

APPEAL STATEMENT & WRITTEN REPRESENTATIONS

APPEAL MADE AGAINST THE LONDON BOROUGH OF HILLINGDON FOR A REFUSAL OF PRIOR APPROVAL

APPELLANT: MR H PUREWAL

LOCATION: 68-76 ALBERT ROAD, WEST DRAYTON, UB7 8ES

PROPOSAL: CREATION OF TWO ADDITIONAL FLOORS ABOVE EXISTING BUILDING TO INCORPORATE 4 X 1-BED FLATS

LPA REFERENCE: 33654/APP/2020/2582

APPLICATION DATE: 7TH SEPTEMBER 2020

DECISION DATE: 17TH NOVEMBER 2020

STATEMENT DATE: 15TH MAY 2020



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1. INTRODUCTION

- 1.1 This appeal statement has been prepared by OPS Chartered Surveyors on behalf of Mr Malkit Purewal to support an appeal against the decision of the London Borough of Hillingdon (the “LPA”) to refuse prior approval for the creation of two additional floors above existing building to incorporate 4 x 1-bed flats at 68-76 Albert Road, West Drayton, UB7 8ES (“the Site”).
- 1.2 Following a description of the site and surrounding area, the report will set out an overview of relevant planning policy and outline the case for the appellant.
- 1.3 It will be demonstrated that the proposal meets the requirements, limitations and conditions of Class A, Part 20, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 and that prior approval should therefore be granted.

2. BACKGROUND

2.1 On 7th September 2020, the appellant submitted a Prior Approval application to the London Borough of Hillingdon (reference 33654/APP/2020/2582) for the following development:

Creation of two additional floors above existing building to incorporate 4 x 1-bed flats

2.1 On 17th November 2021, the LPA notified the appellant that the application had been refused, for the following reasons:

- i) *The proposed development does not constitute permitted development by virtue of the provisions of Part 20, Class A of the Town and Country Planning (General Permitted Development) Order 2015 as the proposal, by reason of its siting, height, scale, bulk and design, would fail to harmonise with the character and architectural composition of surrounding properties, appearing as an awkward, incongruous and cramped form of development which would be detrimental to the visual amenity of the street scene and harmful to the character and appearance of the surrounding area, contrary to Policy BE1 of the Hillingdon Local Plan: Part One - Strategic Policies (November 2012) and Policies DMHB 11 and DMHB 12 of the Local Plan: Part Two - Development Management Policies (2020) and prior approval is refused under **Condition A.2 -(1)(e)**.*
- ii) *Insufficient information has been submitted in order to enable the Local Planning Authority to establish whether the development complies with Condition A.2.-(1)(g) in respect of loss of light, such that detrimental impacts to the amenity of neighbouring properties could arise from the*

*proposed development. The proposed development by virtue of the increase in height of the application building would result in an overly dominant form of development which would detract from both the levels of natural light and outlook available to the occupants of Nos. 59 and 61 Albert Road, resulting in an unacceptable loss of amenity for neighbouring premises contrary to the requirements of Policy DMHB 11 of the Hillingdon Local Plan: Part Two - Development Management Policies (2020) and prior approval is refused under **Condition A.2-(1)(g)**.*

