
Appeal Decision

Site visit made on 22 May 2020

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 8th June 2020

Appeal Ref: APP/Z1510/W/20/3244502

Unit B, 1 Wheaton Road, Witham, Essex CM8 3UJ

- 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 Complete Dance Ltd against the decision of Braintree District Council.
 - The application Ref 19/00953/FUL, dated 17 May 2019, was refused by notice dated 21 November 2019.
 - The development proposed is described as, 'change of use from B1 to D2 for the purpose of running a Dance and Fitness Studio incorporating pre school development programme. Small amount of internal work to accommodate room layout changes and additional toilets'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I note the Braintree District Council Publication Draft Local Plan. However, since there is no certainty that it will be adopted in its current form, I attribute it limited weight only.

Main Issue

3. The main issue is whether the proposed development would accord with the development plan strategy with particular regard to the loss of an employment site and are there any other considerations which indicate that the appeal should be allowed.

Reasons

4. The site is located within an Employment Policy Area. Policy CS4 of the Braintree District Council Local Development Framework Core Strategy Adopted September 2011 (CS) relates to the provision of employment and states that land for employment purposes will mainly be located on existing employment sites within the development boundaries. While the proposal would provide some employment, since the use would not fall within use class B, it would not accord with the aims of this Policy.
5. Policy RLP33 of the Braintree District Local Plan Review, Adopted July 2005 (LP) states that Employment Policy Areas are defined on the Proposals Map where proposals for uses other than those within Use Classes B1, B2 and B8 will be refused. Since the proposal is for a change of use to use class D2, specifically a dance and fitness studio, it would conflict with this Policy. The Council's

evidence also indicates that there is a shortfall in the supply of industrial and office space in the district.

6. The appellant's evidence indicates that despite several marketing campaigns and a reduction in rent, the site has remained vacant for some years. However, while I note the letter from Everett Newlyn, further evidence such as the specific details and duration of advertising, is not before me. I acknowledge the position of the unit at the rear of the building, the lack of a loading bay, the configuration of the accommodation including split levels and areas lacking natural light. However, given the insufficient information before me relating to the details of marketing, there has not been a clear demonstration that there is no demand for the unit within a use class B use.
7. Accordingly, while I acknowledge paragraph 120 of the National Planning Policy Framework (Framework), since there has not been a demonstration of unmet need for the proposed use in the area, this part of the Framework is not relevant to the proposal.
8. I note the evidence regarding a lack of use class D2 units in the area and that other types of units such as retail units are likely to be unsuitable for the purposes of the dance studio. I also acknowledge that the Council's pre-application service was utilised and the issues with the current location of the dance school. However, while I note the evidence submitted by the appellant including correspondence with various councillors, and the indication that neither local property agents nor the Council's key partners such as INVEST ESSEX have suitable units, there is little substantial supporting evidence before me to demonstrate that no suitable alternative sites are available.
9. Planning law¹ requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
10. The appellant considers that LP Policy RLP33 is not wholly in accordance with the Framework. While the Policy may go further than the Framework in certain aspects, this does not necessarily mean that the Policy is not in accordance with it. From the evidence before me the Policy is consistent with the Framework. As such, given the primacy of the development plan, I attribute the development plan and the conflict with LP Policy RLP33 and CS Policy CS4 full weight. Furthermore, since it has not been demonstrated that there is no current or long-term demand for the retention of all or part of the site for employment use, the proposed loss of employment land has not been justified and given the shortfall in industrial and commercial units in the district, there would be significant harm in this respect.
11. LP Policy RLP 28 relates to Employment Land Provision and relates to land that is allocated for employment on the main industrial estates and business parks, as shown on the Proposals Map. The Policy considers certain uses to be appropriate including indoor sports or recreational uses in these allocated areas. There is no evidence before me to indicate that the site lies within these allocated areas. Consequently, this Policy is not relevant to the proposal.
12. I note the benefits of the scheme in the terms identified by the appellant including in relation to health and wellbeing and economic support to local

¹ S38(6) of Planning and Compulsory Purchase Act 2004 and s70(2) of Town and Country Planning Act 1990

businesses. I also acknowledge that paragraphs 91 and 92 of the Framework promote healthy and safe communities. However, given the significant weight attached to the conflict with the development plan as a whole and loss of employment land, the harm arising from the development would be of a greater magnitude than the benefits.

13. Consequently, the proposed development would not accord with the development plan strategy with particular regard to the loss of an employment site and other considerations do not indicate that the appeal should be allowed. The proposal would conflict with LP Policy RLP33 and CS Policy CS4 which relate to the provision of employment.

Other Matters

14. I acknowledge local support for the proposal including from Witham Town Council and the local Member of Parliament as well as the case law² cited by the appellant. I also acknowledge that the Council has not raised other objections with regard to the proposal and concerns regarding the service provided by the Council. However, for the reasons given above this has not altered my overall decision.
15. I acknowledge the cases granted planning permission by the Council including those at Cooper Drive³ and First Avenue⁴. However, since these proposals were in different locations to the appeal site, they do not provide a direct comparison to the appeal scheme. I note the proposal at Moss Road⁵. However, this scheme was recommended for refusal and the reasons for approval by the Council's Planning Committee are not before me. In addition, I note the case at Crittall Road⁶, however, since that scheme fell within the provisions of LP Policy RLP 28, it does not provide a direct comparison with the appeal proposal. In any event, each case must be determined on its individual merits.

Conclusion

16. The appeal scheme would be contrary to the development plan taken as a whole and material considerations do not indicate planning permission should be forthcoming in spite of this. Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

R Sabu

INSPECTOR

² R. (Cala Homes (South) Limited v Secretary of State for Communities and Local Government [2011] J.P.L. 1458, City of Edinburgh Council v Secretary of State for Scotland [1997] 1 W.L.R. 144, Tesco Stores Ltd v Dundee City Council [2012] 2 P. & C.R. 9, Stratford on Avon District Council v Secretary of State for Communities and Local Government [2014] J.P.L. 104, North Wiltshire District Council v Secretary of State for the Environment and others [1992] 3 PLR 113

³ Council ref: 17/00706/FUL

⁴ Council ref: 18/00867/FUL

⁵ Council ref: 17/02105/FUL

⁶ Council ref: 10/01200/FUL