

Appeal Decision

Site visit made on 10 September 2024

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th September 2024

Appeal Ref: APP/V0510/W/24/3339065

Vacant land, Adjacent Midway 208 Fordham Road, Fordham, Newmarket CB8 7LG

- 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 Mr Sheldrake against the decision of East Cambridgeshire District Council.
 - The application Ref is 23/01218/FUL.
 - The development proposed is described as erection of 12 class E(g) commercial units with associated access, servicing and parking areas.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the Framework and a written ministerial statement. While these proposed changes can only be given limited weight at this stage, those parts most relevant to the appeal are not proposed to be amended. As a result, I consider that there is no requirement for me to seek further submissions in respect of these matters, and I am satisfied that no party's interests would be prejudiced by my taking this approach.

Main Issues

3. The main issues are:
 - i) whether the site is a suitable location for the proposed development having regard to local and national planning policy, in particular with respect to accessibility; and
 - ii) the effect of the proposed development on trees.

Reasons

Location

4. The appeal site comprises a generally level triangular parcel of modified grassland located adjacent the A142 (Fordham Road). To the south and west of the appeal site I observed a number of buildings, including dwellings. A

railway line runs northwest to southeast along the eastern boundary, which is bound by a dense belt of trees. The appeal site falls outside of any defined development envelope and therefore falls within the countryside.

5. Policy GROWTH2 of the East Cambridgeshire Local Plan (Local Plan) seeks to focus development on the market towns of Ely, Soham and Littleport. Outside defined development envelopes, the Policy strictly controls development and provides a list of categories of development that may be permitted in these areas. One such exception is for small-scale employment development, against which the criterion of Policy EMP3 of the Local Plan must be satisfied.
6. Amongst other things, Policy EMP3 of the Local Plan sets out that such sites will be permitted on small sites well-related to settlements with opportunities to incorporate or access sustainable transport solutions and where there is a lack of suitable sites and buildings within a settlement.
7. While the appeal site is proximate to existing built form it is not within a settlement. It is understood that the defined settlement of Fordham, is approximately 2.2km from the appeal site and 1.5km from Newmarket, both of which contain a vast array of services and facilities to meet every day needs.
8. The appellant submits that access via bicycle is a realistic option and therefore the proposal meets the criterion of EMP3 in this regard. Fordham Road is subject to a 60mph speed limit, is devoid of a continuous footway or cycleway and is unlit for a considerable distance. At my site visit, I observed this to carry a high volume of traffic, including HGV's. Whilst the access crossover could be constructed to the highway authority's standards the development would not be connected to an existing footway. It is not disputed that the appeal site would be within a reasonable cycle distance to nearby settlements the local road conditions are such that it would be an unattractive option to access the site either on foot or bicycle. Furthermore, no bus stops were apparent within the locality of the appeal site. Accordingly, in the absence of safe routes for employees to access the site by sustainable or active means users of the site would be highly dependent on the private motor vehicle. Whilst the first part of Paragraph 109 of the Framework refers to significant development, the proposed development would not provide the opportunity to maximise the use of sustainable transport facilities, even when accepting that the site is in a rural location.
9. The appellant has indicated that he would be willing to agree to a Travel Plan to secure bicycle related equipment and consider a request to provide a pavement at the visibility splays. Although neither a S106 Agreement or Unilateral Agreement has been submitted, there is no evidence before me that such infrastructure could reasonably be implemented. Furthermore, I cannot be certain that such measures would meet the tests of CIL. Even if such measures were to be secured, I do not consider this would overcome the concerns regarding the vulnerability of cyclists and pedestrians using the local roads. I therefore afford this limited weight.

10. I have been directed to other examples¹ where sites have been allocated in the development plan in the locality, to support the view that the location of the proposed development would be suitable. While I do not have the details of the background for each, from the evidence before me the sites benefit from lit, pedestrian and cycle networks. For these reasons the sites referred to are not directly comparable to the scheme before me. In any event the sites are allocated for development in the Local Plan, unlike the appeal site.
11. The appellant seeks to draw comparisons between the appeal proposal and sites recently granted permission for employment uses, including a training building². From the evidence before me this development differs from the appeal proposal in a number of ways, including being of a different description of development, differing scale and having a different context as it is understood that the proposal relates to existing premises within an allocated site. These factors therefore limit the equivalence to the current proposal. I therefore attribute limited weight to the permission drawn to my attention. In any case, I have dealt with the appeal on its own merits.
12. The shortage, and need, for starter business sites is not disputed. The Framework recognises that sites to meet local business needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not served by public transport. However, the appellant's assertion that there is an urgent need for the appeal development to help meet the development plan requirements, and that large-scale allocations could not accommodate the small-scale business units proposed is unsupported with robust evidence. Nor is there any substantive evidence that the allocated sites would fail to be brought forward within the remainder of the plan period or that they could not accommodate small and starter units.
13. Taking the above matters into consideration, the proposal would not be in an appropriate location having regard to local and national planning policy, in particular regard to accessibility. Accordingly, I find conflict with policies GROWTH2 and EMP3 of the Local Plan. Collectively, these policies support new employment development in the countryside where there is a lack of suitable buildings and sites within the settlement and where a site can be easily accessed by foot or cycle from the settlement. Similarly, I find conflict with the Framework which seeks to promote sustainable patterns of development having regard to the accessibility of the development.

