



Appeal Decision

Site visit made on 24 July 2023

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2023

Appeal Ref: APP/Z5630/W/22/3297323

8-12 Coombe Road, New Malden KT3 4QE

- 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 Martin Morris of Woodcote Estates Limited against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref 22/00358/PRA, dated 2 February 2022, was refused by notice dated 9 March 2022.
 - The development proposed is two additional storeys to provide six apartments.
 - This decision supersedes that issued on 1 December 2022. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Prior approval was refused by the Council on 9 March 2022. This precedes the date of the declaration on the application form which was 19 April 2022. The appellant has advised that the incorrect application form was submitted with the appeal and has subsequently provided a correct version, said to have been taken from the Council's website. I am satisfied that this version, dated 2 February 2022, is the correct form for the appeal proposal, and I refer to it in the banner heading above.

Main Issue

3. The main issue is whether the proposal would be permitted development under Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

4. The proposed development would entail the construction of two additional storeys onto an existing building, which contains a restaurant at ground level and offices on the two upper floors. The building is described by the main parties as having three storeys as well as a mansard roof. However, whilst not a matter of dispute between the parties at the time prior approval was refused, I noted that part of the second storey of the building was contained within the mansard roof.
5. With reference to Schedule 2, Part 20 Class AA Section AA.1.(a) of the GPDO, development is not permitted if, above ground level, the building is less than three storeys in height. Schedule 2, Part 20, Class A, Section C (2) of the GPDO states that, in Part 20 references to a 'storey' do not include, amongst other

- things, any accommodation within the roof of a building, whether comprising part of the original building or created by a subsequent addition or alteration.
6. With reference to what is meant by a 'building', Article 2 (1) of the GPDO states that it includes any structure or erection and, except in [Class F of Part 2, Classes P and PA of Part 3, Class B of Part 11, Classes A to I of Part 14, Classes A, B and C of Part 16, Class T of Part 19 and Class ZA of Part 20 of Schedule 2], includes any part of a building.
 7. With regard to this, the Council now accepts that 'the second floor of the building is contained within the roof of the building', and so the existing building is less than 3-storeys in height. As such the Council considers the proposal 'would not benefit from permitted development rights set out in Class AA, Part 20, Schedule 2 of the GPDO'.
 8. However, the appellant does not accept that the second floor of the building is within the roof and that the existing building is less than 3-storeys in height. The mansard element is simply a feature at the front, to create the impression of a mansard roof in views from Coombe Road and the proposal is 'fully compliant with the wording of the GPDO in all respects.'
 9. The issue in this case is whether any part of the second storey of the existing building is within any part of the existing roof, in which case the existing building would be less than 3-storeys in height.
 10. The rear element of the second storey is topped by a flat roof. The mansard element at the front is tiled with a ridgeline that is parallel to Coombe Road. The mansard roof can be seen to have three contiguous elements: a tiled, shallow rear roof slope; a similar tiled shallow front roof slope; and a tiled steep front roof slope containing six dormer windows that project through it. The three integrally linked elements of the mansard roof are most clearly seen when looking at the side elevations of the building and are also shown on the submitted existing drawings¹.
 11. I note the appellant's comments regarding what is said to be the dictionary definition of a roof, and so what the extent of the 'roof' at the appeal property would therefore be. I do not find the appellant's assertion that the mansard element is a distinct feature that does not form part of the roof to be at all compelling.
 12. The submitted existing drawings show the mansard element² and in terms of its design, position, external materials and function it is clearly part of the roof. The gutter at the front eaves drains both of the tiled front roof slopes and there are fascia and soffit boards on both sides of the building that follow the profile of the mansard roof.

¹ Revised existing drawings were submitted with the appeal, which are said to correct errors on the original drawings following comments by the Council. Whilst the profile of the mansard roof is shown more accurately on the revised existing drawings, they were not considered by the Council in refusing Prior Approval and are not listed by the Council in their suggested conditions, were the appeal to be allowed. In any event, this matter does not affect my assessment of the main issue. I have determined the appeal with reference to the originally submitted drawings and my observations on site; descriptions of the shallow profile of parts of the mansard roof are taken from my observations on site.

² WC15/076/P15 – *Existing Roof Plan* - includes reference to 'Mansard (sic) Plain tiled Roof'; WC15/076 – PO5 – *Existing Elevations and Section* - includes on the Existing External Materials Legend: '2. Reddish Brown Plain Tiled Mansard Roof' which is also shown on the drawings.

13. From the submitted drawings and my observations on site, both within the building and from the surrounding land, the second floor office space extends into the mansard element at the front of the building. Whilst there is an internal tiled ceiling at second floor level, this does not change my view that part of the second floor office space is within the mansard roof.
14. The appellant makes reference to further internal pictures submitted to support their position. However, no such internal pictures of the building were submitted. I have visited the building, including the second floor, and have drawn my conclusions from my observations, and the evidence that was submitted.
15. In any event, the second floor office space also extends into the steep sloped part of the mansard roof containing dormer windows at the very front of the building. This is also shown on the *existing first and second floor office plans*³. Using the definition of a roof supplied by the appellant, were the steep sloped part of the mansard roof to be removed, as suggested in a scenario by the appellant, this part of the second storey of the building would be exposed to the outside.
16. I am satisfied that part of the second storey of the building is contained within the mansard roof, and so the existing building is less than three storeys in height above ground level.
17. I note the appellant's comments regarding what is said to be the dictionary definition of a mansard roof, and that in considering this, the building does not have a mansard roof. Both main parties have repeatedly referred to the front part of the roof as a mansard in their evidence and it is also shown as such on the submitted drawings. Regardless of whether the design of the front part of the roof means it is a mansard, a gambrel, or some other term, I have referred to it as a mansard roof for convenience and clarity and to distinguish it from the rear flat roof.
18. The appellant also makes reference to the views of the Council in refusing prior approval and at the previous appeal, and to the views of the Inspector, whose decision was quashed by order of the High Court. None of this affects my own assessment of the proposal, as set out above.
19. For these reasons, and with particular reference to Article 2(1); Schedule 2, Part 20 Class A Section C(2); and Class AA Section AA.1.(a) of the GPDO, the proposal would not be permitted development under Schedule 2, Part 20, Class AA of the GPDO.

Other Matters

20. As the proposal is not permitted development there is no need for me to consider the Council's reasons for the refusal of prior approval.

Conclusion

21. For the reasons given above, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR

³ WC15/076 – P04 – *Existing first and second floor offices plans*