



Appeal Decision

Site visit made on 18 December 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 17 April 2018

Appeal Ref: APP/K0235/C/17/3179435

123, 123A and 123B Gladstone Street, Bedford, MK41 7RS

- 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 Act).
 - The appeal is made by Mr Stephen Hartwell against an enforcement notice issued by Bedford Borough Council.
 - The enforcement notice was issued on 9 June 2017.
 - The breach of planning control as alleged in the notice is:
 - (i) Breach of condition 3 of planning permission 06/01165/FUL, the change of use of the building hatched black on the attached plan 2 to a separate dwellinghouse; and
 - (ii) Breach of condition 2 of planning permission 06/01165/FUL, failure to provide car parking and turning areas to serve the flats at 123 and 123A Gladstone Street.
 - The requirements of the notice are:
 - i. Cease the use of the building hatched black on the attached plan 2 as a separate dwelling house;
 - ii. remove the bathroom fixtures and fittings from the building;
 - iii. remove the kitchen fixture and fittings from the building;
 - iv. reinstate the ground floor elevation openings on the front western elevation in accordance with drawing no. R-379-4a of planning permission 06/01165/FUL (attached at Appendix 1);
 - v. provide car parking, turning, and barn areas to serve the flats at 123 and 123A Gladstone Street in accordance with drawing no. R-379-4a of planning permission 06/01165/FUL (attached at Appendix 1); and
 - vi. remove all the resultant waste and debris from the land and premises
 - The period for compliance with the requirements is 3 months for step (i), 4 months for steps (ii and iii), and 6 months for steps (iv, v and vi).
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(b),(c),(e),(f) and (g) of the Act.
-

Decision

1. It is directed that the notice be corrected by:
 - deleting the letter “(b)” in the second line of Section 1, and substituting instead the letter “(a)”;
 - deleting all of paragraphs (i) and (ii) in Section 3, and substituting instead the words “Without planning permission, the material change of use of the building hatched black on the attached plan 2 to a single dwellinghouse”.
2. It is directed that the notice be varied by:

- in Section 5 deleting all of paragraph (v), and re-number paragraph (vi) so as to become paragraph (v);
 - in Section 6 deleting “4 months” in both paragraphs (ii) and (iii) and substituting instead “6 months”;
 - in Section 6 deleting all of paragraph (v), and re-number paragraph (vi) so as to become paragraph (v).
3. Subject to the corrections 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 Act.

Appeal site

4. The appeal site on Gladstone Street comprises a former end of terrace house with side driveway leading to a rear yard area with a 2 storey outbuilding historically used as a blacksmith’s workshop. The house has been converted into 2 flats, one at ground floor (No. 123) and one at first floor (No. 123A). The outbuilding (No. 123B) has been converted into two storey habitable accommodation.

The enforcement notice

5. Section 176(1) of the Act provides a wide ranging power to correct or vary the terms of an enforcement notice provided that would not result in injustice to the parties.
6. The allegation at Section 3(i) of the notice, as drafted, refers to the change of use of the outbuilding to a separate dwellinghouse as being in breach of a planning condition. It is this alleged change of use (being development within section 55 of the Act) that has prevented the parking layout the Council refers to as a breach of condition in Section 3(ii).
7. While I acknowledge that a material change of use of a building may also be in breach of planning conditions, I consider that the primary development alleged to have taken place, and which the notice seeks to attack, is the change of use of the outbuilding to a single dwellinghouse. I therefore consider that the breach would be better described in those terms. I raised this matter with the parties so they could make any further submissions, and so that the appellant had the opportunity of considering any further grounds of appeal and supporting evidence.
8. Subsequently, grounds (b) and (c) were added to the appellant’s existing grounds of appeal (a), (e), (f) and (g) and the parties were able to submit and comment upon further evidence. Given these circumstances, I am satisfied that no injustice to the appellant or the Council would arise by my correcting the notice in the terms I have set out in paragraph 1 above. I have therefore done so using powers available to me under Section 176(1) of the Act.

Appeal on ground (e)

9. An appeal on ground (e) is a claim that a copy of the enforcement notice was not properly served as required by section 172(2) of the 1990 Act.
10. Section 172(2) of the Act requires that a copy of an enforcement notice shall be served (a) on the owner and occupiers of the land to which it relates and

(b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. However, section 176(5) provides that non-service can be disregarded provided that neither the appellant, nor the person who was not served, have been substantially prejudiced by the service failure.

