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## Appeal Decision

Site visit made on 16 October 2017

**by Beverley Wilders BA (Hons) PgDurp MRTPI**

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

**Decision date: 27 November 2017**

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**Appeal Ref: APP/G4620/W/17/3179379**

**The Stones Building, Johns Lane, Oldbury B69 3HX**

- 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 S Dunn (Hallbridge Way Properties Limited) against the decision of Sandwell Metropolitan Borough Council.
  - The application Ref DC/17/60193, dated 11 January 2017, was refused by notice dated 22 May 2017.
  - The development proposed is change of use from offices to single occupation bed-sits for the employees of Rotala Plc.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - whether future occupiers of the bed-sits would have satisfactory living conditions having particular regard to noise and disturbance and air quality;
  - whether the principle of the residential use of the site is acceptable having regard to the site's allocation as a local quality employment area.

### Reasons

#### *Living conditions*

3. The appeal site comprises a former office building and surrounding land incorporating a large car park, access roads and grassed areas. At the time of my visit a large number of vehicles were parked on the site, though the building itself was vacant and in a state of disrepair. The appeal site is adjacent to Tipton Road and John's Lane with the immediate surrounding area comprising a mixture of commercial and residential uses including an engineering company located immediately to the west of the site. From the evidence it appears that planning permission has been granted for the appeal site to be used as a bus depot and for ancillary offices on the ground floor of the existing building (DC/15/58839), though I understand that this permission has yet to be implemented.
4. The proposal is to provide residential accommodation in the form of bed-sits with communal kitchens on the first, second and third floor of the former office building. In addition a recreational area would be provided on the ground floor

and a communal balcony on the third floor. It is stated that the bed-sits would be occupied by employees of Rotala Plc, namely bus drivers.

### *Noise*

5. Two noise surveys have been submitted, one dated 11 January 2017 (Ref NS155) and an updated survey dated 23 May 2017 (Ref NS155/3). The original survey stated that noise levels from bus movements around the building were found to be excessive on all sides and concluded that mitigation would therefore be necessary to reduce internal noise levels. The updated survey found that noise levels within the ground floor recreational area and the third floor balcony would also be excessive, that there would be a significant adverse impact on the west windows of the building from bus movements and the adjacent engineering company and that the proposed bus wash facility would also generate noise. A number of mitigation measures were proposed in addition to fixed acoustic glazing to the windows including a wall and fence around the balcony and recreational area, control over bus parking at night-time and the re-location of the bus wash facility.
6. From the evidence it appears that acoustic fixed glazing for the bed-sits and internal communal areas and the erection of walling and fencing around the external communal areas would provide some mitigation for the noise and disturbance likely to be generated by the proposed use of the site and from existing uses nearby. However, the position of the building within a noisy bus depot would require mitigation measures resulting in modest sized bed-sits with no means of natural ventilation and with external amenity areas surrounded by high walling and fencing. In my view this would result in unsatisfactory living conditions for future residents, notwithstanding that they are likely to be employees of Rotala Plc. The fact that future occupiers may be drivers operating from the site who would not always be resident on site and who may be on short term contracts does not mean that they would not be entitled to satisfactory living conditions. The imposition of a condition restricting occupancy to employees only would not overcome the harm identified.
7. In addition, it is not clear whether the mitigation would deal with the impact of any noise and disturbance that would be generated by the proposed bus wash facility on future residents of the bed-sits. Though reference has been made to the bus wash facility being re-located to the rear of the site, the facility does not form part of the proposal before me and from the evidence I understand it to have been previously approved in a position near to the west elevation of the building.
8. The proposed residential use would be subject to excessive noise and disturbance associated with the proposed use of the site as a bus depot and with existing surrounding uses. Though mitigation measures may be able to overcome the impact of this noise and disturbance, the mitigation measures themselves would be harmful to the living conditions of future occupiers who would have no access to natural ventilation and external amenity areas with a poor outlook. Whilst I note the appellant's assertion that air conditioning is an accepted and used method of ventilating city centre apartments, no evidence has been submitted to support this assertion and the appeal site is not in a city centre location. In any event I must determine the proposal before me on its own merits.

### *Air Quality*

9. Policy ENV8 of the Black Country Core Strategy (CS) states that new residential development should, wherever possible, be located where air quality meets national air quality objectives.
10. An Air Quality Assessment dated June 2017 (AQA) has been submitted with the appeal. It concludes that air quality does not represent a material constraint to the proposal. However it is not clear from the AQA whether emissions from the proposed bus depot at the appeal site have been considered as part of the assessment of air quality and how it would affect future occupiers of the bed-sits. In addition it does not appear that the AQA has considered the impact of air quality on the recreational area at ground floor.
11. Though I note that the internal accommodation would be air conditioned, I have had regard to the concerns raised by the Council's Scientific Officer Contaminated Land about the fact that buses would be circulating around the site close to the building and that it may therefore not matter what side of the building is used to draw air in for the air conditioner.
12. Based on the submitted evidence, I am not satisfied that future occupiers of the proposed residential use would experience air quality which meets national air quality objectives.

### *Conclusion on living conditions*

13. The fact that the proposal would meet some aspects of the Council's Revised Residential Design Guide January 2014 (RRDG) does not overcome the harm that I have identified to the living conditions of future occupiers.
14. Taking the above matters into account, I conclude that future occupiers of the bed-sits would not have satisfactory living conditions having particular regard to noise and disturbance and air quality. The proposal is therefore contrary to one of the core planning principles of the National Planning Policy Framework as set out in paragraph 17 which states that planning should always seek to secure a good standard of amenity for future occupants of land and buildings. It is also contrary to Policy ENV8 of the CS and to the RRDG which relates to conversions as well as new build residential development and seeks the delivery of high quality sustainable housing.

### *Principle of residential use*

15. The appeal site is located within a Local Quality Employment Area (LQEA). Policy EMP3 of the CS states that LQEA's will be safeguarded for the commercial uses listed within the policy. The policy justification states that LQEA's are particularly prevalent in the Black Country and that they play an important role providing a valuable source of low cost accommodation which is vital in providing for local employment and a balanced portfolio of different sizes and quality of sites. Whilst the CS anticipates that demand for LQEA's will fall over the Plan period, the CS proposes to manage the change through policies EMP2 and DEL2. The CS states that LQEA's are often most vulnerable to pressure from redevelopment to other uses such as housing but that the loss of too much local employment land will compromise the Strategy.
16. As stated, the appeal site appears to currently be in use for parking and the former office building is vacant. The implementation of planning permission

DC/15/58839 would result in the site being used as a bus depot with the ground floor of the former office building to be used as ancillary offices to the bus depot. The appellant states that the upper floors of the former office building would remain vacant if planning permission is not granted for the proposal.

17. Though it is stated that the proposed residential use would be ancillary to the use of the site as a bus depot, the proposal would nevertheless change the use of the upper floors of the former office building from a commercial use to a residential use. This would be contrary to CS Policy EMP3. Whilst I note that the policy justification for Policy EMP3 states that other uses may be permitted in LQEA's, it also states that this change should be managed to ensure that the loss of too much local employment land does not compromise the Strategy. Though I acknowledge that Rotala Plc is a large local employer and that the appellant states that the upper floors of the building would remain vacant if not used for residential purposes, no substantive evidence has been submitted by the appellant to demonstrate that the vacant floorspace is no longer required for commercial purposes compliant with Policy EMP3 or that the proposal would have no adverse impact on the LQEA. In the absence of this, there are no material considerations which would justify the proposed departure from the development plan.
18. Taking the above matters into consideration, I conclude that the residential use of the site is unacceptable in principle. The proposal is contrary to CS Policy EMP3 which seeks to provide for the needs of locally based investment and to safeguard LQEA's for the uses listed within the policy.

### **Conclusion**

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

*Beverley Wilders*

INSPECTOR