
Appeal Decision

Site visit made on 14 November 2023

by David Troy BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

Appeal Ref: APP/B0230/W/23/3324307

83 Hart Lane, Luton LU2 0JG

- 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 Navis Hussain of Tanfis Ltd against the decision of Luton Council.
 - The application Ref 23/00272/COU, dated 6 March 2023, was refused by notice dated 4 May 2023.
 - The development is retrospective change of use of dwelling and outhouse into commercial (Class B8).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council's decision letter describes the change of use as retrospective. It is clear from the evidence provided and my site visit that the change of use of the dwelling and outhouse into commercial use (Class B8) had taken place at the site. I shall determine the appeal on this basis accordingly.

Main Issues

3. The main issues are the effect of the development on the (i) housing mix in the area, (ii) character and appearance of the area; and (iii) highway safety.

Reasons

4. The development involves the conversion of a three bedroom property and outbuilding into commercial use (Class B8). Policy LLP15 of the Local Luton Plan 2017 (LP) states that provision will be made for 8,500 dwellings to meet housing needs, provided that reflects the needs requirements set out in the Strategic Housing Market Assessment. The policy also states that development should achieve a mix of different housing sizes, types and tenures, informed by various evidence. However, the Council indicates that, compared to the need identified, there is a shortfall in three bedroom plus properties in the Borough.
5. Criteria C of Policy LLP15 of the LP allows the redevelopment of existing housing to other uses, subject to, amongst other matters, there being an overriding need for the other use, which provides benefits to the community which outweigh the loss of housing.

6. The appellant's statement states that the commercial use comprises of a small family run on-line business and the property is used for the storage of contact lenses and related products. The appellant indicates that the business employs 9 employees who operate from the property, with their principal role being the packing, labelling and dispatch of goods sold online to customers nationally.
7. In this regard I have taken into account the appellant's comments that it is advantageous for the commercial use to be based in the local area, which a number of the employees come from. However, that does not preclude alternative locations. Moreover, there is no compelling evidence to indicate that the use must take place at the appeal site with the consequential loss of a family dwelling. In particular little substantive information has been presented to indicate why the appeal site is better placed than other potential commercial properties that might be available.
8. In this regard the Council has indicated that commercial space is available and vacant within the town that could cater for the needs of the business in a more appropriate and designated location for commercial uses within the Borough. Whilst noting the appellant's comments regarding the benefits to the local economy and employment arising from the business, I have little substantive evidence before me to demonstrate that suitable accommodation could not be found within the Borough, that could meet the needs of the appellant.
9. I accept that the loss of one family sized dwelling is limited when compared with the overall needs of the Borough. Nonetheless, the development results in the loss of the accommodation which otherwise would contribute towards the identified housing needs of the Luton Housing Market Area as set out within the Strategic Housing Market Assessment. Notwithstanding the limited loss that results from the development this weighs against the scheme.
10. Consequently, I conclude that the development results in harm to the housing mix in the area. It is therefore contrary to the aims of Policies LLP1 and LLP15 of the LP which, amongst other things, require development proposals to deliver growth and sustainable development and ensure it meets the housing needs identified in the Strategic Housing Market Assessment. In addition, it does not accord with the requirements of section 5 of the National Planning Policy Framework (the Framework) which, amongst other things, establishes the requirement for Councils to plan for a mix of housing types and needs.

Character of the area

11. The appeal site comprises of a semi-detached two storey property with a parking forecourt to the front and a single storey detached outbuilding at the rear. The appeal site is located in a mature well-established residential area, characterised by a mixture of two storey dwellings set back from the road behind front gardens/driveways. A small parade of shops is located immediately to the north-west of the site on the opposite side of the road.
12. No external changes are proposed to the appeal property, and on my site visit, I saw no discernible visual difference between the appeal property, and neighbouring dwellings, that suggest that it was being used for commercial purposes. Moreover, I observed that the road at the front of the appeal site carried a steady flow of traffic and the number of vehicles being parked at the property was comparable with other residential properties in the road, although I accept that this only represents a snapshot in time.

13. The occupiers of the neighbouring properties would be used to a certain degree of noise and activity associated with the surrounding uses, experiencing noise and disturbance associated with traffic and pedestrian movements, and general comings and goings of people to the nearby properties and parade of shops opposite on a daily basis in such a built-up residential area.
14. Given the site's location, the limited nature and scale of the development and the surrounding uses, I consider that the limited comings and goings from the development on a daily basis would not be significantly materially different to the situation on the site if retained as a single dwellinghouse nor result in an unacceptable level of noise, pollution or vehicle movements to the occupiers of the neighbouring properties. In terms of physical alterations, little change is shown to the dwellinghouse to affect its external appearance and its overall character as a dwellinghouse remains. As such I consider that the development has been effectively integrated into the area without causing unacceptable harm to the character of the area and the local environment.
15. Consequently, given the absence of any perceptible change to the external appearance of the appeal property, and the particular locational circumstances, I find that development does not result in unacceptable harm to the character of the area. Accordingly, the development is consistent with Policies LLP1 and LLP25 of the LP, which I consider are relevant in this case. These policies, amongst other matters, seek sustainable development that supports population growth and improves the character of the area. In addition, it also accords with sections 2 and 12 of the Framework which respectively relate to achieving sustainable development and achieving well-designed places.

Highway safety

16. The road in the vicinity of the access has a straight and wide alignment, footpath provision and no on-street parking restrictions. The development shows the retention of the existing parking forecourt with two parking spaces for the appeal property. The evidence provided by the appellant indicates that goods are delivered and dispatched by a van owned by the business.
17. I note the Council comments relating to an enforcement complaint and third parties objections regarding parking and traffic, in particular arising from the loading and unloading of larger articulated lorries and vans at the property. The Local Highway Authority have objected to the development and raised concerns regarding parking and the level of traffic generated from the development.
18. However, from the evidence provided and from my observations on site, I consider that this section of Hart Lane is sufficiently safe and suitable to cater for the limited traffic movements from the appeal property. Due to the current configuration of the site and the access arrangements, vehicles moving into and out of the site are travelling and manoeuvring at low speeds. The current road conditions on the straight section of this residential road allow sufficient visibility for vehicles to enter and leave the site safely and minimise any conflicts between traffic and cyclists or pedestrians.
19. I acknowledge that some properties in both Hart Lane and the surrounding streets rely on on-street parking and there is likely to be competition for parking spaces at peak periods. However, there are no parking restrictions on Hart Lane and the residential streets opposite the site and at the time of my site visit, there were parking spaces available along the nearby streets,

although this was obviously only a snapshot in time. The Local Highway Authority has provided little substantive evidence to demonstrate there is no residual parking capacity in the surrounding area.

20. In view of the modest scale of development and the evidence before me, I consider that the traffic generated by the development is not significantly materially different to the situation on the site if retained as a single dwellinghouse and the extra demand for on-street parking generated by the development is relatively small in the context of the overall supply and availability of parking in the area. Therefore, I consider that the effect is likely to be only marginal and certainly not severe, the test set by the Framework for preventing development on highway grounds¹.
21. In my mind, the scale and layout of the development provide sufficient space and flexibility to achieve adequate parking and access arrangements for the development without resulting in a significant adverse effect on highway safety. I have not been provided with any substantive evidence as to show how the Council seek to be more flexible for a small scale development in such an accessible location as advocated in the Framework. If I had been minded to allow this appeal, deliveries by larger vehicles and articulated lorries could be controlled by the imposition of a suitability worded planning condition.
22. Consequently, I conclude that the development does not have an adverse effect on highway safety. The development is consistent with Policies LLP1 and LLP25 of the LP which, amongst other things, require buildings to be safe and easily accessed by all members of the community. In addition, it accords with the Framework that seeks to ensure developments achieve safe and suitable access to the site for all users (paragraph 110), highway safety (paragraph 111) and create places which minimise the scope for conflicts between pedestrians, cyclists and vehicles (paragraph 112).

Other Matters

23. I note the appellant's willingness to reconsider the appeal scheme and accept a condition restricting the use to a temporary period of three years or less. This, however, would result in a material change to the development before me. As all parties have not been consulted and provided with an opportunity to comment on this, I cannot be certain that any parties would be prejudiced by this change. In any event, I am required to consider the appeal on the basis of the same details that were before the Council when it made its decision.
24. I have considered the letters of support and objection together with the appellant's comments regarding the support from the neighbours and third parties to the appeal proposal. Whilst this maybe so, this does not preclude the proper planning assessment of the impact of the proposal on the area and is not a determinative factor on its own.
25. I have noted the issues raised by the appellant regarding the way in which the application was processed by the Council. However, these are a material consideration to which I can attach only limited weight in making this decision.
26. In terms of other material considerations, the appellant has stated that the appeal property was in poor condition when it was first occupied, and they have invested money in modernising the property that they consider helps to

¹ Paragraph 111 of the Framework

enhance the quality of the area and provides employment for nine people. In this respect, the development makes a positive contribution towards supporting sustainable communities in the local area.

27. The appellant considers the development constitutes a sustainable form of development in line with the requirements of the Framework. I have considered the various benefits put forward by the appellant that the development brings, including scheme's high quality design, contributing to the local economy through providing local employment, training and development of staff and forming part of a network or 'ripple effect' to stimulate and support other businesses in the area. While I have given them some weight, these modest benefits would not be sufficient to outweigh the harm I have identified. For all these reasons, there are no other material considerations to outweigh the development plan conflicts identified.

Conclusion

28. Notwithstanding my findings on the lack of significant harm to the character and appearance of the area and highway safety, this is significantly outweighed by the harm I have identified to the housing mix in the area. The development conflicts with the development plan and the Framework taken as a whole. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Troy

INSPECTOR