



# Appeal Decision

Site visit made on 27 July 2010

by **Julia Gregory BSc (Hons) BTP MRTPI**  
**MCM1**

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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**Decision date:**  
**1 September 2010**

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## Appeal Ref: APP/E3525/A/10/2120025

### Unit 2, Tayfen Road, Bury St Edmunds, Suffolk IP33 1TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Glenn Hunt against the decision of St Edmundsbury Borough Council.
- The application Ref SE/09/1006, dated 15 May 2009, was refused by notice dated 28 September 2009.
- The development proposed is change of use of an existing vacant area adjacent to Unit 2, 40 Tayfen Road; requiring the construction of a 2 storey, single family dwelling house.

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### Application for costs

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

### Decision

2. I dismiss the appeal.

### Main issues

3. The first main issue is whether the development would provide acceptable living conditions for future occupiers in respect of noise and disturbance, amenity space, outlook and daylight and sunlight. The second main issue is the effect of the development on an area of archaeological importance.

### Reasons

#### *Living conditions*

4. Replacement St Edmundsbury Borough Local Plan 2016 (LP) policy DS3 sets development design criteria, including that development does not adversely affect residential amenity.
  5. The building would fill the whole of the site and would have its primary elevation facing the road, in close proximity to it, but this in itself would not create harmful living conditions. There are many other dwellings nearby with similar relationships to the road as the property proposed here.
  6. Both main windows to the ground floor living space would be set back and would face untreated timber batten enclosures. Whilst I acknowledge the appellant's desire for privacy, these would severely compromise outlook from the main living area. If the kitchen is discounted because the window would be onto a porch, and the glazed door for bedroom 2 is discounted as it would face
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- the roof of the takeaway food shop across the terrace, only one room in the whole house would have a decent outlook.
7. Although the light well features would ensure adequate lighting levels at ground floor, and overall lighting levels would be acceptable, the lack of outlook would I consider create unacceptably oppressive living conditions which would adversely affect residential amenity contrary to LP policy DS3. I conclude that in this respect, the dwelling would not provide acceptable living conditions for future occupiers.
  8. There would be limited amenity space for the dwelling, but not everyone wants a garden to maintain. Flats often have little or no private amenity space. The property would have a small utility yard and a small terraced area and I consider that this would be sufficient to serve the size of dwelling proposed.
  9. LP policy NE5 states that noise sensitive development will not be permitted if the users would be affected by noise from existing noise generating development. The dwelling would be sited adjacent to a take away food shop. Whilst there would be activity associated with the premises until 23.00hrs, this is a relatively busy road where traffic and pedestrian movement would not be unusual.
  10. The flue to the take away premises is sited at the rear of the property. This has been approved by the Council, which considers that it would not harm the amenities of existing dwellings to the rear. These are a similar distance away as the appeal premises, from where no noise complaints have been received in the three years of operation.
  11. As part of the appeal a noise survey has been submitted which indicates that predicted noise from the plant would be less than the background noise at the quietest assessment time, and would be significantly less than the maximum for external amenity areas. The indication is that there would not be an adverse effect from the flue or from air conditioning and refrigeration units which would be close to the dwelling and its roof terrace. I consider that the development would comply with LP policy NE5. The Council do not wish to contest this part of the appeal as a result of the submission of the appellant's evidence in this regard.
  12. There have also been no complaints as far as odour from the flue is concerned, albeit that dwellings at the rear are at a different level and position to the dwelling proposed. I note the planning history of the adjacent site and the control on the occupier, limiting the nature of the operation and the potential for odour problems. This would limit the potential for odour problems. Given that most openings in the dwelling would face the street away from the flue, and given the control on the occupation of the take away, I am satisfied that odours would not be a significant issue for future occupiers.

#### *Archaeological matters*

13. Since the application was considered by the Council, PPG16 has been cancelled by PPS5: *Planning for the Historic Environment*. This now comprises national guidance. LP policy HC9 identifies the matters that regard should be paid to in considering proposals which affect sites of archaeological importance. The site is located in such an area. This area is on the line of a medieval bank and/or

associated ditch and on the site of a possible corner turret or bastion of the town wall. There is a possibility of medieval occupation deposits. There is documentation which identifies this and a desk top study has been submitted.

14. I acknowledge that buildings previously existed on this site and the development at No 41 St Andrews Street North. Nevertheless, I am not convinced that all significant archaeology has been obliterated by later development. I note the appellant's willingness to accept a condition requiring archaeological investigation. However, I consider that a field investigation, the costs of which I acknowledge, would be commensurate with its potential significance. The costs would not be so high as to be an unreasonable burden on development. The investigation would be necessary in order that a proper assessment could be made of the direct impacts that the development would have on any remains and for any necessary mitigation measures to be properly formulated.
15. I note the plan ref 1648.03B but that is not based on a field evaluation or considered by the Council as a part of the application. Whilst it seems that some planning permissions in the town have been subject of a condition covering archaeological matters, I have insufficient information to reach any conclusions as to their relevance to the proposal that I am considering. Many developers have been required to carry out pre-determination assessments. I conclude that the development would be contrary to LP policy HC9 and PPS5.

*Julia Gregory*

INSPECTOR

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