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# Appeal Decision

Site visit made on 17 March 2020

**by K A Taylor MSC URP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14<sup>th</sup> May 2020**

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**Appeal Ref: APP/P0240/W/20/3244269**

**Land off Kerrison Close, Lidlington, Bedford MK43 0UW**

- 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 & Mrs D&D O'Connell against the decision of Central Bedfordshire Council.
  - The application Ref CB/19/02384/OUT, dated 19 July 2019, was refused by notice dated 13 November 2019.
  - The development proposed is residential development comprising three residential dwellings.
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## Decision

1. The appeal is allowed and planning permission is granted for outline residential development comprising three residential dwellings at Land off Kerrison Close, Lidlington, Bedford MK43 0UW, in accordance with the terms of the application, Ref CB/19/02384/OUT, dated 19 July 2019, subject to the conditions set out in the attached schedule.

## Procedural Issues

2. Outline planning permission is sought for three dwellings with access to be considered at this stage, with indicative plans showing the respective appearance, layout, scale and landscaping of the dwellings within the plots.
3. The Design, Access and Justification Statement forms part of the evidence in this appeal and is fairly specific (section 4.0) as to the siting of the proposed dwellings and to some extent the proposed design. I have therefore taken this into account in so far as establishing whether it would be possible, in principle, to erect three dwellings on the site.
4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that "where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise". This is also set out in paragraph 47 of the National Planning Policy Framework (The Framework).
5. Within the information before me, references have been made to the emerging Central Bedfordshire Local Plan 2035, (2018). Whilst I have had regard to the policies within this emerging plan, their weight in my decision has been limited on account of the status of the Local Plan and this is yet to be examined.

## Background and Main Issue

6. The proposal is for outline residential development and is a resubmission of a previously refused planning application<sup>1</sup> of which was also dismissed at appeal<sup>2</sup>. The Council acknowledge that the Inspector considered the recreational value of the land as "very limited", their argument in this case is that the Inspector did not have sight of all the relevant information. This includes details of the planning permission for residential development<sup>3</sup> of the wider allocated site and the legal agreement (S106). The Council contend that the appeal site is important as amenity land and the sites allocation as accessible greenspace. They consider it would now be in conflict with paragraph 180(b) of the Framework.
7. Therefore, the main issue is the effect of the proposed development on the availability of, and access to amenity land, having regard to open space, recreation and noise.

## Reasons

8. The appeal site is a parcel of land located within the settlement envelope of the small village of Lidlington as set out in Policy CS1 of the Central Bedfordshire Core Strategy and Development Management Policies, 2009 (CSDMP). The appeal site is positioned on the edge of existing residential development and in the evidence before me sets out that the proposals would form an infill development. As such, it would be in accordance with Policy DM4 of the CSDMP, which amongst other things, limits residential development within settlement envelopes and small villages to only infill development.
9. The appeal site forms part of an allocated housing site under Policy H08(1) of the CSDMP of which most of the designated land has been developed for housing. Policy DM17 of the CSDMP sets out the requirement for new housing developments and accessible greenspaces. It states that planning applications that contain proposals that would adversely affect existing greenspace will not be permitted. However, in the supporting text it sets out that the term for 'accessible greenspace' means an area of land that provides opportunities for open access to the public for recreational purposes. As such it appears that the land has been allocated for both housing and greenspace of which forms part of the larger residential development previously approved by the Council and has been built.
10. The Framework at paragraph 96-98 relates to open space and recreation, setting out that access to a network of high quality open spaces and opportunities for sport and physical activity is important. It should not be built on unless an assessment has been undertaken which clearly shows there is a surplus. Paragraph 180 advises that planning policies and decisions should ensure new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. At paragraph 180(b) it sets out that in doing so they should '*identify and protect*

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<sup>1</sup> CB/17/02350/OUT

<sup>2</sup> APP/P0240/W/19/3220073

<sup>3</sup> MB/03/00166/OUT

*tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason’.*

11. Furthermore, the Framework<sup>4</sup> sets out the definition of open space, ‘*all open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity*’. As such, Policy DM17 of the CSDMP is broadly consistent with the aims of the Framework.
12. The appeal site is relatively narrow and is approximately 0.31 hectares. I observed on my site visit that the site is vacant from built form and was considerably overgrown with rough scrub and grassland. The site is accessed from the residential development off Kerrison Close with a public footpath (PROW) and bridleway crossing through the site. The majority of the appeal site is also enclosed by dilapidated fencing and therefore has no public access. The existing PROW leads to the larger and more open accessible greenspace to the north east of the site including woodland, recreation and play areas.
13. The Council acknowledge in their ‘officers report’ that whilst the proposal would result in the loss of existing, designated accessible greenspace, it appears underutilised, poorly maintained and there appears to be very limited scope to bring the land back into that use. I acknowledge the comments that the site is not allocated within the emerging local plan as accessible greenspace but has been included in a general policy for ‘sport, leisure and open space sites’, however I can only afford this policy limited weight given the stage of the emerging plan.
14. Therefore, the appeal site in its current form appears to offer limited value or opportunity as any public amenity space, open space or use as a recreational facility. The appeal site is private land and is located between a railway line and existing housing. In comparison it forms only a limited and small proportion of the much larger amenity land / greenspace set out in the CSDMP. The PROW crossing the site forms part of the Marston Vale Trail and is frequently used by walkers, residents, children and cyclists of which all would result in existing noise in the area, which is further exacerbated by the close proximity of residential properties and the railway line. Given this, I do not consider it could be classed as being quiet, peaceful, calm or a tranquil area.
15. Furthermore, the PROW would be retained as part of the proposals, albeit some minor alignment may be required but overall it would be enhanced as part of the proposals including a visitor parking area. The PROW would still lead to the existing larger, maintained and much accessible amenity spaces for recreation and public benefit.
16. I acknowledge that there has been little disturbance to the site due to it being unmaintained and overgrown. However, it is private land with no permitted public access other than the PROW. I do not have any substantial evidence before me, particularly with its visual appearance that the relatively narrow land forming the appeal site itself, is land for which is prized for its recreational and amenity value within the landscape, given that it appears to have never been used for this purpose and is unlikely to do so.

