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## Appeal Decision

Site visit made on 21 August 2018

**by L Fleming BSc (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5<sup>th</sup> October 2018**

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**Appeal Ref: APP/B0230/W/17/3190715**  
**58 Kenilworth Road, Luton LU1 1DQ**

- 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 Michael Benson against the decision of Luton Council.
  - The application Ref 17/01271/FUL, dated 7 July 2017, was refused by notice dated 6 September 2017.
  - The development proposed is COU from 6-bed HMO to 8-bed HMO with loft conversion dormer window.
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### Decision

1. The appeal is allowed and planning permission is granted for COU from 6-bed HMO to 8-bed HMO with loft conversion dormer window at 58 Kenilworth Road, Luton LU1 1DQ in accordance with the terms of the application, Ref 17/01271/FUL, dated 7 July 2017, subject to the following 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 approved plans: Location Plan 1:1250, Existing Plans Drawing No 01/04, Existing Elevations Drawing No 01/04, Proposed Plans Drawing No 03/04 (showing a window to the second floor stairwell) and Proposed Elevations Drawing No 04/04.
  - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
  - 4) The development hereby permitted shall not be occupied until the windows at second floor level in the north east facing elevation have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
  - 5) The development hereby permitted shall not be occupied until details of the refuse and recycling bin storage have been submitted to and agreed in writing with the local planning authority. The development shall be occupied only in accordance with the approved details.

- 6) The development hereby permitted shall not be occupied until details of cycle storage have been submitted to and agreed in writing with the local planning authority. The development shall be occupied only in accordance with the approved details.

### **Procedural Matter**

2. An amended plan was submitted with the appeal (Proposed Plans Drawing No 03/04). The amended plan shows a window which was detailed on the proposed elevations but omitted from the proposed floor plans. The Council assessed the effect of this window. This plan has not altered the scheme and merely deals with a discrepancy. I have therefore accepted this plan and I am satisfied that no interested party has been prejudiced by my approach.
3. Since the submission of the appeal the revised National Planning Policy Framework (the Framework) has been published and I have therefore taken it into account in my decision. Both main parties have had the opportunity to comment on the implications for the appeal and I am satisfied that no interested party has been prejudiced by my approach. In any event insofar as is relevant to the appeal the relevant national policies are not so materially different. Thus this change has not significantly influenced the outcome of the appeal.
4. Since the Council made its decision the Luton Local Plan 2011-2031 (2017) (LP) has been adopted replacing the Policies referred to in the Council decision notice. I must make my decision based upon the development prevailing at the time of my determination. Both main parties are aware of this change and in any event the aims of the relevant LP policies are not so materially different, thus this change has not significantly influenced the outcome of the appeal.

### **Main Issues**

5. The main issues are the effect of the proposed development on the:
  - character and appearance of the area;
  - living conditions of future occupiers with particular regard to internal space and outlook;
  - living conditions of nearby residents with particular regard to outlook and noise and disturbance.

### **Reasons**

#### *Character and appearance*

6. The appeal site is a dwelling in a residential area characterised by mainly semi-detached and terraced dwellings of a similar style set a similar distance back from the road. However, when viewed from the rear garden many of the dwellings have been extended including through alterations to roofs. Thus, the area has a formal yet varied character and appearance.
7. The proposed flat roof dormer window would not be widely visible from anywhere other than the appeal site. It would be similar in scale and form to a dormer window at the adjacent property and there are other large dormer windows in the area. It would be set down from the ridge of the main roof and up from the eaves. In my view it would appear subordinate to the main roof

and would be viewed in the context of other dormer windows nearby such that it would not appear out place.

8. For these reasons the proposal would not harm the character and appearance of the area and would accord with the aims of Policies LLP1 and LLP25 of the LP which seek to ensure good design and that new development responds positively to the character and appearance of an area.

*Living conditions (future occupiers)*

9. Although the proposed ground floor bedroom would have a single flank window, it would also benefit from direct access to the private outdoor space such that the living space would not feel oppressive. Furthermore it would also be directly adjacent to the main communal area.
10. Whilst two of the proposed ground floor bedrooms would need to use a communal first floor bathroom, overall the appeal property would have three reasonably sized bathrooms and I find no harm associated with the bathroom being on the first floor. Even though one of the proposed bedrooms in the roof space would not have an outlook it would benefit from natural lighting from two large roof lights. Furthermore, all occupants would have access to a large communal living space.
11. For these reasons the proposed development would not lead to harmful living conditions for the future occupants with regard to internal space and outlook. It would therefore accord with the aims of Policies LLP1, LLP17, and LLP25 of the LP which seek to ensure a good standard of living accommodation and acceptable living conditions.

*Living conditions (nearby residents)*

12. The appeal property is already relatively large and the proposal would result in relatively small increase in floor space. Overall there is no substantive evidence before me which demonstrates the occupation of the proposed development would lead to more noise and disturbance than the existing situation or that would be the case if the property was occupied as a family dwelling.
13. The proposed dormer window would be above the existing roof and there would be a significant gap between the neighbouring property such that I find there would be no harm to nearby residents living conditions with particular regard to outlook.
14. Thus, in my view the proposed development would not harm nearby residents living conditions with regard to noise and disturbance or outlook. The proposal would therefore accord with the aims of Policies LLP1, LLP17, and LLP25 of the LP which seek to ensure good design and safeguard the living conditions of nearby residents.

**Other Matters**

15. I have considered the reasons for refusal relating to bin and cycle storage. However, I am satisfied that such matters can be agreed to reflect arrangements in place already and elsewhere on the street. I have therefore imposed conditions to this effect.

16. I have also noted the comments with regard to similar schemes<sup>1</sup> nearby. However those developments are not before me and I have determined the appeal on its merits.

### **Conditions**

17. The conditions imposed are based on those which have been suggested by the Council. As requested, in addition to the standard timescale condition, I have imposed a condition specifying the relevant drawings as this provides certainty.
18. In addition I have felt it necessary to impose a condition requiring the materials to match the existing dwelling in the interests of safeguarding the character and appearance of the area. Also in the interests of certainty and to safeguard the privacy of nearby residents, although shown on the drawings as such I have imposed a condition specifying the proposed north east facing second floor windows are obscurely glazed and non-opening to an appropriate height.
19. Furthermore, in the interests of safeguarding the character and appearance of the area, appropriate waste management and sustainable transport I have imposed conditions which require cycle and bin storage to be agreed.
20. However, the development grants the change of use to a HMO and it would not benefit from permitted development rights associated with dwellinghouses. Thus any conditions which seek to limit such rights are unnecessary. Furthermore, there is no substantive evidence before me to justify the imposition of a planning condition to limit the occupancy of the appeal property to eight people. I find such a condition would be unreasonable.

### **Conclusion**

21. For the reasons set out above, the proposed development would accord with the development plan and therefore having had regard to all other matters raised the appeal should be allowed.

*L Fleming*

INSPECTOR

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<sup>1</sup> Council references 17/00949/FUL & 14/01468/FUL (Nos 41 & 43 London Road)