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## Appeal Decision

Site visit made on 2 July 2019

**by Stephen Brown MA(Cantab) DipArch RIBA**

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

**Decision date: 06 August 2019**

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**Appeal Ref: APP/B0230/C/18/3214949**

**7 Ashburnham Road, Luton LU1 1JN**

- 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 by Mrs Maruam Begum Saddiq against an enforcement notice issued by Luton Borough Council.
- The enforcement notice, number 974, was issued on 28 September 2018.
- The breaches of planning control alleged in the notice are:
  1. The erection of a full width ground floor front portico extension, with tiled monopitch roof and supporting pillars to the dwellinghouse ("the Extension"),
  2. The installation of white patterned tiled cladding to the ground floor front elevation of the dwellinghouse ('the Cladding') and;
  3. The insertion of brown uPVC doors and side glazing panels into the ground floor front elevation of the dwellinghouse ('the Entrance Doors and Glazed Panels') on the Land.
- The requirements of the notice are to:
  - i. Demolish the Extension
  - ii. Remove the Cladding and Entrance Doors and Glazed Panels from the Land
  - iii. Make good any damage caused to the dwellinghouse on the Land as a result of compliance with steps (i) and (ii) above by using external materials that are of a similar appearance to those used in the construction of the exterior of the dwellinghouse before the unauthorised development was carried out
  - iv. Reinstatement the ground floor front elevation of the dwellinghouse on the Land to its former layout with a white uPVC door and window in the arrangement shown on plan number 01/03 of planning application 18/00384/FULHH.
  - v. Remove all associated building materials and rubble and waste materials arising from compliance with step (i) to (iv) above from the Land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period, and the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.

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### Decision

1. The appeal is allowed on ground (a) insofar as it relates the entrance doors and glazed panels and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for retention of the entrance doors and glazed panels at 7 Ashburnham Road, Luton LU1 1JN.
2. The appeal is dismissed, and the enforcement notice is upheld insofar as it relates to the extension and the cladding, and planning permission is refused on the application deemed to have been made under section 177(5) of the

1990 Act as amended in respect of retention of the extension and the cladding at 7 Ashburnham Road, Luton LU1 1JN.

### **Background matters**

3. The appeal site lies within the Rothesay Conservation Area. I have therefore paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area as required by s.72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
4. An application for retrospective planning permission for construction of a single storey front extension was refused in July 2018<sup>1</sup>. The planning decision notice refers to the applicant as Ms Maryam Saddiq, and the appellant points out that her name is actually Mrs Maruam Begum Saddiq. However, it is clear that the decision notice relates to one and the same property as I am considering on this appeal. I have recorded her name correctly in this decision, and I do not consider the appellant has been caused significant prejudice by the earlier error.

### **The appeal on ground (c)**

5. This ground is that there has not been a breach of planning control. The appellant argues that the replacement entrance doors and glazed panels do not constitute development as defined in The Town and Country Planning Act 1990 as amended (the Act), and that in any case the extension and alterations are permitted under the allowances of Class A, Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
6. S.55(1) of the Act states that except where the context otherwise requires, 'development' means, amongst other things, the carrying out of building or other operations on land. It goes on to say that building operations include operations normally undertaken by a person carrying on business as a builder. S.55(2) then excludes certain operations from what should be taken as development, including those that do not materially affect the external appearance of the building.
7. Before the extension and alterations were carried out there were an entrance door and 3-light casement window on the front elevation at ground floor level. These have been removed, and a single central opening formed with the new double door entrance with glazed panels to either side. This operation would have entailed removal of a door and window, blocking up at least some of the door opening, forming a new larger opening with a lintel, installing the new doors, and making good external and internal finishes. In my opinion all these operations come within those normally undertaken by people carrying on a building business. Furthermore, the alterations have taken place at the front of the house, a few metres back from the pavement and road. Although they are in the shadow of the new extension, they are readily seen in public view, and I consider they have made a material change to the external appearance of the house. These elements of the works should be considered to be development.
8. My reading of the appellant's statement is that the front extension, the tiled cladding, and uPVC entrance doors and side panels as an entirety should be

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<sup>1</sup> Decision notice ref. 18/00384/FULHH, dated 11 July 2018.

regarded as permitted development. In my view all three elements are part and parcel of a single development.

9. Class A of Part 1 to Schedule 2 to the GPDO allows the enlargement, improvement or other alteration of a dwellinghouse. However, paragraph A.1.(e)(i) precludes such allowance if the enlarged part of the dwellinghouse would extend beyond a wall which forms the principal elevation of the original dwellinghouse. In this case the extension is on the principal front elevation and cannot be regarded as permitted development.
10. If the ground (c) argument is brought only with respect to the doors and infill panels, I concur with the Council's view that they would not accord with the condition in paragraph A.3.(a) in that the materials used are not of similar appearance to those used in the construction of the existing dwellinghouse. While the door and window removed were of uPVC construction, the new doors and panels are of entirely different colour.
11. I conclude that the extension and alterations must be considered as development, and that the development does not benefit from permitted development rights. The appeal on ground (c) must therefore fail.

