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## Appeal Decisions

Site visit made on 20 May 2025

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 June 2025

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### Appeal A Ref: APP/K2420/C/24/3346915

#### Land at 37 London Road, Hinckley, Leicestershire LE10 1HQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
  - The appeal is made by Mr Manjeet Hayre of Affitto Limited against an enforcement notice ("EN") issued by Hinckley and Bosworth Borough Council.
  - The EN was issued on 26 June 2024.
  - The breach of planning control as alleged in the EN is: Without planning permission, the material change of use of the outbuilding on the Land to a self-contained residential unit, (the "unauthorised use") as shown in photographs attached at Appendix 1 of this notice.
  - The requirements of the EN are to:
    - a. Cease the unauthorised use of the outbuilding as a self-contained unit of accommodation.
    - b. Remove from the outbuilding, all fixtures and fittings associated with the self-contained residential unit. For the avoidance of doubt this includes all kitchen fittings and appliances, along with bathroom facilities.
  - The period for compliance with the requirements is: 5a) and 5b) above, within six months from the date this notice takes effect unless an appeal is submitted beforehand.
  - The appeal is proceeding on the ground set out in section 174(2)(a) of the 1990 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 1990 Act.
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### Appeal B Ref: APP/K2420/W/24/3346910

#### 37 London Road, Hinckley, Leicestershire LE10 1HQ

- 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 Manjeet Hayre of Affitto Ltd against the decision of Hinckley and Bosworth Borough Council.
  - The application Ref is 23/00560/FUL.
  - The development is the "conversion of detached outbuilding to studio apartment".
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### Decision

1. **Appeal A** - It is directed that the EN is varied by:

- *the deletion of the words "...self-contained unit of accommodation." and their substitution with the words "...self-contained residential unit." in 5. WHAT ARE YOU REQUIRED TO DO.*

Subject to the variation, Appeal A is dismissed and the EN is upheld.

2. **Appeal B** - The appeal is dismissed.

### Matter Concerning the Notice – Appeal A

3. The alleged breach of planning control within section 3 of the EN and step (b) of section 5 of the EN describe the development as a "*self-contained residential unit*".

Whereas it is described as a “*self-contained unit of accommodation*” within step (a) of section 5 of the EN.

4. For precision, it is necessary for me to vary step (a) so that it refers to the same development as described in the alleged breach of planning control and in step (b). As the alleged breach is described correctly elsewhere in the EN, I am satisfied that I can do this without causing injustice to either party.

### **Preliminary Matters – Appeal A and Appeal B**

5. There was a dispute between the parties regarding the internal floor to ceiling height of the self-contained residential unit. At my request, the ceiling height was measured and agreed by the parties as being 2.18m at my site visit. I have therefore determined the appeals on this basis.
6. Since the appeals were lodged, a revised National Planning Policy Framework (“the Framework”) has been published. However, this has not raised any new matters which are determinative to the outcome of these appeals. However, I have referenced the revised paragraph numbers where necessary.

### **Appeal A and Appeal B**

7. An appeal under ground (a) is that planning permission should be granted for the matter alleged. The development in Appeal B, although described differently in the description of development, is in effect the same as the development alleged in the EN. While I shall consider each appeal on its individual merits, to avoid duplication, I shall deal with the appeals together.
8. The **main issues** are the effect of the development on:
  - the character and appearance of the surrounding area; and
  - the living conditions of future occupiers, with particular reference to outlook, both internal and external amenity space, and privacy.

### **Reasons**

#### **Character and Appearance**

9. The self-contained residential unit is within the rear garden of 37 London Road. It extends up to the rear and side boundaries of the plot and is separated from No 37 by a small garden. Access to the self-contained residential unit is via a narrow passageway from a gated entrance between 35 London Road and No 37. The self-contained residential unit is single storey with a flat roof and consists of an open-plan kitchen/living/bedroom and a separate shower room.
10. The surrounding area consists of a mix of residential, educational and commercial uses, with dwellings comprising blocks of apartments, as well as terraced, semi-detached and detached properties. While dwelling plots vary in their size and shape, they typically have a sizeable garden to the rear and off-road parking to the front. In contrast, the self-contained residential unit occupies a significant proportion of No 37’s rear garden and is a cramped form of development within an extremely small plot. Consequently, the self-contained residential unit significantly detracts from the character and appearance of the surrounding area.

11. The appellant states that *“a thorough impact assessment has been conducted, demonstrating that the proposed development will not have a significant adverse effect on the local area’s character”*. However, this has not been substantiated within their evidence.
12. The appellant asserts that the development is similar to the development at No 35. I acknowledge that No 35 has structures occupying almost the whole of the rear of the plot. However, I am unaware of the planning history surrounding these structures or indeed whether planning permission was required for their construction. Therefore, the development at No 35 is not directly comparable to the appeal development. In any event, I must determine each case on its own merits.
13. I have been directed to three examples of developments that the appellant asserts are comparable to the appeal development and suggest that the Council is being inconsistent. The development at 269 Station Road<sup>1</sup> was for ancillary residential accommodation rather than a self-contained residential unit. Limited information has been provided regarding the development at 9 Elmesthorpe Lane<sup>2</sup>, however, the description of development states it is for an annexe. As such, these examples are not directly comparable to the appeal development.
14. For the Glebe House example, I have only been provided with an internal floorplan. The nature of the development or whether planning permission was required have not been identified. As such, I cannot draw any comparison with the development before me.
15. For these reasons, the development has a detrimental effect on the character and appearance of the surrounding area. It conflicts with Policy DM10 of the Hinckley and Bosworth Borough Council Local Plan 2006-2026 Site Allocations and Development Management Policies DPD, adopted 2016 (“LP”) which, amongst other things, states that development will be permitted providing it complements or enhances the character of the surrounding area with regard to layout and density.
16. The Council also refer to LP Policy DM1 in both the reasons for issuing the EN and the decision notice’s second reason for refusal. However, this policy refers to the presumption in favour of sustainable development, which is not directly relevant to this main issue.

#### *Living Conditions of Future Occupiers*

17. To the rear of the appeal site is a three-storey block of apartments with a parking area separating the building from the appeal development. The self-contained residential unit has a high-level window that shares a boundary with the car park, while two rooflights are positioned within its flat roof. At the time of my site visit, the high-level window was obscure glazed, and the apartment block windows were not visible through the rooflights. Consequently, the occupiers of the apartment block cannot view inside the self-contained residential unit’s windows and therefore, the living conditions of future occupiers of the self-contained residential unit are not affected by a lack of privacy.
18. Other than the high-level obscure glazed window and the two rooflights, there are no other windows within the open-plan kitchen/living/bedroom, and the outlook from the rooflights is extremely limited. There is a window within the shower room, but

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<sup>1</sup> Planning Ref 22/00703/HOU

<sup>2</sup> Planning Ref 23/00204/HOU

this too is obscure glazed. As such, the living conditions of future occupiers of the self-contained residential unit are significantly compromised by a lack of outlook.