- iii) The proposed development does not constitute permitted development by virtue of the provisions of Part 20, Class A of the Town and Country Planning (General Permitted Development) Order 2015 as the proposal would fail to provide acceptable light to two (2) habitable rooms (kitchens) within the proposed residential units annotated as 76A and 76C on the submitted plans contrary to the requirements of Policy DMHB 16 of the Hillingdon Local Plan: Part Two - Development Management Policies (2020) and prior approval is refused under **Condition A.2-(1)(f)**.*
- iv) The proposed development does not constitute permitted development by virtue of the provisions of Part 20, Class A of the Town and Country Planning (General Permitted Development) Order 2015 as the proposal, by virtue of the restricted manoeuvring space, would fail to provide sufficient off-street parking provision which would meet the councils approved parking standards. The development would therefore lead to additional on-street parking to the detriment of public and highway safety on Albert Road and is therefore contrary to Policies DMT2 and DMT6 of the Hillingdon Local Plan: Part Two - Development Management Policies (2020) and prior approval is refused under **Condition A.2-(1)(a)**.*
- v) The proposed development does not constitute permitted development by virtue of the provisions of Part 20, Class A of the Town and Country Planning (General Permitted Development) Order 2015 as the proposal would fail to provide acceptable secure cycle storage provision to service the proposed residential units contrary to the requirements of Policy DMT6 of the Hillingdon Local Plan: Part Two - Development Management Policies (2020) and prior approval is refused under **Condition A.2-(1)(a)**.*
- vi) The proposed development does not constitute permitted development by virtue of the provisions of Part 20, Class A of the Town and Country Planning (General Permitted Development) Order 2015 as the proposal fails to demonstrate that 5% of all parking spaces would be provided with*

*an active electric vehicle charging point with a further 5% having passive provision contrary to the requirements of Policy DMT6 of the Hillingdon Local Plan: Part Two - Development Management Policies (2020) and prior approval is refused under **Condition A.2-(1)(a)**.*

3. SITE DESCRIPTION

3.1 The application site is located on the east side of Albert Road and comprises a block of 5 flats. There is an access road to the side with parking to the rear. The site is within the Secondary Shopping Area of Yiewsley / West Drayton Town Centre, as identified in the Adopted Hillingdon Local Plan - Saved UDP Policies (November 2012).

