



Appeal Decisions

Site visit made on 13 February 2024

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 March 2024

Appeal A, Ref: APP/D5120/C/22/3305162

Site of former garages and land adjacent to 17 Betsham Road, Erith, Kent DA8 2BG

- 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 P Thandi against an enforcement notice issued by the Council of the London Borough of Bexley.
 - The enforcement notice was issued on 13 July 2022.
 - The breach of planning control as alleged in the notice is:
 - (a) The construction of a development that is not in accordance with the approved plans granted under reference 20/00600/FUL, specifically drawings numbers A1467-01, A1467-12 P4, A1467-05 P6, A1467-20 P2, A1467-22 P3, A1467-28 P2, A1467-21 P4, A1467-23 P5, A1467-26 as well as the landscaping details granted under reference 20/00600/FUL 01 shown on job number 2021-03, drawing number PL-00-1.
 - (b) The creation of new boundary treatment being the erection of a brick wall measuring approximately 1 metre high at the front of the dwelling and the erection of a brick wall to the rear measuring approximately 2 metres high.
 - The requirements of the notice are:
 - (a) Construct the development so that it accords with the drawing numbers A1467-01, A1467-12 P4, A1467-05 P6, A1467-20 P2, A1467-22 P3, A1467-28 P2, A1467-21 P4, A1467-23 P5, A1467-26 of condition 2 of planning permission reference 20/00600/FUL.
 - (b) Remove the front boundary wall (being a brick wall of approximately 1 metre high) and replaced with wooden picket fencing (to match the immediate neighbours) which measures no more than 1 metre high.
 - (c) Remove the side extension and the rear boundary (being a brick wall measuring approximately 2 metres) and install the soft and hard landscaping approved under reference 20/00600/FUL01 and as shown on job number 2021-03, drawing number PL-00-1.
 - (d) Remove all debris, waste, materials, equipment resulting from complying with 5 (a) – (c) above from the Land.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B, Ref: APP/D5120/W/22/3294901

Site of former garages and land adjacent to 17 Betsham Road, Erith, Kent DA8 2BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.

- The appeal is made by Mr P Thandi against the decision of the Council of the London Borough of Bexley.
 - The application Ref 21/02655/FUL, dated 16 August 2021, was refused by notice dated 22 February 2022.
 - The application sought planning permission for demolition of garages and erection of 1 x 2 bed end of terrace dwelling with associated parking and amenity space without complying with a condition attached to planning permission Ref 20/00600/FUL, dated 26 January 2021.
 - The condition in dispute is No 2 which states that: the development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans, being Drawing No.'s A1467-01, A1467-12 P4, A1467-05 P6, A1467-20 P2, A1467-22 P3, A1467-28 P2, A1467-21 P4, A1467-23 P5, A1467-26.
 - The reason given for the condition is: To prevent any unacceptable deviation from the approved plans.
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Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by
 - After the word Act in the last line of part 1 of the notice insert "and a failure to comply with a condition subject to which planning permission has been granted within paragraph (b) of section 171A(1) of the Act";
 - After the first paragraph in part 4 of the notice delete the full stop and add "and the breach of condition has occurred within the last ten (10) years."
2. Subject to these corrections, the appeal is allowed insofar as it relates to
 - the increased height of the dwelling;
 - the single storey rear projection;
 - the enlarged first floor rear area and the change to the design of the roof over this area;
 - the enlarged porch;
 - the front boundary wall; andplanning permission is granted for them on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended.
3. The appeal is dismissed and the enforcement notice is upheld, as corrected, insofar as it relates to the variations in the parking layout, including the erection of a 2 metre high rear boundary wall to provide an enclosed rear garden and the addition of a single storey side projection. Planning permission is refused for these matters on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended.

Appeal B

4. The appeal is dismissed.

Application for costs

5. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Procedural Matters

6. The allegation includes a breach of condition but the enforcement notice (the notice) only cites that it has been issued under paragraph (a)¹ of section 171A(1) of the Town and Country Planning Act 1990 (the 1990 Act). A notice is a legal document with serious consequences if upheld and it is a criminal offence not to comply with the requirements of a notice. An Inspector therefore has a duty to make sure the notice is in order.
7. Both parties are aware that the development has only taken place in the last few years. The appellant, in submitting an application to vary the approved plans, is also aware that this has resulted in changes to the discharged landscaping details. As such, there would be no injustice if I were to correct the notice to include reference to s171A(1)(b)² and the ten year period.
8. The postcode in the banner headings above is taken from the application form as it was not stated on the enforcement notice or the decision notice.
9. The enforcement notice lists various approved plans which the appellant is alleged not to have complied with in constructing the dwelling. Copies of these were not included by the parties in their cases but were subsequently submitted at my request to enable my consideration of the appeals.
10. There appears to be a typographical error when citing one of the drawings on the decision letter ref: 20/00600/FUL. Dwg No A1467-21 P4 listed on the enforcement notice is missing the number '4' on the decision letter. Having now received a set of the approved drawings, this is clearly a mistake and I shall proceed on the basis that the appropriate drawing is A1467-21 P4.

Appeal A

The ground (b) appeal

11. In appealing on ground (b) the burden of proof is firmly on the appellant to demonstrate that the matters stated in the notice relating to the construction of a dwelling house not in accordance with the approved plans has not occurred as a matter of fact.
12. I saw that the development now includes a single storey side/rear projection; an enlarged porch; an increase in the height of the dwelling to align with the adjoining dwelling; an enlarged first floor rear area and changes to the design of the roof over this area; variations in the parking layout to provide an enclosed rear garden; and the erection of brick boundaries.
13. The appellant states that the amendments are modest in scale and includes photographs of them as built within his statement. The matters alleged have therefore occurred as a matter of fact. The appeal on ground (b) therefore fails.

¹ Carrying out the development without the required planning permission

² Failing to comply with any condition or limitation subject to which planning permission has been granted

The ground (c) appeal

14. This ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. Under a ground (c) appeal, the onus of proof is on the appellant to show that there has not been a breach of planning control. In this case the appellant submits that the new boundary treatment, namely the 1 metre high brick wall to the front and the 2 metres high brick walls to the side and rear are permitted development.
15. Notwithstanding the fact that no condition was imposed on the original planning permission Ref 20/00600/FUL to remove the permitted development set out in Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order), these rights are still subject to Article 3(5). This states that permissions granted by Schedule 2 in the Order do not apply when (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful.
16. The appellant accepts the new dwelling has not been built in accordance with the approved drawings and it is therefore unlawful. As such, the new boundary treatment does not fall to be considered as permitted development and the appeal on ground (c) fails.

The ground (a) appeal, the deemed planning application and the section 78 appeal

The Allegations and the Main Issues

17. There are a number of differences between the approved scheme and what has been built, as shown on the section 78 plans. These are as follows:
 - variations in the parking layout including the erection of a 2 metre high rear boundary wall to provide an enclosed rear garden leading to non-compliance with the discharged landscaping details;
 - the addition of a single storey side projection;
 - the addition of a single storey rear projection;
 - an enlarged porch;
 - an increase in the height of the dwelling to align with the adjoining dwelling;
 - an enlarged first floor rear area and changes to the design of the roof over this area; and
 - the erection of a front boundary wall 1 metre in height.

The reasons for issuing the notice and refusing the application to vary the plans relate only to the first two matters and the Council raise no concerns with regard to the remaining items, save for the front boundary wall, which is required to be replaced with a picket fence.

18. The notice alleges the erection of the front boundary wall but provides no reasons as to why it is unacceptable. The requirements of the notice provide a clue in that it appears to differ from neighbouring property boundaries. I saw

that nearby properties had a variety of front boundary finishes from overlap fence panels, hedges or were simply open plan. In this context the new front wall does not look out of place and is therefore acceptable. The character and appearance of the street scene is not prejudiced and as such the wall accords with saved Policy ENV39 of the London Borough of Bexley Unitary Development Plan 2004 (the UDP). Despite its age, this policy remains consistent with the National Planning Policy Framework's (the Framework) emphasis on good design.

19. With regard to the remainder of the allegation, I see no reason to take a different view from the Council. Therefore, the main issues in respect of both appeals are:

- Whether the parking layout is satisfactory; and
- the effect of the development on the living conditions of the occupiers of No 23 Betsham Road, having regard to outlook.

Reasons

Parking layout

20. When planning permission was granted for the erection of the house, the approved plans showed the provision of two parking bays directly to the rear of the house and a disabled persons' parking bay. The permission was subject to a number of conditions including that the use of the parking area should not start until construction details and a management scheme for the parking area had been submitted to and approved by the local planning authority. These conditions were subsequently discharged. However, what I have before me is not the approved parking layout but something else that has been laid out on site and a set of plans to vary the approved position.

21. The site location plan and the application form for the erection of the house indicated that the appellant owned not only the land on which the house would be built but also the space to the rear of Nos 11-17 Betsham Road and Nos 38-42 Reddy Road, which is used for car parking. The development site was defined on the site location plan as a block of 5 disused garages, 4 parking bays to the side and the access to them, all outlined in red on the site location plan. The remaining existing parking area comprising 14 spaces (of which 1 was a disabled persons' bay³) to the rear of the Reddy Road properties was outlined in blue, signifying land in the applicant's ownership but which does not directly form part of the application. There were therefore a total of 18 bays but they were not marked out on the ground.

22. The Council state the parking area was shown on the original permission for the wider housing area and a condition was imposed that this land should be reserved for parking at all times.

23. On the appellant's approved plans, the 4 bays adjacent to the disused garages were re-provided as 3 directly to the rear of the new house, of which 1 was a replacement disabled persons' parking bay, and the 4th was added to the line of the 14 parking bays in lieu of the disabled persons' bay.⁴ The Council

³ Appendix A, page 2, Motion's Parking Technical Note dated 6 October 2020 accompanying application ref: 20/00600/FUL, disabled persons' parking bay marked with green dot r/o No 38 Reddy Road

⁴ Figure 3.1, page 3, Motion's Parking Technical Note dated 6 October 2020

approved these plans on the basis that 1 of the bays would be dedicated for the occupiers of the new dwelling. The Council were also aware that the parking area was in separate ownership but the appellant's idea that the spaces would be rented on a first come, first served basis was acceptable, subject to the approval of a management plan.

24. In order to provide the new house with an enclosed rear garden, the appellant has re-ordered the parking area shown within the red and blue land but excluded a corner of the Reddy Road parking area. I saw that this is now enclosed by a brick wall. I also saw that the disabled persons' parking bay is still adjacent to the rear of the new dwelling but has been rotated through 90 degrees. The rest of the bays have now been formally marked out with 14 perpendicular bays being provided adjacent to the Reddy Road rear gardens and 4 parallel bays to the rear of Nos 11-17 Betsham Road. There is some space remaining on two sides of the disabled persons' bay but otherwise there is no formal turning space.
25. Previously anyone parking in the perpendicular bays could easily reverse out and turn to leave the parking area in forward gear as there were no bays adjacent to the Betsham Road gardens. However, that is not the case now due to the presence of the parallel bays and the lack of a turning area, which make this more difficult. The parties agreed on site that the gap between the perpendicular and parallel bays measured 4.25 metres, which is significantly less than the 6.34 metre dimension shown on the approved plans.
26. The 6.34 metre aisle width took into account that prior to the formal laying out of the bays, there was a guard strip approximately 1 metre wide between the perpendicular parking area and the back garden fences of No 9 Betsham Road and Nos 38-42 Reddy Road. This appears to be a pavement according to the aerial site context image attached to approved dwg No A1467-05 P6. The Council state that there was a similar strip behind Nos 11-17 Betsham Road but this is not visible on the image. Council highway officers advise that these guard strips protected property boundaries from accidental vehicle damage but I also find that the pavement provided safe passage for pedestrians around the parking area.
27. The appellant has removed the guard strip areas, presumably to provide more manoeuvring space and to enable the provision of the parallel spaces but it has not been demonstrated how this results in a satisfactory parking area and how it would be used in practice.
28. I turn now to the proposed plans submitted for Appeal B. Dwg No A1467-05 P11 shows 12 perpendicular parking bays with 11 in a block and 1 on its own with space either side that also makes use of the corner land now enclosed by a wall. There is also 1 bay parallel to the disabled persons' bay, which is possible as the corner land is included in the layout. In addition, there are 5 parallel bays to the rear of Nos 11-17 Betsham Road. In reality, it is only possible to fit 4 bays in here as the barrier that has been fitted across the entrance into the parking area cuts across the 5th bay. The whole layout is based on the removal of the guard strips.
29. The application was also accompanied by a swept path analysis based on an estate car, prepared by Motion. This however appears to be inconsistent with the proposed layout plan as it shows the corner land as being unavailable and uses the parking bay parallel to the disabled persons' bay or parking bay No 12

