



Appeal Decision

Inquiry Held on 3-6 July 2018

Accompanied site visit made on 6 July 2018

by Melvyn Middleton BA(Econ) DipTP Dip Mgmt MRTPI

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

Decision date: 17th October 2018

Appeal Ref: APP/P0240/W/17/3190687

Land off Sutton Road, Potton, Bedfordshire, SG19 2RS

- 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 Hollins Strategic Land LLP against the decision of Central Bedfordshire Council.
 - The application Ref CB/17/01096/OUT, dated 3 March 2017, was refused by notice dated 6 June 2017.
 - The development proposed is up to 80 dwellings with associated landscaping, open space, with vehicular and pedestrian access off Sutton Road.
-

Decision

1. The appeal is dismissed.

Procedural matters

2. The application is in outline with all matters, apart from the means of access, reserved for subsequent approval. It is accompanied by a Design and Access Statement that as well as considering other matters, contains a plan that demonstrates one way in which the site could be developed with 80 dwellings. This plan is for illustrative purposes only, as is the notional layout in the revised Design and Access Statement submitted in March 2018. The layouts and design are informed by the proposed access to Sutton Road, existing trees and hedgerows surrounding the site and the existing development along Bury Hill.
3. The site's access proposals are shown on drawing ref: 1702-F01 and involve the construction of a conventional road junction with Sutton Road. The Highway Authority supports this aspect of the proposal and in the absence of objections I do not discuss this matter any further.
4. During the course of the Inquiry, the Appellant offered to implement works, within highway land, to extend and improve the pavements along Bury Hill and Sutton Road, if planning permission was granted. These improvements could be secured through an appropriately worded condition.
5. The appeal is accompanied by a Statement of Common Ground. Among other matters, it sets out where the Appellant and the Council agree or disagree on the matters of development plan policy, full objectively assessed housing need (FOAHN), housing land supply, the economic and social benefits of the scheme and its accessibility. A Supplementary Statement of Common Ground was subsequently submitted, to the Inquiry, covering further agreed matters

- concerning biodiversity and green infrastructure. The parties agreed that the part of the first reason for refusal that referred to the provision of net gains to green infrastructure and biodiversity could be conditioned to be resolved at the reserved matters stage. At least 22% of the site area would be provided for these purposes.
6. One of the two reasons used to refuse the planning application referred to the absence of a completed legal agreement securing financial contributions to offset the infrastructure impact of the proposal, in particular, on education, recreation and the provision of affordable housing.
 7. The Appellant submitted a signed Planning Obligation pursuant to Section 106 of the Town and Country Planning Act 1990 between itself, the land owners and Central Bedfordshire Council. In this document the Appellant and the land owners agree, if planning permission is granted, to provide 35% of the total number of dwellings, constructed on the site, as affordable housing and in accordance with conditions set out in the Agreement. The provision of an element of affordable housing, within market housing development, is a requirement of Policy CS7 of the *Central Bedfordshire Core Strategy and Development Management Policies Development Plan Document (DP) 2009*, which is supported by paragraphs 61 and 62 of the *National Planning Policy Framework (Framework)*.
 8. They also agree to make financial contributions towards the provision or improvement of local education, community, children's play, sporting and recycling facilities within Potton. In addition, the Appellant agreed, at the Inquiry to prepare, submit for approval and implement an approved Residential Travel Plan, with the aim of minimising private car use and facilitating walking, cycling and the use of public transport by the occupiers of the development. This could be secured through an appropriately worded condition. DP Policy CS2 (Developer Contributions) requires provision/contributions from new housing development towards additional infrastructure to support among other things, education, recreational open space, community facilities, waste management and sustainable transport. This policy is supported by the Framework at paragraphs 54 and 56.
 9. The Deed includes a clause that says that the covenants and obligations shall not apply or be enforceable, if I find in my decision letter that any obligations are unnecessary or otherwise fail to meet the relevant statutory tests.
 10. In my judgement these financial contributions, towards capital expenditure on new or extended facilities within Potton, are necessary to make the proposal acceptable in planning terms. The existing facilities do not have capacity to meet the requirements of the population that would reside in the appeal development. The agreed financial contributions would enable the Council to provide for the requirements of the appeal development and are therefore justified. Following the completion of the Agreement the Council withdrew reason for refusal No. 2.
 11. Overall the Obligations and the Undertakings that could be secured by conditions or agreement are related to the requirements of the relevant DP policies and are necessary to make the development acceptable in planning terms. They are directly related to the development and fairly and reasonably related in scale and kind to it, mitigating harmful effects of the development where appropriate. They therefore comply with the tests set out in the

Framework, the advice in the *National Planning Practice Guidance* (NPPG) and with Regulation 122 of the *Community Infrastructure Regulations* (CIL) 2010. Additionally, there is no conflict with CIL Regulation 123(3).

