



Appeal Decision

Hearing Held on 26 November 2019

Site visit made on 26 November 2019

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2020

Appeal Ref: APP/B0230/W/19/3235438

10 Midland Road, Luton, Bedfordshire LU2 0HR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Uzel (Alcantara Development Ltd, trading as Grammont Group) against the decision of Luton Borough Council.
 - The application Ref 18/01207/OUT, dated 20 July 2018, was refused by notice dated 9 July 2019.
 - The development proposed is the demolition of existing buildings and erection of five buildings ranging from 3 to 7 storeys to accommodate 227 apartments, 2 ground floor retail units and/or community space, car parking, and cycle parking, together with ancillary facilities.
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Decision

1. The appeal is allowed and outline planning permission is granted for the demolition of existing buildings and erection of five buildings ranging from 3 to 7 storeys to accommodate 227 apartments, 2 ground floor retail units and/or community space, car parking, and cycle parking, together with ancillary facilities at 10 Midland Road, Luton, Bedfordshire LU2 0HR, in accordance with the terms of the application, Ref 18/01207/OUT, dated 20 July 2018, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. The appeal seeks outline permission with matters reserved except for access, layout and scale. In so far as the submitted plans and drawings show details of matters other than the access, layout and scale, I have treated those as being purely illustrative.
3. The description of development is taken from the appeal form, which reflects the amendments which took place during the planning application process.

Main Issues

4. The main issue is whether the development without any on-site affordable housing and limited off-site affordable housing provision is reasonable given the viability of the proposed scheme, in light of development plan policies, the National Planning Policy Framework (the Framework), and other related guidance.

Reasons

5. The proposal for the five buildings to accommodate the 227 apartments, together with some retail units, is located near to Luton train station and the town centre. The development would replace a commercial building and associated large car park area. There is no objection to the principle of a residential led redevelopment of the site from the Council.
6. However, the proposed development would not include any on-site affordable housing. Instead, there would be an off-site contribution which has been set out in the submitted legal agreement amounting to £300,000 towards affordable housing.
7. Within the Luton Local Plan (2011-2031), adopted November 2015, policy LLP16 sets out a requirement of 20% of all major residential development to be affordable housing. This is to help meet the substantial affordable housing need within Luton.
8. The appellant has submitted viability assessments which demonstrate that the proposed development could not provide 20% affordable housing on site, together with the other required financial contributions towards education, waste, and public open space, for example. Reasons for this have been given such as the fact that this is a brownfield site, with demolition and possible remediation works required. Furthermore, whilst construction costs could be high, the end value of the residential units are lower in Luton than other areas of this part of the County. The Council has not argued against these points made by the appellant and I have no reason to consider this explanation to be inaccurate.
9. Taking a policy compliant position to provide the 20% affordable housing plus other contributions the appellant through their viability assessment show only a very profit for the proposed development. I would agree that this low level of profit would effectively make the proposed scheme unviable for a developer.
10. The appellant has therefore worked out a surplus for a financial contribution which could be achieved towards off-site affordable housing and other requirements. The total would be £602,806, based on a 15% profit margin for the developer. Following negotiations with the Council prior to the Planning Committee meeting it is understood that based on the Council's priorities then £300,000 would be contributed towards affordable housing, in lieu of any on-site provision.
11. The Council has had the submitted viability assessments independently checked and has confirmed that in their opinion the conclusions are based on a robust assessment of the viability. The Council also confirmed at the Hearing that they were of the opinion that additional affordable housing provision would likely render the scheme unviable and therefore unlikely to be delivered.
12. Therefore, the particular issue in this case is whether, given the substantial need for affordable housing in Luton, the contribution towards affordable housing as proposed is such that the development would be contrary to Local Plan policy.
13. However, policy LLP16 does allow for viability justifications when less affordable housing than the 20% is proposed, with section D stating:

If the required level of affordable housing would render the proposal economically unviable, developers will be expected to produce a financial assessment that clearly demonstrates the maximum number of affordable dwellings that can be achieved on-site, off-site or as a commuted sum. In that case, the Council will reduce the requirement for affordable housing proportionately.

14. The Council has agreed that the required level of affordable housing would render the proposal unviable, based on the financial assessment submitted by the appellant. The policy also allows for a commuted sum to be provided towards off-site affordable housing, which is the appellant's offer based on the viability information. I also note this policy does not set a minimum level of affordable housing in the event that viability information demonstrates that less than 20% can be provided on site.
15. On this basis, the proposal and the submitted legal agreement which includes contributions totalling £300,000 towards affordable housing off-site is a position which accords with policy LLP16, given the specific circumstances of this case.
16. I recognise that there is a substantial affordable housing need within Luton. However, if what is proposed is all that can be achieved given the viability of developing flats and retail units on this site then it is reasonable to conclude this is the maximum which could be provided. The amount of £300,000 is not a substantial amount to provide affordable housing, but it remains better than the alternative which is for there to be no development of this site, with no new housing or contribution towards affordable housing.
17. As discussed at the Hearing, paragraph 64 of the Framework is relevant. This states that where a major residential development is proposed there should be a minimum of 10% on-site affordable housing expected. There are some exemptions, but none of which would meet with the proposed development in this appeal.
18. However, as worded in the Framework, this is an expectation and not a minimum requirement. In this case, robust viability evidence has been provided that the development would not be deliverable if it was required to meet the provisions of paragraph 64. Based on the particular circumstances of this proposal, dismissing the development of 227 flats on the basis of conflict with paragraph 64 would go against the Government's objective of significantly boosting the supply of homes. Considering all the above, the identified conflict with paragraph 64 is therefore not a determinative issue in this appeal.
19. Furthermore, the proposal would provide 227 apartments as part of a mixed use scheme, in a sustainable part of Luton, known as High Town, which the Council is seeking to regenerate. Policy LLP10 states that this should be done through residential-led mixed use development. This development would fit with this vision and strategy of development in the High Town area. It would also significantly boost housing supply, with what would be a substantial sized residential development in this case.
20. Considering all the above, the provision towards affordable housing is the maximum possible for this site following robust assessments of viability. As such, the proposal is not contrary to Luton Local Plan (2011-2031) policy

LLP16, which seeks to provide affordable housing as part of major residential developments.

Other Matters

21. The appeal site is close to but beyond the High Town Conservation Area boundary. I note that, notwithstanding its other objections, the Council has not concluded that there would be any harm to the Conservation Area or its setting arising from the proposed development. Having regard to the advice contained within the Framework I see no reason to disagree with this view and do not consider that the scheme would harm the setting of the heritage asset.
22. There are listed buildings on the High Street, but a significant distance from the site. At this stage the proposal would not have any impact to the setting of significance of these listed buildings in the area.

Planning Obligation

23. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations) states a planning obligation may only constitute a reason for granting planning permission if the obligation passes three requirements. This is reiterated in the Framework. These requirements are that the Obligation is necessary to make the development acceptable in planning terms, that it is directly related to the development and fairly and reasonably related in scale and kind to the development.
24. The Council has an adopted Supplementary Planning Guidance (SPD) 'Planning Obligations'. This covers the usual requirements for developments of certain types and scale. Evidence of the need for the obligations were also provided through comments from consultees and through discussion at the Hearing.
25. From the evidence provided, including that set out within policy LLP16, there is a demonstrable need for affordable housing provision. The legal agreement would provide £300,000 towards an off-site contribution. This proportion of the full total of contribution is based on advice from the Council, if the development is approved. I am satisfied that there would be a need for affordable housing, that it would be directly related to the development and fairly and reasonably related in scale and kind to the development.
26. Evidence provided from the Education and Provision Planning Manager sets out that the area of the site is experiencing increased shortage of school places. The submitted legal agreement states that £238,166 would be provided towards a new special school in York Street and also for an extension to the existing Ashcroft High School. Both are within the Borough of Luton where the Council confirm there is need.
27. The proposed development would provide some parking provision, but not enough for a space for each dwelling. The Council has therefore required a contribution towards a Town Centre Car Club, which could help address parking. A contribution of £50,000 is to be made through the provisions of the legal agreement submitted towards the Car Club.
28. The proposed development would also result in waste being produced. The SPD on Planning Obligations seeks to mitigate the impact of development proposals on waste, such as the cost of providing new bins. The Council therefore seeks provision of a financial contribution for the waste management service. The

submitted legal agreement includes the provision of £14,640 towards the provision of new waste/refuse facilities, which has been agreed by the Council.