for turning, but there is no guarantee that these bays would be vacant to enable turning. The turning space adjacent to one side of parking bay No 12 also appears to be larger on the swept path analysis than the proposed layout. In addition, it does not appear possible to exit some of the parallel bays, to turn and then leave the site in forward gear. Whilst it shows it would be possible to reverse from a perpendicular bay across an aisle width of 4.25 metres and exit the parking area in forward gear, in reality, this would require substantial back and forth manoeuvring.

30. Government guidance Manual for Streets (MfS) sets out that the aisle width needed to access perpendicular bays at 90 degrees is 6 metres. This dimension can be reduced but only if the width of the parking bay is increased. That is not the case here and, if proposed, would result in less parking overall, to the detriment of existing parking levels on the estate, which has a PTAL (Public Transport Accessibility Level) of 1a (very poor).
31. The proposed layout also fails to show the provision of a dedicated parking space for the new dwelling. The justification for Policy CS15 of the Local Development Framework Development Plan Document Bexley Core Strategy, adopted 22 February 2012 (the CS) states Bexley has low levels of public transport and consequently higher car ownership. In addition, the Council's analysis of census data suggests houses near the appeal site have a demand for 1 car to park and therefore 1 dedicated parking bay is reasonable for the approved development. This oversight could be remedied by the imposition of a condition.
32. The appellant submits he has erected a new fence adjacent to the existing garden fences to replace the protection afforded by the guard strips but I find this is a poor substitute for the space provided by the guard areas. He also states that the proposed layout includes an additional parking bay to make provision for the new dwelling but this overlooks the fact that one of the bays is not useable as it is bisected by the entrance barrier.
33. The appellant also argues that future occupants of the dwelling benefit from close proximity to services and therefore would not need to drive. As such, the layout for the new dwelling makes provision for cycle parking within the new rear garden to promote sustainable transport choices. However, currently the rear garden is enclosed by a brick wall with no gateway and therefore cycle users must take bikes either through the lounge or the kitchen, which deters their use. The proposed plans though show the provision of a rear gateway, which would make using a bike much easier and attractive.
34. Overall, I find the new layout of the parking area, as built, and the proposed layout are not satisfactory. The Framework states that the design of parking areas should ensure that they reflect current national guidance but I find in this case they are contrived and fail to have regard to MfS.
35. As such, both parking layouts do not accord with Policy CS15 of the CS, which seeks to manage the highway network to ensure the free flow of traffic and safety, amongst other matters. They also do not accord with saved UDP Policies H8 and T17. These require adequate and safe access for vehicles and that parking spaces should be located so as to discourage on-street parking, amongst other matters. Despite their age, I find these policies remain consistent with the Framework.

