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## Appeal Decision

Site visit made on 18 September 2018

**by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC**

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

**Decision date: 12<sup>th</sup> October 2018**

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**Appeal Ref: APP/P0240/W/18/3197148**

**Land west of Jacques Lane, Clophill, MK45 4BS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr D Catlin (Anthony Catlin Will Trust) against the decision of Central Bedfordshire Council.
  - The application Ref CB/17/03228/OUT, dated 30 June 2017, was refused by notice dated 13 November 2017.
  - The development proposed is the erection of 8 dwellings and formation of vehicular and pedestrian access with associated landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 8 dwellings and formation of vehicular and pedestrian access with associated landscaping at Land west of Jacques Lane, Clophill, MK45 4BS in accordance with the terms of the application, Ref CB/17/03228/OUT, dated 30 June 2017, subject to the attached schedule of conditions.

### Application for costs

2. An application for costs was made by Mr D Catlin (Anthony Catlin Will Trust) against Central Bedfordshire Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The application is in outline with matters relating to layout, scale, appearance and landscaping reserved for subsequent approval with access for consideration. An indicative site layout plan was submitted as part of the application, depicting a layout as well as landscaping. I have had regard to that plan on an indicative only basis.
4. The Council is currently producing a Local Plan, however while this has been submitted for examination, this has not yet taken place, and as acknowledged by both parties, only limited weight can be attached to this document.

### Main Issues

5. The main issues are:
  - (a) The effect of the proposed development upon the character and appearance of the area; and,
  - (b) The effect of the proposed development upon protected species.

## Reasons

### *Character and Appearance*

6. The appeal site is located towards the south eastern edge of Clophill and forms an open grassed site used for grazing which contains a brick built agricultural building. Jacques Lane is a residential road with a number of detached, semi-detached and terraced properties along its length, of different scales and architectural styles. To the west side is No 12, a single storey detached dwelling, and to the east is No 20, a 2-storey dwelling. The site has a mature hedgerow which runs adjacent to a ditch along Jacques Lane. The side and rear boundaries of the site are also formed from hedges and trees. To the rear are open fields. Opposite the site are dwellings, including three recently constructed houses.
7. Policy DM4 of the Central Bedfordshire Core Strategy and Development Management Policies (North) 2009 (CS) seeks to direct the majority of development to the major and minor service centres, within defined settlement envelopes. Clophill is recognised as a Large Village within the CS whereby smaller-scale developments are supported, however, the appeal site is unallocated and is located outside, but adjacent to, the defined settlement envelope for Clophill.
8. As set out within the supporting text to Policy DM4, settlement envelopes have been defined to enable the clear, unambiguous and consistent application of policies in the control of development in order to protect the character of the countryside. Settlement envelopes also serve to prevent coalescence between settlements. CS Policies CS14 and DM3 set general design aims requiring that development respects local context and the distinctiveness of the area and in terms of providing high quality development which would provide hard and soft landscaping appropriate in scale and design to the development and its setting.
9. As an undeveloped site, the land makes a positive contribution to the open rural character of the area and its transformation to built development would change that character. However, located between Nos 12 and 20, I consider that the site represents a gap site in an otherwise built up frontage along Jacques Lane. As depicted on the indicative plans, the development would comprise of a relatively small number of units which would run in a linear formation along Jacques Lane. In this regard, the development would be in keeping with the general grain and form of development in the street scene, simply infilling between Nos 12 and 20 in a logical form.
10. Moreover, the development would be set behind the existing hedgerow to the site, and incorporate a replanted and bolstered hedgerow to the northern side of the proposed access which would also help to mitigate the impact of the development. Open fields would be retained to the rear with wider hedgerow planting to the rear boundaries of the plots and I am satisfied that this would help to soften the transition between urban and rural, and help assimilate the site into the wider landscape.
11. Matters of design, layout and landscaping secured as part of the reserved matters could also further help to mitigate any effects. In addition, the site would not result in any coalescence between settlements nor would it harm the wider landscape character area. The development would accord with the aforementioned CS Policies CS14 and DM3.

