



Appeal Decision

Site visit made on 9 January 2024

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2024

Appeal Ref: APP/L3625/W/23/3321770

Dormer Cottage, The Chase, Kingswood, Surrey KT20 6HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (The Act) against a refusal to grant planning permission under section 73 of the Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Brown against the decision of Reigate and Banstead Borough Council.
 - The application Ref 22/01974/S73, dated 4 September 2022, was refused by notice dated 6 April 2023.
 - The application sought planning permission for a development described as "demolition of existing dwelling; erection of a replacement five-bedroom dwelling house with integral triple garage; formation of two new access points and erection of gate piers and gates. As amended on 23/09/2021" without complying with a condition attached to planning permission Ref 21/01562/F, dated 4 October 2021.
 - The condition in dispute is No 1 which states that:
The development hereby permitted shall be carried out in accordance with the following approved plans.
Arboricultural Impact Assessment AR 01 07.06.2021
Floor Plan 009 07.06.2021
Elevation Plan 010 07.06.2021
Location Plan 101 07.06.2021
Location Plan 101 A 23.09.2021
Proposed Plans 103 A 23.09.2021
Floor Plan 102 A 23.09.2021
Elevation Plan 104 B 23.09.2021
Proposed Plans 105 A 23.09.2021
Site Layout Plan 109 A 23.09.2021
Section Plan 106 A 23.09.2021
 - The reason given for the condition is:
To define the permission and ensure the development is carried out in accordance with the approved plans and in accordance with National Planning Practice Guidance.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling; erection of a replacement five bedroom dwelling house with integral triple garage; formation of two new access points and erection of gate piers and gates. As amended on 23/09/2021 at Dormer Cottage, The Chase, Kingswood, Surrey KT20 6HY in accordance with the application Ref: 22/01974/S73, dated 4 September 2022 without compliance with condition no. 1 previously imposed on planning permission Ref: 21/01562/F dated 4 October 2021 and subject to the conditions as set out in the attached schedule.

Preliminary Matters

2. The appeal seeks a revised site layout. This type of application is possible as a condition was imposed on the original permission specifying the approved plans. The appeal seeks removal of the condition and replacement with a condition specifying the plans that reflect the amendment. The description of the development remains unchanged.
3. At the time of my visit, I observed the development to be at an advanced stage of construction in accordance with the revised site layout.
4. Whilst not included within the Council's reason for refusal I note concerns regarding the location of an air source heat pump. However, this does not form part of the proposal before me.
5. The appellant is willing to submit revised plans removing the parapet wall above the swimming pool enclosure to the rear and alongside the north-eastern boundary with Oak Cottage, referring to additional plans in an Appendix of their Final Comments. However, the Procedural Guide for Planning Appeals makes it clear that the appeal process should not be used to evolve a scheme and it is important that what is considered is essentially what was considered by the Council, and on which interested party's views were sought. I have had regard to legal judgements on this matter, including *Wheatcroft*¹, and I consider that such a modification could cause prejudice to interested parties by depriving those who should have been consulted on the change the opportunity of such consultation. For this reason, my decision on the appeal is based only on the drawings submitted with the planning application.
6. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Main Issues

7. The main issues are:
 - i) the effect of the proposed development upon the living conditions of the occupiers of Oak Cottage and nearby dwellings, with particular regard to outlook; and
 - ii) the effect of the proposed development on the character and appearance of the area, with particular regard to The Warren and The Glade Residential Area of Special Character (RASC).

Reasons

Living Conditions

8. The appeal site comprises a substantial plot with a large, detached dwelling currently under construction. The site lies within an established residential area of similarly large, detached dwellings. Properties are of mixed character set within wide and deep plots. Oak Cottage, adjacent to the appeal site, is a

¹ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]

- detached two-storey dwelling with its attached garage, with accommodation above, positioned closest to the appeal site. High wooden fences form the side and rear boundaries of the appeal site.
9. The appeal proposal is positioned closer to the boundary with the neighbouring property, Oak Cottage, than the approved scheme. Adjacent to the shared boundary the proposal includes a triple garage with accommodation above and a single storey rear projection.
 10. A high wooden boundary fence forms the shared boundary. I observed mature landscaping, including a laurel hedge, which extended significantly above the height of the fence, within the garden of Oak Cottage. Due to the existing substantial boundary treatment, there is limited visibility between both properties side and rear gardens.
 11. The development extends beyond the rear elevation of the neighbouring property, with the north-east flank elevation of the proposal positioned approximately 3.6m away from the shared boundary. The proposal incorporates a pitched roof above the garage and a single storey flat roof design for the rear projection. Owing to the modest scale of this element of the development, the roof designs and the limited height, the north-eastern flank elevation would not be visually dominant from the neighbouring garden.
 12. Due to the limited height of the proposal combined with the presence of the high and substantial boundary treatment the proposal would not be highly visible from the neighbouring side and rear garden. Furthermore, given the intervening space between the neighbouring garden and the appeal site the north-eastern flank elevation of the proposal would not be visually dominant or overbearing on outlook from the garden of that property. Whilst existing landscaping may visually soften the appearance of the development landscaping can rarely be relied upon in the long term with regards to its maintenance, retention and survival. In any case, the majority of landscaping is on neighbouring land under the control of third parties. Nevertheless, in any event I find the proposal would be acceptable and would not materially harm the outlook from the neighbouring garden.
 13. Given the increased separation distance of the proposal from the boundary with Woodend, coupled with the substantial boundary treatment, I am satisfied that the proposal would not harm the living conditions of the occupiers of this property by reason of outlook or loss of daylight or sunlight. I note this is a view shared by the Council.
 14. For the reasons outlined above, the proposal would not have a harmful effect upon the living conditions of the occupiers of Oak Cottage and nearby dwellings, with particular regard to outlook. Accordingly, the proposal complies with Policies DES1 and DES3 of the Reigate and Banstead Local Plan Development Management Plan 2019 (LP) and the Framework in respect of this issue. Collectively these policies seek a good standard of amenity for existing occupants of buildings.

Character and appearance

15. The appeal site is located within a RASC which is characterised by large, detached properties set within spacious grounds, some of which are constructed relatively close to their respective boundaries.

16. Whilst the proposal would be located closer to the north-eastern side boundary than the approved scheme, the gap between the neighbouring properties would not be significantly eroded. The gap between the north-eastern flank elevation and the shared boundary would be similar to the relationship of existing properties within the immediate streetscene in terms of their proximity to their respective side boundaries. A sufficient visual gap between built development and the boundary would be maintained and accordingly, the proposal would not materially harm the character of the streetscene.
17. Third parties have referred to the quality of landscaping. Landscaping details are not before me, but they are the subject of a condition, which would be reimposed on any grant of permission.
18. For the reasons stated above, the proposal would not have a harmful effect on the character and appearance of the area, with particular regard to The Warren and The Glade RASC. The proposed development accords with Policy DES3 of the LP which amongst others seeks to avoid the harmful erosion of the spacing between buildings or lead to an over-dominance of the built form within the plot. The proposal complies with the Framework which seeks high quality development that is sympathetic to local character, including the surrounding built environment.

Other Matters

19. The removal of protected trees does not form part of the Council's reason for refusal and is dealt with under separate legislation. Protected trees are at the foot of the rear garden and the submitted plans show an exclusion zone for them, and do not show any other trees being removed. Any replacement planting could be secured through the discharge of the landscaping conditions.

Conditions

20. The guidance in the PPG makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. From the evidence before me details of the materials of construction and tree protection measures have been approved. I have therefore amended these conditions accordingly to ensure compliance with the approved details.
21. For certainty a condition is required to ensure the development is completed in accordance with the approved plans.
22. Based on the evidence before me, work has commenced on site. It is therefore not necessary to re-attach a time limit condition.
23. Conditions limiting the position, glazing and opening of the first-floor windows and roof lights are necessary to protect the living conditions of occupiers of neighbouring properties from overlooking. I have attached a condition to remove permitted development rights under The Town & Country Planning (General Permitted Development) (England) Order 2015 for extensions and roof extensions in the interests of the character and appearance of the area and to protect living conditions of neighbouring occupiers. A condition for hard and soft landscaping is necessary to assimilate the development into its surroundings. A condition for broadband connection is necessary in accordance with local plan policy to promote access to, and the expansion of, a high-quality electronic communications network. A condition regarding energy and

water efficiency is necessary to ensure the development supports the efficient use of resources in accordance with local plan policy.

24. The Council has suggested a condition to provide screening to the balcony. As the variation would not materially alter the relationship of the proposal to the neighbouring property, as it would maintain a satisfactory separation distance, I consider that it is unreasonable to impose a more onerous condition on the new permission.

Conclusion

25. For the reasons given above, I conclude that the proposal accords with the development plan and the Framework. I shall therefore allow the appeal.

R Gee

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans.

Tree Protection Plan TPP04 23.10.2022
Floor Plan 009 07.06.2021
Elevation Plan 010 07.06.2021
Location Plan 101 A 23.09.2021
Proposed Plans 103 A 23.09.2021
Floor Plan 102 A 23.09.2021
Elevation Plan 104 B 23.09.2021
Proposed Plans 105 A 23.09.2021
Site Layout Plan 201 B 07.03.2023
Proposed street scene 205 A 17.02.2022
Landscaping Plan RG2027 D2 G 17.03.2023
2. The materials to be used in the construction of the external surfaces, including fenestration and roof shall be undertaken in accordance with the details approved under application ref 21/01562/DET03.
3. The first-floor windows and rooflights in the side elevations of the development hereby permitted shall be glazed with obscured glass which shall be fixed shut, apart from a top hung opening fanlight whose cill height shall not be less than 1.7 metres above internal floor level, and shall be maintained as such at all times.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any order revoking and re-enacting that Order, with or without modification) no extensions or roof extensions shall be erected other than those expressly authorised by this permission.
5. Tree protection measures shall be undertaken in accordance with the details approved under application ref 21/01562/DET06.

6. The development shall not be occupied until details of hard and soft landscaping is submitted to and approved in writing by the Local Planning Authority. These shall include frontage tree and hedge planting and any other existing or proposed, soft or hard, landscaping in the front garden area in order to create a more sylvan appearance, or adjacent to boundaries where appropriate, and shall include details of recued brick piers and hedge gap filling. The soft landscape details shall include an establishment maintenance schedule for a minimum of 2 years, full planting specifications, planting sizes & densities. Upon implementation of the approved development all the landscaping works shall be carried out in strict accordance with the landscape details as approved, and these shall be completed, before building completion, occupation of the approved development whichever is the earliest, or as otherwise agreed in writing by the Local Planning Authority.

If any of the new or existing tree/s or hedge/s, detailed and approved under this condition, are removed, die, or become significantly damaged or diseased within 5 years of completion, it/they shall be replaced before the expiry of one calendar year, to a planting specification agreed in writing by the local planning authority. The hedges detailed shall be retained at a minimum height of 1 metre, or if new, once grown to this height thereafter.

7. The dwelling hereby approved shall be provided prior to first occupation with the necessary infrastructure to facilitate connection to a high-speed broadband. Unless otherwise agreed in writing with the Local Planning Authority, this shall include as a minimum:
- a) A broadband connection accessed directly from the nearest exchange or cabinet.
 - b) Cabling and associated installations which enable easy access for future repair, replacement or upgrading.
8. The development hereby approved shall not be first occupied unless and until a Water Efficiency Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall detail how the development will ensure that the potential water consumption by occupants of the new dwelling does not exceed 110 litres per person per day.

The development shall be carried out in accordance with the approved details and any measures shall be implemented, installed and operational prior to its occupation.

*****End of Schedule*****