



Appeal Decision

Site Visit made on 30 June 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2021

Appeal Ref: APP/B0230/W/21/3271929

Land to rear of 39 Studley Road, Luton LU3 1BB

- 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 M Blair against the decision of Luton Borough Council.
 - The application Ref 20/01499/FUL, dated 1 December 2020, was refused by notice dated 21 January 2021.
 - The development proposed is Erection of a two bedroom detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 July 2021 a revised National Planning Policy Framework was issued. The main parties were given the opportunity to comment on the implications of the resulting changes for this appeal. The references to 'the Framework' made within my decision are to this revised version.

Main Issues

3. The main issues are the effect of the proposed development on (i) the character and appearance of the area; and (ii) the living conditions of the occupiers of neighbouring properties, including 39 Studley Road, with particular regard to outlook, privacy, noise and private amenity space; and whether the proposed development would provide satisfactory living conditions for future occupiers with particular regard to privacy and noise and disturbance.

Reasons

Character and appearance

4. Despite the modest size of the proposed dwelling, its layout, sited to the rear of detached and semi-detached sizeable properties, in close proximity to its rear boundary and one of its side boundaries, with only a comparatively small garden to the other side, and a frontage dominated by a shared parking area and access, would be out of character with the prevailing pattern and rhythm of the surrounding residential development. In this context, notwithstanding the overall size of the site, the proposed dwelling would also appear unduly cramped within its plot.
5. Whilst the dwelling would not be obvious in the street scene, it would be visible from public view through the access gap between 37 and 39 Studley Road (Nos 37 and 39), and from the rear of these and other neighbouring properties and their external spaces, where it would be read as a discordant feature in this

backland position. This would not be mitigated by the use of matching materials or design features. The intensified parking and manoeuvring activity, combined with the inevitable associated domestic paraphernalia and goings-on, would draw further attention to the proposed dwelling and its uncharacteristic position away from the road frontage.

6. It is argued by the appellant that a degree of hard built features already exist in the area, between the street facing developments of Studley Road and Cromwell Road, such as would support the acceptability of the proposed development. However, I do not consider the appeal site forms an area of transition between two distinct character areas. Where buildings exist to the rear of frontage properties on Cromwell Road, they have not interrupted the uniform rear boundary line of Studley Road. The predominant hard built features to the rear of properties along this part of Studley Road are parking areas not outbuildings or other dwellings. Consequently, I consider that the proposal would introduce an inappropriate feature to the site that would fail to integrate effectively with the spatial pattern and character of the surrounding built form.
7. I therefore conclude that the proposed development would have a significant harmful effect on the character and appearance of the area. Thus, the proposal would conflict with Policies LLP1, LLP15 and LLP25 of the Luton Local Plan 2017 (LP) which require amongst other matters that development should respond to and enhance local character. The proposal would also conflict with the relevant design aims set out in Section 12 of the Framework.

Living conditions

8. The Council is concerned with the impact of the proposed development on the living conditions of the occupiers of numbers 37, 39 and 41 Studley Road. The proposal would result in the loss of the amenity space currently provided for the occupiers of No 39. The appellant acknowledges this loss but suggests that this would not result in unacceptable harm, as the area has been underused for some time and several public parks are within walking distance of the property that could be utilised instead. Reference is also made to the external amenity space standards, set out in Appendix 6 of the LP, as allowing a degree of flexibility when considering the amenity space requirements of apartments. The suggestion being that this supports the proposal resulting in the loss of this amenity space.
9. Whilst the standards state that flat occupiers generally do not seek or expect the same level of garden amenity space as house dwellers, it goes on to state that an enclosed area of communal amenity/play space should normally be provided where feasible. No 39 has been provided with such a space and I do not consider that the flexibility contained within the standard provides any justification for the total loss of existing provision. I saw on my site visit that this grassed amenity space was slightly overgrown but not so unkempt to suggest that it could not be used or that it was not in recent use. I note that there was a washing line in place, and that outside furniture and some children's toys were present alongside the boundary with No 41 and adjacent the rear elevation of No 39, suggesting that the outside space is used for amenity purposes and provides green relief in the otherwise hard surfaced area. Indeed, interested parties have raised concern about the loss of this space and have indicated that any underuse has been a result of lack of

maintenance rather than lack of demand. The proposal would permanently remove the option currently available for enjoying outdoor space directly associated with their place of residence. This would be unacceptably harmful to the living conditions of the occupiers of No 39.

