
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: 18 October 2016

Appeal Ref: APP/B0230/W/16/3154431

Land to rear of 201 High Town Road, Luton, LU2 0BZ

- 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 H Bains against the decision of Luton Council.
 - The application Ref 16/00144/FUL, received by the Council on 29 January 2016, was refused by notice dated 23 March 2016.
 - The development proposed is new apartment.
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Decision

1. The appeal is allowed and planning permission is granted for a new apartment at land to rear of 201 High Town Road, Luton, LU2 0BZ in accordance with the terms of the application, Ref 16/00144/FUL, received by the Council on 29 January 2016, subject to the conditions in the attached schedule.

Procedural Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. As the application form is undated I have used the date of the application cited by the Council on their decision notice in the heading above and in my decision.

Main Issues

4. The main issues raised by this appeal are: i) the effect the proposed development would have on the character and appearance of the area; ii) its effect on the living conditions of future occupiers; iii) its effect on the living conditions of the occupiers of 203 High Town Road, and; iv) whether the proposal makes adequate provision for waste management and any additional need for education arising from the development.

Reasons

Character and appearance

5. The appeal site is located to the rear of a terraced property and enclosed on two sides by two storey offshoots which extend some way to the rear of the neighbouring properties. Similar terraced properties along High Town Road form the predominant character of the vicinity of the appeal site. The host
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building has a two storey rear offshoot from which the proposed building would extend but it is considerably shorter than the adjoining ones.

6. The open nature of the appeal site does not make any particular contribution to the character or appearance of the site or the area where the adjoining deep offshoots are the dominant feature of its immediate setting. Whilst the Council considers that the commercial origins of the adjoining offshoots do not set a precedent in terms of scale, their presence on either side of the appeal site nevertheless creates a substantial built form and context which has created the setting of long, tall extensions in which the appeal proposal would be set.
7. In such a context the linear nature of the proposed building would not represent an over development of the site or a disproportionate extension to the host building. Its height and set-back from the party boundary would result in the proposed building having a subservient relationship to the host and adjoining buildings. The set-back from the boundary would reflect that of the offshoot opposite and avoid the proposal appearing unduly cramped. It would not be prominent given its location except from the rear of the host building and the flats in 203 High Town Road next door. The appeal proposal would consequently not have an adverse effect on the area's character or appearance but rather follow an established pattern of development.
8. The proposal would not fail to improve the physical environment of the town, would be well sited in relation to surrounding buildings, would not be an over-intensive form of development nor would it fail to respect the scale, proportion or detailed design of existing buildings. As such the proposal would accord with Luton local Plan, 2006 (LLP) saved policies LP1, H2 and ENV9.

Living conditions of future occupiers

9. The proposed dwelling would be compact in its size and configuration but would have access to a modest dedicated open amenity area as well as a larger shared one. The height, orientation and extent of surrounding buildings and boundary fence would mean that the outlook from some aspects of the proposed dwelling would be limited and there would be the potential for parts of the dwelling to be dark at times, particularly the kitchen and bedroom area.
10. However, the lounge would benefit from larger windows. That in the gable would have a reasonable outlook which would not be overly restricted by the enclosure around the outdoor space. The lounge window in the side elevation would have an outlook which would only be partially affected by the two storey extent of No 203 opposite. A rooflight would supplement the natural light reaching the bedroom.
11. Therefore, whilst occupiers may have to rely on artificial light in some parts of the building to supplement limited natural light, the main living area would be less likely to be so constrained and future occupiers would not have unacceptably limited levels of natural light overall. I have been presented with very little evidence that the two aspect dwelling could not be adequately ventilated.
12. Whilst the internal space would be limited and narrow in width, there is little substantive evidence to suggest that it would be so constrained as to harm the living conditions of occupiers. The Council's Officer Report refers to the minimum internal floor areas set out in the nationally described space

standard¹ (NDSS). The Planning Practice Guidance (PPG) advises² 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 and although the Council acknowledge such a policy is forthcoming it is not yet in place. As such I can only give limited weight to the application of the NDSS in this respect.

13. In any case the 34.5m² floor area cited by the appellant would only represent a moderate shortfall of the NDSS minimum internal floor area of 37m² for a one person, one bed single storey dwelling with a shower. This supports my view that the proposed development would not be so constrained internally or limited in floor space as to harm future occupiers' living conditions or as a result.
14. Overall and notwithstanding the limitations the site has in respect of the enclosing effect of the adjoining buildings, the proposal would not result in accommodation which would lead to material harm to the living conditions of future occupiers.

Living conditions of neighbours

15. The close proximity of the offshoot to the rear of No 203 to the appeal building would mean that the living accommodation and associated windows in the ground floor of the existing and the proposed dwellings would be directly opposite one another and the relationship would therefore be a sensitive one. However the boundary fence between the two would prevent the loss of privacy within either property as a result of overlooking. In order to ensure this situation would not be altered in the future a condition requiring the fence, or a similar one which is no lower, would be necessary.
16. The outlook from the rear offshoot of No 203 is already limited being opposite the blank two storey brick wall of the offshoot to the rear of No 199 which bounds the north west side of the appeal site. Whilst the built form of the appeal proposal would introduce a building considerably nearer than currently exists its effects would be limited by the single storey nature of the proposal and the low pitch of the roof which slopes up way from the boundary. Although the site slopes down to a degree which would slightly increase the apparent height of the proposed building towards its gable end, the visual effect of the proposal would be further limited by the aforementioned fence.
17. The location and height of the fence would have the effect of limiting the existing outlook from the ground floor of No 203 to a considerable degree above which the addition of the appeal proposal would not significantly intrude. Therefore, whilst the proposed building would be noticeable from the ground floor of No 203, it would not be so intrusive as to materially harm the living conditions of neighbouring occupiers.
18. The single storey arrangement of the proposal and predominantly obscure glazing within those windows in the first floor offshoot to No 203 would avoid any harmful effects on the living conditions of the upper floor of that property.
19. As such the proposal would not materially harm the living conditions of either existing or future occupiers and would therefore accord with saved LLP Policies

¹ Technical housing standards – nationally described space standard, Department for Communities and Local Government, 2015.

² Paragraph: 018, reference ID: 56-018-20150327.

LP1 or H2 insofar as they seek to avoid harmful effects on living conditions. For the same reason, the proposal would avoid conflict with the Framework's core planning principle³ of always seeking to secure a good standard of amenity for all existing and future occupants of land and buildings.

Provision for waste management and education

20. The Council consider that the proposed development would give rise to a need for refuse containers to be provided for the property by way of a financial contribution secured through a planning obligation. Although not mentioned in their Officer Report, the Council's refusal reason also includes grounds of an absence of an education contribution. No such obligation has been provided.
21. Such contributions would be tariff style ones. However, the Supplementary Planning Document on Planning Obligations Contributions, 2007 (SPD) does not seek contributions from one-bedroom dwellings towards educational facilities. There is little evidence of what unacceptable impact on local infrastructure would result in the absence of a payment towards refuse containers.
22. In any event, following the court of appeal's judgement⁴ of 11 May 2016, the Secretary of State's Written Ministerial Statement of 28 November 2014 (WMS) on circumstances where planning obligations for tariff style contributions can again be considered as a material consideration. In particular, the Planning Practice Guidance (PPG) states that tariff style contributions should not be sought from developments of 10-units or less, amongst other circumstances.
23. This limits the weight I can give to saved LLP Policy IMP1 as supported by the SPD. Whilst the proposal would be contrary to it, the considerable weight which the WMS and approach in the PPG carry means that the absence of any contributions towards waste management would not be unacceptable. The appeal does not therefore fail on this issue.
24. Although there is little evidence that the Council's requirements for these contributions would, in any event, meet the Framework and CIL Regulations⁵ tests, in light of the clear lack of compliance with the PPG's approach I have not pursued this aspect further.

Conditions

25. It is necessary to attach a condition specifying the approved plans as this provides certainty. As the site levels change across the footprint of the proposed building and the relationship between it and the neighbouring building is a sensitive one it is necessary to ensure that ground floor levels are approved to ensure that occupiers' living conditions are not adversely affected. Requiring the materials to match the host building will preserve the appearance of the area. For the reasons set out above it is necessary to require that the boundary fence, or an impervious one of at least the same height, remains in situ to protect the living conditions of both existing and proposed occupiers.
26. The Council have suggested, without prejudice, that a management plan be approved for shared and common areas which is necessary to ensure that common areas such as the passageway which would exist in front of the

³ Paragraph 17.

⁴ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441

⁵ Framework paragraph 204 and The Community Infrastructure Levy Regulations 2010, regulations 122 and 123.

dwelling and the proposed shared outdoor space are managed in a way which ensures occupiers' living conditions are not harmed. However it is not necessary for the plan to extend to other common areas or the private outdoor space which would be created.

Conclusion

27. For the above reasons the proposal would comply with the development plan, except where material considerations have indicated otherwise, and accords with the Framework and PPG. The appeal is therefore allowed and planning permission granted.

Geoff Underwood

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and specifications: 15/B263/1, 15/B263/20A and Design & Access Statement Ref 15/263.
- 3) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 4) The external surfaces of the development hereby permitted shall match those of the existing building.
- 5) The existing boundary fence, or a replacement boundary treatment in the same location, of at least the same height and of solid construction, shall be retained between the development hereby permitted and 203 High Town Road for the lifetime of the development.
- 6) The development hereby permitted shall not be first occupied until a management plan, including management responsibilities and maintenance schedules, for all external shared/common areas of the development shall be submitted to and approved in writing by the local planning authority. The external shared/common areas shall subsequently be managed in accordance with the approved management plan.