



PINS NOTE 04/2022

To: All Inspectors, All Examining Inspectors, All Casework Managers

Relevancy: All Planning and Enforcement casework, Local Plans, Infrastructure and Specialist

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GPDO Class AA and “External Appearance”: CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC [2022] EWHC 208 (Admin)

Introduction

1. The High Court recently issued a judgment (dated 3 February 2022) regarding the interpretation of Class AA of Part 1 of the GPDO¹ and the principles that apply for authorities when deciding applications for the prior approval of upward extensions on dwellinghouses.
2. Separate but linked challenges were brought by [CAB Housing Ltd, Beis Noeh Ltd and Mati Rotenberg](#) against three decisions by Inspectors on different sites to dismiss appeals against the refusal of prior approval under Class AA. The Class provides for the enlargement of a single dwelling house by the upwards addition of up to two storeys, or one storey above a single-storey building. The three cases were heard in a conjoined hearing. It was alleged that the Inspector in each case had misinterpreted AA.2(3), by taking too broader approach to assessing the adverse impacts on the external appearance of the dwelling and, in two cases, to the amenity of adjoining properties.
3. However, the judgment agreed with the Secretary of State’s broader interpretation of the GPDO and has upheld the Inspectors’ decisions as lawful. Justice Holgate concluded:

“(i) Where an application is made for prior approval under Class AA of Part 1 of Schedule 2 to the GPDO 2015, the scale of the development proposed can be controlled within the ambit of paragraph AA.2(3)(a);

(ii) In paragraph AA.2(3)(a)(i) of Part 1, “impact on amenity” is not limited to overlooking, privacy or loss of light. It means what it says;

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 – SI 2015 No. 596

(iii) The phrase “adjoining premises” in that paragraph includes neighbouring premises and is not limited to premises contiguous with the subject property;

(iv) In paragraph AA.2(3)(a)(ii) of Part 1, the “external appearance” of the dwelling house is not limited to its principal elevation and any side elevation fronting a highway, or to the design and architectural features of those elevations;

(v) Instead, the prior approval controls for Class AA of Part 1 include the “external appearance” of the dwelling;

(vi) The control of the external appearance of the dwelling is not limited to impact on the subject property itself, but also includes impact on neighbouring premises and the locality” (para 102 of the judgment).

This judgment therefore confirms the approach already given in the Inspector Training Manual and confirms PINS’ legal advice on the interpretation of Class AA.

4. The Judge drew comparisons with the use of the word “including” by comparing Class A of Part 20 with Class AA of Part 1 and Classes AA to AD of Part 20. The latter group have the same matters “included” in external appearance, so if the Claimants interpretation of Part 1 Paragraph AA.2 (3)(a)(ii) had been found to be correct, then it must also apply to Classes AA to AD of Part 20.
5. In upholding the decisions of each Inspector, it was considered illogical to allow control of all aspects of external appearance where an upwards extension is to be constructed on a block of flats, but to confine that consideration to the principal elevation and any side elevation fronting a highway where the existing building is a detached (or terraced) commercial or mixed-use building.

Action

6. It is important to note that Justice Holgate emphasised that his judgment was confined to the lawfulness of the decisions under challenge, stating that individual decision-makers will make their own planning judgments applying the prior approval controls, correctly interpreted, to the evidence before them (para 101 of the judgment).
7. However, when considering the external appearance of a dwellinghouse, Inspectors should consider all impacts on neighbouring premises and the locality. Consideration of appearance could embrace the visual impact of a proposal on premises other than the subject dwelling, including streetscapes.
8. The three Claimants are seeking permission to appeal to the Court of Appeal, but until such time as this judgment is overturned, this caselaw should be applied.
9. The Inspector Training Manual will be updated in due course to include reference to this judgment.

Background

10. [The Town and Country Planning \(General Permitted Development\) \(England\) \(Amendment\) \(No. 2\) Order 2020](#) which came into force in August 2020, made

amendments to the [The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#).

11. Article 3 made changes to Part 1 of Schedule 2, which introduced "Class AA - enlargement of a dwellinghouse by construction of additional storeys". Also, Article 4 amended Part 20 of Schedule 2 (permitted development rights - construction of new dwellinghouses) by allowing "works for the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a detached building".
12. Following these legislative changes, the ITM chapter for [The GPDO and Prior Approval Appeals](#) was updated to give advice on how matters concerning external appearance should be dealt; in particular, the effect of the building's relationship on nearby properties.
13. The claimants' had argued that a planning authority's control of impact on amenity was limited to the effects on properties "contiguous with, or abutting", the subject property and were limited to overlooking, privacy and loss of light; and the control of the external appearance of the subject dwelling was limited to the "design and architectural features" of its principal elevation and any side elevation fronting a highway, and was further limited to the effects of those matters upon the subject dwelling itself. The developers had also argued that such a broad interpretation of Class AA would greatly restrict development rights 'established' under the GPDO.

Further Information

14. Please contact [Knowledge and Horizon Scanning Team](#) if you have any general queries on this Note.
15. For case-specific queries, Inspectors should contact their IM in the first instance. The IM may raise the matter with the relevant Pfl if necessary. Pfls will work with colleagues in DLUHC and consider the implications of the judgment.
16. Non-salaried Inspectors should approach [Resource and Process Ownership Team](#) with any queries in the first instance.