



Appeal Decisions

Site visit made on 11 September 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 FEBRUARY 2025

Appeal A Ref: APP/G5180/W/24/3340629

Toppers Oak, Kemnal Road, Chislehurst, Bromley BR7 6LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr B White against the decision of the Council of the London Borough of Bromley.
- The application Ref is DC/23/04830/FULL1.
- The development proposed was originally described as: Demolition of dwelling (Toppers Oak) and stables (Kemnal Stables). Erection of dwelling with associated amenity space, landscaping and parking. (Revised design and details to permission DC/20/05000).

Appeal B Ref: APP/G5180/W/23/3330181

Toppers Oak Kemnal Road, Chislehurst, Bromley BR7 6LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr B White against the decision of the Council of the London Borough of Bromley.
- The application Ref is DC/20/05000/RECON.
- The application sought planning permission for: *Demolition of dwelling (Toppers Oak) and stables (Kemnal Stables). Erection of dwelling with associated amenity space, landscaping and parking, without complying with a condition attached to planning permission Ref DC/20/05000/FULL1 dated 4 August 2022.*
- The condition in dispute is No 2 which states that: The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans approved under this planning permission unless previously agreed in writing by the Local Planning Authority.
- The reason given for the condition is: In the interests of visual and residential amenity to comply with Policy 37 of the Bromley Local Plan 2019.

Decisions

1. Appeal A is allowed and planning permission is granted for *Demolition of dwelling (Toppers Oak) and stables (Kemnal Stables). Erection of dwelling with associated amenity space, landscaping and parking* at Toppers Oak, Kemnal Road, Chislehurst, Bromley BR7 6LT in accordance with the terms of the application, Ref DC/23/04830/FULL1, subject to the conditions in the attached schedule.
2. Appeal B is allowed and planning permission is granted for *Demolition of dwelling (Toppers Oak) and stables (Kemnal Stables). Erection of dwelling with associated amenity space, landscaping and parking* at Toppers Oak, Kemnal Road, Chislehurst, Bromley BR7 6LT in accordance with the application Ref DC/20/05000/RECON, without compliance with condition number 2 previously imposed on planning permission Ref DC/20/05000/FULL1 dated 4 August 2022, subject to the conditions in the attached schedule and the s106 agreement dated 4 August 2022.

Preliminary Matters

3. The appeal site is identical in both appeals. The two appeals would not result in identical outcomes where the proposed dwelling would be in the same position and of the same appearance. However, the differences between the two schemes are not significant in the context of the dispute, which focuses on the proposed basement floor and ramped access. I have considered each appeal on its own merits. However, given the above, I have considered the two appeals together, except where otherwise indicated, to avoid duplication.
4. In Appeal A, the description of development on the planning application form includes additional wording that does not form an act of development. I have therefore excluded these words in my formal decision above.
5. The planning application for Appeal A was submitted as '*revised design and details to permission DC/20/05000*' and was accompanied by a Planning Statement, Design and Access Statement and computer-generated images (CGI). The appellant's submissions indicate that the application ref: DC/20/05000/FULL1 was accompanied by various supporting documents; and the Council agreed that as no changes were proposed that would have any impact on these matters (ecology assessments, landscape masterplan and arboricultural assessment), no further reports were considered necessary. The Council does not dispute this position.
6. In Appeal B, the appeal form indicates that the description of development on the planning application form has not changed, but a different one has been entered. This includes further wording pursuant to the purpose and nature of the proposal (i.e. to allow for the formation of a basement beneath the approved dwelling providing a car garage, storage and ancillary non-habitable facilities) and is used on the Council's decision notice. However, there is no evidence to indicate that a change was agreed. Moreover, as the application seeks to vary the plans condition imposed on a permission, the relevant description is that on the decision notice for the original permission (ref: DC/20/05000/FULL1). This is the description used on the planning application form. I have therefore used this description in my banner heading and formal decision above.
7. The decision notice for the original permission does not refer to a list of approved plans in condition No 2, nor within any other part of it. Furthermore, there was a significant degree of confusion regarding the approved plans submitted to the appeal, such that it was not clear that all approved plans had been listed and/or submitted in the evidence before me. I therefore sought clarification from the main parties on this matter. During the appeals, the main parties agreed the approved plans for the original permission and following final confirmation on 17 December 2024, I am satisfied that all such approved plans have been received for my consideration.
8. Taking account of relevant case law, including the *Armstrong and Finney* judgements¹, the variation sought in Appeal B would not change the operative part of the original permission, and the main parties do not have any dispute in this regard. However, Planning Practice Guidance (PPG) sets out that a Section 73 approach cannot be used where there is no relevant condition in the permission

¹ *Armstrong v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 176 (Admin); and *John Leslie Finney v Welsh Ministers and others* [2019] EWCA Civ 1868.

listing the originally approved plans²; and that an application under Section 96A of the Town and Country Planning Act 1990 should be made first. I therefore sought the views of the main parties on this matter.

