



Appeal Decision

Hearing Held on 4 September 2018

Site visit made on 4 September 2018

by G Rollings BA(Hons) MA(UD) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2018

Appeal Ref: APP/K0235/W/17/3171641

Wyboston Lakes Complex, Great North Road, Wyboston, Bedford, MK44 3AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous outline planning permission was granted.
 - The appeal is made by Wyboston Lakes Limited against the decision of Bedford Borough Council.
 - The application Ref 16/00218/M73, dated 27 February 2016, was refused by notice dated 15 September 2016.
 - The application sought planning permission for the development of a continuing care retirement village (Class C2) comprising care home with nursing and dementia suites, restaurant, care apartments, spa and physio and associated works (Outline – all matters reserved except for access) without complying with a condition attached to outline planning permission Ref 11/02569/MAO, dated 22 July 2015.
 - The condition in dispute is No. 10, which states that: *No development shall take place until an archaeological mitigation strategy has been submitted to and approved in writing by the Local Planning Authority. The archaeological mitigation strategy shall include a timetable and the following components (the completion of each to the satisfaction of the Local Planning Authority will result in a separate confirmation of compliance for each component):-*
 - (a) *fieldwork and/or preservation 'in situ' of archaeological remains;*
 - (b) *a post-excavation assessment report (to be submitted within six months of the completion of fieldwork);*
 - (c) *a post-excavation analysis report, preparation of site archive ready for deposition at a store approved by the Local Planning Authority, completion of an archive report, and submission of a publication report (to be completed within two years of the completion of fieldwork).**The archaeological mitigation strategy shall be carried out in accordance with the approved details and timings.*
 - The reason given for the condition is: *To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the property and timely investigation, recording, reporting and presentation of archaeological assets affected by this development, in accordance with Saved Policies BE24 & BE25 of the Bedford Borough Local Plan 2002, Policy CP23 of the Bedford Borough Core Strategy and Rural Issues Plan (2008) and according to national policies contained in PPS5: Planning for the Historic Environment.*
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Decision

1. The appeal is allowed and outline planning permission is granted for the development of a continuing care retirement village (Class C2) comprising care home with nursing and dementia suites, restaurant, care apartments, spa and physio and associated works (Outline – all matters reserved except for access) at Wyboston Lakes Complex, Great North Road, Wyboston, Bedford, MK44 3AL in accordance with the application Ref 16/00218/M73 dated 27 February 2016, without compliance with condition number 10 but subject to all other conditions previously imposed on outline planning permission Ref 11/02569/MAO dated 22 July 2015, and subject to the following additional condition:

27) The premises shall be used only for purposes falling within Class C2 and for no other purpose, including any other purpose in Class C of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Procedural Matters

2. The planning permission relevant to this appeal is an outline permission. Condition 2 of the permission required the application for approval of the reserved matters to be made before the expiration of three years of the date of the permission. The date has now passed, but at the time of the hearing and on the date of issue of this decision, the reserved matters were before the Council for consideration.
3. The Government adopted an updated version of the *National Planning Policy Framework* in July 2018, which supersedes the previous version. Comments were sought from the parties regarding the updated Framework prior to the hearing, and all references to the Framework within this letter refer to the current version.
4. At the request of the parties, I carried out my site inspection as an unaccompanied visit.

Background and Main Issue

5. The Council confirmed at the hearing that it had no objection to the removal of the disputed condition 10, and having considered the issues raised by the parties with regard to this matter, I agree that its removal would not have a detrimental impact on the proposal.
6. A revised unilateral undertaking was provided by the appellant prior to the hearing, and a completed agreement was supplied to me at the event. Compared with the agreement that currently forms part of the outline permission, the revised undertaking removes and amends specific descriptions, timings and definitions. The Council's objections to these changes form the basis of its case.
7. As such, the main issue is the suitability of the submitted unilateral undertaking, with regard to the use of the proposed development.

Reasons

8. The appeal site is currently open land in a semi-rural setting. The Council's *Core Strategy & Rural Issues Plan (2008)* (the Core Strategy) focuses growth within a defined growth area. The site is within the Rural Policy Area, and Policy CP14 of the Core Strategy states that there should be a proven need for development to be located within the area. Outside key service centres, such development should be restricted to that which is required to meet local need and maintain the vitality of communities.
9. The revised unilateral undertaking alters the nature of the care that would be provided to residents of the development, by removing the obligation for residents to be subject to a Personalised Care Plan, who would instead enter into a contract with the Domiciliary Care Agency. The Council's concerns stem from whether the altered operations would mean that the facility would continue to operate within the definition of a Class C2 use, and not a combination of a Class C2 and other use.
10. The appellant's commercial model caters for independent living together with regular observation and assessment of residents by health professionals, moving through various stages of provision according to the needs of the each resident at any time during their occupation. In this manner, the operation would offer residents a choice in their level of care, but does not impose a care programme onto residents. Instead, it is a more passive type of provision that enables them to feel in control of their own living arrangements. This nature of operation appears to offer both independent living, and a flexible programme of health care provision to which residents are entitled.
11. The revised undertaking retains the requirement for a specific standard of medical care provision, to be provided to all residents by a domiciliary care agency, which would require registration and regular assessment by the relevant Government regulatory body. Upon moving into the facility, residents would be required to enter into a contract with the provider that effectively ties them to the care provision of the operator. This would be a significant financial obligation for residents, and as such, entry into the facility would contain a degree of self-regulation, in that residents would not choose to subject themselves to such an arrangement unless care is required. I also acknowledge that unless a prospective resident has a disability as set out within the revised undertaking, the minimum age upon entry would be 65, which is higher than traditional 'retirement villages'.
12. Moreover, the detailed matters applications that were being considered by the Council at the time of the Hearing indicate that the proposed development would have an appropriate degree of accessibility for wheelchair users and ambulant disabled residents, together with a communal-focused layout. I consider that the development would appeal to prospective residents who require a certain level of care, or at least need the certainty of such within a supported community, but for whom a more independent living arrangement may not be attractive. Accordingly, the hybrid model of care provision and observation within an independent living environment, albeit with communal facilities, would offer a greater level of specialist care than would be considered appropriate within a class C3 use. Despite the loss of some certainty towards a more traditional class C2 operation within the amended undertaking, I am satisfied nonetheless that its revised provisions would provide an appropriate

level of on-site care and communal facilities. Although there would be an independent living element to the scheme, the focus of the operation as set out within the undertaking would remain the bespoke provision of assisted living and care, at varying levels that would be dependent on the evolving needs of its residents. As such, the operation of the proposed development would fall within the class C2 use class.

13. I have taken account of the Council's comments on the enforceability of the nature of occupancy of the proposed development, and agree that a condition of this nature is necessary. I have specified it as a new condition within the outline permission, having had regard to the advice on restrictive conditions of this nature as set out within the Planning Practice Guidance¹. Likewise, I am satisfied that the revised undertaking is acceptable with regard to the tests for planning obligations, as set out within paragraph 56 of the Framework.
14. I therefore conclude that the revised unilateral obligation would be suitable with regard to the proposed use of the development. There would be no conflict with the purposes of the development plan for the area, including policies BE30 and H26 of the *Bedford Borough Local Plan 2002*, Policies CP1, CP2, CP3, CP13, CP14, CP21 and CP29 of the *Core Strategy and Rural Issues Plan 2008*, and Policy AD1 of the *Allocations and Designations Plan 2013* which together allocate a growth strategy for the borough and protect its features of built and natural significance, amongst other considerations.

Conclusion

15. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition, but imposing a new condition, and restating those undisputed conditions that are still subsisting and capable of taking effect.

G Rollings

INSPECTOR

¹ Paragraph: 017 Reference ID: 21a-017-20140306.

APPEARANCES

FOR THE APPELLANT:

Peter Goatley	Counsel, No. 5 Chambers
Craig Owen BSc (Hons)	Appellant, Richmond Care Village
Philippa Fieldhouse BA (Hons)	Appellant, Richmond Care Village
John Sneddon BSc MRTPI	Agent, Tetlow King Planning
Martin Page DipEd MRTPI	Agent, Brown & Co.
Mark Jones FIH	Landowner, Wyboston Lakes

FOR THE LOCAL PLANNING AUTHORITY:

Greg Logan MA MRTPI	Planning, Bedford Borough Council
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DOCUMENTS SUBMITTED DURING THE HEARING

1. Appeal Decision reference: APP/K0235/C/17/3174644, Dwelling at No. 7 Colmworth Golf Club, New Road, Colmworth, Bedford, decision date: 3 May 2018.
2. Appeal Decision reference: APP/K0235/A/11/2149530, 1 Phoenix Park, Wyboston, St Neots, Bedfordshire, decision date: 23 September 2011.
3. Phoenix Park implemented
4. Workspace availability and pricing information as of 20 June 2018 for The Record Hall, London EC1N 7RJ.
5. Public Examination of Camden's Local Plan – Inspector's Post Hearing Note to the Council, dated 2 November 2016, paragraph 2.4, and Council response.

DOCUMENTS SUBMITTED AFTER THE HEARING

6. Bedford Borough Council 'Need for Specialist Older Person Housing – Position Statement September 2018', and appellant response.