



Appeal Decision

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 Ref: APP/B0230/W/21/3272012

Lounge 33, 4 Cumberland Street, Luton LU1 3BW

- 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 Ms H Chohan against the decision of Luton Borough Council.
 - The application Ref 19/01590/FUL, dated 5 December 2019, was refused by notice dated 8 February 2021.
 - The development proposed is described on the application form as: 'retention of existing smoking area'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey side extension to include a smoking area at Lounge 33, 4 Cumberland Street, Luton LU1 3BW in accordance with the terms of the application, Ref 19/01590/FUL, dated 5 December 2019, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: ATK/19/L33/TP1A; ATK/19/L33/TP2A; ATK/19/L33/TP3A; ATK/19/L33/TP4A.
 - 2) No means of broadcasting amplified speech or music shall at any time be attached to the extension hereby permitted.
 - 3) The extension hereby permitted shall not be open for customers between the following hours: 0000 - 1200 on Mondays to Sundays.

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 appeal.
3. A single storey side extension is already in place at the site, and I shall consider the appeal on this basis. In the first paragraph of this decision, I have used a description of development similar to that given on the Council's Decision Notice and the appeal form. However, I have not included the term 'retrospective planning permission' as this is not an act of development. The description of development given on the application form does not clearly reflect that an extension has been constructed, which is why I have not used it.

Main Issues

4. The main issues are:

- The effect upon the character and appearance of the area; and
- The effect upon the living conditions/amenities of neighbouring occupiers, having particular regard to odours.

Reasons

Character and appearance

5. The extension that is under consideration is situated to the side of a modern four-storey building of flat-roofed design that is in mixed use. The area that surrounds the site contains various uses and buildings of a range of different heights, types, designs and material palettes. There is thus a mixed character and appearance in place local to the site.
6. Being set at a single storey with a flat roof, the side extension appears as an ancillary and low-key addition to the main building. Its design and external facing materials suitably reflect the current composition of the main building's ground floor as well as the varied makeup of the wider surrounding area. I do not consider that the extension appears odd or out of place. Indeed, I find that it shares an acceptable degree of legibility with the main building.
7. For the above reasons, the proposal does not cause harm to the character and appearance of the area. The scheme accords with Policies LLP1 and LLP25 of the Luton Local Plan 2011-2031 (adopted November 2017) (the Local Plan) and with the Framework in so far as these policies require all new development in the Borough to contribute to enhancing a sense of place and to preserve or improve the character of the area.

Odours

8. The side extension is, for the most part, comprised of an area designated for smoking. Reflective of this, during trading hours, the smoking area is of part-open design to its side and rear. Residential uses are in place to the upper floors of the building, and thus in proximity to the extension.
9. The Council's Environmental Protection Officer has sounded concern at the lack of supporting information provided as regards the potential impact of smoke emissions and associated odours from the extension. However, having factored in the limited floor space under consideration and the precise location of the extension's open sides relative to the closest upper floor windows, I am unpersuaded that the proposal is likely to generate unacceptable emissions or odours to the detriment of neighbouring living conditions.
10. Whilst planning permissions for major residential/mixed-use developments on close by sites have been brought to my attention, I am satisfied that the living conditions of future occupiers of these developments would not be adversely impacted upon by odours associated to the operation of the small extension in question.
11. For the above reasons, I am sufficiently satisfied that the proposal does not cause harm to the living conditions/amenities of neighbouring occupiers having particular regard to odours. The scheme accords with Policies LLP1 and LLP25

of the Local Plan and with the Framework in so far as these policies set out that planning decisions should promote a high standard of amenity for existing and future users.

12. The proposal accords with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conditions

13. The Council has suggested conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity purposes and omitted one related to odour control.
14. In the interests of certainty, a condition setting out a schedule of approved plans is required. In the interests of protecting neighbouring residential occupiers from any potential undue noise or disturbance, a condition setting out permitted hours of operation that deter activity during early morning hours is both reasonable and necessary. This is particularly when noting the extension's part-open design. Also, in the interests of protecting neighbouring living conditions, a condition setting out that no means of broadcasting amplified sound is to be installed is both reasonable and necessary.
15. For reasons that I have already set out above, I do not consider it necessary to condition that a scheme of odour control be submitted and agreed. I also note that, given the particular nature of the emissions under consideration, any potential agreed odour scheme would likely be unduly difficult to monitor and/or enforce effectively.

Conclusion

16. For the reasons given above, the appeal is allowed subject to conditions.

Andrew Smith

INSPECTOR