



Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th June 2020

Appeal Ref: APP/W4325/W/20/3244910

Ceramics Unit M-N, Champions Business Park, Arrowe Brook Road, Upton CH49 0AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Ms Susan Flanagan, Bebington Gymnastics Club against Wirral Metropolitan Borough Council.
 - The application Ref APP/19/01722, is dated 15 November 2019.
 - The development proposed is change of use from Use Class B2 (ceramics and photographic studio) to Use Class D2 (children's artistic gymnastics club).
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matter

2. In view of the main issue identified below and following Government advice to avoid non-essential travel in order to delay the spread of coronavirus, and with the agreement of the parties, a site visit was not undertaken.

Main Issue

3. The main issue is whether there are material considerations that would justify the loss of land for employment use¹ contrary to development plan policies.

Reasons

4. The site lies within a Primarily Industrial Area identified in the Wirral Unitary Development Plan (the UDP). Saved policy EM8 of the UDP only allows for an employment use, or certain proposals relating to existing businesses, to be permitted within such areas.
5. Paragraph 120 of the National Planning Policy Framework (the Framework) requires planning decisions to reflect changes in the demand for land and be informed by regular reviews of land availability and of the land allocated for development in plans. The Council published studies in 2017 and 2019², and while I have noted the appellant's view that these are of limited relevance because they were undertaken to support emerging policy, I have not been provided with either document in this appeal. However, neither has evidence

¹ A use falling within Classes B1(business), B2 (general industrial) and B8 (storage or distribution) in Part B of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

² Employment Land and Premises Study (2017) and Employment Land Options Study (2019)

been provided to suggest that local business needs and wider opportunities for development have changed since the UDP was adopted. Consequently, and even allowing for the passage of time since the site was allocated, I have no reason to view the approach taken by policy EM8 to be inappropriate to current local circumstances or out of line with paragraph 80 of the Framework.

6. The Planning Practice Guidance (the PPG) indicates that other factors may influence whether there is a realistic prospect of an allocated site being developed for its intended use. These can include the planning history of the site; whether changes in circumstance make it unlikely that it will be taken up for its intended use; and whether there is evidence of active marketing for that use over a reasonable period, and at a realistic price. The planning history of the site includes an extant permission for employment use and the evidence before me does not identify any change in circumstance that might affect the likelihood of an employment use of the site coming forward.
7. Policy EM8 does not require marketing evidence to be submitted, which is understandable given that it makes no allowance for permitting new non-employment uses, and the appellant has identified that there is no reference to marketing in the Framework. However, the PPG indicates that whether marketing evidence exists can be relevant and such evidence would inform a decision as to whether an exception should be made to EM8's strict control.
8. The PPG does not define a reasonable period for marketing, whereas policy CS17 of the Council's emerging Core Strategy seeks a minimum 2-year period. That plan is at an early stage, so only limited weight can be afforded to its policies, and in this case the Council asked for 12 months' evidence instead. I agree it would not be reasonable to expect the Club to wait for 12 months' marketing to be undertaken. However, and while it is not for the appellant to market the premises, it is reasonable to assume that the owner has done so since they were vacated. Nevertheless, no evidence of marketing over any period has been provided and therefore it has not been sufficiently demonstrated that there is no reasonable prospect of an employment use coming forward for the site. In these circumstances, setting aside the normal development plan requirements has not been adequately justified.
9. The appellant refers to the support for an alternative use that would contribute to meeting an unmet need in paragraph 120 b) of the Framework. However, I have found that it cannot be said that there is no reasonable prospect of an employment use coming forward, which is a pre-requisite for paragraph 120 b) being applied in support of the proposed change of use.
10. The sequential site assessment draws on two searches of a commercial property database, supplemented by drive-by surveys of non-residential areas. While I note the criticism that the search area radiates from Arrowe Brook Road and that some local centres are not mentioned, I also note that the searches had a radius of 5 miles, which the appellant states included those centres, and most of Wirral, but only revealed premises meeting their search parameters outside of existing centres. Accordingly, the sequential assessment justifies an out of centre location, consistent with British Gymnastics' advice that town centre premises are generally unsuitable for gymnasia because of unit size, internal height, affordability and parking provision.
11. The selection of the appeal site over the other premises in the assessment is based on the appellant's search parameters. The minimum floor space

requirement takes account of existing equipment and anticipated growth. Only one other site met this criterion, but it was not available because the building was still under construction. Therefore, the sequential assessment justifies the selection of the appeal site. However, neither this nor the justification for an out of centre location indicate that a decision should be made other than in accordance with the development plan taken as a whole.

12. The Club has a need for suitable and secure premises, with enough room for its future expansion, which would safeguard 7 full-time equivalent jobs, help aspiring young gymnasts develop in order to compete at the highest level and contribute to social cohesion and improved fitness amongst younger people. These are all benefits of the proposed development. However, it is not clear how much of the minimum floor space requirement is for expansion and it has not been demonstrated that similar benefits would not be gained from continued use of the Club's current premises. Accordingly, while the benefits are recognised, it has not been demonstrated that they can only be secured through use of the appeal site and they do not indicate that a decision should be made other than in accordance with the development plan taken as a whole.
13. The suggested condition to make the permission personal to the appellant and limit its duration to a maximum of 10 years would encourage the Club to move to sequentially preferable premises, should they become available, and allow for the site to return to employment use if necessary. In this regard I have also noted the Council's decision³ to allow a similar use for 10 years at another business park. However, the wording of the decision notice confirms that marketing evidence had been provided in that case, and the absence of similar evidence is a critical issue in this appeal. While the suggested condition is a genuine attempt to avoid permanent loss of employment premises, it is not a satisfactory substitute for the marketing evidence that would allow an informed decision as to whether an exception to EM8 should be permitted, either permanently or for 10 years.
14. For these reasons, the proposed use is contrary to policy EM8 and thus harmful to the planning strategy for the area and it has not been sufficiently demonstrated that there is no reasonable prospect of an employment use coming forward for the site. This harm cannot be adequately mitigated by reference to paragraph 120 b) of the Framework or the suggested planning condition and insufficient justification has been provided for setting aside the normal protection of land and premises in or allocated for employment use.

Conclusion

15. While it has been demonstrated that the proposed development requires an out of centre location, for the reasons given, it would result in use of premises within a Primarily Industrial Area for purposes other than employment use with insufficient justification. There are no other material considerations to outweigh this finding or the conflict with the development plan. As such, the proposal is unacceptable, and the appeal should not succeed.

Mark Harbottle

INSPECTOR

³ APP/16/01636