



Appeal Decision

Site visit made on 8 August 2023

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 15th December 2023

Appeal Ref: APP/B0230/W/22/3304652

149 Wellington Street, Luton, LU1 5AH

- 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 Danny Taylor against the decision of Luton Borough Council.
 - The application Ref 22/00229/FUL, dated 25 February 2022, was refused by notice dated 31 May 2022.
 - The development proposed is the erection of single storey rear and basement extension to create one studio flat in basement and two bed flat at ground, first and second floor.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made by the appellant against the Council. This is the subject of a separate Decision.

Preliminary Matters

3. Planning permission Ref 21/01343/FUILHH was granted, on 28 September 2021, at the appeal site for the erection of single storey rear and basement extension to create two additional bedrooms. This would enable the conversion of the property into a four bedroom dwellinghouse. There is no evidence before me that this permission has been implemented but appears to remain extant.

Main Issues

4. The main issues are:
 - whether the proposed development would provide acceptable living conditions for future occupiers, in relation to outlook and daylight;
 - the effect of the proposed development on the living conditions of neighbouring occupiers, with regard to noise and disturbance; and
 - whether the proposed development provides an appropriate housing mix.

Reasons

Living conditions – future occupiers

5. The appeal site is a mid-terrace dwelling located on Wellington Street. The property has a basement and can be accessed from the rear through Windsor Walk. The surrounding area consists of other terraced properties of similar scale and design, albeit some of these nearby other properties have been

- externally modified through extensions. A property immediately adjacent to the appeal site has been significantly extended both vertically and horizontally, thereby reducing the overall amount of daylight available at the appeal site.
6. This proposed development would extend and subdivide the existing two-bedroom property into two separate units, albeit the plans indicate that a stairway would remain between the units: a studio flat in the basement (flat 1), and a two-bedroom flat on the ground, first and second floor level (flat 2),
 7. The proposed development retains a basement window at the front elevation, which would provide some natural light in the kitchen area of flat 1. It is proposed that the rear elevation of the basement would be elongated to incorporate a new basement light well area. The plans indicate that flat 1 would be accessible from the rear by a centrally positioned door, which is flanked by two full height windows.
 8. However, a walkway is located above the doorway for this flat, which would reduce the amount of natural light available due to the proportionally large size and central location of the walkway. Additionally, the height and significant levels of built form at the adjacent dwelling would further reduce the amount of daylight available at flat 1. Thus, despite the relatively large rear windows of flat 1, there would be a limited amount of natural light, resulting in unacceptable living conditions for the future occupiers of the dwelling.
 9. In reaching this view, I have considered the southeast orientation of the appeal site, the relatively small size, the open plan design of flat 1 and the potential improvement of this design above the current position. Nevertheless, it has not been satisfactorily demonstrated¹ that these considerations could sufficiently address fundamental concerns regarding the failure of the appeal scheme to provide acceptable living conditions in relation to natural light.
 10. In terms of outlook for flat 1, the window at the front elevation would face a small, confined brick area below a street level grate. Due to the constrained views from this window, there would be an uninviting and restricted outlook from this kitchen. Additionally, while the rear basement light well area is larger than the front, it would still be of a limited size and the accessway for flat 2 would be immediately visible above. As such there would be a confined and enclosed outlook from viewpoints from both the front and rear elevation.
 11. I have also considered that planning permission was granted for the use of the property as a four bed dwellinghouse. However, the occupier of the basement bedroom would have been able to access the other areas of the building as a shared dwelling, which would not be the case once it has been separated into separate units. Notwithstanding the retention of the stairs between the units, the evidence before me is that the two proposed flats would remain as functionally separate dwellings. The occupants of the proposed basement flat would not, therefore, have the same opportunity to inhabit the other levels in the building.
 12. The appellant has submitted two appeal decisions which also involve the subdivision of existing properties into separate dwellings². However, it does not appear that these decisions relate to the development of basement dwellinghouses and consequently, have limited relevance to the issues with

¹ For example, through a Daylight Assessment

² APP/B0230/W/22/3291994 and APP/B0230/W/21/3273311

living conditions identified above. I am also not aware of the particular circumstances of those cases. In any event, I must consider the appeal scheme on its own merits.

