



Appeal Decision

Hearing held on 20 September 2023

Site visits made on 19 and 20 September 2023

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2023

Appeal Ref: APP/A2470/W/23/3323586

Land to the east of Normanton Road, Edith Weston, LE15 8HD

- 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 Philip Davies against Rutland County Council.
 - The application Ref 2022/1213/MAO, is dated 19 October 2022.
 - The development proposed is an outline application for up to 62 no. dwellings, landscaping and open space with all matters reserved except for access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Outline planning permission is sought, but with all matters reserved, except for access. I have determined the appeal on this basis.
3. The Revised National Planning Policy Framework (the Framework) was published on 5 September 2023, after the appeal was lodged. As agreed verbally at the event with the parties, the changes to the Framework are not material to the appeal. Consequently, whilst I have had regard to the Framework in reaching my decision, I will not prejudice any party by taking this approach.
4. Following the close of the Hearing, a section 106 Agreement (the s.106) signed by both parties was provided on 6 October 2023 on a non-prejudicial basis, which includes all of the planning obligations sought by the Council. I consider these further below.

Main Issues

5. As outlined in the Council's Statement, its reasons for refusing planning permission would have been regarding the location of the proposed development and no mechanism to secure provision of affordable housing within the site, open space provision and biodiversity net gain. I have formulated my main issues on this basis. Therefore, the main issues of this appeal are:
 - whether the site is in an appropriate location for housing, having particular regard to the effect of safeguarding the countryside and ensuring a viable and sustainable pattern of settlements; and,
 - whether the proposed development would make adequate provision for: affordable housing, open space and biodiversity.

Reasons

Background

6. The site measures 3.85ha and is located adjacent to the eastern edge of Edith Weston. To the south west of the site are the rear gardens of properties located on Chiltern Drive. To the north east is Normanton Road. The site comprises arable farmland, where a gentle gradient runs from the north western boundary across to the south eastern boundary. Beyond the northern boundary of the site is the remainder of the agricultural field, which the site currently forms part. There are no Statutory Designations on the land forming the site, nor is it identified as a protected landscape.

Sustainable location

7. The development plan comprises the Core Strategy Development Plan Document, 2011 (CS) and the Site Allocations and Policies Development Plan Document, 2014 (SAP), as well as the Edith Weston Neighbourhood Plan, 2014 (NP). CS Policy CS1 and SAP Policy SP1 both set out a number of sustainable development principles. CS Policy CS2 sets out the spatial strategy to provide for sustainable development to help create safe and healthy communities and meet the needs of the local economy, whilst CS Policy CS3 includes a settlement hierarchy, where Edith Weston is listed as one of seven Local Service Centres.
8. It is common ground that the appeal site is outside of Edith Weston as it is defined. It is therefore in the countryside where CS Policy CS4 strictly limits development to that which has an essential need to be located there which supports the rural economy and meets affordable housing needs. SAP Policy SP6 expands on this and confirms that only dwellings essential to the operational needs of agriculture, forestry or an established enterprise, or affordable housing to meet an identified local need, will be allowed.
9. The NP was made on 23 June 2014, and recognises the benefits of housing growth but wishes it to take place in a sensitive and managed manner so as to meet the needs of the community whilst respecting the character of the village, amongst other things. Whilst the parties are of the view that that the NP should carry limited weight, it is still a material consideration as it is part of the statutory Development Plan, particularly NP Policy EW1, which sets out several requirements for future housing growth. It is a statutory requirement that decisions are to be made regarding the Development Plan unless material considerations indicate otherwise. Of course, the NP must comply with strategic policies in 'higher order' plans, but otherwise the intention of the Localism Act and of Government policy is that it should give expression to the planning aspirations of local communities enabling them to exercise some control over how the settlement in which they live should respond to the development needs in the locality.
10. CS Policy CS19 requires new development to be sympathetic and make a positive contribution towards the unique character of Rutland's towns, villages and countryside. SAP Policy SP15, requires development to complement the character of the local area and reinforce the distinctiveness of the wider setting, responding to surrounding qualities that contribute to the landscape quality of the local area, amongst other things.

11. The appellant submitted a Landscape and Visual Appraisal¹ (LVA) with the application to which I have had regard. I also viewed the site from the majority of locations identified in the LVA and am satisfied that I saw everything I need to assess the impact of the development. Whilst the proposal is for outline permission only, the effect of erecting up to 62no. dwellings on this site, and the associated domestic paraphernalia, that would be associated with a residential development can still be determined. The site's existing connection to surrounding fields and countryside means it has value in terms of its contribution to the overall landscape. This would be significantly eroded as a result of any form of residential development. I note the conclusions of the LVA, but I consider that as the site is currently undeveloped, there would be harm from the proposed development to the open landscape character and visual amenity of the site.
12. For the reasons given above, I conclude the proposed development would not be in an appropriate location for housing, having particular regard to the effect of safeguarding the countryside and ensuring a viable and sustainable pattern of settlements. Consequently, the scheme would be contrary to CS Policies CS4, CS19; SAP Policies SP6, SP15, NP Policy EW1 and the requirements of the Framework.

Planning obligation

13. The executed s.106 that has been submitted would provide no less than 40% of the dwellings to be affordable and clarification on allocations. The s.106 also contains obligations in relation to Open Space, Biodiversity Net Gain and Self-build or Custom Build Dwellings. At the event, it was confirmed verbally by the Council that if a completed/signed legal agreement was supplied, securing the above obligations, then the concerns surrounding this main issue would be satisfied.
14. In view of the above, I consider the obligations set out in the s.106 are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind. Therefore, they meet the tests within CIL Regulation 122 and those set out in paragraph 57 of the Framework. There is also compliance with CS Policy CS8. As such, I have taken them into account in reaching my decision.

Other Matters

15. It is agreed by both main parties that the Council can demonstrate a 5-year Housing Land Supply (HLS). The Council claims a HLS of 964 dwellings as on 31 May 2023. This represents the equivalent of 7.5 years supply of land for new housing. Notwithstanding the Council's HLS, the view of the appellant is the development plan policies most important for determining the appeal are out-of-date, and paragraph 11(d) of the Framework should be applied.
16. The appellant has referenced 2no. judgements², which I have noted. I consider these to be relevant on this matter and form a material consideration. Additionally, appeal decisions³ have been submitted by both parties to support their respective positions. However, I note the Council did not have a sufficient

¹ Landscape and Visual Appraisal by Nicholson's Lockhart Garratt, dated 13 October 2022.

² Bloor Homes Limited v Secretary of State for Communities and Local Government [2014] EWHC 754 (Admin); [2017] and Wavendon Properties v SSHCLG & Milton Keynes Council [2019] EWHC 1524 (Admin).

³ APP/A2470/W/22/3301737 and APP/A2470/W/22/3312763.

HLS at the time of the decision supplied by the appellant. Therefore, I conclude that there is a significant difference between the appeal proposal referenced and that of the scheme before me, and both decisions illustrate that every proposal has to be considered on its own particular merits. The parties agree in the SoCG that CS Policy CS4 and SAP Policy SP6 are the most important policies in the assessment of the appeal scheme. Furthermore, the parties agree that CS Policy CS9 is not relevant in the determination of this appeal. On these matters, I have no reason to disagree.

17. The strategic aim of CS policy CS4 is to contribute to the delivery of sustainable development by directing it to the most sustainable locations. Likewise, the aim of SAP Policy SP6 is to define situations where housing in the countryside would be permitted. In both instances, I find that these policies are not contrary to the Framework or depart from its requirements, where they should be deemed out-of-date. Neither party have suggested any similar comments regarding the consistency with the Framework of CS policy CS19 and SAP policy SP15.
18. I acknowledge the comments from the appellant in relation to the composition of the HLS, where he is of the view that 468no. dwellings were approved contrary to CS Policy CS4 and SAP Policy SP6, which equates to 3.8 years of its total supply, and without the approval of these applications, the Council would not currently have a deliverable HLS. I also recognise the requirements of the Framework, to boost housing supply.
19. Additionally, whilst not relevant in the assessment of the application in this instance due to a sufficient HLS being demonstrated, it was agreed at the event that CS Policy CS9 would effectively become active in circumstances where the Council could not demonstrate a deliverable HLS. Although, the appellant questioned its effectiveness. I do not have all the details or circumstances surrounding the schemes for the 468no. dwellings referenced above, but there is no dispute between the parties that they are all beyond existing settlement boundaries.
20. I do not find consistency with the Framework and CS Policy CS9, particularly with regards to the housing requirements set out in the policy, as they are based on the now revoked East Midlands Regional Spatial Strategy and 2004 household projections. Nonetheless, it would still, in the event of an insufficient supply of deliverable and developable land, provide a mechanism within the CS to release greenfield sites within or adjoining the planned limits of development in Local Service Centres, such as Edith Weston. Thus, this policy indicates an ability within the CS to deliver housing beyond settlement boundaries, particularly should deficiencies in the HLS occur.
21. Consequently, I conclude that the most important policies in the determination of this appeal are not out-of-date. Accordingly, the circumstances set out at paragraph 11(d) of the Framework do not apply for this reason.

Planning Balance and Conclusion

22. The Council is able to demonstrate a 5-year supply of deliverable housing land and the development plan policies most important for the determination of the appeal are not out-of-date.
23. I accept the lack of harm in respect of provision for affordable housing, open

space and biodiversity and the absence of other harm arising from the proposed development. There would also be a reasonable contribution to the Council's supply of homes, including affordable housing and general economic and social benefits through the construction phase and subsequent occupation of the scheme, amongst other things.

24. Nonetheless, these factors do not outweigh my assessment regarding the effect of safeguarding the countryside and ensuring a viable and sustainable pattern of settlements, which would result in significant harm. Given my findings above, the proposed development conflicts with the development plan when taken as a whole, and there are no other material considerations that indicate otherwise. It is also at odds with the requirements of the Framework.

25. For the reasons given above, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr M Taylor (agent)	Class Q Ltd
Mr I Downer	Class Q Ltd
Mr T Helliwell	Class Q Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Thrower	Principal Planning Officer, Rutland County Council
Mrs S Baker	Senior Planning Officer, Rutland County Council
Miss K Wesson	Shakespeare Martineau LLP

INTERESTED PARTIES:

Mr J Akak	Edith Weston Parish Council
Mr A Lunn	Edith Weston Parish Council

DOCUMENTS

- Signed/Completed legal agreement, dated 6 October 2023
- Drawings 211055_01_Rev D; 211055_003_Rev B and AMA/21497/SK003
- Expression of interest letter from Mulberry Homes, dated 6 September 2023