19. Part 4.4 of the Council's "*The Good Design Guide*" Supplementary Planning Document, adopted 2019 ("SPD") states that space standards for new residential development should be specified to exceed those set by the Department for Communities and Local Government's Technical Housing Standards (2015)<sup>3</sup> ("THS"), including providing for residential amenity and internal storage.
20. The Council state that the self-contained residential unit is a one-bedroom, one-person, single storey self-contained residential unit. I have no reason to disagree with the Council's assertion. Therefore, according to the THS, the self-contained residential unit requires a minimum gross internal floor area of 37m<sup>2</sup> which includes at least 1m<sup>2</sup> of built-in storage (as it has a shower rather than a bath).
21. The Council state that the gross internal floor area of the self-contained residential unit, including the entrance area, equates to 22.5m<sup>2</sup> and it has no built-in storage. The appellant asserts that the gross internal floor area meets the minimum internal space standards set out in the THS but has not corroborated this with evidence. As such, I have no reason to assume the Council's figure is incorrect. Consequently, the gross internal floor area falls significantly below the minimum figures specified in the THS and results in substandard living conditions for future residents.
22. Paragraph 10 of the THS states: "*The standard requires that: i. the minimum floor to ceiling height is 2.3m for at least 75% of the Gross Internal Area*". As stated previously, the parties agree the floor to ceiling height is 2.18m. There are two rooflights that create a higher floor to ceiling height. However, the Council has stated that they represent less than 14% of the gross internal floor area of the self-contained residential unit and therefore, the development conflicts with paragraph 10.i of the THS. This has not been disputed by the appellant. Consequently, the living conditions of future occupiers are detrimentally affected by the internal height of the development.
23. Part 4.4 of the SPD states that well designed external amenity space is critical to quality of life and can include traditional front and rear gardens, but also balconies, roof terraces and courtyards. The appellant asserts that the rear garden of No 37 is shared between the self-contained residential unit and No 37. However, at the time of my site visit a fence with a gate that could only be opened from inside No 37's garden prevents access by future occupiers of the self-contained residential unit. As such, there is no external amenity space available for future occupiers to use.
24. The appellant asserts that nearby apartments have an absence of private external amenity space, and a park is in proximity of the appeal site. However, limited information is before me to determine whether the apartments are directly comparable to the appeal proposal. Furthermore, proximity to public open space does not overcome a lack of private amenity space for future occupiers.
25. Taking all these factors together, the development has a detrimental effect on the living conditions of future occupiers, with particular reference to outlook, and internal and external amenity space. It therefore conflicts with paragraph 135 of the

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<sup>3</sup> Technical housing standards – nationally described space standard (27 March 2015) Ministry of Housing, Communities & Local Government

Framework that seeks to ensure that developments create places with a high standard of amenity for future users.

26. The Council refer to LP Policy DM10 in the reasons for issuing the EN and the decision notice's first reason for refusal. However, this policy refers only to the effect of a development on the amenity of nearby residents and occupiers of adjacent buildings, rather than the occupiers of the building itself. Consequently, it is not directly applicable to this main issue.

### ***Other Matters***

27. While the building prior to the development may have had a harmful effect on the character and appearance of the surrounding area, I am not persuaded that similar benefits could not have arisen from other, less harmful, forms of development. The Council has not raised an objection to the appearance of the self-contained residential unit and in any event, this is a neutral matter.
28. The appellant states that there was no objection to the development from neighbouring residents. However, a lack of comments does not indicate they have no objection, nor does it free me of my obligation to determine the appeals in the public interest.
29. At the time of my site visit, there was no evidence of any personal belongings within the self-contained residential unit such as clothes, toiletries etc. to suggest it was occupied. Consequently, there is no need for me to have due regard to The Public Sector Equality Duty contained in Section 149 of the Equality Act 2010.

### ***Planning Balance***

30. Since the planning application was determined, the Council has indicated that they can now demonstrate a five-year supply of deliverable housing sites. However, they assert that because of the age of the policies in the development plan, paragraph 11(d) of the Framework is relevant to the appeals. I have no reason to disagree with the Council's assertion.
31. One additional self-contained residential unit makes a contribution, albeit small, to the Government's objective of significantly boosting the supply of new homes and the Council's housing supply, which weighs in favour of the development. Future occupiers of the self-contained residential unit would provide some additional support to the local community and its services, albeit this would be limited due to the small number of occupiers. Therefore, these benefits carry moderate weight in favour of the scheme.
32. Against the benefits is the harm caused to the character and appearance of the area and the living conditions of future occupiers, which is contrary to the design objectives of the Framework, matters which I afford substantial weight.
33. Consequently, I find that the adverse impacts of the development significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal therefore does not represent a sustainable form of development.

## Conclusions

34. **Appeal A** - For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

35. **Appeal B** - For the reasons given above the appeal should be dismissed.

*A Berry*

INSPECTOR