



Appeal Decision

Site visit made on 16 December 2022

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 December 2022

Appeal Ref: APP/P4605/W/22/3303813

70 Steward Street, Birmingham B18 7AF

- 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 O Davis against the decision of Birmingham City Council.
 - The application Ref 2022/03831/PA, dated 10 May 2022, was refused by notice dated 30 June 2022.
 - The development proposed is described as 'Change of use from light industrial (B2) to cafe bar (E), including small meeting/ function area'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effects of the proposal on on-street parking and highway safety;
 - Whether the site is a suitable location for the proposed town centre use having regard to local and national policy; and
 - Whether the loss of employment (Class B2) floorspace is justified.

Reasons

Highway Safety

3. The appeal site is located within a commercial area containing a range of surrounding uses, including numerous nearby industrial uses. Much of Steward Street and its neighbouring streets contain unrestricted parking.
 4. On my site visit it appeared that there was high demand for parking in the streets surrounding the appeal site. This was evident from the significant number of vehicles lining each side of the roads, with relatively few parking spaces available nearby. Additionally, several of the neighbouring business uses within Steward Street contained accesses for deliveries, thus also impacting on the availability of space for on-street parking.
 5. I recognise that my site visit represents a snapshot in time. It was also undertaken during the working day, when large delivery vehicles were operating in connection with neighbouring properties in Steward Street and parking demand may have been higher. Irrespective of that, concerns have been raised from the Local Highway Authority regarding the potential impacts of the development upon parking and highway safety.
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6. Notwithstanding that the appeal site's existing use would have an associated parking demand and the site is of an overall limited scale, the proposal still has the potential to increase the level of parking demand in the area. No parking surveys have been provided to demonstrate existing parking demand or the likely impacts of the proposed development on parking. As such, it has not been demonstrated that the proposal would not have a harmful impact on highway safety.
7. The appellant identifies that the café operation is intended to be used by the employees of the surrounding commercial uses during the working week. It is also indicated that its peak trading hours as a bar and function space would be outside typical office working hours, when there would be greater availability of parking in Steward Street. Be that as it may, it cannot be guaranteed that the proposed use will operate or attract customers in this manner.
8. In the absence of sufficient evidence, I am not convinced that the proposal would not result in increased demand for on-street parking to the detriment of highway safety. Consequently, the proposal is deemed contrary to Policies PG3 and TP44 of the Birmingham Development Plan 2031 'Planning for Sustainable Growth' (BDP) (adopted 2017). Together these policies amongst other matters seek to promote a high design quality in new developments and manage traffic and congestion via appropriate parking provision. Additionally, the proposal would not adhere to the aims of the National Planning Policy Framework (the Framework) which highlights that matters of parking are integral to the quality of development.

Town Centre Use

9. Policy TP21 of the BDP sets out a hierarchy of centres for a range of main town centre uses. The appeal proposal is for a main town centre use¹ (MTCU) and falls outside the boundaries of any of the identified centres under Policy TP21. It is also not specifically allocated for development within the Council's development plan. Accordingly, Policy TP21 requires that the proposed development satisfy national policy requirements to be permitted.
10. To support the role that town centres play at the heart of local communities and to take a positive approach to their growth and management, the Framework requires a sequential test to be undertaken for applications for MTCU which are not within an existing centre. The sequential test seeks for MTCU to firstly be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available in a reasonable period) should out of centre sites be considered.
11. Appropriate evidence has not been provided by the appellant to demonstrate that a sequential test has been undertaken and that there are no sequentially preferable sites available for the proposed development.
12. Consequently, the proposal has not been shown to be a suitable location for the proposed development as it fails to comply with Policy TP21 of the BDP and the policies of the Framework in respect of supporting the vitality of town centres.

¹ As identified within Annex 2 of the Framework

Loss of Employment Floorspace

13. Policy TP20 of the BDP seeks to protect employment land in the city from conversion to other uses. The policy sets out two exceptions where such land could be put to alternative use. Firstly, where it is a non-conforming use². Additionally, where it has been evidenced that it is no longer attractive for employment development through marketing and other appropriate tests.
14. Although not substantial in size, the appeal site is in a predominantly commercial/industrial area. It is therefore not a non-conforming use as established in the Council's 'Loss of industrial land to alternative uses' Supplementary Planning Document (SPD). Furthermore, there is no robust evidence before me that the unit has been appropriately marketed or that the existing use of the site is unviable.
15. Whilst the appeal site is currently vacant and the proposal would result in new employment opportunities associated with the café/bar use, such benefits would be modest given the scale of appeal site. Additionally, the employment opportunities are not necessarily dependent on the form of development that is being pursued, especially since it has not been shown that there is no demand for the site's continued operation under use class B2.
16. Accordingly, the proposal is contrary to Policy TP20 of the BDP and associated guidance within the SPD regarding the loss of industrial land.

Other Matters

17. The appellant highlights that there is an existing public house as well as bar/function room within the street. It is also suggested that a small gym use has recently established within Steward Street. Nevertheless, I have no information before me regarding the background context of those other uses, including whether planning permission has been granted, and if so, under what circumstances. As such, these other nearby uses do not persuade me to reach an alternative view.
18. The appellant suggests that the proposal will address a local need, however, provides little evidence to support this position. Consequently, I give negligible weight to this material consideration and it does not overcome the proposal's conflicts with local and national policies identified above.
19. I note the appellant's frustration at the lack of communication from the Council during the application period. Particularly given investment appears to have already been made by the appellant. However, this is a matter for the Council to address. The appeal has been determined upon its own merits.

Conclusion

20. For the reasons outlined above, having regard to the development plan and all other material considerations, the appeal is dismissed.

Lewis Condé

INSPECTOR

² Birmingham City Council's 'Loss of industrial land to alternative uses' Supplementary Planning Document identifies that 'non-conforming uses' will mostly consist of small (generally less than one acre) isolated industrial sites within predominantly residential areas, although larger sites may come forward from time to time.