



Appeal Decision

Site visit made on 11 February 2025

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2025

Appeal Ref: APP/B0230/W/24/3347867

Rear of 35-37 Wellington Street, Luton LU1 2QH

- 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 Sohail Nawaz against the decision of Luton Borough Council.
 - The application Ref is 24/00114/FUL.
 - The development proposed is erection of a two storey building with undercroft access, parking, cycle and bin storage, to create 2 x 2 storey, 2 bedroom maisonettes.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposed development would preserve or enhance the character or appearance of the Town Centre Conservation Area (CA); and
 - Whether appropriate living conditions would be provided for the future occupiers of the proposal and maintained for neighbouring occupants of 35-37 Wellington Street (Nos 35-37), with regard to overlooking, privacy, amenity space and access.

Reasons

Character and appearance

3. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) states that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
4. The CA is concentrated on the Town Centre and includes a main shopping street and several streets that extend from it. The dominant Town Hall and the adjoining war memorial are key features. Based on the evidence before me, including my site visit, the significance of the CA, insofar as it relates to the proposal, is the varied design and scale of the built form in this secondary commercial street location.
5. The appeal site is a rear parking area behind a 19th century mid-terrace three storey property, Nos 35-37, which is in commercial use at ground floor and has recently been converted to three flats above. The original architectural features of the upper floors of the building have been retained on the front elevation. The rear

elevation, however, has been altered including the addition of flat roof extensions and the insertion of two large dormer windows.

6. The area between the backs of properties on Wellington Street and King Street is cluttered, containing a variety of rear structures, parking spaces and service yards. The proposal would span the gap between rear elements of the adjoining properties, infilling an open section thereby exacerbating an already cramped space. Furthermore, whilst traditional, and present on buildings on King Street, the proposed mansard roof would not reflect the design or appearance of any of the existing buildings and structures visible at the back of properties, including the altered rear elevation of Nos 35-37. Whilst the building could be constructed in matching materials, it would still be a visually incongruous addition.
7. The proposal would not be visible from Wellington Street, and its impact would be limited to views from King Street through a passageway, and from adjacent properties. It would also be in a similar position to a building demolished in 2005. Nonetheless, for the reasons set out above, it would be a discordant feature that would harm the significance of the CA as a designated heritage asset.
8. Paragraph 212 of the National Planning Policy Framework (the Framework) advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Paragraph 213 goes on to advise that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or development within its setting), should require clear and convincing justification.
9. In my judgement, the harm to the character and appearance of the CA would be 'less than substantial' but, nevertheless, of great weight. Under such circumstances, paragraph 215 advises that this harm should be weighed against the public benefits of the proposal.
10. The proposal would provide two additional flats that would contribute to the supply of two-bedroom starter sized family homes in a highly accessible location. However, the harm to the CA, to which I attach considerable importance and great weight, would outweigh such a public benefit.
11. I conclude that the proposal would harm the character and appearance of the CA. It would therefore be contrary to Policies LLP1, LLP25 and LLP30 of the Luton Local Plan (LP) which seek to protect, conserve and enhance heritage assets and local distinctiveness. In addition, it would not satisfy the requirements of Section 72(1) of the Act.

Living conditions

12. At approximately 12 metres separation distance, windows of habitable rooms of one of the proposed flats would be in a close position to windows in the flats at Nos 35-37. Additionally, due to the relatively low height of the proposed opaque balustrade, there would also be intervisibility between the terrace and the existing flats at Nos 35-37. This would result in a high level of overlooking and loss of privacy.
13. Overlooking is accepted in tight urban locations, but there is no compelling evidence before me to suggest that the separation distance proposed is typical in

this part of the town centre. As such, a comparable level of overlooking does not currently exist in this area. The extent of intervisibility that would arise would lead to a significant loss of privacy, and the resultant standard of living conditions for the future occupants of the proposal, and the occupants of Nos 35-37, would be inadequate and unacceptable.

14. I acknowledge that the proposal would not breach the 25-degree line when measured from the first-floor bedroom windows at Nos 35-37, and that it would be in a position of a former building. Nonetheless, such factors would not justify a development that would provide unacceptable living conditions due to overlooking and loss of privacy. Even though the proposed flat would be likely occupied by no more than 3 people, the harm that I have found remains at an unacceptable level.
15. The proposed vehicular and pedestrian access would be via the passageway from King Street, through a rear, partly enclosed space which benefits from limited natural surveillance. As the route appears to be readily accessible to anyone, it would be an insecure and unattractive way for the occupants to gain access to their homes. No details of surveillance and security measures have been provided. For this reason, considering that the passageway is not in the ownership or control of the appellant, I am not satisfied that this matter could be satisfactorily addressed by the imposition of a planning condition. Consequently, the proposal would not create a safe place for the future occupants of the development, to the detriment of their living conditions, and in this regard would be contrary to the Luton Town Centre Design Guide. The appellant has suggested that any concerns regarding the access could be addressed through measures to secure a car free development. However, the removal of cars would not address the issue I have identified.
16. The proposed terrace for each flat would provide outdoor amenity space for its occupants that would be of a sufficient size to satisfy the requirements of Appendix 6 of the LP. As such, in this regard, the proposal would be acceptable. Nonetheless, for the above reasons, I find that appropriate living conditions for the future occupiers of the proposed development would not be provided due to overlooking and inadequate privacy and access arrangements. In addition, the proposal would not maintain satisfactory living conditions for the occupants of Nos 35-37. It would, therefore, conflict with LP Policies LLP1 and LLP25 which seek to secure high quality developments, that minimises overlooking, ensures privacy and promotes opportunities for reducing crime and anti-social behaviour.

Conclusion

17. The proposed development conflicts with the development plan and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict. I therefore conclude that the appeal should be dismissed.

Elaine Moulton

INSPECTOR