



Appeal Decision

Inquiry Held on 2, 3, 4, 5 August 2022

Site visit made on 5 August 2022

by J P Longmuir BA(Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Appeal Ref: APP/B0230/W/22/3294931

Lea Halls, Bute Street, Luton, LU1 2WJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Luton Halls Properties Ltd against the decision of the Council of the Borough of Luton.
- The application Ref 21/01499/FUL, dated 25 October 2021, was refused by notice dated 7 February 2022.
- The development proposed is the conversion and change of use of student accommodation (Sui Generis) to 132 flats (52 one bedroom, 40 two-bedroom, 36 three-bedroom and 4 four-bedroom), together with construction of new entrance canopies added to existing buildings and alterations to parking provision, boundary treatments, lighting, cycle stores, bin stores, landscaping, public realm works, after demolition of existing on-site warden bungalow.

Decision

1. The appeal is allowed and planning permission is granted for the conversion and change of use of student accommodation (Sui Generis) to 132 flats (52 one bedroom, 40 two-bedroom, 36 three-bedroom and 4 four-bedroom), together with construction of new entrance canopies added to existing buildings and alterations to parking provision, boundary treatments, lighting, cycle stores, bin stores, landscaping, public realm works, after demolition of existing on-site warden bungalow at Lea Halls, Bute Street, Luton, LU1 2WJ in accordance with the terms of the application, Ref 21/01499/FUL, dated 25 October 2021, subject to the conditions in the conditions annexed at the end of this decision.

Applications for costs

2. At the Inquiry applications for costs were made by both parties. These applications are the subject of separate decisions.

Preliminary Matters

3. Subsequent to the determination of the application, the appellant submitted a revised layout to the Inspectorate. This showed the replacement of an area of car parking with communal open space. The appellant undertook their own consultation exercise. The Council objected to the submission as the plans were a material change and warranted a new planning application and consultations

as such. Having regard to the Wheatcroft principles¹ I declined to accept the plan because I could not be certain that no party would be prejudiced were I to accept it. I have therefore considered the appeal proposal on the basis of the layout in the application plans.

4. Also subsequent to the determination of the application, the appellant submitted amended floor plans. These did not seek to change the external appearance (and elevations) but sought to correct discrepancies with positions of the windows in the existing buildings. The Council did not object to their submission. Having regard to the Wheatcroft principles, I considered that no party would be prejudiced by their consideration. I have therefore considered the appeal proposal on the basis of these revised floor plans.
5. The appellant submitted a Section 106 agreement dated 25 August 2022. It includes contributions to walking/cycling improvements. Additionally, it has a clause potentially for education contributions, if I am so minded, but the parties dispute the need. I shall return to this matter below.

Main Issues

6. The first reason for refusal concludes the proposal would result in irrevocable harm to the town centre and its ongoing regeneration. The preceding sentence suggests that this is predicated upon various effects and therefore this is not considered in isolation as a separate main issue, rather I have considered it across various potential effects. The main issues, as agreed by both parties at the Case Management Conference, are therefore:
 - whether the principle of the change of use would be consistent with the relevant development plan policies, national planning policies and the Luton Town Centre Masterplan Framework;
 - whether the proposal would be an efficient use of land;
 - the effect of the proposal on the character and appearance of the area, including the public realm and the accessibility to the town centre; and
 - whether the intended occupants would have satisfactory living conditions in respect of external space.

Reasons

The principle of the change of use and consistency with policies

Development plan

7. The development plan is the Luton Local Plan 2011-2031, which was adopted in November 2017. The appeal site is not the subject of a specific local plan policy, rather general policies apply.
8. Policy LLP1 promotes growth and sustainable development subject to various criteria, which I consider latterly. The proposal provides growth by the provision of new housing and in this regard the proposal would comply with LLP1.
9. Policy LLP15 criterion B states that planning permission for residential development will be granted on sites not allocated for housing provided that it

¹ Wheatcroft v. Secretary of State for the Environment and Another [1980]

would not lead to the loss of other uses for which there is a recognised local need. The appeal site buildings have been vacant for three years. It is accepted by both parties that there is no need for the site as student accommodation. Therefore, the proposal would be in compliance.

10. LLP3 states Luton town centre will be the location for positive change and a focus for economic growth to provide a balanced offer of high-quality residential development, offices and studios. It refers to the town centre as a mixed-use area which will provide a balanced offer of high-quality residential development, offices and studios, creative industries, independent and national retail, education institutions and thriving public spaces with a vibrant cafe culture and night-time economy.
11. LLP3 criterion A sets out a number of criteria that development proposals for the town centre should address. These include the need to contribute towards residential growth of 2,100 dwellings, towards new homes for the Borough and create an expanded residential community in the centre of Luton.
12. Footfall from the 132 households would be significant in terms of supporting town centre businesses. In terms of the high-quality criterion, the proposal meets national space standards, provides large windows allowing natural daylighting and provides communal open space. I return to this in more detail latterly.
13. The site is within the Creative Quarter where Policy LLP11 aims to provide a thriving mixed-use area including proposals for the provision of 600 residential units. Paragraph A sets out a number of criteria for development within this area, these include improve the mix of uses including education facilities related to art media and design, a mix of A1, A3, A4, B1, B2, C3, (criterion i). Indeed paragraph 120(a) of the Framework encourages mixed use schemes. However, to require every site to provide mixed-use would be onerous; it may not be practical or viable. Indeed, the policy is aiming for a mix of uses across the area, but some sites would offer more potential for some uses than others.
14. LLP11 at paragraph A states: 'as they are material to the application'. This proposal is a change of use with little external change to the buildings. It is largely a conversion which is material to the proposal. No evidence has been provided that the buildings would be practical for other uses. Their form and arrangement are intrinsically in the form of flats and adaption for other uses would be likely to involve substantial changes. Viability is also material to the consideration of this proposal and the Council has accepted it is below normal returns.
15. The appeal site is within the Creative Quarter. LLP11 states the Council will work with developers, landowners and stakeholders to transform the Creative Quarter into a thriving mixed-use area with 600 residential units and a cafe culture. The 132 dwellings here would be only a minority element of the 600 envisaged. In addition, the appeal site is on the edge of the town centre whereby residential uses would be expected and the core of the town centre would remain as a commercial area. Indeed, there are other residential buildings in the neighbouring Guildford Street.
16. The town centre insert map in the Local Plan shows the Creative Quarter as an extensive area, of which the appeal site is only a small part. Consequently, a substantial area would still be available for a wide range of uses.

17. The Station Gateway site is immediately next door to the appeal site. Section C of Policy LLP11 allocates this for substantial residential development. It also lists other uses such as a hotel and offices but is explicit in this location that there should be only limited retail. Thus, this shows that this vicinity should be primarily focused on residential development and with only limited retail. Given the proximity of the appeal site, the residential focus is notable.
18. The appeal site is not allocated for any site-specific development in the Local Plan. This is in contrast with other sites. It is therefore reasonable to conclude that the Local Plan does not foresee a need to be prescriptive about the uses for the site.
19. The site is currently vacant and consequently has a forlorn appearance and there is no vitality or activity arising from the site. Conversely this proposal would bring new use and activity, without harming the balance of uses in the area.
20. Taking the above into account I therefore conclude that the principle of residential conversion is in compliance with the development plan when considered as a whole.

National policies

21. Paragraph 7 of the National Planning Policy Framework (the Framework) confirms the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 defines the three objectives of sustainable development as economic, social and environmental. Paragraph 9 states decisions should play an active role in guiding development towards sustainable solutions. The proposal seeks to re-use existing buildings for new homes, so in this regard it would meet these objectives.
22. Paragraph 119 promotes the effective use of land for housing, emphasising the use of brownfield land. Paragraph 120(d) also promotes the development of under-utilised land and buildings. As the appeal site is brownfield land, the proposal in principle for re-use would comply.
23. Paragraph 60 of the Framework confirms the Government's objective of significantly boosting the supply of homes. Paragraph 73 also promotes housing delivery particularly on large sites. As the proposal would deliver housing growth it would comply.
24. Taken as a whole I find that the Framework would support the principle of the change of use.

The Masterplan

25. The Luton Town Centre Masterplan Framework 2020-2040 is a corporate document rather than a planning document. It has undergone some consultation but has not been subject to scrutiny and independent examination. Indeed, both parties agree that it is not a development plan document and whilst it is a material consideration, it cannot carry the same weight.
26. Paragraph 6.7 of the Masterplan states: 'in the long term there is potential for further high-density development immediately around the station as well as the complete redevelopment of Lea Halls with new homes, workspace and

community services. The eastern end of Lea Halls site will be redeveloped first to strengthen the connection from the station to the town centre'. However, planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Since the Masterplan is not part of the development plan and has not been subject to scrutiny of independent examination, I afford it only very limited weight.

27. The Masterplan suggests the redevelopment of the site with higher buildings and the Council in evidence, foresaw a new building of up to 10 storeys. However, it is not certain whether this would be acceptable in terms of character and appearance of the area. There are also listed buildings close by and their setting could be harmed as could the living conditions of neighbouring residents.
28. The PPG is clear that in allocating sites specific regard should be had to viability. Indeed, the viability assessment is an integral part of the development plan process. At the Inquiry the viability assessment of a replacement building was considered, and the Council relied upon an earlier viability overview by consultants Avison Young. The document suggests a sales rate of £475 per square foot whereas the agreed sales rate for the valuation of this proposal is £332, which would make a substantial difference to the calculated viability. Moreover, the introduction at paragraph 1.3 states that this is intended for internal use only and a broad indication only. Paragraph 1.4 recommends more detailed assessment. On the basis of the evidence submitted to the Inquiry I am not persuaded that the Council's viability assessment is robust.
29. Paragraph 3.5 of the Masterplan states: 'First and foremost the approach to change in the town centre must recognise what we already have and make best use of it. Focusing on those assets that are underused buildings which are vacant or not fully occupied spaces which do not have a clear role or undervalued will ensure a more sustainable and bespoke approach'. This promotes re-use of the buildings rather than the re-development promoted in the contradictory paragraph 6.7.
30. The same emphasis of re-use is evident at paragraph 3.6: 'In every case refurbishment and re-use should be considered first even if after assessment there are stronger arguments for redevelopment. Refurbishment represents the most sustainable approach by improving the buildings energy performance and therefore reducing its operational carbon, whilst keeping its imported carbon in use'.
31. The proposal would conflict with paragraph 6.7 of the Masterplan, however there are other paragraphs which have overriding support for the principle of conversion. In addition, the viability of the suggested redevelopment of up to 10 storeys has not been tested as rigorously as this proposal. Therefore, in the light of the above, I give paragraph 6.7 very limited weight. In any event this particular proposal must be also considered on its own merits.

Conclusion

32. In terms of the principle of the conversion to residential, the proposal accords with the Local Plan and the Framework. Whilst it would conflict with Masterplan paragraph 6.7, which makes reference to long term potential, it would accord

with paragraphs 3.5 and 3.6. In any event, it is not a development plan document and indeed, the Council at the Inquiry confirmed it is only a 'high-level' document². Both parties agreed that it would not trump the development plan and I similarly give more weight to the development plan and Framework.

Making efficient use of land

33. Policy LLP1 states: 'Growth in homes, jobs and services that constitutes sustainable development will be welcome; provided the growth is directed to places with good concentrations of existing infrastructure or where there is capacity to grow with further sustainable infrastructure investment within the plan period up to 2031'. Thus, this policy seeks to locate new housing in areas with good infrastructure, to which the proposal would accord.
34. Local Plan Policy LLP25 seeks to optimise higher densities and reduce carbon emissions. Policy LLP37 supports development that mitigates climate change. The Masterplan similarly promotes the re-use of buildings. Luton Borough Council has declared a climate emergency and is seeking to move towards zero carbon. The appeal site has been vacant for approximately three years. Both parties agree the original use of the buildings is no longer viable. It was built approximately 26 years ago and is currently a wasted opportunity.
35. The appeal proposal would re-use the existing buildings without demolition, except for the small bungalow. The appellant calculates that the carbon cost of retrofitting the existing buildings would be 37% of the equivalent from new construction³. Even taken as a ballpark the carbon difference between re-use of the building and new construction would be substantial. This was not disputed at the Inquiry.
36. Moreover, the resulting shape of the new flats would be energy efficient as the external surface area of each would be small compared to its internal surface area. This was also not disputed at the Inquiry.
37. The layout of the existing buildings would only change in terms of entrance canopies and the removal of the caretaker's bungalow. The layout shows an extensive footprint of buildings providing coverage across the site. I noted from the layout plan and on my site visit, that the position and shape of the buildings is efficient in their positioning and arrangement around the access and servicing. The amenity spaces are around courtyard buildings. Consequently, the layout does not waste space.
38. The proposal would have a gross density of 180.8 dwellings per hectare⁴ which would be a high-density development. Any higher density would be likely to need taller replacement buildings, and this would be likely to have consequences for the carbon footprint as well as other planning considerations such as the character of the area, setting of listed buildings and living conditions of adjacent occupiers. Also, the viability of taller buildings has not been proven.
39. This scheme is shown to be viable and deliverable. Moreover, the conversions of the existing buildings would only entail internal changes of generally non-structural walls and the existing window openings would be utilised.

² Council closing paragraph 26

³ Mr Simon Sturgis Proof of Evidence paragraph 6.2

⁴ Mr Michael Carr Proof of Evidence paragraph 5.7

Consequently, the buildings would be readily adaptable to the proposal and implementation would be expected to be expedient.

40. The proposal would provide 132 new homes. The footfall from the new occupants into the town centre would be significant to the local economy. They would be likely to use local facilities due to the restricted car parking on the site assisted by the availability of public transport for access further afield. Therefore, the residents would not be reliant upon the use of private car, thereby contributing to the aim of Policy LLP25 in terms of reduction of carbon emissions.
41. The reasons for refusal refer to the failure to make any provision for employment generating use. However, no evidence was presented to the Inquiry to demonstrate that the buildings could be adapted for employment generating use or that such uses would be viable. Moreover, the appellant's June 2022 survey⁵ shows significant vacant floor space in the town centre which questions the demand and viability for more commercial floor space.
42. I therefore conclude that the proposal would be an efficient use of land in terms of the number of dwellings created and there is little likelihood or proven viability of other uses. Therefore, the proposed use would comply with Policy LLP25 and it would not harm the town centre or its regeneration. In terms of carbon emissions, the proposal would be very efficient in terms of conversion of the buildings and the likelihood that future occupants would use sustainable means of transport and would thereby assist with mitigating climate change in accordance with Policy LLP37 and paragraph 152 of the Framework. The proposed development would also make use of a brownfield site in accordance with paragraph 120(c) of the Framework. In terms of LLP1 it would be sustainable development in an area with infrastructure and so would not conflict.

The effect of the proposal on character and appearance, including the public realm and accessibility to the town centre

Changes to the buildings

43. The Council suggests that the existing buildings are unsightly. However, they were granted planning permission less than 30 years ago and design would have been a consideration at least under national planning policy.
44. The buildings have a simple appearance of uniform fenestration, height and massing. They are bland and do not attract attention because neither the detailing nor the massing or materials draw the eye. Whilst their entrances are away from public viewpoints which does not help their appearance, the windows are nonetheless so orientated. I therefore find that they are undistinguished.
45. Whilst the Council have an aspiration for more eye-catching buildings, too many such buildings have the potential to create an overly fussy street scene, whereby the eye would not know where to look; a passer-by may not be able to absorb a complex group of buildings when experienced for a fleeting moment. Some deferential buildings such as the appeal site have a role.

⁵ Mr Robert Barber Appendix 4

46. In any event the proposal is for a change of use which needs to be considered on its own merits. The Council confirmed at the Inquiry that a Compulsory Purchase Order has not been considered. There also was no suggestion at the Inquiry of another scheme coming forward.
47. Whilst the proposal would not create an active frontage, that is the nature of the existing buildings. In any event, the proposed residential use would be evident by lights and movement. The perceived use of the buildings would be likely to lead to most passers-by being able to respect them, rather than a derogatory impression as currently due to their vacancy.
48. The proposal would also provide surveillance from first floor levels and above towards the bus station and to the footpath to the east which connects to the town centre. The proposed floor plans show both aspects would be overlooked by kitchen and living room windows, which would follow the advice on surveillance in the National Design Guide.
49. The external changes to the buildings are limited to new entrance canopies and the removal of the bungalow. The latter is not distinguished and would have a neutral affect but would allow more space for landscaping. The canopies are small scale and would provide simple functional structures reflecting their purpose. They would provide a sense of arrival and would help break up the massing of the building. They would be positive additions albeit only a limited benefit.

Landscaping/boundary treatments

50. The proposal is for a change of use and the effect on the public realm would be derived from the changes perceptible from the public surroundings. This would include the proposed use of the buildings and the new entrance canopies as discussed above as well as landscaping proposed.
51. The open spaces provided by the proposal would not be available as public open space. However, in the context of this proposal for the re-use of existing buildings, it would not be reasonable to require access for the general public, rather the proposal should meet its own specific needs arising from its use as dwellings and provide communal open space specifically for the needs of its households. Indeed, the spaces were not publicly accessible under the previous student occupation and have been fenced off for considerable time.
52. The proposal shows new landscaping to the east side of the appeal site. An informal row of trees is proposed which would have distinctive trained square canopies⁶ which would be eye-catching features. A new hedge would replace the existing laurel hedge. This would be prominent from the adjacent footway and also the railway station entrance stairs, so potentially such landscaping would be very beneficial.
53. Landscaping is also shown along the access into the site, including a row of trees which would be obliquely seen from the adjacent footpath to the east. A wildflower verge is also shown although this would mainly be seen within the site. These would be positive improvements.
54. The proposal shows planting within the courtyards, but these would be largely for the benefit of the residents as public views are very limited.

⁶ ID6 note on Eastern trees and hedge

55. It is proposed to place new fencing around the site. The Council objects to the fencing on the basis that it creates a gated community, is not inclusive and looks harsh.
56. However, there is currently fencing around the site and at the Inquiry it was confirmed that this has been in place for a long time. Therefore, in principle its replacement would not change the character of the area. It was clearly considered necessary for the occupation by students for their security and would be similarly expected to be needed for householders.
57. Moreover, the new fencing is suggested to be a crosswire construction replacing the existing assertive end spikes. New landscaping is proposed which would be capable of subsuming and softening the fencing. The boundary treatments proposed together with a potential management regime, if conditioned, would give the impression of a properly managed site rather than the unkempt existing laurel hedging, which would cease to be perceived as neglected and undervalued.

The proposal and potential new footpath

58. The Council also expressed concern that the fencing would spoil the opportunity for improved connectivity between the transport hub and the town centre by preventing a potential footpath across the site. The Masterplan promotes accessibility in the area.
59. However, the appeal site abuts private land on the south side and not public highway. Consequently, in the absence of a confirmed Compulsory Purchase Order, any footpath would be at the behest of those landowners. No evidence of the willingness of the landowners was produced at the Inquiry and indeed the most likely route would involve crossing a car park which is gated for security.
60. In addition, there is a difference in land levels of approximately 2 metres between the appeal site and third-party land. For a public footway providing accessibility for all users, it was agreed at the Inquiry this would be likely to need a ramp. The adjacent building is listed, and consideration would therefore be needed to its setting.
61. I therefore find that from my observations and the evidence produced at the Inquiry, provision of any footway across the appeal site would have significant physical and financial constraints.
62. There is a wide pedestrian walkway around the eastern edge of the site, which has a favourable gradient for all users and attractively surfaced in paviours. This also forms a direct link between the bus and railway stations and the town centre. I noted on the various occasions I visited the site that this walkway is very well used. There is also a footpath around the western edge of the appeal site which links to that part of the town centre.

Implications on the adjacent redevelopment

63. The land to the east is known as 'The Stage'. This is vacant open land, owned by the Council and has grant funding for re-development. A planning application for re-development has not yet been submitted but an indicative plan has been produced.

64. A public open space is proposed at the western end of The Stage, opposite the appeal site and the groundworks were highlighted at the site visit. This newly created open space would be complemented by the proposed landscaping along the eastern part of the appeal site.
65. The indicative plan shows the redevelopment would be sufficiently distanced from the appeal site to avoid a cramped collective appearance. In addition, the simplicity of the appeal site buildings means they would not be competitive; indeed, the layout shows a courtyard form similar to the appeal site. Consequently, the appeal proposal would not spoil its regeneration.

Conclusion

66. Although bland in appearance, the existing buildings are inoffensive, and the proposed changes are modest and positive. The proposed landscaping would be an improvement particularly along the eastern side. Similarly, no harm would result in terms of accessibility or the redevelopment of The Stage. Therefore, in these respects the proposal would not harm the town centre.
67. There is no clear evidence that any other scheme on the appeal site would come forward. This proposal is for a change of use and when considered on its own merits would result in an improvement of the site.
68. Policy LLP25 seeks to enhance the distinctiveness and character of the area by responding positively to the townscape, street scene, site and building context, form, scale, height, pattern and materials. The proposal as a whole improves the appearance and character of the site, so would not conflict with Policy LLP25 in this regard. The policy also seeks to optimise and improve accessibility, which is not achieved by the proposal. However, bearing in mind the proposal would re-use existing buildings, the constraints on adjoining land that has not been shown to be achievable and the nature of the existing footpaths, such conflict warrants very limited weight and I conclude that the proposed development would comply with Policy LLP25 overall.
69. Paragraph 130 (b) of the Framework states that planning policies and decisions should ensure that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping. As I have found that the changes to the buildings and their occupation, together with the new landscaping, would be an improvement there is no conflict with the policy. Paragraph 126 states the creation of high quality, beautiful and sustainable buildings and places is fundamental to what planning and development should achieve. The proposal would re-use the existing buildings and would be sustainable, in accordance with the above policy.

The living conditions of the intended occupants

70. LLP1 which promotes growth and sustainable development seeks the creation of healthy places. LLP25 requires new housing to be in accordance with the external amenity space standards as in appendix 6 of the Local Plan: 'for flatted developments a minimum of 5 sqm of outdoor private space should be provided for one to two person flats and maisonettes and an extra 1 sqm should be provided for each additional occupant'.
71. The Council submit that balconies for each flat would be necessary to provide private amenity space. However, appendix 6 also states: 'where private outdoor space is not achievable due to the plot size or character this should be

provided in the form of communal open space, grass or hard surface with some landscaping'. This shows flexibility for the particular circumstances of the site, such as this proposal which is a change of use involving existing buildings.

72. The appellant stated at the Inquiry that the cost of providing balconies across the development would amount to £4.6 million, which was not contested at the Inquiry. Bearing in mind the submitted and agreed valuation, this additional cost even as a ballpark would be a significant threat to viability. In addition, the creation of balconies would have implications for the external appearance of the buildings potentially changing the uncluttered simple appearance.
73. This proposal, reflecting the original planning application submission, provides 2,280⁷ sqm of communal open space. This would satisfy the appendix 6 requirement which is 2,128 sqm.
74. The communal open space would be within the existing courtyards between the buildings, which would be directly accessible from each entrance and provide usable shaped areas. The spaces would not generally be visible from public view due to the nature of the courtyards. Whilst there would be overlooking between the residents themselves, this would help security and social mixing.
75. In addition, there are other open spaces in the vicinity. As stated earlier The Stage will provide some open space opposite the appeal site. Also, very close by, the Lea Riverside area will be a new open space; this Council project involves the removal of a culvert to form a riverside park. As I saw on my site visit this work is progressing with terracing in place and the water course already evident. In addition, Brantwood Park is just over 600 m⁸ away (in a straight line) and connected to the appeal site by roadside footpaths. This is a substantial recreation space with extensive children's play equipment, adult outdoor exercise stations and grass playing surface. At the time of my evening site visit it was busy with a wide range of age groups and activities.
76. Both parties accept that the proposed flats would meet the national standards on internal floor space.
77. For the above reasons, I therefore conclude that the proposal would provide satisfactory living conditions for the intended occupants and would comply with Policies LLP1 and LLP25.
78. Paragraph 92 of the Framework states planning policies and decisions should aim to achieve healthy, inclusive and safe places. Paragraph 93 of the Framework seeks social, recreational and cultural facilities the community needs. Paragraph 130 (f) of the Framework refers to amenity, health and wellbeing. The proposal would not be in conflict with these policies.

Other matters

79. The Council confirmed at the Inquiry there is no objection in terms of the setting of heritage assets. The appeal site is seen in conjunction with the Grade II listed 50 George Street. This is a former hat factory, circa 1900 and is detailed in a Jacobean/Queen Anne style. A central pediment rounds off the symmetrical arrangement of the windows in the bays below. The pediment

⁷ Mr Michael Carr Proof of Evidence paragraph 7.10

⁸ Mr Michael Carr appendix UD-04

forms a focal point to the roofline. The other sides of the building are utilitarian, and the frontage appears very elaborate for a factory building.

80. Another listed building experienced in conjunction with the appeal site is 40 Guildford Street, opposite the appeal site entrance. This is a Grade II listed building, dating back to the 1870s. Its pronounced corniced ground floor reflects its use as a pub whilst the upper floor sash windows above are more sedate. Being at the end of the row of buildings this is very prominent.
81. The Plaiters Lea Conservation Area is almost adjacent to the southern side of the appeal site, separated by Guildford Street. There is clear intervisibility between them. The Conservation Area is an area of former commercial buildings making clothes particularly hats. The buildings within the area are typically brick built warehouses and factories.
82. I have not been made aware of any historic connection with the above assets and the appeal site. The proposal in terms of its change of use, the new canopies and landscaping, would be an enhancement to their settings, albeit very limited.

Planning obligations

83. The submitted Section 106 agreement has 'blue pencil'⁹ provisions on primary and secondary education contributions for which the needs are disputed. If such contributions are not needed, then 8 affordable homes would be provided under clause 3.2.1. There is also an undisputed transport contribution towards cycling and walking improvements.
84. The Council published a Planning Obligations Supplementary Planning Document (SPD) in September 2007. This sets out how planning obligations should be applied in the determination of planning applications.
85. However, that SPD, predates the tests for the 2010 Community Infrastructure Levy Regulations (CIL). Paragraph 57 of the Framework, together with these tests require that planning obligations should only be sought where they are: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.
86. Policy LLP39, in the adopted Local Plan also provides more up to date criteria. Policy LLP39 B (i) states financial contributions should meet the reasonable costs of provision to support the development or offset its impact. LLP39 B (ii) states that the contribution must be related to the size and type of each development and the nature of improvements required. Similarly, LLP1 on sustainable development directs growth to 'places with good concentrations of existing infrastructure'.
87. Paragraph 6.2 of the SPD seeks a contribution from developers towards the cost of improving or providing schools and other education facilities for young people in the area of the particular development determined by reference to the assumed pupil yield from the development concerned.

⁹ A blue pencil clause allows certain provision(s) in an agreement to be struck out whilst other provision(s) may be found to be enforceable.

88. The Council suggest the pupil yield from this proposal would be 32 primary school children and 8¹⁰ secondary school age children. It explained that the pupil yield was derived from a 2001 study although it referred to surveys in 2006 and 2012 on three sites for corroboration.
89. The appellant comments that pupil yield is based on a 20 year old formula, which is suggested as outdated data and instead favours the 2011 census data. Given this is more recent I am more inclined to the appellant's figures, of 14.1 primary and 5.5 secondary pupils¹¹ based on market flats. Affordable flats would generate slightly more need but not substantially so.
90. The site would be within the catchment area of Surrey Street and the Linden Academy¹² primary schools. The appellant provides details from the Council's website of the spare capacity at these schools: 169 spaces at Surrey Street and 268 spaces¹³ at the Linden Academy. Therefore, even considering the disputed figures, the need from the development could be comfortably met within these schools.
91. The Council at the Inquiry referred to measures to reduce capacity at Surrey Street. This was the subject of a report to the 'Executive'¹⁴ Council meeting: this 'reduction is to address excessive surplus capacity in the primary sector, following a significant reduction in the birth rate'. This shows a declining need across the appeal catchment area. In any event, it was agreed at the Inquiry that even with the reduced capacity there would be ample spaces for the occupants of the proposal.
92. In terms of secondary schools, the appellant's submissions show that the catchment would be Stockwood Park Academy which has 365 available spaces¹⁵. Again, even with these disputed figures this school would have ample capacity.
93. The Council submitted an appeal decision at Bolton Road in Luton¹⁶, whereby an Inspector allowed the appeal and agreed contributions to provision at the same schools as this appeal case. However, it was not confirmed at this Inquiry what particular evidence was before that Inspector. In this appeal, detailed and up to date information has been provided by expert witnesses to consider the need. Also, the evidence submitted has been rigorously tested at this Inquiry. Consequently, the Bolton Road appeal decision does not lead me to a different conclusion.
94. I therefore conclude that based upon the evidence before me, there is considerable capacity at the existing schools and the proposal would not lead to a shortfall in education provision. Consequently, the contributions would be unnecessary to make the development acceptable in planning terms, thereby failing the tests in the CIL Regulations and the requirements of Policies LLP1 and LLP39. I am therefore unable to take this obligation into account in my decision.

¹⁰ Mr Nicholas Nel Proof of Evidence paragraph 2.10

¹¹ Mr Jan Kinsman Proof of Evidence paragraph 4.10

¹² ID5 Luton Borough Council website catchment search 04/08/22

¹³ Mr Jan Kinsman table 3

¹⁴ Core Document E11

¹⁵ Mr Jan Kinsman table 4

¹⁶ APP/B0230/W/21/3275436

95. The viability of the scheme has been calculated and agreed by both parties. It is common ground that the proposal could not meet all the Council's usually required contributions, particularly in terms of 20% of the dwellings being for affordable housing. The agreement has a clause that in the event that I find no need for an education contribution, the development would provide eight First Homes as affordable housing: Clause 3.2.1 of the obligation triggers paragraph 1.3 of Schedule 1 for the provision of 8 First Homes.
96. Schedule 1 of the agreement provides the mechanism and detail for the First Homes. This reflects the Government's suggested wording. Such eight affordable homes would go towards the 20% requirement in the Local Plan Policy LLP16.
97. A transport contribution of £39,300 is included as an obligation. This is not disputed by either party. A CIL Compliance Statement was submitted by the Council to set out how the contribution would meet the tests in the CIL Regulations and the Framework.
98. This contribution would support footpath and cycling links especially between the station and the town centre. The appeal site is in between, so such a contribution would be well related. Furthermore, the Highways Officer¹⁷ notes there would be a significant shortfall in parking, and this is promoted as largely car free development. It is therefore necessary to help connectivity to facilities and public transport. Indeed, the parking standards in appendix 2 of the Local Plan as referenced in Policy LLP32 seek a modal shift from private cars. This provision would accord with Policies LLP1, LLP32 and LLP39.
99. I am therefore satisfied that the transport contribution contained in the obligation would meet the tests in that it is reasonable, that it is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in kind and scale.
100. There was an overage and review mechanism in the obligation, which was referenced in the third reason for refusal. However, as the Council latterly agreed that this was unnecessary it was removed from the final draft. I would not foresee any need for such a requirement as I have found earlier development would not be expected to be prolonged.
101. I therefore conclude that having regard to the CIL Regulations and Policies LLP1 and LLP39, an education contribution is not justifiably required. Clause 3.2.1 of the Section 106 agreement therefore applies which triggers paragraph 1.3 of Schedule 1 for the provision of 8 First Homes. The Transport Contribution is also justifiably required as in paragraph 2 of Schedule 2.

Planning Balance

102. The proposal would provide a number of benefits. These include provision of new homes on a brownfield site and the re-use of vacant buildings. The intended occupants would have easy access to everyday facilities without the use of private vehicles. Together these matters would provide an efficient use of land and reduction in carbon emissions in accordance with local and national planning policies. The intended occupants would also support the town centre in terms of viability and vitality. The occupation of the buildings would provide surveillance of the bus station and walkway to the east which connects to the

¹⁷ Consultee comments

town centre. I have found above that the proposal would not harm the town centre or its regeneration.

103. The re-use of the buildings, the new canopies, the new landscaping and replacement railings would improve the existing appearance of the site. The intended occupants would have satisfactory living conditions in terms of communal space.

104. The 132 flats would be a social benefit by providing new homes. Paragraph 60 of the Framework confirms the Government's objective of significantly boosting the supply of homes. Whilst the Council is meeting its five-year housing land supply requirements, paragraph 74 of the Framework makes it clear this is a minimum. Implementation would be expected to be achievable promptly as the buildings lend themselves to conversion to residential flats.

105. The 8 First Homes would also help those in need purchase their own home and contribute towards the 7,200 affordable dwellings needed as highlighted in Policy LLP16.

106. The Council typically seek a requirement to promote local employment opportunities in construction projects and Policy LLP13 strives to promote local employment. There is no such provision proposed here but I do not consider there would be an overriding necessity in this case.

107. Looked at in the round, I find that the proposal would comply with the development plan as a whole. There is conflict with the Masterplan in terms of its aspirational development however this is not predicated on robust financial viability, and based on the evidence submitted to the Inquiry, it would be likely to result in much greater carbon emissions than the appeal scheme. There is also conflict with the expectation of improved accessibility, and a new footpath, however as I found earlier this would have significant constraints and be of limited benefit. In any event the Masterplan does not outweigh the development plan and my findings in that regard.

108. The above benefits support the proposal. Section 38(6) of The Planning and Compulsory Purchase Act 2004 states determination must be made in accordance with the plan unless material considerations indicate otherwise. This is reiterated in paragraph 2 of the Framework. Paragraph 11(c) of the Framework states that decision making means approving development proposals that accord with an up to date development plan without delay. The proposal accords with the development plan as a whole and material considerations do not indicate otherwise. I therefore find the proposal acceptable.

Conditions

109. Paragraph 56 of the Framework and the Planning Practice Guidance (PPG) provide the tests for the imposition of conditions. There was general agreement between the parties on conditions. However, the Framework is clear that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning, and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have assessed the suggested conditions accordingly. Some of the wording of the suggested conditions has been amended in the interest of simplicity and clarity.

110. The timing of commencement of development and list of approved plans are necessary in the interests of certainty.
111. The submission of a construction management plan is necessary to protect the living conditions of those living nearby, particularly those in Guildford Street. The requirements are orientated towards the nature of the appeal proposal. Similarly, the condition on external lighting is necessary to safeguard the living conditions of neighbouring residents and the future occupants of the appeal site as spillage and glare could be obtrusive. The condition on acoustic measures is needed to ensure the future occupants are protected against unacceptable noise and disturbance from the surroundings, particularly the railway and bus stations and particularly at times of sleeping. The contaminated land condition is necessary because the site was used as railway sidings and storage buildings, which would have potential for pollutants to seep into the ground. Such contamination if not treated could cause wide ranging health problems and was recommended by the relevant Council officer. However, this is limited to the entrance canopies where the ground works would occur.
112. The submission and approval of building materials for the entrance canopies would ensure that they are in keeping with the existing buildings and the wider area. The approval of the precise details of the landscaping would ensure that the opportunity is taken which as I found earlier would improve the character and appearance of the area, particularly as some of the site is visible from public views. The condition on future management would ensure its value in the longer term. Similarly, the condition on boundary treatments is necessary as I found earlier. The condition on biodiversity measures is necessary to create an enhancement of the value of the site as promoted by Policy LLP25.
113. The condition on cycle storage facilities would ensure that safe and robust measures are put in place for cycles which are an expensive investment and the opportunity for non-vehicular transport is fully realised in the interest of health and carbon emissions. The condition on electric charging points would also encourage use of carbon efficient vehicles. The condition on energy efficiency of the buildings would also help reduce the overall carbon cost of the proposal, which has been a significant consideration.
114. The condition on security measures is necessary to promote the safety of residents and also help their perception of safety. Both of which contribute to the quality of life and encourage access to the town centre at day and night. The condition requiring a fire hydrant is also needed in the interest of safety as this is not currently in place.
115. The construction management plan condition is worded as pre-commencement to ensure appropriate measures are in place at the outset to safeguard living conditions.

Conclusion

116. I therefore conclude that the appeal should be allowed subject to the conditions in the annex below and the Section 106 agreement including the provisions of Clause 3.2.1.

John Longmuir INSPECTOR

Appearances

For the Council:

Ms Lisa Busch KC
Cornerstone Barristers

Ms Abigail Estelle Chapman BSc (Hons), MSc, MRTPI Planning Consultant
Luton Borough Council

Mr Nicholas Martin Nel BA(Hons) MRes Education Provision and Planning Manager
Luton Borough Council

Ms Susan Jane Frost BSc (Hons), PGDip, MRTPI Service Director Sustainable
Development Luton Borough Council

Mr Marcus Wilshere BSc, Dip Arch, MA ARB, MRTPI, FRSA Director
The Collaborative City

For the Appellant:

Mr Christopher Young KC assisted by Sioned Davies
No5 Chambers

Mr Michael Carr BA (Hons) Dip LA Dip UD RUDP
Design and Masterplanning Executive Director Pegasus

Ms Gail Stoten BA(Hons) MCIfA FSA Heritage Executive Director
Pegasus

Mr Simon Sturgis Dip AA RIBA Founder
Targeting Zero LLP

Mr Ramsay Evans Associate BA (Hons) MRICS Associate Partner
Turner Morum LLP Chartered Surveyors

Mr Jan Kingsman CENG MICE BSC (ENG) ACGI Associate Director
Education Facilities Management (EFM) Partnership Ltd

Mr Robert Barber BA(Hons) MRTPI Planning Executive Director
Pegasus

Mr David Feeney submitted evidence on the need for student accommodation but
as his evidence was not contested, he did not appear.

Documents submitted during the Inquiry

ID1 Opening statement of the appellant 01/08/22

ID2 Opening Statement of the Council 01/08/22

ID3 Turner Morum evaluation of Avison Young Viability 03/08/22

ID4 Draft planning conditions 03/08/22

ID5 Luton Borough Council website school catchment search 04/08/22

ID6 Note on Eastern Trees and Hedge by Pegasus Group 04/08/22

ID6 Amended legal agreement 05/08/22

ID7 Closing submissions of the Council 05/08/22

ID8 Closing submissions of the appellant 05/08/22

ID10 Pinsent Masons LLP note on education contributions in S106 08/08/22

ID11 Title deeds 08/08/22

ID12 CIL Compliance statement for sustainable transport contributions 08/08/22

Conditions Annexe

1. The development hereby permitted shall be begun no later than the expiration of three years beginning with the date of this permission.

2. Prior to the commencement of development, a detailed construction management plan (CMP) shall be submitted to the Local Planning Authority for approval in writing. The plan shall include the following:

- the construction programme and phasing;
- hours of operation delivery and storage of materials;
- parking and loading arrangements;
- details of hoarding;
- management of traffic to reduce congestion;
- measures to control potential dust and dirt on the public highway;
- details of consultation and complaint management with local businesses and neighbours; and
- waste management mechanisms to deal with environmental impacts including noise and vibration, air quality, dust, light and odour.

All works shall only be carried out in accordance with the approved CMP from the outset.

3. Prior to the erection of any entrance canopy, samples of materials to be used in their construction shall be submitted to the Local Planning Authority for approval in writing. The development shall only be carried out in accordance with those approved materials.

4. A scheme of acoustic design including sound insulation and noise mitigation, together with a timetable for such works, shall be submitted and approved in writing by Local Planning Authority. The acoustic design shall detail and demonstrate suitable measures to control noise impact on future occupiers and neighbouring properties. No dwelling shall be occupied until the scheme of acoustic design has been fully implemented in accordance with the approved details. The scheme shall be maintained as approved thereafter.

5. Prior to the erection of any entrance canopy, details of a landscaping scheme including all hard surfaces, grassed areas, tree and shrub planting, together with a timetable for implementation, shall be submitted to the Local Planning Authority for approval in writing. The landscaping details shall be wholly implemented in accordance with the approved details and in accordance with the approved timetable. Any trees or plants which within a period of 5 years

from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

6. A landscape management plan setting out the management and maintenance responsibilities, including a timetable for actions, for all hard and soft landscape areas shall be submitted to and approved by the Local Planning Authority prior to first occupation of the development. The landscape management plan shall be carried out in accordance with the approved details and the approved timetable.

7. Details of the boundary treatments of the site shall be submitted to the Local Planning Authority for approval in writing. The boundary treatments shall only be installed as approved and prior to first occupation of the development. The boundary treatments shall be retained as approved thereafter.

8. Prior to first occupation of the development, a comprehensive scheme of security measures, including CCTV, secure entry systems and measures for the prevention of vehicles entering areas of public realm shall be installed in accordance with details that shall have previously been submitted to and approved in writing by the Local Planning Authority. The security measures shall be maintained and retained as approved thereafter.

9. Details of energy efficiency measures for the dwellings shall be submitted to the Local Planning Authority for approval. The measures shall show a rating of 10% better than Building Regulations 2010: Conservation of fuel and power-Approved Document Part L Vol 1: Dwellings (2021 edition). The energy efficiency measures shall be fully installed as approved prior to first occupation of each building.

10. Prior to first occupation of the dwellings, electric charging points on 50% of the car parking spaces, including the management of those spaces, shall be installed in accordance with details that shall have previously been submitted to and approved in writing by the Local Planning Authority. The charging points and management of those parking spaces shall be retained as approved thereafter.

11. Prior to the erection of each entrance canopy, an assessment of the risks posed from any contamination by the construction of that canopy, together with remediation measures and a timetable for remediation, shall be submitted to the Local Planning Authority for approval. The remediation works shall be carried out in accordance with the approved details and approved timetable prior to the erection of that particular canopy. Upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the Local Planning Authority before the relevant building is occupied.

12. Prior to the first occupation of each building, cycle storage for that particular building, shall be installed in accordance with details that shall have previously been submitted to and approved in writing by the Local Planning Authority. The approved cycle storage shall be maintained and retained as such thereafter.

13. Prior to first occupation of each building, a scheme for the external lighting of that particular building shall be submitted to the Local Planning Authority for

approval. Only external lighting in accordance with the approved scheme shall be installed. The external lighting shall be maintained and retained as approved thereafter.

14. Prior to first occupation, a scheme for biodiversity measures and management, together with a timetable for implementation, shall be submitted to the Local Planning Authority for approval. The scheme shall be implemented in accordance with the approved details and the approved timetable and shall be maintained thereafter in accordance with the approved management scheme.

15. Prior to the first occupation of the development, a fire hydrant shall be provided in accordance with details approved by the Local Planning Authority beforehand. It shall be retained as such thereafter.

16. The development hereby permitted shall not be carried out other than in complete accordance with the approved plans and documents as below:

Site Location Plan GAP Architects Ltd · June 2021 · SL-001
Proposed Site Plan GAP Architects Ltd · June 2021 · P-001 Rev A
Block 1 - Proposed Ground Floor Plan GAP Architects Ltd · June 2021 · P-1-G Rev B
Block 1 - Proposed First Floor Plan GAP Architects Ltd · June 2021 · P-1-F Rev B
Block 1 -Proposed Second Floor Plan GAP Architects Ltd · June 2021 · P-1-S Rev B
Block 1 -Proposed Third Floor Plan GAP Architects Ltd · June 2021 · P-1-T Rev B
Block 2 - Proposed Ground & First Floor Plans GAP Architects Ltd · June 2021 · P-2-G/F Rev B
Block 2 - Proposed Second & Third Floor Plans GAP Architects Ltd · June 2021 · P-2-S/T Rev B
Block 3 - Proposed Ground & First Floor Plans GAP Architects Ltd · June 2021 · P-3-G/F Rev B
Block 3 - Proposed Second & Third Floor Plans GAP Architects Ltd · June 2021 · P-3-S/T Rev B
Block 4 - Proposed Ground & First Floor Plans GAP Architects Ltd · June 2021 · P-4-G/F Rev B
Block 4 - Proposed Second & Third Floor Plans GAP Architects Ltd · June 2021 · P-4-S/T Rev B
Block 5 - Proposed Ground & First Floor Plans GAP Architects Ltd · June 2021 · P-5-G/F Rev B
Block 5 - Proposed Second & Third Floor Plans GAP Architects Ltd · June 2021 · P-5-S/T Rev B

Block 6 - Proposed Ground & First Floor Plans GAP Architects Ltd · July 2022 · P-6-G/F Rev C
Block 6 - Proposed Second & Third Floor Plans GAP Architects Ltd · July 2022 · P-6-S/T Rev C
Block 7 - Proposed Ground & First Floor Plans GAP Architects Ltd · June 2021 · P-7- G/F Rev B
Block 7 - Proposed Second & Third Floor Plans GAP Architects Ltd · June 2021 · P-7- S/T Rev B
Block 8 - Proposed Ground & First Floor Plans GAP Architects Ltd · June 2021 · P-8- G/F Rev B
Block 8 - Proposed Second & Third Floor Plans GAP Architects Ltd · June 2021 · P-8- S/T Rev B
Block 9 - Proposed Ground & First Floor Plans GAP Architects Ltd · June 2021 · P-9-G/F Rev B
Block 9 - Proposed Second & Third Floor Plans GAP Architects Ltd · June 2021 · P-9-S/T Rev B
Block 10 - Proposed Ground & First Floor Plans GAP Architects Ltd · June 2021 · P-10-G/F Rev B
Block 10 - Proposed Second & Third Floor Plans GAP Architects Ltd · June 2021 · P-10-S/T Rev B
Block 1 - Proposed Elevations GAP Architects Ltd · June 2021 · PE-1 Rev B
Block 2 - Proposed Elevations GAP Architects Ltd · June 2021 · PE-2 Rev B
Block 3 - Proposed Elevations GAP Architects Ltd · June 2021 · PE-3 Rev B
Block 4 - Proposed Elevations GAP Architects Ltd · July 2022 · PE-4 Rev C
Block 5 - Proposed Elevations @A3 GAP Architects Ltd · July 2022 · PE-5 Rev C
Block 6 - Proposed Elevations GAP Architects Ltd · July 2022 · PE-6 Rev D
Block 7 - Proposed Elevations GAP Architects Ltd · July 2022 · PE-7 Rev C
Block 8 - Proposed Elevations GAP Architects Ltd · July 2022 · PE-8 Rev C
Block 9 - Proposed Elevations GAP Architects Ltd · July 2022 · PE-9 Rev C
Block 10 - Proposed Elevations GAP Architects Ltd · July 2022 · PE-10 Rev C
Purpose Made Cycle Stores GAP Architects Ltd · June 2021 · CS-002 Rev A
Proposed Refuse & Recycling Storage Location One GAP Architects Ltd · June 2021 · R-01 Rev A
Refuse & Recycling Storage Location Two & Three GAP Architects Ltd · June 2021 · R-02 Rev A

Refuse & Recycling Storage Location Four GAP Architects Ltd · June 2021 · R-03 Rev A
Block 1- Proposed Entrance Canopy GAP Architects Ltd · June 2021 · EC-1 Rev A
Block 2-10- Proposed Entrance Canopy GAP Architects Ltd · June 2021 · EC-2-10 Rev A
Eastern Vehicle & Pedestrian Access Gates GAP Architects Ltd · June 2021 · ENT-001 Rev A
External Lighting Plan Lehding Services Design Ltd · September 2021 · E001 Rev D
Landscape Masterplan Park Hood · September 2021 · 7129-PHL-XX-XX-DR-L-2000 Rev C
Boundary Treatments Plan Park Hood · June 2021 · 7129-PHL-XX-XX-DR-L-2100 Rev A
Preliminary Roost Assessment Survey Arbtech · March 2021 · V2
Arboricultural Report Sylva Consultancy · October 2021 · 21122 Rev A
Flood Risk Assessment & Surface and Water Drainage Strategy Mason Navarro Pledge · October 2021 · 221212-MNP-XX-XX-RP-C-0001
Waste Audit Kevin McShane Ltd · September 2021 · KMS/21-001 Rev D
Noise Impact Assessment Hawkins · October 2021 · C135-542969
Transport Statement PJA October 2021 04830 Rev D

End of conditions



Costs Decision

Inquiry Held on 2, 3, 4, 5 August 2022

Site visit made on 5 August 2022

by J P Longmuir BA(Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Costs application in relation to Appeal Ref: APP/B0230/W/3294931

Lea Halls, Bute Street, Luton, LU1 2WJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Luton Halls Properties Ltd for a full award of costs against The Council of the Borough of Luton.
- The inquiry was in connection with an appeal against the refusal of planning permission for the conversion and change of use of student accommodation (Sui Generis) to 132 flats (52 one bedroom, 40 two-bedroom, 36 three-bedroom and 4 four-bedroom), together with construction of new entrance canopies added to existing buildings and alterations to parking provision, boundary treatments, lighting, cycle stores, bin stores, landscaping, public realm works, after demolition of existing on-site warden bungalow.

Decision

1. Partial costs are awarded as set out in the terms below.

The submissions for Luton Halls Properties Ltd

2. The Council refused a proposal which plainly should have been granted. They misapplied and misunderstood their own Development Plan. Policies LLP3, LLP11 and LLP15 support the proposal. The Local Plan does not require mixed use or other criteria on each site. It is not the correct approach in the town centre and the Council have not considered the town centre as a whole.
3. The Council have misunderstood and/or ignored most of the masterplan framework. It supports the re-use of existing buildings.
4. In terms of character and appearance, the Council failed to recognise that design and layout are not a legitimate consideration in a change of use proposal. Compulsory Purchase Powers should not be contemplated to stop a logical change of use. The Council complained about density without demonstrating the point. The layout is efficient.
5. The values for an alternative scheme were not realistic. It was also not correct to attempt to allocate the site through a masterplan.
6. The Local Plan allows for communal space in lieu of private balconies. Indeed, balconies would be problematical for family housing such as this.
7. In terms of education contributions, the Council has not demonstrated a lack of capacity or the need for a contribution. Their approach is not robust. The

appellant approach the Council on numerous occasions for information which was not provided.

The response by the Council of the Borough of Luton

8. The Council was entitled to refuse an application for the reasons given. The decision notice sets out the relevant local plan policies and references to the National Planning Policy Framework (the Framework).
9. The masterplan framework was a material consideration, on which the Council placed significant weight. The case did not stand or fall on the issue of the status of the masterplan; rather the critical issue was whether the proposal was in conflict with the local plan and the Framework.
10. There was disagreement on the interpretation and application of policies. This is a legitimate and an expected aspect of an inquiry. It is not arguable that the Council did not understand its own policies rather it disagreed.
11. The Council robustly defended the reasons for refusal. It did not act unreasonably and made a legitimate decision.

Reasons

12. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
13. The decision notice sets out the relevant Local Plan policies and those in the Framework. The Council elaborated on them in their written evidence and at the Inquiry. The Council was consistent in its application of these policies.
14. The Council considered the relevant policies and explained their particular view on the need for mixed use on the site. Whilst I did not agree with that view, case law has established that the interpretation of these policies is a matter for the decision maker. Consequently, the Council was entitled to arrive at this view. The need for potential re-development was explained and the Council had regard to the relevant policies.
15. The masterplan framework was not quoted in the decision notice. In this respect it did not drive the consideration of the proposal or attempt to trump the Development Plan. It was used in support rather than leading the Council's approach. It also warranted some weight.
16. The Council's concern about the inadequate living standards was due to the lack of balconies. These would have provided some outdoor space readily accessible to the occupants, particularly to sit out, without having to use stairs and lock doors. Whilst I disagreed about this necessity and found the policy allowed for flexibility in particular circumstances, balconies were their preference and a valid consideration.
17. Whilst the proposal is for the change of use of buildings, nonetheless there were potential effects on the character and appearance of the area as well as the effect on the town centre. These effects are matters of judgement and not a precise science and the Council were entitled to come to their view. Bearing in mind the location of the site and the need for regeneration these warranted particular consideration.

18. The lack of an education contribution was part of the third reason for refusal in the decision notice. The need was disputed in the run-up to the inquiry and during preparation of the planning obligation. It warranted the appellant calling an expert witness.
19. The appellant provided up to date and clear details of the existing capacity of schools in the catchment area of the appeal site. This was confirmed by a search on the Council's web site. The catchment area for the appeal site and the available capacity of those schools to meet the pupils arising from the proposal were not countered by the Council at the Inquiry.
20. Furthermore, the Council stated in evidence that the contribution would go to named schools which are outside the catchment area of the appeal site. Moreover, it was not demonstrated how the intended works would expand the capacity at those schools.
21. I therefore find that based on the evidence before the Inquiry, the schools in the catchment area have capacity for the additional pupils arising from the development and the suggested contributions would not be related to the impact of this particular proposal. It was not demonstrated whether the contribution was necessary to make the development acceptable in planning terms, was directly related to the development and whether it was fairly and reasonably related in scale and kind to the development.
22. For the above reasons the education contributions on several grounds fail the tests in the CIL Regulations, which are clearly worded and long standing. Whilst the Council referred to the criterion of improving quality of facilities in the SPD, that pre-dated the CIL Regulations. Indeed, the Framework at paragraph 57 re-iterates such tests, which shows their importance. Moreover, Policy LLP39 specifically refers to the need to consider existing capacity.
23. Paragraph 049 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing a planning application and failure to produce evidence to substantiate each reason for refusal on appeal.
24. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has in part been demonstrated and that a partial award of costs is justified in terms of the requirement for education contributions.

Costs Order

In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that The Council of the Borough of Luton shall pay to Luton Halls Properties Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the education contributions; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to The Council of the Borough of Luton, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Longmuir INSPECTOR



Costs Decision

Inquiry Held on 2 August 2022

Site visit made on 5 August 2022

by J P Longmuir BA(Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Costs application in relation to Appeal Ref: APP/B0230/W/22/3294931

Lea Halls, Bute Street, Luton, LU1 2WJ

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Decision

1. The application for an award of costs is refused.

The submissions for the Council of the Borough of Luton

2. The appellant submitted an amended layout to replace an area for car parking with communal open space. The appellant undertook their own consultation process on this amendment.
3. The Council state that this consultation process caused confusion with internal and external consultees which they then had to resolve. The Council repeatedly advised against such an amendment which they felt warranted a new application. It contravened Annex M of the Procedural Guide: Planning Appeals.
4. The Council state that they were put to unnecessary expense in having to deal with the consultation queries, correspondence with the Inspectorate, additional coverage in proofs of evidence and rebuttals, section 106 agreement and it wasted inquiry time.

The response by Luton Halls Properties Ltd

5. The consultation exercise was launched three weeks after the Council's stated intention to make a costs application.
6. The Council opposed the amendment and refused to engage with it, including the consultation process. All the work was done by the appellant.

7. None of the Council's Proofs of Evidence refer to this amendment. The only mention is in the rebuttal of Ms Chapman at paragraph 2.2.
8. The appellant was entitled to consider the amendment to improve the living standards of the occupants. Examples of other accepted amendments post determination are provided.
9. Any costs involved in consideration of the amendments would be within the general level of administration involved at an inquiry.

Reasons

10. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
11. The appellant undertook the consultation process themselves. The consultation process included an explanatory letter dated 4 July. This set out not only the changes proposed but also the appeal process. The Council do not state how many consultees they had to help or how they had to clarify matters, but the appellant's covering letter does explain the situation, so they did what can only be reasonably expected.
12. It is a matter of practice that post determination amendments are sometimes submitted in the run up to inquiries, notwithstanding the Procedural Guidance. The appellant's intent was not unusual in this action.
13. Whilst the Council advised about their objection to the change from the outset, its acceptability could not be considered until the start of the inquiry when both parties had the opportunity to comment.
14. The Council's evidence does not extend to this consideration of the potential amendment, save for minimal coverage in a rebuttal, so they were not put to significant additional time. Similarly, the matter took minimal time at the inquiry. In terms of e-mails with the Inspectorate these were succinct and would not be expected to be onerous. The section 106 agreement has reference to a possible amendment but again this is not extensive or particularly time consuming.

Conclusion

15. For the above reasons I conclude that the appellant has not acted unreasonably, and that the applicant has not been put to wasted time and expense in its participation in the appeal. Therefore, an award of costs as described in the Planning Practice Guidance is not justified.

John Longmuir

INSPECTOR