



Appeal Decision

Site visit made on 18 November 2024

by Chris Couper BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2024

Appeal Ref: APP/B0230/W/24/3345740 205-207 Marsh Road, Luton LU3 2QQ

- 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 Ajmal Aminyar (2 Bro's Pizza & Dessert Limited) against the decision of the Council of the Borough of Luton.
 - The application Ref is 24/00073/COU.
 - The development is the conversion and change of use from a restaurant (Class E) to a takeaway (sui-generis) (retrospective).
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Decision

1. The appeal is allowed and planning permission is granted for the conversion and change of use from a restaurant (Class E) to a takeaway (sui-generis) at 205-207 Marsh Road, Luton LU3 2QQ in accordance with the terms of the application Ref 24/00073/COU, plan no. TQRQM23343145925418, and the existing and pre-existing floor plan, and subject to the following condition:
 - 1) The refuse bins for the development shall be stored at all times in the designated refuse storage area as depicted on the existing and pre-existing floor plan.

Procedural Matter

2. The description of the proposal on the application form includes an explanation of, and justification for, the development, which has already taken place. In my banner above, I have therefore taken the description from the appeal form, which corresponds with that cited on the Council's decision, and I have had regard to the appellant's reasoning below. My formal decision omits reference to the retrospective nature of the application as that is not an act of development.

Main Issue

3. The main issue is the effect of the development on the health of residents in the surrounding area.

Reasons

4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

5. In this case, the development plan comprises the Local Luton Plan 2011-2031 (2017), with the Council's decision referring to its policies LLP1 and LLP25. Amongst other things, these seek to create healthy places and communities. The Council maintains that the development conflicts with that approach.
6. As depicted on the existing and pre-existing floor plan, the premises previously had a small dining area, before that part of the building was converted to a food preparation area. However, according to the appellant only 10% of sales were generated from customers dining in, with a similar percentage from collection, and the remainder from deliveries. Moreover, I have no evidence to indicate that the type of food sold has changed as a result of the premises becoming a takeaway only. I am not therefore persuaded that the conversion of the former dining area has had a significant impact on the provision of unhealthy food from the premises.
7. The Council states that there are already around 9 takeaway facilities in the Marsh Road District Centre, which the appellant calculates is around 7% of the premises along the frontage. Based on the consultation response from the Public Health Manager ('PHM'), and with regard to a report by the Royal Society for Public Health¹, it would appear that the percentage is slightly higher than the average in Luton, although I have only limited evidence on this matter.
8. In a dismissed appeal at 60 Denbigh Road, Luton² an Inspector found that the proposed takeaway, which was located in a largely residential area, could attract passing trade from a nearby school and encourage children and adults to eat unhealthily. However, unlike this premises, that one was not already a restaurant, and I have no evidence before me to compare the prevalence or concentration of takeaways in that locality with here. Moreover, for this proposal, the Council does not refer to the proximity to schools.
9. The National Planning Policy Framework ('Framework') states that planning decisions should aim to achieve healthy places and should support access to healthier food; and the Planning Practice Guidance ('PPG') acknowledges the influence of planning in improving health and reducing weight and obesity in local communities³.
10. It is clear from the case officer report, and from the PHM consultation response, that Luton has relatively high numbers of children and adults who are classified as overweight or obese compared to regional and national averages. I have no doubt that that puts them at greater risk of some non-communicable diseases and mortality, and it explains why the Council has made it a strategic priority⁴, and why it is seeking to tackle the issue through its Luton Food Plan 2018-2022, and other approaches such as its Healthier Food and Drink Advertising Policy, and its Population and Wellbeing Strategy 2023-2028.
11. However, given this premises' pre-existing use, I am not persuaded that the scheme has had a significant impact on eating lifestyles in the immediate area or in the Limbury Ward. Moreover, having regard to the stance in the PPG, the Council does not have a development plan policy, or supplementary planning document, which justifies limiting the proliferation or over-concentration of

¹ Health on the High Street – Running on empty 2018

² APP/B0230/W/20/3250295

³ ID:53-004-20190722

⁴ Luton 2040: A place to thrive

particular uses by reference to appropriate evidence and the specific locality. The scheme does not therefore conflict with Policies LLP1 and LLP25; nor with the stance in the Framework and in the PPG.

12. Turning to the matter of conditions, I have considered those suggested against the tests at paragraph 56 of the Framework. However, as the development has already taken place, I have referred to the approved plans in my formal decision, rather than attaching a condition requiring that the development be carried out in accordance with them.
13. The Council's suggested condition no. 4 would require that the bins are stored in the depicted refuse storage area. In the interests of the character and appearance of the area, such a condition is necessary.
14. The Council's suggested condition nos. 2 and 3 seek to control noise emissions through the submission and approval of a Noise Management Plan and the setting of an external sound level limit. However, mindful of the Framework's tests, the Council, including its Environmental Protection Department, has not persuasively set out why such conditions are necessary and reasonable. The premises has an approved fume extraction system, and I have not been provided with any information to indicate that the pre-existing use, which was granted planning permission in 2018, was subject to any such controls or that it generated disturbing levels of noise and disturbance, or significant anti-social behaviour.
15. In the absence of detailed evidence, and given the appellant's statement regarding the pre-existing and existing sales profiles, I am not persuaded that the change of use has had a significant impact on the amount of noise and disturbance generated from the premises. For these reasons, and given the distance to the residential properties on Hewlett Road, I have not imposed those suggested conditions.
16. Having regard to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), the Council's suggested condition no. 5 seeks to withdraw permitted development rights for alterations to the external appearance of the building. However, having regard to the advice in the PPG⁵, I have no site specific evidence to demonstrate why such a restriction is reasonable and necessary in this case. I have not therefore imposed it.
17. For the above reasons, I conclude that the scheme does not conflict with policies which seek to create healthy places and communities. For these reasons, and having regard to all other matters raised, the appeal is allowed.

Chris Couper

INSPECTOR

⁵ ID: 21a-017-20190723