



Appeal Decision

Site visit made on 20 June 2023

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Appeal Ref: APP/A2335/W/23/3316315

Newfield House, Middleton Road, Middleton, Lancashire LA3 3PP

- 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 GG Antiques against the decision of Lancaster City Council.
 - The application Ref 22/00823/CU, dated 1 July 2022, was refused by notice dated 22 December 2022.
 - The development proposed is change of use from residential flat and storage into residential care home for the elderly.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the location would be suitable having regard to relevant local and national policies, and
 - whether the proposal would provide satisfactory living conditions for future occupiers.

Reasons

Suitability of location

3. The site consists of a 2-storey, art-deco designed brick-built building, known as Newfield House, and associated car parking and landscaped grounds. The building has an internal floor area of around 1085 sqm in total, of which around $\frac{3}{4}$, 827 sqm, is used for an antiques storage and distribution business, and the other $\frac{1}{4}$, around 258 sqm, is used as a residential flat, which was granted permission on appeal (Ref T/APP/A2335/A/96/264530/P8) for use in association with the antiques storage and distribution business. Although the appellant suggests that the current use of the site is *sui generis*¹, based on the evidence before me and my observations on site, I consider the primary use of the site to be B8 storage and distribution. The proposal therefore seeks to change the use from storage and distribution (B8), to use as a residential care home for the elderly (C2), providing around 20 No. ensuite rooms and ancillary facilities.
4. The appellant considers the site to be physically separated from the main area of the Lancaster West Business Park (LWBP) and suggests that it is more

¹ P1, P3 and P4 of the Planning Statement

closely associated with residential properties related to Middleton Village. Nevertheless, for planning policy purposes it lies within the LWBP. The site also lies within the Heysham Gateway Regeneration Priority Area (the HGRPA). I note also that the local employment land allocation and employment growth land extend to the east and north of the site.

5. The site is located on the corner of Middleton Road and Main Avenue. Access to Newfield House would remain as existing, off Main Avenue, and on-site parking would be provided where the current on-site parking is situated. Main Avenue leads to the Heysham Industrial Estate and Business Park (HIEBP). There is a café located just outside the entrance to the site, which is off Main Avenue, and there are manufacturing buildings and associated grounds located immediately west of the appeal building (previously part of the antiques business²). The proposal includes creating a new boundary between the site and the manufacturing buildings and their associated grounds. The land that encompasses the café and industrial buildings is within the ownership of the appellant. To the west of these buildings/grounds is the Middleton Wood Nature Reserve. To the east of the site, on the opposite side of Middleton Road, is another nature reserve and the Middleton Business Park (MBP).
6. The village of Middleton is located broadly to the south-east of the site and includes a ribbon of residential properties located on the western side of Middleton Road, extending up to the southern boundary of the site. Policy SP2 of 'A Local Plan for Lancaster District, 2011-2031, Part One: Strategic Policies and Land Allocations DPD, 2020', (the LP Part 1), outlines the settlement hierarchy for the area, and identifies that the village of Middleton is designated as a 'rural village'. The Policy states that rural villages will accommodate development that meets evidenced local needs only. The Council accept that the proposal would help meet a district wide need; and I note that representations received include support for the proposal from the local area. However, no substantive evidence has been provided to demonstrate that the proposal would meet a local need. Consequently, the proposal does not accord with Policy SP2 of the LP Part 1.
7. Policy EC1 of the LP Part 1 covers established employment areas (EEAs). The Policy seeks to support and encourage economic growth and new development opportunities within EEAs, in accordance with local and national planning policies. Within EEAs, proposals which are not covered by 'B' land use class uses will be restricted, *unless exceptional circumstances are demonstrated*. The Policy supports proposals for the former B1 uses (offices, research and development and light industrial processes suitable within residential areas), B2 uses (industrial processes not covered by B1), and B8 uses (storage or distribution) on EEAs. The proposal would not be for a use such as the former B1 use, nor a B2 or B8 use, and therefore does not accord with this requirement of Policy EC1. I shall return to the matter of 'exceptional circumstances' below, before concluding whether the proposal accords with Policy EC1 as a whole.
8. Policy DM14 of 'A Local Plan for Lancaster District, 2011-2031, Part Two: Review of the Development Management DPD, 2020', (the LP Part 2), relates to proposals involving employment land and premises. Among other things, the Policy seeks to protect land allocated for employment purposes under Policy

² P2 of the appellant's Statement of Case

EC1 of the LP Part 1 for their identified employment purpose. Proposals for use of employment land for other uses, such as the residential use proposed, will only be permitted where one of specified criteria are met, which are, in summary:

- a) It has been demonstrated, through satisfactory and robust marketing, that an ongoing employment use of the site/premises is no longer appropriate and viable; or
 - b) The location has such exceptionally severe site restrictions, or surrounding land uses make a continuing employment use inappropriate; or
 - c) The re-use of the employment land meets the wider regeneration objectives set out in Policy EC5 of the LP Part 1, and where it is clearly demonstrated that the benefits of the proposal outweigh the loss of the site for employment purposes.
9. The appellant suggests, due to the size and internal layout of the building and the presence of a flat within it, that the site would not be suitable for storage uses. I am not convinced that the building could not be used for storage/distribution uses due to such factors. Additionally, Policy EC1 allows for the site to be used for uses other than B8 storage, ie what was B1 uses (offices, research and development and light industrial processes suitable within residential areas), and B2 uses (industrial processes not covered by B1). Furthermore, no evidence has been submitted to demonstrate that **any** marketing has been undertaken. Consequently, the proposal does not satisfy what I have labelled criterion a).
10. I consider the site to be readily accessible and its use for the purposes designated would not make its continuing use inappropriate. Therefore, the proposal does not satisfy what is referred to as criterion b).
11. Criterion c) has 2 parts, ie i) proposals must meet the objectives of Policy EC5, and ii) clearly demonstrate that the benefits of the proposal outweigh the loss of the site for employment use. The objectives of Policy EC5 of the LP Part 1 with respect to the HGRPA specific to South Heysham, are to provide modern, fit for purpose, employment units that can benefit from the strong linkages to the Power Station, Port of Heysham and access to the strategic road network. Economic regeneration in this area should take place together with habitat creation and improvements to the natural environment of the area.
12. The proposed use does not accord with the employment uses envisaged in the first part of criterion c). Nor has any evidence been provided which demonstrates the proposal would include habitat creation and improvements to the natural environment of the area. However, I accept that the proposal would likely result in the site providing more jobs than are provided by its current use. This could be seen as a benefit of the proposal, a matter I shall return to below as part of the other considerations and planning balance.
13. Policy DM8 of the LP Part 2 relates to accommodation for older people and vulnerable communities. The Policy states that the Council will support proposals for such accommodation where there is a proven need for it. The Policy outlines criteria that proposals must meet, and in the case of older people these include the following:

- 1) Meets the genuine needs of older people and makes a positive contribution towards meeting the identified need for specialist housing for older people as identified in the latest Strategic Housing Market Assessment (SHMA);
 - 2) Is well located to shops, public transport, community facilities and medical services including Primary Health Care facilities that can be reached easily by those without access to a car;
 - 3) Provides suitable open space/grounds that can be used by residents for sitting, relaxing and gentle exercise;
 - 4) Proposals to provide...residential care homes should be supported by the relevant Commissioning Manager and confirmed in writing.
14. The Council accepts, and I have no justified reason to disagree, that the proposal would meet genuine needs of older people and contribute towards meeting a need for a type of accommodation identified in the latest SHMA³. The proposal therefore satisfies this requirement of the Policy. Written confirmation from the relevant Commissioning Manager supporting the proposal has not been received. However, I understand that appropriate consultation was undertaken by the Council and the opportunity to formally comment was not taken. I therefore consider that permission should not be withheld for this reason.
15. I shall return to the matter of whether the open space that would be provided would be suitable below, within the section dealing with living conditions for future occupiers.
16. Notwithstanding the above, and regardless of criterion 3), the proposal would not be well located to shops, community facilities, Primary Health Care and medical facilities/services that could be reached easily without access to a car. The proposal would not therefore accord with Policy DM8 as a whole.

Living conditions - future occupiers

17. The proposal would use the existing access to the site off Main Avenue. It would therefore share the access with the existing manufacturing buildings/grounds to the west of the site. I have not been provided with details of this business but during my visit I observed the site was used for manufacturing large digital media signs. At minimum, therefore, I consider materials for the production process, including large pieces of steel, must be brought to the site and the finished products must be taken off site to their intended destinations.
18. Consequently, there will be traffic associated with the business comprising of vehicles larger than domestic cars undertaking trips to and from the site on a regular basis. The evidence before me indicates that there are no restrictions on the opening hours of the business. Consequently, vehicles could be entering and/or leaving the site at any time of day/night on any day of the week; and materials could be moved around the associated external areas during the same times.
19. As well as being sited close to the shared access, the proposed residential care home would be sited close to the manufacturing buildings. The rear elevation of

³ Although the Council state, in the Officer's Report, that the data in the SHMA is not up to date, as I have not been provided with any substantive data that is more up to date, I have taken full account of the data provided in the latest SHMA

the appeal building, which would include many windows that would serve habitable rooms, would be sited around 14m from the north-eastern facing elevation of the factory buildings. Storage areas associated with the business are located to the south-east and north-west of the buildings.

20. Main Avenue passes by the north-western boundary of the site; it is one of the main routes to the HIEBP. Middleton Road runs parallel with the north-eastern boundary of the site and provides access to Main Avenue and the MBP from the junction with Main Avenue. Given the site's location adjacent to these roads, there would no doubt be a more than average number of larger vehicles passing by the site regularly. The extent of such traffic could also increase, given that land to the east and north of the site is allocated for employment and employment growth.
21. Within the circumstances outlined, I consider future occupiers of the proposed residential care home would potentially experience unacceptable levels of noise both within the building and in what would be the outdoor amenity areas.
22. The appellant commissioned an acoustic survey and assessment in connection with the proposal⁴. The survey found that background noise levels were dominated by traffic and bird song; and no discernible sound levels were identified from the manufacturing business to the west of the site.
23. The conclusions reached in the survey/assessment identified existing background noise levels would result in an adverse impact on accommodation rooms to the front of the proposed care home, which would need mitigating against. It is suggested that mitigation could be provided by the installation of standard double-glazed windows; and as these would need to be closed, additional acoustic wall ventilators would also need to be installed. The survey concluded that the inclusion of these mitigation measures would ensure that internal and external sound levels would be within the levels accepted within recognised guidance⁵. As such, it was concluded that the proposed development would meet the objectives of the Framework to ensure that future occupiers of the proposed care home would not experience any significant adverse effects from noise.
24. I acknowledge the conclusions reached in the survey/assessment, and I appreciate that the appellant considers the noise levels experienced within the residential flat on the site do not cause him any problems. However, I am not persuaded by the contents of the report that future residents of the proposed development would not experience unacceptable levels of noise when using what would be the outdoor amenity areas associated with the proposal. In my opinion, the nature and extent of noise, and frequency of such noise, that future occupiers of the proposed development would experience whilst sitting out on the grassed areas located to the north-east and south-east of the building, close to Middleton Road and Main Avenue, would be unacceptable. For this reason, I conclude that the proposal would not provide satisfactory living conditions for future occupiers of the proposal. Consequently, the proposal would not accord with the requirements of Policy DM8 of the LP Part 2 with regard to outdoor space.

⁴ Acoustic Survey and Assessment for Proposed Residential Development at Newfield House, Middleton Road, Middleton, Lancaster, LA3 3PP, dated September 2022, produced by Martin Environmental Solutions Ltd

⁵ That is guidance provided in the Noise Policy Statement for England, relevant British Standards, and by the World Health Organisation

Other Considerations & Planning Balance

25. The appellant suggests that there are other considerations which weigh in favour of the proposal which amount to the exceptional circumstances required to accord with Policy EC1 of the LP Part 1. Some of these are matters I advised above that I would returning to. In summary:

- i) The proposal would provide residential care for older people of a type and size that the Council accepts would contribute to meeting an identified need across the district. Although it has not been demonstrated that there is a local need for the accommodation proposed, I attach considerable weight to this matter.
- ii) The proposal would create substantially more jobs than the current use. Although the number of job opportunities that would be created is not exactly clear, I accept that more would be created than the current use. However, I am not persuaded that a similar number of jobs that would be created by the proposal could not be created if the building was used for the uses required by relevant policies. I therefore attach limited weight to this matter.
- iii) The proposal would provide improvements to the living conditions of occupiers of residential properties within proximity of the site. Although this may be the case, the fact is that use of the site for some of the uses required by relevant policies, eg office and research and development, could also improve the living conditions for occupiers of residential properties within proximity of the site, compared to the site's current use. I therefore attach limited weight to this matter.
- iv) The appellant asserts that there is already substantial provision for 'B' uses in the neighbouring industrial estates/business parks. Additionally, further land is allocated for such growth close to the site. Furthermore, it is claimed that significant portions of the HIEBP are vacant. I have not been provided with either substantive data of the extent of land/premises currently available for 'B' uses, the extent of land allocated for such uses, or the current vacancy levels of land/premises with such a use. I am therefore unable to conclude that there is an oversupply of land/premises for such employment uses in the area. I therefore attach limited weight to this matter.
- v) The proposal has gained some local support. I acknowledge that the representations submitted provide support for the proposal. However, the proposal must be assessed against the relevant development plan policies. I therefore only attach limited weight to this factor.
- vi) Should planning permission not be granted, the appellant suggests that the fallback would be for him to continue living in the residential flat, and it would be unlikely in such circumstances that he would allow the rest of the building to be used for storage/distribution. The appellant and the Council interpret the occupancy condition attached to the permission for the flat

differently. It is beyond my powers to provide a lawful interpretation of the condition. However, even if I was to accept that the appellant could continue to reside in the flat, I do not consider this to be a matter which significantly weighs in favour of the proposal in the context of all the associated issues. I therefore attach little weight to this factor.

- vii) The appellant is approaching retirement and will have no need for the use of the building for storage/distribution purposes. Additionally, the appellant would like to assist his daughter in creating her own nursing home business. I appreciate these personal circumstances and desires. However, the planning system operates primarily in the public interest rather than the interests/desires of individuals. I therefore attach little weight to these personal matters.

26. I have found that the proposal would not be a suitable location for the proposed development given that it would not accord on the whole with several development plan policies. I have also found that the proposal would not provide satisfactory living conditions for future occupiers, due to noise disturbance experienced when using the outdoor amenity areas.

27. In light of all the above, I consider the other considerations outlined do not amount to the exceptional circumstances required by Policy EC1 of the LP Part 1 to permit the proposal. I also consider that the benefits outlined do not outweigh the loss of the designated employment use. Overall, the proposal would undermine the strategic and management objectives of the development plan to meet the identified employment land/premises and residential needs of the district. The proposal therefore does not accord, as a whole, with Policies SP2, EC1, EC5 or DM8 of the LP Part 1, or Policy DM14 of the LP Part 2. There are no other considerations, including the Framework, which lead me to conclude other than in accordance with the development plan.

Other Matters

28. The appeal site lies within proximity of the Morecambe Bay and Duddon Estuary Special Protection Area, Morecambe Bay Special Area of Conservation, Morecambe Bay Ramsar, and Lune Estuary Site of Special Scientific Interest, areas which have been designated for protection under the Habitats Regulations. The Council Officer's Report therefore identified the need for a contribution towards mitigation measures to avoid an adverse effect on the integrity of the protected sites. Although no contribution has been secured, there is no need for me to consider the impact of the proposal on these protected areas because the scheme is unacceptable for other reasons.

Conclusion

29. For the reasons outlined, I conclude that the appeal is dismissed.

J Williamson

INSPECTOR