
Appeal Decision

Site visit made on 4 October 2016

by Philip Lewis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 October 2016

Appeal Ref: APP/H4505/W/16/3155403

Unit 15F, Follingsby Park, Gateshead NE10 8YG

- 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 Mr David Taviner, Mister Twisters against the decision of Gateshead Council.
 - The application Ref DC/16/00123/COU, dated 2 February 2016, was refused by notice dated 13 July 2016.
 - The development proposed is change of use of an existing industrial unit (B8 storage and distribution) to a children's activity / trampolining facility (D2 leisure use) ancillary to the adjacent existing Mister Twisters children's activity centre (Unit 15E).
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Decision

1. The appeal is dismissed.

Main Issues

1. The main issues for the appeal are:
 - The effect of the proposal on the provision of employment land; and
 - Whether the proposal satisfies the sequential test set out in the National Planning Policy Framework and the Planning Practice Guidance.

Reasons

Employment land

2. I saw at my site visit that Follingsby Park is a relatively modern business park, with a predominance of logistics and distribution activities. I observed that there are occasional other uses evident, but that the defining character is derived from its predominant activities. Unit 15F of Follingsby Park is a vacant business unit of about 930 square metres and is attached to Unit 15E. Unit 15E is occupied as 'Mister Twisters', a children's activity centre. The appeal proposal is for the change of use of Unit 15F to a children's activity / trampolining facility falling within Use Class D2 which would be an expansion of the existing children's activity centre.
 3. Saved Policy JE1 of the Gateshead Unitary Development Plan (UDP) identifies Primary Employment Areas (PEA), where changes of use to leisure uses are not normally permitted. Follingsby Park is identified as a PEA. Policy CS1 of the Planning for the Future Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne March 2015 (Core Strategy) sets out a spatial strategy
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for sustainable growth. Core Strategy Policy CS5 is concerned with employment and economic growth priorities and includes strengthening and clustering economic assets and promoting growth sectors such as distribution and logistics at Follingsby. The Gateshead Employment Land Review Update and Office Capacity Study July 2012 (ELR) identifies Follingsby Park as a key employment location and being regionally significant for Use Class B8 distribution.

4. I understand that the appeal site has been unoccupied since February 2015 and that legal restrictions have prohibited marketing activities of the unit. I have considered the information provided regarding the recent lettings of units on the estate, but note that the evidence in this regard is limited. Unit 15F is semi-detached with Unit 15E and I saw at my site visit the shared access to the car park areas. Although I have considered the comments that the shared access, proximity to Mr Twisters and that fact that the unit is not self-contained, may deter future occupants of the vacant unit and the comments by the previous occupier of the appeal site in this regard, I did see at my site visit that the appeal property also has a separate and independent access to an enclosed yard at the rear. I consider that the appeal property has been vacant for a relatively short period of time and in the absence of specific marketing information for the unit, I have not been convinced that, it has been established that it is 'difficult to let' due to the proximity of Mr Twisters.
5. I have also taken into account the evidence regarding the level of vacant units at Follingsby Park, which I do not consider as being excessively high in the context of the estate as a whole where it would be reasonable to expect a degree in turnover in occupancy. This is demonstrated in the evidence in respect of lettings. I have not been convinced on the balance of evidence that there is no reasonable prospect of the appeal site being used for its allocated purpose, given the restrictions on marketing and the length of time the unit has been vacant. Therefore, in terms of paragraph 22 of the National Planning Policy Framework (the Framework) it would be appropriate to continue to protect the site for its allocated employment use.
6. I have considered that the appeal proposal would create up to 24 jobs and relates to the expansion of an existing business. I have also considered the investment that the appellant has made in his business, the fact that he has a long term lease on the site and that it is not an option to relocate elsewhere and the comment that the lack of opportunity for expansion blights the business. I have also considered that the appeal proposal would be complementary to the existing business and accommodate children of a wider range of ages.
7. I have taken into account the development plan policies cited by the appellant, including Core Strategy Policy CS8 which encourages leisure development by focusing it in the Urban Core and at accessible locations. In respect of the comments regarding flexibility in policy, the appeal proposal does not accord with the exceptions set out in saved UDP Policy JE1 for complementary supporting uses in PEAs.
8. On the balance of evidence before me, I consider that the loss of a unit of 930 square metres for B8 use would be harmful to the Follingsby Business Park and the Council's spatial strategy for growth regarding the promotion of distribution and logistics at Follingsby Park, by appreciably reducing the land and

floorspace available for B8 distribution. I also find that the appeal proposal would erode the character of the business park through the significant expansion of an existing leisure use.

9. To conclude on this matter, the appeal proposal would have an adverse effect on the provision of employment land through the loss of an employment unit for logistics and distribution in a regionally significant location contrary to saved UDP Policy JE1 and Core Strategy Policy CS5.

Sequential test

10. Core Strategy Policy CS7 is concerned with maintaining and enhancing the vitality and viability of centres and includes that main town centre uses will only be permitted where there is not a sequentially preferable site in, or on the edge of a centre. Paragraph 9.32 of the Core Strategy sets out that sequential and impact assessments will be sought in respect of main town centre uses outside centres and the Urban Core in line with the floorspace threshold in the Framework, or as per planning application validation requirements. Core Strategy Policy CS8 encourages development which improves the range and quality of leisure facilities through focusing them in the Urban Core and at accessible locations. The appeal site, being situated within Follingsby Park, is not situated within a defined centre.
11. The Framework, in paragraph 24, states that a sequential test should be applied to planning applications for main town centre uses that are not in an existing centre. The Planning Practice Guidance says that this test is to deliver the Government's "town centre first" policy¹ and the PPG explains how it should be used in decision taking.
12. The application of the test should be proportionate and appropriate for the given proposal. In this case, the appellant is seeking premises to accommodate a trampoline park. A minimum height clearance of 6 metres for the building is required and in terms of floorspace, 900 square metres is said to be required to accommodate the required number of trampolines in order to make the proposals financially viable.
13. In dealing with the sequential test, I have had regard to the relevant judgement² cited by the appellant. This confirms that the question is whether an alternative site is suitable for the proposed development not whether the proposed development can be altered or reduced to fit an alternative site. The case law is based on different circumstances and predates the PPG, but I have defined the proposal above to ensure that this decision is consistent with it.
14. In terms of the sequential test, the appellant states that over 150 sites have been considered in Gateshead Town Centre and various other centres in the area. I note that this work has taken place in several stages and includes evidence provided in final comments in response to further sites suggested by the Council during the appeal process. Whilst I have not been provided with details of all sites considered, I have been provided with the screened result and I consider that the sequential test undertaken is proportionate and appropriate for the proposal, given its requirements. I am satisfied that the suitability of more central sites to accommodate the proposal has been considered and that the reasoning is set out clearly by the appellant.

¹ Reference ID: 2b-012-20140306

² Tesco Stores Ltd v Dundee City Council [2012]

15. The sequential test finds that more central sites are not able to individually accommodate the proposal. Consequently, as there are no suitable sequentially preferable locations, the sequential test is passed. The appeal proposal therefore accords with Core Strategy Policy CS7, the Framework and PPG in this regard. This however does not outweigh my findings in respect of the provision of employment land.

Other matters

16. I note the comment that the appeal proposal would give rise to a unique, large scale trampolining facility for which there is market demand and the comments made in respect of sustainable development. I have also taken into account the comments regarding the location of children's play areas on industrial estates and business parks due to their space requirements.
17. I have considered the policies of the Framework cited by the appellant, but have found that in terms of the presumption in favour of sustainable development, the proposal conflicts with the development plan policies in respect of PEAs and employment and economic growth priorities. I have also considered that the appeal proposal could help promote healthy communities and the reference to the Written Ministerial Statement of 23 March 2011, but these do not lead me to a different conclusion.
18. The appellant has referred me to a proposed trampoline park which was approved by the Council at an allocated employment area. Whilst I do not have full details of this scheme, I note from the Council's evidence that the policy context was different to that of the proposal before me. In any event, I do not consider that the permitted scheme should provide an example which should be followed given the harm found.

Conclusion

19. For the reasons given above and having considered all matters raised, I conclude that the appeal should be dismissed.

Philip Lewis

INSPECTOR