



Appeal Decision

By Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 29 September 2020

Appeal Ref: APP/B0230/C/19/3235641

38 Williton Road, Luton, Bedfordshire LU2 9EJ

- 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 Tariq Elahi against an enforcement notice issued by Luton Council.
 - The enforcement notice, numbered 961, was issued on 15 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission:
 - (1) The change of use of the Land from a single residential dwelling to three separate residential dwellings, as result of the use of two outbuildings on the Land as residential units ("The Unlawful Use")
 - (2) The erection of an outbuilding on the Land, in the approximate position shown hatched on the plan attached to the notice ("the Outbuilding").
 - The requirements of the notice are to:
 - 1. Cease the Unlawful Use.
 - 2. Demolish the Outbuilding.
 - 3. Remove all debris and material arising from compliance with step 2 from the Land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

2. I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available.
3. The appeal is not proceeding under ground (c) of section 174(2) of the Act (that the matters stated in the notice do not constitute a breach of planning control). None the less, the appellant has made comments within his appeal submissions that both outbuildings are "well within permitted development". However, the appellant is not disputing anywhere in his appeal submissions that the matters stated in the notice have not occurred. That is to say, he appears to accept that the two outbuildings are used as separate dwellings. There are no permitted development rights for the erection and use of new dwellings within the land of a host dwelling, as constituted by the appeal development, and so even were an appeal under ground (c) made it would fail.
4. The appellant says that he asked an architect to make an application for a certificate of lawfulness (LDC), but that no reply was received from the Council. This is not a matter which is determinative in this appeal. However, I do note that the Council has included with its submission correspondence sent in

response to the appellant's LDC application explaining that it was considered withdrawn due to unpaid fees and lack of evidence to support the application.

Ground (d)

5. For an appeal to be successful under this ground, the appellant must satisfy me on the balance of probabilities that, at the date when the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters alleged.

Operational development

6. The main evidence in support of the appellant's case is a letter from Mr Eivardas Guobys dated 1 September 2018 which says "This letter is to confirm that I constructed the (two) outbuildings at 38 Williton Road and work was completed on the 29th September 2014. I attach with this letter a copy of the building plans for your reference". While the burden of proof is on the appellant there is no other substantive evidence submitted by him, and I give very limited weight to the letter as it does not have the same status or authority of a sworn statement or a solemnly made statutory declaration. It is also uncorroborated, apart from what the appellant says occurred, and contradicted directly by officer first-hand accounts and several items of photographic evidence taken over different dates.
7. I apply significant weight to evidence from an officer site visit made in November 2014 when it was recorded that there was no second outbuilding located approximately in the hatched area of the enforcement plan, this evidence being supported by a Google Earth photograph submitted by the Council taken on 19 September 2015 which although not of highest resolution shows only one outbuilding on the land located furthest from the host dwelling. This is consistent with, and accordingly I also give significant weight to, officer evidence of their visit to the appeal site on 9 December 2015 and the photograph taken on that date showing the relatively early stages of construction of the second outbuilding.
8. The Act says that no enforcement action may be taken after the end of 4 years beginning with the date on which building operations constituting the breach were substantially completed¹. As the enforcement notice was issued on 15 July 2019, the relevant date is therefore 15 July 2015. Since the evidence in my judgement clearly shows that the operational development represented by the second outbuilding, with approximate position marked with hatching in the enforcement plan, was not substantially completed by that date then the ground (d) appeal must fail in relation to it.

Change of use

9. Other than in respect to operational development, the Act provides that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach (4 years in respect of change of use of any building to use as a single dwellinghouse)². An unauthorised use must continue throughout the 10-year or 4-year period before it can achieve lawfulness.

¹ Section 171B(1)

² Section 171B(2) and (3)

10. While Mr Guobys' letter refers to the construction of the outbuildings there is no substantive evidence put forward by the appellant as to when they were first used as separate dwellings, or evidence as to the continuity of such use. The burden of proof is on the appellant, and accordingly I am not persuaded on the balance of probabilities that it is now too late for enforcement action to occur in respect to this part of the allegation. This view is strengthened by officer evidence that neither of the outbuildings were in use as living accommodation on the visits referenced above, including the 9 December 2015 photograph showing that both outbuildings were missing fenestration. I am not persuaded by the appellant's argument in the absence of supporting evidence that the photograph could show a first outbuilding (furthest from the host dwelling) in use as living accommodation to its rear with an un-fenestrated household storage area to its front.
11. Accordingly, this part of the ground (d) appeal also fails.

Conclusion

12. For the reasons given above I consider that the appeal should not succeed and I shall uphold the enforcement notice.

Andrew Walker

INSPECTOR