
Appeal Decisions

Site visit made on 13 January 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2020

Appeal A Ref: APP/B0230/C/19/3234770

Appeal B Ref: APP/B0230/C/19/3234771

Land at 29 Barbers Lane, Luton, Bedfordshire LU1 2HZ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Sanam Afzal Khan and Appeal B by Mr Majid Mahmood against an enforcement notice issued by Luton Council.
 - The enforcement notice, numbered 986, was issued on 27 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission:
 - (1) The change of use of the Land from (A3) café use (ground floor) and single residential unit of the upper floors; to four self-contained residential units ("The Unlawful Use")
 - (2) The erection of an additional third floor and two storey rear extension to the existing building on the Land ("the Extensions")
 - The requirements of the notice are:
 - (i) Demolish the Extensions; and
 - (ii) cease the Unlawful Use; and
 - (iii) reinstate the ridge height of the building on the Land to its original position using materials to match those of the original building; and
 - (iv) remove all associated building materials and rubble and waste materials arising from compliance with the steps above from the Land.
 - The period for compliance with the requirements is eight calendar months.
 - Both Appeal A and Appeal B are proceeding on the grounds set out in section 174(2)[f] and [g] of the Town and Country Planning Act 1990 as amended.
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Decisions

1. Appeal A and Appeal B are dismissed, and the enforcement notice is upheld.

Procedural Matters

2. The appellants did not attend the site visit, consequently I was unable to access the building. However, on the basis that the appeal was on grounds (f) and (g) only and that the question of whether planning permission should be granted (ground (a)) did not fall to be considered, I decided that I could make my decision without entering the site. Council officers were present but took no part in my considerations in relation to the site visit.
3. The grounds of appeal do not include ground (c) which are that those matters set out on the notice (if they have occurred) do not constitute a breach of planning control. However, they have addressed this ground in their submissions, and I have considered it below.

4. The appellants' statement included reference to original plan details for another site in Luton. This was clearly an error and images of the original plans are provided elsewhere in the submission. Thus, it has not been necessary for me to clarify this issue with the main parties.

Ground (c)

5. An appeal under ground (c) is that the matters alleged in the notice (if they occurred) do not constitute a breach of planning control. This is a legal ground of appeal and the onus of proof lies with the appellants. The standard of proof is the balance of probabilities. In this case the appellants contend that the internal works that have been carried out to convert the building to habitable accommodation do not constitute development. They quote Section 55 (2)(a)(i) and (ii) of the Act in support of this.
6. However, Section 55 (3)(a) specifically provides that the use as two or more separate dwelling houses of any building previously used as a single dwelling house, which includes a flat, involves a material change of use of the building as a whole and each sub-divided flat. On this basis, notwithstanding that the internal works may not constitute development, planning permission is needed for the change of use of the single residential unit of the upper floors to four self-contained residential units and hidden ground (c) fails.

Ground (f)

7. An appeal under ground (f) is on the basis that the steps required by the notice 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 those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
8. The appellants consider that the breach of planning control could be remedied through the approval of planning permission to regularise the unauthorised development, which they have sought to do through the submission of a planning application. However, the application was refused by the Council and a subsequent appeal (Appeal Reference APP/B0230/W/19/3227310) has been dismissed. This remedy is therefore not open to the appellants.
9. The appellants argue that a more proportionate way of mitigating any harm arising from the development would be to lower the fourth-floor level of the building to reflect the subservient relationship to the adjoining listed building which has previously been accepted by the Council. However, there are no details before me to show how the building could be modified in this way. It appears to me that such works would be extensive and the feasibility of them being implemented successfully has not been demonstrated. Furthermore, the resulting building would be so different from that constructed that it could no longer be argued to be the building subject to the allegation.
10. The notice requires that the unlawful use ceases, but it does not require that the ground floor accommodation returns to use as a café. Therefore, the arguments from the appellants that this would also be disproportionate are not relevant to the requirements of the notice.
11. The submissions from the appellants compare the floor to ceiling heights in the current building with those which were provided in the original building and conclude that a reversion to the heights in the original building would not meet

Building Regulations. On this basis they consider that the steps required by the notice are disproportionate. However, this does not amount to an argument that the steps required by the notice exceed what is necessary and in any event the requirement to accord with building regulations is a separate issue for the appellants to resolve.

12. For the reasons set out above the appeals under ground (f) fail.

Ground (g)

13. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellants consider that in order to ensure that current tenants have adequate time to find alternative accommodation and to enable works to be carried out, the period for compliance should be extended to 18 months.

14. As the building is occupied as residential accommodation, the notice would cause the loss of someone's home or other accommodation. Therefore, the right set out under Article 8 of the Human Rights Act 1998 is engaged. However, save for the disruption that finding alternative accommodation would cause the residents, with which I have great sympathy, there is no evidence before me to suggest that such accommodation could not be found within the eight-month compliance period of the notice. As the Council states it has the power to extend the compliance period should this prove necessary.

15. I find that the 8-month period afforded by the notice does not fall short of what is reasonable, and I conclude that the appeals on ground (g) should fail.

Conclusions

16. For the reasons given above I conclude that the appeals should not succeed, and I shall uphold the enforcement notice.

Sarah Dyer

Inspector