

Appeal Decision

Hearing held on 31 January 2017

Site visit made on 31 January 2017

by Siân Worden BA MCD DipLH MRTPI

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

Decision date: 27 July 2017

Appeal Ref: APP/P0240/W/16/3154495

Land adj The Grange, Grange Lane, Lower Caldecote, Central Bedfordshire, SG18 9BA

- 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 Patrick Connors against the decision of Central Bedfordshire Council.
 - The application Ref CB/15/02583/OUT, dated 9 July 2015, was refused by notice dated 15 January 2016.
 - The development proposed is 8 no. dwellings.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was in outline with all matters apart from access reserved for later determination.

Main Issues

3. I consider that the main issues in this case are:
 - whether there is a five year supply of housing land;
 - the effect of the proposed development on the character and appearance of the open countryside;
 - whether the proposed development would be in a sustainable location;
 - the effect of the proposed development on highway safety in respect of access; and
 - the living conditions of neighbouring occupiers with regard to noise and light.

Reasons

Policy position

4. The development plan for the area includes the Central Bedfordshire Core Strategy and Development Management Policies (CS). This was adopted in 2009, prior to publication of the National Planning Policy Framework (the Framework) in 2012. For the purposes of decision-taking, the policies in the Local Plan should not be considered out-of-date simply because they were adopted prior to the publication of the Framework; due weight should be given
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to relevant policies in existing plans according to their degree of consistency with the Framework¹.

5. At the hearing the Council accepted that it did not have a five year land supply; at 1 October 2016 it was calculated to be 4.89 years². Due to criticisms over the Council's methodology, such as the absence of a non-implementation rate, and identified housing sites, the appellant considered that the supply was sufficient for no more than 3.93 years. After commenting on the disputed sites at the hearing the appellant agreed that 173 more units might be assured than he had previously assessed. Based on that position this would take the land supply up to approximately 4 years.
6. The matter of the Council's objectively assessed need (OAN) was also raised, particularly whether it would take sufficient account of the shortfall in provision accrued during the current CS period. The Council, which had commissioned work on this matter in preparing a new Local Plan, considered that it would but the appellant was doubtful. I agree with a previous inspector that it is not my role [in this decision] to set an OAN for the area³. Whilst I am not disputing any of the points made by the appellant on this matter, I cannot form an opinion on the Council's OAN before it, and the methodology supporting it, have been finalised and published⁴.
7. All things considered it is reasonable to conclude that, at the time of the hearing, the Council's land supply was somewhere between 3.93 and 4.89 years. Where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites relevant policies for the supply of housing should not be considered up-to-date⁵. CS Policies DM4 and DM14 are policies for the supply of housing and thus not up-to-date.
8. The Council referred to case law which pointed out that the Framework⁶ does not make such policies irrelevant in the determination of planning applications or appeals, nor prescribe the weight to be given to them⁷. The judgement goes on to state that it could be inferred, however, that that weight would normally be less than the weight due to policies providing fully for the requisite supply. Additionally, weight would vary according to circumstances including, for example, the extent to which relevant policies fell short of providing for the five year supply of housing land⁸.
9. In the light of this case law; the estimated supply of land, which at the time of the hearing was no less than 25% short of five years; and using the appellant's scale⁹, I consider that moderate weight can be accorded to the out-of-date policies.
10. In May 2017 the Supreme Court (SC) issued a judgment concerning the interpretation of paragraph 49 of the Framework and its relationship with paragraph 14¹⁰. The parties provided written comments on the judgement.

¹ The Framework, paragraphs 211 & 215

² Council's Statement of Case, appendix LPA/5

³ APP/P0240/W/15/3003634, paragraph 29

⁴ I note that the LPA now suggests an OAN of 1600 in the draft SHMA

⁵ The Framework, paragraph 49

⁶ Ibid

⁷ *Suffolk Coastal DC v Hopkin Homes Ltd and SSCLG* [2016] paragraph 46

⁸ Ibid paragraph 47

⁹ Full Statement of Case on Behalf of the Appellant, paragraph 6

¹⁰ *Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council*

11. The judgment makes it clear that the primary purpose of paragraph 49 is to trigger the operation of the tilted balance in paragraph 14 where a Local Authority cannot demonstrate a five year supply of deliverable housing sites. The important issue is not the categorisation of development plan policies as 'policies for the supply of housing' but whether the application of these policies is achieving a five year supply of deliverable housing in accordance with the objectives of paragraph 47. At the time of the hearing the Council did not have a five year supply. The development plan policies could not, therefore, carry full weight, regardless of whether they were outside the narrow definition of 'policies for the supply of housing'.
12. Some weeks after the hearing had closed the Council submitted its most recent Five Year Land Statement¹¹ which indicated that, at 1 April 2017, there was a supply of 5.88 years. In an exchange of counter-evidence this was robustly disputed by the appellant. The appellant sets out three figures calculated on various OANs which range from 2.5 yrs to 4.18 yrs. Using the 1600 dph OAN proposed in the draft SHMA, a 20% buffer and a 10% lapse rate, the midway calculation is 3.9 yrs, consistent with the probable range in place at the time of the hearing.
13. If the Council's assessment of its land supply is correct then more weight could be attributed to the relevant policies. If the appellant is right and there is a continuing lack of a five year supply, policies will still carry reduced weight. Based on the figures now put forward by the appellant, I do not consider that weight should differ significantly from my previous assessment described above¹². As explained in the following assessment against the issues, however, my decision is that, in any event, the harm resulting from the proposed development would outweigh its benefits.
14. The appellant considers that CS Policy DM4 is effectively silent on new housing outside of settlement envelopes. The only development specified in the policy as acceptable beyond settlement envelopes is the limited extension of gardens. It is also clarified in the explanatory text¹³ that development in such locations could include residential development but only limited types such as essential rural dwellings, on exception sites, or replacement dwellings. It is not the appellant's case that the proposed scheme would fall into these categories.

Character and appearance of the countryside

15. The appeal site is a rectangular, undeveloped plot abutting Grange Lane where it is proposed to build up to eight dwellings. It is in a rural setting, the surrounding land being mainly in agricultural use and open with few trees. A public right of way (PROW) runs along Grange Lane.
16. To the east of the plot is a car sales business; to the west are two cottages at the end of Grange Lane; and to the south is The Grange, a modern residential development of a few dozen houses. The plot thus has development on three sides and does not protrude into the surrounding countryside. Furthermore, in its current overgrown state, and with a row of densely-planted conifers along one boundary, it does not have a typically rural appearance.

¹¹ For the five year period commencing 1 April 2017

¹² Paragraph 9 of this document

¹³ CS paragraph 11.1.15

17. The proposed development would be clearly visible from Grange Lane and the nearest dwellings in The Grange. The reserved matters stages, at which details including of layout and appearance would be considered, would ensure that the proposed development had an appropriate design and looked attractive. Views from the PROW across the site to the countryside would be blocked by the new houses. At the end of Grange Lane, however, the path enters that countryside and views are extensive in most directions.
18. The other main point from which there are views into the site is where the Lower Caldecote access lane joins the A1. From here, the proposed dwellings would be seen in the context of the existing, mainly residential, development and would not be unduly obtrusive or noticeable. On this issue my conclusion is that the proposed development would not be detrimental to the appearance of the site or surrounding area. The proposals would not, therefore, have an unacceptable impact on the landscape quality of the area and would not be contrary to CS Policy DM14.

Sustainable location

19. A further arm of the first reason for refusal was that the appeal site is outside of any recognised Settlement Envelope, as defined for the purposes of Policy DM4, and is in the open countryside. The objectives of DM4 are related to the sustainability of settlements but, as it is a relevant policy for the supply of housing, by reason of the lack of a five year supply it is out-of-date. As explained above I can give such policies moderate weight.
20. There are no everyday services available in Lower Caldecote. The nearest food shop and post office is in Upper Caldecote where there is also a primary school and church. These services are approximately 2km from the appeal site via public footpaths through the intervening countryside. Those short parts of the footpath network I saw during my visit were comparatively dry and comfortable to use despite the winter weather. They could not be travelled, however, by parents taking children to school when accompanied by younger children in buggies, as is likely to be frequently the case, or in severe weather. Neither would they be suitable for those carrying more than a few items of shopping or with lesser mobility. Overall it is not realistic to consider that the paths would provide a suitable or convenient route for frequent, regular trips to the services in Upper Caldecote.
21. There was disagreement at the hearing as to the bus service, particularly as to where active bus stops were. It seems, however, that buses run reasonably frequently along the A1 and might provide a means of access to employment and other services, albeit limited by the inconvenient location of bus stops on this fast-moving and busy road.
22. On this matter the Framework advises¹⁴ that, to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Where there are groups of smaller settlements, development in one village may support services in a village nearby. The majority of trips out of Lower Caldecote are likely to be by car. There is no evidence that they would be made to a nearby village in order to support the services there, especially as the settlement is fairly close to the towns of Sandy and Biggleswade. I do not consider, therefore, that the

¹⁴ The Framework, paragraph 55

proposed development would comply with paragraph 55 of the Framework. Coupled with the moderate weight I have accorded to CS Policy DM4, which restricts development beyond settlement envelopes, this amounts to a strong indication that the proposed development would not be sustainable development in a rural area.

