



Appeal Decision

Site visit made on 4 October 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2023

Appeal Ref: APP/D3505/W/22/3310476

Rotten Row Farm, Rotten Row, Newton CO10 0FU

- 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 Newfield Partners against the decision of Babergh District Council.
 - The application Ref DC/21/01451, dated 11 March 2021, was refused by notice dated 27 July 2022.
 - The development proposed is continued use of buildings for agricultural, industrial and commercial purposes.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the application form but removed reference to 'continued', as this is not an act of development. I observed some units in the uses set out in the schedule of accommodation but did not view the interior of all units, nor would I be able to verify the units were being used in exactly the manner specified. I have therefore determined the appeal on the basis of the submitted plan and schedule of accommodation.
3. Reference is made by both parties to enforcement proceedings at the site. Decisions taken in respect of this are not relevant to my determination of this appeal which has been made the planning merits of the appeal.
4. On 19th September 2023, the Council received notification that the emerging Babergh and Mid Suffolk Joint Local Plan (eLP) had been found sound, subject to main modifications. I have sought the view of both parties on this and have taken the comments received into account in reaching this decision.

Main Issues

5. The main issues are the effect of the proposed development on:
 - highway safety;
 - living conditions of existing residents; and
 - the character and appearance of the area.

Reasons

Highway Safety

6. The appeal site is served by Rotten Row, a single width lane with unmade verges and limited passing places. The appellant has sought to ensure that vehicles use Joe's Road to access Rotten Row through the placing of signs at the site exit. However Joe's Road is also single width in places.
7. Paragraph 113 of the National Planning Policy Framework (the Framework) requires that all development that will generate significant amounts of movement should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed. There is no such statement, assessment or other substantive evidence before me as to the likely highways impact of the proposed development. In my view the number of vehicle movements that would arise from 46 individual units with a combined floorspace in the region of 6000sq m would be significant.
8. Agricultural use of the site would have given rise to vehicle movements along Rotten Row, including by large machinery. I have no reason to doubt that there would be times when this would generate a high number of vehicle movements. The appellant also asserts that B8 trip generation levels are used as a proxy for agricultural buildings. While this may be the case, the appeal before me also proposes industrial and commercial use of the site. It is probable that such use of the site would be considerably different in terms of the number, vehicle type and times of those trips than that of agricultural use of the site. The appellant acknowledges there are surrounding uses that would use the road network in a similar fashion. Given the single width of the road, narrow grassed verges and the lack of passing places, there is again the potential for there to be a significant effect on the operation of the highway network.
9. The local highway authority has not objected to the application. However, its response is brief with no analysis or commentary to justify the conclusion reached. I do not find this provides compelling evidence that there would not be an unacceptable impact in the absence of any substantive evidence regarding the highways impact of the proposed use.
10. At my site visit I observed the signage directing vehicles leaving the site to avoid the route through the golf course. However, there is no substantiated evidence before me demonstrating why use of this road would have an adverse effect on highway safety. Nor is it clear which roads the Council's Officer Report is concerned with in respect of age, design and what is meant by heavy vehicle use.
11. It has also been brought to my attention that the route through the golf course includes a private road, however I have not been made aware which roads are private and which are adopted. In any event, regulating the use of a private road would be a matter for the landowners.
12. The proposed development would therefore be contrary to Babergh Local Plan 2011-2031 Core Strategy & Policies (2014) (CS) Policy CS15, Babergh Local Plan Alteration No.2 (2006) (LP) Policy CR18 and paragraphs 85 and 11 of the Framework which taken together and insofar as they related to this main issue,

require appropriate evidence and for proposals for conversion for industrial purposes in the countryside to not adversely affect highway safety.

13. LP Policy EM20 concerns the expansion or extension of existing employment uses and seeks to safeguard local businesses. CS Policy CS3 sets out the growth strategy for the district and CS Policy CS17 concerns supporting the rural economy and, while it requires compliance with other policies in the development plan, does not specifically concern itself with highway safety. I therefore consider these policies are not directly relevant to this main issue.

Living Conditions

14. The evidence before me does not include details of any machinery or industrial processes likely to be sited within the units. Such uses give rise to the potential for noise, fumes and odours. The closest residential property is identified as being 125m from the closest building at the appeal site and the Council's public protection officer recommended conditions to avoid there being an adverse effect on the living conditions of occupiers of that property.
15. These would require appropriate surveys to be submitted prior to first occupation of each unit to confirm there would not be an adverse impact. However, the outcome of any such assessments would be unknown, as would the extent of any mitigation that may be recommended, assuming that mitigation would indeed be possible. The Planning Practice Guidance advises that conditions that impact on the proper implementation of a planning permission should not be used. In these circumstances, it is considered that such conditions would not be reasonable, nor would they be precise and therefore would fail to meet the tests contained in paragraph 56 of the Framework.
16. While the appellant suggests that use of the site would not give rise to adverse effects given the extent of hobby and storage uses, no objective evidence in the form of surveys or assessments has been submitted to demonstrate that this would be the case. Furthermore, the wide-ranging nature of the terms of the application are such that future adverse impacts could not be ruled out.
17. The appellant has stated that employment development has been located in proximity to residential properties in other locations. I do not have full details of these proposals before me, nor would they justify allowing this appeal given the harms I have identified.
18. The proposed development could therefore give rise to adverse effects on the living conditions of existing residents. It would therefore be contrary to LP Policy CR18 and paragraph 85 of the Framework which, insofar as they relate to this main issue, require proposals for conversion for industrial purposes in the countryside to not adversely affect residential amenity and for development to be sensitive to its surroundings.

Character and Appearance

19. The road network serving the rural area passes through the golf course which is designated as a local green space in the Newton Neighbourhood Plan (2022) (NNP). Its use by vehicles lawfully using the highway is part of its character and there is no evidence before me that there are any restrictions on the use of the highway.

20. Large vehicles are common in rural areas for the transport of farm machinery, produce and livestock. The use of the road network by large vehicles associated with the proposed development would therefore not be inherently uncharacteristic of a rural area.
21. However, Rotten Row and Rectory Road do pass through the golf course which I observed to be a pleasant and attractive space for sport. While there did not appear to be any restrictions imposed by the local highways authority on the use of those roads, a significant increase in the volume of traffic passing along them could have an adverse effect on the character of the local green space.
22. As identified above, there is no substantive evidence before me as to the likely traffic generation of the proposed development. The appellant has sought to direct traffic away from using this route upon leaving the site, however without any assessment of the trips to and from the site, I cannot be certain that this would be an effective mechanism to address this concern.
23. Any issue of unauthorised use of private roads would be a matter for the landowner.
24. I therefore consider the proposed development would have an adverse effect on the character and appearance of the area. It therefore would be contrary to NNP Policy NEWT3 which requires new development to reflect the character and appearance of the surrounding area and CS Policy CS15 which requires development to respect the local context.

Other Matters

25. There would be undoubted benefits from the provision of employment space, particularly smaller units which could support 'low key' uses. The principle of converting disused agricultural buildings is supported by both local and national policy and the Council's Economic Development and Regeneration team. However, a considerable extent of 'hobby' use is identified in the schedule of proposed accommodation. There is no evidence on how many jobs would be created, although fourteen would be safeguarded. I therefore attach limited weight to the economic benefits of the proposed development.
26. There is no substantive evidence before me as to the permitted development rights that may exist for commercial use of the existing buildings. Both parties have referred to retail use on the site, however as this appears to be in a historic context and retail is not proposed on the site, I have not considered this issue further. While it may be that the buildings would be unused and deteriorate should the appeal be dismissed, this would not justify allowing the appeal given the harms I have identified.
27. A number of policies from the eLP have been identified as relevant to this appeal. ELP Policy LP09 supports a prosperous economy but requires there to be an acceptable effect on the surrounding highway network and quality of life. Policy LP29 expands on transport considerations, including requiring appropriate evidence. ELP Policy LP15 requires appropriate consideration of pollution and environmental amenity, including assessment of amenity impacts that have a significant adverse effect. Policy LP24 requires development to respond to and safeguard existing character/context. These policies broadly continue the approach set out in the current development plan. Paragraph 48 of the Framework advises that weight may be given to relevant policies in

emerging plans subject to certain criteria. As the eLP has been found sound, although not adopted, I attach moderate weight to the proposal's conflict with it.

Conclusion

28. The proposed development would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight to indicate the decision should be taken otherwise. The appeal should therefore be dismissed.

J Downs

INSPECTOR