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<sup>4</sup> Annex 2: Glossary

17. The Council has provided evidence of the legal agreement (S106) dated from 2004. As set out in the Planning Practice Guidance (PPG) planning obligations run with the land, are legally binding and enforceable. However, planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. The PPG<sup>5</sup> also advises that if a planning obligation predates April 2010 or is over 5 years old, an application can be made to change the obligation where it “no longer serves a useful purpose”.
18. I have no evidence before me, as to why the obligation for an amenity open space scheme was not fulfilled by the developer and there appears to be conflict with the provisions in it, which is a matter for the Council. In particular the S106 sets out that the ‘Amenity Open Space Scheme’ is to be completed prior to the occupation of 80% of the dwellings. Furthermore, I have no evidence to the contrary that those identified as ‘owners of the land’ or parties to the agreement are the appellant in this appeal case. Including that a declaration at ‘Certificate A’ on the planning application form was submitted. Moreover, from the evidence presented it would unlikely that the appeal site would be developed in the future for amenity land or public open space serving it’s intended purpose.
19. In regard to the evidence put forward by the Council for the discharge of condition 11 relating to landscaping of the wider site allocation. I note this was dated 2006 and was also accompanied by a maintenance strategy. I have no substantive evidence as to the reason why the developer at that time did not fully implement the scheme in accordance with any approved details. As such, in this regard, it would be a matter for the Council as to the reasons why the developer did not carry the development out in its entirety. Despite this, I see no reason why the buffer between the railway line and the site would not be retained or the existing dense planted areas, whilst a comprehensive landscaping scheme and any further appropriate buffer could be agreed at reserved matters stage.
20. In coming to my conclusion, I have had regard to the previous appeal decision. I have no reason to disagree with the Inspectors findings that the proposal does not provide significant opportunities for open access to the public for recreational purposes. The Inspector concluded that *‘the proposal would not conflict with the broad thrust of Core Strategy Policy DM17’* and would not be in conflict with national policy as *‘this site does not provide a ‘high quality open space’, or, other than the PRWs, significant ‘opportunities for sport and physical activity’.*
21. Despite the Council providing further evidence of the approval of the larger development, the confusing nature of the site being allocated for housing and greenspace all of which have not been implemented, the appeal site offers little value in terms of its designation as any amenity land, greenspace or recreational value to the public and is private land. Therefore, I conclude that the proposed development would not be in conflict with those development plan policies read as a whole, which are relevant to the main issue, being Policy DM4 and the broad thrust of Policy DM17, as I have outlined above.
22. Furthermore, having regard to the Framework, a material consideration in this case I find the proposed development would not be inappropriate for its location, taking into account the likely effects including noise. Neither, do I find

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<sup>5</sup> Paragraph: 020 Reference ID: 23b-020-20190315 Revision Date:15 03 2019

that the appeal site should be considered as a protected or prized tranquil area with high recreational and amenity value. As such, I conclude it would not be in conflict with paragraph 180(b), or the Framework read as a whole.

### **Other Matters**

23. The appellant's submitted as part of the planning application a Phase 1 habitat survey<sup>6</sup>. The Council confirm this identified potential for the site to provide suitable habitat for reptiles and a subsequent reptile study<sup>7</sup> found a good population of common lizard to be using the site. As such, the Council's ecologist has no objections to the proposed development, provided that a suitable worded condition could secure an ecological enhancement strategy for mitigation. I have no reason to disagree with the Council's assessment in regard to ecology and biodiversity and that the reason for dismissing the previous appeal at the site, in this regard has been overcome.
24. As the appeal proposal is in outline, with layout and scale reserved for future consideration and the distance between existing residential properties the proposal would not result in any significant loss of privacy for the occupants of neighbouring houses. Given, the number of houses, the proposal is unlikely to result in unacceptable levels of traffic, parking or adversely affect highway safety. Nor is there any firm evidence to suggest that the development would have any materially adverse effect on the supply of housing in the area, protected species, set a precedent, cause additional drainage or flood risk problems, place an undue strain on local services or create an unsafe environment for children. Any disturbance during construction would be for a temporary period only. Damage caused to property during construction would be a private matter between the parties involved, as would any encroachment onto a private right of way.
25. The issue of impact on property values has also been raised. It is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property.
26. The proposed development would make efficient use of vacant land to deliver housing within the settlement envelope of Lidlington. It would be in an accessible location for public transport and is benefited by the PROW. There would be a modest social benefit in providing the housing and economic advantages would also arise from the construction and occupation of new houses, and in consideration of the appeal all weigh in favour of the proposal.

