



Appeal Decision

Site visit made on 25 February 2025

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th March 2025

Appeal Ref: APP/B0230/W/24/3351660

2 The Crossway, Luton LU1 5NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mrs Shaffi against the decision of Luton Borough Council.
 - The application Ref is 24/00447/FUL.
 - The development proposed is the erection of two storey attached building to provide a three bedroom end of terrace property with associated parking (Retrospective).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In December 2024, a revised National Planning Policy Framework (the Framework) was published. The main parties have had the opportunity to comment on the implications of this, and I have taken their responses into account.
3. While some construction works have been undertaken on the appeal site, I cannot be certain that these works accord with the development subject of this appeal. Consequently, the appeal is progressed on the basis that the scheme is proposed.
4. A structure has been erected to the rear of the proposed dwelling, most of which is within the appeal site. Nevertheless, this structure is not referred to within the description of the proposal on the application form, and no related proposed floor or elevation plans have been provided. Consequently, the appeal is considered on the basis that this structure does not form part of the proposed development.
5. In support of their appeal, the appellant has submitted amended plans which were not before the Council when the application was determined. The proposed amendments include a reduction in the depth of the single-storey rear outrigger. The Procedural Guide: Planning Appeals – England advises that the appeal process should not be used to evolve a scheme, and that it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Council and interested parties at the application stage. In this case, the proposed amendments would constitute a substantive change to the development. That being the case, this appeal is determined based on the plans submitted in support of the application and upon which the Council's decision was made.
6. As part of the application, the appellant purported that the development would be exempt from the general Biodiversity Net Gain condition, as set out in paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990 (as amended).

However, given the date of the application and because no mechanism has been put before me to secure the development as self-build, it is necessary to consider biodiversity as a main issue.

Main Issues

7. The main issues are the effect of the development on;
- biodiversity; and
 - the character and appearance of the area; and
 - whether the development would provide adequate living conditions for future occupiers of the proposed dwelling, with particular regard to outdoor space.

Reasons

Biodiversity

8. Biodiversity Net Gain (BNG) is a mandatory requirement of Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) (Schedule 7A). Unless exempt, the development subject of this appeal would be subject to the mandatory BNG condition, which requires developers to deliver a BNG of at least 10%.
9. In the absence of a planning obligation to secure the development as self-build - as defined in Section 1(A1) of the Self-build and Custom Housebuilding Act 2015 - as amended, the self-build exemption does not apply to the proposal. Moreover, and given that the application was submitted after the expiry of the non-major development exemption, this exemption also does not apply. I am therefore unable to conclude that the proposed development would be exempt from the statutory BNG condition.
10. Furthermore, I have not been provided with a biodiversity metric document which has been completed in accordance with the requirements at Schedule 7A. As such I have been unable to establish that the development could achieve at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat.
11. Consequently, and in respect of biodiversity, the development would not comply with Schedule 7A of the Town and Country Planning Act 1990. This is a matter of overriding concern, to which I attribute substantial weight.

Character and appearance

12. The appeal site contains a semi-detached dwelling in a plot that is wider than typical within the largely built-up and mainly residential area it is located. Most of the houses in the area are either semi-detached or form part of short terraces. While there is some variety in the appearance of these houses, in general, their scale, form, and layout, have a pleasant cohesiveness.
13. The passage between the side of the proposed house and the northeastern plot boundary would be fairly narrow. However, there is an undeveloped strip of land adjacent to the site's northeastern boundary. This strip of land would provide a visual break between the house that subject of this appeal and existing development to the rear of number 71 Wilsden Avenue. Consequently, the proposed dwelling would not appear cramped within the site, and it would not lead to a harmful loss of spaciousness within the area.