9. The Council advises that it does not normally list drawing numbers in a condition. It imposes a condition to require compliance with the approved plans, which are those submitted with the application, or, if amended, as per the date of the decision notice. Further, that such an approach enables the Council to determine any subsequent s73 applications and that this approach has been accepted by Inspectors at other s73 related appeals. The appellant has provided an appeal decision³, whereby the plans condition did not include a list of plans. However, the decision does not address the relevant part of the PPG. In allowing the appeal, the Inspector included a list of plans in the appealed condition.
10. Drawing all the above together, there is no compelling evidence before me to indicate that a plans condition which explicitly lists the approved plans is required in law. Given the main parties have agreed which plans were approved and all such plans have been provided, it seems to me that there is no impediment to my consideration of the appeal. Therefore, and in the circumstances of this case, the PPG (insofar as it refers to this matter) attracts no weight in my consideration of Appeal B.
11. The appellant's statement of case for Appeal A refers to the original permission (the subject of Appeal B), and states that "the extant consent for the detached dwelling was commenced following the approval of details submitted pursuant to pre-commencement conditions" and refers to the partial demolition of stable buildings undertaken as an act of commencement. This position is not disputed by the Council. For the avoidance of doubt, it is not the role of an Inspector dealing with s78 appeals to determine whether a development has lawfully commenced. I have considered the applications as submitted.
12. As the appeal site is within the Chislehurst Conservation Area (CA), I have had regard to s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
13. On 12 December 2024, the National Planning Policy Framework (the Framework) was revised. In the interests of natural justice, the main parties were invited to comment on this matter. The appellant responded and I have taken account of these comments in my consideration of both appeals.

Main Issues

14. In each appeal, the second reason for refusal (RFR) relates to contaminated land. The evidence before me indicates the main parties agree that this matter can be resolved by planning condition, and I find no reason to consider otherwise. I therefore find that the second RFR has been overcome.
15. In both appeals, the Council's first RFR relates to its position that each proposal would comprise inappropriate development in the Green Belt. As such, the first RFR of the s73 application goes beyond the original reason stated for the imposition of condition No 2.

² Flexible Options for Planning Permissions, Paragraph: 018 Reference ID: 17a-018-20230726, Revision date: 26 07 2023

³ Appeal Ref: APP/G5180/D/23/3329944

16. Therefore, the main issues in each appeal are:

- whether the proposed development would be inappropriate development in the Green Belt, having regard to national and local policies, including its effect upon openness; and, if so,
- whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

The appeal site, background and the proposals

17. The appeal site comprises an existing chalet style dwelling, stables and other buildings in a courtyard formation, and associated equestrian facilities.
18. Outline planning permission was granted in 2018 on appeal (the Kemnal Stables Appeal) for the demolition of the existing dwelling and stable buildings to provide a total of nine dwellings of varying sizes, with some in a courtyard formation⁴ (the outline permission). Certain reserved matters were approved in 2019 for a scheme essentially comprising three detached dwellings⁵ (the reserved matters scheme). An application for a certificate of lawfulness⁶ for single storey extensions to those dwellings was subsequently refused as permitted development rights did not exist.
19. The original permission (the subject of Appeal B) was granted in 2020 on the grounds that very special circumstances existed, for the demolition of the existing dwelling and stable buildings and the erection of one dwelling. The original permission includes a condition to restrict permitted development rights and is subject to a s106 agreement to effectively prevent the implementation of the outline permission/reserved matters scheme.
20. Each appeal scheme would result in the demolition of the same buildings and the erection of a new dwelling sited centrally within the plot. It would appear as a two-storey dwelling above ground, with a basement floor below, served by a ramped access. The dwelling proposed for Appeal A would have a slightly different siting and design, and it would be narrower, wider and taller than that in Appeal B, with a larger footprint. The submitted layout plans indicate a formal landscaping arrangement, with some minor variances between the schemes such as path layouts.
21. At my visit, I saw that the approved dwelling of the original permission did not physically exist, and the existing dwelling and stable complex were in situ and in active use.

Whether inappropriate development

22. The Government attaches great importance to Green Belts. The Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; and the essential characteristics of Green Belts are their openness and their permanence. Further, that when considering a planning application, local planning authorities (and therefore by extension an Inspector) should ensure that substantial weight is given to any harm

⁴ Permission ref: 17/03076/OUT and Appeal ref: APP/G5180/W/17/3189041

⁵ Ref: 19/002678/DET

⁶ Ref:20/03190/PLUD

to the Green Belt, including harm to its openness. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

23. The Framework sets out that development in the Green Belt is inappropriate unless one of certain exceptions applies. Such exceptions include those at paragraph 154 d) and 154 g), which respectively concern the replacement of a building, and previously developed land (PDL). These exceptions are relevant in my consideration of each appeal, having regard to the first RFR in each case, and the fact that the officer report (OR) which considered each application assessed the proposal against both exceptions.
24. Policy G2 of the London Plan 2021 (LP) seeks to resist inappropriate development within the Green Belt, unless very special circumstances are demonstrated. The first paragraph of Policy 49 of the Bromley Local Plan 2019 (BLP) follows the same approach. The exception for the replacement of a building within BLP Policy 49 follows the same wording as the Framework: the replacement of a building, providing the building is in the same use and not materially larger than the one it replaces. The policy wording does not define 'materially larger' and nor does the Framework. This approach is in general conformity with the Framework.
25. However, the exception for PDL within BLP Policy 49 refers to "... the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it." This no longer conforms with the exception at paragraph 154 g) of the Framework, which refers to "... the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt."
26. BLP Policy 52 indicates that the Council will permit replacement dwellings in the Green Belt, "... providing that: a -The resultant dwelling (including garaging and any accommodation below ground) does not result in a material net increase in floor area compared with the existing dwelling as ascertained by external measurement; and b -The size, siting, materials and design of the replacement dwelling and of any associated works (such as boundary fences or walls) does not harm visual amenities or the open or rural character of the locality". The supporting text states that "a general increase of over 10% would be material, although this may depend on design issues". This policy is in general conformity with the Framework, although it addresses other factors beyond what might be considered as materially larger. It is not entirely clear how any accommodation below ground could be measured externally.
27. The application for Appeal A was submitted as a revision to the original permission and accepted as such by the Council. The s73 application for Appeal B seeks to vary that permission. The site remains in active use for residential and non-residential purposes, and no 'replacement dwelling' exists at the appeal site in accordance with the original permission. Therefore, in each appeal, the proposed dwelling is part of a wider scheme to include the demolition of an existing dwelling and other non-residential buildings. Taking account of all the evidence before me

and my own observations, I find no reason to consider that the appeal site is not PDL as per the definition in the Framework. This finding would accord with that of the Inspector in the Kemnal Stables Appeal, where he agreed with the main parties that the site was PDL, albeit within the context of national and local policy at that time.

28. For the reasons above, I am satisfied that each appeal falls to be considered under the exception for PDL in the revised Framework, rather than as a replacement dwelling. In such circumstances, the determining factor for each appeal is the effect of each proposal upon openness, and whether any such harm would be substantial.

Openness

29. The land rises from Kemnal Road towards the rear of the appeal site. There are substantial dwellings in large plots to each side of the appeal site, with woodland opposite across Kemnal Road. Due to their height (which ranges from about 3.3m to 6.1m), the existing buildings within the appeal site appear at a much lower height in the landscape than nearby dwellings, but they also cover a substantial part of the width of the appeal site. The land behind the buildings is mainly paddock with associated equestrian uses. Consequently, these clusters of buildings appear in a rural setting. Vehicle movements include not only those serving the dwelling, but those serving the stables. The nature of hardstanding serving the existing dwelling and the stable buildings towards Kemnal Road is extensive, such that it can accommodate a significant number of vehicles.
30. The Council's officer reports (OR) which considered each appeal scheme and the application for the original permission are before me. These include figures which represent a baseline for the appeal site (the existing baseline). These figures indicate that existing built form occupies a footprint of about 663m², with a floorspace of about 606m², and volume of about 2538m³. The hardstanding is about 1500m².
31. The Council's calculations indicate that the Appeal A scheme would result in a third less footprint, 40% more floorspace, 72% more volume and 8% less hard surfacing compared to the existing baseline. The Council estimates the total volume of the proposed dwelling to be about 4369m³. It is not entirely clear how volume has been estimated by the Council. The appellant's figures indicate that Gross External Area (GEA) would be about 872m².
32. Figures from the Council to compare the existing baseline to the Appeal B scheme are not before me in the exact same terms. The Council considers that the scheme for Appeal B would have the same footprint as the original permission, but a larger volume and floorspace; and the additional basement floor would increase the floorspace by a further 403m², with an estimated volume of about 1249m³. The appellant's GEA for the Appeal B scheme is given to be 835m². According to the OR for the original permission, the approved dwelling would have a footprint of about 403m², floorspace of about 730m², volume of about 3600m³ and hardstanding of about 1300m². The Council's calculations indicated this would result in about 39% less footprint, 20% more floorspace, 41% more volume and 13% less hard surfacing compared to the existing baseline.
33. I note that for each scheme, the Council considered a comparison between the existing dwelling (Toppers Oak) and the approved dwelling of the original

permission in mathematical terms. The Council considers the proposals would result in an increase of about 52-55% in floorspace and at least a third in mass above that of the approved dwelling. However, these figures do not take account of the effect of each proposal as a whole.

34. Drawing all of the above together, it seems to me that the effect of the proposed dwelling in Appeal B in mathematical terms compared to the existing situation would be largely similar to that of Appeal A, with Appeal B likely to have comparatively less floorspace, volume, and height, with a similar effect upon hardstanding. The proposed dwelling in Appeal A would result in a larger GEA than that for Appeal B, which would be the same as the original permission.
35. In any event, each proposal would result in the consolidation of built form within the appeal site, to include a significant reduction in overall footprint and hardstanding compared to the existing built form. Floorspace would be much greater than that existing in each appeal. Volume by the Council's measure would be much greater, but it is not entirely clear how volume has been calculated. However, a significant proportion of these increases would be subterranean, whereby the basement floor would occupy all/almost all of the footprint of the proposed dwelling to provide garaging, storage and ancillary non-habitable space.
36. Due to its height (about 9.8m in Appeal A, and about 9.2m in Appeal B), the proposed dwelling in each appeal would appear more prominent within the landscape than the existing buildings, and it would be in view from a nearby public footpath. There would likely be some degree of domestic paraphernalia within its curtilage. However, a degree of domestic paraphernalia exists at present at Toppers Oak, with further equestrian paraphernalia at Kemnal Stables. In both appeals, vehicle movements would likely decrease compared to the existing situation. Furthermore, the garage parking within the basement floor would minimise the effect of parked vehicles on openness.
37. The proposed access ramp would commence at ground level at a point above the lie of the land along Kemnal Road, before declining towards the flank of the proposed dwelling and turning towards the garage door within the flank at basement level. Due to the curved route of the ramp in each appeal, together with the changes in level between Kemnal Road and the siting of the dwelling, views of any part of the flank/garage door of the basement would likely be unavailable, if not extremely limited. The retaining walls along each side of the ramped access would be in very limited view from Kemnal Road, likely through the proposed gates or within glimpses through existing and/or proposed vegetation. Consequently, the external evidence of the basement floor would be limited in each appeal scheme.
38. In reaching this finding, I have carefully considered the submitted plans for each appeal which show the layout of the ramp and the section drawings. For Appeal A, the submitted CGI do not accurately reflect the submitted drawings. An area above the ramp prior to the garage door is shown to have an angled profile from the flank elevation, such that the area above the garage entrance would be covered by the ground above to a greater extent than in Appeal B. In any event, the angled profile in Appeal A or the absence of it in Appeal B would not alter my findings. Consequently, if I were to allow the appeal, the CGI would not form part of any approved plans or drawings for Appeal A.

39. Each proposal would result in a more domestic/urban appearance to the appeal site as a whole. However, the scale of the proposed dwelling and its plot size would be in keeping with other dwellings along Kemnal Road, which are predominantly substantial buildings in large plots. The proposed dwelling design is of a 'mixed gothic revival or chateau style' in Appeal B, and 'neo-classical' in Appeal A, each with formal landscaping. Each scheme would not be out of context in terms of other individually designed properties in large plots along Kemnal Road and within the wider area. Existing trees are proposed for retention and new planting can be controlled by condition.
40. Drawing all of the above together, there would be a consolidation of built form and a reduction in footprint and hardstanding across the appeal site, with decreased vehicle movements. Although there would be an increase in floorspace and volume, a significant proportion of this would be below ground where evidence of its presence would be very limited, and the impact of parked vehicles would be minimised. The ramped access would also be of limited visual impact. Overall, I find that the harm to openness arising from each proposal would be moderate, which is less than substantial. However, any further development within the appeal site could alter this balance. It would therefore be reasonable and justified to restrict permitted development rights to ensure that further development would be controlled by the local planning authority in each case.
41. In reaching my findings, I have considered the various appeal decisions/planning permissions submitted by the main parties. In general terms, each of these examples have their own unique contexts in terms of location and national and local policies, including the provisions of the Framework, which as referenced above are now different. For these reasons, the examples are not directly comparable to the cases before me.
42. For the reasons above, each proposal would not result in substantial harm to the openness of the Green Belt. Therefore, the proposals would not be inappropriate development when considered against the exception at paragraph 154 g) of the Framework. I therefore conclude that in each appeal, the proposed development would not be inappropriate development in the Green Belt; and it accords with LP Policy G2. While each proposal conflicts with the exception for PDL as set out in BLP Policy 49, the material considerations of the Framework outweigh this conflict. Given this conclusion, it is not necessary for me to consider the second main issue.

Other Matters

43. The main parties do not consider that either proposal would fail to preserve or enhance the character of the Chislehurst CA, and I find no reason to consider otherwise.

Appeal B – s106 agreement

44. The original permission was granted subject to a s106 agreement dated 4 August 2022, which binds the owners and successors in title to not carry out any further building works or use authorised by the outline permission or make any further application for approval of details pursuant to that permission.
45. Section 7 of the deed makes clear that the obligations in the deed shall relate to and bind any subsequent s73 consent without the need to enter into any

subsequent deed of variation or supplemental deed. Paragraph 7.2.3 of the deed binds the Council to include a condition or informative to any subsequent s73 consent with a recommended form of words such that the obligations in the agreement equally apply to and satisfy the requirements necessitated under any s73 application. While I am not bound in the same manner, I see no reason why the obligation would not continue to apply in the same terms. The agreement remains necessary to prevent the implementation of the outline permission and the reserved matters scheme.

Planning Balance

46. I am required to determine each appeal in accordance with the development plan unless material considerations indicate otherwise. As set out above, the proposed development in each appeal would result in conflict with the exception for PDL as set out in BLP Policy 49, and by virtue of the revised Framework, this part of BLP Policy 49 is no longer in conformity with it. Consequently, the provisions of the Framework on this matter attract significant weight. There is no other identified conflict within the development plan.
47. I therefore conclude that the material considerations of the Framework are such that they outweigh the conflict with the development plan in each case. Therefore, both appeals can be determined other than in accordance with the development plan. For these reasons, the proposed development in each appeal is acceptable.

Conditions

48. I have considered the conditions suggested by the Council, comments from the appellant including pre-commencement, and in light of the 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 appellant has provided their written agreement to their terms as per s100ZA of the Town and Country Planning Act 1990 (as amended).

Appeal A

49. Conditions 1 and 2 respectively impose a time limit for commencement and require the development to be completed in accordance with the approved plans and documents. These conditions are necessary in the interests of clarity, precision and enforceability.
50. Condition 3 is imposed to ensure that a Construction and Environmental Management Plan (CEMP) is in place to control noise, disturbance and pollution; to ensure public safety and the safe operation of the highway network; and to protect the reasonable amenity of neighbours. Condition 4 concerns potential contamination and is necessary to ensure that development can be safely carried out without unacceptable risks to workers and other receptors and that any risks to future users/occupiers of the site are mitigated and/or minimised.
51. Condition 5 seeks to ensure that levels within the development are agreed to ensure a satisfactory relationship with adjoining land and/or buildings, in the interests of neighbouring amenity, the character and appearance of the area and pedestrian/vehicle safety within the site. Condition 6 seeks to ensure that drainage details are agreed and to ensure that surface water does not impact on the public

highway. Condition 7 requires a road condition survey in order to ensure that any damage to the highway during the construction phase is suitably controlled. I have imposed condition 8 to ensure that the approved tree protection measures are in place during the construction phase.

52. Conditions 3-8 inclusive are reasonable and necessary and imposed as pre-commencement conditions to ensure that suitable controls and measures are in place prior to any works being undertaken.
53. Conditions 9 and 10 are respectively imposed to control materials used in the development and to ensure suitable hard and soft landscaping works. Such conditions are reasonable and necessary in the interests of the character and appearance of the development and the wider area, and in the interests of the amenity of neighbouring occupiers. Condition 11 is necessary in the interests of highway safety. As no cycle store is indicated within the scheme, condition 12 seeks to ensure that cycle parking is agreed and implemented prior to occupation, in the interests of sustainable transport.
54. In order to ensure that external lighting is controlled in the interests of visual amenity and the safety of future occupiers, condition 13 is necessary. In light of the recommendations of the ecology reports⁷ submitted in support of the original permission and accepted by the Council as relevant to this application, this would also be in the interests of biodiversity and/or protected species. Condition 14 is reasonable and necessary to protect biodiversity and secure biodiversity enhancements as recommended in the ecology reports. In this particular case, it is not necessary to secure a precautionary approach to site clearance in the interests of wildlife as recommendations on such matters are set out in the approved ecology reports (listed in condition 2) and are also controlled by other regulatory frameworks.
55. Condition 15 is reasonably imposed in the interests of residential amenity. Conditions 16 and 17 respectively seek to ensure suitable parking arrangements, electric vehicle charging points and circulation routes are in place prior to occupation and are necessary in the interests of sustainable transport and highway safety.
56. No condition has been put forward with regard to arrangements for the storage and collection of refuse and recycling, even though this was considered in the OR which considered the application. I have therefore imposed condition 18 to ensure that arrangements for waste and recycling are in place before occupation, in the interests of future occupiers and residential amenity.
57. Conditions 19 and 20 are compliance conditions, imposed in the respective interests of future occupiers and air quality. Condition 21 is reasonable and necessary to ensure that the existing buildings on site are no longer in situ, in the interests of the openness of the Green Belt, the amenities of neighbouring and future occupiers, and to ensure a satisfactory appearance to the development.
58. I have imposed conditions 22 and 23 to restrict certain permitted development rights for certain classes within the GPDO⁸. Such restrictions are justified in order to protect the openness of the Green Belt, and to protect residential amenity. I am

⁷ Preliminary Ecological Appraisal and Preliminary Roost Assessment Survey by Arbtech, 27 January 2020 and the Bat Roost Assessment by The Ecology Partnership, July 2020.

⁸ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

satisfied therefore that these conditions are reasonable and necessary, so that any such further development can be controlled by the local planning authority.

Appeal B

59. In allowing Appeal B, a new planning permission is created. The PPG makes clear that conditions imposed on the original permission still have effect unless they have been discharged. Conditions imposed that continue to have effect should be reimposed. Furthermore, the local planning authority (and by extension an Inspector) may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission. The PPG also advises that it is good practice to list conditions in the order that they need to be satisfied.
60. The appellant advises that original condition No 3 (slab levels) and all pre-commencement conditions have been discharged, and this is not disputed by the Council. I note that original condition No 3 is a pre-commencement condition (excluding demolition). The Council has suggested conditions for Appeal B, and these are the same as those suggested for Appeal A.
61. I have considered the effect of the appeal scheme on the original conditions imposed. The proposal would result in a deeper excavation, with changes to the site layout, (including the ramped access and the removal of parking areas previously approved above ground). This could affect the nature, duration and effects of construction activity, levels across the site, drainage arrangements and contamination risk. Therefore, in my judgement, it would be reasonable and necessary to reimpose the pre-commencement conditions, modified where necessary to take account of the revisions to the scheme as a whole. If the main parties were to consider otherwise, this would be a matter for them to resolve.
62. As the nature of the proposed development has changed, certain original conditions would no longer satisfy the tests within the Framework. For example, parking arrangements are not the same as those originally approved, as three garage spaces are now indicated, whereas four spaces were previously proposed above ground. This matter also affects the conditions to control the lighting of parking areas (previously all above ground) and electric vehicle charging points. The ramped access could also include lighting.
63. The recommendations of the ecology reports which accompanied the original application do not appear to have been clearly secured within the original conditions. These reports include specific recommendations for lighting and biodiversity enhancements. Although a cycle store is indicated in the basement area, this is also indicated as general storage. In such circumstances, it is not clear whether cycle parking would be obstructed, and therefore a condition requiring details is still required. Further materials to be used in the development will need to be agreed including the walling along the access ramp.
64. There is also a degree of duplication between certain original conditions. For example, a condition seeks a CEMP, including reference to wheel washing facilities and parking/delivery arrangements during the construction phase, which are also the subject of two other conditions. Two conditions seek to control surface water drainage.

65. Original conditions imposed to restrict certain permitted development rights remain justified, reasonable and necessary, in order to protect the openness of the Green Belt, and in the interests of residential amenity. Although not specified in the original conditions, it is reasonable to include the relevant class of the GPDO concerning the enlargement of a dwelling house by the addition of further additional storeys in the circumstances of this case. The original condition restricting further windows and doors to the upper floor does not make reference to the GPDO.
66. A condition regarding arrangements for refuse and recycling was considered appropriate in the officer reports which considered the original application and the s73 application in the interests of residential amenity but was not originally imposed. It is reasonable and necessary to do so.
67. Drawing all of the above together, condition No 1 for the commencement of the development is re-imposed and the disputed condition No 2, is removed and replaced, to include the approved plans and documents in the interests of clarity and precision. The original conditions Nos 3-25 inclusive have either been restated, rationalised, modified and/or re-ordered, and one additional condition has been imposed. For the avoidance of doubt, the previously approved landscape master plan is not included in the new condition No 2, as it no longer conforms to the proposal before me.

Conclusions

68. For the reasons given above, I conclude that Appeal A should be allowed and planning permission is granted, subject to the conditions I have set out in the attached schedule.
69. For the reasons given above, I conclude that Appeal B should be allowed and a new planning permission is granted (subject to the s106 agreement dated 4 August 2022) with the disputed condition No 2 removed and replaced; with all other original conditions either restated, rationalised, modified and/or re-ordered, and one further condition imposed, as set out in the attached schedule.

J Moore

INSPECTOR

Schedule of Conditions - Appeal A - APP/G5180/W/24/3340629

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following drawings and documents:
 - 19-J3052-LP01 Location Plan
 - 19-J3052-200 Proposed Site Layout
 - 19-J3052-200.1 Proposed Coloured Site Layout
 - 19-J3052-201 Proposed Floor Plans
 - 19-J3052-202 Proposed Elevations
 - 19-J3052-202.1 Proposed Coloured Elevations
 - 19-J3052-203 Site Sections
 - 19-J3052-205 Proposed Gates
 - 16-423-TPP-A Tree Protection Plan
 - Tree Survey Report (Canopy Consultancy), Revision A
 - Preliminary Ecological Appraisal and Preliminary Roost Assessment Survey by Arbtech, 27 January 2020
 - Bat Roost Assessment by The Ecology Partnership, July 2020.

