



Appeal Decision

Site visit made on 21 January 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 February 2020

Appeal Ref: APP/B0230/C/19/3235968

47 Blundell Road, Luton LU3 1SG

- 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 Abdul Salam Mohammed against an enforcement notice issued by Luton Council.
 - The enforcement notice was issued on 22 July 2019.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the change of use of the Land from a C3 single dwelling house to the unauthorised mixed use of a C3 single dwelling house and A1 shop unit.'
 - The requirements of the notice are:
 - (i) Cease the Unlawful Use
 - (ii) Remove all plumbing and heating items associated with the Unlawful Use from the Land.
 - The period for compliance with the requirements is four calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion of the words 'change of use of the Land from a C3 single dwelling house to the unauthorised mixed use of a C3 single dwelling house and A1 shop unit' in paragraph 3 and the substitution thereto of the words 'the material change of use of the land to a mixed use comprising a dwelling house and use of the outbuilding for the storage of plumbing and heating supplies for sale'.
2. Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

3. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

The Notice

4. The allegation refers to a change of use. This is not an act of development and I will correct the Notice to refer to a material change of use. This will not result in prejudice or injustice to either party.

Appeal on ground (b)

5. This ground of appeal is that those matters alleged in the notice have not occurred.
6. The appellant considers that no A1¹ retail business is operating from the premises. It is for the appellant to demonstrate, on the balance of probabilities, that what is alleged in the notice has not taken place.
7. The allegation refers to Classes C3 and A1 of the Town and Country Planning (Use Classes Order) 1987 (UCO). However, the allegation relates to a mixed use. Reference to use classes in the UCO is inappropriate when identifying a mixed use. A mixed use should be referred to within an allegation by setting out all the actual uses or the component elements of the mixed use.
8. The Council refer to plumbing and heating items in the requirements. The appellant only refers to the use as follows:
 - the storage of plumbing and heating equipment is ancillary to the residential dwelling.
 - the garage is currently being used for the storage of material – paragraph.
 - No customers call to the site. Orders for the materials are generated mainly through telephone calls and ebay online auction.
 - The appellant makes one or two trips per day to the outbuilding depending on orders being received from clients.
 - Deliveries for restocking carried out on average once a month.
 - No sales to visiting members of the public so use considered not to be within Class A1 of the UCO.
9. The outbuilding has shelves and storage units with numerous items of plumbing and heating equipment within it. The purpose of having those items within the building is to sell them to a third party. I consider that the building is being used to facilitate the storage of plumbing and heating items for sale. The correction of the allegation in line with this description would not result in prejudice or injustice to either party.
10. I will therefore correct the allegation to be 'Without planning permission, the material change of use to a mixed use comprising a dwelling house and use of the outbuilding for the storage of plumbing and heating supplies for sale'. The ground (b) appeal succeeds to this extent.

Appeal on ground (c)

11. This ground of appeal is that those matters, if they occurred, did not constitute a breach of planning control.
12. I note that a Lawful Development Certificate (reference 17/01711/LAWP) was issued by the Council for the erection of a detached garage/store after demolition of existing garage. This was on the basis that it satisfied the conditions and limitations of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
13. The appellant considers that operating a business from home is permitted as it does not constitute a material change of use. It is again for the appellant to

¹ This is a reference to Class A1 of the Town and Country Planning (Use Classes Order) 1987.

demonstrate that the use of the outbuilding for the storage of plumbing and heating supplies for sale is not a material change of use.

14. The outbuilding is accessed via the garden of No 47. At the time of my site visit, there was no physical separation between the garden and the outbuilding or the dwelling house. There is a side vehicular access track running along the side boundary of No 47. It serves garages at the rear and there are a large pair of gates on the side boundary of No 47 to enable access into the garden at the appeal site. As such, access to the outbuilding does not require access through the dwelling house. In my view, the appeal site comprising the outbuilding, garden and dwelling house are all within one planning unit.
15. The storage of plumbing and heating supplies for sale, on the evidence available, is operated separately to the dwelling house use. It is a commercial operation and the appellant states he visits the outbuilding once or twice a day to collect items for customers. In addition, the appellant states that there are deliveries to the outbuilding about once a month. The plumbing and heating supplies are not for use within the dwelling house but for sale to customers.
16. The Council has provided diary sheets which indicate that there have been commercial vehicles attending the site. While the appellant disputes this evidence the Council's Officer witnessed a customer collecting some plumbing items at the time of a visit in January 2019. I also appreciate the evidence is from a limited period of time, however, it does contradict the appellant's stated working practices and indicates that commercial vehicles have attended the appeal site and that customers have collected items from the outbuilding at No 47. A photograph have also been provided showing a commercial vehicle on the highway close to the appeal site. While this is not definitive that this vehicle belonged to a customer visiting the appeal site, there is no alternative explanation for that vehicle and it is likely that any customers visiting the appeal outbuilding would park in this area in close proximity to the appeal site.
17. The appellant considers the alleged use is ancillary or incidental to the dwelling house use. A use which is incidental, or ancillary, is where a use or activity would not be expected to be found as an integral part of a use. Incidental uses may change, expand or decrease without constituting a material change as long as they remain subsidiary to the primary purpose of the planning unit as a whole. The use of the outbuilding is not subsidiary to the dwelling house, but a significant use both in area within, and activity at, the planning unit. It is thus not an incidental use.
18. Ancillary uses require some functional relationship between the ancillary use and the primary use. The appellant has not demonstrated a functional relationship between the use of the dwelling house, which is a residential use, and the use of the outbuilding for the storage of plumbing and heating supplies for sale to customers. An ancillary use is one that is normally found not based on the personal choice of the person carrying out both activities together. No substantiated evidence has been provided to demonstrate an ancillary use in this case.
19. The concept of a material change of use is not defined and is a question of fact and degree in any particular case. However, for there to be a material change of use there has to be some significant difference in the character of the activities from what has taken place before.

