



Appeal Decision

Site visit made on 23 January 2024

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th January 2024

Appeal Ref: APP/N5660/W/23/3325066

1 Alphet Mews, Lambeth, London, SW9 0FN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice of a decision within the statutory period (or within any extended period agreed in writing).
 - The appeal is made by Mr Andrew Gosling against the decision of London Borough of Lambeth.
 - The application ref 23/00835/FUL is dated 14 March 2023.
 - The development proposed is change of use from B2 to E
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. As this is a failure case I have no formal decision notice from the Council. Identification of the main issues is therefore based substantively on section 2 of the Council's statement of case.
3. Planning law requires that applications for planning permission be determined in accordance with the development plan for the area unless material considerations indicate otherwise. In this case, the relevant parts of the development plan are the Lambeth Local Plan (Local Plan) and the London Plan. The National Planning Policy Framework (the Framework) is a material consideration. The Framework was updated in December 2023. Paying regard to the respective cases and any specific references to national policy drawn to my attention, the update to the Framework does not change my conclusions.

Main Issues

4. The main issues are:
 - Whether the location for the use is supported as a matter of principle when regard is paid to planning policy.
 - Effects on the living conditions of nearby residents when particular regard is paid to noise and transport.
 - Whether the proposal makes necessary arrangements when regard is paid to transport and servicing.

Reasons

Location

5. The site is within a Key Industrial Business Area (KIBA). Policy ED3 (Local Plan) is of direct relevance and, at (A) says that development in KIBAs will be permitted only for business, industrial, storage and waste management uses, including green industries and other compatible industrial and commercial uses.
6. Use class E embraces a broad spectrum of commercial, business and service uses. Policy ED3 (Local Plan) and its supporting text point to some flexibility that may include elements of E class uses, which the Council highlight in their statement of case. However, in some instances, E uses may be incompatible with the policy intentions behind the KIBA, paying regard to paragraph 6.28 (Local Plan) regarding loss of industrial floor space capacity in Lambeth.
7. The KIBA also plays a role as a Locally Significant Industrial Site for London Plan purposes where Policy E4 (London Plan) is relevant and prioritises the provision and maintenance of industrial and related functions to meet current and future demands.
8. The Council have provided limited detail about review of employment land and industrial land audits within Lambeth. However, the relative recency of the Local Plan provides some confidence that the evidence on industrial land use is relatively up to date and usable for the narrow purposes of deciding this appeal.
9. I also have no contrary evidence to suggest that policy ED3 is out of date or not working as intended. The Appellant's reference to the Council's inconsistent decision making within the KIBA is un evidenced and carries limited weight. It does not therefore point to any failing in the operation of planning policy.
10. No real detail has been provided by the Appellant about the nature of the Class E use proposed, beyond the intention to keep the premises as commercial but to give more flexibility. In the absence of more detail, I am unable to draw any conclusions about whether the proposal is capable of fitting within the flexibility provided by ED3 (Local Plan). Nor am I able to consider whether conditions are, in practice, capable of making the proposal acceptable in planning terms. The reasonableness of such conditions cannot be established on the basis of the evidence provided, including in light of any intentions that the Appellant may have for use of the site.
11. Some of the uses within Class E would be regarded as town centre uses for the purposes of Policy ED7 (Local Plan). In this location ED7(D) requires assessment against the sequential approach in the Framework. The absence of detail prevents an assessment taking place and leads me to conclude that the justification for not providing main town centre uses in town centres first is un evidenced. Although this is a periphery issue compared to effects on the KIBA, in these circumstances reaching a different conclusion would fail to promote and enhance the vitality and viability of town centres in accordance with Policy SD6 (London Plan).
12. In light of the above, the location of the use is not supported as a matter of principle when regard is paid to planning policy. There is conflict with the development plan, particularly Policy ED3 (Local Plan) and Policy E4 (London

Plan) which together seek to retain, enhance and provide industrial capacity in locations such as the KIBA. In the absence of evidence to the contrary, there is also conflict with Policy ED7 (Local Plan) and SD6 (London Plan) which guides the location of town centre uses in the interests of promoting their vitality and viability.

Living conditions

13. Whilst drawing my attention to Policy Q2 (Local Plan) and referencing neighbouring amenity, noise, and transport in their draft reason for refusal, the Council have not provided a more detailed site specific assessment of the levels of risk. I appreciate they are responding to limited detail. However, in light of the scale and nature of the proposal, I do not accept that this prevented them from providing a more detailed assessment based on reasonable assumptions that goes beyond the superficial consideration of living conditions provided in the written evidence.
14. The Council accept that commercial use currently takes place on the site and that class E uses encompassing industrial activities can operate in a residential area without detriment to its amenity. The site sits within the KIBA and therefore within a broader commercial context that naturally impacts the baseline expectations that surrounding residents should have in terms of living conditions.
15. Notwithstanding the limited detail, and the absence of evidence of a specific risk to living conditions, generalised risks could be managed through the use of conditions. The starting point could of course be the conditions that currently control the existing use and operation, which the Council draw my attention to. There is no evidence to suggest these conditions do not operate effectively, or that they would not be adequate if class E were permitted at the site. Commercial plant and machinery would be subject to any necessary planning permissions and could be controlled by conditions if needed.
16. In relation to the agent of change principle, the Council's evidence of what they see as a substantive risk is not compelling. Without proper articulation of the risks, I am not persuaded that harm to the viability of the KIBA or other harmful effects would occur. Any minimal risk that may exist could be overcome through conditions requiring submission and approval of any necessary suitable mitigation measures.
17. In light of the above, subject to conditions, the proposal is capable of having acceptable effects on the living conditions of nearby residents when particular regard is paid to neighbouring amenity, noise and transport. There is no conflict with the development plan, specifically Policy Q2 (Local Plan) and Policy D13 (London Plan) in relation to amenity and the agent of change principle.

Transport and servicing

18. Notwithstanding the focus of the Council's draft reason for refusal on planning obligations, their statement of case sets out several transport and servicing issues that, in the absence of more detail, result in technical conflict with development plan policy because accordance cannot reasonably be assessed or inferred. This is in addition to measures that may be necessary considering the location of the site within a Controlled Parking Zone.

19. It is reasonable to assume that some of the issues could be managed through S106 or conditions. As such, elements of the conflict may be technical. However, in light of my finding of harm elsewhere, it is not expedient for me to consider these issues further.
20. In light of the above, I cannot reasonably confirm that the proposal makes necessary arrangements when regard is paid to transport and servicing. As such, in the absence of detail, there is conflict with the development plan, in particular Policies T1, T3 and T6 (Local Plan) in relation to promoting sustainable modes of travel.

Other Matters

21. The failure of the Council to make a decision on the application within the required timeframe generates a right to appeal. However, the proposal must then be assessed on its planning merits. A lack of timely decision making is not a consideration that attracts material weight in the outcome of the appeal itself.

Conclusion

22. The location of the proposed use is not supported as a matter of principle when regard is paid to planning policy, with associated conflict with the development plan. In the absence of policies being drawn to my attention that pull in a different direction, the conflict is with the development plan as a whole.
23. There is conflict relating to making necessary arrangements when regard is paid to transport and servicing. This is technical conflict reasonably capable of resolution. As such, my final conclusions exclude harm arising from this conflict.
24. The Framework says that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt (paragraph 85) and be flexible enough to accommodate needs not anticipated (paragraph 86). The Appellant's wish for flexibility is acknowledged but attracts limited weight in light of the need to balance it against the wider effectiveness of the KIBA. The flexibility provided within the development plan to accommodate compatible uses and lack of evidence that the plan is unnecessarily constraining economic growth is also relevant.
25. The lack of intention on the Appellant's part to seek residential use on the site is noted but attracts limited weight in circumstances where the purpose of the appeal is to assess the acceptability of E class use.
26. Weighing things up, no material considerations have been put forward to justify taking a decision other than in accordance with the development plan. That points towards a refusal of planning permission.
27. For these reasons, and paying regard to all other matters put forward, the appeal is dismissed and planning permission is refused.

D R McCreery

INSPECTOR