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## Appeal Decision

Site visit made on 9 March 2021

**by B Davies MSc FGS CGeol**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 April 2021**

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**Appeal Ref: APP/P4605/W/20/3263888**

**87 Bracebridge Street, Aston, Birmingham, B6 4PJ**

- 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 Property Knights Ltd against the decision of Birmingham City Council.
  - The application Ref 2020/04753/PA, dated 24 June 2020, was refused by notice dated 21 August 2020
  - The development proposed is change of use to boarding house for short-term lets only with 6 rooms (use class C1).
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### Decision

1. The appeal is dismissed.

### Main issues

2. The main issues are:
  - whether or not the location is appropriate for use class C1 with regard to local policies for development on employment land,
  - whether or not the location is appropriate for use class C1 with regard to local and national sequential tests for such development,
  - the effect of the development on the living conditions of future occupiers of the development, with particular regard to noise; and,
  - whether or not the proposal would lead to restrictions on surrounding industrial and commercial premises.

### Reasons

3. The appeal site is located within an industrial estate close to Birmingham City Centre. It is a flat roofed, 2-storey, brick structure of modest size with large windows on 3 sides. The building has been split into several small rooms, with communal space in the basement. The rear of the building is attached to a long warehouse, which opens onto Bracebridge Street. The site includes a loading bay on the western side and a small yard to the south east, which provides access to the building.
4. The site itself fronts the cul de sac of Aston Brook Street, on the opposite side of which is the rear of 'Visican', a large packaging supply workshop. A 'Highway Traffic Management' depot is to the west, which I observed to be busy during my visit to the site. The large industrial premises of 'Radshape Sheet Metal

Ltd', an automotive component manufacturer, runs adjacent to the southern boundary.

*Development on employment land*

5. The appeal site is located in the Phillips Street 'Core Employment Area' and the Aston, Newtown and Lozells Industrial Regeneration Area. Policy TP19 of the Birmingham Development Plan 2031 (January 2017) (BDP) states that Core Employment Areas must be retained to meet the targets for land requirements in Policy TP17. Policy CEA of the Area Action Plan (July 2012) states that Core Employment Areas must be retained in employment use and will be the focus of economic regeneration activities.
6. A boarding house does not fall into one of the employment use categories listed in Policy TP19 and in line with this policy it is therefore necessary to assess whether or not an exceptional justification exists. 'Exceptional justification' is not specifically defined in policy and the examples provided in the policy documents before me comprise a closed list.
7. I consider that exceptional justification could potentially apply to development that would support a policy compliant employment use, such as the ancillary canteen that was previously on the site.
8. The appellant suggests that there is a demand for short-term residential accommodation to support local industry, in particular for truck drivers following long shifts, and to maximise shift patterns. Three letters have been provided from businesses supporting the need for temporary overnight residential accommodation in a general sense, albeit only one of the businesses appears local to the site. While I have no reason to doubt that the accommodation could be used, I do not consider that substantial evidence of a pressing need for the proposal has been provided.
9. Conditions have been suggested by the appellant that would tie the boarding house to the nearby industrial sites that are within his control. I cannot be sure that it would always be the case that all sites would be in the control of the appellant and, furthermore, I do not consider that it would be possible to enforce the origin of occupants of the proposed boarding house. The appellant's suggested conditions do therefore not justify allowing development which would conflict with the development plan policies.
10. I note that the manager of the site would initially be someone from a local industrial unit. This may not be a situation that endures forever and, in any event, the economic benefit from one job would be small.
11. While inclusion in a Core Employment Area strongly indicates that a site should be capable of contributing to the portfolio of employment land, I am mindful of the recognition in Policy TP20 that land should not be sterilised where there is no realistic potential for continued employment use. I consider that this factor could potentially constitute exceptional justification.
12. The appellant has marketed the building as offices without success since June 2019. However, it does not appear to have been advertised for the employment uses listed in Policy TP19 and I have therefore not been provided with objective evidence that the site is not a viable proposition for the specified employment uses.

13. I acknowledge that the existing internal arrangement of the host building is 'tight' and that the specification may not be of a sufficiently high standard for offices. However, no reasonable evidence has been provided to demonstrate that these constraints could not be overcome, although I accept that the floorspace is likely to be insufficient for large scale storage use. I also concur that the building is of smaller scale than those surrounding, but no evidence is provided to demonstrate why this would preclude the site from being used for the uses in Policy TP19.
14. Chapter 11 of the National Planning Policy Framework (2019) (Framework) has been drawn to my attention and I have had regard to the support it provides for development of under-utilised buildings. Paragraph 120 applies where there is no reasonable prospect of an application coming forward for the use allocated in a plan, which for the reasons above I do not find has not been suitably demonstrated in this case.
15. I note the appellant's argument that exceptional circumstances exist because of the COVID 19 pandemic, a general reduction in manufacturing activity nationally and an economic crisis. I consider that provision is made for a changing economic situation in local and national policies, and that these factors are not additional material considerations that would outweigh the conflict with the development plan identified above. I consider that it is reasonable to take the view, given a recent relaxation of lockdown measures and a national vaccination programme, that improved economic activity is likely to return in the near future.
16. The appeal site is in a Core Employment Area protected for specific uses, none of which the proposal meets. In this case, the evidence is such that there is no exceptional justification for allowing the development, taking into account both need and viability matters. I therefore conclude that the proposal conflicts with Policies TP17, TP19, TP20 and TP28 of the BDP, which protect employment land.

