



Appeal Decisions

Site visit made on 13 March 2017

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 19 April 2017

Appeal A Ref: APP/B0230/W/16/3163236

73 Crawley Road, Luton LU1 1HX

- 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 Mr Moznu Ali against the decision of Luton Borough Council.
- The application ref 16/01496/FUL, dated 17 August 2016, was refused by notice dated 17 October 2016.
- The development proposed is creation of loft conversion and amendment of construction.

Summary of Decision: The appeal is allowed, and planning permission granted as set out in the formal decision at paragraph 16 below.

Appeal B Ref: APP/B0230/C/16/3156788

Land at 73 Crawley Road, Luton LU1 1HX

- 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 Mr Moznu Ali against an enforcement notice issued by Luton Borough Council.
- The enforcement notice, numbered 915, was issued on 20 July 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a second floor rear facing dormer extension.
- The requirements of the notice are to:
 - (1) Demolish the dormer extension.
 - (2) Make good the roof and all elevations and surfaces of the dwelling on the land affected by the removal of the dormer extension to match the existing and adjoining elevations and surfaces of the said dwelling, and
 - (3) Remove all associated building materials and rubble from the land arising from compliance with step (1) and (2).
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld as set out in the formal decision at paragraph 17 below.

Procedural matter

1. The dormer window has already been constructed. In Appeal A the proposed development comprises building operations that would result in a modified development. It would be materially different to the as built roof extension. I shall proceed on this basis.
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Appeal A – s. 78 appeal

Main issue

2. The effect of the development on: (1) the character and appearance of the host dwelling and that of the locality and (2) neighbour's living conditions having particular regard to visual amenity and outlook.

Reasons - character and appearance

3. No. 73 is an end of terraced dwelling situated within a mainly residential area. It is a two-storey dwelling with accommodation in the roof space. The dormer window occupies the rear and side elevation roof slopes, and forms an L-shaped roof extension. It has a box-like form because of its overall layout and shape. It is set in line with the host building's eaves height.
4. Mr Ali says he was misled by a builder who told him operations were permitted development. He concedes the design is inappropriate given the prominent location of the appeal building, especially when viewed from its rear elevation. I too consider that the dormer window, as built, has an over dominant effect because of its size and scale. The adverse visual effect is accentuated by the use of inappropriate vertical tiles on the external elevation. I find that the design of the dormer window is inconsistent with the simple architectural style of the host building.
5. The proposal is to modify the size and design of the roof addition in order to address concerns about its impact upon the property and built environment. For example it would be set back by about 300 mm, which would significantly reduce its look when seen from the rear elevation. Part of the vertical hung tiles would be removed and replaced by smooth cement render, which would match the external elevation of the main dwelling. In my assessment, these alterations would significantly address my concerns about the environmental impact of the development, because the size and scale of the dormer window would not have a significant adverse visual effect. I shall turn to conditions later.
6. Accordingly, subject to the imposition of suitably worded conditions, the development would comply with design purposes of policy ENV9 of the Luton Plan 2006 ['the LP'], policy LP1 that promotes sustainable development and policy H4, which relates to domestic scale extensions. These local plan policies are broadly consistent with National Planning Policy Framework paragraph 17 and 56.

Living conditions

7. The dormer window includes openings in two bedrooms but these overlook the rear amenity space and car park beyond. There is a small window in its side elevation but it serves a bathroom and is obscure glazed. I consider that the development would not increase the sense of being enclosed, because of the dormer window's elevated position. The bulk and mass of the roof extension would not adversely harm outlook from no. 71, given the location of the property. I conclude that the development would not have a materially harmful effect on neighbours' living conditions. Accordingly, the development would comply with LP policies H4 and LP1, as well as NPPF paragraph 17 and 56.

Other matters and conditions

8. I do not consider that additional habitable space would create demand for more kerbside parking. A domestic extension of this type is unlikely to generate need for

off-street car parking space. There is no evidence of parking stress and, in any event, on-street parking is controlled. There is therefore no material conflict with LP policies LP1 and T3.

9. The dormer window has already been constructed but development that is subject of Appeal A is yet to be implemented; commencement condition is therefore necessary. In the interest of safeguarding the visual amenities of the locality, external surfaces of the development should be constructed in the materials shown on the approved plans. The development needs to be carried out in accordance with drawing nos. 4847 D21 – ground and first floor, D22 – second floor and roof plan, and D23 – proposed elevations. To ensure that overlooking is prevented the bathroom window should be obscure glazed. These stipulations are necessary and reasonable to make the development acceptable in planning terms and they are enforceable. For all of the above reasons, I conclude that Appeal A should succeed.

Appeal B – s. 174 appeal

10. The notice's purpose is to remedy the breach of planning control by restoration. Mr Ali submits that its terms should be varied to make the dormer window comply with the deemed planning permission granted in Class B Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order. For the following reasons, I disagree.
11. Permitted development rights apply to prospective development and not retrospectively. Bearing in mind that the development, as built, exceeds limitations set out in Class B, I am not persuaded that the notice could be varied as promulgated, as the variation sought requires extensive alterations to the built fabric and structure of the dormer window. Given the nature and scale of the operations, I do not consider a variation of the notice's terms is appropriate. Such a variation has the potential to create interpretation issues and legal debate as to the meaning of the notice's terms. Given the possible sanctions for a failure to comply with the notice, I find that to be an unacceptable outcome. The steps required by the notice do not exceed what is necessary to remedy the breach of planning control. Therefore, ground (f) fails.

Appeals A and B - Overall conclusions

12. Having regard to all other matters, in Appeal A, I conclude that the appeal should be allowed subject to conditions. In Appeal B, I conclude that the requirements are not excessive and the ground (f) appeal fails. To the extent that the planning permission granted by virtue of the s.78 (Appeal A) is inconsistent with the terms of the Notice, s.180 of the Act¹ will ensure that the former prevails.

Formal decisions - Appeal Ref: APP/B0230/W/16/3163236

13. The appeal is allowed and planning permission is granted for creation of loft conversion and amendment of construction at 73 Crawley Road, Luton LU1 1HX in accordance with the terms of the application ref: 16/01496/FUL, dated 17 August 2016 subject to the following conditions:
- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

¹ Where a planning permission is subsequently granted for the same development, or for some part of it, the permission overrides the notice to the extent that its requirements are inconsistent with the planning permission, but the notice does not cease to have effect altogether.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing nos. 4847 D21 – proposed ground and first floor, D22 – proposed second floor and roof plan, and D23 – proposed elevations.
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on drawing nos. 4847 D21 – proposed ground and first floor, D22 – proposed second floor and roof plan, and D23 – proposed elevations.
- 4) The bathroom window shown on drawing no. 4847 D23 – proposed elevations, inserted in the side elevation to the dormer window hereby permitted, shall be fitted with obscured glazing. Once installed the obscured glazing shall be retained thereafter.

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14. The appeal is dismissed and the enforcement notice is upheld.

A U Ghafoor

Inspector