

## Appeal Decisions

Site visit made on 12 November 2020

**by Andrew Dale BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Date of decisions: 11 December 2020**

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### **Appeal A Ref: APP/D5120/C/19/3244388**

#### **43 Danson Lane, Welling DA16 2BD**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
  - The appeal is made by Emily Williamson against an enforcement notice issued by the Council of the London Borough of Bexley.
  - The enforcement notice was issued on 12 November 2019 under ref. 18/00239/ENF.
  - The breach of planning control as alleged in the notice is *"Without planning permission the erection of a single storey rear extension to the property shown in the approximate location outlined in blue on the attached plan."*
  - The requirements of the notice are set out as follows:
    - "Either:
      1. Remove the single storey rear extension show (sic) in the approximate location outlined in blue on the attached plan.
    - Or:
      2. Reduce the depth of the extension shown in the approximate location shown outlined in blue on the attached plan to 3.5 metres as approved under application reference 18/01032/FUL.
    - And:
      3. Remove all resultant materials from the site."
  - The period for compliance with these requirements is 3 months.
  - The appeal is proceeding on the ground set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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### **Appeal B Ref: APP/D5120/W/19/3242981**

#### **43 Danson Lane, Welling DA16 2BD**

- 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 Blackwood against the decision of the Council of the London Borough of Bexley.
  - The application ref. 19/01118/FUL, dated 3 May 2019, was refused by notice dated 7 November 2019.
  - The development proposed is described on the application form as *"Rear Extension and first floor side"*.
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## **Decisions**

### ***Appeal A Ref: APP/D5120/C/19/3244388***

1. It is directed that the enforcement notice be corrected by altering the word "show" in the first requirement of paragraph 5 to the word "shown". Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

### ***Appeal B Ref: APP/D5120/W/19/3242981***

2. The appeal is dismissed.

## **The enforcement notice, background and matters of clarification**

3. I have made a minor typographical correction to the enforcement notice, the subject of Appeal A, which should be fairly self-explanatory. This correction would not result in any injustice to the parties.
4. The appeals concern an incomplete single-storey, flat-roofed rear extension which has been added to enlarge the ground floor of a 2-storey, semi-detached house. The adjoining semi-detached house is at no. 41. The site is located in a predominantly residential area close to the junction between Penpool Lane and Danson Lane.
5. The planning history for this property reveals that planning permissions (under ref. 17/01030/FUL and ref. 18/01032/FUL) have been granted for a first-floor side extension and a single-storey, flat-roofed rear extension to a depth of 3.5 m.
6. The plans which accompanied the retrospective planning application, the subject of Appeal B, broadly reflect what has been built on site. They show that the single-storey, flat-roofed rear extension has replaced a conservatory and reaches a depth of 5.0 m. Upon completion of the project, it is stated that the parapet walls on the sides of this extension's flat roof would be a maximum of 3.0 m high.
7. As confirmed in a letter dated 29 January 2020 from the Planning Inspectorate and as recorded on the Council's appeal notification letter of 7 May 2020, Appeal A proceeds on ground (g) only after the appeal on ground (a) lapsed. The planning merits of the development alleged in the enforcement notice will, of course, still to be covered under Appeal B.

## **Appeal B**

8. Reading the reason for the refusal of planning permission, the main issue is the effect of the rear extension upon the amenities of the neighbouring property at 41 Danson Lane with particular regard to outlook and light.
9. My decision is based on what I consider to be the most relevant development plan policies to which I have been referred – Policy ENV39 of the Council's Unitary Development Plan (UDP) which says the Council will consider the extent to which new development "...would not prejudice the environment of the occupiers of adjacent property..." and UDP Policy H9 which seeks to ensure that extensions and alterations meet various criteria, the second of which states that "...the development should not adversely

affect the privacy and amenity of residents of adjoining properties including daylight and sunlight and outlook...".

