



Appeal Decision

Site visit made on 16 September 2024

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2024

Appeal Ref: APP/B0230/W/24/3342696

Rear of 31-37 Chapel Street, Luton LU1 5DA

- 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 D Westcott against the decision of Luton Borough Council.
 - The application Ref is 23/00232/FUL.
 - The development proposed is proposed 5 storey flat roof building to provide 14 flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposal on the application form varies from that on the decision notice. That on the application form adequately describes the proposal, and I have considered it on that basis whilst removing reference to part retrospective as it is not an act of development.
3. At the time of my site visit, I saw that the development had commenced, and the shell of the building had been erected. The application made clear that the scheme was submitted as part retrospectively, and I have dealt with the appeal on that basis. For the purposes of this decision, direction references are taken from the submitted site plan, which indicates Chapel Street largely to the west of the proposed appeal building.
4. Since the application was determined, the National Planning Policy Framework (the Framework) has been revised. Both the main parties have had the opportunity to comment during the appeal process.
5. An updated drainage report¹ was submitted with the appeal. The updated report expands on the details of the drainage scheme and does not, therefore, fundamentally change the nature of the proposal. Consequently, I do not consider that my accepting the document would prejudice any party to the appeal and I have considered it as part of this appeal.

Main Issues

6. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;

¹ Drainage Report Revision B dated 07 December 2023, prepared by Abington Consulting Engineers

- whether the proposed development would provide acceptable living conditions for future occupiers in relation to outlook and daylight;
- whether the proposed development provides an appropriate housing mix; and
- whether there would be adequate means of drainage.

Reasons

Character and appearance

7. The appeal site is located to the rear of properties on the eastern side of Chapel Street, close to the defined Luton Town Centre boundary. It would be accessed through a gap between properties on this side of the street. The frame of the appeal building was erected at the time of my visit. I observed how it is contained on three sides by tall boundary walls and surrounding planting and built form at lower and mid-levels. Above these walls are a large retail store (Matalan) situated close to the southern boundary, a carpark and tall trees to the east and a shallow-pitched parish hall to the north. To the front of the appeal building is two-storey housing.
8. The surrounding area has a mixed character with various property types and sizes, including modern blocks consisting of residential accommodation and multi-storey car parking, and older development of a more domestic scale and appearance interspersed with commercial development leading away from the Town Centre.
9. The proposed development when complete would see a five-storey flat roof building sited at the rear of the site. Given the site's lower land level and the location, height and variety of surrounding buildings, it would not result in a development that disrupts the nearby pattern and grain of development.
10. There are existing forms of backland development within the immediate area, such as the parish hall. Additionally, when seen from wider views, only the uppermost sections of the building would be visible. Given the varying design and materials, the finished development, when seen from middle to longer-distance views, would not appear as a discordant feature in this location.
11. However, when viewed from within the site and surrounding buildings, the overall scale, height, form, and design would not sit comfortably between the tall common boundary walls on three sides with buildings and trees behind in close proximity. Moreover, the arrangement of windows and balconies also emphasises the rather forced and cramped nature of the proposal with little separation from these surrounding features. The development would also result in a somewhat bland building overall with a lack of architectural and fenestration detailing.
12. I note that a scheme for flats was previously granted on-site and that the existing timber frame structure has load-bearing walls that can't be altered without compromising the structural integrity of the building. Nonetheless, that permission² is no longer extant and attracts limited weight in favour of the proposal. Moreover, I am not obliged to follow the Council's previous findings. In this instance, I have considered the proposal on its own merits

² Ref: 17/00449/FUL

and found it harmful to the character and appearance of the area for the reasons set out.

13. The Council's report also raised concerns with regard to providing space to safely transition and enter the appeal building and how this can be achieved should wider extant permissions³ be built out. However, I see no reason why details, including security lighting and demarcated footways, could not be conditioned to ensure safe and appropriate access from the appeal building to the street, given the relatively short distance.
14. For the reasons set out above, I conclude that the proposal would harm the character and appearance of the area. In these regards, it would conflict with Luton Local Plan (LLP) Policies LLP1, LLP15 and LLP25. Together, these seek, amongst other things, development of a high-quality design that responds to and enhances local character and that does not result in an over-intensification of the site. It would also be contrary to the Framework in so far as it seeks new development to be, sympathetic to local character and visually attractive as a result of good architecture and layout.

Living conditions

15. I have already established above that the appeal building would be situated close to tall common boundary walls, buildings, and trees to three elevations, which is evident on site given that the appeal building is partially built. This limited separation distance would remain upon completion, with the flats below the top floor substantially enclosed on three sides. Views out of many of the flats are largely single-aspect, and due to the constrained layout, views from many windows would result in an uninviting and restricted outlook. This would also be the case when occupiers use the balconies, especially those closest to the Matalan building.
16. Additionally, while noting the findings of the solar study in relation to a nearby site, no detailed daylight or sunlight report has been submitted in regard to light for future occupiers from the surrounding development. I note window position has been influenced in part by an extant consent to the front of the appeal site. However, no substantive evidence is presented to show adequate daylight and sunlight levels can be achieved for each flat. Therefore, in the absence of any detailed report, I conclude that it has not been satisfactorily demonstrated that the proposed development would provide adequate levels of sunlight or daylight for future occupiers of all the flats.
17. LLP Policy LLP25, Appendix 6 specifically addresses outdoor amenity space provision. There is no dispute the development would provide an overall amenity area in excess of the standards required by Appendix 6. However, as identified above, the proposed balconies would be harmfully enclosed by the surrounding built form, particularly the Matalan building. Therefore, the appeal proposal would provide a poor standard of outdoor space for future occupants, conflicting with criteria v. and xi. of LLP Policy LLP25. This poor standard would not be overcome by the incorporation of a communal landscaped area to the front.
18. The appellant has drawn my attention to the acceptability of the development in light of the previously consented scheme. Even if I were to accept that local

³ REF: 19/00889/FUL

plan policies have not fundamentally changed, I have still found harm for the reasons set out above.

19. Consequently, the proposal would fail to provide acceptable living conditions in terms of light, outlook and outdoor amenity space. Therefore, it would conflict with LLP Policies LLP01 and LLP25, which aim to secure high-quality design. It would also conflict with the Framework which seeks a high standard of amenity for future users.

Housing mix

20. LLP Policy LLP15 seeks to meet the housing needs of the Borough 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). The evidence presented also indicates that for the purposes of Policy LLP15, the appeal site is located within an allocated site⁴ for housing.
21. Taking into consideration the evidence in the above documentation, the Council has not identified any specific evidence in the above documents which satisfactorily demonstrates that there has been a significant surplus of one and two bed units in the Borough. Therefore, I am unconvinced that the development proposed would result in the oversupply of housing of this type in relation to delivering the mix of new dwellings sought over the plan period, and so this concern merits only limited weight. Moreover, the provision of 10 x 2 bedroom and 4 x 1 bedroom flats on an allocated site would make a contribution to the Government's aspiration to significantly boost the supply of homes as indicated in the Framework which weighs in favour of the proposal.
22. For the above reasons, the proposed development would support an appropriate housing mix and would help to meet the housing needs of the Council. The proposal would not therefore conflict with LLP Policy LLP15 and, by extension, Policy LLP1. It would also accord with the aims of the Framework for similar reasons.

Drainage

23. The appellant submitted additional information after the Council determined the application. The Lead Local Flood Authority (LLFA) still has concerns with the scheme. This is primarily due to the lack of detail regarding correct hydraulic calculations and the discharge rates. No further response from the LLFA was received during the appeal process.
24. Based on the submitted evidence and technical details, I see no reason why an acceptable scheme that meets the LLFA requirements could not be achieved. To that end, had I been minded to approve the development, conditions could be applied in regard to correct hydraulic calculations and the discharge rates to make the proposal acceptable. Thames Water has confirmed the proposed foul discharge to their foul sewer in Chapel Street, and the surface water rate at 5l/s to their surface water sewer in Chapel Street would be acceptable. I see no reason to disagree.

⁴ Appendix 4 – LLP15

25. For the reasons above and subject to conditions, the proposal could be made acceptable with regard to drainage matters. As such, the proposal accords with LLP Policies LLP36, LLP37 and LLP38, which seek to minimise flood risk and mitigate impacts through climate change and pollution.

Other Matters

26. The proposal would boost the supply of housing in the Borough with an additional 14 units in a sustainable location with access to services and facilities on a previously developed site allocated for development. Alongside being able to be built out relatively quickly, the proposal would also provide economic benefits both during and after construction. I attach moderate weight to these benefits, given the scale of the scheme. However, in the form proposed, this development would result in the significant harms identified above, and the benefits of the scheme do not justify development that would be contrary to the development plan.

Conclusion

27. The proposal would result in an acceptable housing mix with appropriate drainage facilities. However, it would result in unacceptable living conditions for future occupiers and harm the character and appearance of the area. It therefore conflicts with 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, the appeal is dismissed.

A Hickey

INSPECTOR