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## Appeal Decision

Site visit made on 6 September 2016

by **R W Allen B.Sc PGDip MRTPI**

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

Decision date: 21 September 2016

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**Appeal Ref: APP/Y0435/W/16/3148882**

**Land Rear of Calverton Road, Stony Stratford, Milton Keynes MK11 1HL**

- 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 Black Sheep Trading III Ltd against the decision of Milton Keynes Council.
  - The application Ref 15/01912/OUT, dated 4 August 2015, was refused by notice dated 19 January 2016.
  - The development proposed is erection of a total 21 dwellings, comprising 6 affordable, and 15 market dwellings, relocation of vehicular access road, parking, open space, new right of way, landscaping and foul water pumping station, surface water drainage and swales.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The appeal is made in outline form with all matters reserved except for access and layout. For the appeal, the appellant has submitted a revised site layout plan, numbered 0176-PLO1 Rev C, which is intended to replace 0176-PLO1 Rev B on which the Council made its decision on.
3. My decision as to whether to accept the amended plan rests on whether the 'Wheatcroft Principles' (Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]) have been met. The main, but not the only criterion on which that judgement should be exercised, is whether the development is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation.
4. The amended layout differs somewhat in the arrangement of the dwellings and the alignment of the access road. At my site visit, I was not suitably convinced that the Council had properly considered the revised plan in its statement, and I observed that some of the residents had not seen it either. For these reasons, I find that accepting the amended layout would potentially prejudice the interests of interested parties. As I must essentially make my Decision on the scheme that was originally before the Council, I will not accept the revised layout drawing.
5. In such circumstances, the appellant has stated that it would wish to withdraw the layout as a matter for consideration in this appeal. I am content to do so, and have determined the appeal as an outline application only with access as the only matter to be determined. I have treated the revised layout plan 0176-

PLO1 Rev C as indicative only. I am satisfied that this course of action will not prejudice any party.

6. Prior to my site visit, I received a signed legal agreement in the form of a Unilateral Undertaking (UU) dated 31 August 2016 for financial contributions towards sports and leisure facilities, social infrastructure and education, and to provide affordable housing. The Council responded that in its view, the UU is deficient in some areas and contains errors in others. Had my findings on the appeal been favourable to the appellant, I would have allowed a further period of time for matters to be resolved. However, as I am dismissing the appeal, it is not necessary for me to reach any conclusions on the adequacy of the legal agreement before me in my Decision.

### **Main Issues**

7. Therefore the main issues are:

- The effect of the proposed development on the role and function of the linear park and amenity open space;
- The effect of the proposed development on the character and appearance of the area having regard to layout and design;
- The effect of the proposed development on the local wildlife;
- The effect of the proposed development on flooding and drainage; and
- Whether any circumstances exist to justify the proposed development.

### **Reasons**

#### *Linear park and open space*

8. The appeal site is open land. It lies in the open countryside but adjacent to the settlement edge of Stony Stratford, and is partially enclosed by existing residential development. The appeal site and land to its south is known locally as 'Higlins Piece'. It is allocated as a linear park within the Milton Keynes Local Plan 2005 (with Saved Policies) (Local Plan). The linear park itself sits alongside the Great River Ouse and provides a strong and important landscape and visual buffer between the river and the settlement edge of Stony Stratford. The tranquillity of the river setting is an attractive quality of the linear park, which I strongly appreciated at my site visit, and the appeal site positively contributes to this setting.
9. Local Plan policy S12 and policy CS19 of the Milton Keynes Core Strategy (Core Strategy) state that green infrastructure will be protected and enhanced; and within linear park areas, development proposals should, amongst other things, protect and improve the landscape. The preamble to the policy explains the importance of linear parks and river valleys in that they were key structuring features in planning Milton Keynes, are multi-functional spaces, and provide a variety of formal and informal recreational opportunities. Right of Access is not a barrier to land being included in the linear park designation.
10. The proposed indicative layout plan illustrates that to accommodate the quantum of dwellings required, much of the open land would be consumed. It would also constitute a noticeable encroachment into the open countryside as the development footprint, regardless of potential changes to layout at

reserved matters stage, would project beyond the area enclosed by existing development. While the dwellings and access road could be positioned such to allow for a landscaped strip to remain adjacent to the river as shown on the indicative layout plan, in my judgement the space remaining would be relatively narrow and would not effectively soften the impact of the proposed development. The ambience, character and functioning of the linear park would be substantially altered as a result causing considerable harm. No evidence is before me to demonstrate how the scheme could be accommodated in alternative ways to alleviate the harm I have identified.

