



Appeal Decision

Site visit made on 6 February 2024

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2024

Appeal Ref: APP/B0230/W/23/3323518

128 New Town Street, Luton LU1 3ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Mahmood Ali against the decision of Luton Borough Council.
 - The application Ref is 22/00644/FUL.
 - The development proposed is change of use of a building and premises from a 'nil' use to a house in multiple occupation (HMO).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published. While there have been some changes to the numbering of paragraphs that are relevant to this appeal, this has not otherwise raised any new matters which are determinative to its outcome.
3. I saw on my site visit that the building is currently in residential occupation, albeit proposed internal alterations and other works shown on the proposed plans have not been implemented. Notwithstanding this, I have determined the appeal based on the proposed plans before me.
4. The Council set out two reasons for refusal in their decision notice concerning the living conditions of future occupiers, and the effect of the proposal on neighbouring properties. However, concerns in respect of the principle of the change of use, with particular regard to housing and employment policies within the development plan, and the effect on the character and appearance of the area, were also articulated within their officer report. These matters have also been addressed in the appellant's appeal submissions. I have therefore had regard to them in my decision.

Main Issues

5. The main issues in this case are therefore:
 - Whether the proposed change of use would be acceptable in principle, having regard to the relevant provisions of the development plan;
 - Whether the proposal would provide satisfactory living conditions for future occupiers, with particular regard to outdoor space provision, outlook and natural light;

- The effect of the proposal on the occupiers of neighbouring properties, with particular regard to privacy; and
- The effect of the proposal on the character and appearance of the area.

Reasons

Change of use

6. The appeal site comprises an existing two storey building in an area containing a mixture of commercial and residential uses. That the building previously had an industrial use does not appear to be disputed by either party. However, I saw at the time of my site visit that it is currently being used as residential accommodation, albeit the evidence indicates that this is unauthorised.
7. The building is located on land allocated as part of a Category B Employment Area in the Local Luton Plan 2011-2031 November 2017 (the Local Plan). The appeal proposal seeks to change the use of the building into a large house in multiple occupation (HMO) containing 8 bedrooms including en-suite bathrooms, with shared kitchen and living facilities.
8. Policy LLP13 of the Local Plan states that Employment Areas (Categories A & B) will be protected to retain and deliver jobs in the borough. Policy LLP13 acknowledges however that category B sites may be redeveloped for other needs provided they satisfy criteria set out in Policy LLP14.
9. Policy LLP14 of the Local Plan states that, where a building or site within a Category B area has been vacant for at least twelve months, redevelopment to non-B uses to meet identified need will be permitted where (i) it can be demonstrated that suitable alternative accommodation at comparable rent 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.
10. The planning history of the site indicates that planning permission was previously granted¹ for change of use from light industrial unit to student accommodation. Only limited details of this previous permission are before me. However, the Council contend that this was never implemented as none of the conditions were discharged, and the layout of the building does not match the plans associated with that application.
11. The appellant acknowledges a breach of planning control was identified, and that the intervening unauthorised use involved the conversion of the building to self-contained residential flats. I saw on my site visit that the existing layout of the building does not correspond with the plans for student accommodation, dated 2014, provided by the appellant.
12. A subsequent retrospective planning application² for change of use from industrial unit to student accommodation was refused. There is thus no evidence to indicate there has been any authorised change of use of the building from its prior use as an industrial unit.
13. Nevertheless, the appellant maintains that the industrial use of the building has been abandoned, and therefore it currently has "nil" use, by virtue of the

¹ Council Ref 14/01464/COU

² Council Ref 20/01579/FUL

intervening unauthorised use that has occurred since the previous grant of planning permission.

14. The concept of abandonment applies if a building or land remains unused for a considerable time. It involves a cessation of use in such a way and for such a time as to give the impression to a reasonable onlooker, applying an objective rather than a subjective test, that it was not to be resumed. However, the cessation of use must be followed by a period of non-use that is more than merely temporary.
15. The building is currently used, albeit in an unauthorised manner. The building and land thus do not currently have the appearance of having been abandoned. Moreover, there is no compelling evidence before me to indicate that the appeal site was subject to any prolonged period of non-use before the unauthorised use commenced. Notably, in both relatively recent planning applications, the description of the proposals referred to the building as a "light industrial unit". The project description on the plans before me is also "change use of an industrial unit to HMO".
16. My attention has been drawn to the judgement in *Petticoat Lane Rentals Ltd v SSE* [1971] All ER 310, which the appellant considers supports their position on this matter. This judgement found that if planning permission is granted and implemented for a new building to be put to a new use, the previous use rights on the open site will be expunged. This is materially different to the case before me however, in which there has been no planning permission implemented to change the use. This does not lead me to conclude the building has "nil" use.
17. The appellant infers that "a new chapter in the planning history" of the site is created where development incompatible with the continuance of the existing use has occurred. I saw on my site visit that internal work, including interior walls to subdivide the spaces, has been carried out to provide bedrooms and other living accommodation within the building. Nevertheless, based on the evidence and my own observations, it is not clear that development has occurred that would preclude the building from returning to its prior use.
18. I have also been provided a copy of an appeal decision³, which the appellant contends supports their case. While the issue of abandonment was raised in that case, the Inspector was of the view that the site had been left to seed without any intention of using it for any other purpose. There is no compelling evidence of this in this case. Moreover, in that decision, the context of the site had significantly changed, and it was considered unlikely to be suitable for an employment generating use. However, the appeal site in this case sits adjacent to other employment uses and within an area allocated for employment uses within the development plan. Its context is thus not directly comparable.
19. In view of the above, I am satisfied that the provisions of Policy LLP14 apply to the appeal scheme. The appellant contends there is no reasonable prospect that the site could return to employment use as there are examples of vacant commercial premises in the surrounding area. There is however no compelling evidence before me to indicate that the site had been vacant for at least twelve months, that there had been any active marketing for a reasonable period, that suitable alternative accommodation at comparable rent is available, that it is no

³ Appeal Ref: APP/L5240/W/20/3265390

longer suitable or viable, or that the proposal would meet an identified need. I therefore find that the appeal proposal would conflict with Policy LLP14.

20. Policy LLP15 of the Local Plan seeks to meet the housing needs of Luton and the Luton Housing Market Area, ensuring the size, type and tenure provided reflect the identified housing need requirements of the area. This policy states that planning permission for residential development will be granted on sites not allocated for housing provided that it would not lead to a loss of other uses for which there is a recognised local need.
21. Neither party has provided evidence of the housing need in this area. I therefore cannot be sure that the proposal would reflect the identified housing need requirements. Even if there were a need for this type of accommodation however, there is little information before me regarding the need, or lack thereof, for commercial or industrial uses in this area. Given the protection provided to employment areas by Policy LLP13, I find that the proposal would lead to the loss of a use for which there is a recognised need. I therefore find that the proposal would conflict with Policy LLP15 in this respect.
22. I conclude that the proposed change of use would not be acceptable in principle, having regard to the relevant provisions of the development plan. The proposal is contrary to Policies LLP13, LLP14 and LLP15 of the Local Plan. These policies, among other provisions, seek to ensure planning applications deliver sustainable economic growth and prosperity, generate jobs on strategic employment allocations, protect against the unjustified loss of existing employment sites, and ensure the provision of housing meets the housing needs of Luton without the loss of other uses for which there is a local need.
23. Policy LLP17 of the Local Plan supports the development of new HMOs, provided there is no adverse effect on the character of the area, and the accommodation conforms with relevant licensing, amenity and design requirements. These matters are considered in further detail below.