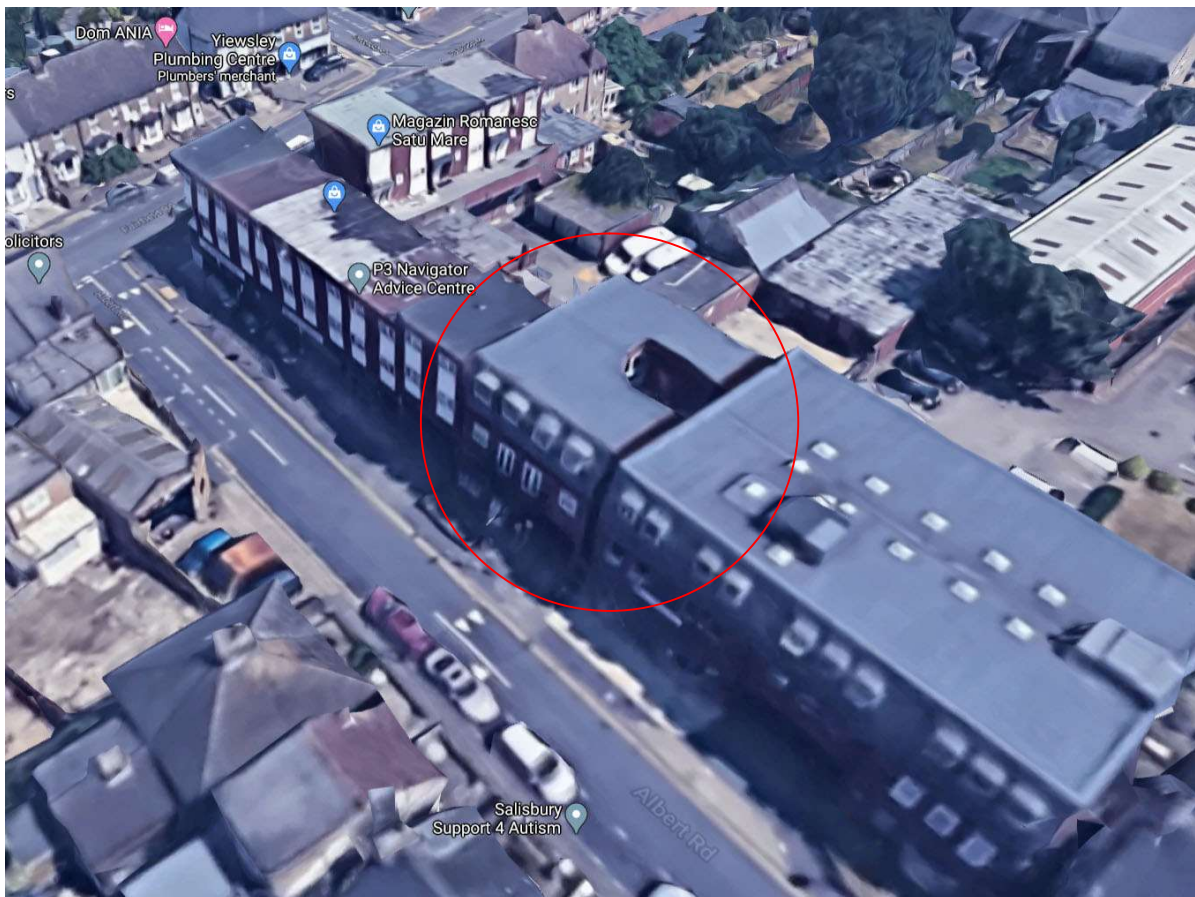


PHOTO 1: SHOWING THE APPEAL SITE

3.2 The appeal property is not listed and it does not lie within a designated conservation area.

4. APPEAL PROPOSAL

4.1 The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2021 introduces a new Class A – ‘New dwellinghouses on detached blocks of flats’ – to Part 20, Schedule 2 of the GPDO. The new right allows developers to add up to two additional storeys to the building. The rights are subject to the conditions and limitations set out in the Order.

4.2 The purpose of this new permitted development right is to simplify the process by which developers can obtain consent for relatively minor and uncontroversial developments. The prior approval process is intended to be light touch, relative to a full planning application.

4.3 The appellant’s proposal is for two additional floors to be constructed on the existing mansard roof of the building. It aligns with the front elevation of the building and replicates its key feature – it has the similar fenestration as the floors below and a similar mansard roof design as existing. The brickwork to the front & rear walls and the cladding to the front and rear will match existing. The new extension rises 5.64m above the existing mansard roof.

4.3 The existing building was constructed at different time to the neighbouring buildings with very dissimilar architectural designs and characters.

5. PLANNING POLICY

5.1 The council’s reason for refusal quotes policies BE1 of the Hillingdon Local Plan: Part 1 – Strategic Policies (Nov 2012), DMHB 11, DMHB 12 of the Local Plans: Part 2 – Development Management Policies (2020), and the provisions of the National Planning Policy Framework (NPPF, 2019).

5.2 As a prior approval application, this proposal falls to be assessed against the criteria under the new Class A of the Part 2, Schedule 2 of the GPDO. As this is not a planning application, the proposal is not assessed in line with local or development management plan policies and the policies quoted by the LPA are not strictly relevant.

5.3 The NPPF is, however, a material consideration. Procedure for applications for prior approval under Part 20, B.15(b) states that: The local planning authority must, when determining an application — have regard to the National Planning Policy Framework issued by the Ministry of Housing, Communities and Local Government in February 2019, so far as relevant to the subject matter of the prior approval, as if the application were a planning application.

5.4 The National Planning Policy Framework (NPPF) sets out the government’s planning policies for England and how they should be applied. It identifies a presumption in favour of sustainable development. Development is sustainable when it meets the economic, social and environmental needs of a community.

5.5 Chapter 11 states that, where there are no relevant development plan policies, permission should be granted unless: *"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."*

5.6 According to paragraph 38: *"Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible."*

5.7 Section 9 of the NPPF seeks to promote sustainable transport. Paragraph 105 states that:

"If setting local parking standards for residential and non-residential development, policies should take into account:

- a) the accessibility of the development;*
- b) the type, mix and use of development;*
- c) the availability of and opportunities for public transport;*
- d) local car ownership levels; and*
- e) the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles.*

5.8 According to paragraph 109: *"Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."*

5.9 According to paragraph 109: *"Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."*

6. CASE FOR THE APPELLANT

CONDITIONS A.2(1)(A) - TRANSPORT AND HIGHWAYS IMPACTS OF THE NEW DWELLINGHOUSES

6.1 According to the officer's report, a majority of the LPA's decision on the Prior Approval application was refused on grounds related to *conditions A.2(1)(a) transport and highways impacts of the development, under refusal reasons iv), v), vi), and the rest under conditions A.2(1)(e),(f)&(g).*

6.2 To avoid any doubt, the LPA did not raise any concerns under the following conditions of the GPDO: A.2(1)(b), (c), (d) & (h).

6.3 In view of the above, the appellant would like to address the refusal reasons relating to A.2(1)(a) transport and highways impacts of the development (under refusal reason iv, v & vi), by providing further mitigation materials to support this appeal

6.4 Having regard to the Wheatcroft Principles, the appellant has provided a supporting statement from the Highway Consultant – Highway Planning Ltd dated May 2021 and an amended car parking & cycle storage plan (drawing reference "2020-68-76AR-APL-1" under APPENDIX 5) to overcome the refusal reasons above. It will be explained why the interests of the LPA and that of interested parties would not be prejudiced by the Inspector accepting additional information in support of the development.

6.5 In respect of the Wheatcroft Principles, the proposed minor re-configuration of the car parking and cycle storage layout does not alter the scheme to a significant degree to consider that it would prejudice unacceptably the interests of the Council or those of other interested parties.

6.6 As a result of the supporting highway statement and amended plans, the appellant believes the above will address the previous refusal reasons relating to highway matters.

CONDITIONS A.2(1)(F) - THE PROVISION OF ADEQUATE NATURAL LIGHT IN ALL HABITABLE ROOMS OF THE NEW DWELLINGHOUSES

6.7 Moving on, the appellant will focus on refusal reason iii) where the LPA opined that the kitchens within the proposed residential units annotated at Flat 76A & 76C would be considered as habitable room hence adequate natural light to the kitchens should be provided.

6.8 The appellant draws the inspector's attention to the official statements below stating that there is no legal definition as whether a kitchen is classed as a "habitable room":

i) The Planning Portal Glossary states that "there is no single legal definition of "habitable room", as its use and meaning is subject to context" (as per APPENDIX 6)

ii) Under the London Plan – Housing SPG 1.3.19 – it states "there is no statutory definition for kitchens to be counted as a habitable room, nor is there any statutory size threshold. Many boroughs, however, included a figure of between 13 and 15 square meters in LDFs: any kitchen above that minimum is usually counted as a habitable room." (APPENDIX 8)

iii) Under the LPA's Policy DMHB 16: Housing Standards, of the Local Plan Part 2 - Development Management Policies 58, paragraph 5.65, it states "*A habitable room is defined as a room within a dwelling, the primary use of which is for living, sleeping or dining. This definition includes living rooms, dining rooms, bedrooms, studies and conservatories but excludes halls, corridors, bathrooms and lavatories. For the purpose of this policy, kitchens which provide space for dining and have windows, will be considered habitable rooms and should be fully considered as part of the assessment of amenity impacts.*" It is clear from the LPA's own policy that only kitchens which provide space for dining and have windows will be considered as habitable rooms. In this instant, the proposed kitchens did not show any dining space or windows, therefore, they must not be considered as habitable rooms and would not need to comply with conditions A.2(1)(f). (APPENDIX 9)

iv) Furthermore, according to the LPA's saved "HDAS - New Residential Layout" Section 4.2 where it states "*habitable rooms include all rooms normally used for living or sleeping in and kitchens having a floor area over 13m². Habitable rooms over 20m² will be counted as two rooms. Small kitchens, halls, bathrooms, balconies, toilets, landings and garages are excluded from the definition of habitable rooms.*" (APPENDIX 7).

v) The refused application drawings for Flat 76A & 76C show small kitchens of 5.82m² being proposed without a window and dining space. Therefore, these

kitchens cannot be classed as habitable space according to the above official statements.

vii) As a result, the LPA is wrong to work against their own policy and define the proposed kitchen as habitable room when assessing the application.

