



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: 28/02/2022

Appeal Ref: APP/B0230/W/21/3276896

Land to the rear of 737-739 Dunstable Road, Dunstable LU4 0HL

- 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 Mrs Kemp against the decision of Luton Borough Council.
 - The application Ref 21/00163/FUL, dated 29 January 2021, was refused by notice dated 15 April 2021.
 - The development proposed is erection of one (two-bedroom) bungalow and a two-storey building comprising five flats (4 x two-bedroom units and 1 x one-bedroom unit) with associated access, parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for erection of one (two-bedroom) bungalow and a two-storey building comprising five flats (4 x two-bedroom units and 1 x one-bedroom unit) with associated access, parking and landscaping at land to the rear of 737-739 Dunstable Road, Dunstable LU4 0HL in accordance with the terms of the application, Ref 21/00163/FUL, dated 29 January 2021, subject to the 14 conditions set out in the attached schedule.

Main Issues

2. The main issues are the effect of the proposal on:
 - (i) the character and appearance of the area; and
 - (ii) the living conditions of occupiers of neighbouring properties on Stanton Road with particular regard to outlook and light.

Reasons

Character and appearance

3. The appeal site consists of two distinct but connected portions of land. The front portion shares a boundary with a section of Stanton Road which is predominantly characterised by bungalows. It also borders the rear boundaries of two-storey buildings on Dunstable Road. The rear portion of the site is an overgrown and irregular shaped backland plot. In views facing west from Stanton Road, this part of the site sits behind a one-and-a-half-storey detached dwelling at No 2A Stanton Road which itself occupies a position behind the bungalows fronting Stanton Road.
4. Further to the west, beyond the rear portion of the appeal site, are the flats at 'Downview' and 'The Drummonds'. These buildings are accessed from Dunstable Road and range between three and four-storeys in height.

'Downview' includes a series of flat roofed buildings one of which sits parallel to the rear portion of the appeal site. Other buildings surrounding the appeal site mainly have pitched roofs. Facing materials to buildings in the area are also varied. Overall, the mixed scale and design of the properties surrounding the appeal site form part of a close-knit urban character.

5. Due to their position behind and closely aligned with the dwelling at No 2A, the proposed flats would form part of a gradual transition in increased scale between the bungalows on Stanton Road and the taller flats which lie further to the west. The contemporary, flat-roofed design would also sit comfortably amongst the varied architecture surrounding the site. The footprint and linear arrangement of the flats would retain substantial parts of the site for private outdoor space for occupants of the building. As a result, the two-storey flats would successfully integrate into their surroundings.
6. The plot for the proposed bungalow would be of comparable width to other plots on Stanton Road. The bungalow would also be set back within its plot and would be provided with a generous rear garden. Whilst its ridge line would be higher than that of the neighbouring bungalow at No 2 Stanton Road, it would provide a suitable step in height towards the higher two-storey buildings on Dunstable Road. Given that there are a variety of roof forms to other bungalows on Stanton Road, some of which incorporate rooms within the roof space, the individual design of the development would not appear conspicuous within the street scene.
7. I conclude that the development would have an acceptable effect on the character and appearance of the area. In that regard, it would comply with the design, local character and density requirements of Policies LLP1 (Presumption in Favour of Sustainable Development), LLP15 (Housing Provision) and LLP25 (High Quality Design) of the Local Luton Plan 2011 -2031 (2017) (the LP) and the National Planning Policy Framework (the Framework).

Living conditions of occupiers of neighbouring properties on Stanton Road

8. The neighbouring dwelling at No 2A Stanton Road has an obscure glazed door, and single ground and first-floor windows within its west facing elevation. This elevation is set away from but in close proximity to the boundary with the appeal site. Fencing is in place to part of this boundary. Tall planting also sits along the boundary and within the appeal site in line with the position of the ground floor window and obscure glazed door at No 2A. Therefore, levels of light and outlook from the ground floor west facing elevation of No 2A are already compromised to some extent.
9. The spacing between the proposed flats and the west facing elevation of No 2A, in combination with the reduction in scale of the proposal towards the shared boundary would be sufficient to ensure that there would not be a material reduction in the quality of outlook and light for occupiers of No 2A when compared with the existing situation. This is particularly so given the existing boundary treatments in place and that the owners of either No 2A or the appeal site could erect an alternative 2.0 metre high boundary treatment in line with the ground floor glazing at No 2A without planning permission.
10. Due to the intervening distance between the rear elevations and rear garden areas serving the bungalows which front Stanton Road, I am also satisfied that

suitable levels of outlook and light would be retained for occupiers of these neighbouring properties.

11. I conclude, the development would have an acceptable effect on the living conditions of occupiers of neighbouring properties on Stanton Road with particular regard to outlook and light. In that regard, the development would comply with the requirements for development to be sustainable and to respond to local context including minimising overshadowing / loss of light in Policies LLP1 and LLP25 within the LP. For the same reasons, the development would also adhere to the requirements at Paragraph 130 of the Framework.

Other Matters

12. I have carefully considered other issues referred to in the Council's delegated report as well as the comments of third-parties including in respect of matters that have not been covered under the main issues.
13. With regards to the level of provision for off-street parking, no concerns have been raised by the Highway Authority. The Council suggest that there would be an overall shortfall of 3 spaces although I have not been provided with a copy of any adopted standard. In any case, given the quantum and size of units proposed as well as the highly accessible location close to frequent bus services, I concur with the Council that the impact of any overspill parking would not be at a level that would be materially harmful to the local highway network.
14. A scheme of boundary treatments could be secured by condition to secure the boundaries of neighbouring properties. With regards to the proposed first-floor balconies, I am satisfied that the distance between the northern balcony and the nearest windows and more private parts of neighbouring rear gardens would be sufficient to ensure that there would be no material loss of privacy for neighbouring occupiers. The side of the southernmost balcony would align with the private garden area immediately adjacent to the dwelling at No 2A Stanton Road. A condition requiring a screen to the side of this balcony would prevent any loss of privacy for occupiers of this neighbouring dwelling.
15. Given that there would be no vehicle access to the rear of the site and that the majority of windows on the flats would be to side and rear elevations, I do not consider that there would be material harm to neighbouring living conditions as a result of light pollution. Precise details of any external lighting could be required as part of a landscaping condition, therefore the Council would have controls over levels of illuminance.
16. The appellant has provided additional information demonstrating that the furthest part of the flats from the highway would be within a distance of 60 – 90 metres. In accordance with the comments made by Bedfordshire Fire and Rescue, at this distance the development would need to incorporate sprinklers as well as a fire hydrant to be installed immediately by the access driveway. These requirements could be secured by condition.
17. The appellant's Arboricultural Impact Assessment (AIA) identifies three trees which would be removed (T4, G5 and T8). 'T8' sits within a small group of mature sycamore trees close to the southern boundary of the backland plot which are covered by a Tree Preservation Order (TPO). However, the tree survey provided identifies 'T8' as a Category U tree meaning that it cannot be

realistically retained for longer than 10 years. I am satisfied that the overall scheme of tree retention and protection outlined in the AIA means that the removal of these particular trees would not be materially harmful to the visually amenity of the area and a condition could be attached requiring details of suitable tree replacement planting to be provided as part of the overall landscaping scheme.

Conditions

18. I have given regard to the conditions suggested by the Council and those suggested by consultees during the application process.
19. I have attached the standard timescale for implementation, a condition specifying the approved drawings and a separate condition requiring the development to be completed in accordance with the tree protection and tree works specified within the appellant's AIA in the interests of certainty.
20. Having regard to the need to remove existing buildings, the relationship of the site to the highway and the proximity of neighbouring residential properties, it is reasonable to attach appropriate pre-commencement conditions to deal with the potential for any contamination found on the site as well as a requirement for a proportionate Construction Management Plan to be provided.
21. Conditions requiring precise 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.
22. The landscaping condition includes amongst other things requirements for replacement tree planting in lieu of those trees to be removed from the site in the interests of visual amenity and to ensure opportunities for biodiversity improvements are incorporated in line with the aims of the Framework. Details of boundary treatments and any external lighting to the access path and other external areas are also covered by this condition in the interests of safety and security. As per the Highway Engineering comments before me, this condition also requires details of drainage to ensure surface water does not discharge to the public highway in the interests of highway safety. I have therefore not attached the separate drainage condition suggested by the Council.
23. I have attached a condition requiring precise details of a site access scheme given that alterations would need to be made to the footway to install new vehicular crossovers and to relocate signage within the highway. The aforementioned requirements for a sprinkler system and fire hydrant as well as a screen for the southernmost balcony are also attached. 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.
24. A pre-occupation condition to provide the proposed parking is reasonable to prevent any undue pressure being placed upon the public highway for parking. I have also attached the Council's suggested pre-occupation conditions requiring full details of refuse and cycle stores and for a management plan for communal areas in the interests of promoting sustainable transport and ensuring the site and buildings are suitably maintained.
25. Given the relative proximity of the flats to the dwelling and garden area at No 2A Stanton Road, a condition is also attached to ensure no first floor

windows are provided to the elevation of the flats facing No 2A in order to protect the privacy of occupiers of this neighbouring dwelling.

26. The Council's Environmental Protection consultation response during the application process suggests that a noise risk assessment should be required by condition. The consultation comments make particular reference to the highly trafficked Dunstable Road and the nearby hospital. However, the development would be set away from both of these and amongst other residential buildings. Overall, I am not persuaded by the evidence before me that a condition requiring a noise survey and / or noise mitigation measures would be justified.
27. Given the scale of the development, the potential for any substantial effects on the surrounding environment or damage to be caused to the public highway during construction is limited. Therefore, I do not consider it reasonable or necessary in this instance to include requirements for the appellant to carry out a dilapidation survey of the roads and footways.

Conclusion

28. 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: Drawing Nos 528-01 (Location Plan), 528-15-A (Proposed Flats Plans), 528-16-A (Proposed Flats Elevations), 528-17-B (Block Plan as Proposed) and 528-18-B (Proposed Bungalow Plans and Elevations).
- (3) Before development commences the tree protection measures shown on Drawing No 201218-P-12 within the Tim Moya Associates Arboricultural Impact Assessment (January 2021) (AIA) shall be put in place and these measures shall then be retained at all times during the development phase. Once the tree protection measures are in place, the development shall be completed in full accordance with the tree work schedule and Drawing No 201218-P-11 'Proposed Layout and Tree Works' contained within the AIA.
- (4) Prior to the commencement of the development a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The CMP shall include details of how materials will be delivered and stored including parking and loading arrangements, the hours of operation for construction works and details of measures to control waste, dust, noise and vibration during the

construction period. Once approved the development shall be carried out in full accordance with the approved CMP.

- (5) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the Local Planning Authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the Local Planning Authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the Local Planning Authority within 5 days of the report being completed and approved in writing by the Local Planning Authority.
- (6) Prior to commencement of above ground works, precise details of the materials to be used in the external surfaces of the development 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.
- (7) Prior to commencement of above ground works, precise details of both hard and soft landscape works and external lighting shall be submitted to and approved in writing by the Local Planning Authority. These details shall include:
- means of enclosure;
 - a planting schedule for the site including details of replacement tree planting in lieu of those to be removed in the tree works approved under Condition 3 of this permission;
 - hard surfacing materials;
 - drainage provision to prevent surface water from discharging from areas of hardstanding onto the highway;
 - lighting to the internal access path and other external areas; 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.

- (8) 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.
- (9) Prior to commencement of above ground works, precise details of a sprinkler system to be incorporated into the proposed flats and a fire hydrant to be installed immediately by the access driveway shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the sprinkler system and fire hydrant shall be provided prior to first occupation of the development and shall be retained thereafter.
- (10) Prior to commencement of above ground works precise details of a screen to be provided to the southernmost balcony of the approved flats, on the side closest to the boundary with No 2A Stanton Road, shall be submitted to and approved in writing by the Local Planning Authority. The approved screen shall be installed prior to the respective flat first being occupied and shall be retained thereafter.
- (11) Before any part of the development hereby permitted is first occupied, the off-road parking spaces as shown on drawing No 528-17-B shall be completed in accordance with the details as set out in this planning permission and thereafter shall be kept available for the purposes of parking thereafter.
- (12) Before any part of the development hereby permitted is first occupied, full details of refuse and cycle stores to serve the development shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the refuse and cycle stores shall be provided prior to first occupation of the development and retained thereafter.
- (13) Before any part of the development hereby permitted is first occupied a management plan, including management responsibilities and maintenance schedules for all internal and external shared/common areas of the development, shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the site shall be managed in full accordance with the management plan for so long as the development remains in existence.
- (14) No windows shall be inserted above ground floor level to the elevation identified as 'West Elevation' on drawing No 528-16-A elevation of the dwelling facing No 2A Stanton Road at any time.