

# **APCAR SMITH PLANNING**

**Chartered Town Planning Consultants**

## **PLANNING STATEMENT**

**6B HILL RISE  
CUFFLEY  
EN6 4EE**

APRIL 2019  
Our Ref: CA/3122

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### Appendices

- A.** Approved section through site from permission ref S6/2002/470/FP
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## **1.00 Introduction**

1.01 This Statement has been produced to accompany a planning application for the retention of an existing detached garage with alterations to the roof to reduce the height of the structure.

1.02 In addition to this Statement the application is accompanied by the following:

- Site Location Plan Drwg No 33/19-1
- Block Plan Drwg No 33/19-2
- Existing/Proposed Elevations and Plans Drwg No 33/19-3
- Daylight, Sunlight and Shadowing Report

1.03 The garage in question has already been constructed. The proposals, in summary, involve a reduction to its height to 3.6m. As is discussed further as part of our consideration of planning history the approved development also has a height of approximately 3.6m but with a slightly different roof form.

1.04 We are aware of all relevant planning history, including an appeal decision dated 13 April 2018, which we discuss further in Section 3. This related to a 3.9m high roof which was considered unacceptable on the basis of its impact on neighbours light and being over dominant. As this Statement and the submitted lighting report demonstrate the current proposals will not cause any harm to neighbours.

1.05 As this Statement discusses, and with the benefit of the results of the Lighting Study, it is considered that the retention of the building subject to the reduction in roof height to 3.6m is acceptable and should be granted planning permission.

## **2.00 Site and Surroundings**

- 2.01 The application site is situated on the north-eastern side of Hill Rise, close to its junction to the south with Plough Hill, as it turns into East Ridgeway.
- 2.02 The application site, together with 6A Hill Rise, are positioned to the rear of 6 Hill Rise as a tandem form of development – with 6B being the property furthest from the street frontage (as can be seen from the submitted Block Plan). As is discussed further as part of our consideration of planning history in the following section, the original planning permission included the construction of a detached garage adjacent to the south-eastern boundary but not set quite so far to the north-east as the garage to which this application relates. The original garage was demolished and replaced with the existing garage as there were constant flooding problems associated with the original garage due to the site sloping downhill from the front to the rear (towards the boundary with the neighbouring Orchard Close properties). The reconstruction of the garage set further to the rear enabled the inclusion of an appropriate means of drainage for surface water run-off which has alleviated the previous flooding problems.
- 2.03 This flooding problem is known to neighbours and indeed when the Council consulted on application Ref: 6/2016/1934/HOUSE (as discussed in Section 3) the owner/occupier of 6A Hill Rise referred to the previously existing garage suffering from “horrendous flooding each time it rains” and this being a contributing factor to the repositioning of the garage.
- 2.04 As originally constructed the existing garage (which this planning application seeks to retain with alterations reducing the height of the roof) originally had a pyramidal pitched roof. The top 0.5m of the roof was removed in 2017 (following the grant of permission Ref: 6/2016/0038/HOUSE which is discussed in the following section).
- 2.05 To the south-east of the application site is the far end of the long rear garden of 4 Hill Rise, with the boundary being established by hedgerow and trees.

- 2.06 To the north-east of the site are the rear boundaries of Nos 7, 8 and 8A Orchard Close. These properties are at a lower ground level than the application site. On the application site the boundary is established by closely planted Leylandii, the tops of which are currently to roughly the height of the reduced height proposed garage roof.
- 2.07 The site is not within a conservation area or in proximity to one; nor is it within the green belt.

### **3.00 Planning History**

- 3.01 The properties now known as 6A and 6B Hill Rise were initially approved under Planning Permission Ref: S6/2002/470/FP, for which planning permission was granted in April 2003. The approved plans show a continuous slope of the land with no change along the north-eastern boundary. This can be seen through the “section through site” on approved drawing number 6078/P/100A (attached at Appendix A for ease of reference). It is therefore evident that the change in ground levels that now exist along this boundary occurred subsequently. It is assumed that this work was undertaken by owners of the neighbouring Orchard Close properties to improve the usability of their gardens. Of relevance to the current application is the fact that this planning permission did not include any conditions removing permitted development rights.
- 3.02 In June 2004 an amended planning permission was granted (Ref: S6/2004/437/FP). This involved revisions to the size and height of the new dwelling on Plot 1 – that which is now known as 6A Hill Rise; not the current application premises. It is that permission which has been implemented. Again there is no condition on the planning permission removing permitted development rights. It is noted from the Officer’s report to this application that the originally approved garage for what is now known as 6B Hill Rise would have had a ridge height of 4.3m. The current proposal would result in an overall height of only 3.6m. The Officer’s report in respect of the 2004 application refers to the garage on Plot 2 being sited adjacent to the rear garden boundaries of Nos 7 and 8 Orchard Close. From the approved 2004 Site Plan it can be seen that the garage to which this current application relates is set approximately 3m closer to this boundary. However to off-set that closer relationship is the 0.7m reduction in height from 4.3m to 3.6m..
- 3.03 As referred to at Para 2.02 the original garage for 6B was demolished and re-built to enable appropriate surface water drainage to be incorporated on the site. Two, partially retrospective, applications were submitted in 2016 for the new garage.
- 3.04 In April 2016 the Council granted planning permission for the retention of the garage and alterations to its roof to reduce the height (Ref: 6/2016/0038/HOUSE). In so doing the Council attached an in

perpetuity landscaping condition in respect of hedgerow along the north-eastern boundary requiring that, should any part of the hedge die, be removed or become seriously damaged or diseased, it should be replaced during the following planting season. Unlike normal landscaping conditions this was not just for a 5 year period. The Officer's report refers to the highest point of the roof being 5.3m with that being reduced by approximately 1.9m – ie; to a height of 3.4m (only 0.2m below the currently proposed height). The plans also showed a reduction in eaves height along the north-eastern side of the garage building.

