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## Appeal Decisions

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**

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**Appeal Ref: APP/D5120/C/22/3297118 (Appeal A)**  
**38 Cleveland Road, Welling DA16 3JP**

- 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 Mrs Asha Tammannappa Mannikeri against an enforcement notice issued by the Council of the London Borough of Bexley.
- The enforcement notice was issued on 30 March 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a structure (shown in attached photographs).
- The requirements of the notice are stated in the alternative. They are either to reduce the height of the structure to 2.5m from natural ground level and remove all resultant materials from the site; or to demolish the structure and remove all resultant materials from the site.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

**Summary Decision: the appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

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**Appeal Ref: APP/D5120/W/22/3295233 (Appeal B)**  
**38 Cleveland Road, Welling DA16 3JP**

- 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 Mrs Asha Tammannappa Mannikeri against the decision of the Council of the London Borough of Bexley.
- The application Ref 21/02384/FUL, dated 18 July 2021, was refused by notice dated 17 March 2022.
- The development proposed is described as the retention of a garden cricket cage.

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

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### Main Issue

1. The main issue in the appeals, which each concern the same development, is the effect of the development on the character and appearance of the area.

### Reasons

2. A garden cricket cage has been constructed within the large rear garden of the subject dwellinghouse, consisting of a series of vertical and horizontal metal poles and covered with netting. The descriptions of its height vary from 9 foot (275cm) to 289cm and 3 metres. I observed on site that it was a little under 3 metres high.

3. The Council's alternative requirements, expressed in the notice that is the subject of Appeal A, allow for the height of the structure to be reduced to no more than 2.5m high, thus achieving a reduction in its height of some 40cm.
4. The relevant development plan policies cited in the notice are policy CS01 of the Bexley Core Strategy of 2012 and policies ENV39 and H9 of the Bexley Unitary Development Plan of 2004. Whilst policy H9 appears to have applied only to extensions and alterations, there is no dispute between the parties that it would have been relevant here. Together these policies required new developments to protect and enhance the character of the locality.
5. The development plan has since been replaced, with the Bexley Local Plan adopted in April 2023. Replacement policies of particular relevance include SP5, requiring all development within the borough to be of high-quality design, contribute positively to the local environment, and to protect the best elements of Bexley's character; and policy DP11, seeking to protect or enhance the character or amenities of the area. No substantive difference in approach to the issues for consideration in these appeals results from the change in policy.
6. I observed that the property benefits from an extensive rear garden, together with the other dwellinghouses on the surrounding streets, forming a large square of gardens all backing onto each other. Occasional structures and buildings of broadly commensurate height with the cricket cage have been erected, together with smaller garden sheds and other ancillary structures. The cricket cage is itself the largest observable structure within the square visible from the property's garden, although it is seen in the context of some large trees to the east. It lies towards the end of the host property's garden, towards the centre of the square.
7. Nonetheless it is relatively unobtrusive because of the nature of its construction, being covered in netting through which it is possible to see. I do not consider that a reduction in its height by 40cm would materially alter its effects on the character or appearance of the area. At a height of 2.5 metres, it would remain readily observable to the surrounding properties, and its height itself is not overbearing and does not cause any unacceptable impacts on neighbouring living conditions. Having regard to the 'fall back' position created by the notice itself, I do not consider the structure to have the adverse effect on the area's character or appearance for which the Council contend. This is because reducing its height by around 40cm would not tangibly affect the structure's impact on those matters.
8. Therefore I conclude that, in the light of the given fall back position, the development is not contrary to the current policies of the development plan, or to policy D4 of the London Plan or the National Planning Policy Framework, both documents having been considered in the Council's statement. Therefore I shall quash the enforcement notice and grant planning permission on both appeals.
9. The permissions to be granted are retrospective in nature. No conditions have been suggested by either party, but for the avoidance of doubt I consider it necessary to withdraw any permitted development rights that might arise to make any alterations to the structure. This is because the structure is only acceptable in view of the nature of its present, largely transparent, construction.

## **Conclusion**

10. For the reasons given above I conclude that the Appeal A appeal should succeed on ground (a) and conditional planning permission will be granted. For the same reasons the Appeal B appeal will also succeed and conditional planning permission will be granted.

## **Formal Decision**

11. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a structure (consisting of a garden cricket cage) on land at 38 Cleveland Road, Welling, referred to in the notice. Appeal B is also allowed and planning permission is granted for the retention of a garden cricket cage. Both permissions are subject to the condition that, notwithstanding the provisions of any development order made under section 59 of the Town and Country Planning Act 1990 (or any development order or Act revoking and re-enacting that development order or Act with or without modification), no alterations (save for demolition) shall be made to the cricket cage hereby permitted.

*Laura Renaudon*

INSPECTOR