
Appeal Decision

Site visit made on 20 November 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 4th December 2017

Appeal Ref: APP/B0230/W/17/3181403
38 Black Swan Lane, Luton LU3 2LX

- 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 Mrs Fitzpatrick against the decision of Luton Borough Council.
 - The application Ref 17/00327/FUL, dated 15 February 2017, was refused by notice dated 5 May 2017.
 - The development proposed is described as 'erection of an attached dwelling on land to side'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of an attached dwelling on land to side at 38 Black Swan Lane, Luton LU3 2LX, in accordance with the terms of the application, Ref: 17/00327/FUL, dated 15 February 2017, subject to the conditions in the attached schedule.

Preliminary Matters

2. On the 7 November 2017 the Council adopted the Luton Local Plan 2011-2031 (LP). This has superseded the previous Local Plan. My decision must be based on the most up to date policies in the development plan and therefore both the appellant and Council were afforded an opportunity to identify the relevant policies in the new LP to which I should have regard.

Main Issue

3. The main issue in this appeal is the effect of the proposed development on the character and appearance of the area.

Reasons

4. The appeal site encompasses part of the side and rear garden of 38 Black Swan Lane (No 38), an end of terrace corner property located at the junctions of Black Swan Lane and Brackendale Grove. The area is broadly residential in character and the dwellings are generally two storey terraced and semi-detached properties arranged to front the streets. The houses tend to exhibit a distinctive style that probably dates to the interwar and post war periods. A number of house types are repeated and this, along with the form and layout of the terraces and semis, gives the area a discernible character and appearance.
5. The appeal scheme is for the erection of an end of terrace dwelling attached to the side of No 38. The proposed house would replicate the width and height of

the other properties in the terrace. The depth would also be consistent save for a small single storey rear lean to. As such, the building would have a scale and form that would harmonise with surrounding properties.

6. The ground floor would be finished in a matching brick and the first floor would continue the white render already evident on No 38. The new roof tile used at No 38 would be continued across into the proposed dwelling. The fenestration employed in the proposed dwelling would mirror that at No 38, including the curved bay window. Overall, the style and finish of the appeal scheme would reflect the appearance of many of the properties in the street, including those in the terrace it would extend.
7. The proposed dwelling would erode the space found to the side of No 38 and would be positioned forward of the building line of the properties in Brackendale Grove. However, the proposed dwelling would be set off the side boundary by a minimum of 1.39 metres and this would provide some side separation that would be sufficient to ensure the dwelling would not appear cramped. This is especially so as the depth of the garden would be similar to others nearby as would the overall plot size.
8. The proposed house would in some ways reflect the addition to 46 Kingsley Road, the side elevation of which is positioned close to the back edge of Brackendale Grove and forward of the building line. The addition to 46 Kingsley Road (No 46) was approved in 1988 and its form and style does not harmonise with the area. Nevertheless, the appeal scheme would for the reasons already given. Moreover, the proposed dwelling would provide some balance to the street scene and built composition at the entrance to Brackendale Grove when viewed from the cul-de sac and Black Swan Lane.
9. Brackendale Grove has a more intimate character than Black Swan Lane due to the narrower width of the street. The appeal site currently provides a limited sense of openness at the entrance to the cul-de-sac. The appeal scheme would erode this. However, it would also reinforce the intimate character of Brackendale Grove by enclosing the street. Moreover, it would provide a 'gateway' to the cul-de-sac when viewed in combination with No 46. As such, the appeal scheme would not harm the spatial character of the area and the composition of the street scene.
10. The appeal scheme would harmonise with the proportions and style of nearby dwellings and it would not be significantly at odds with the layout of the area. As a consequence, the proposal would preserve the character and appearance of the area and therefore I find no conflict with Policy LLP25 of the LP.

Other Matters

11. Although not a reason for refusal the Council has suggested the private amenity area that would be retained for the existing dwelling would be inadequate as it would be around 58 square metres and the standard in the LP is 90 square metres. It is unclear what the 90 square metres threshold is based upon. Nevertheless, the retained private amenity area would be similar in size to other mid terrace properties nearby and therefore I am satisfied the amenity area would be adequate.
12. Likewise, the proposed dwelling would be smaller than the national standard for gross internal area but I share the view of the Council that this is not a

significant failing in this instance, as the house would be of a similar size to others nearby and the internal layout would be adequate and practical.

