



Appeal Decision

Site visit made on 16 June 2025

by **C Walker BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28th July 2025

Appeal Ref: APP/B0230/W/25/3362518

158B Chester Avenue, Luton LU4 9SH

- 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 Desi Junction against the decision of Luton Borough Council.
 - The application Ref is 24/00885/FUL.
 - The development proposed is for the change of use from shop (former A1) to restaurant E(b), erection of the mechanical extractor system to the rear and mitigation measures on the roof and associated internal alterations.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The evidence before me indicates that planning permission¹ was originally granted in 2013 (the 2013 permission) to create the retail unit (Use Class A1)² at 158B Chester Road. The Council refer to a condition imposed restricting the use of the site, albeit limited details have been provided. The appellant asserts that the appeal site has been in use as a café/fast food outlet since approximately 2015-2016. They point to a permission granted³ in 2019 for the 'change of use of garden land and extension to existing café'. However, limited details are provided and as the address on the decision notice relates to 158 Chester Avenue, it is not clear that this relates to the appeal site.
3. The appellant's position is that the 2019 permission makes the 2013 permission superfluous. Further, that the change of use is permitted development, benefitting from the 2020 amendments to the Use Classes Order⁴, thus already establishing the use. The proposed mechanical extraction unit is a matter which the appellant accepts requires planning permission.
4. No Certificate of Lawfulness has been provided which establishes the authorised use. It is not within the remit of this appeal to make a definitive finding on the lawful use of the appeal site. Furthermore, I am mindful that the appellants own description of development describes the existing use as a shop. Accordingly, I determine the appeal on its merits, having regard to the above in my reasoning.
5. Notwithstanding the above, I observed the appeal site is currently in use as a hot food takeaway. Such a use, for consumption of hot food off the premises, falls

¹ 13/00514/FUL

² of the Town and Country Planning (Use Classes) Order 1987 (as amended)

³ 18/01556/FUL

⁴ The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

within a Use Class of its own; 'Sui Generis'. However, that is not the scheme before me and I proceed on the basis of the description contained within the banner heading.

6. Accompanying the appeal are a Kitchen Odour Risk Assessment and a Noise Report that were not before the Council at the time of its decision. The Council has had the opportunity of making representations on these but has not. The former is provided in response to the Council's Environmental Health Officer (EHO) suggested condition, and the latter is an updated report responding to comments made by the EHO during the application process. Both documents are supplementary and would not substantively alter the scheme. Therefore, I accept these and proceed on that basis.

Main Issues

7. The main issues are the effect of the proposed development on:
 - the character and appearance of the area;
 - living conditions of existing residents, with particular regard to outlook and noise;
 - highway safety, with particular regard to parking; and
 - the health of the local community.

Reasons

Character and appearance

8. The appeal site comprises part of a two-storey end terrace building and part of a single storey extension, fronting onto Roman Road at its junction with Chester Avenue. The appeal site at No.158B, relates to the ground floor space only. A hair stylist premises occupies the ground floor retail unit at No. 158 which fronts Chester Avenue, which has a flat above. At the time of my site visit, the attached unit at No.158A was closed up with shutters, albeit evidence indicates it was last in use as a boutique.
9. A parade of retail premises with flats above lie opposite the appeal site, currently in use as a hairdressers, a convenience store and a hot food takeaway. The latter is fitted with a mechanical extraction unit towards the rear of its side gable. Notwithstanding, the area is predominantly residential in character. Chester Avenue is typically formed by tightly packed pairs and rows of two storey dwellings, whereas on this part of Roman Road it is less dense, typically accommodating more spaciouly sited semi-detached dwellings and bungalows.
10. Chimneys on the terrace row, to which the appeal site is part of, extend from the ridgeline, are of traditional brick construction and of domestic scale. In contrast, the flue associated with the proposed mechanical extraction unit would be sited on the gently sloping roof of the retail unit, with the flue positioned against the rear elevation of the attached building and would project above the eaves and ridge. Consequently, its presence would appear out of character and incongruous in the street scene.

11. The plans show the flue would be encased in rendered blockwork. This would match the materials of the existing building, offering some mitigation and helping to diminish its harmful visual effect. However, at its base, a solid wooden fence is proposed. At 0.85m high, this feature would extend almost the full width of the unit, forming a compound around the plant. This would appear as a contrived, alien feature jarring with its surroundings, exacerbated by causing disruption to the gently sloping roof shared by the retail unit at No.158A. The plans annotate that the fence would be 'covered with green'. It is not clear what this refers to and I am not satisfied that anything green, or any other colour, be it painted fencing, planting or otherwise would mitigate the harmful effect of this raised enclosure.
12. Whist it is set back from the road, it would still be highly visible particularly from the north and east. Set amongst a largely residential context and backdrop, the effect of the development on the character and appearance of the area would be demonstrably harmful.
13. The extraction system serving the takeaway diagonally opposite has been drawn to my attention. However, unlike the appeal before me, the extraction unit is sited towards the rear of its flank wall and projects only above the eaves making this relatively discreet in the street scene. It is not directly comparable and does not set a precedent for other harmful extraction units in what is a predominantly residential area.
14. The Council raise concerns that the takeaway element could be a predominant part of the business. Any takeaway element associated with the proposed restaurant would need to be ancillary, and thus a small proportion of the business. The Council have powers to enforce this in the public interest if necessary. Based on the modest number of covers that could be catered for, I would not expect the character of the area to significantly change from that of its approved use, particularly as the opening times sought are 9:00 hours until 21:00 hours. Therefore, it follows that I am not satisfied that the character of the area would be adversely affected by the proposed use.
15. Nevertheless, I have found that the installation of the mechanical extraction unit and the proposed means of mitigation would have a demonstrable harmful effect on the character and appearance of the area. This conflicts with policies LLP1 and LPP25 of the Luton Local Plan 2011-2031 (2017) (LP). Together these policies, amongst other things, expect high quality design and development that contributes to enhancing the sense of place and preserves or improves the character of the area, which this scheme fails to achieve.

Living conditions

Policy context

16. Policy LPP25 of the LP does not relate to the effect of development on the living conditions of residents, other than in the context of housing delivery or by promoting opportunities for reducing crime and anti-social behaviour. Policy LPP1 of the LP has been cited in refusal reason no. 2, but this does not include matters relating to the living conditions of residents. Notwithstanding this, Paragraph 135(f) of the Framework expects development to have a high standard of amenity for existing and future users.

Outlook

17. The extraction system would be sited immediately adjacent to a window serving a first floor flat. No details are before me as to what this window serves, albeit the noise report submitted in support of the appeal indicates it is a habitable room. The fencing that would surround the extraction unit would sit higher than the adjacent window cill and project out for several metres. Behind this fencing would be a substantial piece of plant equipment that is not an expected nor an attractive feature in a residential environment. This would offer a poor outlook for the occupiers of the room adjacent and would be demonstrably harmful.
18. The property at 161 Roman Road is a bungalow which has its main, modest garden area located between it and the appeal site. The side elevation contains habitable windows which overlook its garden towards the appeal site. Given that the extraction unit would be located back against the rear wall of the two-storey building and that the retail unit at No.158A intervenes, views of the flue and its enclosure would be more limited, such that I do not find this would cause an unacceptable outlook for occupiers of this dwelling.

Noise

19. Due to its constrained layout, the dining space could not accommodate a significantly greater level of activity than the 14 covers shown on plan. Even factoring in an ancillary level of takeaway, the scale and nature of the proposed use would be modest and self-limiting. At this relatively low-level use, I would not reasonably expect levels of noise and general disturbance arising from the use to cause undue harm. Patrons visiting by car would likely park either immediately adjacent to the frontage or on the street, which would disperse any noise from car doors slamming. Moreover, the proposed opening hours do not extend late into the evening, when such noise would be more pronounced. The updated Noise Report supports my findings, indicating that predicted internal noise levels from patrons and traffic within the first floor flat, the nearest affected neighbour, to be 32DbA, well below good practice guidelines.
20. The updated noise report sets out that the predicted noise from the mechanical extraction unit on the occupiers of the first floor flat, would also fall below guideline daytime noise levels for habitable rooms as set out in the Council's Environmental Protection - Planning and Noise Guidance. This is material to decision making, to which I attribute significant weight.

Living conditions - conclusions

21. Notwithstanding that I find no significant adverse effects in respect of noise or general disturbance, I am not satisfied that the occupiers of the flat at 158 Chester Road would be afforded an appropriate outlook, thus having a harmful effect on the living conditions of existing residents. This brings the scheme into conflict with Paragraph 135(f) of the Framework.

Highway safety and parking

22. Policy LL32 of the LP supports development, provided car parking provision does not exceed the maximum standards set out in Appendix 2 of the policy, in order to promote modal shift. It goes on to say that sufficient parking should be provided to

help ensure that adverse effects on highway safety and the convenience of nearby residents and users are avoided. Appendix 2 sets out the maximum standard for restaurants as 1 space per 30m² of internal floor space.

23. The Council have not set out the number of parking spaces expected for a development of this nature or scale. The application form indicates the floor space would be 39.81m² and the Council refer to 40m² of floor space in their officer report. By my calculation, even rounding up, the maximum number of parking spaces expected would be two.
24. The appeal site has off-street parking available for two vehicles immediately to its frontage. A third space lies partly within the extent of the red line of the appeal site and partly fronting No. 158. In any event, the proposed quantum of parking spaces comply with the maximum standards set out by Policy LL32.
25. Double yellow lines are present at the road junctions of Roman Road and Chester Avenue and single yellow lines extend along the south side of Roman Road in both directions. There is, however, a fair degree of unrestricted street parking in the area, including directly opposite the appeal site. Whilst some local residents appear to rely on street parking, particularly residents of Chester Road, at my site visit I observed that many properties on Roman Road, closer to the appeal site have access to off-road frontage parking.
26. The appellant asserts there would be ten off-street parking spaces, as they also own the adjacent shop where the spaces fronting this would be available for patrons. However, as these are not contained within the appeal site, they cannot be the subject of control and thus cannot be relied upon.
27. The limited size of the restaurant, available covers and the numbers of staff likely to be present at any one time, would naturally limit the number of associated cars needing to park at or close to the appeal site. Even if all customers arrived by car, I observed that there is likely to be sufficient on-street parking available to accommodate this without causing a highway obstruction. I am mindful that the Local Highway Authority raised no objection in respect of highway safety. As technical experts, I afford this great weight and find no such conflict following everything else I have read and seen.
28. Paragraph 116 of the Framework is clear that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, which has not been clearly substantiated. I am not satisfied that the proposal would have an adverse effect on highway safety with regards to parking. It follows that I find no conflict with Policies LLP1, LLP31 or LLP32 of the LP, which together seek to reduce congestion and ensure that a proportionate number of parking spaces are provided to meet the needs of the development.

The health of local communities

29. The Luton Food Plan 2018-2022 (the LFP) is a local strategy that seeks to improve the health of residents of the borough. My attention is also drawn to a Healthier Food and Drink Advertising Policy. However, I have not been pointed to any specific part of these, as material considerations, with which the appeal scheme would clash. More generally, the Council are concerned that the proposal would promote unhealthy eating and drinking in a borough that has a higher-than-

average obesity rate. However, as previously set out, the takeaway element could only be a small proportion of the overall trade. There are no other restaurants in the immediate area, such that this development would not bring about a proliferation of the same use that would cumulatively cause harm in this regard.

30. The Council have referred to an appeal decision⁵ where an Inspector concluded harm on this main issue. However, unlike the appeal before me, it related to a hot food takeaway use. Furthermore, a primary school was located within a short walk from that site. I have not been made aware of any school being located near to this appeal site, nor any other circumstances or groups of people that might be particularly vulnerable or adversely affected by the development.
31. Therefore, I am not satisfied that the development would harmfully affect the health of the local community. It follows that I find no harm in respect of policies LLP1 or LLP25 of the LP, which together seek to promote healthy communities.

Other Matters

32. Whilst the proposal could offer a greater choice of food to the local population, the benefits of this would attract limited weight and do not outweigh the substantial harm that would arise from the adverse effects on the character and appearance of the area and on the living conditions of existing residents.

Conclusion

33. For the reasons set out above, the proposal would conflict with the development plan as a whole and there are no other considerations which outweigh the adverse effects. Therefore, the appeal fails.

C Walker

INSPECTOR

⁵ APP/B0230/W/20/3250295