



Appeal Decision

Site visit made on 18 May 2022

by Chris Couper BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th June 2022

Appeal Ref: APP/K0235/W/21/3286731

13A High Street, Clapham, Bedford MK41 6EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Singh against Bedford Borough Council.
 - The application Ref 21/01301/FUL, is dated 29 April 2021.
 - The development proposed is described as a multi-flatted development with extensions and alterations to the existing building and access.
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Decision

1. The appeal is dismissed and planning permission for a multi-flatted development with extensions and alterations to the existing building and access is refused.

Application for costs

2. An application for costs was made by Mr Singh against Bedford Borough Council. This application will be the subject of a separate decision.

Procedural Matters

3. Section 78 of the 1990 Act provides that an applicant may appeal if the Council has not given notice of its decision on a planning application within the statutory period (or within an extended period if agreed in writing).
4. In its letter dated 8 March 2022, the Council sets out that planning permission would have been refused for the reasons given in its officer report. In setting out the main issues in this appeal I have therefore had regard to those putative reasons for refusal, along with representations made by interested parties.

Main Issues

5. The main issues are:
 - The effect of the proposed development on the character and appearance of the area;
 - Whether or not future occupiers of the proposed flats would experience appropriate living conditions, with particular regard to outlook, noise and disturbance, and the availability of suitable outdoor space;
 - Whether the proposal would comply with policies which seek to steer new development to areas at lowest risk of flooding; and

- Whether or not the proposal would make adequate provision for sports and play infrastructure.

Reasons

Character and appearance

6. The National Planning Policy Framework ('Framework') attaches great importance to the design of the built environment. At paragraph 134 it states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents.
7. In their stance on promoting good place-making and high quality design, Policies 28S and 30 of the Bedford Local Plan 2030 (adopted 2020) ('BLP') are consistent with the Framework.
8. The existing building on the site, which has been partially converted to provide a dwelling, is a fairly large structure, which is of a functional and utilitarian appearance, reflective of its commercial origins. There is hardstanding around it, but to the rear lies an extensive area of lawn, which leads down to the banks of the River Great Ouse.
9. That lawn helps to soften the building's visual impact and, notwithstanding a large container on the site's eastern boundary, helps integrate the plot with its surroundings, particularly with the trees and hedgerows next to other parts of its side boundaries, and with nearby gardens which extend down to the river, including at The Horse and Groom Public House ('the PH').
10. With its shallow pitched roof, elongated form, and little architectural embellishment, the proposed single storey extension would broadly reflect the style of the existing building, and it would be faced with matching materials. However, its very functional form and appearance would not represent good design.
11. Moreover, the resultant building would sit within a very extensive area of hardstanding which, to the rear, would continue most of the way to the river and would span across the entire width of the site up to its side boundaries. The short, narrow strips of 'garden' next to the building would do little to alleviate the austere impact that would cause. Streetscene views of the proposed rear extension would be limited. However, for those reasons the scheme as a whole would not be well designed, and it would harm the character and appearance of the area. It would thus conflict with BLP Policies 28S and 30, and with the Framework's requirements for good design.

Living conditions

12. I understand that the flats' gross internal area would comply with the DCLG Technical Housing Standards 2015. However, the drawings depict that the windows in the scheme's first floor eastern elevation serving the bedroom and the living space would be obscurely glazed, and fixed apart from top opening fanlights. Whilst that would be necessary to ensure that there would be no harmful overlooking down into the nearby rear amenity space at 13 High Street, it would also leave those habitable rooms without an outlook. It would thus result in poor living conditions for the future occupants.

13. Although the appellant suggests that the internal layout could be amended to address that concern, that is not the scheme before me and it would make the scheme substantially different. To require such an amendment by means of a condition would be inappropriate as it could prejudice interested parties, including the owners of the PH.
14. The Environmental Noise Assessment prepared by Clear Acoustic Design found that, subject to suitable acoustic measures in the building's facade, the occupants of the proposed flats would not experience significant noise ingress or disturbance, and that the scheme would comply with BS8233:2014. I have no cogent reason to doubt those findings, or to conclude that the scheme would not comply with BLP Policy 47S part ii.
15. However, the proposed layout includes ground floor bedrooms whose only windows would be located directly on the site's western boundary. Given that the adjacent area comprises the PH car park and access road, with only limited landscaping, I am concerned that people in those rooms could experience poor living conditions as a result of a disturbing level of visual intrusion, poor privacy, and overlooking at very close quarters.
16. That broad conclusion also holds true for flats 7, 8 and 9 whose rear windows would have a very restricted outlook directly facing an adjacent fence or other boundary treatment, and whose dining room/kitchen windows would abut the shared footway.
17. The proposed shared amenity space would be next to the river where, according to the Council, it would be at least 38 metres from the nearest flat. It would also be in an area at flood risk. However, whilst the residents would need to walk through the parking court to reach it, the vehicular movements associated with these small flats in this accessible village location would be modest. Although the space would sometimes be under water, the rest of the time it would provide a pleasant area to sit outside, with views over the river to meadows beyond. Consequently, it would be of an appropriate quality.
18. Notwithstanding that conclusion, for the above reasons, the residents of the proposed flats would experience poor living conditions. The scheme would therefore conflict with those parts of BLP Policies 2S, 28S, 29, 30 and 32 which require development to be of high quality design, promote healthy communities, and to have regard to matters such as disturbance; and with the Framework's stance at paragraph 130 on ensuring a high standard of amenity.

Flood risk

19. The Framework sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. It continues that the aim of the sequential test is therefore to steer new development to areas with the lowest risk of flooding. BLP Policy 92 is consistent with that national approach.
20. The Planning Practice Guidance ('PPG') advises that the aim should be to keep development out of medium and high flood risk areas (Flood Zones 2 and 3), and other areas affected by other sources of flooding, where possible. Whilst it sets out at ID: 7-033-20140306 that the area across which the sequential test should be applied will be defined by local circumstances, it is clear to me that this needs to extend beyond the application site itself.

21. The Preliminary Flood Risk Assessment prepared by Oakshire Environmental ('the FRA') found that the part of the site adjacent to the river, where the proposed amenity space would be located, is in Flood Zone 3, that the parking area would be in Flood Zones 2 and 3, and that the building would be in Flood Zones 1 and 2. It concluded that the sequential test was passed as, using the terminology in the PPG, the 'more vulnerable' use would be directed to areas of the site at lower flood risk.
22. However, Framework paragraph 167 sets out that development should only be allowed in areas at risk of flooding where, in light of a site-specific flood risk assessment (and the sequential and exception tests as applicable) it can be demonstrated, that the requirements at its sections a) to e) can be met.
23. In this case, applying Framework paragraph 167 a) although the most vulnerable development would be located within those parts of this site at lower flood risk, I have no evidence that there are not suitable and available locations elsewhere in Flood Zone 1.
24. Whilst the appellant refers to the absence of an objection from the Environment Agency ('EA'), or from the Council's Flood Investigation Officer, in stating that it is up to the Council to satisfy itself regarding the sequential test the EA's letter dated 29 October 2021 is consistent with the advice in the PPG.
25. For the above reasons, I am not satisfied that the sequential test has been passed. Having regard to the email dated 25 April 2022 from the appellant's architect, as this relates to a matter of principle, it is not something which could be addressed by means of a planning condition. The scheme would therefore conflict with BLP Policy 92, part 14 of the Framework, and with the advice in the PPG.

Sports and play infrastructure

26. BLP Policy 86S sets out that new development will be required to provide, or contribute towards, measures to directly mitigate its impact on existing infrastructure, and that this will normally be secured through planning obligations or the Community Infrastructure Levy ('CIL').
27. Policy AD28 of the Bedford Allocations and Designations Local Plan 2013 ('BADLP') states that where new housing development is of a type likely to create demand, the Council will require the provision of open space and built facilities in accordance with its standard formulae and that, where this is not possible on site, a financial contribution will be required secured through planning obligations for off-site facilities, and for the costs of future management and maintenance.
28. The Council states that as the scheme would not make a required financial contribution of £11,473 towards the provision of off-site sports space and play areas, it would be contrary to the development plan and to its Open Space Supplementary Planning Document 2013.
29. In his grounds of appeal, the appellant sets out that as the proposal would result in a CIL liability of £18,348, and as he has already paid £34,888 for the change of use of the building to a dwelling, no further financial contribution should be required. However, that stance is at odds with an email from his architect dated 25 April 2022 which maintains that there is no objection to a S106 contribution.

30. I have not been provided with a planning obligation. However, neither do I have any detailed evidence to define the extent of any local deficiencies in sports or play facilities, or the effect that the proposal might have on them. Additionally, I have no information to show how, where or when the requested contribution would be spent.
31. Accordingly, I cannot be certain that the contribution sought would be necessary to make the development acceptable, or that it would be directly related to the development, and fairly and reasonably related in scale and kind.
32. Consequently, and notwithstanding the aims of the development plan, I am unable to conclude that a planning obligation seeking to provide this contribution would comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010. In these circumstances, the absence of a planning obligation does not weigh against the development.

Other matters

33. The scheme would make an effective use of brownfield land to provide a net increase of eight, relatively affordable, units of accommodation. They would be in the Settlement Policy Area of a Key Service Centre, close to regular public transport, and to a range of other services. In those regards, and as a result of the economic benefits both during construction and from subsequent occupation, the scheme finds support from the Framework and the development plan. These are moderate benefits in its favour.
34. The appellant received pre-application advice from the Council regarding his proposals for the site, and is dissatisfied with its handling of his application, including delays, the failure to reach a decision, and a perceived lack of consistency and balance. He also refers to the absence of objections from key consultees. However, whilst I have had regard to those comments and to the site's planning history, I have dealt with the scheme before me on its planning merits.
35. Finally, I have no evidence to support the assertion that an alternative scheme of six flats would not be financially viable.

Planning Balance and Conclusion

36. I have found that the scheme would harm the character and appearance of the area, that it would provide poor living conditions for the future occupants and that, on the basis of the available evidence, I cannot conclude that there are no available sites at lower flood risk. In all these regards the proposal would conflict with the development plan and with the Framework.
37. The scheme's moderate benefits do not outweigh the totality of the harms that it would cause. It does not benefit from the presumption in favour of sustainable development as set out in the Framework and in BADLP Policy AD1. Consequently, and having regard to representations both in favour and opposed to the development, the appeal is dismissed and planning permission is refused.

Chris Couper

INSPECTOR