
Appeal Decision

Site visit made on 31 August 2016

by Wendy McKay LLB Solicitor (non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 September 2016

Appeal Ref: APP/B0230/C/16/3147988

rear of 39a, Millfield Road, Luton, Beds, LU3 1RT

- 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 Sherrif Builders against an enforcement notice issued by Luton Borough Council.
- The Council's reference is 14/00277/ISSUE.
- The notice was issued on 29 February 2016.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the land for the storage of building materials, builders equipment and associated plant equipment on the land.
- The requirements of the notice are: (i) Cease the use of the land for the storage of building materials, builders equipment and associated plant equipment; and (ii) Remove building materials, builders waste materials, builders equipment and associated plant equipment and any other ancillary items associated with the unauthorised use from the land.
- The period for compliance with the requirements is 2 calendar months.
- The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

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

The appeal on ground (a) and the deemed application for planning permission

Main Issues

1. The main issues are first, the effect that the development would have on the character and appearance of the surrounding residential area, and secondly, the implications for the living conditions of neighbours with particular regard to noise and disturbance.

The Development Plan and other policies

2. The Development Plan for the area includes the 'saved' policies of the Luton Local Plan 2001-2011 which was adopted in 2006. The relevant policies are Policy H1 – Existing housing; Policy LP1 – Sustainable development strategy; and Policy ENV9 – Design principles.
3. Turning to national guidance, the Government issued the National Planning Policy Framework, "*the Framework*", in March 2012. It explains that planning law requires that applications for planning permission must be determined in

accordance with the Development Plan unless material considerations indicate otherwise.¹ It identifies as one of the core planning principles to “*always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.*”

4. I find the relevant Development Plan policies in this case to be consistent with the Framework and full weight in accordance with their statutory status should therefore be attached to them.

Reasons

5. The appeal site is located within a residential area. The site access is gained via a driveway between existing residential properties fronting Millfield Road. The plot occupies space to the rear of the frontage properties and immediately adjacent to their rear garden areas. The unauthorised use therefore takes place in very close proximity to residential properties.
6. The use of the site for the storage of building materials, builders’ equipment and associated plant equipment represents an incongruous activity that is clearly out of keeping with the residential character of the surrounding area. Furthermore, given the proximity to residential properties, the activity within the plot would inevitably result in an unacceptable level of noise and disturbance being experienced by neighbouring occupiers. These are not objections which could be satisfactorily overcome by planning conditions.
7. The Appellant states that this parcel of land has not been used for residential purposes for well over 10 years and has been separate from the rear gardens of the houses fronting Millfield Road throughout this time. He claims that prior to his acquisition of the site it had been known as a haulage yard and used for car storage. However, there is no Certificate of Lawful Use or Development² before me, or any cogent evidence with the necessary detail, to support the existence of a lawful use of the site for such non-residential purposes. I do not find, on the balance of probabilities, that there is any lawful fall-back position of that nature.
8. The Appellant also explains that a recent application for the erection of a bungalow on the site has been refused by the Council. However, this is the subject of a separate appeal and does not form part of the subject-matter of the appeal before me. The deemed application for planning permission is limited in scope to the development which is specified in the alleged breach of planning control set out in the notice.
9. I conclude that the development would be contrary to Policies LP1, ENV9 and H1 of the Luton Local Plan and the aims of the Framework in relation to the protection of the amenities of existing occupiers.

Formal Conclusion

10. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

² See section 191 of the Town and Country Planning Act 1990 (as amended).

Formal Decision

11. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Wendy McKay
INSPECTOR