
Appeal Decisions

Site visit made on 1 August 2017

by Rachael A Bust BSc (Hons) MA MSc LLM MEnvSci MInstLM MCMI MRTPI

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

Decision date: 30 August 2017

Appeal 1 Ref: APP/B0230/W/17/3174370

Earls Court, Mulberry Close, Luton LU1 1BZ

- 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 D Gill of Gill-Hudson Homes Ltd against the decision of Luton Borough Council.
 - The application Ref 16/02220/FUL, dated 15 December 2016, was refused by notice dated 28 February 2017.
 - The development is described as "1no. Additional Ground Floor 1 bed Flat."
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Appeal 2 Ref: APP/B0230/W/17/3174371

Earls Court, Mulberry Close, Luton LU1 1BZ

- 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 D Gill of Gill-Hudson Homes Ltd against the decision of Luton Borough Council.
 - The application Ref 16/02219/FUL, dated 15 December 2016, was refused by notice dated 28 February 2017.
 - The development is described as "2no. Additional Ground Floor 1 bed Flats."
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Decision

1. Appeal 1 is dismissed and Appeal 2 is dismissed.

Preliminary and Procedural Matters

2. The General Layout Plan (drawing number 110514/130-01) indicates that the two blocks of flats within Earls Court are referenced as Block A and Block B. I shall use these references for clarity, therefore Appeal 1 relates to Block B and Appeal 2 relates to Block A.
3. At the time of my site visit building work appeared to be well advanced.

Main Issues

4. The main issues in both appeals are the effects of the development on the living conditions for future occupiers, with particular regard to internal space, outlook and light; and on the character and appearance of the surrounding area.
5. With regard to Appeal 2, there is an additional matter regarding noise and disturbance to consider in relation to the living conditions for future occupiers.

Reasons

Living conditions of future occupiers

6. The plans for each flat illustrate a combined kitchen and living area, a double bedroom, an entrance hallway and a shower room with basin and WC. The material submitted in support of the application gives a floor area of 31sqm for Block B and 30sqm for Block A.¹
7. The Council has not adopted a local policy on housing standards, but in its assessment of the application, it has referred to the government's Technical housing standards – nationally described space standard (THS)². I agree that the THS provides a good indication of the amount of internal space required within dwellings to avoid harmful living conditions for the occupants.
8. The appellant indicates that the 3 flats are exactly the same size and layout to those already permitted within both blocks. Whilst that may be the case and I do not have any evidence to the contrary, the THS were published after the original scheme was permitted. It was reasonable for the Council to give weight to these national standards, which are intended to ensure that new development meets minimum internal space standards. Consequently I give the THS significant weight as a relevant material planning consideration in my determination of this appeal.
9. According to the THS a one bedroom-one person flat with shower room requires 37 square metres of gross internal area. If occupied by 2 people this requirement increases to 50 square metres. At only 30 square metres, the 2 flats in Block A would fall significantly short of the THS for such accommodation. In addition, at only 31 square metres, the flat in Block B would also fall significantly short of the THS for such accommodation. While the appellant has not specified the anticipated occupancy, it is clear that the space would fall well below the national standard even if only to be occupied by one person.
10. The appellant suggests that these small one bed flats contribute to meeting the housing needs identified in the Strategic Housing Market Area Assessment. Indeed such accommodation would add to the overall housing choice and provision within Luton. However, while there may well be a need for one bedroom units, such need would not be properly addressed by the provision of sub-standard accommodation. I note that the existing units are said to have sold well, but that would be a reflection of many market factors and does not offer compelling evidence of the quality of the accommodation.
11. Reference has been made to a marginal housing land supply position, with Luton being largely reliant on cooperation from adjoining authorities. However, no detailed evidence on this issue has been submitted. The Council does not dispute that the housing supply position is marginal. Even if there were to be no demonstrable five-year housing land supply, the benefits of the provision of the 3 flats would be marginal.
12. Consequently in the absence of any other evidence, I find that all 3 flats have insufficient internal space. Therefore they constitute a cramped form of

¹ The appeal form suggests the floor space is 35sqm, but I give weight to the figures on which the Council made its decision, which appear to be consistent with the dimensions on the application plans.

² Technical housing standards – Nationally described space standards, DCLG, March 2015

development which would significantly harm the living conditions of the future occupiers, with particular regard to internal space.

13. The flat within Block B is at the rear of the block and would have a single aspect facing southwards. The outlook from the patio door and window would be directly towards a rough grassed earth embankment with a concrete fence at the top, mature trees and vegetation beyond. The gradient of the embankment is relatively steep. The base is close to the rear of the building and rises to a height of approximately 3 metres to the base of the concrete fence. The concrete fence then rises approximately just over a further 2 metres behind which is vegetation, which rises an additional 2 metres above the fence.
14. I find that the combination of the close proximity of the embankment, the concrete fence, and vegetation would reduce the available light reaching the ground floor level and create an oppressive outlook. These existing features would harm the living conditions of the future occupiers of this flat with particular regard to light and outlook.
15. The two flats in Block A would both have a single aspect view, facing north-eastwards and look out onto the surface car park. The door would be half glazed and would open into the living area whilst the window would be to the bedroom. Given the open nature of the car park there would not be any permanent features to obstruct the light reaching the openings into both flats in Block A. Consequently, I do not find harm in respect of the outlook and light to both flats within Block A.
16. However, both flats in Block A are located adjacent to the entrances of the stairwells to the upper floor flats. Future occupiers would experience disturbance by the movements of both residents and their visitors coming and going past their windows and doors. In addition, the close proximity of car parking spaces would lead to noise and disturbance from vehicle movements to both flats.
17. The noise and disturbance would be more noticeable for the northern-most ground floor flat. It has both surface car parking spaces opposite and it is immediately adjacent to the entrance to the undercroft car parking. The undercroft car parking accommodates 4 cars, 2 of which would be parked immediately behind the flat. The enclosed nature of the undercroft parking, which I experienced on my site visit, would amplify the sound of vehicle engines and consequently cause additional noise and disturbance to future occupiers of this flat.
18. I have had regard to the appellant's assertion that the mass of the cavity wall and double glazing would provide adequate noise protection. However, I find that it would be unlikely to mitigate the combination of noise from people and vehicles together with the sense of general disturbance caused by movements of people past their respective windows and doors.
19. In Appeal 1 I find that significant harm would arise to the living conditions of future occupiers, with particular regard to internal space, and outlook and light. In Appeal 2 I find that significant harm would arise to the living conditions of future occupiers, with particular regard to internal space; and noise and disturbance. I have not found harm in respect of outlook and light.

20. Overall, both Appeal 1 and Appeal 2 would fail to improve the quality of life for residents in accordance with criterion (e) of saved Policy LP1 of the Luton Local Plan (LLP), which seeks amongst other things, to improve the quality of life for residents. This is supported by the principles of sustainable development contained in the National Planning Policy Framework which seeks positive improvements in people's quality of life and their living conditions (paragraph 9). It is also one of the core planning principles of seeking a good standard of amenity (paragraph 17).

Character and appearance

21. Mulberry Close lies behind Ashburnham Road and to the south of an area of Victorian terraced housing not far from Luton town centre. Mulberry Close provides the access to several single garages set into the end of the gardens to the properties on Ashburnham Road. The surrounding area is characterised by more recent developments in the form of a collection of 2 to 4 storey blocks of flats. Hard surfacing prevails with little amenity space or landscaping. I saw on my site visit a significant number of cars parked on Mulberry Close. Some cars were within designated areas and others along the road itself in between the double yellow lines. Mulberry Close has a sense of high density living within an enclosed area. To the south of Mulberry Close the land rises up significantly, the steep bank contains a number of mature trees.
22. The appeal site of Earls Court occupies the western corner of Mulberry Close and comprises 26 one-bedroomed flats in 2 separate blocks. Block A is a 4-storey building and Block B is a 3-storey building. None of the existing flats are at ground floor level. The majority of the car parking within the site is surface, but a proportion is underneath each block. The 3 flats are sited within the former undercroft car parking areas for their respective blocks. A limited amount of landscaping and general amenity space for occupiers is evident within the appeal site.
23. The appeal site is within the urban area where high density is encouraged by saved Policy H2 of the LLP. The Council is concerned that the increase in flats from 26 to 29 would lead to an over-intensive use of the site. Given the scale and layout of Earls Court and taking into account the flats within the wider Mulberry Close, I do not find that 3 additional flats within Earls Court arising from both Appeals 1 and 2 would lead to an over-intensive form of development. Therefore I find that there is no conflict with saved Policy H2 of the LLP.
24. The 2 flats in Block A can be viewed from the entrance to the appeal site, whereas the flat within Block B is located on the rear elevation of the block and therefore cannot be seen from the entrance. In all 3 flats the position of the doors and windows would be vertically aligned with the first and second floor flats above. The materials used would be similar to those used in the other flats within both blocks. Consequently the alterations would integrate within the overall design of both blocks.
25. I find that in relation to the character and appearance of the surrounding area no harm arises from Appeals 1 and 2 and there would be no conflict with saved Policy LP1, criterion (g) which requires the efficient use of land, buildings and materials.

Other matters

26. I note other matters concerning poor security controls leading to increased anti-social behaviour and criminal activity reported to the Police, non-residents using parking bays and water leaks in underground car park of Block B leading to areas of standing water. I consider these to be essentially aspects of good management of the site and not critical to the appeal decisions.
27. It is noted that each of the flats in Block A has displaced 2 car parking spaces, however as I saw on my site visit, the overall parking provision on site involves a total of 29 spaces which would be satisfactory to meet the needs of the 3 additional flats if I were minded to allow these appeals.

Conclusion

28. I acknowledge the appeal site already provides residential accommodation in an accessible location with car parking provision and makes use of previously developed land. Whilst I have found no harm in relation to the character and appearance, it does not outweigh the significant harm that I have found for both appeals in relation to the living conditions of future occupiers. Accordingly, the proposal would conflict with relevant local and national planning policies and the development plan as a whole.
29. Taking all matters into consideration, I conclude that these two appeals would not be a sustainable form of development. Consequently Appeal 1 and Appeal 2 are both dismissed.

Rachael A Bust

INSPECTOR