

Development Control Committee 4 December 2019

Planning Application DC/19/0514/FUL – Offices, James Reinman Marine Ltd, The Broadway, Pakenham

Date Registered:	08.04.2019	Expiry Date:	03.06.2019 EOT agreed
Case Officer:	Britta Heidecke	Recommendation:	Refuse Application
Parish:	Pakenham	Ward:	Pakenham & Troston
Proposal:	Planning Application - 2 no. dwellings (following demolition of existing work sheds) and associated works (as amended by email received 31.07.2019 to reduce the scheme from 3 dwellings to 2)		
Site:	Offices, James Reinman Marine Ltd, The Broadway		
Applicant:	Mr James Reinman		

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.

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Background:

The application is referred to the Development Control Committee following consideration by the Delegation Panel. Pakenham Parish Council support the application and the recommendation is for REFUSAL.

The application is also supported by the Ward Member (Councillor Simon Brown).

A site visit is scheduled to take place on Monday 2 December 2019.

Proposal:

1. The application seeks permission for two detached 4-bedroom dwellings each with an attached garage, following the demolition of existing work sheds.

Site Details:

2. The application site is approx. 0.75ha in size and lies between Ixworth and Pakenham, within the open countryside. Access to the site is from The Broadway at the south-west corner of the site. There is established landscaping on the boundaries and within the site.
3. The site was part of a larger site which was used for the extraction of sand and gravel in the 1960's and is at a notably lower level than the road.
4. The application site comprises of a larger commercial building, two smaller ancillary buildings, plus open and landscaped areas. The site is currently used for a boat building operation.
5. Two former office buildings, some 40m north and previously associated with the application site, have been converted into dwellings.
6. Residential properties which form part of the hamlet of Grimstone End lie further north and east of the site. These properties form a loose cluster along either side of Fen Road / Mill Road.

Planning History:

7.

N/73/1686/Tu: Creation of builders depot with workshop, offices, store and 4 dwellings (as amended to omit four dwellings)

E/74/2276/P: office and store building – refused

E/74/1220/P: mesh fence - approved

E/77/2511/P: Erection of vehicle maintenance and service bay with store for builders depot. Grant

E/82/1105/P: Erection of building materials store – as amended. Application Granted (01.03.1982)

E/84/2971/P: Erection of replacement offices. Grant

E/88/1406/P: Erection of extension to workshops (light industrial). Grant

E/89/1919/P: Provision of external fire escape. Grant (Buildwell)

SE/02/3812/P: Planning Application - (i) Erection of two detached houses with detached garages/storage; and (ii) change of use of builders office to Class B1 office (demolition of remaining buildings on site) as supported by information supplied on 14th April 2003 with regard to a Flood Risk Assessment. Grant (Buildwell (in liquidation) (expired before implemented)

SE/04/1536/P: Planning Application - Continued use of former builders' yard for boat building as supported by letter received 18/3/04 with details of machinery and vehicles operated onsite and by letter dated 9th June 2004 containing traffic survey as supported by letter dated 16th July 2004. Grant

SE/04/4084/P: Planning Application - Change of use of offices associated with Builders' Yard to Class B1 (Business). Grant

SE/07/0507: Planning Application - Continued use of former builder's yard for boat building. Grant

SE/08/0156: Planning Application - Continued use of former builders yard for joinery work and soft furnishings in connection with fitting out moulded glass fibre boats for a temporary period (until 31st July 2008). Grant

SE/09/0092: Planning Application - Continued use of former builders yard for joinery work and soft furnishings in connection with fitting out moulded glass fibre boats for a temporary period. Grant

SE/10/0177: Planning Application - (i) Conversion and extension of existing commercial building to dwelling and (ii) erection of 2 no. dwellings and associated car port. Refused

SE/10/0632: Planning Application - (i) Conversion and extension of existing commercial building to dwelling and (ii) erection of 2 no. dwellings and associated car ports (re-submission) as supported by plan received 11th June 2010 indicating Plot 1 elevations and email dated 6th October 2010 including details of a marketing campaign. Refused / Appeal dismissed

SE/11/1174: Planning Application - Erection of 2 no detached dwellings and associated car ports. Grant

SE/12/1651/FUL: Planning Application - Erection of dwelling & garage (Plot 2) (revised application of SE/11/1174). Grant

DC/13/0105/P3JPA: Prior Notification Application under part 3 J - Change of use of Office building Class B1(a) to dwelling Class C3. Not Required

DC/13/0106/P3JPA: Prior Notification Application under part 3 J - Change of use of Office building Class B1(a) to dwelling Class C3. Not Required

DC/17/2199/FUL: Planning Application - Continued use of former builder's yard for joinery work and soft furnishings in connection with the fitting out of moulded glass fibre boats for a temporary period (12 months). Grant

Consultations:

8. Public Health And Housing: No objection subject to conditions to control.
9. Environment Team: No objection subject to conditions to control impacts from demolition and construction phase.
10. Environment & Transport – Highways: No objection subject to conditions.
11. Ecology And Landscape Officer: No objection verbally, subject to implementation in accordance with the recommendations in the ecology report and enhancement measures as set out
12. Suffolk Wildlife Trust: No comments received
13. Strategy And Enabling Officer, Housing: Based on what a Registered Provider would pay for an Affordable Rent property and a Shared Ownership property, we would be seeking to secure a commuted sum of £90,780 for the loss of 0.6 of an affordable dwelling.
14. Parish Council: No objection – *'it is asked that a condition is made that before any building works take place it is ensured the existing workshops are demolished and all commercial use on this site is extinguished.'*
15. Ward Councillor: Councillor Simon Brown called the application in to the Delegation Panel. Councillor Brown submitted comments to the Delegation Panel summarised below:
 - There is already housing development taking place with approval on site.
 - The request is for just two additional houses.
 - It is to replace a commercial workshop, which holds no local trade that will be impacted by change of use.
 - The village will benefit from additional housing.
 - Having no commercial use means no trucks, lorries etc., driving along the lanes causing damage to the hedgerows, conservation, roads and at times of an early morning / late evening.
 - Residents would prefer houses.
 - The Parish Council have no objection and would prefer houses.

Representations:

16. No third party representations have been received.

Policy:

17. On 1 April 2019 Forest Heath District Council and St Edmundsbury Borough Council were replaced by a single Authority, West Suffolk Council. The development plans for the previous local planning authorities were carried

forward to the new Council by Regulation. The Development Plans remain in place for the new West Suffolk Council and, with the exception of the Joint Development Management Policies document (which had been adopted by both Councils), set out policies for defined geographical areas within the new authority. It is therefore necessary to determine this application with reference to policies set out in the plans produced by the now dissolved St Edmundsbury Borough Council.

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

St Edmundsbury Core Strategy 2010

- Core Strategy Policy CS1 - St Edmundsbury Spatial Strategy
- Core Strategy Policy CS2 - Sustainable Development
- Core Strategy Policy CS3 - Design and Local Distinctiveness
- Core Strategy Policy CS4 - Settlement Hierarchy and Identity
- Core Strategy Policy CS5 - Affordable Housing
- Core Strategy Policy CS9 - Employment and the Local Economy
- Core Strategy Policy CS13 - Rural Areas

Rural Vision 2031

- Vision Policy RV1 - Presumption in favour of Sustainable Development
- Vision Policy RV3 - Housing settlement boundaries

Joint Development Management Policies Document

- Policy DM1 Presumption in Favour of Sustainable Development
- Policy DM2 Creating Places Development Principles and Local Distinctiveness
- Policy DM5 Development in the Countryside
- Policy DM6 Flooding and Sustainable Drainage
- Policy DM7 Sustainable Design and Construction
- Policy DM10 Impact of Development on Sites of Biodiversity and Geodiversity Importance
- Policy DM11 Protected Species
- Policy DM12 Mitigation, Enhancement, Management and Monitoring of Biodiversity

- Policy DM14 Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards
- Policy DM22 Residential Design
- Policy DM30 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
- Policy DM46 Parking Standards

Other Planning Policy:

National Planning Policy Framework (2019)

19. 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 provision of the 2019 NPPF that full weight can be attached to them in the decision making process.

Planning Policy Evaluation

20. Policy CS1, CS4 and CS13 of the Core Strategy seek to direct development to suitable, sustainable locations with easy access to local services and facilities. These are aims that are consistent with Paragraphs 78 and 79 of the Framework.

21. Policy CS13 of the Core Strategy does not prevent development outside settlements defined in Policy CS4, but states that it will be strictly controlled. It goes on to state that '*Policies in the Development Management DPD and Rural Site Allocations DPD will set out detailed uses which are appropriate in rural areas*'. The Joint Development Management Policies have since been adopted and Policy DM5 concerns development in the countryside.

22. Policy DM5 was adopted following the introduction of the original National Planning Policy Framework in 2012 and therefore takes a more permissive approach to rural housing than Policy CS4 and its supporting text did. It seeks to facilitate some residential development in smaller settlements by permitting infilling in more than exceptional circumstances. Being more recently adopted, Policy DM5 takes precedent over Policies CS1 and CS4.

23. Policy DM5 permits small scale residential developments on small undeveloped plots in clusters in accordance with Policy DM27. DM27 requires proposals for new dwellings in the countryside to be in a closely knit cluster of 10 or more dwellings adjacent to or fronting an existing highway, as well as consisting of the infilling of a small, undeveloped, plot by one or a pair of semi-detached dwellings commensurate with the scale and character of the dwellings existing in the area. Proposals for dwellings in the countryside must also be located and designed such as to not harm

or undermine a visually important gap that contributes to the character and distinctiveness of the area and would not have an adverse impact of the environment or on issues relating to highway safety.