14. The development would result in a short terrace of houses being formed. In this respect, it would be like other nearby development. Moreover, and although the proposed house would be a little wider than each of the other 2 houses in the pair it would adjoin, its height, general form, and design detailing would be similar to these and other nearby houses. As such, and subject to its external materials relating satisfactorily to those found within the building it would adjoin – which could be secured by condition, then the proposed development would read as a harmonious and sympathetic addition to it.
15. Inspectors have previously dismissed appeals for residential development on the appeal site. However, each decision is made having regard to the evidence and circumstances at that time. In this case the appeal scheme does not include the alley feature which the Inspector in appeal ref APP/B0230/W/20/3261944 found to be unbalancing. Furthermore, the proposed building is not detached, as was the case in the appeal following application ref 15/01534/ful. As such, these previous appeal schemes, which were materially different from that subject of this appeal, do not lead me to reach different views from those outlined above.
16. For the reasons given, the development would not cause harm to the character and appearance of the area. Consequently, it would comply with policies LLP1 and LLP25 of the Council's Local Luton Plan 2022-2031 – dated November 2017 (the Local Plan). Collectively and amongst other things, these require development to be of a high-quality design and to preserve or improve the character of the area.

Living conditions – future occupiers

17. Amongst other things, policies LLP1 and LLP25 of the Local Plan seek to ensure that new development is of a high-quality design that creates healthy places. One of the ways they seek to achieve this is by requiring new housing to be provided with external space that accords with the standard set out within appendix 6 of the same document. Albeit with exceptions, this standard indicates that for new dwellinghouses, an enclosed rear garden of 90sqm should be made available.
18. If the building to the rear of the site were to remain in situ, the rear garden that would serve the proposed dwelling would be significantly less than 90sqm. It would also be considerably smaller than that which is typical of the area. Due to its small size, it would not provide a healthy space sufficient to meet the typical day-to-day needs of future occupiers of the 3-bedroom house.
19. However, the appellant has indicated a willingness to remove this structure. Subject to a condition being imposed to secure this, then, in terms of its size, the rear garden would exceed the minimum standards set out within appendix 6 of the Local Plan, and future occupiers of the dwelling would be able to secure a good sized rear garden. Such a condition could be imposed, and, in respect of this main issue it would be necessary to make the development acceptable
20. For the reasons given, the development would provide adequate living conditions for future occupiers of the proposed dwelling, with particular regard to outdoor space. Consequently, and in respect of this main issue, it would comply with policies LLP1 and LLP25 of the Local Plan.

Planning balance

21. The development would not cause harm to the character and appearance of the area, and, with particular regard to outdoor space future occupiers would be able to secure adequate living conditions. Although these are neutral considerations, the development would comply with the development plan when read as a whole.
22. The Luton 5-Year Housing Land Supply Statement dated October 2024 indicates that there is a 3.36 year supply of deliverable housing sites within the Borough. I have no reason to conclude that this figure is inaccurate and proceed accordingly. The shortfall in housing land supply within the Borough is considerable. However, given that the development would deliver a single dwelling, only moderate weight is attributed to the contribution that the development would make to reducing this shortfall.
23. Future occupiers of the dwelling would have reasonable access to a range of local services and facilities, which they would be likely to use and contribute to the ongoing support of. There would also be short-term benefits during the construction phase. However, given the small scale of the appeal scheme, only a little weight can be attributed to each of these benefits.
24. The proposed development aligns with the Framework where it seeks to significantly boost the supply of homes. Furthermore, the Framework indicates that small and medium sites can make an important contribution towards meeting the housing needs of an area and are often built out quickly. The proposal would also correspond with those parts of the Framework that seek to support the economy and strong vibrant communities. However, because of the very small scale of the scheme, only little weight is accorded to each of these matters.
25. Notwithstanding the above considerations, the development would conflict with those parts of paragraph 187 of the Framework which require net gains for biodiversity. Albeit the small scale of the scheme means that little weight is attributed to this Framework conflict.
26. Nevertheless, this conflict when considered in combination with the failure of the proposed development to comply with Schedule 7A of the Town and Country Planning Act 1990, clearly outweighs the previously identified benefits of the scheme.

Conclusion

27. Although the proposal conforms with the development plan, the material considerations indicate that the appeal should be decided other than in accordance with it. As such this appeal should be dismissed.

V Simpson

INSPECTOR