



Appeal Decisions

Site visit made on 8 April 2025

by **A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 11 April 2025

Appeal A Ref: APP/D5120/C/23/3329188

6 Bladindon Drive, Bexley, Kent DA5 3BP

- 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 “1990 Act”).
- The appeal is made by Mr M P Thind against an enforcement notice issued by the Council of the London Borough of Bexley.
- The enforcement notice was issued on 8 August 2023.
- The breach of planning control as alleged is the erection of a patio and boundary posts as shown in the attached photographs issued with the notice.
- The requirements of the enforcement notice are to: 1) Reduce the height of the patio to 30 cm from pre-existing ground level. 2) Reduce the height of the fence posts adjacent with no.8 Bladindon Drive to 2 metres from pre-existing ground level. 3) Remove from the property all debris, waste, materials and equipment resulting from complying with 5 (1) and (2).
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (a)¹, (f) and (g) of the 1990 Act.

Appeal B Ref: APP/D5120/W/23/3329190

6 Bladindon Drive, Bexley, Kent DA5 3BP

- The appeal is made under section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by Mr P Thind against the decision of the Council of the London Borough of Bexley. The application Ref is 23/00212/FUL.
- The development proposed as stated on the Council’s decision notice is as follows: the provision of a raised patio and replacement boundary fence to the rear garden².

Decisions

1. Appeal A - it is directed that the enforcement notice be varied by the deletion of the number “4” in section 6, the period of compliance, and the substitution therefor with the number “6”. Subject to this variation, the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. Appeal B - allowed and planning permission is granted for the provision of a raised patio and replacement boundary fence to the rear garden, reference: 23/00212/FUL, at 6 Bladindon Drive, Bexley, Kent DA5 3BP, in accordance with the application plans, subject to the following condition: 1) the development hereby permitted shall be carried out in complete accordance with drawings: Site Location Plan received on 27/01/23, and 003 Rev E, 004 Rev F, 005 (Existing Block Plan), 005 (Proposed Block Plan) and 101 received on 27/04/23.

¹ The deemed planning application is fee exempt.

² For clarity, I have taken the description from this source because the one given on the application form is a statement describing the development rather than a description of the operations.

Appeal A - ground (c)

3. The posts located along the boundary with the neighbour's property are 2.6 metres in overall height. The means of enclosure is yet to be completed because close-boarded panels are to be installed. In addition, the patio is 48 centimetres at its highest point. Clearly, the operations involved in the construction of the patio and fence constitute development for which express planning permission is required. This is because the fence exceeds 2 m in overall height and the raised platform exceeds 300 mm above ground level: they both exceeds the limits set out in the relevant part of the Town and Country Planning (General Permitted Development) Order (England) 2015 as amended. The ground (c) must fail.

Ground (a) and the s78 appeals

4. The common **main issue** is the effect of the development on the living conditions of the occupiers of no. 8 regarding outlook and overshadowing.
5. The fence is required to provide privacy when using the patio area at no. 6 and no. 8 has a similar raised platform, but it is lower in comparison and the boundary fence, in its complete form, is likely to have a visually towering effect. Given the positioning of the dwellings and orientation, the overall height of the boundary fence enforced against is likely to have a detrimental effect on outlook. The perceived dominating effect of the means of enclosure is likely to increase when using the patio area or when sitting out on the patio, especially during the summer months. The enforced development is likely to have a detrimental effect on occupiers' living conditions given the overall height and size of the boundary fence.
6. In appeal B, the submitted plans indicate the patio extends 4.8m from the rear elevation. In its complete form, the means of enclosure comprising a close-boarded fence panel, gravel board and concrete posts extends to 1.8m in overall height and is located along no. 6's raised platform. Beyond the patio the fence drops in overall height, given the garden's layout and the topography of the locality. The patio is shown at the same floor level as the rear extension. In its complete form, the fence would significantly reduce in overall height and size. The s78 development, subject to the imposition of suitable conditions requiring the development to be carried out in accordance with the plans, would not have a materially detrimental overshadowing effect.
7. The Council's suggest a condition requiring the development to be completed in accordance with the site location plan received on 27/01/23, and 003 Rev E, 004 Rev F, 005 (Existing Block Plan), 005 (Proposed Block Plan) and 101 received on 27/04/23. I agree. Requiring the approved scheme to be installed within one calendar month and thereafter retained for as long as the patio is in existence is, on the other hand, excessive. It is unreasonable because it is linked to the existence of the patio, which could be altered. The condition is too imprecise as it is open to interpretation.
8. Subject to the imposition of a condition requiring the development to be carried out in complete accordance with the approved plans, which can be imposed, the scheme does not materially harm the living conditions of the neighbours. The appeal B scheme satisfies the main aims and objectives of policies SP5 and DP11 of the Bexley Local Plan (2023), all of which seek to secure good design for new development and the protection of neighbour amenities.

Appeal A – ground (f)

9. The breach of planning control alleged can only be remedied by the steps set out in the notice. The latter seek to remedy injury to amenity and the steps required are not excessive. The planning merits of the enforced development are unacceptable. That said, I intend to grant planning permission via the s78 appeal B. To ensure there is an incentive to implement the approved scheme, I will not quash the notice instead rely on the operation of s180 of the 1990 Act. It states that where planning permission is granted for development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. Ground (f) fails.

Appeal A – ground (g)

10. Given the scheme in appeal B is likely to require additional building work by builders, I consider that 6 months is a reasonable period of compliance. This provides sufficient time to commission and carry out the work required in appeal B and address the harm caused by the unauthorised development. The appeal on (g) succeeds to this limited extent.

Appeals A and B – overall conclusions

11. I conclude that the appeal against the enforcement notice fails on ground (c) and (a) and the deemed planning application but succeeds on ground (g) as the period of compliance should be 6 months. I have therefore varied the notice. However, for the reasons given above, appeal B succeeds and planning permission has been granted as set out in my Decision above.

A U Ghafoor

INSPECTOR