



Appeal Decision

Site visit made on 8 August 2023

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 1st March 2024

Appeal Ref: APP/B0230/W/22/3304471

100 Kingston Road, Luton, LU2 7SA

- 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 G Duggan against the decision of Luton Borough Council.
 - The application Ref 22/00380/FUL, dated 24 March 2022, was refused by notice dated 14 June 2022.
 - The development proposed is the erection of 2 two bed semi detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the determination of the application by the Council, the National Planning Policy Framework (NPPF) was updated in December 2023. However, the revisions in the updated framework do not significantly affect the main issues in this appeal, so no further comments have been sought from the parties.
3. In 2007, the application site received planning approval for the construction of one house (07/00552/FUL) (2007 approval). This approval was deemed lawful in 2021 (21/00692/LAWE).

Main Issues

4. The main issues are:
 - the effect of the proposal upon the character and appearance of the surrounding area;
 - the effect of the proposed development upon the living conditions of future occupiers, having particular regard to floor space;
 - the effect of the proposal on the living conditions of the occupiers of neighbouring properties, with particular regard to privacy, and general noise and disturbance; and
 - the effect of the use of the proposed access on highway and pedestrian safety.

Reasons

Character and Appearance

5. The appeal site is currently open and undeveloped land which is located in a primarily residential area, specifically behind housing along Kingston Road,

Richmond Hill and Colin Road. A building was previously located here and was used as a car repair business, however, this was no longer present at the date of my site visit. The appeal site is set back from the main entrance along the junction between Richmond Hill and Kingston Road, such that there is a relatively low visibility of the site from public views. Due to the location of the appeal site, it is bordered on all sides by residential dwellings, but some are positioned higher or lower than the site due to the geographical features of the area. While the dwellings are limited in size, they front onto wide roads and pavements, which provides the street with a somewhat spacious, suburban character. Some of the front gardens also feature hedgerows and grassed areas, which provide visual relief to the surrounding built form.

6. The residential dwellings in the area are of similar age and overall design, which includes a mixture of two storey semi-detached and terraced properties. As such, the proposal for a pair of dwellings would not be without precedent. However, the existing dwellings exhibit a distinct pattern of design, and are characterised by frontages which directly face the road and which have fairly deep rear gardens.
7. The submitted drawings indicate that the frontages of the proposed dwellings would not face the road, but would otherwise be comparable in size to the surrounding properties. However, due to the backland location of the appeal site, the building line would not be similar to other dwellings, as the proposed dwellings would not front the public highway unlike the other properties in the area. Additionally, the front area of the proposed development would be a self-contained area located behind the entrance point. This front area would consist of a shared front turning area and four car parking plots. Without the visual relief from the wide streets which are characteristic of the area, this front area would appear cramped and cluttered due to the location of the four car parking plots and the confined design of the front turning area. In combination, these aspects would highlight the contrasting effect the proposed development would have with the prevailing pattern of built form and established pattern of development in the area.
8. With regard to the rear gardens, the majority of properties surrounding the appeal site have large rear gardens. By comparison, in terms of depth and overall size, the gardens attached to the two proposed dwellings would be significantly smaller. These smaller gardens, in combination with the overall intensification of the front forecourt area would result in an incongruous layout that would be appreciably at odds with the prevailing pattern of development found locally. Although the plot size of the appeal site is slightly larger than the 2007 approval, the increase in built form and parking spaces means that the overall development would appear cramped and contrived. Additionally, the provision of two semi-detached dwellings would dominate the site by virtue of their bulk and massing, leaving limited space about the buildings. The effect of this would be harmful to the character and appearance of the property and the surrounding area. Whilst the appeal site is not located within a conservation area, this does not undermine the requirement for the appeal scheme to respect local character.
9. In reaching this view, I have considered the visibility of the proposed development from the street scene. Due to their corner location and the length of the access track, the visibility of the proposed dwellings would be relatively low. However, the front forecourt area is set on marginally lower ground and

thus would be clearly perceptible from the street through the site access due to the lack of effective screening between it and the street. As the appeal site is on a slope, it would be highly visible from neighbouring dwellings which are located both above and below the location of the proposed development.

