
Appeal Decision

Site visit made on 20 March 2017

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 2 May 2017

Appeal Ref: APP/B0230/W/16/3165235
157 Biscot Road, Luton LU3 1AW

- 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 B Hussain against the decision of Luton Council.
 - The application Ref 16/01520/COU, dated 18 August 2016, was refused by notice dated 16 November 2016.
 - The development proposed is the change of use of a building from a mixed use (A1, A2, A3, D1) to a mixed use (A1, A2, A3, A5, D1) at ground floor level.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of a building from a mixed use (A1, A2, A3, D1) to a mixed use (A1, A2, A3, A5, D1) at 157 Biscot Road, Luton LU3 1AW, in accordance with the terms of the application, Ref 16/01520/COU, dated 18 August 2016, subject to the conditions in the attached schedule.

Procedural Matter

2. The application form states that the Class A5 use commenced on 1 January 2012 and the Council confirm the change of use dates from 2012. An enforcement notice was served on the property on 29 February 2016 requiring the occupiers to cease use of the ground floor as a hot food takeaway and removal of the extraction system. For the avoidance of doubt I am only dealing with the planning merits of the proposal.

Main Issue

3. The main issue is the effect of the proposal on highway and pedestrian safety in the vicinity of the site.

Reasons

4. The appeal property comprises a small commercial unit with residential use above. There is a pharmacy to the south, and a pair of semi-detached dwellings to the north. The Council has confirmed that the site does not lie within a designated shopping centre. However, this part of Biscot Road is mixed in character, with residential dwellings interspersed with commercial properties including a supermarket located to the south of Dane Road and individual units such as a butchers shop on the opposite side of the road.
 5. The appeal site was formerly a public house. The Council granted permission for a change of use to a mixed use within use Class A1/A2/A3/D1 in May 2012.
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No off-street car parking is provided for customers of the unit and there is controlled parking directly to the front of the property on Biscot Road. There are parking bays available within Dane Road, but as there is no entry from Biscot Road and access only available via Leagrave Road, this may deter some customers from using these spaces. Nonetheless, there are two parking bays outside the supermarket a short distance to the south of the appeal site, as well as a large car park for customers of the supermarket. The Class A5 use has been in operation since approximately 2012, and no compelling evidence has been put before me, such as parking surveys or accident data to demonstrate that the introduction of the additional use of the property for Use Class A5 into the mix of what has already been permitted has materially worsened the existing situation.

6. There are bus stops in the vicinity providing regular services into Luton town centre. However, they are sufficiently distant from the appeal property so as to avoid any conflict between vehicles and pedestrians, and illegal parking can be controlled by the Council's parking enforcement officers. Consequently there is nothing to indicate that the proposal would be harmful to highway or pedestrian safety.
7. Details of the ventilation system are required to be submitted to and approved by the local planning authority to safeguard the living conditions of adjacent occupiers. Details of the waste storage and restriction of the hours of operation are also required for the same reason.
8. A condition preventing alterations to the external appearance of the building without prior permission of the local planning authority has been suggested, but such alterations would require express consent in any event. As such the condition is not necessary to make the development acceptable in planning terms.
9. Taking all of the above into account, I conclude that highway and pedestrian safety would not be prejudiced by the proposal. It would comply with policies LP1 and T3 of the Luton Local Plan (2006) which require, respectively, that developments that conflict with environmental, social, economic, transportation or other principle of sustainable development should be resisted, and that development must not exacerbate road congestion, cause safety problems for pedestrians, cyclists or other road users and would not cause harm to the quality of the local environment.

Conclusion

10. For the above reasons, I conclude that the appeal should be allowed.

Claire Victory

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: LP01, LP02 Article 12 (1) letter dated 8 September 2016, Appendix GC1, Appendix GC2 and Appendix GC3.
- 2) The use hereby permitted shall only operate during the following hours: 1100 to 2300 Monday to Sunday.
- 3) Details of a fume extraction system to include a description of the siting and appearance of odour extraction equipment, sound pressure levels from the extraction equipment and methods of noise attenuation shall be submitted to and approved in writing by the local planning authority. The extraction system shall be retained and maintained according to the approved technical details thereafter for so long as the development remains.
- 4) Details of the waste storage for the use hereby permitted shall be submitted to and approved by the local planning authority, and shall be retained as such thereafter.