CONDITIONS A.2(1)(G) - IMPACT ON THE AMENITY OF THE EXISTING BUILDING AND NEIGHBOURING PREMISES INCLUDING OVERLOOKING, PRIVACY AND THE LOSS OF LIGHT

6.9 This particular condition refers to "amenity of the existing building and neighbouring premises". The appellant draws the inspector's attention to the rather specific way in which this is worded. It limits the impact assessment on the amenity of the existing building and neighbouring premises mainly "overlooking, privacy and the loss of light", and does not empower the decisionmaker to assess the development in its wider context.

6.10 Upon the close examination of this particular refusal reason, it appears to the appellant that the LPA was confused with the assessment criteria under the above set condition because the LPA stated at one point that "*in respect of loss of light, such that detrimental impacts to the amenity of the neighbouring properties (referred to No. 59 & 61 Albert Road by the LPA) could arise from the proposed development..*" and the following statement was also included "*...the development would detract from both the levels of natural light and OUTLOOK available to the occupants of Nos. 59 & 61 Albert Road...*"

6.11 The above demonstrates that the LPA has adopted additional assessment criteria outside what is permitted under the GPDO conditions A.2.(1) in this case the "outlook - available to the neighbouring occupants". The condition A.2(1)(g) has specifically wrapped the three main areas of "overlooking, privacy and the loss of light" under "amenity". The LPA's refusal reason did not include or object to both "overlooking and privacy", it is therefore reasonable to assume that there is no objection by the LPA on these matters.

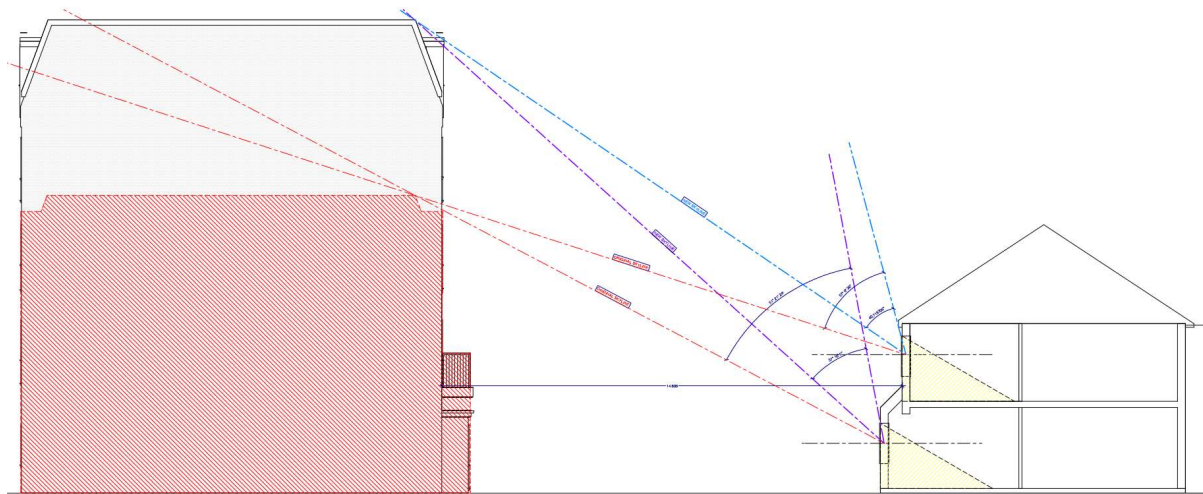
6.12 The appellant will provide supporting evidence to demonstrate the "loss of light" as suggested by the LPA – will not cause detrimental impact on the neighbour occupants at Nos. 59 & 61 Albert Street:

- i) This assessment has been undertaken in full accordance with the Building Research Establishment (BRE) document "Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice" (BR209, 2011).
- ii) The average daylight factor levels recommended by the BRE and set out in the British Standard BS8206 are 1% for a bedroom, 1.5% for a living room of which the appellant understands these values will be application to the ground floor front living room and first floor front bedroom of both properties mentioned above.
- iii) Assessments and calculations of the above values are based on the recent application submitted by No. 59 Albert Road (67518/APP/2020/1695) and appellant assume similar layout for No. 61 Albert Road.

