



Appeal Decision

Site Visit made on 27 October 2021

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20/12/2021

Appeal Ref: APP/G5180/W/21/3271857

Land and Garages, Gardiner Close, Orpington, Bromley BR5 3HW

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- 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 Mr Shazad Mahmood - AZ Investments Limited against the decision of London Borough of Bromley.
 - The application Ref DC/20/01682/FULL1, dated 13 May 2020, was refused by notice dated 17 December 2020.
 - The development proposed is described as 'demolition of existing garages and creation of two new dwellings with associated parking'.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Shazad Mahmood of AZ Investments Limited against the London Borough of Bromley. This application is the subject of a separate Decision.

Preliminary Matters

3. In the period since the appeal was submitted the Government has published the revised National Planning Policy Framework (the Framework) July 2021 which is being brought into immediate effect for the purposes of decision-making. The Council referred to this update to national policy within its statement of case and the appellant has had an opportunity to respond through their final comments. I have had regard to the revised national policy as a material consideration in my decision-making.
4. Since the Council's decision, the London Plan (LP 2021) has been published and forms part of the development plan for the area. Consequently, Policy 5.13 of London Plan (2016), referred to within the Council's decision notice, has been superseded. The main parties have referred to Policies SI 13, D3 and D6 of the LP 2021 within their appeal submissions. I have been provided with a copy of these policies and have taken them into account as part of my assessment.
5. The appellant's statement of case confirms that during the planning application process, a section of land within the appeal site was transferred by the Land Registry to the owners of the neighbouring property, Inglewood. Whether or not the appellant intends to dispute this is a private legal matter falling outside the planning process. I must determine the appeal based on the evidence before me and therefore that part of the site currently sits within the ownership

of Inglewood. In that regard, the appellant has issued Certificate B to the owners of Inglewood. On that basis I am satisfied that the correct procedural requirements have taken place in order to allow me to proceed with determination of this appeal.

6. The appellant has provided amended drawings as part of their appeal submission. The amendments do not alter the appeal site red line boundary but include a hatched line showing the boundary of the land transferred to the owners of Inglewood. The plans include a marginal reduction in the cumulative width of the proposed dwellings when compared with the drawings that were before the Council when it made its decision. The dwellings would not sit closer to neighbouring dwellings than was indicated on the original drawings. The elevational treatment would also be substantively as per the drawings previously seen by the Council and third-parties. The evidence before me also indicates that the dwellings would still meet local and national requirements in respect of internal and external living space, and this has not been disputed by the Council. The owners of the neighbouring property at Inglewood are aware of the changes and have commented on the appeal.
7. Taking the above considerations into account and being mindful of the 'Wheatcroft Principles'¹, I am satisfied that the development is not so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation. Therefore, no party would be prejudiced by me considering the appeal on the basis of the revised drawings.
8. Although the Council's reasons for refusal include matters relating to the living conditions of neighbouring occupiers, potential harm to levels of light are not referred to. However, third-parties have raised specific concerns in relation to this matter and the appellant has responded within their statement of case. Therefore, I have included this matter within the second main issue.

Main Issues

9. The main issues are:

- (i) The effect of the proposal on the character and appearance of the area;
- (ii) The effect of the proposal on the living conditions of neighbouring occupiers with particular regard to privacy, outlook and light; and
- (iii) Whether the proposal would incorporate suitable drainage arrangements.

Reasons

Character and appearance

10. Gardiner Close is mainly characterised by blocks of two-storey dwellings. Due to their predominantly terraced form, dwellings are more often set within narrow plots. Gaps between dwellings mainly relate to the space between neighbouring blocks where they are differently orientated in relation to each other. The appeal site relates to one such gap and is currently occupied by a garage block with a hard surfaced access and forecourt. The neighbouring end terrace at No 18 Gardiner Close has front projecting tile clad features which differentiate it from most of the other front elevations on Gardiner Close.

¹ (Bernard Wheatcroft Ltd v SSE [JPL 1982 P37])

11. Roof forms to dwellings on Gardiner Close are mainly pitched with roof slopes orientated to face the road. However, there is variety to roof forms in the wider locality. The large detached neighbouring dwellings at Inglewood and the locally listed Garland Hill Farmhouse are situated within the St Pauls Cray Conservation Area (CA). These dwellings incorporate hipped and gabled roof forms. Their traditional architecture and high-quality materials form part of the CA's high-quality built environment, positively contributing to its significance and the setting of Garland Hill Farmhouse.
12. The height of the development would be sympathetic to the scale of surrounding buildings with ridge heights set below those of the nearest neighbouring dwellings at Nos 17 and 18 Gardiner Close. The front elevation of the dwellings would align closely with that of the end terrace at No 18. Gaps of 1.0 metre (m) would be provided between the side elevations of the dwellings and the boundaries with neighbouring properties thereby complying with Policy 8 (Side Space of the London Borough of Bromley Local Plan (2019)). In combination with the discreet positioning of the development at the top corner of Gardiner Close, partially screened by the terraced blocks to the east, these factors would assist in assimilating the alternative gabled design into the street scene of this estate.
13. The Council has drawn my attention to the expectation within Policy 8 for more generous space to be provided to the side of dwellings where higher standards of separation already exist within a residential area. However, in addition to the proposed 1.0m gap to the boundary with No 18, this neighbouring dwelling is also set away from the shared boundary. As a result, I am satisfied that the overall spacing provided would not appear cramped or incongruous within the close-knit, predominantly terraced built context of Gardiner Close.
14. Whilst visible from the rear windows and gardens of the neighbouring dwellings in the CA, the development would not be highly discernible in primary street scene views within or towards the CA or Garland Hill Farmhouse. In that regard, it would not be harmful to the setting of these heritage assets and their significance would be preserved.
15. I conclude, the development would have an acceptable effect on the character and appearance of the area. In that regard, it would comply with the design, local character and conservation requirements in Policies 4 (Housing Design), 8 (Side Space) and 37 (General Design of Development) of the London Borough of Bromley Local Plan (2019) (LP), Policies D3 (Optimising site capacity through the design-Led approach) and D6 (Housing quality and standards) of the LP 2021 and the Framework.

Living conditions of neighbouring occupiers

16. I saw on site that the rear garden at Inglewood forms an important amenity space for occupiers of this neighbouring dwelling with seats and benches laid out at various points on the lawn. This garden currently benefits from high standards of privacy due to the distance and angles from the first-floor windows serving Garland Hill Farmhouse and dwellings on Gardiner Close. The majority of first-floor windows to the rear elevation of the development would not result in any material harm to the privacy of occupiers of this neighbouring property given the distance and oblique angles between them and Inglewood's rear garden. However, the northernmost bedroom window to the rear of Unit 2 would sit close to the boundary of the land transferred to the owners of

Inglewood. Whilst this window would not provide direct views of the rear elevation of Inglewood, its close proximity to the boundary would afford views of a substantial portion of the eastern side of Inglewood's garden. This would be detrimental to the privacy of occupiers of Inglewood when using their rear garden.

17. The front elevations of the development would substantively face the rear gardens of No 17 Gardiner Close and other dwellings within this terraced row. When stood within the front bedrooms in the proposed dwellings, the oriel windows would for the most part ensure that views would be directed towards the side elevation of No 17. However, the northernmost bedroom to the front elevation of Unit 2 has the potential to provide a view of the part of the private amenity space which sits closest to the rear elevation of No 17. I acknowledge that this neighbouring terraced row has first floor rear elevation windows and therefore some overlooking of gardens already occurs. However, such views are likely to be more focussed towards the mid and rear parts of neighbouring gardens. When taken together with the loss of privacy to Inglewood, I find the cumulative harm to the privacy of neighbouring occupiers would be significant.
18. No windows are proposed to the side elevation of Unit 2 and first floor front elevation windows would be angled away from Garland Hill Farmhouse. Views from the rear elevations of the development would only provide an oblique line of sight towards the rear garden of No 18 Gardiner Close similar to that already available between neighbours within that row of terraced dwellings. Therefore, there would be no material overlooking impacts on these neighbouring properties. However, this does not override the other harm identified to the privacy of neighbouring occupiers.
19. The distance between the proposed dwellings and the boundary with No 17 would be sufficient to ensure that the mass of the proposed building would not have an overbearing impact on this neighbouring garden or others in the terraced row. The line of sight from the rear windows of these properties would also ensure the development would be peripheral in these views.
20. The rear elevation of the development would extend past the two-storey rear elevation of No 18 Gardiner Close. Even so, it would be set away from this boundary and the angles and spacing retained to the first-floor rear windows, ground floor roof lights and garden to the rear of No 18 would be sufficient to ensure that the proposal would not have a harmful enclosing impact on this property.
21. The proposal would bring two-storey built form closer to the rear boundaries of Garland Hill Farmhouse and Inglewood. However, the building would be substantively offset from the main habitable windows to the rear elevations of these neighbouring dwellings. Consequently, in views towards the development from these properties, the forecourt and rear gardens serving the proposed dwellings would retain an appreciation of space either side of the building. In combination with the generous rear aspect provided by their gardens, I am satisfied that suitable means of outlook would be retained for occupiers of these neighbouring dwellings.
22. The shadow study provided by the appellant uses 3D modelled data and indicates that largest percentage change to levels of shadowing when compared with the existing situation would be some additional shadowing of neighbouring rear gardens at Garland Hill Farmhouse and Inglewood during the

afternoons in midwinter. Even then, the limited level of change when compared with the existing situation would be unlikely to be highly perceptible, particularly given it would occur at times of the year when occupants would be less likely to spend extensive periods within their gardens. The changes in levels of shadowing at other times of the year would be negligible. I find this evidence more persuasive than the shadow studies produced by third-parties which include several discrepancies identified by the appellant. On this basis, I am satisfied that the proposal would not result in any material loss of light for occupiers of neighbouring properties.

23. Overall, I conclude the development would result in a loss of privacy for neighbouring occupiers at No 17 Gardiner Close and Inglewood which taken together would amount to significant harm to neighbouring living conditions. In that regard the development would conflict with the neighbouring amenity requirements in Policy 37 (General Design of Development) of the LP. It would also be contrary to Paragraph 130 of the Framework which amongst other things requires that developments create places with a high standard of amenity for existing and future users.

Drainage

24. The appeal site is currently substantively occupied by garages and hard surfacing. The proposal would provide an opportunity to incorporate a suitable drainage solution for the site including areas of soft landscaping associated with the proposed gardens. The Council acknowledges that its drainage Engineer has raised no objections to the appellant's Sustainable Urban Drainage Scheme (SUDS) proposal subject to the imposition of a drainage condition requiring that detailed SUDS design measures be submitted for approval prior to implementation. Such a condition would be reasonable and could be attached in the event that planning permission was to be granted.
25. With regards to the Council's concerns relating to the ability of the appellant to provide an inspection chamber for a public sewer connection to the dwellings, such matters are usually dealt with under the building regulations in consultation with the relevant utility company. Therefore, I disagree with the Council that provision of this detail should be made a specific condition of permission.
26. I conclude that the development would incorporate suitable drainage arrangements. In that regard the proposal would comply with the sustainable drainage requirements of Policy SI 13 of the LP 2021.
27. The Council's reason for refusal in respect of this main issue refers to Policies 4, 8 and 37 of the LP. These policies do not refer to matters of drainage and have therefore not been material to me finding that the proposal would be acceptable in this regard.

Other Matters

28. The proposal would remove vehicular access to a detached garage serving the neighbouring dwelling at No 18 Gardiner Close. However, this is a private legal matter.
29. From the evidence before me and from my observations on site, the garages are not currently in use nor am I aware of any tenancy agreements. I note the photographs provided by a third-party which seem to indicate some parking

stress on Gardiner Close. However, the site is in private ownership and the owners could preclude the use of the garage and forecourt by members of the public at any time. On this basis, the proposal would not exacerbate any existing problems should they exist. The focus of my assessment is therefore whether the development itself would be served by sufficient parking. In that regard the layout plan indicates that two off-road spaces would be provided for each dwelling. The Local Highway Authority has not raised any specific concerns regarding the parking provision for the development and I find no reason to find otherwise.

30. The proposal includes the provision of 1no public parking space to be secured for public use by a Unilateral Undertaking (UU). However, the UU is signed but is undated so is not complete. In any event, the necessity for securing a single parking space for public use has not been evidenced by any parking stress survey. In the event of another application being submitted for development on the site, it would be appropriate for this issue to be investigated further.
31. The presence of badgers in the area has also been raised by a third-party. However, other than a photograph of a badger in the neighbouring garden at Inglewood, no reasonable evidence is before me to indicate that there are protected species on the appeal site. I also observed on site that the boundary between Inglewood and the appeal site did not include any noticeable gaps which might indicate that badgers freely move between these properties.
32. With regards to third-party security concerns, a condition could be attached in the event that planning permission was to be granted requiring precise details of boundary treatments and means of bin enclosure to be submitted. The potential impact of the proposal on neighbouring sheds is a private matter. In terms of the proximity of the development to trees on neighbouring land, the revised drawings before me set the proposed dwellings further away from these trees than was previously indicated. Tree protection measures could be a condition. Matters of noise, dust and inconvenience during the construction process could also be managed through a construction management plan.

Planning Balance and Conclusion

33. The Council's Officer report acknowledges that the Council cannot demonstrate a five-year housing land supply and no evidence has been presented to suggest this situation has changed since the Council made its decision. As a result, paragraph 11d of the Framework and the presumption in favour of sustainable development is engaged. Planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
34. In the context of the Government objective to significantly boost the delivery of housing, two dwellings would make a modest but important contribution towards the provision of housing in the area and add to the mix of property types in the road. I also attach positive weight to the site's accessible location within close range to services and facilities as well as the potential for some modest economic benefits through the construction works and the expenditure in the area by future occupants.
35. However, the proposal would result in significant harm to the living conditions of neighbouring occupiers with particular regard to privacy. In this respect the development would conflict with the development plan and national policy. This

is a matter which significantly and demonstrably outweighs the modest benefits of the proposal when assessed against the policies of the Framework as a whole.

15. For the above reasons the appeal is dismissed.

M Russell

INSPECTOR