



Appeal Decision

Site visit made on 3 December 2019

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 12th January 2020

Appeal Ref: APP/D1780/C/19/3221954

Land at 25 Leighton Road, Southampton SO19 2FS (also known as Land on the North West side of Leighton Road Southampton)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Robert Bailey against an enforcement notice issued by Southampton City Council.
 - The enforcement notice was issued on 7 January 2019.
 - The breach of planning control alleged in the notice is failure to comply with conditions Nos 2 and 10 of a planning permission Ref 13/01228/FUL granted on 14 October 2013.
 - The development to which the permission relates is erection of 4 x 4-bed semi-detached houses on land adjacent to 25 Leighton Road. The conditions in question are Nos 2 and 10 which state that:
Condition 2 The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority
Condition 10 The external garden areas serving the development hereby approved, and associated pedestrian access, shall be made available prior to the first occupation of the development hereby permitted and shall be retained thereafter.
The notice alleges that the conditions have not been complied with in that the development has not been completed in accordance with the approved plans and the approved gardens have not been made available for residents in accordance with the approved plans.
 - The requirements of the notice are:
 - (i) Reinstate the land (also known as Land on the North West side of Leighton Road and hatched red on the attached plan) as private amenity space for the 4 properties known as 25A, 25B, 25C and 25D Leighton Road.
 - (ii) Remove the rear boundary fence that separates the land from the above 4 properties and install a 1.8 high close board fencing as shown on plan LR 004 (dated 13 May) attached.
 - (iii) Comply with conditions as set out in paragraph 4 above.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)[a] and [f] of the Town and Country Planning Act 1990 as amended.
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Summary Decision

1. The appeal is dismissed, and the enforcement notice upheld.

Preliminary Matters

2. The appellant has also submitted an appeal against a refusal of planning permission for the erection of 4 x 4-bed semi-detached houses on land adjacent to 25 Leighton Road without complying with conditions attached to

planning permission Ref 13/01228/FUL (Appeal Ref. APP/D1780/W/18/3217927) (the planning appeal). This appeal was dismissed on 26 April 2019.

Ground (a) and the Deemed Planning Application (DPA)

3. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main Issue

4. The main issue is whether Conditions 2 and 10 of planning permission Ref. 13/01228/FUL are necessary and reasonable with regard to:
 - i) the living conditions of the occupiers of 25a, 25b, 25c and 25d Leighton Road, in respect to the provision of external garden areas; and
 - ii) the character and appearance of the area.

Reasons

Living conditions

5. The development has been carried out and the houses, which take the form of two semi-detached pairs, are occupied. Rear gardens have been provided and segregated from the surrounding area by fences. The key difference between the approved layout under planning permission Ref 13/01228/FUL and the as built scheme is that the gardens are less than half the depth shown on the approved plans secured by Condition 1 and required to be provided prior to first occupation under Condition 10. The reduced depth has implications for the size of the gardens.
6. The Council's Residential Design Guide (2006) (the SPD) sets out the minimum size for gardens to be retained when a house is extended. Whilst this is not what it proposed in this case, the SPD provides a starting point for the consideration of the amount of external space necessary to meet the needs of residents.
7. The SPD states that a rear garden of a minimum size of 70 sqm is appropriate to serve a semi-detached house, however the rear gardens provided are in the order of 55 sqm, notwithstanding that an extension has been carried out to one house. This level of provision is significantly below the minimum standard and indicates that the space available would not meet the needs of residents.
8. The constrained size of the gardens in relation to the scale of accommodation provided by the houses would result in them being used intensively by the residents. Unlike the rear gardens in the vicinity all activities would be focussed on the small space just outside the buildings. This would be likely to result in significant levels of noise and disturbance and would provide limited opportunities for the quiet enjoyment of private space. Consequently, in this case the degree of disparity between the recommendations for a minimum size and the provision is so great as to be harmful to the living conditions of the occupiers.
9. The appellant refers to the Councils document 'Residential Standards Development Control Brief' (RSDCB) which refers to 38 sqm as an appropriate

'remainder garden' where a single storey extension has been constructed. The status of this document and its relationship to the SPD is unclear. However even if it did attract limited weight, it still advocates a garden size of 70 sqm for a semi-detached house and the appeal scheme does not achieve this by a significant margin.

10. The appellant considers that the gardens which have been provided are adequate to meet the needs of the occupiers of the four houses. He regards the aspect of the gardens to be favourable in terms of light. However, because the gardens face north-west, they will be affected by shadows from the houses which will have a significant impact given their limited depth. The longer gardens which were to be provided as part of the approved development would be less effected by shadows and would provide an appropriate level of amenity for residents.
11. The appellant also contends that public open space is available in the area but whilst these areas are shown on a plan their accessibility including the quality of the routes to them is not substantiated. Overall, I am not convinced that the considerations put forward by the appellant outweigh the harm to residential amenity in terms of noise and disturbance and daylight which I have found as a consequence of the inadequate size of the rear gardens.
12. My attention has been drawn to comments made by the Council in relation to two schemes at 1a and 1b Millais Road and 1c Millais Road (the Millais Road schemes) where gardens which were below the minimum standard were found to be acceptable. The Council has explained that the planning applications for these developments were considered in the context of the Council's housing needs at that time and that it now has in excess of a 5-year housing land supply. Whilst housing need appears to have been an issue in allowing the Millais Road schemes it is not a factor which weighs in favour of the appeal scheme. Thus, it does not outweigh the harm that I have found.
13. The appellant also refers to the Council's acceptance that a first floor flat at the adjacent social club can be occupied without a private outside garden on the basis of the proximity of nearby public open space. I do not find the requirements for private amenity space for a flat to be directly comparable to a 4-bed house, thus this point attracts limited weight in my determination of this appeal.
14. I have very limited details of the other two schemes which have been referred to by the appellant – 44-52 Peveril Road and 59-77 Knighton Road. The Council describe these as pre-dating current local and national policies and as such, with no evidence to the contrary, I attach very limited weight to these references.
15. I conclude that the appeal scheme does not make adequate provision for external garden areas and in consequence does not provide acceptable living conditions for the occupiers of 25a, 25b, 25c and 25d Leighton Road. The development is therefore contrary to Policies SDP1 and SDP7 of the City of Southampton Local Plan Review – Adopted Version 2nd Revision (2015) (the Local Plan) and Policy CS13 of the Core Strategy Development Plan Document – Amended Version incorporating Core Strategy Partial Review March 2015 (the Core Strategy). These policies require that development integrates into the local community and impacts positively in terms of the amenity of all citizens. For similar reasons the development does not accord with advice provided by

the National Planning Policy Framework (the Framework) with respect to the delivery of a high standard of amenity for existing and future occupiers.

Character and appearance

16. Leighton Road serves an established residential area which is characterised principally by houses fronting the road with rear gardens positioned back to back. The new dwellings at 25a, 25b, 25c and 25d Leighton Road read as an extension to the existing row of houses. The Social Club at the junction of Leighton Road with Peveril Road is an anomaly in the street scene being an imposing building with a large footprint. However, the overall appearance of the area is of an organised urban environment where there is a clear distinction between public and private space.
17. Whilst the land behind the new houses is not readily visible from the street or from the Social Club, which has bricked up windows at first floor level, it can be seen from many upstairs windows in the surrounding houses. As a consequence of their comparatively short lengths, the rear gardens would appear at odds with the strong back to back arrangement of the private external spaces when viewed from these adjacent houses. Given the importance of this layout to its character and appearance, the obvious irregularity of the rear gardens would be detrimental to the wider area.
18. I conclude that the appeal scheme harms the character and appearance of the area. The development is therefore contrary to Policy SDP7 of the Local Plan and Policy CS13 of the Core Strategy. These policies require that development respects the existing layout of buildings within the streetscape and the quality of the local environment and that it responds positively to its surroundings. For similar reasons the development does not accord with advice provided by the Framework as it relates to achieving well-designed places.

Other Matters

19. The planning appeal, which has been dismissed, is a significant material consideration in this case because the issues before the Inspector in that case are the same as those which are before me in relation to the ground (a) appeal and the DPA. Although I have considered the current appeal on its own merits, I have reached similar conclusions to the previous Inspector and our decisions are consistent with one another.
20. The appellant considers that an expansion of the size of the gardens so that they achieve the minimum standard can be delivered and he has submitted a plan to show this. However, whilst larger gardens have the potential to provide an appropriate standard of living conditions for occupiers of 25a, 25b, 25c and 25d Leighton Road, the proposals put forward would not overcome the harm to the character and appearance of the area which I have found.

Conclusion

21. For the reasons given above, I conclude that the disputed conditions are necessary and reasonable such that the appeal under ground (a) fails and the DPA is refused.

Ground (f)

22. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
23. The appellant suggests that a variation of the notice to allow the existing gardens to be expanded to achieve the Council's minimum standard would remedy the breach in planning control. However, in the light of my conclusions regarding the appeal under ground (a) and the DPA, in relation to the levels of sunlight in the gardens and the effect of the development on the character and appearance of the area, this would not remedy the breach of conditions as set out in the notice.
24. For the reasons set out above, the appeal under ground (f) fails.

Conclusion

25. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

FORMAL DECISION

26. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Sarah Dyer

Inspector