

Section '3' - Applications recommended for PERMISSION, APPROVAL or CONSENT

Application No : 17/03050/RECON

Ward:
Penge And Cator

Address : 213 Kings Hall Road Beckenham BR3 1LL

OS Grid Ref: E: 536597 N: 170331

Applicant : Brookworth Homes Limited

Objections : YES

Description of Development:

Variation of condition 4 of outline permission ref. 15/04458 allowed at appeal for the introduction of access road and erection of three detached dwellings, each with a double garage, parking and associated landscaping to allow the removal of drawing 13121/C402C - Proposed sketch elevations from the list of drawings with which the development must accord.

Key designations:

Biggin Hill Safeguarding Area
London City Airport Safeguarding
Smoke Control SCA 25

Proposal

Outline planning permission was granted on appeal under reference 16/04433/OUT for the introduction of an access road and the siting of three dwellings on the application site. The application was submitted in outline only, with details of the appearance, scale and landscaping being reserved matters.

The appeal Inspector imposed a number of conditions on the permission. Condition 1 of the permission required that details of the appearance, landscaping and scale (the reserved matters) be submitted to and approved in writing before commencement of development. Condition 4 (the subject of this application) required that the development be carried out in accordance with the plans bundle, listing each plan by reference. It included reference to Drawing No. 13121/C402C - Proposed Sketch Elevations.

This application seeks to vary condition 4 so as to remove the requirement that the development accord with the sketch elevations submitted as part of application 15/04458/OUT. Members are advised that a separate application has been submitted which provides the details of the scale, appearance and landscaping pursuant to the outline planning permission ref. 15/04458/OUT. The elevational drawings show the dwellings have an appearance that differs from that shown in the sketch elevations submitted with the original outline application. The details pursuant application has not, to date, been determined.

Consultations

Local residents were notified of this application and representations were received which can be summarised as follows:

- The condition was not incorrectly imposed and the public have relied upon condition 4 as an important constraint upon the nature of the development
- The condition is not onerous - requiring only that houses are in keeping with those on Kings Hall Road

- The sketch in question was provided by the developer themselves and it was disingenuous to include the sketch if they wanted to build houses not in keeping with Kings Hall Road
- The Inspector's decision should be read as a whole and there is no inconsistency in the decision. Indicative means that the final detailed sketches must be in keeping with the sketch submitted at outline stage
- By relying upon the wording of condition 4 the public has foregone their right to challenge the grant of planning permission by a judicial review
- The houses in Kings Hall Road are examples of Victorian period houses and mark it out from other parts of Beckenham which are characterised by more modern housing
- There has been no material change of circumstances since the Inspector's decision and the decision of a higher decision making authority should stand as a matter of respect for that hierarchy and a matter of principle unless something significant has changed. To vary the condition would not show respect.
- There is no evidence that the inspector made a mistake
- It cannot be said that the developer was unaware of the nature of the condition and the developer has taken no steps to challenge or vary the conditions. This should have been done immediately after the decision was issued. It would be unfair if the protections afforded by the condition were now removed
- It is not the role of the local planning authority to confirm categorically that the drawing in question was outside of the scope of the appeal decision. There is the suggestions that the merits of the application have been pre-judged
- The applicant has consistently stated that the proposed houses should be similar in nature to others in the street so as to create elevations designed to sit comfortably within and enhance the surrounding area. The elevations provided in the outline application should be considered in the context of the Design and Access Statement which referred to the indicative elevations and stated that the architectural merit of the dwellings would have a sensitive regard to the surroundings
- The developer should be asked why the indicative elevations were submitted in support of the application it is was not expected that they would carry any weight in the determination and were in effect meaningless
- Any departure from the Inspector's conditions would undermine her decision.
- the applicant has breached condition 5 by bringing plant and materials onto the site already

Planning Considerations

The application falls to be determined in accordance with the following policies of the Unitary Development Plan

BE1 Design of New Development

BE7 Railings, Boundary Walls and Other Means of Enclosure

H1 Housing Supply

H7 Housing Density and Design

H9 Side Space

NE3 Wildlife Features

NE7 Development and Trees

NE8 Conservation and Management of Trees and Woodland

ER10 Light pollution

T3 Parking

T7 Cyclists

T18 Road Safety

The Council is preparing a Local Plan. A period of consultation on the proposed draft Local Plan (under the Town and Country Planning (Local Planning) (England) Regulations 2012 as amended) ran from November 2016 and closed on December 31st 2016. It is anticipated that the draft Local Plan will be submitted to the Secretary of State in 2017.

Draft Policies of relevance to the application comprise:

- Policy 37 General Design of Development
- Policy 1 Housing Supply
- Policy 4 Housing Design
- Policy 8 Side Space
- Policy 70 Wildlife Features
- Policy 73 Development and Trees
- Policy 74 Conservation and Management of Trees and Woodlands
- Policy 30 Parking
- Policy 32 Road Safety
- Policy 122 Light Pollution
- Policy 119 Noise Pollution

The Council's adopted Supplementary Planning Guidance (SPG) documents are also a consideration in the determination of planning applications. These are:

- SPG No.1 - General Design Principles
- SPG No.2 - Residential Design Guidance

London Plan (July 2011)

- Policy 3.3 Increasing Housing Supply.
- Policy 3.4 Optimising Housing Potential
- Policy 3.5 Quality and design of housing developments
- Policy 3.8 Housing choice
- Policy 5.1 Climate change mitigation
- Policy 5.2 Minimising carbon dioxide emissions
- Policy 5.3 Sustainable design and construction
- Policy 5.7 Renewable energy
- Policy 5.9 Overheating and cooling
- Policy 5.10 Urban greening
- Policy 5.11 Green roofs and development site environs
- Policy 5.12 Flood risk management
- Policy 5.13 Sustainable drainage
- Policy 5.14 Water quality and wastewater Infrastructure
- Policy 5.15 Water use and supplies
- Policy 5.16 Waste self-sufficiency
- Policy 5.17 Waste capacity
- Policy 5.18 Construction, excavation and demolition waste
- Policy 5.21 Contaminated land
- Policy 6.5 Funding Crossrail and other strategically important transport infrastructure
- Policy 6.9 Cycling
- Policy 6.13 Parking
- Policy 7.2 An inclusive environment
- Policy 7.3 Designing out crime
- Policy 7.4 Local character
- Policy 7.6 Architecture
- Policy 8.2 Planning obligations
- Policy 8.3 Community infrastructure levy

London Plan Supplementary Planning Guidance (SPG)

Housing: Supplementary Planning Guidance. (November 2012)

The Town and Country Planning (Development Management Procedure) (England) Order, 2010

National Planning Policy Framework

Planning History

14/01561/OUT

Planning permission was refused and a subsequent appeal against the refusal of outline planning permission was dismissed for the introduction of access road and erection of 6 dwellings comprising 3 pairs of semi-detached houses, parking and landscaping.

The ground for refusal was:

"The proposed development by reason of the restricted plot size and amenity space would be an overdevelopment of the site which would not accord with the spatial standards prevailing in the locality, and the proposal would therefore not be sensitive to the character of the surrounding residential area. Traffic accessing the site will harm the amenities of adjoining residential properties by reason of fumes, noise and disturbance. The proposal is therefore contrary to Policies BE1 and H7 of the Unitary Development Plan."

The Inspector commented that in terms of the relationship with the surrounding properties that there would be no significant overshadowing of the adjoining houses and gardens. It was also commented that the outlook of surrounding residents would evidently change from the view over the existing extensive garden area and orchard, but there would be sufficient separation for the proposed houses not to be overbearing in views from the neighbouring dwellings.

In terms of traffic accessing the site it was not considered that there would be likely to be excessive noise and disturbance for existing occupiers. Similarly with regard to drainage with implementation of a suitable SUDS scheme there was no evidence that a satisfactory drainage scheme could not be devised.

15/00357/OUT

Outline planning permission was refused for the construction of 5 dwellinghouses comprising 2 pairs of semi-detached and 1 detached property, access road, parking and associated landscaping. A subsequent appeal against the refusal of planning permission was dismissed.

The reason for refusal of outline planning permission was:

"The proposed development by reason of the restricted plot size and amenity space would be an overdevelopment of the site which would not accord with the spatial standards prevailing in the locality, and the proposal would therefore not be sensitive to the character of the surrounding residential area. The proposal is therefore contrary to Policies BE1 and H7 of the Unitary Development Plan."

In dismissing the appeal the Inspector concluded that the proposal would appear cramped and out of keeping with the area. The Inspector also commented that at present there are open views above the extension and garage between Nos 215 and 217 Kings Hall Road to

mature landscaping within the existing garden area and to the land beyond which contains a number of large mature trees which add to the verdant and open character of the area. The Inspector was not convinced that the indicative landscaping proposal would be capable of screening the proposal to such an extent that the impact on the open character and appearance of the area would be acceptable.

15/04458/OUT

Outline planning permission was refused for the access and layout of a development comprising the introduction of an access road and the erection of three detached dwellings, each with a double garage, parking and associated landscaping. The application was in outline, with details of the scale, appearance and landscaping of the development being reserved matters. Outline permission was refused on the ground:

"The revised proposals constitute an overdevelopment of the site which would have a detrimental impact on the spacious and open character and appearance of the surrounding area, and would therefore be contrary to Policies BE1 and H7 of the Unitary Development Plan."

A subsequent appeal against the Council's refusal of planning permission was allowed. The Inspector considered that the main issue in the case was the effect of the development on the character and appearance of the area. The Inspector considered that the orientation of the dwelling on Plot 1 (which corresponds to the current Plot 3) was such that the garage would be closest to the northern boundary, reducing the height of the development in direct views down the access road. The landscaping in front and behind the dwelling would soften views of the dwelling and allow retained views over and beyond the plot to the area of woodland behind. Landscaping to the southern and eastern site boundaries would also provide landscaped views between existing dwellings and would assist in screening the development from the rear of neighbouring properties. In respect of the concern that the development would result in an overdevelopment of the site, it was considered that the density of development would be appropriate in the location and that the proposal would not form overdevelopment. Having regard to the spacious size of the plots, the footprint of the dwellings and the retention and enhancement of the landscaping, it was not considered that the proposal would be out of keeping with the character and appearance of the area.

The Inspector considered the impact of the proposal on the living conditions of neighbouring dwellings, highways matters, drainage, flood risk, ecology and sustainable design and construction and in all these matters agreed with the Council that there were no concerns in respect of these matters. With regards to the concerns expressed by neighbouring residents regarding impact on visual amenity, security and light and noise pollution the Inspector concluded that there was no evidence to suggest that the proposal would result in security issues or pollution such that would cause material harm to the amenity of nearby residents and that the landscaping proposed would soften the visual impact of the development.

The Inspector allowed the appeal and granted outline planning permission subject to a number of conditions, including Condition 10 which stated that the dwellings should not be more than 10m in height, with this condition considered necessary in order to protect the character and appearance of the surrounding area and the amenity of neighbouring residents.

At outline stage the applicant provided indicative elevations although the appearance and scale of development were reserved matters, as was landscaping. The indicative elevations which formed part of the application considered at appeal showed the dwelling at Plot 1 (now Plot 3) having a pitched roof approx. 9.8m high to the ridgeline and 5.6m

high to the eaves, with the attached garage 4.8m to the ridge and approx. 2.5m to eaves height.

Condition 4 of the outline permission listed plans with which the development must accord, including the indicative elevation referred to above.

17/00398

Under reference 17/00399/DET an application relating to the details pursuant to condition 1 of the permission was submitted, providing details of the scale, appearance and landscaping of the development granted planning permission on appeal. This application is undetermined.

Conclusions

The application reference 15/04458/OUT which was allowed on appeal subject to a number of conditions was submitted in outline only, with details of the appearance, scale and landscaping comprising reserved matters.

