



Appeal Decision

Site visit made on 19 May 2020

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 May 2020

Appeal Ref: APP/B0230/W/20/3245495

Rear of 84-86 Roman Road, Luton LU4 9SE

- 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 Dahood Khan against the decision of Luton Council.
 - The application Ref 19/00899/FUL, dated 1 July 2019, was refused by notice dated 1 November 2019.
 - The development proposed is erection of single storey building to be used as MOT and Service Centre.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have used the first line of the site address as it appears on both the Council's Decision Notice and the appeal form, as opposed to as stated on the application form. This is because it correctly indicates that the appeal site is positioned to the rear of 84-86 Roman Road.

Main Issues

3. The main issues are:
 - The effect upon the character and appearance of the area;
 - Whether the appeal site represents an appropriate location for the proposed use, having particular regard to the Borough's economic strategy;
 - The effect upon the living conditions of neighbouring residential occupiers, having particular regard to outlook, pollution and noise; and
 - The effect upon highway and pedestrian safety.

Reasons

Character and appearance

4. The appeal site is formed of an area of land that contains, to its eastern side, a short row of low-level timber buildings. I observed the site to have an overgrown and untidy appearance. It is situated to the rear of a parade of ground floor commercial units that front Roman Road (the parade) and is accessed via a shared access road and servicing area.

5. A scattering of existing commercial buildings is in place to the rear of the parade, which would appear, at least in part, to provide a mixture of storage and refrigeration facilities for commercial units within the parade. Several other businesses operate in the site's vicinity. Nevertheless, there is also a strong residential presence with upper floor flats existing above the parade and a residential estate bordering the site's northern edge. The area thus has a mixed character and appearance.
6. The proposed building's footprint would cover close to the entirety of the appeal site. Whilst single storey, its full height would exceed 6m. The building would be noticeably taller than the existing commercial buildings that would abut it, which are instead of discreet low-level form. Notwithstanding the mixed character and appearance of the area, the proposed building would be unduly large and would represent an overly intensive and unsympathetic redevelopment of the site.
7. Although the site occupies a relatively discreet location, the building would still be visible in-part from Morgan Close (the Close) and from numerous surrounding residences. Its intended pitched roof design would not disguise the fact that a large structure of simple construction and inherently commercial appearance is proposed. It would appear as a prominent and discordant addition to the area. This would be my finding even were the building to be finished with brick and tiles.
8. For the above reasons, the proposal would cause harm to the character and appearance of the area. The proposal conflicts with Policies LLP1 and LLP25 of the Luton Local Plan 2011-2031 (November 2017) (the Local Plan) in so far as these policies require that development proposals should respond to and enhance local character.

Appropriateness of the location for the proposed use

9. Policy LLP13 of the Local Plan sets out a positive and flexible economic strategy for the Borough. Alongside listed strategic allocations, the policy offers protection to existing employment areas and seeks to safeguard their economic function. Policy LLP13 does not guard against the principle of employment uses coming forward outside of designated employment areas. This is consistent with the National Planning Policy Framework (February 2019) (the Framework), which states that significant weight should be placed on the need to support economic growth and productivity.
10. Policy LLP13's text references accordance with the sequential approach, but this specifically relates to proposals for town centre uses. The proposed use is not what would ordinarily be considered a main town centre use and sequential assessment is not necessary here.
11. For the above reasons the appeal site represents an appropriate location for the proposed use, having particular regard to the Borough's economic strategy. The proposal accords with Policies LLP1, LLP2 and LLP13 of the Local Plan in so far as these policies support the delivery of economic growth and prosperity.

Living conditions

12. The site is situated such that it has a close relationship with various existing residential properties, which include dwellings situated in the Close and flats above the parade. As set out above, the proposed building would be visible

from the Close. The building would nevertheless not have a direct relationship with the front-facing or rear-facing elevation of any particular property within the Close, nor with primary windows serving habitable rooms. The proposal would thus not lead to a harmful loss of outlook for neighbouring residents within the Close.

