



Appeal Decision

Site Visit made on 15 November 2021

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2021

Appeal Ref: APP/Q5300/W/21/3273016

Matalan, 2 Braithwaite Road, Enfield, London EN3 7NJ

- 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 Auriga Holdings Ltd. against the decision of London Borough of Enfield.
 - The application Ref 20/03134/FUL, dated 25 September 2020, was refused by notice dated 12 February 2021.
 - The development proposed is for the erection of a single storey building for mixed restaurant and hot food takeaway use, incorporating a 'drive-thru' facility and associated reconfiguration of existing car park layout.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site is within a wider parcel of land granted consent to be used as a retail warehouse¹. The use of this is limited by a range of conditions preventing its sub-division and restricting sales to bulky goods, clothing and footwear.
3. The Council has cited policies 2.17, 5.3 and 5.13 of the London Plan (2016) in its reasons for refusal. These policies have been transposed and renumbered as policies E5, SI 12 and SI 13 within The London Plan (2021) which has now been published. These policies are generally the same as the ones they have replaced. I shall take these into account in my decision.

Main Issues

4. The main issues are:
 - Whether the proposal would comply with the strategic land use policies of the Development Plan, and
 - The effect of the proposed development on off-site flooding, with particular regard to sustainable drainage.

Reasons

Land use policies

5. The appeal site is within a car park that serves a large retail warehouse. The site is within a Strategic Industrial Location (SIL) area. Policy E5 of the London Plan (2021) seeks to safeguard SILs to uses that would support London's

¹ Planning Application Reference: TP/86/0650

economy. It lists such uses as those that would fall within the industrial type activities stated in policy E4, Part A. Although, policy E5 also requires proposals to not compromise the integrity or effectiveness of existing industrial activity within the SIL, this objective is not exclusive of the previous point and does not provide the flexibility envisaged by the appellant.

6. Furthermore, Policy CP14 of the Enfield Core Strategy (2010) (CS) identifies the site as being within the Brimsdown Industrial Area which is a Preferred Industrial Location (PIL). Policy DMD 19 of the Enfield Development Management Document 2014 (DMD) provides a closed list of activities that would be supported within PILs. The proposal would fall outside the list advanced by both policy E4 of the London Plan, and policy DMD 19 of the DMD.
7. Policy DMD 21, of the DMD, supports "small scale walk-in facilities such as a café to meet the day to day needs of industrial occupiers". The proposed development would offer a food and drink venue that may be of some benefit to local businesses. However, the proposed development would be a relatively large restaurant and drive through facility. It would therefore be able to cater for high volumes of customers providing both walk in and drive through food collection options. The scale and range of collection options illustrate that the property would cater for a wider catchment area. Therefore, whilst recognising the benefit of this service to local businesses, the scheme would exceed the type of complementary and supporting activities supported by policy DMD 21.
8. As a result, the proposal would not comply with the strategic land use policies of the Council's Development Plan. Consequently, for the above reasons, the proposal would conflict with policy E5 of the London Plan (2021), policies CP13 and CP14 of the CS, policies DMD 19 and DMD 21 of the DMD and the North East Enfield Area Action Plan.

Flood considerations

9. The appeal site is within flood zone 2. The proposal includes a use that would be 'less vulnerable' as defined by the Planning Practice Guidance. The appellant's Flood Risk Assessment² (FRA), submitted in support of the appeal, identifies that the site has a low risk of flooding. As such, table 3 of the PPG indicates, in such circumstances, that development should be considered appropriate in principle. The FRA recommends that the building's ground floor level be set at a sufficient height to protect it from flooding. It is uncontested between parties that the building would not be subject to flood risk and the conclusions of the submitted FRA have been uncontested by the Council.
10. Policy 61 of the DMD seeks rainwater discharge rates to achieve green field run-off rates for major sites. It also requires 'all other sites', such as the appeal site, to explore sustainable drainage measures (SuDS) and deliver a net improvement in quantity and quality. With respect to the proposed SuDS, the FRA states that porous paving, and an attenuation storage tank, would be employed to limit rainfall runoff during storm conditions. Catchment on site would therefore restrict storm water runoff to a reduced level in comparison to predevelopment rates. Consequently, the drainage strategy would provide an improved flood management response in comparison to the existing arrangement.

² Flood Risk Assessment, March 2021, by Link Engineering

11. The proposal would therefore include a robust SuDS strategy which illustrates that significant betterment is capable within the site. In mind of the conclusions of the FRA detailed drainage matters could have been resolved by way of a planning condition had I been minded to allow the appeal.

As a result, the proposed development would have no substantive effect on off-site flooding and would deliver improved rainfall catchment through the proposed sustainable drainage strategy. The proposal would therefore accord with policies S1 12 and SI 13 of the London Plan, policy CP28 of the CS, policies DMD59, DMD60, DMD61 and DMD62 of the DMD and the Enfield Strategic Flood Risk Assessment. These policies seek, among other matters, for flood risk to be managed in a sustainable and cost-effective way.

Other Matters

12. The site already includes a retail operator. However, the retail warehouse is subject to several conditions that limit its retail activity. As a result, the retail warehouse offers negligible opportunities for change, providing limited commonality with the Sui Generis use of the proposal. Although the scheme would not result in the loss of land or buildings in a use defined by policy E4 of the London Plan, it would be within the area that precludes such a use as proposed.
13. I recognise that the proposal would result in new employment opportunities within the area, provide a service offering benefits to local employees and would make efficient use of under-utilised land. However, these merits would not outweigh the conflict I have identified with the development plan.
14. Recent changes to the 1987 Use Classes Order enable premises currently in Class B1 use to be used for a wider range of activities listed within Class E. This change shows a greater flexibility to some business activity. However, it is not in evidence whether such uses are within the local area or of such quantity to result in a significant bearing on the operation of the engaged policies. Further changes of use, through permitted development, could in theory result in the introduction of a more diverse range of uses locally. However, there is no firm evidence to show this is a reasonable prospect or currently establishes a clear fall-back position to the current scheme. Accordingly, recent changes to the use classes order do not have a material bearing on the merits of the proposal.

Conclusion

15. The proposal would conflict with the development plan when taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

B Plenty

INSPECTOR