

**MC/24/0251**

**Date Received:** 5 February 2024  
**Location:** 43 - 47A Luton High Street, Luton, Chatham, Medway  
**Proposal:** Demolition of a two-storey building (E Class and C3 Class) and single storey building (E-Class) and construction of a four-storey building comprising 24 x self-contained flats (13 x 1-bedroom and 11 x 2-bedroom flats), 3 x commercial units and 3 x offices with associated refuse/recycling and cycle store.

**Applicant** EDS Property Investment Ltd  
Mr. A. Akpinar

**Agent** Directive Planning LTD  
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London  
EC1V 9BD

**Ward:** Luton  
**Case Officer:** Madeline Mead  
**Contact Number:** 01634 331700

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**Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 18th December 2024.**

**Recommendation - Refusal**

- 1 The proposed development would represent an overdevelopment of the site, that would result in a dominant building, out of character with the surrounding built form, by virtue of its design, scale, mass, height and relationship to the neighbouring non-designated heritage asset and is considered to be contrary of Policy BNE1 of the Medway Local Plan 2003 and paragraphs 131, 135 and 209 of the National Planning Policy Framework 2023 (December).
- 2 The proposed development fails to meet the needs of future occupants as it would result in unacceptable levels of daylight to some habitable room windows. The development is considered to be contrary to Policy BNE2 of the Medway Local Plan 2003 and paragraph 135 of the National Planning Policy Framework 2023 (December).
- 3 The development would result in unacceptable overlooking to the neighbouring property and would be viewed as a dominant form of development from neighbouring property windows and garden area. The development is considered to be contrary to Policy BNE2 of the Medway Local Plan 2003 and paragraph 135 of the National Planning Policy Framework 2023 (December).

- 4 The application fails to address the impact of the proposal on the Special Protection Areas of the Thames Estuary and Marshes and the Medway Estuary and Marshes through either the submission of details to allow the undertaking of an Appropriate Assessment or via a contribution towards strategic mitigation measures. In the absence of such information or contribution, the proposal fails to comply with the requirement of the Conservation of Habitat and Species Regulations 2010 and is contrary to Policies S6 and BNE35 of the Local Plan and paragraphs 186 and 187 of the NPPF.
- 5 In the absence of a suitably worded legal agreement, the application fails to mitigate the additional demand from development, with regard to the services provided within the Medway area, through the lack of secured contributions in line with the Medway Council's Developer Contributions Guide 2019 and is contrary to Policy S6 of the Local Plan and paragraph 57 of the NPPF.

**For the reasons for this recommendation for refusal please see Planning Appraisal Section and Conclusions at the end of this report.**

## **Proposal**

The application proposes the demolition of the existing building and the construction of a four-storey building comprising twenty four self-contained flats (2 x studio, 15 x 1-bedroom and 7 x 2-bedroom flats), three commercial units and three offices with associated refuse/recycling and cycle store.

The building is proposed to be a four storey block and would have a frontage width of approx. 20.4m, a depth of up to approx. 34.7m and height of up to approx. 11.5m.

The building would comprise:

Ground floor – three commercial units, office, two staff rooms, kitchen, w.c., three storage areas, bin storage for the offices and commercial, bin storage for the flats, cycle storage for the flats and commercial and a further bin storage area.

First floor – three 1-bedroom, three 2-bedroom flats and three offices

Second floor – one studio, six 1-bedroom and two 2-bedroom flats

Third floor – one studio, six 1-bedroom and two 2-bedroom flats

The 1-bedroom flats would comprise lounge/kitchen/dining, bedroom (three of the flats would have a bedroom with a dressing room) and bathroom and the 2-bedroom flats would comprise lounge/kitchen/dining, two bedrooms (one of the flats would have a bedroom with en-suite) and a bathroom.

No parking is proposed on site.

The building is of pitched roof/table top design and would have flat roofed dormers within the elevations/roof.

The main entrance for the flats would be via a door on the front elevation of the property on Luton High Street. The offices at first floor level would be accessed via a door on the side of the building.

A green roof is proposed on the building, along with solar panels on the roof and a living wall and green roof to part of the south western elevation.

### **Relevant Planning History**

None relevant.

### **Site Area/Density**

Site Area: 0.07 hectares. (0.2 acres)

Site Density: 343 dph (120 dpa)

### **Representations**

The application has been advertised on site and in the press and by individual neighbour notification to the owners and occupiers of neighbouring properties. NHS Medway Clinical Commissioning Group, EDF Energy, Southern Gas Networks, Southern Water Services and Kent County Constabulary have also been consulted.

