



Appeal Decisions

Site visit made on 18 November 2020

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2020

Appeal A Ref: APP/B0230/C/20/3256507

182 Leagrave Road, Luton, Bedfordshire LU3 1JD

- 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 Mrs Asifa Saba against an enforcement notice issued by Luton Borough Council.
- The enforcement notice was issued on 16 June 2020.
- 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 dwelling house to: (a) the mixed use of one office space and one studio flat on the ground floor, and (b) one two-bedroom flat spanning across the first and second floors.*
(2) *The erection of an external stairwell on the south elevation of the building on the Land.*
(3) *The installation of a first floor rear entrance door on the south elevation of the building on the Land.*
(4) *The installation of a shop front to the principal elevation of the building on the Land.*
- The requirements of the notice are:
 - i. Cease the unlawful uses of the land as specified in (1)(a) and (b) above.
 - ii. Remove all but one kitchen, including all associated fixtures, fittings and appliances from the Land.
 - iii. Remove the external stairwell and rear entrance door.
 - iv. Remove the shopfront and reinstate the previous frontage as shown in the photo attached.
 - v. Remove all associated building materials and rubble and waste materials from the land arising from compliance with the above steps.
- The period for compliance with the requirements is eight [8] calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought under ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeal B Ref: APP/B0230/W/20/3253228

182 Leagrave Road, Luton, Bedfordshire LU3 1JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs A Saba against the decision of Luton Borough Council.
 - The application Ref 19/01297/FUL, dated 30 September 2019, was refused by notice dated 21 April 2020.
 - The development proposed is for a change of use from single family dwellinghouse to one office and one studio flat on the ground floor, and one two-bedroom flat on the first and second floors, together with the installation of a shop front.
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Decisions

1. **Enforcement Appeal A:** The enforcement notice is quashed.
2. **Planning Appeal B:** The appeal is dismissed.

Procedural Matters

3. The Enforcement Appeal A was lodged on ground (a) only. However, the appellant's case refers principally to when various development at the property was undertaken. This raises issues pertinent to a ground (d) appeal, which is that at the date on which the notice was issued it was too late to take enforcement action against the matters alleged. I must deal with this in the interests of natural justice. The Council has been invited to comment and so no prejudice arises from my consideration of these matters and which may well have implications for the alleged breaches of planning control cited in the notice.
4. For Planning Appeal B, the description in the banner heading above is taken from the Council's decision notice as it more accurately describes the development and also refers to the installation of the shopfront. However, I have omitted the word 'retrospective' as it is not an act of development.

Matters Concerning the Enforcement Notice

5. The enforcement notice (the 'notice') sets out a number of allegations that attract a 4 year immunity period. However, the first allegation (1)(a) alleges a change of use from a single dwelling house to *the mixed use of one office space and one studio flat on the ground floor*. The mixed use attracts an immunity period of 10 years.
6. The Council, on being asked to confirm what was on the ground floor when the notice was issued, say that during their initial investigation only one room on the ground floor operated as a self-contained studio unit – the kitchen – and the room to the rear was unoccupied and did not feature any living facilities. And that the studio flat and office constitute one planning unit.
7. On my site visit I saw a ground floor office with a small separate toilet at the rear of the room. Accessed separately from the rear yard was a small ground floor studio flat comprising a kitchen/dining room, a shower room with toilet and a living/sleeping room. Its layout corresponds with the floor plans submitted with the appeal.
8. There is nothing before me to suggest that the internal layout of the ground floor has been altered since the notice was issued. What the Council's officer describes corresponds physically to what I saw, even if it was being used differently at the time.
9. I observed that there was no internal access or linkage between the office and the ground floor studio flat. The studio flat and office each also had separate lockable entrance doors. From what I saw, the ground floor flat was a self-contained dwelling unit.

10. Applying the tests in *Burdle*¹ I find, as a matter of fact and degree, the studio flat and the office are physically separate areas occupied for different and unrelated purposes. Therefore, as a matter of fact and degree, they are physically and functionally separate primary uses. This leads me to conclude that the whole of the ground floor is not a mixed use, but comprises two separate planning units – an office and a studio flat.
11. This has implications for the immunity period for taking enforcement action. The change of use to a dwelling house, which is what the studio flat is, would attract a 4 year immunity period, and the office a 10 year immunity period.
12. I have powers to correct the allegation if no injustice would be caused to either party. But to change this first allegation would reduce the time period for immunity for the studio flat from 10 to 4 years. This would change the way the case has been brought forward and cause injustice to the parties.
13. For the reasons given above I conclude that the enforcement notice does not accurately specify with sufficient clarity the alleged breach of planning control to have taken place. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is therefore invalid and will be quashed.
14. In these circumstances the appeal on ground (a), as set out in section 174(2) of the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended, do not fall to be considered.

Planning Appeal B

Main Issues

15. The main issues in this case are:-
 - The effect of the loss of a family size dwelling on the supply of housing;
 - The effect of the appeal flats and office on the character and appearance of the area;
 - The effect of the shopfront on the character and appearance of the area;
 - The effect on the living conditions of existing occupiers with regard to internal floor area and noise; and
 - The effect on the provision of waste management.

Reasons

Housing supply

16. The appeal property is a Victorian mid-terrace two-storey property with a part two storey and single storey outrigger at the rear. The property sits in a terrace of six similar ones, although the end two units are used as a commercial unit on the ground floor.
17. The building has already been converted. On the ground floor there is an office with a small separate WC. From the plans and what I saw on site, it looks to occupy what would have been two ground floor reception rooms of the original dwellinghouse. On the ground floor of the outrigger is a small

¹ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

studio flat, which comprises a kitchen/diner, a shower room/WC and a bedroom.

18. At the end of the outrigger there is an external brick flight of steps leading to the flat roof of part of the studio flat below. This provides access into the first floor part of the outrigger and another flat. At entrance level there is a kitchen, bathroom, living/dining room and one bedroom. Stairs from the living/dining room lead into the roof space with sloping ceilings, which was being used as a second bedroom.
19. Policy LLP15 of the Luton Local Plan (the 'Local Plan') seeks to make provision for 8,500 new dwellings during the plan period (2011-2031) to meet the Borough's housing needs. It requires the size, type and tenure of new dwellings to reflect the identified housing requirements of the area. In addition, redevelopment of existing housing to other uses will be permitted provided replacement dwellings are provided on or off site or there is an overriding need for the other uses which provide benefits that outweigh the loss of housing.
20. Policy LLP2 looks to provide for the Borough's 8,500 additional dwellings through various means, including extant permissions and allocated housing sites. It also expects employment Class B uses to be delivered through strategic and other employment locations, and town centre uses should be focused on Luton Town Centre, and regional and district centres. Policy LLP1 is a general policy on sustainable development that seeks to deliver homes and jobs through strategic allocations and with Luton Town Centre being the primary location for growth.
21. The Council's Case Officer Report sets out in Table 1 the Borough's identified housing needs alongside historic delivery of housing. This clearly shows that the greatest need is for 3-bed dwellings and the least need for 1-bed units. However, the greatest delivery has been in 1-bed units, with a significant shortfall of 3-bed or more sized dwellings.
22. The conversion of the property into a one-bed studio flat and a 2-bed upper floor flat does result in two residential units, and it could be argued there is a net gain of one dwelling. However, the appeal development has resulted in the loss of a single family sized 2-3 bed dwelling for which there is the greatest housing need and is contrary to policy, and instead created two much smaller units for which there is less need.
23. The Council recognises there is a need for office space within the Borough. However, with the constraints on the availability of land in the Borough it is unlikely that single family dwellings can easily be provided elsewhere in lieu of what is lost. I acknowledge that the appellant runs her office from the premises and she would find it a challenge to move elsewhere. But I noted on my site visit that the office was empty and not in use.
24. The appeal development results in the loss of a family sized dwelling for which there is a proven need, and undermines the Borough's spatial housing strategy. I am not persuaded that the need for an office and two flats outweighs the loss of the family sized dwelling. Accordingly the appeal development is contrary to Local Plan Policies LLP1, LLP2 and LLP15.