13. In conclusion, the proposed development would not provide acceptable living conditions for future occupiers, in relation to outlook and daylight. As such, it would not demonstrate best practice principles of urban design, contrary to LLP25 of the Luton Local Plan 2017 (the LP). Accordingly, it would not accord with local plan policies, contrary to LLP1 of the LP. It would also not comply with the requirement for development to provide a high standard of amenity for future users, contrary to paragraph 130 of the National Planning Policy Framework (the Framework).
14. The Council also allege conflict with Policy LLP15 of the LP. However, this relates to housing provision and my attention has not been drawn to any words in it that are relevant to this issue. This policy has therefore not been determinative with regard to this main issue.

Living conditions – neighbouring occupiers

15. The proposed development would increase the number of households within the appeal site, thereby increasing the general external activity around the property. However, the appeal site is located within a row of terraced housing which already experiences a high level of activity associated with general residential use.
16. As the proposed development would introduce an additional studio flat to the area, which is suitable for occupation by one individual, it is unlikely that it would generate an excessive amount of further activity. Additionally, flat 1 would only be accessible through the rear of the appeal site, thereby separating traffic between the front and rear elevations.
17. In conclusion, for the reasons set out above, the proposed development would not cause unacceptable harm to the living conditions of neighbouring occupiers, with regard to noise and disturbance. Accordingly, it would ensure that a high standard of amenity is retained for existing and future users, in compliance with chapter 12 of the Framework.
18. The Council also allege conflict with Policy LLP25 of the LP. However, this relates to high quality design and has limited relevance to this main issue. This policy has therefore not been determinative with regard to this main issue. Accordingly, there would be no conflict with the purposes of Policy LLP25 and, by extension, LLP1 of the LP.

Housing mix

19. Policy LLP15 of the LP seeks to meet the housing needs of Luton by ensuring that the size, type and tenure provided reflects the housing need for the area, as identified by the Luton & Central Bedfordshire Strategic Housing Market Assessment Update 2015 (the SHMA 2015). The identified requirements of the SHMA 2015 are monitored through the Strategic Housing Land Availability Assessment 2019 (SHLAA 2019).
20. However, the Council has not identified any specific evidence in the above documentation which satisfactorily demonstrates that there has been a significant surplus of 1 bed units in the Borough. I have not, therefore, been

supplied with substantiated evidence to suggest that the proposed development would result in the oversupply of housing, and so this concern merits only limited weight. This is of particular relevance, given that the proposed development is a studio flat and so, could reasonably be differentiated from 1 bed units.

21. The provision of a studio flat would make a contribution to the Government's aspiration to significantly boost the supply of homes across the country³. It would also provide a type of housing for those community groups which have limited financial resources⁴. These factors weigh in favour of the proposal, given that a studio flat would increase the diversity of housing within the area.
22. The proposal would preserve the ongoing use of the appeal site as a 2 bedroom property at flat 2, with no functional difference in terms of the size of the dwelling, given that the basement is not currently in use. It would therefore not materially alter the provision of this size, type and tenure of dwelling and there would be no harm to the housing mix of the area in this regard.
23. Although there is an extant planning permission for the development of a 4 bedroom dwelling house at the appeal site, the proposed development would not result in the loss of an existing larger family home - only a potential one. Nevertheless, the permission is extant and could be implemented. It therefore represents a fallback position against which to assess the current proposal. However, the loss of a potential, but not guaranteed, larger family home merits only limited weight.
24. In conclusion, the proposed development would support an appropriate housing mix and would help to meet the housing needs of Luton. The proposal therefore complies with Policies LLP15 and, by extension, LLP1 of the LP. As such, it would add to the overall quality of the area, in compliance with chapter 5 of the Framework.

Conclusion

25. Although the proposal would result in an acceptable housing mix and would not cause unacceptable harm to the living conditions of neighbouring occupiers, it would result in unacceptable living conditions for future occupiers. It therefore conflicts with development plan policy and to the development plan as a whole. No material considerations have been demonstrated which would outweigh the conflict. Therefore, for the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal be dismissed.

S Lo

INSPECTOR

³ Paragraph 60 – National Planning Policy Framework

⁴ Paragraph 62 – National Planning Policy Framework