
Appeal Decision

Site visit made on 14 January 2020

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd April 2020

Appeal Ref: APP/H0738/W/19/3240332

Unit 22 Orde Wingate Way, Stockton-on-Tees, Cleveland TS19 0GA

- 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 Shaun Thwaites against the decision of Stockton-on-Tees Borough Council.
 - The application Ref: 19/1372/COU, dated 21 June 2019, was refused by notice dated 9 September 2019.
 - The development proposed is a change of use from industrial (B2) to gymnasium (D2).
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Decision

1. The appeal is dismissed.

Procedural matters

2. The planning application form describes the proposed development as 'Change of Use from B2/B8 to D2'. The description used by the Council on the decision notice is clearer as to the precise nature of the development and I note that the appellant has adopted this on the appeal form. I have, therefore, also used that description for the purposes of the appeal.
3. Although the planning application form states that the change of use had not started, I saw when I visited the site that the interior of the building has been fitted out with a number of pieces of fitness apparatus, that rubber floor mats have been laid out, and various other items of gymnasium equipment were stored on racks. In this respect the change of use has already occurred. I have no information as to whether this occurred before or after the date of the planning application. Nevertheless, Section 73A of the Town and Country Planning Act 1990 (the Act) makes allowance for the submission of a planning application for development which has been carried out before the date of the application. Section 55 of the Act describes development as the carrying out of building operations or the making of material changes of use rather than the retention of works or the continuation of a use and I have, therefore, considered the appeal on the basis that it is for a proposed change of use.

Main Issues

4. The main issues in this appeal are:
 - The effect of the proposed development on the supply of employment premises in the area; and

- Whether the appeal site would be an appropriate location for the development proposed, having regard to the development plan.

Reasons

Effect on the supply of employment premises

5. Policy EG1 of the Stockton-on-Tees Borough Council Local Plan 2019 (the Local Plan) seeks to direct employment development including general industrial and storage and distribution uses, Use Classes B2 and B8 respectively as set out in the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO), to a number of locations within the Borough. One of these is the Primrose Hill Industrial Estate where the appeal site is located. Policy EG1 is explicit that all existing land and buildings last used for employment purposes will be protected from alternative uses unless certain criteria are met. One criterion is that the premises are no longer required for employment purposes, as demonstrated by an appropriate period of marketing extending to at least 12 months.
6. The local plan was adopted after the publication of the current version of the National Planning Policy Framework in July 2018. Although the Framework was amended in February 2019, those amendments were in respect of matters that are unrelated to this appeal and, consequently, the policies in the Local Plan that are most relevant to the determination of this appeal are up to date.
7. The appellant accepts that no marketing exercise has been carried out. However, he contends that there are other industrial premises available nearby and that it is perverse to delay the operation of the proposed gymnasium for 12 months whilst a marketing exercise is carried out. Whilst some lettings brochures have been provided, these are not dated, and two of these relate to the industrial estate as a whole rather than to the availability of specific premises. Consequently, these are not reliable evidence of the current levels of vacancy. There is only one which relates to an individual unit and I note that this is substantially larger than the 60m² floor area of the premises to which the appeal relates.
8. I saw when I visited the site that there were very few buildings displaying "to let" signs and whilst there are a range of unit sizes, smaller units such as the appeal premises were few in number. From the information I have been provided with and from what I saw when I visited the site, it has not been demonstrated that the appeal premises are no longer required for employment purposes. The requirement for a marketing exercise to be carried out is a prerequisite of a policy in a recently adopted local plan which seeks to maintain the current level of provision of land and buildings for employment purposes. Although the appellant may not agree with it, it cannot not be described as perverse or unreasonable.
9. Based on the evidence before me, it has not been shown that the appeal premises are no longer required for employment purposes. The appeal proposal would therefore result in the loss of a building with a B2/B8 use.
10. I conclude that the proposed development would result in an unjustified loss of a building in employment use which would be harmful to the supply of employment land and buildings in the area. It would be contrary to the relevant requirements of Policy EG1 of the Local Plan.

Whether the appeal site would be an appropriate location

11. Local Plan Policy EG2 seeks to maintain and enhance the vitality and viability of the town and district centres in the Borough by generally restricting changes away from retail uses. It also seeks to maintain Stockton town centre as the main town centre shopping location in the Borough and, in particular, the designated Primary Shopping Area. It seeks to consolidate the retail offer of the centre into the Primary Shopping Area by encouraging proposals that reduce the proportion of retail uses in the parts of the wider town centre area which are outside of the designated Primary Shopping Area. Such uses include, among others, assembly and leisure uses (Use Class D2 as defined by the UCO). The appeal proposal would fall within Use Class D2. Certain D2 uses, including health and fitness centres, are identified as a main town centre uses by the National Planning Policy Framework (the Framework).
12. In order to protect town and district centres, Local Plan Policy EG3 sets out a sequential approach for the location of both retail and other main town centre uses, that seeks first and foremost to locate these in town and district centres. The appeal site is not within the designated town centre, or within a district centre, and it has a sufficient degree of separation from the town centre that it could not be described as an edge of town centre location. Nor is it within a designated local centre. Consequently, it is in the least sequentially preferable location in terms of Policy EG3.
13. The appellant has submitted a brief sequential appraisal which identified and ruled out four properties within the town centre area. The fact that these premises did not have planning permission for a D2 use is not a reason to discount a property, as Policies EG2 and EG3 are permissive of such changes of use outside the Primary Shopping Area. In the absence of any financial viability appraisal it is not possible to determine whether the identified premises would be too expensive for the proposed facility to be viable, and as the Council point out, rents can be negotiated. On the basis of the evidence, and from what I saw when I visited the site, the key reason for rejecting these alternative properties is that the interior configuration, particularly in respect of headroom requirements for the proposed use, is not suitable.
14. Policy EG3 allows for proposals in less sequentially available locations where it has been demonstrated that there are no available and suitable sites in sequentially preferable locations. Although the Council have identified a range of available properties in the town centre area, from the information provided, particularly from the submitted images, these would not have the required floor to ceiling height. I saw when I visited the site that the apparatus installed was relatively tall and I have no reason not to accept the appellant's statement that a height of 5 metres is required for the operation of the facility. Within this context, based on the evidence before me, I have to conclude that, at this time, there are not any suitable premises available within Stockton Town Centre that would be in a more sequentially preferable location than the appeal site.
15. The proposed development is small in scale and there is no evidence that it would divert significant numbers of people away from the town centre area. As such, it would have little or no effect on the vitality and viability of the town centre.

16. I therefore find that the appeal site would be an appropriate location for the proposed development, having regard to the development plan. It would not conflict with the relevant requirements of Local Plan Policies EG2 and EG3.

The planning balance

17. I have found that, having regard to the development plan, the appeal site would be an appropriate location for the proposed development. However, I have also found that the proposed development would result in the loss of a small industrial unit, which the development plan seeks to retain. Local Plan Policy EG1 is very clear that all existing land and buildings last used for employment purposes will be protected from alternative uses in order to maintain an adequate supply of premises for economic growth unless it can be demonstrated through a 12 month period of marketing that the premises are no longer required for their original purpose. The appeal proposal has not done this and does not comply with Policy EG1. Although the appeal site may pass the locational requirements of the sequential test, it has not been demonstrated that the proposed premises are redundant for their original purpose. Nor is there any evidence that would indicate that the appeal proposal could only be located on this particular industrial estate.
18. The Framework seeks to encourage economic growth and productivity, and whilst the appeal proposal would allow the appellant's business to operate, the application states that only one full time job would be created and there is no indication that this would increase in the future. The appellant's submitted business model states that the operation functions on a one to one basis and requires the whole of the facility for this. There is also no evidence that would support the proposition that the unit would remain vacant if the appeal were not allowed.
19. It is not argued that there are no relevant development plan policies, or that the policies in the development plan that are most relevant to the determination of the appeal are out of date. I have found that the appeal proposal would not comply with the requirements of Policy EG1 of the local plan.
20. Section 38(6) of the of the Planning and Compulsory Purchase Act 2004 requires that the determination of planning applications and appeals must be made in accordance with the development plan unless material considerations indicate otherwise. Based on the evidence provided, the appeal proposal would result in only very minor economic benefits in the form of the creation of one job. There is no compelling evidence to show that this would increase significantly in the future or that an economically viable use cannot be found for the unit within its current use class. This very small scale benefit would not overcome the conflict with Local Plan Policy EG3 or indicate that planning permission should be granted for a proposal that does not comply with an up to date development plan.

Conclusion

21. For the above reasons, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR