



Appeal Decision

Site visit made on 6 February 2024

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2024

Appeal Ref: APP/B0230/W/23/3323569

25B Mill Street, Luton LU1 2NA

- 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 Mrs Nafeena Beg against the decision of Luton Borough Council.
 - The application Ref is 22/01561/FUL.
 - The development proposed is first floor flat.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published. While there have been some changes to the numbering of paragraphs that are relevant to this appeal, this has not otherwise raised any new matters which are determinative to its outcome.
3. The Council's first reason for refusal relates to inaccuracies in the submitted plans and details. I saw on my site visit that the front elevation windows and doors and the internal arrangement shown on the existing plans do not correspond with the existing development on site. Nevertheless, the appeal is dismissed for the reasons set out below, and amending the plans to resolve these discrepancies would not lead me to a different conclusion. I have thus considered the appeal based on the plans before me.

Main Issues

4. The main issues are therefore:
 - The effect of the proposal on the character and appearance of the area; and
 - The effect of the proposal on the living conditions of the occupiers of neighbouring properties, with particular regard to light, outlook, noise and disturbance.

Reasons

Character and appearance

5. The appeal site comprises a parcel of land to the rear of an existing terrace of properties on Mill Street. The site is currently occupied by a single storey structure housing a self-contained residential flat. This existing building abuts the site boundary on 3 sides and sits adjacent to an existing two storey structure on the neighbouring plot. The height of the appeal building is modest

comparative to neighbouring buildings. A storage area, garden and patio space occupy the remainder of the appeal site.

6. The surrounding area is characterised by a mix of primarily two storey traditional terraced buildings and larger commercial and residential buildings. I saw on my site visit that the area to the rear of Mill Street serves an ancillary purpose primarily as parking and storage space in connection with the residential and commercial uses fronting Mill Street and New Bedford Road. Notwithstanding the appeal building, the provision of detached residential units to the rear of existing properties is not a prevailing characteristic of the area.
7. The limited development that is found in this rear area is subservient in scale and form to that with a frontage onto the street. In places, the rear space is subdivided into small yards serving the frontage buildings. Taken as a whole, the space and limited development in this rear area provides somewhat of a buffer between the development along Mill Street and the adjacent railway line.
8. The proposal would not increase the existing footprint of the building. However, it would extend vertically above it, increasing its overall height, and considerably adding to its mass. This increased size and bulk of the building, combined with the intensification of the residential use of the site, would be at odds with the current ancillary function and subservient form of development in this rear area. Additionally, while the proximity of the existing building to neighbouring buildings is established, its increased size would appear cluttered and have a deleterious effect on the sense of space. The proposal would thus erode the prevailing spaciousness and ancillary nature of this rear area.
9. I therefore conclude that the proposal would be harmful to the character and appearance of the area. It would conflict with Policies LLP1, LLP15 and LLP25 of the Local Luton Plan 2011-2031 November 2017 (the Local Plan). These policies, among other provisions, seek to ensure new development contributes to enhancing a sense of place, preserves or improves the character of the area and avoids over-intensification of the site. They also seek to ensure buildings and spaces are of a high-quality design, including by responding positively to the townscape, site and building context, form, scale, height and pattern of development, among other provisions.
10. The proposal would also conflict with Chapter 12 of the Framework, in particular paragraph 135, which states that planning decisions should ensure that developments will function well and add to the overall quality of the area, are visually attractive as a result of good architecture and layout, are sympathetic to local character, including the surrounding built environment, and establish or maintain a strong sense of place, using the arrangements of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit.

Living conditions

11. The appeal building is sited to the rear of existing buildings on Mill Street. There are minimal separation distances between the appeal building and the rear facing elevations of the neighbouring terrace. Based on the evidence and my own observations, there is residential accommodation in the upper floors of these neighbouring properties. The outlook from these properties is already somewhat constrained by the presence of the existing outbuildings to the rear, and the large residential building adjacent.

12. While the proposal would not sit directly behind 27 Mill Street, and only partially behind 23 Mill Street, given its proximity and size it would significantly erode the outlook from rear facing windows and spaces serving Nos 23, 25 and 27. Its increased mass would appear overbearing for occupiers of these neighbouring properties and would unduly increase the sense of enclosure.
13. To the rear of No 27 there is a 2-storey outbuilding that sits immediately adjacent to the shared boundary with the appeal site and features three windows looking across the roof slope of the existing building. The appeal proposal would extend directly in front of these windows with minimal separation. The occupation of this neighbouring building is not clear. Nevertheless, the appeal proposal would block a significant proportion of the light available to its upper floor.
14. The appeal building itself features living accommodation at ground floor. The proposal would be built above this, facilitated by the removal of roof lights serving ground floor living spaces. These habitable rooms are single aspect, served only by windows in the east facing elevation. Given the depth of the existing building, the loss of the roof lights would unduly reduce the amount of natural light to these rooms. This would be exacerbated by the proposed external staircase that would sit above and in front of ground floor openings.
15. Paragraph 129(c) of the Framework indicates that, when considering applications for housing, a flexible approach should be taken in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site. However, this is subject to the resulting scheme providing acceptable living standards. Given the harm set out above, it is not considered that the proposal would provide acceptable living standards for the occupiers of the existing and neighbouring properties.
16. The Council's second reason for refusal, concerning the effect on the amenities of neighbouring properties, also refers to general noise and disturbance. The Council has not provided any clarification regarding these concerns in their officer report or appeal submissions. The surrounding area is a mix of commercial and residential uses and, given its limited scale and the residential nature of the development, the appeal proposal would not result in undue noise or disturbance for the occupiers of neighbouring properties.
17. While I have not identified any harm to the living conditions of the occupiers of neighbouring properties through undue noise and disturbance, I conclude that the proposal would have a harmful effect on the living conditions of the occupiers of neighbouring properties, with particular regard to light and outlook. It would therefore be contrary to Policies LLP1, LLP15 and LLP25 of the Local Plan. These policies, among other provisions, seek to create high-quality and healthy places, avoid over-intensification of sites, and ensure buildings and spaces are of a high-quality design, including avoiding backland development where it would give rise to adverse amenity, and minimising loss of light.
18. The proposal would also conflict with Chapter 12 of the Framework in this regard, in particular paragraph 135, which states that decisions should ensure that development creates places with a high standard of amenity for existing and future users.

Other Matters

19. The proposal would use previously developed land. It would also add to the housing supply within an existing urban area, with good access to public transport and local services. It would provide a temporary boost in employment during construction, and additional residents may contribute to the local economy and vitality of the community. Nevertheless, these benefits would be modest, given the small scale and context of the development.
20. The appellant also contends the proposal would widen the choice of accommodation in this area. However, evidence of the existing housing mix, and the housing need in this area, has not been provided.
21. I recognise there is support in both local and national policy for the efficient and effective use of land, including brownfield land. Paragraph 123 of the Framework indicates decisions should promote effective use of land in meeting the need for homes, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Paragraph 124(e) supports opportunities to use the airspace above existing residential premises for new homes. Nevertheless, this must be well-designed and consistent with the prevailing height and form of neighbouring properties and the overall street scene. Given the harm identified above, these paragraphs provide limited support to the proposal in this case.
22. Paragraph 124(c) states that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes. However, the site is already in residential use, and given the harm identified, it has not been demonstrated that the site is suitable for additional residential development.
23. Policy LLP3 of the Local Plan states high quality residential development will respect local distinctiveness while making best use of opportunities for higher density development. Policy LP15 of the Local Plan also indicates that higher densities will be encouraged within Luton Town Centre, but new housing should not result in over-intensification of the site. Likewise, Policy LP25(v.) of the Local Plan seeks to optimise higher densities but also seeks to avoid backland development that would give rise to adverse amenity. In view of the identified harm, compliance with these policies has not been demonstrated.
24. The appellant contends that the appeal proposal benefits from deemed permission pursuant to Schedule 2 Part 1 Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), and that this should be considered as a fallback position. However, it has not been clearly demonstrated that the proposal would constitute Part 1 Class AA development. Moreover, the evidence does not indicate that prior approval has been, or would be, granted for such development, which is a condition of Class AA. I therefore do not consider there to be any real prospect that such development might occur were the appeal dismissed. This therefore does not weigh significantly in favour of the appeal proposal in this instance.
25. I saw on my site visit that the appeal site sits near a rail line. There is also extraction and ventilation equipment on the rear elevation of the adjacent terrace, serving existing commercial properties. Notably, the Council's Environmental Protection team objected to the application due to the high risk of adverse effect to dwelling occupiers and outdoor amenity through noise.

Concerns were also raised regarding vibration impacts from the railway, and odour and fumes from restaurant or takeaway kitchen premises.

26. However, there is little substantiated evidence before me regarding the above matters. Moreover, the living conditions for future occupiers did not feature in the Council's reasons for refusal. As the appeal is dismissed for other reasons, I have not considered these matters any further.

Conclusion

27. The proposed development conflicts with the development plan, taken as a whole. I have found no material considerations that indicate the appeal should be determined other than in accordance with the development plan. Consequently, I conclude that the appeal is dismissed.

Ryan Cowley

INSPECTOR