



Appeal Decision

Site visit made on 4 February 2025

by **N Bowden BA(Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7th March 2025

Appeal Ref: APP/B0230/W/24/3351941

Kenneth Road Museum Store, Kenneth Road, Luton LU2 0LE

- 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 M Hussain against the decision of Luton Borough Council.
 - The application Ref is 24/00194/FUL.
 - The development proposed is the erection of an additional floor and a two storey side extension with parking provision to facilitate a conversion and change of use of existing building to Class E(G) (III) industrial processes and convenience shop Class E (A) display or retail sale goods.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of an additional floor and a two storey side extension with parking provision to facilitate a conversion and change of use of existing building to Class E(g)(iii) industrial processes and convenience shop Class E(a) display or retail sale goods at Kenneth Road Museum Store, Kenneth Road, Luton LU2 0LE in accordance with the terms of the application, Ref 24/00194/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised on 12 December 2024. As the changes to the Framework do not affect the main issues in the case, the parties have not been invited to make further comments in this regard. References to paragraph numbers of the Framework in this decision pertain to the most recent version of the Framework.

Main Issues

3. The main issues are:
 - 1) The effect of the proposed development on the character and appearance of the area,
 - 2) Whether the proposed development would result in the loss of an employment generating site,
 - 3) Whether the proposed development would be in a suitable location for retail use having regard to its location outside a designated Town, District or Neighbourhood Centre and the sequential test,
 - 4) The effect of the proposed development on the living conditions of neighbouring occupiers by reason of noise and disturbance and loss of outlook, and

- 5) Whether the proposed development provides sufficient vehicle parking and the effect of the proposed development on highway safety.

Reasons

Character and appearance

4. The existing building comprises a detached single storey brick structure with distinctive arched features with pebbledash render infill and under a tiled roof. It is an interesting, albeit unloved, building in a fairly prominent location. The building is set on a triangular site which tapers towards the junction with Hart Lane and Hitchin Road at the top of a steeply sloping bank. The building's floor level is broadly aligned with Kenneth Road but due to the topographical change, it is set substantially higher than Hitchin Road. Neighbouring buildings are typically two-storeys in height however due to the surrounding topography, some buildings present to the street as being much taller.
5. The proposed development would increase the height of the building from a single storey building, to a two-storey structure. This would align comfortably with other buildings along Kenneth Road near the site as the resultant overall height would be comparable. However, it would result in it exceeding the height of homes on the opposing side of Hitchin Road to a substantial degree. The eaves height of the existing building is already similar to the ridge line of these two storey homes due to the change in levels. The proposed increase in height would result in it being quite noticeably taller and this would be appreciable in both directions along Hitchin Road.
6. Unlike other buildings in the area which have a varied height that evolve between neighbouring buildings, this proposal would be a solitary and isolated structure with only open space around it and no transition between it and other buildings along Hitchin Road. For this reason, I find that the proposed building would be excessively tall and dominating. It would be detrimental to the character and appearance of the area when appreciated from Hitchin Road. The proposal therefore fails to comply with policies LLP1 and LLP25 of the Luton Local Plan 2011-2031 (adopted 2017) (LLP) insofar as it would fail to enhance the distinctiveness and character of the area by responding positively to the townscape, street scene, site and building context.

Employment site

7. The appeal site is set within the built-up limits of Luton but is located outside of any designated employment area. Under policy LLP14 B. of the LLP, the redevelopment, extension and intensification of existing unidentified employment sites that would result in additional floorspace for B1¹, B2 or B8 of the Town and Country Planning (Use Classes) (England) Order 1987 (as amended in 2020) (the Order) will be supported. Where a building or site on an unidentified employment site has been vacant for at least twelve months, a mixed-use development that retains significant employment or alternative redevelopment to non-B uses (as was the Use Class at the time of the adoption of the LLP) to meet identified needs will be permitted subject to certain provisions on the suitability of accommodation and marketing.

