
Appeal Decision

Site visit made on 5 October 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 31 October 2023

Appeal Ref: APP/D5120/C/22/3297576

Land adjacent to 55 Heathside Avenue, Bexleyheath, Kent DA7 4PY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Dan Beneng against an enforcement notice issued by the Council of the London Borough of Bexley.
- The enforcement notice was issued on 22 March 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an outbuilding.
- The requirements of the notice are stated in the alternative. Either to reduce the height of the outbuilding to no higher than the adjacent fence of 106C Pickford Lane, to finish the exterior walls to a similar appearance of those used in the construction of the exterior of 55 Heathside Avenue and to remove all resultant materials from the site; or to demolish the outbuilding and to remove all resultant materials from the site.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed and the varied enforcement notice is upheld.

Preliminary Matters

1. The notice describes the appeal site as land lying adjacent to 55 Heathside Avenue. In fact that property has been extended to the side and subdivided, meaning that the appeal site now lies adjacent to 55A Heathside Avenue. However, the plan appended to the notice is clear as to what land is concerned.
2. An existing fence lies to the rear of 106C Pickford Lane, to the side of the building concerned. The notice in its existing requirements allows for the height of the outbuilding to be reduced to the height of the fence. However, fences can change over time and accordingly the parties were asked to agree its height when on site. This they did: it is 2 metres high. Therefore in the interests of certainty I will amend the relevant requirement to stipulate this height.

Main Issues

3. The main issue in the appeal is the effect of the development on the living conditions of the occupiers of no. 106C Pickford Lane. Other issues, if the notice is to be upheld, concern the reasonableness of its requirements and the time given for compliance with these.

Reasons

The appeal on ground (a)

4. Permission was previously refused and dismissed on appeal for the same outbuilding, and I have no reason to depart from the previous Inspector's conclusions for the reasons he gave. There has been no material change in circumstances since that decision in January 2022. Although the development plan for the area has since been updated and replaced, the relevant provisions are in substance the same.
5. The outbuilding lies close to the boundary fence of 106C Pickford Lane, and I saw that the occupiers of that property have very limited external rear space available. The outbuilding's height exceeds that of the fence by around half a metre. This is sufficient to create an overbearing impression adverse to the living conditions of the occupiers of no. 106C. For this reason the development is contrary to the provisions of the development plan, specifically policies DP11 and SP5 of the Bexley Local Plan of 2023, of requiring new development to contribute positively to the local environment and ensure the appropriate protection of neighbouring amenities.

The appeal on ground (f)

6. The appellant contends that the building is not new, but has been extended upwards. Nonetheless there is no appeal on ground (b), contesting the accuracy of the Council's allegation, and the breeze block building I observed appeared to me to be of reasonably recent construction.
7. It is contended that the building could be permitted development, and therefore that requiring its demolition or height reduction is unreasonable by failing to preserve permitted development rights. However, the appellant goes on to say that the building is in use for storage and that more time would be required to relocate the business. The contents of the building at the time of my site observation did not suggest it was in any use required for a purpose incidental to the enjoyment of the dwellinghouse at no. 55A (or no. 55), from which the appeal site is largely separated. The building appears to have been constructed at a time when no. 55A was itself under construction. Therefore I do not consider the building to be capable of having benefitted from Class E permitted development rights, whatever its dimensions.
8. It is said that a reduction in the height of the building to 2m would make it unusable. Nonetheless the Council's notice seeks to remedy the injury to amenity caused by the breach of planning control, and this could not be achieved except by demolishing the building or making the alterations to it that are sought by the Council. Therefore the appeal on ground (f) will fail.

The appeal on ground (g)

9. It is said that three months is an unacceptably short period within which to demolish the building and relocate the storage business. If demolition is preferred, the nature of the construction of the unfinished building, consisting mostly of breeze blocks, would not be difficult or time consuming to carry out. Likewise if the alternative alterations are made. As to the contents, the availability of storage premises is not said to be in short supply. The three months given is adequate to achieve compliance with the requirements, and the appeal on ground (g) will also fail.

Other matters

10. The appellant's Final Comments on the appeal enclose a series of images purporting to show that the building with its roof has been established for more than four years. No appeal is made on ground (d) (which would contend that the development is immune from enforcement action by reason of the passage of time) but I find that any such ground of appeal would inevitably fail.
11. The period for determining whether development is immune from enforcement action runs from when, in the case of a building, it is substantially completed. I observed at my site visit that the building was not completed: one side of it was largely open to the elements. It appears from the appellant's photographs that earlier finished elements have since been removed. The Council's photographs attached to the notice show the building to be in the course of construction at the same time as the extended building now forming no. 55A was being constructed. Whatever the building may have looked like in the past, the building there now is not yet substantially completed and therefore no immunity from enforcement action could arise.

Conclusion

12. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Formal Decision

13. It is directed that the words "so that the outbuilding including its roof is no higher than the adjacent fence of 106C Pickford Lane" are deleted from paragraph 5(1) and replaced with "to no more than 2 metres in height". Subject to that variation, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Laura Renaudon

INSPECTOR