



Appeal Decision

Site visit made on 2 September 2020

by Thomas Shields MA DipURP MRTPI

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

Decision date: 21 September 2020

Appeal Ref: APP/B0230/C/19/3242960

58 Warden Hill Road, Luton, LU2 7AF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter “the Act”).
- The appeal is made by Mr Kamran Jordan Akhtar against an enforcement notice issued by the Luton Borough Council.
- The enforcement notice was issued on 26 November 2019.
- The breach of planning control as alleged in the notice is without planning permission:
 - (i) the erection of a garage outbuilding (“The Garage”) on the land; and
 - (ii) the change of use of the land from private amenity space to use as a vehicle repair and auto-part storage facility (“The Unlawful use”).
- The requirements of the notice are:
 - (i) Cease the Unlawful Use;
 - (ii) Remove from the land all vehicles, auto parts and equipment connected with the Unlawful Use;
 - (iii) Demolish the garage including, but not limited to its foundations and hardstanding;
 - (iv) Remove all materials resulting from compliance with step (iii) from the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Appeal site and background

1. The houses at even Nos. 58-66 Warden Hill Road sit within rectangular shaped plots with rear gardens all having the same depth. Running along the back of the rear boundaries of these houses is a shared access track which connects to the highway at Warden Hill Gardens. Beyond the access track, generally in line with the rear gardens of Nos. 58-66, are a number of additional plots of land. One of these, identified by the red line on the plan attached to the enforcement notice, is the appeal site.

The Enforcement Notice

2. The plan attached to the notice shows the boundaries of the appeal site in red outline, but it is not further annotated to show the location of the garage building that the notice attacks. An older garage at the front end of the appeal site was demolished some time ago, before the erection of the existing garage and the subsequent issue of the enforcement notice. The footprint of the demolished garage is still shown on the notice plan, because the plan was produced from current Ordinance Survey mapping at the time when the notice was drafted. However, there can be no confusion as to which garage the notice attacks; it being the only one existing on site during the Council’s inspection of

it with the appellant, and subsequently at the date the notice was issued. Hence, while I acknowledge it would have been best practice for the Council to indicate the appeal building on the notice plan, I find the invalidity arguments advanced on behalf of the appellant in this regard to be without merit.

3. Arguments concerning validity of the notice in respect of current and previous uses of the land, and the wording of the requirements at Section 5(iii) of the notice, are more relevant to the appeals made under grounds (b) and (f). I return to these matters later.

The grounds of appeal

4. Separate to the appeals on grounds (a), (f) and (g), the appeals on grounds (b) and (c) are legal grounds of appeal for which the burden of proof, on the balance of probability, rests with the appellant. However, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to dismiss an appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.

The appeal on ground (b)

5. An appeal on ground (b) is a claim that the matters alleged in the notice have not occurred as a matter of fact.

The garage building

6. Given its existence on the appeal site I find on the balance of probability that the erection of the garage, as operational development, has clearly occurred as a matter of fact. Hence, the appeal on ground (b) in respect of this matter fails.

The use of the land

7. It is not clear to me what particular activity or activities the Council considers are or were previously encompassed in "private amenity space". The wide generality of the phrase is not expanded upon to explain the specific land use. However, the presence of the earlier garage on the site to the rear of No. 58, along with other garages on plots to the rear of neighbouring properties, suggests that it included parking and hence some associated vehicle repairs and storage may have taken place, whether by occupiers of those residential properties or otherwise. On that basis the appellant's claimed private incidental use of the appeal site, by his family and himself, for parking and repairs in conjunction with No. 58, would not be inconsistent with "private amenity space". However, the circumstances and nature of the actual use that has taken place will be relevant.
8. In addition to written submissions made on his behalf, the appellant's evidence includes a Statutory Declaration (SD). It sets out that he has lived at No. 58 with his partner and two brothers since March 2017. Following demolition of the former garage he constructed the garage subject of the appeal at the rear of the site, and the land and garage has since been used by himself, together with his partner and brothers, for parking and maintenance of their own vehicles. He occasionally buys spare parts on internet market platforms to maintain and improve their personal cars. He states that they repair and maintain vehicles for their own enjoyment as a hobby with their being no commercial activity.