12. As well as on an accompanied site visit on 6 July, I visited the appeal site and its locality, including Potton Town Centre, as well as some of the surrounding area and nearby settlements, unaccompanied, on 25 June and 2 and 6 July.
13. Following the close of the Inquiry, both the Appellant and the Council alerted me to post Inquiry appeal decisions concerning housing on other sites in Central Bedfordshire¹. The Council also referred me to a corrected version of an appeal that was already before me². All of the new decisions had considered DP policy in Central Bedfordshire that is relevant to this appeal. I accepted these decisions as further evidence and invited the Appellant and Council to make further relevant submissions thereon.
14. On 24 July 2018 and subsequent to the Inquiry, National Planning Policy as set out in the Framework of March 2012 [CD 9.1], was revised and updated. The new Framework supersedes the policies in the old one and any changes relevant to this appeal have a clear bearing on its outcome. I therefore invited the two main parties to make further submissions on the implications of the policies in the new Framework for the decision. I have taken account of their representations on this matter, as well as those that relate to the three new appeal decisions, in reaching my decision.
15. The revised Framework has been accompanied by revisions to the NPPG. In particular the recommended methodology to be used to assess housing need has changed. However, where plans have been submitted for examination, the previous methodology can be used and the updates in the NPPG disregarded. The Central Bedfordshire Local Plan has been submitted for examination and there is no indication to suggest that the methodology used to establish housing need is to be changed. I have therefore not sought observations on the changes in the NPPG but determined the appeal in the context of the FOAHN in accordance with the old methodology.

Main Issues

16. The remaining reason for refusal refers to the proposal not being sustainable development because it is outside of the Potton Settlement Envelope and within open countryside. Its relationship with the existing settlement and the absence of direct footpath and cycleway connections would lead to a development heavily dependent upon car journeys. It would also cause harm to the character and appearance of the local area.
17. The Appellant disputes these assertions and also considers that the Council cannot demonstrate a five year supply of housing land. It criticises both the FOAHN advanced by the Council and its failure to make any allowance for the meeting of unmet housing need from Luton, in its assessment of the dwelling contribution from a site at Houghton Regis, to the supply. It also considers DP Policies CS5 and DM4 to be most important for determining the application and out of date.

¹ Appeal ref: APP/P0240/W/17/3164961, Land at Langford Road, Henlow

Appeal ref: AP/17/3176387, Bayley Gate Farm, College Road, Cranfield, MK43 0AW

Appeal ref: 3166033, Land off Taylor's Road, Stotfold, SG5 4AQ

² Appeal ref: APP/P0240/W/17/3176387, Land west of Astwick Road Stotfold, SG5 4BG

18. In the light of the above and having regard to all that I have read, heard and seen, I consider that the main issues in this case are:
- a) Whether LDF policies CS5 and DM4 should be considered most important for determining the appeal but out of date;
 - b) Whether the Council has demonstrated a five year supply of housing land that is based on an appropriate assessment of the full objectively assessed housing need within the relevant housing market area;
 - c) Whether the accessibility of the site is sustainable;
 - d) The harm to the character and appearance of the countryside and the urban grain along Bury Hill;
 - e) The weight to be given to green infrastructure and biodiversity proposals that could be secured by condition(s).

Reasons

Development Plan

19. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for the area, in which the appeal site lies, comprises the Central Bedfordshire Core Strategy (CS) and Development Management (DM) Policies Development Plan Document (DPD) 2009 and the Site Allocations (SA) DPD 2011, together with the saved policies of the Mid Bedfordshire Local Plan 2005. The CS covers the period up to 2026 but its adoption predates the publication of the first Framework in 2012. Nevertheless the Framework at paragraph 213 now says that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them according to their degree of consistency with the Framework.
20. At paragraph 6.9 of the Statement of Common Ground (SoCG), the parties agreed that all of the DPD policies used by the Council in the first reason for refusal (CS14, CS17, CS18, DM3, DM4 and DM16) as well as policies CS2 and CS7 that were not referred to, are not policies for the supply of housing.
21. Despite agreement to the contrary in the SoCG, the Appellant argued at the Inquiry that Policy DM4 was a policy for the supply of housing. The Appellant considered that by defining settlement envelopes, Policy DM4 was exercising control over the provision of development and was thus a policy for the supply of housing.
22. Policy DM4 seeks to differentiate, through Settlement Envelopes, between areas of built development and the open countryside. As well as indicating what development will be supported within the Settlement Envelopes (this includes small scale housing), it also identifies that limited extensions to gardens will be permitted beyond them, provided that they do not harm the character of the area. However, the boundaries were clearly defined without reference to the plan's overall development requirements and the policy contains no criteria by which to assess the need to build in the countryside or to assess the impact of such development. Specific proposals to meet the

