



Appeal Decision

Site visit made on 24 January 2023

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2023

Appeal Ref: APP/P4605/W/22/3291338

The Stork, 140 Heathfield Road, Lozells and East Handsworth, Birmingham B19 1JF

- 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 Mrs Qalsoom Rafiq against the decision of Birmingham City Council.
 - The application Ref 2021/04999/PA, dated 31 May 2021, was refused by notice dated 24 August 2021.
 - The development proposed is change of use of ground floor of closed down drinking establishment (sui generis) into 4 number of shops (use class E).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council's decision on the planning application, the Development Management in Birmingham Development Plan Document (2021) (DPD) and Birmingham Design Guide SPD (2022) (SPD) have been adopted, superseding the Birmingham Unitary Development Plan (2005) and Supplementary Planning Guidance 'Places for All'. For the purposes of decision making the DPD and SPD now form part of the development plan. The relevant policies and guidance of the DPD and SPD were referred to in the Council's appeal statement, and the appellant has had a chance to comment on these. Consequently, no parties have been prejudiced by me having regard to those details in reaching my decision.

Main Issue

3. The main issue is whether the site represents an appropriate location for the proposed development with regards to local and national planning policies.

Reasons

4. The appeal site comprises a vacant former public house located on the corner of Heathfield Road and Finch Road. Although there are a small number of commercial premises nearby on the opposite site of Heathfield Road, the surrounding area is mainly residential in character.
5. The proposal would involve the sub-division of the ground floor into four retail units. The appellant indicates that up to five prospective businesses are interested in occupying the proposed units.

6. Paragraph 7.21 of the Birmingham Development Plan (BDP) adopted 2017 recognises that outside of defined centre's there are many shopping parades. However, Policy TP21 of the BDP says that proposals for new main town centre uses outside of the centre boundaries will not be permitted unless they satisfy the requirements set out in national planning policy.
7. Policy TP21 of the BDP aims to maintain and enhance the vitality and viability of both local and district centres, with these centres being the preferred locations for retail, office and leisure developments and for community facilities. Proposals for main town centre uses located outside of the district or local centres listed under Policy TP21 will not be permitted unless they satisfy the requirements set out in national planning policy.
8. Paragraph 87 of the National Planning Policy Framework (the Framework) states that a sequential test should be applied for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations, and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.
9. The appeal site is not located within any of the identified district or local centres, the boundaries of which are contained within the Shopping and Local Centres Supplementary Planning Document (SLC-SPD). The nearest local centres of Lozells Primary Shopping Area and Villa Road Local Centre are located a short walk to the south and south west.
10. The appellant's sequential assessment included carrying out a property search and visiting the local centres. Following this, it was confirmed that, no units are available to rent or purchase. Whilst I do not doubt the carrying out of that exercise, I am not clear where the information was obtained or the survey method that was used by the appellant to conclude there is no availability.
11. A search for empty retail units in other areas surrounding the site was also undertaken. Whilst the appellant indicates there were no vacant units, I have been given no details of the area the search covered.
12. The assessment also refers to a conversation the appellant had with a local commercial letting's agent. This confirmed there is a shortage of retail space in the area to meet demand whilst units are rarely available. However, the details of this dialogue are somewhat vague as it only establishes there is a shortage of units rather than providing a numeric account of the available units in absolute terms. Furthermore, the details do not provide any conclusive evidence that there is an absence of available units. Accordingly, based on the lack of empirical information and the ambiguous assertions presented, I cannot be certain that there are no available sites in the nearest local centres.
13. Whilst the Council could have verified the appellant's conclusions on the availability of retail units from various lettings and property websites, and I acknowledge the Council's duty to support the applicant in undertaking the sequential test¹, the burden of proof nevertheless rests with the appellant.

¹ Paragraph: 011 Reference ID: 2b-011-20190722, Planning Practice Guidance – Town Centre and Retail, Revision date: 22/07/2019

14. The lack of robust and quantifiable information on the availability of commercial space in the locality means I am unable to conclude with any certainty that there are more suitable sites within and on the edge of commercial centres. This weighs against the proposed scheme and I give the matter significant weight.
15. I recognise that the appeal would utilise an unused, somewhat unkempt building in an accessible location close to residential dwellings. It would also benefit the local economy in providing additional retail space, choice and employment opportunities. Further economic advantages would be derived from future occupiers benefiting from the lower initial rental costs than those in the locality, making the units more attractive to 'start-ups'. These scheme benefits along with their associated compliance with the provisions of the Framework attract moderate weight in favour of the proposal.
16. Notwithstanding the above, under current local planning policy, the proposal would be located outside of a defined centre, and it has the potential to harmfully undermine the viability of neighbouring defined centres if there are similarly small units within them that are currently vacant. The appellant's Sequential Test has been insufficiently evidence and therefore there maybe sequentially preferable sites available. As such, I cannot be satisfied that the proposal would not harm the viability of neighbouring defined centres. Therefore, and despite there being a number of scheme benefits, these do not outweigh the significant harm I have identified.
17. In conclusion and considering my concerns relating to the information submitted I cannot be satisfied that the appeal site represents an appropriate location for the proposed development with regards to the local and national planning policies I referred to earlier.

Other Matters

18. The appellant has not been able to obtain an occupier for the approved nursery use at the site. She is also concerned that further financial loss could be incurred if the building continues to be vacant. Whilst I sympathise with the appellant on those matters, they do not outweigh the significant harm that could be incurred upon the vitality and viability of local and district centres nearby were the building to be occupied without a satisfactory sequential assessment.
19. There is a commercial car repair garage next door to the appeal property. This belongs to a different use class to the units envisaged by the appellant, therefore I cannot draw similarities between the uses. Moreover, I have no details of when the garage received approval and under what local planning policies. I therefore give this matter limited weight.
20. There have been few neighbouring concerns raised in relation to the scheme, however, this does not overcome the harm I have identified and the conflict with the development plan.
21. The Council's decision included a refusal regarding the harmful effect the removal of some original bay windows would have on the character and appearance of the appeal property. There are no details of this in the description of development, while there appear to be no obvious barriers to this work being undertaken. Nonetheless the replacement windows are evenly

placed along the building's elevations and consistent with the size and arrangement of others in the street. I am therefore satisfied that the new windows would be acceptable visually.

Conclusion

22. For the reasons given and having had regard to all matters raised including the Framework, I conclude that the proposed development would fail to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal should be dismissed.

RE Jones

INSPECTOR