



Appeal Decision

Site visit made on 21 September 2022

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20/10/2022

Appeal Ref: APP/G5180/W/21/3286967

Woodlands, Holwood Park Avenue, Orpington BR6 8NQ

- 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 Mr J Ruprai against the decision of London Borough of Bromley Council.
 - The application Ref DC/19/02269/RECON, dated 19 May 2021, was refused by notice dated 29 September 2021.
 - The application sought planning permission for proposed demolition of existing dwelling and the erection of a replacement 7 bedroom dwelling with accommodation over 2 floors and accommodation in the roofspace together with basement to substitute granted scheme DC/16/03654/FULL1 without complying with conditions attached to planning permission Ref DC/19/02269/FULL1, dated 23/08/2019.
 - The conditions in dispute are Nos 8 and 9 which state that:
 - 8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking, and re-enacting this Order) no buildings, structures, extensions, alterations, walls, or fences of any kind shall be erected or made within the curtilage(s) of the dwelling(s) hereby permitted without the prior approval in writing of the Local Planning Authority.
 - 9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking, and re-enacting this Order) no building, structure, extension, enlargement, or alteration permitted by Class A, B, C, or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilage(s) of the dwelling(s) hereby permitted without the prior approval in writing of the Local Planning Authority.
 - The reasons given for the conditions are: In the interests of protecting the character of the area and residential amenity of neighbouring properties in accordance with Policy 37 of the Bromley Local Plan.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling and the erection of a replacement 7 bedroom dwelling with accommodation over 2 floors and accommodation in the roofspace together with basement to substitute granted scheme DC/16/03654/FULL1 at Woodlands, Holwood Park Avenue, Orpington BR6 8NQ in accordance with the terms of the application, Ref DC/19/02269/RECON, dated 13 May 2021, subject to the conditions set out in the schedule at the end of this decision.

Applications for costs

2. An application for costs was made by Mr J Ruprai against London Borough of Bromley Council. This application is the subject of a separate decision.

Preliminary Matters

3. The Council considered the application as one for a minor material amendment. However, the appellant's application seeks to remove and revise the text of conditions imposed on the original planning permission rather than substitute the plans approved. I have therefore considered the appeal as one for removal or variation of a condition, as the appellant originally applied for it.

Background and Main Issues

4. The planning permission for the replacement dwelling included two conditions removing permitted development rights for buildings, structures, extensions, enlargement, alterations, walls, or fences to the dwelling and within its curtilage. The Council's statement indicates that the conditions are necessary as any further development within the appeal site would harm its setting and have a negative impact on the character of the Keston Park Conservation Area (KPCA).
5. In order to make Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) Schedule 2 Part 1 Class E rights (Class E development) available, the appellant seeks the removal of condition 8 and variation of condition 9 to restrict only permitted development rights under GPDO Schedule 2 Part 1 Classes A, B and C, and Schedule 2 Part 2 Class A. Class E allows the construction of a range of buildings or other structures within the curtilage of a dwelling house, provided they are incidental to the enjoyment of a dwellinghouse.
6. In part of its reason for refusal the Council refer to neighbouring amenity, which its statement advises relates to visual and residential amenity. I have not seen any further explanation of this issue, and have therefore considered it as relating to outlook from neighbouring properties.
7. The main issues are:
 - (i) the effect of the proposed amendments on the character and appearance of the KPCA;
 - (ii) the effect of the amendments on the living conditions of neighbouring residents, with regard to outlook; and
 - (iii) in light of the above, whether conditions 8 and 9 are reasonable and necessary.

Reasons

Character and appearance

8. The replacement dwelling on the appeal site is a large detached building, located on the corner of Holwood Park Avenue and Beech Dell, in Keston Park, which is a private estate.
9. It is also located within the KPCA, which is characterised by large individually designed detached houses among mature trees on spacious plots. The significance of the KPCA lies in its historical connection with the Holwood House Estate, and the way the landscape from Holwood Park was incorporated into a high quality residential development, allowing scope for the construction of

large and individualistic private homes in a manner typical of American suburban development.

10. Although the Council consider the appeal site to be one of the smaller plots in Holwood Park Avenue, it is nevertheless a large plot. Significant trees and shrubs on the boundaries with both direct neighbours, and on the boundary with Beech Dell, also provide substantial screening, creating a very private rear garden. The Council are concerned about the extensive development already undertaken on the appeal site, but it retains a sense of spaciousness, comfortably accommodating patios, lawn, tennis court and other areas in 'garden rooms'. Tennis courts and swimming pools are common in gardens on the estate, and many occupy significant areas of their rear gardens. At the appeal site, these features are well integrated into the garden and do not diminish its spacious setting.
11. The GDPO makes generous provision in terms of the extent of floorspace that may be constructed within the curtilage of a dwellinghouse. However, its provisions are not unlimited, and there are, in particular, height limitations placed on Class E development. It is therefore unlikely that buildings, enclosures and containers erected under that class would be readily visible from beyond the garden, except perhaps in passing views from Beech Dell over the rear gates. The Council considers the largely undeveloped rear gardens enhance the verdant open appearance of the area and the KPCA, but it appeared to me that rear gardens in the vicinity of the appeal site are very well screened, and it is their planted boundaries which contribute to the character of the KPCA. As a consequence, I consider Class E development on the appeal site is unlikely to harm the character and appearance of the KPCA.
12. An interested party has referred to a refused planning application and appeal for a Granny Annex at the rear of the plot in 2001; in that case they report the Inspector found it to be undesirable overdevelopment of the site which would neither preserve nor enhance the character or appearance of the Conservation Area. The details of the case have not been put before me, but in any case, in the intervening period, a replacement dwelling has been constructed on the site and its landscape setting will have changed. That proposal is therefore unlikely to be directly applicable to the current proposals.

Living conditions

13. Class E developments of buildings are limited to a single storey, there are height restrictions on all Class E development, and further limitations apply in Conservation Areas between walls forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse. Therefore, given the spaciousness of the plots, the planting on all boundaries¹, and the space between dwellings, there would be no realistic prospect of significant harm to outlook from either of the neighbouring properties.
14. I have therefore found that the living conditions of neighbouring residents, with regard to outlook, would not be likely to be harmed by Class E development.

Reasonableness and necessity of conditions 8 and 9

15. Paragraph 54 of the National Planning Policy Framework (the Framework) states that planning conditions should not be used to restrict national permitted

¹ Tree Preservation Order No 2685/2020 protects all trees in front, sides and rear garden of the appeal site.

development rights unless there is clear justification for doing so, and paragraph 56 states they should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

16. The Planning Practice Guidance (PPG) advises that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity; blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity². Rigorous application of the 6 tests can also reduce the need for conditions and it is good practice to keep the number of conditions to a minimum wherever possible³.
17. From the information before me I note the Council has removed permitted development rights on a number of other replacement dwellings on the estate, but not all. Nevertheless, in this particular case, I have not identified any material harm that would occur to the character and appearance of the KPCA, or to living conditions of neighbouring occupiers, in the event that Class E development is restored. Conditions 8 and 9 therefore fail to meet the tests of reasonableness and necessity.
18. The appellant's proposed condition would be an appropriate alternative to conditions 8 and 9 of the existing planning permission, with minor changes to reflect the relevant sections of the GPDO. It would strike a reasonable balance, requiring planning permission for development likely to have effects on the character and appearance of the KPCA, while allowing development with more limited effects.

Other matters

19. An interested party is concerned that garages could be erected at the end of the garden, and could ultimately be converted into self-contained accommodation with independent access. However, subdivision of the plot into a separate planning unit would require planning permission.

Conclusion

20. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

Peter White

INSPECTOR

² Planning Practice Guidance Reference ID: 21a-017-20190723

³ Planning Practice Guidance Reference ID: 21a-018-20190723

SCHEDULE OF CONDITIONS:

1. The development shall be retained in accordance with the plans, drawings and documents submitted with planning application DC/19/02269/FULL1.
2. The arboricultural protection measures approved under application ref. 16/03654/CONDT2 shall be retained on site for the duration of the construction works on site. A completed schedule of site supervision and monitoring of the arboricultural protection measures shall be submitted for approval in writing by the Local Planning Authority within 28 days from completion of the development hereby permitted. This condition may only be fully discharged on completion of the development, subject to satisfactory written evidence of compliance through contemporaneous supervision and monitoring of the tree protection throughout construction by a suitably qualified and pre-appointed tree specialist.
3. The site shall be landscaped in accordance with the details submitted to the Council on 15th April 2020 and approved by them on 5th March 2021 (ref: DC/19/02269/CONDIT) in the first planting season after first occupation of the development. There shall be no excavation or raising or lowering of levels within the prescribed root protection area of retained trees unless agreed in writing by the Local Planning Authority. Any new trees or planting that die, are removed or become severely damaged or diseased within five years of planting shall be replaced in the subsequent planting season. Unless further specific permission has been given by the Local Planning Authority, replacement planting shall be in accordance with the approved details.
4. The boundary treatments submitted to the Council on 15th April 2020 and approved by them on 5th March 2021 (ref: DC/19/02269/CONDIT) shall be implemented prior to occupation of the buildings and retained in perpetuity.
5. The materials to be used for the external surfaces of the building shall be as set out in the planning application forms and / or drawings unless otherwise agreed in writing by the Local Planning Authority.
6. The surface water drainage system indicated on the approved drawings shall be completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.
7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, revoking and re-enacting this Order) no extensions, alterations, walls or fences permitted under Classes A, B and C of Part 1 of Schedule 2 and Class A of Part 2 of Schedule 2 of the 2015 Order (as amended) shall be erected or made within the curtilage of the dwelling.
8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no change of use of any kind permitted by Class L (Houses of Multiple Occupation) of Part 3 of Schedule 2 of the 2015 Order (as amended), shall be undertaken within the curtilage of the dwelling without the prior approval in writing of the Local Planning Authority.

9. Before the development hereby permitted is first occupied, the proposed bathroom windows in the first floor flank elevations shall be obscure glazed to a minimum of Pilkington privacy Level 3 and shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed and the window (s) shall subsequently be permanently retained as such.

10. The first floor flank windows identified as "fake windows" on Drawing Nos.061 Rev P2 and 063 Rev P2 shall be fitted with opaque glazing and be permanently fixed shut in accordance with the approved plans and retained as such in perpetuity.