The Planning Inspectorate

Appeal Decision

Site visit made on 2 September 2020

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2020

Appeal Ref: APP/B0230/C/19/3241951
Land at 215 New Bedford Road, Luton LU3 1LL

- 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 Moneer Afghan against an enforcement notice issued by Luton Council.
- The enforcement notice, numbered 992, was issued on 25 October 2019.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a timber canopy structure extending from the rear elevation of the dwelling house on the land.
- The requirements of the notice are to:
  i) Demolish the timber canopy structure; and
  ii) Remove all associated building materials and rubble and waste materials arising from compliance with step (i) above from the land.
- The period for compliance with the requirements is 2 months.
- 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.

Decision

1. 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 1990 Act as amended.

The appeal on ground (a)

Main Issues

2. The main issues are:

- the effect of the development on the character and appearance of the house and the area; and
- its effect on the living conditions of the occupiers of the neighbouring 217 New Bedford Road.

Character and appearance

3. No 215 New Bedford Road is a semi-detached house, featuring white-painted walls with dark timber detailing and a tiled roof. The canopy structure targeted by the enforcement notice is of simple, wooden construction. It is at the rear of the property and is positioned between a large conservatory and boundary fence. Consequently, there are no public views of the structure.

4. Nevertheless, a significant part of the structure protrudes above the boundary fence and is in clear view from the rear garden at the adjacent 217 New Bedford Road and from that property's ground and first floor windows. From there, the appearance of the structure is poor. It appears to have been constructed of wooden decking and this gives it a poor quality, somewhat makeshift appearance. The harmful effect of this is exacerbated by the 2 white uPVC windows which clash with the wooden structure. The extensive felt roof is rather basic and shed-like in appearance, reinforcing the rudimentary overall appearance of the structure. The materials, roof shape and makeshift appearance of the addition fail to reflect the character and design of the original house. The open and lightweight appearance of the structure do little to reduce its harmful impact in my view. I do not consider that the building complements wooden features at the neighbouring property, given its poor design and appearance.

5. For these reasons, while I accept that the height of the addition means that it appears subordinate to the original house, I conclude that the development harms the character and appearance of the house and the area. This gives rise to conflict with the aims for design, character and materials within Policies LLP1, LLP19 and LLP25 of the Luton Local Plan. There is conflict too with the aims for good design set out in the National Planning Policy Framework (the Framework). Since there is conflict with the development plan, the presumption in favour of sustainable development set out in the Framework does not indicate that permission should be granted in this instance.

Living conditions

6. Although the extension includes 2 windows facing the neighbouring garden, these are at a high level, above the top of the high boundary fence that separates the properties. Consequently, there is no greater overlooking of the neighbouring property than would be the case without the building. Although I have found the appearance of the structure to be harmful, its limited height means that it is not unduly overbearing or intrusive. Consequently, I find no harm to living conditions and no conflict with policies LLP1, LLP19 or LLP25 in respect of this issue.

Conclusion – ground (a) appeal

7. I appreciate that the canopy provides additional, versatile accommodation for the appellant and his family, but that does not outweigh the harm I have found. Nor does my finding of no harm in respect of living conditions at the neighbouring property alter or outweigh my view regarding the harmful appearance of the building. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

8. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case the Council indicates that the purpose is to remedy the breach of planning control in accordance with (s173(4)(a)). The requirement to remove the structure in its entirety is consistent with that purpose. Accordingly, the requirements do not exceed what is necessary.

9. I accept that adding film to the windows could address any possible overlooking, and note that this has, in fact, already been done. However, that would not address my concerns regarding the appearance of the building. The appellant also suggests removing the windows entirely, but I have insufficient details to judge the visual effect of such a change. In any event, such changes would not remedy the breach of planning control. Accordingly, the notice should not be varied along the lines the appellant suggests and the appeal on ground (f) fails.

The appeal on ground (g)

10. The appellant's case is that the 2 months specified in the notice is insufficient to arrange for a contractor to dismantle the building and to obtain the necessary funding. However, the appeal building is a simple structure which should be relatively straightforward to remove and I have insufficient evidence to justify the 12 months the appellant seeks instead, or any other period. Consequently, the appeal on ground (g) does not succeed.

Peter Willows

INSPECTOR