Character and appearance

25. The area is predominantly residential, with mainly terraced properties. From my visit I saw, most were in use as single dwellings rather than flats. This tends to encourage families to reside in the area – flats and particularly smaller ones, can alter this mix and change the character of an area.
26. Introducing a ground floor commercial unit with a new shopfront in the middle of a residential terrace of is out of keeping with the prevailing residential character and appearance of the area. In my view it fails to complement the existing residential use of the site and the terrace as a whole, and erodes the predominantly residential character and appearance of the area.
27. I did observe some other properties and short terraces nearby that had retail or commercial uses on the ground floor. The Council advises that a number of these developments came about under different circumstances and planning policy. Therefore they are not directly comparable to the appeal development before me and do not set a precedent. In any event I must consider the appeal proposal on its own merits.
28. Furthermore, as already mentioned, the Council seeks to locate commercial office development in more strategic or town centre locations and seeks to avoid the loss of houses to other uses unless that use outweighs the housing need. I have already found the office use does not override the loss of housing in this location.
29. I therefore find the office use and creation of flats in a terrace of dwellings causes unacceptable harm to the character and appearance of the area. Accordingly it is contrary to Local Plan Policies LLP1, LLP2, LLP13 and LLP25. These collectively seek to ensure that all new development preserves or improves the character of the area, and that business uses are appropriately located to meet the Borough's strategic employment needs.

Shopfront

30. The terrace in which the appeal property sits has a uniformity of design. They all have gable roof features with decorative timber panelling. They also have projecting brick first floor and ground floor bay windows, directly above each other. These are designed as an architectural feature and give each dwelling a strong vertical emphasis and the terrace a distinctive character and appearance that is different from the plainer terraces nearby.
31. A black metal shopfront has been installed in the front ground floor elevation in place of the ground floor projecting bay window. The shopfront has two wide vertical panes of full height glass and a third forms the entrance door. The fascia of the shopfront extends across and beyond the width of the bay window and across what was the front door.
32. The installation of the shopfront has resulted in the removal of a striking design feature that prevails in the terrace and has destroyed the vertical emphasis of the property. And being located in the middle of the terrace of relative uniformity, the shopfront alterations are particularly incongruous, exacerbated by the patch brick repairs do not match the existing bricks. Furthermore, the first floor bay window is left suspended and projects out over the shopfront revealing its underside. I find the shopfront installation has

been poorly executed with little regard to the architectural features of the dwelling and the terrace as whole.

33. The commercial premises at the end of the terrace on the corner with Spencer Road cuts across two units. It is an inappropriate alteration, but its location on the corner gives it a different context. The terraces of properties to the south and north of the appeal property are all shops on the ground floors and there is a variety of shopfront designs. However, the fact these terraces are all ground floor shopfronts creates some degree of uniformity and no one shopfront stands out in isolation. The southern terrace is of a simpler design with no projecting bay windows features. And on the northern terrace some effort has been made to blend the projecting upper floors with the ground floors, unlike with the appeal shopfront. I also saw some other examples of inappropriate isolated shopfronts set within residential terraces along Legrave Road.
34. These examples reinforce my view that allowing another inappropriate shopfront would especially harm the terrace and in turn the harm the wider character and appearance of the area. Nonetheless I must determine the appeal development on its own merits.
35. I find the appeal shopfront, located in the middle of a terrace of residential properties is an inappropriate form of development that causes unacceptable harm the character and appearance of the area. Accordingly it is contrary to Local Plan Policies LLP1 and LLP25 that seek to ensure new development responds positively to the street scene, site and building context and preserves or improves the character of the area. It would also conflict with the Framework that states that permission should be refused for development of poor design that fails to take opportunities for improving the character of the area.

Living conditions

36. The Technical Housing Standards² (the 'national housing standards') set out the minimum gross internal floor area (GIFA) for dwellings of different sizes. A one-bed/one person dwelling of one storey should have a minimum GIFA of 37m². A 2-bed/3 person dwelling over two storeys should have a GIFA of 70m² and a 2-bed/4 person dwelling 79m².
37. The Council says the accommodation is cramped and fails to achieve the national housing standards, but has not provided any substantive evidence to demonstrate that the GIFA for either flat falls below the national housing standards, or an indication of the degree of shortfall.
38. The appellant's agent has submitted a floor plan of the second bedroom in the roof of the upper flat, indicating a floor area of 8.64m² above which the ceiling height is more than 1500mm high. However, this does not inform me whether the flat as a whole meets the national housing standards.
39. From my visit, I observed that the ground floor studio flat was very small and cramped, even without much furniture. With regards the upper floor flat I

² Technical Housing Standards – nationally described space standard - published by MHCLG March 2015

observed a number of beds in the bedroom, and in the bedroom in the roof space the useable floor space was covered with mattresses.

40. This indicates to me cramped accommodation and inadequate floor area to provide the occupants with adequate living conditions. But without substantive evidence to the contrary I am unable to determine if the floor areas of either flat fail to achieve the national housing standards and hence I am unable to conclude whether there is unacceptable harm to the living conditions of the existing occupiers.
41. With regards the Council's concern about internal transference of noise and disturbance from the office to the flats. The flats and office already exist and I have not been presented with any substantive evidence from the residents or the Council that the office has caused, or is causing, unacceptable noise to residents of the flats. The Council's Environmental Health Officer raises no objection, but does suggest conditions to restrict the hours the office is open to the public and when commercial deliveries can be made.
42. The office is a single room accessed from the street, although access from the rear yard is possible. Its size and location would, in my view, be self-limiting on the type of activities that could be carried out from it. From the evidence submitted, I am not persuaded that there would be harm to the living conditions of occupiers of the flats from noise from the office use.
43. Accordingly I am unable to conclude there is inadequate internal floor area available for existing occupiers of the two flats that results in substandard accommodation detrimental to the living conditions of occupants. Nor can I conclude there would be harm arising from noise transference from the office. Accordingly I do not find conflict with Local Plan Policies LLP1, LLP15 and LLP25, which collectively seek to ensure new housing does not result in over-intensification or give rise to adverse amenity.

Waste management.

44. At the rear of the property I saw two wheelie bins for waste disposal, one green and one black, but it was not clear if they served both flats and the office. The Council advise that the dwellings need 2 x 240 litres waste bins, 2 x 240 litre recycling bins and 55 litre box for glass recycling.
45. The rear yard is long and narrow and if the required amount of waste bin storage was provided, this would leave limited space for users to come and go easily and to use the yard for private amenity space. I noted a wide access along the rear of properties in the terrace such that waste bins can be taken for collection on Spencer Road.
46. Whilst the property is in a row of similar buildings this does not demonstrate that adequate provision can be made for waste management for the two flats and office. Nor does this indicate that there would be adequate waste provision to ensure no adverse effect on the amenity of occupiers and the surrounding area, for example from over-spilling bins, odour and lack of amenity space.
47. I find that in the absence of specific information, details and plans, there remains doubt as to whether adequate waste management provision can be

provided for two separate households and an office. Accordingly the appeal development is contrary to Local Plan Policies LLP1 and LLP25, which seek to ensure development does not give rise to adverse amenity.

Other Matters

48. I am aware of third parties who support the development. However, their support does not outweigh the harm I have identified.

Conclusion

49. For the reasons given above, I conclude that the appeal development does not accord with the development plan and there are no other material considerations which outweigh this finding. Accordingly, the appeal should be dismissed.

K Stephens
INSPECTOR