**47** letters of representation have been received, some of these are multiple letters from the same person, or same household and some are following on from re-consultation on amended drawings. The letters object to the proposal for the following reasons:

- Scale of building disproportionate to the surrounding buildings
- Out of character with the surrounding buildings
- Loss of view
- Loss of light
- Overlooking/loss of privacy
- Loss of sunlight
- Increase in noise
- Overbearing impact on neighbouring properties
- Lack of parking
- Increase in on street parking demand
- Traffic congestion
- Increased demand on healthcare and schools
- Letters of support are from people that do not live in the area

80 letters in support of the application have been received (not all of the letters are from addresses within the vicinity of the site). The letters support the application for the following reasons:

- Economic benefits of the development
- With no parking provided this would encourage the use of alternative transport options
- No parking or traffic issues
- Lack of housing available
- Area is run down
- Modern and attractive development
- Doctors has capacity
- Community benefits

**Southern Gas Networks** have written advising that the mains record show the low/medium/intermediate pressure gas main near the site. There should be no mechanical excavations taking place above or within 0.5m of a low/medium pressure system or above or within 3.0m of an intermediate pressure system. The position should be confirmed using hand dug trial holes. They have advised of safe digging practices in accordance with HSE publication HSG47.

**Kent Police** have advised of certain recommendations for the layout and design of the scheme and welcome a discussion with the applicant/agent about site specific designing out crime.

**UK Power Networks** have provided a copy of the records that show the electrical lines and/or electrical plant, along with a fact sheet regarding the use of the plans and working around equipment.

**Southern Water** have advised that the site is located in the SPZ1 for their Gillingham public groundwater supply and advise that certain conditions are adopted. They have advised that they can provide foul sewage disposal to service the proposed development. The planning application makes reference to drainage using Sustainable Urban Drainage Systems (SuDS) and under certain circumstances SuDS will be adopted. Here SuDS rely on facilities which are not adoptable. The applicant will need to ensure that arrangements exist for the long-term maintenance of the SuDS facilities.

**Natural England** have advised that they have no objection submitted to securing appropriate mitigation for recreational pressure impacts on habitat sites (European sites).

## **Development Plan**

The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan). The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework 2023 (December) (NPPF) and are considered to conform.

## **Planning Appraisal**

### *Principle*

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission be determined in accordance with the Development Plan unless material considerations indicate otherwise.

The NPPF seeks to pursue sustainable development, in a positive way through a presumption in favour of sustainable development, unless the policies within the NPPF provide clear reasons for refusing development, or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits (paragraph 11). Paragraph 60 of the NPPF also seeks to boost the supply of housing by bringing forward a variety of land to meet specific housing requirements.

The site is within the urban area as defined on the proposal maps to the Local Plan. Policies S1 and H4 of the Local Plan promote the best use of development opportunities within the urban areas and directs development to such areas.

The site is within a local shopping centre as identified within the Local Plan and therefore Policy R10 is relevant. This policy aims to resist the loss of existing shopping facilities, including retail, service and food and drink uses unless an improvement to local amenity or the provision of community facilities occurs that outweighs the loss. The existing buildings are currently three retail units and the proposal would retain/provide three retail units and therefore the development would comply with Policy R10 of the Local Plan.

Policy H5 of the Local Plan aims to avoid low density housing along routes capable of being well served by public transport and which are close to local facilities. The proposed development would provide high density houses in this location and would comply with Policy H5 of the Local Plan.

Subject to compliance with the detailed matters of these policies which are subject to assessment below, the principle of the site for a mixed commercial and residential development is considered acceptable given the mixed character of the area.

### *Design*

Paragraphs 131 and 135 of the NPPF emphasises the importance of good design and Policy BNE1 of the Local Plan states that development should be satisfactory in terms of scale and mass and should respect the visual amenity of the surrounding area.

The proposed development would be highly visible within the street scene and from neighbouring properties. Luton High Street is a mixed character area with commercial units at ground floor level and residential above and the surrounding area is mainly made up of residential. The surrounding area and in particular, those that make up the local shopping centre, as identified within the Local Plan, are no more than two storeys in

height, with some of the roof spaces having accommodation within them. Within the wider area there are three 3-storey detached buildings which are in residential use.

