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## Appeal Decision

Site visit made on 1 October 2019

**by JP Tudor BA (Hons), Solicitor (non-practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 October 2019**

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**Appeal Ref: APP/D0121/W/19/3232607**

**Unit 7, Tweed Road Industrial Estate, Tweed Road, Clevedon BS21 6RR**

- 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 Toby Cart (Carts in the dog house) against the decision of North Somerset Council.
  - The application Ref: 18/P/2535/FUL, dated 23 February 2018, was refused by notice dated 15 March 2019.
  - The development proposed is change of use from existing B8 use to a dog day kennel (Sui Generis).
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. I have taken the description of the development proposed from the Council's decision notice as it more accurately and succinctly describes the proposal than that contained in the application or appeal forms.
3. The change of use to a day kennel for dogs had already occurred prior to the application. A mezzanine floor had also been erected within the unit to provide additional floorspace. The retrospective application is intended to regularise the position. I have considered the appeal on that basis.

### Main Issue

4. The main issue is the effect of the proposed change of use on the range and quality of business units available for B1, B2 and B8 employment uses in the area.

### Reasons

5. The appeal site is a business unit (No 7) at the end of a row of similar units within the Tweed Road Industrial Estate. There is a further row of units opposite and another to the north-east with parking areas between. The Council advises that there are 23 units in total. The site is located within a wider commercial area which includes a variety of businesses such as window manufacturers, timber and building supplies and a large supermarket.
6. As I saw on my site visit, unit 7 is operating as a dog day care centre and the proposal is to enable that 'sui generis' use to continue. I understand that it was previously in use as a storage warehouse (a B8 use). The adjoining unit is occupied by North Somerset Library Service as warehouse and office space.

According to the Council, the units within the industrial estate are mainly in B1, B2 and B8 use classes, although there are some other uses including a gym at unit 1a. One of the units is said to be currently unoccupied.

7. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.<sup>1</sup> The National Planning Policy Framework (the Framework)<sup>2</sup>, an important material consideration in all planning decisions, also confirms that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Furthermore, it says that where a planning application conflicts with an up-to-date development plan, planning permission should not usually be granted.<sup>3</sup>
8. In broad terms, policy SA4 of the Council's Sites and Policies Plan, Part 2: Site Allocations Plan 2006-2026 (SPPP2)<sup>4</sup> seeks to retain existing employment land and premises in B1, B2 and B8 use, which covers office, light industrial, general industrial uses and use for storage or as a distribution centre. However, the policy allows for non-B1-B8 development if certain conditions are met.
9. According to policy SA4, such proposals must not adversely affect the ability to achieve wider economic aspirations including regeneration, business growth and improved commuting patterns. Then policy SA4 gives three exceptions which may make the loss of B1-B8 land or premises acceptable. I will consider each in turn.
10. The first exception, at (i), is that the proposal would not harm the range or quality of land or premises available for business use development within existing employment areas or in areas expressly identified in the Plan to meet business needs. The Council refers to evidence from its Economic Development Service (EDS) which indicates that there is a shortage of business premises in the Clevedon area, particularly for B2 and B8 uses or for a 'hybrid' use, involving a mix of these uses with some office space. Given that context, which has not been specifically disputed by the appellant, the loss of a B1-B8 business unit does harm the already limited range of such premises available. Therefore, it does not meet the possible exception within clause (i) of SPPP2 policy SA4.
11. The second exception, at (ii), is where there is a specific requirement associated with neighbouring business uses and the development would not lead to the overall site becoming unsuitable for the current or allocated employment use. The appellant says that some of the customers using the dog day care centre are surrounding businesses within the industrial estate, which is confirmed by representations received from third parties. Nevertheless, while some people from surrounding businesses may use the service, that does not demonstrate that there is a '*specific requirement associated with neighbouring business uses*'.
12. The third exception, at (iii), is that through effective marketing, it is shown that the site or premises is no longer capable of offering accommodation for

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<sup>1</sup> s.38(6) Planning and Compulsory Purchase Act 2004 and s.70(2) Town and Country Planning Act 1990

<sup>2</sup> Published February 2019

<sup>3</sup> Paragraph 12

<sup>4</sup> Adopted April 2018

business use development, in this case B1-B8 use. Alternatively, it must be shown that the proposal would lead to the removal of incompatible development resulting in potential benefits for the community in terms of improvements in the environment or amenity.

13. In the appeal, no evidence has been presented by the appellant to suggest that the premises has been marketed for a B1-B8 employment use, for which the Council says there is known demand. The Council also cites a review of property databases and visits to other employment locations at Kenn Road and Hither Green as supporting that view, as well as information from its EDS referred to above. Improvements in the environment or amenity have not been identified by the appellant. In the absence of evidence that a B1-B8 use for the unit is not viable or of any environmental or amenity benefits the proposal does not comply with criterion iii of policy SA4 of the SPPP2 either.
14. Given the above, the change of use conflicts with policy SA4 of the SPPP2, which forms part of the development plan. The economic objective of sustainable development, referred to in the Framework,<sup>5</sup> is to help build a strong, responsive, competitive economy, by ensuring that sufficient land of the right types is available in the right places at the right time to support growth. The Council advises that policy SA4 of the SPPP2, adopted in 2018, forms part of its strategy for meeting that objective, which given its content appears to be a reasonable connection to make. Therefore, the change of use would also be contrary to the Framework.
15. The appellant says that the existing business has two full-time and three part-time employees. It runs education days and work experience for students on animal management courses at Weston College. The appellant also suggests that the business employs more staff than other similar sized units on the industrial estate, which the appellant says do not have more than three employees or are operated by one person. Occupiers of several other business units on the estate have offered their support for the change of use and said that they use the dog day-care service. The appellant has also provided brief case studies of various customers using the service. Those factors are in favour of the proposal.
16. However, while I have considered the employment opportunities provided by the business, the breakdown of two full time and three part-time employees (although actual working hours are not provided) does not appear to be substantially different from the three employees said to be employed at some of the other units, within B1-B8 use. Theoretically, another business (falling within a B1-B8 use) could provide equivalent or greater employment levels. Moreover, whilst it is accepted that a dog day care service is a useful service for customers, including some who work on the industrial estate, there is no compelling evidence to indicate that the business could not be run from other premises rather than occupying a business unit previously in B8 use on an industrial estate.
17. Overall therefore, the change of use adversely affects the range and quality of business units available for B1, B2 and B8 employment uses in the area, for which there is a demand. It also conflicts with policy SA4 of the recently adopted SPPP2, which specifically seeks to retain B1-B8 business uses, subject to limited exceptions which the proposal does not meet. Consequently, it fails

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<sup>5</sup> Paragraph 8

to comply with the broad thrust of the Framework which indicates that the overarching objectives of sustainable development should be delivered through development plans and the application of policies in the Framework.<sup>6</sup> The benefits associated with the current use of the business unit do not outweigh that harm.

### **Conclusion**

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

*JP Tudor*

INSPECTOR

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<sup>6</sup> Paragraph 9