



Appeal Decision

Hearing held on 25 February 2025

Site visit made on 25 February 2025

by Louise Crosby MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2025

Appeal Ref: APP/K0235/W/24/3353144

Dovehouse Farm, 27 The Lane, Wyboston, Bedford, MK44 3AP

- 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 Mr D Buchanan against the decision of Bedford Borough Council.
 - The application Ref is 23/00198/MAF.
 - The development proposed is erection of ten dwellings and associated works.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the Council. This is subject to a separate decision.

Preliminary Matter

3. The Council introduced a further reason for refusal during the appeal process. This relates to the setting of the adjacent designated heritage asset known as 'Moated Enclosure and associated building platforms'. I heard evidence on this at the hearing, including from the appellant. It was agreed that there would be no prejudice in me considering this at such a late stage, especially since the Council's views were made clear in their planning officer report and have not changed. Also, the appellant submitted a heritage statement with the planning application and so was aware of the designated heritage asset close to the appeal site.

Main Issues

4. The main issues are:
 - i) The effect of the proposal on the character and appearance of the surrounding area;
 - ii) The effect of the proposal on the setting of the significance of the designated heritage asset namely 'Moated Enclosure and associated building platforms';
 - iii) Whether there would be safe access to the proposed dwellings during a flood event and whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding;

- iv) Whether the proposal is in a sustainable location such that future occupiers would not be reliant upon the private car;
- v) Whether the proposal would make adequate provision for affordable housing;
- vi) The effect of the development on the provision of general medical services and off-site outdoor sports and equipped/natural areas of play space in the area.

Reasons

Character and appearance

5. Wyboston is a small village with no services other than a village hall. It is defined in Bedford Borough Local Plan (LP) as a Small Settlement. It does not have a defined settlement limit and LP policy 6 seeks to ensure that development in small settlements is within the existing built form.
6. The LP provides a definition of small settlements and what constitutes built form. It specifically excludes, among other things, individual buildings and groups of dispersed or intermittent buildings that are clearly detached from the continuous built form of the settlement and gardens, paddocks and other undeveloped land in the curtilage of buildings on the edge of the settlement where the land relates more to the surrounding countryside than to the built form of the settlement.
7. The appeal site consists of a detached dwelling and various dilapidated outbuildings set within a large plot. The large garden at the rear has an open feel that blends in well with the open fields beyond. The existing development is set well back from the road behind an open paddock and brook and a dwelling fronting the road. This is unusual in Wyboston as I saw when I visited the site that most of the development is linear in form whether that be on The Lane or on Rookery Road. Whilst there is a modern development opposite the site set around 2 cul de sacs, these dwellings are all closer to the road than that which is proposed here.
8. I find that the appeal site consists of individual buildings that are clearly detached from the continuous built form of the settlement and also the large garden area at the rear of the dwelling relates more to the surrounding countryside than the built form of the settlement. As such the proposal does not fall to be considered under policy 6 and is therefore in the open countryside for planning policy purposes. LP policy 7S seeks to control development in open countryside to a stricter degree than policy 6.
9. The proposed development does not meet with the type of residential development envisaged by policy 7S such as a replacement dwelling, affordable housing to meet local needs in the rural area or accommodation for rural workers. Nor would it respond to an identified community need with community support.
10. The proposal would have an adverse effect on the character and appearance of the surrounding area which is mostly linear in form along the main road and introduce a more intense form of development further away from the road into the open countryside. As such it would have a harmful urbanising effect on the site and surrounding area. The proposal would conflict with policy 7S.