- plan's housing requirement were not a part of the CS&DM DPD and clearly could not have been taken account of when the Settlement Envelopes were defined. The Policy assisted the implementation of Policy CS1, which sought to direct most new housing to the larger more accessible settlements. This is consistent with paragraph 8 of the Framework.
23. Land was allocated for residential development outside of the Settlement Envelopes in the subsequent Site Allocations DPD and in order to maintain a five years supply, planning permissions have been subsequently given in appropriate locations outside of the envelopes. Irrespective of Policy DM4, collectively the allocations and planning permissions outside of the Settlement Envelopes have delivered a supply of housing in accordance with the Framework. In such circumstances and having regard to the Suffolk Coastal DC Supreme Court Case³ and that of Gladman Developments v Daventry DC in the High Court⁴, I do not consider Policy DM4 to be a policy for the supply of housing.
24. The parties agree that by protecting the totality of the countryside from development, as opposed to protecting valued landscapes (Framework paragraph 170), Policy DM4 is not fully consistent with the Framework. However, the Framework does recognise the overall intrinsic character and beauty of the countryside and the Cawrey judgement⁵ confirms that the loss of undesignated countryside is capable of being harmful and attracting weight in the planning balance. Furthermore, there is nothing in the Framework to suggest that the use of Settlement Envelopes is inappropriate. In my judgement Policy DM4 is consequently not out of date and is capable of attracting moderate weight, depending upon the circumstances of the case.
25. The Appellant also referred to Policy CS5 as being out of date and triggering the tilted balance. The Policy is not referred to in the reason for refusal, no conflict with it being alleged by the Council. It was clearly a policy for the supply of housing as it proposes a distribution of housing in accordance with the now rescinded East of England Plan. However, although the CS was adopted by Central Bedfordshire Council, it was prepared by and only applied to the former Mid-Bedfordshire District Council area. Additionally, the housing provision related to a need identified in the East of England Plan for that authority. Paragraph 65 of the Framework says that Strategic Policy-making authorities should establish a housing requirement for their whole area. The policy did not relate to the needs of Central Bedfordshire and the housing requirement was not based on a FOAHN of the relevant Housing Market Area. Consequently, not only is this policy not one of the most important for determining the application, it is no longer relevant. Although clearly out-of-date, in the circumstances, that status does not invoke the tilted balance.
26. A new Local Plan is being prepared for Central Bedfordshire. It was published for consultation in July 2017. Paragraph 48 of the Framework says that local planning authorities may give weight to relevant policies in emerging plans according to the stage of preparation reached, the extent of unresolved objections and the degree of consistency of the relevant policies in the emerging plan to the policies in the Framework. Given that the emerging plan

³ Suffolk Coastal DC v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East BC [2017] UKSC 37

⁴ Gladman Developments v SoS and Daventry DC [2016] EWCA Civ 1146

⁵ Cawrey Limited v SoS and Hinckley and Bosworth BC [2016] EWHC 1198

has only reached the Regulation 22 stage, that there are numerous objections to its policies and that it has yet to be examined, it is common ground between the main parties that only limited weight can be attached to it for the purpose of this appeal.

Five Year Supply of Housing Land

Full Objectively Assessed Housing Need (FOAHN)

27. Paragraph 60 of the Framework says that strategic policies should be informed by a local housing needs assessment, conducted using the standard method in NPPG. In the absence of an up-to-date and adopted DPD, NPPG confirms that information provided in the latest full assessment of housing needs should be considered but that the weight given to such an assessment should take account of the fact that it has not been tested.
28. The latest FOAHN for Central Bedfordshire is contained in the December 2017 Strategic Housing Market Assessment (SHMA) for Luton and Central Bedfordshire. It is 32,000 d for the period 2015-2035, (1,600 dwellings per annum (dpa)). It is the latest in a succession of assessments that have used the same approach and methodology, beginning with the one produced for the 2015 SHMA. The 2015 SHMA update was considered at the Luton Local Plan Inquiry. Whilst recording concerns about the accuracy of the 2001 census for Luton, doubts about past migration trends and referring to factors which could indicate that the FOAHN figure might be potentially higher, the Inspector was not persuaded that the FOAHN figures in the plan should be regarded as unsound.
29. His concerns about the accuracy of the 2001 Census at Luton related to under-enumeration and the fact that if correct, migration 2001-11 would have been less than assumed. On this basis the 2015 assessment would have produced a lower housing need figure than the one before him. However, the extent to which potential population inaccuracies at Luton extend to Central Bedfordshire is far from clear. What can be said is that the Luton Inspector found that *"the approach taken in the SHMA to arrive at these figures appears reasonable"*. Nevertheless, whilst he endorsed the methodology used in the Luton and Central Bedfordshire SHMA, he clearly had some reservations about aspects of the data and his conclusions cannot be taken as a full endorsement of the forecasts.
30. The 2017 SHMA is an update of the 2015 version, substituting 2014-based household projections for the 2012. The higher household growth shown in the 2014 figures was one of the other factors that the Luton Inspector referred to; the use of migration trends 2001-11 was another. Both of these are no longer as relevant as they were at the time of the Luton LP Examination because the 2017 FOAHN does not rely on 2001 census information to the same extent as the 2015 assessment did, there being fewer pre 2011 years in the migration trends analysis. The 2017 FOAHN uses the 2014 household projections and 2005-15 migration trends rather than those for the period 2001-11, which were used in the 2015 analysis.
31. Whilst the Luton Inspector did consider the uncertainties to be significant enough to recommend an early review of the Plan, *"when the effect of data concerns about the 2001 Census may be further diminished"*, housing needs assessment is far from an exact science. There is no one methodological

approach or use of a particular dataset(s) that will provide a definitive assessment of development need and the fact remains that the Luton Inspector did not find the 2015 FOAHN unsound.

32. The Appellant has challenged the accuracy of the FOAHN and reworked the data. It concludes that there is a requirement for between 1,999 dpa and 2,074 dpa compared to the 1,600 dpa in the 2017 SHMA. The primary differences relate to uplift in the migration trends and a higher market signals adjustment.
33. However, it is important to recognise at this stage that the judgements about housing need and supply made at a Section 78 appeal cannot involve the kind of forensic analysis that would be appropriate at a Development Plan Examination (DPE). There is not the broad spectrum of conflicting evidence that would be submitted and debated by a variety of parties at a DPE to enable a more informed and balanced opinion to be formed. In addition and unlike at a DPE, the Inspector does not have the ability to request a recalculation of the data on the basis of changed assumptions. The NPPG makes clear that the figure in the SHMA, being the latest full assessment of housing needs, should be considered where the evidence in the LP has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight⁶. Whilst it is appropriate to challenge the FOAHN, it is not appropriate to overturn it without compelling evidence to justify such action.

Migration trends

34. The Appellant's differences primarily stem from the treatment of Unrecorded Population Change (UPC) between 2001 and 2011. It is agreed that there is a discrepancy between the change in the population recorded in the 2001 and 2011 Censuses and that in the published Mid-year estimates, the Mid-year estimates arriving at a figure 7,179 persons higher in 2011 than the Census of that year. The SHMA assumes that about 95% of this is attributable to inaccurate migration estimates. As well as reducing the demographic starting point it also adjusted the pre 2011 net migration flows by about 720 persons per annum (about a 40% reduction) to account for it. This has ramifications for the net migration flows based on 2005 to 2015 trends and used in the forecasting model and the resultant population forecasts.
35. The Appellant concluded, on the basis of census confidence levels, that up to 90% of the UPC figure could be attributable to census methodology / sampling error and as little as 10% to inaccurate migration estimates. To support this contention the Appellant analysed housing completion data (2001-11), and asserted that on the basis of that evidence 84% of UPC was attributable to census error. The Office of National Statistics (ONS) recognised that there were significant discrepancies between the Census and Mid-year estimate figures in 2011. As part of its Migration Statistics Improvement Programme it established an Uncertainty Project. On the basis of the published results for Central Bedfordshire, the Appellant assessed the contribution from census error and migration to each be 50% for the period 2005-10.
36. Considering the three analyses in the round, the Appellant advanced the hypothesis that only between 16% and 50% of the UPC was attributable to migration. In this context it recalculated the dwelling requirement between

⁶ ID: 3-030-20140306

- 2015 and 2035 and advanced a revised dwelling requirement of between 1,666 and 1,729 dpa. This compares with 1,444 dpa established in the SHMA.
37. However, a detailed appraisal of the Appellant's evidence in this context aided by the outcome of cross-examination at the Inquiry revealed a number of flaws in the Appellant's case. The ONS uses the 95% confidence to express the statistical accuracy of the census. It means that it is 95% certain that the population would be within the confidence interval. In the case of Central Bedfordshire the confidence figures are +/- 3,634 persons in 2001 and +/- 2,849 in 2011. The Appellant has postulated that if the census was too high by the 95% interval in 2001 and too low by the same amount in 2011 then 6483 persons or up to 90% of the 7,179 UPC could be attributable to census error. Whilst this is theoretically possible, a scenario where the census over-enumerates to the maximum extent considered likely and then ten years later under-enumerates to the same extent is extremely unlikely. Mr Veasey accepted this on behalf of the Appellant during cross-examination.
38. In using housing completion data to support its conclusions the Appellant failed to exclude the population residing in communal establishments when calculating average household size. In cross-examination Mr Veasey also accepted that his average household size had erroneously been based on a midpoint between 2001 and 2011. The housing completions analysis is consequently flawed and cannot be used to support a scenario that the two censuses were inaccurate to a significant extent in both directions and that 84% of the UPC could be attributable to census error.
39. In interpreting the Uncertainty Project results, the Appellant has misapplied the data. The project estimates the amount of unrecorded population in each year attributable to census error and to migration inaccuracies. Census error is a one-off mistake due to enumeration problems at the time of the Census. Migration errors are cumulative, occurring each year when the migrating population is assessed for the mid-year estimate. As a result, the error due to migration will inevitably increase year on year, whereas that due to the Census will not. The Appellant has used an average of the inter-census years 2002-10 to arrive at a 59% contribution from census error to UPC. However, such an assessment is not valid. Mr Veasey's table on page 23 of his proof clearly shows that by 2010 the Uncertainty Project attributed only about 40% of the error to Census enumeration and the proportion in 2011, when the Mid-year estimate was compared to the Census, would be even lower. He also accepted in cross examination that the census results were a more accurate representation of actual population numbers than the mid-year estimates.
40. Whilst the evidence suggests to me that the balance between UPC caused by census error as opposed to migration, used on behalf of the Council, is likely to have under-estimated the role of the Census, the Appellant's evidence is so discredited that its conclusions are very likely to be an exaggeration and certainly cannot be relied on.

