



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/21/3272285

64-66 Stuart Street, Luton LU1 2SW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 20, Class AB of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mr Reshad Khodabux on behalf of Next Step Support against the decision of Luton Borough Council.
 - The application Ref 21/00022/PAUPTC, dated 6 January 2021, was refused by notice dated 23 March 2021.
 - The development proposed is construction of one additional floor (fourth floor) to provide four studio flats.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. As the application form that is before me does not contain a declaration date or site address, I have used (in the banner heading above) the date of the application and the address as given on the appeal form. Indeed, I have no reason to consider these details to be incorrect.

Main Issue

3. The main issue is whether the proposal would be permitted development under Schedule 2, Part 20, Class AB of the GPDO.

Reasons

4. Part 20 refers to the construction of new dwellinghouses whilst Class AB relates specifically to new dwellinghouses on terrace buildings in commercial or mixed use. The permitted development right for works above the topmost storey of a terrace building will apply (as indicated under sub-paragraph (2) of paragraph AB) when the building is used in a mixed-use capacity combining either two or more specified commercial uses or a use falling within Use Class C3 (dwellinghouses) together with one or more of the aforementioned specified commercial uses.
5. The site's planning history highlights that prior approval was first granted in 2018 under Schedule 2, Part 3, Class O of the GPDO with respect to proposals to change the use of the appeal building from offices to residential apartments. Whilst formerly used as offices, the building is now solely comprised of residential apartments. This is consistent with my own observations upon external inspection, whilst a list of the 15 flats contained within the existing

building appears as an appendix to the appellant's Planning Statement (January 2021). I thus find that the appeal building is not used in either a commercial or mixed-use capacity. Thus, the proposal cannot be considered to constitute permitted development under the terms of Class AB.

6. Various circumstances where development is not permitted under Class AB are set out under paragraph AB.1 of the GPDO. I have no reason to consider that the proposal would fail to comply with any particular provision of paragraph AB.1. However, due to the appeal building's current use, and in accordance with my above reasoning, the proposal does not represent permitted development under Schedule 2, Part 20, Class AB of the GPDO.

Other Matters

7. The provisions of paragraph AB.2 of the GPDO require the local planning authority to assess the proposed development based on several different matters. However, this is only necessary where development is permitted. This is not the case here. It is therefore unnecessary for me to consider the merits of the proposal based on these matters.

Conclusion

8. For the reasons set out above, the appeal is dismissed.

Andrew Smith

INSPECTOR