
Appeal Decision

Site visit made on 12 June 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 11 July 2017

Appeal Ref: APP/B0230/C/17//3168395
86 Humberstone Road, Luton LU4 9SS

- 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 Ummer Malik against an enforcement notice issued by Luton Borough Council.
 - The enforcement notice was issued on 4 January 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the Land from a single family dwelling house in to two separate dwellings on the land by the creation of a self-contained flat within a two storey side and rear extension attached to the main dwelling on the land ('the Unlawful Use') and shown in the approximate position hatched green on the plan reference 13/00117/FUL ('the Self-Contained Flat') attached to the notice.
 - The requirements of the notice are
 - (i) Cease the unlawful use of the Land;
 - (ii) Re-instate full internal access from the Self-Contained Flat with the rest of the authorised dwelling on the Land, in accordance with the approved plans reference 13/00117/FUL, plan No 170/103; and
 - (iii) Remove the front door of the Self-Contained Flat and install a window in accordance with the approved plans reference 13/00117/FUL, plan No 170/104.
 - (iv) Remove all associated building and/or waste materials from the Land arising from compliance with steps (ii) and (iii) above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by the deletion of the words in the allegation and the substitution of the words 'without planning permission, the material change of use of the land from a single dwelling house to two separate dwelling houses by the creation of a dwelling within the two storey and single storey side extension to the main dwelling on the land ('the unlawful use') and shown in the approximate position hatched green on the plan reference 13/00117/FUL ('the self-contained unit') attached to the notice'. It is also directed that the enforcement notice is varied by the deletion of the words 'self-contained flat' from paragraphs 5(ii) and 5(iii) and the substitution of the words 'Self-contained unit'. Subject to this correction and variations 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.
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The Notice

2. An enforcement notice must enable every person who receives a copy to know exactly what in the Council's view constitutes the breach of planning control and what they must do to put it right.
3. In this case the description of the development in the enforcement notice is incorrect for two reasons. Firstly, the allegation does not allege that there has been a material change of use and secondly the layout of the extension is as a two storey dwelling not a flat.
4. It is open to me to correct the allegation in the notice to put it in order but this can only be done provided there is no injustice or prejudice to either party. I consider this can be achieved as it is clear from the appellant's appeal submissions that he has not been misled by the incorrect framing of the allegation and that he understands the nature of the breach of planning control. These errors can therefore be corrected without causing injustice.

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

Main Issue

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

Reasons

6. The appeal concerns a detached dwelling situated within a residential area of family-size housing. Humberstone Road is a long, tree-lined road comprising semi-detached houses in the main, with front and rear gardens. Those on the opposite side of the road from the appeal site have narrow gaps between the pairs of dwellings. However, those on the side of the appeal site have larger gaps and many occupiers have added two storey side extensions. The appeal site and neighbouring properties are a small cluster of detached houses in the road some of which, like the appeal site, have been extended to the side.
7. The Council has provided off street parking on what was formerly a grass verge alongside the road though many occupiers have created hard standings in front garden areas to park their cars off the road. Whilst these changes have affected the appearance of the area, the original layout of the dwellings is still apparent and the street trees and remaining gardens in the area contribute towards the attractive character and appearance of the environment.
8. The appellant received planning permission to erect a two storey and single storey extension to the side of the house. This was to be a granny annexe to the main house. Although the extension would have a separate access from the road within the side elevation and be laid out with a kitchen, bathroom, lounge and bedroom area, access was shown linking the annexe internally to the rest of the house.
9. The extension as built differs from the approved plans in that there is no link either at first or ground floor level with the main house. Access to the unit is taken from the front elevation rather than the side and the internal space has been re-configured from what was shown on the plans. For example, a shower room has been fitted at first floor level whereas the plans showed a bathroom at ground floor level. At the time of my site visit the new unit was unoccupied.

10. The National Planning Policy Framework (the Framework) maintains the statutory status of the development plan as the starting point for decision making. It states development that accords with an up to date plan should be approved and development that conflicts should be refused unless other material considerations indicate otherwise.
11. The Council relies on one policy in the enforcement notice to support its position. Policy H2 of the Local Plan (LP)¹ supports additional housing on existing residential land on the basis that the scheme is well sited in relation to surrounding buildings and that it would not be an over-intensive development. I give this policy significant weight as it is consistent with the Framework's requirement to boost the supply of housing provided new homes are of a high quality.
12. I find that the use of the extension as a one bedroom dwelling is out of character with the traditional, three or more bedroom, family housing in the area. Harm also arises from the intensification of the use of the site as there is a difference between occupation as an annexe, where the occupier is part of the family unit, and occupation by unrelated individuals leading separate lives from the family.
13. The appellant submits that the conversion of the extension was undertaken without the need for extensive external alterations. I find though, that the insertion of a door within the front elevation of the extension has meant that the ground floor window is consequently much smaller in comparison to the larger opening with two opening casements and top lights that was shown on the approved plans. The smaller window is also at odds with the prevailing ground floor window pattern in the area. This is generally made up from large bay windows or large windows with a number of casements and top lights.
14. In addition, the appellant argues that the development has resulted in a pair of semi-detached houses which enhances the character and appearance of the street. At the site visit though, I saw that the existing semi-detached houses in the road generally have a balanced appearance with generous front gardens. The use of the extension as a separate dwelling has resulted in an uneven pair of dwellings with the space in front of the smaller unit only being large enough to provide off street parking for one car. Other semi-detached properties in area have space for a garden and a car parking space.
15. Finally with regard to siting and the surrounding area, the appellant points out that the appeal site has a large rear garden which could easily be split into two. The plan accompanying the notice shows that the appeal site has the largest garden in the immediate area. To subdivide it with fencing to provide private open space for the occupiers of the smaller unit would harm the expanse of open gardens in the area which would add to the overall harm caused by the development.
16. With regard to the policy's requirement to avoid over-intensive development, the appellant submits that the Council are mistaken in their over-intensive claim as planning permission was granted for the extension. However, it appears from the Council's submissions that they are concerned about the harm caused by the over-intensive use of the site arising from occupation by two separate households.

¹ Luton Local Plan 2001-2011 adopted 2006 and subsequently saved.

17. The appellant puts forward other considerations to support his appeal such as the use of the extension as a dwelling is sustainable development in accordance with the Framework. The location is in close proximity to public transport; the appellant used a small building company which supports the local economy and a small dwelling widens the choice of accommodation in the area. However, it is clear from paragraph six of the Framework that regard must be had to the document as a whole in determining what sustainable development means in practice for the planning system. I consider that the presumption in favour of sustainable development does not apply in this case given the demonstrable harm I have found to the character and appearance of the area and the consequent conflict with advice in the Framework. I therefore give the appellant's submissions on other considerations little weight.
18. For all these reasons I conclude that the development harms the character and appearance of the surrounding area. It therefore does not accord with Policy H2 of the LP and the appeal on ground (a) fails.

The appeal on ground (f)

19. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council include the phrase 'The reasons for issuing the notice are not only for the purpose of remedying an injury to amenity' in the notice. However, the reasons for issuing the notice do not refer to any harm to the living conditions of neighbours. The notice requires the unauthorised use to cease and that the internal links between the extension and main dwelling should be re-instated. The purpose of the notice must therefore be to remedy the breach of planning control.
20. The appellant submits that the requirement to cease the use is misplaced, to re-instate the doors is not justified and to remove the front door serves no useful purpose but he does not actually offer any lesser steps. The onus is on the appellant to state the precise details of any lesser steps otherwise it is not possible to judge whether the Council's requirements are excessive or not. Unfortunately, in the absence of any stated lesser steps the appeal on ground (f) fails.

Conclusion

21. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the deemed application.

D Fleming

INSPECTOR