Market Signals

41. The Appellant considers a 20% uplift, to account for market signals evidence, to be appropriate as opposed to the 10% included in the SHMA. To support this, the Appellant has analysed house price changes, changes in private rents and affordability ratios in recent years in Central Bedfordshire, comparing the results with those from Luton and England. There has been an upward trend in

all three since 2013, less so in England as a whole than in the Bedfordshire authorities.

42. At the time of the Inquiry the NPPG suggested that an adjustment for market signals should be assessed with reference to comparable demographic and economic areas. Luton, although a neighbour, is far from a comparable demographic and economic area. Additionally, the NPPG suggested other indicators relating to delivery that do not appear to have been considered by the Appellant. Whilst I accept that the SHMA only looked at market signals up until 2015 and affordability has worsened, in the circumstances I find that there is insufficient evidence to override the assessment undertaken on behalf of the Council on this point.

Housing Land Supply

43. The Appellant accepts that the 9,505 dwellings identified in the April 2018 Quarterly Housing Statement are deliverable. It only takes issue with one site, HT58, Land north of Houghton Regis, which it considers should be omitted because in its view the 620 dwellings being built are contributing towards meeting the housing needs of Luton and not Central Bedfordshire. The basis for this assertion is a statement in the Committee report justifying very special circumstances to grant planning permission for residential development on site HT58. The report refers to the *"substantial housing need, which arises not only from within the Central Bedfordshire area but also from its neighbour, Luton Borough"*.
44. Central Bedfordshire is to provide land in its LP to accommodate 7,350 dwellings as a contribution to the unmet needs of Luton. Nevertheless it is agreed that until the LP is adopted this requirement will not be added to Central Bedfordshire's FOAHN because that is meant to be policy off. That is the correct approach. However, if the demand side of the equation is to exclude Luton then so should the supply side. No comprehensive evidence as to how Central Bedfordshire's contribution to the unmet need of Luton is to be met was placed before the Inquiry. The Pre-submission Local Plan proposes a large site immediately adjacent to Luton Borough and east of the M1 for 4,000 new dwellings. However, that would accommodate little more than half of the requirement from Luton. In the absence of evidence to the contrary, one must therefore assume that some of the deficit will be provided on committed sites close to Luton such as HT58.
45. If insufficient houses are being built in Luton then some of its residents, who are unable to purchase a dwelling there because supply is not meeting demand, will inevitably look to the adjacent parts of Central Bedfordshire in order to satisfy their needs. Although not directly adjacent, the Houghton Regis site is close to Luton and the dwellings for sale will be as attractive to some of Luton's residents as a future home as they will be to residents of Central Bedfordshire.
46. The Council pointed out that 30% of the dwellings would be affordable homes and that the nomination rights are held by Central Bedfordshire and not Luton. Nevertheless, I agree with the Cranfield Inspector that *"an equation which compares a 'policy off' objective assessment of need against a 'policy on' supply is an unbalanced assessment"*. Consequently a proportion of the 620 dwellings currently committed north of Houghton Regis and expected to be delivered by 2023 are very likely to be contributing to meeting some of the

otherwise unmet housing needs of Luton. They should be included in a properly balanced calculation.

47. The Council's assessment indicates a supply of 9,505 dwellings to meet a five year requirement of 8,183. Consequently, even if the supply was reduced by the 620 dwellings suggested by the Appellant (a figure that is too high if the affordable housing being provided is not to contribute at all to Luton's unmet housing needs), there would still be significantly more than a five years supply. I conclude on the evidence before me that the Council has demonstrated a five year supply of housing land that is based on an appropriate assessment of the FOAHN within the relevant housing market area.

Accessibility

48. The only point of access to the site is off Sutton Road. This is geographically the furthest point within the development site from the services and facilities in the centre of Pottton and the local schools that are located to its west. In consequence anyone leaving a dwelling on the site, to visit the centre of Pottton, has to first travel east and then north to Bury Hill before travelling west to the town centre and beyond. For residents living close to the western edge of the site this would add a considerable distance to their journey.
49. In assessing the site's accessibility, the Appellant relies on the 'maximum' distances for walking, found in published documents, rather than the 'desirable' or 'acceptable' distances. By definition most people would not walk the maximum distances but would very likely use motorised transport if it was available. The maximum distances advanced for school children to walk are based on the distances at which the Education Authority is obliged to provide free transport to school. This is hardly an assessment of the maximum distances that some children would be prepared to walk. Indeed to suggest that many young children would be likely to walk anything like 2 km twice a day, with or without adult accompaniment, is not realistic. The reality is that some would walk the 'desirable' or acceptable distances put forward by the Council but even then not all of them.
50. Guidelines for Providing Journeys on Foot⁷ advises that for school trips an acceptable journey is 1 km and a desirable distance is 500 m. The distances to all of the schools in Pottton from the plots in the centre of the proposed residential development would be substantially higher than 1 Km. Manual for Streets⁸ in discussing walking neighbourhoods considers that there should be a range of facilities within 800 m. Planning for Walking (PFW)⁹ reaches the same conclusion. The Appellant only identifies a post box and a bus stop within this distance. Most other facilities are located at a considerably greater distance, the facilities within the town centre being over 1 km away.
51. PFW advises that pedestrian catchments depend upon the power of a destination and suggests a range of 400 m for bus stops. The parties now agree that the distance from the centre of the site to the bus stop on Bury Hill is about 450 m, which is 50 m further than the recommended maximum distance. In addition, the frequency of the service is limited and the evidence of third parties suggest that even these services do not connect appropriately

