
Appeal Decisions

Site visit made on 13 June 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 09 July 2019

Appeal A Ref : APP/D5120/C/18/3203069

Appeal B Ref : APP/D5120/C/18/3203070

Land at 17 Ennerdale Road, Bexleyheath, Kent, DA7 5DP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Mark Ager and Appeal B is made by Mrs Benita Ager against an enforcement notice issued by the Council of the London Borough of Bexley.
- The notice was issued on 19 April 2018.
- The breach of planning control as alleged in the notice is without planning permission the erection of a means of enclosure (in the location approximately marked blue on the plan attached to the notice) which exceeds 2 metres in height above ground level in the rear garden along the side boundary adjacent to 19 Ennerdale Road.
- The requirements of the notice are (i) reduce the height of the means of enclosure (including all bamboo canes, mesh and trellising) attached to or located immediately inside the close boarded boundary fence so that no part of the enclosure exceeds 2 metres in height as measured from existing ground level and (ii) remove all materials and debris resulting from compliance with (i) from the land.
- The period for compliance with the requirements is one month.
- The appeals are proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeals succeed in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Preliminary Matters

1. An enforcement notice must describe the land to which it applies whether by reference to a plan or otherwise. The notice describes the location of the means of enclosure as in the approximate position marked blue on the plan attached to the notice. The plan outlines the site in red and infills the site in green. There is no clear location marked in blue. This is ambiguous. At paragraph 4 the notice states that 'the unauthorised development consists of bamboo canes, mesh and trellising which has been affixed to the existing boundary fence between numbers 17 and 19 Ennerdale Road to form a means of enclosure which exceeds 2 metres in total height'.
2. Despite the ambiguity in one section of the notice read as a whole I find that the development and land to which the notice applies is clear and as there is no misunderstanding between the parties as to the development the subject of the notice and I do not consider it necessary to amend the plan.

3. The appeal form specifies an appeal under grounds (c), (e) and (f). But there are no representations before me concerning service of the notice. I therefore have no supporting evidence in order to consider a ground (e) appeal.
4. Whilst no appeal was lodged under ground (g) I note that the Council has addressed this ground in its representations and as I have the power to consider a hidden ground in the circumstances of this case I consider it reasonable to do so. I shall therefore determine the appeals under ground (c), (f) and (g).

Ground (c)

5. This ground of appeal is that planning permission is not required for the matters alleged in the notice.
6. The appeal site is a semi-detached chalet style property located in a cul-de-sac in a predominantly residential area. The notice concerns a means of enclosure in the rear garden.
7. The Appellants say that the bamboo canes and mesh are to support climbing plants growing against the boundary fence. They say their intention is to minimise growth over the fence in order to prevent complaints from a neighbour regarding encroachment over the boundary. They say planning permission is not needed for plant supports but provide no detailed explanation of their reasoning.
8. Permitted development rights exist for certain minor development. Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO) grants permitted development rights for the erection, construction, maintenance or alteration of a gate, fence, wall or other means of enclosure subject to certain conditions and limitations. Development is not permitted by Class A if the height of any means of enclosure (not adjacent to a highway) exceeds 2 metres above ground level.
9. I saw at my site visit that the bamboo and mesh have been affixed to the fence and form part of the overall structure. There is no disagreement that the fence with the addition of the bamboo and trellising exceeds 2 metres in height. It therefore as a matter of fact and degree does not benefit from Class A permitted development rights and requires planning permission.
10. For the reasons given above, this ground of appeal fails.

Ground (f) appeal

11. This ground of appeal is that the steps required by the notice are excessive.
12. There are two purposes that an enforcement notice may seek to address – to remedy the breach of planning control or to remedy the injury to amenity caused by the breach. In this case the notice requires a reduction in height in recognition of the fall back position by virtue of permitted development rights and its purpose is therefore to remedy the injury to amenity.
13. The Appellants do not suggest any lesser steps but say that the requirement to remove the supports is unnecessary. But the notice does not require removal. It requires a reduction in height. I do not find this to be excessive and it satisfies the purpose of the notice.

14. For the reasons given above this ground of appeal fails.

Ground (g) appeal

15. This ground of appeal is that the time period for compliance is unreasonably short. The notice provides for a one month period.

16. The works required to comply with the notice are not complex or time consuming but I have also taken into account the personal circumstances of the Appellants. I have balanced competing interests – the private interests of the Appellants in maintaining their home and garden and the public interest in bringing the identified harm to an end without unnecessary delay. I consider that on balance three months would strike an appropriate balance. I shall amend the notice accordingly prior to upholding it.

17. For the reasons given the ground (g) appeal succeeds in part and I shall amend the notice to vary the period for compliance.

Other matters

18. I am aware from the representations before me that neighbours are in dispute concerning this development and that there are complaints by the Appellants about the Council's conduct. But my remit is to determine the appeals before me and I have taken into account only those matters that are material planning considerations. I also note the comments about the appearance of the development but there is no ground (a) deemed planning application before me to determine.

Formal Decision

19. The appeals are allowed on ground (g) and it is directed that the enforcement notice be varied by substituting three months as the period for compliance. Subject to this variation the enforcement notice is upheld.

S. Prail

Inspector