



Appeal Decision

Site visit made on 17 October 2022

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Appeal Ref: APP/B0230/W/22/3291824

35 Hitchin Road, Luton LU2 0EL

- 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 Singh against the decision of Luton Borough Council.
 - The application Ref 21/00716/FUL, dated 20 May 2021, was refused by notice dated 6 September 2021.
 - The development proposed is described on the application form as “demolition of existing MOT Centre and erection of a 5 storey block of 18 flats”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal, the appellant submitted a signed unilateral undertaking under s106 of the Town and Country Planning Act 1990, which seeks to secure financial contributions towards education and car club provision. The Council have had the opportunity to comment on the unilateral undertaking and I have taken the comments received into account.

Main Issues

3. The main issues are:
 - the effect of the development proposed on the character and appearance of the surrounding area;
 - the effect of the development proposed on the supply of employment land in the borough;
 - whether the proposal would provide for satisfactory living conditions for future occupiers, with particular regard to internal space, light, outlook and noise; and
 - the effect of the proposal on the living conditions of the neighbouring occupiers, with particular regard to privacy.

Reasons

Character and appearance

4. The appeal site relates to an existing industrial building which is currently used as a vehicle MOT and service centre located on the corner of Hitchin Road and Duke Street. The existing building is a flat roofed structure whose footprint covers much of the site with a small forecourt on Duke Street.

5. The surrounding area is of mixed character which includes residential properties immediately to the north at 37-43 Hitchin Road (Christina Plaza) and on the opposite side of Duke Street, a large storage unit to the north-west on Brunswick Street and retail premises along Hitchin Road. There are a variety of building sizes and styles in the area, ranging from traditional terraced properties to industrial units and modern 3 and 4 storey apartment blocks.
6. The 4 to 5 storey height of the proposed building would rise significantly above the height of the adjacent building, Nos 37-43. I acknowledge the mixed character and appearance of the surrounding area and the variety of roof forms and heights. However, I consider that the height of the proposal would be at odds with its immediate surroundings, which is generally limited to 2 to 3 storey development. The introduction of a 4 to 5 storey building immediately adjacent to Nos 37-43 would create a poor visual relationship between the 2 buildings due to the difference in roof heights.
7. Whilst the existing building steps forward of No 37-43, due to its single storey height it does not dominate its surroundings. The proposal would effectively fill the plot and project forward of Nos 37-43 which would increase its prominence in the street scene and accentuate its visual dominance of the neighbouring building and its general surroundings.
8. The appellant contends that other developments in the area constitute a precedent for the appeal proposal. The development at 15 Hitchin Road comprises of 4 apartment blocks of 4 storeys high which sit within their own plot and are clearly separated from neighbouring built form. That development does not have such a close relationship to neighbouring buildings and is seen more in isolation than would be the case with the appeal proposal. Therefore, the specific site circumstances of the development at No 15 are not comparable to the appeal scheme and do not provide compelling justification for allowing the appeal. I do not have the substantive details of the other approved developments referred to and, in any case, I must determine the appeal on its own merits. Therefore, the other approved developments do not require me to disregard my findings.
9. I conclude that the proposal, due to its scale, massing and height, would have a harmful effect on the character and appearance of the surrounding area. It would conflict with Policies LLP1, LLP10, LLP15 and LLP25 of the Luton Local Plan 2011-2031 (LP) which, taken together, require new development proposals to enhance the character of the area, be of high quality design and not result in an over-intensification of the site. It would also conflict with the National Planning Policy Framework (the Framework) which, amongst other things, seeks high quality development that is sympathetic to local character.

Supply of employment land

10. The Council considers that the existing use falls within use class B2 industrial use. Policy LLP14 of the LP seeks to resist the loss of unidentified employment sites, unless the employment site has been vacant for at least 12 months and it can be demonstrated that suitable alternative accommodation at comparable rents is available and it is no longer suitable for B1, B2 or B8 uses. The appellant claims that vehicle MOT/servicing use of the site is not protected by planning policy within the LP. However, the application form states that the existing use falls within use class B2 and in my view is an employment use

which LP Policy LLP14 seeks to protect. It is therefore reasonable to consider the proposal against the requirements of LP Policy LLP14.

11. The appeal premises is not vacant and the proposal therefore fails to be supported by LP Policy LLP14. The appellant contends that the existing use is one which is limited in terms of its contribution towards the surrounding area. However, it is an unidentified employment site which provides a source of employment to the local area. There is no substantive evidence before me to indicate that the existing use has caused any adverse effects in relation to surrounding residential properties (for example, in the form of noise complaints).
12. The appellant has provided information which indicates that there are 7 other MOT servicing businesses within a 500m radius of the site, which is not refuted by the Council, and suggests that these are likely to be more viable than the appeal site. However, it is unclear whether the other businesses referred to represent suitable alternative accommodation at comparable rents. Moreover, it has not been demonstrated that the appeal site is no longer suitable or viable for B1, B2 or B8 uses, including alternative uses within those categories. Overall, there is insufficient justification for the loss of this employment site.
13. I conclude that the proposal would result in the unacceptable loss of an employment site. It would thus be contrary to Policies LLP1 and LLP14 of the LP which seek to ensure, amongst other things, that development is sustainable and would not result in an unjustified loss of employment land.

Living conditions of future occupiers

14. The appellant's schedule of accommodation indicates that the majority of the flats meet the minimum floor space standards, as set out in the Technical housing standards – nationally described space standard March 2015 (NDSS). However, the measurements given on the floor plans suggest that the gross internal floor space of all the 1 bed/2 person, 2 bed/3 person and 1 of the 3 bed/5 person units would fall marginally below the minimum space standards. However, the NDSS have not been adopted by the Council as local policy. I consider that the proposed flats would be of adequate internal size and proportions to meet the reasonable requirements of future occupiers. Irrespective of this, ensuring acceptable living conditions goes beyond meeting minimum floorspace thresholds.
15. The 1 bed/2 person flats on the first, second and third floors to the rear of the building adjacent to Nos 37-43 would have their main living area set back over 3 metres from the rear opening. The front part of these rooms closest to the opening would be very narrow spaces. Consequently, the outlook from the main living area within these flats and the light received within them would be very restricted and would create an oppressive and confined form of development which would be unlikely to provide an adequate standard of accommodation for the future occupiers.
16. During my site visit I observed that Hitchin Road is a relatively busy main road which leads into and out of the town centre. Regular road traffic noise was clearly audible from the site. Noise from passing traffic and from customers visiting the nearby retail premises would have the potential to cause disturbance to the proposed ground floor flats situated towards the front of the building adjacent to Hitchin Road and which contain several habitable room

windows. However, a noise assessment was not submitted with the application to establish the likely effects of noise on the proposed flats or whether mitigation measures would be required.

17. Framework paragraph 185 indicates that planning decisions should avoid noise giving rise to significant adverse impacts on health and quality of life. Based on the evidence before me, I am satisfied that the development would achieve acceptable noise levels within the ground floor flats at the front of the building.
18. Whilst the proposal seeks to provide an appropriate contribution of larger units to address an identified shortfall in that type of accommodation, this should not be at the expense of future occupants' living conditions.
19. While I have found that the proposed flats would be of adequate size, I consider that they would not provide satisfactory living conditions for future occupiers having particular regard to light, outlook and noise. The proposal would therefore not comply with Policies LLP1 and LLP25 of the LP, or the Framework, which seek a high standard of amenity for future users of places.

Living conditions of neighbouring occupiers

20. The proposed flats positioned in the south-western side of the building would have views towards 25 and 27 Hitchin Road which is located on the opposite side of Duke Street. Nos 25 and 27 have commercial uses at ground level with residential accommodation on the first floor. No 27 contains doors with a first floor window in the side elevation facing towards the site. The first floor window appears to be secondary with the main outlook to that room being provided by a large bay window to the front elevation. The side window is already overlooked to some extent by the existing premises on the site and from the street. Any additional overlooking of the secondary window as a result of the proposed development would be unlikely to be significantly harmful to the living conditions of the occupier of that property.
21. 1A Duke Street is a 3 storey residential development situated on the opposite side of Duke Street and faces towards of the site. It contains patio doors and balcony areas which like the window to the side of 27 Hitchin Road are currently overlooked from the site and from the street. The patio doors and balconies are recessed from the face of the building such that any overlooking of these areas from the proposal would not be significantly intrusive.
22. On the basis of the evidence before me and my observations on site, I have no reason to disagree with the Council's view that this revised scheme would not significantly affect the living conditions of the occupiers of 37-43 Hitchin Road.
23. For the above reasons, I conclude that the development would not have a harmful effect on the living conditions of neighbouring occupiers with regard to privacy. Therefore, it would accord with Policies LLP1 and LLP25 of the LP which, amongst other things, seek to ensure that development minimises overlooking and delivers high quality design. It would also not conflict with the Framework, which sets out that planning decisions should promote a high standard of amenity for existing and future users.

Other Matters

24. Interested parties have raised other concerns, including the effect of the proposal on parking provision in the area. However, the Council have not raised

objections to the proposal on these grounds and I have no reason to disagree based on the evidence before me and my observations on site. The absence of harm in relation to this matter is neutral rather than weighing positively in favour of the proposal.

25. The Council's fifth reason for refusal refers to the lack of CIL compliant financial contributions towards affordable housing, education and car club provision having regard to the requirements of Policies LLP1, LLP16 and LLP39 of the LP, the Council's Supplementary Planning Document on Planning Obligations and the objectives of the Framework. The appellant's unilateral undertaking refers to education and car club contributions but does not include an affordable housing contribution as requested by the Council. The appellant's Financial Viability Appraisal concludes that the development cannot viably provide a financial contribution towards affordable housing. As I am dismissing the appeal for the other reasons given above, it has not been necessary for me to consider this matter further.
26. I afford great weight to the benefits of using suitable sites within existing settlements for homes as required by paragraph 69 c) of the Framework. The development would offer social and economic benefits in terms of providing 18 new flats, including larger residential units, within an accessible location in accordance with the aims of Framework, which recognises the importance that small sites can make to meeting housing requirements. The development would re-use a previously developed site and also have benefits through employment opportunities created during the construction phase and spending in the local area by future occupants. Given the scale of the development, I attach moderate weight to these benefits. The appellant argues that the proposal would contribute towards the continued regeneration of the area. However, there is no convincing evidence before me to show that the appeal scheme is the only means of developing the site whilst still contributing towards the regeneration of the area. The appellant claims that the proposal would contribute to the expectations of the High Town Strategic Allocation in terms of its delivery of new housing. However, in the form proposed this would result in the harm identified above and does not justify development that would be contrary to the development plan.

Conclusion

27. I find that the appeal proposal would not be harmful to the living conditions of neighbouring occupiers. However, for the reasons given above, I consider that the proposal would be harmful to the character and appearance of the surrounding area, result in the unacceptable loss of an employment site and fail to provide satisfactory living conditions for future occupiers having regard to light, outlook and noise. Thus, it would be contrary to the development plan when considered as a whole and the Framework. I attach significant weight to these harms which would not be outweighed by the benefits of the scheme. Consequently, I conclude that the appeal should be dismissed.

M Ollerenshaw

INSPECTOR