



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: 12 April 2024

Appeal Ref: APP/B0230/W/23/3323816

797 Dunstable Road, Luton LU4 0HL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr L Lombardo against the decision of Luton Borough Council.
 - The application Ref is 22/01496/FUL.
 - The development proposed is erection of a detached two bedroom dwelling with associated amenity and parking.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a detached two bedroom dwelling with associated amenity and parking at 797 Dunstable Road, Luton LU4 0HL in accordance with the terms of the application, Ref 22/01496/FUL, subject to the conditions in the schedule at the end of this decision.

Preliminary Matters

2. In the banner heading and formal decision above, I have referred to the description of the proposal contained within the appeal form and the Council's decision notice. This describes the proposal more precisely than that contained within the application form.
3. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published. This has not raised any new matters which are determinative to the outcome of this appeal.

Main Issue

4. The main issue is the effect on the character and appearance of the area.

Reasons

5. The appeal site comprises a parcel of land at the end of a residential terrace on Hayhurst Road. It adjoins commercial units at the rear of 797 Dunstable Road. The evidence indicates that the appeal site has most recently been occupied by a single storey structure in commercial use, albeit I could see at the time of my site visit that this had been partially demolished.
6. The surrounding area is characterised by two storey dwellings, albeit with some examples of ground floor commercial uses and single storey offshoots around the junction of Hayhurst Road and Dunstable Road. South of the appeal site, Hayhurst Road is primarily lined by semi-detached and terraced dwellings, though there are several examples of detached houses and bungalows, including a modest two storey detached dwelling opposite the appeal site.

7. Near the appeal site, dwellings are typically finished in a mix of red brick, light colour render or pebbledash, with grey roofs and chimneys. On the appeal site's side of the road, modest canopy and bay window structures are common to front elevations. Dwellings are set back from the footpath behind small front garden spaces or driveways, with some enclosed by low walls or fences. To the rear, private garden spaces are often elongated and generously sized, providing a sense of spaciousness.
8. The appeal proposal would introduce a two-storey detached dwelling adjacent to the existing terrace. It would be set back slightly further from the footpath than the neighbouring dwelling at 1 Hayhurst Road behind an unenclosed front driveway. The eaves and ridge height of the proposed dwelling would also sit lower than other dwellings along the street. However, its height would be broadly in line with No 797. Moreover, a narrow path leading to the proposed rear garden space would provide visual separation, and soften the transition, between the proposed dwelling and the taller neighbouring terrace.
9. The proposed dwelling would be finished in brick with render at first floor. The proposed fenestration would be proportionate and similarly arranged to that of the adjacent terrace. It would have a dual pitched roof with side facing gables, and a modest canopy would sit above the front door. The form and appearance of the proposed dwelling would thus be largely in keeping with its immediate neighbours. Moreover, its detached nature would not appear incongruous in view of the existing detached dwelling opposite.
10. The proposed external amenity space to the rear and side of the proposed dwelling would be relatively modest, compared to many other rear garden spaces in this area. Its 'L' shaped form is also not a particularly common feature locally. However, the amount of space proposed is commensurate to the modest size of the proposed dwelling. Its size is also not entirely incongruous, with some other examples of somewhat modest rear gardens in the vicinity, including at No 2, and others further south along Hayhurst Road and on the opposite side of Dunstable Road.
11. A sense of openness would be maintained to the front and rear of the dwelling due to the absence of any significant development immediately opposite or behind the appeal site. Separation between the proposed dwelling and the existing two-storey dwellings on Dunstable Road would also be maintained by the intervening single storey commercial units.
12. Overall, the proposal would thus appear as a subservient and sympathetic addition to the street scene that would not appear incongruous in the context described above. Moreover, it would not have a harmful effect on the existing sense of spaciousness or appear unduly cramped. It would therefore not represent an over-intensive form of development.
13. I conclude that the proposal would not harm the character and appearance of the area. It would be in accordance 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 avoid over-intensification of sites and ensure new development contributes to enhancing a sense of place and preserves or improves the character of the area. They also seek to ensure buildings and spaces are of a high-quality design, responding positively to the townscape, street scene, site and building context, form, scale, height, pattern and materials, distinctiveness and natural features.

