



Appeal Decision

Site visit made on 6th February 2025

by **Jonathan Price BA(Hons) DipTP DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 March 2025

Appeal Ref: APP/D3505/W/24/3348316

Former ATS Depot, Edgworth Road, Sudbury, Suffolk CO10 2TG

- 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 13H Ltd against the decision of Babergh District Council.
 - The application Ref is DC/22/03289
 - The proposal is redevelopment of existing site to mixed commercial and residential use with Class E business space, 9no new dwellings and alteration of existing vehicular access (existing building to be demolished).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline, with all detailed matters reserved for later consideration. I have taken the site layout (19/229-07 rev B), plots 7-9 floor plans and elevations (19/229-04 rev B) and plots 1-6 floor plans and elevations (19/229-06) to be indicative of how the proposal might be carried out.
3. A revised National Planning Policy Framework (the Framework) was published in December 2024. The main parties were given the opportunity to comment on this.

Background and Main Issues

4. The 0.14-hectare site is occupied by a single storey commercial building with associated hardstanding areas. It falls within Sudbury town centre, next to a large Waitrose supermarket. To the other side is a drainage ditch with a footpath running alongside. Access is from Edgworth Road, serving residential development in other adjacent parts.
5. A tyre fitting business (Class B2) previously occupied the vacant premises. The Council considered the proposed mix of uses appropriate based on Joint Local Plan (JLP)¹ policies over suitable town centre uses (SP06), protecting employment land (LP10) and allowing above shop housing (LP11), as well as residential amenity considerations.
6. Although accepting the principle of the proposed land use, the Council refused planning permission for three reasons. The first was over the residential element being inappropriate due to the site's high risk of surface water flooding. The second

¹ Babergh and Mid Suffolk Joint Local Plan Part 1 – November 2023.

was over the above ground floor residential accommodation not meeting requirements for 50% accessible and adaptable dwellings. The third was over the failure to provide a biodiversity net gain matrix or clearly identify opportunities to secure biodiversity net gain (BNG).

Main Issues

7. Based on the foregoing, the main issues in the appeal are whether the proposal would be acceptable with regard to:
- flood risk,
 - providing accessible and adaptable residential accommodation, and
 - addressing BNG requirements.

Reasons

Flood risk

8. The site is within Zone 1, indicating a low probability of river or sea flooding. However, significant areas around the existing building are shown in Government mapping to be at high risk of surface water flooding. The appellant's flood risk assessment (FRA)² and hydraulic model technical note³ found this to be an actual low to medium risk. However, Suffolk County Council, as lead local flood authority, maintains a 'holding objection' due to outstanding queries over the modelling.
9. The Framework deems dwellings, and certain Class E uses such as a medical clinic, creche, day centre or nursery, as 'more vulnerable' to flood risk⁴. Framework paragraph 170 states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. It continues that, where development is necessary in such areas, it should be made safe for its lifetime without increasing flood risk elsewhere.
10. Framework paragraph 173 requires that a sequential risk-based approach should be taken to individual applications in areas known to be at risk now or in the future from any form of flooding. Paragraph 174 confirms that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source.
11. The Government's Planning Practice Guidance (PPG) gives further advice over how to take account of and address the risks associated with flooding⁵. This confirms that the aim of the sequential approach is to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding, including areas at risk of surface water flooding⁶. This paragraph goes on to say that avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warnings and property level resilience features.

² Richard Jackson Engineering Consultants Project 60831 (Issue C April 2023)

³ AEGAEA Hydraulic Model Technical Note AEG0610_CO10_Sudbury_03 14/06/2023

⁴ Annex 3: Flood risk vulnerability classification

⁵ [Flood risk and coastal change - GOV.UK](https://www.gov.uk/guidance/flood-risk-and-coastal-change)

⁶ Paragraph 023 Reference 7-023-20220825 Revision date: 25 08 2022

12. Paragraph 175 of the Framework states that the sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk). The appellant's FRA fails to show that the development of this relatively small site avoids any areas at risk of flooding from any source. The requirement for a sequential test would only not be required were this proposal in an area at low risk from all sources of flooding⁷, which has not been satisfactorily demonstrated to be the case. Therefore, the proposal needs to pass the sequential test to satisfy flood risk policy.
13. The PPG advises that, for individual planning applications, the area to apply the sequential test will be defined by local circumstances relating to the catchment area for the type of development proposed⁸. In this case, the Council had agreed to the search area being Sudbury, Great Cornard and Chilton Woods. The PPG advises on the need to identify whether there are any other 'reasonably available' sites within the area of search, not already identified by the planning authority in site allocations or land availability assessments, such as sites currently available on the open market. The applicant may also need to check on the current status of relevant sites to determine if they can be considered 'reasonably available'⁹. Here, the appellant's sequential test¹⁰ reviewed the sites in the Council's 2020 Strategic Housing Economic Land Availability Assessment and 2022 Five-Year Housing Land Supply Position Statement.
14. The Council provides further details of a number of commercial sites, and also properties on the market, which might be considered reasonably available. Not all are beyond the agreed greater Sudbury search area. The Council also refers to the mixed-use Chilton Woods development for 1,150 dwellings, where construction has started. The other two large scale housing developments the Council cites, at Wolsey Grange and Hadleigh East, are outside the greater Sudbury search area.
15. Quite appropriately, the appellant's assessment only considered sites in a Zone 1, low risk flood area. Of those assessed, all were rejected as not being reasonably available. These related to a number of commonly cited issues. They included the sites being completed, commenced or soon to be started, in separate ownerships, not for sale, deliverable only in the long-term, subject to significant constraints and, where the use was commercial only, lacking a residential yield.
16. In a sequential test, the PPG advises 'reasonably available sites' to be '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 of time envisaged for the development. 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'¹¹. Therefore, the housing and commercial uses need not be delivered on a single site as proposed but could form part of a number of reasonably available smaller sites, with the dwellings and Class E uses not necessarily combined.

⁷ PPG Paragraph 027 Reference ID: 7-027-20220825 Revision date 25 08 2022

⁸ Paragraph 027 Reference ID: 7-027-20220825

⁹ Paragraph 029 Reference ID: 7-029-20220825

¹⁰ AEGAEA Sequential Test AEG02876_CO10-Sudbury_02

¹¹ Paragraph: 028 Reference ID: 7-028-20220825

17. To my mind, the sequential report rejects too many sites based on ownership and acquisition factors. According to the PPG, such lower-risk sites do not need to be owned by the applicant to be considered reasonably available¹². Just based on the agreed greater Sudbury search area, it is not clearly demonstrated that there would be an insufficient amount of alternative housing land at a low risk of flooding to accommodate the 9 dwellings proposed as part of this proposal.
18. The Council accepts there to be little or no availability of land for commercial development in Babergh. However, this is not really an issue in a sequential test pertaining to this proposal, as the flood risk concerns do not apply to the commercial space proposed. This would be other than the limited range of 'more vulnerable' Class E uses, which could be excluded by a planning condition, were permission granted.
19. My findings on this main issue pertain mainly to the application of the sequential test to the residential element in this scheme. The Council has a healthy 7.13-year housing land supply overall, including sites in the Sudbury search area. In this context, there is no sound foundation to the case made of there being no reasonably available sites appropriate for this proposal with a lower risk of flooding. Therefore, the sequential test fails, meaning this proposal would be unacceptable on grounds of flood risk, in conflict with JLP Policy LP27, the Framework and PPG. As the sequential test fails, an exception test does not need to be applied.

Accessibility and adaptability

20. The Council finds the indicative layout contrary to JLP Policy LP24. This requires at least 50% of the proposed dwellings to meet the requirements for accessible and adaptable dwellings under Part M4(2) of the Building Regulations. This policy is to address the needs of an ageing population. The first-floor accommodation shown in this proposal is to mitigate for flood risk. However, these plans are indicative only. The requirement to meet Part M4(2) of the Building Regulations could be made a condition, were outline planning permission granted. This might then be addressed at reserved matters stage, such as through providing lifts. On this basis, I find no conflict with JLP Policy LP24, over providing an adequate amount of accessible and adaptable residential accommodation.

BNG

21. The application was made prior to 12 February 2024, so the proposal is exempt from a statutory requirement to deliver BNG. The policy requirement for this, through JLP policies SP09 and LP16, was adopted some 15 months after this application was submitted. No requests were made in respect of BNG, or biodiversity enhancement, prior to the refusal of planning permission. The appellant considers this requirement could be met through a condition. The Council refers to a recent appeal decision, where it was found inappropriate to secure BNG by such means. I am not sure this would universally be the case. However, a finding of harm in respect of this issue would not be determinative in this appeal, in the context of my wider conclusions. Therefore, I do not find it necessary to progress this particular matter any further.

¹² Paragraph: 028 Reference ID: 7-028-20220825

Balance and Conclusion

22. The appellant has not demonstrated to my satisfaction that there are no reasonably available sites appropriate for this proposal with a lower risk of flooding. In such circumstances, paragraph 174 of the Framework states that development should not be permitted. On this basis, the proposal is found contrary to JLP Policy LP27 over flood risk and vulnerability and with the development plan as a whole.
23. The proposal would provide the benefit of much needed housing, within walking distance of a wide range of services and facilities, including shops, schools, public transport and places of work and recreation. There would be further benefits from revitalising a rundown part of the town centre and improving the character and appearance of the area with a suitably designed regeneration scheme. All this attracts significant positive weight.
24. Paragraph 125 c) of the Framework continues to require that substantial weight be given to the value of using suitable brownfield land within settlements for homes and other identified needs. The 2024 revision adds that such proposals be approved unless substantial harm would be caused. However, I have not found the appeal site to be suitable brownfield land for housing, for reasons of flood risk. In relation to the scheme's direct conflict with Government policy, this flood risk harm would be substantial and sufficient to outweigh the benefits identified, including the value of redeveloping brownfield land. Material considerations would thus not indicate a decision otherwise than in accordance with the development plan. Therefore, I conclude that the appeal be dismissed.

Jonathan Price

INSPECTOR