The Planning Inspectorate

Appeal Decision

Site visit made on 8 October 2019

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2019

Appeal Ref: APP/G5180/C/18/3218808
16 Romney Drive, Bromley BR1 2TE

- 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 appeal is made by Ms Renfei Li against an enforcement notice issued by the Council of the London Borough of Bromley.
- The enforcement notice was issued on 30 November 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a fence and associated concrete gravel boards extending to a maximum height of 1.9m, together with the installation of a double wooden gate (following the green line on the plan attached to the notice).
- The requirements of the notice are to remove from the Land the unauthorised fence, including the gate and posts and leave the Land in a neat and tidy condition.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Decision

1. 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, as amended, for the development already carried out, namely the erection of a fence and associated concrete gravel boards, together with the installation of a double wooden gate on land at 16 Romney Drive, Bromley BR1 2TE, referred to in the notice.

Procedural Matter

2. The notice was issued in November 2018 and the reasons referred to Policies BE1 and BE7 of the Council's Unitary Development Plan (UDP). Since then, the Council have adopted the Bromley Local Plan (LP) on 16 January 2019 and Policy 37 replaces the previous policy requirements. As the UDP has now been superseded I shall therefore have regard to the new policy in the determination of this appeal.

The ground (a) appeal and the deemed planning application

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area.

Reasons

4. The appeal concerns a detached house situated on the corner of Romney Drive and Newing Green. The entrance to the property is five steps down from Romney Drive. Habitable room windows overlook both Newing Green and the rear garden, which is sited parallel to Romney Drive. A detached garage building is also situated in the rear garden with vehicular access from Romney Drive. The garage door has been removed by the appellant and replaced with a glazed door.

5. The surrounding area comprises a modern residential estate situated on rising ground with a variety of house types. A key feature of the appearance of the estate is the combination of open plan front gardens and extensive landscaping, which has now matured. This has produced a very attractive street scene, which the Council have sought to protect by the removal of permitted development rights for the erection of fences and other means of enclosure.

6. The appellant has removed the fence that formerly enclosed her rear garden, which comprised fence panels supported by concrete posts, and erected a new fence of a similar appearance. This now encloses the adjacent grass verge and the forecourt to the garage, which has the effect of enlarging the rear garden. The new fence is situated next to and level with the back edge of the pavement and returns to meet the outside wall of the garage whereas previously it was sited below the level of the pavement as the grass verge slopes down to the rear garden.

7. The Council are concerned that the new position of the fence results in a loss of openness and harms what is a principal feature of the area. In addition, the grass verge with its three trees contributed to the pleasant appearance of the area.

8. The enclosure of the grass verge and the garage forecourt has resulted in a loss of openness. Policy 37 of the LP requires all development proposals to positively contribute to the existing street scene and respect important views or landscape features. In this case it is the grass verge with the three trees that contribute to the verdant setting of the estate. Whilst the forecourt was open, it was not planted and clearly was used for off street parking. It is my view that cars parked in front of dwellings on the estate interrupt the flow and views of the landscaping, which has been carefully laid out, having regard to the sweeping curve of the principal road, the layout of the houses and changes in levels.

9. The grass verge was narrow in width and short in length. Its contribution to the pleasant appearance of the area was therefore small. Furthermore, the trees planted in the verge have been retained by the appellant, notwithstanding the fact that they are protected by a Tree Preservation Order, and their canopies are clearly visible above the fence. As such, they continue to add to the verdant setting of the estate.

10. Having regard to important views, on entering Romney Drive it is the dwellings set back from the road at Nos 8-14 that form a prominent vista which is probably why there are groups of trees planted in front of Nos 12-14. These immediately soften the appearance of these dwellings and maintain the original woodland setting of the estate described by a third party. On turning the

corner, it is the group of trees planted in front of Nos 9-17 that take the eye forward. The harm caused by the enclosure of the grass verge is therefore modest and I find that the new fence line is not particularly prominent in the street scene. Although the new position of the fence results in a slightly longer run of fence panels, overall the fence has been well designed and is of a sturdy construction. It is also of a similar appearance to the previous fence.

11. The appellant submits that the level of the back garden is about one metre below the level of the road and the new position of the fence improves her privacy and security. Although her submissions on this matter are not elaborated any further, having viewed corner properties elsewhere on the estate, it would appear No 16 is the only one with a back garden that is below the level of the road. Where other houses have a rear garden parallel to the road, the side boundary has been planted with shrubs and residents have allowed them to grow into thick high hedges, thus preserving their privacy and aiding security without repositioning their fencing. At another property, where the same house type as the appeal property has been built, the rear garden is actually higher than the road. Levels of privacy are therefore well preserved even though the fence does not include the grass verge.

12. The Council have submitted before and after photographs of the works and it appears that previously it was possible to see over the top of the fence into the lounge windows of the appeal property when walking along the road. The new fence, although it is of a similar height to that which existed previously, due to its new position, prevents this.

13. The Council and some third parties have expressed concern that the enclosure of the former garage forecourt has resulted in a loss of two off street parking spaces. Other third parties also raise concerns about a new hardstanding, loss of light to No 14, that the fence line includes double gates, precedent and estate covenants.

14. The appellant maintains that the garage could still be used and this is why she has included double gates in the fence line, although I note the previous hard standing has now been turfed. However, I am not aware that the Highway Authority has raised any objection to this arrangement. The new hard standing area that has been created on the corner of the plot is not attacked by the notice and is therefore not before me. Any loss of light to the ground floor habitable rooms at No 14 is considered to be negligible given the front of No 14 generally faces south and given the position of the garage at No 16.

15. I have considered the arguments that the enclosure of the grass verge would set a precedent for similar developments on the rest of the estate. However, no directly similar or compatible sites to which this might apply have been put forward. Each application and appeal must be determined on their individual merits and a generalised concern of this nature does not justify withholding planning permission in this case.

16. Furthermore, I can see no reason why a grant of planning permission would negate or supersede any covenants on the land. Accordingly, issues relating to title and covenants have not had any material bearing on my assessment of the planning issues in this appeal.

17. I have found that the development is contrary to the development plan. However, in terms of the effect of the development on the character and

appearance of the area, the loss of openness is modest, the trees are retained and the design of the fence is acceptable. In addition, the development improves the privacy enjoyed by the occupiers of the property. These are material considerations which, on balance, outweigh my findings in respect of the development plan. For these reasons and in these particular circumstances, I conclude that the development does not harm the objectives of Policy 37. As such, the appeal succeeds on ground (a) and planning permission will be granted. No conditions are necessary as the development was substantially complete when the notice was issued.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

D Fleming

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 28 January 2019

by Susan Wraith Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2019

Appeal Ref: APP/G5180/C/18/3195986
Land at Summer Shaw, 156 Cudham Lane North[1], Cudham, Sevenoaks TN14 7QR

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Chetna Osman [hereafter "the appellant"] against an enforcement notice issued by the Council of the London Borough of Bromley [hereafter "the Council"].
- The notice ref: 16/00344/OPDEV was issued on 15 January 2018.
- The breach of planning control alleged is: Without planning permission the construction of walls, piers and a pair of wooden gates adjacent to the entrance fronting Cudham Lane North, together with associated hardstanding by this entrance.
- The requirements of the notice are:
  1. Remove the wooden gates and piers
  2. Remove the additional piers, walls and associated hardstanding by the entrance
  3. Remove all items associated with (1) and (2) above from the land and restore the Land to its previous condition.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in s174(2)(a), (f) and (g) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.

Decision

1. It is directed that the enforcement notice be corrected in paragraph 2 by the deletion of "156 Cudham Lane, North Cudham" and the substitution of "156 Cudham Lane North, Cudham". Subject to this correction the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under s177(5) of the Act for the development already carried out, namely the construction of walls, piers and a pair of wooden gates adjacent to the entrance fronting Cudham Lane North, together with associated hardstanding by this entrance on land at Summer Shaw, 156 Cudham Lane North, Cudham, Sevenoaks TN14 7QR referred to in the notice.

Matter concerning the enforcement notice

2. In paragraph 2 of the notice the apostrophe after "Cudham Lane" is in the wrong place as the property address is "Cudham Lane North". This is a typographical error which I shall correct under s176(1)(a) of the Act. No injustice will be caused to either party in me so doing.

[1] I have corrected the address from that given in the enforcement notice.

Other preliminary matters

3. There are differences between the parties regarding the extent to which land levels have been changed to accommodate the hardstanding (a matter to which I shall return). Notwithstanding these differences I am satisfied that some works (to a lesser or greater extent) amounting to "formation" and "laying out" have been involved such that the formation of the hardstanding amounts to an "engineering operation". I shall deal with the appeal accordingly.

4. Whilst the term "engineering operation" is not explicitly stated in the notice, the notice clearly targets the "hardstanding" and, thus, encompasses the totality of the works involved in its formation. I do not regard there to be any inconsistency between the notice as drafted and the case now being argued by the Council.

5. I am told that some of the piers, when first built, exceeded the "permitted development" height of 2.0 metres and 1.0 metre where adjacent to the highway. These have since been reduced to the "permitted development" heights. The appeal, however, concerns the circumstances at the time that the notice was issued. I shall proceed on that basis.

The appeal on ground (a) and the deemed application

Planning policies

6. Since issuing the enforcement notice the Council has adopted its new Local Plan – the London Borough of Bromley Local Plan January 2019 [hereafter "BLP"]. Thus the development plan policies relevant to this appeal are policies 37 and 49[2] BLP and policy 7.16 of the London Plan. The policies of the Unitary Development Plan, referred to in the notice, are superseded.

7. Policy 37 BLP seeks to ensure that new development is of a high standard of design and layout and that (amongst other things) it contributes to the existing street scene and landscape.

8. Policy 49 BLP and policy 7.16 of the London Plan together presume against inappropriate development in the Green Belt unless very special circumstances are demonstrated that clearly outweigh the harm by reason of inappropriateness or any other harm.

9. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise[3].

10. National planning policy is set out in the National Planning Policy Framework [hereafter "the Framework"]. Chapter 12 advises on achieving well-designed places. Paragraphs 143 – 146 advise on the approach to determining applications for proposals in the Green Belt.

11. Policies 37 and 49 BLP are from an up-to-date development plan and are in conformity with the Framework. London Plan policy 7.16 pre-dates the Framework but is in general conformity with it. This is not a case where the

[2] At the time that the notice was issued these policies were at proposed submission draft stage and were referred to as such in the notice.
[3] S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

Framework indicates a decision other than in accordance with the development plan.

Main issues

12. When having regard to the relevant planning policies and submissions made by the parties I consider the main issues to be:-

    In respect of the hardstanding:

    (i) Whether the development is inappropriate development in the Green Belt; and
    (ii) Effect of the development upon the character and appearance of the area.

    In respect of the walls, piers and gates:

    (iii) Whether the development is inappropriate development in the Green Belt;
    (iv) Effect of the development upon the openness of the Green Belt;
    (v) Effect of the development upon the character and appearance of the area; and
    (vi) Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Whether inappropriate development in the Green Belt – the hardstanding

13. Policy 49, which is entirely consistent with the Framework, states that engineering operations are not inappropriate in the Green Belt subject to the proviso that they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt.

14. It is common ground that there has always been an access at the point where the subject works have now been undertaken. The landform, generally, slopes downwards from the road into the site. The Council says that, in forming the hardstanding, the ground level has been substantially raised. The appellant, on the other hand, says that no significant alterations to the level of the land were made.

15. I am not aware of any survey having been undertaken that records precisely the extent of any change in levels. Neither has any other technical information been given, such as height measurements before and after the works were carried out.

16. Amongst the evidence is a photograph, said to be dated April 2012, which shows the pre-existing access and an unmade track sweeping into the site framed by a hedge. The land at this part appears to be similar in level to much of the hardstanding as it now exists. Any necessary raising of the land would most probably have been within the north west part of the area where the hedge is seen, and a little beyond, in the 2012 photograph.

17. It is, however, possible that such an alteration to land levels could have been achieved by simply re-profiling the land. There is no evidence that material was brought to the land to "fill" the area such that there would have been an effect upon openness.

18. I bear in mind that, according to the appellant, any levelling of land has not been significant. The appellant is well placed to know the extent to which land levels have changed. In the absence of any evidence to the contrary I therefore place weight upon the appellant's description.

19. In all there circumstances I find that the works to form the hardstanding (including any changes to land levels) have had no effect upon the openness of the Green Belt. Being development within an existing residential curtilage the works do not amount to encroachment. Neither does the hardstanding conflict with any other of the purposes of including land in the Green Belt.

20. There are no reasons that take the hardstanding outside of the policy exception for engineering operations. Thus I conclude on this issue that the hardstanding is not inappropriate development in the Green Belt.

Effect upon the character and appearance of the area – the hardstanding

21. Summer Shaw is situated towards the edge of the scattered settlement of Cudham. The boundary of its curtilage fronts Cudham Lane North which is defined by a solid timber fence. Beyond the access to the north the boundary is defined by hedgerow and trees. Cudham Lane North is of quite narrow width. In parts it is lined by greenery and elsewhere, including within the settlement, it is fronted by residences and other properties some of which have brick boundary walls.

22. The opening up of the access together with the hardstanding area beyond has brought about a change to the frontage. However, it does not follow that change is necessarily harmful. To my mind an open access with hardstanding is not an usual feature within the frontage of a residential property. The surfacing of the hardstanding in simple rectangular setts of neutral colour laid in a regular pattern provides a reasonable blend with the village vernacular. Whilst the development is clearly seen from the road I do not consider its effects to be negative upon the character and appearance of the area when compared to the previous situation of solid timber fencing and gates immediately to the site frontage.

23. A further important consideration concerns "permitted development". The appellant argues that there are permitted development rights for the provision of a hard surface in the location of the hardstanding under Class F to Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [hereafter "Class F rights"]. The Council on the other hand, whilst not disputing that the land is within the curtilage of the dwellinghouse, says that Class F rights do not apply as the hard surface is not positioned directly between the principal elevation of the dwelling and the highway.

24. I do not agree with the Council's interpretation. The wording of Class F permits hard surfaces incidental to the enjoyment of the dwellinghouse anywhere within its curtilage subject only to conditions concerning water run off where situated on land between the principal elevation and a highway. These conditions are not applicable to the area where the subject hardstanding is positioned.

25. In most cases the "provision" of a hard surface would involve some works to level and prepare the land. Class F rights would, to my mind, cover such

limited and integral works. It would not, however, cover works that involve significant changes to land levels. The matter is one of fact and degree.

26. As already explained, there is no precise information about the extent to which levels have been changed. There may have been some raising of the land within the north west part of the area although the appellant says that there has been no significant change. In any event I am satisfied that, for its most part (at least), there would be permitted development rights to provide a hard surface on the area that accommodates the subject hardstanding.

27. Permitted development rights derive from Government's intention that householders should have certain freedoms to carry out development at their homes without the need to apply for planning permission. Additionally Class F rights provide a valid fallback position for the appellant. The existence of these permitted development rights, and the extent to which they can be exercised in this general location, is a material consideration to which I attach substantial weight.

28. Even if the subject hardstanding is a little larger at its north west part than could (as a matter of fact and degree) be provided under Part F, no tangible harm arises. The hardstanding is satisfactory in any event on its planning merits.

29. For all these reasons, on this issue, I conclude that the hardstanding is acceptable in terms of its effects upon the character and appearance of the area.

Whether inappropriate development in the Green Belt – the walls, piers and gates

30. Policy 49 states that the construction of new "buildings" in the Green Belt is inappropriate development subject to some exceptions. The term "building" is not defined by the Council's policy as far as I am aware. Neither is it defined in the Framework.

31. The definition of "building" at s336[4] of the Act, includes any "structure or erection" and, thus, would cover walls, piers and gates. However, this definition is for the purposes of the interpretation of "building" where it appears in the Act. It is not for the purpose of interpreting policy. Nevertheless, a reasonable approach is to consider the walls, piers and gates (collectively) as a "building" in terms of policy when having regard to this statutory definition.

32. Thus the walls, piers and gates will be inappropriate development unless one of the exceptions of policy 49 applies.

33. Most of the exceptions do not apply to the circumstances of the appeal development. The works could, however, be considered as a replacement of a "building" under the fourth bullet point as they replace the pre-existing wooden gates and (possibly) a small stretch of the previous boundary structure that fronted the highway[5]. This exception is subject to the proviso that the new "building" is not materially larger than the one it replaces.

[4] S336 of the Act states that the term "building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.
[5] The pre-existing gates and fence are seen in the photograph said to have been taken in 2014.

34. The walls, piers and gates (together) are of discernibly longer length than the former structure as they wrap around the hardstanding. The walls and piers are also of more solid construction, and thus of greater depth, than the previous timber gates and fence.

35. Therefore I find, on this issue, that the walls, piers and gates are materially larger than the structure they replaced and, thus, amount to inappropriate development in the Green Belt.

Effect upon the openness of the Green Belt – the walls, piers and gates

36. The assessment of the effect upon openness is not simply a mathematical exercise. Whilst the walls and piers have added a little extra volume they are essentially two dimensional. Openness is still maintained on one side and the other. In fact, the perception of openness in views from Cudham Lane North is marginally positive when comparing the opened up access with set back walls and gates to the pre-existing situation of solid timber gates and a fence directly fronting the highway.

37. The works do not represent an encroachment because they are within an existing residential curtilage. Neither do they conflict with any of the other Green Belt purposes. Thus, on this issue, on balance I find the overall effect upon the openness of the Green Belt to be neutral and that there is no other Green Belt harm.

Effect upon the character and appearance of the area - the walls, piers and gates

38. Brick walls and buildings are not uncommon within the local built fabric. The walls and piers, together with the muted and simple style gates, to my mind, generally accord with the character and appearance of the area when bearing in mind that they are positioned within an established residential frontage.

39. A further important matter concerns the permitted development rights that are available for the erection of gates, walls, fences etc under Class A to Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [hereafter "Class A Part 2 rights"]. As with the hardstanding, I attach substantial weight to permitted development rights which, under Class A Part 2, would permit the erection of walls, piers and gates up to 2.0m height (1.0m where adjacent to the highway) and which provide a valid fallback position for the appellant.

40. The gates modestly exceed the permitted development height but, bearing in mind they are set back from the highway within a spacious plot, this additional height does not give rise to any tangible harm. Some of the piers were slightly higher[6] when built than the permitted development allowances but, similarly, no discernible harm would have arisen in the context of this development. In a "permitted development" scenario walls piers and gates, substantially the same as the subject structures, could be erected without the need to apply for planning permission.

[6] The appellant says that some of the piers were "slightly higher" than the permitted development allowances. There is no other evidence as to the measurements exactly. I therefore place weight upon the appellant's description. These piers have now been reduced to the permitted development height.

41. In all these circumstances I conclude on this issue that the walls, piers and gates have no adverse effects upon the character and appearance of the area.

Whether very special circumstances exist that justify the development - the walls, piers and gates

42. The lack of harm to openness, to any other Green Belt harm and to the character and appearance of the area together with the fallback position arising from permitted development rights, in my view, clearly outweighs the harm that occurs by reason only of inappropriateness. I consider these circumstances to amount to very special circumstances. Thus the development is justified.

Conclusions on ground (a) and the deemed application

43. On ground (a) I conclude that the hardstanding is not inappropriate development in the Green Belt and neither does it result in harm to the character and appearance of the area.

44. Whilst the walls, piers and gates collectively do amount to inappropriate development the harm that arises by reason of inappropriateness is clearly outweighed by the lack of any other harm and the permitted development fall back position. This part of the development is justified by very special circumstances.

45. Overall, I find no conflict with the cited policies of the development plan. I therefore conclude that the appeal on ground (a) should succeed and that the deemed application should be granted. There are no conditions that have been suggested by either party. Neither do I consider any conditions to be necessary.

Conclusion

46. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. Grounds (f) and (g) do not therefore need to be considered.

Susan Wraith

Inspector

The Planning Inspectorate

Appeal Decisions

Site visit made on 24 September 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 28 October 2019

Appeal A: APP/G5180/C/18/3216957
Appeal B: APP/G5180/C/18/3216958
48 Wickham Road, Beckenham BR3 6LT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr John Evans against an enforcement notice issued by the Council of the London Borough of Bromley. Appeal B is made by Mrs Samantha Evans.
- The enforcement notice was issued on 30 October 2018.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a two storey side extension on the northern elevation of the dwelling which does not accord with the scheme approved, ref 15/01053/FULL6 in that:
    a) an additional entrance has been inserted in the rear elevation of the extension;
    b) an additional internal staircase has been constructed between the ground and first floor of the extension; and
    c) rooflights have been inserted in rear roof slope of the extension.
- The requirements of the notice are:
    a) demolish the unauthorised two storey side extension described in paragraph 3;
    b) restore the dwelling to its previous condition prior to the unauthorised works;
    c) remove from the land any resulting debris.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the 1990 Act as amended. Appeal B is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, Appeal B on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: Appeal A is allowed and the enforcement notice is quashed. Planning permission is granted in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs has been made by Mr and Mrs Evans against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

The Notice

2. The enforcement notice alleges that an additional entrance has been inserted in the rear elevation of the extension. The Council accepts that this entrance was shown on the plans approved under planning permission reference 15/01053/FULL6. Consequently, this aspect of the scheme should not have been specified in the allegation. As the main parties have provided comments on this matter, I am satisfied that I can correct the notice without prejudice to delete this part of the allegation.

The appeal on ground (c)

3. In order to succeed on ground (c), the appellants must show on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control. In this type of appeal, the onus of proof is firmly upon the appellant.

4. Planning permission has been granted for a two-storey side extension and roof alterations to the front[1] (the 2015 permission). The appellants claim that the development was commenced but, prior to completion, their family circumstances changed which required alterations to the scheme.

5. The differences between the approved plan and the development include alterations to the fenestration and internal changes, which would enable the extension to function as a separate dwellinghouse although the appellants state that is not their intention. An application for a two-storey side extension, roof alterations to front and elevational alterations (part retrospective) was subsequently refused[2] (the 2017 application).

6. The appellants argue that the extension, as built at the date of the notice, was a two-storey side extension as set out in the description of development in the 2015 permission. It is contended it is lawful as there is no planning condition requiring the development to be built in accordance with the approved plans.

7. When interpreting planning permissions, the principle is that a planning permission should stand by itself, and the meaning be clear from within the four corners of the document. However, in this case, the application was for full planning permission which must be read with the approved plans[3]. The appellants accept that the development is not in accordance with those plans, hence, there is a breach of planning control.

8. Nonetheless, the appellants argue that the only way to impose a limitation or restriction on a planning permission is by imposing a condition; case law is cited[4]. In *I'm Your Man Ltd* a planning application for the permanent use of buildings was made after a 1995 grant of planning permission for a similar use for 'a temporary period of seven years'. No condition was imposed on the 1995 planning permission requiring cessation of the use after that time. It was held that, in the absence of a condition, the 1995 planning permission was not restricted to a temporary use. *R (oao) Altunkaynak* endorsed that principle. I have considered these judgements but the principles at issue differed significantly from the matters before me, which concerns a development not built in accordance with the approved plans as opposed to use restrictions.

9. I am also referred to *Lambeth LBC*[5] in which the Council attempted to restrict a planning permission through the description of development as opposed to imposing a condition. In this case, the Council is not seeking to restrict the permission but to ensure the development is constructed as approved. Again, the circumstances are different.

[1] Ref 15/01053/FULL6 dated 19 June 2015.
[2] Ref 17/05737/FULL6 dated 27 February 2018.
[3] In *Barnett v SSGLG & East Hants DC* [2008] EWHC 1601 (Admin), [2009] EWCA Civ 476 it was held that a full planning permission must be read with regard to the approved plans.
[4] *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107 and *R (oao) Altunkaynak v Northamptonshire Magistrates Court & Kettering Borough Council* [2012] EWHC 174 (Admin).
[5] *Lambeth LBC v SSCLG SSCLG & Others* [2018] EWCA Civ 844.

10. The appellants make a second argument that the works only affect the interior of the building, therefore, they are not development within the meaning of section 55(2) of the 1990 Act as amended. This does not, however, mean there has not been a breach of planning control. If the extension had been built as approved, and then altered later, it could be argued that the subsequent alterations did not require permission. As explained above, the extension has not been constructed in accordance with the planning permission. I consider that this argument is better considered as fallback position under the ground (a) appeal.

11. The appellants' final point about the alleged additional entrance door has been dealt with by a correction to the notice as set out above.

12. To conclude on this matter, the appellants have not shown on the balance of probability that the matters alleged in the corrected notice do not constitute a breach of planning control. Therefore, the appeals on ground (c) must fail.

Appeal A on ground (a) and the deemed planning application

Preliminary Matter

13. Since issuing the notice the Council has adopted the Bromley Local Plan (January 2019). I am directed to Policies 6, 7 and 37 which the Council says are most relevant and consistent with Policies BE1 and H8 of the now superseded Unitary Development Plan. I have considered the appeal against the 2019 policies.

Reasons

14. The appeal on ground (a) is that planning permission should be granted for the matters alleged in the notice. The terms of the deemed planning application are derived from the allegation. As such, planning permission is sought for a two-storey side extension with rooflights and an internal staircase. For the avoidance of doubt, I have considered the scheme in the first instance on the plans submitted with application reference 17/05737/FULL6, for which permission has been sought previously. The development was not complete at the date of my visit and it is important to be clear on this matter.

15. The appeal property is a two-storey detached house located on a corner plot. A two-storey side extension has been erected on the north elevation projecting towards Brograve Gardens. The Council is concerned that the departures from the approved scheme have created the potential for the two-storey side extension to be used as a separate dwellinghouse. This would be considered unacceptable as it would adversely affect the character and appearance of the area.

16. The Council is not alleging that a material change of use to two separate dwellinghouses has occurred. The concern is focussed on what may happen in the future. This is problematic because, at present, the dwelling remains as a single unit of accommodation. The appellant insists it will stay as such. While two separate dwellings on the site may be unacceptable and contrary to development plan policy, the development before me is an extension. Any subsequent unauthorised change of use would be a matter for enforcement. For this appeal, I must consider the planning issues associated with an extension, the main issue being its effect on the character and appearance of the area.

17. Crucially, the Council accepts there is a valid fallback position in that the 2015 permission is for a very similar extension. The external differences between the schemes are minor and are limited to the fenestration. The Council has not raised any concerns about the rooflights or other differences in the external appearance aside from the rear door, which I have removed from the allegation for the reasons set out above.

18. The Council indicates that a grant of permission for the 2017 scheme would be creating future problems and I am asked to consider amending the notice to ensure the development accords with the 2015 scheme. However, this would serve no useful purpose. If the development were built as per the 2015 scheme, internal alterations could be carried out at some point in the future. Ensuring adherence to the approved plans will not prevent an unauthorised change of use, which the Council would have powers to deal with in any event.

19. Overall, I am unable to find that the extension for which permission is sought has an adverse impact on the character and appearance of the area due to its similarities to the approved scheme. Whether or not the extension may be subject to a change of use in the future is not a relevant to this assessment.

Other Matters

20. I have had regard to the concerns of local residents, the majority of which concern the potential for two separate dwellings and the potentially adverse effects of that form of development. I am aware that there was a letterbox in the door, a separate rear access and dividing boundary treatment, all of which suggested a change of use was intended. However, this had not occurred at the date of the notice. As set out above, I must consider the development before me, which is an extension of a very similar form to that already approved.

Conclusion

21. I find that the development does not have an adverse effect on the character and appearance of the area. It accords with Policies 6 and 37 of the Local Plan which seek to promote high quality design and ensure development complements the host building and is compatible with the surrounding area.

22. Policy 7 states that the extension cannot be severed from the main house. I accept that the extension could potentially be severed but, as explained above, this severance has not occurred. The Council intends the policy to relate to future situations as set in the supporting text. However, the wording of the policy itself is clear "the extension cannot be severed". At present, the extension before me has not been severed and hence the development accords with Policy 7.

23. I have not considered the alternative scheme offered by the appellant as part of this appeal, as I have found the development to be acceptable when considered against the plans submitted with 2017 application. For the avoidance of doubt, I have imposed a plans condition.

24. The Council's suggested condition to limit the occupancy of the extension is not necessary. If the extension is severed to form a separate dwelling such that a material change of use occurs, planning permission would be required.

Conclusion

25. For the reasons given above I conclude that the Appeal A should succeed on ground (a) and planning permission will be granted. Appeal A on grounds (f) and (g) does not therefore need to be considered.

Formal Decision

26. It is directed that the enforcement notice is corrected to delete the following statement from paragraph 3 "*a) an additional entrance has been inserted in the rear elevation of the extension*".

27. Subject to this correction, the Appeal A 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 as amended for the development already carried out, namely the erection of a two storey side extension on land at 48 Wickham Road, Beckenham BR3 6LT referred to in the notice, subject to the following condition:

    1) The development hereby permitted shall be carried out in accordance with the plans dated December 2017, as submitted with application reference 17/05737/FULL6 as follows:

    'proposed front elevation' Ref L(-4) 301.3;
    'proposed rear elevation' Ref L(-4) 304.3;
    'proposed right side elevation' Ref L(-4)302.3;
    'proposed left side elevation' Ref L(-4)303.3;
    'proposed ground floor plan' Ref L(-2) 301.3;
    'proposed first floor plan' Ref L(-2) 302.3.

28. Appeal B on grounds (f) and (g) does not fall to be considered.

Debbie Moore

Inspector