



Appeal Decision

Site visit made on 12 March 2025

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2025

Appeal Ref: APP/P5870/W/24/3350795

Marian Court, Robin Hood Lane, Sutton SM1 2SB

- 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 A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by M&D Properties Investments Ltd against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2024/00019.
 - The development proposed is described as “the erection of a one storey upwards extension (alterations to the roof) on the three, three storey blocks of flats. The proposal will facilitate the provision of 14 additional self-contained flats following the removal of the existing flat roof to a mansard roof that will provide habitable accommodation.”
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is made pursuant to Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). This permits development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built block of flats, as well as certain associated works.
3. Paragraph A.1. of Class A, Part 20, Sch. 2 of the GPDO sets out limitations to this permitted development, and Paragraph A.2. requires that before beginning the development, the developer must apply to the Council for prior approval in relation to certain matters. The Council considered that the proposal meets the requirements of paragraph A.2 of Class A, except for paragraph A.2.(1)(a) relating to transport and highways impacts, and (e), relating to external appearance. Based on the evidence before me, I am also satisfied that the proposal would not result in adverse impacts in respect of the other prior approval matters set out in paragraph A.2, and I am also content that the proposal would not fall outside any of the limitations and restrictions set out in paragraphs A.1. applicable to development under Class A.
4. Reason for refusal no. 2 refers to the proposal conflicting with paragraph A.2(1)(a) of Class A, Part 20, Schedule 2, of the GPDO without a legal agreement to prevent future occupiers from obtaining parking permits to park vehicles on the nearby roads. The appellant has submitted a Unilateral Undertaking dated 22 December 2024(UU) that seeks to prevent future occupiers from obtaining parking permits. The Council has responded to say that the UU is acceptable. Consequently, the

appeal has been determined on the basis that the proposal satisfies the requirement of paragraph A.2.(1)(a) of Class A and reason for refusal no. 2 is no longer relevant. I shall return to the UU later in my decision. I have therefore confined my reasoning to the prior approval matter of external appearance.

5. Paragraph B (15) of Class A, Part 20, Sch. 2 of the GPDO requires that when determining such an application for prior approval, regard should be had to the National Planning Policy Framework (the Framework) as far as relevant to the subject matter of the prior approval. It was also held in *CAB Housing Ltd v SSLUHC & Broxbourne BC* (2023) that external appearance can include the effect on adjoining and nearby properties. The appeal proposal has been determined on this basis.
6. The National Planning Policy Framework (the Framework) was revised on 12 December 2024 and later amended on 7 February. As the changes do not materially affect the main issues in this case, the parties have not been invited to comment further and there would be no unfairness as a result.
7. Prior approval applications must not be determined, expressly or otherwise, on the basis of section 38(6) of the Planning and Compulsory Purchase Act 2004 or as though the development plan must be applied. As such, I have only had regard to the parts of the development plan, insofar as they are material considerations to the matters of external appearance.
8. With the appeal the appellant has submitted several plans showing amendments to the scheme, which was refused by the Council. The changes include a reduction in the proposed roof height; shallower pitches on the sides of the new roofs; changes to the design of new openings; and the internal re-configuration of units 2 and 3 to take account of protected trees. These changes, particularly to the external appearance of the building, go beyond the changes that can reasonably be made at appeal stage without public consultation with interested parties. It is also noted that there has been considerable interest from residents and others. In the interests of fairness to all parties, these proposed amendments are not accepted, and the appeal will be determined based on the plans also considered by the Council. Whilst it was said the same revised plans were submitted to the Council before it made its decision, and I can appreciate the appellant's frustration that they were not accepted at application stage, the Council's unwillingness to accept those revised plans is beyond my determination of this appeal scheme.

Main Issues

9. Accordingly, the main issue is whether prior approval should be granted having regard to the effect of the proposed development on the external appearance of the building and the area.

Reasons

10. Marian Court comprises three buildings finished in buff coloured brick, which are all three storeys high under shallow hipped roofs, with generous overhangs at eaves level. The appeal site is accessed from Robin Hood Lane, it has two symmetrical buildings to either side of its central access, that are both 'L' shaped with frontages onto both Robin Hood Lane and the internal access road. At the end of the access road is the third building that is largely rectangular in shape with a small projecting part on one side. The buildings are set within a spacious landscaped setting,

including trees on the frontage to Robin Hood Lane, some of which are protected under a Tree Preservation Order¹(TPO). The front and sides of these buildings at the appeal site, particularly those on the frontages are visible from nearby roads and the appearance of the buildings, including their landscaped setting positively contributes to the character and appearance of the area.

11. Near to the appeal site are a mixture of one, two, three, and four storey properties. There is some architectural variety in the roof forms in the immediate area, including gables, hips, crown, flat, and asymmetrical roofs. However, the very few properties with flat roofs, do not positively contribute to the character and appearance of the area. The majority of properties nearby have dual pitched roofs in either a gable or hipped form.
12. The proposal would remove the existing shallow roof pitches and generous and distinctive eaves overhangs. It would introduce steep roof pitches with dormer roof extensions directly above the existing eaves level, with large central flat roofs above these steep pitches, on all three of the buildings. The section plans do not indicate that its roof would have a central pitch so it would not meet the Framework's definition of a mansard roof. The appearance of the roof form would be bulky, harmfully contrasting with the existing shallow hipped roof, and adding an incongruous feature above these existing well-proportioned buildings that would harm their external appearance.
13. Within the pitched outer sides, there would be large openings for the new flats, many of which would not be positioned directly above existing openings, and some would include large windows within the dormer elements of the roof design. The larger size of some of these openings, most being without glazing bars would be inconsistent with the design and size of the windows below. Moreover, their large size at such a high level would be out of character with the appearance of the existing fenestration on the building and inconsistent with its existing horizontal emphasis. The design of the new openings would create an illegible, top heavy form of development adding to the identified harm, and the proposal would fail to harmonise with the external appearance of the existing building.
14. I saw on my site inspection that there are views of Marian Court from up and down Robin Hood Lane, and from between buildings on neighbouring roads. Such views include the side elevations of the buildings, with their distinctive overhanging eaves. The introduction of the proposed new roof would create a box-like appearance on top of these buildings, which would harm the character and appearance of the area.
15. It is acknowledged that the appellant has said that the external materials could be the subject of a condition and incorporate traditional finishes such as slate or clay tiles. Furthermore, it could be possible to secure materials with an appropriate colour to try and blend in with the existing building and the area, but this would not offset the identified harm above in regard to the design and appearance of the new storey. It is also acknowledged that there are no objections to the scale of the proposal, indeed the GPDO grants permission for the additional storey subject to satisfying certain criteria and limitations.
16. Both parties have referred to an appeal decision at Orchard Court Wallington², which was part of a linked decision, relating to two different prior approval

¹ Ref. TPO no. 2009/01

² Ref. APP/P5870/W/23/3320631

applications to an existing 4 storey flat roof building, one proposal sought an additional upper storey, and the other sought a two-storey upward extension. Both appeals were dismissed due to harmful effects on the external appearance of the building and the area. Whilst there are some similarities with the appeal scheme in that it seeks to introduce a different design on top of the building, the appearance of the host property and Orchard Court is much different to the buildings at Marian Court, and its surrounding context also differed. It is therefore not entirely comparable to the appeal scheme, and I have attributed limited weight to it in my decision.

