

Appeal Decision

Site visit made on 16 August 2016

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 14 October 2016

Appeal Ref: APP/B0230/W/16/3149711

1 Curzon Road, Luton, Bedfordshire LU3 1BG

- 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 Mr Aldi Quazi against the decision of Luton Borough Council.
 - The application Ref 15/01880/FUL, dated 24 December 2015, was refused by notice dated 29 March 2016.
 - The development proposed is change of use from General Industrial use (Class B2) to Retail use (Class A1) and erection of single storey and double storey rear extension.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the appeal site is an appropriate location for retail development.
 - The effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to noise and general disturbance.
 - Whether adequate parking provision is provided and the effect on highway safety.
 - The effect of the proposal on the character and appearance of the area.

Reasons

The appeal site

3. No. 1 Curzon Road is a two storey commercial building with a printing business on the ground floor and associated office on the first floor. It is located fronting onto Curzon Road and is in between the residential gardens of No. 75 Biscot Road and properties on Whitby Road. Apart from the appeal property, the surrounding area appeared to be almost exclusively residential. At the time of my visit Curzon Road was very quiet and I noted that although a Controlled Parking Zone ('CPZ') was in place, there were a number of off street spaces available in Ellenhall Close, directly opposite the appeal site.
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The retail use

4. The conclusion within the appellant's appeal statement refers to the proposal being for a 'local convenience shop'. Furthermore, I have been provided with a copy of Policy S4 of the Luton Local Plan 2001-2011 ('LP') which relates to the loss of such facilities although I do not consider that it is directly relevant to this appeal. In any event, the application form is clear that the proposal is for an A1 Retail use and there is no suggestion from either party that it should be restricted, other than from any future changes of use to Class A2 or A3¹. I have therefore determined the appeal on the basis that the proposal is for an unrestricted A1 Retail use and not for a 'local convenience shop'.
5. Saved Policy S1 of the LP sets out the Council's retail strategy which adopts a sequential approach to retail development with locations in existing centres preferred to 'edge of centre' or 'out of centre' locations. Furthermore, that proposals must demonstrate that there are no suitable alternative sites or buildings in any locations higher in the retail hierarchy. Criteria (b) and (c) also require that the vitality and viability of any shopping policy areas is not adversely affected and that if edge-of-centre or out-of-centre, development would provide a facility for which there is a demonstrable need.
6. The appellant has provided no evidence that any suitable alternative sites or that any such sites or buildings, higher in the retail hierarchy have been considered or suitable justification for not following the established sequential approach.
7. The appellant contends that the LP is not up to date within the meaning of the National Planning Policy Framework ('the Framework'). I agree that the requirement for there to be a demonstrated need for the retail development is not included within the Framework, which also confirms that an impact assessment is not required for retail, leisure and office developments which are below 2,500 sq.m if, as is the case here, there is no proportionate locally set floorspace threshold. As such and in my view, I do not find that it is critical for the appellant to have demonstrated a local need or to have formally submitted an impact assessment, in this particular case.
8. However, although the LP pre-dates the Framework, having regard to paragraph 215 of that same document the requirement to apply a sequential test for a main town centre uses (which the glossary confirms includes Retail development), that is not in an existing centre is consistent with the approach set out in Framework. Moreover, the Framework is unequivocal that where the sequential test is not satisfied the application should be refused.
9. The proposal is not within an existing centre and in the absence of a sequential test to show that this is the most appropriate site available in which to accommodate the development, the aim of directing retail development to established centres would be undermined. In my judgement, if a permanent planning permission were granted without a sequential assessment or suitable justification for not following this approach, it could have an adverse impact on the vitality and viability of centres further up the hierarchy. Such impact may not be significant for one proposal, but it could cumulatively if policy were similarly set aside for others to follow suit.

¹ Condition 4 of the Council's list of additional conditions – 7 September 2016

10. For these reasons I conclude that it has not been demonstrated that the site is an appropriate location for retail development and the proposal would conflict with Policy S1 of the LP and the Framework.

Living conditions of neighbouring occupiers

11. An A1 Retail unit may generate some additional activity but the site is close to the junction with Biscot Road, which appeared to be a busy street on the approach into the town centre. The appeal site has no adjoining buildings and is the only building fronting onto the street in this section of Curzon Road.
12. The proposal seeks to operate seven days per week and from 08:00 hours to 20:00 hours. In my experience it is typical for such a use to operate within such hours and a retail use itself is not one with an inherent noise generating problem or one that is likely to generate anything more than a very limited amount of overall activity and vehicle movements. Furthermore, the presence of the side gardens and boundary treatment of Nos. 75 Biscot Road and 3 Curzon Road would further limit noise and disturbance for neighbouring occupiers.
13. For these reasons, the development would not conflict with Policy LP1 of the LP which, amongst other things require development to maximise the opportunity to improve the quality of life of residents. The proposal would also not conflict with the Framework's objective of securing a good standard of amenity for all future occupants of land and buildings.

Parking provision and highway safety

14. Although there is nothing before me to control the future user of the property, given the amount of retail floorspace proposed I do not consider that it is likely to generate a significant number of trips or that future users could not be safely accommodated within the surrounding highway network. Accordingly, I am satisfied that the proposal would not harm highway safety and would not conflict with Policy LP1 and T3 of the LP which, amongst other things require development to maximise the opportunity to improve the quality of life of residents and to not exacerbate road congestion, cause safety problems or demonstrable harm to the local environment.

Character and appearance of the area

15. The predominant character of Curzon Road and its immediate surroundings is residential, albeit that the existing unit is already in a commercial use. The proposal includes single and two storey rear extensions to the property which appear to be similar to a proposal granted planning permission by the Council on 3 July 2012. Although that permission appears to be no longer extant, the Council do not object to this element of the proposal and on the evidence before me, I have no reason to disagree with their assessment.
16. No other alterations to the appearance of the building are proposed as part of this appeal and the Council has put forward no substantive evidence that the replacement of the existing commercial use with what they consider to be a 'non-conforming' use would have a harmful effect on the character of the area.
17. For these reasons and in view of my findings in relation to the effect on living conditions of neighbouring occupiers, granting permission for an A1 Retail use

would not result in an unacceptable change in the character or appearance of the surrounding area. It would not conflict with Policies LP1 and ENV9 of the LP which seek to protect character and appearance and that development maximises the opportunity to improve the quality of life of residents.

Other Matters

18. Whilst I have had regard to the numerous appeal decisions that have been submitted by the appellant, they all appear to have been in different locations and were subject to different considerations and judgements. In the 2a Ash Road appeal, the appeal site was in a different location, close to a District Centre Frontage and the Inspector clearly considered that there were other considerations to outweigh the conflict with Policy S1 of the LP. Such considerations are not evident in the appeal before me. In the 114 Beechwood Road appeal, the inspector regarded the proposal as a small corner shop and although I have not been provided with the full details of that case, for the reasons given above that is not the case in this appeal. In the St Ethelbert Avenue appeal the retail use appears to have been already well established on the site and details of the particular nature of the retail offer also appear to have been before the Inspector.
19. Overall, whilst I have not been provided with the full details of each case I do not consider that the circumstances are directly comparable to the proposal before me and they do not alter my view in relation to the first main issue. In any event each case must be determined on its own merits.

Conclusion

20. Although I have found that the proposal would not harm the living conditions of neighbouring occupiers, the character or appearance of the area or highway safety, it has not been demonstrated that the proposal would be in an appropriate location for such development. In my view this is the prevailing consideration and so, for the above reasons and having considered all other matters raised, the proposal would conflict with the development plan, when read as a whole and the Framework. There are no material considerations before me which indicate that a decision should be made other than in accordance with the development plan and I therefore conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR