
Appeal Decision

Site visit made on 30 October 2017

by G D Jones BSc(Hons) DipTP DMS MRTPI

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

Decision date: 30th January 2018

Appeal Ref: APP/Y0435/W/17/3179181

Land at Lower End Road, Wavendon, Milton Keynes MK17 8AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Mayne against the decision of Milton Keynes Council.
 - The application Ref 17/00099/FUL, dated 13 January 2017, was refused by notice dated 7 April 2017.
 - The development proposed is the change of use of land to form a site for travelling showpeople comprising four plots for mixed residential and storage use with associated access and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although one of the refusal reasons concerns the effect of the proposed development on foul drainage, the Council's appeal evidence indicates that this matter could be satisfactorily addressed via a condition in the event that planning permission were to be granted. I have found no reason to disagree and have framed the 'main issues' accordingly.

Main Issues

3. The main issues are:
 - Whether the proposed development would accord with the area's strategy for the location of new development;
 - The proposed development's effect on highway safety;
 - Its effect on the character and appearance of the area;
 - Its effect on biodiversity; and
 - Whether any harm arising would be outweighed by any other considerations.

Reasons

Development Strategy

4. In respect to its strategy for the location of new development the Council makes reference to Policies CS1 and CS9 of the Milton Keynes Core Strategy 2013 (the Core Strategy) and Policy S10 of the Milton Keynes Local Plan 2001-2011 (the Local Plan). Policies CS1 and CS9 seek to focus development in the rural area within the development boundaries of the main

- and most sustainable towns or key settlements. Policy S10 restricts development in the countryside unless it 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.
5. The site adjoins a fairly loose knit group of dwellings to the southwest. It is also close to the eastern end of a Strategic Land Allocation identified in the development plan for mixed use development, including residential, employment and community uses (the SLA). The SLA lies to the northwest of the appeal site, on the opposite side of Lower End Road.
 6. Notwithstanding the nearby existing and planned development, the site stands beyond any designated settlement boundary and is not allocated for development. From the information before me I have found no reason to believe that the development plan makes provision for development of the type proposed in this kind of location, for instance via the exceptions criteria of Local Plan Policy S10.
 7. Nonetheless, national policy in the form of the Planning Policy for Traveller Sites (the PPTS) does make provision for development for travelling showpeople outside of settlements. Amongst other things the PPTS says that such development should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. In this case the site is located close to the existing settlement and will become more so with the planned SLA development. Consequently, as a matter of principle and notwithstanding any tension with Policy S10 of the Local Plan and Policies CS1 and CS9 of the Core Strategy, in the context of national policy I am not convinced that the appeal proposal is at odds with area's strategy for the location of such development.

Highway Safety

8. At the time the appeal planning application was determined the Council was concerned, among other things, that adequate visibility at the proposed vehicular access could not be achieved without 'a significant loss of landscape'. However, planting has subsequently been removed from each side of the existing / proposed site access.
9. Notwithstanding the Council's submissions, the appellant has confirmed that, while the proposed access incorporates the existing access and that a wider access would be formed, the proposals are unchanged from when the application was determined. In view of the removal of landscaping to the site frontage, the Council has now advised that if the proposed access is assessed as using the existing access then - with some minor additional cutting of the landscaping in both directions - it would appear that the visibility could be made acceptable in highway terms.
10. The Council's revised position on this matter is subject to the frontage planting not being restored in order to maintain visibility to and from the access. Nonetheless, it is clearly the Council's preference that it is restored in the interests of the character and appearance of the area. The Council has also suggested that this might happen as a consequence of separate enforcement action with reference to the land in question being 'understood' to be 'highways owned land'.

11. It is not my role, when determining an appeal made under section 78 of the Town and Country Planning Act 1990, to rule on the lawfulness or otherwise of such actions. I do note, nonetheless, that the planting clearance works appear to have been undertaken within land identified as being owned jointly by the appellants and one of their parents, rather than on land within the highway. Accordingly there appears to be a good - or at least a reasonable - prospect of adequate visibility at the site access being secured with, at the most, limited additional removal of foliage. This could be achieved before the commencement of the proposed use and retained into the future via a condition in the event that planning permission were to be granted. On this basis the proposed development would not conflict with Policy D1 (vi) (inadequate access) of the Local Plan.
12. The site is not linked to nearby settlements or services by footways and the surrounding roads are unlit. The planned SLA would deliver a good range of facilities in reasonably close proximity to the appeal site. That development would also deliver at least some additional highway infrastructure, including enhanced facilities for pedestrian and cyclists. However, it appears from the evidence that their delivery is likely to take a number of years. In the meantime residents of the proposed development would have to rely on existing facilities further afield.
13. During that interim period, given the lack of pedestrian infrastructure, it seems most likely that some residents of the proposed development may be discouraged from walking from/to the site to access such facilities in preference to other modes of transport. I also acknowledge that due to the nature of the proposed use, residents of the site would not walk to their place of work. Nonetheless, it remains likely that there would be some pedestrian movements both in the shorter and longer term, prior to and following the delivery of the SLA.
14. Given the existing highway circumstances described above and in the absence of greater certainty at this stage regarding any improvements to pedestrian infrastructure in the vicinity of the site, for instance those that may be delivered with the SLA, the introduction of additional pedestrian movements to the local highway network would be likely to significantly compromise highway safety. Consequently, in that regard the appeal scheme conflicts with Policies T1 (the transport user hierarchy) and T3 (pedestrians and cyclists) of the Local Plan. This alone carries substantial weight against the appeal scheme given the vulnerability of pedestrians.

