

Appeal Decision

Site visit made on 9 November 2016

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 29th November 2016

Appeal Ref: APP/B0230/W/16/3155728

7 Gardenia Avenue, Luton LU3 2NP

- 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 Mashood Khan against the decision of Luton Council.
 - The application Ref 16/00842/FUL, dated 13 May 2016, was refused by notice dated 11 July 2016.
 - The development proposed is erection of two bed bungalow at rear of No 7 Gardenia Avenue.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on:
 - (a) The character and appearance of the surrounding area;
 - (b) The living conditions of 1a, 5, 7 and 9 Gardenia Avenue, with particular regard to outlook, noise and disturbance;
 - (c) The living conditions of future occupiers, with particular regard to outlook, light, internal living space and private outdoor space, and;
 - (d) highway safety and the efficient operation of the transport network, with particular regard to parking provision.

Reasons

Character and appearance

3. The appeal site forms the part of the rear garden of 7 Gardenia Avenue. The development would be accessed through the existing driveway between No 7 and No 9. The site is located in a predominantly residential area of semi-detached and terraced dwellings of different styles, though there are also a number of community uses within the vicinity of the site.
 4. The garden of No 7 is relatively wide in comparison to that of neighbouring properties. However, it is not of sufficient size in to adequately or comfortably accommodate the development proposed. There would be very little space around the building which would result in a cramped and over-intensive form of development. This would be exacerbated by the high fencing which would be needed to protect the privacy of neighbouring residents.
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5. The bungalow would be in plain view from the rear of nearby properties and is likely to be seen in glimpsed views from other publically accessible locations between dwellings. From any vantage point, the development would appear to have been unacceptably squeezed into a constrained plot. The siting and scale of the development would also be clearly out-of-keeping with the general built form of the area. Irrespective of other examples of backland development that have been drawn to my attention by the appellant, the predominant character of the area is one of a strong linear relationship between the housing and the street. In addition, the limited amount of space around the building and the resulting plot ratio would not reflect that of the majority of housing in the area, which is characterised as having relatively long back gardens.
6. Although there are bungalows in a backland location on the opposite side of the street, the area remains predominantly two storey in nature. These examples do not impose any overriding architectural characteristic on the area or lead me to conclude that a similar type of development would be acceptable in this location. The other developments identified do not alter my view that the development plot here would be too small and the form of development incongruous to this location. While the appellant has suggested the bungalow would appear subservient and complementary to the other housing, I consider that it would appear somewhat squat, blocky and out-of-proportion in comparison to other buildings in the immediate vicinity of the site.
7. The appellant has drawn my attention to other examples of backland development in the area. I am satisfied that these the resulting impact on the character and appearance of the area from these schemes differs to that here. These do not alter my conclusion, however, that the scale and form of development proposed here would be incongruous and out-of-keeping with the area. It would, therefore, cause material harm to the character and appearance of the area. Accordingly, there would be conflict with saved policies LP1, H2 and ENV9 of the Local Plan¹ (LP) which seek, amongst other things, to ensure development is well sited in relation to surrounding buildings, would not be over-intensive and would enhance the character and appearance of the area. There would also be in conflict with paragraph 64 of National Planning Policy Framework (the Framework) insofar as the development would fail to improve the character and quality of the area.

Living Conditions - Neighbours

8. The fencing around the plot would provide adequate levels of privacy for neighbouring residents. However, the upper part of the bungalow's walls and the roof would still be visible over the fences. The height and bulk of the building near to the common boundaries of No 1a, No 5, No 7 and No 9 would result in an unduly imposing and overbearing structure that would negatively impact on the enjoyment of the garden space of all of these dwellings. This would particularly be the case for the residents of No 9 where the gap between the side of the bungalow and the boundary would be particularly narrow. The impact on outlook resulting from the proximity of the development to neighbouring gardens, is also further evidence of an over-intensive form of development in a constrained plot.
9. In terms of noise and disturbance, neither No 7 nor No 9 has windows in their main flank walls, though both have single storey extensions that include

¹ Luton Local Plan 2001-2011 – Adopted March 2006

windows at ground floor level. There is already a high fence between No 7 and No 9 and the development would create another between the access drive and the extension of No 7. The gap between No 7 and No 9 can already be used as a driveway. Thus, there will already be potential for vehicle movements between the dwellings and a certain level of noise and disturbance. As the existing parking related to No 7 would be displaced, it is unlikely that the development would generate any additional movements over and above what is already possible. Therefore, although the vehicles would be travelling deeper into the site than they do at present, I do not see that there would be a material change in conditions for the residents of No 9.

10. The residents of No 7 will also be subject to potential noise associated with the use of their driveway. However, I consider there to be a material difference between the noise and disturbance generated by a householder's own vehicles and those of another dwelling over whom there is no control. Although a fence would be erected between the driveway and the ground floor windows, this would not completely mitigate the noise emanating from slow moving vehicles along the driveway. This material change in context for the residents of No 7 would lead me to conclude that the use of the driveway and cars passing by their ground floor windows, would create an unacceptable level of noise and disturbance for the occupants of No 7.
11. In conclusion, the development would have an unacceptable impact on the living conditions of neighbouring residents in terms of outlook, noise and disturbance. Accordingly, there would be conflict with saved LP policies LP1 and H2 which seek, amongst other things, to ensure development maximises the opportunity to improve the quality of life of residents and is not over-intensive. The development would also conflict with a core principle of the Framework to secure a good standard of amenity for existing occupants of an area. Policy ENV9 was also referenced in the reason for refusal on this matter, but this policy is concerned mainly with design principles and does not refer to living conditions beyond references to the provision of a safe and secure environment. Therefore, this policy is not of direct relevance to this main issue.

Living Conditions – Future Occupiers

12. As previously noted, there would not be a significant amount of space around the building. The relationship between the windows of the habitable rooms and high fence boundaries would result in an unacceptable lack of outlook from these windows. The boundary fences to the rear of the property and to No 5 would be very close to the windows and would be seen as overbearing and dominant features, creating an unacceptable sense of enclosure and confinement. The proximity of the fences to the windows would also restrict the amount of daylight that is able to penetrate these rooms. This would only serve to create a gloomy and claustrophobic living environment, tangibly diminishing the standard of accommodation for future occupants.
13. In terms of amenity space, the Council have pointed to Appendix 2 of the LP which requires a minimum of 90 square metres (sqm) for new dwellings. The space identified on the plans is less than this at around 82 sqm. It is not clear whether this figure also includes any of the area given over to the driveway and/or those areas which would be too small to provide any form of functionality (for example, the narrow strip of land between the bungalow and

No 9). I have insufficient evidence to conclude therefore that all of the 82 sqm quoted should count toward the LP's requirement of a 90 sqm 'enclosed garden'. However, I have noted that the guidance contained in this appendix does provide some scope for the consideration of less than the prescribed level in certain circumstances, depending on the nature of the property.

14. The appellant has argued that as a modest dwelling, the 82 sqm provided would provide an adequate area of useable space. When considering the importance of private amenity space to future occupants' living conditions, the overall quantity of space must be considered alongside the quality and usability of that space. Essentially, there would be two narrow strips of garden space available for use. All other areas of land around the building would not provide any form of usable garden space. The space provided would not deliver either an appropriate quantity or quality of space to be of practical use to future occupants. Again, this would not lead to an acceptable standard of living environment for future occupiers of the dwelling.
15. The Council has argued the development would not meet the Government's Nationally Described Space Standard (NDSS)². However, the Written Ministerial Statement of 25 March 2015 makes it clear that such standards can only be applied where there is a relevant current local plan policy. There is no such policy in this case and consequently, the national standards cannot be applied on a mandatory basis. Notwithstanding this, the level of internal living space is clearly an important factor in the consideration whether the requirements of the Local Plan or Framework can be achieved.
16. I have noted the Council's concerns and agree that the dwelling would not provide a generous level of internal living space. However, I am satisfied that from the evidence provided the habitable rooms would provide a basic, but acceptable amount of space once necessary furniture, storage and circulation space are taken into account. This does not alter my view, however, that residents of the property would not have an acceptable standard of accommodation resulting from a lack of outlook, daylight and insufficient usable private amenity space. Accordingly, there would be conflict with saved LP policies LP1 and H2 which seek, amongst other things, to ensure development maximises the opportunity to improve the quality of life of residents and is not over-intensive. The development would also conflict with a core principle of the Framework to secure a good standard of amenity for future occupants of a building.

Highway safety

17. Gardenia Avenue is a one-way street and I observed clear signs of existing parking stress along its length. I visited the site in the middle of the day and even at this time there was a significant level of on-street parking taking place on both sides of the road. Most cars were also required to park partially on the pavement on both sides of the road to ensure there was sufficient space for a vehicle to travel down the centre of the road. There are a number of private drives and forecourts which provide parking along the street as well as access points for local community uses that need to be free from obstruction. It is reasonable to assume that the pressure for parking would increase into the evening and at weekends when people are not at work. The situation appeared

² Technical housing standards – nationally described space standard – March 2015 (Department for Communities and Local Government).

far from ideal, with the nature of the parking taking place liable to cause hazards and obstructions to pedestrians and road users alike.

18. The development itself would provide sufficient parking to accommodate the development and thus there would be no conflict with the standards set out in policy T13 in this respect. However, the gap between No 7 and No 9 can clearly already be used for off-street parking and thus the development would lead to the displacement of existing parking onto Gardenia Avenue itself or other nearby streets. I do not accept the appellant's view that the existing parking provision should not be given weight. In all reasonable likelihood, the occupants of No 7 will use this space for parking and they would not be able to once the development had taken place. Therefore, there would be a net increase in the demand for on-street parking in the area.
19. I acknowledge that there were no objections from the highway authority, but the development would still serve to exacerbate the obvious pressure for on-street parking and increase the likelihood of obstructive or inconsiderate parking. This would have adverse consequences for the convenience of existing local residents and an increase in risk to highway and pedestrian safety. Accordingly, I find there would be conflict with policy T3, which seeks to resist development that would cause safety problems for cyclists, pedestrians and other road users.

Other matters

20. In coming to this decision, I have considered the limited contribution the development would make to the housing land supply and the relatively accessible location of the appeal site. However, these factors do not outweigh the unacceptable impact the development would have on the character and appearance of the area, the living conditions of neighbouring and future occupiers and on highway and pedestrian safety.
21. The appellant has drawn my attention to a number of planning appeals that he feels are relevant to this application. While I have considered the decisions, I have not been provided with the full details of each these proposals. Therefore, I cannot be certain that they represent a direct parallel to the appeal proposal before me. In any event, I have determined the appeal on its own merits.

Conclusion

22. For the reasons given above I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR