



Appeal Decision

Site visit made on 17 March 2020

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2020

Appeal Ref: APP/B0230/W/19/3237601 4-11 Burr Street, Luton LU2 0HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Burr Street Limited against Luton Council.
 - The application Ref 18/01840/FUL, is dated 30 November 2018.
 - The development proposed is the demolition of existing buildings and redevelopment to provide 179 residential units (88 x 1-bed, 66 x 2-bed, 24 x 3-bed and 1 x 4-bed); undercroft car parking; cycle parking; refuse; plant and associated landscaping.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The proposed development was changed during the application process. Consequently, I have used the description listed on the Appeal Form, which reflects these changes, in the banner heading above. It was also necessary for me to confirm the plans showing the appeal development with the main parties, given errors in the submitted evidence.

Background and Main Issue

3. The proposed development was recommended for approval at the Council's Development Control Committee (DCC) meeting of 28 August 2019. However, a decision on the proposed scheme was deferred, following a motion to refuse, and an appeal was subsequently lodged concerning the failure to determine the proposal within the specified time period¹.
4. The DCC considered the proposal again on 30 October 2019, after the appeal had been made, and resolved that planning permission be refused based upon the proposed mix of housing; the absence of any contribution to affordable housing provision; and, the absence of S106 financial contributions for other purposes. However, once a valid appeal has been made, the power to determine such a proposal moves from the Local Planning Authority to the Secretary of State, or in this case, one of their Inspectors.
5. A Hearing was scheduled for Tuesday 17 March 2020. However, following the Prime Minister's press conference of 16 March regarding the Covid-19 coronavirus pandemic, both main parties expressed their concerns regarding the Hearing taking place.

¹ 13 weeks for a major development.

6. After considering the stated concerns, and with reference to the evolving guidance from the Planning Inspectorate, I postponed the Hearing on the morning of 17 March 2020, without opening. I informed the main parties of my decision in the circumstances and that an alternative date would be arranged in due course. Following my decision to postpone the Hearing I viewed the appeal site from nearby public land.
7. The restrictions imposed by the Government in response to the pandemic, and the consequent delay to the appeal process, afforded the Council the unusual opportunity to review the appeal proposal further. The DCC convened again on 6 May 2020 to consider their previously stated 'reasons for refusal', including with regard to an appeal decision for a similar proposal on a nearby site²; and, the scope of any S106 Agreement linked to the appeal development. The DCC resolved to withdraw its second 'reason for refusal' concerning the absence of any contribution to affordable housing provision; and, to replace its third 'reason for refusal' with a new one, concerning S106 financial contributions for affordable housing provision and other purposes.
8. As previously mentioned, the Council had no power to determine the appeal proposal and so could not withdraw or replace 'reasons for refusal' for a decision that it had not made. Nevertheless, I note the Council's substantive position in this regard.
9. Both main parties had previously requested that this appeal be determined by written representations. In light of the above and following receipt of a signed copy of the S106 agreement for this scheme, I am satisfied that this appeal can be determined by written representations. With reference to powers under Section 319A of the Town and Country Planning Act 1990, I informed the main parties of my decision in this regard. The appellant was permitted to submit final written comments given the change of procedure; I have had regard to these comments as part of the evidence in determining the appeal.
10. The main issue, therefore, is whether the proposal would provide a suitable mix of unit sizes with regard to identified housing need.

Reasons

11. The appeal site is previously developed land, bounded by Burr Street to the southwest, Back Street to the northwest and Duke Street to the northeast, and by a small parcel of land to the southeast, adjoining Hitchin Road. A significant part of Duke Street next to the site has been closed to traffic and now forms part of a nearby commercial premises.
12. The appeal site is located a short distance to the north of Luton Railway Station, in an area containing a range of commercial uses, together with some new residential development. The town centre is positioned a short distance to the south of the railway station.
13. To the northwest of the site is the High Town neighbourhood, including the High Town Conservation Area (HTCA), which is centred on High Town Road. The topography of the land slopes downwards from High Town Road towards Hitchin Road, and gives the appeal site a sloping gradient. The design, scale, massing and position of the proposed development would not adversely affect the setting of the HTCA.

² 10 Midland Road, Luton, Bedfordshire LU2 0HR; Ref: APP/B0230/W/19/3235438

14. The appellant altered the proposed development in June 2019, following discussions with Council officers. The appeal proposal includes five residential buildings comprising eighty-eight 1-bed units (ninety-nine originally); sixty-six 2-bed units (forty-eight originally); twenty-four 3-bed units (twenty-nine³ originally); and, one 4-bed unit (four³ originally), a total of 179 dwellings (180 originally).
15. The Council refers to the Strategic Housing Market Assessment (SHMA) for the Luton Housing Market Area (LHMA), and the identified need for 17,800 additional dwellings between 2011 and 2031. The housing need is further refined into numbers of different dwelling sizes (1-bed/2-bed/3-bed/4+bed) over the period.
16. The Council also refers to information from the latest Strategic Housing Land Availability Assessment (SHLAA), which compares the identified housing need by dwelling size to the historic delivery of dwellings between 2011/12 and 2018/19.
17. Whilst I do not have copies of the SHMA or SHLAA in the evidence before me, I have no reason to doubt the accuracy of the Council's references to their content, which the appellant has not disputed.
18. Notwithstanding that the identified need extends until 2031 and that delivery would be expected to vary over this period, the SHLAA shows that there has already been a very significant over-delivery of 1-bed dwellings against the identified housing need⁴. Furthermore, there has been a significant under-delivery of larger dwellings against the identified need, and a very significant under-delivery in terms of 3-bed dwellings⁵.
19. The proportion of 1-bed units in the proposed development now comprises 49% of the total, a reduction from what was originally proposed. Nevertheless, 1-bed units remain the single largest component of the scheme and there is no longer an identified need for such dwellings. The number of 3-bed and 4-bed dwellings proposed comprise just 14% of the total, despite making-up well over 61% of the originally identified need for the LHMA; I also note that the numbers of 3-bed and 4-bed dwellings have been reduced from the original proposal.
20. I would not expect any individual site to exactly replicate the mix of units that comprise the identified housing need for the whole LHMA, and the proposal would deliver some dwellings that would contribute towards meeting this need. However, the significant number of 1-bed units in the proposed development would be wholly inconsistent with meeting the housing need identified in the SHMA.
21. Furthermore, the numbers of 3-bed and 4-bed units would make only a very limited contribution towards meeting the identified housing need. The proposed development would, therefore, prevent land that could be used to more effectively meet this need from being used to do so.
22. From the evidence it is not clear how the mix of housing proposed has been informed by the SHMA. In my view, neither the original scheme, nor the appeal

³ There are inconsistencies in the submitted evidence regarding the number of 3-bed and 4-bed dwellings in the original proposal. I have used the original proposal figures from the appellant's letter dated 18 June 2019, which amended the scheme, and from the Statement of Common Ground dated 12 March 2020. In any event, the inconsistencies in the original proposal figures have no significant bearing on my determination of the appeal.

⁴ 2,307 units delivered against an identified need of 420 units.

⁵ 383 3-bed units delivered against an identified need of 10,910 units and 402 4+bed units delivered against an identified need of 2,590 units.

scheme, would be consistent with meeting the identified need specified in the SHMA.

23. The appeal site is located within walking distance of both the railway station and the town centre. However, no substantive evidence has been provided to show that such a location would be particularly suitable for residents seeking a 1-bed dwelling, rather than those wanting a larger unit. I see no reason why this would be the case.
24. Furthermore, no compelling evidence has been provided to demonstrate that the scale of 1-bed units proposed is required to enable the proposed mix of dwellings to be viable, as inferred by the Council's Officer report of 28 August 2019 and the appellant's final comments. I also note that the four-document 'viability report' submitted in the evidence⁶ pre-dates the June 2019 amendment to the scheme by some 5-7 months and concerns a different scheme of 180 units. There is no viability assessment of the appeal development in the evidence before me.
25. The housing mix for the aforementioned nearby housing scheme approved on appeal (Ref. APP/B0230/W/19/3235438) is said to be somewhat similar to that proposed for the appeal development, albeit with some differences in the proportion of dwellings of certain sizes. However, I am not familiar with this scheme, and in any event, each proposal should be determined on its individual merits, with appropriate regard to the development plan and material considerations, which is what I have done in this case.
26. For these reasons the appeal development would not provide a suitable mix of unit sizes with regard to identified housing need. It would therefore conflict with Policy LLP15 (housing provision) contained in the Luton Local Plan 2011-2031, which seeks to meet identified housing needs, and with guidance contained in the National Planning Policy Framework 2019.

Conclusion

27. As referenced above, there is no longer a dispute between the main parties regarding affordable housing provision. A counterpart S106 planning agreement was submitted in early June 2020 which aims, amongst other things, to provide for a financial contribution towards off-site affordable housing provision, including a viability review mechanism⁷.
28. It is not disputed that there is a need for affordable housing in Luton and that the provision of affordable housing would therefore be a benefit of the scheme. However, I am not satisfied that this benefit would outweigh the harm that I have identified in terms of the housing mix of the proposed scheme.
29. For the reasons given above, and taking into account all matters raised, I conclude that the appeal is dismissed and planning permission refused.

Andrew Parkin

INSPECTOR

⁶ 1 HEDC Explanatory Notes; 2 Argus Developer appraisal summary; 3 Accommodation schedule with pricing; and, 4 TPI construction cost estimate.

⁷ £390,000, potentially rising to £774,000 dependent upon the viability review mechanism.