



Appeal Decision

Site visit made on 28 October 2019

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2019

Appeal Ref: APP/P4605/W/19/3234839

Radio House, 79 Aston Road North, Birmingham B6 4DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Bav Tamber of Gian Capital against the decision of Birmingham City Council.
 - The application Ref 2019/02332/PA, dated 11 March 2019, was refused by notice dated 14 May 2019.
 - The application sought planning permission for change of use from radio studio (with ancillary offices) to a premises solely operating as offices (use class B1a) without complying with a condition attached to planning permission Ref C/06222/06/FUL, dated 28 November 2006.
 - The condition in dispute is No C3 which states that: *The premises shall be used for the purpose approved under this permission, and no other purpose included in the Schedule of the Town and Country Planning Use Classes Order 1987, (or any order revoking or re-enacting that Order, with or without modification).*
 - The reason given for the condition is : *In order to define the permission.*
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Decision

1. The appeal is allowed and planning permission is granted for change of use from radio studio (with ancillary offices) to a premises solely operating as offices (use class B1a) at Radio House, 79 Aston Road North, Birmingham B6 4DA in accordance with the application Ref 2019/02332/PA, dated 11 March 2019, without compliance with condition number C3 previously imposed on planning permission Ref C/06222/06/FUL, dated 28 November 2006 and subject to the following condition:
 - 1) The permission hereby granted relates to the details shown on Drawing Numbers 06076 01; 06076 02, 06076 101, 06076 103 and 06076 201.

Preliminary Matters

2. The Council has changed the format it uses for planning application numbers since the original planning permission was granted. The number referenced on the application form and the decision notice refusing planning permission to remove condition C3¹ is different to the number on the original grant of planning permission².

¹ LPA Ref. 2006/06222/PA

² LPA Ref. C/06222/06/FUL

3. I have used the planning application number listed on the original grant of planning permission in my decision, rather than the application number used on the application form / decision notice, which have been converted to the current format.
4. I have also made minor alterations to the address of the appeal property, in order to remove superfluous words and improve clarity.

Background and Main Issue

5. Planning permission was granted in 2006 for a Class B1a office use only. A Prior Approval application for a change of use from Class B1a offices to 55 Class C3 studio flats was refused by the Council on 9 January 2018³.
6. The Council is concerned that in light of recent changes to planning legislation and permitted development rights, the removal of the condition would mean that a residential use could potentially be introduced into the Core Employment Area, which may have adverse consequences for the future operation of neighbouring industrial uses.
7. Therefore, the main issue is whether the condition is necessary and reasonable with regard to the strategic importance of the Core Employment Area.

Reasons

8. The reason given for imposing Condition C3 was simply to define the permission. From the evidence this was neither necessary or reasonable and does not relate to the Council's reasons for refusing to allow its removal.
9. At the time planning permission was granted for a Class B1a office use in 2006, the appeal building was in the *Waterlinks* area of the city. Policy 12.57 of the extant development plan⁴ at this time supported *flexible business space, including research and development and offices* within the *Waterlinks* area, which would include Class B1a offices as well as Class B1b research and development uses.
10. However, following the adoption of the Birmingham Development Plan (BDP) in 2017, Policy 12.57 and most of the saved policies within the UDP were superseded.
11. In the BDP, new designations were introduced, and the appeal building is now located within one of the Core Employment Areas (CEAs). Policy TP19 of the BDP identifies the types of employment uses that would be acceptable in CEAs, which are Classes B1b; B1c (light industrial); B2 (general industrial) and B8 (storage and distribution) and other uses appropriate for industrial areas. Any other use, including a Class B1a office or a Class C3 flat would not be supported in the CEA, unless an exceptional justification existed.
12. The main consequence of deleting Condition C3 would be that the use of the building for Class B1a purposes would henceforth benefit from full permitted development rights in terms of changes of use. For Class B1a uses this would mean that a change to either a Class B1b or Class B1c use would be permitted development, as would a change of use to Class B8. Such changes of use would be consistent with Policy TP19 of the BDP and therefore uncontentious.

³ LPA Ref. 2017/09123/PA

⁴ Unitary Development Plan 2005 (UDP)

13. However, the Council's concern is that the removal of the appeal condition would allow the appellant to change the use of the appeal building from Class B1a to a Class C3 residential use. Such a change of use could be achieved by way of a Prior Approval application under Class O, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). As stated above, such an approach was attempted in the past and was refused by the Council, in January 2018.
14. The Council has powers under Article 4 of the GPDO to remove some or all permitted development rights within some or all of its area, which could address its stated concerns. However, I note that no Article 4 Direction has been made in the area containing the appeal site.
15. The Council considers that a Class C3 use would impact upon neighbouring industrial uses and undermine the strategic importance of the CEA. However, the Council does not provide any explanation of what this impact would be, or how, given that the current Class B1a use is similarly inconsistent with the requirements of Policy TP19, this would undermine the strategic importance of the CEA.
16. Furthermore, the Council does not specify which *neighbouring industrial uses* would be affected. When I visited the site, I noted that a small office building (73-75 Aston Road North) adjoined the appeal building to the south and a separate outlet warehouse was located to the immediate northeast. Neither of these uses are industrial.
17. Aston Road North and Holland Road West border the appeal site, which in addition to Radio House, also includes a car parking area to the rear. These roads and car park provide some buffer space between the appeal site and non-adjacent neighbouring uses, were these the uses that the Council is concerned with.
18. In determining a Prior Approval application under Class O, Part 3 of Schedule 2 of the GPDO, the Council would need to consider, amongst other things, the transport and highways impacts of the development and, the impacts of noise from commercial premises on the intended occupiers of the development. If the Council considers that the development would cause unacceptable impacts then it can refuse prior approval⁵.
19. From the evidence it is not clear what impacts the Council was concerned with when it refused planning permission for the appeal development. However, notwithstanding this point, it does not follow that should the condition be removed and were the appellant to re-apply for such a Prior Approval at the appeal building, that a Class C3 use would necessarily be permitted.
20. No substantive evidence has been provided that an unrestricted Class B1a use at the appeal building, or a Class C3 use should a Prior Approval application⁶ be submitted and approved, would adversely affect nearby uses or detract from the strategic importance of the CEA.
21. For these reasons I am not satisfied that the condition is necessary or reasonable to protect the strategic importance of the CEA. Its removal would

⁵ Paragraph W of Schedule 2, Part 3 of the GPDO.

⁶ under Class O, Part 3 of Schedule 2 of the GPDO.

therefore be acceptable and would accord with Policy TP19 of the BDP and with guidance contained within the Framework.

Other Matters

22. I note the comments made by the owners of No 73-75 Aston Road North / 2 Holland Road West concerning a hotel use and the impacts this may have upon car parking for their business. A hotel use at the appeal building would require a separate planning application to be made and is outside the scope of this appeal. As referenced above, should a Prior Approval application be made for a residential use at the appeal building, then the transport and highways impacts of such a use would be considered by the Council in determining any such application.

Conditions and Conclusion

23. The Council has not suggested any conditions be attached to a grant of planning permission, should the appeal be allowed.
24. In my view, a condition specifying the approved drawings would be necessary for reasons of certainty.
25. For the reasons given above, and taking into account all matters raised, I conclude that the appeal is allowed.

Andrew Parkin

INSPECTOR