The Planning Inspectorate

Appeal Decisions

Site Visit made on 3 August 2021

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 OCTOBER 2021

Appeal A Ref: APP/A2280/W/20/3251714
2E Luton Road, Chatham ME4 5AA

- 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 Lanre Abudu against the decision of Medway Council.
- The application Ref MC/20/0408, dated 15 February 2020, was refused by notice dated 9 April 2020.
- The development proposed is a change of use of A1 (shop) to C3 (residential) with associated alterations to the shop frontage.

Appeal B Ref: APP/A2280/W/20/3255000
2E Luton Road, Chatham ME4 5AA

- 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 Lanre Abudu against the decision of Medway Council.
- The application Ref MC/20/0872, dated 14 April 2020, was refused by notice dated 2 June 2020.
- The development proposed is a change of use of A1 (shop) to C3 (residential) with associated alterations to the shop frontage.

Decision

1. Appeals A and B are dismissed.

Application for costs

2. An application for an award of costs was made by Mr Lanre Abudu against Medway Council. This application is the subject of a separate decision.

Preliminary Matters

3. As submitted, both application forms referred only to the change of use and not the associated physical works to replace the shopfront. Both of the Council's decision notices and the appellant's appeal forms have included this element within their descriptions of development. As these works are operational development for which planning permission is required, I too have included them within the appeal descriptions.

4. There is no difference in the schemes being proposed. Appeal B is a resubmission of Appeal A. For Appeal A, the reasons for refusal included a failure to address the impact of the development on the North Kent Marshes Special Protection Area (SPA)/Ramsar Sites. The Council subsequently confirmed that the appellant had addressed this matter and that the reason for refusal had been overcome. It was not raised as a reason for refusal in relation to Appeal B. I have therefore not considered it as a main issue within my

decision. I have considered each proposal on its individual merits although to avoid duplication I have dealt with both appeals together in my reasoning.

5. An amended Framework[1] was published by the Government between the determination of the planning application and the appeal coming before me. I am satisfied that this latest version of the Framework does not raise any new considerations in relation to this appeal.

Main Issue

6. The main issue for both appeals is whether or not the loss of the existing use within the defined Luton Road Local Shopping Centre would harm the provision of facilities to the local community.

Reasons

7. The appeal building comprises an existing three storey over basement building located on Luton Road. The ground floor is a vacant commercial unit, with the other floors in residential use.

8. Policy R10 of the Local Plan[2] identifies Nos. 2-74 (evens) Luton Road as a 'Local Shopping Centre'. The policy seeks to resist the loss of existing shopping facilities, including what it terms 'retail, service and food and drink uses' (identified in the policy as Classes A1, A2 & A3 but now superseded by Class E) unless there is an improvement to local amenity or the provision of community facilities which outweigh the loss. The Local Plan considers it important that retailing and other services are provided locally to communities.

9. The evidence supplied by the appellant has sought to demonstrate that the retailing situation in the area has changed since the Local Plan was adopted and that there is no longer any demand for a retailing use at the appeal site. The appellant therefore claims that the Local Plan should be considered out-of-date, and that reduced weight should be applied to its policies. However, Paragraph 219 of the Framework clarifies that development plan policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework.

10. Policy R10 has to some extent been overtaken by events insofar as Classes A1-A3 are now subsumed within Class E. However, the underlying objectives of the policy, in seeking to ensure local communities have access to facilities and services, is broadly reflected in Paragraph 93 of the Framework. This paragraph encourages the retention and development of accessible local services and community facilities. I therefore do not consider the objectives of Policy R10 to be out-of-date and accordingly should be afforded due weight.

11. Although Policy R10 does not include viability criteria to help justify the loss of the existing use, I have some reservations in relation to the appellant's evidence on this issue. These include: the evidence of market conditions and of clear and sustained marketing is limited; the references to changes at out of centre locations do not appear to be particularly relevant to these appeals. A survey was submitted on a base map dated 25 June 2020, but it is not clear when the survey was undertaken, whether it was a snapshot on a particular

[1] National Planning Policy Framework (2021)
[2] Medway Local Plan (2003)

day or over a defined period of time. Also, of the residential properties identified on this map, it is not clear which, if any, have always been used for residential purposes. I also note that the unit was occupied until December 2019 and that the Covid-19 situation will undoubtedly have disrupted the uptake of units in such locations in the intervening period, but little regard appears to have been had to it.

12. Furthermore, the appellant does not appear to have specifically addressed the other limb of the policy regarding improvements to amenity. Whilst I acknowledge that the reference to 'improvement to local amenity' is open to some interpretation, no evidence has been provided by the appellant to demonstrate how the appeal schemes would address this issue in the absence of the provision of community facilities. Whilst the schemes propose the reintroduction of a frontage similar to what previously existed, this does not necessarily mean that it represents an improvement to the appearance of the building or wider area such that it might be considered an improvement to local amenity.

13. The appellant has not sufficiently demonstrated in either appeal that the proposals would not harm the accessible provision of facilities to the local community. Similarly, no substantive evidence has been submitted to demonstrate that the loss of the current use and introduction of a residential use would represent an improvement to local amenity or lead to the provision of community facilities. As a result, I find that the loss of the existing use within the Luton Road Local Shopping Centre has not been justified in either appeal.

14. Accordingly, I find that the proposals would be contrary to Policy R10 of the Local Plan, insofar as it seeks to ensure that Local Shopping Centres retain and provide locally available retailing and other facilities for the communities which they serve.

Other Matters

15. The appellant refers to other sites which have received planning permission for residential development within shopping areas, but I do not have the details of those schemes before me and therefore cannot be sure that they represent a direct parallel. In any case, I have determined the appeals on their own merits.

16. The appellant points out that both appeal schemes accord with various policies relating to issues such as amenity protection, highway/parking etc. This would however be a lack of harm which, by definition, would be incapable of weighing against harm. Accordingly, it would be neutral in any balance.

17. The appeal site is located within 6km of the North Kent Marshes SPA/Ramsar Sites. In order to mitigate the likely significant effect of the proposal on the protected site, the Council required the appellant to contribute towards the Strategic Access Management and Monitoring Strategy. When the Appeal A scheme was determined by the Council, no mechanism was in place to secure the contribution and a related reason for refusal was duly added to the decision notice. The Council has since confirmed that an agreement has now been completed which addresses their concerns in relation to Appeal A. This in turn negated the need for a similar reason for refusal for the Appeal B scheme. As I am dismissing the appeal, it is not necessary for me to pursue this matter any further.

Planning Balance and Conclusion

18. The Council has not disputed the appellant's evidence that it is unable to demonstrate a 5-year housing supply. Accordingly, I must have regard to paragraph 11 of the Framework as in this context the most important policies are considered out of date and planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

19. I have found harm in relation to the effect of the proposed development on the Local shopping Centre and its ability to provide services and facilities to the local community. This harm is significant and as a consequence worthy of significant weight. The harm I have found would accordingly lead to conflict with the Framework, in particular Paragraph 93, which encourages the retention and development of accessible local services and community facilities.

20. The appeal schemes would result in a new residential unit, which would add to the overall net supply of housing in the area. It would also accord with the Framework's support for windfall sites. The provision of a 2 bed/3 person flat, by its nature, would make only a small contribution towards housing supply. There would be associated social and economic benefits although some of these would be limited by virtue of time and the scale of the proposal.

21. Overall, and for these reasons, the weight that could be attributed to the benefits would not be sufficient to tip the balance in favour of the appeal schemes. Accordingly, the adverse impacts of granting a planning permission would, in these cases, significantly and demonstrably outweigh the benefits when assessed against the policies in the development plan taken as a whole.

22. Appeals A and B should therefore be dismissed.

Stewart Glassar

INSPECTOR