



*St Edmundsbury*  
BOROUGH COUNCIL

# DEV/SE/19/029

## Development Control Committee 28 March 2019

### Planning Application DC/18/2523/FUL – Aviary, Abbey Gardens, Angel Hill, Bury St Edmunds

**Date Registered:** 19.12.2018      **Expiry Date:** 13.02.2019

**Case Officer:** Adam Ford      **Recommendation:** Approve Application

**Parish:** Bury St Edmunds Town Council      **Ward:** Abbeygate

**Proposal:** Planning Application - Installation of new plant sales retail building (A1 use) including removal of existing timber frame gardener's store and part of existing aviary

**Site:** Aviary, Abbey Gardens, Angel Hill

**Applicant:** Mr Damien Parker

**Synopsis:**

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and Associated matters.

**Recommendation:**

It is recommended that the Committee determine the attached application and associated matters.

**CONTACT CASE OFFICER:**

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## **Background:**

**This application is before the Development Control Committee as it represents an internal application having been submitted by St Edmundsbury Borough Council's Leisure and Culture department.**

## **Amended plans:**

1. It should be noted that following verbal concerns raised by the Bury Conservation Group some minor amendments have been made to the proposal and these alterations are:
  - Removal of a gablet from the south elevation
  - Natural oak used for external cladding

## **Proposal:**

2. Planning permission is sought for the installation of a new plant sales retail building (A1) within the abbey gardens complex. To facilitate this, the application also seeks to remove the existing timber frame gardener's store and part of the existing aviary building.
3. In addition to the retail building, there will be a small outdoor plant sales area enclosed within a 1.8m fence. A new 2.0m gate to the site's compound is also proposed.
4. The proposed retail building comprises a dual pitch roof with an eaves height of 2.4m and a ridge height of 3.7m. Externally the building will be finished with vertical oak cladding and a natural living sedum roof.

## **Application Supporting Material:**

- Completed application form
- Site location plan
- Design and access statement
- Existing block plan
- Proposed block plan and elevations
- Indicative example of proposed fencing
- Biodiversity checklist
- Flood map
- Bat survey

## **Site Details:**

5. The application site lies within the Abbey Gardens site which is a scheduled ancient monument pursuant to the Ancient Monuments Act 1953. The site is also located within the Bury St Edmunds Conservation Area.
6. The proposal relates to a small section of the Abbey Gardens site which is located to the immediate south of the Garden's boundary wall.

## **Planning History:**

7. No relevant planning history with respect to this application

## Consultations:

### 8. Principal Conservation Officer: no objection

- In response to the initial plans, the LPA's Principal Conservation Officer provided the following comments:
- *"The new building would be set forward of the face of the Abbey wall and include a window so that an arch in the wall could be seen. The removal of a section of the aviary would also reveal part of the Abbey wall. These aspects of the proposal would enhance and better reveal the significance of this important heritage asset in accordance with paragraph 200 of the NPPF. Verbal comments have been received requesting that the gablet on the south elevation is removed and that natural oak is used for the cladding. These changes would be acceptable. If the cladding is to be oak, it would be more appropriate to paint the windows and doors in a colour which would blend in with this, rather than white, to avoid them being overly prominent. When submitting a revised plan to show these changes, details of the railings should also be provided together with confirmation that the boarding between the plant sales area and aviary would be green horizontal boarding (to match the existing boarding on the aviary entrance) to ensure the boarding does not look like a suburban garden fence (as per the pre-application advice provided). Once these details are received I recommend approval of this application."*
- Following the submission of amended plans, the LPA's Principal Conservation Officer provided the following additional comments:
- *"I confirm I have no objection to this application based on the revised drawings and additional details. No conservation conditions are required."*

### 9. Historic England: no objection

- Historic England submitted a formal response to this application on the 22 January 2019. These comments are reproduced below.
- *Having considered the detailed drawings, we can confirm that we do not have an in principle objection to the development. We accept the broad principle of the development and have through pre-application discussions sought to minimise the impacts upon the scheduled monument. The works have also now been given Scheduled Monument Consent. We are however aware that the success of the scheme will be in the detailing of the new building and we would ask that the council give regard to these matters through specialist design and conservation advice, and with regard to there archaeological advisors.*
- *Historic England does not object to the application on heritage grounds, but we recommend that you take into consideration any advice from your specialist advisers prior to granting consent."*

### 10. Suffolk County Council Archaeological Service: no objection

- *"The proposed works are intended to be minimal in terms of excavation (less than 300mm deep), and given that the application is also subject to statutory Scheduled Monument Consent processes, I would not advise that there would also need to be a condition on planning consent relating to a formal programme of works.*

