



Appeal Decision

Site visit made on 9 April 2024

by **L Reid BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 August 2024

Appeal Ref: APP/L3625/W/23/3331898

High Beeches, Furze Hill, Kingswood, Surrey KT20 6HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Ravi Patel against the decision of Reigate and Banstead Borough Council.
 - The application Ref is 23/01584/S73.
 - The application sought planning permission for demolition of High Beeches, erection of 1 replacement dwelling, erection of 1 additional dwelling on land r/o High Beeches & Broxholm fronting Copt Hill Lane without complying with conditions attached to planning permission Ref P/12/01458/F, dated 17 October 2012.
 - The conditions in dispute are Nos. 5 and 6 which state:
Condition 5: 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 extensions shall be erected (other than those expressly authorised by this permission), without the prior written approval of the Local Planning Authority.
Condition 6: 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 first floor windows, dormer windows or rooflights other than those expressly authorised by this permission shall be constructed.
 - The reasons given for the conditions are:
Condition 5: To control any subsequent enlargements in the interests of the visual and residential amenities of the locality with regard to Reigate and Banstead Borough Local Plan 2005 policies Ho9, Ho13, and Ho16.
Condition 6: To ensure that the development does not affect the amenity of the neighbouring property by overlooking and to protect the visual amenities of the area in accordance with Reigate and Banstead Borough Local Plan 2005 policy Ho9.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of High Beeches, erection of 1 replacement dwelling, erection of 1 additional dwelling on land r/o High Beeches & Broxholm fronting Copt Hill Lane in accordance with the application Ref 23/01584/S73, without compliance with condition numbers 5 and 6 previously imposed on planning permission Ref P/12/01458/F, dated 17 October 2012 and subject to the conditions in the attached schedule.

Procedural Matters

2. I have amended the description of development of the original permission to remove the reference to the previous application as it is not relevant to this appeal. The Council has used this description on the decision notice and the appellant has also used it in the appeal form.

Main Issue

3. The main issue is whether Condition 5 and Condition 6 are reasonable and necessary in the interests of visual and residential amenity, including minimising the risk of overlooking.

Reasons

4. The Planning Practice Guidance (PPG) advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. In addition, the National Planning Policy Framework (the Framework) is clear that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
5. The surrounding area is characterised by low-density housing of varying design and architectural detailing set within wide, spacious plots which is reflected at the appeal site. The trees, landscaping and grass verges provide a leafy character.
6. The Council have not provided any examples of development covered under permitted development rights that would be particularly harmful. Whilst the houses are sizeable, this is not a back-land or small constrained site where the plots would typically restrict the maximum size of the development. Both houses sit in relatively large plots with a wide driveway at the front and a deep rear garden. The houses are set back from Furze Hill and Copt Hill Lane behind hedging and trees. By reason of this, enlargements to the ground floor of the houses would be largely screened from public views.
7. The insertion of first floor windows and rooflights would be relatively minor additions and would not substantially alter the houses. First floor windows, rooflights and dormer windows would not be unusual or unexpected in an established residential area, given that the houses already have these features and so do some of the neighbouring properties. The presence of such additions would therefore not undermine the more rural character of this part of Copt Hill Lane.
8. The first floor and roof level of the houses are visible from some public vantage points, including the nearby fields. Nevertheless, this situation is not unique to the appeal site, and I have not been advised that the nearby housing is subject to similar restrictions. There is no substantive evidence before me to demonstrate that extensions here would be more harmful than they would at any other of the surrounding properties, particularly as the appeal site is further away from the nearby fields than the other housing.
9. In any event, the general limitations that are attached to the exercise of such permitted development rights, provide for sufficient safeguards from overdevelopment which include limitations on the number of storeys, area of ground covered, height, width, depth, projection, proximity to the boundary and overall volume. When taking this into account and having regard to the overall plot sizes of the houses, even if extended there would be spacing around the houses. The restricted additions or alterations to the houses allowed under permitted development would therefore not diminish the spaciousness of the plots to such a degree that would detrimentally harm the Residential Area of Special Character.

