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# 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: 14 October 2024**

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**Appeal Ref: APP/F3545/W/23/3330884**

**Hazel Stub Depot, Burton End, Haverhill, Suffolk CB9 9AF**

- 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 MK Associates Ltd against the decision of West Suffolk Council.
  - The application Ref is DC/23/0012/FUL.
  - The development proposed is change of use and conversion of existing light industrial depot building, Class B1 (now Class E), to create nine apartments, Class C3, with external car and bicycle parking, refuse area and landscaping. Accommodation to consist of eight 2 bedroom 4 person apartment, and one 3 bedroom 6 person duplex apartment.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The description of the proposed development in the heading above has been taken from the planning application form. Part E of the appeal form states that the description of development has not changed, nevertheless, a different wording has been entered. Neither of the main parties have provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. Since the determination of this application, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended.
4. In addition, 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**

5. The main issues are:

- i) whether an appropriate location for development having regard to the development plan policies, its countryside location and accessibility;
- ii) the effect of the proposal on highway and pedestrian safety;
- iii) the effect of the proposal on the character and appearance of the area; and
- iv) the effect of the proposal on protected species.

## **Reasons**

### *Location*

- 6. The appeal site comprises a two-storey building surrounded by an area of hardstanding, which I observed to be used for parking and manoeuvring. An area laid to grass, with vegetation, is present adjacent to the building. The building is set behind a cluster of residential properties that are predominately set within spacious plots. Beyond the appeal site to the north and west is countryside. Whilst the appeal site would be proximate to existing dwellings it lies outside of a defined settlement, within countryside.
- 7. Policy DM5 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document 2015 (JDMPD) seeks to restrict development within the countryside, subject to a list of exceptions. One such exemption includes small-scale residential development of a small undeveloped plot, in accordance with Policy DM27. However, the appeal site is not an undeveloped plot and so would not comply with the first part of this criteria.
- 8. Policy DM27 supports development within a closely knit cluster of 10 or more existing dwellings adjacent to or fronting an existing highway. There is dispute between the parties as to whether the proposal forms a cluster of 10 or more properties. Even if I were to accept that the appeal site formed a cluster of 10 dwellings the site is not a small undeveloped plot in an otherwise built-up highway frontage, and as such the proposal would fail to comply with this exception.
- 9. The proposal is not advanced as an agricultural worker's dwelling or a rural exceptions site, and on that basis the proposal would fail to accord with Policies DM26 and DM29 of the JDMPD.
- 10. Policy DM33 of the JDMPD provides some support for the re-use and conversion of buildings in the countryside to residential use, and sets out a number of criteria to comply with, which includes compliance with Policy DM28. Whilst the Council cites replacement and exceptional design the proposal is for a change of use and therefore this element of the policy is not determinative to the appeal scheme before me.
- 11. Having regard to the Framework, the appeal site would not be isolated, due to its proximity to other built form, and therefore paragraph 84 of the Framework would not be relevant in this case.

12. Policy DM28 of the JDMPD permits proposals for the conversion of redundant or disused buildings in the countryside subject to a number of criteria. Whilst it is not disputed that the building has an established commercial use, it is unclear how the building is currently used. Nevertheless, from the evidence before me, and my observations at my site visit, there is nothing to suggest that the building is 'redundant'. On the basis that the building is not redundant or disused, the proposal would not accord with the exceptions listed in the development plan or Framework.
13. The appellant states that the current industrial use is not viable in this location, citing difficulty in finding suitable tenants. I recognise the difficulties with recent tenancies<sup>1</sup>. However, with limited information regarding marketing, I cannot be satisfied that alternative occupants, or a reconfiguration of the units, would not be a viable option for the premises. Nor do I have any robust evidence before me to demonstrate that alternative uses for employment/economic development, tourist accommodation, recreation and community facilities have been fully explored and subsequently discounted. Conflict therefore arises with Policy DM28 in this regard.
14. No structural survey of the existing building has been submitted. However, I observed the building to be of a metal portal framed construction with its elevations punctuated with a number of openings. Whilst some works may be required to facilitate the change of use, the building appeared of permanent and substantial construction. This, however, does not overcome the conflict identified with other criterion of Policy DM28.
15. Some external alterations are proposed to the existing building. However, the overall appearance of the building would not be dissimilar to the current building. Areas of hardstanding would be replaced with landscaping, and I am of the view that the proposal would lead to an enhancement of the immediate setting of the building. I return to these matters in my reasoning below.
16. Policy DM28 of the JDMPD goes on to state that not all buildings in the countryside will be suitable for conversion or adaptation to new uses, for a number of reasons, including due to their unsuitable or unsustainable location.
17. There is a lack of local services and facilities in the vicinity of the appeal site. This would, therefore, necessitate the need for future occupants to travel for day-to-day services in the nearest settlement of Haverhill, located approximately 1.2 miles from the appeal site, or beyond to other settlements.
18. Burton End, in the vicinity of the appeal site, is an unlit road with no pavement. It is subject to the national speed limit which would discourage pedestrians and cyclists from using it to access settlements, particularly during the hours of darkness and poor weather conditions. Whilst only a relatively short distance to a footpath that leads to and from Haverhill, to connect to this footpath/cycle network the A1017 would need to be

