



Appeal Decision

Site visit made on 5 December 2023

by J Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2023

Appeal Ref: APP/P4605/W/23/3324269

4 Vincent Street, Birmingham B12 9SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr A Khan against the decision of Birmingham City Council.
- The application Ref 2023/00152/PA, dated 9 January 2023, was refused by notice dated 7 March 2023.
- The development proposed is outline application (all matters reserved) for a mixed-use development comprising approximately 300sq m (3200sq ft) of commercial floor space (Use Class B8 and E(g)(ii) and E(g) (iii)) and up to 8 residential units.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. In September 2023, the Government published a revised National Planning Policy Framework (the 'Framework'). The revisions relate to national planning policy for onshore wind development rather than anything relevant to the main issues in this appeal. Consequently, I have not invited further comments.
4. The appeal proposals have been submitted in outline with access, appearance, landscaping, layout and scale reserved for later consideration. Whilst not formally part of the scheme I have treated the indicative plans as no more than a guide as to how the site might be developed.

Main Issues

5. The main issues in relation to this appeal are;
 - the effect of the proposal on the provision of employment land;
 - whether the proposal would provide acceptable living conditions for future occupants with particular reference to noise; and
 - the effect of the proposal on existing business activity in the area.

Reasons

Employment land

6. Policy TP20 of the Birmingham Development Plan (2017) (BDP) seeks to protect employment sites and premises by a variety of means. However, it recognises that there may be occasions where employment land has become obsolete and can no longer contribute towards the portfolio of employment land. In such cases change of use proposals from employment land to other uses will be permitted where it can be demonstrated that either the site is considered to be a non-conforming use, or the site is no longer attractive for employment development having been actively marketed, normally for a minimum of two years, at a price which accords with other property of a similar type in the area.
7. The Loss of Industrial Land to Alternative Uses Supplementary Planning Document (2006) (SPD) clarifies that 'non-conforming' uses will mostly consist of small isolated industrial sites within predominantly residential areas. Moreover, sites which are adjoined by other industrial uses, and are part of a larger industrial area, would not be considered 'non-conforming.' I saw on my site visit that the area within the immediate vicinity of the appeal site consisted of predominantly commercial uses, with only limited residential accommodation above local shops and offices. More particularly the sites immediately adjacent the appeal site were being used for retail, storage and engineering purposes. Therefore, it is clear to me that the appeal site is not within a predominantly residential area, and as a result would not fall into the non-conforming category as set out in this policy.
8. Furthermore, I am not aware of any active marketing exercise that has been undertaken to demonstrate that the site is no longer attractive for an exclusively employment development. In particular I have no evidence before me that shows how the site has been marketed in accordance with the requirement of Policy TP20 of the BDP. Moreover, I am not persuaded that 'non-formal' marketing, as referred to in paragraph 7.6 of the appellant's statement, provides a sound justification for releasing the appeal site to a scheme that incorporates non employment uses, including residential accommodation.
9. I do acknowledge that the proposal would encapsulate an element of commercial activity, the precise amount of which could be determined at the reserved matters stage. Furthermore, it would incorporate buildings on a largely vacant site. The Framework supports the effective use of land, including assisting in the delivery of much needed housing, however, it also recognises the need to meet other uses. It caveats the use of employment land for homes with the need to avoid undermining key economic sectors or sites.
10. Notwithstanding the above, the proposal is predicated on the basis that it would include a significant element of residential use, which in the appellants view would be an attractive and viable proposition for the site. However, in the absence of substantive evidence to justify the loss of the land to a wholly employment based scheme I am not persuaded that the proposal before me is the only viable scheme that would deliver the benefits sought by the appellant.
11. Accordingly, on this main issue, I conclude that the loss of the employment land would result in unacceptable harm to the provision of employment space,

and as a result the proposal would conflict with TP20 of the BDP, the SPD and the Framework.

Living conditions - Noise

12. Policy DM6 of the BDP requires that development be designed, managed and operated in a manner that takes into account, amongst other matters, location, design, layout, noise mitigation measures and existing background noise.
13. On my site visit I was aware of noise emanating from commercial premises in Vincent Street and the nearby A435. I also noted that the site is encompassed by high walls on the northern, western and eastern boundaries, which presented a significant barrier to noise emanating from those directions. That said, I have no substantive evidence before me to suggest that the noise conditions that I observed were typical, or that operating conditions of the existing businesses could not be altered without recourse to the Council.
14. The predictions and measurements included within the appellants Noise Report¹ (NR) seek to demonstrate that under reasonable worst-case conditions the southern façades of the proposed residential properties facing Vincent Street have the potential to exceed the BS 8233:2014 and World Health Organisation internal sound level criteria. In particular, the report indicates that with the introduction of a noise mitigation scheme suitable internal sound levels would be achieved in all habitable spaces. In this scenario the properties in the proposed development would not require a method of background ventilation that does not rely on open windows. The only mitigation deemed necessary would be trickle ventilation which would be applied to the southern façades that overlook Vincent Street. The NR also indicates that all of the external amenity areas would achieve the suitable external criteria level without additional mitigation.
15. The Council dispute the findings of the NR and are not satisfied that it fully addresses the local noise sources. They have also expressed concern about whether the amenity areas would be subjected to acceptable noise levels.
16. I am mindful that the application is for outline consent only, with all matters of detail reserved for future approval. Therefore, whilst noting the conclusions reached in the NR, which are based on the indicative layout, I cannot be certain that the occupants of any residential unit would be exposed to the noise levels as predicted. The NR also indicates at paragraph 6.3.3 that the existing commercial premises do not operate during the night-time period and therefore only the daytime period was assessed. Whilst this may have been the case when the NR was produced, I cannot conclude with any certainty that operating times could not change in the future.
17. Furthermore, I am conscious that the proposal is for a mixed use scheme, with commercial activity at ground floor level, and will have servicing requirements. In this regard I note that parking and servicing is shown to the rear of the site, directly adjacent to the proposed ground floor amenity space, and in close proximity to the first floor amenity area. As a result, I share the Council's concern that the outdoor amenity space could be adversely affected by noise.
18. Taken together, the above factors lead me to the conclusion that insufficient information is available to fully evaluate whether a scheme, which includes a

¹ Noise Assessment – 4 Vincent Street, Birmingham by Air and Acoustic Consultants (January 2023)

significant residential element, could be carried out on the site without significant harm to the living conditions of future occupiers. Consequently, the proposal would be contrary to policies PG3, TP27 and TP28 of the BDP and policies DM2, DM6 and DM10 of the Development Management in Birmingham Development Plan Document (DMBDPD) which jointly, amongst other matters, seek high quality design which would not result in unacceptable adverse impacts on the amenity of occupiers. It would also be contrary to paragraphs 120 to 134 of the National Design Guide (NDG) and paragraph 130 of the Framework which seek, amongst other matters, to secure well-designed buildings that are functional, accessible and sustainable, with internal environments and associated external spaces that support the health and well-being of their users.

Existing business activity in the area

19. Under the terms of the Framework the safeguarding of business land extends to the consideration of the effects of development on neighbouring sites. Paragraph 187 indicates that proposals should integrate effectively with existing businesses without unreasonable restrictions being placed on them as a result of the development. As such, while the establishment of mixed-use areas can be appropriate, it is important that the mixture of land uses is compatible.
20. At the time of my site visit many of the existing businesses near the site did not typically generate high levels of noise or other disturbance. However, there is no evidence that current activities are controlled or restricted, for example by condition. As such, this *status quo* cannot be relied upon to remain. Although the appellant has control over the units to the west, land ownership is also subject to change.
21. Given the circumstances, I cannot ascertain with any certainty that the proposal would not prejudice nearby businesses through restrictions imposed as a result of future nuisance complaints. Although the Council has not supplied proof that conflict would arise, the burden lies with the proposal to demonstrate that the relationship between sites would be harmonious and policy compliant.
22. Accordingly, on this main issue, I conclude that the proposed development would be contrary to policies PG3, TP20, TP27 and TP28 of the BDP and policies DM2, DM6 and DM10 of the DMBDPD which jointly, amongst other matters, seek to create sustainable neighbourhoods that make best use of existing buildings and efficient use of land in support of the overall development strategy. It would also be contrary to paragraphs 112 of the NDG and paragraph 187 of the Framework which support developments that are located to complement rather than conflict with neighbouring uses in terms of noise, servicing and ventilation.

Other Matters

23. The Council indicates, at paragraph 7.8 of its delegated report, that as of 10 January 2022 they were unable to demonstrate a deliverable 5-year supply of housing land. I have not been advised of any subsequent change to this position. The Framework makes clear the need to maintain a minimum of 5 years' supply in all local authority areas, in order to help boost the supply of

housing nationally. The shortfall of housing land is therefore an important material consideration.

24. Paragraph 11 d) i indicates that where the policies which are most important for determining applications are out of date, planning permission should be granted, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when weighed against the policies in the Framework when taken as a whole. In this context footnote 8 confirms that in considering whether the policies that are most important are indeed out of date, this included the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites.
25. The provision of up to 8 flats would not greatly increase total supply but any additional provision would be valuable in the current circumstances in Birmingham. Furthermore, paragraph 69 of the Framework indicates that the development of windfall sites should be supported, and great weight given to the benefits of using suitable sites within existing settlements for homes.
26. I note that the Council accept that the site is in a sustainable location with reasonable access to local facilities, services and public transport. I have no reason to disagree with them on these matters. However, these matters are neutral factors in my consideration of this case.
27. I also accept that, in order to appeal to modern businesses and avoid adding to existing parking and servicing problems that are occurring on the public highway, it is reasonable to expect future parking and servicing needs to take place within the confines of the site. However, these are matters that would be a requirement for any form of development, and in the event of the appeal being allowed would be subject to further consideration at the reserved matter stages.
28. The appellant has referred me to other residential units located opposite the appeal site. On my site visit I noted the presence of flatted accommodation above commercial premises, with pedestrian access from Vincent Street. That said, I have not been provided with details of the accommodation or made aware of the circumstances that led to their provision. Furthermore, whilst acknowledging that modern development would incorporate higher standards of noise insulation this would be a normal expectation and does not justify the appeal proposal. Consequently, I give this matter limited weight.
29. I have taken into account the representations made by an interested party with particular regard to the need to ensure a quality of life for residents and visitors, and the need to secure a high quality standard of design, as set out in Policy BH2a of the Balsall Heath Neighbourhood Development Plan. Given my comments above it is not necessary for me to comment further on matters relating to the quality of life for residents. Furthermore, as the application is expressed to be for outline consent, with all detailed matters reserved for subsequent approval, it is not necessary for me to consider the detailed design of the scheme at this stage.
30. I have also had regard to the comments made with respect to traffic, parking and fly tipping. Whilst acknowledging that such matters may be a cause for concern, I do not consider them determinative in this instance.

31. The support for the proposal in the Framework is countered by the importance of ensuring that employment land is protected, existing industries do not have unreasonable restrictions imposed on them as a result of the proposal and future occupiers of the proposed dwellings would have a reasonable amenity within which to live.
32. I find that the adverse impacts of the proposal, as identified above, significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

33. Drawing my conclusions together, the harm and conflicts that I have identified are such that the proposed development should be considered as in conflict with the development plan when taken as a whole. Material considerations, including the Framework, do not indicate to me a decision should be made other than in accordance with it. The appeal is therefore dismissed.

J Gunn

INSPECTOR