



Appeal Decision

Site visit made on 20 May 2025

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 May 2025

Appeal Ref: APP/D5120/C/23/3335929

Land adjacent to 188 Halfway Street, Sidcup, Kent DA15 5PD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Cem Over against an enforcement notice issued by the Council of the London Borough of Bexley.
- The notice was issued on 16 November 2023.
- The breach of planning control as alleged in the notice is *the erection of a single storey rear extension on Land adjacent to 188 Halfway Street, Sidcup, Kent DA15 5PD ("the Land") identified and shown outlined in blue on the attached plan to extend the premises on Land at 188 Halfway Street, Sidcup, Kent DA15 5PD, identified and shown outlined in red on the attached plan.*
- The requirements of the notice are to:
 - 1) *Demolish in its entirety the rear single storey extension, identified and shown outlined in blue on the attached plan.*
 - 2) *Reinstate the rear elevation of the building, identified and shown outlined in red on the attached plan, in materials to match as closely as possible the existing materials used in the construction of the rear elevation.*
 - 3) *Remove all demolition materials, waste and debris and equipment resulting from the compliance with Section 5(1)-(2) above, from the Land.*
- The period for compliance with the requirements are: *Four (4) months from the date this Notice takes effect.*
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Formal Decision: The appeal is dismissed, and the enforcement notice is upheld.

Formal Decision

1. The appeal is dismissed, 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.

Preliminary Matters

2. At the site visit I noted that the single storey rear extension, subject to the enforcement notice (EN) had been removed and replaced with a smaller rear extension for storage associated with the primary use of the ground floor unit. There is no dispute that the development subject to the EN had occurred, although the appellant indicated that a retrospective planning application¹ has recently been submitted to the Council for the development as built. Nevertheless, that is not what is before me. Section 181(1) of the Town and Country Planning Act 1990 as amended (the 1990 Act) makes it clear that compliance with an EN does not discharge it. This appeal still needs to be determined in the absence of either its withdrawal by the appellant or by the notice being withdrawn by the Council.

¹ LB Bexley Planning Ref: 25/00832/FUL

3. There has been a revised National Planning Policy Framework (the Framework) published by the Government since the EN was issued. However, it does not raise new issues that are determinative for the purposes of my assessment and therefore injustice to the parties does not arise.

Appeal on ground (a), the deemed planning application

Main issues

4. An appeal under ground (a) is that planning permission should be granted for the matters alleged in the EN. The EN is principally concerned with the effect of the layout of the development on the living conditions for existing and future residents and the staff of the ground floor commercial unit, with specific regard to health and safety and the provision of waste facilities, as identified by the Council in their reasons for issuing the EN.
5. The appellant has nevertheless referenced other matters including sustainable economic growth and productivity; optimising use of workspaces; location and design; quality of the built environment; sustainable transport; and impact on neighbouring amenities, with extensive references to the Framework, the London Plan (LP) adopted March 2021, and the Bexley Local Plan (BLP) adopted April 2023. However, these matters are largely irrelevant to the appeal before me, and consequently, I have attributed these additional issues negligible weight.

Reasons

Health and Safety

6. The development subject to this appeal consists of a timber framed ground floor single storey extension located at the rear of the appeal site. The site consists of a commercial property at the ground floor level, with a residential unit located in the upper floor. The existing access arrangement to the upper floor flat is via a stairwell at the rear of the premises, which is the only point of access and egress from this residential unit. The rear extension sits over this point of access and thus in terms of the legibility, occupants would have to enter or leave the site via a rear service area through the extension attached to the ground floor commercial unit. In this case the existing ground floor use is a café with a functioning kitchen facility, which creates health and safety concerns.
7. Given the very limited shared space, any access or egress from the residential unit would be awkward, with occupants of the flat having to negotiate an unsafe and unsecured method of access to their dwelling. This represents an impractical, illegible and poor quality means of access and creates an unnecessary conflict between commercial and residential users. The route is also somewhat utilitarian and provides an underwhelming sense of arrival in terms of access to the existing premises.
8. Policy D11 of the LP, seeks to ensure and maintain safe and secure environments that are resilient against emergencies and related hazards as set out in the London Risk Register. Development proposals should maximise building resilience and minimise potential physical risks and should be constructed with resilience at the heart of their design. In particular they should incorporate appropriate fire safety solutions and represent best practice in fire safety planning in both design and management.