- iv) For the assessment of daylight within the ground floor front living rooms and first floor bedrooms in the opposite building (at nos. 59 & 61 as suggested by the LPA) the *Average Daylight Factor (ADF)* method can be used. This takes into account the amount of light reaching the window serving the room, the size of windows, the size of the room and the transmittance of windows, the cleanliness of the windows and the size and reflectance of wall surfaces within the room. It is defined as the average internal illuminance as a percentage of the unobstructed external illuminance under standard overcast conditions.
- v) The following calculations have demonstrated the resultant ADF% will meet the BRE standards upon completion with contrast comparison between the original ADF of the building prior to the development.

[PROPOSED]									
Average Day Light Factor Calculation (For 59 & 61 Albert Street with indentical internal layout)									
						G/F LIVING ROOM		1/F BEDROOM	
T	(diffuse visble transmittance of glazing)	=				0.68 m2		0.68 m2	
M	(maintenance factor)	=				0.94 m2		0.94 m2	
Aw	(glazed area)	=				1.88 m2		1.37 m2	
A	(total room surface area)	=				64.25 m2 (*N1)		60.65 m2 (*N2)	
R	(average reflectance)	=				0.77 m2 (*N3)		0.77 m2 (*N3)	
Θ	(the angle subtended)	=				37.1 Degree		40.7 Degree	
ADF	=	TMAwΘ	%	=		44.58 %		35.64 %	
		A(1-R^2)				26.16		24.69	
				=		1.70 %		1.44 %	
Target ADF % (under BRE Guideline)				=		1.5 %		1.00 %	
						PASSED		PASSED	
[ORIGINAL]									
Average Day Light Factor Calculation (For 59 & 61 Albert Street with indentical internal layout)									
						G/F LIVING ROOM		1/F BEDROOM	
T	(diffuse visble transmittance of glazing)	=				0.68 m2		0.68 m2	
M	(maintenance factor)	=				0.94 m2		0.94 m2	
Aw	(glazed area)	=				1.88 m2		1.37 m2	
A	(total room surface area)	=				64.25 m2 (*N1)		60.65 m2 (*N2)	
R	(average reflectance)	=				0.77 m2 (*N3)		0.77 m2 (*N3)	
Θ	(the angle subtended)	=				51 Degree		57 Degree	
ADF	=	TMAwΘ	%	=		61.29 %		49.92 %	
		A(1-R^2)				26.16		24.69	
				=		2.34 %		2.02 %	
Target ADF % (under BRE Guideline)				=		1.5 %		1.00 %	
						PASSED		PASSED	
*N1									
GF Living [Floor 13.75m2] / Ceiling 13.75m2 / Walls 32m2 / Bay Window 4.75m2] (Measurement taken using Application (67518/APP/2020/1695)									
*N2									
1F Bedroom [Floor 12.88m2 / Ceiling 12.88m2 / Wall 32.68m2 / Window 2.21m2]									
*N3									
[Base on white painted walls and light timber floors / light colour carpet proportionally]									

- vi) The following drawing shows the relationship between the proposed building and Nos. 59 & 61 with subtended angles showing existing and proposed skyline.



