
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/17/3167549

1 Exton Avenue, Luton LU2 0LH

- 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 Doherty against the decision of Luton Council.
 - The application Ref 16/01855/FUL, dated 14 October 2016, was refused by notice dated 30 December 2016.
 - The development proposed is demolition of existing garage and erection of 3 bedroom dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The parties do not agree on whether sufficient accurate information has been provided to describe the proposed development. In particular the appellant considers that the Council failed to take account of the revised elevation plans Refs 004C and 005A which were submitted on 27 October 2016 to address land levels and how the proposed dwelling relates to the existing one. I comment further on this in the relevant sections below.
3. 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

4. The main issues for this appeal are the effect of the proposed development on the character and appearance of the area and on the living conditions of the occupants of No 11 Taunton Avenue, taking particular account of noise and disturbance.

Reasons

5. 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

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

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.

6. 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 criterion 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.
7. 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. Development needs to satisfy all three dimensions to be sustainable.

Character and appearance

8. Nos 1 and 3 Exton Avenue are semi-detached houses. The proposal relates to part of the garden of No 1. As a corner property it also has a side boundary onto Taunton Avenue and a rear boundary adjoining No 11 Taunton Avenue. Nearby houses are of mixed styles and types with a fairly uniform building line that broadly follows the alignment of the carriageways. The closest houses are semi-detached properties of a relatively uniform design with hipped roofs, two storey bay windows and render/timber detailing. To the south west of Taunton Avenue are mainly short terraces of red brick houses with gable roofs.
9. The appeal site is at a significantly higher level than both Taunton Avenue and Exton Avenue. Due to its corner location and raised levels the appeal property is in a prominent position. There is a retaining structure adjacent to the highway, which is in poor repair, and another retaining structure within the site which supports a hard standing. The garage beside the house has no particular architectural merit to warrant its retention.
10. The proposed dwelling would be as wide as the existing house and about 1m wider than the existing garage. Due to its position, width and the bulk of building proposed above first floor level, the proposed dwelling would be an imposing feature which would detract from the openness of this corner location. The effect would be emphasised by the need to raise the base on the Taunton Avenue side in order to match the eaves height and window positions of No 1 and by the projection forward, albeit small, of the broad building line on Taunton Avenue.
11. In creating a terraced row the proposal would be an incongruous feature in the street of semi-detached houses particularly as viewed from Taunton Avenue. Whilst the proposed architectural detailing is consistent with the surroundings

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

the overall effect unbalances the uniform symmetry of Nos 1 and 3 to a much greater extent than that of the existing garage.

12. I have taken account of the building form at No 13 Taunton Avenue on the opposite corner of Exton Avenue. However, that property is at a lower level and the development referred to is a two storey side extension. It is much narrower than the appeal proposal and much less prominent. Accordingly it does not lead me to any different conclusion in relation to this appeal proposal.
13. The revised plans referred to above do give some indication of the proposed dwelling in relation to the host house. However, no levels are annotated on the plans and there are no sections showing how the proposed dwelling would relate to the surrounding land levels particularly those on Taunton Avenue. Nor do the plans demonstrate the slope of the approximately 3m wide gap that would be retained between the side of the proposed dwelling and Taunton Avenue or levels in relation to the proposed access and parking areas. The plans contain a note stating "Only written dimensions to be taken from the drawing".
14. For the above reasons I cannot safely conclude that the plans satisfactorily demonstrate the full effect of the proposal on the character and appearance of the area. On the basis of the evidence that is available I conclude that the proposed dwelling would be a dominant and intrusive development that would reduce the spaciousness of the local area even if garden sizes would meet the standards set out in Annex 2 of the LP.
15. The garden of No 1 is wider than some of those at nearby properties but it is not so large as to be considered to be underused. The appeal site is poorly maintained and visually detracts from the character and appearance of the area. Policy H2(B)(iii) of the LP provides for development that would result in a demonstrable environmental gain. However, the lack of maintenance of garden land does not amount to such a demonstrable environmental harm as to be sufficient reason to grant planning permission for an otherwise unacceptable proposal. 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 site does not gain support from Policy H2(B)(i). Accordingly I give these matters little weight in my assessment.
16. For the reasons set out above I conclude that the proposed dwelling would be likely to be overly dominant in this prominent location. It would be a cramped and intrusive form of development that would not amount to good design and would harm the character and appearance of the area. 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

17. Parking would be provided for both the host property and the proposed dwelling in an L shaped arrangement with a new shared access on the boundary with No 11 Taunton Avenue. The proposed access and parking would be close to the side wall of No 11. The parking and manoeuvring of vehicles for two dwellings as proposed, whether or not car doors were slammed or engines revved, in such close proximity to the most useable part of its rear garden, would result in an unacceptable degree of noise and disturbance particularly if

the proposed parking and turning areas would be at a higher level than No 11. As the plans do not show levels would be lowered, or how any changes in level could be satisfactorily accommodated within the appeal site, I cannot safely conclude that the proposed arrangements would not have an unsatisfactory effect on the living conditions of the occupants of No 11.

18. I acknowledge there are some parking/garage courts behind other houses in the vicinity. However, I saw nothing that had similar arrangements to those now proposed so their presence does not lead me to any different conclusion.
19. For the reasons set out above I conclude that the proposed development would have a significant harmful effect on the living conditions of the occupants of No 11 Taunton Avenue. 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

20. I have taken account of other developments in the locality which have been drawn to my attention. 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.
21. The appellant has expressed dissatisfaction with the way in which the Council has dealt with the proposal. However, that does not go to the heart of the planning matters and I have reached my conclusion solely on the basis of the planning merits of the case.

Planning Balance and Conclusion

22. Planning applications and appeals should be determined in accordance with the development plan unless material considerations indicate otherwise³. Planning policies can pull in different directions.
23. 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. These matters weigh in favour of the proposal. However, in view of their small scale I accord them relatively moderate weight in my considerations.
24. I have found that the proposed development would be out of character with the area; would not amount to good design; and would have a harmful effect on the living conditions of occupants of No 11 Taunton Avenue. For these reasons the proposal would not satisfy the environmental dimension of sustainable development. I give these matters great weight. On balance I conclude that there is significant and demonstrable harm that outweighs the planning benefits.
25. 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

³ Section 38 of the Planning and Compulsory Purchase Act 2004

had I found that a five year supply of deliverable housing land could not be demonstrated, my conclusions would remain the same.

26. 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. For the reasons set out above, and taking into consideration all other relevant matters raised, I conclude the appeal should not succeed.

SDHarley

INSPECTOR