The property to the north east of the application site is the former Hen and Chicks Public House, which is considered to be a non-designated heritage asset. This heritage asset is a local landmark building and therefore is considered to display architectural, historic, and communal heritage significance.

The building is proposed to be four stories in height with the third floor accommodation partially extending into the roof. The windows on the upper floors of the building are arranged to give the building vertical emphasis and the roof of the building would be table top, with the pitch of the roof being rather shallow, in comparison to the pitched roofs within the vicinity. The roof would have flat roofed dormers within.

The proposed development would see the ground floor level, built out to the boundaries of the site. At first, second and third level the footprint would be more or less the same as the ground floor, but with small areas to either side and on the rear/side of the building having a set back from the ground floor footprint.

Overall, it is considered that the design, with its shallow pitched roof, scale, mass and height of the building, would be out of character with the surrounding built form of Luton High Street and represent an overdevelopment of the site, with a building that would be dominant in scale and that would not respect, due to its bulk, mass and height the neighbouring non designated heritage asset (Hen and Chicks Public House). The development would be contrary to Policy BNE1 of the Medway Local Plan 2003 and paragraphs 131, 135 and 209 of the NPPF.

### *Amenity*

There are two main amenity considerations, firstly the impact of the proposed flat block on neighbours and secondly the living conditions which would be created for potential occupants of the development itself. Policy BNE2 of the Local Plan and paragraph 135f of the NPPF relates to the protection of these amenities.

### Neighbouring Residential Amenity

There is a neighbouring residential property to the south-west of the development site.

This property has a rear garden and a much larger side garden. The proposed building would be up to the boundary with this property's front/side garden, with only a separation distance from the corner of the proposed building to this dwelling, of approx. 6m at ground floor level and approx. 9.8m at first floor level and above. Due to the height and scale of the proposed building it is therefore considered that it would have a significantly detrimental impact on this neighbouring property in terms of being dominant and overbearing when viewed from the garden area and habitable room windows.

Windows are also proposed within the rear and side elevation of the proposed building. The closest window on the rear elevation to the neighbouring property has been designed with an "Oriel" type window with obscure glazing proposed to the side that would overlook this property and therefore if the application were to be considered acceptable this could be secured by condition to minimize any overlooking. The windows on the side elevation, although they would overlook the end part of the side garden, when considering the minimal distance between the two, would still result in a significant loss of privacy and overlooking to this properties main garden area.

To the north-east of the application site is the former Hen and Chicks Public House, which although vacant, has residential accommodation at first floor level. It is considered that due to the height and scale of the proposed building, it would have a significantly detrimental impact on the residential part of this building, in terms of it being dominant and overbearing when viewed from the rear habitable room windows.

### Amenity of Future Occupiers

With regard to the amenities of the future occupiers, the proposed flats have been considered against the Technical housing standards - nationally described space standard dated March 2015.

The proposed flats would comprise two 1B1P studios, fifteen 1B2P units, six 2B3P units and one 2B4P unit. The nationally described space standards require a gross internal floor area of 39m<sup>2</sup> for a studio, 50m<sup>2</sup> for a 1B2P, 61m<sup>2</sup> for a 2B3P and 70m<sup>2</sup> for a 2B4P unit. A double bedroom should have a floor area of 11.5m<sup>2</sup> and be at least 2.55m wide and a single bedroom should have a floor area of 7.5m<sup>2</sup> and be at least 2.15m wide. All the proposed units would exceed these requirements.

The building is stepped in towards the middle of the proposed block. Due to the set backs on the north eastern and south western elevations, at first floor level, the bedroom window of flat 1, bedroom window of flat 4, at second floor level the bedroom window of flat 7, all of the windows that serve flat 10 and the living/kitchen/dining window of flat 11, would be impacted in terms of daylight, to a point that would be considered unacceptable to the future occupiers amenity.

None of the flats are provided with any private or shared amenity space. Generally, private balconies of 5m<sup>2</sup> should be provided for each flat to meet the requirements of the Medway Housing Design Standards, however, each flat exceeds the national space standard requirements for gross internal floor area by over 5m<sup>2</sup> and therefore it is considered that adequate levels of amenity have been provided internally.

The construction of the development itself could lead to noise and nuisance dust emissions to nearby residential properties and therefore if the application were to be recommended for approval, then a condition requiring the submission of a Construction Environmental Management Plan would be recommended.

It is considered that due to the height and scale of the proposed building it would have a significantly detrimental impact on neighbouring properties, in terms of being dominant and overbearing when viewed from the habitable room windows and garden and would also have some loss of privacy to number 49a from proposed windows within the side elevation. Proposed flats 1, 4, 7, 10 and 11 would not be provided with sufficient daylight to some, or all of the habitable room windows that serve them. This is unacceptable with regard to amenity and the proposal is contrary to Paragraph 135f of the NPPF and Policy BNE2 of the Local Plan.

### *Noise*

Due to the proximity of the site to a heavily trafficked road, within a mixed commercial and residential area and that the application incorporates commercial and office units into the development there is the potential for noise to impact the amenity of the flats.

If the application were to be recommended for approval, a condition would be recommended to ensure that noise from these sources are assessed and mitigated as required. With the recommended condition imposed, no objection is raised in terms of noise under Policy BNE23 of the Local Plan and paragraph 180 of the NPPF.

### *Air Quality*

The site is located within an area designated as an Air Quality Management Area. Having consideration to the Council's Air Quality Planning Guidance, revised November 2021, and on the basis that no vehicle parking is proposed, it is considered that if the application were to be acceptable, a condition is recommended for standard mitigation measures. With the above mentioned condition imposed, no objection is raised in terms of air quality under Policy BNE24 of the Local Plan and paragraph 192 of the NPPF.

### *Highways*

For the creation of the 24 residential units, there is a requirement of 34 on-site car parking spaces (17 spaces for the 1-bedroom units, 11 spaces for the 2-bedroom units and 6 spaces for visitor spaces). This combined with requirements for commercial and office use, means there is a minimum requirement of 70 on-site car parking spaces. The proposed application is for a car free development and therefore, there is likely to be additional parking pressures on roads within the vicinity.

A TRICS analysis has been submitted with the application and a travel plan would not be required to be submitted. Within the vicinity of the site there are no CPZ controls in place and therefore if the application were to be considered acceptable a condition would be recommended for a residential travel plan to be submitted. Through this condition it would help residents of the site to travel sustainably and reduce their reliance on private vehicles. Through this mechanism, it is aimed to mitigate the potential off-site parking impacts of the scheme.



The Transport Statement notes that 32 cycle storage places are proposed, 18 of which would be vertical cycle locks and 14 horizontal cycle lockers. This level and type of cycle storage would be considered acceptable.

Refuse storage for the commercial/offices and residential is proposed to be located within the building at ground floor level. The refuse storage areas would be able to be accessed by staff and residents internally and externally. Access externally would be via a vehicular access to the side of the proposed building.

Refuse and recycling collection will be taken directly from Luton High Street and although there would be an increase in the amount of refuse and recycling from the premises, the collection of the refuse would be the same situation to that which already exists for the commercial buildings. There is an absence of provision for the loading and unloading of goods. If the application were to be considered acceptable conditions would be recommended for the submission of a delivery and servicing management / strategy plan and a residential travel plan.

With above mentioned conditions imposed it is considered that the development would comply with T1 of the Local Plan and paragraph 115 of the NPPF.

#### *Flooding/SUDS*

The report submitted with the application does not reference any of the flooding that has been received within the surrounding area within the recent year, which it is believed, also affected the property and properties within the surrounding area and therefore, the development would need to ensure that if flooding in the area did occur the building is suitably prepared. The submitted drainage strategy references that there is no risk of flooding, however, the Council has evidence that this is not the case and therefore the submitted report would need to be updated to reference the flooding within the surrounding area and how this development would not impact the existing issue.

If the application were considered acceptable conditions would be recommended for further details to be submitted to address the concerns above as well as confirmation of capacity from Southern Water and maintenance details of the green roofs. Subject to these conditions, the development is considered to be in accordance with paragraph 175 of the NPPF.

#### *Climate Change and Energy Efficiency*

The application has been submitted with a climate change statement, which outlines within it how the building would be constructed to address climate change and energy efficiency. Some of the measures proposed would be ground source heat pump, photovoltaic panels on the roof, green roofs and living wall.

The close proximity of amenities including public transport, businesses and shopping facilities from the proposed development mean the length of journey is minimal promoting

walking and making it not essential to own a car. Secured bike storage can be provided within the building, as such the development offers the opportunity for a sustainable transport solution.

If the development were considered to be acceptable a condition is recommended for an energy efficiency and climate change verification report to be submitted. With the abovementioned condition imposed the proposal is in accordance with paragraph 157 of the NPPF.