11. Effective service in compliance with section 172(2)(b) can take place by delivering it to the person on whom it is to be served or to whom it is to be given, as provided by section 329(2)(1)(a) of the Act.
12. The appellant states that at the date the notice was issued he had a contract with Bedford Borough Council's Children's Services (BCCS) to provide care for 16 to 18 year old children in the outbuilding. In support of his claim that BCCS is a party with an interest in the land, but was not served with a copy of the notice, a copy of an unsigned assured shorthold tenancy agreement dated 2013, and a copy of a 2015 purchase order have been provided.
13. I find no merit in this argument. The enforcement notice was signed by the Solicitor to the Council on behalf of Bedford Borough Council. I take that to be acting on behalf of the Council as a whole body. BCCS is one of the Council's service areas within the same building address. Hence, rather than being a separate body to the Council, it is integral to and part of the Council as a single organisation. Hence, serving a copy of the notice on its own internal service area would in effect amount to the Council serving a copy on itself. There is no statutory requirement for it to do so. Indeed, such a requirement would serve no purpose given that the Council should be cognisant of its own interests before issuing an enforcement notice.
14. The appeal on ground (e) fails.

Appeal on ground (b)

15. An appeal on ground (b) is a claim that the matters stated in the corrected notice (which may give rise to the breach of planning control) have not occurred as a matter of fact. The date of issue of the enforcement notice is the relevant date for the purposes of this appeal. The burden of proof falls on the appellant and the relevant test of the evidence is on the balance of probabilities.
16. There is no dispute that the outbuilding has been occupied by people for residential purposes. At ground floor the former openings to the detached two storey outbuilding have been infilled and two windows and a central front door with porch have been inserted. At first floor a window and door have been infilled and French doors and a Juliet balcony inserted. Roof lights have also been installed in the roof slopes. These alterations serve the internal layout of rooms that I saw during my visit to the appeal site, which comprise a kitchen and living area at ground floor with 2 bedrooms and a bathroom/toilet at first floor.
17. Taking account of the physical alterations and condition of the building, together with the provision of internal facilities, and their use for normal domestic living purposes by residents, I conclude that the outbuilding is in use as a single dwellinghouse. In coming to this conclusion I have had regard to the Court's judgment in *Gravesham BC v SSE & O'Brien* [1992] 47 P&CR 142; JPL 307.

18. The appellant argues that the outbuilding's use is ancillary to No. 123A. I deal with this in the appeal under ground (c).

19. The appeal on ground (b) fails.

Appeal on ground (c)

20. An appeal on this ground is a claim that the matters alleged in the corrected notice, if they occurred, do not constitute a breach of planning control. The burden of proof falls on the appellant and the relevant test of the evidence is on the balance of probabilities.

21. 'Development' is defined at section 55(1) of the Act to include the making of a material change of use of land, and section 57(1) requires that planning permission is necessary for the carrying out of any development, subject to some specific exclusions. The key question to be answered therefore is whether the change of use to a single dwellinghouse constitutes a *material* change of use, and if so whether it benefits from planning permission.

22. The appellant's evidence is that he is a social worker providing care for 16 to 18 year old children. In this regard the outbuilding provides a level of independent living for its occupiers while having care, support and guidance close at hand due to the appellant's occupation of the flat No. 123A. The appellant considers this to be an ancillary use to the main residential use of his flat such that no material change of use has occurred. It is argued this is similar to the use of a 'granny annex' within the curtilage of a dwellinghouse.

23. However, unlike a family member occupying a granny annex, occupiers of this outbuilding are unrelated to the appellant. The appellant's own evidence indicates they are temporary occupiers, residing there for short periods of time ranging from a few days to approximately 6 weeks, and supplied through a paid contract and tenancy agreement with the Council. Thus, while the nature of the residential use of the outbuilding is connected to the appellant's profession and provision of contracted care as a social worker, its occupation is highly transitory and not related to the residential use of No. 123A as a 'host' dwelling. In land-use planning terms it is wholly different to a scenario where residential use of an annex by a family member might (in some circumstances) be ancillary to the residential use of a main dwellinghouse by other members of the same family. Having regard to these factors, I do not agree with the appellant's contention that the use is ancillary to No. 123A.

24. Notwithstanding the above, the use as a single dwellinghouse also prevents compliance with planning conditions 2 and 3 attached to the extant permission (Ref: 06/01165/FUL) for the 2 flats, and which could only be regularised by the grant of further planning permission. This is a planning consequence of the use which points towards the change of use being a material one. Furthermore, as set out later in the ground (a) appeal, I consider the use results in other material impacts relating to the character of the area, the living conditions of occupiers, and highway considerations. All of these factors indicate to me that the change of use to a single dwelling house is a material one.

25. Drawing all of these factors together, I have already found in the ground (b) appeal that the use of the outbuilding is as a single dwellinghouse. Given the facilities, nature of occupation and residential use of the outbuilding, I consider it is no longer an ancillary outbuilding to the two flats, but instead is a

self-contained dwelling separate from No. 123A. As such, the use of the outbuilding is materially different in character to its previous use. It also results in the planning consequences previously described. I therefore conclude that the use of the outbuilding as a single dwellinghouse results in a material change of use requiring planning permission.

26. The use of the outbuilding as a separate dwellinghouse is not within the scope of planning permission Ref: 06/01165/FUL because condition 3 of that permission required the outbuilding to be used as an ancillary outbuilding in conjunction with the 2 flats, and for no other purpose. No express planning permission has been granted for the material change of use.
27. Since the use does not benefit from planning permission it therefore constitutes a breach of planning control.
28. The appeal on ground (c) fails.

Appeal on ground (a)

29. The ground of appeal is that planning permission should be granted for the use of the outbuilding as a single dwellinghouse.

Main Issues

30. The main issues are the effect of the use of the outbuilding as a single dwellinghouse on:
- (i) the character and appearance of the area;
 - (ii) the living conditions of occupiers of the outbuilding with particular regard to noise and disturbance, and whether there would be adequate private amenity space and privacy for occupiers of the outbuilding and Nos. 123 and 123A;
 - (iii) highway safety.

Reasons

Character and appearance

31. The former terraced house and its modest curtilage is typical of the traditional uniform layout and pattern of development in Gladstone Street and the surrounding residential area. As an end of terrace it differs a little from others by having a side access and 2 storey outbuilding to the rear. The open space within the site is quite limited, particularly between the rear elevation of the 2 flats and the front elevation of the outbuilding.
32. While the appeal building provided a useful secondary outbuilding to the flats (and to the former single house as a workshop), the relationship of uses between buildings has changed markedly. In my view, the current composition of the site as three residential units, comprising 2 flats and a 2 storey single dwellinghouse, is an over-intensive use of the site. Consequently, there is very limited external amenity space within the site for each of the three units.
33. The outbuilding now appears and functions as a dwellinghouse. Its orientation at 90° to the rear of the main building, such that its front elevation windows and door directly face the rear of the 2 flats, is alien to the rear-to-rear relationship of terraced housing in the area, and the spacing between

dwellings. As such, the development results in significant harm to the character and appearance of the area in conflict with Policies BE30, BE37 and H38 of the Bedford Borough Local Plan (2002) (LP) and Policy CP21 of the Bedford Borough Core Strategy and Rural Issues Plan (2008).

Living conditions

34. As already described, the available external space within the site is very limited and I consider that the private amenity space available to the occupiers of all three units to be wholly inadequate. In addition, vehicular use of the driveway and rear area for parking and manoeuvring in such close proximity to the outbuilding and its shared amenity area would result in a harmful degree of noise and disturbance to its occupiers.
35. The upper floor rear windows of No. 123A overlook the front ground floor windows of the outbuilding. Such overlooking in close proximity results in both a real and a perceived loss of privacy for occupiers of the outbuilding.
36. For these reasons, I find that the development results in overlooking and loss of privacy, and noise and disturbance to occupiers of the outbuilding. There would also be an inadequate provision of private amenity space for all three residential units. These factors consequently result in significant harm to the living conditions of occupiers in conflict with LP Policies BE30, BE37 and H38.

