



Appeal Decision

Site visit made on 14 September 2023

D Hartley BA (Hons), MTP, MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19TH SEPTEMBER 2023

Appeal Ref: APP/K0235/C/22/3297788

Land known as 11 Victoria Road, Bedford, Bedfordshire MK42 9JS

- 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 S Singh against an enforcement notice issued by Bedford Borough Council.
 - The enforcement notice, numbered 19/00038/UNDEV, was issued on 28 March 2022.
 - The breach of planning control as alleged in the notice is without planning permission the erection of an outbuilding and the material change of use in the land from C3 (single dwellinghouse) to a mixed use of C4 House in Multiple Occupancy and a separate C3 dwellinghouse.
 - The requirements of the notice are i) cease the separate residential C3 use of the outbuilding marked green on the attached plan, ii) demolish the outbuilding marked in green on the attached plan; and iii) remove all resultant waste and materials from the land; and iv) reinstate the land to its original condition prior to the works taking place.
 - The period for compliance with the respective requirements is i) four months, ii) five months, iii) six months and iv) twelve 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 (the Act). 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. It is directed that the enforcement notice be corrected by removing all of the words in paragraph 3i) and replacing them with '*without planning permission the erection of a building and material change of use of the land by subdivision to create a separate C3 dwellinghouse*'. Subject to this correction, 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.

The Notice

2. On the evidence that is before me, I find that the notice does not properly describe what the local planning authority (LPA) is trying to enforce against. There is no dispute between the main parties that when the notice was issued the appeal 'outbuilding' was being used as a separate dwellinghouse. Consequently, when the notice was issued there had been a subdivision of the planning unit relating to land at 11 Victoria Road, Bedford. On this basis, when the notice was issued the planning unit was not in a mixed use, but rather there had been the erection of a building and material change of use of the land by subdivision to create a separate C3 dwellinghouse. Furthermore, the LPA allege that at this time there had been the material change of use of the

existing dwellinghouse on the site from use class C3 (dwellinghouse) to C4 (House in Multiple Occupation).

3. Given the above, the allegation in the notice is incorrect. I am satisfied that I can correct the allegation to reflect the above without injustice being caused to the main parties. I shall accordingly correct the allegation in paragraph 3i) of the notice by removing all of the words and replacing them with '*without planning permission a) the erection of a building and material change of use of the land by subdivision to create a separate C3 dwellinghouse and b) the material change of use of 11 Victoria Road, Bedford, Mk42 9JS from use class C3 (Dwellinghouse) to use class C4 (House in Multiple Occupation)*'. Notwithstanding this correction, it should also be considered alongside a further and final correction in paragraph 9 below.

Hidden ground (b) appeal

4. The LPA allege change of use of 11 Victoria Road, Bedford from a dwellinghouse to a House in Multiple Occupation (use class C4). The LPA provides very little information in respect of its contention that when the notice was issued the property was in use as an HMO. The only evidence before me relates to paragraph 7.13 of its statement of case which states '*a Planning Contravention Notice (PCN) was served on the appellant at the same time as the Enforcement Notice on 12 July 2019. The appellant responded on 19 August 2019 (see appendix 10). The response shows that at that time, there were three occupants of the house that were unrelated.... It was concluded from this response that the house was in use as a small HMO at that time*'.
'
5. In respect of the above, the appellant has commented that 11 Victoria Road, Bedford is being used as a dwellinghouse and not as a House in Multiple Occupation (HMO). He lists the names of the occupants '*then and present*' and these are the same as those listed in the PCN response, save for the evidence that the couple now have a child. He states that the other male is the brother of the male that is part of the couple. He states that '*this is a family unit and not as inferred by the local planning authority*'. He says that '*at the time of Mr Singh signing this PCN, there wasn't anybody living in the outbuilding and that situation seems to have come along some time afterwards as construction works were ongoing throughout most of 2019*'.
'
6. While an appeal on ground (b) has not been formally made by the appellant, i.e., that those matters mentioned in the allegation have not occurred, there is insufficient evidence before me to demonstrate that the alleged HMO use had taken place when the notice was issued. In effect, a hidden ground (b) has been pleaded by the appellant based on the appeal correspondence before me.
7. Whether a property falls within use Class C4 goes beyond the Council's simple consideration as to whether occupants are related to one another. It includes how the building is specifically used and what facilities are available to occupants. I have not been provided with detailed information about what was happening in these respects when the notice was issued. Furthermore, and, in any event, there is nothing before me which casts doubt about what the appellant has said about the individuals that are said to have occupied the property '*then and present*' as being connected in family terms.
8. As a matter of fact and degree, the evidence does not support the Council's claim that when the notice was issued a material change of use of 11 Victoria

Road from use class C3 (Dwellinghouse) to use class C4 (Houses in Multiple Occupation) had occurred. In this respect, I conclude that the appeal succeeds on ground (b).

9. I have considered whether I could correct the allegation to reflect the above conclusion. In respect of the planning merits of the deemed planning application, neither the appellant nor the Council provide detailed assessments in respect of the alleged HMO. The assessments of the deemed planning application relate solely to the planning merits of the 'outbuilding'. I am therefore satisfied that following my conclusion on the hidden ground (b) appeal, I can correct the allegation in the notice without injustice being caused to the main parties so that it refers only to '*without planning permission the erection of a building and material change of use of the land by subdivision to create a separate C3 dwellinghouse*'. The allegation in the notice is accordingly corrected.

Ground (a) appeal and the deemed planning application

Main Issue

10. The appeal made on ground (a) of s.174 of the Act is that planning permission ought to be granted in respect of the breach of planning control which may be constituted by the matters stated in the notice. As detailed above, I have corrected the breach of planning control in the notice. Therefore, the ground (a) appeal and the deemed planning application relates to the erection of a building and material change of use of the land by subdivision to create a separate C3 dwellinghouse.
11. I have considered the reasons for issuing the notice and the main issues are the effect of the development on (i) the living conditions of the occupiers of neighbouring dwellinghouses in respect of outlook, (ii) the character and appearance of the area and, (iii), whether sufficient outside amenity space would be available for residents.

Background

12. There is some history relating to the erection of an outbuilding on the site. Planning permission was approved in 2014¹ for a single storey outbuilding on the land to form a gym. The evidence is that such an outbuilding was not built in accordance with approved plans. A larger outbuilding was constructed, and planning permission was refused in 2018² for its retention. Following this refusal, the appellant sought planning permission for the retention of an altered outbuilding as part of a further planning application³ which was subsequently also refused by the LPA. It is understood that such alterations were physically carried out.

Outlook

13. The outbuilding is a large structure occupying a significant proportion of the rear garden. The gardens of the neighbouring properties are narrow. The appeal building is positioned tight up to the boundaries with 9 and 13 Victoria Road.

¹ 13/02195/FUL approved on 4 February 2014

² 18/00636/FUL refused on 2 May 2018

³ 18/01384/S73A refused on 13 December 2018

14. Owing to its length, position and height, I find that the building has a dominant and enclosing impact when appreciated by occupiers of 9 and 13 Victoria Road. I accept that there is an outbuilding at the bottom of the garden belonging to 9 Victoria Road, but this is much smaller than the appeal building. My concern about the harm caused to the outlook of occupiers of neighbouring land is the same whether the appeal building is used as a separate dwellinghouse, or for a use ancillary to use of the main property as a dwellinghouse.
15. For the above reasons, I conclude that the development does not accord with the amenity requirements of design code E7 of the Council's Residential Extensions, New Dwellings and Small Infill Developments Design Guide 2000 (Design Guidance), and paragraph 130(f) of the National Planning Policy Framework 2023 (the Framework).

Outside Amenity Space

16. There is an acknowledgement from the LPA that the reference in the notice to the footprint of the outbuilding resulting in a plot coverage of 68% is incorrect. I have no reason to disagree with that position. However, on my site visit I was able to appreciate the outside space that would be available for occupiers of the host property as well as the breach of planning control. I find that the resultant space available for two residential properties is small and cramped. Furthermore, the space between the appeal building and 11 Victoria Road is about 7 metres. Such space is not separated physically.
17. The subdivision of the inadequate outside amenity space would only compound my concern below from a pattern of development point of view. In the absence of some form of boundary treatment separation between the appeal building and 11 Victoria Road, there would be mutual harm caused to the occupiers of the two properties in terms of the privacy needed for enjoyment of such outside amenity spaces.
18. For the above reasons, I conclude that the outside amenity space is deficient and hence the development does not accord with paragraph 130(f) of the Framework.

Character and appearance

19. While outbuildings are not an uncommon feature in the locality, they are nonetheless mainly subordinate in scale to the host properties and there remains a proportionate amount of open space around buildings, usually in the form of gardens, thereby offering some welcome relief to the otherwise built form. This general pattern of development adds positively and distinctively to the character and appearance of the area.
20. In the context of the above and owing to the size and position of the appeal building, the development is seen as an imposing form of development taking up a significant proportion of open space to the rear of 11 Victoria Road. In this regard, some harm has been caused to the more open pattern of development in the rear garden environment setting to the detriment of the character and appearance of the area.
21. I therefore conclude that the development does not accord with the design, character and appearance requirements of policies 28S, 29 and 30 of the adopted Bedford Borough Local Plan 2030, Design Codes E1, E2 and E3 of the Design Guide and chapter 12 of the Framework.

Other considerations

22. I acknowledge that planning permission was approved in 2014 for an outbuilding on the land. However, and, overall, that was for a smaller outbuilding than is the subject of this appeal, even accounting for the relative changes in roof design. Furthermore, and, in any event, that planning permission is no longer capable of being implemented.
23. I have considered the deemed planning application on its individual planning merits and based on my own planning judgment including what I experienced on my site visit. Neither the former planning permission for the site, nor the potential to exercise permitted development rights under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), are sufficient to outweigh my conclusions on the main issues which are of overriding concern.

Ground (a) conclusion

24. For the reasons given above, I conclude that the appeal development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Hidden ground (f) appeal

25. While an appeal has not been formally made by the appellant on ground (f) of s174 of the Act, it is clear from the appellant's evidence that in fact such an appeal has been made. An appeal on ground (f) makes the claim that the steps required by the notice to be taken 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.
26. The appellant makes the claim that it is excessive to require the demolition of the outbuilding when it could revert to its original intended ancillary use as a gym. The purpose of the notice is to remedy the breach of planning control. Furthermore, I have found as part of the ground (a) appeal that the outbuilding causes harm to the living conditions of the occupiers of neighbouring residential properties in terms of loss of outlook. This would be the case even if the building were to be used for an ancillary purpose. Furthermore, there is no evidence that there is an extant planning permission in place for an outbuilding on the site.
27. I conclude that the steps in the notice do not exceed what is necessary to remedy the breach of planning control. Therefore, the appeal does not succeed on ground (f).

Conclusion

28. 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 deemed application.

D Hartley

INSPECTOR