



Planning Statement

Application for prior approval (Class A) for
construction of two additional storeys of new
dwellinghouses above New Lawrence House, 2
Shawheath Close, Manchester, M15 4TL

for Zagora Management Limited

Emery Planning project number: 21-287



Project : 21-287
Site address : New Lawrence House, 2
Shawheath Close,
Manchester, M15 4TL
Client : Zagora Management
Limited

Date : 19 November 2021
Author : Emily Sykes

Approved by : Caroline Payne

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1. Introduction

- 1.1 This statement has been prepared to accompany an application for prior approval under Class A of Part 20 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the construction of two additional floors to create 33 new dwellings at New Lawrence House, 2 Shawheath Close.
- 1.2 The proposed 33 apartments would incorporate a new roof of the same design and pitch as the existing roof. Materials would match the existing dwelling.
- 1.3 The application is a re-submission of an earlier refused application seeking which also sought prior approval of a development of the same character/description (129429/P20A/2021). This application seeks to overcome the reasons for refusal on the earlier scheme and has been finalised following pre-application discussions with the planning officer.
- 1.4 The application is accompanied by drawings and Design and Access Statement from Stephenson Hamilton Risley Studio, a Transport Assessment prepared by Tetra Tech and a Daylight and Sunlight Assessment prepared by Daylight and Sunlight Solutions.

2. Site Location and description

- 2.1 New Lawrence House is a 5-storey apartment building located in a predominantly residential location on the west side of Shawheath Close. The majority of the building projects along City Road, with the building also accessible from St Lawrence Street to the south-west. The site occupied by New Lawrence House extends to 0.3 hectares. The existing building is positioned adjacent to multiple blocks of flats within the immediate vicinity of the property. These range in height from 2 to 4 storeys.
- 2.2 The building is detached and constructed in a broadly 'L'-shaped footprint. The existing property contains 90 flats in total. Parking for the property is located in a sub-basement below the property, which can be accessed from St Lawrence Street. Further information on the parking can be found within the Transport Assessment created by Tetra Tech.
- 2.3 The site is not located within a Conservation Area and there are no designated heritage assets in the immediate vicinity. There are no tree preservation orders within or near to the site. The site is free from other relevant restrictions / designations referred to in Schedule 1 of the GPDO.

3. Relevant Planning History

- 3.1 Outline planning permission was granted for New Lawrence House in 2003 (068956/OO/2003/S1), which was followed by an approved reserved matters application in 2006 (080003/MO/2006/S1). The building was constructed prior to 2018 and we understand that Class A permitted development rights are not restricted on the property either by Direction or condition.
- 3.2 An application (129429/P20A/2021) was submitted in 2021 for the prior approval for the erection of 36 no.1 and 2 bed apartments within a two storey rooftop extension at New Lawrence House. This was refused on 07/05/2021 for the following reasons:
- Prior Approval is required and refused due to the impact of the proposed extension to the external appearance of the building, which is found to be unacceptable due to conflict with policy outlined at Section 12 of the National Planning Policy Framework. The development therefore fails to pass the test outlined at Condition A.2 – (1) (e) of Schedule 2, Part 20, Class A of The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020.*
 - Prior Approval is required and refused due to the impact of the proposed extension on the residential amenity of the host building and neighbouring property with regards to loss of light and overbearing impact. This is contrary to policy outlined at Section 12 of the National Planning Policy Framework. The development therefore fails to pass the test outlined at Condition A.2 – (1) (g) of Schedule 2, Part 20, Class A of The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020*
- 3.3 The proposed design under application 129429/P20A/2021 is illustrated on the plan below.



- 3.4 The development proposed under this application for prior approval seeks to address the refusal reasons above by proposing amendments to the previously refused scheme.
- 3.5 The Officer's Report for 129429/P20A/2021 states that the previously proposed two storey rooftop extension would harmfully unbalance the external appearance of the building, making it appear over scaled and excessively prominent within the context.
- 3.6 In order to address this reason for refusal, the design of the proposal has been amended to introduce a contemporary design which will have a positive contribution to the skyline, by providing a building with a distinctive rooftop extension. This is detailed further within the Design and Access Statement by Stephenson Hamilton Risley Studio and displayed in the submitted elevations illustrated below.
- 3.7 The set back of the additional two floors with a variation in design would create interest and appear as a subservient element. The proposed contrasting materials would also allow the second storey to visually appear set back from the main building.



- 3.8 The second reason for refusal related to the proposal causing a loss of light and overbearing impact. The Officer's Report noted that the proposed extension would have resulted in some reduction in light levels within upper floor flats, particularly to the courtyard southerly facing elevation of the main part of the building which fronts City Road.
- 3.9 The Officer's Report for the previous application notes that a daylight/ sunlight analysis was not submitted alongside the previous scheme. For this application, a daylight assessment has been created by Daylight and Sunlight Solutions Ltd. This is enclosed with the application and confirms

that the proposed development will provide adequate daylight and sunlight levels for the surrounding buildings and the property itself.

- 3.10 It is also noted within the previous application that Trafford Council, the adjoining authority, commented in their notification response that the pulling in of the extension away from the St Lawrence Road elevation could reduce the over bearing impact on opposing neighbours.
- 3.11 The proposal under this application has also seeks to address the concern of Trafford Council. The layout facing St Lawrence Street changes on each of the two new floors to respond positively to the existing apartments opposite. This ensures that the proposal gives rise to a varied and interesting massing, whilst also having the benefit of significantly reducing the solar impact upon neighbouring properties.

Pre-application discussions

- 3.12 Following these amendments, a pre-application meeting was held on 11th August 2021 to discuss the proposal for New Lawrence House. This was attended by Jennifer Connor of Manchester City Council, Caroline Payne of Emery Planning and Keith Hamilton of Stephenson Hamilton Risley Studio. Positive written feedback was received from the Planning Officer who advised that the scheme represents an improvement over and above the proposal refused under 129429/P20A/2021.

Other relevant decisions

- 3.13 The prior approval procedure for additional storeys of new dwellinghouses under Class A of Part 20 of the GPDO is relatively new. There is little government guidance on how the criteria should be interpreted.
- 3.14 The Officer's Report for 129429/P20A/2021 (attached at Appendix **EP1**) refers to advice from the Ministry of Housing, Communities and Local Government regarding how the external appearance should be assessed. The advice is noted in the Officer's Report as follows:

"The MHCLG stated that it is down to the Local Planning Authority to interpret the regulations and use their planning judgement in considering applications for prior approval. It was also stated that the policy intention is that it is the narrower sense, so how the additional stories fit in with the existing building. Rather than whether the proposal fits in with the local vernacular."

- 3.15 However, the comments regarding the previous proposal's external appearance make reference to the extension being unsympathetic to local character when viewed within the context, as noted below:

"It is considered that the proposed rooftop extension would disproportionately increase the scale and mass of the building which would harmfully unbalance the external appearance of the building. The extension would cause the building to appear over scaled and excessively prominent within the context. This consideration relates to the external appearance of the building when viewed from the street and from neighbouring property only."

- 3.16 Whilst appeal decisions were non-existent when the previous application was assessed, there are now multiple examples of proposals which were initially refused and then approved at appeal. Many of these proposals were refused due to the external appearance of the proposed extension when viewed from the street scene.

- 3.17 One recent appeal which was allowed was at Kings Gate, Hove (APP/Q1445/W/21/3267608), attached as Appendix **EP2**. This was initially refused by Brighton & Hove City Council due to the additional storeys resulting in an incongruous addition to the building, resulting in an unduly tall building in respect to surrounding buildings which together with its location would result in undue prominence.

- 3.18 The Inspector notes that:

"In assessing whether prior approval should be granted, I consider the assessment of the matter in dispute is limited to the external appearance of the building rather than its effect on the wider area. The Framework is only relevant so far as it relates to the subject matter of the prior approval, in this case the external appearance of the building."

"Even if a wider interpretation of the matter to be considered under prior approval is taken, the principle of upward extension of up to 2 storeys is established by the permitted development right in Part 20, Class A of the 2015 order, and the matters requiring prior approval need to be interpreted in the context of that principle. The Framework and indeed development plan policies should not be applied so as to frustrate the purpose of the grant of permitted development rights through the 2015 Order in the first place."

- 3.19 The inspector concluded that the external appearance of the proposed building would be acceptable when viewed by itself. In other recent appeal decisions, the inspectors have taken the same approach. Examples of such appeals are listed below:

- APP/T1410/W/20/3263486 – Eastbourne
- APP/G3110/W/21/3269650 – Oxford
- APP/M5450/W/21/3271920 – Harrow, Middlesex

3.20 Whilst the design of the proposed development has been amended following the previous application for prior approval, it is important to note the above appeal decisions and how the application should assess the external appearance of the building when viewed alone, rather than with the context.

4. The proposals

- 4.1 The application seeks prior approval for two additional storeys of new dwellinghouses above the existing building at New Lawrence House, 2 Shawheath Close. This proposed development will feature the construction of 33 apartments which will consist of both one bedroom and two bedroom properties.
- 4.2 The addition of two storeys would increase the roof ridge of the dwelling from 16.4 metres to 22 metres, an increase in the roof ridge by 5.6 metres.
- 4.3 The existing roof structure above the two-storey part of the house would be removed, new upper storeys would be constructed together with a new flat roof of the same design as the existing roof of the building.
- 4.4 The height of the proposed sixth and seventh floors when measured internally (ceiling to floor) would be each be 2.4 metres, which would be the same as the ceiling heights on the existing floors.
- 4.5 No visible support structures are required; no engineering operation is proposed as part of the development; and there is no requirement for engineering operations to be carried out within the curtilage of the existing dwelling. The requisite supporting structures for the new development will be contained within the envelope of the resultant dwelling.

5. Part 20, Class A - construction of New Dwellinghouses on detached blocks of flats

5.1 Class A of Part 20 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) allows for *“Development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats, together with any or all—*

(a) engineering operations reasonably necessary to construct the additional storeys and new dwellinghouses;

(b) works for the replacement of existing plant or installation of additional plant on the roof of the extended building reasonably necessary to service the new dwellinghouses;

(c) works for the construction of appropriate and safe [access to and egress from] the new and existing dwellinghouses, including means of escape from fire, via additional external doors or external staircases;

(d) works for the construction of storage, waste or other ancillary facilities reasonably necessary to support the new dwellinghouses.”

5.2 In this case, the proposal is for the creation of two storeys of dwellinghouses above the principal part of the existing building.

5.3 Although deemed planning permission is granted by the Order, this is subject to a requirement to obtain the prior approval of the LPA, via the process set out in the Order.

5.4 Below we provide information in respect of the matters requiring prior approval under the conditional requirements at paragraph A.1.

Matters requiring prior approval

5.5 The matters requiring prior approval as listed in paragraph A.1 are addressed below. In determining such applications, paragraph B (15b) states that, in summary, the LPA must have regard to the policies of the National Planning Policy Framework *“so far as relevant to the subject matter of the prior approval, as if the application were a planning application.”* (emphasis

added). Therefore, our assessment below in relation to the matters requiring prior approval refers to policies in the Framework, where relevant.

- 5.6 Prior approval is being sought in respect of the following matters before commencing the development:

Development is not permitted by Class A if—

(a) the permission to use any building as a dwellinghouse has been granted only by virtue of Class M, [MA] N, O, P, PA or Q of Part 3 of this Schedule;
The scheme would meet this requirement – the approved use of the building is as C3 Apartments.

(b) above ground level, the building is less than 3 storeys in height;
The existing building is 5 storeys in height and therefore meets this requirement.

(c) the building was constructed before 1st July 1948, or after 5th March 2018;
The building was constructed between 1 July 1948 and 5th March 2018, with a reserved matters application for the building being approved in 2006.

(d) the additional storeys are constructed other than on the principal part of the building;
The additional storeys will be constructed on the principal part of the building, as shown on the submitted drawings.

(e) the floor to ceiling height of any additional storey, measured internally, would exceed the lower of—

(i) 3 metres; or

(ii) the floor to ceiling height, measured internally, of any storey of the principal part of the existing building;]

The scheme would meet this requirement, with the floor to ceiling height being the same as those in the other storeys of the principal part of the existing building.

(f) the new dwellinghouses are not flats;
The proposed dwellinghouses are flats.

- (g) *the height of the highest part of the roof of the extended building would exceed the height of the highest part of the roof of the existing building by more than 7 metres (not including plant, in each case);]*

The scheme would meet this requirement, with the proposal increasing the height of highest part of the roof by 5.6 metres.

- (h) *the height of the highest part of the roof of the extended building (not including plant) would be greater than 30 metres;]*

The scheme would meet this requirement, with the highest part of the building having a height of 22 metres.

- (i) *development under Class A.(a) would include the provision of visible support structures on or attached to the exterior of the building upon completion of the development;*

There would be no visible support structures and the scheme would meet this requirement.

- (j) *development under Class A.(a) would consist of engineering operations other than works within the existing curtilage of the building to—*

(i) strengthen existing walls;

(ii) strengthen existing foundations; or

(iii) install or replace water, drainage, electricity, gas or other services;

The scheme would meet this requirement as it would not consist of engineering operations outside the existing boundary of curtilage.

- (k) *in the case of Class A.(b) development there is no existing plant on the building;*

There is no plant on top of the existing building nor is there any on top of the roof extension proposed.

- (l) *in the case of Class A.(b) development the height of any replaced or additional plant as measured from the lowest surface of the new roof on the principal part of the extended building] would exceed the height of any existing plant as measured from the lowest surface of the existing roof on the principal part of the existing building;*

The scheme would meet this requirement.

(m) development under Class A.(c) would extend beyond the curtilage of the existing building;

The scheme would meet this requirement as it is located directly above the existing building.

(n) development under Class A.(d) would—

(i) extend beyond the curtilage of the existing building;

(ii) be situated on land forward of a wall forming the principal elevation of the existing building; or

(iii) be situated on land forward of a wall fronting a highway and forming a side elevation of the existing building;

The scheme would meet this requirement as it is located above the existing dwelling and is set back from the existing principal walls of the building.

(o) the land or site on which the building is located, is or forms part of—

(i) article 2(3) land;

(ii) a site of special scientific interest;

(iii) a listed building or land within its curtilage;

(iv) a scheduled monument or land within its curtilage;

(v) a safety hazard area;

(vi) a military explosives storage area; or

(vii) and within 3 kilometres of the perimeter of an aerodrome.

The scheme would meet these requirements.

Conditions of Class A

5.7 Condition A.2 (1) of Class A of Part 2 of Schedule 20 of the GPDO states that:

Where any development under Class A is proposed, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval of the authority as to—

(a) transport and highways impacts of the development;

(b) air traffic and defence asset impacts of the development;

(c) contamination risks in relation to the building;

(d) flooding risks in relation to the building;

(e) the external appearance of the building;

(f) the provision of adequate natural light in all habitable rooms of the new dwellinghouses;

(g) impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light;

(h) impacts of noise from any commercial premises on the intended occupiers of the new dwellinghouses;

(i) impacts of the introduction of, or an increase in, a residential use of premises in the area on the carrying on of any trade, business or other use of land in the area;

5.8 Under application 129429/P20A/2021, the proposal was found to meet all of the above conditions, except for A.2 (1) e and g identified in bold above.

5.9 The proposal was found to not be in accordance with condition A.2 (1) e as the Officer noted that the development was contrary to paragraphs 130 and 134 of the Framework.

5.10 Paragraph 130 of the Framework states that proposed development should be visually attractive as a result of good architecture, be sympathetic to local character and history, whilst maintaining a strong sense of place. The proposed development has been amended to have a sympathetic yet contrasting design with an architectural language and material palette that acknowledges the site's location.

- 5.11 The proposed development under 129429/P20A/2021 was found to be contrary to condition A.2 (1) g and it was noted that a Daylight and Sunlight Assessment was not submitted with the previous application. The assessment submitted with this application outlines how the new design is of a more sympathetic massing in response to the adjoining buildings and does not cause undue harm to the levels of daylight and sunlight. The report concludes that the sunlight levels should be considered adequate for the proposed development.
- 5.12 The conditions of paragraph A.2 (2-6) will be fulfilled by the developer subsequent to the grant of prior approval, as required by the Order.

6. Summary and conclusions

- 6.1 This statement has been prepared to accompany an application for prior approval under Class A of Part 20 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the construction of two additional floors to create 33 new dwellings at New Lawrence House, 2 Shawheath Close.
- 6.2 The application is a re-submission of an earlier refused application seeking which also sought prior approval of a development of the same description (129429/P20A/2021). This application seeks to overcome the reasons for refusal on the earlier scheme and has been finalised following pre-application discussions with the planning officer.
- 6.3 The property was constructed in after 1st July 1948 and before 5th March 2018. Permitted Development Rights have not been restricted at New Lawrence House.
- 6.4 The plans and documents submitted with this application demonstrate that the construction of the proposed additional two storeys would be permitted development and complies with the criteria set out within Class A of Part 20 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 6.5 The Order makes clear that the local authority may require the developer to submit additional information in accordance with paragraph B (14) in order to determine the application. Should any such information be required, please contact the agent as soon as possible to avoid any delay in prior approval being granted.

7. Appendices

- EP1 Delegated officer report for planning application 129429/P20A/2021 – New Lawrence House
- EP2 Appeal at Kings Gate, 111 The Drive, Hove

EP1

Planning

Growth & Development

Delegated officer report for planning application

Application no. 129429/P20A/2021

Date registered valid: 15 March 2021

Proposal: Prior approval for the erection of 36 no. 1 and 2 bed apartments within a two storey rooftop extension

Address: New Lawrence House, 2 Shawheath Close, Manchester, M15 4TL

Ward(s): Hulme Ward

Applicant: Mr Andrew Broadhurst, Zagora Management Ltd, Derwent House, Waterfold Business Park, Bury, BL9 7BR

Agent (if any): Jason M Towriess, Cobe Consulting Ltd, Derwent House, Waterfold Business Park, Waterfold, Bury, BL9 7BR

Case officer: Jennifer Connor
Tel: 0161 234 4545
Email: jennifer.connor@manchester.gov.uk

Recommendation: Refuse

Date of recommendation: 04.05.2021

Application details

Type of application: Prior approval - new dwellings to flats

Development type: Notifications

Date of site visit: 1 April 2021

Standard consultations:

Printed: 22 March 2021 Expired: 12 April 2021

Neighbour notifications

Printed: 22 March 2021 Expired: 12 April 2021

Site notice

Posted: 1 April 2021 Expired: 22 April 2021

Press advert

No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building/area

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

Prior approval for the erection of 36 no. 1 and 2 bed apartments within a two storey rooftop extension

Consultations & Notification Responses

One objection was received from a local resident in relation to existing problems with the site relating to fly tipping, graffiti and vandalism. Requests that the owner installs CCTV and have on site security.

Environmental Health – Recommend conditions relating to Construction Management, acoustic insulation and waste management.

Highway Services - The site is considered to be suitably accessible by sustainable modes and is in close proximity to a range of local bus services. Should the parking provision remain as existing it is anticipated that the proposals are unlikely to generate a significant increase in the level of vehicular trips and therefore would not raise any network capacity concerns. However, we have concerns that the 89 parking spaces would equate to a reduction of on-site parking from 85 to 63% which may increase the demand for on-street parking. An acceptable number of disabled bays are provided (7 bays equating to 8% of existing provision), and we would recommend that some new electric vehicle charging is provided. Secure cycle parking is

provided within the lower ground car park (132 spaces) which equates to 95% provision and is acceptable. Vehicle access is being retained from St Lawrence Street with pedestrian access retained from City Road which is acceptable from a highway perspective. The existing waste management arrangements will be maintained with waste storage in the lower ground floor and the management company responsible for presenting these adjacent to St Lawrence Street on collection days. This arrangement is acceptable to Highways. Should the planning application be approved it is recommended that a Construction Management Plan be conditioned which shall include, where appropriate the following details: o The routing of construction traffic; o Detail the vehicular activity associated with the construction including appropriate swept-path assessment; o Details of the location and arrangements for contractor parking; o The identification of the vehicular access points into the site; o Identify measures to control dust and mud including on the surrounding public highway including: details of how the wheels of contractor's vehicles are to be cleaned during the construction period; o The details of an emergency telephone contact number for the site contractor to be displayed in a publicly accessible location; o For large schemes a highway dilapidation survey including photographs and commentary on the condition of carriageway/footways on construction vehicle routes surrounding the site. The applicant is advised that any requirements for licensing, hoarding / scaffolding, building maintenance and any associated temporary traffic management arrangements will need discussion and agreement with the council's Highways Applications and Network Resilience teams via Contact Manchester (Tel. 0161 234 5004). SUGGESTED PLANNING CONDITION(S): - 1. Construction Management Plan.

MCC Flood Risk Management – As this is a roof top extension which doesn't increase impermeable areas they suggest no further drainage conditions. However, they are unsure if the application for the building which the extension is to being positioned above has had all drainage conditions discharged. If drainage conditions are still attached to the application for the building beneath the extension then these will still stand. (There is no record of how condition 20 attached to the outline consent reference 068956/OO/2003/S1 was discharged).

Manchester Airport Safeguarding Officer – No aerodrome safeguarding objections to the development. Advisory comment relating to cranes and tall equipment.

Trafford Council - Does not wish to raise any objection to the principle of the proposal. It is however noted that the pulling in of the extension away from the St Lawrence Road elevation could reduce over bearing impact on opposing neighbours.

Issues

The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 came into force on the 31st August 2020.

This amendment conferred the right to construct up to two additional storeys of new dwellinghouses immediately above the topmost storey on a detached building together with:

- any engineering operations reasonably necessary to construct the additional storeys and new dwellinghouses
- works for replacement of existing plant or installation of additional plant on the roof of the extended building reasonably necessary to service the new dwellinghouses
- works for the construction of appropriate and safe access and egress from the new dwellinghouses and existing premises in the building, including means of escape from fire, via additional external doors or external staircases
- works for the construction of storage, waste or other ancillary facilities reasonably necessary to support the new dwellinghouses

The right was conferred subject to conditions, compliance with these conditions is set out in the prior approval application submitted, see below for assessment of submission:

The current building was not granted by virtue of permitted development rights under Schedule 1, Part 3, Class M, N, O, P, PA or Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

a) above ground level, the building is less than three storeys in height;

The current building is not less than 3 storey in height, it is 5 storeys in height.

(b) the building was constructed before 1st July 1948 or after 5th March 2018;

The building was constructed between 1 July 1948 and 5 March 2018. Outline planning consent was granted for development of the site under planning permission reference 068956/OO/2003/S1.

The consent was for development in phase 2 comprising a maximum of 247 residential units and 2,340 m2 commercial floorspace in 4/5 storey blocks as illustrated on drawing 0104/MASS with basement parking of at least one space per dwelling. The accommodation will comprise 139 flats and 500 m2 commercial floorspace to the east of the proposed spine road and 108 flats and 1,840m2 commercial floorspace to the west of the proposed spine road.

The outline planning consent was followed by a reserved matters application 080003/MO/2006/S1.

The consent was for the erection of a part 2,3,4 and 5 storey building to form 139 flats and place of worship with semi-basement parking for 139 cars with associated landscaping following demolition of existing buildings.

(c) on 5th March 2018 the building was in a use other than—

- (i) a use or mixed use within paragraph AA(2)(a) or (b); or
- (ii) a use falling within Class C3 of the Schedule to the Use Classes Order;

The approved use of the building is as 104 C3 apartments

(d) the additional storeys are constructed other than on the principal part of the building;

The additional storeys shown on the submitted drawings are on the principal part of the building

(e) the floor to ceiling height of any additional storey, measured internally, would exceed the lower of—

- (i) 3 metres; or
- (ii) the floor to ceiling height, measured internally, of any storey of the principal part of the existing building;

The scheme would meet this requirement.

(f) the new dwellinghouses are not flats;

The scheme is for flats

(g) the height of the highest part of the roof of the extended building would exceed the

height of the highest part of the roof of the existing building by more than 7 metres (not including plant, in each case);

The scheme would meet this requirement

(h) the height of the highest part of the roof of the extended building (not including plant) would be greater than 30 metres;

The scheme would meet this requirement

(i) development under Class AA(1)(a) would include the provision of visible support structures on or attached to the exterior of the building upon completion of the development;

The scheme would meet this requirement

(j) development under Class AA(1)(a) would consist of engineering operations other than works within the existing curtilage of the building to—

- (i) strengthen existing walls;
- (ii) strengthen existing foundations; or
- (iii) install or replace water, drainage, electricity, gas or other services;

Building Control were consulted for their opinion. They state that it is entirely possible that there could be engineering operations outside of the curtilage of the property, Due to the history of the project, it is likely that exposure of the existing foundations would be asked for and this may well mean the carrying out of excavations that are outside of the curtilage of the property.

However, on the basis of information provided with the application the applicant has stated that works will not extend beyond works permitted. On that basis the prior approval could not be withheld.

(k) in the case of Class AA(1)(b) development there is no existing plant on the building;

There is no plant on top of the existing building nor is there any on top of the rooftop extension proposed

(l) in the case of Class AA(1)(b) development the height of any replaced or additional plant as measured from the lowest surface of the new roof on the principal part of the extended building would exceed the height of any existing plant as measured from the lowest surface of the existing roof on the principal part of the existing building;

The scheme would meet this requirement

(m) development under Class AA(1)(c) would extend beyond the curtilage of the existing building;

The scheme would meet this requirement

(n) development under Class AA(1)(d) would—

- (i) extend beyond the curtilage of the existing building;
- (ii) be situated on land forward of a wall forming the principal elevation of the existing building; or

- (iii) be situated on land forward of a wall fronting a highway and forming a side elevation of the existing building; or
- (o) the land or site on which the building is located, is or forms part of—
 - (i) article 2(3) land;
 - (ii) a site of special scientific interest;
 - (iii) a listed building or land within its curtilage;
 - (iv) a scheduled monument or land within its curtilage;
 - (v) a safety hazard area;
 - (vi) a military explosives storage area; or
 - (vii) land within 3 kilometres of the perimeter of an aerodrome

The scheme would meet these requirements

The developer must apply to the local planning authority for prior approval of the authority as to—

- (a) transport and highways impacts of the development;

Highways are satisfied subject to a condition relating to Construction Management

- (b) air traffic and defence asset impacts of the development;

There are no aerodrome safeguarding concerns subject to an informative relating to cranes and tall equipment

- (c) contamination risks in relation to the building;

No contamination risks have been raised by Environmental Health in their response

- (d) flooding risks in relation to the building;

Flood Risk Management do not require any conditions

- (e) the external appearance of the building, including—
 - (i) the design and architectural features of—
 - (aa) the principal elevation; and
 - (bb) any side elevation that fronts a highway; and
 - (ii) the impact of any works under sub-paragraph (1)(c) or (d) of Class AA;



In determining a similar prior approval application another Council have received advice from the Ministry of Housing, Communities and Local Government in relation to how external appearance can be assessed under legislation.

The MHCLG stated that it is down to the Local Planning Authority to interpret the regulations and use their planning judgement in considering applications for prior approval. It was also stated that the policy intention is that it is the narrower sense, so how the additional stories fit in with the existing building. Rather than whether the proposal fits in with the local vernacular.

Appeal decisions on the new legislation are currently non-existent and case law has not been established. It is therefore open for decision maker to interpret the legislation and exercise their own planning judgement.

It is considered that the proposed rooftop extension would disproportionately increase the scale and mass of the building which would harmfully unbalance the external appearance of the building. The extension would cause the building to appear over scaled and excessively prominent within the context. This consideration relates to the external appearance of the building when viewed from the street and from neighbouring property only.

