



Appeal Decisions

Site visit made on 16 November 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2023

**Appeal Ref: APP/B0230/C/20/3262827 (Appeal A) & 3260477 (Appeal B)
Land at 10 and 12 Preston Gardens, Luton, Bedfordshire LU2 7NL**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Ms Yasmeen Akhtar and Appeal B is made by Mr Jablu Miah against an enforcement notice issued by Luton Borough Council.
 - The notice, numbered 20/00035/UCU, was issued on 30 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission the erection of:-
 - I a single storey rear extension to number 10 Preston Gardens;
 - II a rear dormer window roof extension to number 10 and 12 Preston Gardens; and
 - III installation of first floor front elevation alterations resulting in the loss of a bay window to number 10 Preston Gardens(I-III above are together referred to as "the Unauthorised Development")
 - IV a timber fence to the side and front of number 10 Preston Gardens in excess of one metre in height ("the Unauthorised Fence"); and
 - V an outbuilding in the rear garden of number 10 Preston Gardens in the approximate position shown cross-hatched black on the attached plan ("the Unauthorised Outbuilding") as shown on the attached photographs
 - The requirements of the notice are to:
 - (i) Demolish the Unauthorised Development and remove it from the Land.
 - (ii) Restore the roofs of the dwellings on the Land back to their condition before the Unauthorised Development took place.
 - (iii) Reduce the height of the Unauthorised Fence (including posts) to a maximum height of no more than one metre.
 - (iv) Re-instate the first floor bay window to the front elevation of the dwelling (no. 10 Preston Gardens) (as shown on the attached photograph).
 - (v) Demolish the Unauthorised Outbuilding and remove it from the Land.
 - (vi) Remove all associated building materials and rubble and waste materials arising from compliance with steps (i) to (v) above from the Land.
 - The period for compliance with the requirements is: Three calendar months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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.
 - Appeal B is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/B0230/C/20/3262924

**Land to the north-west of 10 Preston Gardens and 10 Preston Gardens,
Luton, Bedfordshire LU2 7NL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Yasmeen Akhtar against an enforcement notice issued by Luton Borough Council.
- The notice, numbered 20/00134/UCU, was issued on 30 September 2020.
- The breach of planning control as alleged in the notice is without planning permission the erection of an outbuilding on the Land, in the approximate position shown cross-hatched black on the attached plan ("the outbuilding")
- The requirements of the notice are to:
 - (i) Demolish the Outbuilding 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: Three calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) 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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Decisions: Appeals A and B

1. It is directed that the enforcement notice is corrected and varied by:
 - At section 3 of the notice, at IV, the insertion of ` , as shown between points A and B and as highlighted in blue on PLAN 1 attached to the notice,` so that it reads `IV a timber fence to the side and front of number 10 Preston Gardens, as shown between points A and B and as highlighted in blue on PLAN 1 attached to the notice, in excess of one metre in height ("the Unauthorised Fence"); and`.
 - The insertion of PLAN 1, which is attached to this decision letter.
 - At section 5(iii) of the notice, insert the words `between points C and D as indicated by the pink line on PLAN 2` and `above ground level`, so that requirement (iii) reads `Reduce the height of the Unauthorised Fence (including posts) between points C and D, as indicated by the pink line on PLAN 2 to a maximum height of no more than one metre above ground level.`
 - The insertion of PLAN 2, which is attached to this decision letter.
 - At section 6 of the notice, delete `Three` and insert `Nine` as the time for compliance.
2. Subject to the corrections and variations above, the appeals are 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.

Decision: Appeal C

3. 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.

Matters concerning the notice: Appeals A and B

4. The notice alleges the construction of a timber fence to the side and front of number 10 Preston Gardens in excess of one metre in height...as shown on the attached photographs. There are two fences which have been erected, one which extends from the front of the property, between No 12 and No 10 and the other which has been erected between No 10 and No 8. Although a photograph has been provided, there is ambiguity as to which notice is attacked by the notice, particularly since the notice refers to a fence in the singular.
5. I raised with the parties whether it would be possible to correct the notice to address this ambiguity. Both parties agree that the notice attacks the fencing which has been erected between No 10 and No 8 and that the allegation should

refer to this and a plan should be inserted showing the extent of the fencing which is being attacked by the notice. Since this would not expand the scope of the allegation but would provide clarity to all concerned, I consider correcting the notice in this way would not cause injustice to either party.

