
Appeal Decision

Site visit made on 25 July 2024

by **S Lo LLB M.SRA**

an Inspector appointed by the Secretary of State

Decision date: 05 November 2024

Appeal Ref: APP/B0230/W/23/3335989

165 Barton Road, Luton LU3 2BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Samir Riaz against the decision of Luton Borough Council.
 - The application Ref is 23/00816/FULHH.
 - The development is described as the use of existing outbuilding as a self-contained granny annexe.
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Decision

1. The appeal is dismissed.

Applications for Costs

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

Preliminary Matters

3. Although Building Regulation Approval was granted for the appeal site in 2022, there is no evidence that planning consent was obtained for the demolition of the garage or the construction of the summer house and gym, which includes a shower room and kitchenette. As it has not been in place long enough to be immune from planning enforcement, the last lawful use of the structure remains as a garage. This correlates with the description used by the appellant in the application form, which describes the structure as an outbuilding. Additionally, due to its location, design and height, the structure would not qualify as permitted development.
4. During my site visit, I observed that the building on the appeal site already contains a kitchenette and bathroom. As the development appears to have already taken place, I have determined the appeal on that basis.

Main Issues

5. The main issues are:
 - whether the development would constitute a separate or ancillary residential unit;
 - the effect of the development upon the character and appearance of the site and its surroundings; and
 - whether the development provides satisfactory living conditions for occupiers, with particular regard to space.

Reasons

Separate or ancillary residential unit

6. The appeal site includes a semi-detached dwelling house and an outbuilding, with a large garden located to the rear and a driveway area to the front. The outbuilding features a central open area, bathroom, and kitchenette. During my site visit, I observed that the kitchenette was equipped with a washing machine, cooker, ventilation hood, and refrigerator. The central space included a desk, limited exercise equipment, a central heating system and laminate flooring. The outbuilding is smaller in size than the primary dwelling but contains all the essential facilities for independent living.
7. The structure has doors and windows at both the front and rear. The front door faces directly onto the driveway, which enables the structure to maintain independent access from the principal dwelling. As such, this driveway can be shared between the outbuilding and principal dwelling. It also has its own separate bins. While the buildings are close to each other there is no direct internal connection between them. The rear door opens onto a garden area paved with stones and artificial grass. Although this area is currently part of the larger garden, it is elevated slightly higher than the rest, suggesting it may have once been separated from the primary garden by a fence, which has since been removed. It is likely that this could be reinstated without significant work.
8. The planning application form indicates that the appellant intends to use the outbuilding as a self-contained granny annexe. However, it is unclear how the annexe would be used or how it would relate to the occupiers of the principal dwelling. There is no evidence before me that it is being used to accommodate a dependent relative. The appellant has not disputed the Council's finding that the outbuilding is currently occupied by a tenant with no familial or functional connection to the residents of the principal dwelling. As such, there is no evidence to indicate a functional relationship between the occupants, nor any indication that the outbuilding shares internal facilities with the principal dwelling.
9. Accordingly, as a matter of fact and degree, I find that the outbuilding provides the necessary facilities required for day-to-day private domestic existence¹. As a result, following the Uttlesford² case, the minimal physical and functional links between the principal dwelling and the outbuilding strongly suggest that a separate planning unit has been created. The Carter case³ is not comparable to this development as there is no evidence that a functional relationship exists between the outbuilding and the principal dwelling in this appeal. There is no evidence before me that it is being used to accommodate dependent relatives. As such, I find that the development has effectively created two distinct residential dwellings.
10. The appellant has referenced several appeal decisions⁴. A common conclusion in these decisions is that the Inspector did not find that a separate dwelling had been established; instead, they concluded that the building would remain an annexe and be part of the original planning unit. Accordingly, these decisions are not comparable to the development. In any event, I am not aware of the

¹ Gravesham Borough Council v The Secretary of State for the Environment (1982)

² Uttlesford DC v SSE & White [1992] JPL 171

³ Carter v South Bucks DC [2011]

⁴ Refs 3329478 and 3329478, 3329478, 3248323

particular circumstances of those cases and must consider this case on its own merits.

