



Appeal Decision

Site visit made on 14 July 2025

by **C J Leigh BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 August 2025

Appeal Ref: APP/B0230/W/25/3364496

179 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 Norbert Poustindaklas against the decision of Luton Borough Council.
 - The application Ref is 24/01346/FUL.
 - The development proposed is the installation of a new kitchen extraction system, and conversion and change of use of storeroom to takeaway/delivery kitchen.
-

Decision

1. The appeal is dismissed.

Main issues

2. The first main issue is whether the proposed development would be consistent with planning policies relating to healthy places and communities. The second main issue is the effect of the proposal on the living conditions of existing residents by virtue of noise and odour.

Reasons

Healthy places and communities

3. The proposed development would see the change of use of an existing building to be a takeaway/delivery kitchen. The submitted drawings and Design and Access Statement show an area for customer ordering and pickup for this takeaway use.
4. Under s38(6) of the Planning and Compulsory Purchase Act 2004, determination of this appeal must be made in accordance with the plan unless material considerations indicate otherwise. The development plan comprises the Luton Local Plan 2011-2031 (LP).
5. Policy LLP1 of the LP sets out a presumption in favour of sustainable development which, amongst other matters, includes a general objective to create healthy places. Policy LLP25 of the LP requires development proposals to be a high quality design; amongst other matters, the Policy seeks to promote healthy communities. These policies do not set out any specific requirements for takeaways in relation to where they may, or may not, be permitted in the Borough. I have not been made aware of any policy in the development plan or in any adopted supplementary planning documents that provide a specific advice on the location of takeaway facilities.

6. The Council's Development Management Report (DMR) explains that the appeal site is within a district centre, where Policy LLP23(A) of the LP applies. I note this Policy does not prohibit takeaways, with general support given for all town centre uses within a district centre. The DMR accordingly states that the Policy allows for takeaways within district centres, and that the proposals meet the relevant objectives of the Policy.
7. The proposed change of use therefore does not conflict with the provisions of the development plan as set out in the relevant Policies LLP1, LLP23 and LLP25.
8. The Council have drawn my attention to the National Planning Policy Framework, which states that planning decisions should aim to achieve healthy, inclusive and safe places. This can be through access to healthier food. The Framework also states that local planning authorities should refuse applications for hot food takeaways within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre. The appeal site is within a district centre, where Policy LLP23(A) allows for town centre uses, and the Council have confirmed this. I therefore see no conflict with the Framework on this matter.
9. Furthermore, the appeal site's location within the district centre sees it within an area where there are a number of existing takeaways, along with retail outlets offering a wide range of food choices. I cannot see that the proposed development would introduce a use that materially changes the choice of food options in the area. These extensive other options for food are closer to schools and to the library, which the Council refer to in their DMR. Hence, I also cannot see that the proposed development would represent a meaningful change to the likelihood for young people in their choice of food.
10. The Council have referred me to the Luton Food Plan 2018-2022, which sets out how they will address obesity and other health challenges linked to eating choices. This is not a planning policy document, but I acknowledge it is a material consideration. However, the references made by the Council are general in scope, relating to an overall strategy to improve health in the context of obesity in Luton, rather than a policy document relating to the location of takeaways. The evidence presented to me does not demonstrate that the proposed takeaway would be in a location where there is a concentration of such uses that is having an adverse impact on local health.
11. My attention has been drawn to a takeaway unit that was refused permission on appeal (ref. APP/B0230/W/20/3250295). Full details of this case have not been provided to me, but it involved a property located in a largely residential area with a primary school a short walking distance away. This is different to the appeal before me, and so I do not find the cases comparable.
12. I therefore consider other material considerations, including the Framework and the Luton Food Plan, do not outweigh my finding on the first main issue that the proposal accords with the LP. My finding is therefore that the proposed development does not conflict with planning policies relating to healthy places and communities

Living conditions

13. The DMR informs me that the building the subject of this appeal was erected following the grant of permission at the property of No. 179, for the erection of two storey and first floor rear extensions to form studio flat and erection of detached outbuilding. The ground floor of the outbuilding is used as a store for No. 179, with a roller shutter entrance that opens to the rear yard area of that property. This adjoins a door within the outbuilding that provides access to first floor accommodation. There are gardens adjoining the appeal site.
14. The proposed use would see access to the takeaway use via an existing gate to a pedestrian alleyway, into the yard, and then through the roller shutter entrance. There are residential properties in close proximity to the outbuilding and this access arrangement, and the response by the Council's Environmental Protection Officer (EPO), refers to dwellings located close to, and elevated above, the premises.
15. I share the concerns of the EPO regarding the impact of accessing the proposed use upon the living conditions of adjoining occupiers. It appears from the submitted drawings, and from my observations at the site, that this would involve staff and customers entering the site via the existing shared access gate to the alleyway, then accessing the ground floor of the premises in a location very close to residential properties, which is an area currently free from frequent commercial activities.
16. The proposed hours of use are to 10pm all nights and midnight on Saturdays which, due to the likely pattern of activity, is a degree of use that has the potential to be intrusive to adjoining occupiers. There are no proposed mitigation measures to control or manage the pattern or activities of use of the premises as a takeaway facility. On the basis of what I have read and seen, I therefore consider a strong likelihood that there would be unreasonable noise and disturbance to existing occupiers adjoining the premises.
17. The proposals include the provision of an external extract flue, which would contain a fan, fan silencer and cowl. The application was accompanied by information showing the details of this installation, but there was no technical assessment relating to noise, vibration or odour emissions. In addition to there being existing dwellings close to the outbuilding, the EPO explains the surrounding area has a low background sound level.
18. The close proximity of dwellings and the current quiet nature of the area mean that the scheme has the potential to impact upon existing occupiers by virtue of noise, vibration and odour. I do not consider this matter can be resolved by the imposition of a planning condition on the grant of permission requiring surveys or assessments to be undertaken at that stage, as that presupposes the layout and details as shown on the submitted drawings are of the correct position, design and specification for the scheme in relation to neighbouring properties; it is the lack of detail in the proposal before me that makes the scheme unacceptable in planning terms due to the potential impact on existing occupiers.
19. On the second main issue, I therefore conclude on the basis of the information provided to me, and from my observations at the site visit, that the proposed development would be harmful to the living conditions of existing occupiers. This would be contrary to the relevant policy of the LP, which was referred to by the EPO, namely Policy LLP 38 that requires development proposals to demonstrate

whether there will be any significantly adverse effect on neighbouring development and, where such impacts are identified, set out appropriate mitigation.

Conclusions

20. Although I have found in favour of the proposal with regards to the first main issue, the conflict arising on the second main issue is sufficient to outweigh that finding. I acknowledge the proposals would lead to a local facility that would provide employment opportunities. But my overall conclusion is that the proposal would conflict with the development plan as a whole, and there are no other considerations, including the provisions of the Framework, which outweigh this finding. The appeal is dismissed

C J Leigh
INSPECTOR