



Appeal Decision

Hearing Held on 31 July 2017

Site visit made on 31 July 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 1st September 2017

Appeal Ref: APP/Y0435/W/16/3165826

Land off Calverton Road, Stony Stratford, Milton Keynes MK112 1HL.

- 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 Black Sheep Trading III Ltd against the decision of Milton Keynes Council.
 - The application Ref 16/01208/OUT, dated 6 May 2016, was refused by notice dated 14 November.
 - The development proposed is an outline planning permission for the erection of up to 21 dwellings comprising up to 6 affordable and 15 market dwellings, provision of vehicular access and roadway, parking, open space, new right of way, landscaping and foul water pumping station, surface water drainage and swales.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although the application was submitted in outline with only access to be determined, it was accompanied by an illustrative site layout showing how a development of up to 21 dwellings might be achieved. The application was also supported by a raft of supporting technical documentation in relation to highways and ecology.
3. At the Hearing the appellant went to lengths to point out that the description of the development has been amended with the agreement of the Council to include the words 'up to'. I was therefore invited by the appellant to consider imposing a planning condition specifying a lesser number of dwellings if I considered this to be necessary. However, the "*Planning Practice Guidance*"¹ is clear that conditions which modify or contradict a development in such a way as to make it substantially different from that set out in the application should not be used. That being the case, I am required to assess the development on the basis that it could be up to the 21 dwellings specified in the application documents.
4. A signed Statement of Common Ground (SOCG) was submitted shortly before the Hearing and I have had regard to this in reaching my decision.
5. I have received a draft Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990. Despite best efforts, the appellant was

¹ Ref ID 21a-012-20140306

unable to submit an agreed UU at the Hearing due to repeated delays on the Council's part. Although, a fully executed UU was submitted after the Hearing, the Council subsequently raised a number of drafting concerns with the appellant. At the current time these remain unresolved. However, since I am dismissing the appeal on its substantive merits I do not need to consider the efficacy of the UU or whether the obligations would meet the tests of regulation 122 of the Community Infrastructure Levy Regulations 2010.

6. An appeal against the refusal to grant permission for an outline application for 21 dwellings on the same site was dismissed in September 2016². Given that this decision relates to a similar development on the same site, it is a material consideration of significant weight.
7. The planning application was assessed by the Council on the basis that it could not demonstrate a 5 year supply of housing. However, since determination of the application the Council has adjusted its supply figures to a revised position as of 1 April 2017 to reflect the number of housing completions in the preceding year. The Council now argue they can demonstrate a supply of 13,727 dwellings, a surplus of 407 units equivalent to a 5.16 years' supply. Given that the latest land supply report³ only became available after the Hearing had closed, the appellant was given additional time to comment on the material.
8. Although the application was refused for two reasons, there was broad agreement at the Hearing that both reasons involve the consideration of similar issues. I have therefore dealt with both reasons under a single main issue.

Main Issue

9. In view of the above, the main issue is the effect of the development upon the open amenity space, linear park and open countryside.

Reasons

10. The appeal site is known locally as "Higlin's Piece" and comprises a broadly triangular parcel of greenfield land located to the rear of existing housing fronting Calverton Road. It lies adjacent to but outside the settlement boundary of Stony Stratford. Although fairly overgrown at the time of my visit, the appellant confirmed that it is used intermittently as paddock/grazing land. Vehicular access to the site is via a simple unmade gated access to the south of No 76 Calverton Road.
11. The site is bounded to the east by Public Footpath 3 and to the west by the River Great Ouse alongside which runs Public Footpath 132 (the riverside walk). The land is relatively flat and other than the presence of several mature trees close to the northern site boundary all of which would be retained, it has few distinctive features.
12. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 explains that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for the area comprises the "*Milton Keynes Core Strategy 2013*" (the CS) and 'saved' policies of "*Milton Keynes Local Plan 2001- 2011*" (the LP).

² PINS Ref: APP/Y0435/W/16/3148882

³ "Assessment of Five Year Land Supply 2017-2022" July 2017

13. The site lies within designated Open Countryside, the Ouse Valley Linear Park and a Wildlife Corridor. LP Policy S10 states that, within the open countryside, permission will only be granted for development that is essential for agriculture, forestry, countryside recreation or other development which is wholly appropriate to a rural area and cannot be located within a settlement. Despite some inconsistencies, the underlying aims of the policy are consistent with the Framework which recognises the intrinsic character and beauty of the countryside. It is not part of the appellant's case that the proposal accords with the exceptions set out in Policy S10. Therefore the location of the development outside the settlement boundary of Stony Stratford would conflict with Policy S10 of the LP.
14. LP Policy S12 and CS Policy CS19 of the Milton Keynes state, amongst other things, that green infrastructure will be protected and enhanced; and within linear park areas, development proposals should, inter alia, protect and improve the landscape. The supporting text explains that irrespective of public access, linear parks and river valleys are importance features in the Milton Keynes area and provide a variety of formal and informal recreational opportunities.
15. The development would include up to 21 dwellings arranged around a new estate road connecting to Calverton Road in roughly the same location as the existing access. Matters relating to the layout, scale and appearance of the dwellings are outside the remit of the appeal scheme.
16. I heard much testimony at the Hearing from local residents about the role the site plays in sustaining the rural setting to the rear of properties on Calverton Road and Ousebank Way. In this regard, it is clear that the site is a cherished local asset on account of its intrinsic openness.
17. The site is particularly sensitive to development given its visual exposure from the two footpaths which abut the eastern and western site boundaries. As I saw at the time of my visit, the riverside walk in particular is a popular and attractive walking route. Whilst its character does fluctuate, its inherent qualities in the immediate vicinity of the site stem from its proximity to the water and its open aspect on both sides. The appeal site and other areas of open land separating the built environment from the riverside corridor are in my view important parts of the form and function of the linear park. They provide physical breathing space along the river which allows for quiet contemplation away from the hustle and bustle of the residential areas nearby. Despite the proximity of housing, the site and wider linear park has a tranquil, semi-rural setting that makes a significant contribution to the character and appearance of the area.
18. Whilst only illustrative, the layout plan shows how the dwellings might be arranged around a short cul-de sac. It shows an enclosed, relatively high-density physically distinct development of 21 dwellings served from the existing single point of access. Due to the constraints of the site's size and shape, it is inevitable, irrespective of exactly how the dwellings and estate road are arranged, that the dwellings would occupy a significant proportion of the site and impose an unduly urbanised built form on the landscape. Although existing landscaping and the proposed wildlife corridor would assist in softening the visual appearance of the development, the dwellings, domestic boundary treatments together with a modern estate road and associated vehicular

movements would completely change the open and green character of the land.

19. Based on the foregoing, I find the scheme would introduce a harmful change in the character and appearance of the site from an open setting to a highly urbanised one. No evidence is before me to demonstrate how the scheme could be accommodated in alternative ways to alleviate the harm I have identified. I therefore conclude that the proposed development would not protect or improve the landscape of the linear park or the appearance of the locality as required by LP Policies S12 and L2 and CS Policy CS19.

Other Matters

20. Having heard from the Council's Countryside Officer at the Hearing, it was apparent that there are a number of ecology related issues that remain outstanding. Specifically, there is no bat survey before me as requested by the Council. In my view, where there is at least a *reasonable likelihood* of bats being present, as is the case here, a precautionary approach should be adopted. Therefore without a bat survey, it is not possible to ascertain the effect of the development on a protected species.
21. Although the Countryside Officer supported the creation of a wildlife corridor as shown on the illustrative plan, it was evident that the diversion of a riverside footpath upon which the stated benefits of the corridor rests, had not been fully considered by either the Council or the appellant. The diversion of the riverside footpath unlike footpath 3 is not shown on the plans submitted with the application and it was abundantly clear that neither the Parish Council nor local residents were aware of this aspect of the scheme. There is no mention of the diversion in the Appellant's Grounds of Appeal, the Transport Assessment or the Design and Access Statement. It is also pertinent that paragraph 6.3 of the Council's Appeal Statement incorrectly refers to the path being unaffected by the proposal.
22. I appreciate the appellant's point that no concerns were raised about the riverside footpath and therefore there was no reason to show its diversion on the layout plan. Whilst I have some concerns with that line of argument, further information was requested by the local Ramblers Association. In my view, based on what I heard at the Hearing and my own observations on site, the diversion of a popular riverside walk into the development and possibly onto an estate road would at best be contentious. Given the stringent tests that exist for diverting a Public Right of Way, I can have no certainty that the diversion could be delivered and as such, I place very limited weight on the ecology related benefits of the wildlife corridor. I also share those concerns about the proposed diversion of Footpath 3 onto the estate road something which would run counter to established best practice.
23. Finally, the appellant argues that the appeal site has been consistently identified for housing as part of the Council's emerging Site Allocations Plan document. However, this was disputed by the Council and the latest published document⁴ categorises the site as one '*with significant obstacles*'. Accordingly, there is no firm prospect of the site being allocated for housing and this argument carries limited weight in the overall planning balance.

⁴ Site Allocations Plan Emerging Preferred Options Consultation October 2015

Conclusion

24. I have found that the proposed development would not respond well to its context and would be harmful to the character and appearance of the area. These conflicts with the development plan are significant factors which weigh heavily against the grant of planning permission.
25. The appellant has not contested the Council's housing land supply position but even if I were to find flaws in the figures, the positive attributes of the scheme in terms of housing supply would not outweigh the harm I have identified. Overall it seems to me that this is a case where the appellant has been trying to achieve too much on a site with significant constraints.
26. For the reasons given above and taking into account of all other matters raised, I conclude that the appeal should be dismissed.

D. M. Young

Inspector

APPEARANCES

FOR THE APPELLANT

Mr Gregory Gray	Appellant's Agent
Mr Harry Wolton	Appellant's Legal Advisor

FOR THE LOCAL PLANNING AUTHORITY

Mr Duncan Law	Milton Keynes Council
Ms Elizabeth Verdegem	Milton Keynes Council
Ms Diane Evans	Milton Keynes Council
Mr Phil Caves	Milton Keynes Council

INTERESTED PERSONS

Simon Cherrill	Stony Stratford Town Council and local resident
Michael Allsopp	Stony Stratford Town Council and local resident
Sue Edwards	Local resident
Kate Edwards	Local resident
Gary Higgins	Local resident
Catherine Frost	Local resident
Graham Benjamin	Local resident

DOCUMENTS SUBMITTED AFTER THE HEARING

- 1 Site Allocations Plan Emerging Preferred Options Consultation October 2015
- 2 Council's Housing Land Supply Statement dated 30 June 2017.
- 3 Appellant's response to the above
- 4 Signed Unilateral Undertaking