Appeals A and B

Ground (b)

6. An appeal under ground (b) is made on the basis that the matters stated in the notice have not occurred, as a matter of fact. The main thrust of Appeals A and B is that no works have been carried out to No 12 Preston Gardens. It does not appear to be disputed that the works have been carried out, or that the works were carried out by the owner of No 10.
7. While the works were not carried out by the owner of No 12, this does not demonstrate that the matters have not occurred as a matter of fact. Under section 178(2) of the Act, a landowner is entitled to recover from the person who committed the breach of planning control the expense of complying with the enforcement notice or the sums paid to the local planning authority if they took the required steps.
8. I saw that the properties along the terrace are designed with a staggered roof height and the appellant has provided me with a photograph of the building prior to works. Although I saw that the roof heights along the terrace are staggered, from my inspection of the site, it appears that the dormer has been constructed so that its edge sits on the roof tiles of No 12. I therefore find, on the balance of probabilities, the matters stated in the notice have occurred as a matter of fact and the appeals under ground (b) must fail.

Appeal A only

Ground (c)

9. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. The ground (c) appeal is made in respect of the northern boundary fence and the detached single storey rear outbuilding.

Fence

10. The appellant states that they have simply maintained and improved a fence which has existed for a number of years and this does not therefore constitute a breach of planning control. However, the photograph provided by the appellant does not show the full extent of the fencing that was *in situ* prior to the works.
11. The Council suggest that some of the fencing which can be seen on the photograph is bamboo fencing belonging to No 8. Although the photograph is not entirely clear, given the way in which the fencing bends and its undefined tops, I consider it likely at least some of the fence panels in the picture comprised bamboo. The fencing which has been erected, by contrast, is a close boarded fence with substantial gravel boards at the base. I therefore consider the works constitute development for the purposes of the Act.
12. Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) permits the

erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Development is not permitted if the height constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1 metre above ground level.

13. While some of the panels are a number of metres from the highway, the fencing has been erected as one act of development. It is not disputed that the fencing exceeds 1m in height and given its proximity to the highway, I consider the works are not permitted by the GPDO. Consequently, planning permission is required for the fence.

Outbuilding

14. The appellant states that the outbuilding that has been erected in the rear garden is for purposes incidental to the enjoyment of the dwellinghouse and would be permitted under Class E of the GPDO. Class E permits the provision within the curtilage of the dwellinghouse of (a) any building...required for a purpose incidental to the enjoyment of the dwellinghouse as such.... E.1(a) states that development is not permitted by Class E if (e) the height of the building...would exceed ii) 4 metres in the case of a building with a dual-pitched roof. The requirements are absolute, there is no *de minimis* allowance.
15. The outbuilding has a dual pitched roof. I saw during my visit that the outbuilding sits on a platform constructed of concrete slabs and measures around 4.2 metres from the base of the platform to the top of the building. The platform measures around 400mm above the adjacent paving, but around 520mm below the concrete gravelboard of the boundary fencing with the communal garages.
16. The Permitted development rights for householders: Technical Guidance (2019) defines height as the height measured from ground level. Ground level is the surface of the ground immediately adjacent to the building in question, and would not include any addition laid on top of the ground such as decking. Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building.
17. The appellant states that the building is located on a reduced level cut into the original garden by about 560mm. However, such a change in levels within the rear garden is not evident in the photograph of the garden dated January 2020 and I have no other evidence to show the levels within the garden prior to the erection of the outbuilding. While I saw the communal garages are located on land which is higher than the platform, this is not itself evidence that the land immediately adjacent to the outbuilding was at this level prior to its construction.
18. The communal garages are located over 2m away from the outbuilding and as such, I do not consider the height of the land can be considered 'immediately adjacent'. The outbuilding exceeds 4 metres in height and therefore fails to comply with the limitations set out in the GPDO.
19. I note the Council has previously written to a nearby resident suggesting that some of the works would fall within the tolerances of the GPDO and would not therefore require planning permission. However, the advice was contained within a letter and does not constitute a determination under section 191 or

192 of the Act and so this does not fetter its discretion to issue an enforcement notice. For the reasons given above, the appellant has not demonstrated, on the balance of probabilities, that the outbuilding and fencing is development which is permitted by the GPDO and so the appeal under ground (c) must fail.

Ground (a)

20. An appeal under ground (a) is made on the basis that planning permission ought to be granted for the matters stated in the notice as constituting the breach.

Main Issues

21. The main issues of the ground (a) appeal are:

- The effect of the appeal scheme on the character and appearance of the area; and
- With respect to the single storey rear extension and fence, the effect of the appeal scheme on the living conditions of occupants of No 12 and No 8 respectively, with regards to outlook; and
- The effect of the fence on the safety of pedestrians, cyclists and drivers using Preston Gardens.

Character and Appearance

Rear dormer

22. The rear dormer has been constructed so that it is flush with the walls of the main building. The facing of the dormer is constructed in render, so when viewed from the side, it appears as one large vertical extension, with the top of the dormer overhanging the face of the rear wall. As a consequence, the dormer appears a dominant, incongruous feature, which is out of keeping with the character and appearance of the area. Although the dormer is located to the rear of the dwelling, due to its height it is highly visible from the footpath which runs from Stockingstone Road to the garages behind the appeal site.

23. The appellant suggests the only reason the dormer is not permitted development is because a soil and vent pipe has been installed. It is suggested that this is a fallback position which should be taken into account. However Class B, Part 1 of Schedule 2 of the GPDO permits development within the curtilage of a dwellinghouse. As set out above, I have found that the dormer has been constructed so that part of it sits over the roof of No 12. It therefore straddles two dwellinghouses.

24. Furthermore, condition B2 (a) of Class B, Part 1 of Schedule 2 of the GPDO permits development subject to the condition that (a) the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The Technical Guidance for Householders advises that the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level. The dormer is finished in render, which contrasts significantly with the roofing materials used in the main dwelling. The dormer constructed therefore fails to comply with condition B.2.(a).

25. Condition B.2.(b) states that the enlargement must be constructed so that (bb) the edge of the enlargement closest to the eaves of the original roof is so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves. However, the side wall of the extension is flush with the original wall, with no set back. I see no reason why it would not be possible due to practical or structural considerations to provide a set back. Consequently, the dormer fails to comply with condition B.2.(b).
26. The walls of the neighbouring dwellings are flush with each other, whereas the appeal wall protrudes slightly beyond the rear wall of the neighbouring property at the first floor level. Since the dormer projects up from this wall, I consider it highly likely that the extension extends beyond the outside face of an external wall of the original dwellinghouse. Furthermore, the top of the extension overhangs the outer face of the wall of the original house. B.2. (b)(ii) states that, other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse.
27. A dormer which complies with the requirements and limitations of the GPDO is likely to be far less prominent than the appeal dormer and would be viewed as an addition to the main roof rather than an upwards extension. Consequently, I afford the fallback position very limited weight in support of the appeal scheme.
28. For the reasons given above, the rear dormer harms the character and appearance of the area, contrary to policy LLP1 of the Local Luton Plan (LLP) 2011-2031 (adopted November 2017), which seeks development which responds to and enhances local character, amongst other things and policy LLP25, which seeks high quality design.

Front Elevation

29. Preston Gardens is generally characterised by terraced dwellings with two-storey bay frontages. The consistent design and sense of rhythm afforded by the bay fronted windows make a positive contribution to the character and appearance of the area. The appeal dwelling has been modified, resulting in the removal of the bay windows to the ground floor and the first floor. However, the notice only attacks the modifications carried out at the first floor level. The alterations to the ground floor would therefore be unaffected.
30. The appellant states that the first-floor bay window structure was rotten and unsafe. However, I see no reason why it would not have been possible to replicate the bay feature which is so characteristic of the properties in Preston Gardens. I therefore afford this matter very limited weight in support of the appeal scheme.
31. The appellant asserts that the plain wall and window at the first-floor front elevation is echoed by a similar style extension at the southern end of the terraces on the south-west of Preston Gardens. However, I do not have full details of the property referred to. While I saw that No 44 has been extended, the two-storey bay has been retained. Although there are a number of single storey properties in Preston Gardens, they do not form part of a terrace of similarly designed buildings and so do not interrupt the rhythm provided by the bay windows.

32. The appellant suggests that since the Council has not included steps to be taken in respect of the single storey front extension, it has underenforced, which will result in the development becoming lawful by virtue of section 173(11) of the Act. Section 173(11) sets out that where an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed...but did not do so; and (b) all the requirements of the notice have been complied with, then so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A. However, the Council has not underenforced, rather it has not enforced against the ground floor works. Since the notice did not allege the ground floor works, the notice could not require their removal.
33. The appellant acknowledges that the ground floor works are unauthorised and so it would be open to the Council to issue an enforcement notice if it considers it expedient to do so. I cannot therefore assume that the ground floor would be retained in its current state.
34. The removal of the first floor bay window interrupts the rhythm afforded by the by fronted windows and is out of character with the other dwellings along the terrace. As a result, it diminishes the character and appearance of the area, contrary to policies LLP1 and LLP25 of the LLP, the requirements of which are set out above.

Outbuilding

35. The outbuilding has been erected to the rear of the dwelling. Although views of the outbuilding are limited from Preston Gardens, the building is highly visible from the footpath which runs from Stockingstone Road to the garages behind the appeal site. Due to the substantial size and height of the outbuilding and the use of a bright red/orange brick, it appears a dominant feature, rather than a subordinate outbuilding.
36. Due to its position to the rear of the main building line, it appears an incongruous feature which fails to respect the pattern of development in the area, contrary to policy LLP25 of the LLP, which seeks high quality design which enhances the distinctiveness and character of the area by responding positively to the pattern and materials of the area, amongst other things.

Fence

37. Boundary treatments in Preston Gardens between terrace properties are generally of limited height, giving the area an open character. The fencing which has been erected delineates the end of the terrace and forms a boundary between Nos 10 and 8 Preston Gardens. Fencing in excess of 1m is used elsewhere in Preston Gardens along side returns and so fencing used in this way is not uncharacteristic of the area.
38. However, the projection of the fencing towards the highway, beyond No 8, presents an enclosed frontage which is uncharacteristic of Preston Gardens and harms the character and appearance of the area, contrary to policy LLP25 of the LLP, which seeks high quality design which enhances the distinctiveness and character.
39. Were the appellant to comply with the requirements of the notice, the property would benefit from permitted development rights again and would be able to erect a fence up to 2m in height, so long as it is not adjacent to the highway.

While I have no doubt the appellant would seek to utilise such permitted development rights, fencing at a lower height adjacent to the highway would be more in keeping with the character of the area. I therefore afford the fallback position very limited weight.

Single storey rear extension

40. The single storey extension extends the full width of the dwelling, with parapet walls to either side. Although the extension is substantial, due to its location to the rear of the dwelling, there are limited views from the public domain. As a consequence, the single storey rear extension does not harm the character and appearance of the area and there is no conflict with policies LLP1 and LLP25 of the LLP in this regard.

Living conditions

Single storey rear extension

41. It is not disputed that the single storey rear extension is not permitted by the GPDO. The single storey extension extends the full width of the dwelling, with parapet walls to either side. Due to the substantial height of the extension and its proximity to the adjacent dwelling, occupants of No 12 are likely to find the extension harmfully overbearing, contrary to policy LLP19 of the LLP, which seeks to ensure that extensions do not adversely affect the amenity of nearby occupiers in respect of visual intrusion, amongst other things.

Outbuilding

42. The outbuilding is located towards the rear of the garden and is set back from the property boundaries on all sides. Although the building appears substantial in height, due to its setback from the boundary with No 12 and the generous depth of the rear garden to No 12, I consider occupants of No 12 are unlikely to find the outbuilding significantly overbearing such that it harms their living conditions. Consequently, there is no harm to living conditions from the outbuilding and no conflict with policy LLP25 of the LP which seeks to minimise loss of light, amongst other things.
43. I note the Council raises concern regarding the proposed use of the outbuilding. However, I have no evidence to show that the outbuilding has been used as an independent dwelling. Were I to grant planning permission for the outbuilding, it would be possible to prevent it being used as a separate dwelling via condition.

Fence

44. The Council asserts that the fence harms the amenity of the occupants of No 8, as it prevents sunlight and is an obstructive feature to the outlook of the dwellinghouse. However, given the limited height of the fence compared to the height of the windows, I consider it does not significantly affect the outlook from No 8 or levels of light reaching the dwelling. Consequently, there is no harm to living conditions from the fence and no conflict with policy LLP25 of the LP which seeks to minimise loss of light, amongst other things.

Highway safety

45. The appeal premises comprises an end terrace with a substantial front garden which has been laid with paving blocks. Due to the height and projection of the

fence between No 10 and No 8, drivers of vehicles exiting the premises are unlikely to have sufficient visibility to see pedestrians using the pavement walking towards the appeal property, past No 8 which would compromise pedestrian safety.

46. Drivers of vehicles exiting the premises are also unlikely to have sufficient visibility to see vehicles travelling along Preston Gardens, from the direction of Stockingstone Road. As a consequence, vehicles are likely to have to pull onto the highway before sufficient visibility is achieved. I saw that vehicles tend to be parked on the street, meaning that vehicles are likely to be travelling in the centre of the carriageway. A passing vehicle is likely to have to manoeuvre around a vehicle exiting the appeal site or wait while it exits. This would pose a risk to users of the highway and interrupt the free flow of traffic.
47. Although it may be possible for drivers to exit the driveway at an angle to improve visibility, they would not be obliged to do this and may choose not to, particularly if vehicles are parked on the street in front of No 12, as they were during my site visit. Thus, I find the fence is harmful to the safety of pedestrians, cyclists and vehicles using the highway, contrary to policy LLP25, which seeks to ensure that places are safe and to improve accessibility to walking, amongst other things.

Conclusion: Ground (a)

48. I have found the rear dormer, outbuilding, changes to the front elevation at first floor level and fencing harm the character and appearance of the area. Although I have found the single storey rear extension does not harm the character and appearance of the area and the fence and outbuilding do not harm living conditions, these are neutral factors in my consideration of the appeal. I have found the rear single storey rear extension harms the living conditions of the occupants of No 12 and that the fence harms pedestrian, cyclist and vehicular safety.
49. While the appeal building and fencing may have been in poor condition prior to the works, I see no reason why it would not have been possible to carry out improvements which are sympathetic to the character and appearance of the area, do not harm living conditions, and which do not harm highway safety.
50. Thus, for the reasons given above, I find the appeal scheme conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

51. An appeal under ground (f) is made on the basis 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
52. Section 173(4) of the Act sets out the purposes of an enforcement notice are (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.

53. Given the requirements, which require the works to be removed and, in respect of the fence, make the development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land¹, it is clear that the purpose of the notice is to remedy the breach of planning control.
54. The ground (f) appeal is made with respect to the restoration of the roofs, the reinstatement of the first floor bay window to the front elevation of the dwelling and the reduction of the height of the fence.
55. The appellant states that the roofs of the property were in a poor state and it would be contrary to the public interest to recreate the serious dilapidations including foliage emerging from the property. However, in my view, it would not be necessary for the appellant to restore the foliage or any defects which were present, rather the requirement would allow the roof to be reinstated to its previous alignment and design. Since the notice requires the roofs to be restored to their condition before the breach took place, the requirement is not excessive.
56. Under ground (f), the appellant repeats concerns raised regarding the omission of the single storey front elevation. However, as set out above, the ground floor is not attacked by the notice and I have considered the implications of this on the character and appearance of the area above. The appellant suggests that the reinstatement of the first floor bay window to the front elevation would give rise to serious disruption of the single storey front extension, including the need for new structural support for the replacement works at first floor level. However, the appellant has not explained what disruption the works would potentially cause.
57. While support is likely to be necessary for the reinstatement of the bay window, given the removal of the bay at the ground floor, I have no substantive evidence to show that it would not be possible to reinstate the window. Since the notice simply requires the first floor bay window to the front elevation of No 10 to be reinstated, I do not consider the requirement is excessive.

The fence

58. Although parts of the fence adjacent to No 8 are located some distance from the highway, it has been constructed as one act of development. Were the appellant to comply with the notice, they would once again have permitted development rights and could erect a fence up to 2m in height, so long as it is not adjacent to the highway.
59. The appellant suggests it is only necessary to reduce the first three fence panels to a height of 1m above the adjacent ground level. As confirmed in *Tapecrow Ltd v FSS & the Vale of White Horse DC* [2006] EWCA Civ 1744, the enforcement regime is intended to be remedial, not punitive. While permitted development rights cannot be applied retrospectively, I consider a lesser step would be to reduce the fence panels which are adjacent to the highway to no more than 1m above ground level.
60. I agree that reducing the first three fence panels would bring the fencing in line with the GPDO and have raised with the parties whether, in the interests of

¹ Planning permission granted by Part 2, Class A of the GPDO

clarity, a plan should be inserted to show which panels should be reduced and the wording varied to refer to the plan so that the appellant knows what they have to do. Since this would provide clarity and reflects the appellant's case with respect to the fence under the ground (f) appeal, I consider such variations can be made without causing injustice to either party.

61. Thus, for the reasons given above, the appeal succeeds under ground (f) with respect to the fencing only.

Ground (g)

62. An appeal under ground (g) is made on the basis that any period specified in the notice...falls short of what should reasonably be allowed. The appellant requests a 12 month period, particularly in light of the current pandemic. However, the situation regarding the pandemic has changed since the appeal was lodged and I am unaware of any remaining restrictions which are likely to impede the appellant's ability to comply with the notice.
63. No 10 appears to be occupied. Given the extent of works that are required, it is likely that the occupant of the property may need to relocate while works are being carried out. Furthermore, the appellant is likely to require a builder to carry out much of the works. I therefore consider it would be reasonable and proportionate to extend the compliance period to 9 months.
64. The appeal under ground (g) succeeds to that extent.

Conclusion

65. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Appeal C

Ground (c)

66. An appeal under ground (c) is made on the basis that those matters (if they occurred) do not constitute a breach of planning control. The appellant asserts that the detached replacement garage which has been erected on the site of the former two garages now lies in the rear garden of 10 Preston Gardens and is for purposes incidental to the enjoyment of the dwellinghouse.
67. The appellant purchased No 10 Preston Gardens in January 2020 and is stated to have acquired the adjoining detached garage at a later date. It is not disputed that the now demolished garages were not within the curtilage of No 10, but were within a garage block accessed via a shared right of way from Stockingstone Road.
68. The appellant asserts that the garage is permitted by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)(the GPDO). However, Part 1 of the GPDO only permits development within the curtilage of a dwellinghouse. The building which has been constructed straddles part of the rear garden of No 10 and the garage block area. Even if I were to accept that the building now falls within the curtilage of No 10 and a material change of use of the land has occurred to residential use, since the appellant did not acquire No 10 until 2020, the change of use would not be lawful by virtue of the passage of time.

69. Thus, the outbuilding is not permitted by the GPDO and planning permission is required. Consequently, the appeal under ground (c) must fail.

Ground (a)

Main Issues

70. The main issues of the appeal are the effect of the outbuilding on the character and appearance of the area.

Reasons

71. The outbuilding is located to the rear of No 10, within an area which formed part of a block of garages, accessed via a shared right of way from Stockingstone Road. The other garages are owned and occupied by adjoining householders in Preston Gardens and Colin Road to the west. The garages are constructed in concrete and dark brick and are modest in size.
72. Although the outbuilding has been erected to the rear of No 10, it is accessed via a shared right of way from Stockingstone Road and is highly visible from the garage courtyard. I saw that the white, uPVC roof of the outbuilding is also visible from Preston Gardens. The building is a substantial structure which, due to the use of orange/red brick and uPVC, contrasts significantly with the modest concrete and brick structures present elsewhere within the courtyard.
73. As a consequence, the outbuilding appears an overly dominant, incongruous feature which diminishes the character and appearance of the area, contrary to policy LLP1 of the Luton Local Plan (2011-2031)(adopted 2017) which seeks to ensure that development responds to and enhances local character and policy LLP25 seeks high quality design and in particular, seeks to ensure that development enhances the distinctiveness and character of the area by responding positively to the form, scale, and materials, amongst other things.
74. Policy LLP19 relates to extensions to dwellings and annexes. The appeal building is not an extension to a dwelling, nor is it an annexe, policy LLP1 is therefore not relevant in this case.

Ground (g)

75. The appellant requests a compliance period of 6 months. However, there is no explanation as to why 6 months is required. Although the outbuilding is substantial in size and builders are therefore likely to be required to remove it, I see no reason why three months would not be sufficient to demolish the building and remove the rubble. Consequently, the appeal under ground (g) must fail.

Appeal C Conclusion

76. 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.

M Savage

INSPECTOR



PLAN 1

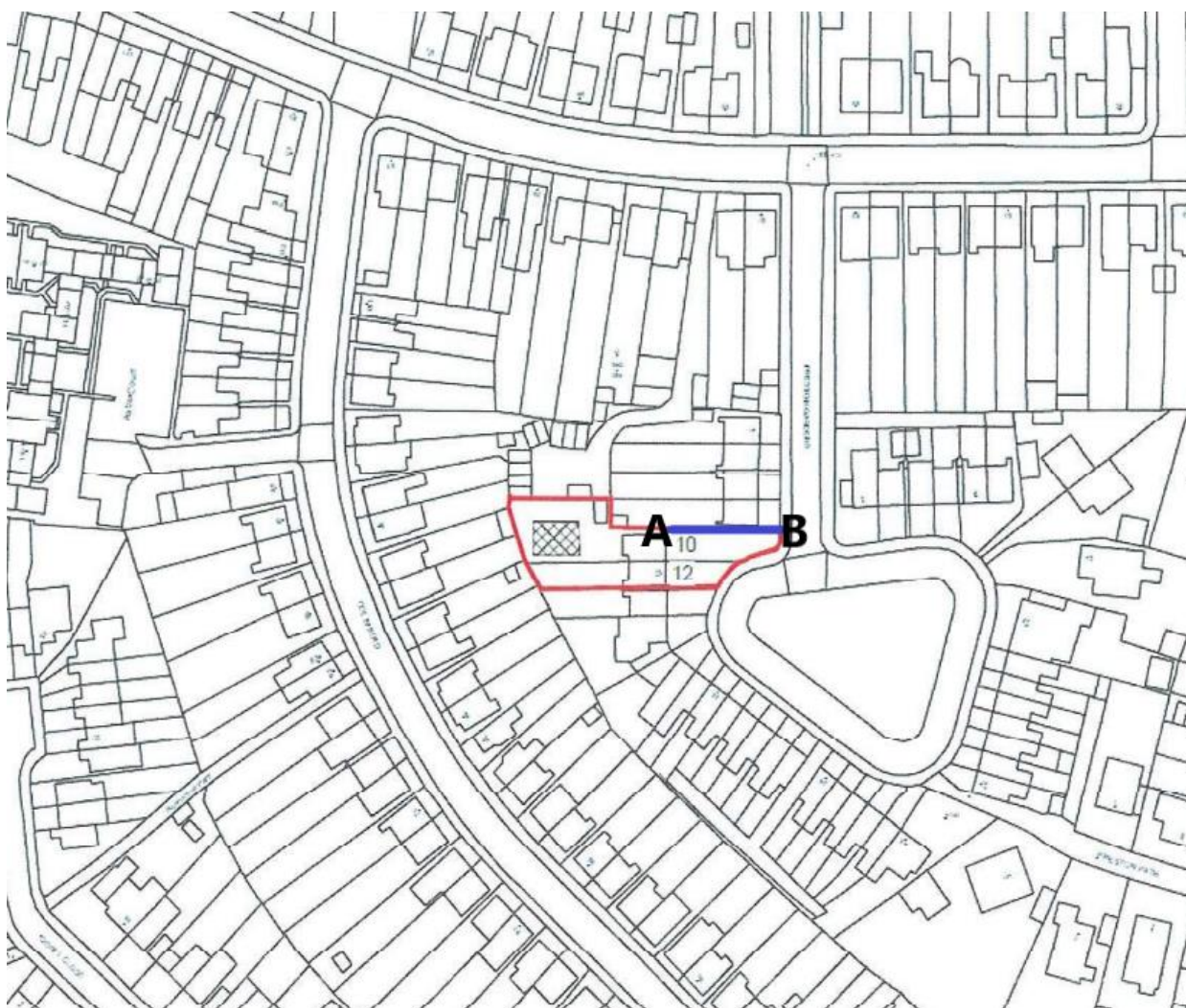
This is PLAN 1 referred to in my decision dated: 9 January 2023

by M Savage BSc (Hons) MCD MRTPI

Land: at 10 and 12 Preston Gardens, Luton, Bedfordshire LU2 7NL

References: APP/B0230/C/20/3262827 (Appeal A) & 3260477 (Appeal B)

Scale: Not to scale





PLAN 2

This is PLAN 2 referred to in my decision dated: 9 January 2023

by M Savage BSc (Hons) MCD MRTPI

Land: at 10 and 12 Preston Gardens, Luton, Bedfordshire LU2 7NL

References: APP/B0230/C/20/3262827 (Appeal A) & 3260477 (Appeal B)

Scale: Not to scale

