

## **Development Control Committee 8 January 2020**

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

**Date Registered:** 08.04.2019      **Expiry Date:** 03.06.2019

**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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## **Section A - Background:**

**This application was deferred from consideration at the Development Control Committee meeting on 4 December 2019. Members resolved that they were minded to grant planning permission contrary to the Officer recommendation of refusal. At this point, the risk assessment protocol was invoked requiring the further reporting of this matter before a decision is able to be made.**

**A Committee site visit was undertaken on 2 December 2019. At the subsequent Development Control Committee meeting on 4 December 2019 Members were minded to approve the application in the light of the planning history of the site and the existing use. However, some of the Committee raised concerns about the loss of employment use and the lack of marketing of the site for alternative commercial uses, others questioned whether employment policy DM30 would could be applied if the present use is argued to not be lawful.**

**The previous Officer report for the 4 December meeting of the Development Control Committee is included as Working Paper 1 to this report. Members are directed to this paper for details of the site and development, summaries of consultation responses and neighbour representations, and for the Officer assessment of the proposal.**

### **Proposal:**

1. Please refer to Working Paper 1 for a description of the proposal

### **Site Details:**

2. Please refer to Working Paper 1 for a description of the proposal

### **Planning History:**

3. Please refer to Working Paper 1 for planning history.

### **Consultations:**

4. Please refer to Working Paper 1 for representations received.

### **Representations:**

5. No third party representations have been received.

### **Policy:**

6. 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.

7. Please refer to working paper 1 for a list of policies and guidance that have been taken into account in the consideration of the application.

**Other Planning Policy:**

8. National Planning Policy Framework (2019)
9. 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.

**Officer Comment:**

10. Please refer to working paper 1 for the officer assessment of the proposals. There is nothing in the February 2019 NPPF that calls into question the assessment set out within that report.

**Section B – Update:**

11. Since the December committee meeting Officers have received the following additional information from the applicant. The existing business employs three full time and two part time staff and would most likely relocate to Brandon where the fibre glass moulding takes place. As queried by members, the application site has not been submitted in support of any marketing evidence for alternative employment uses because the applicant considers there to be material planning considerations to outweigh the conflict with policy. The material considerations put forward being an asserted fall-back position to a builders yard and that this use would be unsuitable given the proximity to residential development and the poor local road network.
12. As set out in the December committee report (working paper 1) officers are of the view that the application site does not currently have a lawful use or a fall-back position to builders yard, as such any continued use or alternative commercial use would require planning permission and any impacts of such use could be minimised and controlled through conditions.
13. The proposal is for two dwellings in a remote location in the countryside, contrary to policy DM5. As set out previously, two Inspectors found two sites in the immediate vicinity unsuitable for residential development in the last two years, when assessing the appeal proposals against the same policies.
14. It could of course be argued that a business would be equally in an unsustainable location and may result in HGV and traffic movements.

However a rural business would likely be policy compliant and may also reduce the need for travel by providing modest local employment opportunities, as the site does at present. Given that the continued or alternative use of the site requires planning permission, the Council would have control over such matters as delivery and opening times and HGV routing, in the interests of amenity.

15. With regards to Policy DM30, this applies to '*sites and premises used and/or designated for employment*'. Whilst the existing use of the site is not lawful, it is well established and would be (and previously has been) considered acceptable subject to planning permission and suitable conditions. The use continues to date and as such the proposed re-development would result in the loss of employment use, albeit unauthorised at present. This loss, without sufficient justification, is contrary to policy DM30 and this adds weight against the scheme in the balance of considerations.

### **Section C – Refusal Reasons:**

16. The Officer recommendation remains one of refusal, with the reason set out below. Refusal reason 2 was a technical refusal reason which could be overcome subject to a S106 to secure a financial affordable housing contribution.
  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.*

17. The purpose of this report is to advise Members of the risks associated with the 'minded to' resolution to grant planning permission for the development proposal, having regard to the conflict with Policies CS2, CS4, DM5, DM27 and DM30 in this case and the officer recommendation to refuse planning permission. For the reasons set out in this report it remains officers' recommendation that permission be refused. If Members remain minded to approve the application, they must be satisfied that any risks associated with doing so have been properly considered.

#### **Section D – Risk Assessment:**

18. Officers consider the development proposed in this case to be contrary to Policies DM5, DM27, DM30, CS2, CS4, CS13 and RV1 and RV3. Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require decisions to be made in accordance with the development plan unless there are material considerations that indicate otherwise.

19. The material considerations in this case are the potential adverse impacts from an employment use. Whilst it is accepted that the site is generally in an unsustainable location, an employment use (continuation of the existing or an alternative use) would require planning permission, would likely be policy compliant and impacts could be controlled and mitigated.

20. It is not considered that in this case there are sufficient material planning considerations which would outweigh the conflict with policies concerned with residential development in the countryside and employment.

21. Whilst every application must be considered on its own merits, it is also important for the Council to be consistent in its application of policy when determining applications of a similar nature. Failure to provide clear reasons to depart from the statutory presumption of the primacy of the development plan could expose the Council to the risk and cost of Judicial Review in the High Court. The further obvious risk is that approval will undermine well established policies of restraint, all of which have been very successfully defended through multiple appeals on many occasions.

22. A further risk to the Authority from an approval is reputational as it may show a lack of regard for the interpretation of countryside protection policies. In coming to their decision Members must clearly identify whether they consider the proposal complies with the development plan and their reasons for reaching their decision. If it is decided that the proposal does

not comply with the policies of the development plan and they wish to approve the application, the material considerations which justify the departure must be identified. Failure to adequately identify the reasons for a decision would adversely impact on the reputation of the Council.

23. Officers consider that if the Local Planning Authority were to accept the development being put forward by allowing the new dwellings, then it would become increasingly challenging to continue to defend the Council's position in similar circumstances, particularly in relation to Policy DM5, DM27 and DM30, potentially resulting in further unsustainable development in the countryside and undermining the principles behind Policies DM5, DM27 and DM30.
24. If policies are not consistently applied, in the event that a similar application is refused, the applicant would have the right to seek to recover their appeal costs (in full or part depending on the circumstances) from the Council should the Inspector conclude that the Council had acted unreasonably. This would result in financial and reputational implications for the Council.

### **Section E – Conclusions:**

25. For the reasons outlined above and also set out within the original report to Development Control Committee, Officers consider that the development would provide unjustified housing in an unsustainable location, which would result in the loss of an existing employment use. The proposal fails to comply with policies which aim to protect the countryside and existing employment sites and steer development to sustainable locations. Officers have attached moderate weight to the benefit of a financial contribution to affordable housing but remain of the view that in the planning balance the clear conflict with policy significantly and demonstrably outweighs the benefits of the proposal.
26. In coming to their decision Members must clearly identify whether they consider the proposal complies with the development plan and their reasons for reaching their decision. If it is decided that the proposal does not comply with the policies of the development plan and they wish to approve the application, the material considerations which justify the departure must be identified.
27. Members should have regard to the attached Working Paper 1 in reaching their decision.
28. In the event that Members grant planning permission, it is recommended that the reasons for the decision are clearly stated and that permission is granted subject to a S106 and the following conditions:

#### **S106 heads of terms:**

- Affordable Housing **£45.000**

- 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>
NS-4231-100 REV.B	Location and Site Plan	31.07.2019
NS-4231-110 REV.A	Proposed Elevations and Floor Plans	31.07.2019
OAS 18-233-TS01	Tree Protection Measures	21.03.2019
OAS 18-233-TS02	Tree Protection Measures	21.03.2019

- 3 No development above slab level shall take place until details of the facing and roof materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To safeguard the character and appearance of the area, in accordance with policy DM2 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 12 of the National Planning Policy Framework and all relevant Core Strategy Policies.

- 4 Prior to commencement of development the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:

- i) A site investigation scheme,
- ii) The results of a site investigation based on i) and a detailed risk assessment, including a revised Conceptual Site Model (CSM),
- iii) Based on the risk assessment in ii), a remediation strategy giving full details of the remediation measures required and how they are to be undertaken. The strategy shall include a plan providing details of how the remediation works shall be judged to be complete and arrangements for contingency actions.

Reason: To protect and prevent the pollution of controlled waters, future end users of the land, neighbouring land, property and ecological systems from potential pollutants associated with current and previous land uses in accordance with policy DM14 of the West Suffolk Joint Development Management Policies Document 2015, paragraphs 170,178 and 179 of the National Planning Policy Framework (NPPF), Environment Agency Groundwater Protection: Principles and Practice (GP3) and all relevant Core Strategy Policies. This condition requires matters to be agreed prior to commencement since it relates to consideration of below ground matters that require resolution prior to further development taking place, to ensure any contaminated material is satisfactorily dealt with.

- 5 No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works as set out in the remediation strategy is submitted to and approved, in writing by the Local Planning Authority.

Reason: To protect and prevent the pollution of controlled waters, future end users of the land, neighbouring land, property and ecological systems

from potential pollutants associated with current and previous land uses in accordance with policy DM14 of the West Suffolk Joint Development Management Policies Document 2015, paragraphs 170,178 and 179 of the National Planning Policy Framework (NPPF), Environment Agency Groundwater Protection: Principles and Practice (GP3) and all relevant Core Strategy Policies. This condition requires matters to be agreed prior to commencement since it relates to consideration of below ground matters that require resolution prior to further development taking place, to ensure any contaminated material is satisfactorily dealt with.

- 6 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted a remediation strategy to the Local Planning Authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the Local Planning Authority. The remediation strategy shall be implemented as approved.

Reason: To protect and prevent the pollution of controlled waters, future end users of the land, neighbouring land, property and ecological systems from potential pollutants associated with current and previous land uses in accordance with policy DM14 of the West Suffolk Joint Development Management Policies Document 2015, paragraphs 170,178 and 179 of the National Planning Policy Framework (NPPF), Environment Agency Groundwater Protection: Principles and Practice (GP3) and all relevant Core Strategy Policies.

- 7 Before the access is first used clear visibility at a height of 0.6 metres above the carriageway level shall be provided and thereafter permanently maintained in that area between the nearside edge of the metalled carriageway and a line 2.4 metres from the nearside edge of the metalled carriageway at the centre line of the access point and a distance of 43 metres in each direction along the edge of the metalled carriageway from the centre of the access. Notwithstanding the provisions of Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking and re-enacting that Order) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the area of the visibility splays.

Reason: To ensure vehicles exiting the access have sufficient visibility to enter the public highway safely and vehicles on the public highway have sufficient warning of a vehicle emerging to take avoiding action in the interests of road safety, in accordance with policy DM2 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 9 of the National Planning Policy Framework and all relevant Core Strategy Policies.

- 8 Prior to first use of the development hereby permitted, the area(s) within the site shown on drawing No. NS-4231-100 REV.B for the purpose of loading, unloading, manoeuvring and parking of vehicles shall be provided. Thereafter the area(s) shall be retained and used for no other purpose.

Reason: To ensure that sufficient space for the on-site parking of vehicles is provided, in accordance with policy DM2 and DM46 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 9 of the National Planning Policy Framework and all relevant Core Strategy Policies.



- 9 The areas to be provided for the presentation of Refuse/Recycling bins for collection as shown on Drawing No. NS-4231-100 Rev B shall be provided in its entirety before the development is brought into use and shall be retained thereafter for no other purpose.  
Reason: To ensure that refuse recycling bins are not stored on the highway causing obstruction and dangers for other users.
- 10 Demolition or construction works shall not take place and no construction related deliveries taken at or despatched from the site outside 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays and at no time on Sundays, public holidays or bank holidays.  
  
Reason: To protect the amenity of occupiers of adjacent properties from noise and disturbance, in accordance with policies DM2 and DM14 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 15 of the National Planning Policy Framework and all relevant Core Strategy Policies.
- 11 Prior to first occupation, all dwellings with off street parking shall be provided with an operational electric vehicle charge point at reasonably and practicably accessible locations, with an electric supply to the charge point capable of providing a 7kW charge.  
  
Reason: To promote and facilitate the uptake of electric vehicles on the site in order to minimise emissions and ensure no deterioration to the local air quality, in accordance with Policy DM14 of the Joint Development Management Policies Document, paragraphs 105 and 110 of the National Planning Policy Framework paragraphs 105 and 110 and the Suffolk Parking Standards.
- 12 Prior to occupation of any of the dwellings hereby approved all existing buildings as indicated to be removed on drawing no. NS-4231-100 Rev.B shall be demolished and all arising materials removed from the site.  
  
REASON: To preserve the residential and visual amenities of the locality, and to secure a satisfactory standard of development, having regard to policies with policies DM2 and DM14 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 15 of the National Planning Policy Framework and all relevant Core Strategy Policies.
- 13 All ecological measures and/or works shall be carried out in accordance with the details contained in Preliminary Ecological by Skilled Ecology consultancy Ltd. (dated Feb. 2019) as already submitted with the planning application and agreed in principle with the Local Planning Authority prior to determination.  
  
Prior to occupation details of biodiversity enhancement measures to be installed at the site, including numbers and location of the proposed bat and bird boxes and the timescale for installation, shall be submitted to and approved in writing by the Local Planning Authority. Any such measures as may be agreed shall be installed in accordance with the agreed timescales and thereafter retained as so installed. There shall be no occupation unless and until details of the biodiversity enhancement measures to be installed have been agreed in writing by the Local Planning Authority.

Reason: To secure biodiversity enhancements commensurate with the scale of the development, in accordance with policy DM12 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 15 of the National Planning Policy Framework and all relevant Core Strategy Policies.

- 14 The dwelling(s) hereby approved shall not be occupied until the optional requirement for water consumption (110 litres use per person per day) in part G of the Building Regulations has been complied with and evidence of compliance has been obtained.

Reason: To ensure that the proposal meets with the requirements of sustainability, in accordance with policy DM7 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 14 of the National Planning Policy Framework and all relevant Core Strategy Policies.

- 15 All planting comprised in the approved details of landscaping as shown on drawing NS\_4231-100 Rev.B shall be carried out in the first planting season following the commencement of the development (or within such extended period as may first be agreed in writing with the Local Planning Authority). Any planting removed, dying or becoming seriously damaged or diseased within five years of planting shall be replaced within the first available planting season thereafter with planting of similar size and species unless the Local Planning Authority gives written consent for any variation.

Reason: To enhance the appearance of the development and ensure a satisfactory environment, in accordance with policies DM2, DM12 and DM13 of the West Suffolk Joint Development Management Policies Document 2015, Chapters 12 and 15 of the National Planning Policy Framework and all relevant Core Strategy Policies.

- 16 The protective measures shown on the tree protection plans OAS 18-233-TS01 and OAS 18-233-TS02 (received 21.03.2019) shall be implemented prior to commencement of any development, site works or clearance in accordance with the approved details, and shall be maintained and retained until the development is completed. Within the root protection areas the existing ground level shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored thereon. If any trenches for services are required within the fenced areas they shall be excavated and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered.

Reason: To ensure that the trees on site are adequately protected, to safeguard the character and appearance of the area, in accordance with policy DM12 and DM13 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 15 of the National Planning Policy Framework and all relevant Core Strategy Policies. This condition requires compliance prior to commencement of development to ensure that existing trees are adequately protected prior to any ground disturbance.

### **Documents:**

All background documents including application forms, drawings and other

supporting documentation relating to this application can be viewed online  
[DC/19/0514/FUL](#).