
Appeal Decision

Site visit made on 28 July 2020

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th August 2020

Appeal Ref: APP/B0230/W/20/3245521

39 Compton Avenue and land to the rear of 35-39 Compton Avenue, Luton LU4 9AX

- 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 Executor of Mrs Salamone deceased against the decision of Luton Council.
 - The application Ref 19/01285/FUL, dated 30 September 2019, was refused by notice dated 27 November 2019.
 - The development proposed is demolition of a garage and lean-to conservatory to No. 39 and erection of 1x (one) 2-bedroom bungalow with associated parking at land to the rear of No. 39.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are the effect of the development on:
 - the character and appearance of the area;
 - the living conditions of neighbouring residents, with particular regard to noise and disturbance;
 - the living conditions of future occupants, with particular regard to internal and external space and noise and disturbance;
 - highway and pedestrian safety, with particular regard to off-street parking provision.

Reasons

Character and appearance

3. The appeal relates to the rear garden of a semi-detached property. The development would utilise an existing access between No 39 and No 35. This currently provides access to garages serving the two dwellings to the rear of the properties. The proposal would see the removal of the double garage serving No 39 to create an access road through to the proposed bungalow.
4. The garden of No 39 is long and relatively narrow near to the dwelling. However, it opens up beyond the garages, where it extends behind the gardens

- of Nos 35 and 37. It is currently a verdant space that also contains a number of sheds and greenhouses.
5. The bungalow would take up much of the width of its plot and would appear as a cramped and contrived form of development which had been squeezed into a small and awkward plot behind the retained garages. The narrow access and the extensive parking and turning areas in front of the bungalow would contribute significantly to this appearance. The appellant has also confirmed that it would be necessary for drivers utilising one of the parking spaces for No 39 to reverse into the forecourt of the new dwelling. This emphasises both the constrained nature of the plot and the contrived layout of the development. The amenity space to the rear of the bungalow would not my conclusion in this regard.
 6. The bungalow would be larger than any of the buildings removed and would thus have a greater impact on the openness and character of the site. The evidence suggests that the semi-detached units in this part of the street are characterised as having long gardens. Although the garden of No 39 truncates those of Nos 35 and 37, it is still nevertheless an open space and thus reflects this character. The development would both reduce the open nature of the rear of the dwellings and be uncharacteristic of the prevailing plot ratio, size and shape. The development would therefore be an unsympathetic and discordant addition to this part of the street.
 7. The bungalow would be reasonably well screened from the public realm, with only glimpsed and fleeting views likely through the access. While this would mitigate the impact to an extent, it does not justify something which would be inherently harmful to the character of the area. Moreover, the cramped and contrived nature of the development would still be discernible from the private views of neighbouring residents.
 8. I have had regard to the backland development that exists behind Nos 31 and 33. However, from what I have seen, these dwellings appear to have been built in a different context, not least that they relate to large detached dwellings with different plots sizes. The appellant has also drawn my attention to recent appeal decisions, including one close to the site¹. I have not been provided with the full details of these proposals and thus cannot conclude they are directly comparable to that before me. However, I saw that the Beechwood Road site is on a corner plot with a long rear garden running adjacent to the road. The Thirlstone Road proposal also appears to relate to a builder's yard. Therefore, these present a different context to the development before me.
 9. Although there is clearly no prohibition on backland development in principle, whether or not it is acceptable in practice will be dependent on the individual characteristics of the case. As such, these examples do not persuade me that the proposal would result in an acceptable layout and form of development.
 10. I therefore find that the development would have an unacceptable impact on the character and appearance of the area. Accordingly, there would be conflict with Luton Local Plan (LLP)(2017) policies LLP1, LLP15 and LLP25 which seek, amongst other things, to ensure development will not result in an over-intensification of the site, be of a high quality design and enhance the character of an area. It would also conflict with paragraph 127 of the National Planning

¹ Appeal references: APP/B0230/W/18/3208828 & APP/B0230/W/18/3207885

Policy Framework (the Framework) which includes expectations that development will add to the quality of an area and be sympathetic to local character.

Living conditions – neighbouring properties

11. Although vehicles already pass between No 37 and No 39, they can go no further than the garages that are centrally located between the two gardens. The development would alter this arrangement such that vehicles for No 39 and the development would need to travel deeper into the site. This would require parking and manoeuvring directly adjacent to the common boundary with No 41. This would create a degree of noise and disturbance not currently experienced by residents of this dwelling. Furthermore, it would emanate from a location well to the rear of the house where noise from vehicles starting up, manoeuvring, passing near to the garden fence, or from the banging of car doors, would not normally be expected to be heard.
12. Boundary treatments removing any visual impact of the vehicles would not be sufficient to mitigate the additional noise and disturbance. This activity would tangibly diminish the enjoyment of the garden to the material detriment of the occupants' living conditions. The parking spaces for the bungalow would also be near to the gardens of Nos 33a and 35. Although to a much lesser extent, this would also lead to similar issues for the occupants of those dwellings.
13. There is no clear evidence which demonstrates that the access arrangements of the backland development examples described above are directly comparable to those before me. As such, they would not lead me to alter my conclusions on the harm that would be caused.
14. The development would lead to an increase in the use of the existing access and any associated noise. Occupants of Nos 37 and 39 will already be used to a certain amount of noise from vehicles passing between their homes. The increase in activity from one additional dwelling is unlikely to be such that it would result in material harm to their living conditions.
15. Nevertheless, I still find that the development would result in unacceptable harm to the living conditions of neighbouring residents, particularly those living at No 41. Accordingly, there would be conflict with LLP Policy LLP25, in particular criterion v, which seeks to resist backland development where it would give rise to adverse amenity. It would also conflict with paragraph 127f of the Framework, which seeks to ensure high standards of amenity for existing users. Policy LLP1 does not specifically refer to matters of living conditions and is thus not directly relevant to this main issue.

