
Appeal Decision

Site visit made on 5 September 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 07 September 2017

Appeal Ref: APP/B0230/C/17/3172247

38 Hazelbury Crescent, Luton, LU1 1DG

- 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 1990 Act").
- The appeal is made by Merhban Qurban ("the Appellant") against an Enforcement Notice issued by Luton Borough Council ("the Council").
- The Enforcement Notice, numbered 15/00169/UBO, was issued on 9 February 2017.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission the unauthorised erection of an extension attached to an outbuilding exceeding 130 square metres on the Land, in the approximate position shown hatched green on the plan attached to the Enforcement Notice reference JSM/919 and shown in photographs referenced 1AIEN919 and 1B/EN919 also attached to the Enforcement Notice ("the Extension").
- The requirements of the Enforcement Notice are: (i) Demolish the Extension including its foundations/hardstanding and remove it from the Land. (ii) Remove all associated building materials and rubble and waste materials arising from compliance with step (i) above from the Land. (iii) Restore the land to its condition before the breach took place by levelling the ground.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) & (d) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the Enforcement Notice upheld.

Procedural Matters

1. The correct postcode for 38 Hazelbury Crescent is that stated in the heading above.
2. In this Appeal Decision I will refer to the:
 - a) Building to which the Enforcement Notice relates as "the Extension".
 - b) The land on which the Extension has been built as "the Appeal Site".

Relevant Background Matters

3. The Appellant purchased the Appeal Site in March 2005. At that time it formed part of the rear garden of 31 Kenilworth Road

Reasons

Ground (d) that at the date when the Enforcement Notice was issued, no enforcement action could be taken in respect of the breach of planning control

4. The onus of proving the Ground (d) appeal rests with the Appellant and he has to prove this ground on the balance of probabilities.

5. The Enforcement Notice was issued on 9 February 2017. The Appellant has to show that the Extension was substantially complete on 9 February 2013 if he is to succeed with this Grounds of Appeal.
6. This Ground of Appeal fails because:
 - a) A Google aerial photograph dated 28 August 2013 ("the Aerial Photograph") which includes the Appeal Site shows that the Extension had not been commenced as at that date.
 - b) Mr L. Jones FRICS of Peter Hill Chartered Surveyors acts for the freeholder of Hazelbury Court. Hazelbury Court abuts one side of the Appeal Site. Photographs were provided by Mr Jones ("the Jones Photographs"). The Jones Photographs were taken on 22 August 2013 and 1 October 2014. The Jones Photographs show that building works on the Extension had not been commenced as at those dates.
7. The Appellant has not provided any evidence to discredit the Aerial Photograph or the Jones Photographs.
8. I have had regard to all of the evidence from the Appellant which seeks to establish that the Extension was built sometime in January 2013 but the photographic evidence referred to above clearly discredits those claims.
9. The appeal on Ground (d) fails.

Ground (a) and the deemed planning application – that in respect of the breach of planning control stated in the Enforcement Notice, planning permission ought to be granted

Policy

10. The Development Plan for the area includes saved Policies LP1 and ENV9 of the Luton Local Plan 2001-2011 ("the Local Plan").

Main Issue

11. I consider the main issue is whether the Extension complies with the Local Plan by enhancing the character and appearance of the area.

Reasoning

12. Parts of Avondale Road, Kenilworth Road and Hazelbury Crescent form the boundaries of a roughly triangular area of residential development. The Appeal Site forms part of this triangular area.
13. The Extension is an addition to an outbuilding that was built in the rear garden of No. 38 in 1990 ("the Original Outbuilding"). The Original Outbuilding and the Extension now form a large "L" shaped building.
14. As at the date of my site visit the:
 - a) Original Outbuilding was being used for recreation (the playing table tennis) and as a relaxation area.
 - b) The Extension was being used, amongst other things,:
 - (i) as a home gym,

- (ii) for the playing of pool,
- (iii) for the storage of furniture, decorating equipment, a ladder, boxes and a bicycle.

15. There is no evidence before me that the Extension has ever been used for uses other than those ancillary to the residential use at No. 38.
16. The Extension is a large block built building (largely rendered) with a mono-pitched roof which has been built close to boundaries of the Appeal Site. There are no windows in the side elevations of the Extension (it is lit by roof lights). The rendering of the Extension has been carried out in a rough and ready manner and the external quality of the workmanship appears to be poor. In summary the Extension lacks any attractive design features and cannot be described as a building of any quality. It is not an attractive building to look at.
17. The Extension is not highly visible from the public realm but it is clearly seen from adjoining properties and their garden areas. I am fully aware that there are no neighbouring occupiers who have sought to criticise the Extension and many have praised it not least for replacing an area of land which was uncared for and covered in discarded items. However, that does not mean that the Extension is acceptable when judged against the provisions of the Local Plan.
18. I am aware that the surrounding area includes large outbuildings to the rear of residential properties. The larger outbuildings to which I was referred mainly comprised blocks of garaging for flat developments along Avondale Road. One of these garage blocks appeared to be semi-derelict and, in my opinion, they clearly did not contribute to making this part of Luton an attractive area within which to live.
19. I do not consider that the Extension enhances the character and appearance of an area as required by Policy ENV9 of the Local Plan. I have explained my concern about the materials used in the construction of the Extension and its general unattractive appearance. In my assessment the development of the Appeal Site by the erection of the Extension has failed to maximise the opportunity to improve the physical environment of this part of Luton and thus is contrary to Policy LP1 of the Local Plan.
20. The Local Plan seeks to promote good design and create an attractive built environment and through this strategy development will play an important part in the regeneration of Luton. I have explained above why I do not consider the Extension to be an example of good design and thus it fails to deliver urban renaissance in this part of Luton and thus fails to comply with Policy LP1 of the Local Plan.
21. The Extension is ancillary to the dwelling-house at No. 38 but the lack of any detail in its design means that it does not respect the main dwelling-house at No. 38 and is thus contrary to Policy ENV9 of the Local Plan.
22. I therefore conclude that the Extension fails to comply with the relevant parts of the Local Plan because it does not enhance the character and appearance of the area within which it has been built.

Overall Conclusion

23. 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.

Formal Decision

24. 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.

Tim Belcher

Inspector