



Appeal Decision

Site visit made on 15 August 2022

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Appeal Ref: APP/E5900/W/21/3272226

Site at South East Junction of Thames Circle and Westferry Road, Thames Circle, London E14 3RX

- 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 REEF London Ltd against the decision of London Borough of Tower Hamlets.
 - The application Ref PA/20/01374, dated 26 June 2020, was refused by notice dated 18 November 2020.
 - The development proposed is siting of containers and change of use of car park to commercial kitchen, container farm, business to business storage lockers'.
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Decision

1. The appeal is allowed and planning permission is granted for the siting of containers and change of use of car park to commercial kitchen, container farm, business to business storage lockers at South East Junction of Thames Circle and Westferry Road, Thames Circle, E14 3RX in accordance with the terms of the application, Ref PA/20/01374, dated 26 June 2020, subject to the attached schedule of conditions.

Applications for costs

2. An application for costs was made by the appellant against the Council. That application is the subject of a separate Decision.

Preliminary Matters

3. I note that during the determination of the planning application it was agreed by the parties that formerly proposed e-scooter charging storage and car club spaces would be removed from the proposal. Drawing ref: 3257/1 revision D, titled 'Proposed Site Plan' details the agreed proposal and the address and development description were changed accordingly. These drawings appear to reflect the development that has been carried out on the site. I have therefore used the agreed site address and development description shown on the appeal form and Decision Notice. I have also considered this appeal on the basis of these agreed changes and what is shown on that drawing.
4. I understand that the Council is seeking to take enforcement action against the development. An appeal against an enforcement notice is not before me. I have considered this appeal solely on the basis of the planning application refusal.
5. The Council refers to the London Plan 2016 in its decision notice. In July 2021, the revised London Plan was published. I have determined the appeal within

the context of the revised London Plan and as all parties have had an opportunity to comment on the appeal, there would be no injustice to the parties in regard to this.

Main Issues

6. The main issues are the effect of the development on:

- established employment use land; and
- character and appearance of the area.

Reasons

Established employment use land

7. The appeal site is located on the corner of Westferry Road and Thames Circle, adjacent to St Edmunds Roman Catholic Church. It is a relatively small rectangular site which, prior to the development, was used for the siting of temporary school accommodation.
8. Policy S.EMP1 of the Tower Hamlets Local Plan 2031 (Local Plan) defines the role and function of employment land within the area. It also outlines the Council's aim to support, protect and enhance, and maximise employment floorspace to meet the Council's job creation target. It designates the appeal site as 'other employment sites'. These are sites, which are outside any specific strategic employment area, but still provide significant employment floorspace and jobs across a variety of sectors.
9. Policy D.EMP3 of the Local Plan details that designated 'other employment sites' should not result in a net loss of viable employment floorspace other than for two exceptions. Firstly, where there is evidence of active marketing over a continuous period of at least 24 months at a reasonable market rent which accords with indicative figures provided. Alternatively, where it could be robustly demonstrated that the site is genuinely unsuitable for continued employment use due to its condition; reasonable options for restoring the site to employment use are unviable and that benefits of alternative use would outweigh the benefits of employment.
10. The above policies are also specifically aimed at preventing the loss of floorspace. However, as the appeal site was previously vacant with no permanent buildings, it did not have any specific floorspace. The Council provided no evidence of existing floorspace or details of the floorspace that the site was expected to provide.
11. The parties do not agree on the development's Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) class use. While I have not been provided with the Council's definition of what class use constitutes employment, I can see that the introduction of a non-Class B (whether sui generis or Class E) could be deemed contrary to the principle of retaining the site in an employment use class. However, based on the assessment presented in the Savills' Employment and Economic Impacts Report dated March 2021, it is estimated that 11 full time equivalent jobs would be created by the development while, approximately 4 to 7 full time equivalent jobs would be created by the established Class B8 use. The Council does not dispute this assessment and moreover, it seems to indicate that it is those uses that may

be more traditionally described as employment ones that would have the lower job creation. Conversely, it is the commercial kitchen use that appears to be the bigger employment generator on this site. As such the development accords with the overall aim of Policy S.EMP1 in protecting, enhancing, and maximising job creation.

12. Consequently, the development creates employment floorspace and a higher number of jobs than that expected from the established employment use land. On this basis the development is not contrary to the aim of Policy S.EMP1 and D.EMP3 of the Local Plan.

Character and appearance

13. The appeal site is encircled by an approximately 2 metre high brick wall and fence, topped with a rotating anti climb spike barrier. It has a single gated access point off Thames Circle. The surrounding area is mainly residential with St Edmunds Roman Catholic Church nearby. The appeal site is an established industrial site. Furthermore, a self-storage business opposite has an industrial appearance and scale.
14. The Council note that there were discrepancies in the dimensions of the business to business storage lockers. During my site visit I noted that the top of the lockers was below the height of the adjacent wall. The unreferenced drawing with pdf title 'B2B locker details' shows the locker height to be 2.19 metres. I have used this measurement in assessing this appeal.
15. The container units are utilitarian in appearance with limited design merit. However, they are functional for the employment use which is designated to the site. While there may be some discrepancies in the stated heights of the structures it was clear to me that with the significant screening provided by the high boundary brick wall and spike barrier, only the top edges of the containers and the kitchen vents are visible.
16. The single storey nature of the containers and limited number of kitchen vents ensures that the openness of this part of the street scene is retained and vistas along Westferry Road are maintained. The container units are not out of scale with the surroundings, nor exhibit excessive height, mass or bulk for the site and in the context of the boundary wall and spike barrier have a very limited visual effect upon the overall street scene and the character of the area.
17. While Policy D3 of the London Plan 2021 aims for development to contribute towards the local character and be to a high quality, it also notes that development should give thorough consideration to the practicality of use, flexibility, safety and building lifespan. As outlined above, the development has very limited visual effect upon the character of the area and it provides a practical and flexible use of the employment land.
18. Accordingly, given the lack of demonstrable harm, the development is of a suitable quality for this location and does not harm the character and appearance of the area. It would, therefore, not be contrary to those aims of Policy S.DH1 of the Local Plan that, while seeking to secure the highest standards of design, layout and construction, require that proposals positively respond to the context, townscape, landscape and public realm at different spatial scale.

Other Matters

19. Representations have been made regarding impacts from the development on neighbouring residential and commercial properties in respect of odour and noise. The Council's Environmental Health Team have recommended that air extraction and filtration systems are installed to control odour, and this could be imposed through a planning condition. They also confirm that noise levels are within acceptable limits for the surrounding area and recommended that a planning condition could be imposed which restricts noise levels emanating from any new plant to be lower than the existing background level by at least 10dBA. I have no reason to disagree with the Council's assessment.
20. Interested parties have raised concerns that the development will increase traffic to the area and vehicles to and from the site will exceed the speed limits of the roads. A Transport Statement was submitted with the planning application and the Council's Transport and Highway Team has found that the development would be unlikely to result in any substantial impact on the local highway network. Having reviewed the Council's comments, I have no reason to disagree with its finding. No substantive evidence has been provided showing that traffic to the site is exceeding the speed limit of the road or why speeds would increase as a consequence of the development.
21. The licencing of premises is a separate process to this planning appeal. While I note concerns in respect of the consultation process and how the application was determined by the Council, there is no substantive evidence that the statutory process has not been followed. Moreover, there has been an opportunity for further comment as part of the appeal process and I have taken account of all representations made to me.

Conditions

22. To provide certainty and avoid doubt regarding the development details, I have included a condition confirming the approved drawings.
23. To protect neighbouring residential and commercial properties and users of the development from undue noise, I have included a condition to limit noise levels from any new plant and/or machinery.
24. To ensure the development does not result in odour disturbance I have included a condition requiring submission, approval and implementation of suitable air extraction and filtration systems.
25. To promote sustainable transport choices, I have included a condition to ensure submission, approval and implementation of adequate cycle parking.
26. I have made some revisions to the Council's suggested conditions, removing references to precise requirements for the details so that the parties can agree what is needed on the basis of the circumstances relevant to the precise use being carried out.

Conclusion

27. For the reasons given above I conclude that the appeal should be allowed.

J Symmons

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Drawing Number 3257/1 Rev D – Proposed Site Plan;
 - Drawing Number 3257/2 Rev A – Proposed Plans and Elevations;
 - Drawing Number 3257/3 Rev A – Location Plan; and
 - B2B Locker Details Plan (showing units as 603mm W, 800mm D and 2190mm H).
2. Any new plant and/or machinery used on the premises shall ensure:
 - a) The level of noise emitted shall be lower than the existing background level by at least 10 dBA. Noise levels shall be determined at one metre from the window of the nearest noise sensitive premises. The background noise level shall be expressed as the lowest LA90 (10 minutes) during which the plant and/or machinery is or may be in operation; and
 - b) All constituent parts of the new plant and/or machinery shall be maintained and replaced in whole or in part as often as required to ensure compliance with the noise levels detailed in part a) of this condition.
3. No further hot food preparation shall take place within the commercial kitchen until all relevant kitchen and hot food preparation areas have first been provided with air extraction and filtration systems designed in accordance with details which have been submitted to and approved in writing by the local planning authority. The air extraction system shall be retained and maintained for the lifetime of the use in accordance with the approved details.
4. Within 1 month of granting of this planning permission, details of the cycle parking including storage facilities shall be submitted to and approved in writing by the local planning authority. The cycle parking and storage facilities shall be completed in accordance with the approved details within 1 month following approval of the details and thereafter maintained in operational condition and made available to the users of the development for the lifetime of the development.