
Appeal Decision

Site visit made on 19 November 2019

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 27th November 2019

Appeal Ref: APP/B0230/W/19/3236387

9 Carol Close, Luton, Bedfordshire LU3 1UZ

- 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 Hassan Khan against the decision of Luton Council.
 - The application Ref 19/00805/FUL, dated 12 June 2019, was refused by notice dated 9 August 2019.
 - The development proposed is described as Retrospective Application - Change of use of the dwelling into two self-contained residential units.
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use of the dwelling into two self-contained residential units at 9 Carol Close, Luton, Bedfordshire LU3 1UZ in accordance with the terms of the application, Ref 19/00805/FUL, dated 12 June 2019, and the plans submitted with it, subject to the following condition:

The use for two self-contained units hereby permitted shall cease within 28 days of the date of failure to meet any one of the following requirements:

- i) Within 3 months of the date of this decision a scheme for the provision of: a hard surfaced pathway to the rear door of the ground floor flat from the front of the site (where the site meets the highway); a scheme for the landscaping of the side and front garden area; and a scheme for the siting and allocation of refuse storage, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for the implementation of each element.
- ii) If within 5 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable and thereafter maintained in accordance with those details.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matter

2. At the time of my site visit the change of use had already taken place. The term retrospective does not constitute an act of development and I have dealt with the appeal on the basis that planning permission is being sought for the change of use from a single dwelling into two self-contained residential units.

Main Issues

3. The main issues are the effect of the development on: a) the character of the area; b) the living conditions of the occupants of adjacent properties; c) the provision of parking and its effect on highway and pedestrian safety; and d) the provision of amenity space.

Reasons

4. The appeal site is a corner property in a residential cul de sac. Properties in this location are typified by three storey properties, uniform in appearance. All the properties in this terrace and a significant number in the adjacent terrace have converted what would have originally been garages into living accommodation. It is not clear whether any of these have been subdivided into separate units.
5. Paragraph 127 of the National Planning Policy Framework 2019 (the Framework) seeks to ensure that developments will function well, are sympathetic to the surrounding built environment and promote a high standard of amenity for existing and future users. These principles are reflected in the development plan policies cited by the Council.

Character

6. The Council's concern stems from the activities associated with the increased number of households within the building including the comings and goings of additional residents given that Carol Close is a small cul de sac.
7. Although it is likely that there would be additional comings and goings from two properties there is nothing specific to demonstrate that the change would cause tangible harm to the character or quality of the area. A family unit of accommodation would be retained and the only visible change at the front of the property is the insertion of a window (previously a garage door). However, as this feature has been repeated on all the properties on the terrace, I consider that it does not have any adverse impact on the character of the site.
8. Whilst a substantive change in character is not solely attributed to the appearance of the property. Overall, I do not consider that the addition of a separate bed sitting unit would have any significantly harmful effect on the supply and balance of housing in the locality such that the effect would be harmful to the character of the area. Consequently, I find no conflict with Policies LLP1, LLP15 and LLP25 of the Luton Local Plan (2011-2031) (2017)

(The Local Plan) or the Framework in so far as they relate to the principle of the development; additional housing provision, or the character of the site.

Living conditions

9. The key concern for the Council is that the residents within the 2 households would give rise to separate work, shopping and leisure trips increasing general external activity around the property. It is argued that this would be out of keeping and give rise to additional noise and disturbance within the surrounding area thereby having a negative impact on the character of Carol Close. Similarly, with the level of comings and goings from the property such as: those associated with two households and their visitors; disturbance from car engines; emptying of bins; people conversing; and the opening and closing of doors at varying times throughout the day and night, the Council are concerned that this would lead to unacceptable levels of noise and disturbance.
10. It is the case that both units would be served by a shared amenity space and that occupiers of the ground floor flat would utilise that same space as the principal pedestrian access to their accommodation. However, I consider that the existence of the amenity space to the side of the site provides clear and separate access to the ground floor flat as a separate bed sitting unit and that the position of this space set adjacent to open allotments would not create a harmful effect on the level of comings and goings from the property. As such it would not cause an unacceptable level of noise and disturbance or interference between the properties created or to the occupants of adjacent properties.
11. The use of a rear door as the main entrance to the ground floor flat is not ideal in terms of access. However, it is not sufficiently problematic as to warrant the refusal of permission in respect of any impact on the living conditions of occupiers of that flat or to neighbours. Refuse storage is also a concern for the Council however the amenity area is sufficiently large to make provision for bin storage and this could be covered by a condition.
12. Consequently, I find no conflict with Policies LLP1, LLP15 and LLP25 of the Local Plan in so far as their content relates to the effect on the living conditions of the occupiers of adjacent properties.

Pedestrian and highway safety

13. The Council objects to the loss of parking through the conversion of the garage accommodation in that this leads to provision below the generally accepted parking standard. Similarly, as only one space would be provided for the development it would lead to increased demand for on street parking. However, even though there is reference to a concern from the highway authority that the amount of provision for parking will decrease at the same time as the need would increase, and there are references in representations to high demand for parking spaces; I have no evidence that this particular area is subject to unresolvable parking stress. I am also mindful that there are no restrictions on the parking of vehicles on-street within Carol Close. Moreover, there are several off-street parking spaces opposite the adjacent terrace and at the time of my visit all of those spaces were vacant.
14. The appellant has outlined that one motorbike space has been provided and one off-street parking space and this falls short of the provision expected by the Councils' parking standards and generates limited conflict with Policies

LLP31 and LLP32. Nonetheless, given the context of parking provision in the Close the lack of an additional space is not, of itself, sufficient to warrant the refusal of the scheme.

Amenity space

15. The existing garden space for the larger property would be shared with the ground floor flat and would also be utilised as the primary access to the ground floor accommodation. This arrangement would only have a minimal effect on the occupiers of the ground floor flat or the occupants of the upper flat in respect of shared amenity space.
16. At the time of my site visit the garden was in the early stages of being landscaped. The land is enclosed from the turning head at the end of Carol Close by timber fencing and screened from what are public allotments to the side and rear by mature vegetation. Overall, even though the use of the garden would be shared by two units it would be of adequate size to meet the needs of the occupants of both flats. However, the completion of these works could, and should, be secured by a condition given that the units are already occupied. This will ensure that the pedestrian access is completed and safe to use.
17. I note that in respect of the technical standards the internal space standards are very marginally short in respect of the first/second floor flat. However, the Council acknowledge that this does not create a cramped or poor living environment and I have no basis on which to disagree.
18. Taking all these matters into account, I consider that the amenity space afforded by this particular plot configuration, which is larger than is typical in the street, is sufficient to meet the needs of two units. Consequently, the two flats accord with the provisions of Policies LLP1, LLP15 and LLP25 in so far as they relate to amenity space requirements.

Other Matters

19. I note the Council has concerns regarding precedent. However, the appeal site is a larger plot than others in the vicinity. It has access to enough amenity space to service both flats and to provide independent access to the rear ground floor flat. Few properties on this cul de sac would be able to achieve subdivision in the same manner as that proposed and could not provide shared facilities for access and amenity space. Similarly, whilst permission has been refused for subdivision at No. 11 Carol Close this related to the lack of amenity space which would not be the case here. As such the issues which apply there are not directly comparable with this appeal proposal. There is nothing substantive to suggest that this appeal would lead to similar applications.
20. The reasons for refusal refer to flood risk assessments however given that the levels of the property would be unchanged from those in the original building there is no substantive evidence before me to suggest that there would be any greater risk in this regard.
21. Representations refer to the refusal of similar conversions in the road and that such conversions contradict the goals of the Council in preserving large family homes. However, in the absence of evidence and noting that the Council do not refer me to any such planning history on Carol Close I am unable to afford this any weight in my deliberations.

Conditions

22. The Council have not recommended any conditions. As the development has already commenced, it is not necessary to impose a time to commence condition. It is necessary for the landscaping of the shared garden to be completed within a reasonable timescale given the unit is already occupied as this is required to ensure a safe pedestrian access to the ground floor flat. Similarly, the designation of refuse storage facilities should also be specified to ensure that these do not impede the highway or the access in the future.
23. The purpose of condition 1 is to require the appellant to comply with a strict timetable for dealing with a properly surfaced pathway to the door of the ground floor flat which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where: the detailed matters in question are not submitted for approval during the time set by the condition; approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal); and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

Conclusion

24. Notwithstanding my conclusions on the limited conflict that results in relation to the Councils' parking standards; I have concluded that the appeal property would retain a three bedroomed unit of family accommodation within the first and second floor of the house with no loss of a family unit. I have also concluded that there would not be any unacceptable impact on the living conditions of the occupants of neighbouring properties and no unacceptably adverse effect in respect of parking. Consequently, the development accords with the development plan Policy LLP15 of the Local Plan as noted above, and the broader strategic housing aims of Policy LLP1 and the aims of the Framework.
25. Taking all these factors into account I conclude that the appeal should be allowed, and planning permission granted subject to the condition as set out in my formal decision.

Janet Wilson

INSPECTOR