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## Appeal Decision

Site visit made on 11 October 2016

**by Nicola Davies BA DipTP MRTPI**

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

**Decision date: 7 November 2016**

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**Appeal Ref: APP/D5120/W/16/3154910**

**1 Essenden Road, Upper Belvedere, Kent DA17 5ED**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73(A) of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
  - The appeal is made by Mr Jagjit Singh against the decision of the Council of the London Borough of Bexley.
  - The application Ref 15/02656/FUL, dated 29 October 2015, was refused by notice dated 28 April 2016.
  - The application sought planning permission for the erection of single storey side extension. Alteration of railing panels and pier heights, retention of replacement front gates and gate post. Alteration to side gate and retention of higher rear wall. Infilling of part of wall facing Berkhamstead Road and reduction of side vehicle access to pedestrian access without complying with a condition attached to planning permission Ref 14/00087/FUL, dated 6 May 2014.
  - The condition in dispute is No 5 which states that: Within one calendar month of the date of this permission the black metal sheeting on the gates shall be removed to the satisfaction of the Local Planning Authority.
  - The reasons given for the condition is: To protect the character of the locality.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of single storey side extension. Alteration of railing panels and pier heights, retention of replacement front gates and gate post. Alteration to side gate and retention of higher rear wall. Infilling of part of wall facing Berkhamstead Road and reduction of side vehicle access to pedestrian access at 1 Essenden Road, Upper Belvedere, Kent DA17 5ED in accordance with the terms of the application, Ref 15/02656/FUL, dated 29 October 2015, without compliance with condition number 5 previously imposed on planning permission Ref 14/00087/FUL dated 6 May 2014 and subject to the following conditions:
    - 1) The single storey side extension and alterations to railing panels and piers hereby permitted shall be carried out in accordance with the following approved plans: Drawing No(s) 9191\_1 and 9191\_2B.
    - 2) The materials to be used for the external surfaces of the building shall be as set out in the planning application forms and drawings.
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## **Background and Procedural Matters**

2. The 2014 planning permission allowed alterations of railing panels and pier to increase their heights. It appeared from my site visit that these works have not yet been carried out.

## **Main Issue**

3. The main issue is whether the disputed condition is reasonable and necessary in order to protect the character of the area.

## **Reasons**

4. The area is of mixed character, comprising detached residential properties, blocks of flats, and a garage block, amongst other development. The appeal site, unlike the open front gardens of properties in Smarden Close and 1a Essenden Road, is enclosed by a brick wall topped by railings set between brick piers. The gates, the subject of this appeal, provide access onto Essenden Road and are clearly visible whether in an open or closed position to public view from this highway and through the existing boundary railings from Smarden Close and Berkhamstead Road.
5. The Council is concerned that the black metal sheeting on the gates is an alien feature in a prominent position in the street scene being a corner site at the junction of several adjacent highways. Whilst the appellant has provided examples of other gates, in the main, these examples, with the exception of one, do not appear to be located close to the appeal site. I observed that a residential property toward the western part of Essenden Road has similar black metal sheeted gates, although I acknowledge these gates were positioned some distance from the highway along a driveway access.
6. The gates, the subject of this appeal, form part of the continuity of the tall boundary that surrounds the frontage of the appeal site, either as it exists presently or as part of the 2014 planning permission if implemented. Although the appeal site and surroundings are not unattractive, the character of the area is unremarkable. Whilst the gates are visible from outside the site and would remain visible following the modifications to the front boundary treatment, whether or not required for security or privacy purposes, the metal sheeted gates are not a prominent feature of the front boundary treatment. They are not particularly conspicuous feature within the area and I consider the visual impact of the black metal sheeting on the gates to be very limited.
7. I conclude that the condition is not reasonable or necessary in the interests of the character and appearance of the area. Policy ENV39 of the Bexley Council Unitary Development Plan seeks to protect and enhance the quality of the built environment by requiring development to be compatible with the character of the surrounding area and not to adversely affect the street scene, taking into account the need to deter crime. This overall aim would not be compromised and I conclude that the proposal is not in conflict with the development plan.
8. Notwithstanding my findings above, the disputed condition lacks precision in requiring the sheeting to be removed "to the satisfaction of the Local Planning Authority". It fails the relevant test as set out in paragraph 206 of the National Planning Policy Framework. As part of the development has been undertaken the need to reattach a start date condition is unnecessary. Condition 3

remains relevant to the permission and is necessary in the interests of the character and appearance of the area.

9. The Council considers that the removal of permitted development rights to prevent any further alterations to the boundary treatments to be appropriate. I refer to the advice in the Planning Practice Guidance which state that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. I do not consider there to be exceptional circumstances here.
10. For the reasons set out above I conclude the disputed condition is not reasonable and necessary in order to protect the character of the area and therefore the appeal should be allowed. I will grant a new planning permission without the disputed condition.

*Nicola Davies*

INSPECTOR