



Appeal Decision

Site visit made on 7 March 2024

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12th March 2024

Appeal Ref: APP/P0240/W/23/3333689

Land south of Cambridge Road, Langford, Biggleswade SG18 9PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Crest Nicholson Chiltern against the decision of Central Bedfordshire Council.
 - The application Ref is CB/22/04684/FULL.
 - The development proposed is erection of 79 dwellings including access, parking, public open space, retained woodland, landscaping and tree protection measures.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal was modified during the course of the **Council's** determination of the application, with a reduction in the number of dwellings from 84 to 79. This is reflected in the description in the banner heading above.
3. The appeal site forms the western half of a larger site covered by an extant outline planning permission (the extant permission). Phase 1 of the extant permission is currently being implemented within the eastern half. The appeal site is being used to store materials and the site office. Drainage works relating to land in the northwestern part of the appeal site have already been approved within the context of the extant permission. The proposed development would exceed the number of dwellings which could be constructed in relation to Phase 2 of the extant permission by 11.
4. A modified layout plan was submitted with the appeal showing the addition of small garden spaces for a few of the proposed units. Whilst this addressed one **of the Council's** concerns, upon further reflection of the remainder, the Council has withdrawn all its reasons for refusal. Much as was originally recommended within the Committee Report, no objection is now raised to the scheme subject to conditions and planning obligations.
5. The appeal site is covered by a Section 106 agreement (the existing S106) relating to the extant permission. A new agreement is however required in relation to the proposed development. Whilst the parties have indicated that they are working on a new bilateral agreement, only a working draft has been submitted to date (the draft S106).
6. The draft S106 covers the provision of affordable housing and custom-build/self-build housing plots, contributions towards education provision, healthcare, sports, libraries, the community hall and a bus stop. It also sets out

modifications to the existing S106 which include extension of its provisions relating to open space/play areas to the proposed development. For ease of reference, I shall collectively term the above items 'social infrastructure'.

7. The parties intend to finalise a bilateral agreement. However, no date has been identified, and the appeal process is not open ended. In the absence of any exceptional reason for delay beyond the date for determination of this appeal, I shall proceed on the basis of the evidence set before me. As such, the acceptability of the development in the absence of planning obligations securing social infrastructure is the main issue in this appeal.
8. An identically described proposal (the follow up application) was submitted by the appellant after refusal of the appeal scheme. The Council has apparently resolved to approve the follow up application. Be that as it may, it does not alter my consideration of the merits of the appeal scheme.

Main Issue

9. The main issue is the acceptability of the development in the absence of planning obligations securing social infrastructure.

Reasons

(a) *Leisure*

10. According to the Committee Report, the existing S106 secures the payment of fixed sums in relation to certain categories of social infrastructure that could be carried over to the proposed development. This was highlighted in relation to libraries, the community hall and sports. In these cases, contributions were sought on the same basis, but in relation to the additional 11 dwellings only. A different approach is presented within the draft S106, insofar as this seeks to limit the application of the existing S106 to Phase 1 of the extant permission, and to instead secure contributions in relation to all 79 proposed dwellings. Though these sums remain to be entered into the draft S106, they would presumably be a multiple of the sums identified for 11 dwellings.
11. The contribution in relation to sports would fall into 2 parts, with a sum identified for Langford Football Club, and another for Saxon Leisure Centre. Sports England calculators have been used. It is however unclear whether the contribution towards the football club serves the identified need to fund local playing pitches, as a public playing field rather than the football club is identified within the supporting information. The latter is therefore insufficient for me to determine the necessity or relevance of the contribution sought for the football club. The contribution sought for the leisure centre would however improve the facility, and thus its ability to cater for additional use by future occupants of the development. The additional pressure likely to be generated by the occupants of 11 dwellings would be small, but the absence of a secured contribution would nonetheless undermine service provision to the broader detriment of its users.
12. Contributions sought towards the library and community hall would again cover improvement of facilities to support increased use arising from the development. The source of the costings used to calculate the contributions is unclear, but I have been provided with no reason to question their validity. The absence of secured contributions would have an effect similar to that outlined above in relation to the leisure centre.

13. The plans show the provision of open space and a Local Area for Play (LAP). As noted above, the draft S106 contains provisions to modify the existing S106 in relation to this matter. Through a condition could be used to secure provision, rights of public access could not be secured in this way. The lack of appropriately secured provision of public open space and LAP could again be detrimental to the wellbeing of future occupants of the development.

(b) *Education*

14. A range of individual financial contributions are sought in relation to education provision, with sums identified for lower, middle, and upper school, together with SEND. The sums have been calculated on a per dwelling basis using average pupil yields and national cost multipliers. Insofar as these contributions are required to provide capacity for the additional pupils likely to be generated by the development, a failure to secure them would place existing provision under pressure. This would be to the detriment of both its quality and the wellbeing of pupils.

(c) *Health*

15. A financial contribution towards healthcare provision has been similarly identified to expand local capacity based on the likely yield of additional patients by the development. This is again calculated on a per dwelling basis using standard formulae. The absence of an appropriately secured contribution would place already constrained healthcare services under further pressure. Again, this would undermine the ability of these services to function properly, having harmful consequences for patient health and wellbeing.

(d) *Bus stop*

16. Improvements to a nearby bus stop have been identified to facilitate its use by future occupants of the development, and thus to encourage sustainable means of travel. A sum for payment to the Council has been specified within the Committee Report but struck out and left blank within the draft S106. It is therefore unclear what the contribution would be. Nonetheless, in the absence of an appropriately secured contribution towards improvements, the bus stop would be less attractive to potential users, thus undermining the sustainability of the development in relation to travel.

(e) *Codes of practice*

17. The Council has a construction code of practice, and an environmental code of practice. I have not been provided with the details of either, or any explanation of why such matters cannot be appropriately addressed by condition, as is commonly the case. I cannot therefore conclude that a planning obligation would be necessary.

(f) *Affordable, custom-build and self-build housing*

18. The development proposes 30% Affordable Housing as required by Policy H4 of the Central Bedfordshire Local Plan 2015-2035 (the Local Plan), and 10% custom-build/self-build plots in accordance with Policy H6 of the Local Plan. It is necessary to secure the provision and transfer of affordable housing, as too the provision of custom-build/self-build housing. Again, in the absence of appropriately secured provision there is no certainty that it would take place, or therefore that the development would cater for the broader identified need for

the provision of such housing. This would significantly undermine the social sustainability of the development.

(g) *Proposed condition*

19. At a very late stage in the appeal process the appellant proposed to address the absence of planning obligations through the imposition of a negatively worded condition. This would cross reference planning obligations identified within the Committee report related to the follow up application. It would also explicitly require those with an interest in the site to enter into an agreement under Section 106.
20. Though the follow up application has the same description as the appeal scheme, the contributions identified within the respective Committee Reports do not exactly match. Both otherwise fail to explain how public use of open and play space would be secured, and take a different approach to the existing S106 to that set out within the draft S106. The reasons for the above remain unexplained, giving rise to uncertainty.
21. The Planning Practice Guidance otherwise states that the use of a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. A negatively worded condition may nonetheless be appropriate in exceptional circumstances. However, the only reason for the absence of planning obligations in the current case is the failure of the parties to finalise a bilateral agreement in a timely fashion. Therefore, even if the proposed condition was not subject of the flaws identified above, no exceptional circumstances would exist which might justify its imposition.

(h) *Conclusion*

22. For the reasons outlined above I conclude that in the absence of planning obligations securing social infrastructure other than in relation to codes of practice and the football club, the development would fail to meet local needs in relation to affordable and custom-build/self-build housing, and give rise to increased pressure on local services and facilities. This would be to the detriment of the wellbeing of future occupants and the broader community alike. The development would therefore conflict with Policies H4, and H6 of the Local Plan as outlined above; Policy HQ2 of the Local which sets out the requirement for development to provide contributions towards physical, social and environmental infrastructure, or the enhancement of existing infrastructure; and Policy HQ3 of the Local Plan, which more specifically sets out a requirement for developments to contribute towards existing, social and community infrastructure.

Other Matters/Considerations

23. The appellant claims that the Council lacks a demonstrable 5-year supply of deliverable housing sites. However, beyond making this assertion, the appellant has offered no evidence to substantiate it. I therefore have no reason **to question the Council's** position.
24. As outlined above, the development would provide 11 dwellings more than could be delivered by the extant permission. Whilst being very limited in scale, the social and economic benefits of such additional provision of housing would otherwise be comprehensively outweighed by the harm identified above.

Conclusion

25. For the reasons set out above the effects of the development would be unacceptable, giving rise to conflict with the development plan. There are no considerations which alter or outweigh these findings. I therefore conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR

Richborough