
Appeal Decision

Site visit made on 8 May 2017

by S Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 22nd May 2017

Appeal Ref: APP/B0230/W/17/3168029
23 St Martin's Avenue, Luton LU2 7LQ

- 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 B Whitlock against the decision of Luton Council.
 - The application Ref 16/01844/FUL, dated 14 October 2016, was refused by notice dated 12 December 2016.
 - The development proposed is erection of a three bedroom attached house.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have had regard to the Supreme Court Judgment: Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council which was published on 11 May 2017¹. However, I find no reason to suppose that the judgement has any direct implications for the basis on which the cases have been put to me in this particular instance.

Main Issues

3. The main issues for this appeal are:
 - the effect of the proposal on the character and appearance of the area; and
 - whether satisfactory living conditions would be provided for occupants of the existing and proposed dwellings taking particular account of the proposed amenity space

Reasons

4. The appeal site is within a residential area with good access to public transport and a range of shops, services and employment opportunities. On this basis I conclude that the appeal site is in a sustainable location. The construction of an additional residential unit would meet those aims of the development plan² and of the National Planning Policy Framework (the Framework) that seek to boost significantly the supply of housing and would be acceptable in principle provided other material planning considerations are satisfied.

¹ [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)

² The Luton Local Plan 2001-2011 (the LP)

5. Policy H2 of the LP is in several parts. Policy H2(A) allocates residential sites for the period of the Plan and predates the Framework by some years. The Framework contains a presumption in favour of sustainable development and states that where the development plan is absent, silent or relevant policies are out of date permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. However, Policies H2(B) and H2(C) are criteria based policies for assessing proposed housing developments on unallocated sites and broadly accord with similar principles in the Framework. A similar criterion based approach occurs in the emerging Luton Local Plan 2011-2031. Accordingly Policies H2(B) and H2(C) carry significant weight.
6. Paragraph 49 of the Framework states that housing applications should be considered in the context of sustainable development. This is defined as having economic, social and environmental dimensions which all need to be addressed.

Character and appearance

7. The appeal site is part of the garden of No 23 St Martin's Avenue. The surrounding area is largely characterised by semi-detached houses. Those on St Martin's Avenue have broadly similar building lines although those on Northview Road are less uniform. Many of the houses have hipped roofs and bay windows but there are some variations in style and detailing. There are some more recent infill dwellings.
8. Nos 23 and 23a are semi-detached houses which have gabled roofs and no bay windows. Generally plot sizes are relatively generous with substantial gardens. The appeal site is in a very prominent corner position at the junction of three carriageways. The proposed development would be to the side of the host building and would almost fill the gap to the edge of the footpath leaving only about 1m to the boundary. It would project well forward of the building line of Nos 39 and 41 Northview Avenue. Due to its width, height, position and the bulk of the gable wall above the eaves the proposed dwelling would appear cramped within the site, overly dominant and intrusive in this prominent location notwithstanding the width of the adjacent footpath.
9. The garden of No 23 is wider than some of those at nearby properties but it is not so large as to be considered to be underused. Moreover garden land in built-up areas, which is a beneficial use in itself, is excluded from the definition of previously developed land in the Framework so the appeal proposal does not gain support from Policy H2(B)(i). I therefore give this matter little weight in my assessment.
10. For the reasons set out above I conclude that the proposed development would be cramped and intrusive in this prominent location. It would not amount to good design and would harm the character and appearance of the area. Accordingly it would conflict with those parts of Policies LP1, ENV9 and H2 of the LP and those principles of the Framework that seek a good standard of design that enhances the character and appearance of the area.

Living conditions

11. A right of access to No 23 would be retained along the rear boundary of the proposed dwelling. Two parking spaces for the proposed dwelling and a bin

storage area would be provided adjacent to this path. Appendix 2 of the LP states that generally provision shall be made for enclosed garden areas of not less than 90sqm. The useable garden areas for the proposed dwelling would be about 50sqm, a little larger if the bin storage and shed is included, and for No 23 would be about 70sqm³.

12. I do not consider the area to the front of the proposed dwelling would function as private amenity space as it would not be contiguous with the rest of the garden and would be open to unexpected visitors. Similarly public open space does not provide an adequate substitute for private amenity space for day to day domestic activities.
13. I acknowledge that Appendix 2 allows for smaller enclosures depending on the type and design of the house proposed. In this case the shortfall is significant. As the houses are of family size I conclude that insufficient private useable amenity space would be provided for the occupants of the existing and proposed dwellings. Even were the proposed parking spaces omitted it is not clear from the evidence that sufficient amenity space would be provided.
14. For these reasons I conclude that satisfactory living conditions would not be provided for occupants of either the existing or proposed dwelling. Moreover, the failure to provide sufficient amenity space is a further indication that the development would be cramped. It would conflict with those parts of Policies LP1 and H2 of the LP and those principles of the Framework that seek a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

15. I have taken account of other local developments drawn to my attention, mainly side extensions but including an attached dwelling on the corner of Stockingstone Road and Felix Avenue. Each application and appeal should be considered on its own merits and nothing that I have seen persuades me that the proposed development is acceptable on the appeal site. Nor do I consider that small gardens elsewhere amounts to a justification for gardens as proposed in the appeal before me.

Planning Balance and Conclusion

16. Planning applications and appeals should be determined in accordance with the development plan unless material considerations indicate otherwise⁴. Planning policies can pull in different directions.
17. The proposed development would provide a positive, albeit small, contribution to the housing stock of the Borough whether or not the Council can identify a five year deliverable supply of housing land. To this extent the proposal satisfies those parts of the development plan that encourage residential development to meet the needs of the Borough and the social dimension of sustainable development. There would be a positive, albeit limited, contribution to the local economy during construction, future occupants could help support local businesses and additional Council Tax would accrue. These matters weigh in favour of the proposal. However, in view of their small scale I accord them relatively moderate weight in my considerations.

³ The Council's Officer Report

⁴ Section 38 of the Planning and Compulsory Purchase Act 2004

18. I have found that the proposed development would be out of character with the area; would not amount to good design; and would not provide satisfactory private amenity space. For these reasons the proposal would not meet the environmental dimension of sustainable development. I give these matters great weight. On balance I conclude that there would be significant and demonstrable harm that outweighs the planning benefits.
19. The appellant asserts that the Council cannot demonstrate a five year supply of deliverable housing land. The Council is silent on the matter. However, even had I found that a five year supply of deliverable housing land could not be demonstrated, my conclusions would remain the same.
20. The proposal would comply with parts of the development plan. However, in conflicting with parts of Policies LP1, ENV9 and H2 of the LP the proposal does not comply with the development plan taken as a whole. Taking all these matters into account, on balance, I conclude that adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the development plan and the Framework taken as a whole. For the reasons set out above, and taking into consideration all other relevant matters raised, I conclude the appeal should not succeed.

SDHarley

INSPECTOR