9. I have been provided with limited information in respect to any compliance with fire safety regulations, nor have I been provided with details to demonstrate how the development would comply with the other provisions of LP Policy D11 with regard to securing a safe environment for occupiers and staff alike. Consequently, I cannot be sure on the basis of the information before me that the proposal would, or could be made to, comply with the provisions of this policy. I have also considered whether the use of a planning condition could be appropriate to secure details in respect of this matter. However, it would not meet the relevant tests² with particular regard to precision and enforceability and would therefore not be appropriate here.

Waste storage

10. The development utilises a refuse storage area that serves the existing commercial use and the upper floor flat at the appeal site. I have been supplied with no information in respect to either the required waste storage capacity or whether there is any deficiency in the existing capacity at the site. In the lack of any evidence to the contrary, I have not identified any problems arising with the use of the existing area. It appears that the development is unlikely to increase the need for waste and recycling storage, over and above that existing, given it is not a major development or one that will generate large amounts of waste or need for storage capacity.
11. Furthermore, the waste storage area is located close to the collection point, and it would not be uncommon for occupants to drag the bins the relatively short distance to be collected. I am therefore satisfied that the waste storage would not be inconvenient or contrary to what other residents and businesses nearby are already doing. Consequently, the development would not be harmful in regard to waste efficiency, nor would it inconvenience highway or pedestrian safety.

Conclusion on ground (a)

12. I have found the development would be acceptable in relation to waste storage and as such, the scheme would not conflict with BLP policy DP26 or LP Policy SI7 insofar as they relate to adequate waste facilities. However, I have also found that the proposal would provide poor living conditions for the occupants of the upper floor flat in regard to health and safety concerns associated with the development. Furthermore, the development creates unnecessary conflict between the ground floor commercial use and the residential use in the upper floor. Overall, I therefore conclude that the development would conflict with the relevant sections of policies GG2, D3, D11 of the LP, and policies SP1 and SP5 of the BLP which collectively seek good design to provide practical, flexible and safe uses so that the living conditions of existing and future occupiers are not unduly diminished, amongst other things.
13. Furthermore, it would be contrary to the Framework which, also seeks a good standard of amenity for all existing and future occupants of buildings. The development is therefore unacceptable and the appeal on ground (a) fails.

Appeal on ground (f)

² PPG: Determining a planning application - Paragraph: 003 Reference ID: 21a-003-20190723 and paragraph 57 of the Framework.

14. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an EN may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
15. The notice requires the rear single storey extension to be removed in its entirety. This is as opposed to the structure being modified by reducing it in size. The complete removal of the rear extension would restore the land to its condition before the breach took place, thus the purpose of the EN is to remedy the breach.
16. The appellant indicates that the removal of the rear extension is unnecessary as it would be excessive and would impact on the economic growth of the appellants business. However, no lesser steps have been proposed, and in the absence of details for an alternative proposal, I have no basis on which to consider whether another option is viable as this could prejudice the parties.
17. As witnessed at the site visit, the rear extension has been removed and replaced with a smaller storage unit, which is currently the subject of a retrospective planning application before the Council. However, that scheme is not before me. Even if this had been supplied, part of the rear extension would remain in situ, and the breach of planning control would not be remedied. This would not have achieved the purpose of the notice as the property would not be restored to its condition before the breach took place.
18. Therefore, the steps set out in the notice are not excessive; they are proportionate and commensurate to the breach of planning control, being the minimum that is required to restore the property to its condition prior to the breach taking place. As a consequence, the ground (f) appeal fails.

Appeal on ground (g)

19. For an appeal on ground (g) to succeed, it is to be demonstrated that the period specified in the notice for compliance in accordance with section 173(9) of the 1990 Act falls short of what should reasonably be allowed.
20. The appellant argues that a period of 9-12 months is the minimum required to undertake the requirements, however as previously stated, the rear extension has already been removed and replaced with a smaller storage facility. The single storey rear extension previously consisted of a timber framed structure. The works required by the EN would be within the capabilities of a competent person within the building trade and could be undertaken within 4 months of the date of this decision.
21. With respect to the appeal under ground (a) I have determined that the structure is harmful, and it is necessary to ensure the development is removed in order to overcome that harm. As such, a 4 month period would achieve a reasonable and proportionate balance between securing compliance and the appellant's ability to carry out the work.
22. Therefore, the appeal on ground (g) also fails.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN and refuse to grant planning permission on the application deemed to have been made under S177(5) of the 1990 Act (as amended).

Robert Naylor

INSPECTOR