



Appeal Decision

Site visit made on 2 August 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2022

Appeal Ref: APP/A1910/W/22/3294068

Highlands, Kings Road, Berkhamstead HP4 3BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Allan Wilton against the decision of Dacorum Borough Council.
 - The application Ref 21/04792/ROC, dated 22 December 2021, was refused by notice dated 11 February 2022.
 - The application sought planning permission for the construction of a detached dwelling without complying with condition 2 attached to planning permission Ref 20/00964/FUL, dated 20 August 202.
 - The condition in dispute is No 2 which states that: *'The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 20/263/PL/100, 20/263/PL/101, 20/263/PL/102, 20/263/PL/103, 20/263/PL/104, 20/263/PL/105, Planning Design and Access Statement dated April 2020, Tree Survey Report dated 29 March 2018 and Preliminary Tree Protection Plan DS29051701.04 dated 30 March 2018.'*
 - The reason given for the condition is: *'to provide certainty and to require compliance with the submitted levels and tree protection details.'*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission 20/00964/FUL was granted for a new dwelling in the garden of Highlands at appeal¹. This followed an earlier refusal, 4/00245/19/FUL, and subsequent dismissal at appeal² for a similar development on the grounds of the effect on the living conditions of the occupiers of neighbouring properties.
3. The application subject to this appeal is made under Section 73 of the Planning Act for minor material amendments. It seeks revised but not substantially different designs for the new dwelling approved at appeal. This type of application is possible as a condition was imposed on the original permission specifying the approved plans. The appeal seeks removal of that condition and replacement with a condition specifying the plans that reflect the amended proposal.
4. The main issue is the effect of the revised design on the living conditions of the occupiers of the neighbouring properties.

¹ APP/A1910/W/20/3256852.

² APP/A1910/W/19/3230140.

Reasons

5. The appeal site comprises the rear garden of Highlands, a detached dwelling in a suburban area. The appeal site is enclosed by a mix of reasonably high hedges incorporating some trees and is predominantly grassed. This provides a sense of openness to the area, as an undeveloped area of green space surrounded by residential dwellings.
6. The appeal site contributes to the outlook of the dwellings, the rear windows of which look towards the appeal site providing views of the sky and a sense of openness. These include 1 and 2 Newbury Grove which back on to the rear boundary of the site. The dwelling 10 Oxfield Close and the dwellings 65 and 65A Kings Road are located on the north west and south east sides of the appeal site respectively. The appeal site is located on rising land that is elevated above the level of properties on Newbury Grove and Kings Road.
7. As with the previous proposals, including the approved scheme, the proposed dwelling would be comprised of three distinct wings in a contemporary style, sited at the back of the garden, reasonably close to the hedges forming the boundaries to the side and rear. The approved scheme comprised a single storey wing with a pitched roof facing the properties on Newbury Grove.
8. The appeal proposal seeks to provide a two storey flat roofed section here, albeit stepped in from the edge of the building slightly. This would nonetheless result in the blank two storey elevation of this wing moving five metres closer to the rear boundary of the properties on Newbury Grove and would significantly increase the height of the wing adjacent to the boundary with 65 Kings Road. This would result in a significant increase in the massing and dominance of the structure in views from these properties when compared with the extant approval.
9. As noted by both previous Inspectors, I accept there is no right to a view, however outlook from neighbouring dwellings should not be unduly obstructed or unacceptably harmed by overbearing or visually dominant development. Whilst I have had regard to the various distances between the proposed dwelling and the neighbouring properties, the proposal would nonetheless represent a significant intrusion into an area that is currently open and undeveloped, adversely affecting the outlook from neighbouring properties. Moreover, this adverse effect on outlook would be exacerbated by the change in levels and elevated nature of the appeal site, increasing the visual dominance of the proposal in views from these properties when compared to the extant approval.
10. In this regard, I note the comments of the Inspector at the previous appeal who highlighted that *'the drop down to single storey greatly reduces the impact on outlook from houses at Newbury Grove'* and that *'the low height of the rear section of the new house and the adequate spacing would sufficiently mitigate any harm to outlook.'* The appeal proposal would re-introduce a two storey wing which formed part of the scheme that was dismissed at appeal. I accept that the current proposal would be for a lower overall roof height, however, the previous appeal decisions nonetheless reinforce my above assessment.
11. I accept that the high hedges would potentially limit views of the structure from neighbouring properties. However, whilst the appellant states that the high hedges would not be removed, to my mind, given their considerable

height, it is not unlikely that future occupants would seek to reduce or remove them. As such, the retention, or maintenance of the hedges at their current heights cannot be relied upon in the long term.

12. I therefore conclude that the proposed revised design would result in unacceptable harm to the living conditions of the occupiers of neighbouring properties. This would be contrary to Policies CS11 and CS12 of the Dacorum Borough Council Core Strategy (2013) which seek to ensure new developments preserve living conditions.

Other Matters

13. I have had regard to the numerous examples of planning permission granted, including at appeal, for dwellings in gardens and adjacent to other residential properties provided by the appellant. Whilst I have been provided with relevant privacy distances, and sometimes the relevant change in levels, I cannot be certain that any of these represent a direct parallel with the circumstances of the appeal site. Nonetheless, I am mindful of the relevance of the previous appeal decisions on the appeal site in this regard.

Conclusion

14. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal is dismissed.

Paul Martinson

INSPECTOR