

## Appeal Decision

Site visit made on 11 April 2017

by **Thomas Hatfield BA (Hons) MA MRTPI**

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

Decision date: 19<sup>th</sup> June 2017

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**Appeal Ref: APP/P0240/W/17/3166582**

**Land off Sand Road, Flitton, MK45 5DT**

- 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 Clarke against the decision of Central Bedfordshire Council.
  - The application Ref CB/16/02632/OUT, dated 16 June 2016, was refused by notice dated 21 September 2016.
  - The development proposed is erection of 18 new dwellings.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The application is in outline with all matters reserved for future consideration. Drawings showing an indicative layout of the development were submitted with the application, and I have had regard to these in determining this appeal.

### Application for costs

3. An application for costs was made by Mr Clarke against Central Bedfordshire Council. This application is the subject of a separate Decision.

### Main Issues

4. The main issues are:
  - (a) The effect of the development on the character and appearance of the surrounding area;
  - (b) Whether the development would make an appropriate contribution towards affordable housing;
  - (c) Whether the development would make appropriate financial contributions towards education provision; and
  - (d) Whether the development would make satisfactory provision for surface water.

### Reasons

#### *Character and appearance*

5. The appeal site comprises part of a large agricultural field that is to the south of the village of Flitton. It is located opposite an existing ribbon of properties
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on the other side of Sand Road. A tall hedgerow runs along the south western edge of the site adjacent to the road.

6. The appeal site consists of open land that is prominent in views from along Sand Road and Silsoe Road. The site is also visible in longer views across the field to the rear. It has a pleasant rural character that provides an attractive transition between the edge of the village and the open agricultural landscape beyond. The development would introduce up to 18 dwellings that would broadly correspond to the existing ribbon of development on the opposite side of Sand Road. However, the existing properties are screened in longer views by mature hedgerows, including the hedgerow along the boundary of the appeal site. In contrast, the appeal development would be highly visible in the surrounding area. It would introduce an additional finger of development that would encroach into the open countryside in a prominent location. This would create an abrupt and harmful transition between the village and the open landscape beyond, when experienced from along Sand Road and Silsoe Road. Whilst the proposal would retain most of the existing hedgerow, that would not overcome my concerns in this regard.
7. Separately, I accept that the siting and spacing of the proposed dwellings is capable of being satisfactorily addressed at reserved matters stage.
8. I conclude that the development would significantly harm the character and appearance of the surrounding area. It would therefore be contrary to Policy DM3 of the Central Bedfordshire Core Strategy and Development Management Policies (2009). This policy seeks to ensure, amongst other things, that new development is appropriate to its setting.
9. The appeal site is also located outside of the Settlement Envelope, and is therefore contrary to Policy DM4 of the Central Bedfordshire Core Strategy and Development Management Policies (2009). However, the appellant contends that a lack of a 5 year supply would outweigh the failure to comply with the development plan in this case. I return to this matter in my conclusion, below.
10. Separately, the criteria set out in Paragraph 55 of the National Planning Policy Framework are not directly relevant in this case. The development is on the edge of a village that contains some facilities, and it therefore does not comprise "*isolated homes in the countryside*".

#### *Affordable housing*

11. The development does not identify an affordable housing contribution, as is required by Local Plan Policy CS7. However, the appellant states that this matter is capable of being dealt with by a condition requiring the submission and approval of a scheme for the provision of affordable housing.
12. A condition of this nature would need to require that such provision is affordable for both first and subsequent occupiers of the affordable housing. However, such a requirement could reasonably be interpreted as requiring a planning obligation to be entered into.
13. Planning Practice Guidance (PPG) states that a condition which limits the development that can take place until a planning obligation has been entered into is unlikely to be appropriate in the majority of cases. Such a condition would require "*exceptional circumstances*", and "*may be appropriate in the case of more complex and strategically important development where there is*

*clear evidence that the delivery of the development would otherwise be at serious risk*" (Paragraph ID 21a-010-20140306). However, no case has been made that exceptional circumstances exist that would justify a condition of this nature. Furthermore, it is clear that the development would not constitute *"more complex and strategically important development"*. Accordingly, the use of such a planning condition would not be appropriate in this case.

14. The appellant has drawn my attention to a recent appeal in Central Bedfordshire (ref APP/P0240/W/16/3154220). In that Decision, the Inspector stated that the Council were satisfied that affordable housing could be secured by either a S106 obligation or a planning condition. However, the full details of that case, including the background to the Council's position, are not before me. Moreover, there is no reference to the relevant PPG tests in that Decision. Accordingly, I have come to my own view on this matter.
15. I conclude that the development would fail to make an appropriate contribution towards affordable housing provision. It would therefore be contrary to Policy CS7 of the Central Bedfordshire Core Strategy and Development Management Policies (2009). This policy seeks to ensure, amongst other things, that new residential development contributes towards meeting affordable housing need in the area.

#### *Financial contribution – educational facilities*

16. Central Bedfordshire School Organisation has requested a contribution towards lower, middle, and upper school provision totalling £134,399.29. This is to mitigate the impact of the development on existing schools which are at capacity. In this regard, there is no planning obligation or unilateral undertaking before me relating to education provision.
17. Community Infrastructure Levy (CIL) Regulation 122 states that planning obligations must be necessary, directly related, and fairly and reasonably related in scale and kind to the development in question. In this case, there is considerable uncertainty about how the contributions would be spent, and the Council simply state that *"the lower school, contribution would help fund a project at Greenfield Lower School"* and *"the upper school contribution would go towards a project to increase the capacity of Harlington Upper School"*. However, no detail is provided as to which specific projects would be funded by these contributions. Accordingly, I cannot be sure that they are directly related to the development.
18. I also have concerns about compliance with CIL Regulation 123, which prohibits the pooling of 5 or more contributions towards a single project. In this regard, no evidence has been provided by the Council regarding the number of contributions that have already been pooled towards the intended projects in this case.
19. For the above reasons, I conclude that the requested financial contributions towards education provision do not comply with the CIL Regulations. The lack of an education contribution is therefore appropriate in this case.

#### *Surface water*

20. The appeal site is located in Flood Zone 1 for river or sea flooding. However, the Environment Agency's map of surface water flood risk indicates that there are surface water flow paths in close proximity to the site.

21. The development provides no details of arrangements for surface water drainage or mitigation of flood risk to and from the site. However, the application is in outline, and the layout of the development and its landscaping design would be submitted at a later stage. These reserved matters will clearly have a significant bearing on the way surface water is managed within the site.
22. The Council has not sought to argue that surface water drainage or flood risk mitigation is difficult or incapable of being accommodated on this site. Accordingly, there is no reason why this matter could not be addressed by condition. In these circumstances, and in the absence of a detailed scheme at this stage, this matter would not justify withholding permission in my view.
23. For the above reasons, I conclude that the development would be capable of making satisfactory provision for surface water. It would therefore be in accordance with Policy CS13 of the Central Bedfordshire Core Strategy and Development Management Policies (2009). This policy seeks to ensure, amongst other things, that new development incorporates sustainable drainage infrastructure.

### **Conclusion**

24. There is a dispute between the parties as to whether the Council can demonstrate a 5 year supply of housing land. In this regard, the Council originally conceded that it was unable to demonstrate a 5 year supply. Subsequently however, it submitted late evidence that purported to demonstrate a 5 year supply at 1<sup>st</sup> April 2017. This late evidence provided limited detail and I therefore only have partial information before me regarding the Council's position.
25. As set out above, the development would result in significant harm to the character and appearance of the surrounding area. It would also not provide an affordable housing contribution. Set against this, there would be some modest economic and social benefits associated with the provision of 18 additional dwellings. In these circumstances, the harm I have identified would significantly and demonstrably outweigh the benefits of the development. Any lack of a 5 year supply would therefore not alter my view regarding this case.
26. For the reasons given above I conclude that the appeal should be dismissed.

*Thomas Hatfield*

INSPECTOR