17. The 2 no. cedar trees on the frontage of the site (subject to the TPO) are tall, they have few branches low down and have arguably been unsympathetically pruned, so they have branches extending further out at a higher level than those below them. The contribution these trees make to the character and appearance of the area is somewhat tempered by the pruning. I was also not convinced that the large branches at higher levels had any meaningful screening purpose. It is noted that the additional storey of accommodation, would be partly within the roof space of the existing buildings, nevertheless 2 no. proposed flats would be close to these trees.
18. The appellant's Arboricultural Method Statement to BS5837:2012, prepared by Arbtech dated December 2023 (AMS) states that the canopies of these 2 no. trees are not in contact with the existing building, and with the removal of its eaves overhang they would be further away from the building as altered (said to be by some 0.75 metres). The AMS also adds that the pruning of these trees is part of regular maintenance for them, and the frequency of such pruning would not need to change. Although it states some tertiary branches would likely need to be pruned for construction works, such pruning is said not to be significant and that there should be no unacceptable effects upon these trees.
19. Given the appearance of these 2no. trees and noting the Council's comments about them being significantly pruned, in the event there was some pressure for pruning their higher branches, this would likely create a more consistent appearance with the lower branches, and would not in my opinion be harmful to the character and appearance of the area, or be likely to harm their retention. In light of my findings, the proposal and the existing trees should be able to satisfactorily coexist alongside the proposal without harming the character an appearance of the area. Moreover, it is noted that the appellant has indicated that units 2 and 3 could be reconfigured to reduce the likelihood of any such pruning pressures.
20. I therefore conclude on this main issue, that whilst I found the likely effect on nearby trees to be acceptable, the proposal would harm the external appearance of the building and the area, and it would conflict with paragraph A.2.(1)(e) of Class A, Part 20 Sch. 2 of the GPDO. In addition, the proposal would conflict with paragraphs 125, 135 and 139 of the Framework, that amongst other things require development to function well and add to the overall quality of the area, be sympathetic to local character, require upward residential extensions to be consistent with the prevailing form of neighbouring properties and the overall streetscene, and for development, which is not well-designed should be refused.
21. Although not determinative, the proposal would also be contrary to Policy 28 of the Sutton Local Plan 2016-2031, dated February 2018 (the SLP), that amongst other things, require attractive development that makes a positive contribution to the street frontage, streetscene, and/or public realm, which is designed to the highest

standard, especially with regard to architectural detailing, and respects local context.

Other Matters

22. In view of my findings above regarding the harmful effects of the proposal on the external appearance of the building and the area, it has not been necessary for me to consider the submitted UU any further in this case.
23. There have been comments made by interested parties stating that 6 no. different occupiers of Marian Court have between them a range of different physical and mental conditions that make them more sensitive to the effects of the proposed development. The concerns raised mainly relate to the effects that could arise from construction works, particularly from dust, noise, disturbance, and vibration, along with parking implications. It was also said that the noise from having a flat above could also cause distress. Based on the information before me, it indicates to me that these occupiers have protected characteristics.
24. In light of this, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had due regard to the Human Rights Act 1998 (HRA) which at Article 8, requires that decisions ensure respect for private and family life and the home, as well as Article 1 of the First Protocol relating to the protection of property, which are also engaged in this case. In reaching my decision, I have kept these interests at the forefront of my mind. However, they are qualified rights, and interference may be justified in the public interest. The concept of proportionality is key.
25. I recognise the paramount importance of the rights of the existing occupiers of Marian Court to have their property, home, private, and family life respected and this is a primary consideration. Any adverse effects experienced from the appeal proposal could interfere with the neighbouring occupier's rights in respect of their property, home, private, and family life. Any such impacts would weigh against the proposal in these respects.
26. It is accepted that there would be some, disruption to occupiers of Marian Court from construction works and traffic movements associated with the new storey of accommodation if the appeal were to be allowed. However, these would be for a temporary period. The use of a construction management plan condition, in the event the appeal was to be allowed, could be imposed to minimise such impacts, particularly in regard to parking and delivery areas, delivery times, dust, hours of work, noise, disturbance, and vibration. Whilst this would not remove the effects of construction works, it would ensure that they were mitigated as far as reasonably practical.
27. The proposed new development is to be car free, so its future occupiers would not be able to obtain parking permits to park on the roads around the appeal site. No on-site parking is proposed, so there should be no unacceptable parking impacts from the proposal if the appeal were to be allowed. A condition could also be imposed for a scheme of insulation to mitigate as far as reasonable any unacceptable noise and disturbance from the occupation of the new flats.

28. Having regard to the above, and the legitimate and well-established planning policy aims in respect of providing housing in well-connected areas and protecting living conditions, a refusal of prior approval relating to its impact on the amenity of the existing building and neighbouring premises would not be proportionate and necessary on the information before me, or consistent with the requirements of the HRA and my PSED duty contained in Section 149 of the Equality Act 2010.
29. I note the arguments made in favour of the appeal proposal by the appellant and the objections made by interested parties about the appeal proposal in addition to the issues referred to above. However, given that this is a prior approval application, my determination of the appeal is limited in this case to the matter of external appearance and it has not been necessary for me to address those issues further.

Conclusion

30. For the reasons given above, I conclude that prior approval should be refused, and the appeal be dismissed.

A Hunter

INSPECTOR