



Appeal Decision

Site visit made on 20 January 2021

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2021

Appeal Ref: APP/P4605/W/20/3261442

19A Cato Street, Nechells, Birmingham B7 4TS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms Aneesah Din (Our Roots CIC) against the decision of Birmingham City Council.
 - The application Ref 2020/05946/PA, stated as being accepted by the Council on 4 August 2020, was refused by notice dated 29 September 2020.
 - The application sought planning permission for change of use from light industrial and offices (Use Class B1) to vocational training centre and college (Use Class D1), erection of railings/wall and access gates to the rear without complying with conditions attached to planning permission Ref 2014/05047/PA, dated 17 September 2014.
 - The conditions in dispute are Nos 1 and 4 which state that:
Condition 1 - The uses hereby approved shall only take place between the hours of 0800-1800 Monday to Fridays.
Condition 4 - Prevents the use from changing within the use class. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or reenacting that Order with or without modification), the premises/building(s)/site(s) shall be used for vocational training centre and college and for no other purpose including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, (or in any provision equivalent to that Class in any statutory instrument amending, revoking and/or re-enacting that Order with or without modification).
 - The reasons given for the conditions are:
Condition 1 - In order to define the permission and safeguard the amenities of occupiers of premises/dwellings in the vicinity in accordance with Paragraphs 3.8 and 3.10 of the Birmingham UDP 2005 and the National Planning Policy Framework.
Condition 4 - In order to define the permission in accordance with Paragraphs 3.8 and 3.10 of the Birmingham UDP 2005 and the National Planning Policy Framework.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from light industrial and offices (Use Class B1) to vocational training centre and college (Use Class D1), erection of railings/wall and access gates to the rear at 19A Cato Street, Nechells, Birmingham B7 4TS in accordance with application Ref 2020/05946/PA, stated as being accepted by the Council on 4 August 2020, without compliance with condition numbers 1 and 4 previously imposed on planning permission Ref 2014/05047/PA dated 17 September 2014 and subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The planning application form is dated incorrectly. As such, I have used the application date as stated on the Council officer's report and on the appeal form in the header and my decision above. The application form indicates that the development subject of the appeal has already started and I have assessed the appeal on this basis.
3. The description of the development and the disputed condition number 4 refer to Use Class D1. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020. These amend the Town and Country Planning (Use Classes) Order 1987 so as to revoke Class D1. However, the Regulations provide that where a planning application was submitted prior to the commencement of the material period, the application must be determined by reference to those use classes which were in effect when the application was submitted. The planning application was submitted before 1 September 2020 and so I have determined the appeal with reference to the now revoked Use Class D1.

Background and Main Issues

4. Planning permission granted in 2014 allows the use of the appeal property as a vocational training centre and college and permits the erection of railings and gates. The appellant has sought, in effect, to vary condition 1 of this permission to allow the approved uses to take place between 0800 and 2000 on Mondays to Fridays and between 1000 to 1800 on Saturdays. The Council has raised no objections to the proposed hours of use and I have no reason to arrive at a different view on this matter.
5. Also, the appellant has sought to remove condition 4, which places restrictions on the use of the site. The appeal submissions refer to a proposed use as a centre providing psychological therapies and education sessions. However, the removal of the condition would allow any Class D1 use and I have assessed the proposal on this basis.
6. The original decision notice states condition 4 is needed to define the permission. However, in light of the Council's refusal reasons, the main issues are whether condition 4 is necessary having regard to (i) the effect on employment land supply, (ii) the effect on the character of the area, (iii) the effect on the vitality and viability of town and district centres, and (iv) highway and pedestrian safety.

Reasons

Employment land

7. The appeal property is in a Core Employment Area (CEA) as identified in the Birmingham Development Plan 2017 (DP) and confirmed as such in the Bordesley Park Area Action Plan 2020 (AP). DP policy TP19 states that CEA's will be retained in employment use as defined in the policy and that other uses will only exceptionally be supported. The Council's Loss of Industrial Land to Alternative Uses Supplementary Planning Document 2006 (SPD) also seeks the retention of land in CEA's in industrial use.
8. The permitted training centre use does not fall in the categories of employment as set out in DP policy TP19. The Council suggest that vocational education is

linked to employment and job creation and so supports the function of the wider CEA. Even if I was to accept this argument, uses that support business and employment are not defined as permissible under DP policy TP19. As such, planning permission already allows non-employment use of the site.

9. The Council indicate that the training centre and college was allowed as an exception to policy. However, the basis on which the original planning permission was granted fails to address the issue that the site no longer provides an employment or industrial use.
10. For the above reasons, I conclude condition 4 serves no purpose in terms of the supply of employment land. As such, it is not needed to ensure the development accords with the aims of DP policy TP19, the AP and the SPD.

Character

11. Business activities and the appearance of the units near to the site give the area a distinct commercial character. As a sizeable building with hard surfaced parking area, the appeal property has a commercial appearance in keeping with its surroundings. Also, as a single building, the training centre has little effect on the predominant commercial or industrial sense of the area despite its unusual use. I find no reason why any other Class D1 use would erode the commercial nature of the locality any more so than the existing college.
12. As such, I conclude condition 4 is not needed to avoid harm to the character of the area. Consequently, and in this regard, it is not necessary to ensure the development complies with DP policy PG3.

Vitality and viability of centres

13. DP policies TP21 and TP24 identify centres which are the preferred locations for a range of services for vitality and viability reasons. The DP policies accord with the National Planning Policy Framework (the Framework) which requires a sequential test to be applied for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date development plan. No sequential test information has been provided with this appeal and so in this regard, there is a degree of non-compliance with the Framework and DP policies.
14. However, the permitted college attracts visitors and is outside of any defined centre boundary and so fails to meet the vitality aims of the referred to DP policies, the AP and the Council's Shopping and Local Centres SPD 2012. There is no substantive evidence before me that shows any other Class D1 use would be more harmful to the vitality and viability of any centre compared to the education use. This is a factor of sufficient strength to outweigh any non-compliance with DP policy and the Framework in terms of the sequential test. As such, I conclude that the disputed condition is not necessary in order to protect or enhance the vitality and viability of town and district centres.

Highway safety

15. The site is within a short walking distance from a railway station and so visitors are not wholly dependent on car travel. For those that arrive by vehicle, there are no parking restrictions on either side of the road. Even when taking into account accesses to other premises, there is scope for visitors to park along significant lengths of Cato Street.

16. No information has been provided on the number of trips that are generated by the permitted training centre and how this compares to any other Class D1 use. Also, it is unclear how much parking could be provided on the site and whether this would comply with the Council's Parking Guidelines Supplementary Planning Document 2012 (Parking SPD). In the absence of trip and parking information, I am unconvinced that a D1 use apart from the college would increase roadside parking. Moreover, the evidence fails to explain how any road parking associated with development would prejudice highway safety or cause a nuisance in terms of obstruction to accesses.
17. Cato Road has pavements on both sides and is generally straight with good visibility along it. No specific defects in the design of the highway that would pose a risk to safety have been brought to my attention. The site is close to commercial premises and so it is likely that visitors would meet lorries and large vehicles on the road. However, there is no evidence to suggest the nature or amount of traffic poses any particular risk to highway or pedestrian safety in the area.
18. The original planning permission includes conditions requiring details of on-site parking arrangements and a parking management strategy as well as a travel plan. These were imposed for highway safety reasons and similar conditions could be reinstated if the appeal is allowed. Based on the evidence provided, I am satisfied that such conditions would ensure that any Class D1 use will cause no significant harm to highway or pedestrian safety. As such, I conclude that condition 4 is not required for highway safety reasons and so is unnecessary to ensure compliance with DP policies PG3 and TP44 and the Parking SPD.

Other Matter

19. The Council raise a concern that the development without condition 4 would set a precedent. Any future application would need to be considered on its own merits. In any case, there is little difference in this regard between the site being used as a training centre or as any other Class D1 use. Therefore, this factor fails to affect my overall conclusion.

Conditions

20. The Planning Practice Guidance states that decision notices for the grant of planning permission under Section 73 should repeat relevant conditions from the original planning permission unless they have already been discharged. The Council has provided a list of suggested conditions that are based upon those on the original permission although slightly amended.
21. I have no information about their status and so I have reinstated the undisputed conditions, although revised in line with the Council's suggestions and to reflect that development has started. In the event that some conditions have in fact been discharged, that is a matter which can be addressed by the parties.
22. Condition 1 is required to safeguard nearby properties from noise and disturbance. Condition 2 is needed to ensure a high standard of design and condition 3 is imposed for clarity purposes and to ensure development is carried out in accordance with the approved plans. Conditions 4, 5 and 6 are imposed in the interests of highway and pedestrian safety.

Conclusion

23. There is no Council objection to the proposed amendments to condition 1 and I find that condition 4 attached to the original planning permission is unnecessary. As such, I conclude that the appeal should be allowed.

Jonathan Edwards

INSPECTOR

Schedule of Planning Conditions

- 1) The uses hereby approved shall only take place between the hours of 0800 to 2000 Monday to Friday and 1000 to 1800 on Saturdays.
- 2) Details of the proposed boundary treatment of the site shall be submitted to and approved in writing by the local planning authority prior to its installation. These details shall include plans showing the locations of existing, retained and proposed new boundary treatments and scaled drawings indicating the positions, height, design, materials, type and colour of the proposed new boundary treatments. The proposed boundary treatment shall be provided in accordance with the approved details.
- 3) The development hereby approved shall be implemented in accordance with the details submitted with the application reference number 2014/05047/PA and shown on drawing numbers 121 revision A, 001, 002 revision A, 020, 010, 120 and 110.
- 4) Within 3 months of the date of this decision, a car park layout plan shall be submitted to the local planning authority for approval in writing. The car park shall be laid out in accordance with the approved details within 3 months of details being approved and shall thereafter be retained.
- 5) Within 3 months of the date of this decision a parking management strategy (including management of disabled/parental child spaces) shall be submitted to the local planning authority for approval in writing. Once approved, the car park shall be operated in accordance with the approved management strategy.
- 6) Within 3 months of the date of this decision a detailed travel plan relating to the development hereby approved shall be submitted to the local planning authority for approval in writing. The travel plan shall include clear objectives to influence and encourage reduced dependency on the private car with a package of measures to meet this objective. Once approved, the development shall be undertaken and operated in accordance with the approved travel plan.