
Appeal Decision

Site visit made on 10 August 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2021

Appeal Ref: APP/B0230/C/20/3259311

11 Charlwood Road, Luton, Bedfordshire LU4 0BS

- 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 Imran Khan 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 the erection of a 1.8m high rendered boundary wall on the land, ("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 4 months.
 - 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. 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.
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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. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). I have invited the main parties to comment on the Framework and have taken account of any responses from them in my determination of the appeal.

Appeal on ground (a), the deemed planning application

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area.

Reasons

4. The appeal site is on the corner of Charlwood Road and Hayhurst Road. The area is residential in character with primarily semi-detached properties with low front boundary walls. The current unauthorised development comprises a grey rendered boundary wall, which lacks any architectural merit and fails to harmonise with its surroundings. Given its bulk, height, length, and prominence, it forms a large, obtrusive, and incongruous feature in the street scene which is at odds with the prevailing character.
5. I appreciate that there are a small number of other tall fences, gates, and walls nearby. However, the existence of these does not justify further harm. Reference is also made to the fact that there was a pre-existing fence. However, the evidence indicates that the pre-existing fence was sympathetic to the area, and not harmful to the character and appearance of the area.
6. The appellant has suggested overcoming the harm by a planning condition which requires the application of a matching colour or brick cladding. However, based on the limited information submitted, I'm not convinced that either painting or brick cladding would be an acceptable solution to overcome the harm identified. Therefore, I do not consider that this could be satisfactorily dealt with by condition.
7. I conclude that the unauthorised development harms the character and appearance of the area and conflicts with policies LLP1 and LLP25 of the Local Luton Plan 2011-2031 (2017). Together these seek to ensure that all new development is of a high quality design and contributes to enhancing a sense of place and preserves or improves the character of the area. Furthermore, the development does not meet the aims of part 12 of the Framework, 2021, which requires development to be sympathetic to local character and history.
8. The notice also refers to policy LLP19 of the Local Luton Plan 2011-2031 (2017). However, this policy relates to extensions to dwellings and annexes and therefore is not directly relevant to the current unauthorised development.

Conclusion on Ground (a) and the Deemed Planning Application

9. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The appeal on Ground (f)

10. The appeal on this ground is "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 (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
11. The enforcement notice requires the removal of the unauthorised development, and as such, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
12. The appellant considers that a planning condition could be applied which requires the application of a matching colour or brick cladding. However, I have already found under the ground (a) appeal, that neither of these options would

overcome the harm identified nor remedy the breach. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice.

13. There are no lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice.
14. On this basis, the Ground (f) appeals fails.

The appeal on Ground (g)

15. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant asks that the time for compliance is extended from four to five months, in order to provide the appellant with additional time to agree an alternative solution with the Council, especially in light of the current situation with the Covid-19 pandemic.
16. I have identified under ground (a) that the development is harmful to the character and appearance of the area. As such, the 5 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements of the notice. The current period for compliance should allow sufficient time for the parties to agree an alternative proposal and for the requirements to be undertaken if agreement on a suitable solution can be reached.
17. I conclude that four months would be reasonable and proportionate time to comply with the notice and the appeal on ground (g) fails.

Conclusion

18. 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 application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR