



## 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: 2 June 2025

**Appeal Ref: APP/D5120/C/23/3333710**

**6 Henfield Close, Bexley, Kent DA5 1QE**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Sampson Olumide Makinde 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: *Without planning permission;*  
*1. Non-compliance with the approved plans referenced 21/03369/FUL and as shown in drawing numbers 03 Revision 02, 04 Revision 01, 05 and 06 all dated March 2022.*
- That being:  
*i) Erection of dormers in the northern side elevation of the Property as shown in Photograph A.*  
*ii) Single storey rear extension as shown in Photograph B.*
- The requirements of the notice are:  
*1) Remove the side dormers on the northern elevation of the Property, as shown in the attached Photograph A and replace with two sky lights as shown on the approved plans referenced 21/03369/FUL drawing number 03 Revision 02 (Proposed Side Elevation A).*  
*2) Reduce the single storey extension as shown in Photograph B to no higher than 3.1 metres from ground floor level.*  
*3) Remove all resultant materials from the Land.*
- The period for compliance with the requirements are: *Six (6) months from the date this Notice takes effect.*
- The appeal is proceeding on the ground[s] set out in section 174(2)(a), (b), (c) 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 allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

### Formal Decision

1. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice in order.
2. It is directed that the enforcement notice (EN) is corrected by:
  - In Section 1 of the EN the notice has been erroneously served under paragraph (a) of section 171A (1) of the Town and Country Planning Act 1990 (as amended) (the Act). The breach of control relates to a breach of planning condition and therefore the EN should be corrected to refer to paragraph (b) of section 171A (1) of the Act.
  - In Section 3, paragraph 1) there is no specific condition referred to. Therefore, it is proposed that Section 3 paragraph 1) is amended to read as follows:

*“Non-compliance with Condition 2 attached to planning permission  
21/03369/FUL.”*

3. Subject to the corrections, the appeal 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 for the development already carried out.

### **Preliminary Matters**

4. There has been a revised National Planning Policy Framework (the Framework) published by the Government since the enforcement notice 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 (b)**

5. An appeal under ground (b) is made on the basis that the matters alleged in the notice as constituting a breach of planning control have not occurred, as a matter of fact. In a legal ground of appeal, the burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
6. Despite appealing under ground (b) the appellant acknowledges that the development as constructed did not benefit from formal planning permission, following a refusal of planning consent<sup>1</sup>, and was therefore unauthorised. The appellant sought retrospective planning permission for the development through a Section 73A application<sup>2</sup>, which was refused but subsequently allowed at appeal<sup>3</sup>. However, prior to the Inspectors decision being issued the Council served the EN that is the subject of this appeal. Nevertheless, as the breach of planning control had occurred on the date of issue of the EN, consequently the appeal under ground (b) must fail.

### **Appeal on ground (c)**

7. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. Again, as with ground (b) the burden of proof is firmly on the appellant to make their case.
8. Section 55 of the Act sets out the meaning of “development”, which includes the carrying out of building engineering, mining or other operations in, on, over or under land. Building operations includes structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder. The development described in the EN are operations which are normally undertaken by persons carrying on business as a builder.
9. Section 55(2)(a) of the Act sets out that the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building does not involve development of the land. From the information before me the development as constructed was significantly different to the development that benefitted from planning permission<sup>4</sup>, thus were subject of the EN, given that it materially affected the external

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<sup>1</sup> London Borough of Bexley Planning Ref: 22/00866/FUL

<sup>2</sup> London Borough of Bexley Planning Ref: 23/01124/FUL

<sup>3</sup> PINS Ref: APP/D5120/D/23/3326175

<sup>4</sup> London Borough of Bexley Planning Ref: 21/03369/FUL

appearance of the building. The works therefore constitute development for the purposes of the Act.

10. The appellant contends that part of the development (single storey rear extension) would fall within “permitted development” as contained under Article 3(1) and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). However, the single storey rear extension formed part of the wider development that was subject to the approved planning application 21/03369/FUL, thus did not benefit from permitted development rights as planning permission for the whole development was required.
11. Even if the scheme was considered permitted development, Article 3(5)(a) of the GPDO states permission granted by Schedule 2 does not apply if in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful. Neither party disputes that the development including the single storey rear extension is existing. As such, given its existing and unlawful status, the development is not covered by the GPDO.
12. Subsequently, I conclude that the appellant has not shown that the matters alleged do not constitute a breach of planning control, and thus the ground (c) appeal also fails.

### **Appeal on ground (a), the deemed planning application**

#### **Main issues**

13. The main issues are the effect of the development on i) the character and appearance of the host property and the surrounding area; and ii) the living conditions of the adjoining residents with specific regard to outlook, light and visual impact.

#### **Reasons**

##### *Character and appearance*

14. The appeal site is a semi-detached single family dwelling located within the residential cul-de-sac of Henfield Close in Bexley. The surrounding area has a suburban feel with a relatively tight knit layout of residential properties in the vicinity. The host property has been subject to several recent extensions and alterations.
15. In terms of the scale of development scheme subject to the appeal is like that allowed by the previous Inspector under a Section 73A application, albeit with a different roof profile for the single storey element. Here the Inspector found the dormers would be of modest scale with limited visibility from the front of the property. I would concur with the assessment that given the modest size and scale of the roof additions, that they would have limited visual impact upon the character and appearance of the host property and surrounding area and would not be visually harmful.
16. Whilst the decision is silent on the impacts of the single storey rear extension, the description of the development in the previous appeal decision clearly states: “*Two storey side extension and front porch. Part two and part single storey rear*

*extensions. Loft conversion with rear dormer window and roof lights without complying with conditions attached to planning permission Ref 21/03369/FUL, dated 23 March 2022.” As such, in allowing the appeal, permission has also been granted for a rear single storey extension.*

17. It is acknowledged that the single storey extension as built on the site, differs from that shown in the allowed drawings. Specifically, the single storey rear extension has a flat roof with a parapet wall (as built) but the allowed appeal drawings indicate this as pitched roof back towards the host property. There is also discrepancy between the parties in respect to the height of the extension.
18. Reference has been made to the London Borough of Bexley Design and Development Control Guidelines Supplementary Planning Document (SPD) which indicates single storey extensions at the rear and on the boundary with the adjoining half of the property should not normally exceed 3.1 metres in height (to eaves level with pitched roofs). Both the allowed drawings and the existing development, as built, appear to exceed this height, however given its rear location and adjoining a two storey extension, the positioning of this part of the proposal does not make it unacceptable.
19. The single storey rear extension does not appear unacceptably prominent because of its respectful scale, form and materials. As such, any minor infringements in respect to its resulting height would not weigh heavily against approval of the scheme, in terms of unacceptable impacts on either the character and appearance of the surrounding area or the host property.
20. While the parts of the appeal scheme do not fully accord with the guidance set out in the SPD, for the reasons set out above, I find they do not have a negative impact on character and appearance, and as such there is no conflict with the relevant provisions of policy DP11 of the London Borough of Bexley Local Plan (BLP) adopted April 2023 or the Framework.

*Living conditions – adjoining residents*

21. The appeal site is set at a higher ground level than the adjoining property of No.7 Henfield Close, given the topography of the area. The appeal proposal does increase the extent of the built form along the party boundary.
22. Nonetheless, the flat roof design means that the appeal proposal's height, scale and bulk is not of a level that gives rise to significant additional overshadowing, nor an undue sense of enclosure in regard to outlook relative to the rear openings at No 7 or its garden area. Furthermore, given its location adjoining a larger two storey rear extension, its overall presence does not significantly reduce the current aspect enjoyed by those occupants to an extent that would be visually overbearing.
23. I recognise that the proposal does not fully accord with guidance set out in the SPD given its height is in excess of that stated. Nevertheless, in this case, I have found that the appeal proposal does not cause harm to the living conditions of neighbouring properties. For these reasons the appeal is not harmful to the living conditions of the occupants of No 7, with particular regard to outlook, light and visual amenity. As such, the development accords with the relevant provisions of policies SP5 and DP11 of the BLP, the SPD and the Framework insofar as they seek a good standard of amenity for all existing and future occupants of buildings.

*Conclusion on ground (a)*

24. I have found that the scheme would be appropriate in regard to living conditions of neighbouring properties and does not cause unacceptable harm to the character and appearance of the surrounding area or the host property. Therefore, the development is in accordance with the Development Plan taken as a whole. No other material considerations have been presented that indicate that the appeal should be determined otherwise than in accordance with it.
25. Consequently, I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the development as described in the notice, as corrected above.

*Robert Naylor*

INSPECTOR