



Appeal Decisions

Site visit made on 18 May 2021

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 June 2021

Appeal A: APP/B0230/C/20/3262823

Appeal B: APP/B0230/C/20/3262824

55 Gatehill Gardens, Luton, LU3 4EZ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter “the Act”).
 - The appeals are made by Mrs Fiona McIntyre (Appeal A) and Mr Adrian McIntyre (Appeal B) against an enforcement notice issued by the Luton Borough Council.
 - The enforcement notice was issued on 30 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a wooden structure to the side elevation of the dwelling house on the land, in the approximate position shown hatched black on the attached plan.
 - 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 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Act.
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Decision

1. It is directed that the notice be varied in section 6 by deleting 3 months and substituting instead 5 months.
2. Subject to the variation the appeals are dismissed and the enforcement notice is upheld.

The appeals on ground (c)

3. An appeal on ground (c) is a claim that the matters alleged at Section 3 of the notice do not constitute a breach of planning control. The burden of proof in a ground (c) appeal falls to the appellant and the test of the evidence is on the balance of probability.
4. The lean-to structure is constructed in timber with a mono-pitch roof, located close to the corner of the house where the side elevation meets the front. It is physically attached to and encloses part of the side wall of the house. As such it forms a small extension of the house.
5. There is no dispute that the small extension amounts to “development” as defined at s55 of the Act, and for which planning permission is generally required, except for certain exclusions. One such exclusion is where planning permission has been granted for development by a Development Order. This forms the appellants’ case; that the structure benefits from the planning

permission granted by Article 3 and Schedule 2, Part 1, Class A of the GPDO¹ ("permitted development").

6. In order to comprise permitted development the extension must satisfy all of the conditions and limitations of Class A. In this regard there is no dispute between the parties, and I have no reason to disagree, that the extension meets all of the relevant conditions and limitations of Class A, except in respect of condition A.3(a). Condition A.3(a) states:

"the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse"
7. Further advice on the interpretation of A.3(a) is contained within the Government's Technical Guidance². It advises that condition A.3(a) is intended to ensure that any works to enlarge, alter or improve a house result in an appearance that minimises visual impact and is sympathetic to existing development. In particular, it states that the materials used should be of similar visual appearance to those in the existing house, including that the external walls and roof of an extension should be constructed of materials that provide a similar visual appearance, for example in terms of colour and style of brick and tiles used, to the materials used in existing house walls and roof.
8. Having regard to the above, and contrary to the appellants' view, I consider that the timber materials used in the extension bears very little similarity to the appearance of the red brick and tiled roof materials used in the main house. The extension taken as a whole appears rather more like a typical garden shed. Moreover, it does not relate well to the character and appearance of the host dwelling or to the immediate surrounding area. I acknowledge that it is screened by vegetation at the front of the house, however that cannot be relied upon as a permanent feature.
9. As such, as a matter of fact and degree, I conclude that the extension materials are not similar in appearance to those used in the construction of the exterior of the existing dwellinghouse, and hence the extension does not satisfy condition A.3(a) of Class A.
10. Consequently, the extension is not permitted development and does not benefit from any grant of planning permission from the Council. I conclude, therefore, that it constitutes a breach of planning control.
11. The appeals on ground (c) therefore fail.

The appeals on ground (f)

12. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach. In this case the notice requires the complete removal of the extension. It is clear therefore that the purpose of the notice is to fully *remedy the breach of planning control*.
13. The appellants argue that painting the extension and/or adding further screening would make the development acceptable.

¹ Town and Country Planning (General Permitted Development)(England) Order 2015

² Permitted development rights for householders – Technical Guidance, page 31, MHCLG, September 2019

14. However, no appeal has been made on ground (a) that planning permission should be granted for its retention, consequently I am unable to consider the planning merits of the extension, in terms of how well it might relate to the character and appearance of the area, as they are not relevant to an appeal on ground (f).
15. Given that the purpose of the notice is to remedy the breach of planning control it is clear that the requirement to remove the building cannot be excessive; it goes no further than remedying the breach. Any lesser requirements, such as those suggested by the appellants, would not fully remedy the breach of planning control.
16. The appeal on ground (f) therefore fails.

The appeal on ground (g)

17. The ground of appeal is that the period of time for compliance with the notice requirements falls short of what should reasonably be allowed. The notice requires compliance within 3 months. The appellants seek a period of 5 months.
18. In their appeal submissions the Council accepts that a 5 month compliance period would be more reasonable taking account of all the relevant prevailing circumstances. I will therefore vary the notice accordingly and the appeals on ground (g) succeed to this limited extent.

Thomas Shields

INSPECTOR