



Appeal Decision

Site visit made on 5 January 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27/01/2022

Appeal Ref: APP/B0230/W/21/3277281

35 Mayne Avenue, Luton LU4 9LR

- 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 I Iqbal against the decision of Luton Borough Council.
 - The application Ref 21/00473/FUL, dated 6 April 2021, was refused by notice dated 21 May 2021.
 - The development proposed is two-bedroomed detached house with car parking.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two-bedroomed detached house with car parking at 35 Mayne Avenue, Luton, LU4 9LR in accordance with the terms of the application, Ref 21/00473/FUL, dated 6 April 2021, subject to the 10 conditions set out in the attached schedule.

Preliminary Matters

2. The reasons for refusal do not specify how the proposal would not provide suitable living conditions for future occupiers of the development. However, the Council's Officer report clarifies that the Council's concerns specifically relate to the provision of private outdoor space. I have taken this into account in defining the third main issue.
3. In the period since the appeal was submitted the Government has published the revised National Planning Policy Framework July 2021 (the Framework) which is being brought into immediate effect for the purposes of decision-making. However, there have been no material changes to the requirements in the Framework for development to be well-designed, to add to the overall quality of an area and to provide a high standard of amenity for existing and future users. Therefore, it has not been necessary to go back to the parties for further comments in this particular instance.

Main Issues

4. The main issues are:
 - (i) The effect of the proposal on the character and appearance of the area;
 - (ii) The effect of the proposal on the living conditions of occupiers of No 32 Bramble Road with particular regard to means of outlook and privacy; and

- (iii) Whether the proposal would provide suitable living conditions for future occupiers of the development with particular regard to private outdoor space.

Reasons

Character and appearance

5. Mayne Avenue forms part of a residential area characterised by dwellings of mixed type and design. Dwellings are generally up to two-storeys in height on Mayne Avenue and are mostly situated within plots of comparable width. Whilst dwellings are often set in from side boundaries, the degree to which dwellings are spaced varies along the street. The regularity in terms of the scale of buildings and plot widths, in combination with the tree-lined grass verges along Mayne Avenue, give the area a pleasant close-knit residential character.
6. The two-storey detached dwelling at No 35 Mayne Avenue is an anomaly within the street scene insofar as it occupies a corner plot which is larger than most of the other surrounding properties. In particular, the large garden area located to the northern side of the dwelling gives a spacious feel to the street towards the junction with Bramble Road.
7. However, the appeal site relates to a smaller side garden to the southern side of the dwelling. It forms a gap comparable to the width of other plots in the area. The front elevation of the proposal would be closely aligned with the existing dwellings at Nos 33 and 35 Mayne Avenue. Its ridge would sit lower than those on Nos 33 and 35 and the building would be set in from the boundaries to both sides. As a result, the scale, design and layout of the dwelling would sit comfortably within the street scene.
8. I acknowledge that the overall size of the plot would be smaller than those generally seen in the area, particularly in terms of the length of the rear garden. However, this would not visibly detract from the appearance of the area for passers-by.
9. The Council's delegated report raises concern that an existing street tree may require removal to facilitate provision of the proposed vehicular access point. This would result in some limited detriment to the street scene but not to the extent that it would be materially harmful to the overall character and appearance of the area. The removal of this tree and details of any replacement if considered appropriate could be assessed as part of a site access scheme secured by condition.
10. I conclude, the development would positively respond to the character and appearance of the area. In that regard it would accord with the design and local character requirements of Policies LLP1 (Presumption in Favour of Sustainable Development), LLP15 (Housing Provision) and LLP25 (High Quality Design) of the Local Luton Local Plan 2011 -2031 (2017) (LLP) and the National Planning Policy Framework (the Framework).

Living conditions of occupiers of No 32 Bramble Road

11. No 32 Bramble Road is a two-storey dwelling with its first-floor windows set within a mansard roof. Its rear garden sits parallel to the rear boundary of the appeal site with the dwelling at No 32 set further towards Bramble Road.

12. The dwelling at No 32 is set at a roughly 45-degree angle from the position of the rear elevation of the proposed dwelling. The rear elevation of the proposal would be set away from the shared boundary with No 32 and would be closely aligned with the rear elevation of the dwelling at No 33 Mayne Avenue. It would also be set back from the nearest part of the existing dwelling at No 35 to the boundary with No 32 Bramble Road. The oblique angle between this neighbouring dwelling and spacing provided would ensure that a suitably open aspect would be retained from the windows and rear garden serving this neighbouring property.
13. The first-floor bathroom window would be visible from the rear windows and garden area of No 32. Even so, a condition requiring that the proposed window be obscure glazed with any opening parts being a minimum 1.7 metres above the internal floor level would prevent any actual overlooking impacts. In combination with the intervening distances and the oblique line of sight, this would also be sufficient to ensure that there would be no material harm from any perceived overlooking impact.
14. In conclusion, the development would have an acceptable relationship with the living conditions of occupiers of No 32 Bramble Road with particular regard to levels of outlook and privacy.
15. In that regard the proposal would accord with the sustainable development and requirements to minimise overlooking in Policies LLP1 and LLP25 of the LLP. It would also adhere to the requirements at Paragraph 130 of the Framework for developments to create places with a high standard of amenity for existing and future users.

Living conditions for future occupiers of the development

16. Appendix 6 of the LLP sets out the Council's 'External Amenity Space Standards' (the standards). It confirms amongst other things that for new dwellinghouses, provision of an enclosed rear garden of 90 sq m should be made other than for units of 1-2 bedrooms where a lesser area will be considered. The standards also confirm that smaller gardens could also be acceptable having regard to the character of the area and design of the house but that they should not be smaller than 45 sq m.
17. I have already found that the size of the rear garden would not be harmful to the character and appearance of the area in this particular instance. The plans indicate that the garden would have an area of 46 sq m. I acknowledge that it is therefore just above the minimum requirement in the standards. Even so, the garden would be level and would provide occupants with sufficient usable space for example to sit out or to hang out washing.
18. The appellant has provided details of windows to be removed from the elevation of the existing dwelling at No 35 Mayne Avenue. The removal of these windows would ensure that the garden is not overlooked and could be secured by condition given that the dwelling at No 35 sits within the appeal site boundary. Views of the proposed rear garden from other neighbouring windows would be more oblique and not materially harmful. Taking all these factors into account, the proposal would provide a private and functional garden area sufficient to serve the two-bedroomed dwelling.

19. I conclude that the proposal would provide suitable living conditions for future occupiers of the development with particular regard to private outdoor space. In that regard it would comply with the sustainable development and external amenity space standards in Policies LLP1 and LLP25 of the LLP. It would also accord with high standard of amenity requirements at paragraph 130 of the Framework.

Other Matter

20. The Council's decision notice also refers to Policy LLP15 of the LLP in respect of the matters considered under the second and third main issues. Given that this policy does not specifically refer to living conditions, it does not alter my conclusions in respect of those matters.

Conditions

21. The Council has not suggested any conditions. However, I have attached the standard timescale for implementation and a condition specifying the approved drawings in the interests of certainty.
22. Conditions requiring details of materials and hard and soft landscaping are necessary in the interests of ensuring the finished scheme positively responds to the surrounding built environment. The landscaping condition also includes a requirement to ensure surface water does not discharge to the public highway in the interests of highway safety. Given a new vehicular crossover would be required and having regard to the potential requirements to remove a street tree and to relocate signage within the highway, I have also attached a condition requiring precise details of a site access scheme. The details required by these conditions can be provided prior to commencement of above ground works as this would still allow for the agreed details to be incorporated into the finished scheme.
23. A pre-occupation condition to provide the proposed parking is reasonable to prevent any undue pressure being placed upon the public highway for parking. Conditions are also attached to ensure that no additional windows, other than the proposed obscure glazed window, are provided to the first-floor rear elevation of the dwelling facing No 32 Bramble Road in the interests of protecting the privacy of occupiers of this neighbouring dwelling. A condition is also attached requiring the specified windows at No 35 Mayne Road to be blocked up prior to the first occupation of the new dwelling in order to prevent any harmful overlooking impacts on the rear garden of the new dwelling.
24. There is the potential that development carried out under permitted development rights could have a harmful effect on the character and appearance of the area and/or neighbouring living conditions in this instance. Therefore, I have attached a condition removing permitted development rights.
25. The Council's Environmental Protection (EP) consultation response during the application process suggests that a noise risk assessment and a Construction Management Plan (CMP) including to deal with any asbestos on the site should be required by condition. However, the dwelling would be set back from the road amongst other dwellings. The desktop information in respect of noise referred to by EP has not been provided. Similarly, the development is not of a scale likely to have a significant effect on the surrounding environment, there are no existing buildings to be removed and no evidence before me to suggest

that there is asbestos on the site. Taking these factors into account, I am not persuaded that such conditions would be reasonable or necessary.

Conclusion

26. For the reasons given I conclude that the appeal should be allowed.

M Russell

INSPECTOR

Schedule of Conditions

- (1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- (2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:1250 site location plan and Drawing nos. mma. 47 7 (Site Plan), mp.2 4 (Plans) and mma.47 7 (Street Scene as Proposed).
- (3) Prior to commencement of above ground works, details of the materials to be used in the external surfaces of the dwelling hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the development shall be carried out in accordance with the approved details.
- (4) Prior to commencement of above ground works, details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. These details shall include:
 - existing and proposed finished levels or contours;
 - means of enclosure and retaining structures;
 - planting and hard surfacing materials;
 - drainage provision to prevent surface water from discharging from areas of hardstanding onto the highway; and
 - an implementation programme

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.

- (5) Prior to commencement of above ground works precise details of a site access scheme, including precise details of works required on the adjoining highway to facilitate vehicular access to the proposed parking area, shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the development shall be completed in full accordance with the site access scheme prior to the first occupation of the dwelling hereby approved.
- (6) Before any part of the development hereby permitted is first occupied, the off-road parking area for the dwelling hereby approved as shown on

drawing No mma.47 7 (Site Plan) shall be completed in accordance with the details as set out in this planning permission and shall be kept available for the purposes of parking thereafter.

- (7) Other than the first-floor rear elevation window shown on the approved drawings, no additional windows shall be inserted in the first-floor rear elevation of the dwelling facing No 32 Bramble Road at any time.
- (8) The first-floor rear elevation window shown as serving a bathroom within the dwelling hereby approved shall be fitted with obscured glazing prior to first occupation of the development and no parts of the window that are less than 1.7 metres above the internal 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 window shall be retained in accordance with the aforementioned obscured glazing and opening restriction requirements thereafter.
- (9) The alterations to block up first-floor bedroom windows in the side elevation of the dwelling at No 35 Mayne Avenue as shown on Drawing No mp.2 4 (35 Mayne Avenue Plans – First Floor Plan), shall be completed prior to first occupation of the dwelling hereby approved and shall be retained as such thereafter.
- (10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by Classes A to E (inclusive) of Part 1 of Schedule 2 of the Order shall be carried out.