



Appeal Decision

Site visit made on 13 December 2023

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th February 2024

Appeal Ref: APP/W4325/W/23/3324421

Bodhouse Antiques, 379 New Chester Road, Rock Ferry, Wirral CH42 1LB

- 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 Roger Boulton against Wirral Metropolitan Borough Council.
 - The application Ref APP/22/01736, is dated 30 September 2022.
 - The development proposed is described as 'change of use of building to large House in Multiple Occupation, repositioning of on-site storage containers, alterations to front boundary fence and gates.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal was made following the failure of the Council to give notice of their decision on the application within the statutory period. However, the Council has submitted a statement which sets out what it considers to be the main issues and putative reasons for refusal. The appellant and third parties have had the opportunity to comment on the Council's statement. I also sought the views of both main parties on what I considered to be the main issues in the appeal. Therefore, they would not be prejudiced by my taking their submissions into account in forming the main issues.
3. During the appeal, a new version of the National Planning Policy Framework (the Framework) came into effect. However, as the Framework's policy content insofar as it relates to the main issues has not been significantly changed, albeit that the numbering of paragraphs has changed, there is no requirement for me to seek further submissions on this latest version. I am satisfied no party would be prejudiced by determining the appeal accordingly.
4. In its statement, the Council refers to policies in the emerging Wirral Local Plan (2021 - 2037) (ELP) which was submitted for examination in October 2022. Paragraph 48 of the Framework states that the weight given to relevant policies in emerging plans should be according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the plan with the Framework. The ELP is at an advanced stage with the examination hearings concluding in November 2023. However, no subsequent report has been issued to date by the examining Inspectors and, while I have been provided with copies of the relevant draft policies for this appeal, I am unaware of any unresolved objections to them. I cannot therefore be certain that these policies will not be amended through the examination process. Consequently, I afford them limited weight.

5. I have reviewed the saved policies of the Wirral Unitary Development Plan, adopted 2000 (UDP), that are most relevant to this appeal against the Framework and find them to be broadly consistent. Therefore, while I have had regard to the emerging policies, I have determined the appeal on the basis of the adopted development plan at the time of my decision which should be afforded full weight.

Main Issues

6. The main issues are:
- Whether the proposal would accord with the local development strategy for the area with regard to location;
 - Whether the proposal would provide acceptable living conditions for future occupiers, with particular regard to noise and disturbance; and,
 - The effect of the proposal on the character of the area.

Reasons

Location

7. The appeal site is a vacant three-storey semi-detached building fronting the east side of New Chester Road. The evidence before me suggests that the building was last used as an antiques warehouse and prior to that, a public house/hotel. Indeed, the part-tiled façade and brewery name remain on the front elevation. The site includes an external yard which wraps around the side and rear of the building and is currently used for container storage. The adjoining building is in use as a takeaway/café at ground floor. The appellant's statement indicates that there is a residential use above.
8. The area is mixed in character. To the east side of New Chester Road in the immediate vicinity of the appeal site are industrial and commercial premises. A large metal sheet industrial building housing an engineering company lies to the south, an MOT garage and servicing business to the north and there is a pallet storage business to the rear of the appeal site. On the west side of New Chester Road, residential properties are set back from the road behind a wide grass verge that includes several mature trees and an enclosed multi-use games court.
9. The site is located within an area designated as a Primarily Industrial Area (PIA) in the UDP. Policy EM8 of the UDP sets out a number of uses, subject to certain criteria, that would be permitted in PIAs. Policy EM9 of the UDP states that 'proposals for retail or housing uses on land allocated for employment purposes will not be permitted.' The justification provided in the UDP is to safeguard the long-term supply of employment land.
10. Unlike Policy WS4.2 of the ELP, neither Policy EM8 nor EM9 of the UDP include a requirement to demonstrate that there would be no reasonable prospect of the site being used for an employment generating use through marketing of the site for such purposes. Nevertheless, the appellant suggests the appeal building has been vacant for some time and there are no alternative viable uses. However, no information has been presented to substantiate this assertion.

11. Whilst the building is an imposing 19th century building of local architectural and historic merit and its retention would be beneficial in this regard, both parties have confirmed that it would not be considered as a non-designated heritage asset in terms of the PPG¹. I acknowledge that the age and format of the building may not be suitable for some employment generating uses. Nonetheless, it is located immediately adjacent to other active employment uses and there is no substantive evidence before me that it would be beyond restoration and re-occupation for an employment purpose or that it would be inherently unviable for employment use.
12. While part of the site would be reconfigured and retained for storage purposes and would therefore be consistent with the PIA designation, the use of the building as a House in Multiple Occupation (HMO) would introduce a residential use on the site. The proposal, while not significant in scale by itself, would lead to a loss of employment land. It would therefore conflict with Policies EM8 and EM9 of the UDP.
13. For the reasons given above, the proposal would not provide a suitable location for residential use with regard to the supply of employment land within the Borough. Consequently, it would be contrary to Policies EM8 and EM9 of the UDP which seek, amongst other things, to safeguard the long-term supply of employment land, including sites of different type and size, to provide for environmental improvements within PIAs and ensure uses are compatible with existing industrial activities.

Noise and disturbance

14. Whilst not suggested as a putative reason for refusal, the Council's statement refers to the living conditions of future occupants of the proposed HMO. In this regard, at my site visit I observed a sign at the entrance to the appeal site that advertised 24-hour access to the container storage facility at the site. Several commercial and industrial businesses nearby also appear to undertake activities in external yard areas. Due to the proximity of the proposed residential use to these businesses the living conditions of future occupiers could be harmed by noise and disturbance, particularly whilst using the proposed outdoor amenity space.
15. The imposition of conditions to restrict the hours of use of the container storage could prevent night-time and early morning use, and the use of glazing and sound proofing measures in the building could help mitigate, to a certain extent, noise intrusion. I note that the appellant is amenable to such conditions. However, the operation of other surrounding businesses is not within the control of the appellant.
16. Paragraph 180 of the Framework requires new and existing development to avoid contributing to, or being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Paragraph 193 also indicates that planning decisions should ensure that new development can be integrated effectively with existing businesses and community facilities by avoiding the need for them to have unreasonable restrictions placed on them as a result of development permitted after they were established. Specifically, the Framework advises 'where the operation of an existing business or community facility could have a significant

¹ Planning Practice Guidance: Paragraph: 040 Reference ID: 18a-040-20190723

adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.'

17. The absence of evidence about the operation of surrounding businesses, including hours of use and noise generation, means I cannot rule out potentially significant harm to the living conditions of future occupants. While the appellant has indicated that the property has thick walls and triple glazing could be installed, no compelling evidence has been provided to be certain that this would be required or, if it were, that it would comprise sufficient mitigation to ensure the living conditions of occupants would be adequately protected from undue noise and disturbance. I am also mindful that the proposed private external amenity space would adjoin potentially unrestricted storage uses, where future occupiers of the HMO could be subject to significant noise and disturbance.
18. On this main issue, I find that insufficient evidence has been provided to demonstrate that the living conditions of future occupiers of the proposed HMO would not be harmed by noise and disturbance or that suitable mitigation could be provided to ensure the operation of surrounding businesses would not be unduly restricted as a result of the proposed residential use in close proximity. As such, the proposal would be contrary to Paragraph 193 of the Framework which seeks that new development can be integrated effectively with existing businesses.

Character

19. The appeal building and the adjoining property are traditional in form and appearance and differ in this respect from many of the buildings in close proximity. With the exception of the flat at the adjoining property, from what I have seen and read, there are no other residential properties in the immediate vicinity of the appeal site on the east side of New Chester Road. However, albeit set back from the road, the west side of New Chester Road opposite the appeal site is predominantly residential.
20. On approach to the site from the north along New Chester Road, once beyond the Rock Ferry By-Pass roundabout, the general industrial nature of the area makes way for residential development to the east. Beyond Bedford Place, residential development is evident on both sides of the road. Overall, the wider location is characterised by sizeable areas of industrial and commercial development as well as significant areas of residential development. The appeal site sits at the edge of the PIA within a transitional area close to residential development. Furthermore, the potential for increased comings and goings associated with the proposed HMO would not be noticeable to nearby occupiers of businesses or residential properties, having regard to the location alongside the main road.
21. Consequently, I conclude that the proposal would not be at odds with the character of the area. It would therefore comply with Policy HS14 of the UDP which requires, amongst other things, that proposals for the conversion of existing buildings to HMO's would not be detrimental to the character of the surrounding area.

Other Matters

22. It has been put to me by the appellant that the first and second floors of the adjoining building are already in use as a flat and located within the PIA. Be that as it may, I have not been provided with the specific circumstances of its use, for example, how long it has been in residential use. Having regard to the age of the building, a flat above the ground floor commercial use would likely have pre-dated the surrounding development and taken place against a different planning policy background. Regardless, the appeal before me is for the whole of the building to be used as an HMO and as such is materially different. Any direct comparison with the adjoining building does not therefore, indicate that the appeal proposal would be acceptable.
23. The appeal site is an accessible location with access to transport links. Additionally, the development would offer potential benefits in terms of providing ten new residential units to the Council's housing stock. It would also have economic benefits through the renovation phase of the development and spending in the local area by future occupants. However, given the relatively small scale of the development, the weight attributable to these matters is limited and is not sufficient to outweigh the harm that I have identified and the conflict with the policies I have referred to.
24. The proposal would make use of a vacant building which would indicate investment in the area and contribute towards the Council's aspiration to improve the PIA and surrounding area. However, there is no compelling evidence to suggest why, in the face of conflict with the PIA designation that similar investment could not be provided with an employment generating use in the building.
25. The decision would not set a precedent for the area, as each proposal must be assessed on its own merits and the particular circumstances of the site.
26. I recognise the appellant's disappointment and frustration with the Council in respect of the advice provided prior to submitting the application and the lack of dialogue during the planning application process. However, this has had no bearing on the outcome of this appeal as I have only had regard to the planning merits of the proposal that is before me.

Conclusion

27. The proposal conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
28. For the above reasons, I conclude that the appeal should be dismissed.

A Veevers

INSPECTOR