



Appeal Decision

Hearing Held on 16 January 2019

Site visit made on 15 January 2019

by Louise Phillips MA (Cantab) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2019

Appeal Ref: APP/J0405/W/18/3203307

Land north of Leighton Road (Easting 490025; Northing 226098)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Newman, Paul Newman Homes Limited, against Aylesbury Vale District Council.
 - The application Ref 17/03956/AOP, is dated 13 October 2017.
 - The development proposed is residential development (C3) comprising 50 dwellings (50% open market, 50% affordable), associated roads, drainage, car parking, servicing, footpaths, cycleways, public open space/informal open space and landscaping.
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Decision

1. The appeal is dismissed and planning permission for residential development (C3) comprising 50 dwellings (50% open market, 50% affordable), associated roads, drainage, car parking, servicing, footpaths, cycleways, public open space/informal open space and landscaping is refused.

Preliminary Matters

2. The application was made in outline with all matters reserved except for access. Approval is sought for the Site Location Plan (C9915.16.001A) and the Proposed Access Strategy (5295/SK/201C), while the Sketch Appraisal (1405-01C) is provided for illustrative purposes. My decision is made on this basis.
3. The appeal is against the failure of the Council to determine the application within the prescribed period and so there is no decision notice. However, the Council's delegated report¹ sets out two reasons for which it would have refused planning permission had it been in a position to do so. The first concerns the effect of the proposed development upon the character and appearance of the area and this has informed the first main issue of the appeal.
4. The second relates to the absence of planning obligations to secure the provision of (or financial contributions towards) affordable housing, open space, flood compensatory measures and the maintenance of a Sustainable Drainage System, education, and highway improvements. However, an executed Unilateral Undertaking (UU) was submitted at the hearing which addresses the Council's concerns in this respect. The appellant does not

¹ Case Officer Report and Recommendation, dated 16 November 2018, paragraph 1.7.

dispute the need for any of the obligations made in the UU and so this matter is not a main issue for my decision.

5. A draft Statement of Common Ground was provided by the appellant at the hearing but as this has not been signed, it carries little weight in my decision.

Main Issues

6. In light of the above, the main issues are:
 - The effect of the proposed development upon the rural character and appearance of the site and wider area; and
 - Whether the Council has a five year land supply for housing as required by national planning policy.

Reasons

Character and Appearance

7. The appeal site is a field on the north side of Leighton Road lying between the A4146 bypass to the west and the large urban area comprising Linslade and Leighton Buzzard to the east. The eastern boundary is with a single residential property, "Westholme", but the site is otherwise surrounded by fields and woodland. The administrative boundary between Aylesbury Vale District Council and Central Bedfordshire Council runs along the northern boundary of the site.
8. The development plan consists of saved policies in the Aylesbury Vale District Local Plan (AVDLP) which was adopted in 2004 and covers the period to 2011. There are no policies in this plan which restrict development in the location of the appeal site absolutely. Whilst Policies RA.13 and RA.14 seek to limit residential development to 5 dwellings either within or on the edge of specific rural settlements, the appeal site is neither within nor on the edge of any one of them. Consequently, these policies are not relevant to my decision.
9. Conversely, Policy GP.35 clearly relates to the effect of development upon the character and appearance of an area, which is a main issue in this case. Some of its provisions concerning design, form and materials are more relevant to a full or reserved matters application, but those concerning the physical characteristics of a site and its surroundings, the natural qualities and features of the area and the effect on important public views and skylines are directly relevant to the fundamental question of whether a satisfactory development can be achieved in principle. Policy GP.35 is therefore relevant to my decision on this outline proposal and, despite its age, its aims are consistent with those of the National Planning Policy Framework July 2018 (the Framework) in respect of achieving well-designed places and conserving and enhancing the natural environment. I therefore give it full weight.
10. The appeal site is very close to the substantial bypass to the west and to the built up area to the east, but neither are prominent in its immediate vicinity due to the local. The land slopes quite steeply down from Linslade across much of the site before rising again towards the bypass from a low point at Valley Farm, while the site itself also rises up from the road to the north. The lie of the land combined with the bend of the road means that Linslade is not seen on the western approach from the bypass until one is almost upon it at the top of the hill, and this creates a very strong settlement edge.

11. Moreover, the stretch of Leighton Road between the bypass and Linslade is bordered by fields on both sides, there is no development except for a few buildings at Valley Farm, and it has no footways or street lighting. The area is therefore essentially rural in character and this contrasts markedly with the urban form to the east. Whilst there is nothing exceptional about the nature of the appeal site itself, it makes an obvious and important contribution to the wider undulating rural landscape which surrounds the settlement up to the bypass and beyond.
12. The proposed development of 50 homes and associated outbuildings and infrastructure on the site would be at odds with the prevailing rural character described. The scale of the development and its density would be more akin to that found within Linslade itself than that along the rural approach, yet the housing would very clearly be beyond the settlement edge. The position of the proposed access in the south-western corner of the site, furthest from Linslade, would emphasise the separation between the new and existing development; as would the need for additional pedestrian infrastructure to serve it. In particular, the 3m wide foot/cycleway required along the south side of Leighton Road would be an urbanising feature in place of the existing green verge.
13. The topography of the appeal site affords it something of a bowl shape and this, along with the existing and proposed vegetation along the boundaries, would eventually contain the development in the wider landscape to a significant degree. Indeed the development would not be conspicuous in longer distance views as shown accurately in the appellant's photomontages; and the Sketch Appraisal demonstrates a clear appreciation of the need for extensive landscaping and low-rise buildings. However, even with such mitigation, the development would be clearly apparent in near views in Leighton Road, particularly from the west. From here, it would appear to unnaturally extend the settlement and encroach upon the countryside.
14. For these reasons, I conclude that the proposed development would be harmful to the rural character and appearance of the area. Thus it would conflict with Policy GP.35 of the AVDLP, particularly in terms of its requirements for development to respect and complement the physical characteristics of the area; the form of the locality; and important public views.

Housing Land Supply

15. As the AVDLP is more than five years old, the requirement against which the Council's five year housing land supply should be measured is the local housing need (LHN) for the District determined by the standard method in the Planning Practice Guidance (PPG). The relevant five year period is 1 April 2018 – 31 March 2023. Notwithstanding that the 2016-based household projections result in a higher LHN than the 2014-based projections for Aylesbury Vale, having regard to the Government's recent consultation², the parties agree that the latter represent the appropriate basis for the calculation. They also agree that a 5% buffer should be added to the five-year requirement.
16. The parties disagree about whether 413 dwellings should be added to take account of under-delivery between 2014 and 2018. On this point, paragraph 017 of the PPG is clear that under-delivery does not need to be addressed

² Technical Consultation on updates to National Planning Policy and Guidance, 26 October 2018.

- separately when calculating the LHN³ because an affordability adjustment is made to take account of this. By contrast, paragraph 044 does indicate that past deficits could be taken into account in establishing the five-year supply requirement⁴.
17. However, paragraph 044 concerns plan-making rather than decision-taking and sets out various options for addressing deficits to be considered through the plan-making process. For decision-taking purposes, the Framework's simpler test of using the LHN if plans are older is the appropriate one. Indeed, because the affordability adjustments are to be updated every year⁵, under-delivery will be taken into account on an ongoing basis. Consequently, the five year requirement for the purpose of this appeal is 7,618 dwellings⁶.
 18. Turning to supply, the Council has based its assessment on its Housing Land Supply Soundness Document, June 2018, prepared to support the emerging Vale of Aylesbury Local Plan, known as the VALP. Whilst paragraph 1.4 of this document explains that it should not be used for assessing planning applications, this is because the housing requirement figure in the VALP had not been tested through examination at the time it was published (see paragraph 1.2). As explained above, the LHN provides the relevant requirement here.
 19. The hearing part of the examination has now finished, and the Inspector has issued Interim Findings to advise the Council about how he currently considers the plan should be modified to make it sound⁷. The Interim Findings are not the final say on whether the housing trajectory set out in the VALP is sound, but it is significant that they suggest no modifications which question its deliverability, either overall or at the level of individual sites. Thus it is reasonable in principle to use the VALP trajectory as the starting point for assessing the Council's housing land supply.
 20. On the basis of the VALP trajectory, the projected five year supply is 9,234 dwellings. However, having regard to the Framework's definition of a "deliverable" site, I am not satisfied that there is a realistic prospect of housing being delivered within five years on the following sites: 3; 4; 5; 6; 7; 8; 16; 21; 22; 23; 24; and 25⁸. In these cases, various factors including uncertainty about when full planning applications will be submitted and a lack of specific, up to date information about the progress of the schemes, indicate that the Council's delivery assumptions are not supported by clear evidence that housing completions will begin when expected. Consequently, 246 dwellings should be deleted from the five year supply, leaving 8,988.
 21. With regard to the other disputed sites, the recent, more detailed information provided does represent the clear evidence necessary to demonstrate a realistic prospect of housing being delivered within five years, including in respect of lead-in times and completion rates. Moreover, notwithstanding that the VALP is being examined under the 2012 version of the Framework, the definition of "deliverable" therein also requires there to be a realistic prospect

³ PPG Paragraph 017 Ref ID 2a-017-20180913.

⁴ PPG Paragraph 044 Ref ID 3-044-20180913.

⁵ PPG Paragraph 009 ref ID 2a-009-20180913.

⁶ Hearing Document 2 - AVDC Statement on Housing Land Supply, 15 January 2019: Table 3, Green Column.

⁷ Interim Findings, 29 August 2018; and Discussion Document, 2 December 2018.

⁸ Site references from Hearing Document 3 - AVDC Comment on sites where delivery is being challenged by DPDS, January 2019.

of housing completions on site within five years. The Inspector's recent consideration of this matter raises no concerns and this gives me sufficient confidence for the purpose of this appeal.

22. Therefore, by comparing the five year housing requirement of 7,618 dwellings to the supply of 8,988, I conclude that the Council is able to demonstrate a five year land supply for housing as required by national planning policy.

Other Matters

23. As stated above, a UU was submitted at the hearing which addresses the Council's concerns in respect of affordable housing and the other services and facilities listed. The provision of affordable housing, and additional housing generally, would clearly be a benefit of the development regardless of the housing land supply position. The fact that the appellant is offering more affordable housing than the proportion required by Policy GP.2 of the AVDLP would also go some way towards offsetting the effect of other developments providing less on viability grounds. This matter weighs in favour of the proposal in the planning balance.
24. Similarly, the economic benefits of the development in the form of the New Homes Bonus, increased employment opportunities during construction and the spending power of additional residents weigh in the scheme's favour. However, the environmental enhancements (including additional tree planting) and increased public access to and through the site which would result from the development represent neutral factors in light of the harm which would be caused to the character and appearance of the area.
25. Interested parties have raised concerns including the effect of the scheme on traffic on Leighton Road and near local schools, biodiversity including hedgerows and the capacity of the sewerage system serving Bideford Green and Derwent Road. However, the balance of the evidence suggests that these matters are either not problematic, or are capable of being addressed through conditions. In any case, they are not determinative of the appeal.

The Planning Balance and Conclusions

26. I have found that the Council can demonstrate a five year supply of deliverable housing sites as required by paragraph 73 of the Framework. Therefore, the planning balance set out in paragraph 11d of the Framework is not engaged by this particular trigger. It is not engaged by there being no relevant development plan policies because Policy GP.35 of the AVDLP is relevant. Indeed apart from Policy GP.2 concerning affordable housing, it is the only policy relevant to my determination of the appeal. With the exception of policies RA.13 and RA.14 discussed above, neither party referred to any other policy during the hearing. Policy GP.35 is not "out of date" and so paragraph 11d of the Framework is not engaged because the policies most important for determining the application are out of date.
27. The appellant contends that paragraph 11d should apply because its (non-specified) housing policies are "time-expired", and I note that this position has been adopted in some, but not all, of the appeal decisions referred to by the Council in Appendix 6 of its Statement. However, my decision is taken on the basis of the present Framework, July 2018. At footnote 7, this sets out specific circumstances in which paragraph 11d is engaged by the five year housing land

supply position by reference to paragraph 73. This in turn provides a specific mechanism for measuring the existence or otherwise of a five year supply in situations where plans are more than five years old. This whole process would be unnecessary if paragraph 11d of the Framework is intended to be engaged simply because a plan is "time-expired".

28. For these reasons, the planning balance set out in Section 38(6) of the Planning and Compulsory Purchase Act is the one to be applied in this case. I have found that the proposed development would harm the rural character and appearance of the area causing conflict with Policy GP.35 of the development plan. This conflict carries significant weight in my decision. The provision of housing, and affordable housing in particular, is a material consideration in favour of the proposal. However, because the Council complies with national policy in respect of housing delivery, this consideration does not outweigh the harm I have found. Similarly, taken together with the housing benefit, the more general economic benefit of the proposal does not outweigh the specific harm I have found.
29. I therefore conclude that the proposal should be determined in accordance with the development plan and it follows that the appeal should be dismissed.

Louise Phillips

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

C Lockhart-Mummery QC	Landmark Chambers
N Arbon BA(Hons), Dip TP, MRTPI	DPDS Consulting Ltd
L Durrant Dip TP, MRTPI, FRICS, MInstD	DPDS Consulting Ltd
P Griffiths BSc(Hons), Dip LA, CMLI	DPDS Consulting Ltd
A Cattell	Paul Newman Homes

FOR THE LOCAL PLANNING AUTHORITY:

I Tafur	FTB Chambers
S Hackner	Aylesbury Vale District Council
D Broadley	Aylesbury Vale District Council
L de la Mothe	Aylesbury Vale District Council
J Bellars	Aylesbury Vale District Council
J Houston	Aylesbury Vale District Council

DOCUMENTS

1. Statement of Common Ground, January 2019 (unsigned).
2. AVDC Statement on Housing Land Supply, 15 January 2019.
3. AVDC comment on sites where delivery is being challenged by DPDS, January 2019.
4. S106 Planning Obligations – CIL Compliance Schedule.
5. 3x A4 Location Maps comparing appeal site to previously appealed sites.
6. A3 Map showing site in relation to Green Belt proposal in emerging VALP.
7. Letter from Sage Housing to appellant, 8 January 2019.
8. Draft Conditions.
9. Executed S106 Planning Obligation (duplicate copy).