
Appeal Decision

Site visit made on 22 August 2016

by Richard Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 October 2016

Appeal Ref: APP/B0230/W/16/3151753

110A Toddington Road (rear of), Leagrave, Luton, Bedfordshire LU4 9DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Stanley Reid against the decision of Luton Borough Council.
 - The application Ref 15/00723/FUL, dated 22 March 2015, was refused by notice dated 30 March 2016.
 - The development proposed is retention of front boundary fence and gates.
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Decision

1. The appeal is allowed and planning permission is granted for retention of front boundary gates at 110A Toddington Road (rear of), Leagrave, Luton, Bedfordshire LU4 9DY in accordance with the terms of the application, Ref 15/00723/FUL, dated 22 March 2015.

Procedural Matter

2. It is evident from the submissions before me and my site visit that the development applied for has been carried out and I have determined the appeal on this basis.

Main Issues

3. The main issues are
 - The effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to access.
 - The effect on highway safety.

Reasons

4. The appeal site is located to the rear of Nos. 108 to 110a Toddington Road and is used for vehicle repairs, a use which was granted on appeal in 2011¹. The site is served by a narrow single vehicle width access running between the flanks of the bungalows and rear gardens of Nos. 110 and 110a. The proposal is formed by a 2.1m high metal palisade fence and gates that joins an existing fence that surrounds an adjoining allotment site to the rear of No. 108. It extends across the frontage of the appeal site and is attached to an existing single storey building to the rear of No. 110a.

¹ 11/00875/FUL

Living conditions

5. On the evidence before me the occupiers of Nos. 104 - 110 have a right of way over the access between Nos. 110 and 110a which is used to access parking spaces and garaging at the rear of these properties. I also noted that the double garage that serves No. 110 was set back from the edge of the right of way, with a small apron of tarmac set behind a low timber double gate and fence.
6. Given the nature of the parking spaces to the rear of Nos. 104 and 106 and because the rear gardens are not opposite the proposal, there would be no material harm to the living conditions of the occupiers of those properties in terms of access.
7. It is likely that users would find it challenging to manoeuvre in and out of the garage spaces associated with Nos. 108 and 110 but with care and caution it would not be impossible. Furthermore, there is no substantive evidence before me that the proposal encroaches onto the right of way. I am also mindful that the Council do not appear to have objected to a previous fence, albeit of a lower height, that was intended to *'create a buffer between the residential and commercial uses to help reduce the impact on residential amenity'*² as part of the previously approved scheme. That fence appears to have been in the same location as the proposal before me and the only change appears to be in its height and design, which has no bearing on the ability of neighbouring occupiers to access their properties.
8. Whilst I acknowledge the representations made by third parties regarding the potential existence of rights of access across part of the appeal site, there is nothing before me that demonstrates that these users have any right of way over any part of the appeal site as well as the access. In any event, this is a private matter between the relevant parties and any planning permission granted would not override any legal rights of access. Accordingly, such matters have not had any material bearing on my determination of this appeal.
9. For these reasons, the proposal does not harm the living conditions of neighbouring occupiers in terms of access and does not conflict with Policy LP1 of the Luton Local Plan ('LP') which requires development to maximise the opportunity to improve the quality of life of residents. The proposal would also not conflict with the National Planning Policy Framework's objective of seeking to secure a good standard of amenity for all existing and future occupiers.

Highway safety

10. In my judgement, the number of vehicles accessing the appeal site and at times when the gates would be typically locked would not be significant. Moreover, smaller vehicles using the access that are unable to enter through the gates would be able to manoeuvre so that the garages and parking areas to the rear of Nos. 108 and 110 could be accessed. I am also mindful that the appellant resides at No. 110a so waiting time for the gates to be unlocked would be relatively short and it was evident from visit that an injunction is in place to enforce against the parking of vehicles in the existing access between Nos. 110 and 110a.

² Page 5 of delegated officer report.

11. Furthermore, there have been no objections from the highway authority in relation to conflict with manoeuvring on and off the highway and even if vehicles did occasionally have to reverse, it has not been demonstrated to me that this would cause an obstruction that would be harmful to highway safety.
12. Drawing all of these considerations together, the evidence before me does not satisfactorily demonstrate that vehicles using the right of way to access the appeal site obstructs the free flow of traffic and results in harm to highway safety. Accordingly, there is no conflict with the aims and objectives of Policies T3 and LP1 of the LP which, in this regard, permit development only if it would not cause harm to highway safety and requires development to maximise the opportunity to improve the quality of life of residents.

Other Matters

13. I note the concerns from neighbouring occupiers regarding damage to existing property but that has no bearing on the planning merits of the proposal before me and is not a matter that falls for me to address as part of this appeal.

Conclusion

14. For the reasons set out above and having considered all other matters raised, I conclude that the appeal should be allowed. I have considered the matter of conditions and note that the Council has not suggested any. I do not consider there is a need for conditions as the development proposed has already been carried out.

Richard Aston

INSPECTOR