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# Appeal Decision

Site visit made on 4 July 2023

**by S Crossen BA (Hons) PgCert PgDip MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 August 2023**

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**Appeal Ref: APP/B0230/W/22/3312726**

**16A Cavendish Road, Luton LU3 1JG**

- 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 F Joseph against the decision of Luton Borough Council.
  - The application Ref 22/01118/FUL, dated 13 September 2022, was refused by notice dated 3 November 2022.
  - The development proposed is demolition of dilapidated garage workshop and construction of two storey office and car parking bay.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues of this appeal are:
  - the effect of the development on the character and appearance of the area;
  - the effect of the development on the living conditions of adjoining occupiers of 11 Denbigh Road with particular reference to garden space and potential for noise and disturbance, and;
  - the effect of the proposed change of use on the provision of employment sites and the development strategy.

## Reasons

### *Character and appearance*

3. The appeal site is a commercial garage at the end of a row of semi-detached houses with similar designs including dual pitched, side gable, tiled roofs, ground floor bay windows, brick and rendered elevations. The appeal site is near to the corner of the road with the side elevation facing the rear elevation and garden of a house on Denbigh Road. On the opposite side of the road are rows of terraced houses, with a corner property in commercial use as a hairdressers. Some distance away at the bottom of Cavendish Road there are more commercial buildings with more varied designs, an area of different character to the appeal site.
4. The existing building is unusual being single storey with a mono-pitched corrugated roof, front roller shutter and palisade fencing at the front. The proposed building would repeat some of these existing features, also having a corrugated, mono-pitched roof (albeit made from aluminium) and roller shutter

but would also include some front windows and be two storey in height, providing space for an upper floor office.

5. In terms of the appearance of the house the front glazing and removal of the palisade fencing would be an improvement. The loss of a gap at first floor level between neighbouring houses and the appeal site would not be out of place in the street. However, the proposed design includes a corrugated mono-pitched roof and roller shutters like the existing design which does not respond to the design and character of adjacent buildings and as such would still be incongruous. Furthermore, the roof slope with its shallow mono-pitch would not reflect the roof design of any two storey houses here. Although the proposed design is similarly incongruous to what exists, these design elements would be amplified due to the increased scale and height and would be significantly harmful to the character and appearance of the area.
6. Consequently, the proposed development would have a significant adverse effect on the character and appearance of the area. It is therefore contrary to policies LLP1, LLP25 of the Luton Local Plan 2011 – 2031, adopted November 2017 (LP) and the aims and objectives of the National Planning Policy Framework (the Framework). These policies amongst other things, seeks that development proposals enhance the distinctiveness and character of the area by responding positively to the townscape, street scene, site and building context, form, scale height pattern and materials.

#### *Effect on living conditions*

7. The appeal site is on lower ground than the neighbouring house which faces Denbigh Road, the rear garden is modest in length and meets the side boundary of the appeal property. The existing side elevation of the garage at the appeal site is higher than the adjoining boundary fence. On the other side of the appeal site is a semi-detached house with a single storey garage in between, which provides a significant distance at first floor level to the rear of the neighbouring house on Denbigh Road.
8. The new building would be two storeys, resulting in a large blank side elevation to the development which would dominate the garden area of the neighbouring house on Denbigh Road. This blank elevation would be significantly higher than the existing elevation and would be in line with their first floor windows, having a significant oppressive effect on the garden in particular. Consequently, the development would be harmful to the living conditions of existing occupiers.
9. Although the development would increase the floor space which could allow more people to occupy the building at the same time, noise and disturbance from an office used for accountancy is unlikely to be greater than any B2 use, which is reasonably likely to include the use of power tools. Therefore, the proposed use would not have any significant detrimental effect on neighbouring occupiers by way of noise or disturbance.
10. I have had regard to the example provided in figure 4 of the appellant's statement. The example differs to this proposed development because the distance between the rear garden of the house on Denbigh Road and the two storey side elevation of the house illustrated, is larger than that proposed by this appeal. In any case I have found harm and if other instances of similar harm exist elsewhere, this would not be suitable justification to repeat such designs and relationships between buildings.

11. Consequently, although I find that noise and disturbance would not result in harm to neighbouring occupiers, the proposed development due to its scale and proximity to the neighbouring house at 11 Denbigh Road would be overbearing on this neighbouring occupier's garden. It is therefore contrary to policies LLP1, LLP25 of the LP and the aims and objectives of the Framework. These policies amongst other things, seeks that decisions ensure a high standard of amenity for existing users.

*Effect on an existing employment use*

12. Policy LLP14 of the LP amongst other things states that "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."
13. Policy LLP13 supports redevelopment for employment, mixed use or other needs provided the criteria set out above in policy LLP14 are satisfied. In the key issues behind these policies, it highlights average vacancy levels for office and low vacancy levels for industrial space, citing a high demand for lower quality industrial buildings for local, small-scale businesses, start-ups, and professional business services.
14. The Use Class Order 1987<sup>1</sup> had a significant amendment in 2020<sup>2</sup> which moved B1 uses into class E. The appellant argues that the proposed change of use to a Class E office is still an employment use, because under the previous use class order which was in place at the time of the LP such uses would have been B1 uses, and on this basis, there is no loss of an employment site. However, under the previous Use Class Order offices fell within either A2 financial and professional services or B1 (a) Office other than a use within class A2. The application form states that the proposed development will be used for accountancy which would have been class A2. In any case the previous use was B2 which is a use class still present following the 2020 changes. Consequently, the proposed development does not represent redevelopment of a B1, B2 and B8 site, as set out in The Use Class Order 1987 prior to adoption of the LP, to an equivalent B use under The Use Class Order 2020.
15. The proposed use would not have fallen under the previous use class order of a B use and the development would therefore result in a loss of an industrial building of a scale and size which is in demand. No details of suitable alternatives at comparable rents have been provided and it is not demonstrated that the current use is no longer viable.
16. For these reasons I conclude that the development results in the loss of a small industrial use in an area with an identified need, contrary to the development strategy. It is therefore contrary to Policy LLP14 (b) the LP. This policy amongst other things seeks to protect existing unidentified employment sites where it cannot be demonstrated that suitable alternative accommodation with comparable rent is available and that the use is not viable with evidence of active marketing for a reasonable period.

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<sup>1</sup> The Town and Country Planning (Use Classes) Order 1987

<sup>2</sup> The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

## **Other Matters**

17. I have had regard to the benefits of the development in that it promotes the effective use of land by extending above the existing building, so would in part accord with elements of the Framework in particular paragraph 120 and appears from the quoted text to in part be supported by LP policy LLP23. I am satisfied the proposal broadly accords with the spirit of the policy, even if it involves a replacement building rather than an extension. However, this does not outweigh the harm I have found above and is contrary to the Framework and Development Plan when taken as a whole.

## **Conclusion**

18. Whilst I have found that the proposed development would be unlikely to have a harmful effect on neighbours due to noise and disturbance, it would be harmful to the character and appearance of the area, to the living conditions of the occupiers of the neighbouring house at Denbigh Road with particular regard to an overbearing impact on their garden, and to the development strategy with regard to the loss of a small industrial use. For the reasons given above and having had regard to the development plan as a whole and all other matters, I conclude that the appeal should be dismissed.

*S Crossen*

INSPECTOR