### *Biodiversity Net Gain (BNG)*

This application was submitted on the 16 January 2024 and therefore pre dates any requirements for Biodiversity Net Gain under the Environment Act 2021, where all planning applications for major development (unless exempt<sup>3</sup>) (submitted on or after 12 February 2024) and small sites on or after the 2nd April 2024, will have to deliver at least a 10% biodiversity net gain.

### *Section 106 Contributions*

The Community Infrastructure Levy Regulations 2010 provide that in relation to any decision on whether or not to grant planning permission to be made after 6 April 2010, a planning obligation (a s106 agreement) may only be taken into account if the obligation is:

- (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.

The obligations proposed comply with these tests because they have been calculated based on the quantum and location of the proposal and are directly related to the development.

Based on a net increase of 24 flats, the following contributions are sought and agreed by the applicant in accordance with Medway Council's Developer Contributions Guide 2019:

- i) £5,552.16 towards the provision, improvement and promotion of waste and recycling services to cover the impact of the development.
- ii) £7,811.76 towards a new swimming gala timing system and improved facility for club and community usage at Medway Park.
- iii) £9,134.16 towards new interpretation at the Old Brook Pumping Station.
- iv) £20,288.88 towards supporting the creation of additional capacity in Primary Care premises, required as a result of the increase in housing and resulting patient registrations.

- v) £5,298.72 towards the improvement of equipment and facilities at Luton Library.
- vi) £5,880 towards enabling public realm works to be undertaken to improve the appearance and vitality of Chatham town centre.
- vii) £5,879.04 towards community facilities within the vicinity.
- viii) £81,863.04 towards enhancement of open space facilities within the vicinity of the development including Luton Recreation Ground, Coney and Daisy Banks, Luton Millennium Green and Great Lines Heritage Park.
- ix) £7,878.48 towards Designated Habitats Mitigation.

A section 106 obligation to secure the above-mentioned contributions has not been submitted and the applicants have not agreed to the contributions. The application is recommended for refusal and therefore, if the decision were to be allowed at appeal, this would need to be subject to a S106 agreement.

### *Planning Balance*

The Council acknowledges that at the present time it is unable to demonstrate a five-year supply of deliverable housing land. Although relatively minor, the proposal would contribute 24 additional flats to this supply, with some associated social and economic benefits. However, for the reasons as outlined above, it is considered that the harm, in terms of the scale, mass and design of the building, impact on the character and appearance of the area, overdevelopment of the site, impact on the non designated heritage asset, dominant appearance to neighbouring residential dwellings, loss of privacy to neighbouring dwellings, insufficient daylight to habitable rooms within the development, would significantly and demonstrably outweigh the benefits of the dwelling when assessed against the NPPF as a whole.

### **Conclusions and Reasons for Refusal**

The proposed development is considered to represent an overdevelopment of the site that would result in a dominant building out of character with the surrounding built form, by virtue of its design, scale, mass, height and relationship to the neighbouring non-designated heritage asset and is considered to be contrary of Policy BNE1 of the Medway Local Plan 2003 and paragraphs 131, 135 and 209 of the National Planning Policy Framework 2023 (December).

The proposed development fails to meet the needs of future occupants with regard to unacceptable levels of daylight to some habitable room windows. The development would result in unacceptable overlooking to the neighbouring property and would be viewed as a dominant form of development from neighbouring property windows and garden area.

The development is considered to be contrary to Policy BNE2 of the Medway Local Plan 2003 and paragraph 135 of the National Planning Policy Framework 2023 (December).

The application fails to address the impact of the proposal on the Special Protection Areas of the Thames Estuary and Marshes and the Medway Estuary and Marshes through either the submission of details to allow the undertaking of an Appropriate Assessment or via a contribution towards strategic mitigation measures. In the absence of such information or contribution, the proposal fails to comply with the requirement of the Conservation of Habitat and Species Regulations 2010 and is contrary to Policies S6 and BNE35 of the Local Plan and paragraphs 186 and 187 of the NPPF.

Without a legal agreement in place, the application fails to mitigate the development, with regard to the public services provided within the Medway area, through the lack of secured contributions in line with the Medway Council's Developer Contributions Guide 2019 and is contrary to Policy S6 of the Local Plan and paragraph 57 of the NPPF.

The application would normally be determined under delegated powers but is being referred for Committee determination due to the extent of representations received expressing a view contrary to the recommendation.

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## **Background Papers**

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://publicaccess1.medway.gov.uk/online-applications/>