



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: 2nd October 2020

Appeal Ref: APP/B0230/W/20/3251436

Unit 1, Windmill Trading Estate, Thistle Road, Luton LU1 3XJ

- 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 Three Rivers Property Investments Ltd against the decision of Luton Council.
 - The application Ref 20/00058/FUL, dated 15 January 2020, was refused by notice dated 4 March 2020.
 - The development proposed is change of use of premises from Trade Counter to Class A1 Bakery.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The main parties agree that the appeal building, whilst currently vacant, falls within Class B8 (storage or distribution) with trade counter. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ('the 2020 Regulations') came into force, amending the Town and Country Planning (Use Classes) Order 1987 ('the UCO'). While Class B8 remains unchanged within the UCO, Class A1 (shops) was revoked and is now incorporated within a new Class E (commercial, business and service). Class B1 (business) was also revoked and now forms part of the same Class E.
3. The appellant has stated that it is permitted development for a building in Class B8 of no more than 500 square metres of floorspace (which is the case here) to change to a business use under Class I, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The appellant notes that it would now be possible for a business use to change to a retail use without the need for planning permission.
4. However, the proposal before me seeks planning permission for the change of use from Class B8 to Class A1. While theoretically the appeal building could go from B8 to business then retail, there is little evidence to suggest that this is a realistic prospect and one that the appellant wishes to pursue. As a consequence, I can only give limited weight to this fallback position.
5. Furthermore, paragraph 4 of the 2020 Regulations clarifies that where a planning application was submitted prior to 1 September 2020, it should be determined by reference to the use classes that existed on 31 August 2020. Therefore, while the new Class E is a material consideration, the development proposed is still essentially a change of use from Class B8 to Class A1 for which no permitted development rights exist.

Main Issues

6. The main issues are the effect of the development on:
- a) the provision of employment space within the borough;
 - b) the provision of retail space within the borough; and
 - c) the character and appearance of the area.

Reasons

Employment space provision

7. Windmill Trading Estate is designated as Category A Employment Area by the Luton Local Plan 2011-2031 (LP). LP Policies LLP13 and LLP14 seek to protect such areas to retain and deliver jobs in the borough. The latter policy goes on to state that changes of use within these areas which would result in a loss of floorspace for economic development uses will be resisted.
8. The majority of the units within the trading estate are considered to be B8 with trade counter including the appeal building. Although tradespeople and the general public can purchase items from these units, the trade counter section is generally small and ancillary to the units' primary storage and distribution purpose. A few units operate as sui generis uses for vehicle servicing and scrap metal recycling. These provide a service to visiting customers rather than selling items. There is a single B8/B1 unit operating as a warehouse and office. Thus, the area remains a trading estate primarily focused on the storage and distribution of building and vehicle supplies.
9. The Council states that there has been a net loss of over 27,000sqm of B8 floorspace between 2011 and 2018. The development would result in the loss of 154sqm B8 floorspace. While only a small part of the overall trading estate, the appeal building occupies a prominent location at the entrance to the estate and forms an integral part of the estate rather than being an ancillary unit. The creation of around 6 full-time equivalent posts would provide some economic benefit, noting that not all new jobs in Luton will be in traditional B1-B8 uses. However, a retail bakery would not have wider benefits for economic development in the same way as a B8 use with trade counter.
10. The appeal building has been vacant and marketed as a trade counter unit since April 2019 as evidenced by the online marketing details provided by the appellant. There has been little apparent interest from B2/B8 or sui generis operators with or without trade counters, with the size of the building seemingly limiting such interest. The scope to rebuild and expand the footprint of the building would be restricted given the location. However, other than the online marketing advert, I have limited information on the marketing process and whether other uses compatible with a Category A Employment Area have been explored. The National Planning Policy Framework (NPPF) and Planning Policy Guidance seek flexibility in terms of land use including employment land, but it has not been adequately demonstrated that the building is no longer feasible for uses compatible with the employment area.
11. The appellant makes comparisons with the permitted retail bakery at Capability Green Employment Area, which I saw during my site visit. However, the permitted bakery occupies a much smaller building relative to the overall

employment area. It had previously operated as an ancillary site management office rather than a commercial office and had been vacant between 2011 and 2017. The impact on the employment area was considered acceptable on that occasion, but the development here would not be ancillary and would result in a greater loss of employment floorspace both in actual terms and relative to the employment area in which the appeal building is located.

