



Appeal Decision

Hearing Held on 11 September 2019

Site visit made on 11 September 2019

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th October 2019

Appeal Ref: APP/P0240/W/18/3213352

Land at south of Sandy Lane, Potton SG19 2QE

- 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 Planning Prospects against the decision of Central Bedfordshire Council.
 - The application Ref CB/17/06069/OUT, dated 22 December 2017, was refused by notice dated 17 July 2018.
 - The development proposed is described as "Outline planning permission for up to 60 dwellings (including 35% affordable housing), landscaping, public open space including children's equipped play area, surface water flood attenuation, vehicular access from Sandy Road, cemetery expansion land and parking provision for Potton Cemetery and associated ancillary works. Outline with all Matters Reserved with the exception of the principal vehicular access from Sandy Road".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the planning application in the header above was amended during its determination and the number of dwellings was reduced from 60 to 42. I have considered the appeal on that basis.
3. The planning application was submitted in outline form with only access for determination. Matters relating to scale, appearance, layout and landscaping are reserved for future consideration.
4. The Council's decision notice refers to Policy CS14 of the Central Bedfordshire Core Strategy and Development Management Policies 2009 (the Core Strategy). However, as this policy is concerned with the quality of design of a development, this would be more appropriately connected with the reserved matters application which would consider layout, scale and appearance. Thus, I do not find this particular policy relevant to the appeal before me.
5. At the Hearing I was presented with a number of documents. A completed unilateral undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 was presented as part of the appellant's submission. I was also provided with the Potton Neighbourhood Plan August 2019 and its examiners report of 3 July 2019. A judgement¹ which quashed an inspector's

¹ Gladman Developments Ltd v SSHCLG And Anor [2019] EWHC 127

decisions for failing to provide reasons for departing from the conclusions of a previous decision in respect of Policy DM4 of the Core Strategy was also provided.

6. At the time of writing, I have not been made aware whether the Potton Neighbourhood Plan (PNP) referendum had taken place nor its outcome. Moreover, the PNP has been through its public examination and a number of modifications are required. Thus, although the PNP is at an advanced stage, I only afford it limited weight until such time it is made.

Main Issues

7. The main issues are the effect of the development on the character and appearance of the area and whether the site would result in net gains for ecology.

Reasons

Character and Appearance

8. The appeal site forms a sizeable parcel of land of some 3.4 ha which contains a paddock and a further larger area of unmanaged grassland and brambles underfoot. The site is surrounded largely by agricultural land and open countryside and wooded areas to the north, west and south. Immediately east of the site is an active cemetery which is roughly rectangular in shape and contains a single storey chapel building and footpaths that cross to either side. Further east of the cemetery is a residential development at Burmo Way which is still partly under construction and contains a variety of style and size of properties. To the west of the appeal site is a small copse of fir trees that leads on to the adjoining open countryside towards Deepdale, and to the north lies a property known as 100 Sandy Rod which is itself surrounded by agricultural land. To the south of the site is a dismantled railway that is located within Potton quarry and the open countryside beyond.
9. The site is bound partly to Sandy Road on its western edge by a mature hedge which stops part way down the sites northern edge so that the majority of its frontage is open and allows views across the site and countryside. This is especially noticeable when travelling past the cemetery in a westerly direction towards Deepdale. The boundary to the cemetery contains a number of trees and shrubs while the remaining boundaries tend to be more open. The copse of fir trees effectively blocks views of the site from the west until one passes the site.
10. Along with the residential development, the proposal seeks to extend the existing cemetery to the south and provide it with a dedicated parking area at the development's proposed entrance onto Sandy Road. Although the Framework plan² is indicative, the bulk of the residential development would be directly west of the cemetery, with a further area proposed to the south of the cemetery extension. The remaining land, essentially that to the south of the existing copse of trees and the central area proposed for development, would be retained as an area of green infrastructure (GI) and for ecological enhancements. Other areas of GI are also denoted on the Framework plan along with areas of hedgerow planting, most notably adjoining the western

² Drawing Ref: SHF.1426.006.L.D.001.C

boundary of the cemetery, on the site's southern boundary and along Sandy Road.

