



Appeal Decisions

Site visit made on 7 July 2026

by **L Perkins BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 July 2026

Appeal A Ref: APP/G5180/C/24/3346767

Appeal B Ref: APP/G5180/C/24/3346768

Land at 27 Victoria Gardens, Biggin Hill TN16 3DJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mr Stuart Porter and Appeal B is made by Mrs Tanya-Louise Porter against an enforcement notice issued by the Council of the London Borough of Bromley.
- The notice was issued on 17 May 2024.
- The breach of planning control as alleged in the notice is:
Without planning permission, unauthorised operational development involving excavation works and the erection of raised framed areas filled with hardcore in the rear garden.
- The requirements of the notice are:
 - (a) Remove the raised framed areas
 - (b) Remove all resultant material and debris resulting from step 1 from the Land and restore the land to its condition before the breach of planning control took place
- The period for compliance with the requirements is: 2 months
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (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.
- Appeal B is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: Appeal A succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision. Appeal B is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Preliminary Matter

1. The rear garden of the appeal property slopes down toward the house. From all of the evidence available to me, including my observations at my site visit, the appellant has excavated a section of the slope to create a level area and the removed spoil has been placed into four timber-framed raised box/platform areas.
2. Looking rearward from the appeal dwelling, two of these raised box/platform areas are near the top of the garden on the left and two are on the right further down the garden. Consistent with the Council's submissions, I shall refer to them by number, 1-4, starting at the far end of the garden.

The Notice

3. Paragraph 3 of the notice alleges that the raised framed areas are filled with hardcore. The appellant states this is factually incorrect as the frames contain only spoil removed from excavating the slope of the rear garden. This is consistent with my observations at my site visit and so I shall correct the notice in this regard, using my powers under section 176(1) of the 1990 Act. I am satisfied this will not cause injustice to any party.

4. For the purposes of section 171B(1) of the 1990 Act, the first sentence of paragraph 4 of the notice refers to a period of “ten” years. But it is apparent from photographs provided that the breach of planning control began prior to 25 April 2024 and there is no dispute in this regard.
5. So the correct period should be stated as four years rather than ten. In this regard, I shall correct the notice accordingly. I am satisfied this has no implications for injustice for any party, as no ground (d) case has been pleaded, nor could one be, based on when the evidence indicates the works were carried out (which includes a response to a Planning Contravention Notice indicating excavation began 10 April 2020 and took 6/7 months).

Reasons

Ground (c)

6. Throughout the appellant’s submissions, there are claims that the appeal development (or parts of it) is ‘permitted development’. It is also said that excavation itself does not need planning approval. Whilst ground (c) has not been pleaded, these constitute ground (c) arguments and so I shall consider them.
7. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. This may be because what is alleged complies with the conditions and limitations of a planning permission, including any permission granted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (‘the Order’), or because what is alleged is not ‘development’ as defined by the 1990 Act.
8. In a ground (c) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
9. Planning permission is required for the carrying out of any development of land. Development is defined in section 55 of the 1990 Act and includes the carrying out of building, engineering, mining or other operations in, on over or under land. Excavation is usually an engineering operation and that being the case, it requires planning permission. I have not been provided with any explanation of why this would not be so in this case and as I saw at my site visit, the excavated space is substantial.
10. Regarding the ‘permitted development’ claim, I have been referred only to a dimension of 300mm. I can only take this to relate to Schedule 2, Part 1, Class E, paragraph E.1.(h) of the Order, where it refers to the construction or provision of a raised platform and Schedule 2, Part 1, Class E, paragraph I. where it defines that “raised” in relation to a platform means a platform with a height greater than 0.3 metres.
11. It was obvious from my site inspection that all of the raised framed areas which are the subject of the notice exceed this height. This is consistent with measurements provided by the Council in its submissions and nothing has been provided by the appellant to satisfy me that any of the raised framed areas do not exceed 0.3 metres, such as plans or cross-sections, to show the existing and preceding ground levels of the site.
12. I conclude that the works which are the subject of the notice are ‘development’ and are not ‘permitted development’ and so the appeals on ground (c) fail.

Ground (a)

13. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice.
14. Based on the reasons for issuing the notice, the main issue in the ground (a) appeal is the effect of the raised framed areas on the living conditions of neighbouring occupiers, with particular regard to overlooking and noise.
15. The same reasons (for issuing the notice) make no reference to any harm caused by the excavation works and so I have no reason to find harm in respect of those.
16. At my site visit I stood on raised framed area 1, 2 and 3 to appreciate the effect of these on overlooking.
17. Dense vegetation along the northern boundary of the appeal site means that none of the raised framed areas have resulted in any overlooking to the adjacent home at Uplyme. The substantial upwards slope to the east means that none of the raised framed areas have resulted in any overlooking to any homes on Sunningvale Avenue, to the rear of the appeal site.
18. Between the appeal site and 29 Victora Gardens there is a timber boundary fence which extends to a height which is below eye-level. Consequently, the rear garden of No 29 may be clearly seen over the fence. However, the incline of the garden of the appeal dwelling is such that just as much of the garden of No 29 may be seen by taking a few steps further up the garden away from the appeal dwelling not on a raised framed area. So as a matter of my planning judgement, the overall effect of raised framed area 1, 2 and 3 on overlooking of the rear garden of No 29 is negligible. In other words, the garden of No 29 was already overlooked by the appeal dwelling garden before the works were carried out and that remains the case after the works. Nothing has been provided to lead me to a different conclusion.
19. However, from my site inspection, it was obvious that the height and proximity to the boundary of raised framed area 4 meant that it facilitated direct views into the upper floor rear window of the dwelling at No 29. I note that in correspondence with the Council, the appellant accepted one of the frames was 'inappropriate' and he committed to remove it. I take that to mean raised framed area 4, which is the only one he has sought to remove.
20. I appreciate that an occupant of No 29 has made representations to the effect that there is no overlooking of rear habitable rooms of his property. But this representation is not consistent with my own observations on site and in my judgement the situation would be materially different with raised framed area 4 in place than without, as is the case now.
21. The Council is concerned that the raised framed areas result in an unacceptable degree of noise. But the Council's case is not further substantiated in this regard. The appeal dwelling has a generous rear garden and this could be used for normal domestic activities, including entertaining, which would generate noise in any event. I see no reason why any of the raised framed areas mean that occupants of the appeal dwelling would be noisier.

