



Appeal Decision

Site visit made on 25 January 2016

by Susan Ashworth BA (Hons) BPI MRTPI

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

Decision date: 4 May 2016

Appeal Ref: APP/Y0435/W/15/3136263

Osier Way, Olney, Buckinghamshire MK46 5PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Duncan Investments against the decision of Milton Keynes Council.
 - The application Ref 14/02060/OUT, dated 10 September 2014, was refused by notice dated 16 April 2015.
 - The development proposed is erection of 33 dwellings with access from Yardley Road and all associated works.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 33 dwellings with access from Yardley Road and all associated works at Osier Way, Olney, Buckinghamshire MK46 5PF, in accordance with the terms of application Ref 14/02060/OUT dated 10 September 2014, subject to the conditions set out in the attached schedule.

Preliminary Matter

2. The application was submitted in outline with all matters except for access reserved for subsequent approval. I have dealt with the appeal on that basis.
3. A copy of a completed planning obligation under S106 of the Town and Country Planning Act 1990 in the form of a Unilateral Undertaking was submitted during the course of the appeal. The Undertaking sets out covenants in respect of the provision and management of affordable housing on the site, the provision and management of on-site public open space, the provision of financial contributions to off-set carbon dioxide emissions produced by the development, and financial contributions towards Early Years Education, Leisure, Recreation and Sports Facilities and Social Infrastructure. The merits of the obligation are considered later in the decision.

Main Issue

4. The Council cannot demonstrate a five year supply of deliverable sites as required by the National Planning Policy Framework (the Framework). In these circumstances, paragraph 49 states that relevant policies for the supply of housing should not be considered up to date, and paragraph 14 advises that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of granting permission when assessed against the Framework as a whole.

5. Accordingly I consider the main issue in this case to be whether, in the absence of a five year supply of deliverable housing land, the proposal would amount to a sustainable form of development in accordance with national and local policy, with particular reference to its location in relation to the heart of the settlement and the effect of the development on the character and appearance of the area.

Reasons

6. The site comprises an area of vacant, gently sloping land that originally formed part of an area associated with a now dismantled railway line. Part of that wider area has been developed as an office park fronting Warrington Road. Planning permission has been granted for residential development¹ adjacent to the office park, immediately to the south-east of the appeal site (phase 1).
7. The site, which lies at a low level in a narrow valley, is bounded by substantial mature hedgerows. Adjoining it to the north-east is a watercourse beyond which is rising agricultural land. A sewage works with access off Warrington Road lies adjacent to the site and to the south-west, at a higher level, is an industrial estate accessed off Yardley Road.
8. Permission is sought to develop the site for 33 dwellings, 30% of which would be provided as affordable housing. Vehicular and pedestrian access would be provided from Warrington Road (A509) which, in effect, would form an extension to the access approved on phase 1. In addition provision would be made for an emergency access onto Yardley Road. An indicative layout submitted with the application suggests a potential layout of a roughly linear form with some dwellings set in clusters off a central spine road. A Local Area for Play would be provided as an extension to that approved under phase 1.

Policy Background

9. For the purposes of this appeal the Development Plan includes the adopted Milton Keynes Local Plan 2001-2011 (2005) (the Local Plan) and the adopted Milton Keynes Council Core Strategy 2013 (the Core Strategy).
10. The site is located outside the defined settlement boundary in the Local Plan and is within the open countryside for planning purposes. Local Plan Policy S10 seeks to restrict development outside settlement boundaries unless essential for the rural economy. The local plan was drafted to cover the period to 2011 and settlement boundaries would have been drafted to reflect the need for and supply of housing land at that time. The settlement boundaries can now be seen as time expired and the restrictions they impose on the location of new housing seen as out of date. As set out in recent appeal decision APP/Y0435/A/14/2224044², Policy S10 is not consistent with paragraph 47 of the Framework to significantly boost the supply of housing and is therefore considered out of date.
11. The Core Strategy is a recently approved document and is therefore up-to-date. It sets out a hierarchical approach to development, setting out the Council's housing needs. Policy CS9 identifies Olney as a Key Settlement where development will be focused. However, development is restricted to the

¹ Planning Application Ref: 13/02130/OUT

² Residential development at Wain Close Newport Road, Woburn Sands, Milton Keynes allowed on 1 October 2015

settlement boundary designated in the Local Plan. This boundary has not yet been reviewed and, as discussed above, is out of date.

