
Appeal Decision

Site visit made on 28 May 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2024

Appeal Ref: APP/M3645/W/23/3329121

Harestone Heights, 16 Woodland Way, Caterham, Surrey CR3 6ER

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs T Bennington against the decision of Tandridge District Council.
- The application Ref TA/2023/505, dated 26 April 2023, was refused by notice dated 16 June 2023.
- The application sought planning permission for the demolition of the existing dwelling and erection of a replacement dwelling with associated works without complying with conditions attached to planning permission Ref TA/2022/927, dated 28 February 2023.
- The conditions in dispute are Nos 8 and 9 which state that:
Condition 8: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no form of enlargement of the dwelling hereby permitted shall be carried out without the prior permission in writing of the Local Planning Authority
Condition 9: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no garages, sheds, greenhouses or other ancillary domestic outbuildings shall be erected without the express permission of the Local Planning Authority.
- The reasons given for the conditions are:
Condition 8: To control further development of the site in the interests of the character of the area and amenities of nearby properties, in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP7, DP10 and DP13 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014.
Condition 9: To preserve the openness of the Green Belt/to control further development of the site in the interests of the character of the area and amenities of nearby properties in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policies DP7, DP10 and DP13 of the Tandridge Local Plan: Part 2.

Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing dwelling and erection of a replacement dwelling with associated works at Harestone Heights, 16 Woodland Way, Caterham, Surrey CR3 6ER in accordance with the application Ref TA/2023/505 dated 26 April 2023, without compliance with conditions 8 and 9 previously imposed on planning permission Ref TA/2022/927 dated 28 February 2023 and subject to the attached Schedule of Conditions.

Background and Main Issue

2. Planning permission¹ was granted for a replacement dwelling, subject to conditions 8 and 9 which restrict the exercise of permitted development (PD) rights² to enlarge the dwelling or erect outbuildings within its curtilage. The justification given by the Council for these conditions is in the interests of the character of the area, the amenities of nearby properties and the openness of the Green Belt, in accordance with policies in the Tandridge District Core Strategy 2008 (CS) and the Tandridge Local Plan Part 2 Detailed Policies 2014 (DP).
3. Conditions 8 and 9 do not necessarily prevent future extensions to the dwelling or the erection of outbuildings within its curtilage, but they allow the Council to control them through the planning application process. The appellants contend that these conditions are not reasonable or necessary and therefore seek to remove them.
4. Therefore, the main issue in this appeal is whether conditions 8 and 9 are reasonable and necessary with regard to: (1) the Green Belt; (2) the character of the area; and (3) the living conditions of neighbouring occupants.

Reasons

Green Belt

5. Paragraph 56 of the Framework and the Planning Practice Guidance (PPG) state that conditions should only be imposed where they meet several tests, including where they are relevant to the development to be permitted, necessary, and reasonable in all other respects. Further, paragraph 54 of the Framework outlines that planning conditions should not be used to restrict national PD rights unless there is a clear justification to do so.
6. Policies DP10 and DP13 of the DP state that planning permission for inappropriate development will normally be refused unless very special circumstances exist, and that the construction of new buildings is inappropriate in the Green Belt, subject to certain exceptions.
7. One exception under Policy DP13 is the replacement of buildings where the proposed new building is in the same use, not materially larger and sited on or close to the position of the building it is replacing. Another exception is the extension or alteration of buildings where the proposal does not result in disproportionate additions over and above the size of the original building as it existed on 31 December 1968 (for dwellings), or if constructed after that date, as it was built originally. A footnote to the policy makes clear that when assessing proposals for the extension of rebuilt buildings, the Council will consider the original building in comparison with the present building and the proposed extension, in order to determine whether the proposal would result in a disproportionate addition.
8. The appeal site comprises a two-storey, detached dwelling within a street of large properties sited in generous plots. It is not clear when the house was originally built but there have since been numerous applications for extensions,

¹ TA/2022/927, 'the extant permission/scheme'.

² Under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPD0)

- some of which have been implemented. There is also a garage adjacent to the road and, to the rear, the land slopes down steeply towards a large outbuilding.
9. Planning permission (ref TA/2021/1449) was recently granted for single, two storey and first floor extensions which, taken together with previous additions, would increase the volume by around 48% over the size of the original building. The Council found that this would not to be a disproportionate addition and thus not inappropriate development in the Green Belt. There is no evidence that this permission has been implemented.
 10. The extant permission for the replacement house (ref TA/2022/927) would result in a marginally higher dwelling with a slightly larger volume and smaller footprint than the existing building. In approving this, the Council found that the proposed dwelling would not be materially larger than the existing property or visually harmful to the Green Belt, and, as such, it would not be inappropriate development within the Green Belt under Policies DP10 and DP13.
 11. Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) sets out PD rights for various development within the curtilage of a dwellinghouse. This includes PD rights for single storey side extensions and single and two storey rear extensions, with restrictions on their height and length, and for roof additions which have limitations on their volume. It also outlines PD rights for outbuildings within the curtilage, including restrictions on their height and proportion of the curtilage occupied. The GPDO does not distinguish between land within or outside the Green Belt.
 12. In the absence of condition 8, the proposed replacement dwelling could be extended without planning permission. It would be possible to accommodate one and two storey extensions and roof additions. However, the length of single storey rear extensions allowed by the GPDO would be limited by the steep slope behind the house. Further, due to its proximity to the boundaries, only one side of the house would have substantive space for a side extension.
 13. I have taken into account the size of the proposed house compared to the existing one, the sizes of the extensions to the existing house with planning permission, the GPDO restrictions and the physical limitations of the site. Having regard to these factors in the round, I see no clear justification in this instance to restrict PD rights. As such, condition 8 is not reasonable or necessary for the proposed replacement dwelling to comply with Policies DP10 and DP13.
 14. Condition 9 seeks to restrict the potential for large ancillary buildings by removing the PD rights contained in Schedule 2 part 1 class E of the GPDO. The extant scheme would replace the existing dwelling but no changes to any outbuildings are indicated. There is no evidence that PD rights for outbuildings on the appeal site are currently restricted nor that these limitations apply to other dwellings in the locality, which also have ancillary buildings and lie within the Green Belt. Therefore, condition 9 is not relevant to the development permitted, necessary or reasonable to preserve the openness of the Green Belt as set out in Policies DP10 and DP13.

15. The Council refers to an appeal decision at Shipley Bridge³ where the removal of PD rights within Classes A and E of the GPDO was found to be necessary and reasonable to prevent inappropriate development in the Green Belt and harm to its openness. However, that case involved the replacement of a mobile home with a bungalow in connection with a riding school, circumstances which are not comparable to the current proposal.
16. Consequently, I conclude that conditions 8 and 9 are not reasonable and necessary with regard to the Green Belt.

Character

17. Policy CSP18 of the CS and Policy DP7 of the DP require new development to respect the character of the area, including that it does not result in overdevelopment by reason of scale, form, bulk, height and spacing, amongst other things.
18. The Council accepted that the replacement dwelling would have a high-quality design and appearance and would not result in overdevelopment of the site, with sufficient space remaining to the front and rear of it. It is concerned about the impacts of any potential extensions or outbuildings built under PD rights on the character of the area, including the potential for overdevelopment of the site, resulting in a cramped appearance.
19. I acknowledge that the GPDO allows development in up to 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse). However, it contains limitations, including development forward of the principal elevation. Given the replacement dwelling would not harm the character of the area, the GPDO limitations on development in the large front garden and the lack of existing restrictions on PD rights, conditions 8 and 9 are not reasonable or necessary to prevent overdevelopment of the site. Therefore, the proposed replacement dwelling without these conditions would comply with Policies CSP18 and DP7 so far as they relate to the character of the area.
20. Consequently, I conclude that conditions 8 and 9 are not reasonable or necessary with regard to the character of the area.

Living conditions

21. Policy CSP18 of the CS and Policy DP7 of the DP include the requirement for new development to not significantly harm the amenities of the occupiers of neighbouring properties.
22. The replacement dwelling would have a different orientation to the existing building and the Council found that it would not cause harmful overlooking, overshadowing or appear overbearing to the occupiers of the neighbouring houses. The Council is concerned that enlargements or ancillary buildings could harm the living conditions of neighbouring occupants, particularly given the sloping land levels.
23. The restrictions in the GPDO, including building heights and the requirement for upper floor side windows to be obscure glazed, are inherently intended to ensure that PD does not cause undue impacts on the occupiers of adjacent buildings. Thus, conditions 8 and 9 are not necessary to protect living

³ APP/M3645/W/21/3286606

conditions and the proposed development without the conditions would accord with Policies CSP18 and Policy DP7 in this respect.

24. Therefore, I conclude that conditions 8 and 9 are not reasonable or necessary with regard to the living conditions of neighbouring occupants.

Other Matters

25. Caterham Parish Council refers to the site being in the candidate area for an Area of Outstanding Natural Beauty (now referred to as National Landscape). Should the area subsequently be designated as National Landscape, there would be greater restrictions on PD rights for outbuildings.

Conditions

26. By allowing this appeal, a new planning permission is created. The guidance in the PPG makes 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.
27. The PPG outlines that the time limit within which the development must be started cannot be amended, so I have altered the timescale condition to reflect 3 years from the date of the extant permission.
28. As I have no information before me about the status of the other conditions imposed on the extant permission, I have imposed all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

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

A Wright

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun not later than 28th February 2026.
- 2) This decision refers to drawings numbered OV/JK/TB/02, OV/JK/TB/03 and the red edged site location plan scanned on 22nd August 2022 and OV/JK/TB/04, OV/DB/TB/01A scanned on 9th November 2022. The development shall be carried out in accordance with these approved drawings. There shall be no variations from these approved drawings.
- 3) No development above ground level shall start until details of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with these approved details.
- 4) No development above ground level shall start until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include:
 - means of enclosure
 - car parking layouts and allocated parking spaces
 - other vehicle and pedestrian access and circulation areas
 - hard surfacing materials
 - minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc.).

Details of soft landscape works shall include all proposed and retained trees, hedges and shrubs; ground preparation, planting specifications and ongoing maintenance, together with details of areas to be grass seeded or turfed. Planting schedules shall include details of species, plant sizes and proposed numbers/densities.

All new planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the completion or occupation of any part of the development (whichever is the sooner) or otherwise in accordance with a programme to be agreed. Any trees or plants (including those retained as part of the development) which within a period of 5 years from the completion of the development die, are removed, or, in the opinion of the Local Planning Authority, become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. The hard landscape works shall be carried out prior to the occupation of the development.

- 5) The development hereby approved shall not be occupied unless and until the proposed dwelling is provided with a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority and thereafter retained and maintained to the satisfaction of the Local Planning Authority.

- 6) Before the development hereby approved is occupied the air source heat pump as specified in the application details shall be installed and this system shall thereafter be retained in accordance with the approved details.
- 7) The development hereby permitted shall be carried out in accordance with the recommendations and mitigation measures set out in the Bat Emergence and Re-entry Surveys (by Arbtech) scanned on 24th October 2022.