



Appeal Decision

Inquiry opened on 19 February 2013

Accompanied site visits made on 19 February and 6 June 2013

by Jennifer Vyse DipTP DipPBM MRTPI

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

Decision date: 8 August 2013

Appeal Ref: APP/B0230/A/12/2184128

Newlands Road, Luton, Bedfordshire

- 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 Mr S Doyle (Templeview Developments Limited) against the decision of Luton Borough Council.
 - The application No 12/00136/OUT, dated 10 February 2012, was refused by a notice dated 5 July 2012.
 - The proposal comprises residential development of a mixture of flats and houses.
-

Decision

1. For the reasons that follow, the appeal is dismissed.

Preliminary Matters

2. The Inquiry opened on 19 February. It sat for a total of 9 days, closing on 7 June 2013¹.
3. Supporting information² shows the appeal scheme as comprising 163 two bedroom flats/maisonettes, 50 three bedroom flats/maisonettes, 4 one bedroom flats/maisonettes and 13 four bedroom dwelling houses (230 units in total). Although this is an outline application with all matters, other than access and layout, reserved for future consideration, it was agreed, at the start of the Inquiry, that permission was being sought for this quantum of development, with the Council confirming that it had dealt with the application on that basis. I shall do the same. Moreover, although maximum building heights could be controlled by condition, were the appeal to succeed (as the application is in outline) it was confirmed for the appellant that, in order to provide the accommodation proposed within the layout shown, the buildings would need to be in general accordance with the scales and heights shown on the submitted plans.
4. At the Inquiry, the appellant submitted a draft planning obligation in the form of a unilateral undertaking. In the event that I consider it to be necessary, the obligation secures the payment of up to £425,000 as a contribution towards waste management, education, or affordable housing. The obligation had not been signed by all the relevant parties by the close of the Inquiry. With the agreement of the Council, an executed version of the document discussed at the Inquiry was submitted after the event (ID45). It is a material consideration in this case and I discuss its content and implications later.

¹ Sitting days: 19 -22 February and 3-7 June 2013

² Including the planning statement, the Design and Access Statement, and the indicative plans.

Main Issues

5. At the start of the Inquiry, the Council confirmed that the living conditions for future occupiers, having particular regard to air quality, could be addressed by condition and that it would not be defending the related reason for refusal. It was also confirmed that there was no land use objection to the principle of residential development on the site.
6. Having read and heard all the evidence, I consider the main issues in this case to be:
 - the effect of the proposal on the character and appearance of the area;
 - whether, having regard to local and national planning policies and viability considerations, the absence of affordable housing is appropriate;
 - the effect of the development on local infrastructure provision, in particular, education facilities and waste management; and,
 - if there is harm in any of the above regards, whether that harm is outweighed by other material considerations.

Policy Background

7. By the time of the Inquiry, the development plan for the area comprised only the Luton Borough Local Plan 2001-2011 (adopted March 2006) the East of England Plan (RSS) having been revoked in January 2013. In addition, the Council has adopted a Planning Obligations Supplementary Planning Document (September 2007) (SPD).

Reasons for the Decision

8. The appeal site lies within the development boundary for the Borough and is not subject to any specific land use allocation or other restrictive designation. On such sites, part B of policy H2 of the Local Plan allows for residential development, subject to certain criteria. In essence, the site should comprise previously developed or under-used land; there should be no loss of use for which there is a recognised need; there should be no unacceptable effect on the environment (or would result in environmental gain); and there should be good access to local facilities and public transport.
9. As it is now more than 12 months since the National Planning Policy Framework ('the Framework') was issued, I have considered the weight to be given to this policy in the light of the advice at paragraph 215 of the Framework. For the appellant, it was argued that the Framework did not specifically require development on unallocated sites to be on previously developed land and that, as a consequence, this part of policy H2 was in conflict with the Framework.
10. Rather than being restrictive, I find part B of policy H2 to be permissive of new residential development, albeit subject to the considerations set out above. Paragraph 17 of the Framework sets out core planning principles which, and among other things, encourage the effective use of land by reusing land that has been previously developed. In directing new residential development to such sites, I find no conflict between the policy and the Framework in this regard. In seeking to prevent the loss of valued facilities, protect the

environment, and ensure good accessibility, the other elements to part B of policy H2 also comply with the thrust of the Framework.³

11. Outline planning permission was granted in 1997, for use of the land as a bowling alley with associated parking.⁴ Applications relating to the reserved matters, and the submission of details pursuant to other conditions, were subsequently approved. Work then commenced on the approved scheme, in as much as preliminary works in relation to the site entrance were started. A Certificate of Lawfulness for the development was issued subsequently.⁵ The permission therefore remains extant, although the development has progressed no further. So, whilst the majority of the site is not developed at the present time, the extant planning permission is a material consideration.
12. The development permitted comprised the erection of a large building at the southern end of the site and the formation of some 130 parking spaces between the building and the road, spreading northwards across the site, together with landscaping. Having regard to the nature of the approved scheme, and the Certificate of Lawfulness, together with the existing residential development at the northern end of the site, the Council treated the site as being previously developed. For the same reasons, I have no reason to demur from that view.
13. Looking at other aspects of the policy H2 part B criteria, although the land currently comprises, for the most part, open space, it has no formal function as open space and is not publicly accessible. It was also a matter of common ground that the development proposed would not result in the loss of any use for which there is an identified need.
14. The appeal site is located within reasonable walking distance (less than 2 kilometres) of the main town centre and Farley local centre. I understand that two bus routes operate along Newlands Road (one linking Luton with Hemel Hempstead via Slip End on an hourly schedule, the other running between Luton and Dunstable via Slip End and Caddington, running at half hourly intervals) with two further routes nearby, offering a clockwise and anticlockwise service to Luton. These run at very frequent intervals. Luton town centre also benefits from a rail link to London. All in all, I agree with the Council that the facilities, jobs and services that might be required by future occupiers would be reasonably accessible.
15. As set out at the start, there is no objection in principle to development of the site for residential purposes. The outstanding matter then, in relation to policy H2, is the impact of the proposal in the environment.

Character and Appearance

16. Whilst paragraph 60 of the Framework make it clear that decisions should not attempt to impose a particular architectural style or stifle innovation, paragraphs 56, 58 and 61 (amongst others) also require that development should respond to and integrate with the local environment, add to the overall quality of an area, make a positive contribution to local character and

³ My findings here relate only to part B of the policy. The first part of the policy sets out housing figures, with part A relating to allocated sites. The appeal site is not an allocated site and so part A is not relevant. I discuss housing supply later on. Since parts C, D and E are not relevant to this appeal, there is no need for me to come to a view on them.

⁴ Planning Application No L/17616/P/0 Approved 21 April 1997

⁵ No 12/00424/LAWP Issued 7 June 2012

distinctiveness and reflect the identity of local surroundings and materials. In addition, the Framework confirms that good design is indivisible from good planning and aims to achieve high quality development that, among other things, is visually attractive.

17. Local Plan policies LP1 and ENV9 reiterate the requirement in part B of policy H2, to ensure that new development does not have an unacceptable effect on the environment. They also seek to ensure that new development accords with the environmental principles of sustainable development and respects the scale and proportions of existing buildings. Having regard to the thrust of the paragraphs referred to above, I find no conflict with the Framework in this regard and the policies therefore continue to carry full weight.
18. The elongated appeal site, which extends to some 2.5 hectares, is located adjacent to the south-western boundary of the Borough, which is defined by the M1 motorway at this point. The playing fields of Luton Rugby Club adjoin the appeal site to the south, with the associated clubhouse complex beyond. Opposite the site, to the east, is Stockwood Country Park which lies on rising ground. A golf course and fishing pond (Farley Pond) are located within that part of the Park nearest the appeal site. Existing built development lies to the north and north-east, although the appeal site is separated from it, both physically and visually, by Caddington Road/Farley Hill and a small area of woodland that spreads across the northern end of the appeal site, adjacent to Caddington Road. The nearest built development, on the far side of Caddington Road, comprises a recently completed development of 101 flats in three blocks of three to five storeys in height (Farley Fields)⁶ together with an adjacent development of two storey affordable dwellings that was nearing completion at the time of the Inquiry (site of the Barn Owl public house)⁷.
19. The Farley Fields scheme introduced development that is not only of greater density and height than the prevailing residential development in the locality, but its impact is accentuated by virtue of the fact that the site occupies an elevated position in relation to the road. Although the Council sought to distance itself from that development it is, as a matter of fact, part of the context for the appeal site. That said, the Farley Fields scheme has a relatively limited road frontage. More importantly, to my mind, it does not face directly onto any part of the Country Park, but is located between existing residential development and the motorway, with Barnfield Academy behind.
20. In contrast, the entire appeal site frontage to Newlands Road, some 270 metres, faces onto the Country Park. I recognise that there is an extant permission for a bowling alley on the site. However, even with its associated parking, that would be a relatively low key development. Whilst the approved building would, in all likelihood, be little more than a box, given its function, the plans show it set well back into the site, behind a wide band of landscaping and dug in to the rising ground to the rear, adjacent to the motorway embankment. As demonstrated by the Council's photomontages,⁸ the permitted building was a relatively low level structure and the built form would not intrude significantly into views across the site, either on the approach down Farley Hill, from the adjacent Country Park, or from Newlands Road itself. To my mind, the open and undeveloped nature of the appeal site in its present

⁶ Planning application No 08/00193/FUL

⁷ Planning application No 11/01426/FUL

⁸ I recognise that the montages do not appear to have been prepared in full accordance with recognised guidelines (ID21). Nevertheless, they do give some indication as to the scale of development as approved and proposed.

form, relates more closely to the parkland opposite, than to the built development to the north, and is relatively independent from other built developments nearby. Even if developed pursuant to the extant permission, much of the site would still be free from buildings, with the approved building having a relatively low profile.

21. I am in no doubt that any housing development on the appeal site (the principle of which is not disputed by the Council) which makes efficient use of the land, will inevitably change its character and appearance. Indeed, due to the scale of the motorway embankment along the rear boundary of the site, I share the view of the appellant, that any development here would need to have some visual 'weight', otherwise it would be lost in its setting. However, it seems to me that, to be successful, any development on the site also needs to create a transition between the peripheral urban development to the north/northeast, and the more rural feel of the parkland opposite and the adjacent playing fields, albeit against the background of the elevated motorway and its associated gantries and lighting.
22. The appeal scheme is an intensive development, comprising mainly three, four and five storey blocks, with a density of some 92 dwellings per hectare. Of itself, a high density development does not, necessarily, equate to harm. Indeed, a building of some substance would be appropriate at the northeastern corner of the site, which occupies a prominent location adjacent to the road junction. Such a building would provide a visual stop in views down Farley Hill and could help engender a sense of place. However, even having regard to the nearby Farley Fields scheme, I consider that the five storey central element of the corner block proposed (Block E) together with its substantial four storey wings and deep footprint, much deeper than the Farley Fields development, would appear overly large and bulky, noticeably out of scale and keeping with the lower density development on the approach to the site along Farley Hill.
23. Block B, at the opposite end of the appeal site, has three component elements, the main part comprising a substantial four storey building running east to west along the southern boundary, lying end on to, and coming to within around 10 metres of, Newlands Road. It has a deep footprint, again much greater than the buildings at Farley Fields, and would be more than twice the height of the rugby club complex further to the south, and of substantially greater bulk and mass. I have significant concerns in relation to the abruptness of the intrusion of such a high, bulky building in this location, a building that makes no concession to the open nature of the land beyond, or opposite. Far from easing the development into its more rural surroundings, it would be seen as particularly intrusive, both in views along Newlands Road and from the Country Park opposite.
24. Blocks A and F would have a linear form, running along the Newlands Road frontage, separated by the site entrance (Block A lying to the south, Block F to the north). A four storey component to each block would flank the site entrance adjoined, in turn, by three storey terraced town houses backing onto Newlands Road. I recognise that the entrance to the development would need some legibility. However, the four storey blocks would be very close to Newlands Road and would, in my view, be seen as particularly intrusive urban features, directly opposite to the Country Park.
25. With regard to the terraced dwellinghouse elements of Blocks A and F, the current character of Newlands Road was described for the appellant, as

'predominantly rural with hedges and landscaping against the road.'⁹ That is a description with which I agree. Moreover, during the second site visit, it was agreed between the parties that the existing hedge along the roadside frontage was as much as 3-4 metres deep in places. The treatment of this boundary is all the more important, given that it lies directly opposite, and in close proximity, to the Country Park. The evidence of the appellant was that it is intended to landscape the highway edge which, it was asserted, would maintain its character. However, in answer to my questions, it was confirmed that there would only be some 1.5 metres available for planting and landscaping between the end of the gardens (some of which would be relatively short) and the road. To my mind, that would not be sufficient to retain a rural feel to this extensive road frontage. This would further erode the established 'predominantly rural' character and appearance of the area.

26. Block C, a very substantial linear block that would run parallel to the motorway along the rear of the site, is shown as comprising a five storey central block opposite to the site entrance, flanked by four storey elements, dropping to three storeys that then rise again to four storeys at each end, returning towards the motorway. Between the returning ends, the block would be separated from the motorway embankment by parking.
27. Indicative elevations are provided for this block. As demonstrated by those plans, with an overall length of more than 110 metres, this would be a very large building. No matter the detailing, there would be no disguising the substantial bulk of this component of the development, which would be almost metropolitan in its scale, significantly at odds with its transitional fringe setting.
28. Block D, a four storey building, would be located behind Block E. It would be much smaller than the other blocks proposed, set towards the rear of the site, away from the road. It would lie adjacent to the drainage ditch that runs across the site from a motorway balancing pond to the west, via a culvert beneath Newland Road, to Farley Pond. The indicative plans show that the ditch would be landscaped which would help with the setting of this building. Even though the block would be seen from the road, it would be less harmful than the other elements of the scheme and I take no issue with this component.
29. With regard to the site layout, the scheme comprises six blocks around the perimeter of the site, with a central spine road running north – south. Internal to the site, all the blocks would front directly onto the spine road and/or parking areas, creating a very 'hard' environment. Further parking areas would be located immediately to the rear and side of Blocks B, C, D and E. The four storey elements to Block C would be relatively close to the four storey components at the ends of Blocks A and F, the three storey elements being only slightly further apart. In such close proximity, and at the heights envisaged, I agree with the Council that this would be likely to create quite an oppressive environment within the site, the feeling of which would be exacerbated by significant shading/overshadowing.
30. Whilst a small area of formal planting is shown at each end of Block C, it is limited in scale in relation to the site as a whole. I referred earlier to the woodland within the northern part of the site. Although it would be retained, it does not form an integral part of site layout. It seems to me, from the details

⁹ Proof of Mr Farr paragraph 4.27

submitted that, other than the small areas of open space at each end of Block C, and the landscaping of the existing drainage ditch, the layout proposed allows little scope for any meaningful planting or landscaping within the site itself. As a consequence, the development would be dominated, for the most part, by substantial building blocks, hard standing areas, parking courts, footways and roads, in direct contrast to its more sylvan setting.

31. I recognise that the bowling alley scheme included an extensive parking area, in addition to the footprint of the building itself. Nevertheless, there was still considerable scope for planting and landscaping, unlike the appeal scheme. It does not, therefore, set a precedent for the development now proposed.
32. To conclude on this issue I find that, for the reasons set out above, the development proposed would not provide an appropriate response to its location and context. It would result in substantial and significant harm to the established character and appearance of the area, contrary to the relevant policies and guidance.

Affordable Housing

33. Subject to the circumstances of the site, and any special development costs, policy H5 of the Local Plan suggests, as an indicative target, that up to 50% of new units in developments of more than 15 dwelling units should be provided as affordable housing. That figure is reflected in the Council's Planning Obligations Supplementary Planning Document (SPD) which was adopted in September 2007.
34. The later Bedfordshire and Luton 2010 Strategic Housing Market Assessment (the 2010 SHMA) continues to identify an acute need for additional affordable homes in Luton. Indeed, it found that the need for affordable housing outstripped the RSS housing requirement. However, the RSS has now been revoked. Even so, it was argued for the appellant that the RSS figures underestimated the need for housing. That said, in light of current economic problems and the effect on the housing market, the 2010 SHMA suggested a policy target of 35% affordable housing. This has, in effect, superseded the 50% indicated by the Luton Housing Requirements Study 2004/5, which informed the SPD.
35. The Luton and Central Bedfordshire Sub-Regional Strategic Housing Market Assessment Update 2012¹⁰ (the 2012 Update) did not alter the 2010 SHMA target. However, in recognising the pressing level of need for affordable housing, as opposed to market housing, it indicated that 60% of all new housing would need to be provided as affordable housing if need was to be met.¹¹ More recently though, having regard to the issue of viability, the Council's Three Dragons Report (ID30)¹² recommends a target of up to 15% on all schemes, in recognition of the prevailing economic climate.¹³ I am mindful, however, that this is simply a report, rather than adopted policy of the Council.
36. The appeal scheme relates to the provision of some 230 units. Based on the 2010 SHMA, the starting point for negotiation is a requirement for 35% of the units (80-81 units) to be affordable, equating to a contribution of some

¹⁰ August 2012

¹¹ Reducing to 50% if based on nil net migration.

¹² Report of Study: Affordable Housing Viability Study (Three Dragons April 2013)

¹³ Previously, the targets had applied to sites above a certain threshold

£1,743,000.¹⁴ Based on the Three Dragons Report, that would reduce to some 34-35 units, equating to a contribution of approximately £747,000.

37. The Framework confirms that pursuing sustainable development requires careful attention to viability and costs, in both plan-making and decision-taking. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. In making the provision of affordable homes explicitly subject to financial viability considerations, policy H5 and the SPD are broadly in line with the National Planning Policy Framework and I therefore afford them substantial weight.
38. The appellant provided evidence, in the form of a valuation and viability appraisal,¹⁵ that demonstrates that the scheme would not be viable, even if only 15% of the dwellings were affordable (or equivalent contribution made).¹⁶ As a consequence, no affordable housing is proposed on site. Even without the 'burden' of affordable housing, the development would only just be viable.¹⁷ I am aware, in this regard, of the higher site opening up costs often associated with larger schemes such as that proposed. There is also the cost, in this particular instance, of diverting two gas mains. Those costs would be likely to apply for any residential development on the site. Even if the entirety of the contribution secured by the planning obligation (£425,000) was used solely to provide affordable housing off-site (and there are other demands on the contribution which I come to later) it would fall substantially short of even the lowest suggestion of what might be considered as an appropriate contribution.
39. With regard to viability, other than drawing attention to the reference in the valuation to there being little demand for flats and apartments for sale, and that the location not being particularly desirable, the Council took no issue with figures in the report or the accompanying viability appraisal. Moreover, whilst the SPD is silent on situations where no contribution is forthcoming, the Council's policies, and the Framework, clearly envisage the possibility of reducing the full quota of affordable housing if market conditions dictate, although there is no indication that this could be as little as zero.¹⁸
40. The Framework urges local planning authorities to deliver a wide choice of quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities. The provision of affordable homes is naturally part of that objective and the Council's desire to see affordable homes provided in the interests of sustainable development is understandable. However, the undisputed evidence on viability does not allow for the required contribution towards affordable housing. Having regard to the approach of local and national planning policies, I therefore consider that the absence of any affordable housing on the site, or equivalent financial contribution, to be appropriate in this instance.

¹⁴ Based on the average grant paid as public subsidy by the HCA in the Midland Region for 2011-2015 affordable housing programme.

¹⁵ Kirkby and Diamond June 2011

¹⁶ This is based on a developer profit of just 4.3%, compared to the more usual 15-20%

¹⁷ This different from the situation in the Guardian Industrial Estate Decision drawn to my attention (ID29). In that case, the development was not viable, even with 100% market housing.

¹⁸ Other than a reference in the Three Dragons Report to small flatted town centre schemes possibly requiring a zero affordable housing target. The appeal site is not a small scheme and does not occupy a town centre location.

Education/Waste Management

41. As mentioned at the outset, a planning obligation was submitted in connection with the appeal. It secures a contribution towards waste management, education, or affordable housing. Regulation 122(2) of the Community Infrastructure Regulations 2010, as reflected in paragraph 204 of the Framework, requires that planning obligations meet three tests. They must be necessary to make the proposed development acceptable in planning terms; be directly related to the development proposed; and be fairly and reasonably related in scale or kind to the development.
42. Policy IMP1 of the Local Plan seeks, in appropriate circumstances, the provision of, or a financial contribution towards, facilities made necessary by the implementation of a new development.¹⁹ The explanatory text to the policy acknowledges that the matter of contributions is to be the subject of discussion, in order to ensure that a development is only required to contribute to the extent that it impacts directly upon service needs. The Planning Obligations SPD also refers, among other things, to the need for contributions towards education provision within the Borough and the provision of waste management services.
43. Looking first at education, the contribution requested by the Council is based on the pupil yields for development, as set out in the SPD. These are derived from a study of the population profile of housing developments within the Borough, the validity of which has been confirmed by subsequent surveys.²⁰ Based on the SPD calculations, the Council estimates that there would be a need for 97 primary and 25 secondary places arising directly from the development proposed. This necessitates a contribution of some £1,635,648.²¹
44. The appeal site is located within the south of the town, an area where there is a significant shortage of school places, even with the majority of schools in the area having undergone expansion. Robust evidence presented by the Council demonstrated that the primary schools within the catchment for the appeal site could not absorb the anticipated pupil yield from the development, as the majority of year groups are full, or have less than five places remaining. Barnfield South Academy (the secondary school within the catchment area) currently has some year groups with more than five surplus places. However, the pupil projections forecast a substantial demand for places between March 2012 and September 2016, as the pressure on primary places spreads to the secondary sector.
45. I understand that the primary pupil yield from the development proposed equates to half a form of entry across seven year groups. It was confirmed that the primary element of the contribution sought would be used towards the building of four class bases and associated infrastructure at the current Surrey Street Primary School site, in order to accommodate two forms of entry

¹⁹ With regard to paragraph 215 of the Framework, I find the thrust of this policy to be consistent with the advice in paragraphs 203-205 of the Framework regarding planning obligations. It therefore continues to attract substantial weight.

²⁰ The calculation set out in the SPD was derived from a 2001 study of the pupil yield from new residential development. A survey in 2006, of three new housing developments in the area, followed by a further survey of the same developments in 2012, demonstrated that in fact the overall pupil yield calculations are very modest. I am also mindful that the average size of a family in Luton is 2.71, which is slightly larger than the national average of 2.4, and that Luton has a very young population in comparison with national averages. For all these reasons, I afford the pupil yield set out in the SPD substantial weight.

²¹ Primary: £1,270,449. Secondary: £365,199

throughout the school. The secondary element would be spent on facilitating additional specialist accommodation and a class base at Barnfield South Academy. I am satisfied that the contribution sought has been fully justified, relates directly to the development proposed, and meets the relevant tests for obligations.

46. However, the uncontested viability evidence of the appellant suggests that the maximum contribution available is just £425,000. Even if the entirety of the sum secured were to be spent on education, there would still be a shortfall of some £1,200,000 in the amount required to fully address the impact of the proposed development. Failure to provide the required funding would mean that families moving into the proposed development would be unable to access a local school place, or would deny existing families the opportunity of places. In addition, it would be more likely that siblings would be split between schools some distance from their home, with all the problems that that entails, including transportation. I am mindful, in this regard, that paragraph 72 of the National Planning Policy Framework confirms that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. In order to meet that requirement, great weight is to be given to the need to create, expand or alter schools.
47. In support of the proposal, the appellant suggests that the shortfall in the required education contribution could be mitigated by the New Homes Bonus (the Bonus), which would be paid once the houses were built. I was reminded, in this regard, that the Bonus is not a ring fenced grant, which means local authorities have flexibility on how to spend it. I am also mindful that Bonus funds can be spent on either revenue or capital/strategic projects, or placed in a local authority's reserves.
48. It is well established that the Bonus qualifies as a local finance consideration. The key question for me therefore, is whether it is material to determination of this specific planning application. If spent in the manner suggested by the appellant, it would be invested in the area in which the development the subject of this appeal would be taking place, and used for specific projects aimed at addressing a particular impact of the development. There would be a direct connection therefore, between the intended use of the Bonus and the development proposed. Significantly however, there is no guarantee that the Bonus would be spent on the education related needs identified by the Council, which would be a consequence of the development proposed. For instance, whilst local councils can decide how to spend the Bonus, the Government expects them to consult communities about how the money will be spent, so that all residents can share in the benefits of growth.
49. There was nothing to suggest that such consultation has taken place. Moreover, no approved local authority spending plans were drawn to my attention which might give succour in this regard. I can have no confidence therefore, that the Bonus would, necessarily, be used to meet the education demands of occupiers of the development proposed. On this basis, it seems to me, that it would be inappropriate, possibly even unlawful, to take the Bonus into account as a material consideration in this particular instance, since there can be no guarantee that it would be used for the purpose intended by the appellant.

50. In coming to this conclusion, I am mindful that the Bonus is intended to ensure that those communities, who embrace growth, reap the benefits of development, not just the costs. Indeed, the Government's response to the consultation on the Bonus, confirms that it '*...is not intended to encourage housing development which would otherwise be inappropriate in planning terms. Local planning authorities will be well aware that, when deciding whether or not to grant planning permission, they cannot take into account immaterial considerations. The New Homes Bonus cannot change this and nor is it intended to. Local planning authorities will continue to be bound by their obligations here.*'
51. The appellant also argued that, even were the full education contribution to be provided via the planning obligation that would not, necessarily, ensure that the money would be put to its intended purpose, since it would be open to the authority to reduce the education budget by the amount that it received from the planning obligation. I find little merit in that proposition. The evidence before me demonstrates that the development proposed would give rise to a requirement for additional education provision over and above the Council's existing requirement/budget. The contribution sought is required to offset the increase in demand on the authority in terms of education provision, so ensuring that the development would have a neutral impact in this regard. In the scenario presented by the appellant, the additional educational needs arising from the development would not be met.
52. Under Section 41(1) of the Education Act 1996, the Council has a duty to ensure that sufficient primary and secondary school places are provided for its area. In addition, the Education and Inspections Act 2006 (Part 1) extends that duty to securing diversity in the provision of schools and increasing opportunities for parental choice. On this basis, it seems highly unlikely that any monies secured through a planning obligation, towards education provision, would not be spent in addressing the increased demand that justified it. In essence, if the contribution could be used in substitution for part of the existing education budget, and still meet the increased demand arising from the development proposed, then the contribution would not have been justified in the first instance.
53. In support of the appeal, my attention was drawn to other schemes approved by the Council where, although the education authority requested a contribution, the development was approved with either a reduced contribution or without any contribution being secured at all. However, the nearby Barn Owl Public House development provided 100% affordable housing, a significant benefit in an area where, as set out above, the demand for such accommodation is so acute that it outstrips the demand for market housing. On that basis, a reduced contribution was considered acceptable. Moreover, it was confirmed for the Council that the situation regarding education within the southern part of the town has worsened since the time of that decision and is now at a critical level.
54. The three other examples referred to by the appellant²² all lie within the west and north parts of the town, areas with more school places available than the centre and the south.²³ Moreover, although the contribution secured in the

²² Sundon Park, The Acorns, and The Unicorn.

²³ The worst areas are the centre and the south, with the situation in the east worsening. The appeal site lies within the southern part of the town for educational purposes.

Sundon Park scheme was reduced on the grounds of viability, the obligation included a 'clawback' or 'overage' clause'. That is not the case here. In addition, both The Acorns and The Unicorn developments comprised 100% affordable housing. Accordingly, those examples are not directly comparable to the development before me, which I have considered on its own merits in the light of the education situation reported at the time of the Inquiry.