23. Although there are no services in Lower Caldecote it is a settlement with perhaps thirty existing dwellings. To my mind, therefore, the proposed development could not be correctly defined as new isolated homes in the countryside.
24. The proposed development would not be in a sustainable location. Its future occupiers would have little opportunity to use alternative modes of transport for trips out of the settlement, and the majority of the additional journeys generated from the scheme would be car-borne. In that regard it would be inconsistent with one of the Framework's core planning principles¹⁵.

Highway safety

25. An indicative drawing¹⁶ shows that Grange Lane could be widened along the frontage of the site by incorporating land within the red line. The appellant explained at the hearing that the intention was to approach the site along Grange Lane and this was apparently supported by email confirmation in response to a query from the Council¹⁷. The stretch of Grange Lane between the highway and the site is un-surfaced, about 38m long and approximately 2.8m wide. The Council is concerned that these conditions would be hazardous for pedestrians as there would be insufficient width for vehicles to pass them safely.
26. The appellant calculates that there would be approximately 80 additional vehicle movements per day along the lane. These could include delivery vehicles as well as cars. The PROW along Grange Lane is well-used by walkers, although I note that there has been no objection to the scheme from the Rights of Way Officer, and is also used for play and cycle-riding by local children.
27. The appellant's view was that the narrow piece of lane could be treated as a shared surface street or a quiet lane. He drew attention to some of the conditions for successful shared surface streets set out in Manual for Streets (MfS), including where they are in short lengths and where the volume of traffic is below 100 vehicles per hour¹⁸. Whilst noting that there is no reference to an appropriate width I agree that these circumstances apply to Grange Lane.
28. In several respects, however, the conditions in Grange Lane would differ from those appropriate for a shared surface. MfS states that shared surface schemes are designed with various aims including creating an environment in which pedestrians can walk, or stop and chat, without feeling intimidated by motor traffic; and making it easier for people to move around¹⁹. When schemes are being developed, consultation with the community and users is stated as being essential, and in many instances it is necessary to provide a protected space with appropriate physical demarcation²⁰. In addition, careful

¹⁵ The Framework, paragraph 17, 11th bullet point

¹⁶ Drawing no. 15_674_002

¹⁷ Hearing document 4

¹⁸ MfS paragraph 7.2.14

¹⁹ MfS paragraph 7.2.8

²⁰ MfS paragraph 7.2.12

attention to detail is required to avoid problems such as vulnerable road users feeling threatened by having no space protected from vehicles²¹. None of those characteristics would be apparent in Grange Lane. Furthermore, the illustrations of shared surfaces do not show spaces which appear to be as consistently narrow and constrained as Grange Lane²².

29. The relevant circular²³ describes quiet lanes, which are designated features, as minor rural roads or networks of minor rural roads appropriate for shared use by walkers, cyclists, horse riders and other vehicles²⁴. The circular does not specify a desirable width but in my experience the majority of minor rural roads are not as narrow as Grange Lane. For that reason I do not consider that it would be equivalent to a quiet lane.
30. Predicted vehicle movements in Grange Lane would be well below the threshold and the speed of traffic would be likely to be low. Nonetheless, it is not characteristic of the types of highway which are suitable for shared use, either as described in MfS or in the quiet lanes circular.
31. The Council pointed out at the hearing that MfS also states that widths between 2.75m and 3.25m should be avoided since they could result in drivers trying to squeeze past cyclists²⁵. To my mind this illustrates the danger inherent in mixing users, such as pedestrians and motor vehicles, even on roads of slightly greater width than the one in this case. The appellant pointed out that it would take the majority of walkers a very short time to cover the narrow part of Grange Lane and most drivers would be prepared to wait until the route was clear. In my view, however, it is not appropriate to entrust the safety of pedestrians to the behaviour of drivers; not all would be likely to exhibit the patience and courtesy which would be necessary to ensure that Grange Lane was safe at all times.
32. The proposed development would not incorporate appropriate access and linkages and would be contrary to CS Policy DM3. This policy is broadly consistent with the Framework and can be given significant weight. All in all, the increased number of vehicle trips in addition to the substandard nature of Grange Lane would be a considerable hazard to pedestrians using that route.
33. The appellant has suggested that an alternative route to the site could be through The Grange residential development. Although the carriageways here are not unduly narrow, I have insufficient information to determine whether this would be a safe and appropriate alternative.
34. During the hearing there was much discussion in respect of holiday accommodation which had been permitted at St Mary's Church, Clophill²⁶ despite being located at the end of a narrow track which was also a PROW and significantly longer than Grange Lane. The appellant pointed out that there were no conditions attached to the permission to prevent the accommodation from being used as permanent dwellings. Nonetheless, it is likely that there will be fewer traffic movements generated per unit. In any event, even if the decision at Clophill indicates inconsistency on the Council's part, the

²¹ MfS paragraph 7.2.13

²² MfS Figures 7.5, 7.6 (a) & (b), 7.7

²³ *The Quiet Lanes and Home Zones (England) Regulations 2006* DfT Circular 02/2006.

²⁴ *The Quiet Lanes and Home Zones (England) Regulations 2006* DfT Circular 02/2006, paragraph 4

²⁵ MfS paragraph 7.2.3

²⁶ Hearing document 3

development there is not a compelling reason for me to permit a scheme which would be detrimental to highway safety.

Living conditions

35. The side elevation of the dwelling known as Zweibel Kotten is almost immediately adjacent to Grange Lane. There are two windows at ground floor level which serve a study and part of the kitchen. The noise of vehicles passing along Grange Lane would be more intrusive than that from the A1. I do not consider, however, that the increased number of traffic movements arising from the proposed development would be sufficient to cause significant annoyance to the occupiers.
36. As the kitchen and study windows are parallel to the lane, the lights of passing cars would not shine directly into them. Some light from headlights might affect the back, upstairs windows but, again, I do not consider that this would result in considerable detriment for the occupiers. There is no evidence that increased passing traffic would damage the structure or foundations of the dwelling. All things considered the living conditions of the occupiers of Zweibel Kotten would not be harmed.

Benefits of the proposal

37. Although no more than eight dwellings would be provided, in areas such as this with no five year supply even a small number of new houses would be a benefit. The number of dwellings would not be sufficient to require the provision of any affordable housing. Nonetheless the development proposed would amount to a social advantage for the district. There would also be minor economic benefits in the provision of jobs during the construction period and income to the local economy from future residents. In total, however, the benefits of the scheme would be modest.

Conclusion and planning balance

38. Whilst the living conditions of neighbouring occupiers would not be considerably worsened and the character and appearance of the area would not be harmed, I have found that the proposed development would be in an unsustainable location and detrimental to highway safety. All things considered it would be contrary to the development plan as a whole where the overall strategy includes limiting development in rural areas.
39. If there is not a five year supply of land in the district relevant policies for the supply of housing are out-of-date and carry only moderate weight. In order to enact the presumption in favour of sustainable development the Framework advises that, where relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would outweigh the benefits when assessed against the policies in the Framework as a whole²⁷. The harm which would be caused by the proposed development would, in my opinion, be of a severity to significantly and demonstrably outweigh the modest benefits arising from the scheme.
40. For the reasons given above I conclude that the appeal should be dismissed.

Síán Worden Inspector

²⁷ The Framework paragraph 14

APPEARANCES

FOR THE APPELLANT:

Matthew Green BA	Director, Green Planning Studio Ltd
Ruth Reed BA DipArch MA	
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Jeremy Hurlstone BSc (Hons)	Managing Director, The Hurlstone Partnership
CMILT MCIHT	

FOR THE LOCAL PLANNING AUTHORITY:

Alex Harrison	Principal Planning Officer, Central Bedfordshire Council
Andrew Marsh	Senior Planning Officer, Central Bedfordshire Council
Dave Ager	Principal Highways Officer, Central Bedfordshire Council

INTERESTED PERSONS:

Tim Gurley	
Annette Bygraves	
Helen Papworth MA MRCVS	Northill Parish Council
Valerie Smyth	
James Dale	

DOCUMENTS

- 1 Statement of Common Ground
- 2 Appeal decision APP/P0240/W/16/3159805
- 3 Delegated report, memo and decision notice in respect of planning applications at St Mary's Church, Clophill
- 4 Email exchange Alex Harrison/David Clarke re access
- 5 Schedule of disputed housing sites