



Appeal Decisions

Site visit made on 5 February 2026

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 10th June 2026

Appeal A Ref: APP/G5180/D/24/3355751

14 Tubbenden Lane, Orpington BR6 9PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ranjit Menon against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/24/02316/FULL6.
 - The development proposed is Garden level changes and landscaping to include new fence (Retrospective).
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Appeal B Ref: APP/G5180/C/24/3356003

14 Tubbenden Lane, Orpington BR6 9PN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Sangeetha Ranjit Menon against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The notice was issued on 21 October 2024.
 - The breach of planning control as alleged in the notice is 'Without the required planning permission, the recontouring of the rear garden of the Land and the resultant alterations of land levels shown in the attached plan hatched in green.'
 - The requirements of the notice are
 - (a) Restore the rear garden of the Land shown in the attached plan hatched in green to its condition before the breach took place and
 - (b) Remove from the Land all material used to raise the ground levels.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(e), (f) and (g) of the Town and Country Planning Act 1990 ('the Act') (as amended).
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The enforcement notice is quashed.

Planning History

3. The appellant has made previous planning applications with regard to garden level changes and landscaping which were refused on 25 October 2022, 28 April 2023 and 19 July 2023 respectively¹. An appeal against the dismissal of the third application which was for 'Part retrospective garden level changes and landscaping to include new fence' was dismissed on 30 May 2024.² A further

¹ 22/03761/FULL6, 23/00903/FULL6, 23/02180/FULL6

² APP/G5180/D/23/3327440

planning application to address the previous Inspector's concerns for 'Garden level changes and landscaping to include new fence (Retrospective)' was made on 18 June 2024 and refused on the 16 September 2024.

Procedural Matter

4. Appeal A is an appeal against the planning refusal dated 16 September 2024. The previous appeal decision dated 30 May 2024 is a material consideration in my consideration of Appeal A as both appeals relate to garden levels. Appeal B is an appeal against the enforcement notice served following the refusal dated 16 September 2024. Both appeals can therefore be addressed separately in a single Decision Letter.

Appeal A – the Section 78 planning appeal

Preliminary Matters

5. The description of the proposal is 'Garden level changes and landscaping to include new fence (Retrospective).' The proposal includes relocating existing laurel hedges, installing a new 1.8 metre high timber fence and removing soil adjacent to the boundary with the rear gardens of Nos 5 and 7 Sherlies Avenue.³
6. The drawing No 05-03 Rev P2 dated 19 June 2024 states 'Since the appeal dismissal, the soil sloping and moving the hedges further back have already been carried out (see images below).' The laurel hedge that exists on site ends at the middle of the land to the rear of No 7. However, the same drawing shows a laurel hedge extending to just beyond the boundary with No 9.
7. The fence shown on the plan extends to the rear boundary of the appeal site and has the effect of enclosing the area along the shared boundary including the TPO beech tree which is within the appeal site close to the rear boundary with No 7. The existing laurel hedge therefore appears to be part rather than all of the proposed hedge in association with other boundary works including a fence.

The Main Issue

8. The main issue is the effect of the proposal upon the living conditions of the occupiers of Nos 5 and 7 Sherlies Avenue with particular regard to outlook.

Reasons

9. The appeal site consists of a two storey detached dwelling in an elevated location with a large rear garden which now slopes upwards from the dwelling. To the west, the appeal garden boundary is shared with the rear gardens of properties on Sherlies Avenue.
10. As part of works to the rear of the appeal property including the creation of a patio, the appellant used excess soil to raise rear garden levels. The raising of the garden levels has created a significant height difference between the appeal garden and the lower gardens of the properties on Sherlies Avenue. The subsequent planning applications have sought to obtain planning permission for the raised ground levels and screening. The previous Inspector concluded that the proposal before him which was largely retrospective has a harmful effect on the

³ Paragraph 3.1 of the appellant's statement

living conditions of occupiers of No 5 and No 7 Sherlies Avenue with regard to privacy and outlook.

11. Shortly after the appeal decision was issued, the appellant relocated the existing laurel hedge further back into the appeal site and created a sloped bank next to the shared boundary. The Drawing proposes a sloped bank running along land to the rear of No 5, across all of No 7 and part of No 9. The width of the sloped bank is not consistent as it is narrow at No 5 and at its widest to the rear of No 9. A laurel hedge is shown following a similar line at the top of the sloped bank. Beyond the hedge, there is a 1.8 metre fence with a top panel with a lattice frame with creepers. The fence follows the line of the hedge but extends beyond the hedge at the top of the garden where it joins the rear boundary. The area containing the sloped bank is therefore enclosed with an access gate at the other end.
12. A sloping bank means that raised ground levels have been set back within the appeal site. However, the proposed screening at the edge of the sloped bank on elevated levels would still be highly visible when viewed by the neighbouring occupiers and is overbearing. Despite the setback, the proposal still relies upon a form of physical screening to overcome the privacy issues arising from the raising garden levels which form part of the application.
13. The issues raised in relying upon screening, including a laurel hedge and fencing, to overcome outlook and privacy concerns were addressed in detail in paragraph 12 of the previous decision. The previous Inspector considered that a hedge is likely to result in a perceived loss of privacy due to its proximity to neighbouring gardens. He also stated that, in any event, there were difficulties in imposing a reasonable and enforceable condition to retain a hedge of similar thickness and height for the lifetime of the development. Whilst a fence by itself could be retained by way of condition, the Inspector also discounted a fence as being tall and overbearing due its height and difference in levels with neighbouring gardens.
14. From my site observations, the raised ground levels do create privacy issues for Nos 5 and 7 Sherlies Avenue. I also share the Inspector's view that there are difficulties in relying upon hedges and fences or a combination of both to overcome harm to privacy. Adding further features to overcome that harm creates issues in terms of outlook particularly when the raised ground levels largely remain. The proposed screening would still be located on top of the raised garden levels which are also part of the application. The addition of a set back with a sloped bank does not address the fundamental issue that raised garden levels dominate views from the neighbouring properties.
15. A fence would still be tall and overbearing by itself. Whilst the hedge is shown on the plans to be in front of the fence, the existing hedge shows the difficulties of relying upon a living hedge to provide screening. The Council and a third party refer to the existing laurel hedge having deteriorated as a consequence of being moved in 2024. The existing hedge does not overcome privacy concerns due to gapping, density and not extending across the rear of No 7. Whilst a longer hedge is proposed, the same issues arise with how the density and thickness of a hedge whose purpose is to provide screening can be achieved. I share the previous Inspector's view that a condition to retain a laurel hedge is not reasonable or enforceable. Reasonableness and enforceability are difficult if problems occur with establishing whether a living hedge is compliant with matters such as density and thickness requirements if gaps occur and complaints are made.

16. The appellant has referred to landscaping conditions being standard in housing developments and providing some standard wording. I am not considering a standard housing development. Whilst the wording is not appropriate for this appeal, any condition has to meet the statutory requirements which include enforceability and reasonableness which is not the case.
17. Setting screening back within the appeal site does not overcome harm to living conditions of occupiers of Nos 5 and 7 Sherlies Avenue. They would still have views of raised garden levels with screening on top of those levels which would be overbearing and impact upon outlook. In seeking to address privacy issues, more development is being proposed in the form of a fence which is overbearing and needs mitigation.
18. The appellant states that in the event of no solution being reached, the appellant will erect an outbuilding of considerably greater adverse impact 'over which there will be planning control.' The prospect of a fallback position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect in order to be material. The appellant states that significant weight should be given to the fallback. However, no information at all has been provided about the proposed outbuilding in terms of size or location. I am therefore unable to make any comparison between adverse impact arising from an outbuilding and raised garden levels. I am therefore not able to attach any weight to a fallback position.
19. The appellant makes comparisons with the appearance of the boundary treatment to the other side of the appeal site with No 3 Orchard Green which consists of a tall boundary fence with trellising with planting carried out by the appellant on his side. However, the appellant is proposing an internal boundary which would be entirely within his control as it is on his land. The view of neighbours looking towards the appeal site is of raised ground levels with proposed screening on top beyond the shared boundary. The two views are not comparable.
20. For the reasons given, the proposal would harm the living conditions of occupiers of Nos 5 and 7 Sherlies Avenue with particular regard to outlook. The proposal is therefore contrary to Policy 37 of the Bromley Local Plan (adopted January 2019) which refers to development not adversely affecting the amenities of neighbouring occupiers.

Other matters

21. The plans submitted by the appellant show the sloped bank, hedge and fence all extending around and beyond the base of the TPO beech tree. I have no details as to whether those works would impact upon the health of the TPO tree. However, as I am dismissing the appeal for other reasons, this is not a matter that I need to address further for this appeal.

Conclusion on Appeal A

22. The proposal would conflict with the development plan taken as a whole. There are no material considerations of sufficient weight that would indicate a decision otherwise than in accordance with it. Appeal A should therefore be dismissed.

Appeal B – the enforcement appeal

Preliminary Matter

23. The appeal is made under grounds (e) (f) and (g). However, the matters raised under ground (e) question the validity of the notice. Validity is more appropriately dealt with separately in considering the notice.

The Notice

24. The appellant maintains that the notice served by the Council did not include the plan that is referred to in the notice and the absence of a plan questions the validity of the notice. A notice can be either a nullity or invalid. A nullity is defective on its face such that the notice is hopelessly unambiguous and uncertain. A notice is invalid if it is not a nullity but still contains some error, defect or misdescription which cannot be corrected without causing injustice. The appellant maintains that the notice is invalid and I will therefore address invalidity.
25. The Council states that the plan was served with the notice but has not provided any evidence in the form of a certificate of service to show that it was included. The Council also refers to the absence of the plan from the Council's website as it was marked as confidential in error. I am satisfied on the basis of the information provided that the plan was not served with the notice.
26. A plan is not a requirement provided that the precise boundaries of the land to which the enforcement notice relates are clear from the wording. In the absence of a plan, I therefore need to consider whether the precise boundaries of the land being enforced are clear from the notice.
27. Section 1 of the notice sets out that the land to which the land relates is 'Land at 14 Tubbenden Lane Orpington, BR6 9PN ("the Land") as shown edged red on the attached plan'. Section 3 states that the breach is 'Without required planning permission, the recontouring of the rear garden of the Land and the resultant alterations of land levels shown in the hatched plan attached in green'. The requirements at Section 5 include 'Restore the rear garden of the Land shown in that attached plan hatched in green to its condition before the breach took place'.
28. The alleged breach does not relate to the appeal property or the whole of the garden it relates to part of the garden. Whilst the appellant has some understanding of what the notice relates to, he states that in the absence of a plan, there is uncertainty as to the precise area that should be restored in the event of the notice being upheld. The issue with the plan is not limited to the breach but also affects the requirements.
29. At a later stage of the appeal process, the appellant has seen the plan. The appellant has queried why the area marked green also extends across the rear of No 9 as well as 5 and 7. The plan does cover a small area to the rear of No 9. The Council has not addressed why land beyond the rear of No 9 is now included or why part of the rear boundary to No 5 is excluded. The plan appears to relate to the proposal under Appeal A rather than the area which is relevant to the allegation and the requirements.
30. Section 4 is intended to set out the reasons for issuing the notice which should relate to the breach of planning control which is set out in Section 3. However, the reasons for issuing the notice do not relate to the alleged breach which is the

raising of ground levels of part of the garden. Instead, the reasons set out the history of previous applications and the previous appeal decision. The Council then refers to the latest submission which includes a fence set 2.5 metres away from the boundary and screened by laurel hedging. It refers to concerns remaining regarding the proposed height of the fence in an elevated position having an overbearing impact on rear gardens on Sherlies Avenue.

31. The allegation relates to the alteration of land levels. The reasoning refers to the proposed height of the fence in an elevated position. The reasons for the issue of the enforcement notice should relate to the breach that has already occurred not what the appellant is proposing under a separate planning application. The reasons allege that the fence is overbearing which harms living conditions of neighbouring properties but that harm has not occurred.
32. The Council has referred to the appellant knowing what is being enforced against due to the planning history. However, a notice needs to have clarity without relying upon other documentation. It is not clear what is being enforced against particularly when the reasons for the notice do not relate to the alleged breach and the Council has referred to under enforcement.
33. The plan was not served and the plan itself is not particularly accurate. These issues impacts upon both the allegation and the requirements. The reasons for issuing the notice lack clarity. It is not clear from the reasons what amenities of neighbouring properties are adversely affected. The Council's view of the harm arising from the latest planning proposal which is the subject of Appeal A is entirely separate to the alleged breach for the enforcement notice.
34. Whilst I can correct any defect, error or misdescription in the enforcement notice or vary its terms, I have to be satisfied that any correction or variation will not cause injustice to the parties. However, reasoning cannot be corrected and the plan was not served with the notice and appears to be inaccurate. Different reasoning and a different plan may have led to different arguments and ground of appeal. I cannot therefore be satisfied that the extent and nature of amendments required would not cause injustice. The notice is therefore invalid.

Conclusion on Appeal B

35. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the reasons for the issue of the notice, the steps required for compliance or identify the land where the breach of planning control is alleged to have taken place.
36. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
37. In these circumstances, the appeal on the grounds set out in section 174(2)(e) (f) and (g) of the 1990 Act (as amended) do not fall to be considered.

E Griffin

INSPECTOR