

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/16/3164056

15 Manchester Street, Luton LU1 2QB

- 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 Z Shaffi against the decision of Luton Borough Council.
 - The application Ref 16/00405/FUL, dated 9 March 2016, was refused by notice dated 27 October 2016
 - The development proposed is change of use of ground floor from Building Society (Class A2) to Café (Class A3) with first floor seating area and erection of a canopy and a Shisha bar at the rear together with a 2 bedroom flat on the second floor and rear high level extraction system.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was originally submitted with a different description including the change of use of the ground floor to a Class A5 use (takeaway) and the upper floors to a house in multiple occupation. However, the plans were amended considerably during the application process, necessitating an extensive change to the description of development and additional public consultation. Thus, the above description is taken from the decision notice and appeal form, rather than the original application form.

Main Issue

3. The main issue is the effect of the proposed shisha bar on the living conditions of occupiers of adjoining residential properties and future occupiers of the proposed second floor flat with regard to noise, disturbance and odour.

Reasons

4. 15 Manchester Street forms part of a row of buildings to the north of the town hall within the town centre shopping area and Town Centre Conservation Area. Many of the ground floor units along Manchester Street are used for commercial purposes (retail, financial, food and drink). Part of the ground floor of No 15 is already being used for a Class A3 use, but the remainder of the building is currently vacant.
 5. There is a service yard to the rear of No 15 with a two storey rear wing at a lower level to the main building in which the proposed shisha bar would be located at first floor. It was evident from my site visit that the adjoining building to the south is in office use on each floor behind and above the ground
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floor unit. It was not possible to tell whether upper floors of buildings to the north along Manchester Street were in a residential use, although the Council's report notes a flat on the upper floors of No 17. From within the yard, I observed background noises and odours associated with the existing food and drink units on Manchester Street, including the hum of machinery, with the orientation of buildings and yards helping to contain the sounds and smells.

6. The proposed shisha bar would extend out over part of the ground floor element of the rear wing enclosed by a canopy roof. It would be open to the rear elevation and side elevation facing the offices apart from railings. There is disagreement between the Council and the appellant as to whether the canopy structure complies with health regulations relating to smoking. I do not have sufficient details on this matter to be certain either way. Nevertheless, the openings on the side and rear elevation would result in a degree of noise, disturbance and odour associated with a shisha bar use being emitted into the yard.
7. I do not have details on the anticipated levels of noise and odour, although the appellant refers to noise levels no more than social talking with low level background music. I note the shisha bar would be of a considerable size and would likely be used until late evening as highlighted by both main parties, indicating a reasonable level of activity over a prolonged period of time.
8. The bulk of the existing rear wing would largely block noise, disturbance and odour from affecting occupiers of buildings to the north along Manchester Street, while the office use of the building to the south means the sensitivities of its occupants to noise, disturbance and odour are not as great as it would be for a residential use. However, the proposed flat on the second floor of No 15 would be above the shisha bar within the same yard space. The canopy roof would help to block some noise, disturbance and odour, but the openings in the rear and side elevation and the layout of the yard would likely result in effects at the rear bedroom window of the proposed flat in particular.
9. These effects are likely to be more significant than the existing background noises and odours given the proximity of the shisha bar to the second floor flat, and would also involve noise from talking and music rather than just the hum of machinery. Based on the proposed hours of use (09:00 hours to 23:00 hours on any day as suggested by the Council's list of conditions), occupants of the flat are likely to be at home for substantial periods when the use is in operation, including at weekends and in the evenings.
10. The Council has suggested a condition relating to noise levels and insulation measures which the appellant is happy with. However, in the absence of any detailed information on likely noise levels, I have no certainty that the noise levels required by the condition can be achieved and maintained. Moreover, such a condition would only address the noise effects of the shisha bar and would not address effects relating to odour and other disturbance.
11. I appreciate that the second floor flat is likely to be rented out by the owner of 15 Manchester Street, enabling a suitable tenancy to be agreed, but any occupant of the flat would be affected by the proximity of the shisha bar. It would also be reasonable to expect any occupant to want to open the rear windows at times, which would exacerbate the effects of noise, disturbance and odour. I recognise that a shisha bar is a social activity that can complement

café and restaurant uses, but any benefits arising from this are not outweighed by the harm I have identified in this case.

12. Based on the evidence before me, the proposed shisha bar would have an unacceptable effect on the living conditions of future occupants of the proposed second floor flat with regards to noise, disturbance and odour. Therefore, it would not comply with Policies LP1 and S2 of the Luton Local Plan 2001-2011 which, amongst other things, seek to improve the quality of life of residents and avoid adverse effects from town centre development upon the amenities of nearby occupiers by way of noise, smell or other nuisance. It would also not meet the aims of the National Planning Policy Framework which seeks a good standard of amenity for all existing and future occupants of land and buildings.

Conclusion

13. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Tom Gilbert-Wooldridge

INSPECTOR