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<sup>1</sup> Submission documents including MK Associates Ltd letter dated 7 October 2024 and Begbies Traynor correspondence dated 27 September 2024 and Absolute Enforcement Services reports

traversed, which could further dissuade some future occupiers from making such journeys.

19. The information before me indicates that there is a bus service, accessible in approximately an 8-minute walk. However, no information has been provided about the frequency of the service. In any event, access to the bus stop would be without a dedicated footpath for much of the route. As such it would not represent an attractive option for future occupiers to walk to, particularly for older people, those with mobility issues or with young children and at times when it is dark or during inclement weather.
20. Given the distance involved between the appeal site and the town centre, and when combined with the limitations of the local roads and footpaths, it is therefore likely that the future occupiers of the dwellings would be dependent on a private motor vehicle to meet their everyday essential needs. In these circumstances 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. I note the appellant's willingness to agree to a condition for a travel plan, however, such a condition would not fully address the harms identified. Whilst the proposal would provide some support for the local economy and would therefore help to maintain the vitality of the rural community, the contribution from the development in this regard would be limited.
21. It is recognised that the Framework supports the effective use of land and gives substantial weight to the value of using suitable brownfield land within settlements. Furthermore, the Framework provides support for the development of windfall sites, giving great weight to the benefits of using suitable sites within existing settlements for homes. However, as set out above, the appeal site lies outside of a defined settlement and therefore these paragraphs provide no additional support for the proposal. The development would be inconsistent with specific local plan policies governing development within the countryside, which weigh significantly against it.
22. For the reasons stated above, I therefore conclude that the proposal would not be an appropriate location for development, having regard to the development plan policies, its countryside location and accessibility. Accordingly, conflict arises with Policies DM5, DM26, DM27, DM28, DM29 and DM33 of the JDMPD, as set out above. The proposal would also be contrary to the Framework, which seeks to locate housing where it will enhance or maintain the vitality of rural communities and promote sustainable transport modes.

#### *Highway and pedestrian safety*

23. The appeal site would utilise the existing access for both vehicular and pedestrian access. The lack of segregated pedestrian facilities within the site would therefore likely exacerbate the risk of conflict between vehicles and pedestrians and cyclists, to the detriment of highway safety.
24. I have little evidence as to the movements associated with the existing use of the building. Accordingly, I cannot be satisfied that the proposal would result in a material reduction in vehicles, including heavy goods vehicles. I,

therefore, cannot draw any meaningful comparisons between the existing and proposed use and their impact on pedestrian and highway safety.

25. For these reasons, the proposed development would result in harm to highway and pedestrian safety, contrary to the Framework which seeks to ensure developments provide safe and suitable access to the site for all users.

