



Appeal Decision

Site visit made on 20 May 2020

by Stephen Wilkinson BA BPI Dip LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th June 2020

Appeal Ref: APP/Y0435/W/20/3247144

Land north of Lavendon Road, Lavendon Road, Olney, MK46 4HH

Grid Reference: 489206 252352

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Angle Property (Olney) and McCarthy and Stone against the decision of Milton Keynes Council.
 - The application Ref 19/01484/FUL, dated 21 May 2019, was refused by notice dated 15 November 2019.
 - The development proposed is erection of 48 Class C2 retirement living plus apartments and 10 Class C3 retirement living bungalows along with related access, road, parking, landscaping and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 48 Class C2 retirement living plus apartments and 10 Class C3 retirement living bungalows along with related access, road, parking, landscaping and associated works. at land north of Lavendon Road, Lavendon Road, Olney MK46 4HH in accordance with the terms of the application, Ref 19/01484/FUL, dated 21 May 2019, and the plans submitted with it, subject to the following conditions included in the schedule to this letter.

Procedural Matters

2. The appeal was originally going to be heard as a Hearing but both parties agreed that due to the Corvid 19 pandemic it should be managed through Written Representations.
3. The Council refused the application on the grounds that the proposals would result in a loss of 'employment opportunities'. In subsequent correspondence it was recognised that this was a drafting error and requested that this should be read as 'retail opportunities'. I have assessed the appeal on this basis.
4. During the course of this appeal I accepted a rebuttal statement from the appellants which included an Appendix containing additional marketing evidence. I consider that the submission of this evidence is consistent with the appellants' original statement.

Main Issues

5. The main issues are:

- Whether the proposal would accord with the development plan strategy and any relevant national policies for the location of retail development, and
- Whether there are any other material considerations which would indicate that the decision should not be made in accordance with the development plan.

Reasons

Development plan strategy

6. Section 70(2) of the Town and Country Planning Act 1990, as amended, requires regard to be had to the provisions of the development plan, so far as they are material to the application and to any other material considerations. The development plan comprises Plan:MK and its related proposals map (2019) and the Olney Neighbourhood Plan (ONP) 2017. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 provides that if regard is to be had to the development plan for any determination then that must be made in accordance with the development plan, unless material considerations indicate otherwise.
7. Development Plan policies identify that within the rural areas of the Borough most new development will be concentrated within key settlements. This is complemented by the Council's retail development strategy which supports development in district centres such as Olney town centre which are required to cater primarily for local catchments. Consistent with this, Policy ONP13 of the ONP designates Site R, the appeal site, for retail development. Although the appellants question the evidence base which supported the final amendment to the policy during the 'examination' process and the process by which this policy was incorporated into the Plan:MK 2019, it is not my role for the purposes of this appeal to unpick its evolution. The adopted policy, does not, differentiate between the types of retail goods which could be sold from the site and includes reference to a petrol filling station.
8. The ONP was subsequently incorporated into the Plan:MK which identifies Olney as a District Centre designed to serve a local catchment¹ and Site R is identified on policy maps² associated with the plan for shopping and leisure uses. I consider that the appeal proposal conflicts with policy ONP13 as it would be for a form of residential development and not retail development as required by adopted the policy.

Other Material considerations

9. A retail study³ used to inform Plan:MK identified that there was scope for the development of an additional 100sm net convenience floorspace and 356sm net comparison goods floorspace in Olney by 2031. Since the adoption of Plan:MK 2019 and the ONP, a 1,610sm retail store, has recently opened for trading on the western part of site R in line with policy ONP13. The new store

¹ Plan MK 2019 Policy ER9

² Council statement paragraph 7.1

³ Milton Keynes Retail Capacity and Leisure Study 2018

exceeds the convenience goods needs by 932sm of net floorspace but still leaves 302sm net of unmet comparison floorspace for Olney.

10. Whilst the allocation of the appeal site for retail development is designed to address the limited opportunities for additional floorspace within the town centre, the results of a marketing exercise completed by the appellants, is used as evidence that there is insufficient market interest for further retail development including for a petrol filling station. I do not entirely accept the Council's criticisms of the marketing exercise given its scope involving a broad range of outlets and media and the length of time during which it was conducted. The scope of marketing is also evidenced by the range of initial interest received from retailers and petrol filling station operators. Whilst the Council is entitled to reach its own views on the strength of the marketing approach adopted by the appellants the conclusions of its consultants, appointed to consider this matter, included at paragraphs 9 and 10 of their letter⁴ is instructive in this regard.
11. Whilst there is a restrictive covenant on the sale of convenience goods from the appeal site it is unlikely that this would have reduced market interest for other forms of retail development and petrol stations which would be in accordance with adopted policy. It is evident that on more detailed assessment of the marketing evidence many of these companies which responded, identified concerns about the site's location and context which weighed against the site's potential for uses in line with adopted policy at this time.
12. Set against policy ONP 13, there is no dispute⁵ between the main parties that there is a need for extra care accommodation within Olney and that the mix and density of units proposed is acceptable. Furthermore, the proposal would not result in an over concentration of such accommodation in Olney and that the proposals are acceptable in the context of suitable local primary health care provision. The Council have not included other policies from its Development Plan which provide a firm basis for objection to the appeal proposals. In this context the references to 'leisure' uses for the site included in policy maps associated with the Plan:MK⁶ indicate that leisure uses, involving the loss of retail opportunities may be acceptable to the Council in policy terms.
13. I acknowledge the Council's report in respect of the provision of care provision⁷ but the supporting officer comment⁸ does not state that there is no demand for the units as proposed in the appeal scheme, only that accommodation required for dementia care services and debilitating long term conditions may not necessarily be met though extra care housing as proposed by the appeal scheme.
14. Whilst the appellants marketing evidence provides only a snapshot in time, compared to the life of the ONP, it is consistent with other evidence⁹ which has been provided on the changing pattern of trade nationally. Despite its buoyant trading position, demonstrated by its low vacancy rate compared to the national picture, it is unlikely that Olney will continue to be immune from these trends despite its planned growth in housing. In contrast there is significant

⁴ Kirby Diamond letter 7 August 2019

⁵ Statement of Common Ground paragraph 3.30

⁶ Council statement paragraph 7.1

⁷ Appendix 4 to the Council Statement - Milton Keynes Market Position Statement 2019-22

⁸ Appendix 5 to the Council Statement

⁹ Milton Keynes Retail Capacity and Leisure Study 2018

and growing demand for housing which caters for the population aged over 65 years.

15. For the above reasons the limited market interest for retail development for this site, is an important material consideration.

Other Matters

16. Interested parties object to the proposals on a number of grounds which I address in turn below.
17. Allowing the appeal, counter to a single policy, would not undermine the integrity of the whole of the ONP. The existence of the new convenience store, in fact, complies with policy but marketing evidence indicates that there is insufficient demand for further retail investment and/or a new petrol filling station. The division of site R, to accommodate the new store, has resulted in the appeal site having a frontage solely to the B565, Lavendon Road, reducing its visibility and attractiveness for passing trade.
18. Concerns have been expressed over the provision of additional accommodation over the planned figures of 300 dwellings included in the ONP¹⁰. I consider that the appeal scheme is for specialist accommodation falling within Class C2 for which it is acknowledged that there is local demand. The development of just 10 units within Class C3 is not significant.
19. Residents of the new scheme would not be isolated. Although the site lies in an out of centre location this is next to the new convenience store. Furthermore, there is good access to other services within the town centre which are located about 1 km away and can be readily accessed, by public transport, from the new bus stops via the new pedestrian crossing. The scheme would include an extension of the footway from within the site along the north side of Lavendon Road to connect with the newly constructed footway following completion of the new store. This would enable safe access for the elderly and infirm.
20. Regarding concerns over the potential for the operations of the new store to adversely effect the living conditions of the residents of the proposed development, the new store has a separate servicing access from Warrington Road, the A509, and the servicing yard is located away from the proposed development. Whilst the vehicular access serving the customer parking areas is located on the eastern side of the site the proposed main residential block would be located sufficient distance away from the site boundary and would be further protected by a fence thereby reducing the possibility of disturbance to the living conditions of the proposed occupants of the scheme. However, as a precaution I have included a condition requiring noise assessments.
21. The planning obligations included in the Unilateral Undertaking (UU) would provide for contributions towards addressing carbon neutrality, waste management, biodiversity enhancements, public transport and healthcare. In particular the contribution for healthcare would address concerns expressed by interested parties over the increased pressure on local medical services.
22. A representation referred to the potential impact of the scheme on the need for additional school places caused by elderly people moving from family homes to the proposed scheme resulting in their homes being occupied by families new

¹⁰ Policy ONP 1 Olney Neighbourhood Plan May 2017

to the area. I think this would be difficult to gauge as potential residents could be drawn from beyond existing school catchments.

23. The location of the proposed buildings together with their scale and design would not adversely impact on the surrounding countryside. The proposed development involves a single 'L' shaped block extending across the western part of the site which comprises in part ground and two upper floors with the upper floor set within the roof although the eastern end of this block reduces to 2 storeys. The 10 residential units would be designed as bungalows and would not infringe the strong tree belts which surround the northern and eastern site boundaries and would be landscaped. For these reasons the scheme respects the openness of the surrounding countryside.

Planning Obligation

24. Paragraphs 55-56 of the National Planning Policy Framework 2019 (the Framework), confirm that planning obligations should only be sought to mitigate the effects of unacceptable development, therefore making it acceptable. The Framework together with the Community Infrastructure Levy (CIL) Regulations 122(2) set out 3 tests for planning obligations requiring them to be necessary to make the development acceptable in planning terms, be directly related to the development and fairly and reasonably related in scale and kind to the development.
25. A Community Infrastructure Levy compliance statement submitted by the Council concludes that the obligations meet the tests of the Framework and CIL Regulations. I regard the rationale for each contribution as meeting the appropriate tests as defined by paragraph 55-56 of the Framework and the Regulations.

Planning balance

26. Whilst paragraph 120 of the Framework places an onus on local planning authorities to determine whether there is a reasonable prospect of land coming forward for uses allocated in Development Plans, this advice however does not prevent decisions being made through planning appeals where material considerations outweigh adopted policy in line with Section 38 (6) of the Planning and Compulsory Purchase Act 2004.
27. Although the marketing evidence presented by the appellants represents a relatively short time period when compared to the life of the ONP it is consistent with the research on retail trends which has informed Plan:MK, and which point to a decline of 'in store' shopping. Marketing was carried out for a sufficient period of time and has demonstrated no substantive interest for comparison retail or for a petrol filling station.
28. Furthermore, the allocation of the site for both leisure and retail in Plan:MK shifts the weight away from retention of the site solely for retail uses given this is an up to date plan with policies which would take precedence over the ONP¹¹. The effect of the development of the new store on the western part of the site has been to leave the appeal site with no frontage to a principal road reducing the possibilities of passing trade undermining its attractiveness for retail development.

¹¹ Planning and Compulsory Purchase Act 2004 sn 38(5)

29. In contrast the Council has not provided substantive objections to the proposed scheme which could meet the increasing demand for accommodation for the elderly. These are material considerations which weigh against adopted local policy.
30. The proposed scheme is accompanied by a Unilateral Undertaking completed under Section 106 of the Town and Country Planning Act 1990, as amended which includes financial contributions towards addressing carbon neutrality, waste management, biodiversity enhancements, public transport and healthcare. I regard the value of these as being neutral in my overall assessment of the appeal scheme.
31. Whilst I recognise the significant weight which the Government places on neighbourhood planning, the single policy objection alone is, in my opinion, insufficient reason for me to dismiss this appeal. I conclude that material considerations, such as the marketing evidence, weigh against adopted policy ONP13. Conversely the lack of a policy objection against the proposed scheme together with the acknowledged demand for the provision of residential accommodation falling within classes C2 and C3 are further material considerations which weigh in favour of the scheme. For these reasons the appeal is allowed.

Conditions

32. The main parties included in their statement of common ground a list of draft conditions which could be included in a decision letter in the event of the appeal being allowed. I have reviewed these and made amendments where I consider necessary.
33. I have imposed a condition specifying the time frames for commencement of the development required by Sections 91 of the Town and Country Planning Act 1990, as amended. I have included a condition specifying the approved drawings in the interests of certainty.
34. A condition is required to control the age of occupants of the accommodation to ensure that it is in accordance with the permitted use. Whilst the Planning Practice Guidance does not readily advocate the use of pre commencement conditions I consider that these are required in this instance for details of finished floor levels, archaeological investigation, a construction environmental management plan and biodiversity enhancements to ensure that the construction of this development can proceed in a way which protects the living conditions of neighbouring occupiers, the protection of the site's historic and biodiversity interests. Furthermore, I have broadened the scope of the suggested condition on ground conditions and added a further one to ensure that these matters are addressed comprehensively.
35. Conditions which seek details of external materials, lighting, boundary treatment and landscaping and its continued maintenance are necessary to ensure that the scheme does not detract from the character and appearance of the area. Conditions are required to ensure that the proposed access arrangements, car parking and turning areas, visibility splays and pedestrian footways are provided to ensure highway safety and that sufficient parking is provided to prevent additional parking in adjacent roads.

