



Appeal Decision

Site visit made on 6 June 2023

by K Allen MEng (Hons) MArch PGCert ARB

an Inspector appointed by the Secretary of State

Decision date: 8 August 2023

Appeal Ref: APP/B0230/W/22/3303964

Sicilian Court, 901 Dunstable Road, Luton LU4 0HR

- 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 Robert Fortune against the decision of Luton Borough Council.
 - The application Ref 21/01495/FUL, dated 22 October 2021, was refused by notice dated 5 April 2022.
 - The development proposed is addition to the existing building of two flats, at second floor level.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - the character and appearance of the area; and
 - the living conditions of the occupiers of the properties fronting Dunstable Road, with particular regard to overshadowing and outlook; and
 - the living conditions of future occupiers, with particular regard to outdoor amenity space.

Reasons

Character and appearance

3. The area is mixed with a variety of property types, designs, and sizes. The appeal site comprises a purpose-built H-shaped, two-storey block of flats in a backland position. The site is accessed via Dunstable Road with the appeal property positioned within the rear garden environment of the neighbouring row of two-storey terraces. Large commercial premises are separated from the site via a narrow access road and car park.
4. Although not widely visible in longer views, due to its proximity to the terraces and its backland position, the appeal property most closely relates to the terraces and their rear garden environment rather than the substantial commercial properties in the wider area. The roof of the appeal property mirrors the design and pitch of the adjacent terrace, strengthening its relationship to the residential properties fronting Dunstable Road rather than the larger warehouse style properties to the rear.

5. The appeal property is of a similar height to the neighbouring terrace, with a marginally lower ridge. The proposal would add an additional storey increasing the buildings total height by approximately 1.4 meters, comparable to the height of the previous appeal scheme from 2011¹. While the alterations to the hipped wings would reduce the mass of the proposal in comparison to the previous scheme, the shallow hipped roofs would neither relate to the steep roofs of the terraces or the predominantly flat roofs of the commercial properties. Although stepped roof forms are apparent within the area, the proposal would result in an unnecessarily complicated mass with a staggered elevation and numerous, discordant roof forms. When viewed from the surrounding properties the proposal would be an unattractive addition to the host property.
6. While the appellant contends that the proposal would relate to the larger commercial properties to the rear, offering an appropriate transition in scale. Due to its proximity to the terrace and its backland location within the rear garden environment, there would be a sudden and significant contrast in scale, appearing incongruous when viewed in relation to the terraced properties. The proposal would be a bulky addition to the host property and would dominate the adjacent terraces.
7. Therefore, I conclude that the proposal would significantly harm the character and appearance of the area, in conflict with Policies LLP1 and LLP25 of the Luton Local Plan 2011-2031 (November 2017) (LLP). Which amongst other things require that development enhances the sense of place, is appropriately located, sustainable and of high-quality design, considering context, scale, height, and pattern of development. Similarly, the proposal would conflict with the National Planning Policy Framework (the Framework) where it requires that development is visually attractive as a result of good architecture and layout.
8. The Council have referenced Policy LLP15 in their reason for refusal. However, this policy relates to local housing provision and is not relevant to the character and appearance of the area.

Living conditions – properties fronting Dunstable Road

9. The appeal property is positioned in close proximity to the rear boundary of the properties fronting Dunstable Road. They benefit from long, southernly rear gardens which directly address the appeal site. The large side elevation of the appeal property extends along the full length of the rear boundaries of Nos 907 and 909 with minimal views of the sky. Mature planting and several outbuildings obscure the bulk of the host property. Nos 903 and 905 overlook the paved parking area while Nos 911 and 911a overlook the communal amenity space.
10. The proposal would increase the height of the appeal property which lies to the south of the properties fronting Dunstable Road. However, I am satisfied by the evidence before me that sufficient offsets would be provided and that the loss of light at the adjacent properties would be negligible and would not result in harmful overshadowing to the adjacent rear amenity areas.

¹ APP/B0230/A/11/21611231

11. The main mass of the proposal would be set back from the edge of the existing property. Despite the length of the existing rear gardens, the cumulative mass would be substantial. The proposal would significantly extend above the existing boundary fence and outbuildings, reducing the existing minimal views of the sky currently afforded to Nos 907 and 909. Consequently, the proposal would have an enclosing effect on the rear amenity areas of Nos 907 and 909 and would appear overbearing. Conversely, the proposal would have a limited effect on the outlook of Nos 903, 905, 911 and 911a as the open views across the parking area and communal amenity space would be maintained.
12. While I am satisfied that there would not be a harmful loss of light to Nos 903-911a, or that the outlook to Nos 903, 905, 911 and 911a would be harmfully affected, I conclude that the proposal would cause significant harm to the living conditions of the occupiers of Nos 907 and 909 Dunstable Road, with particular regard to outlook. The proposal would conflict with Policies LLP1 and LLP25 of the LLP, where they require that development be in accordance with relevant policies, and protects amenity, including important views. There is also conflict with the Framework which seeks to ensure that developments provide a high standard of amenity for existing and future users.
13. The Council has referenced Policy LLP15 in their reason for refusal when discussing living conditions. As previously set out, this policy relates to local housing provision and is not relevant to the living conditions of existing or future occupiers.

Living conditions – future occupiers

14. The appeal property currently provides 8 flats across two storeys. Flats No 3 and 4 benefit from private outdoor space in the form of a courtyard, however the remaining flats only have access to a communal garden, laid to lawn. This approach is accepted by the LLP where private outdoor space is not achievable due to plot character. The LLP identifies that flat occupiers generally do not seek or expect the same level of garden amenity space as house dwellers, however, does not define a minimum space standard for communal gardens.
15. The proposal would add an additional two flats to the appeal property. However, the provision of external amenity space would remain unchanged. Given the existing size of the communal garden, and the proximity of the appeal site to several open green spaces and play areas, I am satisfied that sufficient outdoor amenity space would be available to the future occupiers.
16. Therefore, I conclude that the proposal would not harm the living conditions of future occupiers, with particular regard to outdoor amenity space. The proposal would accord with Policies LLP1 and LLP25 of the LLP, where they stipulate that housing should be in accordance with relevant policies and provide external amenity space in line with the standards set. Similarly, there is no conflict with the Framework where it requires that development creates places which promote health and well-being whilst providing an appropriate amount and mix of development, including green and other public spaces.
17. As above, the Council has referenced LLP15 which does not relate to living conditions issues.

Planning Balance

18. Although the parties agree that the latest Strategic Housing Land Availability Assessment (November 2019) (SHLAA) indicates a 6.36-year supply. The appellant asserts that this document is out of date and therefore a 5-year housing land supply cannot be demonstrated. As a result, the appellant says that paragraph 11 d) ii of the Framework is engaged. However, no substantive evidence has been provided, other than the age of the SHLAA, which would confirm the housing land supply position or the extent of any alleged shortfall.
19. The Framework requires that developments add to the overall quality of the area, are visually attractive as a result of good architecture, layout and appropriate and effective landscaping, and are sympathetic to local character. I have concluded that the proposal would appear incongruous and bulky, harming the character and appearance of the area.
20. Further, the proposal would harm the living conditions of the occupiers of Nos 907 and 909 with particular regard to outlook. This would be in conflict with the Framework where it requires development to create places with a high standard of amenity for existing users. Therefore, the conflict between the proposal and Policies LLP1 and LLP25 and the Framework should be given significant weight in this appeal.
21. Nevertheless, the Framework seeks to boost the housing supply and highlights the important contribution small sites can make, whilst supporting development which makes efficient use of land. The proposal would make an efficient use of previously developed land, providing two additional dwellings within an accessible brownfield site and contribute towards the boroughs housing supply. However, two additional flats, would make little difference to the overall supply of housing, even if any shortfall in supply were significant. These benefits would be of moderate weight.
22. Consequently, even if the Council were unable to demonstrate a 5-year housing land supply, the adverse impacts of the development on the character and appearance of the area and the living conditions of the occupiers of Nos 907 and 909 Dunstable Road would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Hence, the presumption in favour of sustainable development does not apply.

Conclusion

23. Overall, for the reasons given above, I conclude that the proposal would conflict with the development plan, as a whole, and there are no material considerations, including the provisions in the Framework and the benefits of the proposal, which indicate that the development should be determined other than in accordance with it. Therefore, the appeal is dismissed.

K Allen

INSPECTOR