



Appeal Decision

Inquiry Held on 9-12 January 2018

Site visit made on 12 January 2018

by Beverley Doward BSc BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2018

Appeal Ref: APP/P0240/W/17/3175605

100 High Street, Meppershall, Central Bedfordshire, SG17 5LZ

- 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 Landcrest Developments Ltd against the decision of Central Bedfordshire Council.
 - The application Ref CB/16/01012/OUT, dated 4 March 2016, was refused by notice dated 29 November 2016.
 - The development proposed is the demolition of existing dwelling and erection of up to 38 dwellings with all matters reserved except access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application subject to this appeal was submitted in outline with all matters other than access to be reserved. It was accompanied by supporting information and an illustrative layout plan indicating 38 dwellings. During the application process amended and additional supporting information was submitted to the Council in order to attempt to overcome concerns that had been raised, including in relation to the activities at Bury Farm and their potential impact on future occupiers of houses at the appeal site, in respect of noise and disturbance.
3. After the determination of that application a number of amended and additional supporting documents were produced and submitted by the appellant as part of a revised application for the site. The revised application was expressed in the same terms as the appeal proposal and related to the same site. It was subsequently refused planning permission for the same reasons as the appeal proposal. The amended and additional documents submitted as part of the revised application consisted of a revised Heritage Assessment, dated 7 February 2017; a Structural Survey Report, dated 18 April 2017; a Noise Assessment referenced P01-16279 Rev 6, dated 22 September 2017; and an illustrative sketch layout referenced 17539 – 1005 Rev E, indicating 35 dwellings. The Statement of Common Ground (SoCG), dated 7 January 2018, indicates that the appellant wishes to rely upon these supporting documents for the appeal. It also indicates that the Council does not object to the inclusion of these documents as they had been considered and consulted upon as part of the revised application.

4. A further iteration of the illustrative sketch layout was submitted with the appellant's appeal documentation (referenced 17539 - 1005 Rev F). This indicates 35 dwellings but differs to that referenced 17539 - 1005 Rev E in so far as it indicates landscaping along the western boundary of the site, and a 3m high acoustic screen along its southern boundary. At the Inquiry I sought the views of the parties as to the status of the various sketch layouts and in particular that referenced 17539 - 1005 Rev F to which both the appellant's and the Council's noise evidence refers.
5. The parties agreed that as the appeal was submitted in outline with all matters other than access to be reserved, the various layout plans were for illustrative purposes only. It was no part of anyone's case that the description of development should be changed from that given in the heading above. It was also agreed that the plan referenced 17539 -1005 Rev F had been included in the appellant's noise reports that had accompanied the subsequent planning application on the site and had therefore been subject to public consultation. The Council also confirmed that it did not oppose the consideration of the evidence on the basis of the plan referenced 17539 - 1005 Rev F. Having regard to all of the above I am therefore satisfied that no parties would be prejudiced by my consideration of the appeal on the basis of the plan referenced 17539 - 1005 Rev F, albeit for illustrative purposes. I informed the parties at the Inquiry that I would deal with the appeal on this basis.
6. I made an accompanied visit to the appeal site and the nearby Bury Farm on 12 January 2018. During my site visit I was afforded the opportunity to listen to the noise environment with the grain dryers and the grain dresser at Bury Farm in operation, with only the grain dryers in operation, and with neither the grain dryers nor the grain dresser in operation. The rest of my site visit on 12 January 2018 was undertaken on an unaccompanied basis, with the agreement of the parties.
7. On 5 March 2018 the Government published the consultation draft of the revised National Planning Policy Framework. As this is a consultation document its content could change. It is not extant government policy and does not change my conclusions on this appeal.

Main Issues

8. The planning application was refused by the Council for three reasons. Firstly, that the development by virtue of its siting and scale, would result in harm to the character and appearance of the site, and the area, through urbanisation of the countryside, the poor relationship between the site and the built up area of Meppershall, and the demolition of non-designated heritage assets at the site. Secondly, that the development, by virtue of its proximity to Bury Farm, would result in unsatisfactory living conditions for future residents, through noise and disturbance and that this harm could not be acceptably mitigated thereby resulting in poor quality accommodation. Thirdly, that the absence of a completed legal agreement securing the provision of affordable housing and financial contributions required to mitigate impacts of the development on local infrastructure would mean that the proposal would not constitute sustainable development.
9. In relation to the Council's first reason for refusal the SoCG indicates that following consideration of the further information submitted with the revised application for the site, referred to above, the parties are in agreement that the

demolition of non-designated heritage assets on the site should not be a barrier to the grant of planning permission. It also indicates that accordingly the Council no longer seeks to pursue this element of the first reason for refusal. I concur with that approach and as a consequence take this matter no further.

10. The SoCG indicates that subject to the submission of a satisfactory executed legal agreement relating to Affordable Housing and Education Contributions the Council would not contest its third reason for refusal. A completed Unilateral Undertaking (UU) dated 11 January 2018 was submitted at the Inquiry. The UU includes obligations relating to the provision of Affordable Housing and financial contributions in respect of education provision. As a consequence the Council did not contest its third reason for refusal and confirmed in closing submissions that the third reason for refusal had been addressed. I return to the matter of the UU below.
11. At the time of its consideration of the planning application subject to this appeal, the Council accepted that it could not demonstrate a five year supply of deliverable housing sites (5YHLS). Furthermore, the planning application was determined prior to the judgment of the Supreme Court¹ on the interpretation of the phrase '*relevant policies for the supply of housing*' at paragraph 49 of the National Planning Policy Framework (the Framework). The judgment confirmed that a 'narrow interpretation' of policies for the supply of housing is the correct one for the purposes of paragraph 49 of the Framework. Subsequent to its consideration of the planning application, and at the time of preparing its written evidence, the Council indicated that it could demonstrate a 5YHLS.
12. The appellant disputed this in written evidence. However, the SoCG indicates that it is now a matter of common ground between the main parties that the full Objectively Assessed Housing Need (OAN) for Central Bedfordshire is 32,000 dwellings for the period 2015-35; the annual OAN for Central Bedfordshire is 1600 dwellings per annum; that Luton's unmet need should not be included in the housing requirement for 5YHLS purposes, albeit Luton's unmet need is a material consideration of significant weight; the Council is not a persistent under delivering authority for the purposes of paragraph 47 of the Framework; and that the appropriate buffer to apply when calculating the 5YHLS is 5%. The SoCG indicates that it is now common ground between the main parties that the Council can demonstrate a supply of 9812 dwellings as having a realistic prospect of delivery over the next 5 years and that accordingly it can demonstrate a 5YHLS.
13. In the light of all that I have read, heard and seen therefore the main issues in this appeal are:
 - the effect of the proposed development on the character and appearance of the area; and
 - whether the proposed development would provide satisfactory living conditions for future occupiers of the proposed dwellings with regards to potential noise and disturbance.

¹ Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East BC [2017] UKSC 37

Reasons

Development Plan and policy context

14. The adopted development plan for the area within which the appeal site lies comprises the Central Bedfordshire Core Strategy and Development Management Policies Development Plan Document (DPD) (2009) (the Core Strategy), the saved policies of the Mid Bedfordshire Local Plan First Review (2005) (Local Plan) and the Site Allocations DPD (2011). These plans all pre-date the Framework. However, paragraph 215 of the Framework indicates that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The parties agree that there are no saved policies of the Local Plan, or specific policies in the Site Allocations DPD, that are relevant to this appeal.
15. A new Local Plan for Central Bedfordshire is being prepared. The Central Bedfordshire Pre-submission Local Plan 2015-2035 (emerging Local Plan) was published in January 2018. However, given the early stage in the plan's preparation I attach limited weight to it.
16. The reasons for refusal refer to a number of policies of the Core Strategy. However, having regard to the Council's position regarding the non-designated heritage assets at the site referred to in its first reason for refusal and its position regarding the third reason for refusal, the remaining pertinent policies referred to are policies CS14, DM3 and DM4. Whilst the proposal falls to be considered against the development plan as a whole under Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the Act) the relevant policies for the purposes of determining this appeal focus upon policies CS14, DM3 and DM4 of the Core Strategy. Accordingly, I have proceeded on this basis.

Character and appearance

17. The appeal site lies on the edge of Meppershall, to the west of High Street, at the southern end of the village. It consists of a detached dwelling (100 High Street) and land to the rear of the dwellings at Nos 84-100 High Street. Access to the site is currently provided by a narrow vehicular access from High Street.
18. There are a number of buildings and structures on the site associated with its former horticultural use which, the evidence indicates, ceased operating some time ago. The buildings and structures on the site, which include former glasshouse structures, a boiler house, chimneys and water towers, are in various states of disrepair and dereliction. There are large areas of overgrown vegetation, a pond and grassland on the site. The Landscape and Visual Impact Assessment (LVIA) submitted by the appellant indicates that the current use of the site is primarily given over to grassland and from what I saw on my site visit I agree with this assessment.
19. The site is contained by boundary planting made up of scrub, hedge and trees to the west and north. To the north, south and west of the site is countryside and to the east are the rear garden boundaries of 84-98 High Street, which are separated from the site by mature vegetation and High Street itself. The open countryside to the west of the site is in arable use. To the north is an area of open land and then the open rear gardens to Nos 2 and 3 Long Acre. The western part of the northern boundary comprises a paddock and a mixed

agricultural landscape lies further north with small paddocks turning into large scale arable field systems further away from the village. Within the countryside immediately to the south is a paddock area as well as a group of agricultural buildings associated with Bury Farm. Campton Road runs along the southern edge of Bury Farm with a mixed agricultural landscape further south.

20. The existing dwelling at 100 High Street together with its immediate curtilage is included within the settlement envelope of Meppershall as defined in policy DM4 of the Core Strategy. However, the majority of the site lies outside the settlement envelope of Meppershall. Therefore, notwithstanding that part of it is occupied by former horticultural buildings/structures, it is within the countryside for planning policy purposes.
21. Policy DM4 of the Core Strategy relates to development within and beyond settlement envelopes. Beyond settlement envelopes, the policy only expressly permits limited extensions to gardens. Accordingly, the appeal proposal for residential development on a site, the majority of which lies beyond the settlement boundary of Meppershall, would fail to accord with policy DM4 of the Core Strategy.
22. In the light of the advice at paragraph 215 of the Framework the weight to be attributed to policy DM4 of the Core Strategy is a matter of dispute between the parties. However, both agree that in the light of the findings of the Inspector in a recent appeal decision² at Potton it should not be afforded full weight. In considering policy DM4 of the Core Strategy the Inspector in the Potton case found that it is not fully consistent with the policies of the Framework, which seek to recognise the intrinsic character and beauty of the countryside rather than to specifically 'protect' it. He went on to conclude that in such circumstances, it should be afforded moderate weight. I agree with the Inspector's findings in relation to the consistency of policy DM4 of the Core Strategy with the policies of the Framework, which seek to recognise the intrinsic character and beauty of the countryside and I see no reason, from the evidence, to conclude that it should be afforded any lesser weight to that indicated by the Inspector in the Potton case. I deal with the matter of the link between paragraphs 215 and 14 of the Framework and whether an inconsistency with the Framework renders a relevant policy out of date below.
23. The other policies of the Core Strategy against which the proposal falls to be assessed in relation to this main issue are policies CS14 and DM3. These policies require development to be of the highest quality by, amongst other things, respecting local context, and the varied character and local distinctiveness of places. They are consistent with the core planning principles of the Framework that planning should always seek to secure high quality design and take account of the different roles and character of different areas.
24. The village of Meppershall is essentially linear in character being arranged along High Street and Shefford Road running broadly north to south. The 'central core' of the village, which contains the bulk of its services and housing, lies further north within the vicinity of the junction of High Street and Fildyke Road. The appeal site is not within this 'central core' like the new housing development referred to as the Croudace development but is instead, as indicated above, at the southern end of the village. The settlement pattern within this part of the village is not one of 'development in depth' but rather of

² APP/P0240/W/17/3176444 64 Biggleswade Road, Potton (Core Document 13.01)

a linear nature. This is notably so on the western side of High Street where, with the exception of the small development of 4 houses at Long Acre, the pattern of development is essentially one of single plot depth that fronts on to High Street with countryside beyond.

25. Notwithstanding that layout is a reserved matter, it seems to me that the appeal proposal, for up to 38 dwellings, would inevitably result in a residential estate type development at some depth with dwellings sited behind existing properties fronting High Street. Accordingly, it would be out of keeping with the prevailing settlement pattern and at odds with the existing arrangement of built form in this edge of settlement location, at the southern end of the village. It would appear as an alien intrusion into the countryside.
26. In terms of the visual impact of the appeal proposal I note that the LVIA submitted by the appellant identifies only one viewpoint (No 5), being the view from High Street, Meppershall (along which the John Bunyan Way, a long distance walking route, passes), with significant visual effects. The other eight viewpoints are identified as having minor or negligible visual effects. The Council however raises specific concerns about the visual impact of the proposal from both viewpoints No 5 and No 1, as indicated in the LVIA. I took these in at my site visit.
27. The existing view from viewpoint No 5 is of the dwelling at No 100 High Street, with its well planted boundary to the road, and the adjacent narrow access track, which runs alongside the dwelling and leads to the land to the rear, which was previously in horticultural use. There is no view of open countryside from this viewpoint. Nevertheless there is equally no view of urban development. Rather it has a rural aspect, appropriate to the character of the village and particularly to this part of it.
28. Access is not a reserved matter and the proposed access plan indicates that the main access into the site would comprise an engineered bellmouth junction with a 5.5 metre wide carriageway and two 2 metre wide footpaths. Accordingly, as acknowledged by the appellant's witness, it would result in a significant change and appear very much as an 'urban estate road' leading to a housing estate. Although the appeal proposal is in outline form with all matters other than access reserved for future consideration, it seems to me that some houses would undoubtedly be clearly visible, whilst others would be partially visible. The illustrative layout plan suggests as much. Accordingly, anyone passing the site along High Street, which forms part of the John Bunyan Way, could not fail to be aware that there was a housing estate at some depth beyond the existing building line of the dwellings on the western side of High Street. This would be out of keeping and at odds with the prevailing character and appearance of the southern end of the village.
29. When approaching Meppershall along Campton Road the site is not visible along the full length of the road due to the undulating topography and the curve of the road. Nevertheless there is a sizeable stretch of the road where the site is visible over the fields through gaps in the hedgerow. With regard specifically to viewpoint No 1, along Campton Road, the site is visible across the fields through a substantial gap in the hedgerow. The agricultural buildings associated with Bury Farm are visible from this viewpoint. However, despite being large, they comprise part of a farmstead within the countryside. As such they do not appear out of character in this location.

30. The housing development, known as the Croudace development, which is under construction in the core of the village is also visible in the distance from viewpoint No 1 and there are also glimpsed views of the houses fronting on to High Street. However, any views of the houses on High Street are restricted to their rooftops. Furthermore, in relation to the existing built development on the appeal site, whilst the tops of the chimneys on its eastern boundary are visible the former glasshouses are not. Accordingly, the existing built form of the site has no impact on the view of the countryside from this viewpoint.
31. Having regard to the illustrative layout plan a residential development of up to 38 dwellings would inevitably result in development towards the western edge of the site. The parties agreed at the Inquiry that the proposed dwellings would be likely to have an eaves height of at least 5m, and ridge heights of around 9m. On that basis there would be significant views of the dwellings from viewpoint No 1. I appreciate that there would be the potential for a scheme of landscaping to provide some screening. However, the proposed development, even with some alternative means of providing an acoustic buffer to the acoustic fence indicated on the illustrative layout plan, or even with a reduction in the extent of any fence/buffer, would appear as a prominent backland development extending beyond the existing building line of the dwellings in this part of the village, and into the countryside. Despite not being subject to any landscape designation the countryside in this location provides the rural setting to the southern edge of Meppershall. Accordingly, notwithstanding that the Council's landscape officer did not object to the proposal, I consider that the proposed development would, by virtue of its incursion into the countryside, erode the rural character and appearance of this end of the village and cause material harm to its character and appearance.
32. Taking account of all of the above therefore, notwithstanding that the appearance, landscaping, layout and scale of the development would be reserved for future consideration, I conclude that the proposed development would cause significant harm to the character and appearance of the area. Accordingly, it would be contrary to Core Strategy policies CS14 and DM3 and the core planning principles of the Framework that planning should always seek to secure high quality design and take account of the different roles and character of different areas. It would also be contrary to policy DM4 of the Core Strategy albeit for the reasons indicated above the conflict with this policy is afforded only moderate weight in this appeal.

Living conditions

33. The appeal site lies to the north of Bury Farm and its associated agricultural buildings. The operations at the farm include storing, drying and dressing grain for Bury Farm and four other farms. The parties agree that there are various noise sources associated with the operations at Bury Farm. These are the grain dryer fans within the agricultural buildings used as grain stores to the south of the appeal site, a free-standing grain dresser unit within another agricultural building to the south, tractor and lorry movements and a hand held blower.
34. Of the three grain dryers only two operate at any time. However, when in use noise from their operation is continuous and tonal. In addition they can operate for 24 hours per day/7 days per week throughout the harvest period (July to October). The grain dresser, can also operate throughout the harvest

season. It is quieter than the grain dryers but the large roller shutter door and smaller side door, which the evidence indicates are left open when it is in operation, mean that the noise of the grain dresser is likely to break out of the building. The noise from the vehicles used to move grain around the farm and to load and unload grain from lorry deliveries and from the hand held blower used to keep the grain stores clean when required, during the harvest season, is restricted to daytime hours, albeit sometimes this occurs in the very early morning. There is no dispute between the parties that the grain dryers are the dominant source of noise associated with the activities at Bury Farm.

35. The appropriate methodology to be employed in the assessment of noise is a matter of dispute. At the Inquiry the parties provided much detail and extensive technical information about their respective preferred assessments. In addition both main parties sought to question the credibility and reliability of the others expert technical witness on this main issue. It is unfortunate that both parties omitted to bring some matters of relevance to their evidence on this main issue to the attention of the Inquiry in the first instance. However, this does not lead me to necessarily question their credibility as reliable witnesses. I do not doubt that both are technical experts in their field albeit they hold differing views regarding the appropriate methodology to be employed in the assessment of the noise sources in this case and whether or not the proposal would provide satisfactory living conditions for future occupiers of the proposed dwellings with regards to potential noise and disturbance.
36. The Council contends that the proposal should be assessed on the basis of BS 4142³ which provides methods for rating and assessing sound of an industrial and/or commercial nature and that this is the appropriate standard to apply when introducing new residential development into the vicinity of a dominant noise source, as is the case here. However, the appellant contends that the rigid application of such an approach would render housing on the site acceptable only if noise levels are lower than the current background levels, takes no account of proposed mitigation levels by focusing on external facade levels, and pays no attention to the current noise levels at the existing neighbouring properties on High Street or the absence of complaints from existing residents. The appellant contends that the approach advocated by the Council should be rejected in favour of an alternative 'hybrid' approach which, it is maintained, provides a more practical and sensible approach for the assessment of noise in this case and is commonly used by acousticians and planning authorities.
37. It is not disputed that if the proposal was to be considered on the basis of a BS 4142 assessment as espoused by the Council then it would be found wanting. Accordingly, it is not necessary to consider the details of such an assessment but rather to consider the appropriateness of the 'hybrid' approach, advocated by the appellant, as an alternative.
38. The 'hybrid' approach takes as its starting point that part of BS 8233⁴ which identifies satisfactory noise levels both internally and externally and then seeks to address the particular character of the relevant noise, which in this case is the tonality, by reducing the target level as considered appropriate in line with

³ BS 4142:2014 Methods for rating and assessing industrial and commercial sound (Core Document 11.02)

⁴ BS 8233⁴:2014 Guidance on sound insulation and noise reduction for buildings (Core Document 11.03)

the method set out in BS 4142. In this case the appellant has included a +6 dB penalty, as a 'worst case' assessment.

39. The appellant refers to the note at paragraph 8.5 of BS 4142 which states that other guidance and criteria in addition to or alternative to this standard can also inform the appropriateness of both introducing a new noise-sensitive receptor and the extent of required noise mitigation, and suggests that BS 8233 and BS 4142, when read together, are consistent with the 'hybrid' approach. However, I note that no specific endorsement of the 'hybrid' approach is provided in the correspondence between the appellant and the Chairman of the BS 4142 Committee, which sought clarification about the reference in the note referred to above and the appropriateness of applying the criteria/guidance used in this case. Furthermore, no evidence of any specific endorsement of the merits of the 'hybrid' approach by way of a peer review in any relevant journal or of any article or report endorsing the approach were provided to the Inquiry.
40. Two appeal decisions⁵ were referred to in evidence by the appellant as examples of where the 'hybrid' approach has previously been used. However, I am not aware of the full circumstances of these cases. Neither the Council nor the appellant's witnesses appeared at either of the Inquiries. Furthermore, in relation to the Par case it appears that the matter of the methodology to be employed was not in dispute between the parties. Accordingly, I do not afford these decisions any great weight.
41. The appellant also referred in evidence to a prior approval⁶ decision of the Council where it is contended that the 'hybrid' approach had been used to derive the internal noise standards to be achieved by a noise mitigation scheme referred to in the relevant condition. The Council's witness in this case did not advise the Council on that proposal and was not able to provide the details. Therefore, I do not afford this matter any great weight in my consideration of this case.
42. At the Inquiry the appellant's witness accepted that the 'hybrid' approach is not specifically endorsed in national policy/guidance, there being no specific reference to it within the Framework, the Planning Practice Guidance (PPG), the DEFRA Noise Policy Statement for England, BS 8233 or BS 4141. The ProPG⁷ referred to by the appellant in support of the 'hybrid' approach was produced by the Chartered Institute of Environmental Health, the Institute of Acoustics and the Association of Noise Consultants. It is intended to provide practitioners with guidance on a recommended approach to the management of noise within the planning system. However, the ProPG is clear that it does not constitute an official Government code of practice and neither replaces nor provides an authoritative interpretation of the law or government policy. In any event it also indicates in its introduction that its scope is restricted to the consideration of new residential development that will be exposed predominantly to airborne noise from transport sources. That is not the position here. I appreciate that the ProPG does indicate that some of its content is relevant to other sources of noise. However, I am also mindful that it then goes on to state that detailed consideration of other sources of noise (such as dominant noise from industrial,

⁵ APP/R0660/A/12/2170820 Land at Crewe Road, Crewe (Core Document 9.08) and APP/D0840/A/14/2225653 Land to the east of Mount Crescent, Par, Cornwall (Core Document 9.22)

⁶ Decision Notice ref CB/17/02134/PADO Hampden House (Core Document 11.09)

⁷ Professional Practice Guidance on Planning and Noise (Core Document 11.01)

commercial or entertainment premises) is outside its scope. Accordingly, in the light of the above it seems to me that the ProPG is not applicable to this case and therefore it is not necessary to consider its details further.

43. Having regard to all of the above, the degree of support for an assessment based on the 'hybrid' approach is somewhat lacking. Its appropriateness as an alternative to the Council's BS 4142 assessment is therefore questionable. Even if this were not to be so, and the 'hybrid' approach was to be considered appropriate, whilst the external noise targets proposed for the gardens would be met, mitigation would be required in order to achieve the internal noise targets proposed.
44. Given the outline nature of the appeal proposal there is the potential for the details of the proposal submitted as reserved matters to seek to minimise the impact of the noise from the activities at Bury Farm as much as possible, for example by positioning the quieter facades of the houses further away from the noise source, and to provide a screen for the existing dwellings from the noise sources at Bury Farm. Nevertheless, the appellant accepts that in this case achieving the 'target levels' for the internal rooms of the proposed dwellings during the times when the grain dryers at Bury Farm are operational will, in many cases, be dependent upon keeping windows shut. A system of mechanical ventilation and heat recovery (MVHR) is therefore proposed for all of the proposed dwellings on the site. The acceptability of this is a matter of dispute between the parties.
45. The Council acknowledges that there are instances where it has accepted MVHR on other developments. However, I note that the circumstances in the various cases referred to by the appellant are different to this case either because of the location of the site, or the source of the noise.
46. In cases of new residential development where the proposed mitigation relies on windows being kept closed most of the time, the PPG specifically refers to the necessity of a suitable means of alternative ventilation. This would suggest that, in principle, similar solutions as that proposed here, may form an accepted part of the approach to mitigating against the impact of noise. This was considered to be so in the two appeal decisions specifically referred to by the appellant, namely the Crewe Road case referred to above and the Secretary of State decision on the Aspenden Road case⁸.
47. I note that the Inspector in the Crewe Road case found that, neither the location of the site, be it an urban or semi-rural location, nor the nature of the noise, be it industrial or road traffic noise, makes a difference to the 'in-principle' acceptability of MVHR. However, I am also mindful of the findings of the Inspectors in two more recent appeal decisions included in the appeal documentation, namely the Somerby Hill and St Helen's Avenue⁹ cases.
48. In the Somerby Hill case the Inspector made a distinction between the acceptability of assisted mechanical ventilation on a development on a greenfield site towards the edge of a settlement within a rural setting, as opposed to, say, a development on an urban-located site close to existing noise-generating uses. Furthermore, in the St Helen's Avenue case the

⁸ APP/J915/A/14/2224660 Land at Aspenden Road, Buntingford, Hertfordshire (Core Document 13.03)

⁹ APP/E2530/W/16/3163514 Land to the north side of A52, Somerby Hill, Bridge End Road, Grantham (Core Document 9.21) and APP/Q3115/W/16/3163844 Land off St Helen's Avenue, Benson (Core Document 9.20)

Inspector found that the need for future occupiers of a development in a rural area, such as is the case here, to sleep, especially in the summer months, in sealed rooms, relying upon alternative means of ventilation, or alternatively to experience noise entering through open windows, would result in a development that fails to adequately address the connections between people and places and the integration of the new development into the built environment. Such a situation, he found, would not provide a good standard of amenity for the future occupiers of that development. I agree and consider these findings to be particularly applicable in this case. The Crewe Road decision therefore does not provide an insurmountable precedent as to the acceptability of MVHR.

