
Appeal Decision

Site visit made on 28 February 2017

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

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

Decision date: 22 March 2017

Appeal Ref: APP/B0230/W/16/3162436
108 Park Street, Luton LU1 3EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Nagi Quren of Deserts Rose Ltd against the decision of Luton Borough Council.
 - The application Ref 16/01470/REMCON, dated 10 August 2016, was refused by notice dated 21 October 2016.
 - The application sought planning permission for erection of canopies to rear courtyard without complying with a condition attached to planning permission Ref 15/01475/FUL, dated 18 May 2016.
 - The condition in dispute is No 1 which states that: "For the avoidance of doubt the external area to the rear of the premises at 108 Park Street, to which the canopies hereby approved would serve, shall be used for dining purposes associated with the restaurant use only and at no time shall it be used as a smoking area of any type."
 - The reason given for the condition is: "To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policy(ies) LP1 and ENV9 of the Luton Local Plan".
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted retrospectively in May 2016 for canopies to the rear courtyard of 108 Park Street. The appellant wishes to remove condition 1 which prevents the external area which the canopies serve from being used as a smoking area of any type. The main issue therefore is the effect the removal of this condition would have on the living conditions of occupiers of neighbouring properties with regards to noise, odour and general disturbance.

Reasons

3. 108 Park Street forms part of a terrace of properties from 108 to 114 Park Street and the junction with Chequer Street. Another row of terraced properties continues to the rear of 108 to 114 Park Street along the north-west side of Chequer Street at Nos 1 to 13. These terraced properties on both streets occupy narrow plots with small courtyards at the rear. 108 Park Street is used as a restaurant while 110 Park Street is a betting shop, but otherwise the use of these properties appears to be residential at ground and first floors.
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4. The rear courtyard at 108 Park Street contains a seating area associated with the restaurant. Walls enclose the courtyard to north-west and south-west, but the courtyard is open to No 110 over a low level boundary. The canopy roof forms a 'U' shape along the south-west, north-west and north-east sides of the courtyard, with the remaining space open to the sky.
5. The courtyard to the rear of No 110 did not appear to be in any active use based on my site visit observations, but there were stairs to the first floor and a first floor window with obscured glazing. I also observed a window behind the wall to the rear of No 110's courtyard. While it was not possible to ascertain exactly what rooms these windows served, it is evident that residential uses are in close proximity to the rear courtyard at 108 Park Street given the orientation and narrowness of plots.
6. From the evidence before me, the rear courtyard at 108 Park Street is able to be used for dining purposes associated with the restaurant between the hours of 09:00 and 22:30 imposed by condition 2 of planning permission ref 15/01475/FUL. This means that there will already be a degree of noise and disturbance arising from this use within these hours to occupiers of neighbouring properties. This would be particularly noticeable to the south-east across the openings in the courtyard and canopies and would be unlikely to vary significantly within the parameters of a restaurant use.
7. The use of the rear courtyard for smoking is unlikely to result in a marked increase in noise as the activity in itself does not generate many sounds or necessarily encourage more people to congregate or increase their volume. Neither would such a use result in noise and disturbance into the early hours of the morning given the hours imposed in condition 2. However, such a use would likely result in fumes and odours associated with smoking permeating towards the south-east. This would have a negative effect on the occupiers of neighbouring properties.
8. I have not been provided with sufficient details to confirm whether the canopies comply with health regulations regarding smoking, but it may be technically possible for the courtyard area to be used for smoking purposes under these regulations based on the extent of openings. Therefore, it is necessary for a planning condition to prevent this use in order to protect the living conditions of occupiers of neighbouring properties from the negative effects of fumes and odour.
9. The disputed condition is also relevant to planning and the development permitted as the provision of a rear courtyard and canopies to a restaurant raises the prospect of smoking and negative effects arising from this activity. The condition is also enforceable as it would be possible to detect smoking at a visit to the site or neighbouring properties. Whilst resources are unlikely to allow daily monitoring, Council officers would likely respond to any complaints and take enforcement action as necessary. The condition is also precisely worded in that only dining purposes associated with the restaurant use will be permitted in the rear courtyard and no smoking is allowed. Finally, the condition is reasonable in all other respects as it does not prevent the use of the rear courtyard in association with the restaurant but avoids negative effects that would arise from smoking.
10. I note that there is no suitable area for smoking at the front of the property given the lack of open space other than the pavement and the obstruction that

any smoking area would cause. However, this does not outweigh the negative effects that would arise from permitting smoking in the rear courtyard.

11. While the removal of the disputed condition would not have negative effects in terms of noise and general disturbance, it would result in harm to the living conditions of occupiers of neighbouring properties in terms of fumes and odour. Thus, it would conflict with Policy LP1 of the Luton Local Plan 2001-2011 which, amongst other things, seeks to improve the quality of life for residents. It would also not ensure a good standard of amenity for all existing and future occupants of land and buildings as sought by the National Planning Policy Framework (NPPF). Therefore, the condition is necessary and meets all of the other tests set out in paragraph 206 of the NPPF.

Conclusion

12. For the above reasons, I conclude that the appeal should be dismissed.

Tom Gilbert-Wooldridge

INSPECTOR