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# Appeal Decision

Site Visit made on 26 October 2021

**by John Gunn DipTP, DipDBE, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 November 2021**

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**Appeal Ref: APP/B0230/W/21/3273962**

**21 Hadlow Down Close, Luton, LU3 2PY**

- 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 Kevan McCreesh against the decision of Luton Borough Council.
  - The application Ref 20/01277/FUL, dated 9 September 2020, was refused by notice dated 21 December 2020.
  - The development proposed is the construction of 1 no. detached bungalow.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The National Planning Policy Framework (the Framework) was published in July 2021, the main parties have been given an opportunity to comment on its provisions in regard to the appeal. I have taken any responses into account and referred to the Framework in my decision.

## Main Issues

3. The main issues of the proposal are:
  - The effect on the character and appearance of the area;
  - The effect on the living conditions of the occupiers of properties in Neville Road, with particular regard to outlook;
  - Whether it would provide satisfactory living conditions for future occupiers, in terms of privacy; and
  - Highway safety, having particular regard to access for pedestrians.

## Reasons

*Character and appearance.*

4. Hadlow Down Close is a short cul-de-sac comprised of semi-detached bungalows and houses. It contrasts significantly with the west side Neville Road, from which the appeal site would be accessed, which is a through route characterised by short two storey terraces interspersed with detached and semi-detached dwellings. The properties in Neville Road typically have long, narrow gardens which abut the rear gardens of properties fronting Hadlow Down Close, giving the area a spacious quality, notwithstanding the tight knit development along the respective roads.

5. The proposal would introduce a dwelling within the rear garden environment of Hadlow Down Close which, whilst not visible from the public realm, would be visible from the rear of nearby properties in Hadlow Down Close and those on the western side of Neville Road. Such development, would be incongruous with the character and appearance of the area, significantly reducing the separation distance between the built form in the respective streets, which would be harmful to the otherwise spacious qualities that the rear gardens/land provide. Moreover, the lack of street frontage that the dwelling would have would be out of character and incongruous with the overriding pattern of development in the locality.
6. Whilst noting the evidence provided by the appellant in respect of plot sizes and plot ratios this does not outweigh my conclusions regarding the reduced separation distances and spacious qualities of the area that currently exists between the properties in Hadlow Down Close and Neville Road.
7. Accordingly, the proposed development would conflict with Policies LLP1, LLP 15 and LLP25 of the Luton Local Plan 2011-2031 (LP) which requires that new development should enhance or preserve the character of an area, by ensuring that new development does not result in an over intensification of the site and is of high quality design that is well integrated with the existing built form. These policies are consistent with the Framework.

*Living conditions of neighbouring occupiers.*

8. The proposed development would sit to the rear of Nos 43 and 43a Neville Street. The effect of the development would be primarily on these properties, and not Nos 41 and 43 as indicated in the officers report. Notwithstanding the apparent numerical error, I am required to consider the impact of the proposed development that is before me on the neighbouring residents.
9. I note that the proposed dwelling would be restricted in scale and would be set off the shared boundary. However, and certainly from the first floor of Nos 43 and 43a, the full extent of the development would be apparent. The amount of built form, with limited garden space and thus green relief, within very close proximity would impose an adverse sense of enclosure upon the residential occupiers of Nos 43 and 43a and create a poor outlook, which together would significantly harm their living conditions.
10. The appellant refers to the change in ground levels, an existing garage to the rear of 43a and existing vegetation within the neighbouring gardens. In this regard I acknowledge that the garage would limit views from No 43a, and the existing landscaping would provide a soft buffer to the proposed development when viewed from the respective properties. However, I also note that two medium sized trees, located within the appeal site and close to the common boundary will be removed. Moreover, I find that only limited mitigation would arise from existing vegetation within the rear gardens of Nos 43 and 43a, and there is no certainty that it will be retained in the long term. Whilst further planting is proposed, it would be limited in scale, and not located in a position that would mitigate the impact of the proposed development when viewed from No's 43 and 43a.
11. Accordingly, the proposal would harm the living conditions of neighbouring occupiers in terms of adversely restricting their outlook and increasing their sense of enclosure. Therefore, it would conflict with Policies LLP1 and LLP25 of

the LP and paragraph 130 the Framework which seek, amongst other matters, to avoid backland development where it would give rise to adverse amenity and create a high standard of amenity for existing and future users.

*Living conditions for future occupiers.*

12. The lounge, kitchen, and bedroom 2 of the proposed bungalow would face onto the rear garden, which would be enclosed by a tall fence. Moreover, there would be no windows facing directly towards the properties in Neville Road. Consequently, I find that there would be no loss of privacy to rooms within the proposed dwelling.
13. The patio areas, which would be the subject of increased activity, sit close to the proposed bungalow and would be a short distance from the boundary. As a result, they would therefore be subject to limited overlooking from properties within Neville Street. Furthermore, in built up areas it would be expected that some overlooking of garden space would occur. That said, I note that there would be a direct line of sight, over a short distance, from the first floor windows of 43 Neville Road into the rear garden of the proposed bungalow. As a consequence, there would be a significant and unacceptable loss of privacy in the proposed garden space. It would make this space less pleasant to use.
14. I am mindful of the appellants offer to add trellis along the top of any new fencing erected on the common boundary, to retain one of the existing trees and/or provide additional planting. Whilst additional trellis might go some way towards mitigating the reducing overlooking it would not fully address the concerns that I have identified above. A more solid form of boundary treatment might address the privacy issue, however such an approach would, in itself, introduce a feature that would appear incongruous and out of character with the area. Given the position of the trees relative to the proposed bungalow, and the need to protect any proposed underground services and foundations, I am not convinced that their retention would be feasible. Consequently, I find that concerns regarding privacy cannot be satisfactorily addressed using a planning condition as suggested.
15. In light of the above, the proposal would not provide satisfactory living conditions for future occupiers and thus would fail to accord with Policies LLP1 and LLP25 of the LP and paragraph 130 of the Framework. These policies jointly seek to ensure that developments provide a good quality of life through high quality design that, amongst other things, delivers functional private outdoor space.

*Highway safety.*

16. Access to the proposed bungalow would be derived from Neville Street via a private drive that currently provides access to garage/storage areas to the rear of 201 Westmoreland Avenue and 19-43a (odd) Neville Road. The drive rises gently from Neville Road, has a hard surface, is unlit and has limited width. A short length of raised footpath, commencing at a point close to the rear wall of No 41, abuts the private drive.
17. During my daytime site visit I was able to observe that the private drive had limited use by vehicles and pedestrians. However, it is likely that usage would increase in the evening and at weekends when people return to their homes. I acknowledge that these observations can only provide a snapshot of traffic

conditions at a particular time of day, however, I have no evidence to suggest that they are not representative of typical traffic conditions.

18. The drive would be the sole means of vehicular and pedestrian access for the future occupiers of, and visitors to, the proposed development, resulting in a small increase in its use. It is likely that there will be occasions when pedestrians would be walking along that part of the drive where no dedicated footpath is provided, at the same time as it is being used by vehicles. Notwithstanding vehicles are likely to be travelling at slow speed, it is likely that there will be some additional conflict between vehicles and pedestrians leading to a reduction in highway safety. Whilst the likelihood of conflict is would be low, there could be severe consequences with potential injuries.
19. The appellant raises concern about the Highways Authority's position with regards to access by the fire service. In this regard whilst acknowledging the concerns of the Council and the Highway Authority regarding accessibility by fire service vehicles I note that Reason 4 does not make specific reference to this matter. That said, I am satisfied that appropriate measures would be available for emergency access.
20. In light of the above the proposed development would be likely to result in increased danger to pedestrians contrary to Policies LLP1 and LLP31 of the LP and paragraph 130 the Framework which, amongst other matters, seeks to create places that are safe, inclusive and accessible.
21. Policy LLP32 of the LP has been referred to by the Council however, as this relates to car parking standards, and the Council have confirmed that the proposed development would accord with their current adopted requirements. Consequently, I do not consider it relevant to the main issue of this appeal.

### **Other Matters**

22. I acknowledge that the appellant has sought to minimise the visual impact of the proposed bungalow by introducing a hipped roof, similar to those found in Hadlow Down Close, and would provide an open frontage to the site which would increase natural surveillance along the private drive. I also find that the proposed development would provide adequate parking and amenity space. However, these matters do not outweigh the significant harm to the character and appearance of the area, the living conditions of existing and future occupiers and the safety of pedestrians, that I have identified above.

### **Conclusion**

23. There are no material considerations of sufficient weight to indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be dismissed.

*John Gunn*

INSPECTOR