Appeal Decision

Site visit made on 5 August 2025

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2025

Appeal Ref: APP/P4605/W/25/3362620
Land at 135 New John Street & 107 Pritchett Street, Birmingham, B6 4LD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by S&T Enterprises Ltd against the decision of Birmingham City Council.
- The application Ref is 2024/04248/PA.
- The development proposed is 'Change of use from warehouse (Use Class B8) to a wine bar/restaurant/take-away with late night entertainment (Use Class E, Sui-Generis) and installation of extraction flue.'

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the strategic supply of employment land.

Reasons

3. The appeal site comprises an industrial building located within a Core Employment Area (CEA). The surrounding area is characterised by similar buildings primarily in industrial uses. the appeal proposal seeks to change the use of the building to a bar/restaurant/café, with an extraction flue to be installed externally.

4. Policy TP19 of the BDP[1] sets out that applications for uses outside the employment uses specified will not be supported unless an exceptional justification exists. These specified uses are B1b (Research and Development), B1c (Light Industrial), B2 (General Industrial) and B8 (Warehousing and Distribution). It is not disputed that the proposed use would fall outside of these and would therefore require exceptional justification.

5. Policy TP19 does not state what exceptional justification entails. The SPD[2] advises on several approaches; this includes the need to demonstrate active marketing has been undertaken for a reasonable period, generally given as a minimum of two years; the industrial use is no longer viable; and that alternative sites are not available which do not involve the loss of industrial land. It goes on to state that this could be because the particular site size requirements make it difficult to find sites which do not involve the loss of industrial land. While it is claimed that the SPD is out of date, its age alone is not reason enough to reduce the weight of the SPD as a material planning consideration. There is no compelling

[1] Birmingham Plan 2031 Birmingham Development Plan (adopted January 2017)
[2] Loss of Industrial Land to Alternative Uses Supplementary Planning Document (February 2006)

reason before me to justify the assertion that the SPD is out of date. It is therefore a material consideration of significant weight.

6. My attention is drawn to a letter from the owner of the building which states that it had been marketed for sale or lease in early 2022, with the appellant's taking on the lease in 2023 for the adjoining building. However, there is little substantive evidence of the marketing which took place and a one page little offers very little in the way of justification. Moreover, there is nothing before me to demonstrate that a suitable premises for a business of this type could be secured outside of a CEA as per the SPD. The main justification for its location appears to be that the appellant's cash and carry business operates in the adjoining building. Although I understand that the proposed development may create jobs if it were to be a success, there is nothing before me to indicate that the existing use is redundant and incapable of providing future employment uses for which it is designated.

7. There are evidently other uses outside of those defined in policy TP19 of the BDP both nearby and in other CEAs across the city. I observed the place of worship on my site visit close to the appeal site as an example. Policy TP19 does not preclude the change of use, but the exceptional justification places an onus on the appellant to demonstrate these circumstances. The use of the word 'exceptional' indicates a high bar on this evidence and regardless of whether a potential market exists nearby for the proposed business to succeed, the evidence is lacking to justify the loss of industrial land. Those approvals shown in Table 1 in the appellant's appeal statement would have had their own circumstances, and I have little before me to demonstrate what these were.

8. For these reasons, the proposed change of use, and loss of employment land, has not been exceptionally justified. Consequently, the proposed development would be contrary to policies TP19 and GA1.3 of the BDP. These seek, amongst other things, to ensure that there is a sufficient supply of land for employment uses to support the needs of businesses.

Other Matters

9. I have no reason to doubt that there would be benefits to the proposal. The appellant evidently runs other similar establishments and other businesses in the city successfully. There would be some economic benefits from the establishing of a business such as this and throughout the construction process. A café/bar/restaurant catering for the black African and Caribbean market outlined, would provide some societal benefits while the reuse of an existing building, notwithstanding the conflict with policy TP19, brings forth some environmental benefits as it would require minimal construction and no new buildings. However, to my mind these would not outweigh the harm caused by the loss of employment land and conflict with the development plan as a whole.

10. There were no objections from consultees such as the Police, Environmental Health or Highways on relevant matters related to the scheme. Be that as it may, a lack of harm is neutral in the consideration of the proposal as a whole rather than weighing in favour.

Conclusion

11. For the reasons given above, the proposed development conflicts with the development plan and the material considerations do not indicate that the proposal should be determined other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

C McDonagh

INSPECTOR