



Appeal Decision

Site visit made on 10 January 2022

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2022

Appeal Ref: APP/B0230/C/21/3273205

17 Denbigh Road, LUTON, Bedfordshire, LU3 1NR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Saeed Ahmad against an enforcement notice issued by Luton Borough Council.
 - The notice, numbered 20/00170/UBO, was issued on 11 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a detached outbuilding in the rear garden on the land.
 - The requirements of the notice are: (i) demolish the outbuilding and remove it from the land and (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 three calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) & (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a detached outbuilding at 17 Denbigh Road, Luton, Bedfordshire LU3 1NR as shown on the plan attached to the notice and subject to the following condition:
 - 1) The building hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 3 months of the date of failure to meet any one of the requirements set out in 2) to 6) below:
 - 2) Within one month of the date of this decision a scheme for implementing an external finish to the walls of the building shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - 3) If within 3 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - 4) If an appeal is made in pursuance of 3) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - 5) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

- 6) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.
- 7) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

The appeal on ground (b)

3. This ground of appeal is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. However, irrespective of the dispute as to the height of the building in question, it is clearly evident that a detached outbuilding has been erected, without planning permission, as alleged in the notice. The appeal on ground (b) fails.

The appeal on ground (c)

4. The appellant's submission that the outbuilding, which is used for domestic storage, falls within all the limitations of Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 [GPDO] is disputed by the Council solely in relation to E.1.(e), regarding the height of the building.
5. In the case of a building within 2m of the boundary of the curtilage of the dwellinghouse, as is the situation here, development is not permitted by Class E.1.(e) if the height of the building would exceed 2.5m. Article 2-(2) of the GPDO indicates that the height should be measured from ground level. It goes on to clarify that this means the level of the surface of the ground immediately adjacent to the building in question or, where the level of the surface of the ground is not uniform, the level of the highest part of the surface of the ground adjacent to it.
6. The appellant's representations state that the height has been measured at 2.5m, as shown in drawing no.SA.02.02A. Those of the Council state that the height is 2.8m. In order to resolve this, during my site visit, the appellant and the Council's officer between them measured the building's height above the surface of the ground immediately adjacent to the building. I made a note of their agreement that it varied between 2.64m at the eastern end and 2.55m at the western end. Whilst this latter dimension is only marginally over the permitted 2.5m, it fails to comply with the limitation in Class E.1.(e)
7. The appellant has referred to a lowering of the original ground level of the garden as part of the development but, whilst I observed a step in the garden, I have no reliable indication as to what might have been the original ground level immediately adjacent to the outbuilding and therefore have no other basis for my decision than the dimensions provided to me on site.
8. As the height of the building exceeds the relevant limitation of Class E.1.(e), I conclude that it is not permitted development, that planning permission is required and that the appeal on ground (c) must fail.

The appeal on ground (a) and the deemed application

9. The main issue in this case is the impact of the outbuilding on the character and appearance of the area.
10. The appeal property is a large, end terraced house within a predominantly residential area. The house has a flat roofed rear extension extending alongside the southern boundary of the garden. This boundary abuts the grounds of Denbigh Primary School, although the appeal site is at a significantly higher level, above a substantial brick retaining wall.
11. This large, flat roofed, outbuilding infills nearly all of the remaining gap to the rear boundary. However, outbuildings of such scale are a fairly common feature of the area and, to my mind, this development does not appear to be uncharacteristic. In this case, there is ample private amenity space remaining in the rear garden, comfortably in excess of the Council's minimum standards.
12. The outbuilding is of a fairly basic design but is not prominent in the street scene and is within a built-up area containing a wide variety of built form. It is clearly visible from the adjoining school grounds. However, in this densely built-up context, it does not appear unduly incongruous. In any event, it is a significant material consideration that the appellant has a realistic fall-back position, whereby a building only a few centimetres lower in height and not noticeably different in appearance from most public vantage points, could be built as permitted development.
13. In this context, the only unacceptable features are the unsurfaced blockwork walls on the outer elevations. This is a matter that could be addressed by requiring the submission and implementation of a scheme to improve the external finish.
14. The school has submitted that the building works have given rise to damage to the boundary retaining wall. However, whilst I appreciate the concern for the safety of those using the school, any such damage appears to be a private matter between adjoining land owners.
15. I conclude that, subject to a scheme to address the external finish of the walls, the outbuilding does not unduly harm either the character or appearance of the area. Consequently, it complies with the requirements of Policies LLP1, LLP19 and LLP25 of the Luton Local Plan 2011-2031 and the core planning principles of the National Planning Policy Framework.
16. The Council has requested that, in the event that I allow the appeal, I impose a planning condition preventing the installation of kitchen facilities to prevent the implementation of a self-contained residential unit. However, I regard such a condition as unnecessary as use as a self-contained residential unit would constitute a material change of use requiring planning permission and would therefore be capable of being enforced against.
17. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice.
18. The appeals on grounds (f) and (g) do not therefore fall to be considered.

B S Rogers INSPECTOR