Planning Inspectorate

Appeal Decision

Site visit made on 4 November 2025

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2025

Appeal Ref: APP/B0230/W/25/3371291
136 Tennyson Road & 107 London Road, Luton LU1 3RP

- 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 Franco Anacreonte of Invest FM against the decision of Luton Borough Council.
- The application Ref is 21/01174/FUL.
- The development proposed is described as 'Demolition of existing house and hotel and erection of new 4 story apartment scheme comprising 62 apartments with associated car parking and landscaping'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address on the application form is not complete. Consequently, I have used the address on the Council's decision notice, which is also listed on the appeal form, in the banner heading above.

3. A separate appeal[1] has been made by the named appellant, although on behalf of a different company, at a different address within Luton. Whilst these are separate appeals, the Council's reason for refusal concerns the same issue in both cases and I have determined both appeals.

Main Issue

4. The main issue is whether the proposal would deliver the social, environmental and physical infrastructure improvements necessary to make the development acceptable in planning terms, including, if viable, affordable housing.

Reasons

5. The planning application for the proposal was submitted on 19 August 2021 and on 27 July 2022 the Council resolved to approve the proposal subject to a s106 planning obligation being agreed to address various issues.

6. However, for various reasons negotiations on the s106 obligation did not progress, despite the Council's resolution that should the obligation not be completed within six months, or an agreed extended period, then refusal of the proposal was authorised under delegated powers.

[1] Appeal Ref: APP/B0230/W/25/3371311 - Icon Hotel, Stuart Street, Luton LU1 2SA

7. S106 negotiations are said (by the Council) to have resumed in October 2024, for both the appeal proposal and for the aforementioned Icon Hotel proposal. On 2 April 2025, Heads of Terms, including a viability review mechanism for this appeal proposal, are said to have been agreed by the parties.

8. However, there remained disagreement with regard to the payment of the s106 Monitoring Fee by the appellant to the Council. The parties were unable to resolve this impasse, and on 27 June 2025 the Council refused planning permission for the proposal on the grounds that the proposal would fail to adequately mitigate the impact of the development because a s106 planning obligation had not been provided.

9. I note the report to the Council's Development Management Committee on 29 June 2022, where amongst other things, the basis for charging a s106 Monitoring Fee, and the level at which the Monitoring Fee would be set for different types of application was agreed. In the case of an obligation that involves affordable housing, as in this case, a monitoring fee of £10,000 would be set. I am satisfied that this approach is reasonable and consistent with Planning Practice Guidance (PPG)[2].

10. However, the Committee Report does not specify at what stage in the process the Monitoring Fee should be paid. At paragraph 11 of the report, the Council lists the activities that would be undertaken through the monitoring of obligations. Whilst there would be some initial work to record the details of an obligation, including triggers, the bulk of the monitoring work would, self-evidently, not occur until after development commenced.

11. The Council's approach to requiring payment of the Monitoring Fee upfront, at the time the planning obligation was signed and prior to the development commencing, is not explained. Paragraph 10 of the Committee Report describes the task of monitoring as an ongoing process that may involve many officers from across the Council. Given this, there seems no clear basis for requiring the whole of the Monitoring Fee to be paid in advance of the development's commencement, and I find the Council's position in this regard difficult to understand.

12. I note the efforts made by both sides to try and resolve this matter, including efforts by the Council to allow for a phased payment of the £10,000 Monitoring Fee. The appellant has submitted a signed Unilateral Undertaking (UU) (dated 11 September 2025) within which various parties, including the appellant, agree to pay the Council the £10,000 Monitoring Fee upon commencement of development.

13. However, with reference to Government Guidance on Planning Obligations, the signed UU is deficient in a number of regards, including that no evidence of title has been provided and although referenced in the document, there is no site plan annexed to the UU; the appeal reference number is also truncated; and there is no evidence that the UU would be binding upon successors in title. I am not therefore satisfied that the signed UU would be effective and it carries no weight in my decision.

14. I also note the Council's view that a UU is not appropriate in this case. With reference to the latest draft s106 agreement dated 24 February 2025, I would agree. Furthermore, the signed UU only concerns the payment of the Monitoring Fee and

[2] PPG – Planning Obligations Paragraph: 036 Reference ID: 23b-036-20190901 Revision date: 01 09 2019

does not address the obligations contained at Schedules 1, 2, 3 and 5 of the latest draft s106 agreement, which are the main operative parts of that document. Consequently, even if the signed UU were otherwise acceptable, I do not consider it would be compliant with Regulation 122(2) of the CIL Regulations 2010.

15. This is a very unfortunate and somewhat perplexing situation. Both parties now agree that the Monitoring Fee should be paid, but still dispute the timing of the payment, despite the Monitoring Fee being just a tiny fraction of the overall scheme cost. Furthermore, both parties agree that a s106 planning obligation, based on agreed heads of terms is needed, yet there is no such document for me to consider. Whilst I note the apparent willingness of the appellant to enter into a bilateral agreement with the Council, they have had ample time to do so and there is still no such document before me.

16. For these reasons, the proposal would not deliver the social, environmental and physical infrastructure improvements necessary to make the development acceptable in planning terms, including, if viable, affordable housing. It would, therefore, conflict with Policies LLP1 (presumption in favour of sustainable development), LLP2 (spatial development strategy), LLP16 (affordable housing), LLP24 (education and other community facilities), LLP31 (sustainable transport strategy) and LLP39 (infrastructure and developer contributions) of the Luton Local Plan 2011-2031.

Other matters

17. The appellant makes reference to what it considers to be unreasonable behaviour by the Council and that it reserves the right to pursue an application for costs. However, PPG sets out when an application for costs in a written representations appeal should be made, which is no later than the final comments stage[3]. Whilst there is discretion for an application for costs to be made after that date during the appeal process, no such application is before me. Consequently the opportunity to make an application for costs has now passed.

Conclusion

18. For the reasons given above, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR

[3] PPG – Appeals - Paragraph: 035 Reference ID: 16-035-20161210 Revision date: 10 12 2016