



Appeal Decision

Site visit made on 15 September 2020

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 October 2020

Appeal Ref: APP/B0230/W/3254030
104-106, Park Street, Luton LU1 3EY

- 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 Absa Investments Ltd against the decision of the Borough of Luton Council.
 - The application Ref 20/00361/FUL, dated 19 March 2020, was refused by notice dated 29 April 2020.
 - The development proposed is the conversion of vacant public house to 6 flats (2 one-bed and 4 two-bed) with one additional storey and single and two storey rear extensions with associated shared amenity space, cycle and bin storage.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect upon:
 - character and appearance of the area, with particular regard to scale, design and intensity of development; and
 - living conditions of future residents of the proposed flats, with particular regard to internal space standards and any potential for noise, disturbance or odour.

Procedural Matter

3. The site address specified in the banner heading above is taken from the planning application form and differs to that entered on the decision notice. From my inspection, I am satisfied that main parties have referred to the same site as defined on the submitted site plan. As the latter refers to a former business, the site address as originally specified by the appellant is accurate and is used for the purposes of this appeal.

Reasons

Character and Appearance

4. The appeal site is a vacant, mid-terraced public house which is located on the edge of Luton town centre on a main vehicular and pedestrian route. This is a mixed use area, with a predominantly commercial appearance.

5. The appeal property is currently of a 2 storey scale. The appeal proposal would extend the existing footprint and increase the height of the appeal building across its entire width, to provide an additional storey. It would be subdivided into 6 self-contained flats. Other flatted developments are apparent within the street scene. The buildings in the vicinity of the site are of varying ages, designs and scales which range between the existing height of the appeal site and that of the appeal proposal.
6. The Council has not advanced any opposition to the scale and design of the proposed rear extensions. From my site inspection, I have no cause to disagree with that assessment.
7. The contention between main parties is the degree to which the appeal proposal would integrate with the surrounding scale of development. The Council has cited that the proposal would give rise to an over intensive, incongruous development that would be visually intrusive.
8. In terms of scale, evidence has been submitted which confirms that part of the appeal premises which adjoins the taller No 102, Park Street, originally had a 3rd storey prior to undergoing alterations, including a height reduction. The increased height proposed would therefore restore part of the appeal site to something similar to its former height.
9. The proposed design that would be employed would reflect existing window and eaves features which are characteristic of the existing front elevation of the appeal premises. Consequently, this would not result in a confused or unbalanced elevation that would be incongruous.
10. Furthermore, the appellant has provided an elevational drawing of the wider street scene which demonstrates that the appeal proposal would sit comfortably in overall design terms within the varied scale of both this terrace and wider street scene and would not be prominent to a degree that would be overly dominant.
11. The proposed intensity of development would not be discordant with character and appearance of the existing flatted development within the area.
12. For these reasons, I do not find that the appeal proposal would be harmful to the character and appearance of the area, with particular regard to scale, design and intensity of development. Contrary to the Council's view, the appeal proposal would not conflict with Section 12 of the National Planning Policy Framework (the Framework), and in particular paragraph 130.
13. In the absence of any harm, I do not find any conflict with Policies LLP1, LLP15 and LLP25 of the Luton Local Plan 2011-2031 (the Local Plan).

Living Conditions

14. The appeal site is bounded by food and drink uses on either side and also to its rear. There are a number of existing residential units within the vicinity, including flats through conversions and new purpose built developments.
15. I note that the appellant has sought to amend their proposals to address all of the Council's concerns and, in doing so, has ensured that each unit would maximise opportunity for natural light, services, functional rooms and outlook.

