
Appeal Decision

Site visit made on 6 September 2016

by R W Allen B.Sc PGDip MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 September 2016

Appeal Ref: APP/B0230/W/16/3152929

Moreton Park Estate, Moreton Road South, Luton LU2 0TL

- 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 E M Chamberlain Group Ltd against the decision of Luton Council.
 - The application Ref 15/01135/FUL, dated 23 July 2015, was refused by notice dated 18 December 2015.
 - The development proposed is demolition of existing employment buildings and dwelling; erection of 2 No. 2-bedroom houses, 7 No. 3-bedroom houses, 1 No. 4 bedroom house, 19 No. 1-bedroom flats and 23 No. 2-bedroom flats with associated access, garaging and parking arrangements, bin store and electricity sub-station.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I received a signed legal agreement dated 7 September 2016 for financial contributions towards affordable housing, education, museums and waste, which the main parties agree meet the tests set out in paragraph 204 of the National Planning Policy Framework (the Framework). I have concluded that as a result, the Council is no longer defending its fifth reason for refusal. However, because I am dismissing the appeal for other reasons, it is not necessary for me to reach any conclusions on the adequacy of the legal agreement in my Decision.

Main Issues

3. Therefore the main issues are:
 - The effect of the proposed development on the character and appearance of the area having regard to the quantum of development, layout, and provision of external amenity space;
 - Whether the loss of the site for employment use is justified; and
 - The effect of the proposed development on the living conditions of existing occupiers of surrounding properties.

Reasons

Character and appearance

4. The appeal site contains a number of commercial buildings used for industrial, storage and vehicle related activities. I observed at my site visit that all units were occupied with the exception of Unit No 3, and Unit No 5 is permanently disused. The land slopes downhill towards the rear of the site. The appeal site is surrounded by residential properties of mixed character, age and plot size.
5. The proposed development would result in the removal of all existing commercial buildings, replacing them with four flatted blocks containing 41 flats and a separate flat above garages, and 10 dwelling houses. This and the scheme's modern architectural approach would set it apart from the form and character of surrounding properties which comprises largely conventional houses with varying sized rear gardens. However, I find no particular reason why the scheme need mimic or conform to the surrounding vernacular. Its design would be evolutionary and of its time, and I do not find any significant harm would arise to the area's character and appearance.
6. Planning permission had previously been obtained and renewed for the eastern and south eastern part of the site for residential development; the quantum and layout for the now lapsed consent is broadly consistent with the scheme before me. I note particularly that Block 1 would be set within its own generous area of open space and landscaping with some parking to front. I find nothing inherently objectionable about the proposed development on this part of the site.
7. However the quantum and scale of development on the remainder of the site is of some concern to me. I acknowledge that Block 4 would be at right angles from Blocks 2 and 3, and dwelling Nos 5 to 10 would be a little further away sandwiched between the rear boundaries of properties in Moreton Road South and Hogarth Close. Nevertheless because they would be positioned within close proximity of one another, I find that the appeal site would appear as a mass of buildings which would collectively appear overbearing on the site offering little in the way of any visual relief. Furthermore it would result in effectively all of the communal spaces being dominated by buildings, parking spaces and access roads. The diminutive grass areas around Blocks 2 and 3 would in my judgement be incapable of successfully softening the development and little opportunities would exist for any meaningful landscaping to establish. While I note the appellant's assertion that some 900sq.m of space on the site would be amenity land, evidentially much of this would be limited to the area surrounding Block 1 and to a lesser extent Block 4.
8. For these reasons, I find that the proposed development would not promote good design, and would appear noticeably and harmfully at odds with the surrounding and prevailing character of the area. The proposed development would not accord with policies LP1, ENV9 and H2 of the Luton Local Plan 2005 (Local Plan). These state that the Council will grant planning permission for development unless it would fail to maximise the opportunity to improve the physical environment of the town and enhance its character and appearance, and that there would be no unacceptable effect on the environment. It would also not accord with paragraph 65 of the Framework which requires concerns over incompatibility with the existing townscape to have been mitigated by good design.