14. I have not identified any conflict with Chapter 12 of the Framework, in respect of its aims of achieving well-designed and beautiful places.

Other Matters

15. The appeal site is located within the Impact Risk Zone (IRZ) for the Blow's Down Site of Special Scientific Interest (SSSI). Section 28G of the Wildlife and Countryside Act 1981 (the WCA) imposes a duty on relevant authorities to take reasonable steps to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.
16. Blow's Down is part of the Lower Chalk escarpment to the south east of Dunstable. The escarpment changes abruptly from a north west to south west aspect and the chalk is capped by clay. These marked geographical and geological features, which also include a small disused quarry and old banks associated with medieval cultivation terraces, have influenced the development of a wide range of grassland communities. As such, the SSSI represents a rich example of open unimproved grassland which supports a range of characteristic chalk and neutral type grassland communities. Examples of supported flora and fauna include common spotted orchid, kidney vetch, nationally rare great pignut and beetle, and migrating birds.
17. This matter was not addressed in the planning application or in any of the submitted evidence, and so I have sought the views of both parties in this regard. The appellant contends that, due to the distance of the appeal site from Blow's Down, it would have no effect on the SSSI. No concerns have been received from the Council. In line with Section 28I of the WCA, Natural England (NE) has also been consulted on the appeal. NE has concluded that, based on the scale and nature of the proposed development, construction and operation will not have any adverse impact on the Designated Site features. There is no substantive evidence before me that would lead me to a different conclusion.
18. I am therefore satisfied the proposal would have no adverse effect upon the flora, fauna or geological or physiographical features by reason of which the SSSI is of special interest.
19. Concerns have been raised by an interested party regarding lack of car parking provision, external amenity space and loss of privacy for occupiers of 1 Hayhurst Road. However, these appear to be based on previous proposals for two self-contained flats on the site.
20. In respect of the appeal proposal before me, the Council has not raised any concerns regarding the level of on-site car parking proposed or the living conditions of future occupiers, with particular regard to external space standards. The evidence indicates that both the proposed parking provision and external amenity space would meet locally adopted standards. There is no compelling reason before me to conclude otherwise.
21. The proposed dwelling would sit close to the shared boundary with No 1, and its associated rear garden space. Boundary screening would prevent any meaningful overlooking from the proposed ground floor windows. While the proposal would also feature two first floor rear facing windows, the window closest to the shared boundary would serve a bathroom. Such spaces are used less frequently than other rooms, and mutual privacy is typically required. The

other window would serve a bedroom. However, views from either window over this neighbouring garden would be considerably oblique and comparable to the relationship between other dwellings and rear gardens along the street. This would therefore not unduly harm the living conditions of the occupiers of No 1.