16. Notwithstanding this, there is contention between main parties regarding the level of floor space that would be provided for flat No 4. There is also contention over the level of noise and disturbance that would arise from the A505, as well as from existing ventilation plant and entertainment activity at the nearby football supporters club. The appropriateness of the relationship between rear windows serving the proposed flats and the ventilation and odour suppression units associated with the food and drink uses which bound the site, in terms of noise, disturbance and odour is also in dispute.
17. In terms of internal floor space, each of the proposed units would be served off an internal communal hall, stairs and landings. Each unit would have an open plan living room and kitchen, bathroom and either one or two bedrooms. They would each have access to a communal basement storage area, amenity space, bin storage and cycle storage to the rear. In assessing the adequacy of these, the Council has not raised objection. I have no reason to disagree with that assessment. However, the Council has argued that the size of flat No 4 would fall below the Nationally Prescribed Space Standard for a 1 bedroomed single person unit and considers that this would be exacerbated as the bedroom would be capable of accommodating 2 occupants.
18. There is no substantive evidence to support their assumption that double occupancy would necessarily arise. Furthermore, as the Council has not adopted these standards within their Local Plan, they cannot attract significant weight. In any event, on the whole, I find that the level of shortfall would be negligible and would not be harmful to the living conditions of future occupants.
19. In terms of noise and disturbance, the appeal proposal would intensify a noise sensitive receptor within the vicinity of noise generating sources. In terms of road noise, the impact may fluctuate according to the time of the day and also between particular internal and external parts of the appeal site.
20. Furthermore, there would be habitable room windows in the rear elevation of the appeal property that would serve all 6 flats. There would be potential for noise and disturbance to be experienced from entertainment activity and the roof top ventilation plant at the nearby football supporters club which could extend into the evening.
21. There is also the potential for noise, disturbance and cooking odour from the adjoining eateries given there are a number of flues and other units associated with their ventilation and cooking practices. In particular, several such features exist at ground floor level, both very close to and on the boundary between No 102 and the appeal site. The equipment faces and therefore could release cooking odour and noise into a recessed area where bathroom, kitchen and bedroom windows are proposed for flat No 1, and also bathroom windows for flat Nos 3 and 5 above.
22. At the time of my visit, with the exception of No 108, these nearby uses did not appear to be operational. No technical assessments have been presented that would confirm that the noise and odour emissions from those particular sources would be within acceptable tolerances or could be adequately mitigated. There is nothing before me to confirm that they would fall within the control of the appellant. Consequently, I cannot be sufficiently certain that these impacts would not have a reasonable prospect of arising in respect to each unit, albeit it would be to varying degrees.

23. The appellant has highlighted that the existing first floor of the premises has a residential use. However, that part of the site is not the source for contention between parties and has a different juxtaposition. My attention has also been drawn to other recent planning approvals for residential units within proximity to similar equipment. However, these to have a materially different juxtaposition and therefore do not sufficiently justify the compromised living conditions that could result from this specific appeal proposal.
24. I do not share the appellant's view that the requirement for a noise and odour assessment prior to the granting of consent is a disproportionate measure in this particular instance. Although the appeal proposal would remove the public house, a noise generating use, I am mindful that there is a reasonable prospect that this could be at the expense of living conditions for occupants of the new units for the reasons given. Furthermore, no evidence has been provided that would substantiate the appellant's claim of betterment.
25. Paragraph 182 of the Framework makes it very clear that existing uses should not have unreasonable restrictions placed on them as a result of a development permitted after they were established. Therefore, I do not accept the appellant's arguments, which would only serve to defer any adverse impacts to other regulatory regimes.
26. Furthermore, that paragraph of the Framework also states that where the operation of an existing business could have a significant effect on new development in its vicinity, the applicant should be required to provide suitable mitigation before the development has been completed. Given the absence of the necessary technical assessments and the particular juxtaposition between the specific appeal proposal and the sources of potential noise, disturbance and cooking odour, I cannot be sufficiently certain that these impacts could be adequately mitigated in a manner that would be both technically and visually acceptable through the imposition of planning conditions.
27. For these reasons, I find that there would be no harm to living conditions of future residents of the proposed flats in terms of the resulting living space that would be provided. However, I find that the appeal proposal would be significantly harmful to the living conditions of occupiers of the proposed flats with particular regard to noise, disturbance and odour.
28. As such, I agree with the Council that the appeal proposal would conflict with Section 12 of the Framework, in particular paragraph 127(f) as a high standard of amenity would not result.
29. Policy LLP1 of the Local Plan states that planning permission will be granted where applications accord with local plan policies when taken as a whole, unless material considerations indicate otherwise. Change will be managed so as to create amongst things high quality, healthy places. Policy LLP25 requires new housing to be delivered in accordance with prescribed living conditions standards including those relating to noise.
30. Given the identified harm, the appeal proposal would conflict with these policies.

Other Matters

31. The appellant has advanced a number of social, environmental and economic matters as benefits of the appeal proposal which he considers should be afforded substantial weight.
32. In these regards, I note that the appeal proposal would involve the re-use of a vacant building which is falling into decay and would also create employment during construction phase. I also note that the site is within an accessible location and would be capable of promoting an increased footfall in the town centre and an active, healthy lifestyle through walking and cycling. However, these do not out-weigh the harm that I have identified to living conditions.
33. Neither party has provided evidence regarding the extent of the housing land supply in the area. Although the appeal proposal would contribute to that in a limited way, it should not be at the expense of compromising the living conditions of future residents to an unacceptable degree. Therefore, the potential contribution that the appeal proposal could make to housing delivery does not out-weigh the harm to living conditions that I have identified.
34. The absence of third party objections in this instance is not a substantive indicator that the identified harm to living conditions would not arise, is reduced or is justified.
35. Consequently, the appeal proposal conflicts with the development plan when taken as a whole.

Conclusion

36. For the reasons given, the appeal should be dismissed.

C Dillon

INSPECTOR