Trees

14. The appeal site is bound by mature vegetation parallel with the A142 and its boundaries with the railway line and commercial sites. Given the topography of the appeal site and surrounding land the trees are highly visible in the public realm and make a positive contribution to the character and appearance of the locality.
15. Mature landscaping on the eastern boundary would be required to be removed and cut-back in order to provide the required visibility splays at the

¹ Identified as FRD4-8 of Fordham Employment Allocations Insert Map 8.17

² 15/00478/FUM for D Smith Corrugated Ltd- Fordham Road

access point of the site. Buildings would be located proximate to the site boundaries where mature vegetation is present. The appellant's Preliminary Ecological Appraisal (PEA)³ focuses on the ecological implications of the proposal. However, it notes that there is overhang of existing trees on the site's western boundary. The PEA also recognises that existing landscaping may have biodiversity value for birds, bats and foraging animals.

16. In the absence of an arboricultural assessment to assess the impact of the development on these natural features, including but not limited to, root compaction and/or heavy pruning leading to their decline, or removal, the impact of the proposed development upon existing natural features cannot be fully understood. Furthermore, if any mitigation is required to safeguard natural features of importance, I cannot be certain that such mitigation would not require the reconfiguration of the site layout.
17. The appellant submits that they could remove and/or prune the trees and hedgerows with no requirement for replanting as they are not afforded statutory protection. Be that as it may, mature landscaping was present at the time of my visit, and I observed it to make a positive contribution to the appearance of the locality.
18. Any replacement planting would fail to replicate the age and mature appearance of the existing trees.
19. Consequently, there is insufficient evidence to demonstrate that the proposal would not have a harmful effect on trees and biodiversity. I therefore find that the proposal fails to accord with Policies ENV2 and ENV7 of the Local Plan and Policy 8 of the Fordham Neighbourhood Plan. Collectively, these policies seek to retain existing important landscaping and natural features and minimise harm to, or loss of, environmental features, such as trees and hedgerows. Similarly, I find conflict with the Framework which seeks, amongst other matters, for development to enhance the natural environment.

Other Matters

20. The appellant submits that the appeal proposal would result in the visual improvement of the site. I observed the site to be overgrown in places. However, due to the presence of boundary treatments, this was largely visually contained within the site. In any event, I am not satisfied that the appeal scheme is the only means of bringing visual improvement to the appeal site, and I therefore attribute very limited weight to this benefit.
21. The appellants submission refers to bringing the site back into effective use. However, I have not been provided with any evidence of a previous use. Nevertheless, it is not for me, under a section 78 appeal, to determine whether or not a use is lawful. It is open to the appellant to apply to the Council for a separate determination under sections 191/192 of the Act, regardless of the outcome of the appeal.
22. It is recognised that the proposed development would support new businesses, which accords with the aims of the Framework in respect of supporting economic growth. There would be some social and economic

³ SAMSARA Ecology September 2023

benefits arising from the construction period, and on-going once the premises are occupied, which weighs in favour of the proposal. However, even with the significant weight that the Framework places on the need to support economic growth and productivity, this does not outweigh the harm found in relation to the main issues.

23. With regards to the design and external appearance of the proposed units, living conditions of existing occupiers, drainage, highway impacts and parking, subject to the imposition of suitably worded conditions I find no harms. However, these are neutral matters.
24. I have considered all other matters raised by interested people. However, as I have found the development to be unacceptable for the reasons given, it is not necessary for me to reach a conclusion on these matters.
25. A lack of objection from the Parish Council and County Council, does not overcome the harms I have identified.

Conclusion

26. For the above reasons, I conclude that the proposed development would conflict with the development plan as a whole. There are no material considerations, including the Framework, that indicate I should conclude other than in accordance with it. The appeal is therefore dismissed.

R Gee

INSPECTOR