49. I also note that the Inspector in the Crewe Road decision suggested that residents with MVHR will quickly become used to mechanical ventilation. However, I am mindful that in the case subject to this appeal noise from the grain dryers would occur during the day and night, throughout the harvest period, and then not for the rest of the year. In such a circumstance it seems to me that it is not reasonable to assume that the residents of the proposed development will necessarily become used to living with MVHR. Where a window can be opened then it is very likely that it will be opened, particularly when the weather is fine during the summer months, which is the very time of year when the grain dryers are likely to be in continuous use. The opening of windows would compromise the intended mitigation and result in the internal noise levels proposed by the 'hybrid' approach being exceeded such that satisfactory living conditions would not be provided for the future occupiers of the proposed dwellings.
50. Having regard to all of the above therefore, I am not satisfied that the appeal proposal would provide satisfactory living conditions for future occupants of the proposed dwellings as a result of noise and disturbance from the activities at Bury Farm. Although not specifically referred to in the Council's relevant reason for refusal it is also pertinent to consider the effect that the residents of the proposed houses may have on the operation of Bury Farm. This formed a minor part of the Council's case at the Inquiry and is a concern of the owner of Bury Farm.
51. I note that there have been relatively few complaints from existing neighbours about noise from the activities at Bury Farm. However, this is not a matter to which I attach any particular significance. Bury Farm has been in operation for some time and the last new grain dryer was installed over 20 years ago. I would suspect therefore that among existing residents there is likely to be an element of resignation and acceptance of the noise associated with the grain dryers. Accordingly, I give little weight to the level of complaints about noise from Bury Farm from existing residents as an indication of the future likelihood of complaints.
52. Paragraph 123 of the Framework indicates, amongst other things, that existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established. I note the findings of the Inspector in the Crewe Road case in relation to the reasonableness of any complaints being made against the nearby business use and the likelihood of any such complaints being successful. However, these were made on the basis that he considered the proposed mitigation measures to be suitable and that therefore there would

be a good standard of amenity for future residents. As detailed above this is not my finding in this case. Therefore, I consider there can be no certainty that there would not be complaints from future residents about noise and disturbance from the activities at Bury Farm. Accordingly, I cannot be satisfied that the viability of this long established rural business would not be compromised.

53. To conclude on this issue therefore, having regard to all of the above I am not satisfied that the appeal proposal would provide satisfactory living conditions for future occupants of the proposed dwellings in relation to noise and disturbance. Accordingly, it would be contrary to policies CS14 and DM3 of the Core Strategy which require high quality development.

Planning balance and conclusion

54. I have found above that the appeal proposal would be contrary to policies DM4, CS14 and DM3 of the Core Strategy. Whilst I attribute moderate weight to the conflict with policy DM4 I attribute full weight to the conflict with the other relevant policies, namely CS14 and DM3. Accordingly, I consider that the appeal proposal would be contrary to the development plan as a whole.
55. Section 38(6) of the Act requires that applications for planning permission must be determined in accordance with the development plan unless material conditions indicate otherwise. The Framework has the status of a material consideration which (when considered together with any other relevant material considerations) may or may not indicate that an appeal should be determined otherwise than in accordance with the development plan.
56. Paragraph 14 of the Framework provides that where the development plan is absent, silent or relevant policies are out of date the presumption in favour of sustainable development means that 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 specific policies in the Framework indicate development should be restricted. The test of whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole is commonly referred to as 'the tilted balance'.
57. There is no dispute that the Council can demonstrate a 5YHLS for the purposes of this appeal. However, the appellant contends that policies DM4 and CS5 of the Core Strategy which are indicated in the SoCG as relevant to this appeal are out of date and that therefore 'the tilted balance' comes into play. The Council disputes this.
58. In support of their respective cases the main parties have referred me to a number of other appeal decisions where this issue has been considered. However, none of these are determinative in their own right on this matter. In the Langford decision¹⁰, referred to by the appellant and which dates back to June 2015, the Council accepted that the relevant policies for the supply of housing which was considered at the time to include policy DM4 of the Core Strategy were out of date. However, this was prior to the judgment of the Supreme Court that found the 'narrow interpretation' to be the correct one for

¹⁰ APP/P0240/A/14/2228154 Land to the east of Station Road, Langford, Bedfordshire (Core Document)

the purposes of paragraph 49. In the case of the Flitton¹¹ decision also referred to by the appellant there is only limited information as to the arguments put to the Inspector in relation to this matter, it having been dealt with by the written representation procedure.

59. In the Clophill appeal decision¹² referred to by the Council I note that, unlike in the later Potton decision, and my findings above, the Inspector in that case considered policy DM4 of the Core Strategy to be consistent with the Framework. I also note that he went on to conclude that providing it was not preventing the delivery of a supply of housing, which he found it was not due to the proven existence of a 5YHLS, then the relevant policies, including policy DM4, and the relevant policies for the supply of housing, were not out of date. However, it seems to me that relevant policies can be out of date even where there is a 5YHLS, a position which the Council accepts in the current case.
60. The Council also refer to the Potton decision in relation to this matter. I have referred to the Potton case in some detail above in my consideration of policy DM4 of the Core Strategy, and its consistency or otherwise with the Framework. I note the footnote in that decision which states that the tilted balance is not engaged as the LPA can demonstrate a 5 year supply of deliverable housing supply sites and thus paragraph 49 of the Framework does not engage paragraph 14 of the Framework. However, again as indicated above and as accepted by the Council, relevant policies can be out of date even where there is a 5YHLS. Whilst the Inspector in the Potton decision found policy CS5 of the Core Strategy to be out of date he did not express a view on policy DM4 in relation to this matter as it was not necessary to do so having previously found that the proposal would accord with the development plan as a whole.
61. Turning to the current appeal at the Inquiry the Council's witness accepted that relevant policies can be out of date even where there is a 5YHLS. The Council also accepts that in the light of the Potton appeal decision, policy DM4 of the Core Strategy should not be afforded full weight. The Inspector's conclusion in that case, as to the weight to be afforded to policy DM4, came after his finding that when read plainly, the policy is at odds with the Framework and that it is applied by the Council in a manner that involves reading in a major modification. At the Inquiry into this appeal the Council's witness accepted that these could be considered to be features of a policy that was out of date. I appreciate that this was not the finding of the Inspector in the Potton case. However, as detailed above, he did not express a view at all on policy DM4 in relation to this matter.
62. I am mindful that the link between paragraphs 215 and 14 of the Framework has been examined by the Courts and that they have found that any inconsistency between those policies in the development plan and the Framework would render them out of date and cause the approach set out in paragraph 14 of the Framework to be engaged. Accordingly, it seems to me that in this case the inconsistency between policy DM4 and the Framework is such that paragraph 14 of the Framework and 'the tilted balance' set out in it is engaged. Having regard to this finding, it is not necessary for me to go on to consider further whether policy CS5 of the Core Strategy which, although not

¹¹ APP/P0240/W/16/3154220 Land off Greenfield Road, Flitton (Core Document 9.01)

¹² APP/P0240/W/17/3152707 Former Readshill Quarry, Back Street, Clophill, Central Bedfordshire (Core Document 9.07)

one of the policies referred to on the decision notice, is referred to in the SoCG as relevant to this appeal, is also out of date.

63. In respect of the main issues in this appeal there would be significant environmental harm arising from the damage that would be caused to the character and appearance of the area and to the living conditions for future occupants of the proposed dwellings through noise and disturbance. The impact of the harm in respect of the living conditions of the future occupiers of the proposed dwellings would have potentially serious and enduring consequences.
64. In relation to the environmental harm the proposal would conflict with the development plan, being contrary to policies CS14, DM3 and DM4 of the Core Strategy, albeit the conflict with policy DM4 is afforded only moderate rather than full weight in this appeal. It would also be contrary to the core planning principles of the Framework that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings, and take account of the different roles and character of different areas. It would fail to comply with the advice at paragraphs 109 and 120 of the Framework which respectively indicate that the planning system should prevent new development from being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution, and that to prevent unacceptable risks from pollution planning decisions should ensure that new development is appropriate for its location.
65. In addition to the environmental harm caused by reason of the poor living conditions for future occupiers of the proposed dwellings with regard to the noise and disturbance associated with the activities at Bury Farm the viability of this existing long established rural business risks being compromised by complaints or the threat of complaints from the future occupants of the proposed dwellings. This would be contrary to the principle of the Framework of supporting a prosperous rural economy and the advice at paragraph 123 of the Framework which indicates that businesses should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established. I consider that the harm identified in relation to this matter should also be afforded significant weight.
66. The identified harm needs to be balanced against the benefits of the proposed development. Notwithstanding that the Council can demonstrate a 5YHLS the parties agree that the development of up to 38 dwellings, both market and affordable housing, would serve to address the needs of the District and the wider Housing Market Area, especially Luton's unmet needs and that this is a matter that carries significant weight. I see no reason to disagree. However, the proportion of affordable housing proposed is, at 35%, no more than that required by the development plan and whilst I appreciate that the emerging Local Plan indicates a lesser requirement of affordable housing (30%) this plan is at an early stage of preparation. The scale of the proposed development would be appropriate to the scale of Meppershall and would be in an accessible location. Taken together I afford significant weight to the social benefits of the proposal.
67. The proposal would deliver economic benefits including the creation of employment opportunities estimated at 85 full time equivalent jobs during the construction period, construction spend of around £4.5m-£5m and increased

household expenditure assessed at around £849,000 pa some of which would provide support to the local economy and for local facilities. However, the contributions made by way of the UU to education provision are required to mitigate against negative impacts of the proposal. Therefore, they are neutral factors and do not carry weight in favour. Overall I attach considerable weight to the economic benefits.

68. In so far as the proposal is in outline form there may be the potential for the layout of the proposed dwellings to serve as a screen that would attenuate the level of noise experienced in the gardens of the existing dwellings at Nos 82 to 98 High Street from the noise sources at Bury Farm. However, this cannot be known at this stage. Accordingly, I do not afford weight to this matter in the overall balance.
69. The development would result in the re-use of a site within the countryside which has previously been used for horticultural purposes. However, although it does have some areas of hardstandings and the remains of buildings it is primarily given over to grassland. Accordingly, I afford little weight to this as a benefit in the overall balance. The removal of the existing structures on the site, some of which are potentially dangerous does not constitute a benefit of the appeal proposal given that, if their safety is of genuine concern, the landowner would be obliged to address this matter irrespective of whether or not the appeal proposal were to succeed.
70. Taking account of all of the above, I conclude that the adverse impacts identified would significantly and demonstrably outweigh the benefits of the proposed development and therefore, the proposal would not benefit from the presumption in favour of sustainable development. The conflict with the development plan is not outweighed by other material considerations.

Other matters

71. Interested parties including Meppershall Parish Council raised concerns regarding highway safety particularly in relation to the removal of the existing parking spaces on High Street in order to facilitate the provision of the necessary visibility splays from the proposed access to the site, the proximity of the site to the primary school and the width of High Street. However, there is no substantive technical evidence to lead me to conclude differently to the position indicated in the SoCG which is that with appropriate conditions the proposed development would be acceptable in terms of highway safety.
72. As indicated above a completed UU was submitted at the Inquiry. The UU includes obligations relating to the on-site provision of 35% affordable housing and financial contributions in respect of education provision (early years, lower school, middle school and upper school). I have considered these in the light of the Framework, the PPG and the Community Infrastructure Regulations 2010 (CIL Regs). I am satisfied that the obligations meet the statutory tests and comply with the CIL Regs and paragraph 204 of the Framework.

Overall conclusion

73. For the reasons given above I conclude that the appeal should be dismissed.

Beverley Doward INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Alexander Booth	Of Queen's Counsel, instructed by Central Bedfordshire Council
He called:	
Phillip E Hughes BA (Hons) MRTPI Dip Man MCIM	Principal, PHD Chartered Town Planners
Daniel Baker BSC (Hons) IOADip MSC MCIEH CEnvH MIOA	Senior Environmental Health Practitioner, MAS Environmental

FOR THE APPELLANT:

Andrew Tabachnik	Of Queen's Counsel, instructed by Russel Gray of Woods Hardwick Planning Ltd
He called:	
Patrick Allen BSc (Hons) CEng FIOA MEWI	Director, Cass Allen Associates Ltd
John-Paul Friend HND BA (Hons) Dip LA CMLI	Environmental Planning Director, ACD Environmental Ltd
John Freeman MEng CEng MICE MCIHT	Partner, Woods Hardwick Infrastructure LLP
Russel Gray BA (Hons) Dip UP MRTPI	Director, Woods Hardwick Planning Ltd

INTERESTED PERSONS:

Mark Brinkley	Bury Farm, Meppershall
Stuart Travers	On behalf of Mr Gilbert (Local Resident)
Dr Susan Chappell	Local Resident
Roger Martin Smith	Meppershall Parish Council
Alessandra Marabese	Clerk to Meppershall Parish Council

DOCUMENTS SUBMITTED AT THE INQUIRY

1. List of appearances for the appellant Landcrest Developments Ltd
2. List of proposed conditions submitted on 9 January 2018
3. Folder CD13 (core documents) comprising:
 - CD 13.01 64 Biggleswade Road, Potton Appeal Decision Letter (APP/P0240/W/17/3176444).
 - CD13.02 64 Biggleswade Road, Potton Appeal (APP/P0240/W/17/3176444) – Appellant’s Closing Submissions.
 - CD13.03 Land to the east of Aspenden Road, Buntingford, Hertfordshire SoS Appeal Decision Letter (APP/J1915/A/14/2224660).
 - CD13.04 Land Registry Titles for nos. 102, 106, 108, 110 and 112 High Street, Meppershall.
 - CD13.05 Pusey&Anor v Somerset County Council [2012] EWCA Civ 988 (19 July 2012).
 - CD13.06 Central Bedfordshire Pre-Submission Local Plan 2015-2035 January 2018.
 - CD 13.07 Report to CBC Executive on Central Bedfordshire Pre-Submission Local Plan.
 - CD13.08 Extracts of proposed criteria for the assessment of low frequency noise disturbance Revision 1 December 2011 prepared for DEFRA.
 - CD13.09 A Review of Published Research on Low Frequency Noise and its Effects Report for DEFRA May 2003.
 - CD13.10 Correspondence on the non-designated heritage assets issue.
 - CD13.11 Valley Lane, Long Bennington, Grantham, Lincolnshire, NG23 5DY Appeal Decision Letter (APP/E2530/A/10/2136247).
4. Opening submissions on behalf of Central Bedfordshire Council
5. Statement read by Stuart Travers on behalf of Philip Gilbert of 94 High Street, Meppershall
6. A3 copies of noise modelling printouts titled Inquiry Document 1
7. Revised list of proposed conditions submitted on 12 January 2018
8. Signed Unilateral Undertaking dated 11 January 2018
9. Closing submissions on behalf of Central Bedfordshire Council
10. Closing submissions on behalf of the appellant