Conditions

22. The Council has suggested conditions should the appeal be successful. I have considered these and amended where necessary to accord with the Planning Practice Guidance (PPG) and the tests for conditions set out in Paragraph 56 of the Framework.
23. In addition to the standard time limit condition, it is necessary to specify the approved plans as this provides certainty. A condition to secure details of external finishing materials is required to safeguard the character of the area. A condition is required to prevent any windows being installed in the side elevations of the proposed dwelling, in order to safeguard the privacy of future occupiers and the occupiers of neighbouring properties. The proposed parking is also required to be laid out prior to occupation to ensure adequate parking is provided for future occupiers and to safeguard highway and pedestrian safety.
24. The Council's Environmental Protection team has advised that, as a derelict site and one that appears of age, a phase 1 contamination assessment of risk to the health to construction workers, neighbours and future occupants of the dwellings should be carried out. A condition is thus required to secure an assessment of the risks posed by any contamination, along with measures to be taken, including the timescale, to remediate the site, deal with any unexpected contamination, and provide a verification report to the Council.
25. Additionally, the evidence indicates that the site is located in a Noise Important Area and experiences daytime and night-time adverse noise impacts from the heavily trafficked A505 Dunstable Road. Conditions to secure a noise impact assessment and any necessary mitigation measures is therefore necessary.
26. Conditions to secure and maintain visibility splays at the access to the site and to agree surfacing and drainage details for the proposed parking areas are required in the interests of highway and pedestrian safety.
27. It is reasonable that a Construction Method Statement be secured by planning condition, given the proximity of neighbouring dwellings and businesses, and somewhat constrained nature of the site.
28. The Council has suggested a condition to secure an electric vehicle charging point. However, the provision of electric vehicle charging points is covered under separate legislation, so it is not necessary to repeat it in this instance.
29. A condition is also suggested requiring refuse bins to be stored at all times in the designated bin store. The appeal site provides ample space for bin storage to the side or rear of the proposed dwelling and given the modest scale of the development, it is not considered necessary, reasonable or enforceable to apply such a condition in this instance.
30. The Council has suggested removal of permitted development rights that would preclude the erection of further buildings, extensions or other structures without planning permission. However, the suggested condition is imprecise, and there is no compelling justification before me for sweeping restrictions.

Conclusion

31. The proposed development would adhere to the development plan as a whole and there are no other considerations that would outweigh this finding. Accordingly, for the reasons given, the appeal succeeds.

Ryan Cowley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

ATK/21/LL/Dr/TP1A (Proposed Elevations)
ATK/21/LL/DR/Tp2A (Proposed Ground and First Floor Plans)
ATK/21/LL/DR/TP3A (Location Plan)
ATK/21/LL/Dr/TP5 (Proposed and Existing Street Scene)
- 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - a. delivery, demolition and construction working hours;
 - b. the parking of vehicles of site operatives and visitors;
 - c. loading and unloading of plant and materials;
 - d. storage of plant and materials used in constructing the development;
 - e. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - f. wheel washing facilities;
 - g. measures to control the emission of dust and dirt during construction;
 - h. a scheme for recycling/disposing of waste resulting from demolition and construction works.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 4) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 14 days of the report being completed and approved in writing by the local planning authority.

- 5) No development above finished ground floor level shall commence until details / samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 6) No development above finished ground floor level shall commence until a noise impact assessment and noise mitigation scheme for the dwelling hereby approved has been submitted to and approved in writing by the local planning authority. The noise impact assessment shall identify all potential sources of noise likely to impact on the site, including noise from neighbouring dwellings, road traffic, mechanical and equipment noise. The noise mitigation scheme shall include details of acoustic design(s) and demonstrate suitable mitigation measures to control noise impacts on the future occupiers of the residential development and neighbouring properties. All works which form part of the noise mitigation scheme and acoustic design(s) shall be installed and implemented before the dwelling hereby approved is occupied and retained thereafter.
- 7) No development above finished ground floor level shall commence until details of the surfacing and drainage of the parking areas hereby approved have been submitted to and approved in writing by the Local Planning Authority. The details thereby approved shall be installed prior to the occupation of any building on the site.
- 8) The frontage car parking for the development, as identified on the approved plan ATK-21/LL/DR/Tp2A, shall be laid out and ready for use prior to the occupation of the development hereby permitted.
- 9) Notwithstanding the submitted plans, triangular pedestrian visibility splay(s) of 1.8 x 1.8 metres shall be provided on either side of the access prior to the occupation of the development hereby approved. The splays shall be positioned within the site at right angles to the highway (measured at the highway/site boundary). The visibility splays so described shall be maintained free of any obstruction to visibility exceeding a height of 600mm above the existing ground level.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows shall be fitted within the side elevations of the dwelling hereby approved.

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