

## COMMITTEE REPORT

BY THE EXECUTIVE DIRECTOR FOR ECONOMIC GROWTH AND NEIGHBOURHOOD SERVICES  
READING BOROUGH COUNCIL  
PLANNING APPLICATIONS COMMITTEE: 3rd March 2021

Ward: Kentwood

App No.: 201694

Address: 8 The Beeches, Tilehurst, Reading, RG31 6RQ

Proposal: Relocation of Boundary Fence and Removal of Shared Access

Applicant: Mr M & Mrs S Rowe

Deadline: 22/01/2021 - Extended to 5/3/2021

### RECOMMENDATION:

Grant

Conditions to include:

In accordance with approved plans

Details of new boundary and planting to be approved

Use by No8 of their new access directly onto the Beeches only and access onto shared area to be closed off.

Informatives to include:

Standard ones

Condition 10 still applies to remainder of the site

## 1. INTRODUCTION

- 1.1 No 8 The Beeches is a detached two storey dwellinghouse first laid out as one of a group with two other houses accessed off The Beeches via a shared drive. The Beeches is a short adopted road, off Elsley Road, serving 5 other dwellings.
- 1.2 The photographs of the site provided at the end of the report were taken during the officer site visit on Friday 18<sup>th</sup> December.

Site Location Plan



Aerial View - 8 The Beeches



## 2. PROPOSAL

- 2.1 The proposal is for a change to the location of part of the boundary between no 8 The Beeches and the other 2 houses on the shared drive to effectively close off this route to 8 The Beeches and to enclose all the area (c40 sq.m) claimed by the applicant to be part of their ownership.

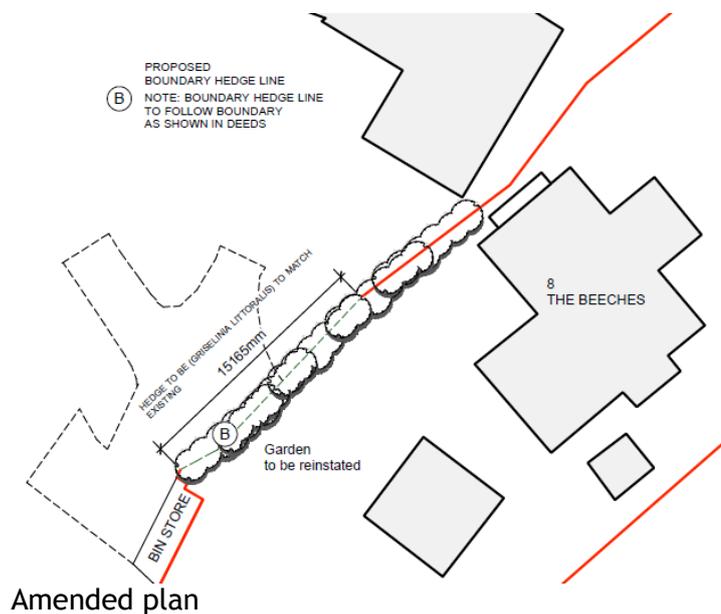
- 2.2 The applicant, having been granted a licence to have a dropped kerb installed to allow access directly from The Beeches then sought confirmation with a Certificate of Lawful Proposed Development (CLP - See Planning History) that the creation of their new access and associated changes to the boundary directly on to The Beeches and areas of hardstanding would not require planning permission to be granted by the local planning authority.
- 2.3 A second part of the CLP application seeking confirmation that the provision of 1.8m high gates and adjoining in-fill panels adjacent to the shared circulation area would also not require planning permission was deleted on advice from officers that this should not be included in the approved CLP as it would breach planning condition 10, imposed when the development of 3 houses was allowed by a Planning Inspector following an appeal against refusal of planning permission by this Local Planning Authority.
- 2.4 The original plan submitted suggested that the existing gates would be replaced with and hedging increased in length to meet it. Amended plans received now seek to eventually replace the gate with entirely an extended hedge.

Submitted Plans and Documentation:

Drawing MA132.01.01 Site Location Plan, Plans and Elevations

Supporting Statement

Drawing MA132.01.01 Rev B Plans & Elevations received on 19 February 2021.



3. **PLANNING HISTORY**

180690/CLP Certificate of lawful development application for a new 1m high brick pillar, dropped kerb to provide a new access onto The Beeches and associated driveway with gully for drainage within the site. Certificate Granted

00/00619/FUL Demolition of the existing dwelling and the construction of three 5 bedroom houses. Refused 26 May 2020.

99/01149/FUL Demolition of the existing dwelling and the construction of three 5 bedroom houses. Refused 23 November 1999

Both decisions were appealed and appeals considered together. The decision was to allow both applications (decision dated 4<sup>th</sup> January 2001) and it is the 99/01149/FUL permission that has been implemented.

Condition 10 of the appeal decision stated that:

*The areas shown on the submitted drawings for the parking, turning and circulation of vehicles shall be constructed and kept available for such use at all times. No development whether or not permitted by the Town & Country Planning (General Permitted Development) Order 1995 shall be carried out on such areas or in such a position to restrict access to such facilities.*

#### 4. CONSULTATIONS

##### **Natural Environment**

The application proposes removal of shared access with no. 7 and relocation of boundary fence, developments that arise naturally from previous 180690 application regarding a new access way to no.8 from The Beeches (permitted 18 May 2018).

Although the site is subject to TPO 137/06 covering valuable trees on the boundary to Elsley Road, the proposed development is restricted to what is existing driveway and small soft landscape areas on either side of the gate to be removed - no impact on said trees. The hard surfacing currently covering the development area is proposed to be replaced by garden (lawn most probably), but the high hedges leading up to the gate on either side are indicatively shown not to be connected on the proposed plan (Drawing no. MA132.01.01). I assume these would have to be removed to allow the boundary be moved outward but the applicant does not commit to the natural course of replanting them along the new fence.

It is likely that the hedges formed part of the original landscaping for these properties and in view of our climate emergency, replacement hedging is required. The applicant can either submit these details now for agreement or condition L1 could be used, amended to refer to just soft landscaping as I assume the remainder will be agreed by virtue of the consent.

Officer note: These comments were passed to the applicant's agent and amended plans provided to confirm that a continuous hedge is now proposed with species shown but more information on the planting is needed so planning condition still recommended.

##### **Transport Development Control**

The site is a detached two storey dwelling house set in a group of two other houses all accessed off The Beeches via a shared drive. This application is for the relocation of the boundary fence and removal of a shared access relating to no. 8 The Beeches.

The applicant was granted a licence to have a dropped kerb installed to allow access directly from The Beeches and a certificate of lawful development application was granted under application 180690. However, it

was deemed that the applicant would need to submit a full planning application if they wished to pursue relocation of the boundary fence and removal of the shared access given the conditions (condition 10) placed on the original permission (99/01149/FUL).

Condition 10 stated that: *“The areas shown on the submitted drawings for the parking, turning and circulation of vehicles shall be constructed and kept available for such use at all times. No development, whether or not permitted by the Town & Country Planning (general permitted development) or Order 1995, (or any order revoking and re-enacting that Order with or without modification) shall be carried out on such areas or in such a position to restrict access to such facilities.”*

The proposed new boundary will have no impact on the applicant’s ability to access their site as they will use their new access. Therefore, the main transport consideration is whether the loss of the hardstanding will impact on the other two properties and prevent them from turning and leaving the site in forward gear.

DfT document Manual for Streets states that “For cul-de-sacs longer than 20 m, a turning area should be provided to cater for vehicles that will regularly need to enter the street.” I have noted from the conveyance plan (submitted under application 180690) and from a site visit, that both the other properties have their own turning heads which provide sufficient space to accommodate a vehicle turning within the site. In view of this, it is our opinion that the proposed development retains and does not alter the parking, turning and circulation of vehicles to and from No 6 and 7 The Beeches that would result in a detriment to Highway safety or inconvenience to the residents of these properties.

It should be noted that refuse vehicles do not enter the site as they collect the refuse from the main carriageway. The only vehicles that would regularly need to enter the close would be small delivery vehicles, such as for food shopping, and they would be able to turn within the private turning areas or even within the retained shared driveway. Some vehicles may require to undertake more than a standard 3 point turn but this is acceptable especially in a layout like this where the overall vehicle movements would be low and traffic would not be impeded. Any vehicles larger than this would be required to either reverse into or out of the shared access in its current configuration and the proposed development would not alter this arrangement.

The Transport response has been prepared following an officer site visit undertaken on 10<sup>th</sup> February 2021.

A further site visit was carried out on Wednesday 17th Feb by the Transport Development Control Manager. He has advised “I was able to undertake a turning manoeuvre utilising the drive leading to No. 6 The Beeches whilst staying well within the shared area. This would be slightly less convenient for the residents of No. 7 but still provides for a suitable turning area.

The conclusion was that as on site turning for a private car could take place either within the private demise of the dwellings or within the shared area that I could not object on those grounds and his earlier comments would stand.

I also considered photographic evidence of food delivery vehicles accessing the site as requested by the objector. See attached photograph, which shows a vehicle once parked and not in any difficulty turning on site. I have further reviewed the turning of a food delivery vehicle and although ultimately this would be tight I think this would still be achievable so my previous response would be unchanged.



## Public

10 Ferndale Close, Tilehurst, Reading, RG31 6UZ  
7 The Beeches, Tilehurst, Reading, RG31 6RQ  
A site notice has been displayed

There is one objector who has submitted a number of comments opposed to the application. The main area of concern is the reason for Condition 10 and that in their view it still applies. It is considered that planning condition 10 is still very relevant to the development. The planning condition has been embodied in the title deeds of all three properties and continues to yield practical benefits of substantial value and advantage to each householder, and it should therefore remain in place unmodified.

“We need the full extent of the shared area to turn, manoeuvre and circulate, and reducing the shared area would substantially interfere with its convenient use by us and our visitors. As a matter of law is it not in the applicants’ power to deny us what we have contracted for”.

The bottom line is that we are protected by this condition in planning terms and through our deeds.

The new fence, referred to in the planning application, would create an obstruction across the shared driveway and deny us, our visitors and emergency services adequate turning and circulation space.

It is claimed that the supporting letter with the application is flawed, inaccurate and wilfully misleading. Reference is made to the fence being built directly across the shared area, in such a position as to deny access to the shared area for turning and circulation.

There are objections to a new hedge being planted on the boundary as it would create an overbearing organic barrier over which they would have no control. It is pointed out that the front gardens were designed to be open plan with low ranch fencing, not 7 foot plus hedges and fences. The

outlook would become “a blank façade of dark overbearing wooden fence across the driveway”.

Reference is also made to conducting media i.e. the electricity supply for the gates on the main entrance, that they believe will be enclosed by the boundary being moved but access is needed to this at all times for maintenance.

Officer note - It also needs to be stated that the objector has written to the Council to advise that they intend to begin Judicial Review Proceedings if permission is granted. Advice has been sought from Legal Services with regards to the historic planning condition and its relevance to the subject application and this is presented later in the report.

### **Equalities Impact**

When determining an application for planning permission the Council is required to have regard to its obligations under the Equality Act 2010. There is no indication or evidence (including from consultation on the application) that the protected groups as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this planning application. Therefore, in terms of the key equalities protected characteristics it is considered there would be no significant adverse impacts as a result of the proposed development.

## **5. RELEVANT PLANNING POLICY AND GUIDANCE**

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Material considerations include relevant policies in the National Planning Policy Framework (NPPF) which states at Paragraph 11 “Plans and decisions should apply a presumption in favour of sustainable development”.

5.2 The relevant policies in Reading Borough Local Plan (November 2019) are:

- CC7: Design and the Public Realm
- CC8: Safeguarding Amenity
- EN14: Trees, Hedges and Woodland
- H10: Private and Communal Outdoor Space
- TR3: Access, Traffic and Highway-Related Matters
- TR5: Car and Cycle Parking and Electric Vehicle Charging

Relevant Supplementary Planning Documents (SPD) are:

- House Extensions
- Revised Parking Standards and Design

## **6. APPRAISAL**

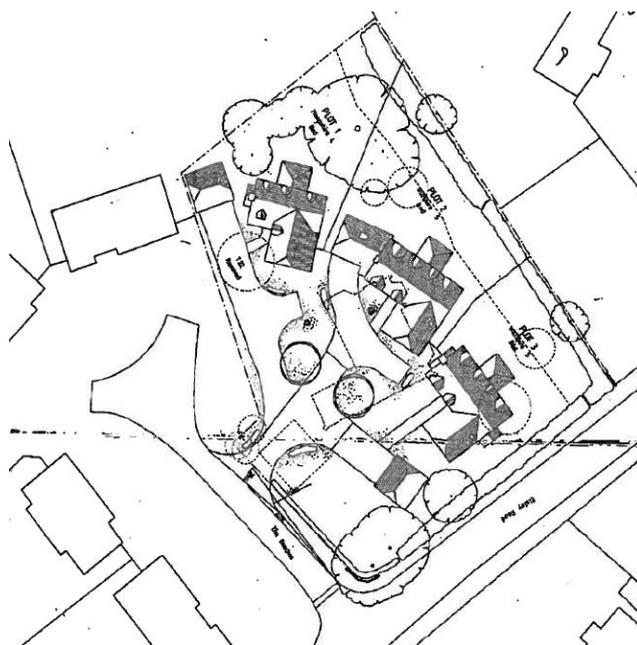
6.1 The main matters to be considered are:

- the principle of the proposal/can it be entertained given the planning condition imposed when the group of 3 houses was granted permission on appeal
- the effect of the proposed change to the boundary position on vehicular access in the area.
- the effect of the proposed change to the boundary position on the character and appearance of the area
- Ownership, covenants & Judicial Review

### Principle of the proposal

- 6.2 The first part of this appraisal deals with whether a planning condition imposed when planning permission was granted should still carry weight. The rules relating to the use of conditions when granting planning permission were established back in 1995 by Circular 11/1995 and these remain in force. The NPPF confirms this and explains the purpose of a planning condition is to enable an otherwise unacceptable development to be made acceptable by requiring further details to be approved, uses controlled or preventing undesirable works or uses from taking place.
- 6.3 Planning conditions should only be imposed where they are (i) necessary, (ii) relevant to planning, (iii) relevant to the development to be permitted, (iv) enforceable, (v) precise and (vi) reasonable in all other respects.
- 6.4 If a developer considers that a condition no longer meets these tests they can apply for the condition to be changed or removed from the planning permission or as in this case, apply for planning permission for the works that the planning condition appears to be controlling.
- 6.5 The relevant condition in this case is Condition 10 of the appeal decision. It states that:  
*The areas shown on the submitted drawings for the parking, turning and circulation of vehicles shall be constructed and kept available for such use at all times. No development whether or not permitted by the Town & Country Planning (General Permitted Development) Order 1995 shall be carried out on such areas or in such a position to restrict access to such facilities.*

The drawing being referred to is shown below:

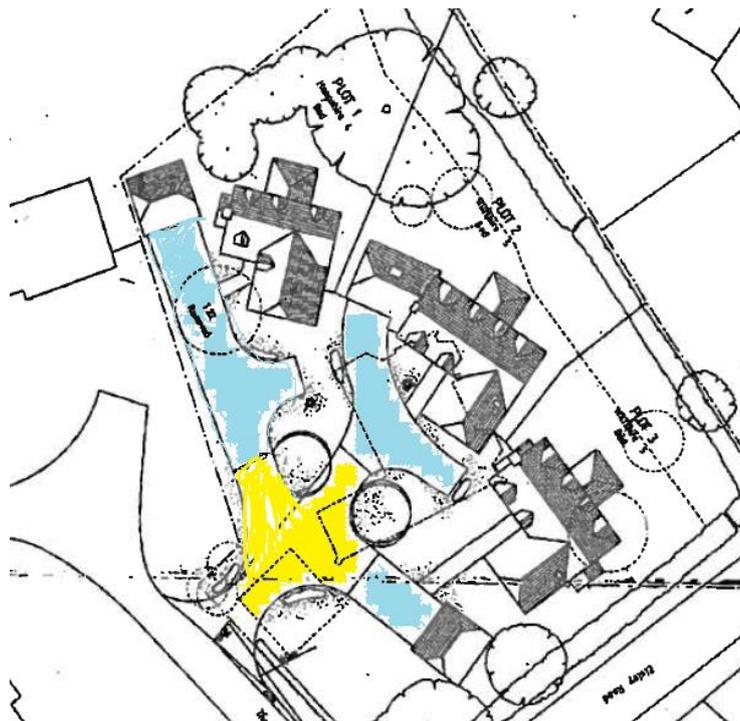


- 6.6 When explaining the reason for the condition the Appeal Inspector said “those conditions concerning the detailed provision of accesses, parking and footpaths are necessary and reasonable in the interests of the

appearance of the development and of highway safety”. The question therefore is whether the condition still serves the purpose when first applied and so still meets the tests.

**The effect of the proposed change on vehicular access in the area.**

- 6.7 The relevant Reading Borough Local plan Policies are TR3 and TR5. The above plan is copied below but shaded up to show the individual driveways serving each house (shaded in pale blue) and the shared area that all would have to have driven over to get to or from the respective houses (shaded in yellow).



- 6.8 It can be seen that the layout of the three driveways provides No.6 (the top house) with a turning head and No.7 (the middle house) with a turning head to allow most vehicles associated with these properties to arrive and leave in a forward gear. No.8 is the only property without its own turning head and therefore the intention for vehicles associated with that property appears to have been for them to rely on the shared area to arrive and leave in a forward gear. From the Transport Development Manager’s personal experience there is adequate space on site for a normal sized vehicle to turn on site even without the area now proposed to be enclosed. It is also relevant that all properties are provided with double garages and all appear capable of being used for parking.
- 6.9 The new access that has been provided for No.8 coming directly off The Beeches and the additional areas of hardstanding serving No.8 is shown in the aerial view below. The turning heads for No.6 & No.7 remain so vehicles can access and leave these properties in forward gear and No.8 no longer needs to use the shared area for access or turning. This leaves the shared area for use by just No.6 & No.7 so would mitigate the loss of shared surface that would be enclosed by the moved boundary if this application is

granted planning permission. Larger vehicles would have to do the same movements as they do now - as explained in the transport officer comments above.



- 6.10 Officers consider that the highway safety reason for the condition has therefore been removed in respect of No.8 The Beeches. However, the condition still has relevance to No.6 & No.7 to ensure that the retained shared area is kept clear for access. In addition a condition to require that No. 8 only uses their new access and that the internal access is permanently closed is recommended if planning permission is granted.

#### **The effect on the character and appearance of the area**

- 6.11 Policies CC7 and H10 have been used to assess the effect that the proposed works will have on the character and appearance of the area.
- 6.12 Policy CC7 applies to all development (town centre redevelopment and householder applications). The policy requires that all development must be of a high design quality that maintains and enhances that character and appearance of the area of Reading in which it is located.
- 6.13 Policy H10 requires:
- “The design of outdoor areas will respect the size and character of other similar spaces in the vicinity, clearly identify whether they are private or communal spaces, ensure that they are appropriately related to main entrances, enhance safety and the perception of safety for future residents and the general public, and not be compromised by the relationship of other buildings which may be detrimental in terms of overlooking, overbearing or overshadowing”.
- 6.14 When the Council opposed this development and refused planning permission in 1999 refusal reason no.4 found that:

“ The proposed development indicates a poor layout and use of the site which results in an over provision of parking spaces to the front of the site....”

While refusal reason no.5 reason said:

“There is an excessive provision of parking and driveway space which is out of character with the surround in area”.

- 6.15 The aerial view shown on the previous page and the photographs provided at the end of this report give an impression of what the group of houses looks like currently. The general impression on arrival (through a gateway that was not shown on the originally approved plans) is one dominated by a large access area but in the context of the large houses and the mature landscaping the impression is softened from what was feared it would look like when permission was originally refused. No.8 has a high hedge and gate so one can only see the top of the house whereas No.6 and No.7 can be easily seen beyond their front landscaped areas. The result is a pleasant appearing private close.
- 6.16 The hedge and gate serving No.8 from within the communal area are not as the site was originally laid out and different in appearance to the boundaries serving the other two properties. It can be appreciated why the objector is unhappy with this change that has already taken place and the further change now proposed. However, by reference to the photographs, the existing hedge and gate are not unpleasant to look at and the proposal to move the boundary hedge and to eventually replace the gate with an extended hedge (see amended plan) will result in a very small change to this appearance.
- 6.17 When assessed against Policy CC7 it is difficult to see how the proposed change to the boundary would not maintain or enhance the existing landscaped character and appearance of the area.
- 6.18 In the context of Policy H10 the change to the garden boundary would not harm or diminish the private amenity area serving No.8. The change would not harm or diminish the private amenity areas serving No.6 or No.7. The communal area retained for No.6 & No.7 would be just under 40 square metres only marginally smaller than that currently available and the area to be lost is part of the original access to No.8 so does not serve an amenity use (visual or outdoor living). In fact it could be argued that removing pedestrian and vehicular activity associated with No.8 from this area would enhance the privacy and safety of occupiers of No.6 & No.7.
- 6.19 The House Extensions SPD has a section about fences and gates and explains that the Council normally resists these where they would close off views or change the character of a street unless positive improvement can be demonstrated. The proposed development will only change the appearance when seen from the other two houses and not the “public realm”, as it is normally understood, and it is not how this change would be harmful when

compared to the existing appearance of the access that the applicant claims is no longer required.

- 6.20 Officers have carefully considered the objections raised by the objector in this regard and have applied the relevant policies to the matter but cannot be persuaded that the proposed change to the boundary would not maintain or enhance the character of the area and thereby fail against Policy CC7. Having carefully look at the implications for both private and communal spaces in the area in the terms of set out in Policy H10 again officers have found that the proposal complies with the objectives of this policy.
- 6.21 The conclusion is that the effect on the character and appearance of the area will be neutral and there is no planning policy basis for refusing planning permission.

#### **Ownership, covenants and Judicial Review**

- 6.22 The applicant and the objector have drawn attention to ownership and the covenants that apply to the site. The applicant served the appropriate notice on No.7 as co-owners of the share area and in that regard that is as far as the issue of ownership can go when considering this planning application.
- 6.23 As the objector has advised that they are considering seeking a Judicial Review of the decision if planning permission is granted the advice of the Legal Services team has been sought.
- 6.24 Their advice on the covenants that “The restrictive covenants as raised by the objector are not a relevant consideration when determining planning applications. Equally, planning permission does not quash any restrictive covenants. Although the restrictive covenant and Condition 10 seem to relate to the same issue of parking, they do not need to be considered together for planning purposes. Enforcing the restrictive covenant would be a civil matter to be settled between the parties”.
- 6.25 Finally advice on the grounds on which a judicial review of a decision can be made:
- The local planning authority has misdirected itself in law, exercised its power wrongly or did not have the power to determine the application in the way that it has.
  - The decision reached was irrational, including that the local planning authority took into account irrelevant matters or failed to consider relevant matters in reaching the decision made.
  - The local planning authority has not properly observed relevant statutory procedures or principles of natural justice in reaching the decision that they have, such a decision can be challenged.
  - If there was a legitimate expectation that the local planning authority, by its own statements or conduct, would act in a certain way but they have failed to do so, an applicant can seek to challenge such approach.

## **7. CONCLUSION**

- 7.1 This proposal has been carefully considered in the context of the Reading Borough Local Plan 2019 and supplementary planning documents. The proposed alteration to the boundary between No.8 The Beeches and No.s 6 & 7 The Beeches would not be harmful to the character or appearance of the site or its surroundings and would not have a detrimental impact on the amenities of the applicant or neighbours nor impede the ability of the neighbours to access their properties. As such the proposal is recommended to be granted planning permission.

Case Officer: Julie Williams