Character & Appearance

15. Although not directly cited in the reasons for refusal, the evidence does address the proposed development's effect on the character and appearance of the area. Due to the removal of the planting to its frontage, the site is now more visible from the public domain than was the case at time the application was determined. Consequently and given the nature of the proposed use, including the potential type and amount of show equipment that might be stored there, the development has the potential to have a more acute effect on the character and appearance of the area than might have been envisaged at the application stage.
16. A substantial buffer area is shown around the site that could be used for landscape screening. While this land lies beyond the site boundary it is

within the appellants' control. Such works are not expressly proposed yet they have the potential to provide an additional substantial screen and verdant setting for the proposed development.

17. Notwithstanding any such potential works, the appeal scheme would still have a reasonably significant effect on the character and appearance of the area. For instance, although there is an existing site access, its appearance is characteristic of the rural field gates that I observed in the countryside surrounding the site. In contrast, the proposed access would have a more engineered appearance, more in keeping with an urban context.
18. Furthermore, the removal of planting at the site's frontage required to secure visibility at the access starkly interrupts the pleasant roadside planting that characterises this part of Lower End Road to the detriment of the street scene. While this could be replaced by new planting, it would have to be set back, somewhat discordantly, from the highway in order to maintain access visibility.
19. The changed access would also act as a visual 'signpost' for the presence of a more intensive form of development within the site in contrast to the current reasonably low-key use for the keeping of horses. Notwithstanding any existing or potential new screening, the access would also offer views into the developed site. All of these factors would detrimentally affect the rural character and appearance of the area. However, the weight carried by that harm would be reasonably limited given the limited scale of development proposed, that such development is a not uncommon feature of the countryside, admitted in principle by national planning policy, and when considered in the context of the very substantial planned development at the nearby SLA. Consequently, the harm to the character and appearance of the area is not determinative in my overall decision.

Biodiversity

20. The National Planning Policy Framework (the Framework) sets out that, in determining planning applications, local planning authorities should aim to conserve and enhance biodiversity. Although no equivalent evidence was submitted with the appeal planning application, a Preliminary Ecological Appraisal has been provided as part of the appeal process.
21. While that Appraisal contained some conflicting contents regarding badgers and whether or not further survey work is required, the appellants' ecologists have subsequently confirmed that these are due to a 'template typing error' and that the Appraisal should have stated that no further surveys are required in respect of badger setts. This appears to be consistent with the wider contents of the Appraisal.
22. There are a number of other points within the Appraisal which indicate that further work is required. Nonetheless, it does appear to draw reasonable conclusions based on adequate information, including an assessment of the likelihood of the presence of protected species and in each case no further surveys are found to be required. Moreover, where issues are identified the Appraisal makes reasonable recommendations in response to the matters arising. These recommendations could be reasonably secured and controlled via a planning condition were planning permission to be granted.
23. For these reasons, subject to mitigation, the proposed development would not have a significant effect on biodiversity such that, in this regard, it would not

conflict with Policy NE2 (protected species) of the Local Plan or with the Framework.