12. Therefore, whilst the proposed development is contrary to Policies S10 and CS9, the unmet need for housing becomes a consideration of substantial weight in the appeal and in accordance with guidance in the Framework the appeal proposal must be assessed in the context of the presumption in favour of sustainable development. This means that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.
13. Although it does not form part of the reasons for refusal, the Council and Olney Town Council have drawn my attention to the emerging Olney Neighbourhood Plan. The site has been allocated as employment land in the Site Selections which will feed into the Neighbourhood Plan. However, the Neighbourhood Plan is not at an advanced stage of preparation and is the subject of significant, as yet unresolved, objections. Consequently it can only be afforded limited weight in the consideration of this appeal.

Character and Appearance

14. The site has not been identified for any designation for the quality of its own landscape and lies outside the designated Area of Attractive Landscape as identified in the Local Plan. Although the site lies within the open countryside for planning purposes, it is physically contained by the topography of the landscape: the railway embankment to one side and the watercourse to the other, beyond which the land rises. In addition the land is visually contained by the substantial mature vegetation which forms a strong boundary and sets the site apart from the countryside beyond, countryside which has a more open and expansive character and appearance.
15. In distant views, the site is set well back from Warrington Road and the development would be screened by the topography of the landscape and by the existing office and approved housing developments. From Yardley Road, the emergency access would be apparent but views of the dwellings would be limited. The development would be seen in glimpsed views from a nearby Public Right of Way (Olney FP005) although vegetation would screen the development. Moreover from this location the development would be seen against the backdrop of the neighbouring industrial uses.
16. Urban development in the form of the offices, industrial development and proposed houses, form a significant component in shorter range views and, as a result, the site has an 'urban fringe' character rather than one of truly open countryside.
17. The layout and design of the proposal are matters reserved for subsequent approval. As demonstrated in the Landscape Masterplan some mitigation, in the form of the retention of boundary features and provision of open areas for the promotion of a mixed habitat, would help assimilate the development into its surroundings. Therefore, whilst the development would undoubtedly change the appearance of the land, it would not cause any significant harm to the character of the area.

Location

18. The Local Plan sets out a Transport User Hierarchy which seeks to ensure that new development is easily accessible by all modes of travel. Policy T1 requires that proposals should meet the needs of, in order of priority, pedestrians and those with impaired mobility, cyclists, users of public transport, taxis and motorcyclists and others. This approach is broadly consistent with a core principle of the Framework to actively manage patterns of growth to make the fullest use of public transport, walking or cycling and focus significant development on locations which are or can be made sustainable.
19. Parties agree that Olney is a sustainable settlement with a range of facilities. The appellant's Sustainability Statement suggests that there are retail services, schools, medical facilities and a library within 1000m of the site. There are also places of employment a similar distance away including at immediately adjoining sites. I noted at my site visit that ground levels between the site and the town centre are relatively level such that services and facilities can be accessed by walking or cycling. In addition there is a bus stop around 675m from the site and there is a regular bus service to the town centre and from Olney to the larger settlements of Milton Keynes, Bedford and Northampton.
20. I accept the Council's point that the eastern end of the site is further away from the services outlined above, but nevertheless it seems to me that residents would still have opportunities to access the facilities by a variety of methods and as such the proposal complies with the requirements of Policy T1.
21. I accept the Council's view that the site is separated from the main residential areas of the town. In addition, the development would have a linear form with direct no links through to the industrial estate. As a result the development would not reflect the existing settlement pattern. Nevertheless, the development of the appeal site would be, in effect, a continuation of that approved under Phase 1, and, for the reasons outlined above, the development would be sustainably located.

Other Issues

22. The application was accompanied by an Ecological Survey (ES) which confirmed the site's generally low ecological value. The main significance of the site is its location as part of a wildlife corridor and the identification of the disused railway line adjoining the site as a 'Biological Notification Site'. The ES outlines the importance of retaining the connectivity of the site within a wider network of habitats and to that end recommends measures that have been included in the Landscape Masterplan including the retention of trees and shrubs along the watercourse and railway line. Although the site provides the potential habitat for protected species none were found on the site. The positioning of bat and bird boxes would be seen as an enhancement to biodiversity and these are matters that can be controlled by planning condition. As such I am satisfied that there would be no adverse impact on ecology or protected species.
23. The proximity of the site to the industrial estate and the waste water treatment works has given rise to concerns that the development would not provide acceptable living conditions for future occupiers of the development in terms of noise and odour. I noted on site that there was some background noise from

the industrial units, however noise levels were low and, at that time, there were no issues with odour.

