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# Appeal Decision

Site visit made on 27 September 2016

**by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 20 October 2016**

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**Appeal Ref: APP/L3625/W/16/3151989**

**13 Brokes Crescent, Reigate, Surrey RH2 9PS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Nutfield Homes against the decision of Reigate & Banstead Borough Council.
  - The application Ref 15/02700/F, dated 30 November 2015, was refused by notice dated 31 March 2016.
  - The development proposed is the erection of a dwelling.
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## Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwelling at 13 Brokes Crescent, Reigate, Surrey RH2 9PS in accordance with the terms of the application, Ref 15/02700/F, dated 30 November 2015, and the plans submitted with it, subject to the conditions on the attached schedule.

## Main Issues

2. There are two:
  - the effect of the proposed development on the character of the surrounding area; and,
  - whether or not the proposed development would make adequate provision for affordable housing.

## Reasons

3. The site of the appeal is an area of the back garden of a house which backs onto Reigate Hill. Along this part of the Hill, the Council sets great store by the retention of what **it describes as the 'parkway principle'**. This, it describes, is where the density of tree planting on the land beside the road, and the distance of development from the road, give the impression to those entering or leaving the town that they are moving through woodland.
  4. It considers that the scale and siting of the proposed house with its eastern flank so close to the boundary on Reigate Hill would break the established, deep, front building line, and would pressure the east boundary to the point where the parkway character would be harmed. While it does not object directly to back garden development per se, it considers that the orientation of the proposal would be out of character with the pattern of development to the north of the site and that it would appear cramped.
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5. I acknowledge **the Council's** concern for the character of Reigate Hill. However, my impression is that while dense belts of mature trees are conspicuous alongside the road towards the top of the Hill, the parkway character gradually dissipates down the length of the Hill towards the railway crossing, where trees become sparser and buildings become the dominant element. The position of the appeal site in this section of the Hill appears to fall between the two degrees. Close to the appeal site, houses are either conspicuous by their siting, or their presence is betrayed by their solid boundary enclosures or by the tree planting which appears increasingly associated with domestic occupation rather than with a parkland idyll.
6. I appreciate that the rear gardens of the houses in Brokes Crescent which back onto Reigate Hill give the road a distinctive, sylvan character. However, the proposal would retain a significant belt of trees and planting along the boundary to Reigate Hill; it would not undermine this existing sylvan character.
7. I note the Council's concern about the siting of the proposal in relation to the boundary to Reigate Hill. While its flank would be sited closer to the road than the building line established by Tanquards and Springwell to the north, it would be comparable to the building line of the hotel next to Springwell and it would be sited significantly further from the road than the petrol station in the same block as these houses. Furthermore, it would reflect the building lines of the houses on the opposite side of the street. The proposed house would be closer to Reigate Hill than its neighbours in Brokes Crescent, and it may appear in views down the Hill, but in this respect it would be little different to the houses on the opposite side of the Hill. In terms of building lines, the proposal would not be out of character with the spatial character of surrounding development. Its footprint may be greater than No 13, but not significantly so, and it would be little different to Tanquards. Its site coverage would be in the same range as Tanquards and Springwell, retaining substantial gaps between the building and the site boundaries. In terms of site coverage, the proposal would not appear cramped.
8. The house would be sited with its flank to the main road; however, the affinity of siting between the proposal and the houses to the north is not so strong that their orientation should be binding on this proposal. The length and width of the side road gives it a significant presence in which context the orientation of the proposal toward it would not be out of character, and it would appear little different to Copperfield at the end of the side road.
9. I conclude on this issue that the proposed development would not harm the character of the surrounding area. The proposed development would accord with saved Policies Ho9, Ho13, and Ho14 of the Reigate and Banstead Local Plan 2005 (LP) which seek, amongst other things, development that maintains the general pattern, form and character of the area, and which promotes or reinforces local distinctiveness.

### ***Affordable housing***

10. One of the reasons for refusal relates to the lack of any contribution to affordable housing, as required under Policy CS15 of the Reigate and Banstead Core Strategy 2014. The Policy requires that schemes of 1-9 dwellings should make a financial contribution equivalent to 10% so that affordable housing can be provided elsewhere.

11. A Written Ministerial Statement<sup>1</sup> (WMS) was made on 28 November 2014 which stated that **'for sites of 10 units or less...affordable housing and tariff style contributions should not be sought'**. Its intention was to ensure that financial contributions should not become a disproportionate burden for developers of small sites and thereby frustrate housing supply.
12. This was challenged in the High Court which resulted in a declaration Order being issued in August 2015 confirming that the policies in the WMS must not be treated as a material consideration. However, the Court of Appeal, in its judgment<sup>2</sup> of 11 May 2016 **upheld the Secretary of State's appeal, and** the WMS should once again be considered as national planning policy defining the specific circumstances where contributions for affordable housing planning obligations should not be sought from small scale development.
13. The Council, however, maintains that the proposed development should make a contribution towards affordable housing. It refers to its Core Strategy which **sets out the Council's aim of providing 1,500 affordable homes by 2027**, equating to an average of 100 homes per year. Its Position Statement describes how on-site provision by large schemes is insufficient to meet the identified needs for affordable housing, and that provision from smaller schemes is essential to its meeting its targets. It suggests that the introduction of the requirement for affordable housing contributions on small sites has had no discernible impact on the viability of small-scale developments.
14. The Council has provided monitoring data from 2007/2008 to 2015/2016, which defines medium-scale/large-scale developers as those delivering over 100 units per annum, and small builders as those normally delivering 100 units or less per annum.
15. The data for small builder completions shows, allowing for a time-lag for lead-in and construction programmes, that whereas the annual completions in the years preceding the WMS varied between 131 and 132 houses, the completions in 2015/2016 increased dramatically to 174. It is unclear from the evidence if the increase in house completions is not in fact as a direct consequence of the WMS rather than despite it, as the Council claims. On the evidence before me, I am therefore not convinced that the requirement for affordable housing contributions on small sites has had no discernible impact on the viability of small-scale developments.
16. I note the comparison to appeal decisions in this Borough<sup>3</sup> and in Elmbridge<sup>4</sup> made by the Council. Regarding the earlier appeal in this Borough, I see no regional completion comparisons in this case. While the evidence in this case indicates that nationally, small-scale and medium-scale builders account for less than 25% of house completions, it is unclear what proportion is accounted for by private individuals or by large-scale builders. As the **Council's definition of medium-scale builder** includes those building more than 100 houses per annum and the national data refers to medium-sized builders being those completing up to 500 units per annum, I am not certain that like data is being compared with like data.

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<sup>1</sup> House of Commons: Written Statement (HCWS50) 28 November 2014

<sup>2</sup> Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

<sup>3</sup> Appeal Ref APP/L3625/W/16/3146512

<sup>4</sup> Appeal Ref APP/K3605/W/16/3146699

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17. In the Elmbridge case, the Inspector concluded that a high number of planning permissions for housing fell below the 10-unit threshold of the WMS, whereas in this case, it appears that only 25% of completions are accounted for by small builders. I note that schemes in this Borough of fewer than 10 units have accounted for around 18% of affordable housing provision in the last 3 years; however, it is unclear what proportion of affordable housing is derived from developments by small builders. I do not therefore consider that these decisions direct me to a different conclusion.
18. I **note the Council's efforts to reduce the burden under the Policy by applying a sliding scale**, taking into account viability and the time-saving approach of a flat rate of contributions and its model form. However, these factors do not outweigh the burden of Policy CS15 when considered against the benefit of the increased housing supply intended under the WMS, and which the monitoring data suggests is being achieved. Furthermore, it is unclear how the Council is performing against its affordable housing targets.
19. While I appreciate the position of the Council and accord significant weight to the objective of Policy CS15 in the light of the housing need in its area, in the circumstances of this case it does not outweigh Government policy. Accordingly, the absence of a planning obligation in this respect does not weigh against the proposal.

### **Other matters**

20. The views of local residents have been taken into consideration and I have already dealt with what I regard as the main planning issues. Other concerns include precedent, traffic congestion and road safety, harm to wildlife habitats, noise and disturbance, drainage, and a covenant on the land.
21. My assessment gives substantial weight to the presence of Tanquards, Copperfield and Springwell and their use of the existing side road. The principal relationship of the proposal is to these houses and that side road. This distinguishes this site from the back gardens of the other houses in Brokes Crescent which back onto Reigate Hill.
22. The proposal would provide on-plot parking and turning and the additional traffic resulting from the development would be unlikely to significantly alter current traffic flows. While it would involve widening the access onto Reigate Hill, this would improve the turning capability of the access which is already used by the three houses to the north. I note that the Highway Authority advises that there have been no accidents recorded at the access and it raises no objection to the proposal.
23. While the residential use of the land would be intensified compared to the existing garden, the proposal would retain large areas of garden as well as the significant trees. There is no substantial evidence that biodiversity or wildlife would be materially harmed by the proposal. I have not been advised of any flooding issues and there is no firm evidence that the proposal could not be effectively drained, nor, given its isolation, scale and window arrangement, that it would materially harm the living conditions of surrounding occupiers, with particular regard to noise and disturbance. I note the restrictive covenant referred to by neighbours; however, this appeal concerns a planning application rather than a matter of private land interest. Accordingly, it has not had a significant bearing in my consideration of the planning issues in this appeal.

24. My attention has been drawn to a proposal at No14 for a fence, rejected because of its height impact on Reigate Hill. However, for the reasons given above, I find the scale and siting of the proposed house would not be overbearing to the character of the Hill or to neighbouring occupiers.

### **Conditions**

25. The Council has suggested a number of conditions that it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of the Planning Practice Guidance (PPG); for clarity and to ensure compliance with the PPG, I **have amended some of the Council's suggested** wording.
26. As well as the statutory time limit condition, it would be necessary in order to provide certainty, to impose a condition requiring the development be carried out in accordance with the approved plans. A condition to secure finishing materials would also be necessary to safeguard the character and appearance of the area. Given the proposal to open-up the north-east corner of the site for access, a landscaping condition would be required to safeguard the character of Reigate Hill, though this could be effectively provided before occupation rather than before commencement of development. Similarly, given the sylvan character of this part of Reigate Hill a tree protection condition is also necessary, and given the risk of disturbance, this should be resolved before development commences.
27. Reigate Hill is a busy, single carriageway road. There would be a risk of site traffic causing congestion, and there would be the potential for mud to be carried onto the road. In this light it would be necessary and reasonable to maintain highway safety to require control over site traffic and mud removal from vehicles by a pre-commencement condition. I consider it likely that the appellant would bring cars onto the site and therefore consider conditions for on-site turning and parking, and for highway access to maintain highway safety.
28. The Council has suggested that permitted development rights under classes A, B, C, D, and E are removed. The Planning Practice Guidance advises that conditions limiting permitted development rights should only be used in exceptional circumstances. In this case, the proposed house would be sited with a flank towards Reigate Hill where there is a potential for harm to its sylvan character which enlargement to this side could cause. In this instance, I agree that the withdrawal of permitted development rights under class A (enlargement, improvement or other alteration of a dwelling house) and class B (additions etc. to the roof of a dwelling house) would be necessary and reasonable, as the condition would not prevent development, but would bring it under planning control. However, I do not see the necessity to restrict the insertion of roof lights or other development permitted under class C (any other alteration to the roof of a dwelling house) nor class D (porches) or class E (buildings etc. incidental to the enjoyment of a dwelling house).
29. The appellant has provided plans indicating existing and proposed ground levels which appear comprehensive and reasonably set; it is therefore unnecessary to require their submission again.

## **Conclusion**

30. For the reasons given above, and taking account of all matters raised, I conclude that the appeal should succeed.

*Patrick Whelan*

INSPECTOR

## **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 13BC P1 Survey; 13BC P2(B) PROPOSED SITE PLAN; 13BC P3 PLANS & ELEVATIONS.
- 3) No development shall take place including groundwork preparation and demolition until all arboricultural protection matters, including supervision, monitoring and tree protection have been implemented in accordance with the tree protection measures as set out in the Tree Protection Plan and Arboricultural Method Statement by ACS dated 25 November 2015 and as shown on drawing TPP1\_BC Tree Protection Plan.
- 4) No development shall take place, including any works of demolition, until a Construction Transport Management Plan has been submitted to, and approved in writing by the local planning authority. The Construction Transport Management Plan shall provide for:
  - a) loading and unloading of plant and materials;
  - b) measures to control the deposit of materials on the highway.The approved Construction Transport Management Plan shall be adhered to throughout the demolition and construction period for the development.
- 5) No development shall take place until samples of all external facing materials have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved sample details.
- 6) The dwelling shall not be occupied until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
  - i) hard surfacing materials;
  - ii) tree removal/ retention;
  - iii) planting plans and written specifications including cultivation;
  - iv) schedules of plants including species, sizes and number/density;
  - v) implementation and management programme.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the first occupation of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 7) The dwelling shall not be occupied until the vehicle access to Reigate Hill has been provided in accordance with the approved drawings.
- 8) The dwelling shall not be occupied until the vehicle parking and turning spaces have been provided and surfaced in accordance with the approved drawings. The parking and turning spaces shall be kept available for the parking of motor vehicles and turning at all times. They shall be used solely for the benefit of the occupants of the dwelling and their visitors and for no other purpose and permanently retained as such thereafter.
- 9) 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 enlargement, improvement or other alteration of a dwelling house as provided for within Class A Schedule 2, Part 1, and no roof enlargements as provided for within Class B Schedule 2, Part 1, of that Order shall be constructed.

**End of the Schedule of Conditions**