The proposed increase in scale and selection of materials (Vulcan Cladding system in golden oak / Vulcan cladding in anthracite and Wetherby insulated render system in white with textured finish) would be of detriment to the visual attractiveness of the building and would be unsympathetic to local character. The impact to the external appearance of the building is found to be unacceptable due to conflict with policy outlined at Section 12 of the National Planning Policy Framework.

Specifically paragraph 127 b, c and d which state that decisions should ensure that developments should:

- Be visually attractive as a result of good architecture and

- Be sympathetic to local character and history, including the surrounding built environment.
- Maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit.

Paragraph 130 goes further to state that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

The development therefore fails to pass the test outlined at Condition A.2 – (1) (e) of Schedule 2, Part 20, Class A of The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020.

(f) the provision of adequate natural light in all habitable rooms of the new dwellinghouses;

The scheme would comply in this regard

(g) impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light;

In terms of impact the amenity of the existing building and neighbouring premises, it is recognised that the development will have a substantial impact on the lives of residents during construction. The LPA sympathises with this and could attach conditions requiring submission of a Construction Management Plan prior to prior approval being given. Due to the temporary nature of construction impacts, these would not warrant withholding prior approval however.

With regards to the amenity of the existing building and its residents, the proposed extension would not result in harmful overlooking or loss of privacy given its position on top of the existing building. In terms of impact to light within existing flats, the proposed extension would likely result in some reduction in light levels within upper floor flats, particularly to the courtyard southerly facing elevation of the main part of the building which fronts City Road (in relation to the increase in the height of the arm of the building that extends down St Lawrence Road, which sits due south and south-west of said elevation).

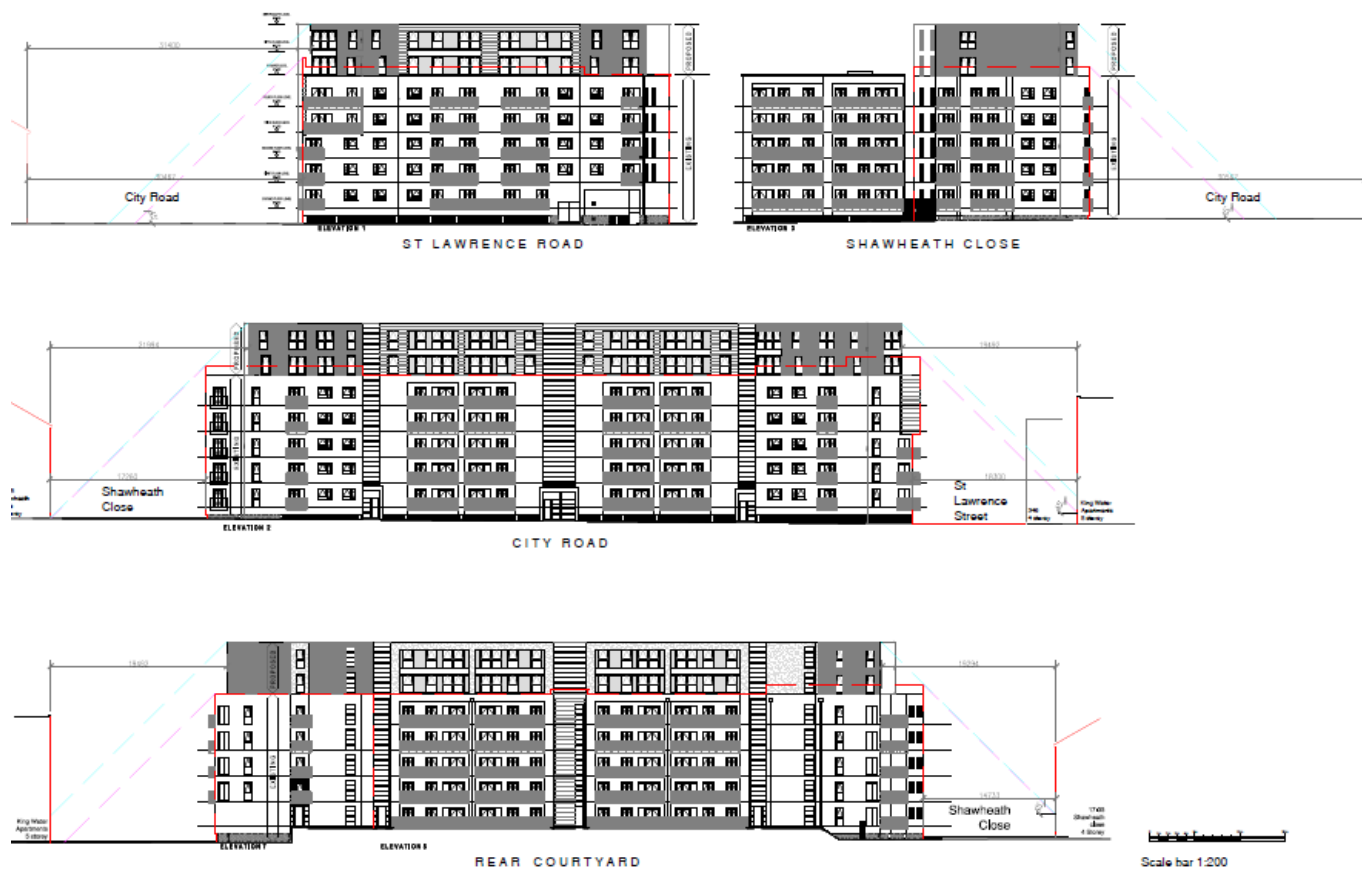
The application was not accompanied by a daylight/sunlight analysis that assessed such impacts, the submitted form stating that the proposed extension over the main body of the building will not impact on the daylighting levels within the existing units. However it is considered, due to the relationship set out above that the development would cause of harm to the residential amenities of occupants in the existing building due to loss of light.

Residents would likely experience some increase in noise and disturbance from increased access, comings and goings. This would be typical domestic activity however and would not be out of character with the existing residential use of the site. This is not found to pose significant harm to living conditions and amenity.

Turning to the impact to amenity at neighbouring properties, the nearest neighbouring properties to the building are:

The applicant states on their application forms that the rooftop extension has been setback from the main elevation to mitigate any impact upon the surrounding areas.

They refer to drawing No. C1518-PD13 which shows the street scene elevations together with a 45 degree angle of influence from the existing and proposed elevations. They state that the proposed extension will have little impact upon the elevations containing primary windows and minimal impact upon the elevations which contain secondary windows.



The extension is shown to be located 31.4m from property on the opposite side of City Road to the north at 292-326 City Road (4 storey) and 2-6 Grenham Avenue (3 storey). Although this distance would be reduced at the nearest point to c. 25m to properties at 252-290 City Road (4 storey).

The extension is shown to be located c. 22m from secondary windows to property on the other side of Shawheath Close (4 storey). Although on plan the south east most part of the roof top extension would be some c. 17m from south facing primary windows to the same premises.

The extension is shown to be located c. 19.5m from primary elevations to King Water Apartments (5 storey) and when measured of plan c. 13.8m from secondary windows to the side of 349 City Road.

Trafford Council commented in their notification response that the pulling in of the extension away from the St Lawrence Road elevation could reduce over bearing impact on opposing neighbours.

The application was not accompanied by a daylight/sunlight analysis that assessed such impacts. It is considered that the scheme would adversely impact upon residential amenity of neighbouring property by virtue of loss of light. Particularly with regard to the property at 349 City Road, King Water Apartments and property on Shawheath Close.

(h) impacts of noise from any commercial premises on the intended occupiers of the

new dwellinghouses;

Environmental Health are satisfied subject to the imposition of a condition relating to acoustic insulation

(i) impacts of the introduction of, or an increase in, a residential use of premises in the area on the carrying on of any trade, business or other use of land in the area;

Increase in residential use would be in a residential setting and would therefore be acceptable.

Conclusion

On the basis of the above it is considered that Prior Approval is required and refused due to the impact of the extension on the external appearance of the building and the impact of the extension on the amenity of the occupants of the host building and neighbouring premises through loss of light and overbearing impact, contrary to Part 20 Conditions A.2(1e and g).

Human Rights Act 1998 considerations

This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: Refuse

Reasons for recommendation to refuse

Prior Approval is required and refused due to the impact of the proposed extension to the external appearance of the building, which is found to be unacceptable due to conflict with policy outlined at Section 12 of the National Planning Policy Framework. The development therefore fails to pass the test outlined at Condition A.2 – (1) (e) of Schedule 2, Part 20, Class A of The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020.

Prior Approval is required and refused due to the impact of the proposed extension on the residential amenity of the host building and neighbouring property with regards to loss of light and overbearing impact. This is contrary to policy outlined at Section 12 of the National Planning Policy Framework. The development therefore fails to pass the test outlined at Condition A.2 – (1) (g) of Schedule 2, Part 20, Class A of The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020.

Appendix 1 – List of consultees & neighbours notified

Environmental Health
Highway Services
MCC Flood Risk Management
Manchester Airport Safeguarding Officer
Trafford Council

List of properties notified on Uniform

Appendix 2 – Planning constraints

Article 4 Direction - Removal of PD Rights Change of Use from Class C3 to Class C4
Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: SOUTH

EP2



Appeal Decision

Site visit made on 9 June 2021

by J Ayres BA Hons, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 06 JULY 2021

Appeal Ref: APP/Q1445/W/21/3267608

Kings Gate, 111 The Drive, Hove BN3 6FU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Anstone Properties Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/03170, dated 2 November 2020, was refused by notice dated 11 December 2020.
 - The development proposed is Prior Approval for the erection of an additional two storeys to provide 10no self contained flats (C3).
-

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a Prior Approval for the erection of an additional two storeys to provide 10no self contained flats (C3) at Kings Gate, 111 The Drive, Hove BN3 6FU in accordance with the application BH2020/03170, dated 2 November 2020, and the plans submitted with it.

Preliminary Matters

2. Since the Council's decision, The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 4) Order 2020 has amended Part 20, Class A of the 2015 Order. However, transitional arrangements in the amending Order mean that its provisions do not apply to prior approval applications submitted before 30 December 2020. The amendments are therefore not applicable to this appeal.
3. Paragraph B (15) of Part 20, Class A of the 2015 Order requires the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework (the 'Framework'), so far as relevant to the subject matter of the prior approval, as if the application were a planning application. My determination of this appeal has been made on the same basis.
4. The principle of the development is established by the 2015 Order. The prior approval provisions do not require regard to be had to the development plan. I have therefore only had regard to the policies of the development plan in so far as they are material to the matters for which prior approval is sought.

Main Issue

5. Paragraph A.2 of Part 20, Class A of the 2015 Order requires prior approval to be sought for the matters listed in that paragraph. Having assessed the application, the Council is content that the development meets all of the matters other than that relating to the external appearance of the building. I have no reasons based on the evidence to disagree with that assessment.
6. The main issue is therefore whether the development would accord with the provisions of Part 20, Class A of the 2015 Order with regard to the external appearance of the building.

Reasons

7. The application site lies to the south of Old Shoreham Road, at the junction of Old Shoreham Road and The Drive, Hove. It comprises a four storey purpose built block of residential flats which fronts The Drive and Old Shoreham Road. The building comprises red brick with brown hanging tile details, projecting bays, UPVC windows and a flat roof. A set of steps, accessible off The Drive, lead to the front entrance.
8. The proposal would result in an additional two storeys being erected on top of the appeal property. The first additional storey would be built directly above the existing storey and appear as a continuation to the building. The proposed materials would match the brickwork and tile hanging of the floors below. The fenestration pattern would align with and reflect the existing arrangement of the building.
9. The second additional storey would sit above this and be set in at either end, the materials would be lighter in detail to contrast with the existing tile hanging and face brickwork of the floors below. The proposed contrasting materials would allow the second storey to visually appear set back from the main building.
10. Having regard to the similar design and materials of the first additional storey when compared to the existing building, albeit with a greater use of tile hanging rather than brick, and the set back of the top floor with a variation in design to create interest and create a subservient element, I consider the external appearance of the proposed building would be acceptable, when taken by itself.
11. I note that an additional storey was permitted to facilitate an additional six flats under BH2014/00075 and this has been built, which in the Council's view extends the building to its limits. The building is a prominent building because of the additional storey previously constructed. However, that storey utilised materials in keeping with the building, which would be replicated within the appeal scheme. The upper storey would then be purposefully different as described above. I am satisfied that whilst the resulting building would be a significant structure, with a sympathetic approach to materials and massing the additional storeys would sit comfortably within the building itself and would not appear as an overdevelopment of the building.
12. The Council has put in their evidence that the increase in the height of the building would be harmful to the wider area, harm which was also identified

previously by an Inspector determining an appeal on the site¹. To be clear, the previous appeal decision was for a refusal of planning permission, and in that case the Inspector was bound to assess whether the proposal would comply with the policies in the development plan. This appeal relates to an application made under Paragraph A.2 of Part 20, Class A of the 2015 Order, and therefore it is necessary for me to approach the decision in accordance with the 2015 Order, which I have made clear in my preliminary matters.

13. The Council makes reference to paragraphs 118 and 127 of the Framework which support upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, and is sympathetic to local character and history, including the surrounding built environment, while not preventing or discouraging appropriate innovation or change (such as increased densities). It is therefore put to me that the wider character should be assessed.
14. When reading Part 20, Class A.2(1)(e) of the 2015 Order it is specific in referring to the external appearance of the building. I note that the 2015 Order does not permit an assessment of the impact that such external appearance may have, which may give one greater scope to consider the effect or impact of the external appearance of the building on the wider area. Therefore, in assessing whether prior approval should be granted, I consider the assessment of the matter in dispute is limited to the external appearance of the building rather than its effect on the wider area. The Framework is only relevant so far as it relates to the subject matter of the prior approval, in this case the external appearance of the building.
15. Even if a wider interpretation of the matter to be considered under prior approval is taken, the principle of upward extension of up to 2 storeys is established by the permitted development right in Part 20, Class A of the 2015 Order, and the matters requiring prior approval need to be interpreted in the context of that principle. The Framework and indeed development plan policies should not be applied so as to frustrate the purpose of the grant of permitted development rights through the 2015 Order in the first place.
16. Whilst I have acknowledge that the proposal would result in a building of significant height being included within the street scene, which would be noticeably larger than its neighbours, it is unavoidable that in some circumstances development permitted by the 2015 Order will result in more substantial variations to the wider area. The introduction of the permitted development right supports the Government's objective of significantly boosting the supply of homes as set out in paragraph 59 of the Framework.
17. I conclude that the external appearance of the proposed building would be acceptable when viewed by itself, and for the purposes of Part 20, Class A of the 2015 Order the increase in height and bulk would not be inconsistent with the overall street scene having regard to the support for additional homes and increased densities in the Framework. Within the context of that permitted development right, the external appearance of the building would also accord with policies QD14 of the Brighton and Hove Local Plan and CP12 of the Brighton and Hove City Plan Part One which amongst other things require that development is well designed in relation to the property and uses materials sympathetic to the parent building.

¹ APP/Q1445/W/20/3255322

Other Matters

18. I note that no parking is proposed for the development. However, the evidence suggests that there is capacity to accommodate additional parking within the Controlled Parking Zone. The top floor of the building is of recent construction (2014/15) and entirely in residential use, so is considered unlikely to contain asbestos or other contaminants. The proposal would not involve breaking ground, so no contamination risks would arise from the use of the wider site or neighbouring uses. The site is situated within National Flood Zone 1, which represents the lowest risk of flood.
19. The applicant has provided floor plans and elevational drawings which show that all habitable room would be served by windows capable of providing adequate natural light. There are no notable obstructions (buildings, trees etc) surrounding the site of a height which would impinge on natural light provision.
20. The side elevation of no. 70 Old Shoreham Road facing Kings Gate does not house any windows serving primary habitable rooms which would be impacted by the proposed increase in height. North facing windows at 107-109 The Drive, due to the positioning to the south of Kings Gate and by reason of the degree of separation, would not suffer any significant loss of light or overshadowing, nor would the existing outlook be compromised.

Conditions

21. Planning permission granted for development under Article 3(1) and Schedule 2, Part 20, Class A of the 2015 Order is subject to conditions set out in paragraph A.2 of that Class which specifies:
 - The development must be completed within a period of 3 years starting with the date of this decision
 - Before beginning the development the developer must provide the local planning authority with a report for the management of the construction of the development which sets out the proposed development hours of operation and how any adverse impact of noise, dust, vibration and traffic on occupiers of the building and adjoining owners or occupiers will be mitigated
 - The developer must notify the local planning authority of the completion of the development as soon as practicable after completion in writing including the name of the developer, address or location of the development and date of completion
 - Each new dwellinghouse is to remain in use as a dwellinghouse within the meaning of Class C3 of the Schedule to the Town and Country (Use Classes) Order 1987 (as amended) and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse.

Conclusion

22. For the reasons given above I conclude that the appeal should be allowed.

J Ayres

INSPECTOR