12. While retail and business use now fall within Class E of the UCO, there would still be a loss of employment space from Class B8. As noted above, the fallback position of converting from B8 to business and then retail is hypothetical and so carries limited weight. There may be existing and future B1, B2, B8 accommodation in this part of Luton, including the emerging Napier Park, but it has not been demonstrated that the development would avoid a net loss of such accommodation within the borough.
13. Concluding on this main issue, the development would have a negative effect on the provision of employment space within the borough. Therefore, it would not accord with LP Policies LLP13 and LLP14 as set out above or help to build a strong and competitive economy as advocated by the NPPF.

Retail space provision

14. The trading estate is not located within the town centre or any district or neighbourhood centre as defined by the centre hierarchy in LP Policy LLP21. The size of the unit is small and would not require an impact assessment. However, LP Policy LLP21 states that retail proposals should meet the sequential test and not significantly adversely affect the viability and vitality of the town, district and neighbourhood centres either on its own or in combination with other schemes.
15. The appellant contends that the development would provide a much-needed service to employees on the trading estate and other nearby employment areas as a permanent replacement for an existing mobile takeaway van. The appellant argues that as the target audience is very locationally specific, there are not any sequentially preferable sites available.
16. However, the trading estate is close to the town centre as well as shopping parades on Kimpton Road and Park Street. Based on my observations, these locations are within a reasonable walking distance, particularly Park Street. No assessment of potentially suitable alternative sites in these locations has been included by the appellant. Moreover, the site is on an established road frontage to and from the town centre, which means that any retail bakery is likely to serve more than just the employees and customers of the trading estate.
17. In terms of the sequential test assessment, Capability Green is some distance from any existing centre or parade and is a very self-contained location. The officer's report for the permitted bakery makes clear that there were no other sequentially preferable sites in that location. It is not apparent that the same conclusion can be made here.
18. The appellant has highlighted the permitted drive thru restaurant and coffee shop sites at Luton Retail Park. I observed these on my site visit. Neither site is within a designated employment area. In the case of the restaurant, the officer's report stated that there were no suitable locations in the town, district or neighbourhood centres in terms of conflict with similar existing development

and the appropriateness of sites to accommodate a drive thru. Additionally, and in the case of the coffee shop site too, the officer's report noted the integral drive thru designs were intended to serve a distinct market using the retail park as well as passing trade. As noted above, there is less of a distinct market for the appeal proposal, or sufficient evidence that alternative sites have been considered.

19. While the development may not result in the loss of trade from any commercial premises or designated centre, it has not been demonstrated that there are no suitable alternative sites available in existing centres. Therefore, the development would have a negative effect on retail provision within the borough, contrary to LP Policy LLP21 as set out above. It would also not accord with NPPF paragraph 86 which advocates the use of a sequential test for main town centre uses such as retail.

Character and appearance

20. As noted above, most of the units on the trading estate operate as B8 with trade counter. The character and appearance of the estate is commercial and industrial with a distinct function in terms of the storage and distribution of building and vehicle supplies along with vehicle servicing and metal recycling. While tradespeople and the general public visit the estate to purchase items, there is not a general retail character.
21. The provision of a retail bakery selling food and drink would be different to the other units in terms of the products sold. It would be likely to serve a wider range of customers than the rest of the estate, particularly given its prominent location next to the main road. Although signage and opening hours could be controlled in planning terms, there would be a shift towards a more general retail character. This would be at odds with the estate's prevailing character.
22. Concluding on this main issue, the development would have a negative effect on the character and appearance of the area. Therefore, it would not accord with LP Policies LLP1 and LLP25 which, amongst other things, seek to preserve or improve the distinctiveness and character of the area. It would also not comply with NPPF Section 12 which advocates developments that are sympathetic to local character.

Conclusion

23. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Tom Gilbert-Wooldridge

INSPECTOR