Living conditions

36. The new dwelling adjoins No 17 Betsham Road and is sited in the space formerly occupied by a block of flat roof garages and their approach. These garages faced the end elevation of No 17 with their rear wall abutting a footway serving No 23 Betsham Road and neighbouring houses, which are sited at right angles to the footway.
37. The approved plans show that the private garden for the new dwelling was to be sited between the side of the new dwelling and the footway but the appellant has now infilled this space with a single storey addition. This has a part pitched roof/part flat roof to provide a lounge and a study. No 23 is an end terraced property with a small front garden. It has a porch in the middle of the front elevation and windows either side that serve habitable rooms.
38. The outlook from these rooms was previously onto the rear wall of the garages 5.6 metres away but one window also had an oblique outlook across the parking area. The roof of the new side addition is higher than the previous garages and has therefore reduced the outlook from No 23. The differences in height are significant in this confined space of small front gardens and narrow footway, notwithstanding that the new roof includes a pitched roof element (the highest point is 3.85 metres) and a slightly lower flat roof element, 2.9 metres high. The effect on outlook is exacerbated by the new 2 metre high wall enclosing the new rear garden which removes the relief to the sense of enclosure that previously existed from the oblique view across the parking area.
39. The appellant submits that the "as built" single storey side addition and the proposed single storey side addition do not infringe a 25 degree light angle measured from the lower window of No 23. In addition, the approved scheme provided a better outlook for the occupiers of No 25 following the garage block demolition and this is retained, notwithstanding the new side addition. Whilst that may be the case, it does not make the harm I have found to outlook acceptable.
40. As such, the living conditions of the occupiers of No 23 are not preserved contrary to UDP Policies ENV39 and H8, which require the environment of the occupiers of adjacent properties not to be prejudiced, amongst other matters. This requirement is consistent with the Framework's emphasis on good design.

Other Matters

41. Third parties have raised several concerns about the construction of the new fencing directly bordering their rear garden fencing. This prevents them using their rear garden gates and, in some cases, prevents them accessing garages built in their rear gardens. They are also concerned about the lack of access to the parking area. The appellant states that the residents do not have rights of access over the land or a right to park in the parking area as the land is privately owned. I find that these are private matters and they have no material bearing on my assessment of the planning issues in this appeal.

Interim Conclusion

42. For all these reasons the appeal under ground (a), in respect of the variations to the parking layout and the addition of a single storey side projection, fails. It is not possible to issue a split decision in respect of the s78 appeal concerned

with a variation of plans condition and as such, this appeal does not succeed. No conditions are required in respect of the elements of the scheme that are acceptable to the Council as they are substantially complete.

The ground (f) appeal

43. Given the result on the ground (a) appeal, the ground (f) appeal is limited to the variations in the parking layout to provide an enclosed rear garden and the addition of a single story side projection. This appeal is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of a notice are set out in s173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) and/or to remedy any injury to amenity (s173(4)(b)). In this case the notice requires:

- the development to be constructed in accordance with the approved plans;
- the removal of the front boundary wall and its replacement with a picket fence; and
- the removal of the side extension, the rear boundary wall and the implementation of the approved landscaping scheme.

The purpose of the notice is therefore to remedy the breach of planning control and to remedy injury to amenity.

44. In appealing on ground (f) the onus is on the appellant to specify lesser steps. The appellant's lesser steps rely on the plans submitted to vary the approved plans but these do not remedy the breach of planning control. For example, they do not show the removal of the single storey side extension, which would remedy the breach of planning control, and the appellant repeats his arguments on planning merits, which I have dealt with under ground (a). He also repeats his arguments on permitted development regarding the erection of the walls, which I have dealt with under ground (c). In the absence of any other lesser steps, the ground (f) appeal therefore fails.

45. Although planning permission is to be granted for:

- the front boundary wall,
- the enlarged porch,
- the single storey rear extension,
- the increase in the height of the dwelling to align with the adjoining dwelling and
- the enlarged first floor rear area and the changes to the design of the roof over this area,

it would not be appropriate to vary either Step 1 or Step 2. To do so would lead to a grant of unconditional planning permission under s173(11) of the 1990 Act. Rather, reliance is placed on the provisions of s180 to the effect that the notice ceases to have effect so far as it is inconsistent with the planning permission hereby granted.

Conclusions

Appeal A

46. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for some parts of the matter the subject of the enforcement notice but otherwise I will uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application for the other parts. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of section 180 of the 1990 Act.

Appeal B

47. For the reasons given above I conclude that the appeal should be dismissed.

D Fleming

INSPECTOR