

Application 17/03050/RECON: Variation of condition 4 of outline permission ref: 15/04458 allowed at appeal for the introduction of an 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:

Location: 213 Kings Hall Road Beckenham BR3 1LL

General response to application lodged by David Phillips of 181, Lennard Road, Beckenham BR3 1QN on behalf of affected residents in Kings Hall Road and Lennard Road

Summary of objections

- There is no evidence that the Planning Inspector *“incorrectly made reference”* to the drawing of sketch elevations to which the applicant now objects nor can it be demonstrated that the requirement to rely upon that drawing is, in any sense, *“onerous”*.
- The Inspector’s decision was balanced and nuanced. She indicated that, *“The main issue raised in this case is the effect of the development on the character and appearance of the area”*. Everything points to her having given very careful thought to the conditions imposed in the interests of preserving the character and appearance of the locality.
- The applicant is seeking to retreat from proposals which it voluntarily put forward. It made the clearest possible representations as to the intended design of the development in both its Design and Access and Planning Statements. It did so in order to promote its application. A requirement for the applicant to honour its own proposals cannot be *“onerous”*.
- The reference to the sketch elevations being for *“indicative purposes only”* must be seen in the context of the Planning Inspector’s decision generally and with the word *“indicative”* being given its natural meaning. The sketches were *“indicative”* in the sense that they were intended to convey a strong impression of the design to be adopted. The Inspector simply stipulated that any subsequent detailed drawings should respect and be in keeping with the sketches.
- Any departure from the Inspector’s conditions would undermine her intentions. There has been no material change of circumstances since her decision was made.
- The objectors were disappointed by the Inspector’s decision but relied upon the protections afforded by the conditions to which it was subject. The conditions have been on record since 23 September 2016 and any departure from them now would result in significant prejudice to objectors and to the public generally.
- There should be great caution, in any event, in varying or amending a decision made at a higher level.

Introduction and background

This response is made by way of objection to the latest application made by Brookworth Homes Ltd in relation to this proposed development. On this occasion, the applicant is seeking a variation of the conditions governing the grant of outline planning permission on appeal.

The Planning Inspector granted outline permission, with conditions, on 23 September 2016. The applicant then submitted an application for approval of details of scale, appearance and landscaping in December 2016. That application was subsequently withdrawn and replaced by an application with revised plans in February 2017. On 9 May 2017, Plans Sub-Committee No 3 deferred the application to permit the applicant to address concerns with regard to various aspects of their proposals including the size of windows, the need for more mature planting, the length of the acoustic fencing and the positioning of security gates. The Sub-Committee also requested the Council's officers to provide advice on the mandatory nature of the Planning Inspector's condition number 4 which required the permitted development to be carried out in accordance with six plans to which she specifically referred. These included drawing number 13121/C402C which shows proposed sketch elevations for the three properties¹.

Objectors to the application have consistently sought to point out that the conditions imposed by the Planning Inspector are an integral part of her decision and are legally binding upon the applicant. That view would now appear to have been belatedly accepted by the applicant and, as a result, it is now applying to be released from the specific requirement to follow drawing number 13121/C402C.

The objections set out in this document are once more lodged with the knowledge and approval of affected residents in both Kings Hall Road and Lennard Road². There is unanimous opposition from every neighbouring property in Lennard Road (Nos. 169-199) and Kings Hall Road (Nos. 193 – 217) apart from two properties in Kings Hall Road – 213 which remains empty and 215 which clearly has an interest in the application succeeding.

The planning file already contains a large number of individual written objections lodged by residents in Lennard Road and Kings Hall Road with regard to the two applications which are pending at present.

¹ Appendix 1 shows drawing number 13121/C402C.

² Appendix 2 sets out a list of the objectors who support this General Response.

The application

It is unclear why the applicant is pursuing this application. It essentially involves the applicant seeking to be released from proposals which it voluntarily put forward for the design and appearance of the three properties and in circumstances where it actively promoted those proposals in support of its application for outline permission.

It is disconcerting that the applicant appears to be suggesting that an indication was given by planning officers in their pre-application advice that reference to the drawing in question was *“outside the scope of the Inspector’s decision”*. Not only would this seem to be a misrepresentation of the written advice actually given (this has now been disclosed to the objectors) but the applicant also seems to believe that determination of this application is no more than a formality. It is very far from being a formality and the objectors’ united view is that the application should, in view of its history and the weight of objection to it, not be determined by officers under devolved powers but should instead be placed before a Plans Sub-Committee having existing knowledge of the matter.

In every Design and Access Statement that it has published, the applicant has indicated that the new properties would be *“similar in nature to other houses along Kings Hall Road”* so as to *“create elevations which are designed to sit comfortably within and enhance the surrounding area”*. Furthermore, the Planning Statement lodged in support of the application, also confirmed that the *“indicative elevations demonstrate that the architectural merit of the dwellings proposed would have sensitive regard to the character and appearance of the surrounding area and that the scale of the development would be in keeping with the locality”*. The sketch elevations appearing in drawing number 13121/C402C reflect these clearly expressed objectives.

Both the applicant’s Design and Access Statement and its Planning Statement were before the Planning Inspector when she made her decision. There is no evidence that she made a mistake and that she did not intend to include reference to drawing number 13121/C402C in condition number 4. The Inspector’s decision was balanced and nuanced in its reasoning. She indicated that *“The main issue raised in this case is the effect of the development on the character and appearance of the area”*. She also went on to say that it was necessary for there to be 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”*. Everything points therefore to her having given very careful thought to the conditions imposed – not least condition number 4 which is very clear in its terms.

Condition number 4 is mandatory in its effect and says that the permitted development shall (added emphasis) be carried out in accordance with the six plans and drawings which the Inspector then specifically identified. This again suggests the level of thought given to the wording of the condition.

The conditions imposed by the Inspector have been in place since her decision was issued on 23 September 2016 and everyone has known about them since then. Notwithstanding this, the applicant makes the surprising suggestion that the nature of the condition, it seeks to have varied, has only *“come to light during the determination of the reserved matters application”*. This obviously cannot be correct.

No steps have been taken by the applicant until now to challenge or vary the conditions. The proper time for so doing was immediately after the Inspector’s decision was issued. In the meantime, the objectors’ disappointment at the decision has been balanced and alleviated by the protections afforded by the Inspector’s conditions. The removal of any of those protections, so late in the day, would be grossly unfair and prejudicial to neighbouring properties and to the community generally.

The applicant appears to be suggesting that the sketch plans were, in the context of the overall application, simply transitory or ephemeral in nature. If they were, in effect, meaningless, why trouble to lodge them at all? In fact, the applicant clearly considered the sketch elevations to be a robust *“selling point”* for its application and expected them to be taken as cogent evidence of the intentions and promises expressed in both its Design and Access and Planning Statements.

The submission of sketches for *“indicative purposes”* was precisely that. Indications or strong suggestions were being made by the applicant as to the intended design and appearance of the houses which the Inspector stipulated should be the basis for future detailed drawings as and when these were submitted.

The applicant made clear representations, as to the intended design (which included, for example, much smaller windows than appear in the recent designs and the absence of any windows in the roof space of properties). The Inspector relied upon these representations when making her decision and in drafting her conditions. She did so in the interests of preserving the character and appearance of the locality.

Any departure from the Inspector’s conditions will undermine her intentions. There has been no material change of circumstances since her decision was made and condition number 4 should not be disturbed.

In any event, there should be great caution in varying or amending a decision made at a higher level by the Planning Inspector.

David Phillips – 7 August 2017

APPENDIX 1



BROOKWORTH HOMES

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Proposed Sketch Elevations
Kings Hall Road, Beckenham
13121 / C402C
Scale 1:200 @ A3 February 2016

APPENDIX 2

LIST OF OBJECTORS SUPPORTING GENERAL RESPONSE

LENNARD ROAD

169	Laurence Frewer
173	Jackie Allen
175	Zeb and Nur Dostmohammad
177	John Kenny and Karen Grieves
179	John and Chris Daniells
181	David and Jill Phillips
183	Neil Lornie
185	Paul Sentobe and Kamile Ozcan
187	Mike Grice and Anna Parry
189	Danny Dyal and Jessy Sale
191	Ian Stewart
193	Phil and Gwen Rogers
195	Paul and Mina Bailey
197	Helen and Gary Byfield
199	Stephen and Caroline Studd

KINGS HALL ROAD

177	Des and Sheila Hamilton
188b	Sue Kibler
193	William and Tessa Gould
195	Mike Tighe and Sakina Mer
197	Graeme, Elaine and Katrina Thomson
198	Andita and Shaji Sukumaran
199	Amanda and William Lawson
201	Axel and Antje Waldecker
203	Rob and Jennifer Kafcas
205	Rebecca and Mike Woods
207	Hannily and Simon Pavey
209	Stuart, Alison, Sam and Caitlin Westgate
211	Atholl and Angela Milton
217	Janice Bennett-Hunter