



Appeal Decision

Site visit made on 5 September 2025

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2025

Appeal Ref: APP/P4605/W/25/3366915

67 Mott Street, Birmingham B19 3HE

- 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 Mr Amanuel Kaleb against the decision of Birmingham City Council.
 - The application Ref is 2024/03382/PA.
 - The development proposed is part change of use of warehouse and storage unit (B8) into restaurant (Class E).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the proposal on the long-term provision of employment land.

Reasons

3. The appeal property is currently vacant but was previously used for the wholesale of footwear. There is no dispute between the parties that the proposal would change the use of part of the appeal property to a use that falls outside of those uses specifically associated with employment land.
4. Policy TP20 of the Birmingham Development Plan (2017) (BDP) states that employment land and premises are a valuable resource to the Birmingham economy and will be protected where they contribute to the portfolio of employment land and are needed to meet the longer-term employment land requirements. However, the policy recognises that outside Regional Investment Sites and Core Employment Areas there may be occasions where employment land has become obsolete and can no longer make a contribution towards the portfolio of employment land.
5. In such cases, Policy TP20 permits change of use proposals from employment land to other uses where it can be demonstrated that either the site is considered 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 that accords with other property of a similar type in the area. Where it is argued that redevelopment for employment purposes would be commercially unviable, a viability assessment may also be required which should include investigations into the potential for public sector funding to overcome any site constraints.

6. The Loss of Industrial Land to Alternative Uses Supplementary Planning Document (2006) (SPD) provides guidance on the application of Policy TP20 of the BDP. Although it was adopted quite some time ago, the appellant does not dispute the relevancy of its requirements in an advisory capacity. The SPD clarifies that non-conforming uses will mostly consist of small isolated industrial sites within predominantly residential areas. It goes on to explain that sites which are adjoined by other industrial uses, and are part of a larger industrial area, would not be considered non-conforming.
7. I saw on my visit that the area within the immediate vicinity of the appeal property comprises a mix of commercial uses. There is a variety of uses on both sides of Mott Street, including industrial uses, such as wholesale trade, and some retail uses, as well as cafes and restaurants. The industrial use of the appeal property is in keeping with this mix of uses and therefore is not 'non-conforming' for the purposes of applying Policy TP20 of the BDP.
8. There is little substantive evidence before me to demonstrate the active marketing of the appeal property. A letter from the previous owner and a short statement attached as Appendix 2 to the appellant's appeal statement describe the appeal property to have been marketed privately over the last two years, through 'word of mouth', local traders and builders. The letter also explains that due to high demand within the local community, it was considered unnecessary to advertise the property online or through wider platforms.
9. I am of a similar view to the Council, that this approach would have likely limited the marketing of the property to the immediate locality and appellant's existing business network. It is a far more limited approach than the advice at Paragraph 5.3 of the SPD, which sets out the Council's expectations in terms of undertaking active marketing. There is also no substantive evidence that the appeal property was being marketed for a price which accords with other industrial property of a similar type in the area.
10. I appreciate that Policy TP20 of the BDP does not give prescriptive guidance on how a marketing exercise should be demonstrated. Nevertheless, in this case, the one-page letter and short statement, which describe the actions taken without showing any evidence of them, in my view, fall short of demonstrating active marketing for two years.
11. It has also been put to me that there is reduced viability for industrial units in the area. The appellant contends that the re-use of the appeal property as a B8 industrial unit would not be feasible. This is because a huge investment would be needed to redevelop it for B8 industrial use. Nonetheless, the viability evidence provided is incomplete. A quote for refurbishment and internal works for a new industrial occupier has been provided to demonstrate the amount of investment required. However, without information regarding the potential returns of selling or letting the unit, it is not possible to determine whether this level of investment would render the re-use of the appeal property for an employment use unviable. There is also no evidence of investigations into the potential for public sector funding, as required by Policy TP20 of the BDP.
12. I note the appellant's view that Policy TP20 of the BDP should be reviewed to correspond to the aim of the National Planning Policy Framework (Framework) to avoid the long-term protection of sites allocated for employment use where there is

no reasonable prospect of a site being used for that purpose. Nonetheless, this policy has been removed from more recent versions of the Framework, so the weight I can afford it is limited. In any event, in this case, it has not been demonstrated that there is no reasonable prospect of the appeal site being used for employment use.

13. The appellant refers to the Aston, Newton and Lozells Area Action Plan (APP). However, the appeal site is not located within the boundary of the APP, so its policies would not be applicable in this case.
14. The appellant also refers to Planning Policy Guidance Note 3. Nonetheless, this has been superseded by the Framework.
15. Accordingly, based on the evidence before me and my observations on site, in the absence of substantive evidence to demonstrate adequate active marketing or that redevelopment for employment purposes would be commercially unviable, the proposal would conflict with Policy TP20 of the BDP and result in harm to the long-term provision of employment land.

Other Matters

16. I note the objection from Birmingham Public Health regarding the proximity of the proposal to St George's CoE Academy. Nonetheless, given I am dismissing the appeal on the main issue, I have not considered this further.

Planning Balance and Conclusion

17. The appellant refers to the Framework's support for economic growth and sustainable development by, among other things, ensuring that planning decisions reflect changes in the demand for land. Nevertheless, while the proposal would not be out of character with the mix of commercial uses in the immediate area and would retain part of the appeal property in B8 industrial use, it has not been demonstrated that the unit, as a whole, is no longer attractive or viable for an employment use.
18. Overall, the proposal would result in some modest economic and social benefits arising from the refurbishment works and new business, including the generation of some employment, albeit for 40 covers this would be limited. These benefits weigh in favour of the proposal. However, they would not outweigh the conflict with Policy TP20 of the BDP and the resulting harm to the long-term provision of employment land.
19. Accordingly, the proposal would conflict with the development plan, read as a whole. It has not been demonstrated that there are any material considerations of sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. The appeal is therefore dismissed.

Hannah Guest

INSPECTOR