Scheduled Monument

11. Immediately to the west/northwest of the site is a scheduled monument. The designated heritage asset consists of an earthwork site which is thought to relate to the site of a manor house associated with the medieval manor of Wyboston. Historic England describe it as a hugely significant earthwork site. The significance of the site is increased because of its very good condition and excellent survival of the earthwork features that relate to the moat and associated settlement. It is one of the best defined earthwork moated sites in the area and the site includes the moated enclosure with prominent external banks that survive up to 1m high. The eastern part of the monument includes a number of building platforms which are thought to have been for a contemporary settlement associated with the manorial site. The moat would have been situated on the edge of a small tributary of the Great Ouse River known as the Beggary Brook. This brook runs in front of and through the appeal site
12. The moat and the earthworks, including the house platforms on the eastern half of the site have high historical, evidential and social value. In addition, the site is likely to contain important buried archaeological deposits associated with the manor house which enhances the significance of the monument. The remaining open fields and rural character of the surroundings to the south and east make a positive contribution to the setting and significance of the scheduled monument.
13. The introduction of ten dwellings would greatly increase development on this side of The Lane and alter the setting of the nearby monument from rural in character and appearance to a more urban one. The main parties agree that the proposal would result in less than substantial harm to the designated heritage asset, but the appellant says it is at the lower end of the scale and the Council at the higher. I find it is at the higher end given the significance of the asset and the magnitude of change that would occur so close to it. In any event the Framework advises that in cases where there is less than substantial harm, regardless of the scale, these need to be weighed against the public benefits.
14. The public benefits here would be the provision of ten homes, the economic benefits arising from the construction, the vitality and viability of a small rural community. Other benefits that may have arisen such as affordable housing or the financial contributions to the local GP surgery and local play area cannot be taken into account as there is no Section 106 agreement before me to secure these. Overall, I find that the limited public benefits in this case do not outweigh the harm to the significance of the designated heritage asset. As such the proposal would conflict with LP policy 41S and the advice in the Framework.

Flood Risk

15. The majority of the site is in Flood Zone 1, but there are parts of it in Flood Zones 2 and 3. It is the access road from The Lane to the dwellings that is in Flood Zones 2 and 3. This is significant as in the event of a flood there would need to be a safe access from the site for future residents of the dwellings. The access crosses a brook by way of a small bridge. The appellant has carried out several flood risk assessments (FRA) during the course of the planning application and appeal.
16. The last one at the planning application stage noted that the access route would need to be rebuilt, and a new bridge constructed over the brook to a level above the known flood levels. However, the FRA did not include an assessment of flood levels and therefore it was not known if such a bridge could be constructed in a way

that would not impact flood flow routes or increase flood risk elsewhere. This necessitated either hydraulic modelling of the brook to obtain accurate flood levels or an appropriate free board level to be included in the design of the bridge to accommodate for the level of uncertainty.

17. The FRA submitted most recently, during the appeal process does include an assessment of fluvial flood risk however the Environment Agency (EA) are still concerned that the assessment does not adequately assess fluvial flood risk since it does not take account of climate change allowances and an insufficient freeboard height is proposed for the bridge in order to prevent the accumulation of debris and risk of blockage.
18. The EA have provided a suggested condition should the appeal be allowed but based on the evidence before me I am not satisfied that a bridge could be designed to meet the requirements of the EA and thus provide safe access from the site during times of flood. Therefore such a condition would not meet the tests set out in the Framework at paragraph 57.
19. In conclusion I am not satisfied based on the evidence before me that the site access could be made safe during times of flood and that a new bridge would not impact flood flow routes or increase flood risk elsewhere.
20. Moreover the most up to date version of the Framework requires a sequential risk-based approach when considering applications such as this. The aim of this is to steer new development to areas with the lowest risk of flooding from any source. This would require the appellant to carry out a sequential test to establish whether there are reasonably available sites appropriate for the proposed development within the Borough that are in areas with lower flood risk. The appellant has not done this.
21. Taking all of the above into account I find that the proposal would conflict with LP policy 92 and the Framework which seeks, among other things, to direct development to areas at lowest risk of flooding.

Sustainable location

22. As set out above the site is located in Wyboston where the only service in the village is a community centre. I saw when I visited the site that there is a convenience store and a McDonalds on the opposite side of the A1. Whilst this is within walking distance of the site it requires a short walk along the side of the A1 dual carriageway where vehicles are travelling at speeds of up to 70mph. The footpath is close to the road and is not protected by a barrier. The footpath leads to a footbridge over the A1. This necessitates climbing steps or going along a stepped ramp. This would be very tricky for anyone with poor mobility or pushing a pushchair and wheelchair access would be impossible.
23. St Neots has a full range of services which the appellant says are within walking/cycling distance. However, this a long indirect walk which would be inconvenient and unlikely to be undertaken on a regular basis and certainly not carrying shopping. It would be more feasible by bicycle but even then, I am not sure it would be favoured by many on a regular basis.
24. There are regular bus services from the village to St Neots and Bedford. Some of the bus stops are in the village and others alongside the A1. It seems to me the

ones at the side of the A1 would not be favourable places to stand and wait for a bus, especially with children, because of the proximity of the fast-moving traffic.

25. Considering all of the above I find that residents of the site would be likely to rely on a private car to access services most of the time, especially since the A1 is so close by, giving quick and convenient road access to St Neots. As such the proposal would conflict with LP policy 53 in so far as it seeks to ensure development is located and designed to provide convenient access to local services by foot, cycle and public transport.

Affordable housing

26. LP policy 58S seeks to ensure that for developments of 10 or more dwellings that 30% are affordable homes, except where it would not be financially viable to do so. Whilst the previous local plan policy would not have required affordable housing on this site, the current local plan was adopted in 2020 and so well in advance of the submission of this planning application.
27. The affordable housing would need to be secured by a Section 106 agreement. The appellant did not provide a credible reason at the hearing why affordable housing was not being provided in this case, such as issues with viability and I do not have a Section 106 agreement before me to secure any affordable housing. As such the proposal would conflict with LP policy 58S.

Medical services and Public Open Space

28. It is agreed between the main parties that the commuted sums in relation to the local GP surgery to enable it to accommodate the additional patients this development would generate is necessary. Likewise, it is agreed that a commuted sum for off-site public open space commensurate with the scale of the development is necessary to be policy compliant. The amounts have been agreed between the parties, but I do not have a Section 106 agreement before me to secure these amounts. This is despite the appellant being reminded on numerous occasions in the run up to the hearing that such an agreement should be submitted at least 10 days prior to the hearing.
29. Without a Section 106 agreement to secure these contributions the proposal would conflict with Bedford Borough Council Allocations and Designations Local Plan policy AD28 which requires such contributions for public open space and LP policy 33 which requires contributions towards health facilities.

Other Matters

30. The Council's reasons for refusal in relation to category 2 adaptable and accessible dwellings and biodiversity net gain could be overcome by a planning condition should the appeal be successful. Such conditions were agreed at the hearing.

Conclusions

31. I find that the proposal would be harmful to the character and appearance of the surrounding area. The proposal would also harm the significance of a designated heritage asset and although the harm is less than substantial the public benefits do not outweigh the harm. There is insufficient information to ascertain if the proposed dwellings would be safe from flooding and therefore a precautionary approach must be taken. Moreover, a sequential test has not been carried out.

32. The proposal is in an unsustainable location such that future occupiers would be reliant upon the private car. No provision has been made for affordable housing nor for the provision of general medical services and off-site outdoor sports and equipped/natural areas of play space in the area contrary to development plan policies.
33. Whilst the reason for refusal in relation to category 2 adaptable and accessible dwellings can be overcome this does not add weight in favour of the proposal it merely has a neutral effect on the overall planning balance.
34. I find that the proposal would not accord with the development plan as a whole and nor would it reflect national planning policy.

Planning Balance

35. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
36. The Council accepts that they cannot demonstrate a deliverable five-year supply of housing land as required by paragraph 78 of the Framework. Consequently, paragraph 11 d) of the Framework, which is a material consideration of significant weight, is engaged. As a result, the development plan policies that are most important for determining the application are out-of-date.
37. However, the application of policies in the Framework that protect areas or assets of particular importance provide strong reasons for refusing the development proposed. In this case this is in relation to a designated heritage asset and the risk of flooding. Consequently, the proposal does not benefit from the presumption in favour of sustainable development.

Overall Conclusion

38. For the reasons given above the appeal should be dismissed.

Louise Crosby

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Simon Richardson – GamPlan Associates

Mr D Buchanan – Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Penny Jewitt, Senior Planning Officer, Bedford Borough Council

Mr Alastair Wren – Team Leader for Appeals and Enforcement, Bedford Borough Council

DOCUMENTS

Revised set of planning conditions

Richborough



Costs Decision

Hearing held on 25 February 2025

Site visit made on 25 February 2025

by Louise Crosby MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2025

Dovehouse Farm, 27 The Lane, Wyboston, Bedford, MK44 3AP

Costs application in relation to Appeal Ref: APP/K0235/W/24/3353144

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr D Buchanan for a full award of costs against Bedford Borough Council.
 - The appeal was against the refusal of planning permission for erection of 10 dwellings and associated works.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Bedford Borough Council

2. The costs application was submitted in writing prior to the hearing. At the hearing the Council also added that the revised flood risk assessment was required as a result of a change in national planning policy and therefore not the Council's fault.

The response by Mr Buchanan

3. The response was made orally at the hearing.
4. The appellant argued that several of the reasons for refusal require interpretation and balance and the fact that there are 9 reasons for refusal does not mean that the appeal is unreasonable.
5. The fact that the appeal was submitted on the last day should not be held against the appellant, it was still within the time permitted by the Planning Inspectorate. The statement of case is brief because lots of points had already been made. For example, paragraph 1 needs to be read in conjunction with supplementary statements submitted with the application.
6. In terms of the costs that the Council has incurred, there are none in relation to the date of the submission of the appeal. They have not produced any special technical reports to address any of the evidence. The statement of common ground is naturally a two-way process that goes back and forth. Indeed, the Framework advocates a collaborative approach. The statement of common ground was the last opportunity to work together, and we did that.
7. The historic heritage reason for refusal was introduced at a late stage by the Council, but the appellant has not complained about that.

8. Additional costs have only been incurred by the appellant as he has updated the flood risk assessment.

Reasons

9. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
10. The reasons for refusal that relate to character and appearance are to some degree about judgement, but as can be seen from my letter there is a clear policy conflict as the site is in open countryside. The appellant put forward very little evidence in their statement of case or at the hearing to explain why they considered the appeal site to be policy compliant and not in open countryside.
11. The issue of reliance on cars is to some degree subjective but again my findings on this matter are not finely balanced. I clearly find in favour of the Council on this main issue. The appellant argues that the site is within or very close to the village boundary, but the village does not have a defined boundary in the development plan.
12. In terms of affordable housing the appellant argues in his statement of case that none is required as it is not a rural exception site. As can be seen from my decision this is not the case, there is a policy requirement for 30% affordable housing. The appellant was unsure at the hearing whether he would be prepared to provide affordable housing but provided no justification for not providing it. Had he been willing to provide it this could have potentially been overcome by way of a Section 106 agreement. I shall return to this matter later in relation to other reasons for refusal.
13. In terms of the requirement for adaptable and accessible homes on the site and the biodiversity net gain requirement this could have been overcome by a planning condition as I have found in my decision letter.
14. Regarding flood risk, whilst the appellant has worked with the Council and Environment Agency on this matter further work is still required and the appellant had not carried out a sequential test when asked at the hearing.
15. As set out in my decision letter several of the reasons could have been overcome through the submission of a Section 106 agreement. I reminded the main parties about the need to submit a Section 106 agreement at least 10 days before the hearing. When nothing was received, I chased the matter again in the week before the hearing. At the hearing the appellant said their solicitor had in the last week tried to contact the Council's solicitor to no avail.
16. This was clearly too late in the process to start the drafting of an agreement, especially when the appeal was submitted in October 2024. I enquired as to whether a unilateral undertaking had been considered rather than a bi-lateral agreement and was given no reason why such an agreement had not been drawn up. Moreover, the Council explained that they have a Planning Obligations supplementary planning document with a Section 106 agreement template in it to assist in cases such as this. I have little evidence to show that the appellant made real efforts to prepare a Section 106 agreement.

17. Indeed, the PINS Procedural Guide for appeals makes it clear that it is the responsibility of the appellant to make sure that a final draft, agreed by all parties, is submitted no later than 10 working days before the hearing opens. I have very little evidence that the appellant made any real attempts to do this. Without a Section 106 agreement, regardless of the findings on other matters I could not have allowed the appeal. This in itself rendered the hearing a waste of time and expense for the Council, both in preparing for it and attending it.
18. In addition, the statement of case submitted by the appellant failed to substantiate the appellant's case. Each reason for refusal was dealt with by way of a very short paragraph, many consisting of a single paragraph.
19. PINS procedural guide states that "a full statement of case contains all the details and arguments (as well as supporting documents and evidence) which a person will put forward to make their case in the appeal". At the hearing the appellant again provided very little explanation as to why the proposal before me accorded with the development plan.
20. In terms of the late introduction of the historic heritage reason for refusal by the Council, this was provided in advance of the hearing and would not have been a surprise to the appellant given the section in the planning officers report on this matter where the findings were the same as the reason for refusal.
21. Overall, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

22. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Buchanan shall pay to Bedford Borough Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Mr Buchanan, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Louise Crosby

INSPECTOR