20. A change may be *de minimis* meaning it is on too small a scale for the law to take account of it. Due to the size of the outbuilding, the amount of stock of plumbing and heating supplies stored within the building, the vehicle activity stated by the appellant including picking up stock and deliveries, and the diary sheets of commercial vehicle activity around the appeal site all provide evidence of a level of activity materially different from a dwelling house use. As such, the establishment of the storage of plumbing and heating supplies for sale use within the outbuilding has resulted in a change to the activity and use of the appeal site. The scale of the use is greater, in my view, than a *de minimus* use and as such, the change is a material change of use.
21. The operation of the outbuilding for the storage of plumbing and heating supplies for sale is not an incidental or ancillary use to the dwelling house. As such the Lawful Development Certificate does not support the appellant's case. It is also of a scale of activity/use which is not *de minimus*. As such, it is a primary use in its own right and part of a mixed use of the planning unit comprising a dwelling house and use of the outbuilding for the storage of plumbing and heating equipment for sale. This is a material change of use from a dwelling house for which planning permission has not been obtained. I therefore find that a material change of use that required planning permission has taken place and the appeal on ground (c) fails.

Appeal on ground a

Main issue

22. The main issue in the ground (a) appeal is the effect of the development on the living conditions of nearby residential occupiers particularly in relation to noise and disturbance.

Reasons

23. No 47 is an end of terrace two storey early 20th century dwelling within a road of predominantly similar properties. There is a primary school nearby. An access track is situated between Nos 45 and 47. The track has locked gates restricting access to the garages to the rear of a number of properties on the road and the outbuilding within the rear garden of No 47.
24. The evidence provided by the Council demonstrates that the use results in disruption to neighbouring residents due to the comings and goings of vehicles, the appellant, and customers in and around the appeal site. I am satisfied that commercial vehicles have visited the appeal site to collect heating and plumbing supplies and this could not be controlled in a satisfactory way were the use to continue. I also accept that customers and the appellant have visited the outbuilding to either deliver or collect supplies and this has caused disturbance to nearby residential occupiers. The access track has been stated to be blocked by visitors or the appellant to the outbuilding. This activity has, in my view, resulted in significant harm to the residential amenities of nearby residential occupiers through vehicle noise and people coming and going from the outbuilding.
25. I have considered whether the imposition of conditions could overcome the harm I have identified. However, due to the narrowness of the access track and proximity of nearby residential occupiers I consider that such harm cannot be adequately mitigated by conditions.

26. The siting of the outbuilding and the type of use taking place, results in vehicles, whether the appellant's or customers, attending the site to deliver or collect plumbing and heating supplies. This, along with people attending the outbuilding results in unacceptable noise and disturbance for the adjacent residential occupiers. This type of activity is out of character with the residential character of the area. As such, the use of the outbuilding is contrary to Policy LLP 1 of the Luton Local Plan 2011-2031 which requires new development to amongst other things preserve or improve the character of the area. It is also contrary to the National Planning Policy Framework which seeks to ensure that developments create places with a high standard of amenity for existing and future users.
27. Although the Council have referred to Policy LLP 19 this relates to development relating to the extension to dwellings and annexes and is not relevant to the development under consideration.

Conclusion on ground (a)

28. For the reasons stated above the appeal on ground (a) fails.

Appeal on ground (f)

29. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. The appellant considers the use should be regularised to ensure the business remains ancillary and, in his view, causes no harm to residential amenity or the character of the area.
30. I have considered under ground (a) whether or not conditions could be imposed to mitigate the harm identified and I have found this would not achieve adequate mitigation. In my view, the requirements of the notice are not excessive to address the objections to the development.
31. For the reasons stated the appeal on ground (f) fails.

Appeal on ground (g)

32. This ground of appeal is that the period of compliance is too short. The compliance period is four calendar months. The appellant considers a period of 9 months would be required to allow adequate time to find alternative appropriate premises to operate from.
33. The steps required are not complex and could reasonably be carried out within the four month period of compliance. While I appreciate that a longer period would allow more time to look for alternative premises, it would unacceptably prolong the significant harm to the amenity of local residents I have identified. I therefore consider that the period for compliance is reasonable and the appeal on ground (g) fails.

Hilda Higenbottam

Inspector