36. Other conditions are required to protect existing landscape features, including trees, hedges and woodland to preserve the character of the site and in particular its boundaries which in turn impact on the character and appearance of the wider area. In addition, I consider that a condition is required to undertake a noise assessment because of the proximity of the appeal site to the neighbouring Sainsbury's store. This could identify whether there is a need for mitigation measures. Conditions requiring details of cycle parking and vehicle electric charging points are also required before occupation of the accommodation to ensure the scheme complies with adopted policy for sustainable modes of travel.
37. Conditions are also required regarding the need for a surface water drainage strategy and the maintenance of the system in accordance with the submitted flood risk assessment. This would reduce the possibility of flooding of the appeal site and neighbouring properties.
38. Linked to the biodiversity of the site a specific condition is included to ensure development proceeds in line with the submitted method statement for Great Crested Newts in order to safeguard the local population of this protected species which is found in local habitats. A condition requiring full details of a lighting plan required to ensure that there is no severance of the bat commuting and foraging habitats. Finally, given the age and likely vulnerability of some of the residents it is important that a condition requiring confirmation of Secured by Design accreditation is included.

Stephen Wilkinson

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: NL-2604-03-AC 1001 rev B location plan; NL-2604-03-AC 1000 rev M site plan; NL-2604-1005 rev B elevations and sections; NL-2604-03-AC 1006 rev B elevations and sections; NL-2604-03-AC 1010 rev D Plan level 0; NL-2604-03-AC 1011 rev B plan level 01; NL-2604-03-AC 1012 rev B plan level 02; NL-2604-03-AC 1013 rev B Roof Plan; NL-2604-03-AC 2001 rev C Bungalow Plan and Elevations; NL-2604-03-AC 1003 rev B 3D views; CPW-190346-E-EXTSITE-XX-01-P1 External lighting Couch Perry Wilks; MCS22430 11B Landscape and General Arrangements; MCS22430 12B Landscape Proposals; MCS22430 50B Landscape Management Plan; Landscape Management and Maintenance Plan Rev B; NL-26460KC-XX-YTREE-TTP01 Rev C Tree Protection Ian Keen.
- 3) No development shall take place above slab level of the buildings until a sample panel of the materials to be used in the construction of the external surfaces shall have been prepared on site for inspection and approved in writing by the local planning authority. The sample panel shall be at least 1 metre x 1 metre and show the proposed material, bond, pointing technique and palette of materials (including roofing, cladding and render) to be used in the development. The development shall be constructed in accordance with the approved sample, which shall not be removed from the site until completion of the development.
- 4) No building shall be occupied until a lighting plan has been submitted to and approved in writing by the local planning authority. This shall include measures to ensure that there is no adverse impact of the lighting on bats in the vicinity of the newly created bat features which form part of this scheme and on the existing commuting and foraging routes. The development shall be carried out in accordance with the approved details.
- 5) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) a statement setting out the design objectives and how these will be delivered;
 - ii) earthworks showing existing and proposed finished levels or contours;
 - iii) means of enclosure and retaining structures;
 - iv) boundary treatment;
 - v) vehicle parking layouts;
 - vi) other vehicle and pedestrian access and circulation areas;
 - vii) hard surfacing materials;
 - viii) minor artefacts and structures e.g. furniture, play equipment, refuse or other storage units, signs, etc.;

- ix) proposed and existing functional services above and below ground e.g. drainage, power, communications cables, pipelines etc. indicating alignments, levels, access points, supports;
- x) retained landscape features and proposals for enhancement;
- xi) an implementation programme.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance.

