



Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th June 2020

Appeal Ref: APP/W4325/W/20/3245124

Units P25 - P27, 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 Helen Bennett against Wirral Metropolitan Borough Council.
 - The application Ref APP/19/01749, is dated 22 November 2019.
 - The development proposed is change of use from Use Class B2 (general industrial) to Use Class D2 (area for indoor sports and recreations).
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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) applies to plan making and planning decisions and requires the latter to reflect changes in the demand for land and be informed by regular reviews of land availability and of land allocated for development in plans. In this regard I have been directed to the Council's Employment Land and Premises Study (ELPS) 2017 and the Liverpool City Region Strategic Housing & Employment Land Market Assessment (SHELMA) 2018. While reference has also been made to the Council's 2019 Employment Land Options Study, that document has not been provided.

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).

6. The SHELMA indicates that poorer quality older industrial sites will not necessarily meet the need for office and industrial land it has identified. While it has been suggested that the Champions Business Park is such a site, and is generally unattractive to contemporary light industrial businesses, no direct evidence has been provided. Furthermore, while I understand that agents and developers contributing to the ELPS highlighted a need for units with flexible space that can be adjusted to meet the needs of businesses and let on relatively flexible short term leases, it does not follow that the appeal site is unsuited to employment use.
7. The SHELMA states that the quality of existing sites and allocations should be considered by local employment land studies and while the ELPS pre-dates it by a year, and was commissioned to support an emerging plan, its methodology had regard to the Framework and the Planning Practice Guidance (the PPG). For these reasons, its assessment of the employment area that includes Champions Business Park as good quality should be afforded weight.
8. The mid-Wirral area, including Upton, is expected to only contribute a small proportion of the total employment land supply identified in the ELPS. While the loss of the site to employment use would therefore have a limited impact on employment land supply across Wirral, the effect within mid-Wirral would be more significant and should not be disregarded.
9. The evidence before me does not indicate that local business needs and wider opportunities for development have changed significantly since the UDP was adopted. Consequently, and even allowing for the passage of time since the site was allocated, the approach taken by policy EM8 remains appropriate to local circumstances and therefore in line with paragraph 80 of the Framework.
10. 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. No changes in circumstance that might affect the likelihood of an employment use coming forward are identified in the evidence before me.
11. 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 there is no reference to marketing in the Framework. However, the PPG indicates that whether there is marketing evidence can be relevant and such evidence would inform a decision as to whether an exception should be made to EM8's strict control.
12. The PPG does not define what is 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 the Council asked for 12 months' evidence instead. 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 requirements of policy EM8 has not been adequately justified.

13. The sequential site assessment draws on two searches of a commercial property database, supplemented by drive-by surveys of non-residential areas. The searches had a radius of 5 miles, including most parts of Wirral and some parts of adjacent areas, and revealed 4 premises meeting the appellant's search parameters outside of existing centres. A town centre unit was also identified but it is below the appellant's minimum floor space requirement and therefore would not meet current needs and allow for future expansion. The selection of the appeal site over the other premises in the assessment is based on the appellant's search parameters. Only one other site met the appellant's floor space requirements, but it was under offer and therefore unavailable. On that basis, the sequential assessment justifies an out of centre location and the choice of the appeal site, which is close to most current members. However, neither justification indicates that a decision should be made other than in accordance with the development plan taken as a whole.
14. The appellant's case indicates that, following the closure of the youth club building she operated from, there is an unmet need for suitable and secure premises, with room for current equipment storage and for future expansion, where she can operate. Wirral's Leisure Strategy, published by The Wirral Partnership, does not identify a shortage of indoor sport and recreation premises; however, the appellant's business assists with one of the Strategy's priorities, to encourage people to take part in sports, leisure, social and physical activities. Furthermore, it offers low cost activities for local children from less well-off areas, contributing to greater fitness and reduced obesity, and with accredited standards of coaching and management. While the appellant's current arrangements, involving operating from 2 sites, may not be ideal, it has not been demonstrated that the business cannot continue to offer those benefits in that way. Accordingly, the identified benefits do not indicate that a decision should be made other than in accordance with the development plan taken as a whole.
15. The suggested condition to make the permission personal to the appellant and limit its duration to a maximum of 10 years would encourage the appellant to look for and, should they become available, move to sequentially preferable premises and allow for the site to return to employment use if necessary. In this regard I have also noted the Council's decision² to allow a Class D2 use for 10 years at another business park, although I have seen that decision was made with the benefit of marketing evidence, the absence of which 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.
16. For these reasons, the proposed change of 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 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.

² APP/16/01636

Other matters

17. While each proposal must be considered on its merits, my attention has been drawn to 2 examples of housing being permitted within the Primarily Industrial Area. The first of these³ was for 180 houses on vacant land within the allocation; however, the Council has confirmed that this followed a marketing exercise and there was under 5 years' supply of deliverable housing sites at the time. These are significant differences from the appeal proposal. Only limited details of the second case⁴ are before me, such that the evidence is inconclusive. Accordingly, these decisions do not alter or outweigh my findings on the main issue.

Conclusion

18. Although 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/15/01261

⁴ APP/19/00315