



Appeal Decision

Hearing held on 11 June 2019

Site visit made on 11 June 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 9th July 2019

Appeal Ref: APP/P1940/W/18/3214903

Scotsbridge House, Scots Hill, Croxley Green, Rickmansworth, WD3 3AB

- 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 Millen Homes Ltd against the decision of Three Rivers District Council.
 - The application Ref 18/1110/OUT, dated 24 May 2018, was refused by notice dated 17 August 2018.
 - The development proposed is demolition of offices and erection of new passive development of 33 flats with underground parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline, with only access and layout to be determined at this stage. During the consideration of the application the appellant submitted plans illustrating the scale and appearance of the building. As the application is in outline the appellant is not tied to the detail shown on these plans with regard to scale or appearance. However, they show how 33 flats with underground parking, based on the proposed layout, could be accommodated on the site and the floorspace of the proposal is cited within the viability assessments.
3. Moreover, both main parties agreed at the hearing that if I was minded to allow the appeal a condition could be imposed that restricted the overall height and gross internal floorspace of the proposed building. As such, I have treated the plans relating to scale and appearance as indicative of the appellant's intentions and have assessed the application on this basis.
4. Subsequent to the above application being refused prior approval for the change of use of Scotsbridge House from Offices (Class B1) to Residential (Class C3) to form 30 residential units has been granted. In addition, a further outline planning application for 33 flats with underground parking with a slightly different layout was refused by the Council on the 3 April 2019. Given, the fallback position provided by the granting of the prior approval the Council has withdrawn its reason for refusal 2, in relation to the case before me. In addition, the Environment Agency provided additional advice and suggested conditions as part of the subsequently refused application. I have been provided with a copy of that advice and the suggested conditions.

5. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. However, the parties have had the chance to take it into account during the consideration of this appeal. The Government also published Housing Delivery Test (HDT) results for local authorities in England on the same date as the revised Framework and the Office for National Statistics published the updated annual affordability ratios on the 28 March 2019. I have no evidence before me in relation to whether the Council can demonstrate a 5-year housing land supply (5HLS). In the circumstances of this case the parties would not be prejudiced by my consideration of these documents. I have had regard to the revised Framework in reaching my decision.
6. It was agreed at the hearing that both parties would be given a set amount of time to allow the appellant the chance to agree and submit a Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act. The appellant has submitted a UU and an additional viability assessment (AVA) based on the provision of 6 shared ownership units being provided as affordable housing on the site. I will return to these matters below.

Main Issues

7. Taking into account the above, the main issues are:
 - Whether the proposal is inappropriate development in the Green Belt for the purposes of the Framework and the development plan, including the effect on the openness of the Green Belt;
 - Whether or not the development proposed makes appropriate provision for affordable housing, with reference to the relevant provisions of local and national planning policy;
 - If the development would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

8. The appeal site comprises Scotsbridge House, which is currently in use as offices, its detached outbuildings, hard standings used as carparking areas and its extensive associated grounds. There are numerous mature trees within the grounds that are included within a Tree Preservation Order (TPO) and the River Chess runs through and adjacent to the appeal site. Lavrock Lane, a public right of way (PROW), runs adjacent to a boundary of the site. The proposal would involve the demolition of Scotsbridge House and its outbuildings, the removal of some hard standings and a replacement building that would contain 33 flats and underground parking facilities.

Whether the proposal would be inappropriate development in the Green Belt

9. Apart from certain clearly defined exceptions set out in paragraph 145 of the Framework the construction of new buildings in the Green Belt is to be regarded as inappropriate development. The exceptions include, amongst other things, the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces and the partial or complete redevelopment of previously developed land which would not have a

greater impact on the openness of the Green Belt than the existing development or would not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

10. Policy CP11 of the Core Strategy (CS) predates the publication of the 2012 version of the Framework and the wording of the policy reflects previous Government guidance on this matter. The policy does not outline any of the exceptions as contained within paragraph 145 of the Framework. As such, I consider that this policy, with regards to paragraph 213, is only partially consistent with the Framework. The wording of Policy DM2 of the Development Management Policies Local Development Document (DMP) is based on the 2012 version of the Framework. It states, amongst other things, that within the Green Belt, except in very special circumstances, approval will not be given for new buildings other than those specified in national policy. I consider that this policy is consistent with the Framework in this respect.
11. As the replacement building would not be in the same use as the existing building exception d) of paragraph 145 would not apply in this case. As the appeal site is occupied by a permanent structure there is no dispute that the site can be treated as previously developed land. The proposal would involve the redevelopment of that previously developed land.
12. In determining the nature and extent of impacts on Green Belt openness it is appropriate to assess both spatial and visual impacts. Based on a gross internal floor area of 4791 square metres the parties agree that there would be around a 9% increase in the footprint and an approximately 18% increase in the above ground volume of the built form on the appeal site. Added to this would be the volume of the below ground parking facilities. No details of the volume of the basement area is provided within the evidence before me. Whilst, it is highly likely that the basement would have very little visual impact on the openness of the Green Belt it would form part of the building. Even without the basement, the volumetric increase of, the above ground part of the building, of around 18% confirms that there would be a spatial increase in built form on the site and thus a reduction in the openness of the Green Belt.
13. In visual terms, the mature landscaping and trees within the site in combination with the sloping topography mean that Scotsbridge House is not prominent in longer distance views from the public domain. Nevertheless, due to its proximity to Scots Hill and Lavrock Lane it is visible from several points along these parts of the public highway. In these close range views, it is clearly discernible that a number of phases and extensions connecting former outbuildings to the main building comprises the overall built form of Scotsbridge House. As these phases and extensions have different architectural styles, materials and heights the bulk and massing of the overall building is perceived as a number of discrete elements.
14. In addition, due to the small scale of the outbuildings and the amount of landscaping around them they currently have a very limited visual impact on the openness of the site. An area of surface car parking is within close proximity to a boundary of the site and even though a fence on that boundary provides some screening glimpses of the cars can be gained through that fencing.

15. The existing built form is therefore perceived as a series of distinct elements that are interconnected surrounded by land of generally open appearance. The proposal would remove a large proportion of the surface car parking and additional landscaping would be planted and, in these respects, the visual impact of hardsurfacing/car parking on the openness of the Green Belt would be reduced. In addition, the footprint of the proposed building would consolidate the built form into one location that would remove the parts of the existing building that adjoin the boundary with Scots Hill.
16. I acknowledge that the appearance of the building is a reserved matter and that the building could be designed to have distinct elements. Moreover, green roofs and landscaping as 'living walls' could provide some mitigation for the visual impact of the building. However, the consolidation of the footprint would mean that the bulk and massing of the proposed building would be more likely to be perceived as one substantial structure.
17. Moreover, to achieve the stated floorspace it is highly likely that this bulk and massing would be appreciably greater than that of the existing building in certain areas. This would mainly relate to the part of the site that is currently occupied by 2 storey and single storey modern extensions that are at the rear of the building in close proximity to Lavrock Lane. Even though, there is landscaping between these extensions and Lavrock Lane I noted that they are visible in glimpse views from the PROW. Furthermore, when this landscaping is not in full leaf the extensions would be clearly discernible especially given that the PROW is, in the main, at a higher ground level than those extensions.
18. The principal part of the elevation, of the section of the proposed building, that would replace these extensions would be appreciably closer than the majority of the corresponding elevation of the current building. Consequently, in combination with the increase in the bulk and massing of this part of the building it is highly likely that the proposal would have a significantly greater visual impact than the existing built form, as it would appear as a more intensive and dominant development on the site, when viewed from the PROW. Whilst, landscaping would largely screen the development at certain times of the year from the PROW, glimpse views through the landscaping would still be possible even when it is in full leaf.
19. Additionally, the building would be clearly visible from Scots Hill and the proposed access would allow views into the site. As such, I consider that overall the proposal would spatially and visually have a greater impact on the openness of the Green Belt than the existing development.
20. Given, my findings in relation to the UU below the proposal would not provide an off-site contribution or onsite affordable housing units and therefore it would not contribute to meeting an identified affordable housing need.
21. As such, taking into account all of the above I do not consider that the exception at paragraph 145 g) would apply to this proposal. I have no evidence before me to show that the scheme would fulfil any of the other exceptions as set out at paragraph 145 of the Framework. Against this background the proposal would be inappropriate development within the Green Belt.
22. The subsequent planning application was also for 33 flats and underground parking and it is not disputed that the Council consider that, that proposal

would not be inappropriate development in the Green Belt. However, it is clear that the layout and gross internal floor area of that scheme is not directly comparable to the proposal before me. In any case I am required to determine the appeal on its individual merits.

23. Reference has been made by the appellant to court judgements¹ and I have had regard to them. I consider that the judgements support the approach taken in this decision.

Affordable housing

24. CS Policy CP4 states, amongst other things, that the Council will in view of the identified and pressing need for affordable housing in the District, seek an overall provision of around 45% of all new housing as affordable housing, incorporating a mix of tenures and that in most cases it will require affordable housing provision to be made on site. It goes on to state that in assessing affordable housing requirements including the amount, type and tenure mix, the Council will treat each case on its merits, taking into account site circumstances and financial viability.
25. The Framework (paragraph 34) sets out that development plans should set out the contributions expected from development including the levels and types of affordable housing provision required. It goes on to state at paragraph 57 that it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The Planning Practice Guidance (PPG) on viability has been revised and it states that the role for viability assessment is primarily at the plan making stage².
26. At paragraph 62 the Framework states that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be met on site unless off-site provision or an appropriate financial contribution in lieu can be robustly justified and the agreed approach contributes to the objective of creating mixed and balanced communities.
27. Paragraph 64 of the Framework states that where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership as part of the overall affordable housing contribution from the site.
28. Within the evidence before me and during the discussions at the hearing it was indicated that the proposal would not provide any affordable housing on the site. The appellant outlined during the discussions that it is considered that the scheme is not suitable for onsite affordable housing due to the high value and large size of the flats and the potentially high maintenance/service charges. As a result, the appellant considers that registered providers would be reluctant to take on any of the units. However, I have no evidence to indicate that smaller units could not be viably incorporated into the overall scheme and registered providers would not be required to be involved in all forms of affordable housing as defined by Annex 2 of the Framework. Moreover, the AVA undertaken by S106 Affordable and submitted after the hearing appears to

¹ Turner v Secretary of State for Communities and Local Government [2016] EWCA Civ 466; Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council [2018] EWCA Civ 489 and Euro Garages Limited v Secretary of State for Communities and Local Government [2018] EWHC 1753 (Admin).

² Paragraph 002 Reference ID: 10-002-20190509

- indicate that the proposal would be financially viable whilst providing 6 shared ownership units.
29. Consequently, I do not consider that there is robust justification for an appropriate financial contribution in lieu as such there is no need to consider whether it would contribute to the objective of creating mixed and balanced communities.
 30. Prior to the hearing a viability assessment (VA) relating to 33 market housing units with no affordable housing being provided, also undertaken by S106 Affordable, was updated a number of times and this enabled the parties to agree on the majority of the variables involved within it. The VA and its updates were reviewed for the Council by Adams Integra (AIR). The main areas of disagreement, in respect of the VA, related to design fees, the Benchmark Land Value (BLV) and the net to gross saleable area ratio.
 31. During the discussion at the hearing both parties agreed that there was little difference in the design fee figures and that a fee of 6.5% would be acceptable to them. I have no reason to dispute this. Both parties agree that the BLV should be based on the Alternative Use Value from the granting of prior approval for the 30 flats. The dispute in relation to the BLV relates to the build costs that would be attributable to that prior approval and developer's profit levels.
 32. Whilst, the overall build costs provided by the appellant appear to have been underestimated in relation to communal areas it would appear that the electrical and plumbing quotations contained within the evidence were based on contractors visiting the site and assessing the works required. As such, it is reasonable to consider that the build costs would be between that of the Council and the appellant.
 33. The developer's profit levels in relation to the conversion of the existing building to flats are included within the BLV calculations. The VA sets it at 17% on cost and 14.5% on the Gross Development Value whereas AI sets it at 17.5%. The scheme for the BLV would be relatively similar to that proposed in relation to the number of units to be provided and both would be for market housing. However, there are risks involved in the scheme as there are unknowns in relation to the underlying condition of the building and the sale or renting of the flats would be as market housing. However, there would also be similar risks associated with the proposal relating to the sale or rent of market housing and there would also be risks relating to the possible contamination of the land and the drainage strategy. As such, I consider that it is reasonable that the profit levels should be the same as the proposed scheme.
 34. The disagreement in relation to the net to gross saleable area ratios appeared to relate to a misunderstanding in relation to the algorithm behind the model used for the VA. It was agreed that AI had utilised the model correctly.
 35. The viability assessment that was undertaken as part of the CS would have been based on a definition of affordable housing that pre dates the 2019 version of the Framework and it was agreed at the hearing that it would have been undertaken in around 2010. As such, the need for a viability assessment to support the scheme is justified and it has substantial weight.

36. Taking into account all of the above, I consider that there would be a substantial surplus that would be somewhere between the figures of around £940,000 and £1.47 million that were agreed at the hearing. Whilst, it is agreed that this would not be able to provide 45% of the new flats as affordable housing it is reasonable to consider that it would be financially viable to provide a small number of units as affordable housing on the site. Even though, it is not clear from the evidence before me, as to the form of the 6 shared ownership units cited in the AVA, it appears to indicate that the scheme would be financially viable with a form of onsite affordable housing provision.
37. Nevertheless, given my findings in relation to the UU no affordable housing would be provided as part of this scheme. Consequently, would not make appropriate provision for affordable housing. It follows that the proposal would conflict with CS Policy CP4. This policy was adopted prior to the publication of the Framework and with regard to paragraph 213 of the Framework it is not entirely consistent with the revised definition of affordable housing in Annex 2 of the Framework. CS Policy CP4 is more prescriptive than the Framework on the circumstances as to when financial contributions towards off-site affordable housing would be acceptable. However, it is broadly consistent with the Framework's expectation that affordable housing should be met on site. Therefore, I consider that the conflict with this policy has considerable weight.

Planning Obligation

38. Throughout the evidence before me and during the discussions at the hearing the proposal was described as market housing with none of the units being provided as affordable housing. Subsequent to the hearing the appellant submitted a UU which appears to include a provision for 6 shared units being provided as affordable housing onsite. I consider that this could constitute a material change to the nature of the development and therefore I cannot be certain that no party would be prejudiced by my consideration of it.
39. Nevertheless, there are serious deficiencies with the UU which mean that I have insufficient evidence to assess whether the clauses of the UU in relation to the provision of affordable housing would meet the three tests as contained at paragraph 56 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations (CIL). These deficiencies include the lack of a complete definition of the type of affordable housing to be provided, no definitions of the commencement date, completion date or affordable housing contribution, Schedule 1 appears to be incomplete as there is a blank area between its paragraphs 1.2 and 2.2, paragraph 2.2 of that schedule refers to paragraph 8.1 of the schedule and there is no paragraph 8.1 to that schedule. Moreover, the section on affordable housing that appears to form part of Schedule 2 is not cited within section 3 of the UU which relates to the owner's covenants. As such, it is not clear as to what affordable housing would be provided as part of the scheme and therefore whether it would be fairly and reasonably related in scale and kind to the development.
40. These deficiencies also mean that I cannot be certain that the covenants of the UU would ensure the delivery and retention of affordable housing as part of this scheme. Consequently, the UU in relation to this matter has no weight in the consideration of this appeal.
41. The UU also contains a provision to construct a public walkway. The plan included within the UU indicates the walkway would be largely alongside the

River Chess. Whilst, I sympathise with the aims of providing public access alongside the river both parties agreed at the hearing that the walkway was not necessary to make the development acceptable in planning terms. As such, the construction of the walkway would not meet the statutory tests cited above and I am unable to take it into account in determining this appeal.

Other considerations

42. The proposal would utilise previously developed land and this is a limited benefit which counts in its favour. I agree that it would help to boost the supply of housing in line with the government's objective set out at paragraph 59 of the Framework. Given the amount of development proposed the social and economic benefits derived from the occupation and construction of the dwellings would be appreciable. The building would also incorporate energy saving features. These appreciable benefits have considerable weight in favour of the proposal.
43. The Council did not object to the impact on neighbouring occupier's amenity, access and parking, the impact on the TPO trees and ecology or heritage. However, the lack of harm in these respects is a neutral consideration that does not weigh for or against the proposal.

Planning Balance and Conclusion

44. The proposal would be inappropriate development in the Green Belt. Paragraph 144 of the Framework establishes that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations. I acknowledge that the other considerations do not have to be rare or uncommon to be special.
45. For the reasons given above, the other considerations in combination do not clearly outweigh the harm to the Green Belt and the harm to the provision of affordable housing. Consequently, the very special circumstances necessary to justify the development do not exist.
46. I have no evidence before me to indicate whether the Council can demonstrate a 5HLS. Nonetheless, even if it cannot demonstrate a 5HLS paragraph 11 of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Such assets include land designated as Green Belt (Footnote 6). Footnote 7 of paragraph 11 states that for applications involving the provision of housing, this includes situations where the local planning authority cannot demonstrate a 5HLS.
47. Having regard to my findings that the proposal would be inappropriate development in the Green Belt and in light of Footnote 6, for the reasons set out above, I consider that the application of the Framework's Green Belt policies provide a clear reason for refusing the proposal.
48. The proposal would be contrary to CS Policy CP11 and DMP Policy DM2 and whilst the conflict with the former has moderate weight, in relation to the reasons given above, the conflict with the latter has full weight. Moreover, I

have also found that the proposal conflicts with CS Policy CP4 and that this conflict has considerable weight. As such, the proposal conflicts with the development plan as a whole and material considerations do not indicate that the proposal should be determined other than in accordance with the development plan.

49. For the reasons set out above, the appeal should be dismissed.

D. Boffin

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Alistair Rokas	Woods Hardwick Planning
Richard Murdock	Woods Hardwick Planning
Simon Corp	S106 Affordable Housing
Ben Lowry	Millen Homes

FOR THE LOCAL PLANNING AUTHORITY:

Adam Ralton BA (Hons) MSc MRTPI	Team Leader – Development Management
David Coate	Adams Integra

DOCUMENTS

- 1 Copy of the decision notice and plans associated with planning application 18/2189/OUT.
- 2 Copy of a Unilateral Undertaking dated 21 June 2019.
- 3 Viability Assessment by S106 Affordable Housing in relation to the provision of 6 shared ownership units within the scheme.