



Appeal Decision

Site visit made on 17 August 2022

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2022

Appeal Ref: APP/B0230/W/21/3286040
281 Dunstable Road, Luton, LU4 8BS

- 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 Michael Benson against the decision of Luton Council.
 - The application Ref 21/01004/COU dated 13 July 2021, was refused by notice dated 5 October 2021.
 - The development proposed is described on the application form as "Planning for conversion of 6 bedroom HMO to 9 bedroom HMO."
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Decision

1. The appeal is dismissed.

Procedural matters

2. The appellant has submitted two sets of amended plans as the original existing plans were incorrect and illustrated a single storey side/rear extension which had not been constructed. The Council was consulted in respect of the first set of amended plans and stated that they were still incorrect as the existing first floor plan showed the flat roof of the single storey side/rear extension which was inconsistent with the existing ground floor plan which showed no extension. The second set of drawings corrected this error and the Council did not provide any additional comments upon further consultation. Taking into account the judgement given in *Bernard Wheatcroft Ltd v Secretary of State for the Environment and Harborough District Council* [1980], I am satisfied that third parties would not be prejudiced by these minor changes and as a consequence I have considered the appeal on the basis of these amended plans.
3. For the avoidance of doubt and in view of the fact that there does not appear to be any dispute between the Council and Appellant on this matter, I have proceeded on the basis that the drawings under consideration in this appeal are the location and block plan (Drawing No 05/05 dated 11/07/21), the existing floor plans (Drawing No 01/05 dated 17/08/22), the existing elevations (Drawing No 02/05 dated 11/07/21), the proposed floor plans (Drawing No 03/05 dated 11/07/21) and the proposed elevations (Drawing No 04/05 dated 11/07/21).
4. The development description on the application form and drawings does not correspond with the design & access statement, decision notice and appeal forms. In particular, the application form describes the proposed development as "planning for conversion of a 6 bedroom HMO to 9 bedroom HMO" and refers

to its existing use as a '6 bedroom HMO' [where a HMO is a 'House in Multiple Occupation']. In direct contrast to this, the appellant's design & access statement and appeal statement refer to the property as a single family dwelling and make no reference to the existing use as a HMO.

5. However, the appellant's design & access statement and appeal statement also state that renovation works to the property started on 1 July 2021 and at my site inspection on 17 August 2022 I observed that all 6 bedrooms were occupied and that each of these had a tall fridge/freezer and ensuite facilities with access restricted to each occupier via individual lock & key. There was also a separate communal kitchen and lounge to the ground floor. On this basis, and the information contained on the application form and drawings, I am satisfied that the use of the property as a 6-person HMO had commenced by the time of my inspection and that the property was no longer in use as a single family dwelling. The Council was aware that this could happen as the case officer's report states that "the property could be converted to a six-person-HMO without the need for planning permission".
6. I recognise that it is common practice in many Councils to amend the description of development on the application form, but there is no evidence before me that a revised description was discussed with the appellant before changing it, as advised in the Planning Practice Guidance¹. In light of this omission, my assessment on-the-ground, and the evidence before me, I have treated the appeal as one for planning permission for the development described on the application form.
7. At my site inspection, I observed that a large dormer extension had been added to the rear plane of the roof, which the appellant confirmed would be constructed prior to its change of use to a HMO under permitted development rights. The Council and appellant also confirmed that the building has planning permission for the erection of a single storey side/rear extension², but it is unclear whether this was approved in connection with the building's previous use as a single family dwellinghouse or its current use as a 6-person HMO. The appellant states that this extension had not yet been implemented at the time of writing their appeal statement (October 2021), but that it soon would be. However, it was unclear from my site inspection as to whether construction had commenced on this in the intervening period since October 2021 – the only clear conclusion that could be reached was that it had not been completed by that time.
8. The submitted plans reveal the proposed 9-person HMO is based upon the increased floor space accommodation provided by the approved, but as yet unbuilt, single storey side/rear extension. However, the scheme before me only proposes a change of use of the building and the development description does not make any reference to operational development to include an extension. I do however recognise that it is possible that construction of the previously approved side/rear extension may have been lawfully implemented since the appellant's appeal statement was drafted and is therefore capable of now forming part of the proposed change of use scheme before me. In the absence of evidence demonstrating otherwise, I have therefore proceeded to assess the scheme on the basis of the proposed floor plans which reveal the approved extension forming part of the 9-person HMO.

¹ Paragraph: 046 Reference ID: 14-046-20140306, Revision date: 06 03 2014.

² Planning Permission 21/00264/FULHH dated 15 April 2021.

9. In the event that there is any doubt as to the whether it would be lawful to implement the previously approved side/rear extension in connection with a HMO use, it is open for the appellant to apply to have such matters determined under sections 191 or 192 of the Act or for the Council to take enforcement action if it considers previous operations to be unlawful. Any such application or enforcement action would be unaffected by my determination of this appeal.

Main issues

10. The main issues are;

- whether the development would lead to the loss of an existing large family dwellinghouse which would fail to assist in delivering a mix of housing that would meet local need;
- the effect of the development on living conditions, with specific regard to future occupiers of the HMO and neighbouring residents at Nos 279 and 283 Dunstable Road.

Reasons

Appeal site context

11. The appeal site contains a large semi-detached Victorian/Edwardian property that fronts onto the busy Dunstable Road with a modest sized rear garden and side driveway leading to a dilapidated store/garage. The surrounding area is primarily residential in character, interspersed with small scale commercial uses and local retail parades.

Whether the development would lead to the loss of an existing large family dwellinghouse which would fail to assist in delivering a mix of housing that would meet local need

12. The Council states that there is a clear need for 4+ bedroom houses in the Borough due to the limited number being constructed and delivered locally. Be that as it may, the existing building is now in use as a 6-person HMO and no longer a single family dwelling. As a consequence, the proposed scheme would not result in the loss of an existing large family dwellinghouse as alleged in the Council's first reason for refusal.
13. HMO's fall within Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended). This is defined as the use of a dwellinghouse by not more than 6 residents as a "house in multiple occupation". Although a dwellinghouse used by 9 residents as a house in multiple occupation falls outside this definition and is classified as a sui generis use, it nonetheless performs the same underlying function as a 6-person HMO, namely that of living accommodation, but in a more intensive manner.
14. In light of this, the scheme before me would not result in the loss of an existing housing use; - the existing 6-person HMO use would merely be replaced by a more intensive 9-person HMO use. As a consequence, I conclude that the development would not conflict with Policy LLP15 of the Local Plan³, which seeks, amongst other things, to ensure that existing housing is not lost to other uses.

³ Local Luton Plan 2011-2031, November 2017.

The effect of the development on living conditions, with specific regard to future occupiers of the HMO and neighbouring residents at Nos 279 and 283

15. If all the proposed rooms were occupied, it would result in at least 9 unconnected parties living together at the property, although it could potentially be even more if the rooms were occupied by a couple. The collective impact of this number of residents engaging in hobbies, personal interests and social activities, their movements to and from the site for work, shopping, leisure pursuits or simply going out for a walk, together with the comings and goings of family and friends, would result in a significant amount of prolonged and sporadic pedestrian and vehicle movements throughout the course of the day and into the evening with car doors closing, engines revving and increased vocalisation of residents/visitors to the building. It is my view that this would result in significant noise and disturbance to future occupiers of the property and neighbouring residential occupiers at Nos 279 and 283 Dunstable Road.
16. I recognise that these activities would also occur within the existing 6-person HMO and, to a lesser extent, if it was used as a large single family dwelling, but they would be considerably more intense with the proposed 9-person HMO scheme and hence result in significantly more noise and disturbance.
17. Although there are commercial and retail uses close to the appeal site, these are more likely to be in use during the day and would not therefore present the same level and type of noise and disturbance that a more intensive HMO use would. I do nonetheless recognise that the existing background noise levels from vehicles on Dunstable Road are high, but the ongoing general hum of passing traffic is different to the irregular frequency and changing pitch of sounds associated with pedestrian movements, doors opening & closing, and verbal communication between people, all of which would take place in close proximity to the neighbouring dwellings at Nos 279 and 283 and within the building itself. The presence of this traffic noise would not therefore nullify the harm to living conditions of neighbouring and future occupiers arising from a more intensive HMO use.
18. I agree with the appellant that the position of the previously approved side/rear extension and the existing rear extension to No 283 would lessen the impact of noise and disturbance from a more intensive HMO use of the property to neighbouring occupiers. However, this would not completely eradicate all noise, which would still occur outside the front of the building and inside it. The appellant has suggested the imposition of a condition to require soundproofing to party walls, but this would not overcome the harm I have identified.
19. The development would be provided with one large communal kitchen/living room area and the appellant states that this exceeds the minimum space standards laid down for 6-10 occupants in the Council's 'Houses in Multiple Occupation Standards'. However, two of the proposed bedrooms would be accessed directly off this room and be subject to a much greater degree of noise and disturbance than other bedrooms accessed off the hallway. As a consequence, the scheme would also result in harmful living conditions for future occupiers.
20. In view of the above, I conclude that the development would be harmful to the living conditions of future occupiers and neighbouring residents at Nos 279 and 283 Dunstable Road. The proposal would therefore conflict with Policies LLP1, LLP15 and LLP25 of the Local Plan, which seek, amongst other things, to

ensure; (a) the creation of high quality places where noise is minimised; and (b) that new housing does not result in an over-intensification of the site.

21. I also find that the scheme conflicts with Paragraph 130 of the Framework⁴ which seeks, amongst other things, to ensure that development creates places with a high standard of amenity for existing and future users.
22. Although the Council has referred to Policy LL17 of the Local Plan in its reason for refusal, I do not consider there to be any conflict with this as there are other intensive residential apartment uses in the locale and I am not therefore of the view that the scheme would adversely affect the character of the area.

Planning balance

23. Although the Local Plan is approximately 5 years old, Paragraph 219 of the Framework states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework and that due weight should be given to them according to their degree of consistency with the Framework.
24. Policies LLP1, LLP15 and LLP25 of the Local Plan are broadly consistent with the Framework insofar as they relate to the main issues of the case and I am satisfied that the proposal conflicts with the development plan when taken as a whole.
25. I recognise that the scheme would result in benefits from;- (a) the provision of additional HMO accommodation in a highly sustainable location to help meet local need from different groups in the community; (b) future occupiers contributing to the vitality and viability of shops, services, facilities, businesses and community organisations in Luton; and (c) local employment during construction of the side/rear extension. However, given that only 3 additional HMO rooms are proposed, I consider these benefits to be of limited value and that the adverse impacts of the scheme would outweigh these, when assessed against the policies in the development plan and other material considerations.
26. In view of the above, I conclude that the proposal does not accord with the development plan and that other material considerations do not indicate that the proposal should be determined other than in accordance with this.

Conclusion

27. Although I have concluded that there is no harm in respect of the main issue relating to the loss of a single family dwellinghouse, I am nonetheless satisfied that the harm identified in respect of the main issue relating to living conditions is sufficient to still justify dismissal of the appeal.
28. All representations have been taken into account, but no matters, including the benefits of the development and the scope of possible planning conditions, have been found to outweigh the identified harm and policy conflict. For the reasons above, the appeal should be dismissed.

Robert Fallon

INSPECTOR

⁴ National Planning Policy Framework, Ministry of Housing, Communities and Local Government, 20 July 2021.