Living conditions

24. The proposed plans before me show at least one window, and in some cases two, serving each of the proposed bedrooms. Two windows would also serve the communal kitchen and living space. However, I saw on my site visit that many of these windows are small, including the west facing windows at ground and first floor. Other windows are installed at a high level, including first floor south facing windows. Several windows are also obscurely glazed. Moreover, most of the ground floor windows sit on the site boundary with no defensible space separating the appeal building from neighbouring land. The rooms served by these windows would experience a sense of enclosure provided by neighbouring uses and buildings.
25. These factors would restrict the amount of natural light to, and outlook from, some of the proposed bedrooms, particularly those on the ground floor without a front facing window. Obscure glazing could be removed to provide better outlook in some cases. However, this would likely have a deleterious effect on privacy, given the relationship of many of the windows to site boundaries. Overall, this would be harmful to the living conditions of future occupiers.

26. The appellant contends that the proposed windows comply with standards set out in the Council's HMO guidance⁴. Notably, this document is pursuant to other regulatory requirements and does not have regard to all planning considerations relevant to this main issue. Compliance with the standards alone would thus not demonstrate the proposal would be acceptable in this respect.
27. Nevertheless, it has not been clearly demonstrated that in all habitable rooms natural lighting would be provided via a clear glazed window, or that the glazed area would be equivalent to at least 1/10th of the floor area. Additionally, some windows would be located in the corner of rooms, immediately adjacent to walls, where it is not clear that the light from the window would be able to illuminate most of the room.
28. In respect of outdoor space provision, Appendix 6 of the Local Plan states that for flatted developments a minimum of 5sqm of private outdoor space should be provided for 1-2 person flats. Where private outdoor space is not achievable due to plot size or character, communal amenity space should be provided.
29. No private outdoor space is proposed in this case. The plans before me depict a front forecourt area, with a limited strip of landscaping along one side. The appellant contends that this could be secured for the provision of external amenity space. However, this space would be used for parking of cars and bicycles, and the storage of waste bins. It would also be the main access into the building. It thus would not provide a practical or pleasant space for future occupiers to spend time recreationally. The proposal would therefore not benefit from any meaningful outdoor amenity space.
30. While this space may previously have been accepted as external amenity space through the earlier application for student accommodation, the plans provided in respect of that scheme included more soft landscaping and did not depict car parking or bin storage in this area. Moreover, the proposed internal common areas in that case were larger and more practical. This does not therefore justify the absence of adequate external amenity space in the appeal scheme.
31. Appendix 6 recognises that flat occupiers generally do not seek or expect the same level of garden amenity space as house dwellers. Nevertheless, an enclosed area of communal amenity/play space should normally be provided where feasible. It has not been adequately demonstrated that such provision is not feasible in this instance.
32. I recognise that future occupiers may have access to local parks. However, these perform a different function to private or communal amenity spaces serving residential development. Moreover, the provision of adequate external amenity space on site for future occupiers would be of added importance in this case given the quality of the internal accommodation described above.
33. My attention has also been drawn to another decision by the Council⁵ for the conversion of a property on George Street West to residential flats, in which the Council concluded a lack of private or shared amenity space for future occupiers would not provide an unacceptable living environment. However, based on the evidence provided, that site is located centrally within the town centre with greater access to town centre amenities. Notably, the internal living

⁴ Houses in Multiple Occupation Standards Private Sector Housing Enforcement

⁵ Council Ref 20/00203/FUL

conditions were also considered acceptable. This is therefore not directly comparable and does not lead me to a different conclusion on this main issue.

34. I conclude that the proposal would fail to provide satisfactory living conditions for future occupiers, with particular regard to outdoor space provision, outlook and natural light. The proposal would be contrary to Policies LLP1, LLP17 and LLP25 of the Local Plan. These policies, among other provisions, seek to deliver sustainable development, ensure HMOs conform with local amenity and design standards and that buildings and spaces will be of a high-quality design, accord with external amenity space standards set out in Appendix 6 and minimise noise, overlooking and overshadowing/loss of light.
35. The proposal would also conflict with Chapter 12 of the Framework, in particular paragraph 135, which states that decisions should ensure that development creates places with a high standard of amenity for existing and future users.
36. Chapter 5 of the Framework concerns the delivery of a sufficient supply of homes. I have not identified any conflict with this part of the Framework in respect of this main issue.

Neighbouring properties

37. I recognise that all existing windows sit on, or close to, the site boundaries with adjoining plots. A significant degree of overlooking of neighbouring land would thus occur, particularly affecting 8 May Street to the south east, and 126 New Town Street to the north west.
38. I saw on my site visit that No 8 has the appearance of a commercial garage and storage area. Various materials were stored externally, and the building features a large shutter door on its southern elevation. The plans before me indicate that part of the building is used for car storage. High level first floor windows in the south facing elevation of the appeal building would have limited views across No 8. However, there are several ground floor windows that abut the site boundary and would look directly across its yard area. Nevertheless, the evidence before me and my own observations indicate that this is not a land use that would be particularly sensitive to overlooking or loss of privacy.
39. No 126 is a vacant plot of land that immediately adjoins the appeal building. Several ground and first floor windows in the side elevation of the appeal building look directly across this land. However, there is no evidence that planning permission has or would be granted for residential development on this site, and no details of any proposals for its redevelopment are before me. I therefore cannot conclude the proposal would be harmful to future occupiers of this neighbouring site and, in any event, any future proposals would need to be considered on their own merits having regard to the site context at that time.
40. I conclude that the proposal would not have a harmful effect on the occupiers of neighbouring properties, with particular regard to privacy. In respect of this matter, I have not identified any conflict with Policies LLP1, LLP17 or LLP25 of the Local Plan. These policies, among other provisions, seek to deliver sustainable development, ensure HMOs conform with local amenity and design standards and that buildings and spaces will be of a high-quality design, including through minimising overlooking. I have not identified conflict with Chapter 12 of the Framework with regard to this main issue.

Character and appearance

41. The appeal site sits within an area of mixed residential and commercial character. There are several commercial buildings of varying size sitting amongst terraced streets of dwellings. There is also a school close to the site. The residential use of the appeal site would thus not be particularly out of keeping with the locality.
42. The appeal proposal would not materially change the outward appearance of the building, save for some modest changes to fenestration. Car and bicycle parking on the front forecourt would not appear uncharacteristic of the area, while waste bins would be stored deeper into the site, away from the public highway. The appearance of the appeal site or surrounding area would therefore not be appreciably changed.
43. The character and appearance of the area would thus be preserved. I have therefore not identified any conflict with Policies LLP1, LLP17 or LLP25 of the Local Plan in respect of this matter. These policies, among other provisions, seek to ensure proposals do not adversely affect the character of the area and contribute to enhancing a sense of place, including by preserving or improving the character of the area.

Other Matters

44. The Council has commented that the development does not provide for a logical arrangement for access. This concern is somewhat vague however and no further clarification has been provided. As I am dismissing the appeal for other reasons, I have not considered this matter any further.
45. I recognise that existing occupiers may need to seek alternative accommodation in the event the appeal is dismissed. Given the identified harm and the conflict with the development plan in this instance, dismissal of the appeal is a proportionate and necessary response. Notwithstanding this, the Council would need to consider the expediency of taking enforcement action before any unauthorised use had to cease and with that the effect on the human rights of existing occupiers.
46. Other than where set out above, I have not identified conflict with any other relevant parts of the development plan or national policy and guidance. However, the absence of harm or development plan conflict with respect to other relevant matters weighs neither for nor against the proposal.
47. I understand that the proposals for this site have been amended, including following pre-application discussions with the Council. However, this does not indicate that the appeal scheme is acceptable with regard to the main issues.

Conclusion

48. The proposed development conflicts with the development plan, taken as a whole. I have found no material considerations that indicate the appeal should be determined other than in accordance with the development plan. Consequently, I conclude that the appeal is dismissed.

Ryan Cowley

INSPECTOR