### **Conditions**

27. The Council has provided a list of suggested conditions that it considers would be appropriate, these are replicated from the committee report and the appellant has acknowledged these. I have considered these in light of the Framework and PPG.
28. I have undertaken some minor editing and rationalisation of the conditions proposed by the Council in the interests of precision and clarity. I have also limited the number of pre-commencement clauses to those cases where this is

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<sup>6</sup> Lockhart Garratt Extend Phase 1 Survey Report; Ref: 16-3200 4123; Version 2; Date March 2017

<sup>7</sup> Lockhart Garratt Reptile Survey Report; Ref: 19-0046; Version 1; Date 02/04/2019

essential for the condition to achieve its purpose and in accordance with the regulations<sup>8</sup>.

29. I have attached conditions relating to the submission of reserved matters and the time limits associated with this. I have also included a condition specifying the relevant plans as this provides certainty. I have included the condition to restrict the development to that of three dwellings and for the submission of, and adherence to, mitigation to protect ecology and biodiversity. Finally, I have included the conditions relating noise and to drainage details for surface water to ensure these are appropriately dealt with.
30. I have not imposed the Council's suggested condition in respect to the PROW as this would fail the test of relevance and be unnecessary. The grant of planning permission does not authorise any obstruction to or interference with any PROW, this is covered within other legislation<sup>9</sup>. Moreover, the matters of landscaping and layout are reserved for subsequent approval and will require the details of the PROW and Bridleway to be set out. As such the evidence before me is not conclusive to establish the basis of whether it is necessary to stop up or divert the PROW.

### **Conclusion**

31. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed subject to conditions set out in the attached schedule.

*K A Taylor*

INSPECTOR

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<sup>8</sup> The Town & Country Planning (Pre-commencement Conditions) Regulations 2018

<sup>9</sup> S257(1) of the Town and Country Planning Act 1990 (TCPA90)

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**Schedule of conditions attached to planning permission**

- 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 plans: Lidlington Location Plan (OS), 16176(B) 097 Revision C, TA10.
- 5) The development hereby approved shall not exceed a maximum total of three dwellings.
- 6) Any subsequent reserved matters application shall include details of the existing and final ground and slab levels of the buildings proposed. Details shall include sections through both the site and the adjoining properties.
- 7) Any subsequent reserved matters application shall include details of the following:
  - A road designed to geometric standard and not less than 4.8m wide
  - Vehicle parking and/or garaging
  - Cycle parking and storage
  - A vehicle turning area within the curtilage of the site suitable for a service/delivery sized vehicle (6.5m length)
  - Driver/driver intervisibility and pedestrian visibility from the residential access within the site and at the bridleway/footpath
  - Construction vehicle parking and loading and unloading areas
  - Material storage area
  - Wheel cleaning arrangements
- 8) Prior to the occupation of any dwelling hereby approved, an access shall be provided no less than 4.8m wide with no less than 6.2m in front of the existing garages (11.0m in total), with a triangular vision splay provided on each side of the new access drive, at the site boundary/Kerrison Close boundary and shall measure 2.0m along the fence, wall, hedge or other means of definition of the front boundary of the site, and 2.0m measured into the site at right angles to the same line along the side of the new access drive. The vision splays so described and on land under the applicant's control shall be maintained free of any obstruction to visibility exceeding a height of 600mm above the adjoining footway level.
- 9) Prior to occupation of any dwelling hereby approved, a scheme showing precise details for charging of electric and ultra-low emission vehicles shall be submitted to and agreed in writing by the local planning

authority. The agreed scheme must be completed prior to occupation of any dwelling hereby approved and, thereafter, maintained, kept free from obstruction and available for the purpose specified.

- 10) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for its implementation; and,
  - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 11) Construction work shall not take place until a scheme for protecting the proposed residential development from noise from the railway line shall have been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before any part of the residential development is occupied and retained thereafter.
- 12) No development shall take place until an Ecological Enhancement Strategy (EES) for the creation of new wildlife features such as hibernacula, the inclusion of integrated bird/bat and bee boxes in buildings/structures, hedgehog holes in fences and tree, hedgerow, shrub and wildflower planting/establishment has been submitted to and approved in writing by the local planning authority. The content shall be informed by an up to date Ecological Appraisal of the site and include the:
- a) purpose and objectives for the proposed works;
  - b) detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used);
  - c) extent and location of proposed works shown on appropriate scale maps and plans;
  - d) timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
  - e) persons responsible for implementing the works;
  - f) details of initial aftercare and long-term maintenance.

The works shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter.