



Appeal Decisions

Site visit made on 28 March 2023

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 MAY 2023

Appeal A Ref: APP/G5180/W/22/3310708

Land and Garages between 17 and 18 Gardiner Close, Orpington, Bromley BR5 3HW

- 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 the London Borough of Bromley.
 - The application Ref 22/00192/FULL1, dated 11 January 2022, was refused by notice dated 26 October 2022.
 - The development proposed is demolition of existing garages and erection of 2 two storey semi-detached 4 bedroom dwellings with associated parking and cycle and refuse stores.
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Appeal B Ref: APP/G5180/W/22/3310709

- 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 the London Borough of Bromley.
 - The application Ref 22/00336/FULL1, dated 20 January 2022, was refused by notice dated 26 October 2022.
 - The development proposed is demolition of existing garages and erection of 2 semi-detached dwellings (1 four bedroom and 1 two bedroom) with associated parking, cycle and refuse stores, and undercroft access to existing garage at No.18 Gardiner Close.
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Decisions

1. Appeal A is allowed and planning permission is granted for demolition of existing garages and erection of 2 two storey semi-detached 4 bedroom dwellings with associated parking and cycle and refuse stores at Land and Garages between 17 and 18 Gardiner Close, Orpington, Bromley BR5 3HW in accordance with the terms of the application, Ref 22/00192/FULL1, dated 11 January 2022, subject to the conditions in the schedule for Appeal A below.
2. Appeal B is allowed and planning permission is granted for demolition of existing garages and erection of 2 semi-detached dwellings (1 four bedroom and 1 two bedroom) with associated parking, cycle and refuse stores, and undercroft access to existing garage at No.18 Gardiner Close at Land and Garages between 17 and 18 Gardiner Close, Orpington, Bromley BR5 3HW in accordance with the terms of the application, Ref 22/00336/FULL1, dated 20 January 2022, subject to the conditions in the schedule for Appeal B below.

Applications for costs

3. Applications for costs were made by Mr Shazad Mahmood, AZ Investments Limited against the London Borough of Bromley in respect of each appeal. These applications are the subject of a separate decision.

Preliminary Matters

4. I have taken the descriptions of development from the appeal forms. Although different to that on the planning application forms, the evidence before me indicates that the changes were agreed. The addresses of the proposed developments were originally described as Land and Garages, Gardiner Close. I have used the addresses as they appear substantively on the appeal forms, in the interests of clarity.
5. My attention is drawn to a land ownership dispute. The appellant has issued Certificate B to the owners of Inglewood, and therefore I am satisfied that the correct procedural requirements have taken place in order to allow me to proceed to determine both of the appeals.
6. As set out above, there are two appeals on this site. Both of the planning applications were refused for the same reason. The primary difference between the appeals is the form of accommodation proposed. Appeal A details two semi-detached dwellings (Units 1 and 2), with accommodation at ground and first floor level, while Appeal B details a different form of accommodation for Unit 1, in the form of a flat above an undercroft. The appeals also differ in terms of site layout. However, the overall scale of the built form, and the position and design of windows to the first floor is the same for both schemes. I have considered each proposal on its individual merits. However, to avoid duplication, I have dealt with the two schemes together, except where otherwise indicated.

Main Issue

7. The main issue in both Appeal A and Appeal B is the effect of the proposed development upon the living conditions of neighbouring occupiers at No.17 Gardiner Close and Inglewood, with particular regard to privacy, outlook, and levels of daylight and sunlight.

Reasons

8. The appeal site is located within a residential area and comprises a garage block with hardstanding and a forecourt. The area is characterised by two storey dwellings, predominantly in terraced forms within narrow plots. The appeal site is located within a gap between two terraced blocks, which are orientated differently to each other.
9. The principal elevations of the proposed development in both of the appeal schemes would align with that of the neighbouring terraced block, and they would face the side of another terraced block opposite. The northern boundary of the appeal site faces the rear garden boundary of neighbouring Inglewood, which is a large, detached dwelling accessed from Chapman's Lane.
10. The principal elevations of the proposed dwellings in both Appeal A and Appeal B include windows to habitable rooms at the first floor that would directly face the side boundary of the rear garden of No.17. However, the windows would

include projecting angled surrounds and vertical fins. The northernmost window to Unit 2 could provide the most direct view to the rear garden of No.17, but this window would be obscurely glazed up to a minimum height of 1.7m above first floor level. Consequently, these privacy screening measures would prevent overlooking towards the rear garden of No.17.

11. The side boundary of No.17's rear garden includes a fence with trellis above, which is sufficiently tall enough to prevent overlooking from within the appeal site at ground floor level. The existing garage block also forms part of the side boundary to No.17's rear garden. Consequently, the loss of the garage block would expose the garden of No.17. However, this matter can be addressed by the provision of an appropriate boundary treatment secured by condition.
12. The proposed windows to the rear first floor elevations of both schemes would serve bedrooms to Unit 1 and Unit 2. While these windows would not directly overlook the rear elevation of Inglewood, they could provide indirect views of the easterly part of its extensive rear garden. However, the submitted plans detail 300mm projecting surrounds as privacy screening measures to these windows. In addition, angled vertical fins are proposed to the windows at Unit 2. Thus, overlooking to the rear garden of Inglewood would be prevented.
13. Furthermore, the outlook and distance diagrams for both schemes demonstrate that the proposed privacy screening measures to the first-floor windows would not result in overlooking to No.17 or to Inglewood. Therefore, existing vegetation at the appeal site is not significant in terms of preventing overlooking. In any event, soft landscaping matters could be secured by suitable conditions.
14. The Council contends that the proposed privacy screening measures could be easily undone by future occupiers and cannot be reasonably secured in perpetuity. However, these measures are clearly shown and specified on the submitted plans; and could be secured by suitable conditions.
15. The proposed first floor windows in both schemes are vertically styled and of a considerable size, and the scheme for Appeal B also includes a rooflight. There is little evidence before me to demonstrate that the proposed privacy screening measures would result in an unacceptable outlook, nor in unacceptable levels of daylight and/or sunlight for future occupiers, and I see no reason to find otherwise.
16. Due to the scale, height, width and depth of the proposed developments in both schemes, the proposals would result in some overshadowing to Inglewood's rear garden. The appellant's shadow study submitted to this appeal models the shadowing for various intervals during the day for both the existing situation and with the proposed built form. It demonstrates that the largest percentage change to levels of overshadowing would occur during the late afternoons, and I consider that this change is not so significant as to be unacceptable. The garden would still receive significant amounts of daylight and sunlight. The shadow study provided by the interested party does not model the existing situation, and presents little analysis. In this regard, I am not persuaded that it is as reliable as that provided by the appellant.
17. The main parties agree that the proposals comply with the minimum one metre side space distance as required by Policy 8 of the London Borough of Bromley Local Plan 2019 (BLP), and I find no reason to disagree. Due to the separation

distances between the proposed developments and Inglewood, together with the height, width, depth and siting of the proposed developments, the outlook from Inglewood would still include views of the sky and the spaces to either side of the built form in both schemes.

18. I therefore conclude that the proposed development for both Appeal A and Appeal B would not harm the living conditions of neighbouring occupiers at No.17 Gardiner Close and Inglewood, with particular regard to privacy, and levels of daylight and sunlight. The proposed development for both Appeal A and Appeal B accords with Policies 4 and 37 of the BLP. Among other things, these policies seek to ensure that development proposals are of a high standard of design and layout; and that development respects the amenity of neighbouring occupiers.

Other Matters

19. There is no dispute between the main parties concerning harmful effect to the character and appearance of the area nor to the setting of the adjacent St Paul's Cray Conservation Area. I have little evidence to disagree with this.
20. Interested parties raise concerns about parking problems within Gardiner Close and draw my attention to the use of the appeal site for parking. From the evidence before me and my own observations, the garages are not currently in use, and previous leases have been terminated. While the access to the site remains open, members of the public appear to be using the area for parking. However, this is a private matter. The decision of a previous inspector¹ at the appeal site referred to similar parking concerns in consideration of a scheme which included a parking space for public use. In that case, the necessity for such a space was not evidenced by any parking stress survey. In contrast, the proposed car parking spaces in the schemes before me meet the minimum policy requirements to service the proposed developments; the local highway authority has raised no concerns in this regard, and I find no reason to find otherwise.
21. The appeal site does not comprise backland or garden land, as it comprises a garage block, hardstanding and forecourt, and the proposed development would not be sited behind existing properties. Consequently Policy 3 of the BLP is not of relevance. Notwithstanding a photograph of a badger in Inglewood's garden, there is no objective evidence before me to actually demonstrate that there are protected species at the appeal site.
22. The rights of access to the garage serving No.18 are a matter of dispute. However, planning permission would not override any legal rights of access, and this matter has not had any bearing on my assessment of the planning merits of the proposals.

Conditions

23. I have considered the conditions suggested by the Council, comments from the appellant including pre-commencement, and in light of the Planning Practice Guidance² (PPG). For clarity, precision and to ensure compliance with the PPG, I have undertaken some amendments, editing and rationalisation. Where conditions require compliance prior to the commencement of development, the

¹ APP/G5180/W/21/3271857

² Planning Practice Guidance: Use of Conditions

appellant has provided their written agreement to their terms as per section 100ZA of the Town and Country Planning Act 1990 (as amended).

24. A condition specifying the time limit and approved plans is necessary to provide certainty. I have imposed condition 3 specifying external materials are to be agreed, and in order to safeguard the character and appearance of the area. This is a pre-commencement condition to ensure that the proposed privacy screening measures are enforceable; and because these measures are critical to the acceptability of the proposed developments.
25. Condition 4 is necessary to ensure that consideration is duly given to preservation in situ and/or recording of items of archaeological interest. I have imposed condition 5 to protect the reasonable amenity of neighbours during the demolition and construction phase, and to ensure highway safety. In order to ensure a satisfactory relationship between the various components of the development and with adjoining land, I have imposed condition 6. Condition 7 is necessary to reduce and alleviate flood risk.
26. Conditions 8, 9 and 10 are necessary to ensure appropriate landscaping; and to ensure that that the construction works result in no harm to trees and/or vegetation in adjoining properties. These conditions are also necessary in the interests of both the living conditions of existing and future occupiers, and the character and appearance of the area. The pre-commencement nature of conditions 8 and 10 is justified in order to ensure good neighbourly development in the context of the variances in levels and the presence of existing trees.
27. I have imposed conditions 11 and 12 in the interests of the living conditions of neighbouring occupiers. In accordance with the PPG, there is a clear justification to appropriately restrict permitted development rights. It would not be difficult for the local planning authority to detect a breach, and monitoring in the circumstances would not be unreasonably onerous. Condition 13 is necessary in the interests of both highway safety and the future occupiers of the development.
28. The Council requested a further condition to restrict permitted development rights in relation to car parking spaces, garages and turning spaces. Condition 11 adequately deals with the removal of permitted development rights, and therefore a further condition is not necessary or justified in this regard.

Conclusions

29. For the reasons given I conclude that Appeal A and Appeal B should succeed.

J Moore

INSPECTOR

Schedule of Conditions Appeal A - APP/G5180/W/22/3310708

- 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:
 - Site Location Plan dated 04/02/2020
 - 0055_DWG_003B - Proposed Ground Floor
 - 0055_DWG_004B - Proposed First Floor
 - 0055_DWG_005A - Proposed Roof Plan
 - 0055_DWG_007B - Proposed Elevations
 - 0055_DWG_008 - Outlook and Distances Diagram
- 3) Notwithstanding condition 2, no development shall take place until samples of all external facing materials, and materials for the angled fins, projecting metal surrounds and obscure glazing to first floor windows have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No demolition or development shall take place until a Written Scheme of Investigation for archaeological works shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions - and if indicated by the Desk Top Study submitted with the application:
 - i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons or organisation to undertake the works set out within the Written Scheme of Investigation.

No demolition or development shall take place other than in accordance with the approved Written Scheme of Investigation.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;

- v) measures to control the emission of dust and dirt and noise during construction;
- vi) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- vii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 6) No development shall take place until the following information shall have been submitted to and approved in writing by the local planning authority:
- i) a full site survey showing: the datum used to calibrate the site levels; levels along all site boundaries; levels across the site at regular intervals and floor levels of adjoining buildings;
 - ii) full details of the proposed finished floor levels of all buildings and hard landscaped surfaces.

The development shall be carried out in accordance with the approved details.

- 7) No dwelling hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 8) No demolition or development shall commence 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) earthworks showing existing and proposed finished levels or contours;
 - ii) indications of all existing vegetation to be retained and set out measures for their protection throughout the course of development
 - iii) planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment);

schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate;

- iv) boundary treatments;
- v) vehicle parking layouts;
- vi) other vehicle and pedestrian access and circulation areas;
- vii) hard surfacing materials;
- viii) an implementation programme, including phasing of work where relevant.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.

- 9) 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; and any trees or plants which within a period of 5 years from the completion 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.
- 10) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority.

The scheme for the protection of the retained trees shall be carried out as approved.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 11) The development hereby permitted shall not be occupied until the privacy screening measures comprising angled fins and obscure glazing and projecting metal surrounds to first floor windows shall have been constructed in accordance with details shown on the approved plans and once installed the privacy screening measures shall be retained permanently thereafter.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no building, structure, extension, enlargement, alteration or opening permitted by Class A, B, C, or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilages of the dwellings hereby permitted.
- 13) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 0055_DWG_003B for five cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for the parking of vehicles and those purposes.

Schedule of Conditions Appeal B - APP/G5180/W/22/3310709

- 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:
 - Site Location Plan dated 04/02/2020
 - 0055_DWG_003 - Proposed Ground Floor
 - 0055_DWG_004 - Proposed First Floor
 - 0055_DWG_005 - Proposed Roof Plan
 - 0055_DWG_007 - Proposed Elevations
 - 0055_DWG_008 - Outlook and Distances Diagram
 - Swept Path Analysis Figure 1
 - Swept Path Analysis Figure 2
- 3) Notwithstanding condition 2, no development shall take place until samples of all external facing materials, and materials for the angled fins, projecting metal surrounds and obscure glazing to first floor windows have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No demolition or development shall take place until a Written Scheme of Investigation for archaeological works shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions - and if indicated by the Desk Top Study submitted with the application:
 - i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons or organisation to undertake the works set out within the Written Scheme of Investigation.

No demolition or development shall take place other than in accordance with the approved Written Scheme of Investigation.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;

- iii) storage of plant and materials used in constructing the development;
- iv) wheel washing facilities;
- v) measures to control the emission of dust and dirt and noise during construction;
- vi) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- vii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 6) No development shall take place until the following information shall have been submitted to and approved in writing by the local planning authority:
- i) a full site survey showing: the datum used to calibrate the site levels; levels along all site boundaries; levels across the site at regular intervals and floor levels of adjoining buildings;
 - ii) full details of the proposed finished floor levels of all buildings and hard landscaped surfaces.

The development shall be carried out in accordance with the approved details.

- 7) No dwelling hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 8) No demolition or development shall commence 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) earthworks showing existing and proposed finished levels or contours;
 - ii) indications of all existing vegetation to be retained and set out measures for their protection throughout the course of development

- iii) planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate;
- iv) boundary treatments;
- v) vehicle parking layouts;
- vi) other vehicle and pedestrian access and circulation areas;
- vii) hard surfacing materials;
- viii) an implementation programme, including phasing of work where relevant.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.

- 9) 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; and any trees or plants which within a period of 5 years from the completion 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.
- 10) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority.

The scheme for the protection of the retained trees shall be carried out as approved.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 11) The development hereby permitted shall not be occupied until the privacy screening measures comprising angled fins and obscure glazing and projecting metal surrounds to first floor windows shall have been constructed in accordance with details shown on the approved plans and once installed the privacy screening measures shall be retained permanently thereafter.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no building, structure, extension, enlargement, alteration or opening permitted by Class A, B, C, or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilages of the dwellings hereby permitted.
- 13) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 0055_DWG_003 for three cars to be parked and for vehicles to turn so that they may enter and leave the site

in forward gear and that space shall thereafter be kept available at all times for the parking of vehicles and those purposes.