55. The waste management demands of the development proposed necessitate a contribution of some £9,258. Whilst my attention was drawn, in this regard, to the decision of a colleague Inspector (ID 29)²⁴ there is nothing in that Decision to indicate that she had sight of the Council's Planning Obligations SPD. Chapter 10 of the SPD sets out how the contribution is calculated, confirming that it relates to sustainable waste management, in particular, the provision of bins and boxes for each property, which would facilitate recycling in accordance with the Bedfordshire and Luton Waste Local Plan 2005. Having regard to the SPD, I am satisfied that the provision of waste bins for the development is a legitimate and necessary requirement and that a contribution in this regard would meet the relevant tests.
56. To conclude on this issue, I have found that there is a justified need for additional education and waste management facilities to meet the increased demand and pressure on services that would be a direct consequence of the development proposed. Although the planning obligation offers a contribution towards those services, the amount secured is significantly below that required to fully mitigate the impact of the development in these regards. The development would, therefore, place undue strain on existing local education and waste management services, undermining the three dimensions to sustainable development set out at paragraph 7 of the Framework. I find conflict, in this regard, with policy IMP1 of the Local Plan and the Council's SPD.

Is any harm outweighed by other considerations?

57. Paragraph 49 of the Framework advises that housing applications should be considered in the context of the presumption in favour of sustainable development. In addition, relevant policies relating to the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
58. A considerable amount of Inquiry time was spent looking at the matter of housing land supply, the parties taking diametrically opposed positions. For the purposes of this appeal, I shall adopt the position of the appellant, namely that there is a significant shortfall in the supply of housing land, calculated as being somewhere between less than one year and 2.22 years (including a 5% buffer) (ID35). This is not to be interpreted as any indication that I necessarily agree with that position. I simply adopt it as a worst case scenario in order to carry out the planning balance. On this basis, the relevant policies for the supply of housing land cannot be considered up-to-date. In these circumstances, and in relation to decision taking, paragraph 14 of the Framework advises that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a

²⁴ The Inspector found that whilst desirable, and in accord with good practice, a contribution towards waste management was not essential to make the development acceptable in planning terms.

whole; or specific policies in the Framework indicate that development should be restricted.

59. Looking at the first of these considerations, I recognise that the development would generate a number of jobs during the construction phase and other spin-off economic benefits. However, given that there is no objection to the principle of development on the appeal site, I have no reason to suppose that a scheme that did not result in the harm that I have identified, would not generate similar benefits. That limits the weight I afford this matter.
60. I have found substantial harm in relation to the impact of the development on the character and appearance of the area. It would also place significant strain on local education facilities and waste management services. In my judgement, the totality of that harm significantly and demonstrably outweighs the benefit of providing 230 dwellings, even in the context of a substantial shortfall in housing land supply asserted by the appellant.
61. Moving on to the second of the considerations referred to in paragraph 58 above, I recognise that the vast majority of policies in the Framework do not seek to restrict development. However, Section 7 of the Framework makes it clear that the Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Paragraph 64 of the Framework goes on to advise that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area, and the way it functions. Given my findings in relation to design, paragraph 64 is engaged and is an indication that the development should be restricted.

Other Matters

62. Local residents have raised various concerns, including the effect of the development on traffic congestion. With regard to traffic, the development would result in increased traffic movements along Newlands Road, with the appellant's traffic assessment concluding that increased use of the Newlands Road/Caddington Road/Farley Hill junction would, if not mitigated, result in substantial queues. However, mitigation works, namely signalling the junction, are proposed. A Grampian type condition could ensure that, if the appeal were to succeed, development could not commence until timetable for the implementation for those works had been agreed, with development only to be carried out in accommodation with that timetable. The assessment confirms that the works would provide sufficient capacity and would allow for safe operation of the junction beyond the design year of 2021. The Highway Authority takes no issue with the assessment or its findings and, in the absence of any substantiated evidence to the contrary, I conclude that the traffic generated by occupiers of the development need not cause material harm in terms of highway safety or capacity.
63. Other concerns in relation to biodiversity and flooding could be addressed by condition, were the appeal to succeed.

Conclusion

64. With regard to matters of viability, I have found the absence of any affordable housing provision to be appropriate in this instance. There would be no harm

either, in terms of highway safety. However, the totality of harm in relation to the impact of the development on the character and appearance of the area, and the strain that would be placed on local education facilities and waste management services, would be so significant that it would outweigh the benefit in providing 230 dwellings, even against the background of the worst case housing land supply scenario asserted by the appellant. Therefore, for the reasons set out above, and having regard to all other matters raised, I conclude, on balance, that the appeal should not succeed.

Jennifer A Vyse

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

D Lintott of Counsel	Instructed by Luton Borough Council
He called	
J Kelley MSc, MTCPA	Town planner with Luton Borough Council
A Thompson	Strategy and Development Manager (Housing and Community Living Directorate) Luton Borough Council
Mrs D Craig BA(Hons)	Admissions and Planning Manager (Education) Luton Borough Council
D M Hall DipTP, MRTPI	Associate Director Boyer Planning Limited (Crowthorne Office)

FOR THE APPELLANT:

P Goatley of Counsel	Instructed by DLP Planning Limited
He called	
R G Bolton BSc(Hons) MRTPI	Director DLP Planning
G Venning MA(Cantab)	Director Levvel Limited
R A Farr BA(Hons), DipArch, RIBA	DLP Design Limited
S James BA, DipTP, MRTPI, MIEAM	DLP Planning Limited

INTERESTED PERSONS:

Councillor R Stay	Ward Member for Caddington and Slip End
Councillor K Collins	Vice-chair Caddington Parish Council

INQUIRY DOCUMENTS

ID1	Appearances for the appellant
ID2	Opening submissions for the Appellant
ID3	Opening submissions for the Council
ID4	J Kelley comments on SHLAA site info provided by appellant
ID5	Computer generated images showing appeal development in relation to the approved bowling alley scheme (evidence of D Hall)
ID6	Population estimates and forecasts 2007 (document informing research

- paper 4: SHMA 2010) (evidence of J Kelley)
- ID7 Office for National Statistics Release: Sub-national population projections, Interim 2011-based (evidence of J Kelley)
- ID8 Notes and Definitions for the Housing Flows Reconciliation (HFR) form (2011) and floor plans for University of Bedfordshire Luton Campus (sites A and B) (evidence of J Kelley)
- ID9 Revised 2001 based population and household growth in the East of England 2001-2021 (replacement appendix 7 to evidence of R Bolton)
- ID10 Extract from Luton and Southern Central Bedfordshire Joint AMR 2010/11 - additional pages to appendix 3 (evidence of R Bolton)
- ID11 Plan showing boundary of Chilterns AONB
- ID12 Friends of the Earth - response to appeal
- ID13 Plan showing public footpaths No 1 and No 8.
- ID14 Appeal decision 2159038 (Chapel-en-le-Frith)
- ID15 Inspector's Note (ID/28) Bath & NE Somerset Core Strategy Examination: preliminary conclusions on strategic matters and way forward (June 2012)
- ID16 Written Ministerial Statement (DCLG): Housing and Growth (6 September 2012)
- ID17 Appeal Decision 2187879 (Longridge, Preston)
- ID18 Draft conditions
- ID19 Summary of housing projections (advance draft)
- ID20 Draft planning obligation
- ID21 Landscape Institute Advice Note 01/11 – photography and photomontage in landscape and visual impact assessment
- ID22 Bedford and Luton SHMA 2010 - Research Paper 6
- ID23 Supplementary Statement on behalf of the Council re photomontage image submissions
- ID24 Council note and spreadsheet on pupil/population projections
- ID25 Summary of Housing projections in relation to the appeal site – joint report
- ID26 Amendment to the proof of evidence of Robert Farr provided by Matt Herbert
- ID27 Amended proof of S James (superseded by ID35, ID36 and ID37)
- ID28 Photomontages (reduced to A4)
- ID29 Guardian Industrial Estate Appeal decision (APP/B0230/A/12/2183021)
- ID30 Luton Borough Council Affordable Housing Viability Study: Report of Study (Three Dragons – April 2013)
- ID31 Report of the Head of Planning and Transportation: Local Plan update (25 March 2013)
- ID32 Suggested conditions (revised)
- ID33a Report of the Head of Planning and Transportation: Luton Borough Council's response to Central Bedfordshire's pre-submission Development Strategy Consultation and matters relating to the Sustainable Urban Extension at Houghton Regis North (HRN1) planning application consultation (15 April 2013)
- ID33b Report of the Head of Planning and Transportation: Luton Borough Council's response to Central Bedfordshire's pre-submission Development Strategy Consultation and matters relating to the Sustainable Urban Extension at Houghton Regis North (HRN1) planning application consultation (15 April 2013) Amended
- ID34 Plan showing amenities in the vicinity of the appeal site
- ID35 Amended Section 5 to the proof of S James
- ID36 Updated comments on the SHLAA sites (evidence of S James)
- ID37 Amended Appendix 5.2 to the evidence of S James

- ID38 Station Gateway and Bute Street concept scheme
- ID39 Letter from Foxley Kingham (appellant's accountants) re availability of funding for the appeal scheme (25 January 2013)
- ID40 Letter from Michael Hardiman & Associates LLP regarding relocation of the gas main that crosses the appeal site (6 June 2013)
- ID41 Phasing plan that accompanied a recent planning application for the Napier Court development
- ID42 Closing submissions for the Council (written copy)
- ID43 Court case referred to by the Council in closing - *Tewkesbury Borough Council v SoS for CLG* [2013] EWHC 286 (Admin)
- ID44 Closing submissions for the appellant (written copy)
- ID45 Signed version of the planning obligations submitted after the close of the Inquiry

Richborough Estates