¹ Use Class B1 was subsumed into Use Class E by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations SI: 2020/757

8. There is disagreement between the parties regarding the current use of the premises, with the Council considering it to fall within Use Class B8 of the Order and the appellant finding the site has a nil use. In this scheme however, I find this point to be moot as the proposal incorporates a like-for-like replacement of the current ground floor employment floorspace over the proposed first floor. Assuming the Council's scenario, this employment use would be altered from B8 on the ground floor to a near identical amount of employment use, in floorspace terms, over the first floor. This B8 use would be altered to a use within Use Class E(g)(iii) which, considering the Council's pre-2020 Plan, would likely fall within the ambit of either B1(c) or B2 of the pre-2020 amendments to the Order. My reading of the Council's policies means that there would therefore be no overall loss of employment floorspace. Taking the appellant's arguments, that the site has a nil use, the site would result in additional employment floorspace, and this would also be in accordance with policy LLP14 of the LLP.
9. Accordingly, adopting either argument results in compliance with the provisions of policy LLP14. There is no requirement to demonstrate suitable alternative accommodation or undertake marketing as there is no loss of employment floorspace. Equally, there is no need for me to further consider whether the site has a nil use as this consideration is not determinative in the context of this proposal. As such, the proposal complies with policy LLP14 of the LLP insofar as it would deliver sustainable economic growth and prosperity to serve the needs of Luton and the wider sub region.

Suitability for retail

10. The site proposes retail floorspace, in Use Class E(a) of the Order, over the ground floor of the premises. As such it falls within the ambit of a main town centre use, as defined in Annex 2 of the Framework. The site is not located within a Town, District or Neighbourhood Centre however I do recognise its proximity to a Neighbourhood Centre which the appellant nominates is 50 metres away. It seems to me that this is a somewhat optimistic measure although this distance is not challenged by the Council. In any case, it remains within the 300 metres nominated by the edge of centre definition given at Annex 2 of the Framework.
11. Policy LLP21 of the LLP directs main town centre uses towards Town, District or Neighbourhood Centres. The Framework states at paragraph 91 that local planning authorities, and by extension, Inspectors, should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations. In this instance, the appellant has provided a list of premises within the nearby Neighbourhood Centre and this indicates that at least a significant proportion, if not all, of the premises are occupied in retail or similar uses. On this basis, it would appear to me that there is no opportunity to locate this use within the Neighbourhood Centre.
12. Paragraph 92 of the Framework advises that when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. The site is located near to the Neighbourhood Centre and is within moments walking distance of it. It is in an accessible location, being set between Hitchin Road and Kenneth Road and where numerous other surrounding roads meet.

13. The proposed retail premises is of a relatively small size. The provision of a small additional area of retail floorspace is unlikely to have an adverse effect on the vitality and viability of the nearby Neighbourhood Centre in this context, particularly being mindful that there are no or minimal vacant retail units within this area. Looking further afield, it also seems unlikely that a retail space of this size could have any form of prejudicial effect on any other Town, District or Neighbourhood Centres.
14. Whilst the sequential test performed by the appellant is not exhaustive, the Planning Practice Guidance (PPG) notes that the application of the test will need to be proportionate and appropriate for the given proposal. The modest scale, in terms of retail floorspace, of this proposal means that it is unlikely to represent a significant change in the overall amount of main town centre use floorspace in this local area.
15. I therefore conclude that the proposed development would meet the sequential test and would not adversely affect the Neighbourhood Centre. Furthermore, its small size and location means it would not have an impact upon other Neighbourhood Centres or the Town Centre. The proposal therefore complies with policy LLP21 of the LLP.

Living conditions

16. The proposed building would be increased in height by one floor. It is separated by open space and surrounding roads from neighbouring homes. Whilst the increase in height would be visible and noticeable from many properties, it is not in such close proximity to these that the increase in height would result in a loss of outlook or overshadowing for neighbours.
17. The last known use of the building was within Use Class B8 of the Order. However, based on the appellant's evidence, this use has not occurred since at least 2009. I have no evidence to suggest that this use was restricted in terms of its hours of operation. This use can, in theory, create a degree of activity and disturbance that could impinge upon the living conditions of neighbours. However, I must be mindful of the building's size and context and the likely amount of activity and disturbance that could be generated. This is in addition to the appellants additional argument that the site has a nil use.
18. The appeal proposal incorporates two uses with light industrial, Use Class E(g)(iii), over the first floor and a retail, Use Class E(a), use on the ground floor. Use Class E(g)(iii) is restricted in the Order to being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. It is therefore, by definition, capable of occurring within this predominantly residential area without causing harm to the living conditions of neighbours. Indeed, I find that a light industrial use over the first floor is likely to be one which is non-intrusive due to natural constraints of being on the first floor and thus being incompatible with heavy machinery or the like that could be deleterious to neighbours living conditions.
19. With regard to the use of the ground floor, a small local shop could create a degree of activity and disturbance in the form of congregating or noisy customers, parking of vehicles and the like. However, I am conscious that the retail use would be small and unlikely to attract a significant number of visitors. Moreover, it is set adjacent to the relatively busy Hitchin Road and is clearly a well trafficked through route for

pedestrians. Whilst the immediate area is predominantly residential, there are numerous examples of other uses which appear to coexist comfortably adjacent to each other.

20. The hours of use for the premises have not been specified by the appellant. A condition could restrict the hours of use to ensure that these excluded hours of late operation that would be incompatible with this residential area. Although I could reasonably impose a condition here to this effect, I am conscious that local residents have expressed concern regarding this matter. Were I to allow the appeal without consultation on hours of use, this may prejudice these parties. Accordingly, I have imposed a condition that requires further consultation and this would need to be undertaken by the Council following the receipt for approval of matters reserved by way of condition. I have noted the Council's views regarding subsequent pressure and applications to extend opening hours but this is not a reason to decline permission as each proposal is considered on its merits. Invariably, operation of a retail premises at anti-social hours would be detrimental to neighbours living conditions.
21. I therefore conclude that, subject to a condition to control the hours of use of the premises, the proposal complies with policies LLP1 and LLP25 of the LLP insofar as it would contribute to making a quality place.

Vehicle parking and highway safety

22. Policy LLP31 of the LLP promotes sustainable transport including minimising the need to travel and provides sustainable transport choice. Policy LLP32 relates to parking provision. It supports proposals for reducing on-street parking in and around the town centre and states that car free development may be supported in areas of high public transport accessibility. Parking provision should not exceed the maximum standards set out at Appendix 2 of the LLP.
23. The proposal indicates the provision of three parking spaces, including two spaces which are in a tandem arrangement. It is not clear whether these would be dedicated to the first floor use in Use Class E(g)(iii) or to the retail use on the ground floor. The spaces are arranged at right angles to the highway and as these directly access the highway they may not be suitable for the type of short stay parking connected with a retail use. This is because each movement would result in a vehicle reversing off or onto the highway, across the footway and in close proximity to a sharp corner. This is a matter that could, however, be controlled by condition to ensure that the parking spaces are used for staff or in connection with the first-floor use.
24. The use of the premises as a shop will invariably generate trips and some of these will no doubt be made by car. As such, I do recognise concerns about additional on-street parking in this area which does appear to suffer from a degree of parking stress. This level of parking stress has, however, not been quantified in any survey or assessment. I am also mindful of the size of the retail use and, due to its small size, is unlikely to become a destination in its own right for vehicle traffic. I find it more likely that the size of the premises and its proximity to surrounding residential areas, on a route to the Town Centre and on the edge of the Neighbourhood Centre, will mean that many trips will be on foot or by bicycle. I further note that the site is well connected to public transport infrastructure including nearby bus stops and within reasonable walking distance of the train station. Whilst the new

accesses will displace some on-street parking, this will be replaced by three off-street spaces. Therefore, whilst the development incorporates some degree of off-street parking, this would be minimal and equally would also be sufficient to cater for staff for the first floor Use Class E(g)(iii) and/or the ground floor retail use. As such, I conclude that the proposal would accord with the provisions of policies LLP1, LLP31 and LLP 32 of the LLP.

Other Matters

25. In reaching my conclusions here, I have had regard to the observations of neighbours and many of these views are explored in my commentary above. I have also considered the effects of potential overlooking however the proposal is not for a residential use and is separated from neighbouring homes such that overlooking would be minimal. I have imposed a condition, discussed below, relating to waste management and prevention of litter.
26. I have considered comments relating to a lack of information on the submitted plans and details, however I am satisfied that these are sufficient in order to allow me to determine this appeal. I have also noted concerns over construction of the first floor, however such matters are governed under separate legislation and construction works themselves will be temporary in nature.
27. I am mindful of concerns regarding future use of the first floor as residential or office as opposed to that for which permission is sought here. However, any such alternative use would require a new planning permission and it is not my role here to preclude or prejudge any such future application that may be submitted.

