

Appeal Decision

Site visit made on 14 February 2017

by L Fleming BSc (Hons) MRTPI

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

Decision date: 14 March 2017

Appeal Ref: APP/B0230/W/16/3161456

Land Rear of No 10 Arundel Road, Luton LU4 8DY

- 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 M Hussain against the decision of Luton Council.
 - The application Ref 16/00344/FUL, dated 14 April 2016, was refused by notice dated 15 September 2016.
 - The development proposed is erection of two detached dwellings.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of two detached dwellings at Land Rear of No 10 Arundel Road, Luton LU4 8DY in accordance with the terms of the application Ref 16/00344/FUL, dated 14 April 2016, subject to the conditions set out in the Schedule to this decision.

Main Issues

2. The main issues are the effect of the proposed development on:
 - the character and appearance of the area;
 - the living conditions of the occupants of Nos 10 & 12 Arundel Road with particular regard to outlook.

Reasons

Character and appearance

3. The appeal site is an area of land to the rear of No 10 Arundel Road (No 10) accessed between No 8 Arundel Road (No 8) and No 10. No 10 is a two storey detached dwelling whereas the properties on Arundel Road to the north of the appeal site are mainly semi-detached two storey dwellings set a similar distance back from the road in long and narrow plots. However, towards the junction of Arundel Road with Dunstable Road, are detached bungalows set in wider plots beyond which there are two storey detached properties. Thus, this part of Arundel Road has a relatively mixed character and appearance.
 4. Both main parties agree that the land adjacent to the appeal site and to the rear of Nos 4 to 8 Arundel Road (Nos 4 to 8) benefits from extant planning permission for the erection of five houses and eight flats. I find no reason to question this. Whilst these dwellings are yet to be completed, there is no substantive evidence before me to suggest that this scheme will not be implemented and thus there is a reasonable prospect it will.
-

5. This appeal scheme proposes a pair of two storey detached dwellings positioned side by side behind No 10. These dwellings would be similar in size and positioned a similar distance from Arundel Road to the row of five detached dwellings which form part of the approved development on the land to the rear of Nos 4 to 8.
6. The proposed dwellings would be set in reasonably sized plots with parking areas in front and with reasonably sized rear gardens in a part of Arundel Road which is characterised by mainly detached dwellings. Furthermore, the proposed dwellings would be finished in brick and white render matching the dwellings nearby.
7. I am mindful of the advice contained within the National Planning Policy Framework (the Framework) which states local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area. However, there are no such specific policies before me. Furthermore, even if I were to accept that the appeal site is residential garden land, in order to find conflict with the Framework in this regard, I would need to find the proposed development to be inappropriate.
8. However, for the reasons given, I find the proposal would be in keeping with the pattern of development in the area and would not harm the overall mixed and varied character and appearance of the area. For these reasons, in this regard the proposal accords with saved Policies LP1, H2 and ENV9 of the Luton Local Plan (2006) (LP) and the Framework which, taken together, aim to ensure good design and avoid the inappropriate development of residential gardens.

Living conditions

9. The Council granted planning permission for a similar scheme relating to the appeal site in October 2008. Since that time there have been no changes to the development plan and my attention has not been drawn to any developments nearby that have altered the relationship of the appeal site with nearby dwellings.
10. The proposed dwellings would be visible from the rear elevations and gardens of Nos 10 & 12 Arundel Road (Nos 10 & 12). However, the proposed houses would be bound by a close boarded fence restricting visibility at ground floor level. Furthermore, they would be some distance away with pitched roofs which slope away from Nos 10 & 12. Moreover, views from No 12 Arundel Road would be from an oblique angle through garden planting.
11. For these reasons, I find the proposed development would not be overbearing and thus would not harm the living conditions of the occupants of Nos 10 & 12 with particular regard to outlook. Thus, the proposal would therefore accord with saved Policy LP1 of the LP and the Framework which, taken together, aim to ensure new development does not harm the living conditions of nearby residents and does not result in the inappropriate development of residential gardens.

Other Matters

12. I acknowledge the concerns with regard to setting a precedent for other similar schemes in the area. However, each proposal would need to be considered on

its merits. That said I have found the appeal site would not harm the mixed and varied character and appearance of the area, with specific note of the relationship of the proposed development with the adjacent approved scheme and the properties towards the junction of Arundel Road with Dunstable Road.

13. I have also noted the concerns with regard to the impact of the proposed development on the living conditions of nearby residents with particular regard to light, privacy and noise and disturbance. However, given the space between the proposed dwellings and surrounding properties I find the proposed development would not result in material harm with regard to these matters. For the same reasons, the proposal would not conflict with the requirements of the Human Rights Act (1998).
14. I also note concerns with regard to the effect of the proposed development on trees. However, the proposed dwellings would be a sufficient distance from trees and I find no substantive evidence to suggest any significant trees would be harmed if the development was allowed.
15. I have considered concerns with regard to traffic and parking in the area. I find that the provision of the proposed off-street parking spaces is sufficient for there to be no risk to highway safety or the flow of traffic in the area. Furthermore, there is no substantive evidence to suggest that the modest increase in traffic generated by two dwellings would be harmful to highway safety. Furthermore, there is no substantive evidence to suggest that the proposed relatively wide access and space in front of the dwellings would not be sufficient to allow access for emergency services.
16. Finally, there is no substantive evidence to suggest that local infrastructure and services could not absorb the relatively modest increase in demand generated by two dwellings.

Conditions

17. The conditions imposed are those which have been suggested by the Council but with some variation in the interests of clarity and precision having regard to the advice on imposing conditions in the Framework and the Planning Practice Guidance (PPG).
18. In addition to the standard timescale condition, I have imposed a condition specifying the relevant drawings as this provides certainty. I have also imposed a condition restricting permitted development rights for the installation of windows in the flank elevations of the proposed dwellings. I also agree that given the relatively confined nature of the appeal site a condition is justified which removes all other permitted development rights.
19. As suggested by the Council I have also imposed conditions which require boundary treatments and a landscaping scheme to be agreed and implemented and trees to be protected in the interests of safeguarding the character and appearance of the area. I have also attached a condition which requires site drainage details to be agreed with the Council in the interests of proper site drainage.
20. Furthermore, in the interests of public safety, as suggested by the Council I have imposed a condition which requires the site to be investigated for contamination and dealt with accordingly if found to be present. However, the

condition suggested has been amended to reference relevant standards and in the interests of clarity in line with the PPG.

Conclusion

21. For the reasons given above, I conclude that the proposed development would accord with the development plan and the Framework and thus having had regard to all other matters raised the appeal should be allowed.

L Fleming

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan of LU4 8DY, Ground Floor Plans Drawing No 1140-01 Revision A-WIP, First Floor Plans Drawing No 1140-02, Second Floor Plans Drawing No 1140-03, Roof Plans Drawing No 1140-04, Site Plan 1140-05 Proposed Elevations Drawing No 1140-06, Proposed Elevations Drawing No 1140-07, View Drawing No 1140-08 and View 2 Drawing No 1140-09.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows other than those expressly authorised by this permission shall be constructed on the flank elevations of the dwelling hereby approved.
- 4) Details of the surfacing and drainage of any car parking service area hereby approved shall be submitted to and approved by the local planning authority before the development hereby permitted is commenced. The details thereby approved shall be installed prior to the occupation of any dwelling on the site.
- 5) Full details of the proposed boundary treatment of the site shall be submitted to and approved by the local planning authority before the development hereby permitted is commenced. The details thereby approved shall be installed before the dwellings hereby permitted are occupied.
- 6) No works or development shall take place until full details of a landscaping scheme to include all hard surfaces, grassed areas, tree and shrub plantings and the proposed times of planting, has been submitted to and approved in writing by the local planning authority. All grassed areas shall be laid out and all tree and shrub planting shall be carried out in accordance with those details and at those times. Within one month of the completion of the landscaping scheme written confirmation of the completion date shall be submitted to the local planning authority. If within a period of five years from the initial date of planting of any tree or shrub, any such plant is removed, uprooted, destroyed, dies, or becomes in the opinion of the local planning authority, seriously damaged, diseased or defective, another tree or shrub of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 2015 (or any Order revoking and re-enacting that Order with or without modification) no building, extension or other structure shall be erected, constructed or placed within the curtilage of the dwellings hereby permitted without the prior permission of the local planning authority.
- 8) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice

and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 28 days of the report being completed and approved in writing by the local planning authority.

- 9) Before any building or engineering works are commenced on site the existing trees, within the site shall be safeguarded against damage or injury by the erection of fencing or other suitable protection at a distance of not less than 6 metres from the tree trunks and no plant, materials or other objects shall be stored or placed against any of the trees, The protection measures referred to above shall be maintained during the whole period of site excavation and construction.

END OF SCHEDULE