11. Local Policy L2 (with reference Appendix L2) states that in certain cases, the loss of amenity open land may be acceptable if improvements are made to the quality of landscaping and appearance in the locality. For the reasons set out above, I find that any improvements in the retained landscape areas as a result of the scheme would be insufficient to meet this objective, and the proposed development would also conflict with this policy.
12. Therefore on the first main issue and on the evidence before me, I find that the proposed development would fail to protect or improve the landscape of the linear park. It would not accord with Local Plan policies S12 and L2 or with Core Strategy policy CS19, details of which I have set out above.

#### *Layout and design*

13. Local Plan policy D2A requires development proposal to follow specific design guidance, and Local Plan policy D2 and Core Strategy policies CS12, CS13 and CS18 require new buildings and developments to be sustainable, to achieve the highest design standards and be appropriate in scale to its surroundings, and have regard to prevention of crime and the surveillance of the public realm.
14. I observed at my site visit that although little natural surveillance currently exists to the footpath that runs to the rear of properties in Calverton Road, it nonetheless has an open and unthreatening feel because the western boundary is to open land.
15. The indicative layout shows that the character of this footpath space would fundamentally change. It would be largely enclosed on both sides, with flank elevations and boundary treatments resulting in an unattractive and potentially threatening atmosphere. This would in my judgement represent poor design and give rise to potential issues of security. As above, no evidence before me which demonstrates how the proposed could be accommodated on site in a manner which would alleviate this concern.
16. I note that a sewer pipe runs below the said footpath which explains why it needs to be retained. Furthermore, I note that the pedestrian access would be diverted through the proposed development site rather than navigating the existing footpath, which would be more pleasant and would allow safe access to facilities in Stony Stratford. However this does not overcome the fact the existing footpath would be retained and to some extent abandoned, and would in my judgement be rendered unsafe by the proposal notwithstanding the provision of gates at either end of it.
17. I acknowledge a development of this size would somewhat contrast with the urban grain and the established pattern of the surrounding properties. However, this would be an inevitable consequence of any new development

such as this, and it is not as a matter of principle a reason to dismiss the scheme out of hand. In any event, I do not find that the proposed scheme would necessarily contrast unfavourably with pattern of surrounding development to cause significant harm to its character.

18. Therefore on the second main issue and on the evidence before me, I find that the proposed development would not promote good design and that it would not accord with Local Plan policies D2 and D2A or with Core Strategy policies CS12, CS13 and CS18, details of which I have outlined above.

#### *Effect on wildlife*

19. The Council states, and not disputed by the appellant, that the appeal site lies entirely within the River Great Ouse Wildlife Corridor. Local Plan policy NE1 and Core Strategy policy CS19 state that development will protect biodiversity, and development will only be permitted where the importance of the development outweighs the local value of the site. The preamble to the policy identifies wildlife corridors as linear pathways containing habitats that encourage the movement of plants and animals between important wildlife sites. Local Plan policy NE2 states planning permission will be refused for development if it would adversely affect animal or plant species or their habitat. Local Plan policy NE3 states that all new development exceeding 5 dwellings will be required to incorporate proposal to enhance biodiversity.
20. The initial response from the Council's Countryside Officer dated 29 September 2015 on the appellant's Phase 1 Habitat and Ecological Scoping Survey stated that the proposed development would result in a wildlife corridor which would be too narrow, and which would also be exposed to light nuisance from road lighting, such that it would not be capable of successfully functioning effectively. Furthermore, the Council stated that survey works were either insufficient in that they were undertaken at sub-optimal times of the year, or that it made recommendations that had not been carried through to the proposal. The appellant sought to address this through additional survey reports for otters, reptiles and a habitat suitability index. The Council's Countryside Officer in her response of 11 January 2016 once again raises objectionable concerns, stating that the proposals contradict the recommendations of the appellant's ecologist.
21. The appellant points to subsequent further dialogue having taken place between the main parties, which I have no doubt led to the revised layout 0176-PLO1 Rev C being tabled which increased the width of the open strip of land between the proposed development and the river. I also note the appellant evidences an email from the Council's Countryside Officer dated 18 April 2016 where it is acknowledged that the scheme "*could offer significant benefits*" for wildlife. Nevertheless this does not amount to an acceptance of the scheme on the Council's part in this regard. It is not sufficiently clear on the evidence before me that the proposed development would not cause significant harm to local wildlife. In this instance and in such circumstances, I must adopt a precautionary approach particularly having regard to the body of objections from third parties on the matter, and find that the proposed development would not accord with Local Plan policies NE1, NE2 and NE3 and with Core Strategy policy CS19, which I have outlined above.

*Effect on drainage*

22. A small section of the appeal site lies within Flood Zone 2. Local Plan policy D1 and Core Strategy policy CS13 state that new development should provide strategic and surface water drainage, and that planning permission will be refused for development which would provide inadequate drainage which would adversely affect surface water disposal, including flood control, or overload the existing foul drainage system. The appellant's flood risk assessment submitted with the appeal states that flood risk to and from the development would be negligible, that the method of disposal of rainwater would be either to ground or the river via an attenuation pond, and sewage would be pumped into the existing sewer which crosses the site. It makes a number of recommendations including, amongst other things, further surveys of soils and a detailed design of the sustainable urban drainage system including its management to be undertaken.
23. The Council's Strategic Flood Management Officer's (SFMO) initial comments were that the information contained within the FRA was insufficient and warranted an objection, which the Council carried forward into its decision. However the appellant evidences that further amendments to the FRA were made, and the Council's SFMO subsequently appended further comments raising no objection subject to subject to a condition requiring a detailed drainage strategy to be submitted. This advice appears to mirror that given by Anglian Water, as reported by the Council.
24. The Council has not explained why, in light of the revised position of its SFMO, it remains of the view that the FRA is insufficient. The findings and recommendations contained within the FRA appear to me to be adequate to ensure there would be no risk to flooding and surface water drainage would be adequately managed, and I see no obvious reason why drainage matters would be acceptable subject to the condition suggested by the Council's SFMO. I therefore find on the fourth main issue and in the absence of evidence to the contrary, the proposed development would accord with Local Plan policy D1 or with Core Strategy policy CS13.

*Whether circumstances exist to justify the development*

25. Common ground exists between the main parties that the Council cannot demonstrate a five year supply of deliverable housing land, and I have accounted for some of the residents' comments that the Council is only marginally short of this figure. Nevertheless, paragraph 49 of the Framework dictates that relevant policies for the supply of housing should not be considered up-to-date. Neither main party considers the policies relevant to this Decision and referred to above are out-of-date.
26. Paragraph 14 of the Framework states that a presumption in favour of sustainable development lies at the heart of the Framework. Where the development plan is out-of-date, permission should be granted for development unless any adverse impacts of doing so would be significantly and demonstrably outweighed by the benefits when assessed against the policies of the Framework taken as a whole.
27. Although outside of the settlement boundary, neither main party disputes that the site is located within reasonably easy access to local services and facilities, such that its location is considered to be a sustainable, and I have no reason to

disagree. I also acknowledge that the proposed development would provide much needed market and affordable housing and in doing so, would make a small but nonetheless welcomed contribution in reducing the five year housing supply shortfall. Added to this, the proposed development would potentially generate employment opportunities during the construction stage. All of the above would amount to social and economic benefits which weigh in the scheme's favour.

### **Other Matters**

28. The appellant states that the appeal site is proposed to be allocated for residential development as part of achieving the Council's five year housing supply. However the evidence submitted by the appellant indicates that the Council's appraisal of the site concluded that there would be "*no added value to allocating*". It is not sufficiently clear whether the site is to be allocated for residential purposes, but even if it were no evidence is before me as to whether the potential allocation has been subjected to external examination. Accordingly, I have afforded little weight to this in my Decision.
29. Concerns have been raised in respect to the effect of the proposed development on the local highway network, having specific regard to additional traffic generated by the proposed development and upon its access, which would lie more or less opposite Milford Avenue. I observed at my site visit that Calverton Road was moderately busy and there was a steady stream of cars travelling in both directions. I also observed a number of parked cars along the road in which parking controls were unrestricted. Nevertheless, insufficient evidence is before me to demonstrate the harm that would occur from the proposed development and its access. The Council does not raise this as an issue and in the absence of evidence to the contrary, I have no reason to disagree.

### **Conclusion and Planning Balance**

30. The proposal would contribute to the Council's market and affordable five year housing supply and it is sustainably located. Economic and social benefits would arise which weighs in the scheme's favour. I also find no conflict with Local Plan and Core Strategy policies in respect to drainage matters. Nonetheless, considerable harm would be caused to the role and function of the linear park and amenity open space, from its layout and design, and on ecology. The environmental harm I have identified would in my judgement significantly and demonstrably outweigh the benefits.
31. Therefore for the reasons given above I conclude that the appeal is dismissed.

*R Allen*

INSPECTOR