



Appeal Decision

Site visit made on 8 August 2023

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 27 March 2024

Appeal Ref: APP/B0230/W/23/3316045

196 Leagrave Road, Luton LU3 1JD

- 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 Ajaz Khan against the decision of Luton Borough Council.
 - The application Ref 22/01624/FUL, dated 16 December 2022, was refused by notice dated 2 February 2023.
 - The development proposed is a change of use of rear garage to Meals Collection Depot (Sui Generis).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site previously received approval (18/00881/FUL) for a single and two storey extension to create a new shop and shop front on the side of the building, but this was not commenced. It is also otherwise unrelated to this appeal, and I have considered this proposal accordingly.
3. Proposed planning conditions were provided following consultation with the parties. Their comments have been taken into consideration.

Main Issues

4. The main issues are:
 - the effect of the proposal on the living conditions of nearby residents, with particular regard to traffic generation, noise and disturbance; and
 - the effect of the proposal upon the character and appearance of the surrounding area, with particular regard to amenity.

Reasons

Living Conditions – Neighbouring Occupiers

5. The appeal site includes a grocery shop, small parking area and detached garage. It is located at the end of a row of terraced houses and at a busy junction between Leagrave Road and Saxon Road. The closest residential property to the appeal site is 2a Saxon Road, which directly adjoins the detached garage.
6. There are a number of commercial and community uses nearby on Leagrave Road, however, they do not directly face onto Saxon Road. As such, traffic movements are more intensive and numerous along Leagrave Road than Saxon Road. Nonetheless, due to the prevalence of terraced properties and limited

opportunities for off road parking, there are a high volume of parked vehicles on both sides of Saxon Road. In combination with its narrow width and the close proximity of other businesses along Leagrave Road, the competition for on-street parking is high. Additionally, due to the one-way system, vehicles must travel down the long and narrow Saxon Road before reaching the appeal site.

7. The proposed development would occupy the detached garage. It would be used as a depot for collecting, packing and delivering around 50 meals in the vicinity of Luton. It is not clear whether those meals would be prepared over the course of the day or the week. However, given that the proposed operating hours would extend from the morning into the evening it is feasible that within that timeframe, that they could be prepared daily. The depot would be open 3-4 times a week for no more than 3-4 hours a day, albeit the opening hours permitted by the proposed conditions are significantly longer. Although the appellant has referred to bringing ready, cooked food into the depot, they have also stated that the kitchen would be used to cook meals. I also note that the photographic evidence submitted during the appeal by the appellant indicates that a cooker has been moved into the building. It is therefore feasible, given the presence of catering equipment, that food would be actively cooked on site, rather than just prepared and reheated.
8. In terms of vehicle movements, these meals would be delivered to up to 10 outlets per day, 3 days a week. However, it is unclear how staff would reach the depot, notwithstanding that it is unlikely this would be more than 3 people, given the limited size of the building. Additionally, it is unknown what additional movements would be required to bring pre-cooked food or raw food materials to the depot.
9. Preparing, cooking, packing and reheating food would significantly change the general level of activity within and around the building. Moreover, with the preparation of a large number of meals a day, as well as unaccounted deliveries required to prepare and pack the hot food, vehicle activity around the building and nearby residential properties (particularly at 2a and 2 Saxon Road), would significantly increase. Due to the one-way system, this would affect traffic along the full length of Saxon Road. Additionally, the sounds and activities associated with the proposed use, such as food preparation, doors opening and closing, and staff movements and chatting would be heightened around the appeal building and nearby thus appreciably altering the noise characteristics and general activity in the immediate area to an unacceptable degree.
10. Without any means of extraction and ventilation, it is likely that the front window and door of the appeal building would be left open, particularly during the warmer months. This would enable sounds and odours associated with food preparation, packing and staff speaking to one another to be transmitted through the frontage and onto the street.
11. Consequently, the proposal would result in greater disturbance to the living conditions of neighbouring dwellings. This would be particularly harmful during warmer days and evenings when residential properties would be more likely to have their windows open and be more exposed to the sounds and activity in and around the appeal building.

12. The appeal site contains two off-street parking bays, which are in the control of the appellant. There is no evidence before me that these bays are formally used by other businesses or local residents, such that their use as delivery bays as part of the proposed development would result in a displacement of existing parking spaces. Nonetheless, the area has a high volume of vehicles and is susceptible to being affected by any additional vehicular traffic and noise.
13. The proposed conditions do not limit or control the number of vehicle movements to the appeal site. They also permit opening hours which are beyond the duration which have been stated as necessary by the appellant. I have considered the use of a planning condition to limit the number of proposed pick up/delivery movements and duration of opening hours, thereby making unacceptable development acceptable through the use of conditions¹. However, I am not persuaded that such a condition would be precise, enforceable and reasonable in all other respects, as there is no evidence before me regarding which days the depot would be open and consequently, what hours would be appropriate.
14. For these reasons, therefore, the proposed development would be harmful to the living conditions of nearby residents with particular regard to traffic generation, noise and disturbance. It would not adhere to the best practice principles of urban design, contrary to Policy LLP25 of the Luton Local Plan 2017 (LP). Accordingly, it would fail to accord with local plan policies, contrary to LLP1 of the LP.
15. The Council's alleges conflict with Policy LLP23 of the LP. However, this relates to District and Neighbourhood Centres and the protection of town centres and shopping parades, which have limited relevance for this proposed development. Furthermore, my attention has not been drawn to any words in it that are relevant to this issue. This policy has therefore not been determinative with regard to this main issue.
16. The Council's also alleges conflict with LLP32 of the LP, which relates to parking provision. I have found that the proposed development would not result in an adverse impact on occupier amenity through the displacement of on street parking. Accordingly, the proposed development would comply with this policy. However, the proposed development is considered unacceptable for other reasons.

Character and appearance

17. The surrounding area is predominantly residential, which is characterised by terraced two storey housing of similar scale and design. These characteristics, along with the generally narrow width of Saxon Road, combine to give the street scene a strong rhythm of residential activity. However, as the appeal site is located at the junction between Leagrave Road and Saxon Road, it is in an area of transition between residential and retail uses.
18. The proposed development would not significantly alter the external appearance of the garage. The plans indicate that there are no alterations to the building other than the changes to the frontage. These would consist of the replacement of the front shutter with a more conventional front door and

¹ Paragraph 55 - National Planning Policy Framework

window, giving it a more domestic appearance. The overall footprint and height of the building would remain unaltered. No works are proposed to install fan extraction equipment, which would have a material effect on the appearance of the building.

19. Although the proposed development would add a non-residential use to the area, the appeal site is already in close proximity to retail shops, gym and a mosque. As such, there already exists a wide diversity of commercial frontages in the immediate area and in this regard the appeal scheme would not appear visually out of place in the context of the street. Additionally, the appeal site is on the periphery of the residential area.
20. For these reasons, and notwithstanding my concerns in relation to traffic generation, noise and general disturbance, the proposed development would not have a harmful effect on the character and appearance of the surrounding area. It would be adaptable to changes of use and respond positively to the building context, in compliance with Policy LLP25 of the Luton Local Plan 2017 (LP). Accordingly, it would accord local plan policies, in compliance with LLP1 of the LP. It would also be sympathetic to local character, including the built environment, in compliance with Section 12 of the National Planning Policy Framework (NPPF).

Other Matters

21. In relation to the amenity value of the appeal site, the appellant has cleared the outside areas and has removed residential waste, including sofa and mattresses. The garage doors were also previously broken. However, as the buildings are privately owned and such maintenance works are not contingent on the proposed development, this is a consideration of limited weight.
22. I have considered the appellant's reference to the grant of three new planning permissions in the last year for fast food establishments in the heart of the residential area, with no parking and in front of zig zag lines. However, these would be different uses and not comparable to the proposal, which would not operate as a hot food takeaway or trade to visiting customers. As such, this is a consideration of limited weight.

Conclusion

23. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

S Lo

INSPECTOR