24. Paragraphs 77-79 of the NPPF discuss rural housing matters similar to this policy, in that the NPPF states that in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. Furthermore, these paragraphs state that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities, as well as stating that planning policies and decisions should avoid the development of isolated homes in the countryside except in exceptional circumstances as outlined in paragraph 79 of the NPPF.
25. Paragraph 79 of the NPPF does however not imply that a dwelling has to be isolated for a restrictive policy, such as Policy DM5 and DM27, to apply. There may be other circumstances, such as the evidenced based requirements of a development plan, which would suggest development in the countryside should be avoided.
26. Policy DM27 is part of an overall spatial strategy that seeks to promote sustainable travel, maintain local character and enhance and maintain the vitality of rural communities. Its clear intent is to provide some opportunities for housing in smaller settlements as a means of balancing these aims. Accordingly, there is an important element of control in the policy. This is how it has been written and should be applied.
27. Given the consistency between the points raised in the local policy and the paragraphs of the 2019 NPPF above, officers are satisfied that there is no material conflict between Policies DM5 and DM27 and the provisions of the NPPF, such that it is considered that full weight can be given to policies DM5 and DM27 in this case.

Five Year Supply of Housing

28. On 1st April 2019 West Suffolk Council was created. A joint five year housing land supply report (5YHLS) for West Suffolk taking a baseline date of 31 March 2019 was published in September 2019. This confirmed that the new single council can demonstrate a 6.2 year supply of housing land. The report is accompanied by detailed evidence set out in 8 appendices which support the delivery of sites over the period 2019 to 2024. Alongside this report is the West Suffolk Housing Delivery study prepared by consultants Turleys. This report reviews past and current rates of housing delivery and determinants of demand and makes recommendations to accelerate housing delivery across West Suffolk. The report sits alongside the 5YHLS as it provides evidence to support the benchmarks and assumptions used in it.
29. In conclusion, on the basis of the above the policies which are most important for determining the application are not out-of-date and the tilted balance set out in para 11 of the NPPF does not apply.

Officer Comment:

30. The issues to be considered in the determination of the application are:
- Principle of Development

- Compliance with relevant policies for housing
- Planning history
- Fall-back position
- Loss of employment use
- Layout and design,
- Impact upon residential amenity
- Ecology
- Highways matters
- Affordable housing
- Contamination
- Flood risk and drainage
- Air quality
- Sustainable Construction
- Planning Balance

Principle of development:

31.Planning law requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004).

32.The NPPF is a 'material consideration' which does not alter the primacy of the development plan, but remains a significant material consideration in the determination of planning applications. As paragraph 12 states:

'The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.'

33.Core Strategy Policy CS1 sets out the Council's spatial strategy for the former St Edmundsbury Borough Council area. Settlement boundaries are included on the Policies Map accompanying the Joint Development Management Policies Document (2015). The application site lies outside of any defined settlement boundary, and is therefore situated in the countryside for the purposes of interpreting planning policy.

34.Accordingly, the application site is outside of any settlement boundary, in the open countryside and where Policy DM5 applies, and which seeks to protect the countryside from unsustainable development. The distance to the edge of the nearest village Ixworth is approx. 1.8km, there are no footpaths, the roads are not lit and the speed is not generally restricted below 60mph. A journey to Ixworth would also involve crossing the A143 with limited safe pedestrian crossing points of an otherwise busy road. The village of Pakenham is in excess of 2km away, but again the journey is not conducive to travel other than by the private car. The distances and road conditions to local facilities and services in the nearest villages are such that sustainable modes of transport such as walking and cycling would not particularly be encouraged. Therefore, occupiers of the proposed dwellings are most likely to frequently rely on the private car to access day to day

services and facilities, which would have negative environmental and social effects. A recent 2018 appeal decision (AP/18/0015/REF) for a single dwelling some 70m east of the application site was dismissed for similar reasons, with the Inspector considering what was then paragraph 55 (isolated dwellings in the countryside, now paragraph 79) of the then relevant NPPF 2018 and concluding as follows –

'In this regard, I consider the appeal site to be poorly located. I did not observe any shops, community facilities or bus stops within a reasonable walking distance of the site and the various services cited by the appellant are located in neighbouring villages and not proximate to the site. Moreover, the local road network lacks pedestrian footways and is inherently unsuited to walking or cycling, particularly after dark or in bad weather. In any event, whilst the limited range of services and facilities in Ixworth might provide for some day-to-day essentials, future occupants of the dwelling would still be dependent on longer distance car journeys to access supermarkets, employment areas and the like. (...) For these reasons, the proposal would conflict with one of the core principles of the Framework which is stated as; *'to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling'.*

35. There is nothing before us that calls into question this Inspector's judgement in relation to this matter, notwithstanding the updating of the NPPF in 2019, and the clear locational similarities between that site and this add considerable weight in support of the view above that this is NOT a sustainable location for residential dwellings and that the provision of such in this location would strongly conflict with the provisions of the NPPF. This is a very clear example of the way a Planning Inspector would be expected to determine a matter such as this in light not only of local policies, but also bearing in mind the provisions of the NPPF. That, when analysing a dwelling in an immaterially different location, against identical policies as before us now, an Inspector reached such a robust decision is telling, and points very clearly to the strong policy conflict arising. This conflict is a factor which weighs very heavily against the proposal.
36. Policy DM5 sets out forms of development that will be permitted in the countryside (affordable exemption sites, rural workers dwellings, replacement dwellings and infill where there is a cluster of 10 or more existing dwellings). The proposal does not fall within any of these categories and, therefore, would be contrary to Policy DM5.
37. Policy DM27 referred to by policy DM5 permits small-scale development of a small undeveloped plot in the countryside provided it accords with the criteria set out within the policy.
38. Policy DM27 states that such housing should be within a closely knit cluster of 10 or more existing dwellings adjacent to or fronting an existing highway and the scale of development should consist of infilling a small undeveloped plot by a dwelling commensurate with the scale and character of existing dwellings within an otherwise continuous built-up frontage. The policy clarifies that plot sizes and spacing between dwellings should be similar to adjacent properties and that permission will not be granted for proposals that harm a visually important gap or have an adverse effect on the environment.

39. There are some dwellings north and south of the site but these are scattered very loosely along the road. The proposal is for two detached dwellings, each sited on large plots clearly not within any cluster. There is also, in any event, not a continuous built-up frontage along Broadway.
40. Based on the above the proposed development is contrary to policies CS1, CS4, CS13, RV1 and RV3, DM5 and DM27 and as such is not acceptable as a matter of principle. As with the conflict with the provisions of the NPPF identified above, this is a conclusion that weighs very heavily against the proposal.
41. Accordingly, unless there are material considerations to indicate that the plan should be set aside, the only reasonable conclusion that can be drawn is that the proposal should not be approved.

Loss of employment use

42. Policy DM30 seeks to protect existing employment sites. Non-employment uses proposed will only be permitted where the proposal can demonstrate that it meets certain criteria.
43. The site is currently used for boat building operations. The proposal is therefore also considered against policy DM30. The applicant accepts that in this respect the proposal does not strictly comply with that policy but argues however, that *'a key question is the extent to which any policy tension in that regard is of significance, especially where the employment use is of itself unsustainable by virtue not only of its location but its harmful impact upon surrounding environs.'*
44. The NPPF at para 84 advises that *'sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.'* It goes on to say that *'In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.'*
45. Whilst it is agreed that the location is remote from any settlement boundary and services and facilities, the site being close to the settlement of Grimestone End is not in and of itself physically 'isolated' and employment uses on small rural sites will provide rural employment and may in turn reduce the need to travel further afield. As such a location whilst being very clearly unsuitable for housing may be more suitable for appropriate employment uses, and this is considered the case here.
46. The existing, albeit currently unauthorised, use of the site for boat building operations is one such use which would gain support from local and national policy and was considered acceptable previously in this respect noting the recent history of approvals.

47. Impacts from the existing boat building operations or potential alternative employment uses can be controlled by the LPA and mitigation secured by conditions as appropriate, and as had been the case previously.
48. In conclusion, the proposal would result in the loss of an existing employment site and is as such contrary to Policy DM30. Without adequate justification for the loss of such this will weigh against the proposal in the planning balance.
49. Based on the above the proposal does not comply with the relevant policies in the local plan for housing (CS1, CS4, RV1, RV3, DM5 and DM27) and would result in the loss of an employment site, contrary to policy DM30. The very strong conflict with the provisions of the NPPF is also a very significant factor. Taken together, the principle of development is not considered acceptable.
50. However, it is also important to consider what other material considerations exist. The application has been submitted by the applicant on the basis of their argument that the relevant development plan policies are out of date, that there is a claimed fall-back position to builder's yard and that there is material planning history to this site which justifies a decision otherwise contrary to the development plan. Conformity of local plan policies with the NPPF and the Council's 5 YHLS have been addressed above, with neither argument presented by the applicant bearing scrutiny. The Council has an up to date suite of policies, compliant with the provisions of the NPPF, as well as a demonstrable five year housing land supply. This means that full weight can be given to local policy, and when such is done, it leads inevitably towards the conclusions reached above. The further matters of planning history and fall-back position are addressed below:

Planning history:

51. Planning permission has previously been granted on the site for two dwellings in 2003, after the, at that time, established builder's yard went into liquidation, and again in 2011, following an appeal decision in 2010, which albeit dismissed on other grounds, had regard to the potential for the overall site to revert back to a builder's yard use and considered that the associated heavy vehicle movements and disturbance to residents would be such as to outweigh the policy conflict of residential development. The Inspector concluded in 2010 that *'In the particular circumstances of the appeal I therefore conclude that the proposed provision of two new detached houses would be justified.'*
52. However, the circumstances have since materially changed. At the time (2010) the Inspector considered that there was a *'real possibility'* for the whole site to revert back to a builder's yard. As expanded upon below Officers do not consider that the builder's yard use remains a fall-back position now, almost ten years on from the conclusions of that Inspector. Moreover, the appeal scheme also included the substantial north-eastern part of the site, including two buildings. This part of the site has since changed use to residential under the prior approval provisions of permitted development rights and the two buildings that previously supported the builder's yard use have since been converted into dwellings. This subdivision of the former planning unit has created a new chapter in the planning history of the site and matters must be considered within this new context.

New chapter in the planning history

53. Case law indicates that the later implemented approvals for change of use to dwellings have created a new chapter in the planning history of the site. Case law has established that if land forming part of a larger area in one occupation has an established use, and if planning permission for the erection or enlargement of a building on another part of the same area is granted and the development takes place, this does not necessarily terminate or remove the established use. It only does so if in some way the development which took place is inconsistent with the established use.
54. In this case, the former builder's yard use area was reduced to the remainder of the site. This means, in the opinion of your officers, that any historic builder's yard use is considered inconsistent and incompatible with the residential use of the other part of the site. Subsequently, following case law, and on any reasonable interpretation, the builder's yard use, even if it was still considered to exist at the time of the prior notification approvals, which is moot, would most certainly in the opinion of your officers, have terminated at the point when the prior notification approvals were implemented, noting that these subdivided and diluted the former larger planning unit containing the builder's yard. The significantly reduced area available plus the loss of the buildings associated with that former builder's yard use would have had a profound, and terminal, effect on the ability of any residual use to survive in law as an extant use of that remaining land. Instead, the former builder's yard area outside of that area subsequently converted to dwellings and curtilages would have had no lawful formal planning use, which is not an unusual scenario on rural sites such as this.
55. In the view of officers therefore, the granting and implementation of subsequent consents on the site, not least the prior notification dwellings, have started a new chapter in the planning history of the site, superseding any former consents, given the incompatibility of the former use with the new use noting this loss of area and buildings. What this means is that any claimed historical use of the site as a builder's yard cannot offer any support as the kind of material consideration that might otherwise offer more support for the residential re-use of the site.

Fall-back position

56. Even if the position set out in the above paragraphs is not accepted, and for the record, Officers consider this to be a cogent, legally sound, and otherwise well-made and reasonable argument on the facts of the case before us, and even if it is considered that, somehow, and at odds with the reality of how the site has subsequently been subdivided and used, that it can be argued that the builder's yard otherwise was extant even after the implementation of the Prior Notification applications, then your officers believe, without prejudice, that there is a further argument that would readily counter this position anyway. This relates to the fact that even on the hypothetical basis that the subdivision of the site to create the additional dwellings did not somehow start a new chapter in the planning history, then the facts otherwise will show that any builder's yard use has very clearly been abandoned, as the following paragraphs will demonstrate.

Abandonment:

57. After gravel and sand extraction the wider site including two larger buildings now converted to dwellings, were used as a builder contractors depot from the late 1970's until 2002 when the contractor went into liquidation. The larger part of the site has since been used by the applicant for a boat building operation and one building on the site had been rented out for office use to another business, until the two larger buildings on site changed use to dwellings under permitted development rights.

58. Case law has established that there are tests to consider in order to ascertain whether a building/use has been abandoned. These are:

- The intention of the owner
- The physical condition of the building/site
- The period of non-use
- Whether there have been intervening uses

(Trustees of the Castle-Mynach Estate v SoS for Wales [1985] JPL 40 amongst other more recent authorities)

59. The intention of the owner: The planning history, in the view of officers, shows little evidence to support an intention for the site to be used as a builder's yard again. There have been numerous applications in relation to the boat building operation and applications for conversion of existing buildings to and construction of new dwellings on site over the last 15+ years. This is considered to be a considerable and material period of time, and casts significant doubt on the intentions of the owner ever to 'fall back' to this use. The fact that many of the intervening permissions for boat building were 'temporary' does not, in the opinion of officers, cast material doubt on this conclusion.

60. The physical condition of the building/site: Two of the three main buildings associated with the former builder contractors depot have been converted to dwellings, which means that the buildings and this considerable part of the site are no longer capable of being used for former uses. This is part of the reason why officers, as set out above, believe a new chapter in the planning history has, in any event, been created. Again, this casts considerable doubt on the suitability for the site to retain any lawful use and the close proximity of the site to former office buildings now converted to dwellings also casts doubt on the ability of the site to accommodate any such 'fall back' use.

61. The period of non-use: The site has not been used as a builder contractor's depot since 2002, for the last 17 years. It is logical to conclude that the shorter the period of non use the more likely it is that any such use may not have been abandoned, and also that the longer the period of non use is the more likely it is that any former use has been abandoned. Officers consider that 17 years is a considerable period of time, and even if, contrary to the available evidence, a new chapter in the planning history has NOT been created, then the period of time since the site was last used as a builder's yard leads to a reasonable conclusion that any such use has been abandoned.

62. Whether there have been intervening uses: The site has in most parts been used for boat building operations. One building was used for B1 office use and considerable parts of the site have since changed use to residential.

Notwithstanding the fact that the intervening permissions for boat building were temporary, nothing has demonstrated any indication to otherwise revert back to these uses, with the number and regularity of the renewals for the 'temporary' boat building use all pointing, reasonably, to an 'intervening' use which is in fact permanent in all reality on the site.

63. Whilst the claims of being able to implement the builder's yard use might have had merit in 2010 when considered by an Inspector, due to the passage of time since then, the extended period of alternative use on the site, and the change of use of considerable, and material, parts of the site to residential in the meantime leads to a conclusion that the previous use has been abandoned and is no longer capable of being implemented.
64. On the basis of the tests applied above and notwithstanding the applicant's assertions to the contrary regarding their possible future intentions to reinstate a builder's yard use at the site, it can reasonably be concluded that the previous use is highly likely to have been abandoned. It must also be remembered that this argument is made by officers entirely without prejudice to A) the fact that planning policy points very clearly towards a refusal in any event and B) that the conversion of existing buildings into new dwellings within substantial parts of the site very clearly started a new chapter in the planning history of the site, thereby superseding any historic established uses that may have existed at that time.

Weight to be attached to any hypothetical fall-back

65. There is a further argument that officers consider is important to rebut. Again, this argument is made without prejudice to the arguments above. In the eventuality that it is not accepted that the changes of use on the site created a new chapter in the planning history of the site, and on the basis that, notwithstanding the arguments above, that any former use has also not been abandoned, then it is important to understand, entirely without prejudice, how much weight might otherwise be attached to this fall-back.
66. In this regard, and for the purposes of this analysis, even if it were accepted, notwithstanding all the above arguments, that there was somehow shown to be a fall-back position of a lawful use of the site for a builder's yard, officers are very firmly of the opinion that only very limited weight could otherwise be attached to this in the balance of considerations in any event. Certainly, any such weight, even if such was shown to exist, would not be sufficient to outweigh the strong policy conflict and the harm identified above. The site contains limited buildings, is remote otherwise, and in the opinion of officers, would only ever reasonably be used for a low key and relatively unobtrusive use, if at all. The unlikelihood therefore that the site would ever be attractive for reuse as anything other than a small scale builder's yard significantly limits any weight to be attached to this as a fall-back. In reaching this conclusion it should be further noted that any such use, which it should also be noted is likely to accord with relevant Development Management policies supporting economic uses within the countryside, would be preferable to the development of the site in the manner sought, noting the strong conflict with policy and the conflict of the proposal with the provisions of the NPPF.

Summary and conclusion on fall-back arguments

67. Firstly, the subdivision of the site, for substantial parts to be used for residential, has created a new chapter in the planning history which terminates any former builder's yard use given the scale and extent of land lost to other uses and given the inconsistency of the new and established use. Secondly, for the reasons set out above the builder's yard use is considered to have been abandoned, even if it is somehow accepted that the subdivision of the site has NOT created a new chapter in the planning history. There is therefore no likely fall-back position in this case, to indicate that the application should be determined other than in accordance with the plan.
68. Even if there was a fall-back position to builder's yard, without prejudice, this further argument fails anyway since Officers do not consider that this former use would ever be reasonably reinstated thereby significantly reducing the weight to be attached here.
69. However, even if a builder's yard could be reinstated on the application site, again without prejudice, the area available for such a use has significantly reduced and the historic permissions this use would rely on did restrict noise levels to limit impacts on amenity. In the view of officers, such a small scale business which will still generate some employment is still considered more sustainable in this location than two dwellings remote from any services and facilities. Therefore only very modest or even no weight could be attached to such argument, and would be insufficient to outweigh the clear and obvious conflict with policy.

Layout and design

70. Core Strategy Policy CS3 and Joint Development management policies DM2 and DM22 requires all development to fully consider the context in which it sits, to maintain or create a sense of place and character, as well as to optimise local amenity and be of a high architectural merit.
71. The application proposes the erection of two detached two-storey dwellings of traditional form and design set within spacious plots.
72. Development in the immediate locality of Grimstone End is characterised by detached dwellings on large plots fronting the road. There is a variety of building designs in the area. Whilst the density here would be very low and notwithstanding the overriding policy objection to the principle of residential development, it is considered that in a rural location such as this, a low density development is more in keeping with the character of the locality.
73. Additionally, the application site is well screened by existing landscaping on the site boundaries. Albeit of a considerable scale and massing the design of the proposed dwellings would not have a significant impact upon the character of the area due to their secluded position.
74. On the basis of the above the proposal is not objectionable with regards to layout and design.

Amenity

75. The separation between the proposed dwellings and existing properties is such that the proposals would have no adverse impact by reason of overlooking, overshadowing or being overbearing.
76. The dwellings would benefit from large gardens and overall provide a good standard of amenity for future residents. The proposal in this respect would be acceptable in line with policy DM2 and DM22 and guidance within the NPPF.

Ecology

77. The application has been submitted with a Preliminary Ecology Survey which, following a desk study and site survey, concluded that further ecological surveys or mitigation were considered unnecessary.
78. The site supported an area of common and widespread habitat low in ecological value, excluding boundary vegetation which would not be affected by the proposal.
79. The reports set out impact avoidance precautionary measures and habitat compensation for bats, birds, reptiles, amphibians, hedgehogs and habitats to further minimise any residual risk of harm or impact to protected, priority or rare species. This and biodiversity enhancement measures as set out in the report could be secured by condition to ensure compliance with policy DM10, DM11 and DM12 of the JDMPD.

Highways matters

80. Policy DM2 requires development (*inter alia*) to produce designs, in accordance with standards, that maintain or enhance the safety of the highway network
81. Paragraph 109 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
82. The proposed access currently serves the commercial site and two dwellings. It is considered to be adequate to serve the proposed development, with sufficient visibility in both directions. Parking will be provided within the garages and on the drive in accordance with the current SCC Guidance for Parking. As such the proposal would be acceptable in this respect. SCC Highways have raised no objection subject to conditions.

Affordable housing

83. The National Planning Policy Framework states that affordable housing shall only be required for sites of 0.5ha and over or for 10 dwellings and over. The application site is 0.75 ha in site area.
84. In line with the economic and social dimensions of sustainable development, which (*inter alia*) seek to provide a supply of housing to meet the needs of the present and future generations, Policy CS5 of the St Edmundsbury Core Strategy requires developments of the scale proposed

to contribute towards the provision of affordable housing. In this case the requirement is 30% which would equate to 0.6 units.

85.Forest Heath District Council & St Edmundsbury Borough Council Joint Affordable Housing Supplementary Planning Document (published Oct 2013) provides supplementary guidance to support the affordable housing policies in the adopted Development Plan. Although the preferred option is for affordable housing to be provided on-site the SPD does allow for off-site provision and payments in lieu of on-site affordable housing in exceptional circumstances, where it can be robustly justified.

86.The strategic housing team, based on what an RP would pay for an Affordable Rent property and a Shared Ownership property, would be seeking to secure a commuted sum of £90,780 because it is not possible to secure 0.6 of an affordable dwelling on site.

87.The proposals were subject to a viability assessment. A financial contribution of £45,000 was considered viable by the applicant and is offered as a benefit of the scheme. On the basis of the evidence available, this is considered to be an acceptable contribution in this case. This will weigh in favour of the proposal in the planning balance.

Contamination

88.The application is supported by a Phase 1 Desk Study and Risk Assessment which provides a summary of the history and environmental setting of the site, includes a walkover survey and gives recommendations for intrusive investigations.

89.The Environment team welcome this new opportunity to appropriately investigate and (if necessary) remediate the site. The standard land contamination condition is recommended to be attached, should planning be granted.

Flood risk and drainage

90.The site lies within Flood Zone 1, where the chance of flooding from rivers and the sea occurring each year is less than a 0.1 per cent (1 in 1000). The application form indicates that drainage will be dealt with by soakaways. Given the minor scale of development proposed details would be secured through the Building Regulations.

91. The application accords with policy DM6 and would therefore be acceptable in this respect.

Air quality

92.Section 3.4.2 of the Suffolk Guidance for Parking states that "Access to charging points should be made available in every residential dwelling." Policy DM2(I) and DM46 seek to ensure compliance with the parking standards and to promote more sustainable forms of transport. The NPPF at para 105 seeks to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles and para 110 (d) states 'Within this context, applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible

and convenient locations.’ On this basis a condition should be attached to any consent to secure a vehicle charging point for the new dwellings.

Sustainable Construction

93.DM7 states (inter alia) proposals for new residential development will be required to demonstrate that appropriate water efficiency measures will be employed. No specific reference has been made in regards to water consumption. However, a condition could ensure that either water consumption is no more than 110 litres per day (including external water use), or no water fittings exceeds the values set out in table 1 of policy DM7.

Planning Balance

94.In terms of the planning balance West Suffolk Council can demonstrate a 5 years supply of deliverable housing and the relevant development plan policies are considered to be broadly consistent with the NPPF. Full weight can therefore be attached to these policies. The proposal is contrary to the development plan policies in relation to housing in the countryside and will result in the loss of employment use without adequate justification, contrary to policy DM30.

95.Planning law requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. By any objective analysis of this assessment this clearly points towards a recommendation of refusal.

96.Officers do not consider that there is a fall-back position to builder’s yard because, firstly the changes of use on the site started a new chapter in the planning history of the site which would have superseded any extant lawful uses at that point and, even if it is accepted that they did not, then any former builder’s yard use has clearly been abandoned given the length of time and the extent of intervening uses since it was last in such use. The circumstances of the site have also materially changed since the planning permission and appeal decision referenced by the applicant to justify the proposal. Therefore very limited weight can be attached to those.

97.Even if, without prejudice, the conclusion was that there is a fall-back position to builder’s yard, the area available for such a use has significantly reduced and the historic permissions this use would rely on did restrict noise levels to limit impacts on amenity. This would mean that any such use, even if it was considered to be lawful, would be an otherwise generally acceptable use noting the provisions of present policy. Therefore, no weight could be attached to any such fallback as offering support for the development now proposed, firstly on the basis that officers do not consider that there is any material fall back, but that even if such is shown to exist, that it would not otherwise justify approval of a scheme which otherwise very clearly fails policy, in a location where a recent Planning Inspector has considered that residential development would not be suitable.

98.The proposed development would not be in a suitable location when considering the policies concerned with housing in rural areas. As such, it would significantly and harmfully undermine the adopted spatial strategy for rural housing and employment in the development plan and the

consistency and relative certainty that should flow from a plan led approach to the location of new development.

99. The provision of two dwellings are a social benefit of the scheme, so would the financial contribution to affordable housing (£45k). Modest weight can be attached.

100. Overall the conflict with policy with regards to housing in the countryside and the loss of a rural employment site are however considered to significantly outweigh the modest benefit arising from the affordable housing contribution and any marginal benefit arising from the limited social and economic benefits such as the contribution to the housing supply, construction period and additional local spend.

Conclusion:

101. In conclusion, as set out above, the principle of the development is considered to be unacceptable and fails to comply with relevant development plan policies and the National Planning Policy Framework. The limited benefits from the provision of a financial contribution to affordable housing, marginal social and economic benefits from the provision of two dwellings and commensurate biodiversity enhancements are not considered to outweigh the significant and demonstrable harm by reason of undermining the spatial strategy for housing and employment.

Recommendation:

It is **RECOMMENDED** that planning permission be **Refused** for the following reasons:

1. The site is in the open countryside in a location remote from services and facilities. Policy RV3 of the Rural Vision 2031 states that residential development will be permitted within housing settlement boundaries where it is not contrary to other policies in the plan. There are exceptions to allow for housing development in the countryside as set out under DM5 (affordable, rural workers dwellings, replacement dwellings and infill where there is a cluster of 10 or more existing dwellings), but this proposal does not satisfy any of these exceptions. The site is also not allocated for residential development in the Local Plan. West Suffolk can demonstrate a deliverable five year housing land supply and therefore the development plan can be considered up to date. The proposal therefore fails to comply with policy RV3 of the Rural Vision 2031, Core Strategy policy CS1 and CS4 and Policy DM5 of the Joint Development Management Policies Local Plan and the NPPF, particularly paragraphs 11, 77 and 79 and is considered unacceptable as a matter of principle. Moreover the proposal would result in the loss of an existing employment site. Without sufficient justification the proposal is contrary to policy DM30. The limited social benefits from a financial contribution to affordable housing and marginal social and economic benefits from the provision of two market houses is not considered to outweigh the substantial harm by the proposal undermining the adopted spatial strategy for rural housing and employment in the development plan.

The Local Planning Authority does not consider that there are material factors that justify any other decision. The claims of a 'fall back' builder's yard use by the applicant do not bear scrutiny. Firstly, the Authority is of the opinion that

subsequent changes in the use of the site, including the change of use using permitted development rights of two buildings to dwellings started a new chapter in the planning history of the site. This would mean that any former builder's yard use would have been extinguished at this point. If, and without prejudice, this argument is not accepted, then the facts of the situation, including the period of time and the extent of intervening uses, indicate very firmly that any builder's yard use that might have existed, and may still have existed beyond the implementation of the prior notification approvals, has otherwise been abandoned. Even if this argument is not accepted, then the Authority would argue that the likelihood of any builder's yard use recommencing is unlikely, significantly limiting the weight to be attached to such. Furthermore, even if such a use was shown to be extant, and however unlikely, it did recommence, the Authority is of the view that any such use would be preferable to the provision of two dwellings on the site, noting the clear harm arising from such. On this basis, the Authority is of the opinion that no weight can be attached to any claimed 'fall-back' arguments relating to the planning history of the site and that determination should be made in accordance with the provisions of the NPPF and the Development Plan, both of which very clearly indicate refusal.

2. Policy CS5 sets out the Council's requirements for affordable housing provision. In this case 30% equating to 0.6 units would be required. It has been demonstrated that a financial contribution of £45,000 is viable. However, no mechanism is in place to secure the required affordable housing contribution arising from this development and, in the absence of an appropriate contribution the development would have significantly adverse impacts upon the delivery of affordable housing, further reducing its sustainability credentials. The proposals are therefore also contrary to the policy CS5, Forest Heath District Council and St Edmundsbury Borough Council Joint Affordable Housing Supplementary Planning Document (2013) and the objectives of the National Planning Policy Framework (2019) that seek to deliver sustainable development.

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online [DC/19/0514/FUL](https://www.forestheath.gov.uk/DC/19/0514/FUL)

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