

Appeal Decision

Site visit made on 23 February 2021

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2021

Appeal Ref: APP/J1535/W/20/3261356

Messina Transport Ltd, Sedge Green, Roydon, Harlow CM19 5JR

- 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 Messina Transport Ltd (Mr Messina) against the decision of Epping Forest District Council.
 - The application Ref EPF/1297/20, dated 29 May 2020, was refused by notice dated 14 August 2020.
 - The development proposed is the erection of a workshop.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt;
 - the effect of the proposal on surface water drainage;
 - other considerations;
 - whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the proposal?

Reasons

Whether inappropriate development

3. The appeal site falls within the Green Belt (GB) where Policy GB2A of Epping Forest Local Plan and Alterations (2006) (LP) presumes against new buildings unless they fall within specified exceptions. The Epping Forest District Local Plan (2017) (eLP) has reached an advanced stage in its preparation. Policy DM4 of the Submission Version of the eLP states that new buildings in the GB will be inappropriate other than in certain exceptions. The exceptions specified are broadly similar to those set out at paragraph 145 of the National Planning Policy Framework (the Framework). The policy can be afforded considerable weight. The appellant argues that the appeal proposal falls within exception (g) of paragraph 145 which allows for the partial redevelopment of previously developed land which would not have a greater impact on openness than the existing development.
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4. The appeal site forms part of a hard-surfaced transport yard and there is no dispute that it constitutes previously developed land. I recognise that the transport yard is well established and distinguishable from the open countryside and that the proposed building would be typical of those found in similar premises. It would also be fairly well related to existing buildings to the south and east and would take up a relatively small proportion of the site as a whole. Nevertheless, in the context of the GB, openness has a spatial as well as visual component. In this case, prior to the partial erection of a steel frame without planning permission, the site was open above ground level.
5. The proposal is for a new building measuring some 5.6m by 12.1m and in excess of 5m tall. The creation of built development with this volume, notwithstanding its visual suitability to its surroundings, would result in a loss of openness compared with the open character of the existing site. Consequently, I find that the proposal does not meet the test in Framework paragraph 145(g) and, therefore, amounts to inappropriate development in the GB.

Surface Water

6. The appellant's appeal submissions include a site-specific Flood Risk Assessment (FRA) (EAS Document Ref: SuDS-2923-2020). It confirms that the appeal site falls within Flood Zone 2 in the Environment Agency's flood maps and is at medium risk of fluvial and surface water flooding. Framework paragraphs 155, 157 and 158 and eLP Policy DM15 seek to steer development to areas with the lowest risk of flooding. In order to achieve this, they require FRAs to undertake a 'sequential test' and, where necessary an 'exception test'. Policy U2A of the LP also requires development to be determined in accordance with the sequential approach. The submitted FRA does not include those tests.
7. The Planning Practice Guidance advises that the information in a FRA should be proportionate to the degree of flood risk and appropriate to the scale of development. It also recognises that a pragmatic approach should be taken to the availability of alternatives such as other locations for an extension to an existing business when considering the sequential test. However, as established in the submitted FRA, part of the appeal site falls within Flood Zone 1. In the absence of a sequential test to show why the proposed building could not be located on that part of the site, I find that the proposal would conflict with the national, LP and eLP policies set out above.
8. The submitted FRA advises that the site would continue to fall within the 'less vulnerable' category for the purposes of the exception test as set out in the PPG. However, the sequential test must be passed before the exception test can be applied.
9. Framework paragraph 163 seeks the use of sustainable drainage systems wherever appropriate and eLP Policy DM16 seeks to ensure that development manages surface water as close to source as possible and sets out a hierarchy of drainage techniques. Paragraph 7.7 of the FRA concludes that the site is at low risk of flooding and that, with appropriate sustainable drainage features, the proposal offers the opportunity to reduce flood risk downstream.
10. The FRA sets out proposals for making the new building flood resilient, makes reference to the Environment Agency's flood warning service and outlines a drainage maintenance schedule. However, apart from the removal of a septic

tank from the existing system, no firm proposals to improve drainage of the site or introduce new sustainable drainage solutions have been offered. As such, it has not been adequately demonstrated that the proposal would result in the site being at low risk of flooding or that the downstream flood risk would be reduced. Consequently, I find that the proposal would conflict with Framework paragraph 163 and eLP Policy DM16.

11. The second reason for refusal also cites LP Policy U2B. This policy is based on Flood Risk Assessment Zones shown on the LP Proposals Map. I have not been provided with information on these Zones and, therefore, am unable to reach a conclusion on whether or not the proposal accords with this policy.

Other Considerations

12. The appellant's Design and Access Statement refers to the support at Framework paragraph 83 for the sustainable growth and expansion of all types of business in rural areas, including through the construction of well-designed new buildings. However, my findings on the main issues indicate that the proposal would not be a sustainable form of development and, therefore, it derives limited support from paragraph 83.

Green Belt Balance

13. I have found that the appeal proposal would be inappropriate development in the GB. Framework paragraph 143 advises that inappropriate development is, by definition, harmful to the GB and should not be approved except in very special circumstances. I have also found that the proposal would result in a reduction in the openness of the GB. Paragraph 144 confirms that substantial weight should be given to any harm to the GB.
14. I have also found that the proposal would not accord with national and development plan policies on flood risk and sustainable drainage.
15. Overall, I find that the other considerations in this case do not clearly outweigh the GB and other harm. Looking at the case as a whole therefore, I consider that the very special circumstances necessary to overcome the GB harm have not been demonstrated. The proposal, therefore, conflicts with LP Policies GB2A and U2A, eLP Policies DM4, DM15 and DM16 and Framework paragraphs 143, 144, 145, 155, 157, 158 and 163.

Conclusion

16. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR