



Appeal Decision

Site visit made on 4 September 2020

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 September 2020

Appeal Ref: APP/B0230/W/20/3250295

60 Denbigh Road, Luton LU3 1NR

- 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 & Mrs N. Patel against the decision of Luton Council.
 - The application Ref 19/01421/FUL, dated 28 October 2019, was refused by notice dated 10 February 2020.
 - The development proposed was originally described as construction of shopfront extension, new A5 retail unit and a new flat.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description above is from the original 28 October 2019 application form. Plans were amended and a new application form submitted on 12 December 2019 to include reference to an extractor unit and rear detached A1 store.
3. The Town and Country Planning (Use Classes) Order 1987 was amended on the 1 September 2020. Shops (previously Class A1) now fall within a new Class E, while takeaways (previously Class A5) now fall within a sui generis use. These amendments have not altered the need for planning permission for the proposed development or affected the determination of this appeal.

Main Issues

4. The main issues are:
 - a) the effect of the development on the character and appearance of the area;
 - b) the effect of the development on the provision of retail space in the borough;
 - c) the effect of the development on the living conditions of occupiers of neighbouring properties with regard to noise and disturbance;
 - d) whether the development would provide suitable living conditions for future occupiers with regard to private outdoor space;
 - e) the effect of the development on highway safety; and
 - f) the effect of the development on the health of local communities.

Reasons

Character and appearance

5. The appeal property is situated on the corner of Denbigh Road and Kennington Road with a pharmacy at ground floor and a flat above. The surrounding area is mostly residential, although there is a small group of shops with flats above between Kennington Road and Montrose Avenue including the appeal property. The area is characterised by two storey properties with pitched roofs.
6. The existing single storey side/rear extension to the appeal property has a crown roof, while the single storey side/rear extension to 58 Denbigh Road on the opposite corner has a shallow pitched roof. As a consequence, this helps to retain a degree of spaciousness around the junction with Kennington Road. Moreover, the restricted height of the appeal property extension means that it does not overly dominate the main building.
7. The development would result in a large and long first floor extension that would be particularly prominent along the Kennington Road frontage. It would extend the building footprint rearwards with an L-shape footprint at first floor. Due to its size and siting, it would be disproportionate to the main building. It would also greatly reduce the remaining space on the junction with Kennington Road and appear overly-dominant. While there would be some difficulties with a pitched roof design that worked with the main building, and the area is not of a particularly distinctive character, the proposed flat roof design would be out of keeping with properties and extensions in the surrounding area.
8. This part of Denbigh Road already has a part retail character although no existing units operate as a takeaway. The pharmacy already experiences footfall throughout the week until mid-evening based on its opening times. However, a takeaway would operate later into the evening and would encourage more comings and goings in a largely residential area. The extract flue on the rear corner of the extension would be visually prominent and highlight the takeaway use to the detriment of local character.
9. The introduction of an additional flat at first floor would intensify the residential use of the appeal property. However, it is a largely residential area, flats above shops exist already, and the level of comings and goings would be limited. Thus, this element of the proposal would not detract from the area's character.
10. In conclusion, the development would have a harmful effect on the character and appearance of the area. Therefore, it would not accord with Policies LLP1 and LLP25 of the Luton Local Plan 2011-2031 (LP) which, amongst other things, require development to preserve or improve the character of the area and respond positively to the local context with high quality design. The development would also not comply with Section 12 of the National Planning Policy Framework (NPPF) which seeks well-designed places and schemes that are visually attractive.

Retail provision

11. The appeal property lies within a shopping parade frontage as allocated by the LP, but outside of a town, district or neighbourhood centre. LP Policy LLP2 states that retail uses will be directed in accordance with the centre hierarchy in LP Policy LLP21. That policy states that planning permission will be granted for retail development provided that the sequential test is met and the vitality

and viability of town, district and neighbourhood centres are not significantly adversely affected by the scheme on its own or in combination with other schemes. The Council's concerns focus on the takeaway unit.