24. The appellant's Noise Assessment concludes that acceptable internal noise levels could be achieved within the dwellings using standard building construction methods. The design and layout of the dwellings are matters that would be considered at the reserved matters stage and, taking on board the recommendations of the assessment I am satisfied the future occupiers would be afforded acceptable living conditions in terms of noise. The appellant's Odour Assessment indicated that emissions were lower than the benchmark figures and concluded that the treatment works would be unlikely to have a detrimental impact on the amenity of future residents. In the absence of any convincing evidence to the contrary I am therefore satisfied that a satisfactory standard of amenity can be provided.

The Planning Obligation

25. The planning agreement, which is agreed by both main parties, allows for 30% of the dwellings on site to be provided as affordable housing, the timing of their provision and transfer to a registered provider. In addition, the agreement includes the provision of an area of public open space, the timing for its provision and future maintenance and management arrangements either by the Council or by a Management Company.
26. Payments would be made to the Council to off-set carbon dioxide emissions produced by the development, in line with requirements in the Local Plan and the Sustainable Construction Supplementary Planning Document 2007.
27. In addition financial contributions towards Early Years Education, Leisure, Recreation and Sports Facilities and Social Infrastructure would be provided in accordance with the requirements of the Education Facilities SPG, Leisure, Recreation and Sports Facilities SPG and the Social Infrastructure SPD.
28. On the basis of the evidence before me I am satisfied that these covenants would comply with the tests set out in the Framework and Planning Practice Guidance and, where applicable, the Community Infrastructure Regulation 123 (3) and Planning Obligation for Pooled Tariffs. I have taken them into account in support of the appeal.

The Planning Balance

29. The Framework seeks to significantly boost the supply of housing. The Council cannot currently demonstrate a five-year supply of housing, therefore the contribution of the proposal to meeting the current shortfall is a benefit to which I give considerable weight. The provision of a number of units of affordable housing is also a benefit of the scheme. Residents would have access to local services that would support health, social and cultural well-being. Therefore there is clear evidence of the social benefits of the development.
30. The economic dimension would be illustrated by spending during the construction period and in terms of support for local shops and services beyond the construction period. These economic benefits add limited weight in favour of the scheme.

31. In environmental terms residents would be able to access services, and carry out longer trips by a variety of sustainable modes of transport. The development would result in the loss of an area of green open space and its character would therefore change. However, the site is well contained, both visually and physically and the development would have a minimal effect on the quality or character of the wider landscape. Harmful effects of the development could be mitigated by a suitable landscaping scheme. There would also be some opportunity for biodiversity improvement on a site that lacks ecological interest.
32. On balance any environmental harm to the settlement pattern would not significantly outweigh the benefits of the development. In accordance with the Framework, the proposal must be regarded as sustainable development to which the presumption in favour applies.

Conditions and Conclusion

33. The Council has suggested various conditions should the appeal be allowed. I have considered the conditions in the light of advice within the Planning Practice Guidance. I have changed the suggested wording of conditions where necessary. The Code for Sustainable Homes has now been rescinded and the suggested condition requiring the scheme complies with relevant Building Regulations is unnecessary.
34. To avoid uncertainty and in the interests of proper planning I have specified the outline time limits and the approved plans. In order to ensure that the development is carried out to a satisfactory standard it is necessary to ensure that foul water and surface water drainage schemes are approved. For the same reason, and given the history of the site, it is necessary that a survey for contaminants is carried out and remedial works implemented as necessary.
35. In the interests of highway safety conditions requiring the provision of visibility splays, provision of adequate parking and cycle facilities and details of the adoptable estate roads are necessary.
36. In the interests of visual amenity and to promote biodiversity, tree protection measures, including details of those trees to be retained, are required. For the same reason it is necessary to specify the contents of the landscaping scheme to be agreed as part of the reserved matters and to require the agreement of a biodiversity and ecological plan and a lighting scheme.
37. In the interests of the character and appearance of the area it is necessary to identify finished floor levels of the proposed development and to require agreement of external materials and boundary treatments.
38. In order to promote sustainable construction it is necessary that the reserved matters application is accompanied by a Sustainability Statement. In the interest of the living and working conditions of neighbouring occupiers, conditions requiring the submission and agreement of a Code of Construction Practice, and restricting the hours of construction are necessary. In order to ensure satisfactory provision of the affordable housing it is necessary to ensure that details of the location of the affordable housing units are demonstrated in the reserved matters application.

39. For the above reasons, and taking all other matters raised into account, I conclude that the appeal should be allowed and outline planning permission granted subject to conditions.

S Ashworth

INSPECTOR

SCHEDULE

- 1) No development shall commence on any phase or part of the development until details of the layout, scale, appearance and landscaping for that phase or part (hereinafter called "the reserved matters") has been submitted to and approved in writing by the local planning authority.
- 2) Application for approval of the reserved matters in respect of all phases or parts shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development within any phase or part of the development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 12022 (D) 010; 12022 (D) 011; 12022 (D) 099; 12022 (D) 028 and 12022 (D) 029, but only in respect of those matters not reserved for later approval.
- 5) No development shall commence in each phase or part of the development, until a foul water drainage strategy for that phase or part has been submitted to and approved in writing by the local planning authority. No dwellings in that phase or part shall be occupied until the works have been carried out in accordance with the approved foul water strategy.
- 6) Prior to any development taking place in each phase or part of the development, the developer shall carry out an assessment of ground conditions to determine the likelihood of any ground, groundwater or gas contamination of that part of the site. The results of this survey detailing the nature and extent of any contamination, together with a strategy for any remedial action deemed necessary to bring the site to a condition suitable for its intended use, shall be submitted to and agreed in writing by the local planning authority before construction works commence. Any remedial works shall be carried out in accordance with the approved strategy and validated by the submission of an appropriate verification report prior to the first occupation of that phase or part of it. Should any unforeseen contamination be encountered in that phase or part of the development the local planning authority shall be informed immediately. Any additional site investigation and remedial work that is required as a result of unforeseen contamination will also be carried out in accordance with a scheme to be agreed in writing by the local planning authority.
- 7) The visibility splays provided shall be in accordance with Manual for Streets 2006. The visibility splays shall not be impeded and the height of

any hedge/wall within the visibility splays shall be kept below 1.05m above the carriageway height.

- 8) Existing trees and hedges which are to be retained in each phase or part of the development are to be protected according to the provisions of BS 5837 :2012 'Trees in relation to design, demolition and construction- Recommendations'. All protective measures shall be put in place prior to any other work commencing in that phase of the development.
- 9) Prior to the commencement of development on any phase or part of it, a scale plan accurately marking the position of retained trees, the extent of root protection areas and the tree protection fencing along with the root protection area margin shall be submitted to and approved in writing by the local planning authority. Proposed and existing spot levels shall be shown in sufficient numbers and at appropriate spacing to enable the impact of level changes on the root zones to be assessed. Layout of hard-works shall be adjusted as necessary to accommodate the root protection areas without root damage.
- 10) For any phase or part of the development details of the finished floor levels and finished ground levels in relation to existing surrounding ground levels shall be submitted to the local authority and agreed as part of the reserved matter application. Development for that phase or part shall be undertaken in accordance with the approved levels.
- 11) Reserved matters applications for any phase or part of the development shall be accompanied by a sustainability statement including as a minimum, details required by saved policy D4 of the Milton Keynes Local Plan 2001-2011 and accompanying Supplementary Planning Document Sustainable Construction Guide.
- 12) Prior to the commencement of any phase or part of the development a Code of Construction Practice (CoCP) shall be submitted to and approved in writing by the local planning authority. The CoCP shall include Noise Action Levels (based on a noise survey) and other measures to include:
 - Site management and complaints procedure;
 - Temporary boundary treatments;
 - Lighting and security;
 - Site facilities;
 - Means of access;
 - Construction traffic routing;
 - Environmental and nuisance mitigation measures;
 - Vehicle wheel cleansing facilities.

All construction work shall be undertaken in accordance with the agreed CoCP for that phase or part and all contractors shall be contractually required to comply with it.

- 13) Sample panels of the external materials to be used in any phase or part of the development shall be erected on site and approved in writing by the local planning authority. The development shall be constructed using the approved materials.

- 14) Details to be submitted in accordance with condition 1 above shall include a scheme for cycle parking and manoeuvring and the provision of visitor car parking spaces in accordance with the adopted 2005 Parking Standards Supplementary Planning Guidance and the 2009 Parking Addendum, or to the standards in force at the time of any reserved matters applications. The approved scheme shall be implemented and made available for use before the development hereby permitted is occupied and the approved cycles storage parking and manoeuvring areas shall not thereafter be used for any other purpose.
- 15) Prior to the commencement of each phase or part of the development, details of the adoptable estate roads for the site, or for that phase or part, shall be submitted to and approved in writing by the local planning authority. No dwelling shall be occupied in any phase or part of the development until the estate roads which provide access to and from the existing highway have been laid out and constructed in accordance with the approved details.
- 16) The hours of working on any phase or part of the development during the construction period shall be restricted to 08:00 hours to 18:00 hours Mondays to Fridays, 08:00 hours to 13:30 hours on Saturdays and no working shall take place on Sundays and Bank holidays. The term 'working' shall, for the purpose of clarification of this condition include; the use of plant or machinery (mechanical or other) the carrying out of any maintenance or cleaning work on any plant or machinery, deliveries to the site, and the movement of vehicles within the site. No 'working' outside these hours shall take place without the written consent of the local planning authority.
- 17) Prior to the commencement of each phase or part of the development, a scheme showing the proposed boundary treatments for that phase or part shall be submitted to and approved in writing by the local planning authority. The approved boundary treatments shall be completed in accordance with the approved details prior to the first occupation of any dwelling within that phase or part and shall be retained thereafter.
- 18) The application for reserved matters shall include details of the location and type of affordable housing pursuant to the development parcel for which approval is sought. Each phase or part of the development shall be carried out in accordance with the approved details.
- 19) The landscaping scheme required by condition 1 above, shall include provision for the planting of trees and shrubs including native species and those beneficial to wildlife for each phase or part of the development. The scheme shall show the numbers, types and sizes of trees and shrubs to be planted and their location. All planting shall be carried out in accordance with the scheme and shall be carried out within 12 months of the commencement of the development or each phase or part of it. Any trees removed, dying, severely damaged or diseased within two years of planting shall be replaced in the next planting season with trees or shrubs of a similar size and species.
- 20) A landscaping, biodiversity and ecological plan shall be submitted to and agreed in writing by the local planning authority prior to the commencement of each phase or part of the development. The plan shall

demonstrate how the following measures shall be provided within the development:

- The Ecological Survey report shall be updated to include a desk study using data obtained from the Buckinghamshire and Milton Keynes Environmental Records centre and other local sources, paying greater consideration to the potential of the site to provide habitat for any European Protected Species.
 - The assessment of existing biodiversity using the Biodiversity Impact assessment calculator and the result used to develop future plans that enhance biodiversity. These plans shall contain proposals and a management regime that will protect biodiversity.
 - Mature trees on the site shall be surveyed for the presence of bats by a suitably qualified ecologist prior to the commencement of the development. Should evidence of a bat roost be found works must stop immediately and may not proceed without prior acquisition of a derogation licence from Natural England.
- 21) All external lighting shall be kept to a minimum and directed away from bat features. A lighting plan shall be submitted to the local planning authority for approval in writing prior to the commencement of development and shall be implemented in accordance with the approved details.
- 22) Development shall not begin until a surface water drainage scheme for the site, based on sustainable draining principles and an assessment of the hydrological and hydrogeological context of the development, has been carried out in accordance with the agreed details prior to the first occupation of the units on that phase or part of the development and thereafter retained. The scheme shall include:
- Details of ground investigation work to ensure any infiltration drainage is in uncontaminated land.
 - Detailed calculations for any proposed storage requirements and discharge rates to watercourses where applicable.
 - Details of where reduction in flows is achieved to show betterment from the existing system.
 - Details of existing and proposed drainage routes, inclusive of the watercourse adjacent to the site, demonstration that no third party property is at risk from flooding.
 - Details of porosity tests where applicable.
 - Details of any potential on-site or off-site flow routes for extreme rainfall events for any proposed surface water infiltration drainage where it is outside its design parameters.
 - Details for the future responsibilities for the management of the surface water drainage scheme.