



Appeal Decisions

Site Visit made on 2 August 2021

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2021

Appeal A Ref: APP/B0230/W/21/3268919

2 High Town Road, Luton LU2 0DD

- 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 Dhiraj Shetty on behalf of 50Nine Health & Well-Being Ltd against the decision of Luton Borough Council.
 - The application Ref 20/00759/COU, dated 11 June 2020, was refused by notice dated 24 September 2020.
 - The development proposed is described as: 'Change of use of ground floor from shops (A1) and Coffee bar (A3) to hot food takeaway and restaurant/coffee bar (A3/A5)'.
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Appeal B Ref: APP/B0230/W/21/3270226

2 High Town Road, Luton LU2 0DD

- 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 Dhiraj Shetty on behalf of 50Nine Health & Well-Being Ltd against the decision of Luton Borough Council.
 - The application Ref 20/00950/FUL, dated 28 July 2020, was refused by notice dated 25 September 2020.
 - The development proposed is described as: 'External Alterations following the submission of Change of use of ground floor from shops (A1) and Coffee bar (A3) to hot food takeaway and restaurant/coffee bar (A3/A5) application ref: 20/00759/COU'.
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Decision

1. Appeal A is dismissed, and Appeal B is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. The main parties to this appeal have had the opportunity to comment upon any relevance of this to the outcome of the appeals.
3. As regards both appeals, I have taken the descriptions of development as stated on the Council's Decision Notices and the appeal forms as opposed to as set out upon the application forms. This is because they are concise and, in each case, focus solely upon the proposed development under consideration.
4. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 and had the effect of amending and simplifying the system of Use Classes. Even so, as each original planning application was submitted prior to 1 September 2020, the Regulations dictate that the appeals now before me must be determined by reference to the Use Classes that were formerly in place. I note here that, notwithstanding

the amendments made, planning permission continues to be required to introduce a hot food takeaway use (*sui generis*).

5. In terms of the external alterations that are the subject of Appeal B, an extraction flue (the flue) has already been installed to the rear elevation of the appeal property. This particular element of the proposal is thus to be considered on a retrospective basis.

Main Issues

6. The main issues with respect to Appeal A are:
 - The effect upon highway and pedestrian safety; and
 - The effect upon the health of local residents.
7. The main issues with respect to Appeal B are:
 - Whether or not the proposal would preserve or enhance the character or appearance of the High Town Conservation Area (the CA); and
 - Whether or not sufficient information has been provided to demonstrate that the proposal would have an acceptable effect upon the living conditions of residential occupiers at No 4 High Town Road (No 4), having particular regard to the potential for noise and odours.

Reasons

Highway and pedestrian safety (Appeal A)

8. The site is positioned opposite Luton train station and in proximity to where High Town Road meets Midland Road, both of which are busy inner urban routes that incorporate various waiting restrictions. Indeed, during my inspection, I witnessed regular vehicular and pedestrian movements taking place (including over a zebra crossing that is positioned alongside the site) and observed a limited supply of obvious stopping/parking opportunities to exist close to the site.
9. The Highway Authority (the HA) has raised concerns that the takeaway element of the proposed use would generate traffic and parking in an area that is already extremely busy, which, it has been suggested, would be to the detriment of highway safety. This is a matter of importance as the HA are responsible for the safety of users of the local highway network.
10. My attention has been drawn to the presence of nearby car parks situated within walking distance of the site, including a multi-storey facility that serves the train station. However, it would be unrealistic to expect takeaway customers (or delivery drivers) to routinely seek to utilise local car parks if merely intending to stop for the purposes of collecting orders.
11. I acknowledge the site's sustainable central location as well as the presence of a small area of hardstanding adjacent to the appeal building's side. However, it has not been demonstrated that a suitable extent of convenient and useable parking options is offered in proximity to the site for the purposes of serving the takeaway element of the intended mixed use. Indeed, the proposal would be likely to prejudice the free flow of traffic and the safety of highway users in this congested location.

12. For the above reasons, and in the absence of robust evidence to clearly demonstrate otherwise, the proposal would have an unacceptable effect upon highway and pedestrian safety and would thus cause harm. The scheme conflicts with Policies LLP1, LLP31 and LLP32 of the Luton Local Plan 2011-2031 (adopted November 2017) (the Local Plan) and with the Framework in so far as these policies set out that sufficient parking should be provided to help ensure that adverse effects on highway safety and the convenience of nearby residents and users are avoided.

Health of local residents (Appeal A)

13. The Luton Food Plan 2018-2022 comprises a local strategy targeted at improving the health of residents and is a material consideration in decision making. One of its commitments is to use planning and licensing as the function to manage food retail located near to sensitive uses.
14. It has been brought to my attention that high rates of child obesity exist within the High Town Ward and that the site is situated within walking distance of St Matthew's Primary School. However, the school is not located in immediate proximity to the site. As such, various takeaway outlets exist at closer or comparable distances.
15. It is also relevant to note that a mixed use is proposed, as opposed to a use solely focussed upon the sale of hot food to take away. Furthermore, the current establishment is marketed based on it offering food and drink that promotes health and wellbeing. Whilst I accept that an establishment of this type could not realistically be secured in perpetuity via the possible imposition of a planning condition, all matters considered, I am suitably satisfied that the proposal would have an acceptable effect in health impact terms.
16. For the above reasons, harm would not be caused to the health of local residents. The proposal satisfactorily accords with Policies LLP1 and LLP25 of the Local Plan and with the Framework in so far as these policies promote the creation of healthy places and communities.

The CA (Appeal B)

17. 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. The CA's significance continues to be readily identifiable despite various modern and unsympathetic influences that are contained within and in proximity to it.
18. The appeal property has extensive history as a licensed premise and is, I understand, included on Luton's Draft Local List of Heritage Assets. It is prominently located at the southern end of a linear row that fronts High Town Road and is of traditional appearance, being comprised of various pitched roof elements. The property exhibits a range of ornate features to its elevations and contributes positively to the CA's character and appearance.
19. Whilst the flue is setback from the highway and discreetly positioned so as not to have a material impact in conservation terms, a predominantly glazed modern structure with a shallow-pitched roof (the extension) is proposed. This would cover a sizeable footprint adjacent to Midland Road. Notwithstanding its

intended single storey height, the extension would be readily visible from a range of publicly accessible vantage points. Owing to its unduly prominent positioning and excessive footprint coverage, the extension would appear as an unsympathetic addition to the site and wider CA. Indeed, it would unacceptably detract from the appeal property's current well-proportioned form and traditional qualities.

20. For the above reasons, the proposal would fail to preserve or enhance the character or appearance of the CA and would cause less than substantial harm to its heritage significance. As set out in the Framework, any less than substantial harm to a designated heritage asset should be weighed against the public benefits of the proposal.
21. In terms of the scheme's benefits, the proposal would extend the internal capacity of the appeal property and raise its potential to cater for additional custom across all seasons of the year. This would offer economic and social benefits and thus support the vitality and viability of the High Town Neighbourhood Centre. Nevertheless, merely a single commercial operation is under consideration and a somewhat modest extent of additional covered floor space would be created. I also note that a ramped access to the premise is already in place. In the context described here, I attach limited weight to the scheme's public benefits. The less than substantial heritage harm that I have identified would not be outweighed by these benefits.
22. The proposal conflicts with the relevant heritage provisions of the Framework and with Policies LLP1, LLP25 and LLP30 of the Local Plan in so far as these policies set out that, to protect, conserve and enhance Luton's unique and rich heritage, identity and sense of place, development proposals must take account of the character, setting and local distinctiveness of local affected heritage assets.

Living conditions of the occupiers of No 4 (Appeal B)

23. The flue is located to the rear elevation of the appeal property and immediately alongside No 4. Its outlet point only marginally exceeds the eaves height of the appeal property's main roof and is set close to a rooflight that serves No 4. It is my understanding that this rooflight is the only opening to serve a bedroom.
24. The Council's Environmental Protection Officer (the EPO), in his role as a technical internal consultee, requested (at planning application stage) a range of additional information to enable him to make a proper assessment of the extraction system's effectiveness at preventing potential noise and odour nuisance. Whilst the scheme is supported by some selected specification details, including of circular silencers, fans and roof ejectors, no formal/comprehensive assessments to assist in determining the extraction system's impact upon No 4's occupiers have been submitted.
25. When noting the flue's specific positioning, I see clear merit in the EPO's request for further information. Indeed, in the absence of detailed information/assessment, I find that it has not been demonstrated that the proposal has or would have an acceptable effect upon the living conditions of residential occupiers at No 4 High Town Road having particular regard to the potential for noise and odours to occur. I thus find harm.

26. The proposal conflicts with Policies LLP1 and LLP25 of the Local Plan and with the Framework in so far as these policies support healthy places and set out that planning decisions should promote a high standard of amenity for existing and future users.

Planning Balance

Appeal A

27. In the absence of robust evidence to the contrary, I have found that the proposed change of use would cause harm by prejudicing highway and pedestrian safety. Any economic or social benefits associated with expanding the site's range of uses (including the introduction of a takeaway service) attract limited weight. This is due to a single premise of relatively modest size being under consideration. Indeed, the scheme's benefits would be outweighed by the harm and associated 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.

Appeal B

28. The external alterations (more specifically, the extension) would cause less than substantial harm to the heritage significance of the CA, a designated heritage asset. Additionally, in the absence of sufficient evidence to demonstrate to the contrary, I have identified that the proposal would cause harm to the living conditions of No 4's occupiers. The scheme's limited economic and social benefits, which would be associated to the potential for additional custom to be catered for, would be outweighed by the harms and associated 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

29. For the reasons set out above, both Appeal A and Appeal B are dismissed.

Andrew Smith

INSPECTOR