10. The limitations of permitted development place restrictions on the insertion of upper floor windows to be fitted with obscure glazing above a certain height. The evidence provides no clear justification for why the removal of permitted development rights is required to protect the living conditions of the neighbouring occupants.
11. For these reasons, in the absence of clear justification, I conclude that Condition 5 and Condition 6 are not reasonable or necessary in the interests of visual and residential amenity, including minimising the risk of overlooking. The conditions are therefore not necessary to meet the aim of Policy DES3 of the DMP which seeks to protect the RASC, and the provisions of the Framework in achieving well-designed and beautiful places

Other Matters

12. I have paid regard to the comments from an interested party and even if part of the appeal site is under a separate title and has been subject to previous applications, this has no bearing on my findings of the appeal which is based on the merits of the case before me.

Conditions

13. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.
14. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose 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. I have not reimposed the condition relating to the commencement of development as the development has started. For clarity, I have also merged the approved plans condition and approved details conditions as these conditions both require the development to be carried out in accordance with the relevant details.

Conclusion

15. For the reasons given above I conclude that the appeal should succeed and a new planning permission should be granted.

L Reid

INSPECTOR

SCHEDULE OF CONDITIONS

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

Location Plan	FRZ/3/001	17.08.2012
Site Layout Plan	FRZ/3/100	17.08.2012
Floor Plan	FRZ/3/101	17.08.2012
Elevation Plan	FRZ/3/102	17.08.2012
Floor Plan	FRZ/3/103	17.08.2012
Elevation Plan	FRZ/3/104	17.08.2012
Elevation Plan	FRZ/105	26.09.2012

11/01823/DET03: road surface;

11/01823/DET11: landscaping;

11/01823/DET14: method of construction statement;

11/01823/DET08A: tree protection measures;

12/00131/DET03: building materials

2. Within 3 months of the completion of the houses on Plot 1 and/or Plot 2 the hard and soft landscaping submitted to and approved in writing under 11/01823/DET11 by the local planning authority shall be implemented. All these works shall be carried out in strict accordance with these details as approved before occupation or use of this development.
3. The upper floor windows in the southern flank elevation of plot 1 and the first floor dormer windows in the western flank elevation of plot 2 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 meters above internal floor level, and shall be maintained as such at all times.
4. No pruning, removal or other works to the retained trees and hedges located both within and overhanging the site, shall take place during construction, or for one year after completion except with the prior written approval of the Local Planning Authority. Any tree work already approved as part of this consent and any other work undertaken should be done in accordance with British Standard 3998 'Recommendations for Tree Work'. If any of the retained trees or hedges, within the site, controlled by this condition, are removed, die, or become damaged or diseased within one year of completion, it/they shall be replaced before the expiry of one calendar year by tree/s or hedge/s, to a planting specification agreed in writing by the local planning authority.
5. The existing external boundary hedge along the northern boundary of the site to be retained, or new hedging to be planted as part of the approved landscaping, once established, shall be retained permanently and managed to maintain a minimum height of 3 metres and a minimum width of 1 metre.

Where any such plants are lost replacements shall be planted to a time scale and specification agreed in writing by the local planning authority and be subject to the same requirements.

6. No development shall be occupied until the surface improvement access between the dwelling on Plot 2 hereby approved and the junction between Copt Hill Lane and Furze Hill have been completed in accordance with the scheme and schedule of works that have been approved in writing by the local planning authority under reference 11/01823/DET03.
7. No new development shall be occupied until space has been laid out within the site in accordance with the approved plans for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. The parking and turning area shall be retained exclusively for its designated purpose.
8. A pedestrian inter-visibility splay (of 2m by 2m) shall be provided on each side of both accesses, the depth measured from the back of the footway and the widths outward from the edges of the access. No fence, wall or other obstruction to visibility between 0.6m and 2m in height above ground level shall be erected within the area of such splays.
9. The garage on plot 2 hereby permitted shall not be occupied at any time other than for the purposes ancillary to the residential use of the dwelling occupying that plot.

END OF SCHEDULE