
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

Appeal Ref: APP/D5120/C/22/3299825 (Appeal A) **95 Heversham Road, Bexleyheath, Kent DA7 5BN**

- 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. Sian against an enforcement notice issued by the Council of the London Borough of Bexley.
- The enforcement notice was issued on 11 May 2022.
- The breach of planning control as alleged in the notice is the erection of a single storey side and rear extension as shown in the attached photographs A and drawing number HR-A-06.
- The requirements of the notice are to remove the side and rear extension shown in Photographs A and as shown on drawing number HR-A-06 under planning reference 21/03684/FUL; and to remove all resulting debris, waste, materials and equipment.
- The period for compliance with the requirements is six 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.

Summary Decision: the appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Appeal Ref: APP/D5120/D/22/3308765 (Appeal B) **95 Heversham Road, Bexleyheath, Kent DA7 5BN**

- 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. Sukhdev Singh Sian against the decision of the Council of the London Borough of Bexley.
- The application Ref 22/02003/FUL, dated 3 August 2022, was refused by notice dated 21 September 2022.
- The development proposed consists of proposed amendments to existing single storey side extension and front porch with new tiled pitched roof to match existing roof and a new 2m high timber fence along the side boundary.

Summary Decision: the appeal is dismissed.

Preliminary Matters

1. Permission has been refused and dismissed on appeal for the 'as built' development, leading to the withdrawal of the ground (a) appeal on Appeal A. That appeal is pursued inasmuch as further time is sought to comply with the notice's requirements. That in turn will relate to the outcome of Appeal B, now seeking permission for an alternative scheme.
2. The development plan for the area has been replaced since the Council's decisions were made, the Bexley Local Plan having been adopted in April 2023. Nonetheless the Council's Design and Development Control Guidelines, referable to the former Unitary Development Plan, remain in force.

3. Amendments have also recently been made to the National Planning Policy Framework, superseding the iteration available at the time when the Council's decisions and the appeals were made. I am satisfied that nothing here turns on the changes.

Main Issue

4. The main issue in Appeal B is whether the development now proposed would sufficiently overcome the identified harm resulting from the existing development, such that what is proposed would comply with the development plan for the area. In this, the main issue for consideration remains the effect of the development on the living conditions of neighbouring occupiers.

Reasons

5. The Council's reasons for issuing the notice in Appeal A and refusing planning permission in Appeal B referred to the then-extant policies ENV39 and H9 of the former Unitary Development Plan, as well as to the Design and Development Control Guidelines. Policies ENV39 and H9 have been replaced and superseded by the 2023 Local Plan. Several of its policies were supplied by the Council, the principal relevant ones appearing to be policies SP5: placemaking through good design; and DP11: achieving high quality design; as well as the overarching sustainable development strategy of policy SP1.
6. I do not understand anything to turn substantively on these changes in policy, in terms of the main issue for consideration in these appeals. Whilst policy H9 required that development 'should not adversely affect' the privacy and amenity of neighbours, policy DP11 requires development to ensure that 'appropriate levels' of privacy and amenity are provided and that the amenity of existing properties is 'appropriately protected'. These appear to me different ways of expressing the same aim. Similarly the wording of policies ENV39 and SP5 differs somewhat, but both were and are aimed at achieving high quality design standards that are compatible with the local environmental character.
7. The Inspector determining the previous appeal (APP/D5120/D/22/3297401) found that the extension appeared as intrusive and enclosing, with a domineering and overbearing effect, resulting in significant harm to the living conditions of the occupiers of the adjoining property at no. 93 Heversham Road. This harm arose as a result of the height and scale of the extension and its proximity to those neighbours.
8. As explained by the previous Inspector, although the dwelling at the appeal site and its attached neighbour face directly onto the street, each of them are adjoined by neighbouring semi-detached pairs that are angled to face their respective corner locations. This results in the dwelling at no. 93 Heversham Road, itself appearing to have been substantially extended, being oriented at the rear to face the boundary with no. 95, and having a tapering triangular-shaped rear garden reflecting its position on a corner plot. To the rear, cornering the gardens of both no. 93 and 95, is a large outbuilding to the rear of 57 Langdale Crescent, with a flat roof around 3m high.
9. The development now present, and as considered by the previous Inspector, consists of a replacement side extension to the house at no. 95. Formerly, a garage was attached to the house. This was set in from the boundary with no. 93 by around 0.7m with a side passageway. It was around 6.5m deep, 2.2m to

eaves and with a hipped roof to a maximum height of around 3.5m where it joined the side wall of the house.

10. The development there now consists of a flat-roofed extension of a little over 13m in depth, to a height of just under 3m. It extends beyond the rear of the host dwellinghouse by over 3m, and adjoins almost the entire length of no. 93's rear side garden boundary. It is proposed to retain the footprint of the extension, but to reduce the height to 2.6m at the boundary but with a front-to-rear pitched roof to a maximum height of around 3.8m at its centre, which would be around 1.8m from the boundary.
11. Whilst the 40cm reduction in the eaves height of the extension at the property's boundary would go some way to reducing the oppressive effects identified by the previous Inspector, the proposal is now coupled with the additional roof height achieved by the addition of a pitched roof. I acknowledge that no overshadowing issue arises, and consider that the proposal would ameliorate the impacts of the development on the neighbouring property to a limited degree. However in the light of the significant harm to neighbouring living conditions found by the previous Inspector, I am unable to conclude that a 40cm reduction in the adjoining height coupled with an increase of some 80cm in the overall height would sufficiently mitigate or omit that harm. The appellant's grounds of appeal do not explain why this would be so, by making repeated references to the existing flat roof and averring that the flat roof profile ensures that the amenity of no. 93 remains preserved.
12. Nor do I consider that the harm could be overcome by the installation of a timber fence on the neighbouring side. There is evidently some dispute as to the exact whereabouts of the boundary, with the neighbours contending that the extended building is already on the boundary line, leaving no room for an additional fence. Whether or not that is the case, it appears that any fence erected could not be readily maintained except from the neighbour's side. Whilst any such fence could help to mitigate the appearance of the flank wall of the extension, it could not overcome the fundamental problem of the extension's dimensions resulting in the identified loss of outlook to the neighbouring occupiers.
13. It follows that I am unable to find that compliance with the development plan for the area would be achieved. The living conditions of the neighbouring occupiers would not be appropriately protected, contrary to policy DP11. No material considerations have been brought to my attention that would be sufficient to indicate a decision otherwise. Therefore Appeal B will be dismissed.

Appeal A: Ground (g)

14. The appellant's reasons for seeking more time concern financial and contractor availability constraints. The Council say that time should run for finding a contractor from the date of making the appeal.
15. Whilst there is no Appeal A appeal on any other ground upon which the appellant may have been entitled to assume success in the meantime, there has nonetheless been a concurrent appeal concerning the Appeal B proposal. Accordingly, in these particular circumstances, I do not think it is reasonable to have expected the appellant to have taken steps to secure the involvement of contractors before receiving this decision letter, because until now he will not have known exactly what needs to be done.

16. I accept that six months is likely to be too short to secure contractors to achieve what, in the terms of the enforcement notice, are quite significant demolition works. I am also mindful that the extension here appears to have replaced a previous one. There is no suggestion (or appeal on any other ground) that any right to revert to those previous built arrangements applies here. However, in the light of that planning history (and having regard to any permitted development rights that might arise) it is potentially, although by no means necessarily, the case that an alternative to complete demolition might be found. In the light of all these factors I consider that 12 months would be a reasonable time to secure compliance with the notice's requirements. The Appeal A appeal on ground (g) succeeds to that extent.

Conclusion

17. For the reasons given above I conclude that planning permission should not be granted in respect of the Appeal B proposal, and that appeal will be dismissed. I conclude in respect of Appeal A that a reasonable period for compliance would be 12 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decisions

Appeal A

18. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion of six months and the substitution of 12 months as the period for compliance given in paragraph 6 of the notice. Subject to that variation the enforcement notice is upheld.

Appeal B

19. The appeal is dismissed.

Laura Renaudon

INSPECTOR