29. I am satisfied that there is a need for the above contributions, that it would be directly related to the proposal, and fairly and reasonably related in scale and kind to the development. As a result, it would pass the statutory tests set out in Community Infrastructure Levy Regulations, 2010, as amended.

Condition Reasons

30. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the Framework. The conditions I have included from the recommended list have been subject to some alterations to improve clarity and ensure consistency with the Framework and PPG.
31. I have attached the standard reserved matters and time limit conditions, and a plans condition as this provides certainty. I have used the model condition time frames as I see no clear reason to modify these for this proposal. I have also added a condition concerning materials, boundary treatments, plus the need for a Design Code for the development, all to ensure a satisfactory appearance and final design. Furthermore, there is included a condition for an on-site management plan to be submitted, in relation to upkeep of the open spaces for example, which are an important aspect of the scheme.
32. There is included a condition requiring the planting timeframe, in connection with the landscaping which is currently a reserved matter.
33. Details of lighting is required by condition, which is necessary in the interests of the site appearance and the amenity of adjacent highway users and neighbouring property users/occupiers.
34. Conditions are included to require details of cycle and bin storage, together with car parking management. There is also a condition requiring a Travel Plan for future occupiers. These are in the interests of addressing the need for adequate and well managed parking provision, together with promoting sustainable forms of travel. Bin storage is also important to make sure this is adequate and suitably accessible for collection.
35. I have included a condition requiring details of noise insulation for the proposed development, which given its location near a train line and busy roads is reasonable and necessary. However, I do not regard there to be a need for a condition to limit the noise from plant and equipment at the site as the Council has recommended. There is no substantive evidence this will be necessary. Furthermore, if there transpires to be an issue with noise generated from the development then there is other legislation separate to Planning than can address this.
36. I have included a condition requiring drainage details, including its future management and maintenance. I have merged this condition with the separate condition recommended by the Council requiring final inspections of the drainage. The condition included requires the drainage to be implemented, managed and maintained in perpetuity, as per the agreed details.
37. As recommended by the Council, I have included separate conditions requiring a Construction Method Statement and also a Construction Environmental

Management Plan. I have, however, removed sections where they appear to duplicate requirements for information. These conditions will help to ensure the process of construction of this large scheme will have minimal impact to the area of the site. These are required to be submitted prior to the commencement of development, which given what is required with this information (such as details regarding the demolition works), is considered reasonable.

38. In the interests of security of future occupants and to help design out crime potential, conditions requiring details of both CCTV and secure entry systems has been included.
39. There is reference to an energy production plant within the site, however, these details are not provided. There is some doubt as to the nature of the energy centre. As such, I have adapted the Council recommended condition to allow for an alternative but similar facility, if that is what is put forward with the reserved matters. In any case, details would be needed to ensure this aspect of the proposal does not have a visual or environmental adverse impact.
40. Conditions have been included for a Phase 2 site investigation relating to the potential for contaminated land. If such contamination is uncovered the conditions require a remediation strategy and a validation report to be submitted to the Council for their agreement. This is to ensure that any on-site land contamination is suitably addressed as part of the development. However, I have not included the condition recommended for there to be no soakaways in contaminated ground. Any contaminated ground should be addressed through the other relevant conditions I have included.
41. Finally, there is included a condition requiring full details of off-site highways works connected with the car parking spaces to be provided at street level on Midland Road. As this involves highways land then this should be a condition requiring full details prior to the commencement of development.

Conclusion

42. For the reasons given above, the appeal should be allowed subject to the following conditions in the attached schedule.

S. Rennie

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Justin Wickersham	Agent – Optimist Consulting
Mr Asitha Ranatunga	Barrister
Mr Robbie Locke	Optimist Consulting
Mr Daniel Uzel	Grammont Group

FOR THE COUNCIL:

Ms Sue Frost	Service Director
Mr Clive Inwards	Planning Team Leader
Ms Claire Astbury	Head of Housing Strategy

ITEMS SUBMITTED AT THE HEARING:

- Information from Council with regards current level of housing land supply, with the latest figures being for November 2019.
- Legal Agreement, dated 26 November 2019 – Undertaking – Section 106 Town and Country Planning Act 1990 (as amended), relating to 10 Midland Road, Luton.

Schedule – Conditions

- 1) Details of the appearance and landscaping, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall not be carried out other than in complete accordance with the approved plans and specifications, where the details relate to access, scale or layout, as set out on plan numbers: W0353-0201-Rev. F, W0353-0202-Rev. E, W0353-0203Rev. E, W0353-0204-Rev. E, W0353-0205-Rev. E, W0353-0206-Rev. E, W0353-0207-Rev. E, W0353-0208-Rev. A, W0353-0301-Rev. E, W0353-0302-Rev. E, W0353-0303-Rev. E, W0353-0401-Rev. E, W0353-0402-Rev. E, W0353-0110-Rev. D, W0353-0500 and W0353-0100-Rev. B.
- 5) Full details of the proposed boundary treatment of the site shall be submitted to and approved by the Local Planning Authority before above ground works are commenced and the approved treatment shall be installed prior to occupation of the buildings and retained for so long as the development hereby permitted remains in existence.
- 6) Details of a Design Code shall be submitted to and approved in writing by the Local Planning Authority prior to or in conjunction with the submission of the first details reserved for subsequent approval. The plan shall identify all details to maximise the quality and legibility of the public spaces, to help reinforce local character and accessibility and to ensure a high quality finish to the development. The construction of the proposed development shall then be carried out in accordance with the details set out within the approved Design Code.
- 7) All planting included in the scheme submitted in compliance with Condition No. 1 of this permission and approved by the Local Planning Authority shall be carried out by a date no later than the end of the first full planting season immediately following the completion of that development. If within a period of five years from the initial date of planting of any tree or shrub, any such plant is removed, uprooted or destroyed or dies, or becomes in the opinion of the Local Planning Authority, seriously damaged, diseased or defective, another tree or shrub of the same species and approximate size as that originally planted shall be planted at the same place.
- 8) A Management Plan, which shall include management responsibilities and maintenance schedules for all external and shared/common areas of the development, shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development for its permitted use. The management plan shall be carried out as approved.

- 9) No above ground works shall commence until a scheme for protecting the proposed dwellings from noise has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on the recommendations identified in the Burohappold Engineering Ltd report (Ref: 0041716) dated 19 July 2018 and shall include details on ventilation. None of the dwellings shall be occupied until such a scheme has been implemented in accordance with the approved details, and shown to be effective, and it shall be retained in accordance with those details thereafter.
- 10) No external lighting shall be installed on the site, other than in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority beforehand. For this scheme, the lighting equipment and levels of illumination shall comply with guidance issued by the Institution of Lighting Engineers in their publication "The ILE Outdoor Lighting Guide" and shall be accompanied by a statement from the developer confirming that compliance. The scheme shall thereafter be retained and maintained for so long as the development remains in existence.
- 11) No above ground works shall commence until a detailed design and associated management and maintenance plan of surface and foul water drainage for the site (which shall be achieved using sustainable drainage methods) has been submitted to and approved in writing by the Local Planning Authority in consultation with Thames Water. The drainage and the management and maintenance plan shall be implemented, managed and maintained in perpetuity, as per the agreed details.
- 12) No above ground works shall commence, including any demolition works, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for: (i) Operating hours - No demolition, construction or contaminated land remediation activities, movement of traffic, or deliveries to and from the premises, shall occur other than within the hours agreed with the Local Planning Authority. Any proposed extension to these agreed hours, other than for emergency works, shall be agreed with the Local Planning Authority before work commences; (ii) the parking of vehicles of site operatives and visitors; (iii) loading and unloading of plant and materials; (iv) storage of plant and materials used in constructing the development; (v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; (vi) wheel washing facilities; (vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 13) A Construction Environmental Management Plan for the development shall be submitted to and approved in writing by the Local Planning Authority prior to the implementation of any works, including demolition. The plan shall identify all aspects of construction and demolition that could have an environmental impact and provide management controls to eliminate and/or minimise those identified impacts. The impacts to be addressed including but not being limited to piling, traffic, construction dust and noise and any disturbance to vegetation. The plan shall also include details of the arrangements for the temporary use and/or

management (as appropriate) of those parts of the sites awaiting redevelopment. The demolition and construction as part of the development hereby approved shall then be carried out in accordance with the details set out within the approved Construction Environmental Management Plan.

- 14) No above ground works shall commence until the applicant has submitted in writing for approval by the Local Planning Authority full details of all energy producing plant to be installed at the Energy Centre or an equivalent facility within the development. The details shall include predictions of the content and amount of all emissions to air likely to arise from all plant when in operation, and the measures to be instigated to adequately control such emissions including calculations for any chimney stack heights associated with this facility. The approved details shall be fully implemented prior to any energy producing plant coming into operation.
- 15) No development approved by this permission shall take place until a Phase 2 investigation report, as recommended by the previously submitted BRD Environmental Ltd report dated June 2018 (Ref: BRD3174-0R1-B), has been submitted to and approved in writing by the Local Planning Authority. Where found to be necessary by the Phase 2 report a Remediation Strategy to deal with the risks associated with contamination of the site shall also be submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include an options appraisal, giving full details of the remediation measures required and how they are to be undertaken. This strategy shall include a plan providing details of how the remediation works shall be judged to be complete and arrangements for contingency action.
- 16) Prior to the occupation or use of the development hereby approved, a Validation Report shall be submitted to and approved in writing by the Local Planning Authority to demonstrate the effectiveness of any agreed Remediation Strategy. Any such Validation Report shall include responses to any unexpected contamination discovered during works.
- 17) Samples of the materials to be used in the construction of the external elevations and the roofs of the buildings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of above ground works. The development shall be carried out using the approved materials.
- 18) The development hereby permitted shall not be occupied until a scheme to provide for CCTV has been submitted to and approved in writing by the Local Planning Authority. The relevant CCTV system shall be operational before the residential units hereby permitted are first occupied.
- 19) No part of the development hereby approved shall be brought into use until a detailed Residential Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall be in line with the prevailing policy and best practice and shall include as a minimum:
 - The identification of targets for trip reduction and modal shift;
 - The methods to be employed to meet these targets;

- The mechanisms for monitoring and review, which should include a monitoring regime within six months of first occupation or 75% of building floorspace occupation, whichever occurs the soonest;
- The mechanisms for reporting;
- The penalties to be applied in the event that the targets are not met;
- The mechanisms for mitigation;
- Implementation of the Travel Plan to an agreed timetable and its operation thereafter;
- And mechanisms to secure variations to the Travel Plan following monitoring and reviews.

The details of the Travel Plan shall be carried out as approved.

- 20) Prior to the commencement of above ground works, a management scheme for the car parking areas of the development, including provision for electric vehicle charging, shall be submitted to and approved in writing by the Local Planning Authority. The scheme thereby approved shall be implemented before the occupation of the first residential unit and maintained for as long as the development remains in existence.
- 21) Prior to above ground works commencing, full details of the cycle stores and bin stores for the dwellings on site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented prior to occupation in full accordance with the approved details and shall be retained and maintained for as long as the development remains in existence.
- 22) A secure entry system shall be provided to all entrances in accordance with a scheme to be submitted to and approved by the Local Planning Authority before the commencement of above ground works and the approved entry system shall be installed and fully operational prior to the occupation of the first residential unit and maintained for so long as the development remains in existence.
- 23) No development shall commence until full details of the highway works, as depicted on drawing reference W0353-0201-Rev.F, have been submitted to and approved in writing by the Local Planning Authority (in consultation with the Highway Authority). Details shall include:
 - Construction of the proposed buildings including any basement levels, covering structural works and support for adjoining land;
 - New pavement surfacing;
 - Any proposed street tree planting; and
 - Maintenance of pedestrian access on the footpath past the site during construction.

The approved works shall be completed in accordance with the Local Planning Authority's written approval and shall have been certified in writing as complete on behalf of the Local Planning Authority prior to occupation of any part of the development.

End of Schedule.