10. These policies accord with the broad thrust of the National Planning Policy Framework (Framework) which sees the creation of high-quality buildings and places as being fundamental to what the planning and development process should achieve. The Framework seeks a high standard of amenity for existing and future users and it says that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. In this regard, I have been referred to the Council's Design and Development Control Guideline 2 (DDCG2) relating to extensions to houses and attached to the UDP.
11. I saw that the extension has resulted in a significant depth of built development next to the boundary with no. 41, higher than both the existing boundary treatment and any wall or fence which could be constructed on that boundary as permitted development.
12. The rear elevation of no. 41 has not been extended. Close to no. 43 it contains a glazed door with side lights to a main habitable room overlooking and giving access to the back garden. Even though it has a single-storey built form and a flat roof, the extension, mainly because of its proximity and excessive depth, is visually overbearing and intrusive as it has impinged to an unacceptable degree upon the outlook from that adjacent ground floor window and the garden immediately beyond it.
13. There will also have been some diminution of daylight reaching the rear ground floor of no. 41. Moreover, that adjoining house also lies to the north-east of no. 43, so the extension will have brought about a notable loss of sunlight reaching the closest rear ground floor window of no. 41. This compounds the unacceptable loss of outlook and daylight. Representations made on behalf of this neighbour confirm that there has been a serious deterioration in natural light and an increase in shading.
14. The Council's DDCG2 advises that on semi-detached houses, single-storey extensions at the rear and on the boundary with the adjoining half of the property should not normally exceed 3.1 m in height above existing ground level or 3.5 m in depth from the rear of the property. Whilst the DDCG2 is only guidance and does not categorically rule out larger rear extensions, there has been a very clear infringement of the guidelines regarding depth. The conflict is not marginal and like the Council I cannot find any exceptional circumstances at this site that would justify such a rear extension 5 m in depth. The conflict with this local design standard confirms the decision I have reached in this case.
15. Given reasonable residential use of the extension, the location of the openings in its rear wall and the presence of intervening fencing and garden planting, I could not see why the development would lead to a loss of privacy or excessive noise levels for the occupiers of no. 41. This does not however alter my concern that the scheme prejudices the environment of the occupiers of that adjacent property in terms of outlook and light.

16. For the reasons given, I find on the main issue that the extension has materially harmful impacts upon the amenities of the neighbouring property at 41 Danson Lane with particular regard to outlook and light. There is thus conflict with UDP Policies H9 and ENV39 which aim to safeguard the amenities of adjoining properties.
17. Drawing all the above together and taking into account all other matters raised, my finding on the main issue determines the outcome of the appeal. There is conflict with the development plan and I find no material considerations of sufficient weight to justify a grant of planning permission. The objections to this development could not be overcome by planning conditions. I have therefore concluded that Appeal B should be dismissed.
18. I should add that representations were made to the effect that Mr Kenneth Gibson's (occupier of 41 Danson Lane) rights under Article 1 of the First Protocol of the Human Rights Act 1998 would be violated if the appeal were to be allowed. However, as I have decided to dismiss the appeal, my decision would not lead to any violation.

### **Appeal A, the appeal on ground (g)**

19. This ground of appeal is that the time given for compliance with the enforcement notice falls short of what should reasonably be allowed. The notice gives 3 months for the requirements to be carried out. The appellant has stated that this period is not practical or reasonable because it does not allow sufficient time to raise the necessary funds to complete the works required and to identify and appoint a contractor to carry out those works. It is requested that the compliance period be extended to 9 months.
20. It is desirable that the breach of planning control is remedied without unnecessary delay in order to address the harm that arises from it, as identified in the reasons for issuing the notice. No financial details have been supplied concerning the estimated cost to demolish the extension or reduce its depth to 3.5 m and remove the materials from the site. I am inclined to the view that the physical works required by the notice (in either of the alternatives) are relatively straightforward and should not take very long to complete. This is aided by the fact that the structure has not been finished. The cost of the works is unlikely to prevent compliance. There is no evidence to suggest that a suitable contractor would be hard to find.
21. In line with the advice set out in paragraph 58 of the Framework, effective enforcement is important to maintain public confidence in the planning system. The Council is likely to be aware that it has the discretion to extend the compliance period, should any unforeseen difficulties arise, using its powers under section 173A (1) (b) of the 1990 Act as amended. On all the available evidence before me, I find that the 3-month compliance period given in the notice was reasonable. The appeal on ground (g) in Appeal A does not therefore succeed.

*Andrew Dale*

INSPECTOR