



Appeal Decision

Site visit made on 1 July 2022

by Richard Clegg BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2022

Appeal Ref: APP/Z4310/W/21/3287753

65 Stephenson Way, Wavertree Technology Park, Wavertree, Liverpool, L13 3HN

- 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 Sisu Bevan House LLP against the decision of Liverpool City Council.
 - The application Ref 21F/0568, dated 25 February 2021, was refused by notice dated 30 September 2021.
 - The development proposed is the change of use from offices (use class E) to a school (use class F1).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The reasons for refusal refer to Policy E1 of the Unitary Development Plan and Policy EC2 of the draft Local Plan. In January 2022, subsequent to the refusal of planning permission, the Liverpool Local Plan 2013-2033 was adopted. I must consider the appeal having regard to current planning policies, and it is the policies of the adopted Local Plan which are relevant in this regard. I note that both the Appellant and the Local Planning Authority (LPA) have taken the adopted Local Plan (the Local Plan) into account in their representations.

Main Issues

3. I consider that the main issues in this appeal are:
 - (i) The effect of the proposed development on the supply of employment land in Liverpool.
 - (ii) The effect of other considerations on the overall planning balance.

Reasons

The supply of employment land

4. No 65 Stephenson Way is a modern four storey office building which is currently vacant. The site is located together with other offices and commercial and business premises within Wavertree Technology Park, a campus-style setting outside the city centre. It is included as part of a primarily industrial area on the Policies Map. Policy EC1 of the Local Plan explains that Liverpool has an overall requirement for 145ha of land for industrial and business uses over the Plan period, which is to be met in part

from the designated primarily industrial areas. Under Policy EC2, these areas are primarily to be protected for industrial and business uses. However, the policy does not exclude other forms of development, provided that they satisfy the relevant tests set out at parts 3a-3d.

5. Parts 3a and 3d of Policy EC2 which are respectively concerned with small-scale ancillary uses and parking for airport customers are not relevant in this case. Part 3b does apply, and requires in the first instance that there should be no reasonable prospect of the site being used for purposes within use classes E(g), B2 and B8. The building has been marketed since at least 2018¹, and has been offered for sole occupancy and various permutations of multiple occupancy. Details have been published on online marketing platforms, and brochures sent to agents and in response to enquiries. Enquiries received from May 2018 to January 2021 are summarised in the marketing report. Whilst interest was expressed by a number of organisations, including some viewings, the report indicates that only the interest from Turning Point Academy to use the building as a school (the appeal proposal) has progressed as far as the discussion of terms.
6. The main parties disagree about the adequacy of the marketing exercise. The brochure clearly refers to office accommodation, and this use is mentioned in posts on social media and in the descriptions of the property available on those platforms listed in the marketing report. However, part 3b of Policy EC2 specifically requires that the site be appropriately marketed for B2 and B8 uses in addition to use class E(g). The Appellant has explained that all types of commercial property are advertised on the same marketing sites, and consequently the information about the availability of the building was not restricted to those potential tenants seeking office accommodation. Unsurprisingly, most enquiries concerned office accommodation, but enquiries were also made by a dentist, an eye clinic, a film production company seeking warehouse space in addition to offices, and by Turning Point Academy for the appeal proposal of a school.
7. There is, however, a clear difference between marketing which does not discount other uses and that which draws attention to the possibility of uses which are supported in a primarily industrial area. The Appellant argues that it would be unreasonable to actively market the site for B2 or B8 use, as that would not be consistent with its current use. It is also suggested that such uses would be inappropriate due to the proximity of housing, the adequacy of the highway to accommodate heavy goods vehicles, and the likelihood that industrial uses would necessitate redevelopment of the site calling into question viability. The principle of B2 and B8 uses within primarily industrial areas, one of which includes the appeal site, is, however, established by part 2 of Policy EC2. Whilst the appeal site has been developed as offices, the floor plans included in the marketing report demonstrate that there are various ways in which the building could be sub-divided. There is a wide range of organisations involved in activities which fall within use classes B2 and B8, and it should not be assumed that none would be able to make use of No 65 Stephenson Way. Although the existing use of the building is as an office, that need not prevent marketing drawing attention to the possibility of other uses promoted in

¹ The Appellant's marketing report (appendix 3 to the statement of case) says that it includes evidence of marketing since 2018 at paragraph 1.5, but at paragraph 2.2 the report says that marketing has taken place since instruction to commercial agents in 2017.

primarily industrial areas, subject to the caveat that planning permission would be required.

8. The Local Plan does not prevent flexibility in the use of employment land, but the report of the Local Plan Inspector made clear that the flexibility to allow for non-industrial uses was subject to reasonable caveats, and that the 24 months marketing exercise was justified to ensure that suitable employment land was not lost too rashly². I find that the appeal site has not been appropriately marketed for industrial/ business uses in use classes B2 and B8, which (together with marketing for class E(g)) is a specific requirement of Policy EC2. Given that failing, it does not follow that there is no reasonable prospect of the site being used for industrial/ business purposes and contributing to the employment land supply.
9. The Local Planning Authority (LPA) and the Appellant have provided differing assessments of the supply of employment land in Liverpool. Reference is made by the LPA to the Employment Land Study (ELS) of 2017, which formed part of the evidence base for the Local Plan, and which concluded that the positive balance of employment land was relatively slight. The appeal site falls within the Edge Lane Corridor Central sub-area: here the report acknowledged a number of vacancies, but considered that these were at a healthy level to provide for market churn. The subsequent update report³ concluded that it would be appropriate to plan for a higher level of employment land than the 122ha referred to in the ELS. Against a requirement for 144.5ha⁴ of employment land, table 4 in the explanation to Policy EC1 identifies an undersupply of 19ha.
10. On behalf of the Appellant, an agent responsible for marketing of the building argues that the city centre office market is distinct from the 'out of town' market⁵. That view is shared by the LPA, but they suggest that there is synergy between the two markets: that just as some occupiers may wish to relocate to the city centre, others may seek the reverse with a campus-style location. The National Planning Policy Framework (NPPF) refers to the importance of up-to-date evidence (para 31), and Worthington Owen and CBRE, on behalf of the Appellant, have provided details of the availability of office floorspace since 2015⁶: outside the city centre 76,643m² was available in 2015, increasing to 82,049m² earlier this year. In Wavertree (Liverpool Innovation Park and Wavertree Technology Park) floorspace increased from 12,133m² to 15,453m² over the same period, and it is expected that this figure will increase further following the decision of MerseyCare NHS Trust to close its office at Liverpool Innovation Park this year. In contrast annual take-up of office space within Wavertree between 2017 and 2020 has varied between 513m² and 2,778m²⁷. The Appellant argues that there is a massive over-supply of office space within the immediate area of the appeal site and that these availability rates are not healthy.

² Paragraph 131 of the Inspector's report, appendix 7 to the Appellant's statement.

³ Employment Land Evidence Base, G L Hearn for Liverpool City Council, December 2017.

⁴ The requirement of 145ha in Policy EC1 is a rounded figure. Table 4, which gives an employment land supply balance, uses the figure of 144.5ha.

⁵ Letter dated 17 February 2021 from Worthington Owen, appendix 5 to the Appellant's statement.

⁶ The figures are given in square feet in appendix 5 to the Appellant's statement and appendix 1 to the Appellant's Final comments.

⁷ The Appellant gives take-up rates for office space in paragraph 5.57. of its statement of case and on page 2 of appendix 5 to the statement. The two sets of figures are not consistent: I have referred to those in appendix 5 as the statement of case indicates that this is the source document.

11. Whilst there are no other assessments on that basis before me, the Appellant's assessment covers a relatively short period of time. Moreover it is concerned with office accommodation, which is just one component of employment land supply. Consequently, I do not consider that the evidence before me demonstrates that the use of the site as a school would not adversely affect the City's overall capacity to meet future demand for industrial/ business purposes, as required by part 3(b)(i) of Policy EC2.
12. Notwithstanding the evidence of available office floorspace, that is not sufficient to justify the release of the appeal site in a primarily industrial area for non-industrial/ business purposes. The marketing test is a key safeguard to ensure that an adequate supply of employment land is maintained in the city. That test has not been fully addressed, and the assessment of available office floorspace is similarly constrained. In these circumstances, I conclude that the proposed development would detract from the supply of employment land in Liverpool.

Other considerations

13. I turn now to other considerations, including those tests in part 3(b)(ii) of Policy EC2 which are to be used in assessing whether a proposal for non-industrial/ business purposes in a primarily industrial area would bring wider economic, social, regeneration benefits.

Employment

14. The school would initially employ between 35 and 40 full-time staff, with the potential to expand this number to 60. There is no information before me of the number of people working in the building prior to its closure as NHS offices in 2018. However as there is currently no workforce, the employment provided by the school would be an important benefit.

The need for the appeal proposal

15. At the date of the application, Turning Point Academy, which would run the school at the appeal site, was located in Bootle⁸. The School caters for children with special educational needs (SEN), with places commissioned by local education authorities (LEAs). In 2021 the School had 42 pupils on roll. A note on SEN school capacity prepared on behalf of the Appellant points out that the number of places commissioned by LEAs is growing, and that in July 2021 Turning Point had a waiting list of 63 pupils⁹. Moving to the Appeal site would enable the Academy to expand to accommodate 130 pupils, including additional provision for years 3 and 4 pupils and out-of-school care: there would also be the potential to establish a sixth form. Reference is made to an OFSTED report from 2019 which comments favourably on the School and states that it has got off to an excellent start (having opened earlier that year). The School admits pupils from across the Liverpool City Region, and the appeal site is well located to serve that area.
16. Information is presented on the capacity of SEN schools within three miles of the appeal site¹⁰. Although, in 2021, there was known spare capacity at six of

⁸ Planning statement, page 1.

⁹ SEN School Capacity in the Surrounding Area, July 2021, Appendix 2 to the Appellant's statement.

¹⁰ Table 1 in Appendix 2 to the Appellant's statement. Capacity data was not available for two of the ten school included in the table.

the ten schools, this was limited to just six places. The Appellant's note points out that the capacity available may be for pupils whose needs would not be best met by attendance at Turning Point, which specifically addresses pupils with neuro-developmental conditions. The corollary is that the additional provision which the appeal site offers for Turning Point would not necessarily be of benefit in meeting a need for SEN places in the surrounding area.

17. In its response on the planning application, the City Council's Education Team acknowledged that special schools in the City were oversubscribed, and that there was an increasing demand for placements there. It is intended that in the long-term the demand for specialist placements will be met through additional provision within the maintained sector. That time-frame does not indicate a lack of need for additional provision such as that which would be provided in the short-term by the expansion of Turning Point Academy. I have also considered the public sector equality duty, which requires, amongst other matters, that a public authority must have due regard to the need to eliminate discrimination, and to advance equality of opportunity between persons who share a protected characteristic and those who do not share it. Disability is a protected characteristic, and the proposal would provide educational opportunities for children with a range of neuro-developmental disorders.
18. Paragraph 95 of the NPPF makes clear that it is important that a sufficient choice of school places is available to meet the needs of existing and new communities, and paragraph 122 provides support for alternative uses of land where there is no reasonable prospect of an application coming forward for the use allocated in a plan and where the proposal would contribute to meeting an unmet need. Whilst there is a need for SEN provision in Liverpool, the evidence does not demonstrate that there is no reasonable prospect of the site being used for industrial/ business purposes as intended in the Local Plan. Paragraph 123 of the NPPF makes clear that a positive approach should be taken to proposals for alternative uses of land which is currently developed but not allocated for a specific purpose in development plans where this would help to meet identified need. Whilst the appeal site is not allocated in the Local Plan, it is included within a primarily industrial area, which clearly indicates its intended use, and I do not consider that paragraph 123 of the NPPF lends any additional support to the appeal proposal. Nevertheless, the need for additional SEN provision carries significant weight in support of the appeal proposal.

Alternative sites

19. The third criterion in part 3(b)(ii) of Policy EC2 refers to a lack of a suitable alternative site. The Academy has submitted information about three alternative sites investigated over a two years period, when the School was based in Bootle. One of these was described as ideal, but was no longer available, a bid for another was unsuccessful, and the site appraisal states that the third, the former West Lancashire College at Ormskirk, was not in an ideal location and would have been unviable because the site was larger than required¹¹. It is the Appellant's case that no alternative for the School to move to has been found, and I understand that relocation from Bootle was required to enable it to expand in size and in terms of the service offered. However the LPA asserts that the former West Lancashire College is being used by the

¹¹ Appendix 8 to the Appellant's statement, page 3.

School, a situation which has not been disputed by the Appellant. There is nothing before me to indicate that the School could not continue to operate at its existing premises at the present time, even if these have certain shortcomings. In addition to the appeal site, there is only evidence of three other sites having been explored by the Academy: that is not indicative of a rigorous site selection exercise over a two years period. Accordingly I give only moderate weight to the argument about the lack of a suitable alternative site.

Displacement and environmental improvements

20. As No 65 Stephenson Way is vacant, the question of displacement of businesses from the building does not arise. The fifth criterion seeks improvements to the physical/ operational environment of the employment area. The appeal site comprises a modern building with landscaping. Inevitably, as it has been vacant for four years, the landscaping requires some maintenance, but the site does not materially detract from its surroundings. The proposal includes the formation of a play space on part of the existing parking area, and the Appellant suggests that that could include planting and a garden area. No details of any additional planting are provided, but some additional planting on the area indicated on the proposed site plan would simply reflect the treatment of nearby plots, representing only a modest improvement to the physical environment. The Appellant refers to support for local shops and facilities by employees providing a boost to the operational environment of the area. However the test in Policy EC2 refers to the operational environment of the employment area: nearby shops and other businesses along Rathbone Road are outside the employment area. There is nothing before me to indicate how the proposal would improve the operational environment of the employment area.
21. The Appellant claims environmental benefits arising from the opportunity to travel on public transport and the re-use of an existing building as opposed to the construction of a new school. Whilst the appeal site is located close to a railway station and a bus route, I note that the Appellant's transport statement concludes that most trips will be made by people carrier, and there is nothing before me to indicate that consideration has been given to the construction of a new building to accommodate Turning Point Academy. Consequently, these matters carry little weight in my considerations.

Regeneration

22. The proposal does not form part of a comprehensive regeneration scheme as required by the final criterion in this part of Policy EC2. The Appellant suggests that the re-use of the vacant building amounts to a regeneration scheme, but the limited scope of the appeal proposal would not satisfy that test of the policy. I acknowledge that re-use of this vacant building would bring benefits in terms of employment, expenditure in the surrounding area, and maintenance of the site. I have already considered employment and the appearance of the site in assessing the performance of the proposal against other criteria in part 3(b)(ii) of Policy EC2.

Previous proposals involving the loss of employment land

23. The Appellant has drawn attention to a number of proposals which have involved the loss of employment land to other uses within Wavertree

Technology Park. I note that these cases were considered by the LPA prior to the adoption of the Local Plan earlier this year. The relevant policy then for considering changes of use within primarily industrial areas was Policy E1 of the Unitary Development Plan. The provisions of that policy relating to proposals for non-industrial/ business use are summarised in the report on the planning application for the proposal at No 65 Stephenson Way, and there are several differences between those provisions and the requirements of Policy EC2 in the current Local Plan. There are also case specific differences which I consider below.

24. Land at Plot C on Enterprise Way received planning permission for housing in 2017. The LPA's report on the planning application acknowledges that a comprehensive marketing strategy had been undertaken, but there had been a lack of speculative development finance available. The information before me does not provide details of the marketing exercise in respect of Plot C, but I have found that that undertaken for the appeal site was constrained by focussing on office accommodation. The application report also gave weight to the juxtaposition of Plot C to an existing residential area.
25. Planning permission was granted for the change of use from a B2 office to a yoga studio/ gym at Newton Court. The report on this application refers to the imposition of a condition restricting the proposed use to a temporary period of five years: that is a material difference to the appeal proposal which makes no indication that permission is sought other than on a permanent basis. The third proposal referred to by the Appellant concerns an educational and discovery centre on Faraday Road. In this case, the LPA's report did not consider that the proposal would undermine the future use of the area for high technology industries, as there was an argument that the facility, offering an element of education and learning on science, arts and craft, could sit alongside existing uses. Finally, premises at Vortex House received prior approval for the change of use from an office to a dance school. Prior approvals are granted under the provisions for permitted development in article 3 and schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), and it is those provisions which establish the principle of the proposed use.
26. On the information before me there are clear differences between the cases referred to by the Appellant and the appeal proposal, and I do not consider that any of those cases constitute a precedent for the development proposed at the appeal site.

Fall-back argument

27. The Appellant suggests that part of the building on the appeal site could be used for residential purposes through the exercise of permitted development rights in Class MA of Schedule 2, Part 3 of the GPDO. For a fall-back argument to carry weight there should be a real prospect of the alternative use occurring. Although the Appellant, referring to *Mansell v Tonbridge and Malling BC & Others [2017] EWCA Civ 1314*, says that a possibility will suffice for a prospect to be a real prospect, there is no indication that any consideration has been given to this change of use beyond the assertion that it is a possibility. Moreover, because of the floorspace limit in Class MA, the Appellant refers to the change of use of two floors of the building only, which would result in considerably less loss of employment space than the appeal proposal. In these

circumstances, I do not consider that there is a real prospect of residential development having a similar effect to the appeal proposal, and the fall-back argument merits little weight in this case.

Conclusions

28. In its statement, the LPA raises no issue with several policies in the Local Plan, including those concerning local character, community facilities, accessibility, and new planting, and I have no reason to take a different view. However, the most important policies for determining this appeal are Policies EC2 and EC1 which are concerned with employment areas and employment land supply respectively. These policies are closely connected, with land in the employment areas covered by Policy EC2 contributing to the supply of employment land required by Policy EC1. The proposed development would conflict with Policy EC2, and, given its importance in this case, I find that the proposal would conflict with the Development Plan considered as a whole.
29. There is evidence of an increasing availability of office floorspace outside the city centre and specifically in Wavertree. Given that this is just one component of employment land supply, this is a matter which carries no more than moderate weight in support of the appeal. The marketing test in Policy EC2 has not been fully addressed, and on the evidence before me I do not consider that there is no reasonable prospect of the appeal site being used for industrial/ business uses. Notwithstanding the benefits which are associated with several of the tests in part 3(b)(ii), that is sufficient for the proposal to fail to comply with Policy EC2.
30. I acknowledge that the employment which would be provided by the school is an important consideration, carrying significant weight, as is the need for additional SEN provision, and these factors would contribute towards economic and social objectives in line with paragraph 8 of the NPFF. Expenditure in the surrounding area would also offer an economic benefit. I have given moderate weight to the lack of an alternative site to date, but environmental considerations relating to the treatment of the site, the opportunity to use public transport, and the re-use of an existing building carry little weight for the reasons given above (paras 20 & 21). I give little weight to the fall-back argument concerning housing.
31. Policy EC2 does not preclude non-employment uses within Wavertree Technology Park. The policy includes an element of flexibility subject to tests to ensure that careful consideration is given to the loss of employment land. These tests take into account the considerations related to employment, need for an alternative use, and the prospect of use for industrial/ business purposes. I am concerned that the proposal does not fully address the marketing test. This is a key safeguard in Policy EC2 of a recently adopted and up-to-date Local Plan. Nor does the evidence demonstrate that the City's overall capacity to meet future demand for industrial/ business purposes would not be adversely affected, as required by part 3(b)(i) of the policy. I have found that the proposal would detract from the supply of employment land in Liverpool, a factor which carries considerable weight, and, although matters raised in support of the proposal involve certain economic, social and environmental benefits, and the proposal would extend educational opportunities for children with the protected characteristic of disability, these factors do not outweigh the harmful economic impact which would result from

the loss of the land for employment purposes, and they do not justify development which would be contrary to the Development Plan.

32. For the reasons given above, and having regard to all matters raised, including references to possible conditions, I conclude that the appeal should be dismissed.

Richard Clegg

INSPECTOR