



Appeal Decision

Site visit made on 22 November 2023

by K Allen MEng (Hons) MArch PGCert ARB

an Inspector appointed by the Secretary of State

Decision date: 21 December 2023

Appeal Ref: APP/B0230/W/23/3315653

83 Russell Rise, Luton LU1 5ET

- 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 Charlie Simpson of British Home Buyers against the decision of Luton Borough Council.
 - The application Ref 22/01279/FUL, dated 20 October 2022, was refused by notice dated 8 December 2022.
 - The development proposed is extensions and alterations to existing dwelling and change of use to 8-bedroom HMO.
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Decision

1. The appeal is dismissed.

Application for Costs

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

Preliminary Matters

3. The appellant asserts that the appeal property could be enlarged, and its use changed to a six bed HMO without the need for planning permission. This has been demonstrated by the recently approved Prior Approval Application¹ and a Lawful Development Certificate². I am satisfied that if the appeal proposal were dismissed, there is a reasonable prospect that such a fallback position would be implemented. As such I have considered it throughout my decision.

Main Issues

4. The main issues are:
 - the effect of the proposal on the borough's supply of family houses;
 - the effect of the proposal on the living conditions of adjoining occupiers, with particular regard to noise and disturbance;
 - whether the proposal would provide a satisfactory living environment for its future occupants, with respect to indoor living space;

¹ Application Reference: 22/00525/PARES

² Application Reference: 22/00434/LAWP

Reasons

Supply of family houses

5. The area is residential in character, with Russell Rise comprised predominantly of long terraces to either side of the street. The appeal site comprises a typical mid-terrace house currently arranged as a three bedroom single family dwelling, with accommodation across two storeys. The proposal would involve a part two storey, part single storey rear extension and a dormer roof extension with internal reconfiguration to accommodate eight Houses of Multiple Occupancy (HMO) bedrooms.
6. Policy LLP15 of the Local Luton Plan 2011-2031 (November 2017) (LLP) seeks to ensure that new housing meets the identified needs of the Borough, as highlighted within the Strategic Housing Market Assessment and monitored annually via the Strategic Housing Land Availability Assessment.
7. The Council asserts that the latest data indicates a need for 3-bedroom dwellings and the appellant does not dispute this. Moreover, I have no substantiated evidence before me to suggest there is an identified need for HMOs.
8. The appeal proposal would result in the loss of a three bedroom dwelling, and I have no reason to disagree that there is a recognised local need for such accommodation. However, the fallback position to convert the property to a six bed HMO would result in the same loss.
9. Whilst I acknowledge that the proposal would conflict with Policies LLP1 and LLP15 of the LLP and paragraph 63 of the Framework which support the delivery of new housing for which there is a recognised local need. Due to the fallback position, I conclude that proposal would not harm the borough's supply of family houses.

Living Conditions - adjoining occupiers

10. The proposed HMO would comprise up to eight unrelated individuals/couples, all of whom would have their own separate work/domestic regimes and attract their own visitors and deliveries at different times during the day and evening. In this respect, the HMO use is likely to increase the volume of movements to and from the property, compared to its current use as a single-family dwelling, and the range of times when these activities take place.
11. In addition, due to the increase in occupancy, the proposed HMO use, with eight separate individuals/couples using the rear garden for recreation and for entertaining visitors would result in a more intensive use of the garden than would be the case with a single family occupying the property. Consequently, I am satisfied that there would be an increase in noise and disturbance to neighbouring occupants as a result of the intensification of use.
12. As indicated by the fallback position, the appeal property could be converted to a six bed HMO under permitted development, with the noise and disturbance generated considered comparable to a large family. However, conversion to an eight bed HMO requires planning permission as the increased occupancy has the potential to have significant effects on living conditions which must be explicitly considered on a case by case basis.

13. Although the increase in bedrooms between the fallback and the appeal scheme would be limited, there would be at least two additional occupants. Consequently, due to the constrained nature of the appeal site and the close proximity of the neighbouring dwellings, the noise and disturbance generated by the additional occupants and their associated visitors and deliveries would be noticeable and hence more harmful to the living conditions of the adjoining occupants when compared to the fallback position.
14. Therefore, I conclude that the development would have a harmful effect on the living conditions of adjoining occupiers, with particular regard to noise and disturbance. This conflicts with Policies LLP1, LLP17 and LLP25 of the LLP where they require development to be of high-quality design with an adequate standard of amenity. Further, the proposal conflicts with paragraph 135 of the Framework which requires all developments to create places with a high standard of amenity for existing and future users.

Living Conditions - future occupants

15. The proposal would extend and subdivide the appeal property to create eight individual ensuite bedrooms with one communal kitchen/diner space. The bedrooms would exceed the space required by the Nationally Described Space Standards and the kitchen/diner would be able to accommodate the facilities required for eight occupants as described in the Houses in Multiple Occupation Standards document. However, there would be no separate communal living space.
16. The appellant suggests that the kitchen/diner would provide ample space for socialisation and that there is no express requirement for a separate living space. Nevertheless, the plans provided fail to adequately demonstrate that there would not be enough space for all of the occupants to use the kitchen/diner at one time. Although it is reasonable to assume that the occupants would not require use of the kitchen/diner simultaneously, if this space were fully occupied, there would be no alternative indoor communal space available within the property.
17. I acknowledge that the occupiers of an HMO are more likely to live independently of one another, restricting occupiers to their private bedrooms. However, no matter how generous the size of the bedrooms, the lack of a separate living space for both the occupants and their visitors would not promote health and wellbeing. While there is a substantial rear garden, which would offer additional socialisation space, the use of this space would be weather dependent and as such does not offer an adequate alternative to an indoor communal living space.
18. My attention has been drawn to other appeal decisions relating to a change of use to HMOs. However, there are fundamental differences to the appeal proposal, these include the location, the relevant development plan, and the occupancy history of the property. As such, the context differs significantly to that of the scheme before me, and so it does not lead me to a different view in this case.
19. Although the fallback scheme would have less floor area as the first-floor rear extension would be omitted, it would have fewer occupants. In the absence of the full plans for the fallback scheme, it is reasonable to assume that additional

communal living space would be provided when compared to the appeal scheme.

20. Consequently, I find that the proposal would not provide a satisfactory living environment for its future occupants, with respect to a lack of internal living space. The proposal would conflict with Policies LLP1, LLP17 and LLP25 of the LLP which amongst other things seek to ensure development is of a high quality with an adequate standard of amenity. There would also be conflict with paragraph 135 of the Framework which requires that development creates places that promote health and well-being, with a high standard of amenity for existing and future users.

Other Matters

21. The Council raises concerns regarding character and appearance. However, this has not been brought forward as a reason for refusal. Whilst the proposal would intensify the use of the site, the proposed extensions would be limited in scale and would be residential in appearance. Moreover, I am satisfied that bin and cycle storage could be accommodated within the large rear garden and therefore would not have a detrimental effect on the street scene.

Conclusion

22. For the reasons given above, the fallback position reduces the weight I attribute to the loss of family housing. Although both schemes would be comparable in terms of character and appearance, the appeal scheme would be more harmful in terms of the living conditions of adjoining occupiers and future occupiers and does not lead me to determine the appeal other than in accordance with the development plan.
23. Therefore, I conclude that the proposal conflicts with the development plan as a whole and there are no material considerations, including the Framework that would outweigh that conflict. Therefore, the appeal is dismissed.

K Allen

INSPECTOR