



Appeal Decision

Site visits made on 13 January 2020 and 17 February 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Appeal Ref: APP/W2465/C/19/3231188

Land at 37 and 37A Bruce Street, Leicester

- 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 Jaspal Kullar against an enforcement notice issued by Leicester City Council.
- The enforcement notice was issued on 8 May 2019.
- The breach of planning control as alleged in the notice is without planning permission the construction of a single storey detached building ("the Unauthorised Outbuilding") at the Property on the approximate position, shown hatched black on the attached plan.
- The requirements of the notice are: -
 - 5. 1 Demolish the Unauthorised Outbuilding
 - 5.2. Remove from the Property all rubble and building material which arises from compliance with the above step and restore the site to its previous state and condition.
- The period for compliance with the requirements is eight weeks.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Procedural Matters

1. The original accompanied site visit was arranged for the 13 January 2020. However, the appellant requested a cancellation of that site visit due to the tenant of the shop, that is within part of the appeal site, being unavailable. The Council requested that it would be helpful if I could carry out an unaccompanied site visit on that day. As a result, I carried out an unaccompanied site visit and viewed the appeal site and the surrounding area from the public highway.
2. An accompanied site visit was still required to view parts of the appeal site and this was carried out on the 17 February 2020. However, even though I was able to view the interior of the outbuilding that is affected by the enforcement notice I was not able to view some parts of the interior of the shop unit as I was informed that the tenant was still not available and therefore the keys to it were also not available. I was able to view parts of the shop that were visible through the glazed shopfront.

The ground (a) appeal and deemed planning application

Main Issues

3. The main issues are: -

- The effect on the character and appearance of the area;
- The effect of the development on the living conditions of existing and future occupiers of the appeal site with regard to the ability of the area to assimilate the development.

Reasons

Background

4. The enforcement notice relates to the operational development of the construction of a single storey detached building to the rear of 37 and 37a Bruce Street. Whilst, the evidence before me highlights the potential use/s of the building as the enforcement notice is not aimed at a material change of use, I have dealt with the appeal on the basis that it relates solely to the operational development.
5. Planning applications¹ to retain the outbuilding that has been constructed on the appeal site and to amend the design and materials of the outbuilding have been refused by the Council. I have not been made aware of any appeals made against those decisions. The appellant also submitted a further planning application for the detached outbuilding with a reduced footprint and a hipped pitched roof. However, the Council refused to determine this planning application as it had been submitted after the enforcement notice was issued.

Character and appearance

6. The appeal property is sited on the corner of Bruce Street and Wilberforce Road and part of the ground floor has recently been in use as a hairdressers and tattoo parlour. However, the commercial unit part of the appeal property was not in use at the time of both of my site visits. The information before me indicates that the remainder of the main building is in use as 4 residential flats.
7. The area where the site is located does include a number of commercial uses. Nevertheless, the properties within the immediate vicinity of the site are predominantly traditional terraced housing. The streets are primarily straight arranged in a grid configuration creating a pattern of perimeter blocks. The use of red brick with painted stone surrounds for doors and windows and the repetition of forms and spaces provides a harmonious regularity. Even though, I noted that render has been applied to a few properties in the surrounding area the overriding character and appearance of the area provided by this regularity has not been substantially eroded.
8. During my site visit I noted that, towards most corners of the perimeter blocks in close proximity to the site, there would have been spaces created where the rear of the end property on one street backs on to the side of the end property on the adjoining street. However, in many of those instances the spaces have been infilled to varying degrees with later buildings/extensions.
9. The enforcement notice relates to a single storey detached building which has been built at the rear of the appeal property. The building virtually fills the space between the rear of the main building and rear boundary wall. The building has an 'L' shape footprint with its front elevation being adjacent to the highway boundary. A gate in the boundary wall allows access to a narrow

¹ Ref Nos: 20181847 & 20190447

- walkway and a rear door in the main building. I was informed at the accompanied site visit that the door provided an access to a ground floor room of one of the flats.
10. The infilling of the space to the rear of the property has not harmed the overall character and appearance of the area given my observations above in relation to infilling with later buildings/extensions. Nevertheless, in this case the detached building has a flat roof and its walls have been rendered and painted. It is clearly visible over the boundary wall and its design and materials mean that it has an incongruous appearance that adversely effects the harmonious regularity that characterises the surrounding area.
 11. The appellant refers to the fact that extensions/buildings on similar types of properties have been built in the surrounding area. The full details of them are not before me and such developments tend to be determined upon individual site circumstances. Furthermore, nothing that I saw persuaded me that the development subject of this appeal is acceptable in this location. I have, in any case, determined the appeal on its own merits.
 12. The appellant has stated that a condition could be applied to a planning permission requiring the implementation of the roof and cladding shown in drawing RPD/MAR/2019/023/01 submitted with application 20190447. Nonetheless, the power to grant planning permission in an enforcement appeal is limited by section 177(1)(a) of the 1990 Act to granting planning permission *"in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates"*. I cannot therefore, grant planning permission for alternative proposals, except to the extent that they can be carried out by granting planning permission for the whole or part of the development enforced against.
 13. Whilst, the alteration to the materials cladding the building could be treated as forming part of the development before me the proposed alteration to the roof design would amount to a significant addition to the building. I note that the Council did not refuse the planning application 20190447 with regard to the character and appearance of the area. Nevertheless, this roof alteration would require planning permission to be granted for development that is not, and is not part of, the development enforced against, and I do not have the power to deal with it.
 14. The alteration to the materials would improve the visual appearance of the building. However, it would not overcome the harm highlighted above due to its flat roof design. Whilst reasonably localised in its extent, the effect of the development diminishes and would still diminish, even if clad in brickwork, unacceptably the character and appearance of the surrounding area.
 15. It follows that the development conflicts with Policy CS Policy 3 of the Leicester Core Strategy (CS) which expects, amongst other things, high quality, well designed developments that contribute positively to the character and appearance of the local built environment. Paragraph 213 of the National Planning Policy Framework (the Framework) states that, *'existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework.'* With regard to this paragraph of the Framework I consider that this policy is

consistent with section 12 of the Framework relating to achieving well-designed places and as such the conflict with this policy has full weight.

Living conditions

16. The detached building fills most of the area to the rear of the property. As such, there is only a small space adjacent to the rear door on the main building. This space is capable of accommodating a small number of domestic 'wheelie' bins, but that storage in itself restricts access to the rear door and effectively fills that space.
17. Saved Policy PS10 of the City of Leicester Local Plan (LP) seeks to protect the amenity of existing and future residents by ensuring, amongst other things, that the area has the ability to assimilate the development. The Council has also cited its Residential Amenity Supplementary Planning Document (SPD) and the guidance it contains in relation to the provision of amenity space for flats and it has provided copies of 2 appeal decisions in relation to the weight to be given to the guidance in the SPD. However, I have not been provided with a copy of the SPD and therefore I can give it little weight.
18. In any case, it would appear that only one flat would have had direct access to the area to the rear of the building through the rear door. Moreover, I have little evidence before me to indicate how the rear area was utilised prior to the detached building being erected or in what way the Council considers that the storage of waste bins on the street would harm the amenity of residents.
19. I acknowledge that ideally the rear area, prior to the building being erected, could have provided a storage area for the waste bins for the flats and the commercial unit and an amenity area/s for the occupiers of the flats. However, it is reasonable to consider that it was used as a storage area of the waste bins and served as an informal amenity area for the occupiers of the flat that has direct access through the rear door.
20. As a result, based on the information before me, there is little to indicate that the living conditions or amenity of the occupiers of 3 of the flats, in respect of the provision of amenity space, have materially altered with the detached building in place. Nonetheless, the living conditions of the occupiers of the one flat would be likely to be adversely affected if they do not have access to an amenity space. The small area remaining close to the rear door of the one flat could serve as an amenity area to that flat without the waste bins being stored within it. However, I do not consider that it is of enough size to cater for both and in any case, it does not appear to be of sufficient size to cater for all of the waste bins associated with the property.
21. It is reasonable to consider that the Council's concerns regarding the waste bin storage relate to the visual impact of the bins on the street scene. As the front of the commercial unit is set back from the pavement there is an area that appears to be utilised for waste bin storage in connection with that unit. As such, the waste bin/s in that area is/are not prominent in the street scene and I noted that other commercial and residential properties on Wilberforce Road store bins in similar areas. Consequently, bin storage associated with the commercial unit would not appreciably harm the amenity of existing or future residents.

22. Reasonably, each flat could have its own domestic 'wheelie' bin which means that 4 bins could be stored on the pavement adjacent to the side wall and boundary wall of the property. I acknowledge that due to the nature of the existing terraced housing on Bruce Street that each house appears to store its 'wheelie' bin on the pavement adjacent to its front elevation. This means that these bins do form part of the streetscene. Nevertheless, in this case if the bins associated with the flats were stored on the pavement, given the number of bins concentrated adjacent to the property, they would visually clutter this part of Bruce Street. I consider that this would harm the amenity of nearby residents with regards to the visual appearance of the area.
23. I note that the appellant has stated that a condition could be imposed requiring submission of plans for a revised footprint for the detached building and/or a specified bin storage area. The appellant has submitted a plan² that indicates that the projection at the front of the building could be removed and it also includes a hipped roof on the building. The hipped roof can also not be considered to be part of the development before me for the reasons outlined above in relation to section 177(1)(a) of the 1990 Act. However, if the building was reduced in footprint it may be possible to accommodate bin storage for the flats and an amenity area for the one flat.
24. Nonetheless, given my findings above in relation to the flat roof design of the building, I do not consider that such a reduction in the footprint of the building would overcome the harm identified above.
25. In conclusion, I consider for the reasons given above that the development harms the amenity of existing and future residents. It follows that the development, in this respect, conflicts with saved LP Policy PS10 and with paragraph 127 of the Framework which states, amongst other things, that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users. With regard to paragraph 213 of the Framework I consider that this policy is broadly consistent with paragraph 127 of the Framework and as such the conflict with it has substantial weight.

Other matters

26. I appreciate that the appellant undertook the works in good faith and did not seek to flout the planning regulations. However, this point has not affected my decision, which is based on the planning merits of the development.
27. I accept that the Council has not raised any objections to the development in relation to noise, flooding, contamination, highway safety and parking. However, the absence of harm in these respects is a neutral consideration and does not weigh for or against the development.
28. The detached building appears to provide additional facilities to supplement those available within the commercial unit. The commercial use of the property provides economic and social benefits. Nevertheless, I have little evidence to indicate that the commercial use of that unit is dependent on these additional facilities. Therefore, these considerations do not outweigh the harm identified above.

² Appendix 7 a (1)

Conclusion on ground (a) and the deemed planning application

29. I have found that the development conflicts with CS Policy 3 and saved LP Policy PS10. Consequently, it is contrary to the development plan when read as a whole. In this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.
30. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

The ground (f) appeal

31. The ground of appeal is 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.
32. Given that the requirements in paragraph 5 of the notice require the complete removal of the single storey outbuilding, the purpose of the notice is clearly to remedy the breach of planning control.
33. The appellant has put forward a number of alternatives that could be applied to the development as constructed. However, I have found above that the pitched roofs are not part of the development before me. I have considered the alterations to the materials and footprint of the building as part of the ground (a) appeal.
34. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The appeal on ground (f) fails.

The ground (g) appeal

35. A ground (g) appeal is that any period specified in the notice in accordance with section 173(9) of the 1990 Act falls short of what should reasonably be allowed.
36. The appellant has stated on his appeal form that the period for compliance should be 12 months to give time for the business to adequately source other premises to carry out their work and relocate and to retain contractors to safely demolish the building. Nonetheless, within his statement of case he considers that 6 months will be required to relocate the facilities in the detached building and to demolish it.
37. The facilities provided within the development are limited and as stated above it is not clear that the commercial use is entirely dependent on them. I observed through the shop front that there appears to be, at the least, toilet facilities within the commercial unit. Moreover, given the restricted size of the development and that it is detached from the main building I consider that its demolition would be relatively straightforward and would not require a protracted time period for compliance.
38. Nevertheless, six months would allow the appellant the time to submit to the Council a planning application for an alternative scheme. Consequently, a

reasonable period for compliance would be 6 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

39. The appeal is allowed in part, on ground g, and it is directed that the enforcement notice be varied by: -

- The deletion of 8 weeks and the substitution of 6 months as the period for compliance.

Subject to this variation 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.

D. Boffin

INSPECTOR