Living conditions – future occupiers

16. The Council's third reason for refusal does not specify the exact nature of their concerns in relation to the living conditions of future occupants. However, the officer report sets out three areas of concern; noise and disturbance, internal living space and external amenity space.
17. In terms of noise, the main concern is the effect of the parking spaces. The appellant has confirmed that cars utilising the furthest space from No 39 would need to reverse into the front forecourt of the bungalow. The layout means that this would most likely take place in front of a bedroom window or close to the front door. Even if this were to be a relatively infrequent occurrence, it is still

likely to result in a somewhat unneighbourly activity that would result in an unacceptable degree of disturbance to future occupants.

18. The amount of outdoor amenity space provided would exceed the Council's requirements as set out in Appendix 6 of the LLP. The Council has queried the shape of the site. Nevertheless, it would provide sufficient space to sit out, dry clothing and provide outdoor storage. As such, there is nothing to suggest this would result in an unacceptable living environment.
19. In terms of indoor space, the Council acknowledge that they do not have a policy requiring adherence to the Government's Nationally Described Space Standards (NDSS). However, the development would appear to meet these standards in any event. The plans indicate that while the dwelling would not be of a particularly generous size, it would still be sufficient to provide an acceptable standard of accommodation.
20. Nonetheless, I still find that the layout of development is such that the living conditions of future occupants would be compromised. This weighs against the development and would be contrary to LLP policies LLP15 and LLP25 which seek, amongst other things, to avoid the over-intensification of a site and resist backland development which results in harm to amenity. It would also conflict with paragraph 127f of the Framework, which seeks to ensure high standards of amenity for future users. Again, Policy LLP1 is not directly relevant to this main issue.

Highway and pedestrian safety

21. The development would seek to meet the Council's maximum parking standards. However, there is dispute between the parties as to whether the spaces serving No 39 would be accessible. Although the Council's parking standards may not refer to manoeuvring, it must logically be the case that for a space to 'count' it must be usable.
22. The access to the two spaces would be very tight and difficult to get into and out of, particularly if both spaces were in use. As noted above, the appellant accepts that when reversing from one space you would need to enter the forecourt of the proposed bungalow. While this would result in issues relating to living conditions, it may also make the space less convenient and thus less likely to be used. Therefore, I am not entirely convinced that one or both of the spaces for No 39 would be usable at all times. However, LLP Policy LLP32 is clear that the standard is a maximum and that sufficient parking should be provided to help ensure adverse effects are avoided.
23. In this regard, the Council's reason for refusal states that parking in the area is over subscribed. However, they have produced no detailed evidence to substantiate this claim. I saw that Compton Avenue benefits from a number of designated on-street parking bays. These are subject to some form of control through parking permits.
24. Although my visit can only represent a snapshot of normal conditions, I saw a large number of vacant spaces and no evidence of obstructive or inconsiderate parking. It is likely that demand for the spaces would increase during evenings and at weekends. However, there is nothing before me which demonstrates that potential overspill parking would inevitably lead to highway or pedestrian safety issues. On this basis, there would be no conflict with LLP policies LLP31

and LLP32 which seek, amongst other things, to ensure development does not result in unacceptable safety issues.

Other Matters

25. Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The development conflicts with the plan in relation to impacts on local character and the living conditions of neighbours and future occupants. The Framework also gives great importance to these matters.
26. There are policies in the LLP which seek to support housing development on unallocated sites and increase densities. The development would add one house to the supply and make more efficient use of land. There would also be economic benefits relating to construction and support to local shops and services. However, the benefits of a single dwelling would not be significant and thus carry only limited weight.
27. The Council's evidence is silent on whether or not they have a five year supply of deliverable housing land as required by paragraph 67 of the Framework. The appellant has therefore argued that I should assume one does not exist and that the 'tilted balance' set out in paragraph 11(d) of the Framework should be triggered. This states that where a five year supply cannot be demonstrated, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.
28. The Council has not sought to dispute this. However, in forwarding their argument the appellant has also not provided any direct evidence that the Council cannot demonstrate a five year supply or the level of any shortfall that might exist. The evidence is therefore somewhat inconclusive.
29. Nevertheless, having regard to the harm identified above, I am satisfied that the adverse impacts of the development would significantly and demonstrably outweigh the benefits of a single dwelling. As such, paragraph 11d of the Framework would not apply in this case.
30. There are therefore no material considerations that would lead me to a decision other than in accordance with the development plan in this case.

Conclusion

31. For the reasons given above I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR