



Appeal Decision

Site visit made on 6 December 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th January 2024

Appeal Ref: APP/L2250/W/23/3314153

Pemberton Court, Hospital Hill, Hythe, Kent CT21 5RP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 F C Stark Ltd against the decision of Folkestone and Hythe District Council.
 - The application Ref 22/0864/FH/PA, dated 24 May 2022, was refused by notice dated 3 August 2022.
 - The development proposed is described as 'upward extension of existing block of flats through the construction of 2 additional storeys, to provide 8 flats along with necessary ancillary works'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above, I have taken the description of the proposed development from the covering letter dated 23 May 2022. This differs slightly from the description on the Council's decision notice, but not in any material respect.
3. The application was for prior approval of the proposed development, as required under Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Under this Class of the GPDO, upward extension of an existing block of flats by up to two additional storeys is permitted subject to several limitations. Such proposals are subject to the local planning authority's prior approval of the issues listed in Paragraph A.2 (the prior approval matters), which include the external appearance of the building (Paragraph A.2 (1) (e)).
4. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 20, Class A do not require consideration of the development plan. I have therefore had regard to the development plan policies referred to in the reason for refusal only insofar as they are relevant to the prior approval matter under consideration.
5. The GPDO requires that regard is had to the National Planning Policy Framework (the Framework), so far as relevant to the subject matter of the prior approval. A revised Framework came into force in December 2023, while this appeal was under consideration. The main parties have had the

opportunity to comment on whether the December 2023 revisions have relevance to their cases, and I have taken comments received into account.

Main Issue

6. The main issue is the effect of the proposed development on the external appearance of the building.

Reasons

7. Although the principle and potential maximum extent of an upward extension is established in the GPDO, this is subject to consideration of the external appearance of the building. In the CAB Housing case¹, the Courts held that this is not limited to the appearance of the building in isolation, but may also include its relationship with its surroundings. The Courts also confirmed that the scale of the proposed development is not excluded from consideration. Similarly, while the Framework is supportive in paragraph 124 of upward extensions to provide new homes, this support is subject to design considerations, including the effect on the overall street scene.
8. The appeal site is an existing block of flats, on rising land between Seabrook Road and Hospital Hill. It is elevated above Seabrook Road and the seafront, part way up Hospital Hill, which continues ascending beyond the site. The surrounding development is in a generally linear arrangement, forming several parallel rows of buildings between the coast and the wooded hillside to the north. The hillside is part of the Sandgate Escarpment and Seabrook Valley Local Landscape Area, as defined in the Folkestone & Hythe District Places and Policies Local Plan (PPLP) 2020.
9. Pemberton Court is already one of the larger buildings between Seabrook Road and Hospital Hill. The additional storeys would substantially increase its height and massing, with the central five storey element forming a significant proportion of the extended building. Although the ground floor is partly obscured by landscaping and neighbouring buildings, the scale of the building would nevertheless be clearly apparent from a variety of viewpoints.
10. As described in the Landscape and Visual Appraisal (LVA)², there are three main components to the landscape and townscape around the appeal site: the lower-lying area along the shoreline, a linear urban area on relatively low but rising land, and open space in the form of the wooded hillside above that. The appeal building is already a prominent element within the linear urban area, between terraced housing to one side and a variety of townhouses and other dwellings to the other. Despite the wide variety of building typologies, in views from the south there is a relatively consistent urban roofline, above which the wooded hillside forms an attractive backdrop. This provides a strong landscape context to the urban area, which can be appreciated from several viewpoints near the seafront and along Seabrook Road, as well as from the public rights of way and open space alongside the Royal Military Canal.
11. Within these views, the extended building would be a significantly more imposing and dominant feature on the hillside. It would disrupt the fairly consistent roofline, introducing a materially larger and more dominant element

¹ CAB Housing Ltd v SSLUHC & Broxbourne BC [2022] EWHC 208 (Admin) & CAB Housing Ltd v SSLUHC & Broxbourne BC [2023] EWCA Civ 194

² Briarwood Landscape Architecture Limited Landscape and Visual Appraisal dated April 2022

into the townscape. While I accept that the extended building would not break the skyline in these long views, as demonstrated in the LVA, it would significantly reduce the visible tree cover above the roofscape. This would undermine the landscape context around the site and the surrounding urban area. Furthermore, where it is visible from various points along Seabrook Road, the existing building already breaks the skyline, so the additional storeys would be particularly imposing above the two storey housing below.

12. There are other taller and/or more elevated buildings nearby, including a group of modern townhouses only slightly further up Hospital Hill. However, these are not of a similar scale and do not obscure the hillside to the same extent. The flats at Olivia Court are set at a significantly lower level, near the seafront, and therefore do not have a comparable relationship with their surroundings.
13. The hillside behind the appeal site is designated in the PPLP as a Local Landscape Area. While there is no requirement under the GPDO to determine the application in accordance with the development plan, the fact that Policy NE3 of the PPLP recognises this area as being of local landscape value adds weight to the harm arising from the external appearance of the building and consequent erosion of landscape context around the urban area. The adverse effect on the surrounding landscape and townscape would also be inconsistent with Policies HB1 and HB8 of the PPLP, which include that development should contribute positively to its surroundings and not adversely impact on landscape character.
14. The proposed elevational detailing would incorporate various design features, such as contrasting external materials and an articulated roof line. These would provide some visual interest and help to break up the massing of the large front and rear elevations. A similar approach was deemed by the Council to be acceptable on a different site, at Willow Court. However, that site sits in a different urban context, on lower lying land and not intruding into the surrounding landscape to the same extent. In this particular case, the design approach would not represent an overall enhancement, when the significantly increased scale and prominence of the building are taken into consideration.
15. As seen from Battery Point and Alexandra Corniche, the stepped design would break up the bulk of the extended building. The lower parts of the building would be in the foreground, and it would not be excessively imposing from this perspective. From Hospital Hill, the building is set mainly below street level, such that the additional storeys would be prominent, but not excessively tall or imposing. Within the context of the varied building forms in these immediately surrounding streets, the additional building mass could be acceptably accommodated within the shorter range views which are available.
16. Nevertheless, for the reasons given above, I conclude that the proposed development would have an unacceptably harmful effect on the external appearance of the building, particularly in longer views from the south. In this respect, it would conflict with relevant paragraphs of the Framework, notably paragraph 124 which requires that upward extensions are consistent with the prevailing height and form of neighbouring properties and the overall street scene.

Other Matters

17. The Council did not allege any conflict with other prior approval matters and planning permission has been granted for car parking and refuse storage to support the proposed development. However, this does not outweigh my conclusions as set out above, since all prior approval matters must be satisfied in order for prior approval to be granted.
18. The proposal would contribute to the supply of housing, making more efficient use of previously developed land. This is consistent with the underlying aim of Part 20 of the GPDO, to boost the supply of housing. However, the Framework's more specific provisions regarding housing land supply and housing delivery are not relevant to the prior approval matter of the external appearance of the building. Therefore, while I note that the appellant anticipates that the Council may face housing supply and delivery challenges in the foreseeable future, while accepting that a five year supply can be demonstrated at present, this does not alter the conclusions I have reached on the prior approval matters before me.

Conclusion

19. For the reasons set out above, the appeal is dismissed.

Jane Smith

INSPECTOR