It is noted that in application 15/04458/OUT the applicant submitted sketch elevations despite explicitly (on the application forms) reserving the final details of the appearance of the development from consideration. This is not an uncommon practice in outline applications, and in determining outline applications where indicative details are provided despite being reserved matters, the decision-maker will be mindful of the scope of the application and the associated scope of the decision to be made.

Conditions 1 and 2 of the permission 15/04458/OUT jointly require, as is common practice in outline decisions, that within 3 years of the date of the decision the applicant submit details of those matters which had been reserved at outline stage, and that these details should be approved in writing prior to the commencement of development.

It is noted that the details pursuant application which is currently in abeyance includes elevations which show the appearance of the development not replicating that of the sketch elevations submitted with the outline application. Members will be aware however, that if this application to vary the condition is approved, this does not explicitly or implicitly tie Members to granting planning permission for the details pursuant application; these are separate applications and the onus on the Local Planning Authority in this specific application is to determine whether the variation of the condition on its own is reasonable.

Separately, in respect of the other application, the Local Planning Authority will be required to determine whether the detail of the appearance of the development under 17/00398/DET is acceptable. It is intended to report that application back to Committee pending the outcome of this application.

In considering this current application it is important to note that it is not uncommon for a Local Planning Authority to have the role of amending/varying the details of development which has been allowed on appeal, including the requirements or wording of conditions. Regardless of the applicant's assessment that condition 4 of the outline permission was drafted in error, the determination of this application is not a judgement on this matter. Rather, it is the responsibility of the Local Planning Authority to assess whether the removal of the drawing in question from the bundle of plans referred to in condition 4 would be reasonable and appropriate.

For background, it is however evident that when the Inspector allowed the appeal it was noted in the decision that the sketch elevations of the proposed dwellings were for indicative purposes only (para. 2 of the appeal decision notice). Within the section of the decision notice "Conditions" the Inspector stated at para. 20 "As the appeal proposal is in

outline with matters of access and layout to be approved at this stage, it is not necessary to impose conditions regarding appearance, scale and landscaping." This statement appears to be odds with the content of Condition 4 which lists all the plans which were submitted with the application, including that which provided an illustrative indication of the appearance of the development. At para. 20 the Inspector stated: "The normal conditions governing the submission of details in pursuance of reserved matters are required as is a condition requiring the development to be carried out in accordance with the approved plans for the avoidance of doubt and in the interest of proper planning."

Members will be aware that the outline planning permission granted by the Inspector related to the siting and means of access only and as such, that the Council would have the opportunity to consider the details of the appearance of the dwellings, their scale and the landscaping of the site at a later stage should the applicant decide to progress to details pursuant stage. As previously stated, a "details pursuant" application has in fact been submitted which includes elevational drawings that do not tally with the sketch/indicative elevations submitted at outline stage. It is important to note however that approval of the variation of condition 4 does not prevent Members from assessing the details pursuant application (17/00398) on its own merits and that that application has not been determined.

It is not for the Council at this stage and within this application to consider the detailed elevations and appearance of the proposed development; rather the purpose of this application is to remove the stipulation that the detailed development should be identical in appearance to the sketch elevations supplied in the course of the outline application.

The issue in question in this case is whether varying Condition 4 would be appropriate. In view of the original application having been submitted in outline only, with the appearance of the development being outside of that application, it is not considered reasonable for the Local Planning Authority to refuse to vary the condition; the net result of such a refusal would be to stipulate that the appearance of the development must accord with what were acknowledged by the Inspector to be indicative elevations only. In any case, the Local Planning Authority has the opportunity at detailed stage to determine whether the appearance of the dwellings would be acceptable, along with the scale and landscaping of the development, taking into account the relevant planning policies and any other material planning considerations.

Granting permission to vary condition 4 of the Inspector's decision does not undermine the Council's ability to consider matters of design and appearance in the detailed application - instead it addresses the contradiction between the wording of the condition and the detailed analysis of the merits of the outline application in the main body of the Inspector's decision notice.

Paragraph 206 of the NPPF states that planning conditions should only be imposed where they are "necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects." It was not the Local Planning Authority that imposed Condition 4 which included the sketch elevation while the appearance of the development was specifically reserved from consideration in that outline application. However, the LPA is required to determine this application and in assessing the merits of the proposal it is inevitable that such a determination will include consideration of the reasonableness of the condition in full as imposed by the Inspector.

Insofar as the application was submitted in outline with details of appearance and scale reserved from consideration it is not reasonable for the Council to seek to sustain a condition where it includes reference to sketch elevations, particularly in view of the

Inspector's own wording: "it is not necessary to impose conditions regarding appearance, scale and landscaping."

Background papers referred to in the preparation of this report comprise all correspondence on files refs: 14/01561/OUT, 15/00537/OUT, 15/04458/OUT, 17//0398/DET and 17/03050/RECON excluding exempt information.

RECOMMENDATION: APPROVAL

subject to the following conditions:

- 1 Details of the appearance, landscaping and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.**

Reason: In the interest of the visual and residential amenities of the area and to accord with Policies H7 and BE1 of the Unitary Development Plan.

- 2 Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from 23rd September 2016.**

Reason: No such details have been submitted and to comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

- 3 The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.**

Reason: Section 91, Town and Country Planning Act 1990.

- 4 The development hereby permitted shall be carried out in accordance with the following approved plans:**

**Drawing No. 13121/S401 Site Location Plan
Drawing No. 13121/S402 Existing Site Survey
Drawing No. 13121/C401B Coloured Site Layout
Drawing No. 13121/P403 Proposed site block plan comparison of plot sizes
Drawing No. 13121/SK403 Coloured Site Layout with Previous Scheme**

Reason: In the interest of the visual and residential amenities of the area and to accord with Policies BE1 and H7 of the Unitary Development Plan.

- 5 No demolition, site clearance or building works shall be undertaken, and no equipment, plant, machinery or materials for the purposes of development shall be taken onto the site until an arboricultural method statement detailing the measures to be taken to construct the development and protect trees is submitted to and approved in writing by the local planning authority.**

The statement shall include details of:

-Type and siting of protective fencing, and maintenance of protective fencing for the duration of the project;

- Type and siting of scaffolding (if required);
- Details of the method and timing of demolition, site clearance and building works;
- Depth, extent and means of excavation of foundations and details of method of construction of new foundations;
- Location of site facilities (if required), and location of storage areas for materials, structures, machinery, equipment or spoil, and mixing of cement and concrete;
- Location of bonfire site (if required);
- Details of the location of underground services avoiding locating them within the protected zone;
- Details of the nature and installation of any new surfacing within the protected zone;
- Methods proposed for the watering of the trees during the course of the Project.

The method statement shall be implemented according to the details contained therein until completion of building works, and all plant, machinery or materials for the purposes of development have been removed from the site.

Reason: To ensure that all existing trees to be retained are adequately protected and to comply with Policy NE7 of the Unitary Development Plan.

- 6 The applicant shall at his own expense instruct an arboricultural consultant, approved by the Council in writing to liaise with the developer and/or his architect or engineer to approve details of construction methods, oversee the works and report to the Council throughout the period of the works in so far as the works may affect trees within the site. Works shall not commence on site until a consultant has been appointed. After commencement of the project, all persons employed or engaged on the project shall immediately comply with any reasonable instruction, advice or request given or made by the arboricultural consultant in respect of works in so far as they relate or affect trees within the site, including an instruction to cease work if the arboricultural consultant considers that works have deviated from the agreed working methods and in these circumstances works shall not recommence until or unless written authority has been given by the Council or the arboricultural consultant that such works may recommence.

REASON: To ensure that works are carried out according to good arboricultural practice and in the interests of the health and amenity of the trees to be retained around the perimeter of the site and to comply with Policy NE7 of the Unitary Development Plan.

- 7 The design of the foundations of the proposed new dwellings must be sufficient to allow the trees within the woodland order W1 to remain in situ sustainably in close proximity to the new dwellings given that the proposed development site is on London clay. The ownership and control of trees within the Woodland Order W1 should be placed into a management company to reduce post development pressure on the trees from the proposed new dwellings.

REASON: In order to comply with Policy NE8 of the Unitary Development Plan and in the interest of good arboricultural practice and the visual amenities of the area.

- 8** No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner before or during building operations, other than in accordance with the approved plans and details without the prior written approval of the local planning authority. [In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars]

Reason: : In order to comply with Policy NE8 of the Unitary Development Plan and in the interest of good arboricultural practice and the visual amenities of the area.

- 9** The development permitted by this outline planning permission shall not commence until a surface water drainage scheme for the site based on sustainable drainage principles, and an assessment of the hydrological and hydro geological context of the development has been submitted to, and approved by the local planning authority. The surface water drainage strategy should seek to implement a SUDS hierarchy that achieves reductions in surface water run-off rates to Greenfield rates in line with the standards of the Mayor's London Plan.

Reason: To secure a satisfactory and sustainable means of surface water drainage to accord with the standards of the London Plan.

- 10** The dwellings hereby permitted shall not be more than 10.0m in height.

Reason: In the interest of the visual and residential amenities of the area and to accord with Policies BE1 and H7 of the Unitary Development Plan.

- 11** Details of the layout of the access road and turning area including its junction with Kings Hall Road and dimensions of visibility splays shall be submitted to and approved in writing by the Local Planning Authority and these access arrangements shall be substantially completed before any part of the development hereby permitted is first occupied. There shall be no obstruction to visibility in excess of 0.6m in height within the approved splays except for trees selected by the Authority, and which shall be permanently retained.

Reason: In order to comply with Policy T18 of the Unitary Development Plan and in the interest of pedestrian and vehicular safety.

- 12** Before any work is commenced details of parking spaces and/or garages and sufficient turning space shall be submitted to and approved in writing by the local planning authority and such provision shall be completed before the commencement of the use of the land or building hereby permitted and shall thereafter be kept available for such use. No development whether permitted by the Town and Country Planning (General Permitted Development Order) 2015 (or any Order amending, revoking and re-enacting this Order) or not, shall be carried out on the land or garages indicated or in such a position as to preclude vehicular access to the said land or garages.

Reason: In order to comply with Policy T3 of the Unitary Development Plan and to avoid development without adequate parking or garage provision, which is likely to lead to parking inconvenient to other road users and would be detrimental to amenities and prejudicial to road safety.

- 13 **Parking bays shall measure 2.4m x 5m and there shall be a clear space of 6m in front of each space (or 7.5m if garages are provided) to allow for manoeuvring and these spaces shall be permanently retained as such thereafter.**

Reason: In order to comply with Appendix II of the Unitary Development Plan and to the interest of pedestrian and vehicular safety.

- 14 **Garages shall have minimum internal dimensions of 2.6m x 6m and there shall be a minimum clear space in front of their doors of 6m (or of 7.5m where the garages are in a compound or opposite a structure or means of enclosure) to allow for manoeuvring and these dimensions shall be permanently retained as such thereafter.**

REASON: In order to comply with Appendix II of the Unitary Development Plan to ensure that adequate on-site parking is provided and in the interest of pedestrian and vehicular safety.

- 15 **While the development hereby permitted is being carried out a suitable hardstanding shall be provided with wash-down facilities for cleaning the wheels of vehicles and any accidental accumulation of mud of the highway caused by such vehicles shall be removed without delay and in no circumstances be left behind at the end of the working day.**

Reason: In the interest of pedestrian and vehicular safety and in order to comply with Policy T18 of the Unitary Development Plan.

- 16 **Prior to the commencement of the development hereby permitted a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include measures of how construction traffic can access the site safely and how potential traffic conflicts can be minimised; the route construction traffic shall follow for arriving at and leaving the site and the hours of operation, but shall not be limited to these. The Construction Management Plan shall be implemented in accordance with the agreed timescale and details.**

Reason: In order to comply with Policy T5, T6, T7, T15, T16 & T18 of the Unitary Development Plan and in the interest of the amenities of the adjacent properties.

- 17 **No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.**

Reason: In order to comply with Policy BE1 of the Unitary Development Plan and in the interest of the visual and residential amenities of the area.

