



Appeal Decision

Hearing held on 28 August 2019

Site visit made on 28 August 2019

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2019

Appeal Ref: APP/P0240/W/18/3216675

Back Street, Clophill MK45 4AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Hamlin Estates against Central Bedfordshire Council.
 - The application Ref CB/16/05438/OUT, is dated 21 November 2016.
 - The development proposed is described as residential development of up to 51 dwellings.
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Decision

1. The appeal is dismissed and planning permission is refused at Back Street, Clophill MK45 4AE, for residential development of up to 32 dwellings.

Preliminary matters

2. This is an outline application with all matters but access reserved for subsequent consideration. At the hearing the appellant also confirmed I should consider the proposal on the basis that the buildings would be no more than 2 storeys in height. I have assessed the appeal accordingly.
3. Whilst the application was being considered by the Local Planning Authority the appellant sought to modify the description of development to 'up to 32 dwellings'. This was accompanied by an illustrative layout plan that showed the 32 dwellings arranged in a manner that extended appreciably outside the red line of the application site. The Council said it was not able to accept the amendment because the scheme was materially different with third parties possibly being prejudiced, it involved works outside of the site boundary and there were no technical reports to assess the impact of the reduced numbers and the revised layout.
4. At the hearing the appellant maintained it wanted to reduce the maximum number of houses proposed from 51 to 32, but they would be entirely within the red line of the application site. It therefore withdrew the illustrative layout plan and I have not taken it into account in my determination.
5. To my mind amendments can be material as they are often promoted to get planning permission for a scheme that would otherwise be refused. Moreover, I consider that a development of 32 units is sufficiently similar to what was initially proposed. Indeed, this reduction would still fall under the original

description of the development, which was for 'up to' 51 dwellings. Whilst there may be some scenarios where third parties might have objected to 32 houses who did not object to 51, I consider that is unlikely as it is fair to assume the impact of the revised proposal would be no greater and quite probably less. Therefore, I am prepared to accept the amended description and shall consider the proposal accordingly. Whilst there may be no technical reports that specifically address the impact of 32 dwellings that is a matter that I shall take into account in my determination.

6. During the hearing there was discussion as to whether the works proposed to the south side of Back Street were entirely within the highway. The appellant maintained that they were, but if that is not in fact so then my decision has not prejudiced the position of any additional land owners who should have been notified of the scheme.

Main Issues

7. The main issues are the effect of the development on the character and appearance of the area, whether there is any suitable means for addressing the infrastructure impacts, and if any harm would be caused by either of these factors, whether that would be outweighed by other material considerations.

Reasons

Character and appearance

8. This appeal concerns the former Readshill Quarry, which was an operative sand quarry until about 30 years ago. Since quarrying ceased it has returned to nature, with woodland on all but the steepest sides and a grassland succeeding to mixed woodland on the quarry floor. It still has quarry faces evident, and is some 11m deep at the southern end and 20m or so deep at the north. This is the second appeal for housing here. A previous one for up to 51 dwellings (the previous appeal) was dismissed in November 2017.
9. The site sits outside of but immediately adjacent to what the *Central Bedfordshire Core Strategy & Development Management Policies* defines as the northern settlement boundary of Clophill. As a result, in policy terms and indeed when seen on the ground, it lies in the countryside. It is located within the Greensand Ridge, which is a distinctive important landscape designation that runs across the middle of the county. Mindful of the advice in the Council's Landscape Character Assessment, the appeal site in its current state makes a positive contribution to this area with its steep slopes, its dense deciduous woodland, and its remnants of grassland. To the east, just beyond the rim of the quarry, is a section of the Greensand Ridge Walk, a long-distance footpath that runs along the Greensand Ridge for over 60km. A further footpath runs off that to the northern boundary.
10. The quarry itself has an area of about 7.9ha, but the proposed development would be within some 2.78ha of the quarry floor, as defined by the red line of the application site (the developable area). The remainder of the quarry would be managed in a way that promoted its ecological benefits. The scheme is seeking to maintain public access to the woods, not just by upgrading the Greensand Ridge Walk and making it safe from land slips but also by formalising a path down the western side.