13. Both the Council and appellant have referred to a detached dwelling recently constructed at 2 Black Swan Lane. The presence of this property has not proven to be determinative as the appeal scheme is acceptable for the reasons already given.

Conditions

14. I have had regard to the advice in the Planning Practice Guide and the conditions suggested by the Council. It is necessary in the interests of safeguarding the character and appearance of the area, and the living conditions of neighbours, to ensure that the development is undertaken in accordance with the approved drawings, that hard and soft landscaping is approved and provided (including boundary treatment) and that the finishing materials match those of No 38. In the interests of highway safety it is necessary to provide visibility splays.
15. The Council's Environmental Protection Team (EPT) has suggested that certain internal ambient noise levels should be achieved but I have not been directed to any noise source that would suggest the imposition of such a condition is necessary. The EPT have also suggested that the future occupants of the appeal property would be vulnerable to the presence of contamination and that a 'Phase 1 report' should be submitted before the application can be considered. The Council did not seek this information when considering the application, which is an indication they may not be relevant or necessary. As such, I do not consider the conditions suggested by the EPT are necessary in this instance and I note the Council have not recommended their imposition.
16. The plan in the Flood Risk Assessment (FRA) appears to suggest that the site is outside the flood zones shown. The plan was taken from the Environment Agency website. It is unclear why the appellant has submitted a FRA and suggested that the site is in Flood Zone 2 (FZ2). The Council have not applied the sequential assessment to the proposal and the application form states that the site is not in FZ2. This would support my view that the appeal scheme is outside FZ2 (or FZ3). As such, it is unnecessary to require flood resistant construction.
17. It is unnecessary to specifically require the garden to be provided through a planning condition as this would be covered by the conditions relating to drawings and landscaping. The Council have not demonstrated why permitted development rights should be exceptionally removed and therefore I do not consider such conditions to be necessary.

Conclusion

18. The appeal scheme would adhere to the development plan taken as a whole. Accordingly, the proposal is sustainable development and for this reason, the reasons given above, and having regard to all other matters raised, I conclude the appeal should be allowed.

Graham Chamberlain
INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall commence not later than the expiration of three years beginning with the date of this permission.
2. The hereby approved dwelling shall not be occupied until the development hereby permitted has been carried out in complete accordance with the following plans and documents (or any approved non material amendment to these plans).
 - ATK/16/4099/TP1A – Site and block plans
 - ATK/16/4099/TP1 – Existing elevations and roof plan
 - ATK/16/4099/TP1A – Proposed site, block and floor plans
 - ATK/15/4099/TP2 – Proposed elevations
 - ATK/16/4099/TP3 – Proposed roof plan
 - Details contained within the application form
3. No works or development shall take place until full details of a landscaping scheme to include all hard surfaces, boundary treatment, grassed areas, tree and shrub plantings and a timetable for planting and construction, has been submitted to, and approved in writing by, the Local Planning Authority.

The landscaping scheme shall be carried out in accordance with the approved details and timetable.

If within a period of five years from the initial date of planting set out in the approved timetable, any tree, shrub or plant is removed, uprooted or destroyed or dies, or becomes seriously damaged, diseased or defective, another tree, shrub or plant 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.

4. Samples of the materials to be used in the construction of the walls and roof of the development shall be submitted to, and approved by, the Local Planning Authority before they are applied to the building. The development shall be carried out using the approved materials unless otherwise agreed in writing by the Local Planning Authority.
5. Before the development is first occupied and notwithstanding the submitted plans, triangular pedestrian safety visibility splays of 1.8 metres x 1.8 metres shall be provided on each side of the vehicle access points to the site. The splays shall be positioned within the site at right angles to the highway (measured at the highway/site boundary). The visibility splays so described shall be maintained free of any obstruction to visibility exceeding a height of 600mm above the existing ground level.