10. In terms of visibility from other dwellings, the proposed units are two storeys tall. This is consistent with the height of other nearby dwellings. Nonetheless, due to this would not overcome the proposal's constrained layout and intensive appearance within the confines of the site. The proposal's layout and its appearance within the plot. The proposed development's negative impact is further emphasised when compared to the existing development pattern, due to the narrow entrance point, confined nature of the shared access area and lack of effective screening.
11. I acknowledge that the development of the site would result in the clearing of the area around the site's access and would likely be a visual improvement. However, this is not contingent on the proposed development. I have also considered references made by the appellant to other infill developments in the area, however, there is limited information before me regarding the particular circumstances of those developments. In any event, I must consider the appeal scheme on its own merits.
12. The 2007 approval is an extant permission which permits the erection of a detached three bedroom dwelling and single garage. It would increase the amount of built form at the appeal site, in terms of floor space, bulk and mass, resulting in a roughly comparable gross external area to the proposed development. The appellant's case is that the extant permission would form a realistic fall back position should this appeal be refused, and thus that a substitution of development should be consequently allowed. There is no information before me which contradicts the appellants' case that they would not pursue this permission. Thus, I consider that the 2007 approval is likely to be a valid fall back position.
13. However, the 2007 approval only enables the development of one dwelling rather than two. By comparison, the proposed development would increase the intensity of residential use on the appeal site, by adding two dwellings and associated domestic elements like parking and waste storage facilities. These features would not be present with this intensity if the proposed development does not occur. As such, it would detract from the character and appearance of the street scene and the surrounding area, by introducing further residential development into a confined space. Accordingly, when considering the visual effect of the use of the appeal site as two dwellings rather than one dwelling, the 2007 approval is not sufficiently comparable to the proposed development as to justify it. Additionally, a significant period of time has elapsed since the 2007 approval was granted consent. It was subject to a different planning regime for a fewer number of dwellings, and as such it carries limited weight.
14. In conclusion, the appeal scheme would harm the character and appearance of the surrounding area. It would not respond to local character or provide continuity of built form, contrary to Policies LLP1 and LLP25 of the Luton Local Plan 2017 (the LP).
15. The Council's refusal reason alleges conflict with Policy LLP15 of the LP. However, this relates to housing provision and my attention has not been

drawn to any words in it that are relevant to this issue. This policy has therefore not been determinative with regard to this main issue.

Living Conditions – Future Occupiers

16. The Government's nationally described space standard (NDSS)¹ sets out the minimum internal space requirements for dwellings. It is common ground that the NDSS requires a 2 bedroom, 2 storey dwelling, such as the proposed development, to have a minimum size of 70 m². However, while the Council has referred to these figures set out under the NDSS, there is no evidence before me that these are measurements which have been adopted in the local plan. Nonetheless, the NDSS does emphasise good design and it is consistent with the NPPF. As a result, I attach moderate weight to it.
17. It is common ground between the parties that the internal area of each proposed dwelling would equate to approximately 59 m². As such, it would fall well short of the minimum level of provision considered acceptable under the NDSS, both in terms of overall size and storage space. Given the failure of each unit to meet minimum space requirements, the experience of occupying the appeal site would be cramped and confined, with insufficient space available for reasonable domestic activities. It would therefore not provide satisfactory living conditions for future occupiers or result in a good quality home.
18. In reaching this view, I have considered that the Proposed Floor Plan (19 056 100 Rev A) indicates that both of the larger rooms on the first floor would be used as bedrooms. The appellant has suggested that compliance could be achieved by restricting the use of one of the proposed bedrooms as an office. However, it would not be possible to do so by planning condition, because it would substantively alter the use of one of the rooms, which would result in a fundamental change to the proposed layout of both dwellings and require the submission of new plans. This amendment would also contradict the description of development, which refers to "2 two bed semi detached dwellings". As such, this alteration would prejudice the interests of parties who have not had the opportunity to be consulted. Finally, such a condition would be contrary to the Procedural Guide² which states that the appeal process should not be used to evolve a scheme. In any event, I am not persuaded that such a condition would be enforceable and thus such a condition would not make the development acceptable in planning terms. By design, the new office room would be fully capable of being built out and occupied as a bedroom, further highlighting the issues regarding enforcement.
19. In conclusion, the proposed development would not provide appropriate living conditions for future occupiers, with regard to internal floor space. Accordingly, it would not demonstrate adherence to the best practice principles of urban design, contrary to Policy LLP25 of the LP. Accordingly, it would not accord with local plan policies, contrary to LLP1 of the LP. It would also not comply with the requirement for development to provide a high standard of amenity for future users, contrary to Section 12 of the NPPF.

Living Conditions – Neighbouring Occupiers

20. As backland development, the appeal site development is situated in close proximity to the rear gardens of neighbouring residential homes and would only

¹ Technical housing standards – nationally described space standard, March 2015

² Paragraph 16: Procedural Guide – Planning Appeals – England (2024)

be accessible through a narrow entrance point for both pedestrian and vehicular traffic.

21. The proposed development includes four car parking spaces that would be located next to the rear gardens of neighbouring dwellings. Due to this location, this would result in unexpected vehicle noise for those living nearby who are unlikely to be accustomed to such noise from the rear of their dwellings. Although the site used to be a workshop, but it has been a significant period of time has elapse since it was used for that purpose. This would affect in particular, the occupiers of 100 Kingston Road, as they would be located adjacently and thus in close proximity to the access road. However, I recognise that the site is in a densely built area and that the development of the appeal site for one new dwelling has already been established. On the basis that the proposed development is not expected to materially increase traffic to the site, it is unlikely to result in a significant increase in noise and disturbance.
22. The appeal site is located on a slanted incline, resulting in the proposed dwellings, garden areas and parking spaces sloping downwards away from the road. This would result in those dwellings along Kingston Road becoming positioned vertically above the appeal site, enabling unrestricted views of the upper floors of those dwellings from the appeal site. Additionally, some of the dwellings on Colin Road are located lower than the appeal site. This would allow unobstructed views of their rear gardens and upper floors from the appeal site due to the sloped location of the area. Although the fencing and retention of the sycamore and fruit tree would partially mitigate the effect, they would not be sufficient to effectively screen the appeal site from the occupiers of existing dwellings in the vicinity, due to the sloping position of the appeal site.
23. As the appeal site is already enclosed by existing dwellings, there is likely to be an element of existing passive overlooking, which is partially acceptable given the existing permission for one dwelling and the constraints of the appeal site. On the second floor of one of the side elevations, there is a window that directly faces the dwellings on Kingston Road. However, this window is located in a bathroom. As such, it is not likely that a sustained amount of time would be spent in these locations such as to cause significant harm to privacy. The front elevation for two proposed dwellings is angled, such that the windows for the front habitable rooms would not face the rear windows of the opposite dwelling. Nonetheless, there would still be clear views of the rear of other dwellings along Colin Road, which could not be adequately screened by fencing. In combination with the limited spatial distance between dwellings and the differences in terrain, these clear views would have a significant harmful impact on the privacy of those properties.
24. The 2007 approval also permits the construction of a two storey building. However, it would be limited to one dwelling, as opposed to the proposed development which would result in two dwellings. This would increase the likely number of occupiers and households, thus leading to additional harm to the privacy of neighbouring occupiers. Additionally, in comparison with the 2007 approval, there are also significant changes to the shape and orientation of the built form. The proposed development does not incorporate a garage which would help to screen angles of view from certain windows. Additionally, in contrast to the 2007 approval, the front of the building now faces the rear of the dwellings on Colin Road, which increases the visibility of those dwellings. As

such, the proposed development would result in further harm to the privacy of neighbouring occupiers. Accordingly, the 2007 approval is not sufficiently comparable to the proposed development as to justify it.

25. In conclusion, even though I have found no harm in respect of noise and general disturbance, the appeal scheme would harm the living conditions of the neighbouring occupiers, in relation to privacy. It would not demonstrate adherence to the best practice principles of urban design, contrary to Policy LLP25 of the LP. Accordingly, it would not accord with local plan policies, contrary to LLP1 of the LP. It would also not comply with the requirement for development to provide a high standard of amenity for future users, contrary to Section 12 of the NPPF.

Highway Safety

26. The comments from the Highway Authority indicate that the narrow, restricted access to the development falls below the standards for a shared pedestrian and vehicular frontage access to the dwellings. Furthermore, this was recognised in the 2007 approval. However, on the basis that as this access was being used by the workshop, they had no objection to the proposal.
27. It is common ground between the parties that the access does not meet the required standards. However, I have not been provided with any further detail regarding these standards. Additionally, there is no evidence before me that this would render it unusable or result in significant harm to pedestrians or vehicles.
28. I recognise that due to the narrow width of the frontage access, that it would not be possible for vehicles to pass one another, which could potentially lead to conflict should two vehicles try to enter and leave the site at the same time. This could lead to vehicles needing to reverse backwards onto the highway in the event that a vehicle is leaving at the same time. However, it is likely that these movements would be carried out at low speed, given that it is located within a residential area where the speed of traffic is comparatively low. Additionally, other vehicles in the area would be carrying out similar manoeuvres as they attempt to park locally. As the appeal site is limited to two dwellings, the likelihood of such situations of conflict would be relatively low. Furthermore, regarding pedestrian use of the access track itself by future occupiers, it is unlikely there would be significant conflict between pedestrians and vehicles due to the high visibility from the slope and the slow speeds of vehicles entering the site.
29. There is no dispute that the frontage access does not reach the required standards, however, in reviewing the situations I have described above, I am not persuaded that there would be an unacceptable highways or pedestrian safety risk associated with the use of this frontage access.
30. I note comments in relation to the accessibility of the proposed dwellings by emergency services vehicles; however, this issue has not been presented in the Council's reasons for refusal. As I am finding harm in other respects, I have not assessed this matter in any real detail.
31. In conclusion, the use of the proposed access would not result in harm to highway and pedestrian safety. It would meet the relevant criteria for reducing the safety risk to motor vehicles and vulnerable users, in accordance with

Policy LLP31 of the LP. It would create a place which is safe and accessible, in compliance with Section 12 of the NPPF.

32. The Council allege a conflict with Policy LLP32 of the LP. However, this policy relates primarily to providing a proportionate number of car parking spaces. My attention has not been drawn to any wording in either policy that relates to this main issue. They have therefore not been determinative in my decision on this issue.

Other Matters

33. I note the appeal site is previously developed land and that the principle of backland development has been established. I also recognise that the site was previously used as a builder's yard with four garages, however, this use ceased a significant period of time ago upon the commencement of the 2007 approval. There would be some benefits through the addition of one unit in an accessible location as well as an associated economic uplift from the construction process and future spending of occupiers. However, those benefits would be relatively modest and would only attract limited weight. Accordingly, none of these other matters outweigh or overcome my conclusion on the main issues.

Conclusion

34. I have found that the appeal scheme would be contrary to the development plan as a whole. No material considerations have been demonstrated which would outweigh the conflict. Therefore, for the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

S Lo

INSPECTOR