



Appeal Decision

Site visit made on 12 November 2024

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2024

Appeal Ref: APP/P1560/W/24/3340451

Foundry Yard, Hall Lane, Walton on the Naze CO14 8HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Fuller Enterprises (Graeme & Marcia Fuller) against the decision of Tendring District Council.
 - The application Ref is 23/00806/OUT.
 - The development proposed is the redevelopment of a vacant commercial site with 3 x two bed houses and 9 x two bed apartments.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made by Fuller Enterprises (Graeme & Marcia Fuller) against Tendring District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application which is the subject of this appeal was made as an outline application with all matters (access, appearance, landscaping and layout), apart from scale, reserved for future consideration. As such I have considered the appeal on this basis.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the provision of employment land within the district;
 - whether the Foundry building within the appeal site is a non-designated heritage asset and, if so, the effect of the proposed development on the significance of this; and
 - whether the proposed development would make an appropriate contribution to community facilities.

Reasons

Employment Land

5. The appeal site is located within an existing industrial estate, known as Harmers Yard. Whilst the remainder of the estate is in use by a variety of

businesses, the appeal site itself is disused and, according to the appellant, has been for a significant period of time. It is occupied by the main foundry building, a large brick building fronting Hall Road, a detached mixed use building with two retail units on the ground floor and one residential unit above, also adjacent to Hall Road, and some smaller units to the rear.

6. Policy PP6 of the Tendring District Local Plan 2013-2033 and Beyond Section 2 (the Section 2 Local Plan) 2022 states that the Council will seek to protect existing employment sites and that sites within use classes B2 and B8 will be safeguarded for these purposes. Whilst the appeal site may not have been used for employment purposes for a number of years, the appeal site is designated as an employment site within the local plan and therefore Policy PP6 is relevant to the proposed development.
7. The policy goes on to state that proposals for non-employment uses on these sites will only be permitted if it complies with one of three stipulations. The first stipulation (a) states that it can be demonstrated that the land or premises have become inherently unsuitable for any form of employment use and there is clear and robust evidence of appropriate marketing with registered commercial agents at a reasonable price to demonstrate no realistic prospect for continued employment use.
8. The appellant indicates that the site is in poor condition with structural and maintenance issues and therefore is incapable of being used for modern commercial purposes. I saw during my site visit that the site and buildings were derelict and in poor condition. However, no evidence has been provided to demonstrate any structural defects or maintenance issues or outline why remedial works could not be undertaken to allow the buildings to be brought back into use for employment purposes.
9. It is contended that suitable tenants for the appeal site cannot be found due to the structural defects, extensive costs of remedial works and inability to obtain insurance. However, again, no evidence has been provided to demonstrate this. The site has been marketed for sale by a local agent since 1 April 2024 at what the appellant considers to be a realistic price and considerable publicity with no interest received. However, the advertisement provided as part of this appeal is largely based on the use of the site for residential purposes, subject to this appeal, and therefore this does not demonstrate that there is no realistic prospect for continued employment use.
10. Consequently, it has not been sufficiently demonstrated that the land or premises have become inherently unsuitable for any form of employment use and clear and robust evidence of appropriate marketing, with registered commercial agents at a reasonable price to demonstrate no realistic prospect for continued employment use, has not been provided. As such, the proposal would not comply with part (a) of Policy PP6.
11. The second stipulation (b) states that the alternative use will either facilitate or result in wider economic regeneration benefits that outweigh the loss of employment land or premises on the protected site for existing or potential employment use.
12. It is noted that funding is required, from the proposed development, to invest in essential infrastructure for the remainder of the yard, including a new estate road and improvements to the electric supply, water supply and foul drainage.

The appellant contends that this would secure the future of the estate for employment purposes. However, there is no guarantee that any funds generated from the proposed development would be used for such infrastructure works or ensure the estates continued use for employment purposes. Therefore, this is given limited weight, which would not outweigh the loss of employment land.

13. The appeal site is within an area designated a priority area for regeneration in the local plan and is identified within The Walton Regeneration Framework 2010 as a site which may have potential to contribute to the achievement of regeneration objectives as part of the comprehensive development framework. However, I see no reason as to why such regeneration objectives could not be achieved by keeping the land in employment use. As such, whilst the alternative use may facilitate or result in wider economic regeneration benefits, this would not outweigh the loss of employment land and the proposal would not comply with part (b) of Policy PP6.
14. The third stipulation (c) states that the alternative use will ease or resolve demonstrable longstanding and otherwise irresolvable harmful conflicts between land uses. The appeal site is located in close proximity to several residential properties and whilst the appeal site itself is not in use, the remainder of Harmers Yard is being used for industrial/employment purposes. No evidence has been brought to my attention which suggests any demonstrable longstanding harmful conflicts between these two land uses which would be resolved by the proposed development. Therefore, the proposal would not comply with part (c) of Policy PP6.
15. It is noted that new site allocations for employment use have been outlined in the local plan which the appellant considers are far superior to the appeal site. However, whilst this may be the case, this does not automatically negate the need for the existing employment land within the district and does not lessen the weight to be afforded to Policy PP6.
16. Therefore, the proposed development would result in an unjustified loss of employment land within the district and would be contrary to Policy PP6 of the Section 2 Local Plan, as detailed above.
17. Whilst it is noted within government guidance and the Framework that brownfield sites are given priority to boost housebuilding, this does not negate the requirement of Policy PP6 of the Section 2 Local Plan to retain employment sites or render it out of date. Therefore, the conflict with this policy is given significant weight.

Non-designated Heritage Asset

18. The Council assert that the main foundry building on the appeal site is a non-designated heritage asset (NDHA) for its age, rarity and historic interest. Whilst not on a Local List, it is recorded on the Essex Historic Environment Record (HER) as part of the industrial heritage with The Foundry assessed as a building or site of regional importance.
19. The Planning Practice Guidance (PPG) establishes that NDHAs are those identified by plan-making bodies as having a degree of heritage significance meriting consideration in planning decisions but which do not meet the criteria for designated heritage assets. It goes on to state that irrespective of how

they are identified, it is important that the decision to identify them as NDHAs are based on sound evidence.

20. Whilst the PPG states that it is helpful if local planning authorities keep a local list of NDHAs, it also makes reference to the HER and states that, in some cases, local planning authorities may also identify NDHAs as part of the decision making process on planning applications. Therefore, whilst inclusion on the local list would be preferable, the foundry building is recorded in the HER as a building of importance and the Council have provided sound reasoning as to why they consider it to be a NDHA. This is in accordance with the advice by Heritage England, highlighted by the appellant, which requires NDHAs to be properly recorded and made publicly available but only suggests an addition to a local heritage list.
21. Paragraph 209 of the Framework states that the effect of an application on the significance of a NDHA should be taken into account in determining the application. The foundry building is a prominent feature within the streetscene which makes a positive contribution to the area. As outline previously, no evidence has been provided to demonstrate as to why the building could not be retained, for either employment or residential uses, and its demolition would result in the total loss of a NDHA.
22. Therefore, the proposed development would harm the significance of the non-designated heritage asset and would conflict with the historic environment objectives of the Framework.
23. The appellant has highlighted an appeal decision¹ where it was found that a pair of semi-detached cottages to be demolished as part of the proposed development were not considered NDHAs. However, in that case the Inspector found that there was insufficient justification for the buildings to qualify as NDHAs. Therefore, it is not comparable to the appeal site and the building before me.

Community Facilities

24. The Council contend that as the proposal will result in a net increase of 11 dwellings and due to a deficit of equipped play facilities in Frinton, Walton and Kirby, should planning permission be granted, a financial contribution is required to make improvements to the ball court at Bathhouse Meadow, which requires updating.
25. Whilst Policy HP5 of the Section 2 Local Plan relates to open space, sports and recreation facilities, it makes no specific reference of the provision of open space on smaller sites. Policy DI1 of the Section 2 Local Plan, relating to infrastructure delivery and impact mitigation, states that developers will be expected to contribute towards the delivery of relevant infrastructure. However, again, no specific requirements are outlined within this policy.
26. The Council's Open Space and Play SPD relates to Policy COM6 of the Tendring District Local Plan 2007, which has been superseded. Whilst this SPD makes reference to the emerging Local Plan, which has now been adopted, the figures within it do not appear to have been reviewed since and the Council have not outlined the specific financial contribution sought. While some detail has been provided of an estimated project cost, there is otherwise little

¹ APP/P1560/W/20/3265745

evidence as to how a contribution would be fairly and reasonably related in scale and kind to the proposed development.

27. As such, it has not been demonstrated that the contribution is necessary nor meets the relevant tests for a planning obligation as set out in the Framework and the proposed development would not conflict with Policy HP5 of the Section 2 Local Plan for the reasons outlined above.

Planning Balance

28. It is noted that the Framework and recent government guidance prioritises brownfield sites within existing settlements, such as this one, for the provision of housing. With paragraph 124 (c) of the Framework giving substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs and paragraph 124 (d) promoting and supporting the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained. However, there is no evidence to suggest that there is an identified need for housing in the area and, for the reasons above, the appeal site is not considered to be suitable brownfield land for the proposed development. Therefore, whilst the proposal would provide a net gain of 11 dwellings to meet current and future housing needs in this area on previously developed land, this is given only moderate weight in my consideration of this appeal which would not outweigh the conflict with the development plan and the harm I have identified.

Other Matters

29. The appeal site lies within the Zone of Influence of the Hamford Water Special Area of Conservation (SAC) and Ramsar site. Given that the proposal is for additional housing, there is a reasonable likelihood that this European Site would be accessed for recreational purposes by future occupiers of the development. Therefore, in combination with other developments, likely significant effects cannot be ruled out. A completed unilateral undertaking has been submitted to secure a financial contribution a relation to the protection of habitats.
30. The Conservation of Habitats and Species Regulations 2017 (as amended) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. However, regulation 63(1) indicates the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. Therefore, in view of my overall conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

Conclusion

31. Therefore, for the reasons given above and having had regard to all other matters raised, the proposal would conflict with the development plan taken as a whole and I conclude that the appeal should be dismissed.

E Grierson

INSPECTOR