Highway safety

37. I acknowledge that the site's location is within reasonable distance to the town centre and other services by walking or public transport. In such cases relevant policies can be applied flexibly and some reduced level of parking can be acceptable.
38. However, the current use of the site for vehicle parking and manoeuvring would be harmful to occupiers' living conditions, as previously described, and thus on-site parking would not be acceptable. Furthermore, it can be reasonably anticipated that each of the three residential units would generate their own associated level of vehicle-borne visitors to and from the site, in respect of future occupiers if not current ones. Given the generated increase in demand for on-street parking, in a terraced street restricted predominantly to on-street parking, it would result in undesirable parking pressure and inconvenience to highway users. Thus, given that the site does not adequately provide a level of on-site parking for the three units I find there to be conflict with Policies BE30 and H38.

Other matters

39. The appellant contends that occupancy of the outbuilding could be restricted by a planning condition to limit its use as an annexe ancillary to No. 123A, including occupation of children in the temporary care of the appellant.
40. As set out in ground (c) I have found the current use not to be ancillary. Moreover, even if such occupation were ancillary to No. 123A, the appellant's evidence indicates that the 16-18 year old occupiers only stay for relatively short periods of time. In such circumstances I consider that transitory occupiers between the ages of 16 to 18 would also require reasonable levels of private amenity space; quiet enjoyment of their living spaces free from

excessive levels of noise and disturbance, and reasonable levels of privacy. For the reasons I have set out above that would not be the case here.

Conclusion on ground (a)

41. For all the above reasons, I conclude that the development results in significant harm to the character and appearance of the area and to the living conditions of all occupiers with regard to the provision of private amenity space. Significant harm to the outbuilding occupiers would also result due to noise and disturbance from vehicle movements, and from loss of privacy due to overlooking of ground floor windows. There is also an inadequate level of space within the site for parking and manoeuvring. Overall, it would not constitute sustainable development and planning conditions would not overcome this harm.
42. As such, the development conflicts with the requirements of the previously referred to Development Plan policies. It also conflicts with the Framework¹ which sets out as a core principle the need to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
43. The appeal on ground (a) therefore fails.

Appeal on ground (f)

44. The ground of appeal is that the steps required to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters alleged in the notice, or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
45. Having regard to the corrected notice, I consider that requirement (i) goes no further than remedying the breach by requiring the use of the outbuilding as a dwellinghouse to cease. It cannot therefore be an excessive requirement. Requirements (ii) to (iv) require the removal of works and restoration of openings that were carried out to facilitate the breach. I consider them to be the minimum necessary in order to ensure that the unauthorised use of the outbuilding, and its resulting harm to the character and appearance of the area and to living conditions, permanently ceases.
46. Sufficient space for parking for the two flats would be provided following compliance with requirements (i) to (iv). Requirement (v) therefore seems unnecessary in order to overcome the identified harm and to remedy the breach. To this limited extent the appeal on ground (f) succeeds and I have varied the notice accordingly by deleting requirement (v).
47. In all other respects the appeal on ground (f) fails.

Appeal on ground (g)

48. The ground of appeal is that the period for compliance falls unreasonably short of what should be allowed. The appellant seeks a period of 12 months for requirement (i) and a further 6 months for the remaining requirements.

¹ National Planning Policy Framework (2012), Paragraph 17.

49. Given that the occupiers of the appeal building only stay for relatively short periods of time, ranging from a few days to approximately 6 weeks, I find the 12 months period sought by the appellant is unjustified. While the Council may or may not need to find alternative care facilities elsewhere, that is a matter for the Council. There is no other convincing evidence before me to justify extending the 3 month period for requirement (i).
50. Scheduling of contractors, and any other arrangements that need to be put in place in order to carry out the remedial works specified by requirements (ii) to (v) in the corrected notice, can be made in advance of the cessation of use. However, given the need to carry out remedial works during hours that would minimise disruption and noise to surrounding residents, and mindful of the restricted site area, I accept that more time may be necessary in order to fully complete the works.
51. I will therefore allow a period of 6 months, from the date of this decision, to complete requirements (ii) to (v) which I consider to be more reasonable in all the circumstances.
52. To this limited extent the appeal on ground (g) succeeds and I have varied the periods for compliance with the notice requirements accordingly.

Thomas Shields

INSPECTOR