



Appeal Decision

Site visit made on 8 May 2025

by **K E Down MA(Oxon) MSc, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 May 2025

Appeal Ref: APP/B0230/D/25/3359862

35 Wetherne Link, Luton, LU4 9PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms S Lenortavice against the decision of Luton Borough Council.
 - The application Ref is 24/01073/MMAMD.
 - The application sought planning permission for “Change of use of existing outbuilding to granny annex” without complying with a condition attached to planning permission Ref 22/01393/FULHH, dated 8 March 2023.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall not be carried out other than in complete accordance with the approved plans and specifications set out on Luton Borough Council plan and document numbers: DC01, DC02, DC03, DC04A, DC05, DC06, DC07, DC08, and DC09.
 - The reason given for the condition is: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of existing outbuilding to granny annex at 35 Wetherne Link, Luton, LU4 9PE in accordance with the application Ref 24/01073/MMAMD, without compliance with condition numbers 1, 2 and 4, previously imposed on planning permission Ref 22/01393/FULHH dated 8 March 2023 and subject to the following conditions:
 - 1) The external materials to be used in the construction of the development hereby permitted shall match those used in the main dwelling.
 - 2) The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 35 Wetherne Link, Luton, LU4 9PE.
 - 3) The residential occupation of the building hereby permitted shall only be by a dependant relative with a direct family relationship to the occupier(s) of the dwelling known as 35 Wetherne Link, Luton, LU4 9PE.

Procedural matter

2. The Council noted at their site visit that, in addition to alterations to the approved layout and external openings in the annex the subject of this appeal, it had been finished in white render and not in materials to match the host dwelling, as required by condition 3 of planning permission 22/01393/FULHH. The Council did not

consider this alteration in their determination of the application to vary condition 2 although they used the non-compliance with condition 3 as a second reason for refusal.

3. The appellant in the appeal statement questions whether this matter is before the decisionmaker (the Council and now the Inspector) to determine since it did not form part of the original application. Rather it is suggested it is a separate breach of condition 3 that should be assessed and actioned by the Council as a separate matter.
4. Since the issue of the render did not form part of the original application and was not a matter that was addressed by the Council or consulted on or drawn to the attention of third parties such as neighbours, I agree that it is not a matter before me in the context of this appeal. Moreover, the annex is visible from both neighbouring properties and from the public domain. I therefore consider that the interests of both the Council and third parties could be prejudiced if I were to take a view on this matter as part of this appeal. I shall therefore restrict my further consideration to the terms of the original application, which is to substitute one of the approved plans under condition 2, and to the Council's first reason for refusal. Since the proposed plan does not specify external materials, I can do this without any potential conflict with condition 3 arising.
5. The evidence makes reference to an internal dividing fence within the appeal site which was required to be removed under condition 4 of planning permission 22/01393/FULHH. At the time of my site visit there was no dividing fence. It therefore appears that the essence of condition 4 has been complied with, although it is not clear whether the Council was notified of its removal as required.

Background

6. The annex was granted a certificate of lawful use or development (LDC) at appeal on 14 February 2022 under ref APP/B0230/X/21/3278349 as an ancillary outbuilding. On 8 March 2023 the Council granted planning permission for the change of use of the outbuilding to a granny annex. The permission was subject to six conditions including condition 2, requiring the development to be carried out in accordance with various plans including plan DC04A, which shows the approved elevations and floor plan.
7. The appeal before me seeks to substitute a different plan, ref BR24-01002, which shows a different internal layout, a larger window in the rear elevation, differently sized windows in the front elevation and a relocated door and new window in the south-east facing side elevation. The annex has been built in accordance with the proposed plan and hence in conflict with condition 2.
8. It is clear from the evidence that it is the proposed layout and the door and window in the south-east elevation to which the Council's reason for refusal relates.

Main Issues

9. There are two main issues. Firstly, whether the proposed layout and alterations to openings would result in a sustainable and ancillary development so as to comply with Policies LLP1 and LLP19 of the Local Luton Plan 2011-2031 (LP), adopted 2017; and secondly, the effect of the proposed side window on the living conditions of neighbouring occupiers with respect to privacy and light.

Reasons

10. The approved layout showed the living room and bedroom at the front of the annex with a bathroom and garden storage room at the rear. The proposed layout shows the bedroom and living room at the rear with an entrance hall, bathroom and garden storage room at the front. This layout provides the same accommodation with the addition of a separate entrance hall. I find it acceptable in principle.
11. However, the Council objects to an internal door between the garden storage room and the annex, deeming this unnecessary and suggesting that it could potentially enable the room to be used as a kitchen to serve the annex. They also consider that the design of the external door to the garden store, including a keypad lock, gives the appearance of a main access. The flooring and presence of power points, a water heater and extractor fan add to their concerns.
12. Many residential outbuildings have locks, and a keypad lock would provide security and convenient access to the garden storage room. Moreover, there are many reasons why a second entrance to the annex, including with a keypad lock, may be deemed appropriate for example to enable emergency access or for carers to enter the building without having to carry a key. I noted that unlike the bedroom door, the internal door between the annex and garden storage room had a lock which suggests that there is an intention to keep the areas separate but even if this door was not locked, I do not consider that the presence of a second entrance to the annex would result in it losing the status of an ancillary building.
13. With respect to the presence of flooring, power points etc. although the plan notation is "garden storage" many garden buildings are multi-purpose and may include uses for other purposes connected with the host dwelling, such as for DIY or hobbies or to provide utility space. I am not therefore persuaded that the presence of these items amounts to evidence of a proposed kitchen use which was clearly not present at the time of my site visit.
14. Finally, the Council points to the size of the proposed window in the garden storage room suggesting it is unnecessarily large and an indicator of the room not being for garden storage. However, if the room is used flexibly then good daylight would be desirable.
15. Overall, a clear functional link can be shown between the annex and the main dwelling, and I find the proposed layout, including the external side and additional internal doors acceptable in the context of the annex use. Moreover, any potential use of the annex as a separate dwelling could be controlled by a planning condition, as suggested by both the Council and the appellant.
16. It is concluded on the first main issue that the proposed layout and alterations to openings in the annex would not amount to a material change of use. In consequence, it would remain as an ancillary building and comply with Policies LLP1 and LLP19 of the LP. Taken together and amongst other things, these support development which complies with the development plan including annex buildings that have a functional link with, are ancillary to and are not subdivided from the host dwelling through boundary demarcation or the sub-division of garden areas.
17. Turning to the effect on living conditions, the proposed elevations include a bedroom window in the side elevation facing the rear of neighbouring dwellings.

The window would be modest in size and would face towards the approximately 2m high close boarded garden fence that divides the appeal site from the neighbouring gardens. The separation would be the width of a garden path. The outlook from the window would thus be limited to a view of the fence and above this the upper floor of the dwellings. There would be no overlooking of garden areas and owing to the angle of view above the fence and distance of separation there would be no loss of privacy to the dwellings. In terms of light pollution, the size of the window, screening by the fence and distance from the neighbouring dwellings would ensure that any light from the room did not cause any material light pollution or loss of amenity to neighbours.

18. It is concluded on the second main issue that the proposed side window would have no materially harmful effect on the living conditions of neighbouring occupiers with respect to privacy or light. In consequence, it would comply with LP Policies LLP1 and LLP19 which, taken together and amongst other things, expect extensions to dwellings, including annexes not to adversely affect the amenity of nearby occupiers with respect to privacy or light.
19. With respect to conditions, I shall delete Condition 2 and allow the appeal. Since the development is now complete, I agree with the Council that there is no need for a condition specifying that it be built in accordance with the approved plans. However, for the avoidance of doubt, I allow the appeal having regard to plan ref BR24-01002, submitted with the application and appeal, which shows the layout and elevations as built.
20. Of the other five conditions on the original planning permission, I agree with the Council that condition 1, relating to implementation, is no longer relevant since the development has been commenced. Condition 3, relating to external materials remains necessary and reasonable and I shall reimpose it. As reasoned above, the current breach of this condition is a matter for the Council to address. Condition 4, requiring the dividing boundary fence to be removed is no longer necessary since it has been complied with.
21. Conditions 5 and 6 relate to the use of the annex as ancillary accommodation to the host dwelling. These remain necessary and reasonable so as to ensure that the annex remains ancillary to the main dwelling and complies with residential occupancy restrictions set out under LP Policy LLP19. I will adjust the original wording of condition 5 to comply with the model condition set out in Appendix A of Circular 11/95: The Use of Conditions in Planning Permissions, which remains extant despite the body of the circular having been cancelled. This will ensure that alternative legitimate uses of the building are not precluded should it no longer be needed for a dependent relative. Condition 6 is reworded for clarity.
22. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be allowed.

KE Down
INSPECTOR