#### *Sequential test*

17. Policy TP21 states that town centre uses outside the boundaries of the network centres will not be permitted unless they satisfy the sequential test requirement in paragraph 86 of the Framework.
18. A hotel would comprise a town centre use. I acknowledge that a boarding house is not identical to a hotel, but for the purposes of Policy TP21, the objective of which is to secure the vitality of the town centre, they fulfil the same purpose. The proposal may only be for 6 rooms, but neither local nor national policies introduce exceptions based on size or the quantum of development.
19. Paragraph 86 of the Framework states that a sequential test should be applied to applications for main town centre uses outside an existing centre, which has not been provided by the appellant. Paragraph 90 of the Framework recommends that the application should be refused on this basis.
20. For this reason, the proposal would fail to accord with Policy TP21 of the BDP and the town centre vitality and viability requirements of the Framework.

*Living conditions of future occupants*

21. I have been provided with an extract of Birmingham City Council's 'PCGN' Guidance Note on Noise and Vibration (March 2020). This states that sealing of the building envelope should only be considered where this is necessary for air quality reasons, which does not apply to the appeal site.
22. The appellant's noise assessment therefore concludes that mechanical ventilation is required to allow occupants to close windows when noise is disruptive. The PCGN states that a strategy relying on the occupier having to close the window during noisy activities, other than for noise without character, would not be acceptable.
23. The noise associated with the surrounding industrial units, including the adjacent loading bay and Radshape Sheet Metal Ltd, would be of a discrete, tonal and intrusive character. I consider that it would be necessary to close windows frequently given the proximity of industrial activities. This could also occur at night, given that Radshape Sheet Metal Ltd has indicated that they will be increasing their shifts. For these reasons, I conclude that the proposal would lead to unacceptable living conditions.
24. I acknowledge that bedrooms have been placed away from the side of the building that immediately adjoins the warehouse to the rear, and this is a mitigation strategy listed in the PCGN. However, I do not consider this sufficient to overcome the harm to living conditions identified above.
25. I have noted that the appellant owns a number of the surrounding businesses, and the suggestion that this link with the occupants would prevent complaints. I consider that occupants of a residential building should have a reasonable expectation of peace and quiet, regardless of where they work.
26. I conclude that a requirement to regularly close windows to mitigate against intrusive noise, including at night, would result in poor living conditions for future occupants. For this reason, the proposal conflicts with Policies PG3, TP27 and TP37 of the BDP, which require high design quality.

*Restrictions on surrounding industrial use*

27. The proposal would locate a noise sensitive receptor adjacent to industrial premises. It is clear from the 'hierarchy of measures' in the PCGN that there are few mitigation measures available to reduce the impact of noise on residents in this situation. I therefore consider it entirely possible that restrictions would need to be placed on nearby industry, including in relation to working hours and noise levels. This would constrain the ability of industry to expand and develop in the future.
28. Radshape Sheet Metal Ltd has voiced strong concerns over any potential future constraints and their ability to continue at the site in the event that it is used for residential purposes. I do not find it relevant that the Council is the landowner. I find that the comments made by Radshape Sheet Metal Ltd are entirely credible and I have taken them into account.
29. The appellant draws my attention to his ownership of many of the nearby buildings. However, I do not consider that this factor leads to these buildings being exempt from additional controls to protect the living standards of residents in the future.

30. I conclude that it is likely that the proposal could cause restrictions to be placed on surrounding industrial premises, with the consequence that employment in the area would not be maximised. This conflicts with Policies TP17, TP19, TP20 and TP28 of the BDP, which protect employment land.

### **Conclusion**

31. There would be benefits from bringing a potentially underused building back into use and in provision of short-term residential accommodation. However, it has not been adequately demonstrated that a policy compliant employment use could not be found for the building, nor that there is exceptional justification for a boarding house, or that a sequentially preferable location for the enterprise would not be available. In addition, there would be potential harm to occupants from poor living conditions, and the placement of residential accommodation in proximity to industrial premises has the potential to restrict employment use in the future. I conclude that these are matters of overriding concern and outweigh the benefits of the scheme.
32. The proposal does therefore not accord with the local development plan when read as a whole and the appeal is dismissed.

*B Davies*

INSPECTOR