



Appeal Decision

Site visit made on 18 October 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2022

Appeal Ref: APP/B0230/W/22/3300546

Land adjacent to 39 Havelock Road, Luton LU2 7PW

- 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 Whetstone against the decision of Luton Borough Council.
 - The application Ref 21/01631/FUL, dated 19 November 2021, was refused by notice dated 17 January 2022.
 - The development proposed is the erection of a two-storey building to accommodate 6 flats (4 two beds & 2 one beds).
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Decision

1. The appeal is dismissed.

Main Issues

2. 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 the occupiers of 39 and 43 Havelock Road and 125 North Street with particular regard to light and outlook; and
 - iii) whether or not living conditions for future occupiers of the development would be acceptable with particular regard to light, outlook, privacy, and noise and disturbance.

Reasons

Character and Appearance

3. The appeal site is located to the north of North Street on the corner of Mussons Path and Havelock Road. Although there is more diversity to the south of North Street, Havelock Road and the closest adjacent streets to the site are for the most part tightly lined by two-storey terraced and semi-detached dwellings, alongside a few industrial or commercial buildings, some of which have been converted to flats. Separation between adjacent buildings is usually very modest, and most are positioned directly adjoining the footways, or with only very small set backs. These factors provide for a close urban grain, and together with the usually similar form and traditional appearance of the typical nineteenth and early twentieth century buildings, there is an attractive and distinctive sense of coherence to the street scenes.
4. Currently, the majority of the appeal site is occupied by a disused light industrial unit with a single-storey lean-to structure to the rear. The appeal proposes a replacement building which would have a broadly 'L-shaped' footprint including a deeper section to part of the rear elevation closest to Mussons Path.

5. The development would occupy the majority of the width of the plot. However, this is also the case with the existing development, and the proposed building would be of lesser depth, providing for greater separation to the boundaries at the rear of the site than currently. Moreover, a tight urban grain is part of the character of the surrounding area and I saw very limited spacing around many of the buildings nearby, including at No 39 adjacent. While I acknowledge that there are some examples of residential developments in more spacious settings, it seemed to me that these were somewhat unusual in the vicinity of the site, and they did not in my view define the character of the surrounding area. In this context, I find that the close relationship of the development with its boundaries would not in itself be jarring or uncharacteristically cramped.
6. The two-storey height of the development would also reflect most buildings nearby. However, the roof would include flat sections which would be somewhat unusual against the characteristic pitched and hipped forms of other buildings. I accept that No 39 also includes a flat roof section, but this is only to the front part of the building. In contrast, a substantial proportion of the roof of the development would be flat, and while the rear section would be lower, the set down would be small. The roof design would add considerable scale and mass to the upper part of the building which I consider would cause it to appear unduly bulky, and I find that the development would stand out as a discordant and unsympathetic feature at odds with its surroundings.
7. The existing building on the site is undoubtedly in poor condition, with sections of crumbling brickwork and missing render, and fairly significant vegetation growing up through where the roof to the part of the building closest to Havelock Road would have been. Despite its dilapidated appearance though, the unobtrusive form of the building and its relatively modest height as it adjoins Havelock Road help to reduce its visual impact, and it does not detract significantly from the street scene. The greater height and bulk of the development now proposed would be markedly more prominent on the site, and I find in these circumstances that the proposal would not enhance the character or appearance of the area overall.
8. The site is not within a conservation area, but that does not mean its character and appearance are of no importance. That said, the character of the area is not uniform, and there is some existing diversity in the scale, form and architectural detailing of development nearby. The visual impact of the proposal would further be localised, and I am satisfied given the significantly lower height of the building relative to No 39 that it would not compete visually with this neighbour. No 39 would therefore remain the more prominent building appropriate to its location at the crossroads of Havelock Road and North Street.
9. For these reasons, I conclude that the proposal would cause only limited harm to the character and appearance of the area. Nevertheless, this harm would result in conflict with Policies LLP1, LLP15 and LLP25 of the Luton Local Plan 2011-2031 (adopted 2017). Broadly and amongst other things, these policies seek high quality design and development that enhances the distinctiveness and character of the area, and housing development that does not result in over-intensification of the site. It would also be contrary to the National Planning Policy Framework ('the Framework') insofar as it seeks well designed places and development that is sympathetic to local character.

Living Conditions – Neighbouring Occupiers

10. The planning statement that accompanied the application suggested that windows to the side of 39 Havelock Road facing the site do not serve habitable rooms. However, the Council advises that plans for the flats at No 39 show the windows as serving rooms including a kitchen, living room and bedrooms, and this has not been disputed by the appellant at appeal stage.
11. There would be very limited separation between these windows and the development. I appreciate that the existing building is also in close proximity to these windows, and this relationship would already be likely to have an effect on access to natural light and outlook. However, the development would be taller than the highest parts of the existing building. In my view, the height increase which the appellant indicates would be around 0.9m could not reasonably be described as modest. Moreover, the existing roof includes two parallel pitched roofs with a valley section between them which dips largely below the height of the facing first-floor windows to No 39. The flat sections of the roof would be significantly higher than this valley section, and the development would also be of greater height at the eaves than the existing building.
12. As a consequence, there would be a substantial increase in the overall bulk and mass of the upper part of the building on the site which would result in a significantly more imposing form of development when seen from No 39. The development would also be likely to obstruct views that may currently be available, particularly from the neighbouring first-floor windows, above the existing structure's roof form leading to a far greater degree of enclosure. These factors would harm outlook for occupiers at No 39 in comparison to the existing situation, causing significant detriment to their living conditions. Furthermore, it seems to me that the additional bulk and height of the building would be likely to result in some reduction in natural light reaching the neighbouring windows, and there is no substantive evidence before me to the contrary, nor to demonstrate that any light loss would be insignificant.
13. The appellant advises that No 39 is within their ownership, and suggests that other windows could be provided to serve the flats here. However, no details to show how this could be achieved are before me, and I do not consider this could appropriately be dealt with by way of a planning condition given the potential for new windows to raise fresh implications, including possible overlooking to neighbouring properties.
14. In addition, the development would be appreciable from the rear windows and garden of 43 Havelock Road, where I saw that outlook to the rear is already restricted somewhat by the adjacent building at Fredericks Gate. The development would extend along much of the depth of the garden to No 43 which is relatively modest in size, and while I appreciate that the existing building is deeper, I find that the greater height and significant increase in the upper bulk of the development would offset the benefit of the reduced depth. As a result and given the relatively limited separation to this neighbour, I consider that the development would be a dominant feature when seen from No 43, increasing the impression of enclosure and exacerbating the already constrained outlook.
15. Similarly, there would be views from the windows and rear amenity space to flats at 125 North Street onto the rear part of the development which would essentially extend across the full width of the neighbouring site at two-storey

height. The appellant indicates that the closest first-floor window to No 125 serves a bathroom, but separation to the other windows would still be fairly limited, and I consider that the additional height and upper bulk of the development would notably increase the impression of enclosure in comparison to the existing situation, adversely affecting outlook for occupiers. Given the relationship, and in the absence of firm evidence to demonstrate otherwise, I am also concerned that the increased bulk and height of the building could restrict light received by the windows and amenity space to No 125. This would further detract from the quality of life experienced by occupiers of this building.

16. The Council's reason for refusal refers to overlooking of adjoining properties. However, this concern is not clearly explained within its evidence. The submitted plans indicate that first-floor windows facing No 43 and to the rear of the recessed section of the building would be obscure glazed. I consider that this would prevent harmful overlooking from these windows to neighbouring dwellings, albeit that I return to consider the effect of this treatment on the living conditions of future occupiers of the site under the third main issue below. Having regard to the position of other windows and relationship with neighbouring development, and subject to suitable boundary treatment and obscure glazing to the first-floor bathroom window facing No 39 which could be secured by planning condition, I am satisfied that the proposal would not cause a harmful loss of privacy for neighbouring dwellings. Nevertheless, this does not outweigh the harm that would be caused to neighbouring occupiers' quality of life through loss of outlook and light.
17. I acknowledge that development in the vicinity of the appeal site is fairly dense, often with little or no separation between buildings. Be that as it may, I have not been directed to examples of development of comparable form or scale in similar proximity to neighbouring windows and amenity spaces as would result here, and I do not find this a compelling justification to allow development that would harm living conditions for occupiers neighbouring this site.
18. For these reasons, I conclude on this main issue that the development would cause unacceptable harm to the living conditions of the occupiers of 39 and 43 Havelock Road and 125 North Street through loss of outlook, and it has not been demonstrated that there would not be further harm to the occupiers of No 39 and No 125 as a consequence of light loss. It would accordingly conflict with Policies LLP1 and LLP25 of the Local Plan which include requirements seeking high quality design, and to minimise loss of light. It would also be contrary to the Framework which includes a requirement for a high standard of amenity for existing and future users.

Living Conditions – Future Occupiers

19. Flat 4 to the ground-floor of the development would include a bedroom window facing towards 39 Havelock Road. Given the scale and very close proximity of No 39, I agree with the Council that this window would be likely to receive limited natural light and would offer poor outlook. It would also be overlooked. The appellant has suggested that the window could be obscure glazed, which would be likely to prevent overlooking from No 39, and I note that the room is also served by a second window to the rear. However, views from this window would be towards a boundary fence at close range, and in my assessment, it would offer little alternative outlook. There would also be only a very limited

range of outlook from the rear window serving the other bedroom to this flat with significant enclosure to views occasioned by the close proximity of the deeper projection to the building and boundary fencing. These relationships would also be likely to have some effect on natural light reaching the bedroom windows. While the open plan kitchen, dining and living room would be served by large windows to the front of the building, I find levels of outlook for the bedrooms would fall short of what could reasonably be expected by occupiers, and I am unable to determine that they would receive adequate natural light.

20. In addition, bedrooms to Flats 6 and 7 would all be served by windows that are shown to be obscure glazed to prevent overlooking to neighbouring dwellings. This would severely limit outlook and any sense of visual connection with the surroundings. Even if there were no requirement for the windows to be fixed shut, having them open at all times is unlikely to be desirable for future occupiers. It also seems to me that they would need to be wide open to offer any meaningful outlook which would defeat the object of their being obscure-glazed. I am not therefore satisfied that the ability to open windows would enable adequate access to outlook, and I find that the living conditions for occupiers of these bedrooms would be unacceptably compromised.
21. The development also includes ground-floor windows to Flats 1 and 2 positioned very close to Mussons Path, including to open plan kitchen and lounge rooms where occupiers would be likely to spend a significant proportion of their time. I have no firm evidence to substantiate the appellant's suggestion that vehicle and pedestrian movements along Mussons Path are minimal. In any event, the proximity of the windows to Mussons Path would seem likely to afford passers-by direct views into the rooms served, and I consider that even low numbers of movements would be likely to result in a distinct lack of privacy for occupiers of these flats.
22. Moreover, even a small number of movements are likely to generate some level of noise and disturbance which could be noticeable to the ground-floor flats given the close relationship with their windows. In the absence of an objective assessment considering prospective noise levels, I am unable to determine that noise and disturbance would not be intrusive to future occupiers. Nor can I be sure that mitigation measures such as triple glazed windows, noise-reducing glazing or other insulation or sound proofing would be effective to ensure satisfactory living conditions for occupiers. In these circumstances, it would not be appropriate to defer this matter to a planning condition.
23. Taking the above factors into account, I conclude on this main issue that the proposal would fail to provide acceptable living conditions for future occupiers of the development with regard to light, outlook, privacy, noise and disturbance. Accordingly, the proposal would conflict with requirements within Policies LLP1 and LLP25 of the Local Plan broadly seeking high quality design to help create quality places, and suitable privacy for new housing. It would also be contrary to the Framework which includes a requirement for a high standard of amenity for existing and future users.

Other Matters

24. The Highway Authority has commented that the lack of on-site parking provision would warrant a contribution towards the town centre car club which should be secured by planning obligation. No such obligation is before me, but

given that I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter further as it could not alter my decision.

Planning Balance

25. The proposal would make efficient and effective use of a previously developed site to deliver 6 new dwellings. The Local Plan seeks delivery of homes to address the identified housing requirements of the area, including a reliance on development of unallocated sites such as this, and indicates a substantial need for family-sized accommodation. In addition, the Framework refers to boosting significantly the supply of housing, and highlights that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. It further indicates that development of windfall sites should be supported, giving great weight to the benefits of using suitable sites within existing settlements for homes.
26. In light of these objectives, the provision of additional homes on the site including 4 two-bedroom flats which could be suitable for families is an important benefit of the proposal, and I afford it great weight. However, the extent of the benefit and the contribution made to the mix and supply of housing overall would be limited by the modest scale of the proposal.
27. Job creation and additional expenditure during the construction period and on occupation of the development would result in temporary economic and social benefits, and there would be longer term benefits through support for the local economy and services by future occupiers. The proposal's contributions in these regards would be constrained by its relatively small scale though, and I give them modest weight overall. While I note that there would be Council Tax revenue associated with the development, there would also be a corresponding increase in demand on local services and so this is not a factor to which I attach positive weight.
28. Conversely, the proposal would cause significant harm to the living conditions of neighbouring occupiers, and would fail to provide acceptable living conditions for future occupiers. I afford these matters significant weight. There would also be some limited harm to the character and appearance of the area, and I find that the cumulative adverse impacts of the proposal would firmly outweigh the modest benefits.

Conclusion

29. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR