



Appeal Decision

Site visit made on 19 October 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2020

Appeal Ref: APP/B0230/C/20/3252347

Land at 1 Broadacres, Luton, Bedfordshire LU2 7YF

- 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 Parmjit Kaur against an enforcement notice issued by Luton Council.
 - The enforcement notice was issued on 7 April 2020.
 - The breach of planning control as alleged in the notice is without planning permission the erection/provision of:-
 - I. a porch canopy structure with supporting pillars to the front of the dwelling on the Land;
 - II. a side extension to the east elevation of the dwelling on the Land;
 - III. a boundary wall to the east and south of the dwelling on the Land; and
 - IV. hard surface areas to the east and north elevations of the dwelling on the Land(I-IV above are together referred to as the "Unauthorised Development")
 - The requirements of the notice are:
 - (i) Demolish the Unauthorised Development and remove it from the Land.
 - (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 five calendar months after this Notice takes effect.
 - 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.
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Decision

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

Main Issues

2. The main issues are:
 - the effect of the appeal scheme on the character and appearance of the area; and
 - the effect of the appeal scheme on surface water flooding.

Reasons

Character and appearance

3. The appeal property is a detached dwelling located in a prominent location on the corner of Broadacres and Cromer Way. The area is generally residential and is characterised by detached and semi-detached dwellings set back from the road with modest front gardens which are typically open fronted with planting which gives the area a verdant character.

4. Fences and brick walls of around 2m in height are generally found on return boundaries and where a side boundary to property is adjacent to a highway. The materials used in such boundary treatments are generally in keeping with the construction of the respective dwellings and have a similar design using contrasting brick colours. A number of dwellings, including (but not limited to) Number 32 and 47 Broadacres, have modest side extensions which are finished in contrasting brick, reflective of dwelling and wall design. This ensures a degree of uniformity throughout the estate and ensures that the extensions are not obtrusive or dominant features.
5. Policy LLP1 of the Local Luton Plan 2011-2031 (LLP)(2017) seeks to ensure that development preserves or improves the character of the area and Policy LLP19 seeks to ensure that the scale, mass, layout, design and external materials are consistent with and proportionate to the principal dwelling surrounding properties, streetscape and character of the area, amongst other things. Policy LLP25 seeks to ensure that development responds positively to the townscape, street scene, site and building context, form, scale, height, pattern and materials, amongst other things.
6. The appeal dwelling has been extended to the side with a single storey extension finished in grey render. A boundary wall, also finished in grey render, has been constructed which wraps around the rear of the garden and is highly visible from both Broadacres and Cromer Way. The use of grey render contrasts significantly with the materials used in the construction of the dwelling and used in other boundary treatments on the estate. As a consequence, the extension and wall, with associated pillars and substantial concrete slope, appear dominant, incongruous features which diminish the character and appearance of the area.
7. The appellant suggests applying a colour to the render that matches the dwelling and has provided plans setting out how this could look. Whilst the grey colour contributes towards the prominence of the wall and extension, it is the render, with its lack of detailing and solid massing which appears at odds with the more traditional materials used elsewhere in the area. Painting it would not mitigate the harm to the character and appearance of the area. Although the property was previously bound by a fence and brick wall, the wall was constructed in contrasting brick which is characteristic of the area.
8. To the front of the property, a porch has been constructed which extends the width of the dwelling and is finished with brown tiles and white columns. Although porches are a common feature of the estate, they are generally modest and use materials in keeping with their host dwellings¹. Due to its size, it appears a dominant incongruous feature which detracts from the character and appearance of the area. The appellant suggests removing the columns and the canopy retained in its current position. Whilst this would lessen the visual dominance of the porch, there would still be harm because the canopy itself is a dominant feature which is uncharacteristic of the area.
9. The appellant suggests that hard surfaces are a characteristic feature of Broadacres and has drawn my attention to examples within the estate². Whilst I saw that some hard surfacing of front gardens is a common, the extent of

¹ For example, brick columns at numbers 4 and 7 Broadacres.

² 17, 18, 41, 43 and 44 Broadacres

concrete utilised in the appeal scheme is not. Furthermore, front gardens generally retain some soft landscaping which helps soften the visual impact of hard surfaces. The concrete and paving slabs at the appeal site, together with the slope, is a hard, urban feature which, given its prominent location, diminishes the character and appearance of the area.

10. The appeal scheme utilises materials which are at odds with the principal dwelling and surrounding properties, contrary to Policies LLP19 and LLP25 and, fails to preserve the character of the area, contrary to Policy LLP1 of the LLP, the requirements of which are set out above. It would also be contrary to the aim of the National Planning Policy Framework (the 'Framework')(2019) to achieve well-designed places.

Surface water flooding

11. Policy LLP36 of the LLP seeks to minimise the risk and impact of flooding by ensuring that development does not increase the risk of flooding elsewhere, including cumulative impact on adjoining and surrounding land, amongst other things. The hard surfaces that have been constructed of concrete and paving slabs which are impermeable. Along the east of the property there is a substantial slope towards the highway which gives access to a gate. The Highways Authority has objected to the scheme as rainwater from the roof of the new side extension falls onto a newly laid hard surface that discharges directly to the Public Highway which is an offence under Section 163 of the Highways Act 1980.
12. The appellant suggests that this matter is more appropriately dealt with outside the planning remit. However, I do not agree. Although conditions must not be used to control matters that are subject to other primary legislation, I do not consider it unreasonable to ensure that development is capable of compliance with legislation. The hard surfaces would discharge water directly to the highway and increases the risk of flooding elsewhere by having a cumulative impact on the adjacent land. This is contrary to Policy LLP36 of the LLP.

Conclusion on ground (a)

13. Whilst the wall affords the occupants of the dwelling a degree of privacy, the appeal scheme is not the only means of securing the site. The appeal scheme has a harmful effect on the character and appearance of the area and increases the risk of flooding elsewhere. The appeal on ground (a) therefore fails.

Ground (f)

14. An appeal on ground (f) is made on the basis 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. It is clear that the purpose of the Notice is to remedy the breach, since it requires the removal of the unauthorised development in its entirety.
15. Complying with the requirements would leave the rear garden unenclosed which, the appellant asserts, would be unsafe and uncharacteristic of the area. The rear garden would no longer provide private amenity space, which the appellant suggests would be contrary to the requirements of LLP Policy 25 and Appendix 6 of the local plan. The scope of the Enforcement Notice (EN) is

limited by s173(4)(a) and (b). Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. An EN cannot be regarded as null or invalid if it merely requires the removal of unauthorised works without specifying their replacement. It will be for the appellant to seek planning permission for any further works that may be required.

16. Much of the appellant's case under ground (f) relates to the planning merits which I have considered under ground (a) above. The requirements go no further than is necessary to achieve the purpose of remedying the breach and so the appeal under ground (f) must fail.

Ground (g)

17. An appeal on ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant considers a reasonable period for compliance is 12 months in order for alternative remedies to be sought with the Council. Concern has also been raised regarding the effect of the current Covid-19 pandemic and the potential for delay. The Council, however, considers that 12 months would be too long and considers 5 months is an adequate timeframe for an application to be dealt with.
18. I consider 12 months is excessive to seek permission for any further works that may be required. Given the scale of the development, I consider 5 months is sufficient and proportionate, taking into account the potential for delay which may be caused as a result of the Covid-19 pandemic and the likely need to secure planning permission for a revised scheme. Accordingly, the appeal under ground (g) fails.

Conclusion

19. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

M Savage

INSPECTOR