
Appeal Decision

Site visit made on 17 January 2017

by Alex Hutson MATP CMLI MARborA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 February 2017

Appeal Ref: APP/D3505/W/16/3159313

Wheldons Fruit Farm, Poplars Farm, Cornard Tye, Sudbury, Suffolk

- 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 Mr Andrew Wheldon against the decision of Babergh District Council.
 - The application Ref B/16/00131/FUL/JD, dated 29 January 2016, was refused by notice dated 1 April 2016.
 - The development proposed is change of use of an existing farm shop (Use Class A1) to a dwelling house (Use Class C3) including parking, gardens and access.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. One of the reasons for refusal set out on the Council's decision notice relates to a lack of a contribution towards affordable housing provision in the District. However, following recent Government advice, the Council has confirmed that they wish to withdraw this reason for refusal. It is therefore not necessary for me to consider this matter any further and I have determined the appeal on this basis.

Main issue

3. The main issue is whether or not the loss of the employment use of the building has been adequately justified, having regard to other material planning considerations and local and national planning policy requirements.

Reasons

4. The appeal site occupies a rural location approximately 1.3 kilometres from the A134 which is a main road linking the settlements of Colchester and Sudbury. It comprises a large, barn-style building which was purpose built for use as a farm shop¹. The building is a modern construction which appears to be in good condition. The farm shop recently ceased trading and the building is currently vacant. Prior to this, 2 full-time staff and 4 part-time staff were employed at the premises.
5. Saved Policy EM24 of the Babergh Local Plan Alteration No.2 2006 (Local Plan) seeks to protect existing or vacant employment land, sites and premises in the

¹ Consented under Council Ref B/07/00940/FUL

District. This policy allows a change of use for non-employment purposes where it can be demonstrated that the retention of employment land, sites and premises for an appropriate employment use has been fully explored. This can be undertaken in one of two ways. Firstly, by an agreed and sustained marketing campaign; or secondly, by demonstrating that the land, site or premises are inherently unsuitable or not viable for all forms of employment use.

6. The wording of Policy EM24 does not define 'employment land, sites and premises'. However, the guidance of the Council's Safeguarding Employment Land Supplementary Planning Document 2008 (SPD) advises that policies designed to protect employment land can apply to uses other than those which fall under use classes B1, B2 and B8. On this basis, and given that the appeal building provided some employment whilst in use, I consider that saved Policy EM24 is relevant to this appeal.
7. There is no dispute between the parties that the first criterion of saved Policy EM24 has not been met. The appellant therefore relies upon meeting the provisions of the second criterion to justify the change of use of the building to residential.
8. The appellant suggests that the remote location of the building is not conducive to an alternative business use, such as offices, and that any structural changes required to convert it to such a use, including any internal dividing walls to establish separate working spaces, would be significant. Moreover, the appellant suggests that any use for storage, distribution or general industrial activity would give rise to unacceptable levels of noise and disturbance and traffic in the area.
9. Nevertheless, whilst in a rural location, the building is not located a significant distance from the wider road network, including the A134. As such, I am not persuaded that it is so remote as to definitively discount any alternative business use of the building on this basis alone, for offices or otherwise. It is also unclear why the appellant considers that any alternative business use would inevitably require significant structural changes. Without any evidence to demonstrate otherwise, an open plan layout may prove equally desirable for an alternative business use dependant on any specific needs.
10. There is no substantive evidence before me to demonstrate that a harmful level of noise and disturbance and traffic would inevitably arise from any other potential employment use of the building. Moreover, there is likely to be other environmental legislation or planning policies in place to control any such potential harmful effects. As such, I am not convinced that such matters provide adequate justification to automatically discount all alternative forms of employment use.
11. The evidence demonstrates that the previous retail use of the building as a farm shop ran at a loss over its last few years of trading, which led to its closure. However, this does not inexorably mean that this would be the case for any other retail, business or employment use of the building. In addition, whilst there may be some vacant retail units within some towns within the District, there is no marketing evidence to demonstrate that there is no inherent demand for an alternative retail use within this particular building. Moreover, retail is only one type of use which can generate employment. As such, I afford these matters limited weight.

12. The appellant makes reference to permitted development rights to convert certain buildings to residential use. Nevertheless, the appellant accepts that the building the subject of this appeal does not benefit from any such rights. As such, this is not a material planning consideration to which I can afford any significant weight in the consideration of this appeal.
13. I have had regard to the appeal decision² highlighted by the appellant where the Inspector in that case allowed the change of use of a retail unit to residential. Nevertheless, the Inspector considered the retail unit in that case to be small, in a poor state of repair and would require significant investment to bring it up to modern standards. Moreover, that it was poorly connected to major roads. As such, there are considerable differences between the circumstances of that appeal and those of the appeal I am to consider and as such, it is not helpfully comparable. I therefore do not consider that this example justifies a planning permission in this instance.
14. Reference is made to saved Policy EM01, of the Local Plan, the supporting text of which advises that 'employment related development' means development that provides a significant employment element. The appellant considers that on the basis of the modest levels of employment previously generated at the premises, the building cannot be classified as being within an employment use. Nevertheless, the term 'employment related development' appears to relate to only some of the policies within the Local Plan. The term is not specified within saved Policy EM24 and as such saved Policy EM01 does not appear to have any bearing on the interpretation of this policy. In any case, it has not been adequately demonstrated that the building, through an alternative use, would not be capable of creating a greater level of employment than that previously generated.
15. In light of the above, I therefore conclude that it has not been satisfactorily demonstrated that the premises are inherently unsuitable or not viable for all forms of employment use. Consequently, the loss of the employment use of the building has not been adequately justified.
16. The proposal would therefore be contrary to saved Policy EM24, of the Local Plan. The proposal would also be contrary to saved Policy CR19, of the Local Plan; and Policy CS3- Strategy for Growth and Development, of the Babergh Local Plan 2011-2031 Core Strategy and Policies 2014 (Core Strategy). These policies reflect the aims of saved Policy EM24, insofar as they seek to protect the business and employment use of land and buildings in the District. These policies are consistent with the aims and objectives of the National Planning Policy Framework which seek to support economic growth in order to create jobs and prosperity whilst recognising that the long term protection of employment sites should be avoided where there is no reasonable prospect of a site being used for that purpose.

Other matters

17. The proposal would make a contribution, albeit a limited one, to housing supply within the District. I acknowledge that the building could be converted to a residential use with minimal changes to its overall character and appearance. These matters, which would comply with aspects of the development plan, weigh modestly in favour of the appeal.

² Ref APP/D3505/W/15/3006718

Planning balance and conclusion

18. Notwithstanding my view that the proposal is in compliance with aspects of the development plan, having considered all the policies drawn to my attention, I find that there is conflict with the development plan as a whole. The evidence is insufficient to adequately justify the loss of the employment use of the building and I consider that the conflict that would arise with the development plan as a whole would outweigh any benefits.
19. Thus, for the reasons set out above and having regard to all other matters, I conclude that the appeal should be dismissed.

Alex Hutson

INSPECTOR