- 3.05 Relevant to the consideration of permitted development rights (as discussed further in Section 5) is the fact that, as the Officer's report acknowledges, if the garage had a flat roof it would be considered permitted development. This is relevant insofar as the consideration of the fall-back position is concerned. The existing garage roof could simply be removed and the garage left with a flat roof to its existing eaves height as the Officer's report acknowledges.
- 3.06 Subsequently Application Ref: 6/2016/1934/HOUSE, for the retention of the detached garage with alterations to reduce the height, was refused by the Local Authority in July 2017 on the basis of it causing loss of light and being unduly prominent from the rear windows and rear gardens of Nos 7 and 8 Orchard Close, detrimental to the living conditions enjoyed by the occupiers of these neighbouring properties. Unlike with the current application, no Lighting Study was submitted with that application.
- 3.07 It is noted that the Officer's report referred to Leylandii Hedge screening a significant proportion of the facing wall but the bulk of the wall still being prominent and overbearing. Since then the Leylandii has continued to grow and now screens the entire wall and also the majority, if not all, of the proposed reduced roof. The Officer's report alleges that landscaping cannot be retained in perpetuity with a grant of planning permission. However, as is discussed further as part of our consideration of the proposals in Section 5 of this statement, that is not the case.
- 3.08 The Council's refusal of planning permission was upheld on appeal in March 2018. No evidence was submitted with the appeal (which was handled by the Applicant himself) to prove that there would be no

unacceptable impact on neighbours light. Furthermore, when compared to the scheme the Inspector was considering, the current proposals involve a reduction in height of a further 0.3m – to an overall height of 3.6m (rather than the 3.9m the Inspector was considering).

#### 8 ORCHARD CLOSE

- 3.09 Also of relevance to the consideration of this application is a planning permission granted in December 2006 for the demolition of 8 Orchard Close and the replacement of that original house with two detached houses – now known as 8 and 8A Orchard Close. Attached at Appendix B are the approved north elevation of the house on Plot 1 and the south elevation of Plot 2. These show the relationship with the boundary of 6B Hill Rise. As can be seen to enable the development ground levels were reduced in the rear garden of 8 Orchard Close so creating the significant change in ground levels that now exist (when compared with the gently sloping change in ground levels that previously existed).



#### **4.00 Planning Policy**

- 4.01 The past refusal of planning permission (Ref: 6/2016/1934/HOUSE) referred specifically to Policy D1 of the Welwyn Hatfield District Plan 2005 as well as unspecified aspects of the Council's Supplementary Design Guidance and also the National Planning Policy Framework.

##### NATIONAL PLANNING POLICY FRAMEWORK (2019)

- 4.02 Para 127 includes reference at Part (b) to developments being visually attractive as a result of good architecture, layout and appropriate and effective landscaping. From this it is clear that the existing landscaping along the north-eastern boundary of the site, which we consider can be controlled by way of an in perpetuity condition (as discussed further in the following section) is of relevance to the consideration of the proposal.
- 4.03 Part (f) of the same paragraph refers to the requirement in respect of high standard of amenity for existing and future users. For the reasons discussed further in the following section it is considered that the retention of the garage, with the reduced height roof, ensures a high standard of amenity for existing and future users as well as for existing and future neighbours.

##### WELWYN HATFIELD DISTRICT PLAN (2005)

- 4.04 We are aware that the Local Authority are currently preparing a replacement Local Plan. However, for now, the District Plan 2005 remains the statutory development plan.
- 4.05 Policy D1 has been referred to by the Local Authority in their refusal of Application Ref 6/2016/1934/HOUSE. This is a general policy regarding design, requiring high quality design of new development incorporating the design principles and policies in the Plan and the guidance contained in the Supplementary Design Guidance. In this respect it is clear from the planning history that there should be no concern in respect of character and appearance; the Council and the Appeal Inspector's only concerns when refusing application ref 6/2016/1934/HOUSE related to impact on neighbours amenities.

## SUPPLEMENTARY DESIGN GUIDANCE (2005)

- 4.06 Para 3.18 is of particular relevance, relating to sunlight and daylight, and supplementing Policy D1 in this respect. It requires that all new development be designed and built to ensure that there is a satisfactory level of sunlight and daylight to both the new development and the surrounding developments and/or open spaces. It refers to the Building Research Establishment's document "Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice" 1991. The BRE have now published an update to this (in 2011). The submitted Daylight and Sunlight Report has been prepared having regard to this. As discussed in the following section it demonstrates that the development will comply with the guidance in that document.
- 4.07 The Supplementary Design Guidance provides no specific guidance that helps in assessing whether or not a development would be "unduly dominant" (the phrase referred to in the refusal of planning permission Ref: 6/2016/1934/HOUSE) or "dominate the outlook" (the phrase referred to in the subsequent appeal decision).

## EMERGING PLANNING POLICY DOCUMENTS

- 4.08 We have reviewed the Council's and Parish Council's website. We note that the emerging Neighbourhood Plan for Northaw and Cuffley is not yet available for public consultation. From the brief summary of the intended document on the Parish Council's website it does not appear as if it will contain any policies of direct relevance to this application.
- 4.09 We note that the emerging Local Plan is not likely to be adopted for at least another year. Policy SP9 of the draft Local Plan Proposed Submission Document 2016 refers to proposals being informed by a site's character and context including the wider townscape and landscape.
- 4.10 Policy SADM11 of the draft Plan makes specific reference to levels of sunlight and daylight within buildings and garden areas being satisfactory. Also of relevance is the requirement that new development is not overbearing upon existing buildings and open spaces and the requirements that outlook and visual amenity afforded from within buildings and garden areas should be satisfactory taking account of the relationship with neighbouring buildings including landscaping.

4.11 It is not considered that any aspect of emerging policy changes the way in which the application should be considered.

## **5.00 Appraisal of Planning Merits**

- 5.01 The proposals seek to retain the existing footprint and walls of the proposed garage but with a reduction to the height of the roof to 3.6m. The eaves height will remain unchanged at 2.6m. As is referred to in the Officer's report in respect of application Ref: 6/2016/0038/HOUSE, the overall height, at that time, was 5.3m. Since then it has been reduced in height by approximately 0.5m. The proposals involve a reduction of a further 1.2m.
- 5.02 Of relevance to the consideration of the application is what could be constructed as "permitted development". There is no condition on either the original planning permission (Ref: S6/2002/0470/FP) for the construction of the two houses now known as 6A and 6B Hill Rise or the subsequent variation permission (Ref: S6/2004/0437/FP) removing permitted development rights. Therefore both dwellings have all normal permitted development rights. It is those rights set out in Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) that are of relevance to the garage.
- 5.03 A garage could be constructed immediately adjacent to the north-east boundary with a height of up to 2.5m as permitted development. The submitted Lighting Study considers this scenario and demonstrates that the retained garage with the proposed reduction in height to its roof would have less of an impact on neighbours than a 2.5m high garage adjacent to the boundary.
- 5.04 Permitted development rights also allow the existing garage to be retained as a flat roof structure to a height of 2.5m – ie; simply removing the roof. Indeed this is acknowledged in the Officer's report in respect of Application Ref: 6/2016/0038/HOUSE.
- 5.05 Permitted development rights were not considered by the Local Authority or Appeal Inspector in the determination of application Ref: 6/2016/1934/HOUSE – no doubt due to the fact that this point was not drawn to the attention of either the Local Authority or Inspector prior to the decisions being issued. However the permitted development fall-back, including a 2.5m high garage immediately adjacent to the boundary is, a fundamentally relevant material consideration.

- 5.06 From the point of view of the character and appearance of the area a pitched roof over the garage is far more appropriate and in keeping with the general townscape than a flat roofed garage. This is particularly considered to be the case as the garage is visible from Hill Rise being directly in line with the gates that provide access to 6A and 6B. An aesthetically acceptable garage is therefore important to the general context.
- 5.07 It is noted that the Officer's report in respect of the two previous garage applications (Refs; 6/2016/1934/HOUSE and 6/2016/0038/HOUSE) both acknowledge that, whilst greater in bulk and mass than the previously approved garage, the build, form and location does not result in a visually dominant or incongruous feature and does not disrupt the harmony of the wider surrounding built form. Furthermore Northaw and Cuffley Parish Council preferred the existing appearance of the garage to that which was approved under Permission Ref: 6/2016/0038/HOUSE (as is referred to in the Officer's report in respect of that application). The current proposal retains the character of the existing roof form and therefore it is assumed that the Parish Council would prefer this current application to the extant permission.
- 5.08 With regard to the impact on neighbours sunlight/daylight and overshadowing of garden this has never previously been properly assessed – either by or on behalf of the Applicant, by the Local Authority or by the Appeal Inspector.
- 5.09 It is noted that occupants of 8 Orchard Close objected to Application Ref: 6/2016/1934/HOUSE. They referred to the previous reduction to the height of the roof (which was by approximately 0.5m as referred to at Para 2.04) as having made no difference in terms of light in their garden. However the Officer's report in respect of that application has slightly changed the way in which the neighbour referred to light by referring to "resultant loss of sunlight".
- 5.10 As can be seen from the submitted Daylight, Sunlight and Overshadowing to Neighbouring Buildings Report the proposals are entirely acceptable and comply in all aspects with the BRE Guidance. The report looks at two scenarios (as it refers at Para 4.1.1 – no existing building compared with the proposed building (with the reduced height

roof) and, secondly, what could be constructed as permitted development (a 2.5m high building on the boundary) with what is proposed. It looks at the impact on both Nos 7 and 8 Orchard Close in terms of overshadowing of those properties gardens, impact on daylight and impact on sunlight. With regard to overshadowing of the gardens of those properties it refers, at Paras 6.1 and 6.2, to the development remaining well above the BRE recommended guidance. With regard to sunlight it refers, at Para 5.1.2, to the BRE's recommended values being fully satisfied. With regard to daylight it refers, at Para 4.4.1, to the daylight availability to the neighbouring buildings being retained in accordance with the BRE recommendations. As can be seen from Appendix 2 of that Report these outcomes are the same (ie; the conclusions are not changed) even if the permitted development scenario is not considered. In other words even if the permitted development fall-back scenario is not considered the report demonstrates that the retention of the garage, with the proposed reduction in height to the roof, satisfies all aspects of the BRE Guidance.

- 5.11 In view of this it has been demonstrated conclusively that there is no harm caused to amenities of neighbouring occupiers in terms of daylight, sunlight or overshadowing of gardens.
- 5.12 With regard to the concern raised in the refusal of Application Ref: 6/2016/1934/HOUSE regarding dominating the outlook from the rear gardens of 7 and 8 Orchard Close, again the permitted development fall-back scenario is of fundamental relevance. This includes rebuilding the garage right adjacent to the boundary with a 2.5m high roof or, acknowledged as being more realistic, retaining in its current position but removing the roof so as to have a 2.5m high flat roof. It is not considered that the pitched roof itself has any impact whatsoever in terms of the building and its alleged harm in terms of dominating the outlook from Nos 7 and 8.
- 5.13 Furthermore since the April 2018 appeal decision the Leylandii along the north-eastern boundary has continued to grow and now screen the garage and its proposed reduced height roof from both of the neighbouring properties. It is clear that the Council accept the relevance of this Leylandii Hedgerow with Condition 3 of planning permission Ref: 6/2016/0038/HOUSE requiring its retention and also

requiring that should any part of the hedge die, be removed, seriously damaged or diseased, it should be replaced during the following planting season. Whilst standard landscaping conditions require replacement planting within 5 years this condition of the April 2016 planning permission has no time limitation and is therefore an in perpetuity condition. The Applicant has no objection to a similar condition being imposed if the Council were minded to grant the application to which this Statement relates. So as to ensure that the Leylandii hedgerow did not grow too tall in itself so as to harm neighbours amenities consideration could be given to adding to the previous condition by including reference to a maximum height that the Leylandii hedgerow should be maintained at (whether this be the 3.6m overall height of the proposed reduced roof or an alternative height).

- 5.14 It is noted that the Officer's report in respect of refused application ref: 6/2016/1934/HOUSE referred to the Leylandii hedge screening a significant proportion of the facing wall but the bulk of the roof still being prominent and overbearing. However since then the Leylandii has continued to grow and now does screen the reduced height roof. It is noted that the Officer's report continues by referring to landscaping not being retained in perpetuity with a grant of planning permission. However this ignores the fact that permission ref: 6/2016/0038/HOUSE did contain what was in effect an in perpetuity condition.
- 5.15 It is noted that the Appeal Inspector, in upholding the Council's decision in respect of Application Ref: 6/2016/1934/HOUSE, suggested that a hedge would be unlikely to provide effective long term screening without growing to the height of the garage and/or blocking out day and sunlight. However as referred to above the incorporation of a condition (or Legal Agreement if considered inappropriate for a condition) could ensure that the hedge is maintained within specific maximum and minimum heights. Furthermore the Inspector did not give consideration to the fact that the garage could be retained without the pitched roof – as permitted development – and with no landscaping at all.
- 5.16 We are aware of an in perpetuity landscaping condition imposed on an appeal decision. A copy of that appeal decision is provided at Appendix C. Whilst that appeal decision dates back to 2006 there is no reason

why what was considered to be an acceptable condition at that time, would not be acceptable now. In 2006, as now, planning conditions were considered against the 5 tests of reasonableness. The Inspector, in imposing the in perpetuity retention of the landscaping condition, clearly considered the condition to be reasonable in all respects.



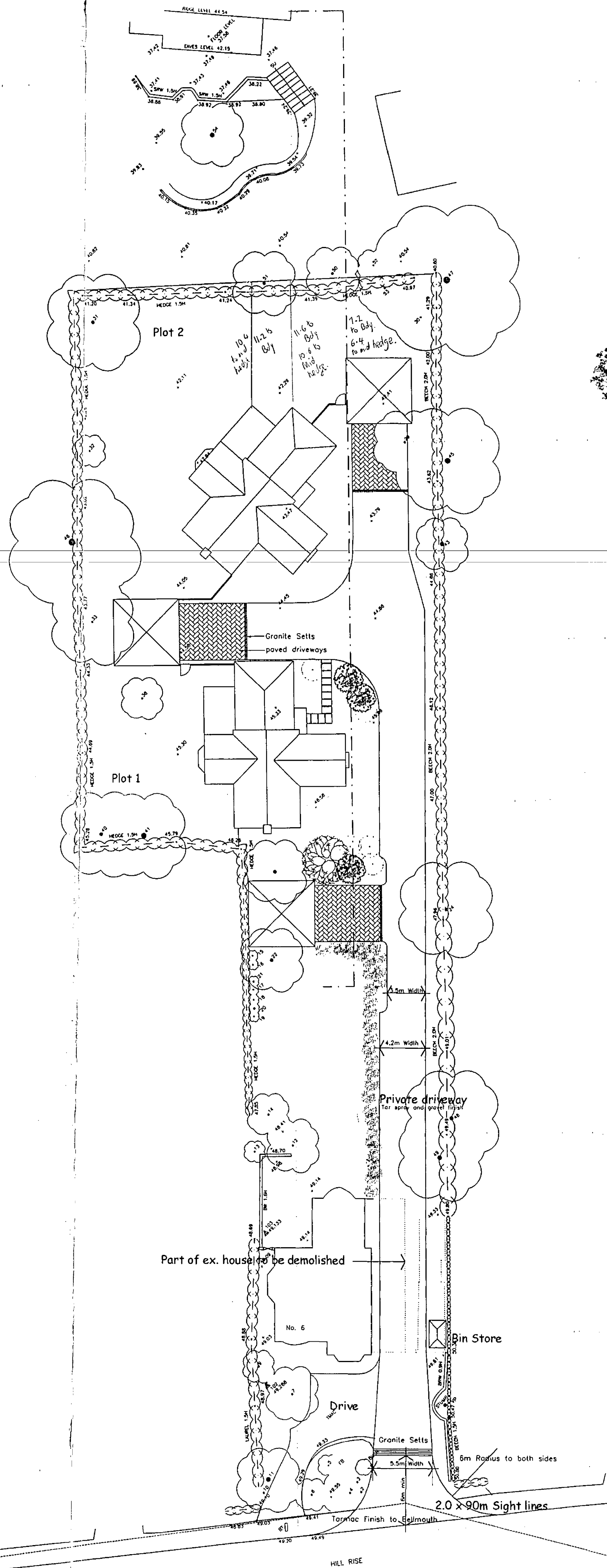
## **6.00 Conclusions**

- 6.01 For the reasons discussed in detail in this Statement it is considered that the retention of the garage with the proposed reduction in height to the pitched roof to 3.6m is acceptable in all respects. As the Lighting Report clearly demonstrates it does not result in any unacceptable loss of sunlight, daylight or overshadowing of the gardens of 7 and 8 Orchard Close. This application is therefore materially different to the previous application and the decision of the Council's as upheld on appeal (Ref: 6/2016/1934/HOUSE) in that neither the Local Authority or the Appeal Inspector had a lighting analysis on which to base their decision.
- 6.02 It is clear from the Council and Appeal Inspector's comments with regard to the garage being considered to dominate the outlook from neighbouring properties that, were there a way of ensuring that the hedgerow would be retained in perpetuity, and to an appropriate height, concerns could be overcome. As has been discussed it is considered that this could be dealt with by way of an appropriately worded condition or Section 106 Agreement. Such a condition or clause in a Section 106 Agreement would essentially be similar to condition 3 of planning permission Ref: 6/2016/0038/HOUSE with added reference to the hedge being retained "permanently" and also added reference to it being maintained between whatever the Council may consider to be appropriate minimum and maximum heights.
- 6.03 It is therefore hoped that the Council will see fit to grant planning permission subject to an appropriately worded condition or clause in a Legal Agreement regarding the hedgerow.

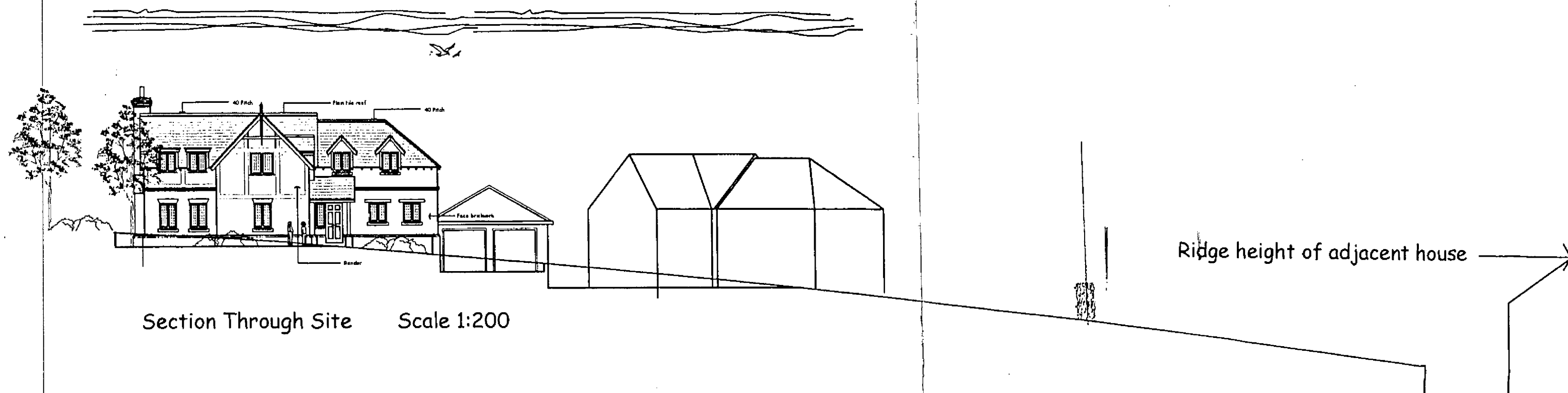
## APPENDIX

'A'

NOTES:  
ALL DIMENSIONS TO BE CHECKED ON SITE PRIOR TO COMMENCEMENT OF BUILDING WORK.  
DO NOT SCALE FROM THIS DRAWING.

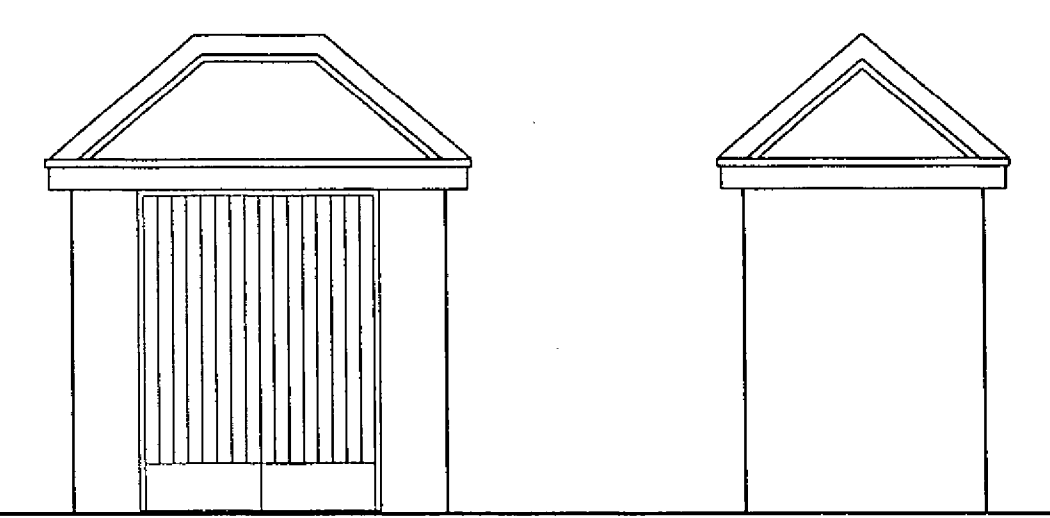


Proposed Site Plan Scale 1:250



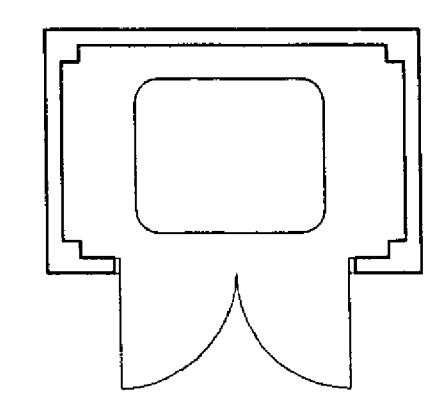
Section Through Site Scale 1:200

Bin Store



Front

Side



Plan

AMENDMENT  
27 FEB 2003  
02/470/PP  
4 MAR 2003

Rev A Amended to planners req. Feb.'03

**HERTFORD PLANNING SERVICE**  
98-100 Fore Street  
Hertford SG14 1AB  
Tel:- (01992) 552173  
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Project: Proposed Development  
Hill Rise  
Cuffley

Drawing: Site Plan

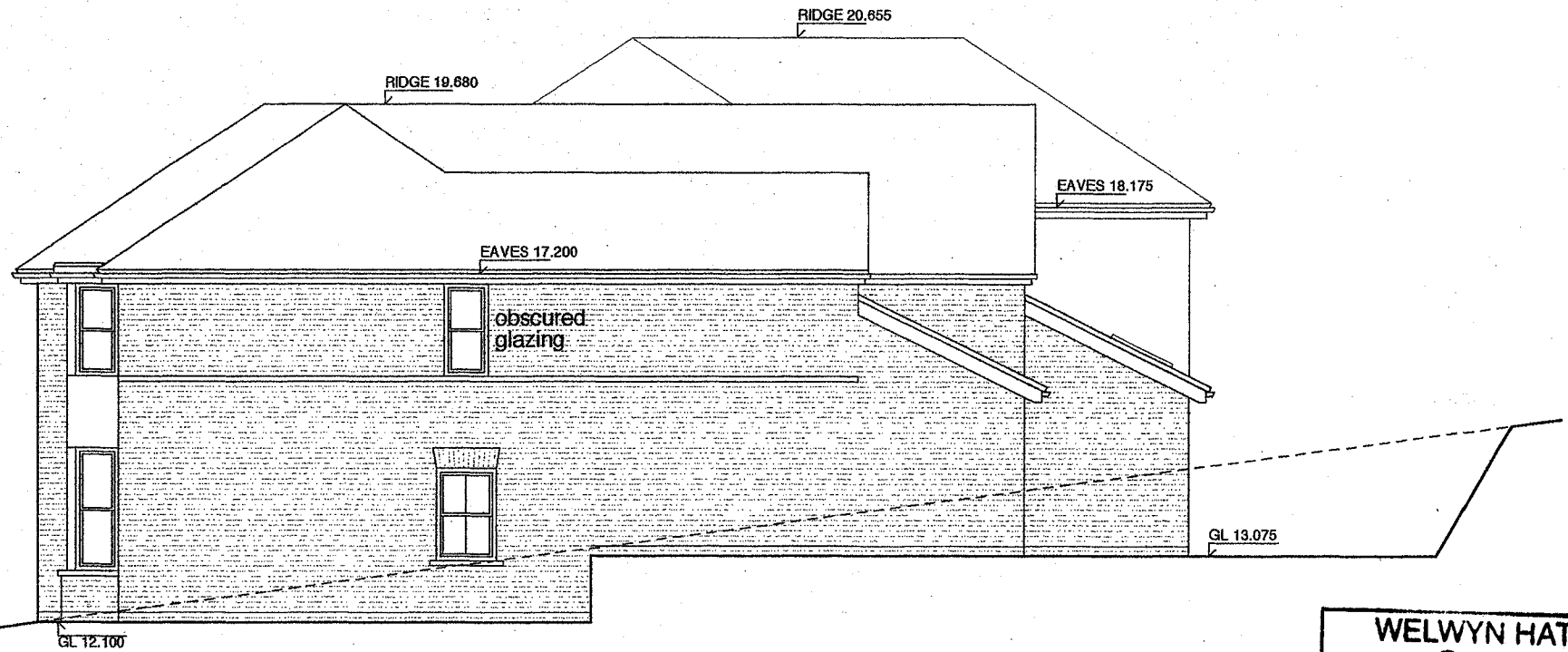
Date: Nov. 02

Scale: 1:250, 1:200 & 1:50

Drawn: ACT 6078/P/100A

## **APPENDIX**

**'B'**



PLOT 1

WELWYN HATFIELD  
 PLANNING  
 OFFICE COPY  
 25 SEP 2006  
 No: 36/06/1271/FP

DATUM 8.00 METRES



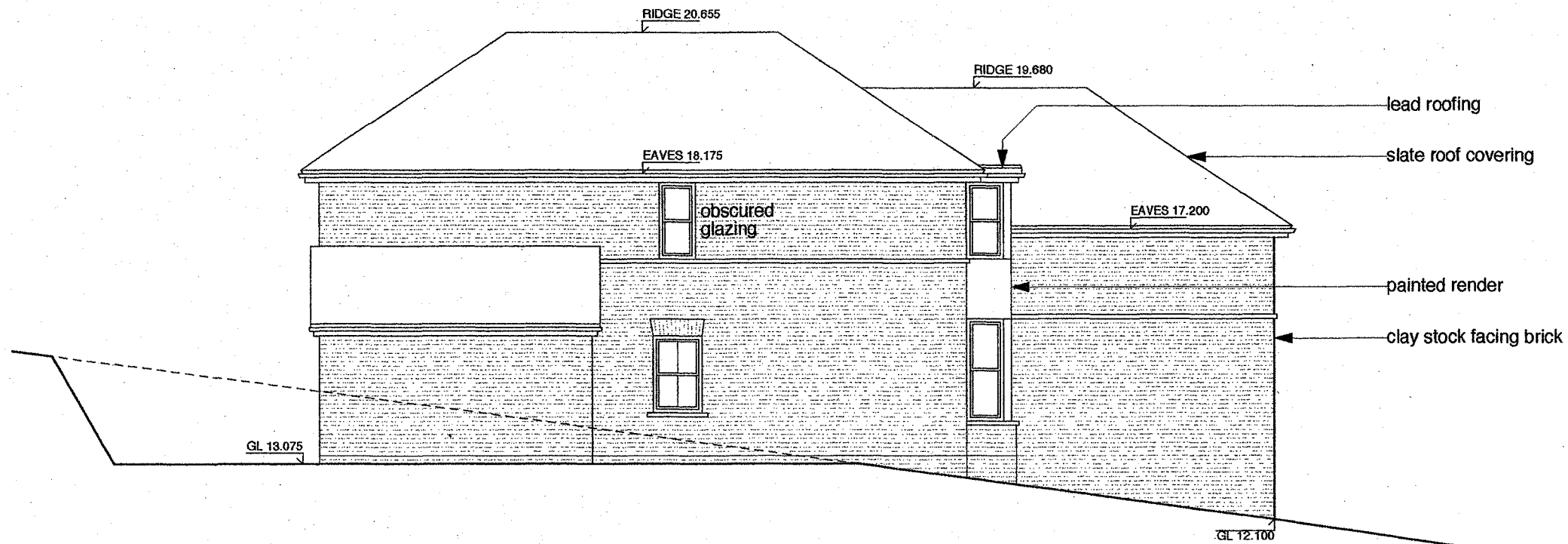
**NORTH ELEVATION**

REDEVELOPMENT OF 8 ORCHARD CLOSE, CUFFLEY

Scale 1:100 @ A3 Date Sep 2006 Drawing no. 264 I D I 008

A N D R E W G O O D M A N A R C H I T E C T U R E

© 90 Ware Road Hertford SG13 7HN telephone + fax 01992 501073 e mail andrew@goodarchitecture.co.uk



WELWYN HATFIELD  
 PLANNING  
 OFFICE COPY  
 25 SEP 2006  
 No: 26/06/1271/SP

PLOT 2

DATUM 8.00 METRES



**SOUTH ELEVATION**

REDEVELOPMENT OF 8 ORCHARD CLOSE, CUFFLEY

Scale 1:100 @ A3 Date Sep 2006 Drawing no. 264 I D I 006

ANDREW GOODMAN ARCHITECTURE

© 90 Ware Road Hertford SG13 7HN telephone + fax 01992 501073 e mail andrew@goodarchitecture.co.uk

**APPENDIX**

**'C'**



# The Planning Inspectorate

Room: 3/04  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

Direct Line: 0117-372-8430  
Switchboard: 0117-372-8000  
Fax No: 0117-372-8181  
GTN: 1374-8430

<http://www.planning-inspectorate.gov.uk>

Apcar Smith Planning  
28 Wellington Avenue  
London  
N15 6AS

Your Ref:

CA/2106

Our Ref:

APP/N1920/A/06/2013137/WF

Date:

26 July 2006

Dear Sir/Madam

**Town and Country Planning Act 1990**  
**Appeal by Mr S Agha**  
**Site at 38 The Avenue, Radlett, Hertfordshire, WD7 7DW**

I enclose a copy of our Inspector's decision on the above appeal.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:

Quality Assurance Unit  
The Planning Inspectorate  
4/09 Kite Wing  
Temple Quay House  
2 The Square, Temple Quay  
Bristol BS1 6PN

Phone No. 0117 372 8252

Fax No. 0117 372 8139

E-mail: [Complaints@pins.gsi.gov.uk](mailto:Complaints@pins.gsi.gov.uk)

Yours faithfully

*P. Quinnell*

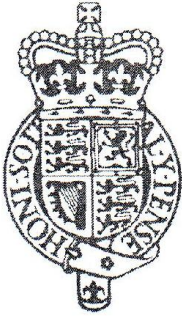
Paul Quinnell

COVERDL1

*You can now use the Internet to submit and view documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -*  
<http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>







# Appeal Decision

Site visit made on 17 July 2006

by **P J Asquith** MA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for  
Communities and Local Government

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN  
☎ 0117 372 6372  
e-mail: enquiries@planning-  
inspectorate.gsi.gov.uk

Date: 26 July 2006

**Appeal Ref: APP/N1920/A/06/2013137**

**38 The Avenue, Radlett, Hertfordshire, WD7 7DW**

- 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 S Agha against the decision of Hertsmeres Borough Council.
- The application Ref. TP/05/0975, received by the Council on 4 August 2005, was refused by notice dated 29 September 2005.
- The development proposed is the construction of a rear timber deck.

**Summary of Decision: The appeal is allowed and planning permission granted subject to the conditions set out in the Formal Decision.**

## Main Issue

1. I consider the main issue in this case to be the impact of the proposal on the living conditions of adjoining residential occupiers, with particular reference to privacy, and noise and disturbance.

## Inspector's Reasons

2. The timber decking the subject of this appeal has been erected and extends the full width of the rear of No. 38, a substantial detached house situated to the northern side of The Avenue. Because of the lower level of the rear garden the decking is some 1.3 to 1.5 metres above this, enabling occupants of the dwelling to walk directly out from the house onto it. For the most part the decking extends only about 1.5 metres from the rear face of the dwelling but towards its eastern end, close to the neighbouring property of Moya Khatta, it broadens out to a depth of about 5 metres.
3. Because of its raised level I was able to see that there would be the possibility of views from the decking over the rear garden of Moya Khatta above the dividing close-boarded fencing. However, there are several well developed trees within its garden along the common boundary with No. 38 and at the time of my visit these were in full leaf, providing a considerable degree of screening of this adjacent garden and rear of the house. When not in leaf, clearer views from the decking over the garden would no doubt be possible. However, evergreen shrubs have been planted within the appeal site along this boundary. These already stand over 2.6 metres in height and have the capability of quickly providing a taller dense mass that would provide additional screening throughout the year. It has been suggested that a condition could be imposed to require the heightening of boundary fencing alongside the decking and to ensure the retention of landscaping. In my view, such a condition would be reasonable and necessary and would help to ensure that there would be no undue potential overlooking and loss of privacy for the occupiers of Moya Khatta.

4. Although the decking extends to the full width of the rear of the house to its western end, a balustrade prevents access to the westernmost three metres. I do not consider that any undue overlooking of the neighbouring property to the west is likely, particularly as the decking is of only limited depth at this end of the house.
5. There is concern that the use of the decking, particularly to its eastern end where it widens out and is capable of accommodating a table and chairs, could result in noise and disturbance for the occupiers of Moya Khatta. However, the decking is within the rear garden of No. 38, which is modest in relation to the size of the house, and which would be capable of being used for all manner of domestic activities even if the decking was not there. I am not convinced that the presence of the decking would result in such levels of additional activity that any material increase in disturbance would be occasioned for the occupiers of the adjacent property.
6. Although the Council has referred to Policies D20 and D21 of the Hertsmere Local Plan, together with its Guidelines for Domestic Extensions/Alterations, I do not consider that these are pertinent to the consideration of this case, which I have accordingly considered on its own particular merits. Therefore, subject to the imposition of conditions as already referred to, I consider the proposal to be acceptable.

#### **Conclusion**

7. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

#### **Formal Decision**

8. I allow the appeal, and grant planning permission for the construction of a rear timber deck at 38 The Avenue, Radlett, Hertfordshire, WD7 7DW in accordance with the terms of the application, Ref TP/05/0975, received by the Council on 4 August 2005, and the plans submitted with it, subject to the following conditions:
  1. Within three months of the date of this decision a scheme of landscaping, which shall include details of all existing trees and shrubs along the eastern boundary of the rear garden and those to be retained, together with details of additional screen fencing, shall be submitted to and approved in writing by the local planning authority. The details shall include a timetable for the implementation of the scheme. The scheme shall be fully implemented as approved.
  2. The landscaping and fencing referred to in condition No. 1 shall be permanently retained. Any tree or shrub comprising part of this landscaping which is damaged or dies shall be replaced in the first available planting season in accordance with details that shall have been previously submitted to and approved in writing by the local planning authority.

*P J Asquith*

INSPECTOR



# The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime  
Minister and the National Assembly for Wales

## Challenging the Decision in the High Court

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### ***Challenging the decision***

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

### ***Grounds for challenging the decision***

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

### ***Different appeal types***

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

### ***Challenges to planning appeal decisions***

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions and advertisement appeals.). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

### ***Challenges to enforcement appeal decisions***

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

**Important Note** - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

### **Frequently asked questions**

"Who can make a challenge?" - In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this - see Further Information).

"How much is it likely to cost me?" - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees - see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

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### **Inspection of appeal documents**

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

### **Further information**

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: [www.courtservice.gov.uk](http://www.courtservice.gov.uk)

### **Council on tribunals**

If you have any comments on appeal procedures you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: <http://www.council-on-tribunals.gov.uk/>. However, it cannot become involved with the merits of individual appeals or change an appeal decision.

### **Contacting us**

High Court Section  
The Planning Inspectorate  
4/07 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

Phone: 0117 372 8962

#### **Website**

[www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk)

#### **General Enquiries**

Phone: 0117 372 6372

E-mail: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

#### **Complaints**

Phone: 0117 372 8252

E-mail: [complaints@pins.gsi.gov.uk](mailto:complaints@pins.gsi.gov.uk)

#### **Cardiff Office**

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Room 1-004  
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Phone: 0292 082 3866  
E-mail: [Wales@pins.gsi.gov.uk](mailto:Wales@pins.gsi.gov.uk)

#### **The Parliamentary Ombudsman**

Office of the Parliamentary  
Commissioner for Administration  
Millbank Tower, Millbank  
London, SW1P 4QP

Helpline: 0845 0154033

Website: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

E-mail: [opca-enqu@ombudsman.org.uk](mailto:opca-enqu@ombudsman.org.uk)