- 6) All existing trees, woodlands and hedgerows to be retained as shown on the approved plans shall be fully protected in accordance with the British Standard (currently BS 5837:2012-'Trees in relation to design, demolition and construction-Recommendations') by the time the construction begins. All protective measures must be in place prior to the commencement of any building operations (including site clearance, removal of any trees and hedgerows, engineering operations, ground works, vehicle movements or any other operations normally undertaken by a builder. The root protection area within the protective fencing must be kept free of all construction, construction plant, machinery, personnel, digging and scraping, service runs, water logging, changes in level building material and all other operations. All protective measures shall be maintained in place and in good order until all work is complete and all equipment, machinery and surplus and waste materials have been removed from the site. Signs informing of the purpose of the fencing and warning of the penalties against destruction or damage to the trees and their root zones shall be installed at a minimum of 10m intervals with a minimum of 2 signs per stretch.
- 7) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 8) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;

- ecological systems; and
 - archaeological sites and ancient monuments.
- 9) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 10) Prior to commencement of development above slab level an assessment of noise impacts shall be undertaken (including from the neighbouring food store) on the proposed residential properties and submit a report of the assessment to the local planning authority for written approval. If the assessment indicates that there is likely to be an adverse impact then written proposals for mitigating impacts on the residential properties shall be submitted to the local planning authority for prior approval. None of the dwellings shall be occupied until a mitigation scheme has been implemented in accordance with the approved details.
- 11) The surface water drainage scheme shall be constructed in full accordance with the Flood Risk Assessment submitted by RSK LDE Limited (ref: 133601-R1(1)-FRA) dated 10 May 2019 and the drainage strategy layout submitted by Infrastructure Design Limited (ref: NL-260403-DE-10) dated April 2019 and be available for use prior to first occupation.
- 12) Details of the long term maintenance arrangements for the surface water drainage system (including all SUDS features) to be submitted to and approved in writing by the Local Planning Authority prior to first occupation of the dwelling hereby permitted. The submitted details should identify run off sub catchments, SUDS components, control structures, flow routes and outfalls. In addition, the plan must clarify the access that is required to each surface water management component for maintenance purposes. The maintenance plan shall be carried out in full thereafter.
- 13) Prior to occupation of the development hereby allowed beyond the slab level details of the cycle parking shall be submitted and approved in writing by the local planning authority. No part of the development shall be occupied until the cycle parking has been approved in accordance with the submitted details.
- 14) Prior to commencement of the development hereby allowed beyond the slab level details of the internal roads and footways shall be submitted and approved in writing by the local planning authority. No dwelling shall be

occupied until the estate road and footway which allows access to it from the existing highway has been laid out and constructed in accordance with the submitted details.

- 15) No part of the development shall be occupied until the visibility splays shown on the approved drawings have been provided on both sides of the access. The area contained within the splays shall thereafter be kept free of any obstruction exceeding 0.6m in height above the nearside channel level of the carriageway.
- 16) No development shall take including site clearance until a Biodiversity Enhancement Scheme and Management Plan has been submitted to, and approved in writing by the local planning authority. The development shall hereafter be carried out in accordance with the approved details prior to occupation of the development.
- 17) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) Routes for construction traffic
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) loading and unloading of plant and materials;
 - iv) storage of plant and materials used in constructing the development;
 - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - vi) wheel washing facilities;
 - vii) measures to control the emission of dust and dirt during construction;
 - viii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - ix) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 18) The development shall be undertaken in accordance with the approved Great Crested Newt (GCN) non licenced method statement, dated, 26.07.2019 file ref – MSC22430_GC_N MS with an additional survey carried out immediately prior (or as close as reasonably practical) to the erection of the exclusion fencing to avoid potentially trapping GCNs before vegetation clearance is carried out. The development shall thereafter be carried out in accordance with the approved details prior to occupation of the development.
- 19) Prior to the occupation of the development, a copy of the certification confirming the achievement of Secured by Design accreditation (as awarded by Thames Valley Police) for the dwellings on site shall be submitted to an approved in writing by the local planning authority. The development shall be carried out in accordance with the approved measures prior to occupation of the respective dwellings.

- 20) The C2 use care properties shall only be used for the use as permitted and for the accommodation of individuals above the age of 65 years (excluding staff and guest accommodation). The C3 use class bungalows shall only be sold to be occupied by persons aged 60 years and or older or above, unless otherwise agreed in writing by the local planning authority.
- 21) Prior to commencement above slab level, a plan showing the provision of electric parking and charging points within the development shall be submitted and approved in writing by the local planning authority.
- 22) No development shall take place until a Written Scheme of Archaeological Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions - and
 - i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.