11. Policy DM4 of the Central Bedfordshire Core Strategy and Development Management Policies 2009 (the Core Strategy) seeks to direct development to sites within Settlement Envelopes and addresses development beyond such areas. There is no dispute between the parties that the appeal site lies beyond the Settlement Envelope of Potton and as such, the development would be in conflict with Policy DM4 of the Core Strategy.
12. Policies CS16 and DM14 of the Core Strategy seek to safeguard local landscape characters and states that proposals will be assessed against its impact on the landscape and any development that would have an unacceptable impact on the landscape quality of an area will be refused. Although I accept that the supporting text to policy states that the Council will protect the countryside for its own sake, there is case law³ that countryside that falls outside of a statutory designation is still afforded protection within the Framework. In conserving and enhancing character and distinctiveness, Policies CS16 and DM14 of the Core Strategy recognise the intrinsic character and beauty of the countryside and seek to take account of the different roles and character of different areas. Moreover, Policy CS16 recognises the protection of differing landscapes commensurate to their status, reflecting paragraph 170 of the Framework. I therefore find these policies broadly consistent with the Framework and afford them significant weight.
13. At a national level the appeal site lies within area 90 Bedfordshire Greensand Ridge⁴ which seeks to protect, amongst other things, *"long open views and high levels of tranquillity to ensure continued enjoyment of the landscape..."*. At a local level, the site is identified as part of the Everton Heath Greensand Ridge within the Central Bedfordshire Landscape Character Assessment 2015 which identifies its positive landscape features as *"extensive mosaic of woodland and heathland...an important recreational, biodiversity and visual resource..."*.
14. The appellant undertook a Landscape and Visual Impact Assessment and Addendum⁵, which states that the site is in a poor condition and that the development would not result in prominent changes to the characteristics of the wider landscape as it would essentially be contained by well vegetated boundaries. However, regardless of its current state, the site makes a valuable contribution towards the character of the area as it forms a logical rural buffer to the built-up area of the village of Potton to the east. The plateau landform and openness of the site is an intrinsic characteristic of the Greensand Ridge in which the site sits, allowing views across it to the wider countryside beyond. Although the proposal has the ability to link with the recent development at Burmo Way at the south of the site, it would nonetheless appear divorced from the main core of development of Potton that exists to the east of the cemetery.
15. Furthermore, as a result of the scale of the development, it would represent a sizeable shift of the built environment beyond the edge of the village at this point which is clearly demarcated by the cemetery, representing a significant

³ Cawrey Limited v SSCLG and others [2016] EWHC 1198 (Admin)

⁴ National Character Area Profile: 90. Bedford Greensand Ridge, Natural England (Appendix 2, LPA Landscape Statement, June 2019)

⁵ LVIA dated December 2017 and Addendum dated March 2018

visual intrusion into the countryside when entering the village from the west. Whatever its final form, the development of 42 dwellings across the site would be to reduce the openness that the site contributes to the rural quality of the area.

16. Moreover, albeit localised, it is inevitable that the development would be visible from the surrounding area. In viewing the site from the viewpoint locations⁶ undertaken by the appellant, it is clear that the development would be perceptible through the access into the site off Sandy Lane, from public vantage points, such as viewpoint 2 and 6, from the cemetery and the recent development at Burmo Way. Furthermore, the development would also be visible over the existing landscaping and would appear as an obtrusive form of development that would extend the built environment into the surrounding countryside, resulting in material harm to the character and appearance of the area. Moreover, the addition of landscaping at the site would take a very long time to mature and, in any event, cannot be relied upon to remain in perpetuity.
17. Turning to ecological matters, the appellant provided an updated Ecological Impact Assessment⁷ (EIA) which considered the opportunities for biodiversity enhancement at the site and provides a list of those proposed enhancements. The EIA concludes that provided the mitigation measures are incorporated into the development, there would be no net loss of biodiversity. Moreover, should the proposed enhancements be provided, there would be a net gain as a result of the proposal. This stems largely from the provision of hibernacula, bat boxes, bird boxes and additional native tree and shrub planting throughout the GI buffer proposed within the site. Furthermore, the acid grassland on the site to be retained, would be demarcated with stock fencing and signs installed informing residents that the site is a wildlife area to avoid disturbance and nutrient enrichment from dog fouling.
18. Although I acknowledge the Council's concerns that net gain calculation is neither accurate or reflective of the proposed scheme, it is also acknowledged that the DEFRA⁸ Biodiversity Metric used for such measurements is still in its beta phase and is not publicly available. The mitigation for bats, birds and badgers are accepted as appropriate to the Council. However, as 0.3ha of acid grassland would be retained and a further 0.3ha translocated, the Council argue that this would not result in a net gain of acid grassland. Nevertheless, even taking into account the Council's revised measurements, it is clear that the development would still result in a net gain for biodiversity.
19. Therefore, having regard to paragraph 175 of the Framework states that decisions should contribute to and enhance the natural and local environment by minimising the impact on and providing net gains for biodiversity, it is clear from the appellant's EIA that any net gain is predicated on the implementation of the enhancement measures as detailed therein. Consequently, notwithstanding the translocation of the acid grassland and reptiles, the development would not result in a loss in biodiversity and a gain would occur.
20. Thus, the development would result in material harm to the character and appearance of the area. It would be in conflict with Policies CS16 and DM14 of

⁶ Figure 1: Viewpoint Locations, LVIA December 2017

⁷ Ecological Impact Assessment, enzygo dated 3 May 2018

⁸ Department for Environment, Food & Rural Affairs

the Core Strategy and the National Planning Policy Framework (the Framework) which seek, amongst other things, to protect the character and appearance of the landscape.

21. Turning to Policy DM4 of the Core Strategy, the appellant argues no weight should be afforded to it as it is considered to be out-of-date as a result of the development plan itself being dated and its policies being inconsistent with many of the themes as set out within the Framework. Notably, Policy DM4 places a blanket restriction on new open market housing outside of settlement envelopes and as such, the appellant suggests that it only carries limited weight when assessed against paragraph 123 of the Framework. The Council disagrees with this argument and both parties have provided a raft of appeal decisions to support their position.
22. I accept that Policy DM4 has a degree of inconsistency with the Framework, in that it seeks to protect the countryside from development outside of settlement envelopes while the Framework has a more nuanced and refined approach stating that the intrinsic beauty of the countryside should be recognised while allowing development that would enhance or maintain the vitality of rural communities. Nevertheless, I do not consider it necessary for me to contribute to the ongoing debate over the weight to be attributed to Policy DM4 because even if I were to find that it carries reduced or even no weight, it would not outweigh the harm that I have identified and its conflict with Policies CS16 and DM14 of the Core Strategy.

Other Matters

23. The appeal site sits adjacent to the cemetery and one has to consider whether the development would impact on the reflection and tranquillity that visitors to the cemetery would experience. Although the development at Burmo Way has resulted in development along its eastern edge, which is separated by a track, the majority of benches where one could sit and take time to reflect were located on the western side of the cemetery. Nevertheless, the development proposes a substantial landscaping buffer between the cemetery and the site which would be strengthened through additional planting. Thus, I am satisfied that the tranquillity of the cemetery would not be significantly affected by the development.
24. I note that representations were made by local residents, some of whom raise additional concerns. However, given my findings on the main issues, it is not necessary to consider these matters in detail.

Planning Balance and Conclusion

25. The appellant's UU secures financial contributions towards education, public open space, waste, the village hall and transfers a parcel of land to the south of the cemetery to the Council to enable the cemetery to be extended. The contributions for infrastructure provision would only be necessary to make the development acceptable in planning terms and thus, this aspect of the UU is a neutral factor in the case rather than a benefit.
26. The UU also secures 35% of the development to be affordable housing to which I afford significant weight. The transfer of land to the cemetery as a public benefit weighs in favour of the development. The proposal would boost the supply of housing, resulting in social benefits and additional economic benefits

would ensue both during the construction of the development and once the dwellings are occupied which also weigh in favour of the development. The support given in paragraph 68 of the Framework to the contribution small and medium sized sites can quickly make to meeting the housing requirement of an area also carries weight.

27. The Framework states at paragraph 73 that Council's should identify a supply of specific deliverable sites to provide a five year supply of housing against their local housing need where their adopted policies are over five years old. The Core Strategy is over five years old. The Council have commented that using the standard method for calculating local housing need, as set out in the planning practice guidance, is not appropriate in this case as it is based on 2014 household projections which, in this area, do not provide a realistic assessment of demographic growth. As such they have not calculated their local housing need using the standard method which is supported by a recent appeal decision⁹ and agreed with the Council and found that the it could indeed demonstrate a five year supply of deliverable housing sites and as such, the tilted balance at paragraph 11 of the Framework was not engaged.
28. However, even if the Council is unable to demonstrate a five year supply of deliverable housing sites, and the policies that are the most important for determining the appeal are out-of-date and the tilted balance at paragraph 11 of the Framework is indeed engaged, I have found that the proposal would be contrary to the Development Plan for the reasons as set out above. Notwithstanding the social and economic benefits of the development, the harm I have found is serious and, in my view, this significantly and demonstrably outweighs the benefits of the scheme when assessed against the policies in the Framework taken as a whole. Therefore, the presumption in favour of sustainable development as envisaged by the Framework does not apply in this case. There are no other material considerations that indicate a decision other than in accordance with the Development Plan.
29. Thus, for the reasons given above, and having regard to the Development Plan when read as a whole, the appeal is dismissed.

Graham Wyatt

INSPECTOR

⁹ APP/P0240/W/18/3206495 and APP/P0240/W/19/3220640 dated 25 June 2019

APPEARANCES

FOR THE APPELLANT

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DOCUMENTS

Pottton Neighbourhood Plan August 2019
Pottton Neighbourhood Development Plan – Examiners report 3 July 2019
Gladman Developments Ltd v SSHCLG And Anor [2019] EWHC 127
Unilateral Undertaking from Appellant