
Appeal Decision

Site visit made on 12 November 2019

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th December 2019

Appeal Ref: APP/P4605/W/19/3236075

38 Hatchett Street, Newtown, Birmingham B19 3NX

- 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 Simon Agu (The African Village Restaurant) against the decision of Birmingham City Council.
 - The application Ref 2019/04778/PA, dated 5 June 2019, was refused by notice dated 5 August 2019.
 - The development proposed is conversion of an existing warehouse to an A3/A5 restaurant.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposed development on the Core Employment Area (CEA); and
 - whether the proposed development would provide a safe environment for future users.

Reasons

Effect on Core Employment Area

3. The appeal property is a two storey building with a storage area/workshop on the ground floor and offices on the first floor. It is situated within a CEA. Properties within the surrounding area largely comprise a mixture of one and two storey buildings in commercial and light industrial use with some of them also having offices on the first floor. The proposed development would change the use of the ground floor area to a restaurant with associated seating, a kitchen and a wine bar. It is proposed to use the first floor as a VIP lounge which would also be used as a multi-purpose meeting, dining and conference area. It is also intended that the restaurant would serve hot food takeaway meals to the employees of the commercial and industrial units in the vicinity of the appeal property with the proposed hours of operation being between 13:00 – 05:00.
4. The primary concern raised by the Council relates to the principle of a restaurant/hot food takeaway business being in operation within the CEA. Policy TP19 of the Birmingham Development Plan 2017 (BDP) indicates that the

purpose of a CEA is to retain employment uses within them so as to be the focus of economic regeneration activities on this identified employment land. The Policy defines these employment uses as: research and development; light industrial; general industrial; warehousing/distribution; and other appropriate uses such as waste management, builders' merchants and machine/tool hire centres. This does not include the use of a building for a restaurant/hot food takeaway. For the proposed change of use to be acceptable under this Policy an exceptional justification would need to be provided.

5. In support of the appeal scheme the Appellant has stated that the proposed change of use would provide employment within the CEA and a socio-economic benefit which would consequently comply with development plan policies thereby negating the requirement to provide an exceptional justification. However, the evidence before me makes it clear that the proposed development would lead to a net decrease in employment meaning that there is likely to be no to extremely limited socio-economic benefits arising from the proposal. In any event, Policy TP19 seeks CEAs which are needed to facilitate economic regeneration within them leading to further investment and larger scale employment opportunities which development of the type proposed could not provide in these locations. Furthermore, saved Birmingham Unitary Development Plan 2005 (UDP) Policies 8.6 and 8.7 require that hot food takeaway/restaurant uses be restricted to suitable locations with established retail or mixed commercial uses which is not the case within the CEA.
6. Given the above considerations and the fact that the appellant has not provided any evidence demonstrating that an exceptional justification is applicable in this case the proposed change of use would be inappropriate within the CEA. Moreover, it would harm the primary purpose of the CEA to facilitate economic regeneration initiatives and increase appropriate employment opportunities within it. I therefore conclude that the proposed development would conflict with Policies TP19 and TP20 of the BDP (adopted January 2017) which seek to protect employment land and facilitate economic investment and regeneration amongst other considerations. It would also conflict with the aforesaid Policies 8.6 and 8.7 of the UDP.

Whether the proposed development would provide a safe environment

7. Given the existing uses of the buildings surrounding the appeal property, and the proposed hours of operation, there would be little or no natural surveillance of patrons exiting the restaurant/takeaway on a dark evening or late at night. The appellant's design and access statement does not show that the issue of crime has been considered when designing the proposed development. Accordingly, based on the evidence before me I consider that the proposed change of use would potentially create a less than safe environment for the patrons of the restaurant and/or conference area particularly during the hours of darkness.
8. I note the appellant's point that the proposal would not change the current baseline of access, infrastructure and any associated environmental risk. However, the fact that the proposed development includes a large restaurant/dining area, bar and substantial meeting/conference area means that the number of people entering and leaving the building would be significantly greater than at present which would (given the above considerations) increase the potential risk in relation to there being a less than

safe environment for its patrons within the immediate vicinity of the appeal site.

9. I therefore conclude, that the proposed development would fail to provide or contribute to a safe environment for future users. Accordingly, it conflicts with Policy PG3 of the BDP (adopted January 2017) which aims to ensure that new development creates safe environments by designing out crime and creating spaces that promote positive social interaction and natural surveillance, amongst other considerations.

Conclusion

10. For the reasons set out above I conclude that the appeal should be dismissed.

C Coyne

INSPECTOR