
Appeal Decision

Site visit made on 3 June 2019

by Steven Hartley BA (Hons) Dist.TP (Manc) DMS MRTPI MRICS

an Inspector appointed by the Secretary of State.

Decision date: 19th August 2019

Appeal Ref: APP/B0230/W/19/3221773

50-52 New Bedford Road And 39-43A Mill Street, Luton, LU1 1SH'.

- 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 Alistair Robertson against the decision of the Council of the Borough of Luton.
 - The application Ref 18/00554/FUL dated 11 April 2018, was refused by notice dated 3 August 2018.
 - The development proposed is to the existing storeroom to the first floor rear, change of use to individual residential unit, including new terrace over flat roof, new doorway and linked stairs/platform leading off existing staircase
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Despite the name on the appeal form, clarification has been sought that the appeal is proceeding in the name of the applicant ie Alistair Robertson. This is reflected in the banner heading above.
3. The application form gives the address of the proposed development as '39-52 New Bedford Road, Luton LU1 1HR'. The decision notice describes it as '50-52 New Bedford Road And 39-43A Mill Street, Luton, LU1 1SH'. I consider that the address on the decision notice more accurately reflects the address on the submitted location plan and I have thus used this in the banner heading.
4. Since the submission of the appeal, an updated version of the National Planning Policy Framework (February 2019) (the Framework) has been published by the Government. This is a material consideration in planning decisions. In relation to the main issues in this appeal, Government policy has not materially changed, and it was not therefore necessary to invite any further comments from the different parties involved.

Main Issues

5. The main issues relate to (i) the suitability of the accommodation for occupiers of the proposed development in terms of privacy and outlook;(ii) the effect of the proposed development upon the living conditions of neighbouring occupiers

in terms of, privacy, noise and general disturbance and (iii) the effect of the proposed development upon the character of the area.

Reasons

Proposed living conditions

6. The appeal building is in an area of mixed uses and it forms part of a row which wraps around the corner of New Bedford Road and Mill Street. The row has various commercial premises on the ground floor and residential accommodation above it on the first floor. The proposed development relates to part of the row at the named address and it would make use of a redundant part of a retail unit.
7. The distance between the proposed bedroom and living/dining room windows to the proposed flat and the existing clear glazed window to the apartment facing it at no 50 New Bedford Road, would be very close. Even though the windows are set at an angle, the limited distance would be likely to cause a level of overlooking which would significantly and adversely affect the privacy of future occupiers of the proposed apartment.
8. In addition, the existing flat roof is overlooked from the window of No 50. Given its proposed use as amenity space, this would have a significant and adverse impact on living conditions for the occupiers of the proposed flat by reason of inadequate privacy.
9. Furthermore, due to the limited distance from the windows of the proposed flat, views would be both restrictive and oppressive in outlook.
10. I find therefore that the proposed development would not provide suitable accommodation for occupiers of the proposed development in terms of privacy and outlook
11. I conclude that the proposed development would not be contrary to the Luton Local Plan (2017) (LP) policy LLP15 which encourages higher densities and a mix of housing types. Nevertheless, I also conclude that it would be contrary to LP policy LLP25 (xi) which aims to minimise overlooking.
12. I further conclude on this issue that the proposed development would not accord with LP policy LLP1 insofar as this requires development to be sustainable and where paragraph 124 of the Framework states that 'good design is a key aspect of sustainable development.' Furthermore, it would not accord with paragraph 127(f) of the Framework which advises that developments should 'create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users'.

Living conditions of neighbouring properties

13. I have previously referred to the distance between the windows in the proposed flat and the existing, clear glazed window in No 50 New Bedford Road. Furthermore, the proposal is likely to give rise to an intensification of the use of the proposed building. For reasons of the likely intensification of use and

the limited distance between windows, the privacy of the occupants of the existing flat would be significantly and adversely affected by overlooking even though the windows are set at an angle. Furthermore, the proposed access platform and the use of the flat roof as amenity space, would be close to the window of the habitable room to No 50. This would lead to it being overlooked to the significant detriment of the privacy of the occupiers.

14. The use of the proposed platform to gain access to the proposed flat, by reason of its closeness to the window to no 50, would also be likely to lead to an increase in noise and general disturbance to those occupants, even though there is already external noise from the nearby roads, railway and commercial premises. The use of the flat roof as amenity space would be likely to add to such noise and disturbance.
15. In addition, the proposed use of the flat roof as amenity space would be very close to the rear of No 54 New Bedford Road and where it would significantly and adversely affect its occupiers by a loss of privacy and the likelihood of noise and general disturbance. The appellant considers that the overlooking is no different to most houses which overlook adjoining gardens. However, in this case, the overlooking would be to the whole of the adjoining garden, including that part closest to the apartment and which is likely to be the most intensely used.
16. I therefore find that the proposed development would significantly and adversely affect the living conditions of adjoining occupants in terms of loss of privacy and a likely increase in noise and general disturbance.
17. I conclude that the proposed development would be contrary to LP policy LLP25 for the same reason as stated in paragraph 12 relating to 'living conditions'. I also conclude that the proposed development would not accord with LP policy LLP1 or with paragraphs 124 and 127 of the Framework for reasons stated in paragraph 12.

Character

18. The LPA considers that the proposed development would adversely affect the character of the area because it would be a cramped and over intensive development. It considers that character can be a function of social conditions as well as physical appearance.
19. The area and the building are characterised by apartments over ground floor commercial units. As the immediate first floor area is already used as apartments, the proposed development for one extra apartment would not lead to any significant change to the social characteristics of the building or any significant intensification of the use of the building as a whole, and thus it would not adversely affect the character of the area.
20. The LPA Council refers to the internal space standards advised in the *Technical housing standards - nationally described space standard* (March 2015) (NDSS), though these are not part of the development plan. With an internal space of 39m² it states that '*the internal floor area within the proposed would just about meet this requirement*'. Furthermore, it states that the proposed

amenity space *'would be approx.15 sq. metres in excess of the amount required'* in appendix 6 of the LP. I therefore find that the proposed development would not be cramped.

21. I conclude on this issue that the proposed development would not adversely affect the character of the area. In terms of character it would not be contrary to LP policy LLP15, which encourages the principle of higher densities and a mix of housing types, or with the details of LP policy LLP25 (other than its promotion of good design) which requires developments to be accessible for all members of society. It would not be contrary to LP policy LLP1 regarding character insofar as this requires development to be sustainable. I do not consider that, in terms of character, it would be contrary to paragraph 127(f) of the Framework which requires a high standard of amenity for existing and future users, even though I have concluded that it would be contrary to this policy in terms of the impact upon the living conditions of existing and future occupiers.

Other matters

22. The proposed development would make effective use of a redundant part of the A1 retail unit and this is a factor in its favour: I afford it limited weight.
23. The appellant refers to planning approvals for conversions to form other apartments in the near vicinity. However, I have few details of the circumstances relating to these: in any event I have considered the appeal on its individual merits.
24. None of these other matters outweigh by conclusions on the main issues.

Conclusion

25. I have concluded that the proposed development would not have any significant or adverse effect on the character of the area. However, this does not outweigh my conclusions with regard to the impact of the proposed development in terms of privacy, noise and disturbance to existing and future occupants.
26. For the reasons outlined above, I conclude that the appeal should be dismissed.

Steven Hartley

INSPECTOR