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

12. This ground is that planning permission should be granted for the matters alleged in the notice.
13. From my inspection of the appeal site and surroundings and all that I have read I consider the main issue in this case to be the effect of the development on the street scene in the vicinity of the appeal site, and on the character and appearance of the Rothesay Conservation Area.
14. The original house is detached of three storeys standing on the southern side of Ashburnham Road, slightly to the west of the junction with Brantwood Road on the opposite side. It was probably built in the mid-20<sup>th</sup> century and as such is of a significantly different design from the prevailing 19<sup>th</sup> century red brick houses along this side of the road, and in other nearby streets. It is built of red/brown brick with a red tiled roof. Windows on the first and second floors are arranged as continuous bands across the width to the building, with a spandrel between, now clad in white uPVC tiles. Immediately to the west of the appeal property is a pair of semi-detached houses of similar age, with two-storeys of accommodation above garages at street level.
15. The Conservation Area includes several residential streets developed principally with 19<sup>th</sup> century housing and also the substantial open spaces of the Rothesay Cemetery to the south and Brantwood Park/Dallow Road Recreation Ground to the north. Houses along this part of the southern side of Ashburnham Road are for the most part detached 3-storey of red brick with a variety of projecting bay windows and gables, and with entrance levels raised above street level.
16. The extension of the appeal property runs across the full width of the house and comprises an open-fronted lean-to roof structure with red concrete tiles and rendered side walls. Below the beam along the front edge of the roof are two fluted columns towards the outer ends. The new entrance doors and side panels are described above. The walls to either side of the door opening are tile clad.

17. This open lean-to projection is a prominent feature in the street scene. It is quite uncharacteristic of the area, which is characterised by substantially built red-brick houses of robust construction and detailing, and with virtually no examples of extensions to the front. I note that the beam along the front edge of the extension roof has a significant sag. This gives the extension a somewhat makeshift appearance quite at odds with the prevailing character of solidity. This is exacerbated by the clumsy collision of materials where the top edge of the roof abuts the French doors that previously gave access to a balcony on the front of the house. The fluted columns are conspicuous and highly incongruous. Overall, the design of the extension is poor, and it is a prominent and out of place feature of the area.
18. Although the uPVC entrance doors and glazed side panels are of a different colour from other windows and doors in the front of the house, the new arrangement with a single central opening does not cause any significant harm to the appearance of the house, and the colour itself is recessive. Furthermore, the opening with entrance doors and panels is similar in arrangement to garage doors on nearby houses. While nearly all window and door frames nearby are in white, this is not entirely the case, and in my view this colour difference is not harmful. However, the tiled cladding to either side of the new opening is highly uncharacteristic in the context of the generally traditional brick construction, and I consider this to be harmful to Conservation Area interests.
19. I conclude on the main issue that the extension and tile cladding cause significant harm to the street scene in the vicinity of the appeal site, and to the character and appearance of the Rothesay Conservation Area. These elements of the development do not accord with the development plan, notably with respect to Policies LLP19, LLP25, and LLP30 of the Local Luton Plan of 2017. These policies include aims to ensure that dwelling extensions are of a design and external materials consistent with streetscape and character of the area, are generally of high-quality design, and protect conservation area interests.
20. I further conclude that the entrance doors and glazed panels cause no significant harm to the street scene in the vicinity of the appeal site, or to the character and appearance of the Rothesay Conservation Area. These elements of the development accord with the aims of the development plan in respect of the policies noted above.
21. The harm to heritage interests – in this case the Conservation Area – is less than substantial. Paragraph 196 of the National Planning Policy Framework advises that in such cases the harm should be weighed against the public benefits of the development. In this instance there are no public benefits to weigh against the harm I have found.
22. The appeal on ground (a) therefore fails insofar as it relates to the extension and cladding but succeeds insofar as it relates to the entrance doors and glazed panels, I therefore intend to refuse planning permission for the extension and cladding but grant planning permission for retention of the entrance doors and glazed panels.
23. S.180 of the Act states that if, after the service of a copy of an enforcement notice, planning permission is granted for the retention on land of buildings or works, then the enforcement notice shall cease to have effect in so far as it requires steps to be taken for the demolition or alteration of those buildings or works. This means that I will not vary the requirements of the notice, but

nonetheless the notice will have no effect with respect to the elements granted planning permission.

### **The appeal on ground (f)**

24. This ground is that the requirements of the notice are excessive, and that lesser steps would overcome the Council's objections. The appellant argues that the new entrance doors and glazed panels do not harm the appearance of the house, and that reinstatement of the original door would serve no useful purpose. I have dealt with this matter under ground (a) and intend to grant planning permission for that element of the development. I therefore take no further action on ground (f).

### **The appeal on ground (g)**

25. This ground is that the compliance period is too short. It is argued that 6 months would be a more reasonable period to find a suitable contractor to carry out the required works.
26. In my opinion a contractor could readily be found and instructed within one month, and the required works carried out in the following 2 months. I can see no good reason why the harm caused should continue for longer than necessary. The appeal on ground (g) therefore fails.

### **Conclusions**

27. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed on ground (a) with respect to retention of the entrance doors and glazed panels, and I intend to grant planning permission on the deemed planning application for that element. Otherwise the appeal fails, and I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

***Stephen Brown***

INSPECTOR