12. No impact assessment is necessary due to the small size of the unit. However, no sequential test has been provided by the appellants. While non-shop uses already exist within the shopping parade, LP Policy LLP21 does not exclude such locations from needing to carry out the sequential test. The appellants' lack of ownership of commercial properties in central Luton does not preclude them from looking at whether other suitable sites might be available in existing centres. On its own, the takeaway is unlikely to significantly adversely affect existing centres, but it remains to be demonstrated that there are not more sequentially suitable locations for this development.
13. In the absence of a sequential test, it is not possible to conclude that the development would have an acceptable effect on the provision of retail within the borough. Therefore, there would be conflict with LP Policies LLP2 and LLP21. The development would also not accord with NPPF paragraph 86 which advocates the use of a sequential test for main town centre uses such as retail.

Living conditions of neighbouring occupiers

14. The takeaway unit would be located near to a number of existing properties. It would operate until late evening throughout the week and encourage a number of people to visit including by car. This would generate noise and disturbance during what should be quieter times of day for local residents. Limiting the opening hours would reduce the negative effects, but no suggested hours are before me and it is not certain how reasonable it would be to limit or prevent the opening of a takeaway during evening hours.
15. As a consequence, the development would have a harmful effect on the living conditions of occupiers of neighbouring properties with regard to noise and disturbance. Therefore, it would not accord with LP Policies LLP1 and LLP25 which, amongst other things, seek high quality places and the minimising of noise, or with NPPF paragraph 127(f) which seeks a high standard of amenity for existing users of places.

Living conditions of future occupiers

16. The existing first floor flat appears to have no private outdoor space given the rear yard and parking area. However, this is an existing situation and it would not be realistic to compel this development to make better provision. In contrast, LP Policy LLP25 requires new housing to be delivered in accordance with external space standards, while Policy LLP1 seeks high quality places.
17. The development would provide the minimum necessary amount of external space for the new flat (7sqm), located at the rear of the site. However, the area would only be the size of half a parking space and would be adjacent to parking spaces, the new store building and a boundary fence. While it is not essential for the space to contain a washing line, the size and location of the external space would be very poor and unlikely to encourage regular use. In summary, the development would have a harmful effect of the living conditions of future occupiers with regard to the provision of private outdoor space. Thus, it would not accord with LP Policies LLP1 and LLP25, or NPPF paragraph 127(f) which seeks a high standard of amenity for future users of places.

Highway safety

18. At the time of my early afternoon site visit, Denbigh Road and adjoining side streets had a large amount of on-street parking including on yellow lines at junctions and across cycle lanes. While only a snapshot, as a relatively densely populated residential suburb with little off-street parking available in front of properties, it seems reasonable to conclude that the area experiences a high degree of parking congestion. This is likely to be most acute in the evenings when more people are at home.
19. The pharmacy would only increase by a small amount, and the development proposes two off-street parking spaces. A single parking space for the new flat would be less than the maxima of 2 requested spaces but would make some provision in a location where occupiers could travel by foot, bike or bus. A single parking space for the takeaway would also make provision for customers but, as noted above, the unit is likely to generate more comings and goings particularly in the evenings. This could result in additional parking around the junction of Denbigh and Kennington Roads, adding to the congestion. While more parking provision should not necessarily be encouraged, there would be implications for traffic flow and the safety of pedestrians and vehicle users.
20. In conclusion, the development would have a harmful effect on highway safety. Therefore, it would not accord with LP Policies LLP1, LLP25, LLP31 and LLP32 which, amongst other things, seek high quality places with safe access, reduced road congestion and appropriate parking provision.

Health

21. The appeal property is located in a largely residential area with a primary school a short walking distance to the south. The takeaway unit could attract passing trade from the school and encourage children and adults to eat unhealthily. While it is feasible that a takeaway serving healthier food could operate from the unit, this would be difficult to enforce from a planning perspective. It may be possible to limit the opening hours to avoid the times of day when pupils are travelling to and from the school. However, no such hours have been provided. In the absence of any controlled opening hours, the development would have a harmful effect on the health of local communities. Thus, it would not accord with LP Policies LLP1 and LLP25 or the NPPF which, amongst other things, seek to promote healthy places and communities.

Conclusion

22. The enlargement of the pharmacy would improve its viability while the NPPF supports the provision of residential properties above shops. However, the development would result in a number of harmful effects and would not accord with several development plan policies. As such, the presumption in favour of sustainable development does not apply to this appeal. For the above reasons, I conclude that the appeal should be dismissed.

Tom Gilbert-Wooldridge

INSPECTOR