



Appeal Decision

Site visit made on 19 January 2022

by Andrew Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 March 2022

Appeal Ref: APP/B0230/W/21/3275436

2-12 Bolton Road, Luton LU1 3HR

- 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 M Sidhu against the decision of Luton Borough Council.
 - The application Ref 20/00696/FUL, dated 17 June 2020, was refused by notice dated 18 February 2021.
 - The development proposed is demolition of existing building and provision of 10 no. two bedroom flats and 2 no. office suites with associated landscaping, parking and amenity areas.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing building and provision of 10 no. two bedroom flats and 2 no. office suites with associated landscaping, parking and amenity areas at 2-12 Bolton Road, Luton, LU1 3HR in accordance with the terms of the application, Ref 20/00696/FUL, dated 17 June 2020, subject to the conditions in the attached Schedule.

Procedural matter

2. In September 2020 amendments to the Town and Country Planning (Use Classes) Order 1987 were made. This deleted Class B1 and all the uses which previously fell into that class, including offices, are now within Class E. For consistency, when referring to Local Plan policies which pre-date this change, I have referred to Class B1. However, the condition which relates to the use of ground floor of the development refers to Class E of the amended Order.

Main Issues

3. The main issues are:
 - i) the effect of the development on the supply of employment land;
 - ii) the effect of the development on the character and appearance of the area; and
 - iii) whether it is necessary for the development to provide contributions towards education, museums, open space, libraries, waste and a car club, and if so whether an appropriate mechanism for securing these has been provided.

Reasons

Employment land supply

4. The appeal site accommodates a building which currently appears vacant but, I understand, was previously in industrial use as a bakery until a few years ago.
5. The parties agree that the site is a category B employment site. Policy LLP14 of the Luton Local Plan states that where such sites have been vacant for at least twelve months:

"a mixed use development that retains significant employment or alternative redevelopment to non B uses to meet identified needs will be permitted where:

- (i) It can be demonstrated that suitable alternative accommodation at comparable rents is available; and*
- (ii) It can be demonstrated that it is no longer suitable or viable for B1, B2 or B8 uses and where the site is vacant, there is evidence of active marketing for a reasonable period".*

6. Firstly, it is not disputed by the parties that the site has been vacant for over 12 months.
7. Secondly, it is necessary to consider whether the proposal retains significant employment. The policy is not clear as to whether 'significant employment' means floorspace or jobs. In terms of floorspace, the application forms state the floor area of the building is 235m², of which, according to the planning statement, 200m² is useable. The proposal would provide 112m² of office space which, although would represent a loss of around 100m² of floor space, it is still a substantial amount of employment generating floor space.
8. In terms of jobs, it is reasonable to anticipate that an office use would generate more jobs per square metre than a general industrial use, and this is supported by the data in the appellant's appeal statement. From this, it is clear that even with a considerable reduction in employment floorspace, the proposal would be likely to generate an increase in the number of jobs. As such, for the purposes of the policy, I consider significant employment would be retained.
9. Thirdly, from the way the policy is written, it seems that criteria (i) and (ii) should both apply to the proposal. The appellant has not suggested there is suitable alternative accommodation elsewhere and has not demonstrated the site is unviable for employment use nor provided substantive evidence of active marketing. The proposal would therefore conflict with the policy in this regard.
10. However, the appellant contends that as significant Class B1 space would be provided, it would be illogical to show alternative employment generating accommodation or to seek to demonstrate that the site is no longer suitable for B1, B2 or B8. I agree. Indeed, theoretically, the policy would require a mixed-use scheme that retained all the previous employment floor space to consider alternative employment accommodation and demonstrate a lack of viability or suitability for its retained employment use. This consideration carries significant weight in my assessment.
11. The Council suggest that there must a demand for the site as the viability assessment considers the site has significant land value and calculates a yield

of 5%. However the viability assessment merely calculates its value based on an average of rental values of similar sites around Luton and average yields. This does not suggest there is a demand for this building specifically in its current form in this location.

12. Overall, a significant amount of employment generating land would be retained by the development and the development would not have an unacceptably harmful effect on the supply of employment generating land. Therefore whilst there would appear to be some conflict with some of the wording of the policy, the proposal would accord with policy LLP14 overall, and policy LLP13 which also supports the redevelopment of employment sites for mixed uses.

Character and appearance

13. The site currently accommodates a rather squat single storey building. It faces a viaduct, which is higher the roof level of the building, which conceals it from most viewpoints aside from those from Bolton Road directly in front of it, and the public car park under the viaduct.
14. The neighbouring buildings are similarly functional in design, of limited height and appear to accommodate industrial uses. However, in the wider context there are a number of taller buildings. Most prominently these are on the opposite side of the viaduct and are part of the University of Bedfordshire. These buildings are several storeys taller than that proposed and are finished in a range of coloured sheet metal cladding. Also on that side of the viaduct there is a five-storey building finished in grey/brown brick with significant amounts of glazing. There is also a four-storey red brick building very close to the viaduct and further west along the viaduct there are more tall buildings around a roundabout junction.
15. To the east side of the viaduct there are some buildings of similar height to that proposed including two buildings behind the site; one finished in red brick and the other rendered in grey but with some brightly coloured detailing around some of the windows. There are other tall residential tower blocks in the distance to the east. Nonetheless, due to its proximity to the viaduct, it is considered that from positions along the viaduct, the development would appear as the most prominent building to the east, particularly as from some positions it would obscure views of the similarly heighted buildings to its rear. However, this would not necessarily render it harmful to its context. It is not unexpected that the buildings on the west side of the viaduct, whether part of the University or not, are taller as they are closer to the centre of Luton. The development's 6 storey height is comparable to other buildings on this east side of the viaduct and it would represent a more gradual decrease in heights moving away from the town centre than the current severe drop. Indeed, it would weaken the visual constriction to the town centre provided by the viaduct.
16. In terms of its design, the plans show that the rear part of the building would be finished in three equal bands of material (ivory render and two types of brick) with the front part wholly in ivory render. The use of render would reflect that of the 6-storey building to the rear and when mixed with brick would represent an acceptable finish.
17. Fenestration would be a series of square windows with the living room and primary bedroom in each flat having a balcony. Though there are sections of

wall which are devoid of windows or balconies, overall the building has sufficient openings such that no elevation would appear bland or featureless. Furthermore, the mixture of opening sizes provided by the windows and balconies adds interest, and differentiates it from some of the other buildings nearby, including those at the university, which contain elevations with many windows all of a uniform shape and regular placement. The balconies, whilst not particularly innovative, are simple features in their own right which do not detract from the appearance of the building.

18. Overall, I find nothing in the buildings design that would represent poor quality and it would represent an improvement on the existing building. It would be an appropriately positive response to its context and in this prominent location would not detract from the character and appearance of the area. It therefore would accord with Luton Local Plan policies LLP1 and LLP25 which both seek to ensure development enhances and improves the character of the area. As the site appears to be outside the town centre, policy LLP3 as referred to in the decision letter, would not appear to be relevant.

Planning obligations

19. To address the Council's third reason for refusal, a completed unilateral undertaking has been submitted during the course of the appeal. This aims to provide contributions towards education, open space, libraries, museums, waste collection and a car club scheme.
20. The Council's Planning Obligations Supplementary Planning Document (2007) (SPD) provides the justification for the scale and nature of the majority of the contributions. However as the SPD is 15 years old some of the values currently sought are, understandably, greater than that suggested by the SPD.
21. Notably the figure requested for the education contribution towards the local primary school on Surrey Street is markedly higher than as suggested by the SPD. However, conversely, the figure required for the secondary school at Stockwood Park Academy is less than would be generated using the formula in the SPD. Nonetheless, I consider the values are reasonable, directly related to the development and are necessary. The obligation therefore meets the tests as set out in Regulation 122 of the Community Infrastructure Levy Regulations.
22. The open space contribution is largely in line with the calculation provided in the SPD and in light of the very limited outdoor space that would be provided on site and lack of much public open space nearby, this contribution is also reasonable and necessary.
23. Contributions to libraries, museums and waste are in line with the SPD in terms of their scale and the scale of the development and also meet the tests in Regulation 122.
24. The Council's highway engineering consultee commented that as the development provides no on-site parking for the dwellings, a contribution of £3500 to the Luton Car Club scheme would be required. However, the provision of contributions to car clubs is not referred to in the SPD and I have no other justification before me to explain why a contribution of this scale would be necessary. As a result, this obligation does not meet the tests set out in Regulation 122 and it carries no weight in my consideration of the appeal.

25. Nonetheless the other obligations do all meet the aforementioned tests. The proposal therefore would accord with Luton Local Plan policy LLP39 which seeks to ensure development adequately contribute to the infrastructure needed to support them.

Conditions

26. The Council have not suggested any conditions, but several are recommended in responses to the application from consultees. Where necessary, and in the interests of clarity and precision, I have slightly altered the recommended conditions to more closely reflect the advice in the National Planning Policy Framework and the Planning Practice Guidance. I have also added other conditions I consider to be necessary.
27. I have attached the standard conditions relating to the commencement of the development and the approved plans in the interests of certainty. For the same reason, I have added a condition to restrict the use of the ground floor to offices, as proposed.
28. The condition relating to the construction method statement is necessary to protect the residential amenity of nearby residents, while conditions relating to contamination and noise protection are necessary to ensure a satisfactory residential environment is provided for future occupiers of the development.
29. Two conditions, relating to visibility splays and the provision of parking, are necessary in the interests of highway safety, and the condition relating to surface water ensures the satisfactory drainage of the site and the prevention of flooding on the highway.
30. The conditions relating to a landscaping scheme, finishing materials, cycle and bin storage and lighting are necessary in order to protect the character and appearance of the area.
31. Some conditions require details to be submitted before the commencement of development. This is to ensure the effects of the proposal are properly mitigated.

Conclusion

32. The development accords with the development plan taken as a whole and there are no other material considerations to suggest the decision should be made other than in accordance with the development plan. Therefore, for the reasons given above and having had regard to all other matters raised, the appeal is allowed.

Andrew Owen

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 18-929-P-01 Rev A and 18-929-P-02 Rev D.
- 3) No development shall commence until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The development shall be carried out in accordance with the approved sample details.
- 4) No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the construction programme and phasing;
 - ii) delivery, demolition and construction working hours;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the parking of vehicles of site operatives and visitors;
 - v) loading and unloading of plant and materials;
 - vi) details of hoarding;
 - vii) management of traffic to reduce congestion;
 - viii) measures to control the emission of dust and dirt during construction;
 - ix) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - x) details of consultation and complaint management with local businesses and neighbours;
 - xi) mechanisms to deal with environmental impacts such as noise and vibration, air quality and dust, light and odour;
 - xii) details of any proposed piling operations, including justification for the proposed piling strategy, a vibration impact assessment and proposed control and mitigation measures.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 5) No development shall commence until a scheme for the protection of the dwellings hereby permitted from noise arising from road & air traffic sources and from nearby industrial/commercial and community-use units has been submitted to and approved in writing by the local planning authority. The scheme shall be supported and informed by a noise impact assessment carried out in accordance with relevant technical standards. None of the dwellings shall be occupied until such a scheme has been implemented in accordance with the approved details, and the scheme shall be retained as such thereafter.
- 6) No development shall commence until a Phase 2 investigation report, as recommended by the previously submitted Paddock Geo Engineering Preliminary Contamination Risk Assessment dated April 2020 (Ref: P20-

042pra), has been submitted to and approved in writing by the local planning authority. Where (following the Phase 2 investigation report) land affected by contamination is found which poses risks identified as unacceptable in the Phase 2 investigation report, no development shall take place until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option, the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including a validation plan.

- 7) The approved remediation scheme shall be carried out and upon completion a validation report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 8) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority before development recommences. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority before the development is occupied. These approved schemes shall be carried out before the development is occupied.
- 9) No development shall commence until there shall have first been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include details of proposed boundary treatment.
- 10) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 18-929-P-01 Rev A for 10 bicycles to be parked and for the storage of waste bins. Those spaces shall thereafter be kept available for those purposes.
- 11) The development shall not be occupied until space has been laid out within the site in accordance with drawing no. 18-929-P-01 Rev A for two cars to be parked and those spaces shall thereafter be kept available at all times for the parking of vehicles.
- 12) Before the occupation of the development, visibility splays measuring 1.8 metres from the edge of each parking space as shown on drawing no. 18-929-P-01 Rev A, and 1.8 metres back from the nearside edge of the carriageway shall be provided. No shrubs, trees or other vegetation shall be allowed to grow above 0.6 metres in height, and no structure or erection exceeding 0.6 metres in height shall be placed, within the visibility splays.
- 13) The development shall not be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage

systems (or any subsequent version). No surface water shall be allowed to drain onto the public highway.

- 14) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before the development is first occupied. Development shall be carried out in accordance with the approved details.
- 15) The ground floor of the building shall be used for offices and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).