12. The site is located outside of the settlement envelope and as such the Council considers that the proposals would conflict with CS Policy DM4. There is also a dispute between parties in respect of any conflict between CS Policy DM4 and the National Planning Policy Framework (the Framework), and accordingly, whether the policy should be considered to be out of date, for the purposes of paragraph 11. I have had a number of recent appeal decisions referenced by both parties on this matter<sup>1</sup> as well as reference to other planning decisions taken by the Council and case law.<sup>2</sup>
13. However, while CS Policy DM4 has a clear focus on supporting development within settlements and is titled 'Development within and beyond settlement envelopes' it does not prohibit development outside of settlement envelopes, nor does it give policy guidance on instances where this would be acceptable or otherwise. I appreciate that the reasoned justification in support of the policy provides guidance in terms of protecting the countryside as set out above, but that is not reflected in the actual policy text itself.
14. If I were to accept the Council's arguments that the adopted policy should be accorded weight, while I accept that the proposed dwellings are outside of the settlement envelope to which Policy DM4 seeks to focus development, I find no explicit conflict with Policy DM4. Accordingly, even if paragraph 11 was to apply, the Framework is clear that for decision taking, development proposals that accord with the development plan should be approved without delay.
15. I appreciate that this is in contrast to the conclusions made within other appeal decisions, but I do not have the full details of considerations that applied in those cases and I have reached my own conclusions on the proposals based on the evidence before me.
16. Overall I find no harm to the character and appearance of the area, in accordance with CS Policies CS14, DM13, as well as Policy DM4.

#### *Protected Species*

17. CS Policy CS18 seeks to protect biodiversity and geological conservation through the maintenance and enhancement of habitats. The Framework also seeks to protect and enhance biodiversity sites in a manner commensurate with their statutory status, encouraging biodiversity improvements and resisting in the destruction of habitats.
18. The appeal site is located within the Greensand Ridge Nature Improvement Area (NIA) whereby development is expected to deliver net gains to biodiversity. A detailed Phase I Ecological Survey was submitted with the original application, along with a separate further Reptile Survey and Great Crested Newt Assessment.
19. These assessments identify that the appeal site is of potential value to some species, including bats, badgers, reptiles, toads and Great Crested Newts. However, it is concluded in each study that there would be no significant negative impact upon protected species, habitats, or designated sites.

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<sup>1</sup> APP/P0240/W/17/3190584, APP/P0240/W/16/3152707 & APP/P0240/W/17/3176444,

<sup>2</sup> Cawrey Ltd and SoSCLG and Hinkley and Bosworth BC [2016] EWHC 1198 (Admin) and Gladman Developments Limited v Daventry District Council [2016] EWCA Civ 1146

20. As set out on the indicative plans, measures such as hedgerow replacement, wildlife corridors and meadowland would contribute be ecologically beneficial, supporting nature improvements in the area. The reports also recommend a number of further enhancements, including bat boxes. I am also mindful that the suggested conditions by the Council's Ecologist, which relate to a method statement and the approval and implementation of an Ecological Enhancement Strategy would ensure that protected species and biodiversity is conserved and enhanced.
21. Overall, on the basis of the evidence before me, and subject to conditions, I am satisfied that the proposed development would meet the aims of the NIA as well as Policy CS18 and the Framework as well as the statutory protections afforded specific species and habitats.

### **Other Matters**

22. The proposals have generated high levels of objections by local residents who raise a number of other matters. In terms of flood risk, the site is within flood zone 1 with a low risk of flooding and there was no objection from the Environment Agency. Conditions relating to drainage would ensure that the wider area would not be affected from surface water run-off.
23. As set out within the revised Framework, contributions for affordable housing should not be sought for small scale developments of less than 10 units. As 8 dwellings are proposed, there is no requirement for affordable housing for this scheme.
24. Detailed layout and design of the proposed dwellings are reserved for future consideration and as such at this time detailed matters relating to living conditions for future and neighbouring occupants would be fully assessed, including matters relating to privacy and noise and disturbance. Similarly, landscaping proposals are also reserved and detailed landscaping proposals, including retention of tree/hedgerows and further planting would be considered at that time.
25. In terms of highway safety, there was no objection by the Council's Highway's Officer, subject to conditions which were clarified at the Committee Meeting. While Jacques Lane is relatively narrow and incorporates passing places, however the submitted evidence is clear that the proposals would not increase traffic using the lane of any significant degree. Parking arrangement for the units would be dealt with at the reserved matters stage.
26. Matters relating to noise and disturbance from construction (including highways effects) could be readily dealt with by the imposition of a condition for a construction management plan. Other services relating to supplies, water and electricity would be dealt with via other regulatory requirements.
27. Finally, Clophill is defined as a large village with a number of services and facilities. I consider that development would be accessible to these facilities, and would support these.

### **Conditions**

28. I have had regard to the conditions as put forward by the Council as well as the comments made by the appellant on these.

29. I have attached conditions limiting the life of the planning permission and setting out the requirements for the reserved matters, in accordance with the requirements of the Act. I have also required development to be in accordance with the site plan, for clarity.
30. For the reasons set out above, I have imposed a condition for a construction management plan in order to protect highway safety and residential amenity. Due to the nature of the condition, this must be agreed pre-commencement of the development on site.
31. As per the verbal comments recorded as the Committee meeting minutes, the Highway Officer confirmed that off-site highways works relating to a passing bay, footway and junction widening improvements would not be necessary. I agree that these would not be necessary for highway safety and as such have omitted the Council's suggestion conditions for these. Instead, conditions for signage and turning space are suggested and I consider these to be necessary for highway safety and a reasonable approach. I have amended the wording of the signage condition from the condition suggested by the Council as this relates to land outside of the control of the applicant and thus details should be required via a Grampian style condition, and in order to be more precise.
32. I have also imposed conditions in respect of closing up existing accesses, and use of bound material again for highway safety purposes. In the latter, I have omitted reference to surface water drainage as this would be covered by separate condition. Accordingly, I have imposed a condition relating to drainage, in order to protect the living conditions of future and neighbouring residents. Due to the nature of the condition, it is necessary that this is pre-commencement of the development.
33. For the reasons given above in my decision, a condition relating to the submission and implementation of an ecological Enhancement Strategy is also necessary, and including a method statement for site clearance.
34. Finally, a condition relating to detail of bin storage is not necessary at this stage as this would be contrary to the flexibility provided by the outline nature of the application. Such details would be dealt with at the reserved matters stage.

### **Conclusion**

35. Overall I have found no harm to the character and appearance of the area and protected species. Accordingly, I am satisfied that the proposals are in accordance with the development plan taken as a whole and there are no material considerations to indicate otherwise.
36. For all the above reasons, and having regard to all other matters raised, I therefore conclude that the appeal should be allowed.

*C Searson*

INSPECTOR

### **Schedule of Conditions**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: 1208/1A.
- 5) The development shall not commence until a Construction Management Plan has been submitted to and approved, in writing, by the Local Planning Authority. The statement shall include:
  - i) waste management measures;
  - ii) details of site compounds, offices and areas to be used for the storage of materials;
  - iii) methods and details of dust suppression during construction;
  - iv) proposals to minimise harm and disruption to the adjacent local area from ground works, construction noise and site traffic.
- 6) Before the new access is first brought into use, any existing access within the frontage of the land to be developed, not incorporated in the access hereby approved shall be closed in a manner to the Local Planning Authority's written approval.
- 7) No development shall commence until a detailed signage, a signage scheme for a no through road sign (TSRGD 816) and Quiet Lanes sign has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented prior to the first occupation of the development in accordance with the approved details.
- 8) Prior to the first occupation of the dwellinghouses hereby approved, a turning space for a 11.5m long refuse collection vehicle shall be constructed within the curtilage of the site in a manner to be approved in writing by the Local Planning Authority.
- 9) The development hereby permitted shall not be commenced until a detailed surface water drainage design, based on the FRA (1910 June 2017), has been submitted to and approved in writing by the Local Planning Authority. The design shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme. The scheme to be submitted shall include:
  - Plans and calculations showing sufficient disposal, storage and conveyance of surface water (up to and including for the 1in100 year event + a 40% allowance for climate change).

- Ground testing (in accordance with BRE 365) to determine the feasibility and final design of infiltration devices.
  - Details of the management of exceedance flows and overland flood routing.
  - Details of the proposed culvert in accordance with CIRIAs 'Culvert design and operation guide C689' and any necessary environmental mitigation.
  - Detailed plans of the drainage scheme in its entirety.
  - Details of the proposed construction of the system and any phasing of works.
  - Details of who the surface water drainage will be managed by and how it will be maintained, including any split in public and private responsibilities. Responsibilities for maintenance of all culverts and watercourses (or ditches) on/adjoining site should be made apparent, including any riparian owner duties.
- 10) The development hereby permitted shall not be commenced until an ecological enhancement strategy (EES) has been submitted to and approved in writing by the local planning authority. The EES shall include the following:
- (a) Purpose and conservation objectives for the proposed works.
  - (b) Review of site potential and constraints.
  - (c) Detailed design(s) and/or working method(s) to achieve stated objectives.
  - (d) Extent and location/area of proposed works on appropriate scale plans.
  - (e) Type and source of materials to be used where appropriate, e.g. native species of local provenance.
  - (f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
  - (g) Persons responsible for implementing the works.
  - (h) Details of initial aftercare and long-term maintenance.
  - (i) Method statement for the demolition of buildings on the site.

The EES shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.