



Appeal Decision

Inquiry Held on 14 May to 16 May 2019

Site visit made on 16 May 2019

by Richard Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th June 2019

Appeal Ref: APP/P0240/W/18/3211493

Bury Spinney, Thorn Road, Houghton Regis LU5 6JQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr S J Worts against the decision of Central Bedfordshire Council.
 - The application Ref CB/17/04108/OUT, dated 24 August 2017, was refused by notice dated 23 July 2018.
 - The development proposed is described as '*Residential development for up to 100 dwellings with all other matters except access reserved. The proposed development is within the designated HRN2 site earmarked for development as part of the northern expansion of Houghton Regis*'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline, with only access to be considered. Although the submitted site plan¹ is not marked 'Illustrative' or 'Indicative', because only access is before me, I have determined the appeal on the basis that it shows only one option for the layout of the development applied for. The Inquiry sat for 3 days from 14 May to 16 May 2019. On the final morning I visited the site and the immediate area on an accompanied basis and I carried out an unaccompanied site visit before the Inquiry.
3. The third reason for refusal refers to the absence of a completed legal agreement securing financial contributions to offset the infrastructure effects of the proposal and 'sub-standard' provision of affordable housing. A draft planning obligation in the form of a S106 Legal Agreement ('the S106') was submitted before the Inquiry but due to the need for signatures I agreed a period of time for the completed version to be submitted following closure. A S106 dated 17 May 2019 was duly received and I return to this below.
4. There is no dispute that the proposal lies within the Green Belt and there is no relevant Green Belt policy in the South Bedfordshire Local Plan Review 2004 ('the LP'). Consequently, the parties agree that it would be inappropriate development as defined in the National Planning Policy Framework ('the Framework'). I agree and in accordance with paragraph 144 of the Framework I attach substantial weight to this harm.

¹ 13060SK1.10 Rev A.

5. The Council also confirmed at the Inquiry that subject to conditions regarding the timing and delivery of development, in order to coincide with provision of the necessary infrastructure, that they would no longer pursue reason for refusal 2 relating to accessibility. I have had regard to this in the determination of the appeal.

Main Issues

6. Given the above, the main issues are:
- The effect on the openness of the Green Belt.
 - Highway safety.
 - Whether the proposal makes adequate provision for the infrastructure needed to support the development.
 - Whether the harm, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the proposal.

Reasons

The appeal site and surrounding context

7. The appeal site comprises predominantly open grassland extending to some 3.3 hectares with some indication of use by motorcycles. In roughly the front third of the site are 3 dwelling houses and outdoor storage of building and other materials. Mature soft landscaping exists along some of the site's boundaries which contain a number of mature trees. Larger parts of the southern section of the site are devoid of any boundary treatment allowing views into the site from adjoining land and public footpaths. Overall, the prevailing openness of a large part of the appeal site is an attractive natural feature.
8. The site contains a number of enclosures consisting of post and rail or close boarded fencing and domestic paraphernalia along with parked vehicles. The Ouzel Brook runs adjacent to the southern boundary of the appeal site with rights of way along the eastern edge leading into the wider network in the surrounding area. Despite my attention being drawn to a commercial use in the appellant's evidence, the appellant confirmed at the Inquiry that there was no lawful commercial or other non-residential use on the appeal site.
9. Land around the appeal site comprises part of the Bidwell West – Houghton Regis North Two ('HRN2') site which benefits from outline permission for 1850 dwellings and non-residential uses including employment space, a new primary school and local centre. Since the Council determined the application the subject of this appeal it has given Reserved Matters approval² for 97 dwellings on the land to the immediate west of the appeal site. Further development is also due to commence or is being considered by the Council on various parcels within HRN2.

² LPA ref: CB/18/00811/RM.

Emerging planning policy

10. The examination of the emerging local plan for Central Bedfordshire pre-submission version ('the ELP') commenced on 21 May 2019. The ELP proposes to take land to the north of Houghton Regis out of the Green Belt and this potentially includes the appeal site. In the Statement of Common Ground, the parties agree that limited weight can be afforded to the ELP albeit there is disagreement as to the weight to be afforded to Policy SA5, Houghton Regis North Strategic Allocation. I return to this policy later but in general terms the ELP has not yet been subject to examination and I do not know the extent to which there are unresolved objections to the relevant policies. Having regard to paragraph 48 of the Framework I agree that the ELP, as a whole and at this stage, carries no more than limited weight.

Openness of the Green Belt

11. Openness can be assessed having regard to both spatial and visual aspects. In spatial terms the proposal would introduce a substantial amount, array and variety of built form on to a site which is generally open and free from any significant development. Even in the context of surrounding reserved matters approvals being implemented the appellant admits that the openness of the site would be 'very substantially'³ reduced. In any reasonable assessment there would be a further permanent change and reduction to the openness of this part of the Green Belt.
12. Turning to the visual dimension, the Design and Access Statement suggests there would be a mix of house types and sizes including a range of flats, semi-detached and detached dwellings. Notwithstanding the fact that scale and layout would be considered at a later stage, it is clear that the site would take on a much more built-up character than it currently has. This change would be readily apparent to users of public footpaths in the locality, which allow for clear views from the east and south.
13. Notwithstanding its locational context and impending residential and commercial development on neighbouring HRN2 sites, to which I return below, there would be a greater impact on openness both in spatial and visual terms resulting in a clear intrusion into this part of the countryside. This would be exacerbated by substantial areas of hard surfacing comprising roads, pavements, hardstanding, street lighting and associated residential paraphernalia. There would also be additional activity and movements which would further affect openness.
14. The effect of development as encroachment on the countryside may be in the form of loss of openness or intrusion and through the loss of openness, there can be an intrusion or encroachment into the countryside, the safeguarding of which is one of the 5 purposes of Green Belt. Through its creation of substantial built form and 'very substantial' reduction of openness it would not safeguard the countryside from encroachment. In terms of the weight to be afforded to this in Framework terms I return to this below given the circumstances of this appeal in the context of the ELP and the HRN2 situation on the ground.

³ JP in XX.

15. I consider that the loss of openness resulting from the appeal scheme would conflict with Policy BE8 (i) of the LP insofar as it requires natural features which are an attractive aspect of a site to be protected and conserved. The appellant has suggested this policy does not relate to outline proposals and this is a matter I return to in the planning balance below.

Highway safety

16. Thorn Road is a 2 way through road with a carriageway width of 6.2m and with no footpath on either side. It is to be narrowed to 4.8m with a 2.5m shared footway and cycleway installed for its length on its southern side with a 30mph speed limit. A 2.0m wide footway is to be constructed along the northern side of Thorn Road in front of the local centre and phase 3, leaving just a verge along the frontage of the appeal site. The approach to the 'downgrading' of such a road following the completion of the M1-A5 link road to the immediate north is to discourage through traffic.
17. This section was intended to provide access to 2 parcels of land within HRN2 and to serve 235 dwellings plus existing uses. Further, the HRN2 highway mitigation package is being implemented including provision of a Pegasus crossing and part of the cycleway to the west and serving other development parcels. The remainder of the highway works are required before 500 dwellings are occupied in HRN2.
18. The parties do not agree as to the correct classification for Thorn Road as set out in the Council's Design Guide 2014⁴ ('the DG'), the purpose of which is to inform decision making by ensuring highway safety. It sets out typical characteristics of streets within a framework of a hierarchy of street types and is guidance only. A 'Main' street, which the appellant prefers, typically serves more than 300 dwellings, over 200 vehicles per hour peak flow, accommodates a bus route and transiting vehicle traffic. The Council contend it should be classified as an 'Access' street, serving up to 300 dwellings, no more than 200 vehicles per hour peak flow and accommodating a bus route or vehicle traffic generated from minor streets.
19. The appeal site does not have a typical context and on my reading, this is not a case where Thorn Road sits comfortably or squarely within either category as there are a number of factors in both the characteristics and design parameters that weigh in favour of the arguments of both parties as to its most appropriate classification. The Buchanan study⁵ I have been referred to does not assist given its age, lack of reference to carriageway width and because I do not have the full report
20. In any event, a definitive conclusion on its classification and the use of peak flows as opposed to average peak flows is not necessary in this case because the breach of a threshold in guidance does not automatically equate to harm to highway safety. This is a matter of judgment as to the nature and likely occurrence and frequency between users of the highway and in this case, within a road that has already been designed, agreed and will be delivered.
21. The increase in traffic would not achieve the Council's objective of downgrading Thorn Road per se. However, the increase in peak hourly flows is somewhat insignificant in comparison to the traffic predicted to use Thorn Road and would

⁴ Design in Central Bedfordshire.

⁵ Traffic in Towns, Colin Buchanan et al, 1963.

- amount to approximately 1 additional vehicle movement every 2 minutes or so. The proximity of the wider highway network to either end of Thorn Road would assist in dissipating the volume of traffic generated by the development fairly quickly and a significant amount is likely to be transiting traffic. I have had regard to a scheme for 50 dwellings at Oakwell Park but that does not have planning permission and even if it did, the increase would not be significant and overall, Thorn Road could accommodate the increase in traffic generated.
22. The number of HGVs using the road would not be material due to the future weight restriction of 7.5 tonnes. However, there are other goods vehicles and, on my reading, there is no implication in *Manual for Streets*⁶ that on a 4.8m carriageway lighter goods vehicles could pass within the confines of the reduced carriageway. Such standards are not solely determinative but my own observations of the proposed reduction in width of the carriageway at my visit, was that wider modern day delivery vehicles, larger van or goods vehicle under the weight limit would not have sufficient space to pass safely and without coming into contact on the carriageway.
 23. In terms of the likely effects, the appellant conceded that in such cases the vehicle would have to mount the already below standard shared footway/cycle way (even for a Main street) to be able to avoid such 'side swiping'. Any mounting of the kerb and footway would clearly increase the risks of conflict between vehicles, pedestrians and cyclists. Some drivers would modify their behaviour in a safe manner, the footway is sufficiently wide and the straight alignment would assist in drivers being able to see oncoming pedestrians and cyclists. Given the likely low frequency of such conflict occurring such conflicts should be capable of being avoided, as will be the case for such vehicles accessing surrounding residential development.
 24. The change in character from an internal estate road with activity associated with the dwellings in terms of vehicle and pedestrian movements would be in contrast to the relatively straight and rural section of Thorn Road when exiting the proposed access. Driver behaviour could be erratic due to this change in character due to a sense of less speed restrictions, no street lighting and its straight alignment. However, most drivers would be aware of the conditions although an estate of 100 dwellings would also attract a number of visitors some of which would be likely to be unfamiliar with the local highway network. In this regard there would be no material effect on highway safety.
 25. In reaching this view, I am also mindful that traffic flows on Thorn Road for HRN2 already exceed 200 vehicles per hour and this issue was not raised or highlighted to the Council in granting permission on nearby sites. I am not bound by those decisions however and I must reach my own conclusions based on the evidence before the Inquiry.
 26. Having done so and taking everything together, there would be an increased risk of conflict between users of the highway but the frequency and likelihood of these occurring would be very low. There is no relevant development plan policy before me but paragraph 109 of the Framework requires development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. For the purposes of this Green Belt appeal this is 'other harm' that weighs minimally against the scheme but the

⁶ Illustration 7.1 - *Manual for Streets*.

impact would not be so unacceptable or sufficient that the development should be refused on highway grounds alone.

Infrastructure

27. The Council accepted the viability assessment of the appellant submitted at the application stage, which it independently tested. It concluded that only 10% affordable housing can be delivered set against a development plan requirement of 30% and in this regard, there would be compliance with Policy H4. The issue between the parties at the Inquiry is whether the total amount of financial contributions that were to be provided are sufficient to address the infrastructure needs of the proposal, particularly with regard to leisure, off site sports and additional education contributions.
28. Following the refusal of planning permission, the cost per pupil place multiplier changed⁷ and it appears this only came to light when the Council's witness reviewed the case for the appeal. The uncontested shortfall in the financial contributions would result in a shortfall of 7 education places although this is contingent on the mix of units and could increase to a shortfall of 33. Further sums of £86,167 for leisure facilities and £31,597 for off-site sport pitch facilities are required but are not provided for in the S106.
29. The Council's uncontested evidence sets out the detailed background and justification for each of the obligations in terms of their necessity, relationship to the appeal scheme and their reasonableness and that the existing facilities do not have capacity to meet the requirements of the population that would reside in the appeal development. On the evidence before me the obligations that the Council is seeking would accord with the provisions of Regulation 122 of the CIL Regulations 2010 and the tests for planning obligations set out in the Framework.
30. I understand that the timing of the change to the calculation of education contributions was not helpful to the appellant. Nevertheless, the merits of that matter are not in dispute. The effect of allowing the appeal on the terms sought would be that necessary provision for education, leisure facilities and sports pitches would not be secured. I have had regard to national policy and practice guidance in general but just because the viability assessment was accepted this does not automatically equate to the contribution being acceptable, not least because of a material change in circumstances. Although the appellant contends the scheme is contributing all it can there is nothing before me to suggest there are no alternative schemes.
31. Overall, the scheme fails to mitigate its effects by providing financial contributions required to make it acceptable in planning terms. It would not make adequate provision for the infrastructure needed to support the development and would fail to fulfil the social dimension of sustainable development. It would therefore conflict with the Framework insofar as decisions should aim to achieve healthy, inclusive, and safe places including provision of safe and accessible sports facilities and provision of social, recreational and cultural facilities that such a community would need. Even in the context of an agreed viability assessment, this failure weighs significantly against the proposal given the extent of under provision.

⁷ PH PoE – 0.04 pupils per dwelling per year group to 0.06.

Other considerations

32. Turning back to the issue of the ELP, future purpose and what is happening on the ground within HRN. At this point in time the appeal site is excluded from the HRN2 outline permission and is Green Belt. I must determine this appeal on the basis of local and national policy in force at the time of my decision and the ELP is not adopted. Further, having regard to paragraph 48 of the Framework I have not been provided with any evidence by either party of the level of unresolved objections or the degree of consistency of relevant policies with national policy.
33. Although one statutory consultee may not have objected to the appeal proposal, this does not fully address other concerns highlighted to me in evidence relating to multiple representations concerning the wider drainage and sewerage functions and other infrastructure concerns, let alone those relating to the level and quantum of housing and the role of the appeal site. The fact that no interested persons attended the Inquiry is not decisive and has no bearing on the weight to be afforded to it.
34. The appellant has referred to consistency of approach in terms of the application of Policy SA5 and my attention has been drawn to a number of decisions made by the Council on sites within the wider Green Belt and the appeal site⁸. However, the example on the appeal site for a single detached dwelling⁹ is plainly not directly comparable to the appeal scheme in terms of scale of development and the necessary planning considerations and judgements that would have been needed to be weighed in the balance, not least in terms of effects on openness.
35. The planning context also appears to me to have not been directly comparable, particularly in terms of housing land supply matters and clearly weight to be attributed to the various considerations are matters for the decision maker. Moreover, they all appear to be for either substantially larger or smaller scales of development and are not therefore directly comparable.
36. These approvals indicate permission has been granted for residential development in advance of the formal adoption of Policy SA5 but none of them indicate to me that in my consideration of whether very special circumstances exist in this case, which has bespoke site specific considerations and judgements, I should automatically adopt a similar approach. That approach was also not reflected in the Council's case at the Inquiry. Whilst planning approvals have been granted as part of HRN2 these are following approval of Reserved Matters following the grant of the HRN2 outline permission and add no more than some visual context to what will inevitably happen on the ground on these sites.
37. Despite its location within HRN, the site could end up as an 'island' free from development or it could end up forming part of the SA5 proposed allocation. However, I simply do not know the conclusions of the examining Inspectors in terms of this site's future designation and role and any certainty that it will be removed is not borne out in the evidence before me.
38. The appellant suggests that the consequences of this view would be an 'anomalous island of Green Belt within an urban extension' that would serve no

⁸ Land off Bedford Road, r/o The Old Lion, Bury Spinney and The Orchard.

⁹ LPA ref: CB/15/01961/FULL.

purpose. I disagree because there is nothing substantive in planning terms that indicates to me the retention of such a sizeable area of open land within such a large scale housing extension should somehow be seen as being incongruous or unsatisfactory or indeed would not integrate into the emerging character and appearance of the area, just because other residential development is taking place around it. Taking everything together and with regard to paragraph 48 of the Framework the weight to be given to Policy SA5 in this context and at this time, is no more than moderate.

39. There is no dispute that the Council has a 5 year housing land supply so does not need to build on this current Green Belt site to discharge its policy obligations. However, as the parties agree, there is no 'cap' on development and the provision of up to 100 new dwellings weighs moderately in favour of the scheme given the Framework's requirements to 'significantly boost the supply of housing'. The benefit from affordable housing is small given its scale and tempered because it is less than the policy envisages due to viability issues. Accommodation for older people in the form of 12 units, for which there is a critical need as set out in national guidance¹⁰ also attracts a small amount of weight in favour given the number of units proposed.
40. There would be economic benefits of construction jobs and other expenditure in the construction industry. This would however be a benefit of any acceptable proposal and any benefit delivered to the locality would be minimal. There would also be an increase in spending in the local economy from future residents but this carries no more than minimal weight in favour. I ascribe negligible additional benefit in respect of future accessibility to local services¹¹, as I consider this to be an absence of harm.
41. The proposal would make a more efficient use of the appeal site, albeit it is not wholly 'Previously Developed Land'. Footpath improvements are predominantly reinstatement and mitigation although there may be some minimal local public benefit in terms of improving accessibility to the wider public rights of way network. I acknowledge the appellant's contention that the development could be commenced soon after any planning permission is granted but the weight to this is of no real significance because the Council is delivering on its current housing requirements.

Planning balance and overall conclusion

42. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It goes on to advise that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
43. In the necessary balance¹² and at the time of my decision, the other considerations put forward do not clearly outweigh the substantial weight that I give to the harm to the Green Belt, by reason of inappropriateness, the harm to openness, one of the 5 purposes, harm to highway safety and failure to fully make adequate provision for the infrastructure needed to support the

¹⁰ Reference ID 2a-021-20150326 and ID: 3-037-20150320.

¹¹ Subject to an appropriate conditions securing timing and delivery with HRN2.

¹² Not the so called 'tilted balance' within paragraph 11 of the Framework.

development. Consequently, the very special circumstances necessary to justify the development do not exist.

44. Although the Council can demonstrate a 5 year housing land supply Policy H4 of the LP is a 'most important' policy for the determination of this appeal and it is accepted as being out of date¹³. Paragraph 11 (d) of the Framework indicates therefore that permission should be granted, unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. The application of national Green Belt policy provides that to be the case here and as such, the proposal would not be the sustainable development for which Paragraph 11 of the Framework indicates a presumption in favour.
45. Drawing my conclusions together, there would be compliance with part of the development plan in terms of Policy H4, a policy which carries limited weight, but I give greater weight to the harm and conflict with Policy BE8 of the LP that I have identified and this is such that the proposal should be regarded as being in conflict with the development plan, when read as a whole. Material considerations, including the Framework do not indicate to me that a decision should be taken other than in accordance with the development plan.
46. Even if I were to accept the appellant's contention that Policy BE8 of the LP is a policy not relevant to this outline proposal and therefore the proposal would comply with the development plan, the Framework is a material consideration which in this case would indicate to me that a decision should be taken other than in accordance with the plan.
47. For the reasons given above and having considered all other matters raised, I therefore conclude that in this particular case the appeal should be dismissed.

Richard Aston

INSPECTOR

¹³ The Affordable Housing Guidance Note for Central Bedfordshire (South Area) – April 2016 make clear that H4 is out of date and only limited weight can be attributed to it.

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DOCUMENTS SUBMITTED AT THE INQUIRY

Document Number	Document name	Submitted by
Document 1	Appearances on behalf of the appellant	Appellant
Document 2	Central Bedfordshire Emerging Local Plan Policies Map Extract	Council
Document 3	'dlp planning' letter to CBDC dated 25 January 2019	Appellant
Document 4	Opening submissions on behalf of appellant	Appellant
Document 5	Opening submissions on behalf of Central Bedfordshire Council	Council
Document 6	Houghton Regis Open Space Parcels Rev C	Council
Document 7	Amended Table 1 – Peak Hourly Flows along Thorn Road	Council
Document 8	Bury Spinney Context Plan Rev B	Appellant
Document 9	Agreed Conditions	Council
Document 10	Closing statement on behalf of Council	Council
Document 11	Doncaster Metropolitan Borough Council v Secretary of State for the Environment, Transport and the Regions [2002] EWHC 808 (Admin)	Council
Document 12	Closing statement on behalf of appellant	Appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY

Document	Completed S106 agreement	Appellant
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