



## Appeal Decision

Site visit made on 26 October 2022

**by Bhupinder Thandi BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 December 2022

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**Appeal Ref: APP/M5450/W/22/3292680**

**Marlborough House, 159 High Street, Harrow, London HA3 5DX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1), Schedule 2, Part 20, Class ZA of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended
  - The appeal is made by W.E.Black Ltd against the decision of the London Borough of Harrow.
  - The application Ref P/4032/21/PRIOR, dated 4 October 2021, was refused by notice dated 26 November 2021.
  - The development proposed is demolition of existing buildings and construction of a four to six storey building containing 33 flats.
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### Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 20 Class ZA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for demolition of existing buildings and construction of a four to six storey building containing 33 flats at Marlborough House, 159 High Street, Harrow, London HA3 5DX in accordance with the terms of the application, Ref P/4032/21/PRIOR, and the plans submitted with it.

### Applications for costs

2. An application for costs was made by W.E.Black Ltd against the London Borough of Harrow. This application is the subject of a separate Decision.

### Procedural Matters

3. I have taken the description of development from the Council's decision notice as it more accurately describes it. However, I have shortened the description to make it more succinct.
4. The principle of the development is established by Schedule 2, Part 20, Class ZA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPD0). The prior approval provisions do not require regard to be had to the development plan.
5. Paragraph B(15) of Part 20 of the GPD0 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 so far as relevant to the subject matter of the prior approval, as if the application were a

planning application. My determination of the appeal has been made on the same basis.

6. Following determination of the planning application by the Council, the appellant has prepared a Flood Risk Assessment (FRA). I have paid regard to this document in consideration of the appeal and having regard to the Wheatcroft Principles I am satisfied that no interested parties have been prejudiced by my approach.
7. The appellant has produced a planning obligation by Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990. The UU would restrict possession of parking permits for future occupiers. I return to this later on.

### **Main Issue**

8. The main issue is whether the proposed development would be granted planning permission by the GPDO with regard to the requirements of paragraphs ZA.2.(2) (c) flooding risks in relation to the new building (g) the impact of the development on the amenity of the new building and of neighbouring premises, including overlooking, privacy and light and (l) the plans for landscaping of the development, including the planting and maintenance of shrubs and trees.

### **Reasons**

#### *Flooding risks in relation to the new building*

9. I have considered the evidence provided by the appellant including the FRA, which sets out that the site is at low risk from all sources of flooding and no site specific measures are required. I also note that the existing drainage arrangements would not be altered nor would the impermeable area of the site change as a result of the proposed development.
10. As such, I am satisfied that the submitted information overcomes the Council's concern in relation to this matter. In this regard the proposed development would not increase the risk of flooding in the area complying with the provisions of paragraphs ZA.2.(2) (c).

#### *The impact of the development on amenity*

11. There is no specific guidance set out in Part 20 Class ZA as to what can be considered in relation to the impact of the development on the amenity of the new building and of neighbouring premises. Paragraph ZA.2(2)(g) refers to overlooking, privacy and light, but there is nothing to indicate that this is a closed list. In other words, these are not the only matters to consider in respect of amenity. As such, it is a matter of planning judgement.
12. The ground floor flats proposed would contain a number of windows and balconies including on the elevation facing the High Street. These windows would serve both living and bedroom areas.
13. The Council contend that the lack of defensible space would result in unacceptable living conditions for future occupants. However, they have not provided any evidence to substantiate what harm would be caused by the lack of defensible space. It is not for me to make assumptions in relation to the

Council's case therefore I give this aspect of their argument very limited weight in coming to my decision.

14. The Council's decision notice does not allege harm in respect of the absence of private amenity space even though the Officer's report refers to harm. I acknowledge that the proposed development includes a proportion of flats that could be occupied by 3 and 4 persons including family groups. However, the proposed development would include balconies that would provide an outdoor space for future occupiers.
15. The amenity spaces proposed in terms of size and shape would be adequate for future occupants. They would also be safe and secure. Whilst no communal amenity spaces are proposed future occupants would be able to use the nearby Whitefriars Open Space and other playgrounds within a short walking distance of the site. The absence of external amenity space would not make the scheme unacceptable in this particular instance.
16. As such, the proposed development would provide satisfactory living conditions for future occupiers complying with the provisions of paragraphs ZA.2.(2) (g).

#### *Plans for landscaping*

17. To the rear of Marlborough House is an existing car park laid out to hardstanding. The proposal seeks to retain the car park and in the main introduce linear planting along the boundaries and along the rear of the proposed building.
18. The proposed landscaping would, in my view, serve to break up and soften the site's hardstanding. I find that it would be appropriate when taking into consideration the site's urban context. In addition, the appellant has indicated the planting mix and outlined a strategy for management of the landscaping ensuring it is maintained in the short and long term.
19. I acknowledge the Council's comments in respect of visual setting and biodiversity enhancements. However, taking into account the provisions of the GPDO there is no requirement for development under Part 20 ZA.2(2) to consider such matters. Furthermore, I am mindful of the Planning Practice Guidance which is clear that statutory requirements relating to prior approval are much less prescriptive than those relating to planning applications and is a light-touch process.
20. Consequently, I conclude that the proposed landscaping would comply with the provisions of paragraphs ZA.2.(2) (l).

#### **Other Matters**

21. The proposed development would be taller compared to the existing building. However, it would be no taller than neighbouring Jenga House and given the variety of building heights in the area the proposed development would not appear alien to its context or unacceptably dominate the skyline.
22. Furthermore, the principle of upward extensions is established by the GPDO. The increased height and a taller building are an inevitable consequence and has to be interpreted as not being inconsistent with the street scene and wider area for the purposes of Part 20, Class ZA.

23. There is no substantive evidence to indicate that the quantum of parking would not be sufficient to serve the proposed development. The appellant has also submitted a UU restricting future occupiers from possessing parking permits, which would reduce instances of on street parking. Moreover, I note that the highways authority raised no objection to the application.
24. Matters relating to the private parking management at Artisan Place and the motor related use operating on the site fall outside what I can consider in this Section 78 appeal. Thus, I have not taken these matters into account in consideration of this appeal.

### **Conditions**

25. Paragraph ZA.2.(6) sets out that prior to commencement the developer must provide the local planning authority a report for the construction of the development, the proposed use of materials and plans for the disposal and recycling of waste generated by the development. It is not necessary to impose conditions beyond those.

### **Conclusion**

26. For the reasons set out above the appeal succeeds and prior approval is granted.

*B Thandi*

INSPECTOR