9. The appellant's SD has the same weight as evidence given on oath in a court of law. He has stated he is aware that he would be liable to prosecution if he knew that anything in it was false or he did not believe to be true. He will also no doubt be aware of the penalties the Court can impose on conviction of such an offence. Given these circumstances I consider he would have been acutely aware of the essential need to provide truthful evidence in submitting a SD. For these reasons I attach significant weight to the appellant's evidence.
10. The Council argue that the intensity and frequency of the use of the site for vehicle repairs and vehicle parts storage, whether for commercial and/or private purposes, has resulted in a new and material change of use. However, I find their evidence to support this assertion to be somewhat unconvincing as set out in the following paragraphs.
11. While the Council state in their statement of case (SOC) that they do not regard the use of the land as comprising *solely* commercial car repairs, there is no evidence before me of any commercial activity. The lack of such evidence of commercial use is consistent with the appellant's claimed private use of the land by his family.
12. In the Council's delegated enforcement report (ER) and their later SOC the Council refer to two site visits by officers, the first unannounced, the second by prior appointment.
13. The SOC states "*Council officers witnessed **significant repairs** occurring on a **number of vehicles at once** during their initial site visit*". However, that differs markedly from the ER report which makes no mention of significant repairs being witnessed on a number of vehicles at once. It refers only to one vehicle on car jacks in a state of repair, with car parts littered across the site. Other cars were said to have driven off, but there is no detailed evidence of how many others, or why they were there. There is no evidence of any of these others undergoing "significant repairs". I appreciate the Council may have encountered an uncooperative response during their first visit, and were prevented from inspecting the inside of the garage, however that does not explain the differing accounts between the ER and SOC of what was witnessed during the visit.
14. The ER is dated 31.07.19, some 5 months after the event, and the SOC produced subsequently. If any records or notes of the officers' conversations and observations on site were made contemporaneously, or soon afterwards, and could have provided a more accurate and reliable picture, it is unfortunate that they have not been submitted in evidence.
15. At the second inspection, the Council state (ER) the site had been significantly cleared in that the car parts were much more organised and the car previously on car jacks had been removed. Also, that the garage contained many items relating to car repair activity and a dismantled car along with some children's toys and an exercise weight bench. Externally on the site were a large number of car parts in a storage shelving area. The Council say (ER) all of this amounts to clear indicators of "extensive car repair activity".
16. I take a different view. The Council's observations on their two visits to the appeal site *could* be indicative of some repairs taking place. However these two inspections alone do not provide witness evidence of "extensive car repair activity" *actually* taking place. While the Council assert (SOC) that it is the

intensity and frequency of repairing activity that has resulted in a material change of use, the evidence before me from just two inspections does not demonstrate any intensity, or indeed frequency, of such activity.

17. As to frequency, the Council also refer (SOC) to “numerous reports” they received from anonymous members of the public. While I understand that, for whatever reason, people may wish to report matters anonymously, the Council’s own complaint records (redacted if necessary) of when and what was reported to them, such as dates, times, vehicle makes, registrations, witnessed activities, have not been submitted. Aside from the two site visits there is no evidence of the outcome of any investigation by the Council of the details of these reported events.
18. Moreover, at odds with the stated “numerous reports” in the SOC, the ER sets out that the Council’s investigation and inspection of the site was made after receiving one single complaint. The Council state (ER) they contacted that complainant again in June 2019, who reported continuing activity. However no specific records of dates and times of any activity, that might have indicated frequency, or the outcome of any investigation of any details of those events with the appellant are before me.
19. Given these factors I am unable to place any significant weight on the anonymous complaints the Council make reference to in their evidence.
20. In addition, I have received objections from occupiers of nearby residential properties in response to being notified of the appeal. They are not anonymous objectors and live close to the appeal site. As such, they would be very likely to have experienced any adverse effects from previous frequent vehicle repair activity. However, they object to the deemed application for planning permission in terms that treat it solely as a proposal, making no mention of any previous extensive car repair activity. Given that they ‘openly’ object one would expect them to have referred to such previous activity and adverse effects. As such, I find them to add a further degree of incongruity with the Council’s assertion that there has been intense and frequent repairing activity that has resulted in adverse effects on amenity.
21. In balancing the parties’ evidence, I attach significant weight to the appellant’s evidence for reasons set out earlier. Against that, I consider the Council’s evidence to be limited in scope and not sufficiently detailed. Indeed, much of the Council’s evidence is not necessarily inconsistent with the appellant’s explanation of his use of the site. The third party representations also do not lend any weighty support to the Council’s case. Additionally, while the building itself is of some size and well equipped, I saw nothing during my own inspection of the site that undermines the appellant’s stated use of the site.
22. Having regard to all of the evidence before me I conclude overall, on the balance of probability, that the alleged change of use of the land *from private amenity space to use as a vehicle repair and auto-part storage facility* has not occurred.
23. The appeal on ground (b) therefore succeeds with regard only to the alleged use. Consequently, I will vary the notice to remove reference to the alleged use in Section 3(ii) and the associated requirements at Section 5(i) and (ii). The remaining grounds of appeal therefore proceed only in relation to the operational development at Section 3(i) of the notice, the garage building.

The appeal on ground (c)

24. An appeal on ground (c) is a claim that the matters alleged in the notice do not constitute a breach of planning control.
25. There is no dispute that the garage building is operational development within the meaning of s55 of the Act and requires planning permission, and that no permitted development rights are available. I have no reason to disagree. Consequently, I conclude that the erection of the garage building constitutes a breach of planning control and the appeal on ground (c) fails.

The appeal on ground (a)/deemed application for planning permission

26. The appeal on ground (a) relates only to the garage building.

Main Issue

27. Having regard to the Council's first reason for issuing the notice (Section 4) I consider the main issue to be the effect of the garage building on the character and appearance of the area.

Reasons

28. The prevailing residential character of the area around the appeal site comprises mainly two storey semi-detached houses, some of which have been extended. The houses are set out in a very traditional regular estate pattern, having regimented uniform lengths and widths of gardens, many of which contain typical domestic garages and outbuildings. The appeal site is one of several plots of land that sit behind the rear gardens of properties to the north on Warden Hill Road. As set out earlier, they are separated from those gardens by the shared access track which runs from east to west. Aside from the appeal site the existing garages and other buildings on these separate rear plots are also of a domestic scale and appearance. The western boundary of the appeal site also forms a border with the rear gardens of four properties in Warden Hill Gardens. Open playing fields are located immediately to the south of the appeal site.
29. Judging from the footprint of the now demolished garage, it was within the range of domestic scale of similar buildings I saw within residential properties in the surrounding area, including those adjacent at the front end of the other separated rear plots of land.
30. However, the building subject of this appeal is considerably larger, measuring approximately 2.6m height x 6.6m width x 10.1m depth, filling almost the entire width of the plot. As such, I find that its massing and presence is noticeably out of scale in the context of the other more modest residential outbuildings in the area previously described. Rather than being reflective of the established residential character of the area, its form and appearance is more akin to a commercial building. Its frontage of wide roller shutter door also appears overtly industrial/commercial in appearance. As such, it further emphasises the building's prominence and its incongruity with the modest scale of outbuildings in the area, starkly at odds with the area's prevailing residential character and appearance. Although the building is located off a track and not noticeable in the street scene, it can nonetheless be seen from a number of vantage points, including from the rear of a number of residential properties.

31. Having regard to all of these factors, taken together, I find that the building results in significant harm to the character and appearance of the area. It thereby conflicts with Policies LLP1 and LLP25 of the Luton Local Plan (2017) which together require all new development to respond to and enhance local character, contributing positively to the distinctiveness and character of an area.
32. I acknowledge that the occupiers of No. 58 would reasonably require garage space for off-street parking and that the appeal site provides such a space. However, I saw that there is off-street parking space on the front driveway of No. 58 for two cars with considerably more space within the appeal site. Thus, the need for such space for parking clear of the highway already exists. While I appreciate the appellant's desire for a garage, it does not justify a garage of the scale of this one which results in the harm I have set out above.
33. I am unable to grant planning permission for something materially different to that which exists and hence any potential significant alterations to the building (rather than demolition as required) would need to be subject of a planning application to the Council in the first instance.
34. I have considered whether the imposition of planning conditions could adequately mitigate the harm I have identified. Limiting use of the garage to the incidental purposes of No. 58 would not overcome the obvious visual harm to the character and appearance of the area I have described. I have considered whether other planning conditions would overcome the identified harm, but consider that there are none that would do so.
35. For all these reasons the appeal on ground (a) therefore fails.

The appeal on ground (f)

36. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach.
37. In this regard the notice requires the removal of the building, foundations and hardstanding. It is clear therefore that the purpose of the notice is to *remedy the breach of planning control*.
38. However, the hardstanding is not referred to in the breach of planning control at Section 3(i) of the notice, and hence requiring its removal goes beyond the breach, as described, and is excessive. It also cannot be removed in connection with the alleged use since the appeal on ground (b) has succeeded. I also acknowledge that the foundations/floor slab of the garage could be used as part of the hardstanding for other incidental purposes within the private amenity space. As such, I consider that complete removal of the garage down to ground level would be sufficient to fully comply with the purpose of the notice. I will therefore vary the notice requirements so as to remove the element requiring removal of the hardstanding, and to require demolition of the garage down to ground level.
39. The appeal on ground (f) therefore succeeds to the limited extent set out above.

The appeal on ground (g)

40. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed. The notice requires compliance within 3 months. The appellant seeks a period of 6 months.
41. I am mindful that the harm resulting from the breach of planning control should be remedied as soon as possible. However, I acknowledge that securing its careful dismantling so that it might be used sustainably elsewhere might take longer than 3 months. Against that, 6 months seems an unduly long period of time which has not been fully justified. In light of all the circumstances I consider on balance that 4 months would be more reasonable.
42. The appeal on ground (g) succeeds to this limited extent and I will vary the notice accordingly.

Formal Decision

43. It is directed that the notice be varied by:
- in Section 3; placing a full stop after the word "Land" in 3(i) and deleting the remainder of 3(i) and deleting the whole of 3(ii); and
 - in Section 5; deleting 5(i) to 5(iv) inclusive and substitute instead the following requirements:-
 - "5(i) Demolish the garage building down to ground level"; and
 - "5(ii) Remove all materials resulting from compliance with 5(i) from the land"; and
 - in Section 6; deleting "three months" and substituting instead "4 months".
44. Subject to the variations 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 Act.

Thomas Shields

INSPECTOR