Other Considerations and the Planning Balance

24. Both main parties make reference to the PPTS. Policy H relates to determining planning applications for traveller sites, including para 24 of Policy H, which sets out a number of criteria, which I consider in turn starting with the existing level of local provision and need for sites.
25. The Council has produced the Milton Keynes Strategic Housing Market Assessment 2016–2031, February 2017 (the SHMA), which includes a Gypsy and Traveller Assessment (the GTAA). This work has been used to inform the emerging Plan:MK (the eP:MK), which is intended to replace the Local Plan. As the eP:MK is at a reasonable early stage, scheduled for submission for examination in spring 2018, it is likely to be subject to change such that it attracts limited weight only at this stage. However, that does not necessarily affect the weight that may be attached to its evidence base, such as the SHMA.
26. The assessment undertaken for the GTAA “did not find any Travelling Showpeople yards in Milton Keynes so no additional need has been identified” for the plan period. The appellant is critical of the GTAA particularly in terms of the extent of engagement with all representative bodies. The GTAA itself is not explicit in that regard, however the Council has provided additional information regarding its methodology and the measures taken to assess need, including liaison with the Showmen's Guild. On this basis, although it has yet to be tested through the eP:MK process when it is likely to be subject to greater scrutiny and wider evidence, from the information before me the GTAA appears to have gone to reasonable lengths to establish current and future need for travelling showpeople's yards.
27. I recognise that the appeal proposal itself may be symptomatic of greater need than is identified in the GTAA. For instance, the letters from the intended occupants of the site submitted with the appeal indicate that there is at least some need for some development on the basis that their current accommodation is either unsuitable or will become unavailable. However, there is no apparent strong spatial link to Milton Keynes other than that the appellants own the site, while there appear to be only reasonably broad family and working links to the wider area. Consequently, in the context of the findings of the GTAA, likely need for the development attracts only limited weight in favour of the appeal. I do nonetheless recognise that decision-takers should determine applications for sites from any travellers and not just those with local connections.
28. There is no obligation on the appellants to demonstrate the lengths they have gone to to find new accommodation, the methodology employed in doing so or even to search for alternative sites at all. They have, nonetheless, made an assessment of alternative sites in eight neighbouring Council areas, which concludes that there are no other sites that are suitable, available and viable to meet their needs in those areas.
29. However, no such assessment has been made of the Milton Keynes area. The Council and a number of interested parties make reference to the potential availability of property, including ‘brownfield land’, and allocated traveller sites in Milton Keynes. However, no specific sites are identified and there is no

evidence to show that any such sites are available or that they would be suitable for the purposes proposed. The evidence is, therefore, somewhat inconclusive on this matter, such that the claimed absence of alternatives carries only limited weight in favour of the appeal.

30. The evidence also indicates that the appeal site would be well located in terms of providing good access to the road network to meet the proposed occupants' pattern of work to reduce the need for long-distance travelling, as well as being reasonably close to other family members. The site would accommodate four related families, including a number of children. Allowing the appeal would permit the extended family to live together as a group for general mutual help and support. The evidence also indicates that an adult family member is fully dependant on the help and support of the appellants.
31. There is nothing in the information before me that leads me to conclude that the proposed occupants could not access the medical and educational services they require or gain good connections to the highway network from a geographical base elsewhere. Nonetheless, it would be in the children's best interests to have a settled base and these interests are a primary consideration. All of the personal circumstances identified in the evidence together carry significant weight in favour of the appeal.
32. The Local Plan plans for the area's development needs up to 2011 only such that it is out of date in that regard. From the information before me it appears that the Local Plan and the Core Strategy do not make specific provision for the development of yards for travelling showpeople. On this basis there are currently no locally specific criteria available for this particular type of development that can be used to guide the allocation of sites in plans or in circumstances where there is no identified need, which form criteria-based policies to provide a basis for decision-making. Moreover, the development plan is, at least in part, silent, absent and out of date for the purposes of determining the appeal scheme. Therefore, the so called 'tilted balance' under para 14 of the Framework applies.
33. To summarises, in some respects the proposal would contribute positively to sustainable development objectives as set out in the Framework and the PPTS, notably in terms of responding to a potential need for such accommodation and to the personal circumstances of the proposed occupants, particularly in terms of providing them with a permanent settled base. Collectively that weight is very significant.
34. However, there are considerations which at the least carry substantial weight against the scheme, most notably in respect to the likely effect of the development on highway safety. Overall, therefore, the identified harm would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework and the PPTS at large, such that the appeal scheme would not represent sustainable development in the terms of the national planning policy.
35. In making this assessment I have also taken into account the appellants' submissions regarding Policy HN12 (Travelling Showpeople) of the eP:MK, which would introduce a criteria based approach to assessing proposals for this type of development. However, as identified above, the eP:MK currently carries limited weight only and in any event, for the reasons outlined above,

the proposed development would not satisfy all of the proposed criteria of its Policy HN12.

Other Matters

36. Interested parties also allege that the proposed development would dominate the nearby existing settled community in the terms of paras 14 and 25 of the PPTS. However, given its reasonably modest size relative to that community, and in the context of the planned SLA, this would be unlikely to be the case. Consequently, I give this consideration very limited, non-determinative weight.
37. While I have taken into account the other matters raised by interested parties both for and against the appeal development these have not altered my overall decision.

Conclusion

38. For the foregoing reasons the appeal should be dismissed.

G D Jones

INSPECTOR