



Appeal Decision

Site visit made on 21 January 2025

by A Knight BA PG Dip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th May 2025

Appeal Ref: APP/W3520/W/24/3348448

Land Off Creeting Road West, Stowmarket, Suffolk IP14 5AT

- 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 Laurence Homes Ltd against the decision of Mid Suffolk District Council.
 - The application Ref is DC/23/05554.
 - The development proposed is erection of 6no 1-bedroom flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have removed a reference from the description of development which describes it as a resubmission, as that is not a form of development.
3. Since the determination of this application a revised National Planning Policy Framework (the Framework) has been published. The main parties have been given the opportunity to comment, and I have considered the revised Framework in my decision.

Main Issues

4. The main issues are:
 - Whether the proposed development would be in a suitable location having regard to local policies on employment uses; and
 - The effect of the proposed development on biodiversity.

Reasons

Location

5. The appeal site (the site) comprises land covered by a mix of compacted ground and hard surfaces in the centre of Stowmarket. It is part of a wider plot where planning permission¹ was previously granted for the replacement of light industrial buildings with 14 flats arranged in two blocks, and an office block (the previous permission). The two blocks of flats have been built but construction of the offices has not begun; the appeal proposal is to provide additional flats instead.
6. The Council consider the site subject to Policy LP10 of the Babergh and Mid Suffolk Joint Local Plan (2023) (the Local Plan), which addresses changes from

¹ Application Ref 2028/15.

employment uses. Policy LP10 states that development will only be approved where it does not compromise ongoing employment use(s) and requires any such proposals to demonstrate that the possibility of re-using or redeveloping the land for other employment or community uses have been explored by a period of sustained marketing, the nature of which is specified in detail. The appellant contends that Policy LP10 does not apply as the site has a nil use and, also, is vacant rather than in employment use.

7. Little is put forward in support of the argument the site has a nil use beyond a contention that its lawful industrial use was extinguished when the buildings that used to be there were demolished and that, whilst the previous permission included an office block, it has not been constructed.
8. Whilst the Council has not contested the appellants assertion that there is no obligation to complete the approved office block, neither party contends that the previous permission is anything other than extant, and I see no reason to think it is not. I see no reason why the approved office block could not lawfully be constructed now or in the future, and no argument has been advanced that it could not. Accordingly, I have no reason to view the lawful use of the wider plot as anything other than a mix of residential and employment.
9. As set out in the judgement in *Panton v Secretary of State for the Environment, Transport and the Regions* (1999) 79 P & CR 186, it is long established that the lawful use of land may only be lost in one of three ways, the first being abandonment, the second being by the formation of a new planning unit, and the third being by way of a material change of use (whether by implementation of a further planning permission or otherwise). I have no compelling evidence before me that any of these three circumstances are applicable and so have no reason to find that the site has a nil use.
10. Whilst I accept that the site is vacant, I see no reason why that would exclude it from being employment land for the purposes of Policy LP10. The supporting text is explicit that the policy seeks to retain viable employment sites and premises. That the site is currently vacant, and that it has not yet been built out, does not demonstrate that its use for employment is not viable. Moreover, whilst the policy refers to ongoing employment use(s), I do not take that to refer only to sites which are currently occupied for employment purposes. Indeed, it is inherent within subsection 2(a) that employment sites may be vacant, hence the requirement to advertise their availability, but are still subject to Policy LP10. Overall, I find that the policy is applicable to the site.
11. The appellant has advanced no argument that the possibility of re-using or redeveloping the site for other employment or community uses has been explored by a period of sustained marketing, and the proposal is contrary to Policy LP10, therefore.
12. Notwithstanding the above, it is the view of the appellant that sufficient available employment land exists elsewhere in the district. My attention has been drawn to a range of examples in this respect. The Council refers to the Economic Lands Needs Assessment (June 2024) as providing evidence of ongoing need, but I have not been provided with that document and so cannot consider it within my determination.