11. I have considered the use of a planning condition to ensure that the outbuilding would remain ancillary to the principal dwelling. However, I note that the development has already been built out, which highlights the issues regarding the Council's ability to effectively monitor the appeal site. Additionally, the appellant has referred to their need to respond to market circumstances and provide ancillary accommodation which will be attractive to prospective tenants, which highlights the lack of a functional relationship between the occupiers of the development and the principal dwelling. Given my finding that a change of use has already occurred, I am not persuaded that such a condition would be enforceable and reasonable in all other respects. Thus, such a condition would not make the development acceptable in planning terms.
12. In conclusion, the development would constitute a separate residential unit. It would be self-contained and could function as an entirely separate dwelling, contrary to Policy LLP19 of the Luton Local Plan 2017 (the "LP"). As such, it would fail to accord with local plan policies, contrary to LLP1 of the LP.
13. The Council alleges conflict with Policy LLP25 of the LP. However, this policy relates primarily to urban design. Accordingly, this policy has not been determinative in my decision on this issue.

Character and appearance

14. The frontage of the property has undergone external modifications, including the installation of a door and window that resemble those of a residential dwelling. Additionally, there are separate bins for the outbuilding. As such, I find that the development has created the appearance of a residential bungalow dwelling.
15. The area is characterised by a mixture of different uses, including residential, office and commercial. The surrounding buildings include a mixture of semi-detached and detached two storey houses and bungalows of varying scale and design. However, the building is the only observed example of a detached outbuilding of its kind visible from this part of the street and within the immediate group of properties. As such, the development creates a perceived over-intensification of the residential use of the appeal site. The visibility of the shared front access, alterations to the fenestration, and continuing separation of the outbuilding from the principal dwelling, also highlight the development's harmful effect on the established pattern of development along the road.
16. While the visibility of the development is relatively low due to the height of the surrounding walls/front gate and the limited height of the outbuilding, the development still remains a departure in character for the area as a whole. I did not observe, nor has any evidence been submitted, to suggest that the use of outbuildings as separate living spaces is common in other plots or sites in the area. As such, the development significantly alters the appearance of the site and the surrounding area. The resulting visual intensification of the residential use of the site, alongside the increased level of associated residential activity and paraphernalia, makes the site distinct from neighbouring single household properties. As such, although the proportions of

the building are largely unchanged from its previous use as a gym, the development introduces a more intensive form of residential use into the area.

17. In conclusion, the development harms the character and appearance of the site and its surroundings. It does not respond positively to the street scene and building context, contrary to Policy LLP25 of the LP which requires high quality design. As such, it would fail to accord with local plan policies, contrary to LLP1 of the LP.
18. The Council alleges conflict with Policy LLP19 of the LP. However, this policy relates primarily to the use of the annexe. Accordingly, this policy has not been determinative in my decision on this issue.

Living conditions –occupiers

19. The plan provided by the appellant was prepared in anticipation of the use of the appeal site as a summer house and gym. The plan does not specify the size of the garden or how it functions as an outdoor amenity space.
20. No storage space has been allocated on the plans for occupiers, albeit storage furniture was observed during the visit, which reduced the habitable space within the structure. The shower room and bathroom occupy a significant proportion of the available floorspace. The incorporation of the kitchen and associated white goods within the central living area further reduces the available space. The plans indicate that the combined area for the shower room, gym, and tea point is approximately 25 sqm. As such, due to the confined nature of the structure, there is limited habitable space for occupants. Based on these considerations and my observations during the site visit, I find that the appeal site falls short of the minimum acceptable provisions of useful habitable space. Given this, the living experience is cramped and confined, thus being insufficient for reasonable domestic activities.
21. In conclusion, the development does not provide satisfactory living conditions for occupiers, with regard to space. It is not a high quality design and does not demonstrate adherence to the best practice principles of urban design, contrary to Policy LLP25 of the LP. As such, it fails to accord with local plan policies, contrary to LLP1 of the LP. It also does not create a place with a high standard of amenity for existing and future users, contrary to paragraph 135 of the National Planning Policy Framework.

Conclusion

22. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

S Lo

INSPECTOR