



Appeal Decision

Site Visit made on 21 June 2021

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th July 2021

Appeal Ref: APP/B0230/W/21/3269299

Rye Hill, Cromwell Hill, Luton LU2 7PZ

- 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 Ummer Iqbal against the decision of Luton Borough Council.
 - The application Ref 20/01309/FUL, dated 22 October 2020, was refused by notice dated 11 December 2020.
 - The development proposed is erection of a two storey building containing 2no two bedroomed flats and works to provide additional car parking space with new vehicular access off Cromwell Hill.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two storey building containing 2no two bedroomed flats and works to provide additional car parking space with new vehicular access off Cromwell Hill at Rye Hill, Cromwell Hill, Luton LU2 7PZ in accordance with the terms of the application, Ref 20/01309/FUL, dated 22 October 2020, subject to the conditions set out at the end of this decision.

Preliminary Matter

2. Whilst not listed upon its Decision Notice, the Council has confirmed that it considered revised plans¹ when determining the planning application that is now the subject of this appeal. I am content that no party with a potential interest in the outcome of the appeal is prejudiced by me accepting the revised plans for determination purposes. Indeed, the revisions, which relate to intended parking arrangements, are minor in nature.

Main Issues

3. The main issues are:
 - The effect upon the character and appearance of the area;
 - Whether or not acceptable living conditions would be provided for future occupiers of the proposed development, having particular regard to outlook and access to natural light; and
 - The effect upon the living conditions of adjoining occupiers, having particular regard to privacy.

¹ DPL/20/15/01A; DPL/20/15/02A

Reasons

Character and appearance

4. The appeal site currently contains a brick-built, three-storey block of flats, shared parking/amenity areas and detached single-storey garaging intended to be demolished as part of the proposal. Its surroundings tend to be residential and made up of a variety of different dwelling types, which include flats located in several different blocks. Built form in the site's immediate vicinity is set upon a variety of different orientations and building lines, and there are instances of buildings positioned to the rear of frontage development. A mixed residential character and appearance is thus in place local to the site.
5. The proposed building would have at least some visibility when experienced from a range of publicly accessible vantage points. However, even when factoring in changing levels, it would have a relatively discreet presence to the rear of the site in the approximate position currently occupied by the on-site garaging. The building would not cover an excessive footprint and, even when acknowledging its two-storey height, would not appear as an unduly prominent or intensive addition. Indeed, a large portion of the site would remain clear of built development and a notable degree of spaciousness would continue to avail.
6. A 2019 planning permission² relating to the neighbouring site to the rear has been brought to my attention, which, whilst not yet implemented, involves the erection of a two-storey building containing two flats (the approved building). A similar building design is now proposed in the interests of continuity and consistency. I see merit in this approach and find that the new building would not appear out of place should the 2019 permission be implemented. Indeed, particularly when factoring in the built variety that exists locally, the proximity of the new and approved buildings (to each other) would be acceptable in character and appearance terms.
7. For the above reasons, the scheme would not cause harm to the character and appearance of the area. The proposal accords with Policies LLP1, LLP15 and LLP25 of the Local Luton Plan 2011-2031 (adopted November 2017) (the Local Plan) and with the National Planning Policy Framework (February 2019) (the Framework) in so far as these policies require all new development in the Borough to contribute to enhancing a sense of place and preserving or improving the character of the area and to not result in an over-intensification of the site.

Living conditions – future occupiers

8. The proposed building would be positioned such that its north elevation would have a close relationship with the rear boundary of the appeal site. At ground and first floor levels, rear-facing bedroom and kitchen windows and glazed dining room doors would be installed.
9. It has been suggested that the dining room doors at ground floor level would provide outlook across adjoining communal space that serves neighbouring flats. However, should the appeal be successful (and the on-site garaging be removed), it would be appropriate to ensure that the entirety of the site's northern boundary is treated so as to secure the site and provide appropriate

² 19/00986/FUL

levels of privacy for future ground floor occupiers. On this basis, limited northward outlook would be provided for future occupiers of the ground floor flat.

10. However, the proposed floor plans illustrate that the ground floor dining room would makeup part of a double-aspect open plan space. Indeed, a large front-facing window would provide a broad level of outlook and, being south-facing, would receive direct sunlight. The rear bedroom at ground floor would be served by a west-facing window that would provide a meaningful degree of outlook across the site's shared amenity area, as well as access to natural light. I also note that the ground floor kitchen, being of constrained size, would not realistically accommodate dining/seating facilities. Thus, the limited outlook and natural light that would avail for future users of this particular room does not raise undue concerns.
11. Should the approved building upon the adjacent site be implemented, the above findings would not dissimilarly apply to the proposed first-floor flat. Furthermore, in the event the approved building is not ultimately built-out, the proposed rear-facing openings at first floor would offer largely unrestricted outlook and would be anticipated to receive ample natural light.
12. For the above reasons, whilst limited levels of outlook and/or natural light would be offered from/received by some of the intended north-facing openings, acceptable living conditions would be provided for future occupiers of the proposed development having particular regard to outlook and access to natural light. The proposal accords with Policy LLP25 of the Local Plan and with the Framework in so far as these policies set out that new housing shall be delivered whilst minimising overshadowing/loss of light.

Living conditions – adjoining occupiers

13. The land that adjoins the site to the rear/north is comprised of a relatively expansive communal amenity space that serves an existing neighbouring block of flats, Nos 14-19 Gregories Close (Nos 14-19). It is a space that is already faced by various upper floor window openings that serve flats contained within the appeal site. When also factoring in the proposed building's intended position in proximity to the far eastern end of the communal space (thus well distanced from internal areas), I am satisfied that the privacy of existing occupiers at Nos 14-19 would not be prejudiced.
14. Should the approved building be constructed, potential overlooking opportunities would be diminished by virtue of that building's position in proximity to the appeal site's rear boundary. Even so, the proposed rear-facing bedroom window at first floor level would be located to face, at proximity, land situated to the immediate rear of the approved building. However, owing to this opening being singular and modestly-sized, and when also noting that the adjoining space would be utilised communally as opposed to on an individual/private basis, I do not consider that the standards of privacy enjoyed by potential future occupiers of the approved building would be unduly diminished. I also note that the proposal would not realistically offer the potential for direct overlooking into rear/west-facing windows to occur.
15. For the above reasons, the scheme would not cause harm to the living conditions of adjoining occupiers having particular regard to privacy. The proposal accords with Policy LLP25 of the Local Plan and with the Framework in

so far as these policies set out that new housing shall be delivered whilst minimising overlooking.

16. The proposal accords with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conditions

17. The Council has suggested conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have amended some of the suggested conditions for consistency and clarity purposes and have omitted others. I have also added a condition related to boundary treatment and imposed a single pre-commencement condition having received agreement in writing from the appellant to do so.
18. In the interests of certainty, a condition specifying the suite of approved plans is required. In the interests of safeguarding the character and appearance of the area, a condition to secure full details of the external-facing materials to be utilised is both reasonable and necessary.
19. In the interests of protecting the environment, public health, the living conditions of local occupiers and highway safety, a condition securing the submission and implementation of a Construction Method Statement is both reasonable and necessary. However, I have not considered it necessary to list all provisions contained within the Council's suggested drafting. For example, the limited scale of development does not justify the carrying out of a dilapidation survey, nor that the provision of wheel washing facilities or specific measures to control dust/dirt emissions be governed by condition.
20. In the interests of highway and pedestrian safety, a condition securing the provision and ongoing retention of pedestrian visibility splays positioned to either side of the new parking area (to be created off Cromwell Hill) is both reasonable and necessary.
21. In the interests of protecting the character and appearance of the area, site security and ensuring that the privacy of existing and future residential occupiers is properly safeguarded, a condition attaining confirmation of the intended treatments to be retained/erected to the site's boundaries is both reasonable and necessary.

Conclusion

22. For the above reasons, the appeal is allowed subject to conditions.

Andrew Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun not later than the expiration of three years beginning with the date of this permission.
- 2) The development hereby permitted shall not be carried out other than in complete accordance with the following approved plans: Location Plan (scale 1:1250); 20015-1; DPL/20/15/01A; DPL/20/15/02A.
- 3) No development (including any works of demolition) shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The CMS shall include details of operating hours, parking for site operatives and visitors, loading/unloading arrangements, storage provisions for plant/materials, a scheme for recycling/disposing of waste, and measures to manage the safe removal and disposal of asbestos material. The development shall be carried out only in strict accordance with the approved CMS.
- 4) Prior to the commencement of above-ground works, details/samples of all external-facing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in full accordance with those approved details/samples.
- 5) Notwithstanding any relevant details depicted upon approved plan DPL/20/15/01A, the building hereby permitted shall not be first occupied until triangular pedestrian visibility splays of 1.8 x 1.8 metres have been provided to either side of the new access (to serve two additional parking spaces). The splays shall be positioned within the site at right angles to the highway (measured at the highway/site boundary). These splays shall be maintained free of any obstruction to visibility exceeding a height of 600mm above the ground level of the two additional parking spaces.
- 6) Notwithstanding any relevant details depicted upon approved plans DPL/20/15/01A and DPL/20/15/02A, the building hereby permitted shall not be first occupied until full details of the treatments to be retained/erected to the site's boundaries have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full prior to the first occupation of the building and retained at all times thereafter.