



Appeal Decision

Site visit made on 12 November 2020

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2020

Appeal Ref: APP/P4605/W/20/3255432

235-238 Great Lister Street, Birmingham B7 4BS

- 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 Kaberay Mohammed against the decision of Birmingham City Council.
 - The application Ref 2019/00726/PA, dated 26 January 2019, was refused by notice dated 23 January 2020.
 - The development proposed is Erection of first floor extension and change of use from a warehouse (Use Class B8) to 33-bedroom student accommodation (Sui Generis) together with creation of a rooftop courtyard, bricking up windows and alterations to the main entrance.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The appeal form refers to the Appellant as Mr Lalu Ali. However, the application form identifies the applicant simply as Mohammed. Subsequent clarification has been provided that the applicant, Mr Kaberay Mohammed, is making this appeal. This is reflected in the heading.
3. Part E of the appeal form states that the description of development has not changed, even though an alternative description to that set out in the application form has been entered. In the interests of accuracy and clarity the description of development in the heading has been taken from the Decision Notice.

Main Issues

2. The main issues are:
 - i. Whether or not there is a demonstrated need for the proposed student accommodation, with regards Policy TP33 of the Birmingham Development Plan (the DP).
 - ii. Whether or not it has been demonstrated that the site is no longer needed for employment use.
 - iii. Whether or not the proposed development would provide adequate living conditions for future occupiers with particular regards private amenity space and communal facilities and noise, disturbance and odour from adjoining commercial premises.

Reasons

Student Accommodation

3. Policy TP33 of the DP requires, amongst other matters, that the need for purpose-built student accommodation is demonstrated.
4. The appellant has only provided very general commentary from sources such as "Cushman & Wakefield's UK Student Accommodation Report 2017-18" on the countrywide situation of the provision of, and demand for, student accommodation and very basic figures regarding the situation in Birmingham.
5. On the basis of the evidence before me, I find that that the need for the purpose-built student accommodation proposed by the appeal scheme has not been demonstrated. As such, I find that the appeal scheme is contrary to Policy TP33 of the DP.

Employment Use

6. Policy TP20 of the DP seeks to protect employment land and premises except where the site is considered a non-conforming use or the site is no longer attractive for employment development. In the latter instance the policy requires that the site have been actively marketed "normally for a minimum of two years, at a price which accords with other property of a similar type in the area."
7. The appellant has not provided any substantive evidence that the appeal property is a non-conforming use or that it is no longer attractive for employment development. While the appellant states that the property has been marketed for the last two years, no substantive evidence has been submitted to support this assertion.
8. At the site visit I saw that the first floor appeared to be largely used for storage in connection with the commercial enterprise below. As such, the number of jobs directly attributable to the current use of this floor space is likely to be low. Nonetheless, the provisions of Policy TP20 still apply in respect of the appeal site.
9. The Appellant details that the appeal scheme will create a number of jobs, this is a material consideration that weights in favour of the appeal scheme but does not outweigh the conflict with Policy TPP20 of the DP.
10. For the reasons detailed above I find that it has not been demonstrated that the appeal property is no longer needed for employment purposes and as such the appeal scheme is contrary to Policy TP20 of the LP.

Living Conditions

11. Policies PG3 and TP33 of the Birmingham Development Plan 2017, saved Policies 8.23-8.25 of the Birmingham Unitary Development Plan 2005 seek, amongst other matters, to protect the living conditions of the occupiers of adjacent properties and new developments.
12. The submitted plans show that the appeal scheme would provide 33 bedrooms with 4 shared kitchens. The kitchens vary in size, but none are shown as being able to accommodate other functions, such a common room or lounge.

13. The roof terrace, detailed in the officer's report as being over 100m², provides the only outside amenity space. The appeal scheme does not provide the level of outdoor amenity space required by The Specific Needs Residential Uses Supplementary Planning Guidance (the SPG), identified in the officer's report as being 528m². This is not specifically disputed by the appellant. Furthermore, I note that many of the bedroom windows facing onto the private amenity space would also look into the windows of other bedrooms within the scheme, some at a very short distance.
14. At the site visit, carried out in the afternoon of a typical weekday, I noted the appeal site is located within a mixed-use area, including some properties in commercial and industrial type uses. The Council has raised concern that the operation of nearby business may impact upon the living conditions of future occupiers of the appeal scheme. I have not been provided with any substantive evidence to the contrary, such as a noise survey or noise migration scheme.
15. For the reasons detailed above the appeal scheme would not provide satisfactory living conditions for future occupiers and is therefore contrary to the provisions of Policies PG3 and TP33 of the DP, saved Policies 8.23-8.25 of the Birmingham Unitary Development Plan 2005 and the SPG.

Conclusion

16. For the reasons given above I conclude that the appeal should be dismissed.

Mark Brooker

INSPECTOR