



Appeal Decision

Site visit made on 23 November 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2021

Appeal Ref: APP/B0230/C/20/3257412

Land at 28 South Drift Way, Luton, Bedfordshire LU1 5PX

- 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 Stephen Connolly against an enforcement notice issued by Luton Council.
 - The enforcement notice was issued on 5 August 2020.
 - The breach of planning control as alleged in the notice is without planning permission: -
 - (1) the change of use of the Land from residential use to mixed use as residential and vehicle repair facility use ("The Unlawful Use")
 - (2) the erection of a detached garage on the Land, in the approximate position shown hatched on the attached plan reference 19/00268/UCU ("the Garage")
 - The requirements of the notice are:
 - (i) Cease the Unlawful Use
 - (ii) Remove from the Land all vehicles, parts and equipment associated with the Unlawful Use
 - (iii) Demolish the Garage and remove it from the Land
 - (iv) Remove all associated building materials and rubble and waste materials arising from compliance with step (i) to (iii) above from the Land
 - The period for compliance with the requirements is Four calendar months after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. When the appeal was lodged the appellant requested a hearing. However, the Council has confirmed it is happy for the appeal to proceed by way of written representations and, following my assessment of the evidence I am satisfied that I have sufficient information on which to make a decision.
3. The appellant ticked ground (b) on the appeal form. However, grounds (a) and (c) have since been added and the appeal will therefore proceed on this basis.

Ground (b)

4. An appeal on ground (b) is made on the basis that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The onus of proof is on the appellant to show that some or all of the alleged matters had not in fact occurred by the time the notice was issued, on the balance of probabilities.

5. The main thrust of the appellant's case under ground (b) is that the building has been used by him and members of his own family to repair vehicles owned by them. Whilst the appellant is now using the garage to store his classic vehicles, it is not disputed that vehicle repairs have been carried at the site. Therefore, the breach has occurred as a matter of fact. Accordingly, the appeal under ground (b) fails.

Ground (c)

6. An appeal on ground (c) is made on the basis that those matters (if they occurred) do not constitute a breach of planning control. Consideration of ground (c) involves whether the matters constitute development and if so, whether the development already benefits from a grant of planning permission.
7. Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO) permits the provision within the curtilage of the dwellinghouse of (a) any building...required for a purpose incidental to the enjoyment of the dwellinghouse... subject to certain conditions and limitations.
8. Whilst I note the Google extract provided by the appellant, the building should be properly assessed against the criteria contained within the GPDO. E.1. under Class E of the GPDO states that development is not permitted by Class E if (e) the height of the building would exceed (ii) 2.5 metres in the case of a building within 2 metres of the boundary of the curtilage of the dwellinghouse.
9. It is clear from my inspection of the site that the building is within 2 metres of the boundary of the curtilage of the dwellinghouse. The height of the building greatly exceeds 2.5 metres and so, whether or not it is considered incidental to the enjoyment of the dwellinghouse, it is development for which planning permission is required.
10. Activities will amount to a material change of use if they are outside what could normally be expected to occur within a dwellinghouse and its curtilage. Whilst the appellant may work full time, this does not preclude him from operating a business elsewhere. Moreover, whether a material change of use has occurred is not dependent upon the building being used for commercial purposes but will depend upon the facts of the case and the nature and character of the activities being carried out.
11. The appellant states that he is a classic car and motorcycle enthusiast and that he uses the garage to store his classic vehicles with any vehicle repair carried out either by him, or members of his family. The appellant indicates that he and his partner have 6 children who drive. He also allows his brother and his two sons to use the garage during the day whilst he is at work. No detail is provided regarding the activities carried out on site by the appellant's brother and his sons, the nature of the permission given or the vehicles that have been worked on in the appellant's absence.
12. At the time of my visit the garage was being used to store the appellant's classic vehicles. The garage appeared to be well equipped with various paints, oils and equipment and also appeared to be fitted with an inspection pit, which is more typical of a commercial vehicle repair facility. The Council has provided a series of photographs which appear to show vehicles being worked on in the garage and a vehicle being brought to the premises by a tow truck. Images of

sales particulars of vehicles being sold by the appellant have also been provided.

13. The appellant suggests that the tow truck was his daughter's vehicle being dropped off for an insurance assessor to view the car and that he has sold cars for members of his family on Facebook. However, no documentary evidence has been provided by the appellant in support of these claims. Furthermore, limiting repairs to vehicles owned by members of the appellant's family does not mean that no change of use has occurred.
14. I note there is dispute regarding the precise number of cars which have been repaired at the site over the last two years. An interested party explains that, on a daily basis the appellant takes receipt of cars, then whilst he is out at work several people working on those cars over the week and weekends. Whilst the appellant suggests the allegations made by an interested party regarding the number of cars worked on are ridiculous, he has provided no cogent evidence to persuade me that this is not what has occurred.
15. Allowing people to bring vehicles to the garage for repair, whether or not they are related to the appellant, in my view, goes beyond what would normally be expected to occur within the curtilage of a dwellinghouse. As such I conclude, on the balance of probabilities, the use of the building is not incidental to the enjoyment of the dwellinghouse but is a material change of use for which planning permission is required.
16. Thus, for the reasons given above, the appeal under ground (c) must fail.

Ground (a)

17. An appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed application are directly derived from the allegation, which relates to the mixed use of the premises as residential and a vehicle repair facility use and the erection of a detached garage.

Main Issues

18. The main issues of the appeal are:

- The effect of the appeal scheme on the character and appearance of the area;
- The effect of the use of the garage on the living conditions of neighbouring occupants with particular regard to noise, nuisance, odour and fumes; and
- The effect of the use on highway safety (traffic generation and parking)

Reasons

Character and appearance

19. The appeal site is located in a generally residential area on the corner of South Drift Way and Friars Close. Friars Close consists of two storey terrace dwellings and flatted development generally characterised by gable roofs. Although the main dwelling fronts onto South Drift Way, the garage faces towards Friars

Close and is set behind breeze block walls and substantial metal gates. The garage is finished in red brick and breeze block with a tiled, hipped roof.

20. Whilst the garage is located to the rear of the host property, due to its height, bulk and contrasting roof shape, it appears a dominant, incongruous feature which diminishes the character and appearance of the area, contrary to Policies LLP1 and LLP25 of the Luton Local Plan (LLP)(2011-2031)¹ which both seek development which preserves or enhances the character of the area and Policy LLP19 of the LLP which 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.

Living conditions

21. The garage faces onto Friars Close which is a cul-de-sac located in a generally residential area. The use of the garage for vehicle repairs is likely to generate noise, including tonal and impulsive noise, from the use of tools and running of engines. The use of oils and paints also has the potential to release odour and fumes. Given the very limited distance between the garage and nearby residential properties and their gardens, I consider this would diminish the living conditions of the occupants of nearby properties.
22. In the absence of evidence to the contrary, and having regard to concerns raised by an interested party regarding noise, I conclude that the use of the garage as a vehicle repair facility is harmful to the living conditions of nearby occupants, contrary to the aims of the National Planning Policy Framework (the 'Framework') which seeks development with a high standard of amenity for existing and future users.

Highway safety

23. Friars Close is a cul-de-sac with limited off-street parking. During my visit I saw that on-street parking demand in the area was significant. Whilst there is off-street parking provision to the front and side of the property, there is limited space to the front of the garage.
24. Although there is space within the garage for a car, there is unlikely to be sufficient space to park a car in front of the garage, causing vehicles to overhang the public highway, particularly when more than one car is being worked on. This would cause an obstruction to users of the footway, contrary to Policy LLP32 of the LLP which seeks the provision of sufficient parking or Policy LLP 31 of the LLP which supports development that reduces road congestion and reduces the safety risk to motor vehicles, non-motorised and vulnerable users, amongst other things.

Conclusion on ground (a)

25. I have found that there is harm to the character and appearance of the area from the building and harm to the living conditions of neighbouring occupants and highway safety from the use of the garage for vehicle repairs. Accordingly, the ground (a) appeal fails.

¹ Adopted November 2017

Conclusion

26. 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