- *The Planning Statement notes that if in the event excavations deeper than 300mm are needed they would be consulted on, and I would expect this to be managed through the Scheduled Monument Consent process. The depth is quite important, as archaeological remains slightly further south into the Great Court have been noted to be more or less at 300mm deep (County Historic Environment Record BSE 393), and although there is a little more cover towards the aviary, archaeological horizons are relatively shallow in this area."*

## **Representations:**

### **11. Bury Town Council: no objection**

- *"No objection based on information received subject to Conservation Area issues and Article 4 issues."*

## **Policy:**

12. The following policies of the Joint Development Management Policies Document, the St Edmundsbury Core Strategy 2010 & Vision 2031 Documents have been taken into account in the consideration of this application:

### **SEBC Core Strategy document**

- Core Strategy Policy CS1 - St Edmundsbury Spatial Strategy
- Core Strategy Policy CS2 - Sustainable Development
- Core Strategy Policy CS3 - Design and Local Distinctiveness

### **Bury Vision document**

- Vision Policy BV1 - Presumption in Favour of Sustainable Development
- Vision Policy BV17 - Out of Centre Retail Proposals

### **Joint Development Management Policies Document**

- Policy DM1 Presumption in Favour of Sustainable Development
- Policy DM2 Creating Places Development Principles and Local Distinctiveness
- Policy DM11 Protected Species
- Policy DM12 Mitigation, Enhancement, Management and Monitoring of Biodiversity
- Policy DM17 Conservation Areas
- Policy DM19 Development Affecting Parks and Gardens of Special Historic or Design Interest
- Policy DM20 Archaeology
- Policy DM35 Proposals for main town centre uses

## **Other Planning Policy:**

13. The NPPF was revised in February 2019 and is a material consideration in decision making from the day of its publication. Paragraph 213 is clear however that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the revised NPPF. Due weight should be given to them according to their degree of consistency with the Framework; the closer the policies in the plan to the policies in the Framework, the greater weight that may be given. The Policies set out within the Joint Development Management Policies have been assessed in detail and are considered sufficiently aligned with the provisions of the NPPF that full weight can be attached to them in the decision making process.

## **Officer Comment:**

14. The issues to be considered in the determination of the application are:

- Principle of Development
- Design, form and scale & resulting impact of the proposal upon heritage assets
- Impact on residential amenity
- Ecological implications

## **Principle of Development**

15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise. The development plan for St Edmundsbury comprises the Core Strategy, the three Vision 2031 Area Action Plans and the Joint Development Management Policies Document. Policies set out within the NPPF and the presumption in favour of sustainable development contained at its heart are also material considerations.

16. This application seeks planning permission for a new plant sales (A1) building (with associated fencing and partial demolition) within the grounds of Abbey Gardens and is located within the defined settlement boundary of Bury St Edmunds although the proposal is not located within the town centre as defined on the policies maps.

17. In this regard, Policy DM35 provides the basis for applications which seek retail use outside of the main centres and it is clear that where main town centres uses are proposed, if they are not in a defined centre and are also not in accordance with an up to date local plan, a sequential approach in selecting the site must be demonstrated.

18. However, in this instance, whilst it is recognised that the proposed retail building is not located within a defined centre, Abbey Gardens is not allocated for a particular use class and therefore, the proposal cannot be considered as conflicting with the existing local plan. Accordingly, a sequential test is not deemed to be necessary and a material conflict with DM35 has not therefore been identified. However, whilst the principle of retail plant / flower sales is acceptable, further retail uses may give rise to additional adverse impacts in this heritage asset rich location. Accordingly, a condition which restricts additional retail uses beyond what is applied for within this application shall be imposed.

19. The principle of development in this location is therefore something the LPA are able to support, subject to other material planning considerations which, in this instance, are predominantly related to the impact of the proposal upon Abbey Gardens and the Bury St Edmunds Conservation Area.

### **Design, form and scale & resulting impact of the proposal upon heritage assets**

20. The proposal under determination involves the partial demolition of the existing aviary building, the creation of an outside sales area, the provision of new 1.8m fencing and a new plant sales building.
21. The application site lies within the Bury St Edmunds Conservation area and Abbey Gardens is a scheduled monument in its own right. Accordingly, the impact upon these heritage assets must be considered fully as per the statutory duty placed on the LPA by paragraphs 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
22. In policy terms the National Planning Policy Framework identifies protection and enhancement of the historic environment as an important element of sustainable development and establishes a presumption in favour of sustainable development in the planning system (paragraphs 7, 8, 10 and 11). The core planning principles of the NPPF are observed in paragraphs 8 and 11 which propose a presumption in favour of sustainable development. This includes the need to conserve heritage assets in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life for this and future generations as set out in Chapter 16.
23. At paragraph 193 the NPPF goes on to require planning authorities to place '*great weight*' on the conservation of designated heritage assets, and states that the more important the asset the greater the weight should be. '*this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance*'. Paragraph 194 also recognises that the significance of an asset can be harmed from development within the setting of an asset, and that '*any harm or loss should require clear and convincing justification*'. It is also recognised in the NPPF (paragraph 196) that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
24. Having regard to DM17 and DM19, the new building would be set forward from the 'face' of the Abbey wall and include a window so that an existing arch in the wall could be seen. The removal of a section of the dated aviary would also reveal part of the Abbey wall. These aspects of the proposal would enhance and better reveal the significance of this important heritage asset in accordance with paragraph 200 of the NPPF. In addition, the proposed building is modest in scale and is externally finished with Oak cladding and a sedum green roof whilst the proposed fencing comprises 1.8m black railings; all of which have been agreed with the LPA's Conservation Officers. The building does not therefore harm the setting of the conservation area, with respect to views in to, or out of it.
25. With respect to policy DM20 (archaeology) due to the project also requiring scheduled monument consent, Suffolk County Council's Archaeology service have confirmed that there is no need for a planning condition which requires a programme of works. This will be dealt with under the scheduled monument consent.

26.The proposal is therefore able to meet the requirements of policies DM17, DM19 and DM20.

### **Impact on residential amenity**

27.Whilst the proposed development is located within the confines of Abbey Gardens, there are residential properties to the North of the application site, beyond the Gardens' wall. Accordingly, given the thrust of policy DM2, the potential impact of the proposal upon existing residential amenity must be considered.

28.In this instance, the proposed works will not be visible from within the residential properties and the modest retail use is not judged to give rise to adverse implications that the LPA would otherwise seek to resist. Given the enclosed nature of the application site and the extent to which the use will assimilate into the existing Abbey Gardens site, the proposal is not judged to give rise to an unacceptable impact with respect to residential amenity.

### **Ecological implications**

29.Policies DM10, DM11 and DM12 seek to ensure that proposals do not give rise to an unacceptable impact upon biodiversity or protected species. In addition, the NPPF places responsibility on Local Planning Authorities to aim to conserve and enhance biodiversity and the encourage biodiversity in and around developments.

30.The redundant aviary (P1) is noted to be a single storey structure predominantly made with wire mesh with a brick built wall at the northern side of the structure (P2). The roof of the aviary is an un-lined plastic corrugated sheeting also with wire meshing (P3). Multiple wooden support beams are located throughout. The brick wall was in good condition and no holes or cracks were present that were considered suitable for bats. No holes were present within the wooden beams and gaps between beams and wall contained wire mesh restricting access for bats (P4). The structure is considered to have 'negligible' bat roosting potential.

31.The adjoining gardener's store (P5) is a wooden boarded/panelled storage structure with an un-lined plastic corrugated sheet roofing with wire meshing. There are also occasional wooden support beams. There were no gaps present between the wood joins and the wooden panels were well sealed. The structure is considered to have 'negligible' bat roosting potential.

32.No droppings or other evidence of bats was present in the redundant aviary or the adjoining gardener's store.

33.Accordingly, as no signs of bats were found during the building inspection, further emergence surveys are not considered necessary. The proposal is not therefore judged to represent a material conflict with policies DM10, DM11 or DM12.

## Conclusion:

34. In conclusion, the principle and detail of the development is considered to be acceptable and in compliance with relevant development plan policies and the National Planning Policy Framework.

## Recommendation:

35. It is recommended that planning permission be **GRANTED** subject to the following conditions:

- 1 The development hereby permitted shall be begun not later than 3 years from the date of this permission.

Reason: In accordance with Section 91 of the Town and Country Planning Act 1990.

- 2 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans and documents:

Reason: To define the scope and extent of this permission.

<b>Reference No:</b>	<b>Plan Type</b>	<b>Date Received</b>
20078/PA/002	Existing Site Block Plan	18.12.2018
2007/PA/001	Site Plan	18.12.2018
File 20078 v.1.1	Design and Access Statement	18.12.2018
20078/PA/003 REV A	Proposed Site Plan and Elevations	18.12.2018

- 3 The building hereby approved for A1 retail purposes, shall be for the sale of plants and associated items only, and shall only be open for trade to members of the public during the following times:

Mondays - 07:30am to 20:00pm  
Tuesdays - 07:30am to 20:00pm  
Wednesdays - 07:30am to 20:00pm  
Thursdays - 07:30am to 20:00pm  
Fridays - 07:30am to 20:00pm  
Saturdays - 07:30am to 20:00pm  
Sundays - 07:30am to 20:00pm

Reason: To protect the amenities of occupiers of properties in the locality.

## Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online <DC/18/2523/FUL>