



Appeal Decision

Site visit made on 13 December 2024

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2024

Appeal Ref: APP/X3540/W/24/3344326

Felixstowe Adventure Golf, 14 Sea Road, Felixstowe, IP11 2BB

- 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 Family Amusements Ltd against the decision of East Suffolk Council.
 - The application Ref is DC/22/3980/FUL.
 - The development proposed is Commercial and Leisure spaces at ground floor and 14 flats on upper floors.
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Decision

1. The appeal is allowed and planning permission is granted for Commercial and Leisure spaces at ground floor and 14 flats on upper floors at Felixstowe Adventure Golf, Felixstowe, IP11 2BB in accordance with the terms of the application, Ref DC/22/3980/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The latest update to the National Planning Policy Framework (the Framework) was published on 12 December 2024. The changes set out within Chapter 14 Managing the challenge of climate change, flooding and coastal change, which is the most relevant to the consideration of this appeal, are minor and do not fundamentally affect my findings. Therefore, I have not found it necessary to seek views from the parties in this instance.

Main Issue

3. During the course of the appeal the parties have resolved matters pertaining to the Council's second and third reason for refusal and a Section 106 Planning Obligation has been submitted to address the fourth reason for refusal.
4. Therefore, the main issue in this appeal is whether the development is appropriate, having regard to the sequential based approach to the location of development in a flood zone.

Reasons

5. Paragraph 170 of the Framework seeks to avoid inappropriate development in areas at risk of flooding, by directing these away from the areas of highest risk. Paragraph 173 sets out that a sequential risk based approach should be taken to individual applications known to be at risk now or in future from any form of flooding.

6. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The site is located within Flood Zone 2, and the construction of a building used for dwelling houses is classified as a 'more vulnerable' development as defined within Annex 3 of the Framework.
7. Therefore, the planning practice guidance requires the appellant to carry out a sequential test which compares the proposed site with other available sites to show which one has the lowest flood risk.
8. The appellant has provided a sequential test as part of the planning application, and this has subsequently been updated through the appeal submission to address concerns raised by the Council that other alternative sites should be considered.
9. The proposal is for 14 one bedroom units over a commercial space which could be divided into up to nine units for seaside based commercial operations. On this basis the sequential test needs to be based on a mixed use scheme of commercial floorspace with flats above. The sequential test identified that there is demand for commercial units within Felixstowe, however it is not suggested that these require a seafront location.
10. The Council have defined the area of search to include sites in the whole of the Felixstowe Peninsular (up to and including the areas identified in the Area East of Ipswich) and this is the area that the appellant has used to undertake their sequential test.
11. The appellant has considered 28 potential sites across the search area and considered whether or not these are reasonably available, concluding that none were. The Council has disputed these findings in six cases.
12. The PPG sets out that 'Reasonably available sites' are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.
13. These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. Such lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available', but the guidance does refer to them being currently available on the open market.
14. Three of the sites, Site 3 (Ferry Road), Site 5 (Howlett Way) and Site 15 (North Felixstowe Garden Neighbourhood) are allocations for residential development in the East Suffolk (Suffolk Coastal) Local Plan.
15. Site 3 (Ferry Road) is an allocation for 150 dwellings and whilst a range of housing types are set to be delivered and an outline planning application is under consideration, there is a degree of uncertainty as to whether the site would be reasonably available for piecemeal development of the 14 dwellings set out by the appellant.
16. Site 5 (Howlett Way) has an outline planning application under consideration for 310 dwellings. The appellant sets out that the site is part of a wider site for which a masterplan has been submitted and that given its scale it will be developed by a large housebuilder. As such there is a degree of uncertainty that it would reasonably be available for a smaller scheme.

17. Site 15 (North Felixstowe Garden Neighbourhood) this is an area of land with the potential for up to 2000 homes. The allocation will be planned as part of a master plan, which is being devised by East Suffolk Council. This approach is also set out within the site allocation policy SCLP12.3. The Council has also indicated through its Housing Land Supply Statement that houses will not be delivered on site before 2028. As such it is not available within a reasonable timeframe. Site 28 (Trelawny Place) is also part of the Felixstowe Garden Neighbourhood and has permission for a mixed development with this part of the site being for a community centre as such it is not reasonably available for commercial or residential use.
18. The Council have also considered that Site 16 (Land at Crescent Road) which benefits from a historic planning consent for 18 no. apartments is available and currently being marketed for sale. However, the appellant has confirmed that this site was sold at auction in March 2024 and therefore I do not consider it is reasonably available.
19. Site 17 (Land at Riby Road) is not of a sufficient size to accommodate the entire development and would only be suitable for a proportion of the residential element. It currently has planning permission for two dwellings and is available for sale, on the basis of the Council's evidence. However as other sites have not been identified to enable all of the scheme to be delivered it would not be a reasonable alternative for the purposes of the sequential test.
20. Therefore, I am satisfied that the appellants have demonstrated that there are no sites within the search area agreed with the Council that present a reasonably available or suitable alternative in a sequentially preferable location.
21. It is not necessary for the development to undertake the exception test as the residential development is classified as more vulnerable and the commercial element is less vulnerable. The exception test is only required in Flood Zone 2 for highly vulnerable development.
22. The proposal would therefore accord with Policy SCLP9.5 of the LP which seeks to ensure proposals minimise the risk of flooding to people and property by taking a sequential approach which directs development to the areas at the lowest risk of flooding.

Other Matters

23. I have also taken into account the range of matters raised in the representations received including issues such as highway safety, design and scale of the proposal, impact on residential amenity, loss of existing facility, noise, pollution, odour and impact on wildlife. However, there is no evidence before me that there would be harm in respect of these matters, and no objection has been raised by the Council or statutory consultees in regard to these matters. Therefore, none of the concerns raised provide a compelling reason why planning permission should not be granted.

Setting of the Conservation Area

24. The site is outside of but abuts the Felixstowe South Conservation Area. Paragraph 219 of the Framework requires new development within the setting of Conservation Areas to enhance or better reveal its significance. The

Framework defines the setting of a heritage asset as “the surroundings in which a heritage asset is experienced.”

25. The parties agree that the Adventure Golf site in its present form does not make any contribution to the Conservation Area, and for that reason was excluded from the designation.
26. Whilst the site falls within the setting of the Conservation Area, as it forms part of the general resort character of Felixstowe, the Conservation Area Appraisal makes no reference to the appeal site, when it considered the elements that form part of its setting. As such the site is currently neutral in its impact on the setting of the Conservation Area.
27. The Council has set out that with respect to the form, materials, modelling, uses and character, the design is informed by its context and the wider character of Sea Road, which is within the Conservation Area. As such the proposal would preserve the significance of the Conservation Area and there would be no harm arising.

Planning Obligation

28. The appellant has provided a legal agreement under section 106 of the Town and Country Planning Act 1990, which includes an obligation which would come into effect if planning permission were to be granted. I have considered the obligation in light of the Framework, Planning Practice Guidance and the Community Infrastructure Levy Regulations (the CIL Regulations). These state that a planning obligation must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
29. The obligation provides for a Primary New Build Contribution to Suffolk County Council, which will be used towards the building of a new primary school facility to serve the development.
30. The proposed development is expected to generate the need for 1 primary school places, at a cost of £25,989.00 per place. The evidence before me indicates that the existing Primary School is forecast to exceed 95% capacity and the proposed mitigation, through the construction of a new school, is to expand existing provision to meet the demands arising from basic need and housing growth. Therefore without mitigation being secured it would place an unreasonable burden on the County Council in light of the scale of future demand identified and be harmful to future occupiers of the development who could be required to look beyond their catchment school for education provision.
31. The contribution has been calculated based on the evidence provided by Suffolk County Council and I am satisfied that this planning obligation meets all three planning obligation tests and so is necessary.

Deben Estuary SPA/RAMSAR, Stour and Orwell Estuaries SPA/RAMSAR and Orfordness-Shingle Street SAC.

32. The appeal scheme proposes a dwelling on a site that lies within the Zone of Influence of the Deben Estuary SPA/RAMSAR, Stour and Orwell Estuaries SPA/RAMSAR and Orfordness-Shingle Street SAC.

33. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPA and the SAC. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
34. Since the development is for 14 dwellings, the number of additional recreational visitors would be modest and the likely effects on the SPA site from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
35. The site is within the 13km zone of influence where new residential development is likely to result in recreational pressure, which would, both alone and in combination with other development within the zone of influence, have a likely significant effect on the interest features of the aforementioned site. Therefore, I consider that the development would have an adverse effect on the integrity of the site, but regard can be had to whether these adverse effects can be mitigated.
36. The Suffolk Coast Recreational Disturbance Avoidance and Mitigation Strategy Planning Document sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPA and SAC.
37. The appellants have indicated that they have made a per dwelling contribution to fund the Suffolk Recreational Avoidance Mitigation Strategy (RAMS) and the Council has confirmed that the payment has been made. Given the evidence before me I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
38. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

Conditions

39. The Council has suggested conditions which I have considered against the advice in the Framework and Planning Practice Guidance and where necessary amended them for clarity. In addition to the standard implementation condition, it is necessary, for the avoidance of doubt, to define the plans with which the scheme should accord.

40. In order to respect the character and appearance of the area I have imposed a condition requiring the submission of the precise details of the external facing materials, due to the lack of detail on the approved plans, finished floor levels, details of hard and soft landscaping.
41. The submission and implementation of a construction management plan is necessary to minimise detrimental effects to the living conditions of neighbouring residents and ensure highway safety during the construction phase.
42. To manage the surface water environment of the scheme a condition is necessary that secures a detailed surface water drainage scheme to be submitted to and agreed by the Council.
43. In order to ensure the amenity of future occupiers I have required details of any equipment to control the emission of fumes and smell from the commercial units, and a noise mitigation scheme to be submitted and for any unexpected contamination to be appropriately assessed and remediated.
44. In order to ensure an appropriate level of parking provision, I have imposed a condition requiring parking spaces to be provided and in order to ensure appropriate standards of highway safety, the access to be constructed in accordance with the approved plans in terms of visibility splays, surfacing and drainage. This has to be implemented prior to the development being first brought into use, either for residential or commercial use.
45. I have also imposed a condition relating to refuse and bicycle storage, to ensure that appropriate space is provided within the site for storage of bins and cycles and electric vehicle charging infrastructure.
46. To ensure that HGV movements around the locality are properly planned once the commercial elements of the proposal are operational, a deliveries management plan is required.

Conclusion

47. For the reasons given above the appeal should be allowed.

G Pannell

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: 2725.20.00 Site location Plan; 2725.20.401 A (Proposed Ground Floor Plan); 2725.20.402 (Proposed First, Second and Roof Plans) & 2725.20.403 (Proposed Elevations and Streetscene)
- 3) No development above ground level shall take place until details of all external facing materials and fenestration details including the shopfronts, have been submitted to and approved in writing by the local planning authority in writing. The development shall be carried out in accordance with the approved details.
- 4) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 5) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - means of enclosure and retaining structures;
 - boundary treatments;
 - hard surfacing materials;
 - an implementation programme,

The landscaping works shall be carried out in accordance with the approved details before any part of the development is brought into use in accordance with the agreed implementation programme. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance.

- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;
 - v) measures to control the emission of dust and dirt during construction;
 - vi) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - vii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 7) Before the use hereby permitted commences, equipment to control the emission of fumes and smell from the commercial premises shall be installed in accordance with a scheme shall first have been submitted to and approved in writing by the local planning authority. All equipment installed shall thereafter be operated and maintained in accordance with the approved scheme and retained for so long as the use continues.
- 8) Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 9) Construction work shall not take place until a scheme for protecting the proposed noise-sensitive development from noise from the ground floor commercial units, including an acoustic survey and report, has been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before any part of the noise sensitive development is occupied and retained thereafter.
- 10) The hereby approved development shall not commence until full, comprehensive details of the implementation, maintenance and management of the approved strategy for the disposal of surface water has been submitted to and approved by the Local Planning Authority. The strategy shall be implemented and thereafter managed and maintained in accordance with the approved details unless otherwise agreed by the Local Planning Authority.
- 11) The areas to be provided for the storage and presentation for collection/emptying of refuse and recycling bins as shown on Drawing No. 2725.20.401 Rev. A shall be provided in their entirety before the development is brought into use and shall be retained thereafter for no other purpose.
- 12) The use shall not commence until the areas within the site shown on drawing no. 2725.20.401 Rev. A for the purposes of loading, unloading, manoeuvring and parking of vehicles, secure cycle storage and electric vehicle charging infrastructure have been provided and thereafter the areas shall be retained, maintained and used for no other purposes.
- 13) All HGV delivery traffic movements to and from the site once the development has been completed, shall be subject to a Deliveries Management Plan which shall be submitted and approval in writing to the Local Planning Authority for approval. No HGV movements shall be permitted to and from the site other than in accordance with the routes defined in the Plan.

- 14) Before the access is first used visibility splays shall be provided as shown on Drawing No. 2725.20.401 Rev. A with an X dimension of 2.4 metres and a Y dimension of 43 metres and thereafter retained in the specified form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction to visibility shall be erected, constructed, planted or permitted to grow over 0.6 metres high within the areas of the visibility splays.
- 15) No other part of the development hereby permitted shall be commenced until the new access has been laid out and completed in all respects, including surfacing details and pedestrian visibility splays in accordance with drawing no. 2725.20.401 Rev A with an entrance width of 4.5 metres. Thereafter it shall be retained in its approved form.
- 16) Before the development is commenced details shall be submitted to and approved in writing by the Local Planning Authority showing the means to prevent the discharge of surface water from the development onto the highway including any system to dispose of the water. The approved scheme shall be carried out in its entirety before the access is first used and shall be retained thereafter in its approved form.

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