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## 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: 05 June 2020**

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**Appeal Ref: APP/B0230/W/20/3245238**

**High Town Engines, Midland Road, Luton LU2 0HS**

- 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 S Hussain on behalf of Heritage National Properties Ltd against the decision of Luton Council.
  - The application Ref 19/00417/FUL, dated 26 March 2019, was refused by notice dated 5 August 2019.
  - The development proposed is demolition of existing garage buildings and construction of 5no. one bedroom flats and 10no. two bedroom flats.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Two sets of potential plan revisions illustrating amendments to proposed south-facing balconies make up part of the appeal submission. One set of revisions<sup>1</sup> shows each balcony being reduced in extent, and the other set<sup>2</sup> indicates the full removal of balcony podiums and their replacement with Juliet balconies. These proposed potential revisions have been put forward in the interests of improving standards of daylighting for future occupiers.
3. However, the appeal process should not be used to evolve a scheme and, in the interests of ensuring no one with an interest in the outcome of this appeal is prejudiced, it is important that the plans considered at appeal stage are essentially the same as those considered by the Council at planning application stage. The proposed potential revisions to balconies alter the extent of private external space that would serve each of the 15 units of accommodation under consideration. Each set of plans would evolve and materially alter the scheme that was refused planning permission by the Council. I thus do not accept either set of plans and shall consider the appeal on this basis.
4. A further plan<sup>3</sup> has been submitted at appeal stage. When compared to previous submissions, only minor amendments to tree positions are depicted in the interests of accuracy and of ensuring consistency with the Arboricultural Planning Appeal Statement<sup>4</sup> (the APAS). I am thus content that no party with an interest in this appeal is prejudiced by me accepting it to supersede plan 18-959-P-01D (only in so far as it sets out existing and proposed block plans).

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<sup>1</sup> 20-1001-P-01A; 20-1001-P-02A; 20-1001-P-03A

<sup>2</sup> 20-1001-P-01B; 20-1001-P-02B; 20-1001-P-03A [sic]

<sup>3</sup> 18-959-P-04A

<sup>4</sup> CW/9177-PAS-1, November 2019

## **Main Issues**

5. The main issues are:

- The effect upon the character and appearance of the area, including the setting of the adjacent High Town Road Conservation Area (the CA);
- The likely long-term effect upon trees situated to the perimeter of the site;
- The effect upon the living conditions of future occupiers of the development, having particular regard to light;
- The effect upon the living conditions of future occupiers of the development, having particular regard to noise; and
- Whether or not the proposed development makes an adequate contribution towards affordable housing and other infrastructure requirements.

## **Reasons**

### *Character and appearance*

6. The appeal site is currently occupied by a vehicle repair/sales business and is located close to the town centre and adjacent to the CA. The significance of the CA as a designated heritage asset is drawn, in part, from its compact and linear layout of predominantly brick-built buildings. These buildings are relevant to the historic evolution of the town and tend to be of two to three stories and traditionally designed, with many exhibiting intricate architectural detailing.
7. Station House is a locally listed property of historic and aesthetic value that sits within the CA and alongside the site. Its setting is influenced by various existing trees that also contribute positively to the CA's character and appearance. I also note that the CA's significance continues to be readily identifiable despite various modern and unsympathetic influences that are contained within and in proximity to it.
8. The proposal involves the demolition of the existing buildings on-site and the erection of a five-storey block of flats. The proposed block would cover close to the site's full width and be a highly visible building of significant scale and mass. A modern design is proposed, with the predominant external-facing materials being comprised of low-level brickwork with cladding above.
9. Policy LLP10 of the Luton Local Plan 2011-2031 (November 2017) (the Local Plan) sets out that, to ensure the vision of a sustainable, vibrant and historic neighbourhood is realised in the High Town area, development proposals must achieve, amongst other provisions, appropriate densities and height. I do not dispute that the density of the proposed development would be broadly comparable to other developments granted planning permission locally in recent times.
10. Whilst a maximum density for new housing development is not specified either within Policy LLP10 or the High Town Masterplan Supplementary Planning Document (2016) (the SPD), it does not necessarily follow that development of the scale and height proposed here should be considered acceptable. Indeed, the individual site circumstances and the specific nature of the site's relationship to the CA are important factors to consider. Of particular

relevance here is the presence of a neatly formed terrace of predominantly two storey residential properties (the terrace), that front the northern side of Midland Road opposite to the site and are contained within the CA.

11. The differentiation in height between the terrace and the intended block of flats would be significant. The proposed block, although intended to be setback within the site, would tower above the terrace to the detriment of its historic value and status within the townscape. Indeed, when also noting Station House's somewhat modest form and height, the site's immediate surroundings are heavily influenced by low-rise development of historic merit. The proposed building would appear as a discordant and unduly prominent addition in this context.
12. The main existing building on site is visible in the Midland Road streetscene and is of not insignificant size. Whilst this building is of simplistic and inherently commercial design, it does not have an overbearing or unduly prominent presence and therefore does not have a significant effect upon the CA's setting. In contrast, the proposed building would appear unduly tall and domineering.
13. I acknowledge that there are buildings of sizeable scale and bulk that exist close to the appeal site and that already influence (to differing degrees) the settings of the CA and Station House. These include various buildings situated in proximity to Midland Road's western end as well as the railway station's multi-storey car park (the car park), which is located eastwards and beyond Station House. Furthermore, amongst several recent planning/appeal decisions that have been brought to my attention, a January 2020 appeal decision<sup>5</sup> has been provided where outline planning permission was granted at 10 Midland Road for redevelopment involving the erection of five buildings ranging between 3 and 7 storeys in height.
14. Nevertheless, the buildings of height that exist to the west do not have an immediate physical relationship with either the appeal site or the CA. It must also be noted that the car park has an adjacent and functional relationship with the railway station that is not repeated at the appeal site. The car park also has a differing physical relationship to the CA, whereby it does not directly oppose the frontage of a row of low-level terraced houses.
15. With respect to the scheme that was successful at appeal in January 2020, it is apparent from the evidence before me that its scale and layout was negotiated at planning application stage in the interests of ensuring its highest elements would be set away from the CA's boundary. It would also appear that, unlike the appeal proposal, an immediate relationship with the frontage of a residential terrace contained within the CA would be avoided.
16. I accept that a varied palette of materials exists locally and that the final details and colouring of the materials to be used could be secured via planning condition in the event the appeal be successful. I am also not opposed in principle to the modern design approach that has been taken. Nevertheless, a large building of excessive height and prominence is proposed that would, to a significant degree, exacerbate unsympathetic influences that already exist within the settings of Station House and the wider CA.

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<sup>5</sup> APP/B0230/W/19/3235438

17. For the above reasons, the proposal would have an adverse effect upon the CA's setting and result in less than substantial harm being caused to its heritage significance. As set out in the National Planning Policy Framework (February 2019) (the Framework), any less than substantial harm to a designated heritage asset should be weighed against the public benefits of the proposal.
18. The Framework sets out the objective of significantly boosting the supply of homes and states that decisions should promote an effective use of land. As set out in the SPD, High Town has been identified as a key area in which the Borough's housing needs can be partly met. The redevelopment of a centrally located site with good transport links and access to a range of town centre facilities is proposed, which would provide 15 additional housing units and represent an effective use of land. Nevertheless, the number of new homes proposed would not make a substantial difference to the Boroughwide housing land supply position. It is also relevant to note that the site is in current active commercial use. For these reasons I apportion moderate weight to the benefits of providing housing and making effective use of land.
19. Whilst existing jobs would be displaced from the site, the proposal would create jobs during its construction phase and provide subsequent support to the local economy once occupied. When noting how the site is currently used and the non-strategic scale of development under consideration, I apportion limited weight to these benefits.
20. Whilst the harm I have identified to the significance of the CA would be less than substantial under the terms of the Framework, the identified harm would not be minor in nature and attracts great weight in my determination of this appeal. The public benefits of the proposal outlined above would not, in combination, outweigh the identified loss of significance that would be caused to the CA.
21. In summary, the proposal would cause harm to the character and appearance of the area, including harm to the CA through development within its setting. The proposal conflicts with Policies LLP1, LLP10, LLP15, LLP25 and LLP30 of the Local Plan in so far as these policies require that new housing should not result in over-intensification of the site and that development proposals must enhance the distinctiveness and character of the area and take account of the character, setting and local distinctiveness of local affected heritage assets.

### *Trees*

22. Positioned along the site's eastern boundary there are various individual trees and groups of trees protected by virtue of their CA location and the existence of a 1985 Tree Preservation Order (the TPO). Whilst none of these trees have been surveyed as being of the highest quality, several are of a desirable quality and status that promotes their retention. This is consistent with my own observations having visited the site. Existing planting to the site's southern and western sides is not protected, has been surveyed as low value and would have a less direct/immediate relationship with the building that is proposed.
23. To the site's northern edge, a line of prominent individual trees is in place. These are not protected by virtue of the TPO and are not located within the CA. Nevertheless, their trunks are situated inside the boundaries of the public highway and associated maintenance responsibilities would fall to the Highway

- Authority accordingly. The street trees with the most direct relationship to the site are T6, T7, T8 and T9 as identified within the APAS, which are high quality London Plane specimens. Indeed, it was apparent from inspection that all four of these trees are substantial with well-developed crowns. They appeared to be in good health and contribute very positively to the local townscape.
24. With respect to the proposed construction works, it is important to note that these would involve the supervised demolition of an existing building that already significantly intrudes under the canopies of two of the street trees. The proposed building would be setback within the site and only limited intrusions within the identified root protection areas of the street trees are proposed using specially engineered foundations. New hard surfacing within root protection areas is intended to be installed without further excavation and a fairly limited extent of pruning would be required to create working space. I am sufficiently satisfied that the long-term integrity of the street trees would not be compromised during the scheme's construction phase.
25. However, very limited separation would be provided between the proposed building and the eastern boundary of the site. I have specific concerns as regards the implications of this for an ash tree (T1 as identified within the APAS), which is of fair size and decent health in overall terms. Construction is proposed within its identified root protection area and only a short distance from its trunk. Notwithstanding the existing compacted ground surface within the site and the specially engineered foundations that are intended, the construction phase would likely have a detrimental long-term effect upon the contribution offered by T1.
26. Furthermore, I note concerns raised by the Council with respect to potential future pressures being placed upon the Midland Road street trees by virtue of the proximity of the newly proposed accommodation. Indeed, it has been suggested that significant pruning to prevent encroachment and associated nuisance would be likely once the block is built, which could adversely affect the health of the trees and reduce their contribution to the streetscene.
27. It was apparent from inspection that street tree canopies overhang the appeal site to a considerable extent. There is a significant likelihood that, once the proposed block be occupied, regular and potentially vigorous pruning would be encouraged or necessitated to the detriment of the street trees' long-term health and integrity. This is particularly when noting the scale and anticipated lifespan of the trees in question as well as the height of the proposed block and the high number of window openings that would provide outlook from its north-facing elevation. This finding applies to trees T6, T7 and T8.
28. Reference has been made to the street trees having previously been pollarded and to the potential for them to be re-pollarded in the future. However, such works do not fall under the control of the appellant and would require the Highway Authority's consent. There is thus no guarantee that a programme of cyclical re-pollarding would be accepted and undertaken. In any event, such a programme may not have a positive effect upon the visual amenity offered by the trees.
29. For the reasons set out above, the proposal would be likely to have a negative long-term effect upon the integrity of trees situated along the eastern and northern boundaries of the site, specifically specimens T1, T6, T7 and T8. This would exacerbate the harm that I have already identified would be caused by

the proposal to the character and appearance of the area and to the significance of the CA. The proposal conflicts with Policies LLP1 and LLP10 in so far as these policies set out that development should respond to and enhance local character and that the vision for the High Town area includes an enhanced natural environment.

*Living conditions of future occupiers – light*

30. The Council has raised specific concerns as regards the proposed layout of the five units that would be centrally positioned within the block, where kitchen windows would face out on to part-enclosed shared landing areas. The north-facing orientation, the Council suggests, when considered in conjunction with the tree cover that is in place to this side of the site, would result in limited natural light levels being achieved.
31. A Daylight and Sunlight Report (January 2020) (the DSR) has been submitted at appeal stage, which assesses the habitable rooms of the proposed flats using the Average Daylight Factor (ADF) metric. Its findings confirm that the five centrally positioned combined kitchen/living room areas that are proposed would not achieve the relevant British Research Establishment ADF standard.
32. However, the combined kitchen/living rooms in question are open plan in the sense that kitchen areas would benefit from natural light received via south-facing balcony doors. Furthermore, the DSR demonstrates that, without exception, all bedrooms would achieve the relevant ADF figure. Overall, I am satisfied that the internal layout of the proposed development has been designed to maximise daylight potential. Notwithstanding the setback nature of selected north-facing kitchen windows, as referred to above, unacceptably dark or gloomy living conditions would not be created within any of the flats that are proposed.
33. For the above reasons the proposal would not cause harm to the living conditions of future occupiers of the development, having particular regard to light. The proposal accords with Policy LLP25 of the Local Plan in so far as it requires that, with respect to the delivery of new housing, provision is made to minimise overshadowing/loss of light.

*Living conditions of future occupiers - noise*

34. The appeal site addresses Midland Road to the north and, to the south, sits in proximity to Hucklesby Way (the A6). Both Midland Road and the A6 run an approximate east-west axis. The car park is accessed via Midland Road and is situated beyond Station House to the east. Beyond the A6 to the south and reflecting the proximity of the railway station to the site, there are situated various station platforms and associated railway tracks.
35. To assist in understanding and presenting ambient noise levels in the area, survey work<sup>6</sup> was initiated that involved noise measurements being taken at the intended locations of the north and south facing façades of the proposed building. The survey results indicate that façade noise levels would be noticeably higher to the southern side of the building when compared to the northern side. Indeed, this is logical given the positions of the A6 and the railway station. Whilst only limited noise survey data was gathered, following

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<sup>6</sup> Site Noise Survey & External Building Fabric Assessment, referenced 18321/001/js/b, dated 18 April 2019

my inspection of the site and local area I am sufficiently satisfied that the results are broadly representative of the current local noise climate.

36. I do not dispute that, based on the noise survey calculations put before me, it may be possible to achieve the recommended internal noise levels to all proposed flats using cavity blockwork and high-performance glazing alongside passive ventilation techniques. Nevertheless, this would represent a far from ideal situation whereby all future occupiers of the building would be dependent upon the use of passive ventilation rather than natural ventilation to achieve an appropriate internal living environment. This issue is magnified to the southern façade where noise levels are at their highest and where future occupiers would have access to external balcony areas via their living rooms.
37. Whilst the proposed balconies are relatively small, they would not be so limited in size so as to only potentially be suitable for activities such as drying clothes or growing pot plants. They would instead provide external spaces of an extent that could quite realistically be regularly occupied, particularly during summer months. This also raises the likelihood of future occupiers being exposed to unacceptably high internal noise levels through door openings to balconies being left open.
38. I recognise that guideline noise values may not be achievable in all circumstances and that the site occupies a high-noise central location where potential compromises could quite legitimately be found. Nevertheless, the scheme includes the provision of multiple external balconies to the most-noise affected southern side of the building where daytime noise levels have been surveyed at 67dB and where the typical regular maximum night-time noise level is indicated to be as high as 75dB. In this context it has not been satisfactorily demonstrated that a good acoustic design process has been followed. This finding is consistent with objections raised by the Council's Pollution Team Leader.
39. For the above reasons the proposal would cause harm to the living conditions of future occupiers of the development, having particular regard to noise. The proposal conflicts with Policy LLP25 of the Local Plan in so far as it requires that, with respect to the delivery of new housing, provision is made to minimise noise.

#### *Affordable housing and other infrastructure requirements*

40. Policy LLP39 of the Local Plan requires development proposals to adequately contribute towards the infrastructure and services needed to support them. Amongst other provisions, the policy sets out that any on-site provision or financial contribution should take account of the cumulative impact of requirements on the viability of development. Policy LLP16 of the Local Plan sets out that where the required level of affordable housing, which is 20% in this case, would render the proposal economically unviable, financial assessment should clearly demonstrate the maximum number of affordable units that can be achieved either off-site or as a commuted sum.
41. In this case a Viability Appraisal (April 2019) (the VA) was produced at planning application stage. It is evident that the VA was scrutinised by an independent advisor on behalf of the Council and that, following negotiations that took place, agreement was reached as regards the maximum level of contributions that could be sustained without leading to the proposed

development being unviable. From the evidence before me I have no reason to dispute that a fair agreement was reached at £61,500 and that the negotiated and agreed contribution towards offsite affordable housing would in this case achieve compliance with the relevant requirements of Policies LLP16 and LLP39.

42. The Local Education Authority has requested contributions towards primary and secondary education in accordance with, it would appear, their standard formulae. The Highway Authority has requested a contribution towards the Luton Car Club, at a level it would appear has been agreed with the Council's Car Club Manager. A waste management contribution has also been requested in line with adopted Council guidance. I am satisfied that such contributions, as set out in the Council's Committee Report, are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind.
43. However, a completed/dated legal agreement is not before me such that an appropriate mechanism to secure the required affordable housing, education, waste management and car club contributions has not been demonstrated. I thus find that the proposal does not make an adequate contribution towards affordable housing and other infrastructure requirements. The proposal conflicts with Policy LLP39 of the Local Plan in so far as it requires development proposals to provide or adequately contribute towards the infrastructure and services needed to support them.

### **Planning Balance**

44. I have listed the benefits of the proposal above, which include the effective use of centrally located previously developed land, the provision of 15 new homes, the creation of construction jobs and the support to be provided to the local economy post-occupation. However, these benefits would not outweigh the various harms and policy conflicts 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**

45. For the reasons set out above, the appeal is dismissed.

*Andrew Smith*

INSPECTOR