#### *Character and appearance*

26. Dwellings within the locality are predominantly large, two-storey dwellings, set within spacious, landscaped, plots giving the area a verdant appearance. The site is largely screened from Burton End due to the presence of existing built form and mature landscaping, meaning there would only be very limited glimpses of the proposed development in this view. The existing building is proximate to its north-western boundary visible from the countryside.
27. It is recognised that the existing building is of a utilitarian design. The proposal includes changes to the external appearance of the building, including its fenestration. However, overall, the proposal would not be dissimilar to the visual appearance of the existing building. I therefore consider the proposed changes to the external appearance of the building would have a neutral impact upon the character and appearance of the locality.
28. The existing building is clearly separated from the adjoining countryside. The proposed dwellings would be accommodated within the confines of the existing building and, therefore, the proposal would not result in encroachment into the countryside.
29. Currently the appeal site includes large expanses of hardstanding which provide for a harsh visual appearance, contrasting starkly with the adjacent open fields. Areas of hardstanding would remain for parking and manoeuvring to serve the properties. However, additional landscaping within the appeal site, including areas immediately surrounding the existing building, would soften the visual appearance of the site when compared to the existing layout. This could be secured by planning condition should I be minded to allow the appeal.
30. For the reasons stated, I therefore find that there would be no erosion of the rural character of the area, either visually or spatially, when compared to the existing situation.
31. In drawing these matters together, I conclude that the proposal would not have a harmful effect upon the character and appearance of the area. The proposal would accord with Policy DM2 of the JDMPD and Policy CS3 of the St Edmundsbury Core Strategy 2010 (CS) insofar as they seek developments that produce designs that respect the character, scale, density and massing of the locality and to create and contribute to a high quality, safe and sustainable environment.

#### *Ecology*

32. At the time of my visit, the appeal building appeared to be occupied in some form and of substantial construction. A grassed area with landscaping would

be retained to the west of the appeal site and some existing areas of hardstanding would be replaced with landscaping.

33. Collectively, amongst other things, Policies DM10, DM11 and DM12 of the JDMPD and Policy CS2 of the CS seek to protect and enhance biodiversity. The Council considers that the site may offer some ecological value and is concerned that no ecological information has been submitted to confirm whether protected species are present.
34. The Planning Practice Guidance<sup>2</sup> states that local planning authorities should require ecological surveys only where clearly justified. While the building may be located in a rural environment I have not been directed to any habitats or features on the site which may support protected species, nor any other evidence that they may be present in the locality. Therefore, I cannot be satisfied that a preliminary ecological appraisal would be required in this case.
35. If I had been minded to allow the appeal a suitably worded condition could have been imposed to secure soft landscaping and biodiversity enhancements.
36. Consequently, I conclude that there is insufficient evidence to show that the proposed development could harm protected species. As such, I find no conflict with Policies DM10, DM11 and DM12 of the JDMPD and Policy CS2 of the CS.

### **Other Matters and Planning Balance**

37. The appellant submits that the current use generates considerable nuisance to the local residents when in full occupation. It is also asserted that the proposal would result in a reduction on heavy vehicles using the site. Whilst there may be some benefit to the cessation of the current use, I have no substantive evidence in regard to nuisance experienced. However, I am not satisfied that the proposal is the only means of securing such improvements. This benefit, therefore, carries no more than limited weight in favour of the development.
38. The proposal would contribute to the housing supply, which could be built out relatively quickly given its size. Economic benefits during the construction phase, and after, with future occupants supporting local services and facilities would also occur. However, given the scale of the proposal these benefits would be limited.
39. Conditions could be imposed to secure sustainable measures such as electric vehicle charging and solar panels, which would be of environmental benefit, and therefore weighs in favour of the scheme.
40. The appellant asserts that the proposal would meet the technical space standards, vehicle parking standards and be acceptable in terms of contamination. This is not disputed. Nevertheless, these are neutral considerations that weigh neither for, nor against, the proposal.

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<sup>2</sup> Planning Practice Guidance Paragraph: 018 Reference ID: 8-018-20240214

41. I note there are listed buildings in the locality. However given the separation distances involved and surrounding built form, I consider that the appeal site is not within their setting and thus the proposal would not harm their significance. This is a view shared by the Council.
42. My attention has been drawn to permitted development rights and a change of use of the existing building. However, 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. However, in the absence of any prior approval consent or lawful development certificate, I cannot therefore be certain that there is a realistic prospect of such a fallback, that it would result in the same or greater harm than I have identified with the scheme before me. Consequently, the potential fallback position attracts negligible weight.
43. Any concerns regarding due process during the processing of the planning application fall outside of the remit of this decision.

## **Conclusion**

44. 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