13. Of the provided examples, it is stated that facilities at Chilton Leys have been on the market for a number of years, though I have no evidence this is typical of the local market, or not resulting from a specific feature of that particular site. Otherwise, the provided examples tell me little more than the facilities in question were available at an unspecified point in time. I have not been shown when, how long for, or how competitively they were priced.
14. That any particular employment land may be available at any particular point does not, within itself, demonstrate that the overall need has been met, and I have no evidence placing the cited examples in the context of anticipated or established demand. Similarly, no evidence has been provided in support of the claim that demand for office accommodation has declined in favour of home working, significantly reducing the weight I can attach to that observation.
15. My attention has also been drawn to a permission, granted in 2018, in which offices were converted into flats without, the appellant states, first being marketed². The Council points out that this permission was granted prior to the adoption of the current Local Plan, and I can see from the operative dates that this is so. In the absence of any evidence that comparable marketing requirements were applicable to both schemes, the cited permission carries very little weight in my determination.
16. The appeal site would not be a suitable location for the proposed development, having regard to local policies on employment uses, and would be contrary to Policy LP10 of the Local Plan where it requires a demonstration that the possibility of re-using or redeveloping the land for other employment or community uses has been explored by a period of sustained marketing.

Biodiversity

17. Local Plan Policy SP09 addresses the enhancement and management of the environment. Policy LP16 provides further detail, requiring, amongst other things, that new development identify and pursue a net gain in biodiversity. The appellant has advanced no case that the requirements of Policy LP16 do not apply to the proposed development but does argue that it could be addressed subsequent to any permission.
18. It is not stated in the policy that an assessment of existing, baseline biodiversity levels must be provided at the initial application stage. Whilst I find there will inevitably be instances where such an assessment is required in order for the possibility of compliance with the condition to be established, so too there will doubtless be instances where the condition of the site in question renders that approach unnecessary. I see no evidence that addressing biodiversity gains using a planning condition would be bound to result in failure on the part of the Council to meet the duties imposed upon it by the Natural Environment and Rural Communities Act 2006.
19. The site is lacking in greenery, save for some growing at its edges. Otherwise, it is largely laid to hardsurface. Given the circumstances at the site I see no reason to feel that compliance with Policies SP09 and LP16 would not be possible, or to find that the absence of a baseline assessment at this stage renders the proposal unacceptable.

² Application Ref DC/18/*05104.

20. The Council has provided me with a recent appeal in which a different approach was taken³. That scheme involved significant development on an open field rather than, as is before me, on a site already largely developed. As such, the risk of ultimate non-compliance with Policies SP09 and LP16 are different in the two cases, justifying a different approach in each.
21. I have no evidence that the proposed development would fail to comply with the requirements of Policies SP09 and LP16 of the Local Plan in respect of the provision of biodiversity gains.

Other Matters

22. The site is near Stowmarket Railway Station, which is a Grade II listed building. I have therefore had regard to the statutory duty referred to in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Council has not raised any concerns as to the effect of the proposal on the setting of the railway station, describing it as neutral. I see no reason to take a different view.
23. The decision notice is clear that the proposal was refused on the basis of principle, as the site is one where employment uses are protected. The supporting text to Policy LP10 explains its purpose; to maintain economic opportunities, which is fundamental to the sustainability of communities. The harm arising from conflict with the policy is inherent, therefore, and I attach no weight to the omission from the decision notice of any further or more detailed articulation of that harm.

Planning Balance

24. The benefits of the scheme are material in my determination. The proposal would provide new housing which, notwithstanding a 10.88 year supply of housing land in the district, would nevertheless contribute towards Governmental aims. The provision of new housing carries significant weight but is tempered in this case by the relatively modest scale of the scheme.
25. There would be some temporary economic benefits associated with the construction phase as well as the prospect of work-related training for site operatives. Thereafter, there would be ongoing local economic and social activity relating to the occupation of the site to the benefit of local facilities and services, as well as to the local community. Nevertheless, these benefits would be minor, and not sufficient to outweigh the harm resulting from the conflict with the development plan described above.

Conclusion

26. Whilst I have found no reason to consider the proposed development contrary to the Council's biodiversity policies, overall, and for the reasons given above, I conclude that the proposal would conflict with the development plan as a whole. There are no material considerations that indicate that the proposal should be determined otherwise than in accordance with it. Therefore, the appeal is dismissed

A Knight

INSPECTOR

³ Appeal Ref: APP/W3520/W/23/3325598.