



Appeal Decision

Site visit made on 22 August 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 13th September 2017

Appeal Ref: APP/P0240/W/17/3173864
Flitton Road, Greenfield MK45 5DJ

- 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 J Gill (c/o JC Gill Developments) against the decision of Central Bedfordshire Council.
 - The application Ref CB/16/05116/OUT, dated 1 November 2016, was refused by notice dated 1 February 2017.
 - The development proposed is residential development for 16 new dwellings comprising a mix of 2, 3 and 4 bedrooms with associated landscaping, surfacing, parking and access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline form and it is clear that only Access is applied for. Although the description refers to Landscaping, because of this I have determined the appeal on the basis that this is a reserved matter, treating the plans as illustrative. I have also been referred to emerging Local and Neighbourhood Plans. However, I have no information to suggest the plans are likely to be adopted in the near future and consultation has only recently finished¹ on the former. I therefore attach very little weight to them.

Main Issues

3. The main issues are:
 - Whether the proposal would provide a suitable site for housing, having regard to location and the effect of the proposal on the character and appearance of the area.
 - Affordable housing and planning contributions.

Reasons

Suitable site

4. The appeal site lies on the southern side of Flitton Road adjacent to No. 50 Flitton Road, a 2 storey end of terrace property, fronting onto Flitton Road and set back a short distance from it. The appeal site is roughly rectangular in

¹ 29 August 2017 – Regulation 18.

shape and in-between the site and development in Holmewood Road is a former orchard. To the rear are open agricultural fields.

5. The site falls outside the defined Settlement Envelope ('SE') in The Central Bedfordshire Core Strategy and Development Management Policies 2009 ('CS') and is within the countryside for development plan purposes. The proposal would not appear to be one of the exceptions under Policy DM4 and to the extent that it lies outside the SE the proposal would conflict with it.
6. The appeal site is not a designated gap or landscape and I accept that effects on wider landscape character would be minimal. Closer to the appeal site and in visual terms however, the openness and spaciousness of the site combines to give the site a stronger affinity with the open countryside than any existing development in proximity to it. It positively contributes to the locally distinctive and predominantly linear pattern of development between Flitton and Greenfield which is punctuated by such gaps and spaces. The introduction of the proposal onto an undeveloped site would alter its character and appearance as a site that provides an important and valuable contribution to the open and undeveloped landscape setting of the settlements
7. Whilst all matters apart from Access are reserved there are a limited number of ways in which the appeal site could be developed for 16 dwellings. The local topography would mean that any development would be clearly visible on the approach along Flitton Road in both directions. Moreover, such buildings are highly likely to be sited uncharacteristically beyond the existing building line on this side of Flitton Road, extending in linear form for the majority of the depth of the site. They are also likely to be substantial and tall, 2 storey dwellings with minimal spacing in between. They would appear as overly dominant and unduly prominent built form and in such a context would not therefore represent a high quality of design.
8. The proposal would result in the unacceptable suburbanisation of the appeal site and I do not consider that this effect would be mitigated by additional or retained landscaping given the amount of time any such scheme would take to mature to have any effect and the overall scale of likely development. Its effect would also be exacerbated somewhat by the loss of part of the existing mature hedgerow for the access.
9. For these reasons, the proposal would not be a suitable site for housing in terms of location and would cause significant harm to the character and appearance of the area. It would conflict with Policies DM3, DM4 and CS16 of the CS which, amongst other things, do not allow for such development outside the SE, require new development to be appropriate in terms of scale and design to their setting and conserve and enhance the quality and integrity of the built and natural environment. The planning balance and benefits put forward by the appellant in their written submissions, including matters of weight are matters to which I return to below.

Affordable housing and planning contributions

10. Policy CS7 of the CS requires 35% affordable housing to be provided. The proposal would also require education contributions in accordance with Policy CS2 of the CS. The affordable housing provision has not been disputed by the appellant but there is no legal agreement before me. On the basis of the information before me, I have no reason to consider that such a requirement

would fail to meet the tests of necessity, relevance and fairness as set out in section 122 of the Community Infrastructure Levy Regulations (as amended) 2010 ('the Regulations') or the Framework.

11. Although I have been provided with further information by the Council, there is little before me as to whether such education contributions would conflict with the necessary pooling restrictions of the Regulations. Consequently and notwithstanding the aims of development plan policy, I am unable to conclude that a planning obligation seeking to provide them would comply with the Regulations. In these circumstances, the absence of a planning obligation insofar as this matter is concerned does not weigh against the development.
12. The appellant has suggested that the affordable housing could be secured by condition but I have not been provided with any such condition other than reference to a previous appeal decision. The Planning Practice Guidance states that planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation. This is because such a condition often fails the test of precision and enforceability. Furthermore, that only in exceptional circumstances, a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence 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.
13. However, there is no evidence to suggest that these special circumstances apply to this case. In my view and notwithstanding the view of the Council at an earlier appeal², on the evidence before me such a condition would not be appropriate. I have some sympathy with appellant given the Council's approach to not negotiating such matters because the proposal was deemed unacceptable in principle. Nonetheless, the Planning Inspectorate's Procedural Guide Planning Appeals – England 2016 is clear that a certified copy of the executed obligation should be received no later than seven weeks from the appeal start date and I have had no indication that the appellant intended to submit one.
14. For these reasons, I am not satisfied there are means of securing the requisite amount of affordable housing and in the absence of the necessary obligation the proposal fails to make adequate provision for affordable housing. It would conflict with Policy CS7 of the CS, which seeks to ensure that new development delivers affordable housing.

Other Matters

15. My attention has been drawn to a number of appeals by the appellant, 2 of which are within the locality. An appeal at land off Greenfield Road, Flitton³ was allowed in November 2016 and on land to the east at the rear of 50 Flitton Road⁴ in May 2017. My attention has also been drawn to a recent decision⁵ at Stotfold, where outline permission was granted for up to 78 dwellings.

² APP/P0240/W/16/3154220.

³ APP/P0240/W/16/3154220.

⁴ App/P0240/W/17/3167118.

⁵ APP/P0240/W/16/3166033.

16. In the former appeal the Inspector drew different conclusions in relation to the effect on character and appearance due to layout, inclusion of a landscape buffer, single storey scale of part of the proposal and 5 year housing and supply. At 50 Flitton Road, that proposal related to 4 dwellings and the Inspector found it would replicate the shape of an existing business with a separate character to the countryside land that would not cause harm. I have reached a different conclusion on such effects and neither decision therefore alters my view in relation to the main issues.
17. The Stotfold decision followed the Hearing procedure and although consistency is important, I must determine the appeal on the basis of the evidence as put before me by solely by the parties. As I have not been provided with the full details I cannot be certain that it is directly comparable to the proposal before me. It does not therefore alter my views in relation to the main issues. In any event each case must be considered on its own merits.

Planning balance and overall conclusion

18. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The appellant refers to Policy DM4 being out of date, designed to meet a previous housing target should be afforded limited weight because of its non-compliance with the Framework.
19. The Council accept that the approach was drafted at a time when a different Objectively Assessed Need ('OAN') was being used and the relevant Regional Spatial Strategy has since been revoked. Whilst the Council have indicated they have a 'freshly drafted' OAN, on the evidence before me there is no clear indication of how this will be delivered and whether the existing SE approach is appropriate in helping to achieve this. I share the findings of previous Inspectors that it is probable that the settlement boundaries established by the CS will need to be revised in order to accommodate future housing requirements. To my mind and irrespective of the housing land supply position, Policy DM4 is out of date.
20. Furthermore, the blanket protection of the countryside is not supported by the Framework and the wording of Policy DM4 is not entirely consistent with it in terms of the balancing of impacts and benefits. Nonetheless, insofar as recognising the intrinsic character and beauty of the countryside, actively managing patterns of growth to make the fullest use of public transport, walking and cycling and supporting the effective use of previously developed land are concerned, there is some inherent consistency with the core planning principles at Paragraph 17.
21. When the Council determined the application they could not demonstrate a 5 year housing land supply⁶. The Council contend that they can now demonstrate a 5.75 year Housing Land Supply based on the latest Housing Land Supply Position Statement published in April 2017. Although the appellant questions this, the evidence does not appear to conclude on the supply position, relying instead on extracts from previous appeal decisions. Although I have had regard

⁶ 4.89 years and a shortfall of 211 dwellings – 5.1 of Council's Appeal Statement.

to the various decisions put before me⁷ I find that on the evidence before me I am unable to reach a definitive conclusion.

22. Paragraph 14 of the Framework states that at the heart of the Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. Where the development plan is absent, silent or relevant policies are out-of-date; planning 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 whole. This is the case here insofar as my findings in relation to Policy DM4.
23. The proposal would not accord with the CS in terms of its location. The weight given to Policy DM4 is less than full but given my findings in terms of consistency I still afford it substantial weight. The proposal would also cause significant harm to the character and appearance of the area and would fail to provide affordable housing. It would conflict with Policies DM3 and CS16 which are consistent with the Framework and to which I afford full weight. The proposal would also fail to fulfil the social and environmental dimensions of sustainable development as set out in Paragraph 7 of the Framework.
24. The proposal would provide some economic and social benefits. It would appear to be on previously developed land, the efficient use of which is encouraged by national policy. Regardless of the housing land supply position 16 dwellings would provide a small contribution to 'significantly boost the supply of housing'⁸. Sixteen dwellings would also provide some support for local services and additional spending in the rural economy. I give little weight to the economic benefits of construction jobs and the additional patronage of such services during construction, given their short term nature.
25. Taking everything together, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, when taken as a whole. As such, it would not be the sustainable development for which the Framework indicates a presumption in favour.
26. For the reasons set out above, the proposal would conflict with the development plan, when read as a whole and the Framework. Material considerations do not indicate that a decision should be made other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR

⁷ APP/P0240/W/16/3166175 and APP/P0240/A/14/2228154 from the Council and APP/P0240/W/16/3154220 and APP/P0240/W/16/314995 from the appellant.

⁸ Paragraph 47 of the Framework.