

Appeal Decision

Site visit made on 27 September 2016

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 October 2016

Appeal Ref: APP/B0230/W/16/3153287

188 Marsh Road, Luton LU3 2QL

- 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 Javed Iqbal Naeem against the decision of Luton Council.
 - The application Ref 16/00060/FUL, dated 14 January 2016, was refused by notice dated 23 March 2016.
 - The development proposed is change of use from (A1) to a mixed use (A3) and (A5) to the ground floor and extensions to the first and second floors to provide 2x self-contained residential apartments.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues raised by this appeal are: i) the effect the proposed development would have on the living conditions of future occupiers with particular reference to the adequacy of internal and external space; ii) the effect it would have on the character and appearance of the area; iii) the effect it would have on highway safety, and; iv) whether the proposal makes adequate provision to mitigate any effects it may have on local infrastructure.

Reasons

Living conditions of future occupiers

3. The appeal site is located in a built up District Centre and adjoined by buildings with residential uses on their upper floors. The proposal would create two flats above the ground floor commercial use. One of the proposed flats would have the benefit of a balcony although the two bedroom flat would have no outdoor space in which occupiers could relax or carry out domestic tasks.
 4. Whilst a room identified on the plans as a 'drying room' would provide space for some activities this would not offer the same benefits that an outdoor space would in terms of providing accessible, dedicated space in open air for occupiers' use and enjoyment. In any event, it would appear uncertain that such a room could be retained for such purposes into the future, rather than reverting to another room for living accommodation. The absence of an area of outdoor amenity space would materially harm the living conditions of future occupiers of the two bedroom flat.
 5. Occupiers may well chose to visit the public open space at Marsh Farm however this is some distance from the appeal site and offers a very different type of outdoor
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space than convenient private amenity space attached to a flat would. I do not consider that this would adequately present an alternative to the provision of private outdoor amenity space for occupiers which can be directly accessed from the proposed flat. Nor do I consider that the internal size of the flat would compensate for the absence of outdoor space.

6. In considering the acceptability of additional dwellings, saved Policy H2 of the Luton Local Plan, 2006 (LLP) requires proposals to have regard to guidance including that in Appendix 2 regarding amenity space. This recommends, at 2. (k) a minimum provision of 25m² amenity space be provided for two bedroom units. This recognises both that flat occupiers generally do not seek the same level of garden amenity space as house dwellers and that internal drying facilities may be provided, but that an area of amenity space should normally be provided.
7. I have been presented with little convincing evidence as to why such space should not be provided in this case. By way of contrast, as pointed out by the Council and which I observed when visiting the site, the adjoining and nearby flats and maisonettes above commercial units on the north east side of Marsh Road have access to outdoor spaces in the form of roof decks. The proposed arrangements would fail to maximise the opportunity to improve the quality of life of residents and therefore the proposal would not comply with saved LLP Policies LP1 and H2. For the same reason the proposal would not accord with the National Planning Policy Framework's (the Framework) core planning principle¹ of always seeking to secure a good standard of amenity for all future occupants of buildings.
8. The Council consider that the size of the one bedroom flat would be inadequate. This flat would be very compact in terms of its internal space, but there is little evidence to suggest that it would be so small or constrained that it would harm the living conditions of future occupiers.
9. The Council refer to the minimum internal floor areas set out in the nationally described space standard² (NDSS). The Planning Practice Guidance (PPG) advises³ that where a local planning authority wishes to require an internal space standard, they should only do so by reference in their Local Plan to the NDSS. I have not been directed to any development plan policy which accords with this approach and I can therefore give limited weight to the application of the NDSS in this respect.
10. In any case the 42.5m² floor area cited by the appellant would exceed the NDSS minimum internal floor area of 39m² for a one person, one bed single storey dwelling. Although the proposal would fall short of the 50m² NDSS minimum for two person occupancy, I do not consider that the proposed development would be so constrained internally or limited in floor space as to harm future occupiers' living conditions or as a result conflict with saved LLP Policies LP1 or H2 in this particular respect.

Character and appearance

11. The existing single storey building abuts a taller building with a prominent dormer serving a second floor in the roof above. Immediately opposite on the other side of Nursery Road is a three storey block of shops with flats or maisonettes above. Elsewhere along Marsh Road two storey buildings and those of a similar height,

¹ Paragraph 17.

² Technical housing standards – nationally described space standard, Department for Communities and Local Government, 2015.

³ Paragraph: 018, reference ID: 56-018-20150327.

predominate. In this context, the existing single storey building appears noticeably lower. Nursery Road has a disparate character in the vicinity of the appeal site with a mixture of enclosures, parking areas, accesses and a group of semi-detached houses all of which lead to an area which has little visual cohesion. The single storey nature of the existing building makes neutral contribution to the character of Nursery Road.

12. The proposed built form of a two storey building with second floor dormers would better reflect its built context and provide a more defined form of enclosure on the south east side of the junction of Nursery Road with Marsh Road. Although occupying the whole site with a two storey block running alongside Nursery Road, the building would not appear cramped or over developed in the context of the various buildings and wings which extend to the rear of other properties on Marsh Road in the vicinity of the site.
13. Any limited loss of spaciousness that exists in the vicinity of Nursery Road would be outweighed by the benefits of a built form which better reflects the scale, height and mass of that which characterises this part of Marsh Road. As such the proposal would not harm the streetscene of either Marsh or Nursery Roads, nor the character and appearance of the wider area.
14. Whilst there would be an awkward difference in the pitch of the roof on the proposed building and that which it would adjoin, the visual effect of this would be limited by that building's tall parapet at the front, and the proposed building's dormers and rear wing.
15. The proposal would comply with the design requirements of saved LLP Policies LP1, H2 and ENV9, in particular by enhancing the character of the area and existing urban spaces as well as respecting the scale and proportion of existing buildings, building lines and heights within the streetscene. By improving the character and quality of the area and the way it functions the proposal would avoid conflict with paragraph 64 of the Framework which presumes against poor design.
16. I have considered the Council's argument that approval of the scheme would set a precedent for other similar developments. Notwithstanding that I have not found the development harmful in respect of its effects on character and appearance, the Council have not identified any directly comparable sites to which this might apply. Each application and appeal must be determined on its own merits and a generalised concern of this nature does not lead me to a different conclusion on this matter.

Highway safety

17. Marsh Road is a busy commercial thoroughfare. In the vicinity of the appeal site I observed that on-street parking is restricted during the day except on Sundays (a similar restriction applies to that part of Nursery Road adjacent to Marsh Road) and on street loading is prohibited at set times in the morning and afternoon except on Sundays. Dedicated parking and loading spaces are provided further along the street. The high density of commercial and residential uses in the area could be likely to lead to heavy use of, and competition for, the parking and loading provision which is available.
18. The hot food takeaway element of the proposal is likely to attract customers in cars and delivery drivers, both groups of whom could be reasonably expected to attempt to park as close to the premises as possible although parking close by may be

limited, particularly at certain times during the day. However, there is little substantive evidence that drivers would not use the available parking and loading arrangements, particularly in the evenings when parking and loading is not restricted. There is also little evidence to suggest that the haphazard parking the Council are concerned about would be directly associated with the proposed use or that, if it did occur, it could not be controlled by enforcement of existing parking and loading restrictions. Furthermore, there is very little evidence to suggest that the combination of the proposed use and the existing conditions at the junction of Nursery and Marsh Roads would necessarily result in any harm to the safety of pedestrians and drivers as a result.

19. Given the site's location within a District Centre the levels of such activity would reasonably be expected to be high in any event and, as the Council advise, it already experiences high levels of congestion and parking problems. It has not been conclusively demonstrated that any additional activity associated with the proposal would materially and adversely affect existing parking and traffic conditions in the vicinity of the site.
20. As it has not been demonstrated that the proposal would exacerbate road congestion or cause safety problems for road users the proposal would not conflict with saved LLP Policy T3 or consequently saved LLP Policy LP1. The cumulative impacts of the development would not be severe, circumstances the Framework requires⁴ to prevent or refuse development on transport grounds.

Local infrastructure

21. Saved LLP Policy IMP1 states that the Council will seek planning obligations to secure the provision or cost of facilities made necessary by a development for which there is a recognised need or deficit. This is supported by the Supplementary Planning Document on Planning Obligations, 2007 (SPD) which sets out rates for financial contributions for a variety of facilities. However, the Council's Officer Report does not set out any explanation of what effects the proposed development would give rise to which would need to be mitigated in such a manner.
22. The types of financial payments set out in the SPD would appear to be tariff-style contributions. The PPG⁵ sets out that such contributions should not be sought from developments of 10-units or less. This limits the weight saved LLP Policy IMP1 can be afforded in this case. Coupled with the limited evidence as to what the effect of the absence of such a contribution would be, the lack of a planning obligation requiring such a contribution does not lead to the appeal failing on this issue.

Conclusion

23. I have not found that the character and appearance, highway safety or infrastructure contribution implications of the scheme are unacceptable. However, for the above reasons, and having had regard to all other matters raised, the proposal would materially harm the living conditions of future occupiers, contrary to the development plan and the Framework. The appeal is therefore dismissed.

Geoff Underwood

INSPECTOR

⁴ Paragraph 32.

⁵ Paragraph: 031, reference ID: 23b-031-20160519.