



Appeal Decision

Site visit made on 7 February 2023

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2023

Appeal Ref: APP/B0230/W/22/3306618

163 Barton Road, Luton LU3 2BN

- 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 Makwana against the decision of Luton Borough Council.
 - The application Ref 22/00364/FUL, dated 24 March 2022, was refused by notice dated 6 June 2022.
 - The development proposed is the change of use of a dwelling house to a mixed-use day nursery and manager's dwelling house and the erection of a wooden canopy.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Makwana against Luton Borough Council. This application is the subject of a separate decision.

Main Issues

3. The main issues relevant to this appeal are:
 - the effect of the development upon the living conditions of the occupiers of the neighbouring properties;
 - whether the proposed development would result in the loss of a family dwelling; and
 - the effect of the development upon the character of the surrounding area.

Reasons

Living conditions

4. The appeal site contains a building that was originally constructed as a dwelling. The wider area contains a variety of other dwellings, which are arranged in a broadly linear pattern. There are also some commercial properties in the surrounding area.
5. The proposed development would result in the creation of a business use in the dwelling. This would include several children that would be looked after by the business in addition to visiting members of staff that would provide the care for children.
6. Therefore, given that such staff and children are likely to require being driven to the appeal site, the development is likely to give rise to an increase in the

- amount of noise present in the locality arising from an increase in the number of comings and goings. This noise is likely to be audible in the neighbouring properties.
7. In addition, the garden of the appeal site could be used for outdoor activities. Given the number of people that could be present in the business, the proposed development would generate greater amounts of noise and disturbance. This is because the garden could be used on a more intensive basis than a domestic dwelling.
 8. Although there is a parking area at the property, this is likely to feature noise arising from vehicles arriving and departing the property. This noise would be apparent in the neighbouring properties. In addition, the patrons of the appeal development may be known to one another. Therefore, additional noise could be generated as people congregate outside the building.
 9. In consequence, the proposed development is likely to have a detrimental effect on the ability of neighbouring occupiers to undertake recreation and rest within their properties. Additional noise is likely to be generated from the undertaking of activities within the appeal proposal. Although there are some commercial uses nearby, the appeal scheme would result in a more intensive use of the appeal site that would erode the living conditions of neighbouring occupiers.
 10. Given the nature of the existing land uses, there are unlikely to generate sufficient noise and activity that would screen the adverse effects as previously identified. In reaching this view, I have had regard to the presence of a nearby relatively busy road. However, the likely scale of activities within the appeal site is such that there would not be sufficient screening of the noise generated by the proposed development.
 11. I acknowledge that, had I been minded to allow this appeal, I could have imposed a condition that would limit the times that the proposed development could operate. However, whilst this would prevent the proposed development from operating during early morning and late evening periods, it would not prevent the business from operating during the daytime period.
 12. The appeal site is in proximity to the neighbouring dwellings, including their gardens. Therefore, even during daytime periods, the activities associated with the operation of the proposed development and comings and goings are likely to be still audible in the neighbouring properties.
 13. As residents may still be present in their dwellings during these times, the adverse effects would still be experienced. Therefore, the imposition of such a condition would not overcome my previous concerns.
 14. I understand that the appeal site could be utilised for a relatively small child-minding business, and that the appellant has operated such businesses elsewhere previously. Although this might be the case, such a business would have less people present than within the appeal scheme. Therefore, the activities would not be on the same level as the scheme before me.
 15. The appeal site has been utilised for a child-minding business. However, irrespective of the planning circumstances of this business, the appeal scheme would be used on a more intensive basis, which would give rise to the

previously described adverse effects. Therefore, the existing use of the building does not overcome my previous concerns.

16. I therefore conclude that the proposed development would have an adverse effect upon the living conditions of the occupiers of the neighbouring properties. The development, in this regard, would conflict with the requirements of Policies LLP1 and LLP25 of the Luton Local Plan (2017) (the Local Plan). Amongst other matters, these seek to ensure that new developments manage change; and accommodate the living requirements of all members of the community

Loss of a family dwelling

17. The appeal proposal is sited in a residential dwelling. However, the development features several rooms on the ground floor that would be utilised for the appeal scheme. In addition, the development would also feature the usage of the garden of the appeal site.
18. The proposed development would use sections of the building, which was originally constructed to be a dwelling. Although the parts of the building that would be used for the development would revert to residential accommodation when the business is not operating, these sections would not be able to be used by the occupiers of the development when the business is operating.
19. In addition, there is a likelihood that the garden could be used for activities associated with the proposed use. This would therefore reduce the amount of space available for occupiers of the dwelling to undertake outdoors recreation. In consequence, the proposed development would not be subordinate to the use of the building as a dwelling. Therefore, the appeal site has a diminished ability to accommodate a larger family.
20. Therefore, the occupiers of the dwelling would have less room to undertake recreational activity during the periods of time that the business is operating. Therefore, although the proposed development would not necessarily result in the loss of a dwelling, it would mean that a home is created that would support a lower number of residents.
21. This is a concern given that the evidence before me is indicative that there is a notable need for larger dwellings within the area under the jurisdiction of the Council. Therefore, the proposed development would result in the creation of harm as it would accentuate a shortfall of larger dwellings.
22. It has been suggested that there has been an increase in the overall level of dwellings in the vicinity. Although this may be the case, the evidence is indicative that the biggest amount of growth has been in the area of smaller dwellings. In result, there remains a need for larger homes in the vicinity.
23. Although the proposed development would result in a reduction in the number of bedrooms in the dwelling, there would be a diminished ability for the building to accommodate a larger family. Therefore, the development would exacerbate existing shortfalls of larger family housing in the locality.
24. My attention has been drawn to Policy LLP24 of the Local Plan, which sets out the criteria by which developments akin to the appeal scheme should be considered. Whilst this policy recognises that such developments are in need, it is clear that such developments should also be assessed against other criteria,

such as ensuring that the need for the facility does not outweigh the need for the existing use.

25. Therefore, given that it has been established that there is a shortfall of larger family housing in the locality, the need for the proposed development would not outweigh the harm that would be created. The policy is clear that an assessment should therefore be assessed against all of these criteria. Therefore, although I do not doubt that the proposed development would be needed, this does not offset my previous concerns.
26. I therefore conclude that the proposed development would result in an unacceptable loss of a family dwelling that could accommodate a larger household. The development would therefore conflict with the requirements of Local Plan Policies LLP15 and LLP24. Amongst other matters, these seek to ensure that development does not take land allocated for other uses unless the need for the facility outweigh the need for the existing use; and that there is an overriding need for other uses.

Character

27. The appeal site contains a building arranged in a linear form of development. The surrounding area is characterised by the presence of buildings constructed to different designs and scales. In addition, the footprint of buildings in the vicinity are such that they occupy a significant proportion of the associated site's width.
28. The appeal proposal includes a wooden canopy. Although this is a different style of construction to several other buildings in the surrounding area, it would be placed in a varied built environment. In consequence, the proposed development would not appear discordant in this regard.
29. Furthermore, owing to the pattern of development in the surrounding area, views of this element of the development would not be possible from the public realm. In addition, views from neighbouring properties would generally be made at an oblique angle and obscured by the site's boundary treatments. These boundary treatments would also obscure any activities undertaken in the rear garden.
30. Therefore, these factors, when combined would also mean that the proposed development would not be a visually prominent addition to the surrounding area. It would therefore not appear incongruous, or discordant.
31. In addition, although the proposed development would generate increased comings and goings in the vicinity of the appeal site. However, given the nature of the surrounding land uses, this would not be visually prominent. Furthermore, such activities are likely to also be of a more transitory nature and would not result in a permanent adverse effect upon the area's character. In consequence, this would not erode the character of the surrounding area.
32. My attention has been drawn to Local Plan Policy LLP15. Although this policy refers to the redevelopment of residential accommodation, the criteria in this policy does not refer to the effect of such a development upon the character of the surrounding area. Therefore, I do not find that this policy is relevant to my assessment of this particular matter.

33. I therefore conclude that the proposed development would not have an adverse effect upon the character of the surrounding area. The development, in this regard, would comply with the requirements of LLP1 and LLP25. Amongst other matters these seek to ensure the provision of sustainable development; and are of a high-quality design.

Conclusion

34. Although I have found that the proposed development would not have an adverse effect upon the character and appearance of the surrounding area, this is outweighed by the harm arising from the loss of a family dwelling and the adverse effect on the living conditions of the occupiers of neighbouring properties. The scheme would therefore conflict with the development plan taken as a whole. There are no material considerations, including the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the preceding reasons, I conclude that the appeal should be dismissed.

Benjamin Clarke

INSPECTOR