



Appeal Decision

Site visit made on 17 October 2023

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2023

Appeal Ref: APP/P5870/W/23/3317492

Stonecot Nursery, Stonecot Close, Sutton SM3 9HR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Jim Dobbe against the Council of the London Borough of Sutton.
 - The application Ref DM2022/00282, is dated 11 February 2022.
 - The development proposed is the erection of six flats (three x two bedroomed, two x three bedroom and a one bedroom) with associated parking and amenities.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal is made against the failure of the Council to determine a planning application within the prescribed period. The Council have confirmed that had they determined the application it would have been refused on the grounds that the submitted marketing evidence provides insufficient detail to demonstrate that the loss of industrial floor space would not result in an unacceptable loss of an employment site in the borough contrary to the aims and objectives of Policy 14 of the Sutton Local Plan 2018 (SLP).
3. It therefore follows that the main issue is whether the loss of employment floor space would meet the requirements of the development plan policy.

Reasons

4. The appeal site, a fencing contractor's yard, is located on Stonecot Hill (the A24) between Morden and Ewell. A church adjoins the site otherwise this part of Stonecot Hill is predominantly residential in character, although a campervan dealership is located close by to the south and a parade of shops and commercial premises is a short distance away to the north.
5. SLP Policy 14 deals with the retention of employment land and floorspace and seeks to resist its loss. Outside of designated Strategic Industrial Locations and Established Industrial Areas proposals which would result in the loss of industrial or business floorspace are expected to demonstrate that *'there is genuine evidence that the site has been marketed for a period of 12 months at a reasonable market rent for its location and condition'*. Although the supporting text does not set out the type of evidence required, the Council provided advice to the appellant clearly stating that analysis of the advertised rental price was fair and comparable was required to be demonstrated (my emphasis).

6. The appellant has submitted a marketing report (4 February 2021), an addendum (undated) and an updated report (13 February 2023) prepared by a local property agent outlining a marketing campaign undertaken for the premises. The premises have been marketed since September 2019 for sale on a leasehold basis. Although the marketing report indicates that marketing boards were erected at the site, I have not been provided with any evidence of how long they remained in place or the wording of the boards. There was no marketing board present at the site at the time of my site visit. Furthermore, I have not been provided with evidence that the premises have been marketed for commercial opportunities beyond the existing use of the site as a storage yard.
7. I have been provided with copies of sales particulars for four other industrial sites for sale. Two of the sites were being marketed as development opportunities with planning permission for residential development in place (Mitcham and Raynes Park). A further site was being marketed as a development opportunity without planning permission (East Acton). The other set of details is for a site located much closer into central London in an area highlighted for large scale redevelopment (St. James's Road). None of the sites are in Sutton Borough. They are therefore not directly comparable to the case before me and notwithstanding the requirement of the policy to provide evidence of its realistic market rental level, do not provide evidence that the asking price for the appeal site is realistic as an employment site in this location and condition.
8. I acknowledge that the wording of the policy is restrictive and renting the premises out would require ongoing management of the premises and of any prospective tenants. However, I have not been supplied with any compelling evidence that this option has been fully explored or that a commercial letting agent would either not be willing to take on the management of the premises as a rental opportunity on behalf of the owners or that rental of the premises is not a realistic proposition.
9. I acknowledge that paragraph 82 of the National Planning Policy Framework (the Framework) sets out a requirement for planning policies to be flexible and SLP Policy 14 fails to take account that business operating models may change. However, I have no compelling evidence before me that SLP Policy 14 is inconsistent with the Framework and, therefore, out of date. Furthermore, the Inspector in the previous appeal at the site in 2019¹, noted that the appellant was moving then to a 'just in time' operating model. Nevertheless, at the time of my site visit, the site appeared to remain in use for the storage of materials relevant to a fencing business.
10. I therefore conclude that the marketing of the premises has not been significantly robust enough to demonstrate that the site is no longer viable for commercial use of any kind. Its loss is therefore not justified. The marketing evidence falls short of the substantive marketing requirements set out in SLP Policy 14. It does not demonstrate that robust marketing efforts have been made to establish that there is no demand for the floorspace on offer or that alternative employment generating uses have been fully explored. As such, the proposal would result in the loss of employment land and harm the Council's overall objectives of working with existing businesses to expand and enhance

¹ APP/P5870/W/19/3226569

their premises and providing new opportunities for new business to come and flourish in the borough. Accordingly, the proposal conflicts with SLP Policy 14, whose aims are outlined above.

Other Matters

11. Whilst the Council did not refuse the application in respect of principle, design, living conditions for future occupiers, effect on neighbouring residents or fire safety, the lack of harm on these matters are neutral factors which do not outweigh the harm that I have found on the main issue.
12. I acknowledge that some recent development close by may be on sites which were previously in use for employment purposes. However, I do not have the details of these developments before me. I therefore do not know the circumstances which led to their redevelopment for residential purposes. Their existence does not provide any weight in favour of the proposal before me and does not lead me to an alternative conclusion on the main issue.

Conclusion

13. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

KL Robbie

INSPECTOR