The Planning Inspectorate

Appeal Decision

Hearing held on 4 April 2017

Site visit made on 4 April 2017

by David Cliff BA Hons MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15th June 2017

Appeal Ref: APP/P0240/W/16/3164471
Land at Bury Hill to the rear of 1 Church Causeway, Potton, Bedfordshire, SG19 2RL

- 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 Derek Smith against the decision of Central Bedfordshire Council.
- The application Ref CB/16/01363/OUT, dated 29 March 2016, was refused by notice dated 6 July 2016.
- The development proposed is the erection of up to 27 dwellings.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is in outline with all detailed matters (access, layout, scale, appearance and landscaping) reserved for future consideration. The submitted plans include a layout drawing which I have treated as being only indicative given that layout is a matter reserved for future consideration.

3. Prior to the Hearing a draft S106 agreement was provided seeking to address the Council's reason for refusal regarding the provision of affordable housing and the need for financial contributions to mitigate the impacts of the development on local infrastructure. The Council confirmed at the Hearing that the provisions of the draft agreement would overcome this reason for refusal subject to satisfactory completion. A signed and dated S106 agreement was subsequently provided after the Hearing in accordance with a timetable agreed at the Hearing. I will return to this matter later in this decision.

4. Following the Hearing the Council submitted a Five Year Land Supply Statement dated 1 April 2017 which sets out its updated position on housing land supply. Though it is dated from 1 April 2017 this statement appears to have been published after the date of the Hearing. I have taken it into consideration in my determination of this appeal. Both main parties subsequently submitted comments on the implications of this statement for this appeal. I return to this matter later in the decision.

5. Also following the Hearing, I requested and received comments from both main parties on the implications of the recent Supreme Court judgment in Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates

Partnership LLP and SSCLG v Cheshire East Borough Council ('the Supreme Court Judgment').

6. Further to the Supreme Court Judgment, where there is a lack of five year housing land supply, this indicates that the policies for the supply of housing in the development plan are out of date and the tilted balance in paragraph 14 of the National Planning Policy Framework ('the Framework') applies. The Supreme Court Judgment indicated that it is not necessary to individually categorise policies as being 'up to date'. The weight to be given to the relevant development plan policies is a matter of judgement for the decision maker.

Main Issues

7. The main issues are:

   i) The effect of the proposed development upon the existing landscape character and setting of the town, and

   ii) Whether the proposed development would safeguard the ecological value of the site including any protected species.

Reasons

Housing Land Supply

8. The main parties agreed in the Statement of Common Ground that at that time the Council was not able to demonstrate a five year supply of housing land. The Council's Statement of Case stated it to be 4.88 years whilst the appellant's Statement of Case suggests it to be 4.66 years drawing on the findings of a recent appeal decision[1] at Greenfield Road, Flitton. In either case, the supply of housing land based on these figures is slightly below five years.

9. As referred to above, following the Hearing the Council published an updated Five Year Housing Supply Statement. The Council states that in recognition of the level of housing completions it no longer regards itself to be a persistently under delivering local authority and therefore it considers that a buffer of 5% should be added to the five year requirement in the context of paragraph 47 of the Framework. The Council concludes that it can demonstrate a 5.88 years supply of deliverable housing sites. In response, the appellant has made representations that it does not agree with the Council on its updated housing supply position. Based on the evidence before me I find the position regarding housing land supply to be inconclusive.

10. The proposal would provide for up to 27 new houses, of which 35% would be affordable dwellings. The contribution made towards the housing supply would be considerable.

Landscape character and setting of the town

11. Policy DM4 of the Central Bedfordshire Core Strategy and Development Management Policies 2009 seeks to generally direct residential development to within the Settlement Envelopes in order to protect the countryside from inappropriate development. Whilst the weight to be applied to this policy would be reduced in the scenario where the Council is unable to demonstrate a five year supply of housing land, it is consistent with the aims of the

[1] APP/P0240/W/16/3154220

Framework to safeguard the intrinsic character and beauty of the countryside. The other policies referred to by the parties regarding this issue are generally consistent with the Framework. Whilst the appellant argues that there continues to be a shortfall in the housing land supply, this would be a modest shortfall and these policies carry substantial weight in this instance.

12. The site is located outside of the Settlement Envelope for Potton and is within the open countryside. It is currently open and free from development. Whilst being located adjacent to the eastern edge of the main settlement, it would be separated from the main part of the town by the playing fields and recreation area. Existing mainly residential development is also located to the south of the site on the opposite side of Bury Hill and also to the north. A line of more loose-knit residential properties is located on the south side of Bury Hill heading eastwards towards the cross roads. The site falls on the edge of the landscape character area of the Dunton Clay Vale (5G) at the boundary with the Everton Heath Greensand Ridge area (6C) as defined by the Central Bedfordshire Landscape Character Assessment January 2015.

13. Located adjacent to the predominantly open playing fields and recreation area to the west, the existing site forms part of an attractive open green edge to the town in this location, with views of the open green space and rising agricultural land beyond contributing to a semi-rural character at the edge of the town. The site has significant value in contributing towards the transition from the urban to the rural area.

14. The illustrative drawing submitted with the application indicates how the proposed development could proceed including the provision of open and landscaped areas. However, whilst I am satisfied that some open and landscaped areas could be provided on the site I am in no doubt that the proposal, including the houses, access roads and parking areas, would result in a significant urbanisation of the site. Although the appellant has sought to provide for a low density development, I consider that the change to the character and appearance of the site would be likely to be radical and harmful to the area.

15. Whilst there is existing development to the north and south, the location of the site adjacent to the recreation area and playing fields, along with its long linear shape, would result in development that would appear as being poorly integrated and poorly connected with the existing pattern of built development. This would result in significant harm to the setting, character and appearance of this part of the town.

16. The eastern side of the site consists of a steep bank with mature trees and hedgerows running along the top. This would prevent views of the development from the east. However, it is the impact of the development in the context of its edge of the town location which creates significant concern.

17. Whilst the site benefits from some existing screening, the residential development would still be conspicuous in several views from around the site. Although further landscaping could be provided as part of any detailed proposal, the residential development would be particularly visible from the playing fields and recreational area to the west, from the main road to the south west and from the south following the removal of existing vegetation likely to be required for the proposed access which is indicatively shown to be from the main road at the southern side of the site.

18. Whilst Brookfields is a linear form of residential development, I consider that it relates much more coherently with the existing pattern of development in the town than would the proposed development which would be located on the currently open east side of the recreation area and which provides a pleasant and attractive open edge to the existing townscape.

19. In contrast to the Flitton appeal where the development also encroached into the countryside, I find that the impacts of the current appeal proposal on the character and appearance would be very significant.

20. For the above reasons, the proposed development would result in significant harm to the landscape character and setting of the town. It would be contrary to the design and landscape aims of policies DM3, DM4, DM14, DM16, CS14, CS16 and CS17 of the Central Bedfordshire Core Strategy and Development Management Policies 2009 ('Core Strategy'). I will go on to consider this as part of the overall planning balance later in the decision.

Ecology

21. Policies CS18 and DM15 of the Core Strategy include the aim to generally safeguard biodiversity and protected species. These policies are generally consistent with the relevant aims of the Framework and even should there be a modest shortfall in the housing land supply as argued by the appellant I consider that they carry substantial weight in this instance.

22. The site is currently covered in grassland and some other vegetation. It is also located adjacent to Potton Brook watercourse.

23. The application includes a Phase 1 Habitat Survey and Protected Species Assessment. This generally concludes that the habitats on the site are of low ecological value. It does, however, recommend further survey work relating to bats and breeding birds should any mature boundary trees be removed along with an Ecological Management Plan to safeguard badgers.

24. It also recommends a 7 metre wide buffer zone along Potton Brook to protect the habitat of water voles and otters. I note in this respect that the indicative layout drawing shows that such a zone appears to be capable of being provided with the level of development proposed. Whilst the Council has expressed concerns in spite of the buffer zone, from the evidence before me I am satisfied that water voles and otters could be satisfactorily protected in this case, subject to appropriate management and enhancement measures that could be secured through a planning condition should the appeal be allowed.

25. In respect of bats, the Phase 1 Assessment makes clear that existing trees on the site are suitable for roosting, foraging and commuting bats, particularly the scattered trees along the western, southern and eastern boundaries. It therefore recommends that surveys are carried out should trees be removed. It is not clear from the evidence before me as to the extent of trees that may need to be removed to accommodate the proposed development including the garden areas. Whilst I acknowledge that the application is in outline this matter could be material to the overall acceptability of the proposals. Whilst the appellant says that surveys could be carried out a later date, Circular 6/2005 indicates that surveys should be carried out before permission is granted where there is a reasonable likelihood of protected species being present and affected. Consequently, it advises that surveys should only be

required by condition in exceptional circumstances. Without surveys it is also difficult to be specific on any mitigation that might be required. Therefore, the absence of further bat surveys in this case weighs against the biodiversity credentials of the proposed development.

26. The application proposes areas of landscaping and an attenuation pond which would have the potential to provide some biodiversity enhancements. However, this does not outweigh the concerns set out above regarding the absence of detailed bat surveys.

27. Therefore, from the evidence before me I am not satisfied that the proposed development would satisfactorily protect the ecological value of the site. It would be contrary to the relevant aims of Policies CS18 and DM15 of the Core Strategy.

Other matters

28. A S106 agreement has been completed by the main parties. This makes provision for nine of the proposed dwellings to be affordable, along with contributions towards education and community facilities. The Council has confirmed that this agreement resolves its concerns set out in its third reason for refusal regarding the absence of a completed legal agreement. The provision of affordable housing is a benefit of the scheme which I carry forward to the overall planning balance below. Otherwise, as the appeal is being dismissed for other reasons as set out below, there is no need for me to consider the S106 agreement in any further detail.

29. The Potton Neighbourhood Pan is at a very early stage of preparation and therefore carries minimal weight in my consideration of this appeal.

Planning Balance and Conclusion

30. The proposed development would result in significant harm to the landscape character and setting of the town, contrary to the design and landscape aims of policies DM3, DM4, DM14, DM16, CS14, CS16 and CS17 of the Core Strategy. I have also found harm to arise in relation to the ecological value of the site contrary to policies CS18 and DM15 of the Core Strategy.

31. Whilst the weight to be given to policy DM4 is reduced in the scenario of there being a shortfall in housing land supply as argued by the appellant, the other relevant policies carry substantial weight.

32. In spite of the Council's latest Five Year Land Supply Statement the appellant states that the Council is still unable to demonstrate a five year supply of housing land. Whilst the evidence is inconclusive and I have not considered the housing land supply matter in any further detail, on this basis the policies for the supply of housing in the development plan are out of date and the tilted balance in paragraph 14 of the Framework therefore applies.

33. Paragraph 14 of the Framework states that where the development plan is out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or there are specific policies in the Framework which indicate that development should be restricted.

34. The development would provide for up to 27 dwellings in an accessible location within walking distance of the town centre. Nine of the proposed dwellings would be for affordable housing and the proposal as a whole seeks to provide family housing. The Framework seeks to boost significantly the supply of housing and the proposal would make a considerable contribution towards the supply of housing, including the affordable housing provision. Based on the appellant's assertion that there is not a five year supply, from the evidence before me the shortfall would only be a modest one, but nonetheless the resulting benefits carry considerable weight.

35. The proposal would also provide moderate economic benefits from employment during construction and further moderate economic benefits would result from future residents supporting existing shops and services in the town, adding to the vitality and viability of the town centre, along with the new skills of incoming residents.

36. However, given the landscape and biodiversity harm I have identified, the environmental dimension of sustainable development would not be achieved and the objections in respect of the landscape impact are particularly strong. This weighs heavily against the appeal.

37. The lack of a five year supply of housing land does not automatically lead to a grant of planning permission. In this case, in the scenario of the modest shortfall in the five year housing supply, the adverse impacts of granting permission that I have identified would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework when taken as a whole. Therefore, overall the proposal would not represent sustainable development.

38. Whilst the relevant evidence before me on housing land supply is inconclusive, in this case it has not been necessary to re-open the Hearing to consider the housing land supply matter further and I do not consider it necessary to come to a conclusion on whether the Council can now demonstrate a five year housing supply. This is because, even in the context of the Council being unable to demonstrate a five year supply, I have concluded that the adverse effects of the development would significantly and demonstrably outweigh the benefits. In the event that I were to find that the Council was now able to demonstrate a five year housing supply, this would not alter my overall conclusion on the merits of the appeal as the proposal would not be in accordance with the development plan and I do not consider that material considerations exist that justify a decision otherwise. To invite further representations on this matter would have incurred unnecessary expense for the parties as it would not have changed my overall conclusion.

39. I have also considered the other decisions, including appeal decisions, referred to by the appellant along with a case where a proposal has recently been recommended for approval. I have considered the current appeal proposal on its individual merits finding significant harm as identified above and, from the information provided, find nothing in the other decisions and applications which alter my conclusions.

40. Therefore, having had regard to all other matters raised, I conclude that the appeal should be dismissed.

David Cliff

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon Chapman	Optimis Consulting
Claudia Dietz	Optimis Consulting

FOR THE LOCAL PLANNING AUTHORITY

Nik Smith	Planning Project Manager
Alison Myers	Landscape Officer
Liz Anderson	Ecologist

INTERESTED PARTY

Chris Bailey

DOCUMENTS SUBMITTED AT THE HEARING

1. Proposals Map for Potton (April 2011)
2. Five Year Land Supply Statement (1st January 2017)
3. Central Bedfordshire Landscape Character Assessment (January 2015)
4. Photograph (Water Voles)
5. Appendix 8 (Confidential Appendix) of Phase 1 Habitat Survey
6. The Greensand Ridge Nature Improvement Area – An Introduction
7. Planning Obligations Justification Statement and Pro Forma

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

1. Signed S106 agreement
2. Email from Council dated 18th April 2017 with attached Five Year Land Supply Statement (1st April 2017)
3. Email from Council dated 3rd May 2017 regarding Five Year Land Supply Statement
4. Letter from Appellant dated 5th May 2017 regarding Five Year Land Supply Statement
5. Letter from Appellant dated 25th May 2017 regarding recent Supreme Court Judgement
6. Email from the Council dated 25th May 2017 regarding recent Supreme Court Judgement