



Appeal Decision

Site visit made on 18 August 2020

by **K A Taylor MSC URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 August 2020

Appeal Ref: **APP/W4325/W/20/3248455**

Unit C5, 1 Brook Way, Prenton CH43 3DT

- 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 Luke Porter against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/19/01040, dated 8 July 2019, was refused by notice dated 1 October 2019.
 - The development proposed is originally described on the application form as the change of use from B1 vacant industrial unit to D2 private members gym.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from B1 industrial unit to D2 private members gym at Unit C5, 1 Brook Way, Prenton CH43 3DT in accordance with the terms of the application, Ref APP/19/01040, dated 8 July 2019, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans Location Plan; 2019 032 300 001 Revision 01.
 - 2) Notwithstanding the approved plans, details of a secure covered cycle parking and/or storage facilities shall be submitted to and approved in writing by the local planning authority within one month of the date of this decision. The facilities shall be carried out in accordance with the approved details and shall be retained for use at all times thereafter.

Procedural Issues

2. The change of use has already commenced I am therefore dealing with the appeal retrospectively. As such, I have also removed the word 'vacant' from the description within the decision as this is now inaccurate.
3. During the course of the appeal the Government announced its intention to reform the planning use classes. The parties were given the opportunity to comment on these impending reforms and the implications for the appeal. In reaching my decision I have taken these comments into account.
4. The Council has cited Saved Policy EM9 of the Wirral Unitary Development Plan (Including Minerals and Waste Policies) (UDP), 2000 in their reason for refusal in regard to non-employment uses in industrial areas. However, this policy relates to proposals for retail or housing uses on land allocated for employment

purposes. As such, this policy is not relevant or forms part of the determining issues within this case.

5. The Council has referred to Policy CS17 of the Emerging Core Strategy for Wirral – Proposed Submission Draft (December 2012). Whilst I have had regard to this, given its stage of the plan preparation, this policy has only limited weight.

Main Issue

6. The main issue in this appeal decision is whether there is sufficient justification for the loss of employment land, having regard to national and local planning policy.

Reasons

7. The appeal site is an end industrial unit located within the North Cheshire Trading Estate, which falls within the designated 'Primarily Industrial Area'. The industrial estate comprises of a variety of end uses but predominantly these are within Use Classes¹ B1, B2 and B8.
8. Saved Policy EM8 of the UDP sets out that within primarily industrial areas, uses will only be permitted for uses falling within Classes B1, B2 or B8; and proposals for the reconstruction, extension or expansion of existing businesses.
9. The Wirral Employment Land and Premises Study, 2017 sets out that there is a demand for industrial premises. It also notes that that commercial agents have reported the shortage of smaller industrial premises and this was constraining business growth. However, the study forms part of the emerging development plan as evidence, and as such I can only attach limited weight to it.
10. The National Planning Policy Framework (the Framework) at paragraph 80, requires planning policies and decisions to help create the conditions in which business can invest, expand and adapt. Significant weight is placed on the need to support economic growth and productivity, taking account of both business needs and wider opportunities for development. Paragraph 120 reflects the need of changes in demand for land and be informed by regular reviews of both land allocated and land availability. Therefore, Saved Policy EM8 is broadly consistent with the aims of the Framework.
11. The appellant states that they wish to establish an exclusive premier health and fitness facility. The evidence before me includes a sequential assessment² (SA). This sets out the appellant's parameters for a suitable site, including a vacant unit, preferably already within a D2 use and of 2500-5000 sq. ft. The search of available premises was undertaken within the catchment areas of Wirral including town centres, on the edge and then out of centre sites. Appendix 1, of the SA details properties/units that were considered and then discounted of which seven sites were identified. The appellant considers these came close to meeting the parameters. However, for a variety of reasons, albeit brief, were later discounted including rental cost, size, parking and the amount of remodelling works.

¹ The Town and Country (Use Classes) Order 1987 (as amended)

² Sequential Assessment, Dated July 2019

12. The SA confirms that the appeal building satisfied the appellant's needs as it has an area of 4,159sq. ft. Furthermore, that the site had been vacant for 12 months and was marketed for over six months with agents '*Mason Owen & Legat Owen*'. The SA confirms that there had been very little enquiries for the building over the past year and enquiries had not progressed as the building was found to be unsuitable for industrial uses due to a variety of reasons and restrictions.
13. Despite the Council's Saved UDP Policies not setting out the required length of time for marketing such premises, and whilst I have had regard to the '*Cherkley*' judgement³ the appellant has provided in support of the appeal. Saved Policy EMP8, itself, aims to safeguard employment land from land uses which are not suitable including those that are non-generating employment and located within designated primarily industrial areas.
14. Furthermore, the Planning Practice Guidance (PPG)⁴ advises that when considering whether there is a realistic prospect of an allocated site being developed for its intended use, it may be relevant to take into account, the length of time since the site was allocated, the planning history and whether there is evidence that the site has been actively marketed for its intended use for a reasonable period, and at a realistic price. It is also relevant to consider the extent of evidence that an alternative use would address an unmet need.
15. As such, I have not been provided with any evidence of the details of the marketing activities associated with the most recent period of marketing as set out in the SA. Moreover, it is not clear when this period of marketing commenced or the terms and conditions upon which the unit was offered.
16. Therefore, I am not persuaded that the evidence presented satisfactorily demonstrates that reasonable attempts were made to market the industrial unit for an appropriate and continuous period of time. As such, I have no substantive evidence before me to demonstrate that the unit was no longer required for the purposes of B1 or another appropriate use falling within B2 or B8, and therefore redundant of these uses. Furthermore, there is little evidence to suggest that the industrial unit was offered under reasonable terms and conditions or at an appropriate market value.
17. Consequently, in my judgement it has not been sufficiently demonstrated or justified that the industrial unit is no longer required as a B1 use or other uses which are acceptable under development plan policies for the industrial area. The change of use, and subsequent loss of the B1 unit, has therefore had a harmful effect on the industrial function of the North Cheshire Trading Estate. The development is therefore contrary to UDP Policy EM8, the aims of which are set out above. It is also inconsistent with the economic objective of the Framework, to help build a strong, responsive and competitive economy.
18. Planning law⁵, and as set out by Paragraph 12 of the Framework, dictates that planning applications must be made in accordance with the development plan unless material considerations indicate otherwise.
19. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 will come into force on 1 September 2020, amending the

³ *Cherkley Capaign Ltd, R (on the application of) v Mole Valley DC & Anor* [2014] EWCA Civ 567, 07 May 2014

⁴ Paragraph: 001 Reference ID: 66-001-20190722 Revision date: 22 07 2019

⁵ Section 38(6) of the Planning and Compulsory Purchase Act 2004

Town and Country Planning (Use Classes) Order 1987. These regulations amend and simplify the system of Use Classes and in doing so will create a new broad 'Commercial, business and service' use class (Class E). This will incorporate the existing shops (Class A1), financial and professional services (Class A2), restaurants and cafés (Class A3), offices and other business uses (Class B1), some non-residential institutions e.g. nurseries and health centres (Class D1), and gymnasiums and sports facilities (Class D2) use classes into a single use class.

20. The implications for the appeal being that beyond 31 August 2020 the change of use would no longer constitute an act of development and therefore the industrial use of the unit would be lost without the need for planning permission. This represents a significant fallback for the appellant, and in the event that the appeal was to fail, I am satisfied that there is a greater than theoretical possibility of this fallback option being implemented. Therefore, I give the fallback position considerable weight as a material consideration that outweighs the conflict, I have found with the development plan.

Other Matters

21. The appellant confirms in the SA, that the unit has existing parking allocated and has set out the provision for ten spaces on the plans with an additional communal parking area identified. It is not conclusive if this falls within the red line of the appeal site. However, the Council have confirmed that they are satisfied that it is within the control of the appellant including access to the use of the communal area and is not a reason for refusal.
22. Nevertheless, I observed on my site visit that there were no parking restrictions in the immediate vicinity of the site and there was ample on-road space on both Brook Way and Prenton Way. Therefore, I do not consider that the development leads to an unacceptable intensification of parking in the area, and that it conflicts with highway safety.
23. Policy TR12 of the UDP requires where considered practicable and desirable, new development will be required to provide cycle parking facilities, and in this case, it would be the provision of one cycle bay. I find that it would be reasonable to impose such a condition that would promote sustainable modes of transport and the opportunity for cycling to the development, which is a key aim of the Framework under Paragraph 102. As such a suitable worded condition to agree the cycle parking facility/storage could be secured.
24. I have also had regard to the appeal decisions⁶ which have been brought to my attention, although they may have some comparisons with the scheme before me. I have not been provided with full details about the developments, including supporting information and marketing. Therefore, I am unable to assess their relevance in respect of the current appeal. I also note that both appeals were dismissed. In any event, the appeal needs to be determined on its individual merits on the basis of the evidence before me.

Conditions

25. I have had regard to the list of suggested conditions provided by the Council, both parties have seen these, and I have no evidence to suggest that they disagree. I have considered these in the context of the Framework and PPG

⁶ APP/W4325/W/20/3244910, APP/W4325/W/20/3245124

which advises that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

26. As the development has commenced, it is not necessary for the standard time limit. The condition to limit the number of clients to eight on the premises, is not reasonable and would not be enforceable, as such it would not meet the tests. I note the suggested condition from the appellant to make the development acceptable, for restriction of the use to a ten-year period, however this would place unjustifiable and disproportionate financial burden and would not be reasonable⁷ in this case.
27. It is necessary in the interests of precision, to define the plans with which the scheme should accord. A re-worded condition relating to the provision of a secure cycle parking facility for the appellant to provide details to ensure compliance with UDP Saved Policy TR12 and the promoting of sustainable transport modes in line with the Framework, Chapter 9.

Conclusion

28. The proposal would lead to the loss of employment land without justification and would harm the function of the designated primarily industrial area. Therefore, it conflicts with development plan policy, that seeks to protect industrial land and non-generating employment uses. However, the appellant has a strong fallback position that is a material consideration which indicates that the appeal ought to be allowed contrary to the development plan.
29. Accordingly, subject to conditions, the appeal is allowed.

K A Taylor

INSPECTOR

⁷ PPG Paragraph: 005 Reference ID: 21a-005-20190723 Revision date: 23 07 2019