Planning Balance and Conclusion

28. The proposed development would not conflict with the employment policies of the LLP and provides a retail function in this edge of centre location. I have found it would not result in harm to the living conditions of neighbours, would have sufficient vehicle parking and would not be harmful to highway safety. However, I have found that the first floor extension would result in harm to the character and appearance of the area through the construction of a first floor extension and this would result in harm to the character and appearance of the area in conflict with policies LLP1 and LLP25 of the LLP.
29. However, I am also mindful that the premises has clearly been vacant for a substantial amount of time. The appellant has indicated that this is since at least 2009. In this period the premises has stood as an empty an unused building which in itself causes harm to the character and appearance of the area through giving a perception of dereliction and lack of investment or care. Therefore, whilst I do find that the first-floor extension would be harmful to the character of the area, this is comparable to the harm created by perpetuating the existence of a derelict building.
30. Moreover, this is not a sustainable use of resources and does not make the best use of available land. Granting permission for the development would be in accordance with Framework paragraphs 8 and 85 in supporting growth, vibrant and healthy communities, enhancing the built environment and allowing businesses to invest, expand and adapt. It would also deliver growth and investment in accordance with policy LLP1 of the LLP.

31. Accordingly, given the opportunity to bring a redundant building back into use and, on balance, I conclude that the proposal would comply with the provisions of the development plan when read as a whole. The material considerations indicate that a decision should be made other than in strict accordance with policy LLP25 of the LLP given the overall compliance with the development plan. As such, the appeal is allowed and planning permission is granted subject to the conditions set out below.

Conditions

32. The Council has not provided a schedule of conditions however I have considered the merits of the appeal and the comments of consultees and third parties. Conditions 4, 5 and 8 are pre-commencement conditions and the appellant has been consulted on the imposition of these having regard to the provisions of S100ZA of the Act.
33. I have imposed a condition requiring the development to commence within a period of three years to comply with the provisions of the Act. A condition to secure adherence to the approved plans is imposed for certainty. A materials condition ensures that matching materials are used in the construction of the development in the interest of the character of the area.
34. Condition 4 requires the submission of details on the hours of use for the premises. As noted in my reasoning above, this is to ensure that public consultation is carried out on the hours of opening such that the permitted uses do not occur during anti-social hours that could be detrimental to the living conditions of neighbours.
35. Details of cycle parking to ensure the development offers sustainable transport options and encourages non-car-based journeys to the premises are required by condition 5.
36. Condition 6 is to secure vehicle parking to cater for the proposed uses. To accord with the request of the Highway Authority, I have required these spaces to be 2.5 by 5 metres in terms of their overall dimensions. Whilst this exceeds the dimensions shown on the plans, I am satisfied that this change in size is sufficiently minor that it can be accommodated on the site and is reasonable to impose.
37. Condition 7 is also submitted at the request of the Highway Authority and is to ensure adequate sight lines from the new accesses to avoid conflict with pedestrians using the footway.
38. The final condition relates to waste management in the interests of the amenity of the area to ensure that waste is stored in an appropriate location and to minimise litter.

N Bowden

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 plan nos. mma.478, mp.24, mp.29, mp.258.
- 3) The external materials of the extension hereby permitted shall match those used in the existing building.
- 4) Prior to the commencement of the use hereby permitted, details of the hours of operation of the ground floor retail (Use Class E(a)) and first floor light industrial (Use Class E(g)(iii)) uses shall be submitted to and approved in writing by the local planning authority. Such details shall include opening times and hours for deliveries on weekdays, weekends and public/bank holidays. The approved hours shall thereafter be adhered to for the duration of the use(s).
- 5) Prior to the commencement of the use hereby permitted, details of two bicycle parking spaces shall be submitted to and approved in writing by the local planning authority. The use may not commence until those spaces have been laid out within the site and that space shall thereafter be kept available for the storage of bicycles.
- 6) The development hereby permitted shall not be occupied until the vehicle parking spaces have been provided in accordance with plan mma.478, excepting insofar as those vehicle spaces shall have dimensions of 2.5 by 5 metres in size. Such spaces shall be made of a permeable material. Thereafter those spaces shall be retained for the parking of vehicles only in connection with the uses hereby permitted and shall not be for use by customers of the retail premises.
- 7) Triangular pedestrian visibility splays of 1.8 x 1.8 metres must be provided on either side of the new access. The splays shall be positioned within the site at right angles to the highway (measured at highway boundary/site boundary). The visibility splays so described shall be maintained free of any obstruction to visibility exceeding a height of 600 mm above the existing ground level.
- 8) Prior to the commencement of the use hereby permitted, details of how waste and recycling will be managed shall be submitted to and approved in writing by the local planning authority. Such details shall include details of where waste and recycling will be stored, collection arrangements and details of waste and recycling receptacles for customers. The use may not commence until such measures have been agreed and shall thereafter be maintained to for the duration of the use(s).

End of schedule