



Appeal Decision

Site visit made on 23 September 2024

by Les Greenwood MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2024

Appeal Ref: APP/B0230/W/24/3340743
86 Bradley Road, Luton LU4 8SW

- 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 Khan against the decision of Luton Borough Council.
 - The application Ref is 23/01380/FUL.
 - The development proposed is the erection of a chimney flue.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a chimney flue at 86 Bradley Road, Luton LU4 8SW in accordance with the terms of the application, Ref 23/01380/FUL, subject to the 6 conditions in the attached Schedule.

Preliminary matters

2. The 'existing' floor plan on submitted drawing 01/04 shows a dining area and kitchen within a flat roofed side section of the building. As the time of my site visit, however, this area was being used as part of the shop that occupies the whole of the ground floor.

Main issue

3. The main issue is the effect of the proposal on the character and appearance of the building and the local area.

Reasons

4. No 86 is a convenience store with accommodation over, occupying a corner plot within an urban residential area. The proposal is to attach a flue pipe to the gable end of the building, rising up from the flat roofed side section. The stated purpose is to facilitate use of that part of the building as a restaurant, though that change of use is not part of the appeal proposal. There is some debate between the Council and the appellant about the potential to use the side section as a restaurant under permitted development rights¹ (without the need for a specific planning permission), but that is not a matter for my adjudication here.
5. The flue would be encased within a chimney structure, rendered to match the gable wall. This would be a minor, proportionate and unremarkable feature

¹ As set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

within this neighbourhood where chimneys are commonplace – even though most others have internal stacks. The proposed chimney/flue would add some interest to the otherwise blank existing gable, thus contributing to the local street scene. This assessment of the proposal's visual impact is not dependant on whether or not there is a change of use to a restaurant.

6. I conclude that the proposal would represent a minor enhancement of the character and appearance of the building and the local area. It accords with policies LLP1 and LLP25 of the Luton Local Plan, which aim to secure high quality design that enhances the distinctiveness and character of the area.
7. A condition requiring matching materials is needed to protect the character and appearance of the local area. I impose a condition specifying the relevant plans to provide certainty, though this cannot justifiably include detailed specifications for an extract ventilation system since no restaurant use is proposed here. Three conditions regarding potential smells, vibration and noise are, however, reasonably required in case the chimney is put to use for extract ventilation as suggested by the appeal documents. I have amended the Council's suggested wording to address this particular situation more clearly. Finally, the Council's suggested requirement for a Construction Management Plan is not necessary for this small scale development.
8. The proposal accords with the development plan for the area. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should succeed.

Les Greenwood

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 01/04, 02/04, 03/04 and 04/04.
- 3) The materials to be used in the construction of the external surfaces of the chimney/flue extension hereby permitted shall match those used in the adjacent gable wall of the existing building.
- 4) Prior to any use of the approved chimney/flue for extract ventilation, details of the installation, operation, and maintenance of odour abatement equipment and extract system, including the height of the extract duct and vertical discharge outlet and in accordance with the EMAQ+ publication "*Control of Odour and Noise from Commercial Kitchen Exhaust Systems*" shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the commencement of such use and shall thereafter be permanently retained.
- 5) Prior to any use of the approved chimney/flue for extract ventilation, extract ventilation system and ducting shall be mounted with proprietary anti-vibration isolators and fan motors vibration isolated from the casing and it shall thereafter be maintained as such.

- 6) The external sound level emitted through the approved chimney/flue from any plant, machinery or equipment shall be lower than the lowest existing background sound level by at least 10dBA. This assessment shall be made in accordance with BS4142:2014 at the nearest and/or most affected noise sensitive premises, with all machinery operating together at maximum capacity.