



Appeal Decision

Site visit made on 6 May 2025

by T Bennett BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 May 2025

Appeal Ref: APP/B0230/W/25/3359826

5 Cromwell Road, Luton LU3 1DP

- 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 Mrs Luana Calonga De Jesus against the decision of Luton Borough Council.
 - The application Ref is 23/00832/FUL.
 - The development proposed is Change of use of a six person house in multiple occupation (HMO) class C4 to an eight person large HMO (Sui Generis).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development has been taken from the decision notice as this more accurately and concisely describes the proposal. This has also been used on the appeal form.

Main Issues

3. The main issues are:
 - whether the proposed change of use is acceptable, with particular regard to flooding.
 - whether the proposed change of use is acceptable, with particular regard to the supply of larger homes;
 - whether the proposed development would provide acceptable living conditions for future occupiers; and
 - whether the proposed development would provide acceptable living conditions for neighbouring occupiers with particular regard to noise and disturbance.

Reasons

Flooding

4. The appeal site falls within Flood Zone 3. This is an area which has a high probability of flooding. The National Planning Policy Framework (the Framework) sets out that when determining planning applications, local planning authorities should ensure that flood risk is not increased elsewhere and that, where appropriate, applications should be supported by a site-specific flood-risk assessment (FRA).

5. Footnote 63 of the Framework explains that such an assessment should be provided for all development in Flood Zones 2 and 3. It does not preclude change of use applications. No site-specific flood-risk assessment has been submitted with the application, contrary to the requirements of the Framework.
6. As no FRA has been submitted it is not possible to determine whether the change of use is acceptable with regard to flooding. It therefore conflicts with Policy LLP1 of the Luton Local Plan 2011-2031 (LP) which seeks to ensure sustainable development and with the provisions of Footnote 63 of the Framework. Five other policies have been cited on the decision notice in relation to this issue. Policies LLP15, LLP17, LLP25, LLP31 and LLP32 respectively relate to housing provision, HMO's, design, sustainable travel and parking. As such I find these are not determinative on this main issue. However, this does not alter my overall assessment on this main issue.

Supply of larger homes

7. The appeal site is currently in use as a 6 bedroom house of multiple occupation (HMO) for up to 6 people within use class C4. The proposal seeks to increase the number of occupiers to 8 people by increasing the bedspace within two of the existing bedrooms.
8. Policy LLP15 of the LP outlines that provision will be made for housing that meets the housing needs of Luton, ensuring the size, type and tenure provided reflects the identified housing need requirements of the area in the Strategic Housing Market Assessment (SHMA). Part B of the policy states planning permission for residential development will be granted on sites not allocated for housing, provided it would not lead to a loss of other uses for which there is a recognised local need. This is consistent with guidance within the Framework that the housing needs of different groups in the community should be reflected in planning policies and that local planning authorities plan for a mix of housing.
9. The Council refers to its latest Strategic Housing Land Availability Assessment (2019), which they state monitors the requirement of the SHMA through an annual publication. Now several years old, it identifies that only 402, 4+ bedroom dwellings have been delivered between 2011 to 2019, against a need of over 2,590 over the plan period. It states that most are from student houses or HMOs. The Council contend that this indicates a high unmet need for large single household dwellings, and that the proposal would exacerbate this through the loss of a 4+ bedroom home.
10. Notwithstanding this, the SHMA also indicates at figure 61 and paragraph 4.16 that there is likely to be a continued role for HMOs. There is limited information before me to suggest that HMOs cannot contribute to the mix of housing or that there is an overconcentration of HMOs.
11. Despite the Council asserting that the appellant has not demonstrated a need for a larger HMO, I am mindful that Policy LLP17 of the LP is generally permissive of new HMOs, and it does not require a need for such accommodation to be demonstrated. Therefore, whilst recognising that there is a need for larger properties within the SHMA, there is also nothing before me to indicate that HMOs could not assist in meeting the housing needs of Luton.

12. Moreover, the property is already in use as a HMO. I recognise that the proposed change of use would result in a change of use class, which would preclude the property from being used flexibly for purposes in Class C3 or C4 in the future and that planning permission would be required for its future use as a single-family home. However, the proposal involves no further internal alterations or subdivisions to accommodate the additional two occupants beyond the existing situation. Therefore, whilst an application for a change of use would be required to revert back to C3 use, the plans before me suggest that it would not be unduly onerous to revert back to a C3 single dwelling house.
13. Drawing all the above points together, given the existing situation, I find that the proposal would not result in the loss of a larger dwelling.
14. In conclusion, the proposed change of use would be acceptable with regard to the effect on the supply of larger homes. There would be no conflict with Policies LLP1 and LLP15 of the LP. These policies, among other matters, require all development proposals to have regard to relevant plan policies, seek to deliver sustainable development and ensure new housing helps meet the housing needs of Luton and the Luton Housing Market Area.
15. The Council have cited conflict with Policy LLP17 of the LP. However, this is permissive of HMOs provide it does not adversely affect the character of the area and is in accordance with amenity and licensing standards. As such I find no conflict with this policy in respect of this main issue, nor Policy LLP25 which is focused on design quality.
16. The Council alleges conflict with Policies LLP31 and LLP32 of the LP. However, these policies relate primarily to sustainable transport strategy and parking. These have therefore not been determinative in my decision on this main issue.

Living conditions – future occupiers

17. The Council has raised concerns that bedroom 6 represents a 1 bed-self-contained flat as it has a kitchen area, shower room and sofa. Whilst there is no definition before me of what constitutes a self-contained flat, I observed on my site visit that the kitchenette area was limited, with basic facilities. For example, it did not contain an oven or any ability to undertake laundry; thus, it would be highly likely occupiers would need to use the main communal areas for their full day-to-day needs. I therefore find it does not represent a 1-bed flat for the purposes of this decision.
18. Policy LLP17 of the LP, permits the development of new HMO accommodation provided that it would not adversely affect the character of the area, that the units conform with adopted licensing and amenity standards and to design requirements set out in Policy LLP25, and that appropriate outdoor amenity space, bin storage and parking provision are provided.
19. The Council have raised no concerns regarding the proposals effect on the character of the area, nor do they raise concern regarding the provision of outdoor space, parking and bin provision. From the information before me and my site observations, I find no reason to disagree.
20. Policy LLP25 is focussed on adherence to best practice principles regarding urban design. It is not clear where the conflict with this policy lies as it does not specify

any licensing or amenity standards, except in relation to external outdoor amenity space where no concern has been raised.

21. However, Policy LLP17 does require that the units conform to adopted licensing and amenity standards. The Council confirms that the bedrooms would meet space standards with appropriate levels of light and outlook. I have no reason to come to a different view on this. The increase in occupiers, however, will likely place further demand on communal living space and access to cooking facilities.
22. The Council has expressed concern that insufficient information has been submitted to demonstrate the proposal's compliance with licensing standards. Specifically, concerns have been raised regarding the adequacy of the communal areas for the proposed number of occupants, particularly the kitchen layout and the provision of hobs, microwaves, and sinks. I have had regard to the HMO Licensing Standards provided by the Council. These standards stipulate that a shared kitchen must be suitably located, and of such layout and size, and equipped with such facilities so as to adequately enable those sharing the facilities to store, prepare and cook food. The standards also require a sink with a draining board and, in properties occupied by between 6 and 10 people, a dishwasher or provision of a double sink.
23. The submitted plans show two hobs and a dishwasher. This is in addition to the sink with draining board that I observed on site. Additional storage would also be provided and I observed a cooker and a microwave in the kitchen. The standards do not specify a set number of microwaves. Therefore, I find that the proposed change of use would provide an appropriate standard of communal accommodation. Notwithstanding this, if there was any breach or failure to comply with the HMO licensing regime, action could be taken outside of the planning system.
24. Whilst some of the rooms are labelled as 1 bedroom and could potentially have 2 people, I am satisfied that the overall number of people occupying the property could be controlled by a suitably worded planning condition.
25. For the reasons above, the proposed change of use would provide acceptable living conditions for future occupiers. There would therefore be no conflict with Policies LLP1 which seeks sustainable development, LLP17 and LLP25 of the LP.
26. The Council alleges conflict with Policies LLP31 and LLP32 of the LP. However, these policies relate primarily to sustainable transport strategy and parking where no concern has been raised by the Council, nor is it related to this main issue. The Council also cites conflict with Policy LLP15, this relates to provision of housing and not living conditions. These policies have therefore not been determinative in my decision on this main issue.

Living conditions – neighbouring occupiers

27. The appeal building is a terraced property with a long rear garden. I would envisage the existing HMO generates a level of residential activity with associated noise. There is little evidence before me to indicate that the existing use of the property as a HMO injuriously harms the living conditions of neighbouring occupiers with regard to noise and disturbance.

28. The proposal would result in up to two additional people residing at the property compared to its existing use; this would also not be significantly more than if it were in use as a large 5+ bedroom single-family property. Considering this, any additional comings and goings from accessing the bin store and cycle storage would be modest, and I am not persuaded that this would be so harmful as to result in a detrimental impact on the living conditions of the neighbouring occupiers.
29. In conclusion, the proposal would not have an unduly harmful effect on the living conditions of the neighbouring occupiers, with particular regard to noise and disturbance. It would therefore accord with Policies LLP1 and LLP25 of the LP in this regard. These policies, amongst other provisions, seek to deliver sustainable development, create high quality and healthy places, and ensure new housing minimises noise.

Other Matter

30. The Council has provided two appeals that were dismissed in support of their case. The Council has provided no commentary on these decisions or expressed why they are of relevance. Notwithstanding this, the appeal at 186 Dunstable Road was not currently a HMO at the time of the application and the appeal at 30 Hillborough Road was to convert from a HMO to individual flats. As such, I find that the circumstances in those cases are not directly comparable to this appeal.

Conclusion

31. I have found the change of use acceptable in relation to the living conditions of future and neighbouring occupiers and the supply of larger homes. However, the proposal would not be acceptable with regard to flooding. As such it 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.

T Bennett

INSPECTOR