10. Concerns have been raised by occupiers of No 37 regarding the impact of the proposal on the enjoyment of their communal external amenity space. Although the Council has not specifically objected in this regard, the appellant has nevertheless addressed this issue in their evidence. I am therefore satisfied that no party would be prejudiced by me considering this matter. The proposed dwelling would be situated close to the shared boundary with No 37, adjacent to its amenity space. Despite the proposal's one and a half storey height, its proximity to No 37's amenity space, combined with its height and overall mass, would be overbearing for the users of that space. The proposal would be visually intrusive and would unacceptably dominate the amenity space. The presence of the proposal would therefore harmfully detract from the quality of the living environment currently enjoyed by the occupiers of No 37.
11. The proposal would introduce a dwelling at the rear of No 39. It would appear as an unexpected and intrusive feature fronting the rear of these flats. However, the scale of the proposed building, its separation distance and window arrangements in relation to Nos 37 and 39 would ensure that there would be no significant loss of privacy of their internal spaces. In respect of No 41, due to the intervening features of boundary treatments and the separation distance between No 41 and appeal site, the proposal would not result in unacceptable harm to the living conditions of the occupiers of that property. There would be some increased overlooking of the parking area and driveway and the external amenity space of No 37 from the comings and goings of future occupiers of the proposed dwelling, however, in the context of the number of existing users of these spaces I do not consider that the increase would be so significant as to amount to unacceptable harm to the living conditions of the occupiers of Nos 37 and 39 in this regard.
12. There would be an increase in the number of vehicular movements at the site that would necessarily result in additional vehicles passing closely between Nos 37 and 39. Parking arrangements would be formalised, but the spaces shown to be adjacent to the shared boundary with No 41 would be as existing. Given the existing arrangements and the number of users of the parking areas of Nos 37 and 39, I do not consider that the increase in vehicular movements, likely to be generated by the scale of the proposal, would be so significant as to amount to an unacceptable level of noise and disturbance such that would be unacceptably harmful to the living conditions of the occupiers of Nos 37, 39 or 41.
13. The proposed dwelling would be modest in size compared to Nos 37, 39 and 41. Due to this difference in scale the proposed dwelling would be overlooked from the facing windows of No 39, including from a dormer window. Overlooking would also occur from the nearest first floor and dormer windows of No 41. The impact on the internal privacy of the future occupiers would be minimised by the proposed window arrangements and the potential likely use of window coverings such as blinds and net curtains. However, the level of intrusion of privacy, when considered in combination with the direct overlooking that would be experienced by future occupiers when using the proposed external amenity space, would result in unsatisfactory living

conditions for those occupiers with regard to privacy. This would be the case, because of the height from which overlooking would occur, even when taking into consideration the proposed boundary treatment and potential for planting.

14. The proposed dwelling and its outside space would be situated close to the shared parking and manoeuvring area. However, this arrangement, whereby vehicles parking immediately outside of the front of the proposed dwelling would be associated with the occupiers of the dwelling, and other vehicular movements would not pass immediately adjacent the property, would not result in unacceptable levels of noise or disturbance such that the proposal would fail to provide unsatisfactory living conditions for future occupiers in respect of this matter.
15. To conclude, I have not found harm to the living conditions of occupiers of neighbouring properties with regard to noise and disturbance or loss of privacy, and I have found that the proposal would be satisfactory with regard to vehicular noise and disturbance in relation to future occupiers of the proposed development. However, I have found that the proposal would result in unacceptable harm to the living conditions of the occupiers of Nos 37 and 39 with regard to impacts on existing external amenity spaces. I have also found that the proposal would not provide satisfactory living conditions for future occupiers in respect of overlooking and privacy of internal and external spaces.
16. Consequently, the proposal would conflict with LP Policies LLP1 and LLP25 and Section 12 of the Framework which, together and amongst other matters, seek developments that provide high standards of amenity for existing and future users.

Other Matters

17. I note the support for the proposal; however, this does not lead me to a different conclusion on the main issues.
18. I acknowledge other concerns raised by interested parties, including in relation to light pollution, access for emergency vehicles and refuse collection arrangements. I also note that concern was raised by interested parties and by the Council, in its officer report, with regard to the overall number of parking spaces proposed to serve both No 39 and the new dwelling. However, given my findings in relation to the main issues, I have not considered these matters any further.
19. The proposal would make a modest contribution towards boosting the supply of housing. The proposal would seek to make more efficient use of land in an accessible location and would be on a windfall site, such as is supported by both local and national policy. I afford these benefits modest weight commensurate with the scale of development proposed. Although Paragraph 69 of the Framework states that great weight should be given to the benefits of using windfall sites within existing settlements for the provision of homes, such sites are required to be 'suitable'. For the reasons I have identified, the appeal site does not represent a 'suitable' site and the benefits of its development therefore attract more limited weight. The limited social and economic benefits to the area resulting from the construction of a single dwelling would be modest.

20. I have found the proposal to be acceptable in some respects. However, the absence of material harm is not a benefit that weighs in favour of the development. In seeking to make effective use of land the Framework makes clear that this should be balanced with safeguarding and improving the environment and ensuring safe and healthy living conditions.
21. In taking account of the benefits, I do not consider that they outweigh the harm and policy conflicts that I have identified and to which I attribute significant weight. The proposal would conflict with the development plan as a whole and there are no material considerations, including the provisions of the Framework, which indicate a decision should be made other than in accordance with it.

Conclusion

22. For the above reasons the appeal is dismissed.

S Tudhope

INSPECTOR