

Appeal Decision

Hearing Held on 25 April 2018

Site visit made on 25 April 2018

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th June 2018

Appeal Ref: APP/P0240/W/17/3184967

Land at Shawmer Farm, 122 Hitchin Road, Stotfold SG5 4HT

- 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 NFC Homes Ltd against the decision of Central Bedfordshire Council.
 - The application Ref CB/17/02039/OUT, dated 25th April 2017, was refused by notice dated 26th July 2017.
 - The development proposed is described as an outline planning application for a residential development of 58 dwellings comprising 3 x 2 bedroom bungalows, 10 x 2 bedroom dwellings, 28 x 3 bedroom dwellings and 17 x 4 bedroom dwellings following the demolition of 122 Hitchin Road, with all matters reserved except access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description I have used has been taken from the Council's decision notice. It is the same as is shown on the appeal form. It differs from that shown on the planning application form since the scheme was amended during consideration by the Council, reducing the number of dwellings. There were no objections to me using this description when it was discussed at the hearing. I have therefore proceeded on this basis. As per the description, the proposed development seeks outline planning permission with all matters reserved save for the consideration of access.
3. Whilst I shall go into more detail about this later, at the hearing, I allowed a period of two weeks for the appellant to correct what appeared to be a Land Registry (LR) error and thus have the correct title plans accompanying a proposed bilateral planning obligation. On its face and at the time, this seemed rectifiable with limited cost and effect. Events that have transpired since then have changed the landscape in this respect and the additional work devoted to a revised obligation, specifically changing it to a UU and amending wording through discussion with the Council, has taken place without my involvement or request. Further delays in the issuing of this decision have been due to each party having an opportunity to respond to examples of other recent appeal decisions that have been issued since the hearing.

Main Issues

4. There are two main issues in the determination of the appeal. These are a) the effect of the proposed development on the character and appearance of the area and b) whether or not it would be able to satisfactorily mitigate its effect on local infrastructure.

Reasons

Character and Appearance

5. There are two strands to the Council's concerns in respect of how they see the appeal scheme would cause harm to the character and appearance of the area. The first is how it would not appear as a sympathetic extension to the town and secondly how it has not been demonstrated that the quantum of development proposed plus suitable landscaping can be satisfactorily achieved on the site. I shall endeavour to address each matter in turn but there may be some overlap.
6. The appeal site is a roughly flat parcel of land that is currently sub divided by post and rail fencing and planting into separate paddocks. It is an open green space between the elongated narrow gardens of dwellings that face Hitchin Road and the more open fields that stretch towards the A507. Settlement character in the vicinity is mainly frontage development, particularly as it lines the western side of Hitchin Road, stretching for a noticeable and significant distance. There is a more layered arrangement of built form to the east. Bridleway No.12 runs to the northern boundary of the appeal site, linking to a route on the opposite side of the A507. The appeal site lies outside of the defined limits of the settlement and is therefore, by definition and in planning terms, in the countryside.
7. Whilst the appeal scheme seeks outline planning permission, by the site's very nature it would have to result in a contained estate of its own distinct identity, behind and divorced in character terms from the frontage development it would abut. Put simply, there seems little possibility of the scheme being able to reflect the defined frontage character of the western side of Hitchin Road.
8. To an extent, I agree with the point that making something the same or copying a layout of its time may not be the be all and end all. In essence, different doesn't always mean harmful. However, and in this particular case, I feel it would be. The frontage character of built form to the west of Hitchin Road defines and gives identity to the manner in which urban gives way to rural on the south western fringes of the settlement. For want of a better way of putting it, the frontage buildings and their elongated narrow gardens directly abutting open undeveloped land draws a noticeable and character forming line in the sand. The appeal scheme would 'smudge' this line and appear on plan form to be something of an awkward bolt on to the edge of the settlement as a result and encroach into the open countryside.
9. To my mind, this would not solely be harm in plan form terms. The appeal scheme, despite landscaping enhancements, would still be readily visible on pedestrian approach from the A507 along the route of Bridleway No.12. This route appears from written and site evidence to be well used and users would be on a constant approach to the appeal site, thus their views would be of a high sensitivity. The current situation shows open paddocks and undeveloped land with the rear elevations of what are clearly identifiable as frontage

buildings behind. A contained estate would be readily identifiable as such and result in visual harm for the same reasons I have set out above. I therefore agree with the Council that the proposed development would not appear as a sympathetic extension to the town.

10. Looking at the Council's second key area of concern in respect of the character and appearance of the area. This focusses on doubts that the scheme could achieve the quantum of the development proposed plus suitable landscaping without harm.
11. Putting aside my earlier findings and looking at this matter purely in isolation, the appeal proposals do not strike me as appearing over developed. I have found harm insofar as that which would be caused by the nature and location of the development but the indicative layout that has been provided shows a mix of types and orientations that allow for some open space and landscaping reflective of local densities. On this matter therefore I would conclude that the quantum of development could be achieved on the site and that adequate landscaping appears on the strength of what I have seen to be possible and appropriate.
12. I acknowledge that the appeal site is not part of a statutorily designated landscape. However, neither this nor my comments in paragraph 11 would reduce the harm that I have identified and with these factors in mind, it is my view that the proposed development would be harmful to the character and appearance of the area. Such that it would conflict with Policies CS14, CS16, DM3, DM4 and DM14 of the Local Plan¹. These Policies, amongst other things and along with the Framework², seek to ensure that new development is of a high quality and contextually appropriate design and appearance that respects local character, distinctiveness and landscapes. They also seek to contain the majority of new development to within existing settlements in the interests of sustainable growth patterns and the specific character of the open countryside.

Local Infrastructure

13. There was detailed initial discussion at the hearing regarding a bilateral planning obligation compiled by the appellant, a copy of which the Council had seen in advance of proceedings. The Council advised that they would not be willing to sign the obligation and thus allow it to be completed as there was a discrepancy on the LR maps. These are documentary proof of title. There was an area of land within the site to which the obligation related shown as not being registered to any of the named signatories. The Council were concerned that should the agreement be completed, there would be doubts about its enforceability given that it was not completely clear all parties with an interest in the land forming the appeal site would be bound to the obligation.
14. From discussion, and confirmation from the appellant's solicitor, it seemed to be the case that the discrepancy on the LR plans, the so called 'white space', was a drafting error on the part of LR and the land was under the ownership of one of the signatories. Since the hearing, the appellant has sought to address the matter which initially appeared to be rectifiable with the LR issuing a corrected map. This has not been issued and in fact it has transpired that the white space is not registered. At the time of writing the appellant is seeking to

¹ Central Bedfordshire Local Development Framework Core Strategy and Development Management Policies 2009

² The National Planning Policy Framework 2012

- have this land registered. The appellant has not given a timescale for this but has provided assurance that the white space belongs to one of the signatories of the obligation.
15. The Council have, on understanding the land ownership ambiguity, declined to sign an obligation. It has therefore been amended to a Unilateral Undertaking (UU). The UU provides for affordable housing as well as commuted sums towards education at lower, middle and upper school level and public rights of way improvements.
 16. The affordable housing provision is more than sufficient to meet the relevant policy and the obligation specifies precisely the education projects for which funds will be provided. The rights of way improvement relates to public bridleway No.12 which runs to the north of the appeal site. Following discussion at the hearing, I am satisfied that the contributions set out at least meet policy requirements and are related in scale and kind to the development as well as adequately addressing its impacts on local infrastructure. The Council advised that they would be satisfied, in the event that they signed an obligation, it would address their second reason for refusal. For the reasons I have set out above I do not disagree.
 17. The Council have expressed other concerns about the UUs content and use of wording. Concerns which, to my mind, do not seem insurmountable. However, I do have reservations about a planning obligation where there is, albeit small, remaining ambiguity about the ownership of land. Land that is included in the appeal site.
 18. A planning obligation is required to bind and be enforceable against the signatories who have proved title. Title which is proved by documentary evidence. The LR plans which provide that documentary evidence are not accurate and despite written assurances that the white space is or will be owned by one of the signatories, without the requisite documentary evidence before me I cannot be certain of that.
 19. The white space is a small area of land that, when looking at the proposed plans, would unlikely have a significant effect on the development as a whole. Nevertheless, and as a matter of fact, the obligation would not (based on what the main parties have explained to me) bind and be enforceable against all parties with an interest in appeal site. Ultimately, and if I have any doubts over the enforceability of an obligation, then I can only attach limited weight to it. Accordingly, I cannot be satisfied that the proposed development would mitigate its effect on local infrastructure. As a consequence, it would fail to comply with Policy CS2 of the Local Plan which seeks to ensure that new development does not place undue pressure on existing infrastructure, seeking appropriate and proportionate contributions for such from developers.
 20. Based on the most recent correspondence between the appellant and the Council it seems highly likely that, with the assistance of more time, this land ownership matter could be resolved. Ultimately however, a completed obligation would not overcome my concerns in respect of the first main issue and as such to put the appellant to further work on it (which involves financial cost) would simply not be fair. I have therefore drawn my conclusions, in respect of this second main issue, based on an obligation that does not bind all parties with an interest in the appeal site.

21. The appellant has, most recently, made an offer to amend the red line site plan to omit the white space from the appeal site. This may be another means to resolve this main issue. However, I have reservations about inviting unilateral changes to the extent of the land to which the appeal relates at this stage without the correct public consultation. Having regard to the relevant procedural guidance³, the appeal process should not be used to evolve a given proposal and what is before the Inspector should be what was before the Council at the time they determined the planning application.
22. Even if I were minded to accept such a change following further consultation, the harm I have found in respect of the first main issue would still remain regardless. With this in mind, such a course of action would be without overall benefit.

Other Matters

23. There was discussion at the hearing concerning Policy DM4 of the Local Plan and specifically its degree of consistency with the Framework and the matter of due weight. A number of decisions taken by my colleagues referring to this policy have been brought to my attention in the written evidence, discussed at the hearing and passed to me since⁴. The findings of these decisions, on the matter of weight to be afforded to Policy DM4 specifically, differ and thus support both the Council and the appellant's cases.
24. Whilst I have no reason to disagree with my colleagues' conclusions in each case, reduced weight does not mean reduced harm. Both are a matter for the decision maker in each case. Policy DM4 may not fully accord with the Framework but their aims are far from polarised. Both seek to reduce development in areas where there is limited access to services by directing it to those areas with good provision and away from those areas where it is poor as well as protecting the character of areas. In the case of the Framework this is the commitment to reduce the need to travel and encourage the use of sustainable transport options as well as recognising the intrinsic beauty of the countryside.
25. In addition, I do not consider that some lack of consistency in this particular case⁵ equates to policies being completely out of date for the purposes of the Framework. Indeed, the development plan is neither absent or silent in this case with regard to the relevant matters. The policy approaches I have identified have the same general direction of travel and it is common ground that the Council are able to demonstrate the supply of housing sites as required by the Framework. In any event, the outcome of this appeal does not hinge squarely on DM4. As such, even if I were to reduce weight I attach to it in my conclusions, there are other policies that I have set out above to which the proposed development would also be contrary. These policies are as relevant to the main issues at play as DM4.
26. It is perhaps pertinent to point out that, as well as being drawn up for the purposes of defining areas of character, settlement limits (envelopes) also seek

³ Annexe M M.1 Procedural Guide Planning Appeals – England January 2018

⁴ Planning Inspectorate References APP/P0240/W/16/3152707; APP/P0240/W/16/3166033; APP/P0240/W/17/3176444; APP/P0240/W/17/3170248; APP/P0240/W/17/3181269; APP/P0240/W/17/3175605; APP/P0240/W/17/3186914; APP/P0240/W/17/3176387 and APP/P0240/W/17/3190584

⁵ Taking into account the means by which the Council proposes to deliver a number of their housing sites that contribute to their five year supply.

to ensure that new development was contained within them to follow the principles of sustainable growth. In essence to those areas that have services to support it. On this matter in isolation I recognise, as did the Council, that the appeal site would be within a short distance of a range of services on which residents would rely for day to day living and thus the need to travel would be minimal along with sustainable options being available. I have not found harm in this particular respect despite the appeal site being outside of the defined settlement limit.

27. There was discussion at the hearing concerning a number of housing allocations around Stotfold. The appellant produced a plan showing them overlaid onto an aerial image of the town. The largest is Arlesey Cross, a substantial swathe of land to the western side of the A507. I do not have further details of this scheme beyond it being identified as a masterplan and thus cannot be certain as to how much of this land area will be developed. In addition, I heard at the hearing that it is currently under consideration as an outline planning application. Furthermore, as what appears to be a strategic new settlement/settlement expansion it bears no specific similarities to the appeal scheme beyond the fact that it would represent development in the countryside. For these reasons, I am not persuaded to allow the appeal in its light.
28. Other sites, such as the smaller HA/11 adjacent the appeal site and HA/12 to the north appear on plan to relate more closely to the existing settlement than the bolt on nature of the appeal proposals. The larger H08 (10) E1 to the east appears to be mid construction, having been so for some time. It is well contained in character terms to the north of the A507, thus forming an evolving and arguably more logical extension to Stotfold.
29. The Council refer to Policy CS7 of the Local Plan in their second reason for refusal. I have not however referred to it above as I do not have a copy on my file. Nevertheless, I am content that Policy CS2 is sufficient to set out the Council's development plan stance with respect to developer contributions. I have referred to this policy above in my findings with regard to the second main issue.

Conclusion

30. It is for the reasons I have set out above, whilst having regard to all other matters raised, that the appeal is dismissed.

John Morrison

INSPECTOR

APPEARANCES:

FOR THE APPELLANT:

Mrs Samantha Boyd	Woods Hardwick Planning Ltd
Mr Alistair Rokas	Woods Hardwick Planning Ltd
Mr Nicholas Cooper	NFC Homes Ltd
Mr Ben Brading	NFC Homes Ltd
Mr Carl Horsdal	Landscape Advisor

FOR THE LOCAL PLANNING AUTHORITY

Mrs Donna Lavender	Central Bedfordshire Council
Mrs Alison Myers	Central Bedfordshire Council

INTERESTED PARTIES:

Mr Brian Collier	Deputy Mayor, Stotfold Town Council
Mr and Mrs Moore	Local Residents
Mr Barry West	Local Resident
Mr Humphrey Pickerin	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING:

- Copy of draft bilateral planning obligation setting out developer contributions
- A3 map showing development plan housing allocations around Stotfold