



Appeal Decision

Site visit made on 21 November 2024

by **S Lo LLB M.SRA**

an Inspector appointed by the Secretary of State

Decision date: 28 January 2025

Appeal Ref: APP/H5960/W/24/3341700

150A - 170 Penwith Road, Wandsworth, London SW18 4QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Penwith Developments Ltd against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref is 2023/4518.
 - The development proposed is the use of the existing Class B8 basement unit as dual B8/Class E flexible use.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The above description of development is taken from the application form. However, the Council has described the development as a change of use of basement unit from class B8 (storage) to dual B8 (storage)/class E (Commercial/Business and Service) flexible use. This represents a more accurate description of development, and I note that the appellant has entered a similar description onto the appeal form. I have dealt with the appeal on this basis.
3. The description used in the application form included a typographical error, referring to the 'Use of the existing Cass B8 basement unit'. To improve clarity, the banner heading has been updated.
4. A revised National Planning Policy Framework (the Framework) was published on 12 December 2024. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the matters relied on by the main parties are unchanged. Therefore, I did not need to consult with the main parties regarding the revised Framework.
5. Subsequent email correspondence since the submission of the appeal indicates that the appellant is now willing to accept a planning condition to limit the Class E uses to Class E(g)(ii) and Class E(g)(iii). However, the appeal process should not be used to evolve a scheme¹. The Holborn Studios² case sets out two tests to determine whether proposed amendments should be considered. Regarding the substantive test, restricting the permitted Class E uses would result in a fundamental change to the application, affecting the core of the overall scheme. Regarding the procedural test, there is a significant risk that the proposed amendment would cause unlawful procedural unfairness to consultees and third

¹ Section 16: Procedural Guide: Planning appeals – England; The Planning Inspectorate

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823

parties involved in the appeal, as it would deprive them of the opportunity to make representations on the changes proposed. As the correspondence appears to have been limited to the parties involved, it is unclear whether consultees and third parties have been made adequately conscious of this proposal. Given this, based on the evidence before me, the proposed amendment will not be taken into account.

Main Issue

6. The main issue is whether the appeal site is a suitable location for the proposed development, having regard to the retention of industrial land.

Reasons

7. The appeal site consists of a mixed-use, four-storey building with an additional basement level. While part of the basement is allocated for storage linked to the ground-floor retail unit, the section which forms the appeal site is designated for use as a storage unit (Class B8).
8. The site is situated within the Thornsett Road Locally Significant Industrial Area (the "LSIA"), which seeks to create a strategic reservoir of industrial land in the borough to serve the needs of the local economy and the wider industrial needs of London.
9. Policy LP34 of the LP³, Part A, states that the Council will support the use of land and premises for industry and distribution in appropriate locations which fall within certain uses. These uses include Storage and logistics/distribution (B8), which is the current designation of the appeal site. Part B supports the uses identified in Part A and states that the strategic reservoir of industrial land, comprised of areas such as the LSIA, will be protected and retained. Development proposals for other uses in these locations will not be supported, except in certain circumstances and provided that the use does not erode the effective operation of the LSIA.
10. The proposed development seeks to alter the use of the appeal site to a dual B8/Class E flexible use. However, Class E encompasses a broad range of activities, many of which are not supported within an LSIA. Among these, only E(g)(ii) uses, which relate to the research and development of industrial and related products and processes, and E(g)(iii) uses, which relate to light industry, would be supported by the policy. Class E(c)(iii) uses, which relate to the provision of other appropriate services in a commercial, business or service locality is not supported by the policy.
11. The appellant's application for a dual B8/Class E flexible use does not include a planning condition which would limit the use to E(g)(ii) or E(g)(iii). As a result, the appeal site could be used for purposes which would not be supported within the LSIA, undermining the primary objective of protecting land and premises for industrial use and retaining a strategic reservoir of industrial land within the borough. Significantly, the appeal site is the only remaining floorspace within the approved development which is consistent with the LSIA designation of the site. Without a restriction on the permitted Class E uses, there is a significant risk that the appeal site would not provide any industrial related floorspace at all on the site. The loss of this portion of the LSIA would reduce the availability of strategic

³ Wandsworth Local Plan (adopted July 2023).

industrial land, eroding the borough's capacity to meet the needs of the local economy and the broader industrial demands of London.

12. In reaching this view, I have considered the appellant's references to Part C of Policy LP34 as justification for the marketing exercise. The marketing reports assert that there has been no interest in the basement unit for B8 or industrial use despite over two years of active marketing. The appellant contends that widening the permitted uses would optimise the letting potential of the space. However, this part of the policy does not directly relate to Part B. Instead, it relates to Part C, which governs Industrial Land and Premises in Other Locations. To that end, the appellant has submitted this marketing report as a robust and meaningful marketing exercise to demonstrate the lack of demand. Nonetheless, this provision only applies to industrial land outside the Strategic Reservoir, and thus has limited relevance to the appeal site, given its designation within the LSIA. Accordingly, the submitted marketing reports do not justify a departure from the policy.
13. The potential use of a planning condition to restrict Class E uses to those supported under Part A of Policy LP34 of the LP has been discussed between the parties, the reasoning in the appeal decision⁴ and an advice note from Mr Peter Village KC. Throughout the proceedings, the appellant has maintained that such a condition would be unduly restrictive. However, any planning condition that broadens the permitted Class E uses beyond those outlined in Part A would conflict with the protection of the industrial aspects of the appeal site, which goes to the heart of the overall scheme and aligns with the objectives of local plan policy. On that basis, imposing such a condition has not been necessary or reasonable in all other respects.
14. While several other policies may broadly support Class E uses, the most relevant policy remains Policy LP34 of the LP. This remains the case regardless of the physical attributes of the site. On this point, there is a conflict that cannot be outweighed by any support from other policies.
15. In conclusion, the appeal site is not a suitable location for the proposed development, having regard to the retention of industrial land. It would erode the effective operation of the industrial function of the LSIA, contrary to Policy LP34 of the LP.

Other Matters

16. Several letters of support have been received from various neighbours. While community feedback is an important aspect of the planning process, the presence of supportive responses does not justify the identified harm.

Conclusion

17. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

⁴ APP/H5960/W/19/3235608

S Lo

INSPECTOR