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/25/3371311
Icon Hotel, Stuart Street, Luton LU1 2SA

- 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 Franco Anacreonte of Hotel I against the decision of Luton Borough Council.
- The application Ref is 22/00170/FUL.
- The development proposed is described as 'Demolition of existing hotel and erection of new building containing 102 1, 2 & 3 bedroomed apartments over 17 storeys with 499m^2 of commercial space at ground floor level'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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

3. 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

4. The planning application for the proposal was submitted on 14 February 2022 and on 29 June 2022 the Council resolved to approve the proposal, subject to a s106 planning obligation being agreed to address various issues.

5. 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.

6. S106 negotiations are said by the Council to have resumed in October 2024, for both the appeal proposal and for the aforementioned Tennyson Road / London Road proposal.

7. However, the Council states that the appellant only proceeded with the drafting of the s106 obligation for the Tennyson Road / London Road proposal, rather than for

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

both. This is said to be to avoid duplicating legal costs, whilst still allowing for a swift amendment of the s106 obligation for the Icon Hotel proposal; it was an approach agreed by the Council.

8. Following this, on 2 April 2025 Heads of Terms, including a viability review mechanism, are said to have been agreed by the parties for the Tennyson Road / London Road proposal.

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

10. 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].

11. 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.

12. 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.

13. 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 also submitted various unsigned and undated Unilateral Undertakings (UU) which are not consistent in terms of the obligations listed within the latest draft s106 agreement[3] for this proposal in the evidence before me.

14. With reference to Government Guidance on Planning Obligations, the UUs are deficient in a number of regards, including that they are not signed or dated, no evidence of title or site plan is provided; and there is no evidence that the UU would be binding upon successors in title.

15. Additionally, in one of the UUs, reference is made to a separate draft s106 Agreement (March 2025) and that the contents of which are to be incorporated into that UU. This would not be an appropriate mechanism for dealing with obligations, heads of terms etc. and in any event, this draft s106 Agreement, which is not

[2] PPG – Planning Obligations Paragraph: 036 Reference ID: 23b-036-20190901 Revision date: 01 09 2019
[3] Dated 20 December 2024 from the document title.

agreed and so is not binding, is not in the evidence before me. Consequently, the submitted UUs carry no weight in my decision.

16. Furthermore, I also note the Council's view that a UU is not appropriate in this case. With reference to the aforementioned latest draft s106 agreement provided by the Council I would agree.

17. 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.

18. 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

19. 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[4]. 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

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

Andrew Parkin

INSPECTOR

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