



Appeal Decision

Site visit made on 2 November 2022

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2022

Appeal Ref: APP/C3620/W/21/3286049

Triumph House, Guildford Road, Little Bookham, Leatherhead, KT23 4HB

- 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 AA of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Paul Morris against the decision of Mole Valley District Council.
 - The application Ref MO/2021/1054/PN20AA, dated 24 June 2021, was refused by notice dated 19 August 2021.
 - The development proposed is described as "prior notification for the erection of an additional storey to create 1 No. dwelling."
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application form does not include a clear description of the proposed development. I have therefore used the description referred to on the Decision Notice in the banner heading above, as it more clearly sets out the development proposed.
3. The application before me is for the prior approval of proposed new dwellinghouses on detached buildings in commercial or mixed use, permitted under Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO). The appellant's statement includes references to other classes in the GDPO, particularly Class AA under Part 1 of the order which relates to the enlargement of a dwellinghouse by construction of additional storeys. In paragraph 3.1 of the appellant's statement, it is incorrectly stated that they are seeking prior approval for proposed enlargement of a dwellinghouse, rather than a detached building in commercial or mixed use. Paragraph 5.10 continues this mistake by setting out an assessment of the proposal against the criteria set out at paragraph AA.1 of Schedule 2 of Part 1 of the GDPO. However, this application relates to development permitted under Part 20, Class AA and, to ensure injustice does not arise, I must consider it under these provisions.
4. The appellant refers to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004, that when making a determination under the planning Acts regard is to be had to the development plan and the determination shall be made in accordance with the plan unless material considerations indicate otherwise. Much of the appellant's statement sets out how the proposal is supported by planning policy. However, with regards to the

application before me, the principle of development is established by the GDPO and the provisions of Schedule 2, Part 20, Class AA do not require regard be had to the development plan or other material considerations. While I may have regard to planning policy, that would only be in so far as it relates to the matters set out in the conditions at paragraph AA.2. As explained in my reasoning below, this has not been necessary in this case.

5. Class AA of Part 20 permits the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a detached building in commercial or mixed use subject to a number of criteria. Paragraph AA.1. sets out the circumstances when development would not be permitted. Of these, the Council cites the proposal as not satisfying the requirements set out in paragraph AA.1 (a), (c) (i & ii), (e) and (f). Notwithstanding this, the Decision Notice also makes it clear that the proposed development would be unacceptable in terms of the matters set out at paragraph AA.2 (a) (c) (e) (g) (h) and (i) for which prior approval is sought.

Main Issues

6. Therefore, the main issues are whether the proposed development would be permitted under Schedule 2, Part 20, Class AA of the GDPO and, if so, whether prior approval should be granted when assessed against the matters set out at paragraph AA.2.

Reasons

Paragraph AA.1 (a): height in storeys above ground level

7. Paragraph AA.1 (a) of Schedule 2 of Part 20 of the GDPO states that development is not permitted by Class AA if above ground level, the building is less than three storeys in height. The appeal property is a single storey flat roofed building and therefore fails to meet the requirements of paragraph AA.1 (a) and is not permitted by Class AA of Schedule 2 of Part 20 of the GDPO.

Paragraph AA.1 (c) (i & ii): Use of building on 5th March 2018

8. Class AA of Schedule 2 of Part 20 of the GPDO permits the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a detached building which is (a) used for any purpose within Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes) or Class B1(a) (offices) of the Schedule to the 1987 Order¹, or as a betting office, pay day loan shop or launderette; (b) in a mixed uses combining (i) two or more uses within paragraph (a); or (ii) a use falling within Class C3 (dwellinghouses) of the Schedule to the 1987 Order¹ together with one or more uses within paragraph (a).
9. This requirement is set out again at paragraph AA.1 (c) that states that development is not permitted by Class AA if on 5th March 2018 the building was in a use other than (i) a use or mixed use within paragraph AA(2)(a) or (b); or (ii) a use falling within Class C3 of the schedule of the Use Classes Order.
10. Notwithstanding references to previous unauthorised use of the building as a dwellinghouse, the parties agree that in March 2018 the appeal property was being used to store vehicles, which is a Class B8 use. While this may be a

¹ In relation to Class AA, "the 1987 Order" means the Use Class Order as in force on 5th March 2018.

commercial use, it is not a use set out in paragraph AA.1 (c) and is therefore not permitted by Class AA of Schedule 2 of Part 20 of the GDPO.

Paragraph AA.1 (e): floor to ceiling height of any additional storey

11. Paragraph AA.1 (e) requires the floor to ceiling height, measured internally, of any additional storey permitted to not exceed the lower of (i) 3 metres or (ii) the floor to ceiling height, measured internally, of any storey of the principal part of the existing building.
12. I appreciate that it may be likely, based on the elevation drawings submitted as part of the application, that the floor to ceiling height of the additional proposed storey, measured internally, would not exceed 3 metres. However, in the absence of any section plans, it is not possible to tell. It is also unclear what the floor to ceiling height, measured internally, of the existing building is. It has therefore not been demonstrated that this criterion has been met.

Paragraph AA.1 (f): whether the new dwellinghouses are flats

13. Paragraph AA.1 (f) states that development will not be permitted if the new dwellinghouses are not flats. The submitted plans show the additional storey would be used in conjunction with the ground storey as a single dwellinghouse. This is also confirmed in the appellant's statement at paragraph 5.14. Given this, the proposal fails to meet the requirements of paragraph AA.1 (f) and is not permitted by Class AA of Schedule 2 of Part 20 of the GDPO.
14. Accordingly, the proposed development would not comply with three of the limitations and restrictions specified as being applicable to the proposed development by the GDPO, and it is not possible to determine whether it complies with another. Consequently, it does not benefit from deemed permission under Schedule 2, Part 20, Class AA of the GDPO.
15. As the proposed development is not permitted development, it is not necessary for me to assess whether prior approval should be granted for the matters set out at paragraph AA.2 or whether any further conditions are necessary.

Other Matters

I have taken careful account of the variety of other matters raised by the appellant, including examples of similar development where planning permission has been granted in the surrounding area. However, these matters are not relevant in determining whether the proposal would be permitted by Schedule 2, Part 20, Class AA of the GDPO, and therefore do not lead me to a different decision.

Conclusion

16. For the reasons above, the appeal is dismissed.

Hannah Guest

INSPECTOR