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## Appeal Decision

Site visit made on 9 October 2017

by **Graham Wyatt BA (Hons) MRTPI**

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

Decision date: 29<sup>th</sup> November 2017

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**Appeal Ref: APP/Y0435/W/17/3178790**

**Land to the Rear of Castle Road and North of The Glebe, Lavendon, Olney MK46 4JE**

- 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 & Mrs Gray against the decision of Milton Keynes Council.
  - The application Ref 16/01630/OUT, dated 15 June 2016, was refused by notice dated 12 May 2017.
  - The development proposed is 21 new dwellings and associated development on land rear of Castle Road, Lavendon.
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### Decision

1. The appeal is allowed and outline planning permission is granted for "Outline planning permission including means of access (all other matters reserved) for erection of 14 new dwellings at Land to the Rear of Castle Road and North of The Glebe, Lavendon, Olney MK46 4JE" in accordance with the terms of the application, Ref 16/01630/OUT, dated 15 June 2016 subject to the conditions on the attached schedule.

### Application for costs

2. An application for costs was made by Mr & Mrs Gray against Milton Keynes Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. A third party claim they own part of the access to the site and have provided a number of land registry titles. The appellant states that they signed Certificate of Ownership 'A' in good faith on the basis that they consider the land to be in their ownership. It is not for me to resolve matters of land ownership and the issue has no bearing on the planning merits of the case before me. Moreover, if the appellant is incorrect, nothing in my decision affects the rights that any other owner may enjoy.
4. The application sought outline planning permission with only access for consideration. A layout has been provided detailing how the site could be developed with the dwellings. I have treated this as an illustrative drawing for the purposes of the appeal.
5. The application initially sought permission for 21 dwellings. Following negotiations with the Council this was reduced to 14 dwellings. As a result, the description of the development changed from that in the header above to "Outline planning permission including means of access (all other matters

reserved) for erection of 14 new dwellings". The Council dealt with the proposal on that basis and so shall I.

6. The application form identifies the site as "Land to Rear of Castle Road Lavendon". For clarity I have included reference to "The Glebe", the postal town of Olney and postcode.

### **Main Issues**

7. The main issue are:

- Whether the appeal site is an appropriate location for new housing having regard to the provisions of the development plan; and
- Whether the site constitutes previously developed land and the implications that flow from a conclusion on that matter.

### **Reasons**

#### *Appropriate Location*

8. The appeal site forms a roughly triangular parcel of land that is currently used for grazing and keeping of horses. The site is mainly laid to grass and contains a manege and stable buildings to the north with the land rising gently from the south to the north. The site lies to the east of Castle Road and to the north of The Glebe. Further east and north are mainly open agricultural fields. The site lies outside of the development boundary for Lavendon and therefore, for the purposes of planning policy, lies within the countryside.
9. Policy S10 of the Milton Keynes Local Plan 2001-2011 (adopted 2005) (the Local Plan) defines the open countryside as all land that is outside the development boundaries. It is a deliberately restrictive policy which states that in the open countryside permission will only be given 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.
10. Policies CS1 of the Milton Keynes Core Strategy (adopted 2013) (the Core Strategy) sets out the settlement hierarchy whereby Lavendon is defined as an "other village" with a settlement boundary whereby small scale redevelopment and infill development will be permitted. Policy CS9 of the Core Strategy sets out the strategy for the rural area and states that appropriate infill development and conversions will be allowed in villages with development boundaries.
11. Therefore, as the proposed development would be sited beyond the settlement boundary of Lavendon and is therefore within the open countryside. The development would conflict with Policy S10 of the Local Plan and Policies CS1 and CS9 of the Core Strategy which seek, amongst other things, to restrict development to land within defined settlement boundaries.

#### *Previously Developed Land*

12. A stable building, hardstanding and manege are located in the northern part of the site, with the remainder used as grazing areas for horses. Annex 2 of the National Planning Policy Framework (the Framework) defines previously developed land as, "Land which is or was occupied by a permanent structure,

- including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure”.
13. From my visit it is clear that although only the northern part of the site contains development, the paddocks that extends to the south is part of the use of the site for equestrian purposes. I find this to be an integral part of the site that is within the curtilage of the manege and stable building. Thus, the site is considered previously developed land.
  14. Paragraph 17 of the Framework identifies 12 core principles of sustainable development, one of which is to encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value. Paragraph 111 of the Framework reiterates the point that planning policies and decisions should encourage the use of brownfield sites. I therefore attach significant weight to the fact that the site is brownfield land.
  15. The Council confirm that although the site is designated as “open countryside” it is not designated as an “Area of Attractive Landscape”. Moreover, Policy CS10 of the Local Plan clarifies that the term “open countryside” applies to all land outside the development boundaries of settlements. From my visit the site does not have a high environmental value.
  16. Paragraphs 7 and 8 of the Framework tell us that the three dimensions of sustainable development are economic, social and environmental which should not be considered in isolation. Paragraph 55 of the Framework also tells us that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby.
  17. Lavendon contains a number of amenities and facilities such as a shop and post office, two public houses/restaurants, a primary school and a nursery. The key Settlement of Olney lies some 5 kilometres to the west of the site and can be reached by public transport where one can access a wider range of amenities and facilities. The larger towns of Northampton and Bedford are also accessible via public transport which provide a wider range of services and transport links.
  18. The site adjoins the settlement boundary for Lavendon and has access to a variety of facilities, but it is acknowledged that occupiers of the dwellings are likely to use the private car to access services further afield. However, public transport is provided close to the site which provides an alternative to the private car.
  19. The provision of 14 dwellings themselves would provide a social benefit. Moreover, the provision of houses would also enhance and maintain the vitality of rural communities by supporting services in a nearby village, such as Olney, which can be accessed by public transport. There would also be an economic benefit though the construction and subsequent maintenance of the dwellings. Turning to the environmental dimension of sustainable development, it is clear that the Framework seeks to promote the reuse of brownfield land. It seems to me that as a core planning principle, it is far better to bring forward development on acceptable brownfield land than build on undeveloped green fields.

20. The appeal must be determined in accordance with the development plan, unless material considerations indicate otherwise. The policies within the Framework are current Government policy and are a material consideration to which I attach significant weight. The reuse of the brownfield site for the development constitutes a significant environmental benefit and I consider that the Framework is a material consideration of sufficient weight to justify a decision other than in accordance with the development plan.

### **Other Matters**

21. Interested parties have raised the issue that the Council can currently demonstrate a 5 year supply of deliverable housing sites. As a result, there is no need to provide additional houses. Moreover, the policies within the development remain up-to-date. The fact that a Council can demonstrate a 5 year supply of deliverable housing is not in itself a reason to restrict more housing developments. Moreover, the Framework places an emphasis at paragraph 47 that to boost significantly the supply of housing, local planning authorities should identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15.
22. I have not seen any evidence that local services, such as schools and doctors, could not cope with the additional demands of 14 dwellings. Concerns regarding highway safety and traffic congestion have also been raised. However, I note that the local highway authority did not object to the development. From my site visit, I see no reason to disagree with the local highway authority.
23. With regard to flooding, I note that following negotiations with the Local Lead Flood Authority (LLFA) to reduce the development from 21 units to 14 and the provision of a flood meadow area, they no longer raise an objection to the development. I see no reason to disagree with the LLFA. The Council have also confirmed that trees on the site are not the subject of a Tree Preservation Order. The site is not within the Green Belt. As stated earlier, land ownership is a private matter between those parties involved and has not had a material bearing on my assessment of the planning merits in this appeal.
24. The Council have demonstrated that there is a need to mitigate the impacts of the proposed development on local infrastructure including primary education, leisure, recreation and sports, social infrastructure and carbon neutrality. The appellant's have agreed to the contributions sought by the Council and to that end, have provided an executed planning obligation.
25. The Council's committee report states that the contributions flow from the Core Strategy, the Local Plan and other relevant Supplementary Planning Documents/Guidance. The Council are also satisfied that the contributions meet the tests at paragraph 204 of the Framework and are in accordance with Regulation 122 and 123 of Community Infrastructure Levy Regulations 2010. However, I have not been presented with any evidence to demonstrate that that is indeed the case. Although the obligation has been entered into and would come into effect on the grant of planning permission, I cannot reach a finding on it and it plays no part in my decision.

## **Conditions**

26. The Council have suggested a number of conditions. In accordance with the advice contained within the Planning Practice Guidance (PPG), where appropriate, I have reworded them where necessary in the interests of precision and enforceability. The PPG advises that, "Conditions relating to anything other than the matters to be reserved can only be imposed when outline planning permission is granted".<sup>1</sup> With this in mind, it is necessary to consider which conditions the Council have suggested fall outside the scope of the reserved matters and which can be dealt with at reserved matters stage.
27. Access is not a reserved matter. Therefore, in the interest of highway safety it is necessary to ensure that the access is laid out and completed in accordance with details to be submitted to the Council for approval before any other development is carried out. To prevent the increased risk of flooding, a scheme for surface water drainage should be submitted to and approved by the Council. In the interest of sustainable development, a full Sustainability Statement and Wastewater Strategy should be submitted to the Council for approval. In the interest of biodiversity, a Biodiversity Enhancement Scheme should also be submitted to the Council for approval. To ensure adequate refuse storage is provided a Refuse Strategy should also be submitted to the Council for approval. All dwellings should achieve the Secure by Design Accreditation. Given the site's location close to neighbouring properties, it would be prudent to require a Construction Management Plan. A survey for potential groundwater or gas contamination and a programme of archaeological field evaluation should also be undertaken before any development commences. The approved plans should also be specified to provide certainty.
28. However, as layout, appearance, scale and landscaping are reserved matters, details of cycle storage and signage/bollards, boundary treatments, materials, external lighting, finished floor levels and hard and soft landscaping are not necessary at this stage.

## **Conclusion**

29. For the reasons given above, and having regard to the development plan when read as a whole, and other material considerations, particularly the Framework, I conclude that the appeal should be allowed.

*Graham Wyatt*

**INSPECTOR**

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<sup>1</sup> PPG Paragraph 025 Reference ID: 21a-025-20140306 Revision date: 06 03 2014

## Schedule of Conditions

- 1) Details of the, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: MS-1961, SU01, SU02, J32-2579-PS-002 and SK02 Rev N but only in respect of those matters not reserved for later approval.
- 5) No other part of the development shall commence until the new means of access have been sited, laid out and constructed in accordance with details to be approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and constructed in accordance with Milton Keynes highway specification.
- 6) The details to be submitted for approval in accordance with condition 1 above shall include a detailed design and associated management and maintenance plan, for a surface water drainage scheme, based on sustainable drainage principles for the site shall be submitted to and be approved in writing by the local planning authority. The management and maintenance plan shall include a detailed time table for the implementation of the surface water drainage scheme. The approved drainage scheme shall subsequently be implemented in accordance with the approved detailed design and in accordance with the approved time table for implementation and be retained thereafter.
- 7) Prior to the commencement of the development hereby approved, a Construction Management Plan shall be submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period and include provision for:
  - i. The parking of vehicles of site operatives and visitors
  - ii. Loading and unloading of plant and materials
  - iii. Storage of plant and materials used in constructing the development
  - iv. The erection and maintenance of security fencing/hoardings and lighting
  - v. Welfare and other site facilities
  - vi. Construction traffic routing and signage
  - vii. Working hours and delivery times
  - viii. Measures to control the emission of dust, dirt, noise and vibrations during construction
- 8) Prior to the commencement of the development hereby permitted, an assessment of ground conditions to determine the likelihood of any

ground, groundwater or gas contamination of that part of the site shall be undertaken and the results of this survey together with a strategy for any remedial action deemed necessary to bring the site to a condition suitable for its intended use shall be submitted to, and approved in writing by, the LPA. Any remedial works shall be carried out in accordance with the approved strategy and validated by submission of an appropriate verification report to the local planning authority prior to first occupation of any part of the development. Should any unforeseen contamination be encountered in that phase or part of the development the local planning authority shall be informed immediately. Any additional site investigation and remedial work that is required as a result of unforeseen contamination shall be carried out to the written satisfaction of the local planning authority.

- 9) Prior to the commencement of the development hereby permitted, a programme of archaeological field evaluation comprising trial trenching shall be completed in accordance with a Written Scheme of Investigation that has been submitted to, and approved in writing by, the local planning authority. On completion of the agreed archaeological field evaluation, a further Written Scheme of Investigation for a programme of archaeological mitigation in respect of any identified areas of significant buried archaeological remains shall be submitted to and approved by the local planning authority in writing. No development shall take place other than in accordance with the Written Scheme of Investigation so approved. The development hereby permitted shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 10) Prior to the commencement of the development hereby permitted, a wastewater strategy shall be submitted to, and approved in writing by, the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the approved wastewater strategy.
- 11) Prior to the construction of any of the dwellings hereby permitted above ground floor slab level, a Biodiversity Enhancement Scheme informed by the DEFRA Impact Assessment Biodiversity Calculator methodology and including bird bricks and bat tubes in buildings, hedgehog fence passes and the use of native plant species shall be submitted to, and approved by, the Local Planning Authority. The approved scheme shall be implemented prior to the first occupation of the development and retained thereafter.
- 12) Prior to the occupation of the development hereby approved, a refuse strategy shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved refuse strategy.
- 13) All dwellings shall achieve Secured by Design accreditation. Prior to the occupation of each dwelling, a copy of the certificate confirming the achievement of Secured by Design accreditation for that dwelling shall be submitted to, and approved in writing by, the Local Planning Authority.