



Appeal Decision

Site visit made on 9 November 2020

by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2020

Appeal Ref: APP/D5120/W/20/3250361

Europa Trading Estate, Unit N7, Fraser Road, Erith DA8 1QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Crossfit Against the Fire against the decision of the London Borough of Bexley Council.
 - The application Ref 19/01480/FUL, dated 16 June 2019, was refused by notice dated 2 March 2020.
 - The development proposed is for Change of use from Class B8 to a Flexible Use of Class D2 (Leisure Use for a Crossfit Gym) and B1, B2 or B8.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue of this appeal is the effect of the proposal on employment floorspace in a Primary Employment Area and Strategic Industrial Land location.

Reasons

3. The appeal site is located on the Europa Trading Estate (the estate) and is one of 12 small units in the centre of this extensive estate, with a variety of units differing in scale, which, on my site visit appeared to be close to full occupation and in intensive use. The proposal seeks a flexible change of use for the appeal site that would allow D2 (Leisure Use), B1 (Business), B2 (General Industrial) or B8 (Storage and Distribution), the last of which is its current sole defined use.
4. The estate is defined by the Proposals Map in the London Borough of Bexley Unitary Development Plan 2004 (the UDP) as a Primary Employment Area (PEA) and is subject to Policy 2.17 of the London Plan 2016 as a Strategic Industrial Land (SIL) location. The proposed D2 use as a gymnasium is classified in the National Planning Policy Framework (NPPF) annex 2 Glossary as a Main Town Centre use, suitable for city centre, town centre, district centre and local centre locations.
5. Whilst paragraph 89 of the NPPF sets a floorspace threshold above 2500sqm for out of centre development that requires an impact assessment on town centres, I find that this threshold is set only for the purposes stated in the NPPF and that this threshold cannot, therefore, be taken as a threshold requirement for a Sequential Test (ST) to be in accordance with the NPPF. Although Policy CS14 of

the Bexley Core Strategy 2012 (the CS) and relevant UDP policies relating to out of centre development predate the NPPF, I find that they are in accordance with it in this regard and, therefore, I don't agree with the appellant that the policies are out of date.

6. Notwithstanding their stated position on local policy and paragraph 89 of the NPPF, the appellant has sought, in accordance with the NPPF and Policy CS14 of the Bexley Core Strategy 2012 (the CS), to demonstrate through a Sequential Test (ST) that the appeal site, although in an out of centre location, is the only available and viable property available for the specific requirements of a D2 Crossfit gym of the type operated by the appellant. In coming to their conclusion, the appellant points to the 27 properties in town and district centres within the borough of Bexley that have been considered through the ST.
7. Although there is no standard template for an ST, Planning Practice Guidance¹ (PPG) sets out what an ST is, and only if suitable sites in town centre or edge of centre locations are not available, or expected to become available within a reasonable period, should out of centre sites be considered.
8. With reference to the approach to applying STs, and the PPG, case law² and appeals³ brought to my attention by the appellant, it is reasonable to expect that the ST should be in conformity with the PPG and that the approach applied with regard to the ST should be proportionate and appropriate with regard to properties considered. Furthermore, in taking into account the particular market and location requirements of the appellants use, it is accepted that the 27 sites identified in the ST as unsuitable for the particular needs of the appellants use are just that.
9. However, although the ST shows that the appellant has considered a number of sites in the town centre and district centre locations, I do not consider that the appellant has demonstrated that they have given similar consideration to any sites in edge of centre locations, or other such areas, such as secondary employment areas, as suggested by Bexley Council (the Council). I find, therefore, that the appellant's ST is not in conformity with the PPG and does not allow for a clear conclusion that the appeal site is the only suitable, available and viable site for the appellants use.
10. The appellant acknowledges that, even if an ST is in conformity with the PPG, this does not automatically lead to the conclusion that permission will be granted. However, as set out in the NPPF⁴, decision making should be flexible and take into account that there may well be cases where a departure from policy is justified by special circumstances. Although the proposal would be a viable economic use, provide some employment opportunities and offer an in demand service, it would also fail to safeguard land and buildings for commercial and industrial use and would prejudice the provision of employment floorspace. This loss would not be part of a strategically coordinated process contributing to London's economic prosperity or supporting employment growth in the area. Therefore, I find that the proposal is not justified as an exception to the loss of employment floorspace in this area.

¹ Planning Policy Guidance Ref: 2b-009-20190722 and 2b-011-20190772

² Tesco Stores Ltd v Dundee City Council [2012] UKSC 13

³ Appeal Ref: APP/G2815/V/2190175, APP/J4423/A/13/2189893 and APP/M3455/A/13/2195541

⁴ National Planning Policy Framework s4. Decision Making

11. Consequently, I do not find that the benefits of the proposal would outweigh the harm caused through the loss of employment floorspace in a PEA and SIL location and the proposal would, therefore, be contrary to saved Policies ENV39, E1, E3 and TS7 of the UDP, Policies CS01, CS04, CS12, CS13 and CS14 of the CS and Policies 2.17 and 4.4 of the London Plan (2016) and Policy E5 of the London Plan- intend to publish (2019), which collectively seek to address constraints and opportunities in the economic growth of this part of outer London.

Other Matters

12. The appellant has provided me with marketing material as part of their appeal documentation that was not made available to the Council when making their decision. Whilst I acknowledge that the appeal site had been the subject of this marketing, I do not find the limited information provided on the commercial aspects of marketing this unit for this time period in an otherwise well occupied and active estate, provide me with material that demonstrates what amounts to a significant material consideration that would justify a departure from policy and I have, therefore, only given this little weight in my considerations.
13. The appellant has drawn my attention to an approval by Medway Council for a similar proposal to that of the appellant. As the proposal would have been considered on its own merits, I have given this only little weight in my considerations.
14. The appellant has suggested that a condition could be applied to an approval that would limit the approval to the appellant, as this would allow reversion at some point in the future to the existing use. However, an approval with such a condition would still result in the harm I have identified above and would not set a limit on the length of time this harm would persist. I do not, therefore, find that the appellant has provided me with any special circumstances that would justify such an approach.

Conclusion

15. Although the policies of the UDP are now of some age, they do accord with the NPPF, and I have given them significant weight in my considerations.
16. For the reasons given above the appeal is dismissed.

Victor Callister

INSPECTOR