22. I conclude that raised framed areas 1, 2 and 3 have no harmful effect on the living conditions of neighbouring occupiers, with particular regard to overlooking or noise. In this regard, I find no conflict with Policy 37 of the Bromley Local Plan and so the appeal on ground (a) succeeds in part.
23. But I conclude that raised framed area 4 has a harmful effect on the living conditions of occupants of No 29, with particular regard to overlooking (but not noise). In this regard, it does not comply with Policy 37 of the Bromley Local Plan and so the appeal on ground (a) fails in part.

Ground (f)

24. An appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
25. Under section 173(4) of the 1990 Act, when serving an enforcement notice relating to operational development, as is the case here, the Council may seek to (a) remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.
26. Based on the requirements of the notice, the purpose of the notice is to remedy the breach. This is clear from paragraph 5(b) of the notice which requires that the land is restored to its condition before the breach took place.
27. The appellant states that one of the raised areas (ie raised framed area 4) has already been removed. This is broadly consistent with my observations at my site visit, although it appeared that part of its timber frame remains in situ.
28. But what has been removed makes no difference because section 181(1) of the 1990 Act provides that compliance with any of the requirements shall not discharge the notice. As such, the requirements of an enforcement notice have an enduring effect, such that if there is a later breach of the requirements, section 181(1) means that the breach remains enforceable.
29. Under section 181(3) and (5), if works are removed in compliance with an enforcement notice but development is later carried out to reinstate the works, the enforcement notice is deemed to apply to the works as it applied before they were reinstated. So there is no need for me to vary the requirements on the basis that part of the appeal development has been removed.
30. The appellant considers paragraph 5(b) of the notice to be self-contradictory. This is because the debris to be removed would include spoil that was excavated from the slope. With that spoil removed from the property the slope could not be reinstated and so the garden could not be restored to its condition before the breach took place, as is required by the notice. So in this regard the requirement to remove the spoil is excessive. I shall vary the notice accordingly and the ground (f) appeals succeeds to this extent.

Ground (g)

31. An appeal on ground (g) is that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed.
32. Because of section 180(1) of the 1990 Act and my findings on the ground (a) appeal, the requirements of the notice effectively now bite only in respect of raised framed area 4, which largely appears to have been removed already anyway. In other words, relatively little more is required to comply with the notice.
33. I have taken into account the appellant's concerns about access to the rear of the property and the work having been undertaken by hand. But given the limited amount of work necessary to comply with the notice for the unacceptable part of the appeal development (ie raised framed area 4), I am satisfied that the period for compliance specified in the notice does not fall short of what should reasonably be allowed.
34. I conclude the appeals on ground (g) fail.

Conclusion

35. For the reasons given above, I conclude that Appeal A should succeed in part only. I will grant planning permission for the excavation works and raised framed areas 1, 2 and 3. But otherwise I will uphold the notice with corrections and a variation and refuse to grant planning permission in respect of raised framed area 4.
36. For the reasons given above, I conclude that Appeal B should not succeed. I shall uphold the enforcement notice with corrections and a variation.
37. By virtue of section 180(1) of the 1990 Act as amended, the requirements of the notice will cease to have effect so far as they are inconsistent with the planning permission hereby granted.

Formal Decision

38. It is directed that the enforcement notice is corrected by:
 - the deletion of "hardcore" from paragraph 3 of the notice and its substitution with "spoil";
 - the deletion of "ten years" from paragraph 4 of the notice and its substitution with "four years";
39. It is directed that the enforcement notice is varied by:
 - the deletion of paragraph 5(b) of the notice and its substitution with: "(b) Remove all wooden frames resulting from paragraph 5(a) from the Land and restore the land to its condition before the breach of planning control took place."
40. Subject to these corrections and variation, Appeal A is allowed insofar as it relates to the excavation works and raised framed areas 1, 2 and 3 and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the excavation works and raised framed areas 1, 2 and 3, at 27 Victoria Gardens, Biggin Hill TN16 3DJ.

41. Appeal A is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to raised framed area 4 and planning permission is refused in respect of raised framed area 4, at 27 Victoria Gardens, Biggin Hill TN16 3DJ on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
42. Subject to the corrections and variation, Appeal B is dismissed and the enforcement notice is upheld.

L Perkins

INSPECTOR