⁷ Institution of Highways and Transportation , 2,000.

⁸ Department for Transport, Department for Communities and Local Government, 2007

⁹ Chartered Institute of Highways and Transportation, 2,000

- with train services to London from Sandy, such that it is not convenient for commuters to use the bus as well as the train. This assessment does not suggest that even with the implementation of a travel plan it would be easy to persuade future residents at this site to make sustainable travel choices.
52. Section 9 of the Framework promotes sustainable transport. It requires the promotion of opportunities to use walking, cycling and public transport through the planning system and for it to actively manage patterns of growth in support of this objective. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.
53. In seeking to focus new development in places, which due to their convenient location and access to local facilities, promote sustainable travel patterns, Policy CS 4 is in full accord with this aspect of the Framework. Policy DM 3, which seeks high quality development through the incorporation of appropriate access linkages, including for pedestrians and cyclists, also accords with it, as does Policy DM 1, which requires new development to have good access to the transport network. The appeal proposal does not meet the sustainable travel objectives of these policies.
54. Furthermore, because of the locational considerations, the residents of the proposal would not easily interact with the rest of Potton, a requirement of paragraph 91 of the Framework.
55. The only access linkage proposed from this site travels away from all of the facilities in Potton and in the context of pedestrian movement it is not at all helpful in promoting this mode of travel. The access for pedestrians and cyclists to the transport network is not convenient and a development as proposed at the appeal site would not easily promote sustainable travel patterns. The development is significant and in the light of the above, I do not consider that it would achieve an accessible neighbourhood or one that was sustainable in this context. The proposal is in conflict with the above policies and the Framework objective of promoting sustainable transport. In my judgement substantial weight should be given to this weakness of the scheme.
56. I note that the Council has approved a scheme for residential development at Sandy Lane Potton with some distances to facilities even greater than those at Sutton Road. However, this was in different policy circumstances to this appeal and the Council appears to have secured pedestrian/cyclist access from the site to a potential footpath link towards the town centre along a disused railway line. This would reduce appreciably some of the walking distances. The site visit confirmed that there are multiple pedestrian accesses from Aldgate Road and one at the north-eastern corner of the Paddocks that avoid the need for pedestrians to take circuitous routes to the facilities in Potton from these housing sites.

Character and appearance

57. The appeal site is an open field that is not currently cultivated or grazed, such that it is beginning to become overgrown. It is bounded to the north by the ribbon development on the south side of Bury Hill, which was developed at a low density, mostly during the first half of the last century. To the west is a modern residential estate of a higher density than Bury Hill and there are properties fronting Sutton Road, along a part of the eastern boundary. The

- extensive southern boundary is open, there being a field immediately to its south and an extensive area of woodland beyond.
58. Despite the residential development, to the north and west, the site is open and essentially rural in character, as is the land to the north beyond Bury Hill. Having said that, it is somewhat contained by topography and development and is not a prominent feature in the landscape. The only point at which the site was noticeably visible is from Sutton Road adjacent to the site. It is nevertheless a part of the countryside, the character of which both DM 4 and the Framework seek to recognise, protect, and enhance.
59. Nevertheless, although outside of the Settlement Envelope, this is not a designated landscape of any kind and its loss would not seriously impact on the wider countryside landscape. Consequently, its loss should attract less than the moderate weight discussed above in the consideration of Policy DM 4.
60. The development along Bury Hill is an incongruous ribbon of development protruding into the open countryside for some distance. Despite the Council's assertions, I do not consider it to be a sensitive transition between the settlement and the open countryside. The rear gardens are deep and the plot sizes and density much larger and lower respectively than they would be on the appeal site. Some of the rear gardens and adjacent parts of the appeal site, have a preponderance of trees and shrubs so that the built development is not prominent and does not harmfully intrude into the rural view from Sutton Road across the appeal site. In such circumstances, although the grain of development and its scale would be different to that on Bury Hill and the two developments would not be integrated, they would not be read together and the appeal proposal would not be harmful in this context.
61. Whilst Policy CS 14 requires development to be of a high quality, local context can be respected through design and without copying the layout and density of existing built development. A detailed proposal for this site need not be contrary to Policy CS 14. A detailed scheme could respect the amenity of surrounding properties and a sense of place that respected local distinctiveness could also be established within the site. A detailed scheme need not be contrary to the design aspects of Policy DM 3.

Green Infrastructure and Biodiversity

62. The appeal site is not a part of a network of green spaces and I have not been referred to any proposals to include some or all of the site within such a designation. The revised notional layout demonstrates that the appropriate level of green infrastructure could be delivered within the site, in accordance with Policy DM 16. This would be a net gain and in accordance with Policy CS 17. However, as the Council rightly points out, given the walking distance before significant numbers of dwellings are encountered, it is unlikely that many people residing in the rest of Potton would come to avail themselves of green infrastructure provision within the appeal site. Its provision can therefore only attract minimal weight in favour of the proposal.
63. The Appellant pointed out that a scheme based on the March 2018 notional layout would provide a larger area of land to be used for "green" purposes and that some of these areas could be provided in such a way as to create wildlife habitats that would improve the biodiversity of the site. Whilst that may be so I agree with the Council's ecologist and am not persuaded that the

- development of the site with 80 dwellings or a not insignificant lower number would create overall net gains for biodiversity.
64. The Council could quite rightly argue that a development of this magnitude required the provision of open space upon which children could play ball games as well as formal play areas. Such areas are not noted for their contribution to biodiversity and their very existence would reduce the areas available for diverse use by wildlife. Also a development of this size would generate a sizeable population of domestic pets in close proximity to the wildlife that would not be conducive to its establishment and survival.
65. There is clearly wildlife on the site at the moment, both in the extensive area of unmanaged grassland that covers the site and in the peripheral trees, shrubs and hedgerows. A development of up to eighty houses would remove much of the grassland habitat and the population and domestic animals would disturb the birds and other creatures living in the peripheral vegetation to a far greater extent than they are now.
66. Whilst I accept that a more diverse wildlife population could be established and that this could enhance biodiversity as promoted by Policy DM 15, overall I consider that the proposed development would most likely result in net losses for biodiversity rather than longer term benefits, which is also a requirement of Policy DM 15. The links between the vegetation to the rear of Bury Hill and the open countryside, including the nearby woodland to the south would be fragmented. As such the proposal is not supported by Policy CS 18.
67. Although the Council has now agreed that biodiversity and green infrastructure are not matters that justify a refusal of planning permission that is not the same as suggesting that the proposal should be given weight because of a positive contribution to green infrastructure and biodiversity. In my judgement the revised scheme would be at best neutral in this context.

Other Decisions

68. The Appellant and Council have referred me to eleven other recent appeal decisions in Central Bedfordshire. They were all proposals for housing development and the issues of housing land supply and up-to-date policies were considered to a greater or lesser extent at each of them. The outcomes were not consistent in the context of the assessment of these issues and a number of the decisions have been challenged. Whilst I have read and had regard to all of them, I have not specifically referred to any of them in my decision above.
69. I was also referred to a decision in Aylesbury Vale¹⁰ but the circumstances do not seem to me to be directly comparable with the situation at this appeal site in Central Bedfordshire.
70. With the exception of the Taylor's Road Stotfold appeal, all of the decisions were issued before the revised Framework was published. Part d) of paragraph 11 refers to there being no relevant DP policies or the policies which are most important for determining the application being out-of-date. This is a different wording to that contained in paragraph 14 of the 2012 Framework, against which all of the other appeals were assessed.

¹⁰ Appeal ref: APP/J0405/V/16/3151297 Land west of Castlemilk, Moreton Rd, Buckingham MK18 1YA

71. Furthermore, it is rarely the case that the circumstances and evidence that led to other appeal decisions are so similar as to significantly influence the outcome of an appeal and that is the position here. I have determined this appeal on the merits of the evidence put before me by all of the parties and have given minimal weight to the overall outcome of the other appeals referred to me. Nevertheless, my reasoning with regards to policies DM 4 and CS 5 is broadly similar to that contained in the Taylor's Road Stotfold decision.
72. I was also referred to a number of High Court decisions, which I have had regard to in formulating my decision. However, apart from the Cawrey, Gladman and Suffolk Coastal judgements referred to above and the matters of law that some of the others resolved and which I have followed, the respective cases were not so similar to this appeal proposal for them to further influence the outcome of this appeal.

Planning balance and overall Conclusion

73. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the DP unless material considerations indicate otherwise. Part d) of paragraph 11 of the Framework would be an important material consideration if there were no relevant DP policies or the policies which are most important for determining the application are out of date. In such circumstances the tilted balance would be applied.
74. However, there are a number of relevant DP policies that the Council used to refuse the application. Additionally, I have found that Policy DM4 is not out of date, that the Council can demonstrate a five year supply of housing land and so the relevant policies for the supply of housing are not out of date in that context. Furthermore, Policy CS 5 is not one of the most important for determining the application and is no longer relevant. Consequently, the tilted balance is not invoked and the proposal should be judged against the DP.
75. The proposal would not achieve an accessible neighbourhood or promote sustainable travel patterns as required by Policy CS 4. It would be in conflict with the accessibility aspects of policies CS 4, DM 1 and DM 3 and the Framework objective of promoting sustainable transport.
76. Although not located within a designated landscape, the proposal would nevertheless not protect or enhance the character and appearance of the local countryside and is contrary to Policy DM 4. Whilst there would be a net gain in green infrastructure and the site's biodiversity could be improved, in accordance with Policy CS 17, DM 15 and DM 16, the existing biodiversity network would be reduced, and probably prejudiced, which is contrary to Policy CS 18. It is unlikely that there would be overall long term benefits for wildlife as required by Policy DM15. On balance I consider the proposal to be contrary to the thrust of the relevant DP policies.
77. I give substantial weight to the development's failure to meet the Framework's objective to promote sustainable transport through new development. I recognise that the addition of a further 80 dwellings, of which 35% would be affordable housing, to the area's housing stock would bring economic and social benefits to the area. However, the weight that I could give to these is moderated by the fact that the District's housing needs are currently being met through the delivery of other sites. In my judgement these overall benefits do

not outweigh the harm resulting from the accessibility of the site. Overall the environmental benefits and impacts of the scheme would weigh against the proposal to a small extent. I therefore find that on balance the development as proposed would not be sustainable development within the meaning of the Framework and that the changes to the proposal necessary to make it such are not capable of resolution through conditions. Consequently the harm to the Development Plan is not outweighed.

78. The other material considerations, to which I have been referred, including the extensive array of other appeal decisions, do not indicate that planning permission should be granted. For the reasons discussed above I therefore find that the appeal should be dismissed.

M Middleton

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Ian Ponter	Instructed by Nexus Planning
He called	
Dominick Veasey BA, Dip TP, MRTPI	Town Planner
Sara Boland BA, DipLA, CMLI	Landscape Architect

FOR THE COUNCIL:

Alexander Booth	Instructed by Central Bedfordshire Council
He called	
Jonathan Lee BSc	Statistical Planner
Philip Hughes BA, MRTPI,	Town Planner

INTERESTED PERSONS:

David Rowell	Potton resident
Mrs J Andrews	Local resident
Adam Zerney	Local Councillor
John Hobbs	Potton Town Council

DOCUMENTS SUBMITTED TO THE INQUIRY

- 1 Supplementary Statement of Common Ground (Biodiversity and Green Infrastructure)
- 2 Appeal notes submitted by David Rowell
- 3 Appeal notes submitted by Mrs J Andrews
- 4 Appeal notes submitted by John Hobbs on behalf of Potton Town Council
- 5 Memorandum from the Council's ecologist (Liz Anderson) to Donna Lavender (Principal Planning Officer) about the ecological implications of the revised notional layout, submitted by Mrs J Andrews
- 6 Representation from Central Bedfordshire Council to the Luton Local Plan Examination about the objectively assessed need for housing, submitted by the Council
- 7 Assessment of affordable housing need in the Luton and Central Bedfordshire Strategic Housing Market Area, submitted by the Council
- 8 Statement about the nomination rights of the affordable housing provision at site HT0058 – Land North of Houghton Regis, submitted by the Council
- 9 Committee report, re application CB/16/02590/OUT, land to the south of Sandy Road, Potton, submitted by the Appellant
- 10 Appeal decision, ref: APP/J0405/V/16/3151297, land west of Castlemilk, Moreton Road, Buckingham, submitted by the Council
- 11 Suggested conditions
- 12 Revised conditions
- 13 Planning obligation submitted by the Appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 14 Revised appeal decision re: APP/P0240/W/17/3176387, Land west of Astwick Road, Stotfold
- 15 Appeal decision ref: APP/P0240/W/16/3164961, Land between 103 and 27 Langford Road, Henlow
- 16 Council's observations on the Langford Road, Henlow appeal
- 17 Appellant's observations on the Langford Road, Henlow appeal
- 18 Appeal decision ref: APP/P0240/W/17/3190779, Bayley Gate Farm, College Road, Cranfield
- 19 Council's observations on the Bayley Gate Farm, College Road, Cranfield appeal
- 20 Appellant's observations on the Bayley Gate Farm, College Road, Cranfield appeal
- 21 Council's observations on the revised National Planning Policy Framework
- 22 Appellant's observations on the revised National Planning Policy Framework
- 23 Appeal decision ref: APP/P0240/W/16/3166033, Land off Taylor's Road, Stotfold
- 24 Council's observations on the Taylor's Road, Stotfold appeal
- 25 Appellant's observations on the Taylor's Road, Stotfold appeal

PLANS SUBMITTED TO THE INQUIRY

- A Central Bedfordshire Local Plan, Proposed Submissions Policies Map, submitted by the Appellant
- B Central Bedfordshire Local Plan, Allocations north-west of Luton, submitted by the Council
- C Land off Sandy Lane, Pottton, site plan, submitted by the Appellant
- D Land off Sandy Lane, Pottton, layout plan, submitted by the Appellant