



Appeal Decision

Site visit made on 16 March 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2021

Appeal Ref: APP/B0230/C/20/3261028

Land at 4 Millfield Road, Luton, Bedfordshire LU3 1RT

- 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 Kuldip Singh against an enforcement notice issued by Luton Council.
 - The enforcement notice was issued on 11 September 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a self-contained residential dwelling on the Land in the rear garden, in the approximate position shown cross-hatched on the attached plan reference 19/00211/UCUSUB ("The Unauthorised Dwelling")
 - The requirements of the notice are:
 - (i) Demolish the Unauthorised Dwelling and remove it from the Land.
 - (ii) Remove all associated building materials and rubble and waste arising from compliance with steps (i) and (ii) above from the Land.
 - The period for compliance with the requirements is six 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 on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act, as amended.
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Decision

1. It is directed that the enforcement notice is corrected at paragraph 5(ii) by deleting the wording "steps (i) and (ii)" and substituting with "step (i)". Subject to this correction the appeal is dismissed, 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.

Enforcement Notice

2. There is a typographical error in paragraph 5 (ii) of the notice which requires the clearing of waste and materials associated with compliance with steps (i) and (ii) above. There is in fact only a step (i). I will therefore correct the notice to remove reference to step (ii), and in doing so I am satisfied that there would be no injustice to the appellant or the Council as the purpose of the notice would not alter.

Appeal on ground (a), deemed planning application

Main Issues

3. The main issues in this case are:

- The effect of the development on the living conditions of neighbouring residents;
- The effect of the development on the character and appearance of the area; and
- Whether the development provides for acceptable living conditions for existing and future occupiers.

Reasons

Living conditions of neighbouring residents

4. The new self-contained residential unit is situated within what was originally the rear garden of No 4 Millfield Road, a semi-detached property, which is currently in use as three separate flats. The appeal site is accessed through a gated passage which runs alongside the flank wall of No 4, and the Land has been enclosed by timber fencing to create a self-contained space.
5. To gain any means of access to the new residential unit it is necessary for the occupiers and any visitors to the property to pass close to the flank wall of No 4. This flank wall contains a number windows, all of which at ground floor level have been fitted with obscure glazing/decorative film to prevent views into the rooms. Occupants of the new unit, their visitors and any person making deliveries to it need to pass very close to those windows, and in doing so, the privacy of the occupants of those rooms would be compromised. Moreover, the daily activities and comings and goings from the new unit would result in disturbance to existing occupiers, with unknown persons walking directly past No 4's windows and in very close proximity to them and to their private rear garden area.
6. For the reasons given above, I conclude that the creation of a separate residential unit in this location has a harmful effect on the privacy and living conditions of the existing occupants of the original dwelling No 4. There is conflict with the development plan, and in particular with Policy LLP25 of the Luton Local Plan, adopted November 2017 (LP) which seeks to ensure, amongst other things, that new housing minimises noise, overlooking and does not give rise to adverse amenity. I also find conflict with the National Planning Policy Framework (the Framework) which aims to provide a high standard of amenity to all existing and future users.

Character and appearance

7. Millfield Road is situated in a residential area which is predominantly characterised by semi-detached dwellings and short terraces. The properties are set back from the road with small frontage gardens, many of which have been taken over by hardstanding to provide off-street parking.
8. Policy LLP25 of the LP seeks to ensure that buildings and spaces are of high quality design with distinctive character to help create quality places in the Borough. It further advises that backland development should be avoided where it would give rise to adverse amenity.
9. I appreciate that an outbuilding used for purposes incidental to the residential use of the main dwelling would not be uncharacteristic within the rear garden of the main dwelling. However, a self-contained dwelling has very different

characteristics. Where a new dwelling is to be formed it should conform to the design standards for new residential units and be appropriately located. In this case, the dwelling is situated in a backland location which conflicts sharply with the pattern of layout of existing dwellings in this residential neighbourhood. The dwelling has no street frontage and its overall siting and appearance, tucked away in the corner of a private garden and close to boundary fences, has resulted in a form of development which is poorly related to the existing character of the area. Although the new dwelling is not visible from the street and therefore has little effect on the overall appearance of the street scene, it does have a significant and harmful effect on the character of the area.

10. I conclude that the development of a separate self-contained residential dwelling in this location has a harmful effect on the character of the area. It conflicts with the development plan, and in particular with Policy LLP25 of the LP, the aims of which are set out above. However, I do not find any conflict with Policy LLP19 of the LP, as this policy relates specifically to extensions to dwellings and annexes and not to self-contained dwellings, which is the case in this appeal.

Living conditions of future occupiers

11. The new unit is a single storey one bedroom unit. It has a living/bedroom area, a kitchen and bathroom and a gross internal floorspace of 29m². All the windows are fitted with obscure glass or decorative adhesive film. There is a small area of amenity space at the front of the dwelling.
12. The location of the unit, positioned within the rear garden of No 4, means that it is directly overlooked by first floor windows within the rear elevation of original property. Taking into account the obscure film which has been adhered to almost all to the windows in the rear elevation of No 4, which overlook the new unit, it was clear to me from my observations on my site visit, that there are privacy issues between the accommodation at No 4 and the new unit. Whilst obscure glazing/film helps to prevent overlooking, it also restricts the outlook from the internal accommodation and reduces the amount of daylight available to it. In this case, it has been necessary to fit obscure film to all of the windows in the new self-contained unit to prevent being overlooked, and consequently, the living room/bedroom does not have a clear aspect to the outdoors. In addition, the boundary fencing erected close to those windows, further restricts the outlook from the living/bedroom area and as such the internal accommodation would be oppressive.
13. The unit has a small external amenity space in front of it which provides some space for outdoor storage/bins and somewhere to put chairs and a table for sitting out. However, this amenity area is completely overlooked and so not private. I appreciate that the unit of accommodation is only small and therefore the amount of outdoor space available to it does not need to be substantial. However, in this case with an internal floorspace of only 29m², the new unit is extremely limited in size internally and due to obscure glazing and boundary fencing, its occupiers have a restricted outlook from it. Consequently, it is even more important that the occupiers have access to a reasonably sized private outdoor space.
14. For the reasons give above, the self-contained unit does not provide for acceptable living conditions for future occupiers. There is conflict with the development plan and in particular with Policy LLP25 of the LP which seeks to

ensure that new housing development is delivered with, amongst other things, acceptable levels of privacy, light and external amenity space. I also find conflict with the Framework which seeks to provide a high standard of amenity for existing and future users.

Other Matters

15. I saw on my site visit the development which is taking place at 15-21 Millfield Road. I do not know the exact circumstances of this case, however, the new dwelling at the side of 21 Millfield Road does have a street frontage, and so is not directly comparable to this appeal case which is a backland form of development. In any event I have determined the appeal on its own merits.
16. The development would provide a new dwelling which would contribute to the supply of housing in the Borough, albeit it may not contribute to an identified need. However, the social and economic benefits derived from a single one bedroom dwelling would not outweigh the harm that I have identified in the main issues set out above.

Human Rights

17. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would interfere with the occupier's rights under Article 8 and Article 1 of the First Protocol and the appellant's rights under Article 1 of the First Protocol. However, given the harm identified, the action is in accordance with the law and pursues legitimate aims of protecting the environment and is necessary and proportionate to the situation.

Overall Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, with a correction, and refuse to grant planning permission on the application deemed to have been made under section 177 (5) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR