



Appeal Decision

Site visit made on 18 October 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Appeal Ref: APP/B0230/W/22/3300038

162 Connaught Road, Luton LU4 8ET

- 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 Nawaz against the decision of Luton Borough Council.
 - The application Ref 21/00762/FUL, dated 31 May 2021, was refused by notice dated 22 December 2021.
 - The development proposed is described as 'retention of store storage space'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development description in the banner heading above is taken from the planning application form. However, the appellant has entered a different description on the appeal form, referring to 'retrospective planning permission for erection of rear outbuilding as storage space'. This essentially reflects the description stated on the Council's decision notice, and, with the exception of 'retrospective planning permission' which is not an act of development, more clearly describes the proposal. I have determined the appeal accordingly.
3. At my visit, I saw an outbuilding present on the site. This was partly open to the front, and included a roof overhang to the side which is not indicated on the submitted plans. For the avoidance of doubt, I have determined the appeal on the basis of the development as it is shown on the submitted plans.
4. The Council has raised concerns that the appeal site is being used for dismantling vehicles, and indicates that the use of the site and outbuilding is subject to investigation. However, I have determined the appeal on the basis of the development applied for which is an outbuilding to be used for storage. Any other development, whether authorised or not, would be a separate matter between the Council and the appellant in the first instance.

Main Issues

5. The main issues are:
 - i) the effect of the proposal on the character and appearance of the area;
 - ii) the effect of the proposal on the living conditions of the occupiers of neighbouring dwellings with particular regard to noise, disturbance and odour; and
 - iii) whether or not the proposal would result in unacceptable ground contamination.

Reasons

Character and Appearance

6. The appeal site includes a two-storey end-of-terrace building close to the junction of Connaught Road and Thornhill Road. Near to the appeal site, these are predominantly residential streets characterised by two-storey terraced and semi-detached dwellings of similar overall form and appearance with relatively long gardens extending to their rear. Together with the layout of the dwellings at generally regular intervals on consistent building lines, this provides for a high degree of uniformity in the pattern of development and street scenes. Nevertheless, the area is not exclusively residential, and a convenience store at 160 Connaught Road as well as a retail unit to the ground floor of the building on the appeal site add some variety to the form and arrangement of development. In addition, there are large commercial buildings on plots situated beyond the rear gardens of many dwellings in the vicinity, including on a bus depot site which covers an extensive area to the rear of Connaught Road and Thornhill Road near to the site.
7. The appeal relates to an outbuilding proposed to provide storage associated with the retail unit on the appeal site. It would be positioned on part of the appeal site that wraps around to the rear of 58-64 Thornhill Road which both main parties indicate was formerly part of the gardens to these neighbours. Although the proposal would spread non-residential activity to the rear of neighbouring dwellings, these dwellings already back onto the bus depot site, and there are further examples of commercial uses immediately to the rear of other dwellings nearby. However, these commercial buildings are on separate plots that adjoin the rear boundaries of gardens rather than being set in and amongst residential gardens and associated with frontage properties. Their context therefore differs from that of the appeal site.
8. I acknowledge that the outbuilding would occupy only around a third of the area of the appeal site, maintaining a degree of spaciousness around it. However, it would have a footprint much larger than the existing building at 162 Connaught Road, and would result in a considerable increase in the non-residential floorspace on the site. While the outbuilding would be single-storey compared to No 162 which is two-storey, I find having regard to its significant floor area and overall scale that it could not reasonably be described as subordinate to the host building, and far less as subordinate to the existing retail unit on the site.
9. I have noted the appellant's comments that outbuildings of the same scale and design are present in the surrounding area. However, I was not directed to any specific examples, and the typical outbuildings that I was able to see to the rear of other buildings on Connaught Road and Thornhill Road nearby were of generally much more modest overall scale against the host properties.
10. There would be limited views of the outbuilding from the street scene, but based on my observations at my visit, the roof would be visible from Connaught Road in the gap between no 162 and the side of 64 Thornhill Road. It would also be clearly visible from neighbouring properties. In these views, the unusually large scale of the outbuilding relative to the host unit would be appreciable, and would result in an unsympathetic feature that would fail to respect the usual pattern of development, detracting from the character and appearance of the area.

11. The proposal would accord with objectives within the National Planning Policy Framework ('the Framework') and the Luton Local Plan 2011-2031 (adopted 2017) seeking the effective and efficient use of land. However, the Framework also includes requirements for development that is sympathetic to local character and that adds to the overall quality of the area. Policies LLP1 and LLP25 of the Local Plan similarly include requirements for high quality design and development that enhances the distinctiveness and character of the area.
12. For the reasons set out above and having regard to the substantial scale of the outbuilding, I consider that the proposal would not achieve those aims. I conclude that the proposal would harm the character and appearance of the area. The harm would be modest given the limited public views of the development and that the scale of the building would be balanced somewhat by the overall area of the site. Nevertheless, it would result in conflict with Policies LLP1 and LLP25 of the Local Plan, and with the Framework.

Living Conditions

13. The outbuilding and its large overall scale would be appreciable from neighbouring dwellings. However, it would generally be seen together with or against the backdrop of substantial buildings at the bus depot site to the rear which would help to limit its visual impact. It would also be set in from the boundaries of the site with the gardens to 58-64 Thornhill Road and 164-166 Connaught Road, and would adjoin only a fairly small proportion of the rear part of the garden to 56 Thornhill Road. Given also the single-storey height of the outbuilding and the separation to surrounding dwellings, I find that the development would not be unacceptably dominant or overbearing to cause visual intrusion, and I agree with the Council that it would not cause a harmful loss of light or outlook for nearby occupiers.
14. However, while the outbuilding is proposed to be used for storage, there would still be related activity, for example as goods were moved to and from the building and sorted and arranged. I appreciate that the site is already in retail use, but noting the much larger size of the outbuilding relative to the existing retail unit, it seems to me that it could lead to a significant increase in the level of activity taking place on the site overall, and a fairly considerable number of movements around the outbuilding. Furthermore, the position of the doors to the outbuilding means that activity would be likely to be focussed particularly in the area immediately to the rear of the gardens to 58-64 Thornhill Road.
15. At my visit, I also saw a forklift truck on the site, suggesting that some activity may entail use of machinery. Even if no machinery were used though, I consider given the scale of the outbuilding that the significantly greater potential level of activity on the site immediately adjacent to residential gardens would generate a level of noise and disturbance that would be likely to be clearly noticeable to neighbouring occupiers. No objective evidence considering noise associated with the development in the context of existing background noise levels has been submitted to demonstrate otherwise.
16. Despite examples of other commercial uses in the vicinity, I found the appeal site to be relatively peaceful at my visit, and I did not experience significant background noise from the street or elsewhere. In addition, the gardens of Nos 58-64 are already short relative to most dwellings nearby. In comparison to other commercial uses that typically adjoin longer gardens, this relationship means that noise and disturbance emanating from the appeal site would be

likely to be more noticeable across a large proportion of the adjacent gardens, increasing the influence of the development on the available areas. I appreciate that my visit was only a snapshot, but given these factors and in the absence of substantive evidence to the contrary, I consider that noise and disturbance from the appeal site would be intrusive to neighbouring gardens, detracting significantly from their use.

17. I note the appellant's suggestion that the use of the outbuilding and hours of operation could be restricted by planning condition. However, my findings are based on use of the outbuilding for storage as proposed. From the information before me, I am also concerned that the level of noise and disturbance that could result from the development would be intrusive to neighbouring occupiers at any hour of day. I am not therefore persuaded that the suggested conditions would adequately mitigate the harm that I have identified. I have also considered whether the harm could be overcome by a condition suggested by the Council to require details of noise from plant, machinery, equipment and noise-making activity on the site and details of mitigation measures. However, I cannot be sure from the evidence currently before me that mitigation to ensure acceptable noise levels for neighbouring occupiers could realistically be provided. It is not therefore clear that the condition would be effective, and in these circumstances, it would not be appropriate to defer this matter to a planning condition.
18. The Council's reason for refusal also refers to odour, but the basis for this is not explained within its evidence, and from the information before me, I do not consider that unacceptable odour would be likely given the nature of the development proposed.
19. For these reasons, I conclude that the proposal would result in noise and disturbance that would cause unacceptable harm to the living conditions of neighbouring occupiers. Although I do not share the Council's concerns that there would be further harm through visual intrusion or odour, the proposal would therefore conflict with Policies LLP1, LLP25 and LLP38 of the Local Plan which include requirements for high quality places and design, and seek to ensure that development does not result in significant adverse effects on neighbouring development including through noise. It would also be contrary to the Framework which includes a requirement for a high standard of amenity.

Land Contamination

20. The Council has raised concerns that the use of the site and building for dismantling vehicles could result in contamination and pollution of the ground. However, the development before me is an outbuilding to be used for storage, and the Council has not provided substantive evidence to demonstrate how such a use related to the retail use of No 162 would be likely to pose a risk of contamination. Indeed, its evidence suggests that it is by reason of the current activities which are the subject of investigation that there would be potential pollution and contamination.
21. Based on the evidence before me, I conclude that the proposal would not result in unacceptable ground contamination, and I find that it would not conflict with Policy LLP38 of the Local Plan which seeks to resist development that would adversely impact land or cause the contamination of adjoining land. Nor would it conflict in this regard with the Framework's requirement for development to be appropriate for its location taking into account the likely effects of pollution.

Other Matters

22. The Council indicates that no permission has been granted for the change of use of the part of the site to the rear of 58-64 Thornhill Road from residential garden, and nor is this change of use specifically referred to as part of the planning application. However, given my findings above and that I am dismissing the appeal for other reasons, it has not been necessary for me to consider this matter further as it could not alter my decision.

Conclusion

23. The proposal would make efficient use of land, and would be likely to result in economic and social benefits through supporting the retail use of the site. However, these benefits would be limited given the small scale of the development. I find that they would not be sufficient to outweigh the failure to demonstrate that there would not be harm to the living conditions of neighbouring occupiers taken cumulatively with the harm, albeit modest, to the character and appearance of the area, and the resulting conflict with Policies LLP1, LLP25 and LLP38 of the Local Plan.
24. The proposal would conflict with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR