



Appeal Decision

Site visit made on 22 June 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2021

Appeal Ref: APP/B0230/W/20/3265848

286 Turnpike Drive, Luton LU3 3RQ

- 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 Ashley Simmons against the decision of Luton Council.
 - The application Ref 20/01164/FUL, dated 24 September 2020, was refused by notice dated 25 November 2020.
 - The development proposed is change of use of land from open space to residential amenity space, including erection of a boundary fence and gate.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use of land from open space to residential amenity space, including erection of a boundary fence and gate at 286 Turnpike Drive, Luton LU3 3RQ in accordance with the terms of the application Ref 20/01164/FUL, dated 24 September 2020, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plan and drawings: UK Planning Maps (location plan)-scale 1:1250, and drawings: 1201-A-102-Revision A, 1201-A-103-Revision A, 1201-A-202 Revision A.
 - 3) Prior to the area hereby permitted as residential amenity space being brought in to use, the fencing and gate hereby permitted shall be installed and finished in a similar colour to the existing fencing along the rear of properties 276 and 278 Turnpike Drive, or alternatively in a finish which has been submitted to and agreed in writing by the local planning authority.

Preliminary matters

2. The appeal submissions include a plan and drawings showing red line boundaries. For clarification and based on the submissions made by the main parties it is clear that the extent of the appeal site is as shown on the UK Planning Maps (location plan)-scale 1:1250 and I have determined the appeal on that basis.
3. I have used a description of development based on the Council's decision notice as this accurately and concisely reflects what is before me. However, I have nonetheless had full regard to the lengthier description contained on the application form.

4. Since the appeal was lodged, a revised version of the National Planning Policy Framework, 2021 ('the Framework, 2021') has been released. The main parties have been consulted on this and I have taken this into account where relevant to my Decision.

Main Issues

5. The main issues are the effect of the proposal on the character and appearance of the area and the living conditions of neighbours.

Reasons

Character and appearance

6. The appeal site comprises 286 Turnpike Drive, a dwelling, and its front and rear gardens, along with part of an open space located to the rear of this property.
7. The wider open space which the appeal site is a part of is located at the end of a cul-de-sac and adjacent to a footpath. It comprises an area of mowed grass with a mature tree at its centre. The Council has confirmed that this is not formally designated as open space in the local plan, nor it is located in an area where there is a deficit of open spaces.
8. Nonetheless, this open space forms part of a mosaic of incidental open spaces which are laid out throughout the estate. These are generally located adjacent to paths which link them to a larger central open space. Furthermore, because of its open and verdant appearance, this open space along with other similar spaces offer some relief to nearby built forms and contribute positively to the visual appearance of the area.
9. Relative to the wider open space, the area to be enclosed and incorporated as amenity space for the host property, would occupy a modest footprint of about 5m x 3m. This area is also located furthest away from the highway and adjacent to existing gardens. Therefore, whilst I have noted all the benefits this and other similar spaces provide, due to the extent and location of the area to be enclosed, this would not unacceptably undermine the overall quality or function of the wider open space.
10. Views of the open space from the surrounding area are against the backdrop of established boundary treatments (fencing) and a domestic garage. The proposed enclosure in the form of fencing and pedestrian gate would be of a similar design and appearance to the existing fencing. This would therefore assimilate with the existing boundary treatment without any significant change or diminution to the appearance of the wider open space.
11. For the above reasons, the proposal would not unacceptably harm the character and appearance of the area and accords with Policies LP1, LLP19 and LLP25 of the Luton Local Plan ('LP') which amongst other things seek to retain a network of connected, sustainable, high quality, locally distinctive, healthy places. I also find no conflict with Policy LLP27 of the Luton Local Plan, which does not preclude development proposals resulting in the loss of open space in an area where there is no identified deficit of open spaces and it is surplus to requirement.

Living conditions of neighbours

12. The open space is visible from certain neighbouring properties and therefore affords the occupiers of these dwellings a degree of visual amenity. Nonetheless, in light of the above reasons, the part reduction and enclosure of this space, would not unacceptably change the outlook from neighbouring properties. Consequently, the proposal would not harm the living conditions of neighbours with regard to visual amenity. Therefore, I find no conflict with Policies LLP1, LLP19 and LLP25. Together, these policies seek to achieve good design in developments which do not adversely affect the amenity of nearby occupiers.

Other matters

13. I have taken account of the representations against the proposal. Nevertheless, for the reasons set out above, these do not alter my findings on the main issues. The remaining area of open space does not form part of the appeal site and therefore any speculation over the future use of this is not for me to consider. My determination of this appeal is based on the site-specific circumstances of the appeal site and proposal. As such, any other application for development on an area of open space would be assessed on its planning merits and therefore my findings in relation to this appeal would not necessarily set a precedent.

Conditions

14. I have considered the conditions put forward by the Council in light of the requirements of the Planning Practice Guidance ('PPG') and the Framework, 2021. In addition to the standard timescale condition, I have imposed a condition specifying the relevant plan and drawings as this provides certainty. A Condition relating to the finish of the proposed boundary treatment is necessary in the interests of the appearance of the area.
15. The location, details and provision of the proposed boundary treatment are addressed under conditions 2 and 3. Therefore, the Council's suggested condition 04 is not necessary.
16. The PPG¹ advises that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. Accordingly, as the proposal before me is to provide a modest extension to residential amenity space which would be enclosed, it would not be reasonable or necessary to remove permitted development rights for buildings, extensions, or other structure within this area.
17. Because the remaining area of open space does not form part of the appeal site, it is not necessary or reasonable for me to attach any conditions in respect of removing permitted development rights for any fence, wall, bollard, or other means of enclosure on this, or with regard to its use and maintenance.

Conclusion

18. For the above reasons, I conclude that the appeal should be allowed.

M Aqbal

INSPECTOR

¹ Paragraph: 017 Reference ID: 21a-017-20190723