Pre-commencement conditions

- 3) No development shall take place, including any works of demolition, until a Construction and Environmental Management Plan (CEMP) has been submitted to, and approved in writing by the local planning authority. The CEMP shall provide for:
 - (a) measures to control, mitigate and/or manage construction/demolition noise, the emission of dust and dirt; including the location and operation of plant and wheel washing facilities;
 - (b) Details of construction traffic movements including cumulative impacts which shall demonstrate the following:
 - a) the rationalisation of travel and traffic routes to, from and within the site;
 - b) full details of the number and time of construction vehicle trips to and from the site with the aim of reducing the impact of construction related activity;
 - c) measures to ensure the safe movement of pedestrians;
 - (c) swept path drawings for manoeuvres on vehicle routes to and from the site, and proposed access/egress arrangements at the site;
 - (d) parking of vehicles of site operatives and visitors;
 - (e) arrangements for the loading, unloading and/or storage of plant and materials used in the construction of the development;
 - (f) delivery, demolition and construction working hours; and
 - (g) Full contact details of the site manager and any project managers or person responsible for the day-to-day management of the works.

The approved CEMP shall be adhered to throughout the construction period for the development.
- 4) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), has been

submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:

- (a) a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority;
- (b) the site has been remediated in accordance with the approved measures and timescale; and
- (c) a verification report has been submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended until:

- (d) additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and
- (e) a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.

- 5) No development shall take place until full details of the finished levels (above ordnance datum) in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The details shall include the floor levels of the proposed building; levels along site boundaries; levels of the proposed access ramp and all hard landscaped surfaces. The development shall be carried out in accordance with the approved details.
- 6) No development shall take place until details of a surface water drainage scheme (including measures to prevent the discharge of surface water onto the highway) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained thereafter.
- 7) No development shall take place (including demolition, site clearance, excavation and preparatory works) until a road condition survey has been submitted to and approved in writing by the local planning authority. Any damage to the surface of the road during the construction phase shall be reinstated prior to the occupation of the dwelling to a standard at least commensurate with that as evidenced in the approved condition survey.
- 8) Prior to the commencement of the development hereby approved (including demolition and all preparatory work), tree protection measures shall be installed in accordance with the approved Tree Protection Plan. The tree protection measures shall be retained in situ until completion of the development and all materials and machinery have been removed from the site. The development shall be carried out in accordance with the Arboricultural Method Statement within the Tree Survey Report (Canopy Consultancy), Revision A.

Pre-occupancy and other early-stage conditions

- 9) Notwithstanding condition 2, no development above ground level shall take place until details of the materials (including samples) to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the local planning authority. The details shall include all wall facing materials, (including roofing, brick,

cladding and render), glazing specifications (including obscure glazing), door and window frames, decorative features, rainwater goods and paving to be used in the development. The development shall be carried out in accordance with the approved details.

- 10) Notwithstanding condition 2, no development above ground level shall take place 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:

- a scaled plan showing all existing vegetation to be retained and all proposed planting, which shall include use of a minimum of 30% native plant species of home-grown stock (where possible) and no invasive species
- a schedule of all proposed planting to include species, size, numbers and planting specifications
- means of enclosure and retaining structures;
- boundary treatments;
- vehicle parking layouts and other vehicle/pedestrian access and circulation areas;
- specifications for the operations associated with plant establishment and maintenance for a period of five years following planting; and
- 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 or in accordance with the agreed implementation programme.

There shall be no excavation or raising or lowering of levels within the prescribed root protection areas of retained trees, unless agreed by the local planning authority in the approved landscaping details.

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.

- 11) No development above ground shall take place until details of the layout of the vehicular accesses on to Kemnal Road and turning area and dimensions of visibility splays shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to the occupation of the dwelling and retained thereafter. There shall be no obstruction to visibility in excess of 1 metre in height within the approved splays except for trees identified in the approved details.
- 12) No development above ground shall take place until details of arrangements for the parking of bicycles have been submitted to and approved in writing by the local planning authority. The details shall be implemented prior to the occupation of the dwelling and thereafter shall be kept available for the storage of bicycles.
- 13) No development above ground shall take place until full details of any installation of external lighting have been submitted to and approved in

writing by the local planning authority. The installation shall be guided by BS 5489 - 1:2003 *Code of Practice for the design of road lighting* (or its equivalent if replaced) and shall incorporate the recommendations within the Bat Roost Assessment (The Ecology Partnership, July 2020). The installation shall be carried out in accordance with the approved details and retained as such thereafter.

- 14) No development above ground level shall take place until details of biodiversity enhancements have been submitted to and approved in writing by the local planning authority. The details shall incorporate the recommendations within the Preliminary Ecological Appraisal and Preliminary Roost Assessment Survey (Arbtech, 27 January 2020) and the Bat Roost Assessment (The Ecology Partnership, July 2020). The approved details shall be implemented in full prior to the occupation of the dwelling and retained thereafter.
- 15) The dwelling hereby permitted shall not be occupied until windows within the upper floor side elevations and any rooflight windows have been obscure glazed (minimum specification of Pilkington Privacy Level 3) and shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. Such windows shall be retained as such thereafter.
- 16) The dwelling hereby permitted shall not be occupied until all parking spaces, turning areas and vehicular access routes within the site (including within the basement garage) have been laid out in accordance with the approved plans and details. Thereafter the parking spaces, turning areas and vehicular access routes shall be kept available at all times for those purposes.
- 17) The dwelling hereby permitted shall not be occupied until details of a scheme to install electric vehicle charging points (EVCPs) have been submitted to and approved in writing by the local planning authority. The details shall demonstrate that at least 20% of parking spaces within the site will be provided with active EVCPs, with passive provision for all other spaces and shall include details of the specification and/or infrastructure for electric and/or ultra-low emission vehicles.

The EVCPs shall be installed in accordance with the approved details and shall be in full operation prior to the occupation of the dwelling. Thereafter, the EVCPs shall be maintained for the lifetime of the development, unless they need to be replaced, in which case the replacement shall be of the same specification or higher in terms of charging performance.

- 18) The dwelling hereby permitted shall not be occupied until details of arrangements for the storage and collection of waste and recycling have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to the occupation of the dwelling and shall operate for the lifetime of the development.

Other conditions

- 19) The dwelling hereby permitted shall be built in accordance with the criteria set out in Building Regulations M4(2) 'accessible and adaptable dwellings' and shall be permanently retained thereafter.

- 20) The site is located within an Air Quality Management Area declared for NO_x: any gas boilers installed within the dwelling shall meet a dry NO_x emission rate of <40mg/kWh.
- 21) No later than 2 (two) months after the first occupation of the dwelling hereby permitted, the existing buildings on the site (as shown on drawing ref: 19-J3052-LP01 - Location Plan) and known as Toppers Oak and Kemnal Stables shall have been fully demolished (to include all foundations) and all materials from their demolition shall have been removed from the site. Thereafter there shall only be one dwelling on the site.
- 22) 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 development permitted by virtue of Classes A, AA, B, C or E of Part 1 of Schedule 2 to the Order shall be undertaken.
- 23) 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 windows or doors (other than those hereby approved) shall be constructed within the flank elevations of the upper floor or any roof slope of the dwelling.

END OF SCHEDULE

Schedule of Conditions Appeal B - APP/G5180/W/23/3330181

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following drawings and documents:
 - 19-J3052-LP200 Location Plan
 - 19-J3052-CP201 Context Plan
 - 19-J3052-202.1 Proposed Colour Site Plan
 - 19-J3052-203 Proposed Extension and Basement Floor Plans
 - 19-J3052-204 Proposed Elevations
 - 19-J3052-205 Proposed Site Section & Street Scene
 - 19-J6052-109 Proposed Gates
 - 16-423-TPP-A Tree Protection Plan
 - Tree Survey Report (Canopy Consultancy), Revision A
 - Preliminary Ecological Appraisal and Preliminary Roost Assessment Survey by Arbtech, 27 January 2020
 - Bat Roost Assessment by The Ecology Partnership, July 2020.

Pre-commencement conditions

- 3) No development shall take place, including any works of demolition, until a Construction and Environmental Management Plan (CEMP) has been submitted to, and approved in writing by the local planning authority. The CEMP shall provide for:
 - (a) measures to control, mitigate and/or manage construction/demolition noise, the emission of dust and dirt; including the location and operation of plant and wheel washing facilities;
 - (b) Details of construction traffic movements including cumulative impacts which shall demonstrate the following:
 - d) the rationalisation of travel and traffic routes to, from and within the site;
 - e) full details of the number and time of construction vehicle trips to and from the site with the aim of reducing the impact of construction related activity;
 - f) measures to ensure the safe movement of pedestrians;
 - (c) swept path drawings for manoeuvres on vehicle routes to and from the site, and proposed access/egress arrangements at the site;
 - (d) parking of vehicles of site operatives and visitors;
 - (e) arrangements for the loading, unloading and/or storage of plant and materials used in the construction of the development;
 - (f) delivery, demolition and construction working hours; and
 - (g) Full contact details of the site manager and any project managers or person responsible for the day-to-day management of the works.

The approved CEMP shall be adhered to throughout the construction period for the development.

- 4) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), has been

submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:

- (a) a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority;
- (b) the site has been remediated in accordance with the approved measures and timescale; and
- (c) a verification report has been submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended until:

- (d) additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and
- (e) a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.

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- 6) No development shall take place until details of a surface water drainage scheme (including measures to prevent the discharge of surface water onto the highway) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained thereafter.
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- boundary treatments;
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- 21) No later than 2 (two) months after the first occupation of the dwelling hereby permitted, the existing buildings on the site (as shown on drawing ref: 19-J3052-LP200 Location Plan) and known as Toppers Oak and Kemnal Stables shall have been fully demolished (to include all foundations) and all materials from their demolition shall have been removed from the site. Thereafter there shall only be one dwelling on the site.
- 22) 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 development permitted by virtue of Classes A, AA, B, C or E of Part 1 of Schedule 2 to the Order shall be undertaken.
- 23) 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 windows or doors (other than those hereby approved) shall be constructed within the flank elevations of the upper floor or any roof slope of the dwelling.

END OF SCHEDULE