13. As regards the neighbouring upper-floor flats that front Roman Road, the proposed building would be positioned to have a direct relationship with these properties. However, a fair degree of separation would exist between the flats and the building and it is important to factor in the upper-floor position of the relevant existing window openings. Whilst a building of not insignificant scale and height is proposed, I am satisfied that it would not be unduly visually obtrusive when experienced by neighbouring flat occupiers. No harm to living conditions through loss of outlook would therefore result from the proposal.
14. The proposed use, by virtue of its nature, would lead to the creation of exhaust fumes and, realistically, some associated pollution. Nevertheless, the proposed operation would not be anticipated to result in car engines running for extended periods of time at regular intervals. I am content that, in the event the appeal be successful, a planning condition could suitably secure measures to satisfactorily mitigate any effect of fumes/odours upon neighbouring living conditions.
15. A MOT and Service Centre use would reasonably be anticipated to create noise from sources including car engines and the operation of various tools, plant and other service-related equipment. Whilst the appeal site is accessed via an existing shared service area where regular vehicle manoeuvres can already realistically be expected, the introduction of the proposed use would hold the potential to create additional unwanted noise to the detriment of neighbouring living conditions. This is notwithstanding the existing presence of various extraction and refrigeration equipment to the rear of the parade.
16. Nevertheless, I have noted the appellant's assertions that only MOT testing and associated repairs are intended to be carried out and that the proposed premises have been designed to accommodate just one MOT tester. It has also been stated that the only tool that makes noise that would ever be used is a quiet modern compressor, and that even this could theoretically be dispensed with if customers were to be advised to check their own tyre pressures before arriving for a test.
17. However, the appellant's various assertions as regards how the proposed building would be used in practice must be considered in the context that vehicle servicing (and thus repair work) forms part of the proposed use that is being applied for. The proposed ground floor plan illustrates the provision of a sizeable workshop area. This area is proposed to incorporate separate ramped MOT and service bays, a further pair of parking bays and additional undefined internal workspace as well as staff/customer facilities. Consistent with the description of development put forward, the intended facility would evidently offer considerable potential for servicing/repair works to be undertaken and for multiple persons to be employed at the site.
18. A planning condition seeking to set out the precise extent of servicing/repair work that could be undertaken at the site would be problematic to enforce. Indeed, a potential condition linking repair work to only minor MOT failures would be imprecise and open to interpretation and would, I consider, be

unreasonably onerous to enforce. This is particularly when noting the wide range of repair work that could potentially be linked to MOT failures and the constraints that would be associated with closely monitoring the precise nature of works carried out within the building.

19. Consistent with my own findings, the Council's Environmental Health Officer (the EHO) has raised concerns that insufficient information has been provided regarding potential noise impacts and how these would be mitigated and controlled. Indeed, the EHO suggests that a suitably robust noise impact assessment is required to demonstrate likely noise impacts and to define a suitable and practicable mitigation scheme.
20. I do not consider that in this case a noise impact assessment and associated noise mitigation scheme could be suitably secured by way of a planning condition. To my mind it has not been clearly and robustly demonstrated what, in realistic terms, the noise impacts of the proposal (as described and set out on the submitted plans before me) would likely be. Neither has it been robustly demonstrated that a suitable and practicable scheme of noise mitigation measures necessarily exists.
21. For the above reasons, the proposal would cause harm to the living conditions of neighbouring residential occupiers, having particular regard to noise. The proposal conflicts with Policy LLP25 of the Local Plan in so far as it requires that provision should be made to minimise noise.

Highway safety

22. On-street parking opportunities in proximity to the site are limited, particularly as parking restrictions are in place on Roman Road. The existing shared access from Roman Road is narrow in width and unable to accommodate the two-way movement of standard sized vehicles. The shared access also leads to entrance doors to flats situated above the parade. The service area in place to the rear of the parade is constrained in terms of its size and layout. Nevertheless, it was evident from inspection that this shared private area offers a limited number of parking opportunities. I also noted the presence of various waste storage vessels in different positions.
23. The Council's highways engineer, in their role as Highway Authority, has raised concerns related to the proposed development's potential to generate a significant parking demand in an area where limited on-street parking is available. Given that the Highway Authority are responsible for the safety of road users on the local highway network, these concerns are a matter of importance.
24. The proposed building has been designed to accommodate parked vehicles internally and the appellant has asserted that only booked appointments shall be taken and that on-street parking shall not be required. Whilst it would likely be difficult to control the way in which customers would park upon initial arrival at the site, I shall in any event consider whether the appellant's intentions would likely be achievable at this site.
25. During site inspection, I observed multiple vehicle movements via the shared access as well as several manoeuvring vehicles within the service yard area. Indeed, a clear unobstructed route to the appeal site from Roman Road was only in place for a short period of time during my visit. I also witnessed

delivery vehicles waiting at the roadside for the access to become clear and available for use.

26. I acknowledge that my single visit to the site cannot be relied upon to provide an entirely accurate account of existing day-to-day access arrangements. Nevertheless, given the number of businesses that already use the access and the way in which the service yard is laid out, it is evident that clear access to the appeal site would be unlikely to be available on a routine basis. It is also apparent that, based on the evidence before me, the appellant does not have control over how the shared access and service yard area are used. Indeed, these areas fall outside of the red-line extent of the appeal site.
27. Therefore, notwithstanding the appellant's intention for future customers to park their vehicles within the proposed building, there is significant doubt that such opportunities would exist in practice. The proposal would instead raise the likelihood of blockages and obstructions occurring within the shared access and service yard area. Not only would this provide practical difficulties for the existing and proposed businesses, it would raise the potential for vehicles needing to wait or park on Roman Road where limited such opportunities exist. This would likely be to the detriment of safe and free-flowing traffic and pedestrian movements.
28. Whilst the proposal does not in itself involve the loss of existing car parking spaces, for the above reasons it would prejudice highway and pedestrian safety and thus cause harm. The proposal conflicts with Policies LLP31 and LLP32 of the Local Plan in so far as these policies require that proposed developments reduce the safety risk to motor vehicles, non-motorised and vulnerable users and that sufficient parking should be provided to help ensure that adverse effects on highway safety and the convenience of nearby residents and users are avoided.

Other Matter

29. I have noted various concerns raised by the appellant as regards the Council's handling of the planning application that is now the subject of this appeal. However, these criticisms are of little relevance to the planning merits of the scheme that is before me for determination.

Planning Balance

30. The Framework promotes an effective use of land whilst safeguarding and improving the environment. The proposal would bring into active use a redundant and poorly maintained urban site. However, when noting the site's somewhat modest size and discreet location, I afford these benefits of the scheme moderate weight.
31. Reference has been made to the site having been used for fly tipping and other anti-social purposes. The proposal, through developing the site, would remove the potential for the site to be used in this way. However, when noting that opportunities through other means would exist to secure the site and guard against unauthorised access, I afford these benefits limited weight.
32. The proposal, by way of introducing a business, would support the local economy and provide a limited number of new employment opportunities. Considering the relatively modest size of the proposed business, I afford these benefits moderate weight.

33. Having considered the scheme's benefits, I consider that, in cumulative terms, they would not outweigh the policy conflict and significant harms that I have identified. The proposal conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conclusion

34. I have found that the site occupies an appropriate location having particular regard to the Borough's economic strategy and that no harm would be caused by the proposal to the living conditions of neighbouring residential occupiers, having particular regard to outlook and pollution. However, the proposal would cause significant harm to the character and appearance of the area and to neighbouring living conditions, having particular regard to noise, and through prejudicing highway and pedestrian safety. These identified harms are the overriding considerations in this case.
35. For the reasons set out above, the appeal is dismissed.

Andrew Smith

INSPECTOR