



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: 28th March 2025

Appeal Ref: APP/B0230/W/24/3351251

140 Barton Road, Luton LU3 9BD

- 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 Mr & Mrs Jusbinder against the decision of Luton Borough Council.
 - The application Ref is 24/00511/FUL.
 - The development proposed is the erection of a four bedroom detached dwellinghouse after demolition of existing house.
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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. On the application form it was purported that the development would be exempt from the general Biodiversity Net Gain (BNG) condition as set out in paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990 (as amended). However, the temporary exemption for the BNG condition for non-major developments had expired before the submission of the planning application. Moreover, no mechanism is before me to secure the development as self-build. Consequently, had the development subject of this appeal been otherwise acceptable, and given that no other BNG exemptions have been put forward, it would have been necessary to consider BNG as a main issue.

Main Issues

4. The main issue is the effect of the development on the living conditions of the occupiers of neighbouring properties with particular regard to outlook, light, and privacy.

Reasons

5. The properties at numbers 4, 6 and 8 Hillcrest Avenue (numbers 4, 6, and 8), comprise houses with fairly small and enclosed rear gardens. The rear boundaries of which adjoin the appeal site, and are close to where the proposed house would be constructed. As such, it is appropriate to consider the effects of the proposed development on the living conditions of the occupiers of these neighbouring properties.

6. Outlook is not specifically cited within policy LLP25 of the Council's Local Luton Plan 2011-2031 dated November 2017 (the Local Plan). However, it is a relevant factor when determining whether a development would result in the provision of a high-quality and healthy place that would provide suitable living conditions. The quality of the outlook available through the rear windows of number 4 and from its rear garden is already constrained by the nearby house on the appeal site. Nevertheless, and albeit the ridge of the proposed dwelling would only be a little higher than that of the house it would replace, its eaves would be significantly taller. As such, and despite the varying width of the strip of land that would separate the proposed house from its shared boundary with numbers 4 and 6, the proposed dwelling would loom over the rear gardens of these properties more than the existing development on the site. In this respect, it would further reduce the quality of outlook available to the occupiers of number 4, and it would harmfully reduce the outlook available to the occupiers of number 6.
7. Moreover, due to its location, height, and proximity to numbers 4 and 6, the development would lead to increased shadowing over the gardens of these properties. This would be especially so during the Autumn, Winter, and Spring, when the sun is lower in the sky. As a result, the gardens of numbers 4 and 6 would become more gloomy and less attractive places for occupiers of numbers 4 and 6 to spend recreational time.
8. A condition could reasonably be imposed requiring that the first-floor windows in the side elevation of the proposed dwelling closest to numbers 4 and 6 be obscurely glazed. However, due to its height and its proximity to the rear gardens of numbers 6 and 8, it would be possible to secure close views down into much of the rear gardens of these properties through the larger first-floor window that would serve bedroom 2. This would harmfully reduce the level of privacy available to the users of these gardens.
9. Within the front of the house at number 138 are 2 bay windows. These primarily address the fairly deep and open front garden and parking area of this property. Nevertheless, at an oblique angle, parts of the front of the proposed dwelling would undoubtedly be visible from these windows above the fencing on this shared boundary. Notwithstanding this, and even though the proposed dwelling would be a little taller than that which it would replace, it would be several metres further back within the plot. As such, and with particular regard to outlook, it would not be unduly prominent or harmful to the living conditions of the occupiers of number 138, either from within the house or the front garden. However, this is a neutral consideration.
10. For the reasons previously given, the development would cause harm to the living conditions of the occupiers of other neighbouring properties, with particular regard to outlook, light and privacy. Consequently, it would conflict with policies LLP1 and LLP25 of the Local Plan. Collectively and amongst other things, these require new development to create high-quality healthy places where overlooking and overshadowing/loss of light are minimised.

Other Matters

11. That future occupiers would be able to secure reasonable living conditions, and the development would not cause harm to the character and appearance of the area are neutral considerations.

12. The implementation of the appeal scheme would result in the provision of a more spacious and adaptable home that would be suitable for family occupation. It would also incorporate measures to minimise energy requirements. However, given that the scheme relates to a single dwelling, very little weight can be attributed to these associated benefits.
13. The evidence does not enable me to understand the basis for the planning permission for the neighbouring houses on Hillcrest Avenue or the development subject of application reference 07/00312/FUL. Nevertheless, the subsequent construction and occupation of the houses at numbers 4, 6 and 8 does not justify further development which would cause harm to the living conditions of the occupiers of these properties.

Conclusion

14. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, this appeal should be dismissed.

V Simpson

INSPECTOR