11. In the Core Strategy, Policy DM4 broadly seeks to allow only limited types of development in the countryside, while Policy CS16 endeavours to conserve or enhance the character and distinctiveness of landscapes defined in the Landscape Character Assessment. Policy DM14 states proposals that would have an adverse effect on the Greensand Ridge would be rejected unless there is some reason to justify otherwise. Moreover, Policies CS17 and DM16 aim to protect and enhance green infrastructure while Policy DM3 says development should be appropriate in scale and design to its setting. Nationally, paragraph 170(b) in the *National Planning Policy Framework* (the Framework) requires decision-makers to recognise the intrinsic character and beauty of the countryside. As this is not in a protected landscape paragraph 170(a) of the Framework is not applicable.
12. The proposal would not comprise the type of development defined as permissible outside settlement boundaries in the supporting text to Policy DM4. It was argued that from the footpaths to the east and north the scheme would be well concealed by the difference in land levels and by the trees along the quarry edge. However, mindful that at the southern end at least, the ridges of the houses would be only a few metres below the quarry rim, even in the summer the scheme would be noticeable from lengths of the eastern footpath through gaps in the intervening tree cover and beneath their canopies. In winter the deciduous nature of the trees means their screening effect would be less effective and views more extensive. Indeed, the proposed clearance of some of the vegetation could well open up these views even more. Part of the development would also be apparent through the entrance that would be formed on Back Street, in place of the mounding and mature trees that border the northern side of that road at present. To my mind from these viewpoints the scheme's suburban nature with its houses, fencing, roads, street lights and so on would be distinctly at odds with the otherwise rural character and appearance of the area. As such it would be a jarring and discordant intrusion into this area of countryside, to the detriment of the enjoyment of those on the Greensand Ridge Walk.
13. I note similar concerns were raised in the previous appeal. Whilst fewer houses are now proposed, I am aware that the developable area is no smaller so it would be possible for the scheme to be spread over a similar amount of the quarry floor. However, even if the extent of development were to be reduced by 19 houses being taken off the northern end of the illustrative layout initially submitted with this scheme, I consider that would not have a material impact on its effect in this regard.
14. In coming to this view I have taken account of the appellant's Landscape Visual Impact Assessment (LVIA), which accepts moderate adverse effects during construction, becoming generally minor adverse after 15 years. I appreciate too that a landscaping scheme could soften the development. However, I consider that views from the footpath to the east would be more extensive than implied in the LVIA and any such landscaping would not be sufficient to overcome the fundamental change in the site's character. Again, these are very similar findings to those expressed in the previous appeal.
15. It has also been said that slope stabilisation works are going to be necessary, even if this appeal is dismissed and these will change the quarry's appearance. It was agreed though that such works would almost certainly require planning permission, at which point a balanced judgement about their extent and their

visual impact could be made. In any event, their effect on the landscape would not be as extensive as that of the housing scheme before me.

16. Turning to the effect of the proposal on Back Street, its initial length from the A6 past the site has a narrow carriageway with no pavements and limited kerbing to either side, and runs between 2 maturely landscaped embankments, the northern one of which includes a stone wall. The combined effect of these factors is to give the road the appearance and character of a country lane, and this contributes positively to the adjacent countryside. It is now proposed to widen the carriageway and form a pavement to the south. The northern embankment, with its trees, would be removed and replaced with a wall behind which a further new pavement would run. This in turn would be in front of replacement planting and a mound. The site access would then be taken from this northern side.
17. Whilst such works may be needed to ensure the development has suitable access, I consider their overall effect would be to change the character of this length of Back Street from that of a country lane to a suburban road, to the detriment of the countryside. Again, whilst I realise that the treatment of this frontage has been modified since the previous appeal, to my mind these changes do not go sufficiently far to allay my concerns.
18. In coming to this view I have noted the appellant's contention that, because of stability issues, the wall, embankment and trees along the northern boundary would have to be removed irrespective of the outcome of this appeal. There is no particular evidence to support this though, and it has not been confirmed when such works would need to be undertaken or how extensive they would be. Moreover, whilst it was said that palisade fencing may then have to be erected to maintain the security of the quarry, there is little else to show that would occur and indeed it is not apparent on the appellant's photomontage of Back Street after the works. In any event, if I dismissed this scheme and there was extensive removal of walling, mounding and trees on the northern side, the effect of this, with or without fencing, would be to open up views into the wooded quarry. To my mind this would not be as harmful to the area as the housing estate now proposed. Therefore, whilst I have considered this as a fall-back position it does not overcome my concerns.
19. Accordingly, I conclude the development would detract unacceptably from the character and appearance of the area, thereby conflicting with Core Strategy Policies DM3, DM4, DM14, CS14, CS16 and CS17, and the Framework.

Infrastructure impacts

20. The Council also gave as a suggested reason for refusal the lack of any mechanism to secure affordable housing and mitigate off-site impacts. An undertaking was submitted to the appeal, together with a subsequent Deed of Variation. This makes contributions towards education, highways studies and infrastructure, green infrastructure and a Multi-Use Games Area, as well as agreeing build rates and securing affordable housing.
21. I give little weight to the build rates in reaching my decision as I consider there is an adequate housing land supply. However, on the evidence before me I consider the other provisions satisfy the tests in the *Community Infrastructure Levy Regulations 2010* by being necessary to make each development acceptable, directly related to the development, and fairly and reasonably

related in scale and kind to the development. I therefore give them weight in reaching my decision, and consider the scheme does not now conflict with Core Strategy Policies CS2 and CS7, which seek to secure such contributions and the provision of affordable housing.

Matters to outweigh the harm

Housing provision

22. At the hearing the appellant accepted the Council had a 5-year supply of deliverable housing land. As such, the housing situation did not engage paragraph 11(d) of the Framework and the so-called 'tilted balance'. Following on from this, I have no reason to consider that the recent tightening of the definition of deliverability of housing sites weighs against the scheme. Similarly, while the appellant is proposing agreed build rates, as I am aware of no shortfall in housing land supply this is of limited benefit.
23. When the emerging local plan is adopted it seems the Council's housing needs will rise. However, it is fair to assume that suitable provision will be made in that plan to accommodate such an increase. Notwithstanding that, I am mindful of the Government's desire to boost housing numbers, and the 5 year supply should not be viewed as a maximum figure. The provision of 32 dwellings is therefore a benefit of the scheme, as indeed is the provision of affordable housing. However, to my mind these do not outweigh the harm identified, given the scale and magnitude of this harm.

Biodiversity

24. It was contended that currently the quarry provides a valued habitat that would be lost to succession if no further action was taken. The appellant was therefore proposing to manage the areas that would remain undeveloped in a manner that would maintain and promote their ecological value. In particular it would re-introduce acid grassland to the site and protect it over the years ahead. I accept that benefits would arise from the management proposals before me, and I acknowledge that the diversity and value of the site would reduce if the appeal were to be dismissed. I appreciate too that developments that incorporate biodiversity improvements should be encouraged. However, again these factors would not be sufficient to overcome the harm of the scale I have highlighted above.
25. This matter was considered under the previous appeal, and similar findings were reached. The appellant contended that the wording in the newest edition of the Framework, which has been published since the previous appeal decision was issued, places greater emphasis on habitat protection than was found in the edition of the Framework from 2010. However, from my comparison of the text I consider any such changes in wording have not had a material or significant effect in this regard, and so do not justify a different position.

Out-of-date policy

26. Finally, the appellant said that the Core Strategy was now '*more out-of-date*' than when it was considered under the previous appeal as it was older. However, mindful of advice in the Framework the mere age of a policy or policy document does not, of itself, render it out-of-date.

27. Specifically though the appellant said Policy DM4 was out-of-date, and in this regard a court judgement¹ was submitted. However, that judgement did not consider the status of Policy DM4, but rather found the decision in question did not provide sufficient justification for coming to a different view on the issue to that expressed in another appeal decision. Consequently, that does not help me in this matter. Some Inspectors have, in the past, found the policy to be out-of-date, the last seemingly being in the late spring of last year, but since then there have been numerous decisions where the policy has not been found out-of-date. In any event, given the scale of the adverse impact on the character and appearance of the area, even if I were to accept that Policy DM4 was out-of-date and so, for that reason, paragraph 11(d) of the Framework was engaged, these adverse impacts would significantly and demonstrably outweigh the benefits.

Conclusions

28. Accordingly, I consider the scheme would detract unacceptably from the character and appearance of the area in conflict with the policies stated. Although various benefits have been offered, I consider that, even if taken together, they would not justify allowing the scheme in the light of the development plan conflict. Therefore, the appeal should be dismissed and planning permission refused.

J P Sargent

INSPECTOR

¹ Gladman Developments Limited v Secretary of State for Housing Communities and Local Government & Central Bedfordshire Council [2019] EWHC 127 (Admin)