Loss of employment

9. Local Plan policy H2 states that planning permission for residential development will be granted provided that development of the site would not lead to a loss of uses for which there is a recognised local need. Local Plan policy LP1 requires development not to conflict with the objectives of other policies. Paragraph 51 of the Framework supports changes to residential use from commercial buildings unless strong economic reasons exist to render such a change as inappropriate.
10. The main parties agree that the appeal site is contains low quality buildings, which are heavily constrained and accessed, such that its overall quality of the site is poor for employment purposes. Nevertheless, I observed that the site was well used and appeared popular notwithstanding the vacancy of one of the units. I therefore find no reason to disagree with the Council's assertion that such buildings have a role and purpose in providing low rent accommodation for new start-up businesses, and other uses which may otherwise be unable to afford more modern and higher rent accommodation.
11. However, notwithstanding the issues concerning expiring leases of the tenants, the appellant evidences in its updated viability report for 2016 that available capacity exists in the area, pointing to 30 available units and 4094 sq.m of floor space which the appellant states would amply accommodate the displaced businesses. Neither the Council nor the potentially displaced tenants have particularly disputed this or offered conflicting evidence as to why such accommodation would not suffice. It would therefore seem that available capacity exists and the site could be developed without resulting in a loss of a recognised need.
12. However even if I were to cast aspersions on the appellant's evidence on availability of alternative accommodation, I am satisfied that the ramifications of the requirements of the Energy Act 2013 are such that significant modifications and reinvestment of the building stock to improve energy performance would be necessary. I note the Council's view that such investment could be undertaken in stages to eventually bring them up to standard. However because of the site's poor location and access, I find the appellant's case persuasive that it would not be capable of raising rents sufficiently in order to make such an investment viable or worthwhile to justify the expenditure. I find that there would be a high likelihood that the buildings would in the near future become vacant and unusable; such that site would likely not make any contribution to employment needs of the borough. Whether the redevelopment of the site would lead to an excessive demand for employment has not been substantiated in evidence before me.
13. Therefore for the reasons set out above, I find that the proposed development would not cause significant harm to the employment needs of the borough. The proposed development would therefore accord with Local Plan policies H2 and LP1, and with the Framework, details of which I have set out above. I note the Council's view in respect the weight to be given to its emerging Local Plan and policies which designate the site as a Key Employment Area B. However little evidence before me suggests that the emerging plan is at an advanced stage in its adoption process. I have therefore afforded it little weight in my Decision.

Living conditions

14. The appellant states that the existing commercial Units 1 and 2, which occupy the boundary with properties in Hogarth Close, measure 46m in length and extend to 6m in height. The proposed dwelling No 10, which would similarly be positioned along the boundary, would measure 9.5m in length and to a height of 5.5m. I acknowledge that the distance between the flank wall of proposed dwelling No 10 and the rear elevations of properties in Hogarth Close would be below the separation distance advocated by Appendix 2 of the Local Plan. However the proposed layout plan indicates that both Nos 4 and 5 Hogarth Close project away from direct view of the flank wall of house No 10. But in any event, the reduction in built form along the boundary would be substantial, and would in my judgement result in a considerable improvement in outlook for the occupiers of properties in Hogarth Close.
15. The proposed development would result in the provision of 11 parking spaces to align alongside the side boundary fence of No 27 Moreton Road South, and the noise and disturbance from vehicle movements would undoubtedly cause some nuisance to the living conditions of the occupiers of this property. However, I find this would highly likely be less irritable over what the occupiers would currently endure from the existing commercial use and operation, and the associated noise and disturbance particularly noting that parking already exists along the boundary.
16. I therefore find that the proposed development would enhance the living conditions of occupiers of surrounding properties when assessed against the existing commercial use of the site. It would accord with Local Plan policies LP1 and H2. These state that the Council will grant planning permission for development unless it would fail to maximise the opportunity to improve the quality of life of residents.

Conclusion

17. I find the proposed development would not result in an unacceptable loss of employment land, or would it cause any significant harm to the living conditions of occupiers of properties in Hogarth Close and No 27 Moreton Road South. However, for the reasons given above, I find that the quantum of development proposed particularly on the north west part of the site would not amount to good design and would conflict with and cause considerable harm to the character and appearance of the area.
18. I therefore conclude that the appeal should be dismissed.

R Allen

INSPECTOR