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# Appeal Decision

Site visit made on 7 December 2021

by **D.R McCreery MA BA (Hons) MRTPI**

An Inspector appointed by the Secretary of State

Decision date: 13<sup>th</sup> January 2022

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**Appeal Ref: APP/Z5630/W/21/3273719**

**Austin House, St. Mark's Hill, Surbiton KT6 4LT**

- 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) and Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
  - The appeal is made by Mr Rory Gleeson (Sunley Holdings Ltd) against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
  - The application Ref 20/03303/PACND, dated 17 December 2020, was refused by notice dated 9 April 2021.
  - The development proposed is construction of two additional storeys of new dwellinghouses above Austin House, St Marks Hill, Surbiton, KT6 4LT to provide 12no.x new dwellings (2no. x1 bed 1person units, 8no. x1 bed 2 person units and 2no. x 2 bed 4 person units), with works for the construction of appropriate and safe access to and egress from the new dwellinghouses and works for the construction of storage facilities reasonably necessary to support the new dwellinghouses.
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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 AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for construction of two additional storeys of new dwellinghouses above Austin House, St Marks Hill, Surbiton, KT6 4LT to provide 12no.x new dwellings (2no. x1 bed 1person units, 8no. x1 bed 2 person units and 2no. x 2 bed 4 person units), with works for the construction of appropriate and safe access to and egress from the new dwellinghouses and works for the construction of storage facilities reasonably necessary to support the new dwellinghouses at Austin House, St. Mark's Hill, Surbiton, KT6 4LT in accordance with the application 20/03303/PACND, dated 17 December 2020, and the details submitted with it and subject to conditions as detailed below.

## Procedural Matters

2. The Council's decision notice is undated. The Council have not addressed this matter in their evidence. I have adopted the decision date that has been provided by the Appellant, evidenced by information taken from the Council's website.

3. Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a detached building. For development to be permitted it must satisfy the limitations set out at paragraph AA.1 and the conditions at AA.2.
4. Compliance with the other limitations at AA.1 is not an issue in dispute between the Council and the Appellant and I do not have evidence that leads me to take a contrary view.
5. The conditions at AA.2 require developers to apply to the local planning authority for their prior approval in relation to a number of specified matters, set out at subparagraphs 'a to l'. Views of the Council and the Appellant were sought on whether the requirements at 'k and l' relating to fire risk and safety are relevant in this case. I address the matter of fire safety further under the conditions section of this decision.
6. Paragraph B of Part 20 sets out the procedure for prior approvals and 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). I have considered the appeal on the same basis.
7. Policies in the Kingston Core Strategy are referenced in the Council's reason for refusal. For the avoidance of doubt, I have not decided this appeal on the basis of the duty in s38(6) of the Planning and Compulsory Purchase Act 2004. I have noted the policies, but only insofar as they may generally assist with forming the planning judgment required in relation to the application for prior approval.
8. A signed unilateral undertaking has been submitted under section 106 of the Town and Country Planning Act 1990 (s106). The s106 makes an obligation relating to permit free development. I am satisfied that the obligation is necessary to manage the transport and highways impacts of the development, and therefore relates to satisfactorily addressing a prior approval matter. The obligation meets the relevant tests in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 57 of the Framework<sup>1</sup>. I have taken the obligation into account in reaching a conclusion on this appeal.

### **Main Issue**

9. The main issue is whether or not prior approval should be granted for the proposed development with particular regard to the requirements of Part 20, Class A paragraphs AA.2 (1) (e) relating to the external appearance of the building.

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<sup>1</sup> Including national planning guidance at - Paragraph: 009 Reference ID: 23b-009-20190315

## Reasons

10. It is noteworthy that 'external appearance' is undefined in the GPDO. Paragraph AA.2 (1) (e) (i) and (ii) specifies what is included in the consideration. However, this does not, on an ordinary reading of the legislation, serve to limit the assessment to just those aspects of external appearance. Giving definition to the scope of the consideration is therefore a matter of planning judgement based on the specific proposal, context, and evidence that has been presented.
11. I have considered the question of whether my assessment should be limited to the effect on the building as viewed in isolation and the degree to which the relationship with the wider context is also relevant. In this case, the proposal relates to a building that sits within a built up context and has prominent street facing elevations. As such, it is appropriate to consider effects on external appearance that result from a change in its relationship with the wider context. This is, however, a narrower consideration than impacts on the character and appearance of the wider area and street scene, which go beyond the scope of the prior approval.
12. In reaching a view on this issue, I have considered the evidence put forward by the Council and the Appellant, including the previous appeal decisions that they refer to. However, as noted above, this issue is one fundamentally of planning judgement to be reached on the specifics of the proposal and the evidence that is before me.
13. The GPDO establishes the principle of enlarging the building by adding additional storeys. A building of a greater scale would naturally flow from such enlargement. As such, a denial of prior approval simply on the grounds that a bigger building would result runs contrary to the principle that the GPDO establishes, unless it is accompanied by a deeper level of specific justification.
14. The building is prominently located at a busy crossroad junction. It's novel form and appearance, coupled with the general nature of the surroundings, is such that it does not sit within a single and coherent built narrative. It has a visual relationship with a number of different contexts. This includes public views from lower ground when approaching from Surbiton Hill Road where the building is seen in relative isolation and is an imposing feature, views from the surroundings of Church Hill Road/Avenue Elmers where it is part of the backdrop to smaller scale houses, or views from within the more immediate surrounds of the busy crossroad junction where it acts as a gateway building, along with other modern properties in this location.

15. The result is a building that responds to a number of different urban contexts. However, I am not persuaded by the evidence put forward that any of these contexts are particularly sensitive to change or have an especially close visual or other tie with the building, including in relation to the scale of different buildings. As such, the proposal would not have a harmful effect on the external appearance of the building by virtue of it severing an important part of its relationship with the surrounding context.
16. The proposal aims to achieve upwards extension by adding additional storeys that replicate the size and, to some degree, detailed design of the existing floors that would be beneath it. It is intended to be read as a continuation of the existing building, rather than an obvious extension to it. The result would alter the proportions and appearance of the building, but not in a way that would be harmful to its external appearance. The detailed design would mimic much of the existing building, with small balconies providing a good element of visual interest. The use of matching materials could be the subject of condition.
17. To use the term adopted by the Council, as I think it describes it plainly and accurately, the general appearance of the existing building is 'boxy'. The proposal would result in a similar appearance. However, that is part of the nature of the building. The evidence does not lead me towards a conclusion that the proposal would result in harm to the external appearance of the building simply because it would continue a feature of it that already exists.
18. For the reasons set out, the proposal would have acceptable effects on the external appearance of the building. As such, there would be no conflict when regard is paid to the Framework, including national policy set out in Chapter 12 on achieving well-designed places and the creation of high quality and beautiful buildings and places.

### **Other Matters**

19. I have paid regard to the comments of other interested parties. Those that relate to issues that are not prior approval matters are not within the express consideration of this appeal. Nevertheless, I have considered such comments in accordance with the duties under the GPDO. Comments relating to external appearance have been paid regard to as part of my conclusions on the main issue.
20. In relation to impacts on the amenity of occupants of the existing building and neighbouring properties, I have considered the Appellant's amenity impact assessment and the Council's response to it, along with the issue of amenity in their delegated report. Whilst sympathetic to the comments, I find no firm evidence that leads me to take a view that the proposal would have a harmful impact on amenity.

21. Conditions relating to construction management would assist in managing effects on amenity during development works.
22. Parking and other issues linked to potential motor vehicle activity would be adequately managed by the S106 relating to permit free development and conditions designed to assist with managing construction.

### **Conclusion**

23. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

### **Conditions**

24. Paragraph AA.2 to Schedule 2, Part 20, Class AA of the GPDO permits development subject to a number of conditions. This includes conditions relating to:
  - Completion of the development within a 3 year period.
  - Provision of a report for management of the construction of the development.
  - Notification of the completion of development and provision of specified details.
  - Requirements relating to use.
25. I will consider further conditions by reference to the numbering in the attached schedule. These conditions apply in addition to those set out in the relevant part of the GPDO. I have considered the list suggested by the Council. I have not included conditions that would replicate the requirements of the GPDO as they would not pass the test of necessity. Some amendment to the suggested conditions may have been made in the interests of clarity and effectiveness.
26. (1) is necessary in the interests of certainty. (2) is necessary in the interests of maintaining the safe operation of the highway. It goes beyond the condition set out in Paragraph AA.2(4) of the GPDO. However, this is justified on the grounds of the location of the site at the crossroad junction of a busy highway. It needs to be a pre commencement condition as some of the measures would need to be in place prior to the development starting in the interests of highway safety. (3) is necessary in order to achieve a satisfactory standard of external appearance. (4) is necessary on the grounds of managing the impact on the amenity of the existing building and neighbours. (5) is necessary as part of managing the transport impacts of the proposal.
27. Considering the views of the Council and Appellant on the matter, I have no evidence to dispute that the requirements for prior approval at 'k and l' Schedule 2, Part 20, Class AA relating to fire risk and fire safety impacts did not apply.

28. In the case of consideration of fire safety impacts at paragraph 'I', this was because the original application to the Council fell within the relevant transitional arrangements.
29. Whilst specific prior approval was not required on fire safety impacts at the time, as this matter is now relevant I am of the view that imposing a condition relating to it would be legitimate and also prudent in this case. Condition (7) is justified and necessary on this basis and in the interests of ensuring adequate consideration of fire safety impacts and measures before the development is occupied. It needs to be a pre-commencement condition as there may be measures necessary that would be hard to retrofit at a later point.
30. I am not satisfied that the evidence provided by the Council justifies their suggested conditions relating to Co2 emissions and water usage or that the matters are relevant to the prior approvals set out in AA.2. Requirements relating to permit free development are adequately addressed by the s106 discussed above.

*D.R. McCreery*

INSPECTOR

### **Schedule of conditions**

1. The development to which this decision relates shall be carried out in accordance with the following plans: 180 - A 00 010 - Site Location Plan Planning Letter dated 17/12/2020 180 A 00 100 - Existing Ground Floor Plan 180 A 00 101 - Existing Roof Plan 180 A 01 100 - Proposed Ground Floor Plan 180 A 01 101 - Proposed 4th Floor Plan 180 A 01 102 - Proposed 5th Floor Plan 180 A 01 103 - Proposed Roof Plan 180 A 00 305 - Existing and Proposed North Elevation 180 A 00 300 - Existing and Proposed Surbiton Hill Road Elevation 180 A 00 302 - Existing and Proposed Church Hill Road Elevation 180 A 00 303 - Existing and Proposed Courtyard North Elevation 180 A 00 304 - Existing and Proposed Courtyard West Elevation 180 A 00 301 - Existing and Proposed St Marks Hill Elevation, Daylight and Sunlight Report and Supplemental Supporting Information, External Building Fabric Assessment Flood Risk Assessment Transport Statement 17/12/2020, Daylight and Sunlight Report 16/02/2021
2. No development shall take place (including any works of demolition) until a construction management plan or construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout demolition and construction. The statement shall provide for: i) The procedure for loading/unloading materials; ii) The route to and away from site for muck away and vehicles with materials; iii) The protocol for managing deliveries; iv) The protocol for managing vehicles that need to wait for access to the site; v) Whether any reversing manoeuvres are required onto or off the public highway into the site and whether a banksman will be provided; vi) Temporary site access; vii) Signing system for works traffic; viii) Whether site access warning signs will be required in adjacent roads; ix) Whether it is anticipated that statutory undertaker connections will be required into the site; x) The storage of plant, materials and operatives vehicles; xi) The location of all ancillary site buildings; xii) The means of enclosure of the site, its erection and maintenance; xiii) Wheel washing equipment; xiv) The parking of vehicles of site operatives and visitors; xv) The method of recycling and disposing of waste resulting from the demolition and/or construction phases. Deliveries/collections to and from the site shall use a route that is agreed with the highway authority and the agreed route shall be signed accordingly.
3. The facing materials used in the development to which this decision relates shall match those of the existing building unless otherwise agreed in writing by the local planning authority.

4. Prior to the first occupation of the development to which this decision relates, details of waste and recycling facilities to serve the development shall be submitted to and approved in writing by the local planning authority. The refuse and recycling facilities as shown in the approved details shall be provided prior to first occupation of the development and shall be permanently retained thereafter.
5. Prior to the first occupation of the development to which this decision relates, details of secure cycle parking facilities to serve the development shall be submitted to and approved in writing by the local planning authority. The cycle parking facilities as shown in the approved details shall be provided prior to first occupation of the development to which this permission relates and shall be permanently retained for that purpose and kept free from obstruction thereafter.
6. Prior to the commencement of the development hereby approved a Fire Statement which is an independent fire strategy, produced by a third party, suitably qualified assessor, shall have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the agreed details any measures shall be put in place prior to first occupation of the development and shall remain in place and maintained over the lifetime of the development.