PROPOSED ELEVATION SHOWING RELATIONSHIP BETWEEN PROPOSED DEVELOPMENT AND NOS. 59 & 61 ALBERT STREET (1:100)

CONDITIONS A.2(1)(E) - THE EXTERNAL APPEARANCE OF THE BUILDING

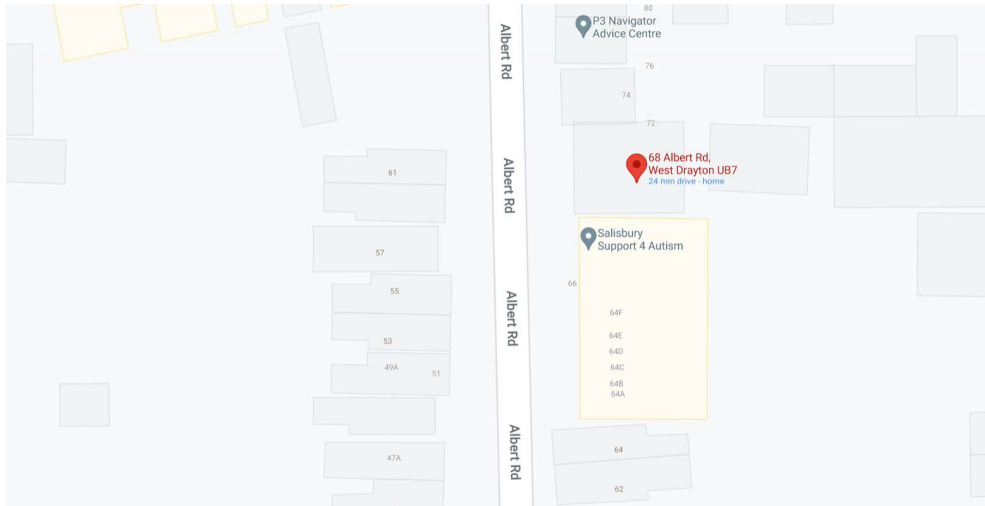
6.13 The sole remaining issue is the design of the proposal. A.2(1)(g) requires that the local planning authority assess: *"the external appearance of the building"*

6.14 The appellant draws the inspector's attention to the rather specific way in which this is worded. It limits the design assessment to *"the external appearance of the building"*, and does not empower the decisionmaker to assess the development in its wider context.

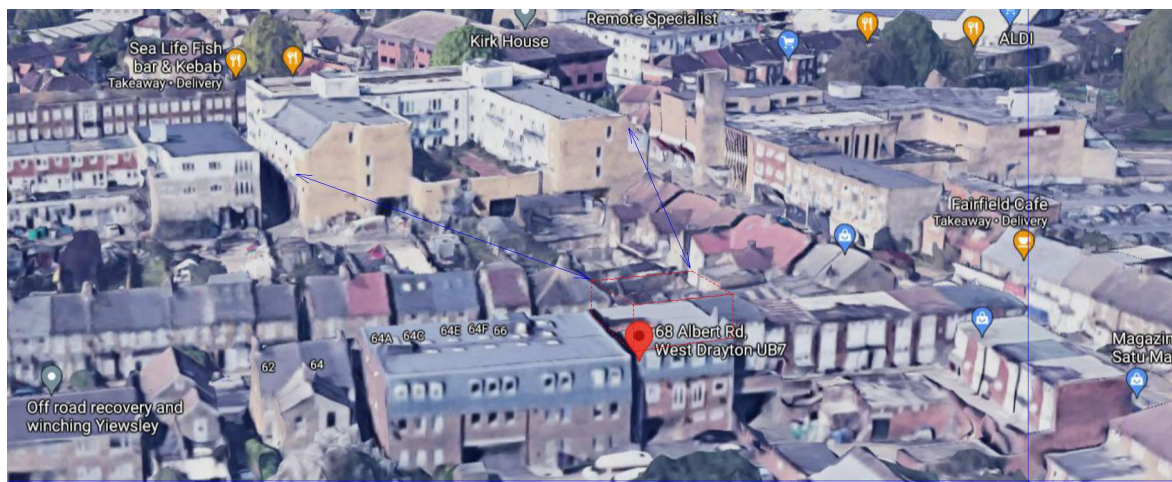
6.15 Given the otherwise precise way in which it is worded, it would have been a simple matter for its drafters to include reference to the impact on the development on the surrounding area, if that was to be considered relevant. The appellant contends that the proposal should not be assessed in terms of its impact on the wider streetscene.

6.16 There is no dispute that, in terms of the external appearance of the building and its architectural features, the proposal would follow that of the host building. The officer's report acknowledges that the *"design of the building is such that it would mimic the style and palette of materials of the existing host building, albeit at an increased height"*.

6.17 The host property is not architecturally distinguished and is not protected by any planning designations. The new floor adds just 5.64m in height. It replicates the architectural design of the existing building and uses matching materials. The front elevation will appear symmetrical and balanced. The side elevation will be taller but will not be substantially changed. In any case, the front elevation is set well back from the highway.



6.18 Though the physical context of the proposal is not relevant, the appellant does not believe that the development will look out of place on the streetscene. The proposed upward extension is a modest and subordinate addition. The proposed building is located near the end of Albert Road and is slight set back from the front elevation of its immediate neighbours (no. 74 to 94) and more set back from the front elevation of houses nos. 36 to 64. It is concealed from view from a number of streets by its adjoining buildings on both side due to their existing building heights. There is diversity in the streetscene and the building on the immediately right of the appeal site is similar in design, the flats & houses nearby are of a different architectural style and era. Furthermore, due to the length of the street, the increase in height of the host building would be hardly visible from either Fairfield Road or Norton Road. Similarly, the proposed development would have similar or less visual impact as 92/104 High Street, West Drayton UB7 7QH due to its physical size, where the LPA had previously approved the multi-storey residential block of flats.



6.19 With reference to appeal reference APP/J1535/D/21/3266264, under paragraph 10 the Inspector agreed that "the GDPO wording suggests a relatively narrow assessment as to the external appearance of the dwellinghouse itself, including the design and architectural features" for Class AA Prior Approval. Similarly, the appellant considers this appeal application should be considered under the same principle. More importantly, the case inspector has made it clear under paragraph 15 that "Fear of a precedent is not sufficient to warrant refusal, each case must be assessed on its own merits. As outlined within the procedural matters at the start of this decision letter the proposal falls to be considered against the GDPO. It is not a Local Plan based assessment..." A copy of the appeal decision is enclosed with this statement under APPENDIX 11.

7. CONCLUSION

7.1 There is no dispute between the parties that the proposal complies with all of the specific requirements in Class A, apart from A.2.(1)(a),(e),(f)&(g) where:

- Issues related to A.2(1)(a) have been addressed by the highway consultant with supporting materials submitted with this appeal;
- A.2(1)(e) is specifically worded to allow local planning authorities to assess the external appearance of the building only. Although not relevant, the proposed development will also sit comfortably on the wider streetscene. The proposed development is a non-obtrusive addition and the surrounding area is diverse in character and appearance.
- The appellant has provided clear evidence to demonstrate that small kitchens of 5.8m² will not be classed as habitable room either under the London Plan or the LPA's own policies, therefore the provision of natural light the proposed kitchens within Flat 76A & 76C should not be required under A.2(1)(f).
- The appellant has demonstrated in the previous sections 6.9-6.12 that the proposed development would not have detrimental impact on the amenity of neighbouring premises due to the loss of light.

7.2 For these reasons, the appellant contends that the proposal represents sustainable development and the inspector is respectfully requested to allow the appeal.

APPENDICES

- Appendix 1: APPLICATION DRAWINGS
- Appendix 2: HIGHWAY APPEAL STATEMENT
- Appendix 3: DECISION NOTICE (REFUSED)
- Appendix 4: OFFICER REPORT
- Appendix 5: AMENDED DRAWINGS FOR PARKING & CYCLE
/ DAYLIGHT ADF DIAGRAM
- Appendix 6: PLANNING PORTAL GLOSSARY
- Appendix 7: NEW RESIDENTIAL LAYOUTS (SPD)
- Appendix 8: LONDON PLAN - HOUSING SPG (KITCHEN)
- Appendix 9: LBH DMHB 16
- Appendix 10: DRAWINGS PG 2 -SWEEP PATHS
- Appendix 11: CLASS AA - APPEAL DECISION NOTICE