



Appeal Decision

Site visit made on 11 June 2020

by A Denby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 August 2020

Appeal Ref: APP/P0240/W/20/3247284

81 Tower View Nurseries, Fildyke Road, Meppershall, SG17 5LU

- 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 Mr Paul Howkins against the decision of Central Bedfordshire Council.
 - The application Ref CB/19/03758/FULL, dated 4 November 2019, was refused by notice dated 27 January 2020.
 - The development proposed is demolition of existing bungalow and construction of 3x detached residential dwellings and all ancillary works.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. In its evidence the Council referred to policies within the emerging Central Bedfordshire Local Plan 2035. Whilst this plan has completed Examination in Public, I understand that further modifications are necessary. The Council has not conveyed how this may affect the policies to which it has referred. Therefore, whilst I have had regard to them, bearing in mind its stage of preparation, it does not carry full weight.

Background and Main Issue

3. A planning application, with the same site address as the current appeal scheme, was submitted to the Council for the erection of 10 dwellings¹ (first scheme). The site encompassed the appeal site and land to the north and east though it was subsequently withdrawn in November 2018.
4. Planning permission was granted in July 2019 for 9 dwellings² (adjacent scheme) on land adjacent to the appeal site. As the proposals fell below the 10 unit threshold no affordable housing provision, or contributions to local infrastructure, were sought by the Council.
5. The appeal scheme was submitted in November 2019. The Council consider that the appeal site in combination with the adjoining site is a deliberate subdivision of land in order to avoid triggering the threshold for the provision of affordable housing and local infrastructure.

¹ CB/18/00232/FULL

² CB/18/04569/FULL

6. As the combined proposals would equate to a net increase of 11 dwellings, the Council consider that the policy requirements for the provision of affordable housing and contributions to local infrastructure should apply. The planning application was therefore refused due to the absence of a completed legal agreement to deliver such provision.
7. The main issue is therefore whether the proposal forms part of a larger residential development, and if so whether it should make provision for affordable housing and local infrastructure, with particular regard to education provision.

Reasons

8. Policy CS2 of the Central Bedfordshire Core Strategy and Development Management Policies, 2009 (LP) seeks developer contributions from any development which would individually or cumulatively necessitate additional or improved facilities or exacerbate an existing deficiency, and the Council's submission indicates that they apply a threshold of 10 dwellings or more for such contributions.
9. LP Policy CS7 requires new housing developments of 4 or more dwellings to provide an element of affordable housing. However, in accordance with the revisions to the National Planning Policy Framework (the Framework) the Council now only seek affordable housing provision on major developments. The policy does specifically state though that where a site has been divided and brought forward in phases, the Council will consider the site as a whole for the purposes of calculating the appropriate level of affordable housing provision.
10. In determining this matter both parties have drawn my attention to a high court judgement³ which considered whether a site should be combined with an adjoining development for the purposes of affordable housing. In that case the Court found that to be a matter of planning judgement, and suggested three ways in which a conclusion may be reached on the matter: whether the sites are in single ownership; whether they constitute a single site for planning purposes; and whether the proposals can be deemed to constitute a single development.
11. It is not disputed that the sites are currently within separate ownership. However, the transfer of the adjoining site to Blakeney Estates Ltd only occurred in September 2019. This was after the approval of the adjacent scheme and submission of the planning application now subject of this appeal. The first scheme encompassed both sites, and it is clear from the above that until relatively recently they existed as a single site.
12. It is evident that Blakeney Estates Ltd have assisted the appellant through both the planning applications and two earlier applications relating to the same parcels of land which were subsequently withdrawn. The appellant's final comments also refer to the appeal being lodged on behalf of Blakeney Estates Ltd. There is no guarantee that Blakeney Estates Ltd would purchase the appeal site or undertake the construction, though the above does lead me to conclude that this close and supportive relationship is likely to continue through the development of both sites.

³ R (Westminster City Council) vs First Secretary of State and Brandlord Limited [2003] J.P.L 1066

13. The appellant has acknowledged that the site was split, though they state that this was not to circumvent the requirements for affordable housing or local infrastructure, but due to the location of the sites in relation to the settlement envelope and the different policy context they consider exists between the sites, with specific reference to LP Policy DM4.
14. This Policy, through the identification of settlement envelopes, largely differentiates the built-up areas of settlements from the open countryside beyond. This Policy also identifies forms of development that would generally be acceptable within settlements and essentially discourages development within the countryside.
15. It is not in contention that the appeal site extends, albeit slightly, beyond the settlement envelope. Although approved under the adjacent scheme, the appeal scheme includes, and relies upon, the construction of an access outside the settlement envelope. Furthermore, the dwelling proposed to plot 3 would also extend beyond the settlement envelope. Therefore, the appeal scheme would give rise to conflict with LP Policy DM4 and would fall to be considered in the same policy context as the adjacent scheme.
16. In assessing the policy context though I consider it is also important to note how the policy has been operating. LP Policy DM4 is a restrictive policy in that it limits development outside of settlement boundaries and essentially discourages development within the countryside. The Policy, therefore, in part protects the countryside for its own sake and in that regard departs from the approach advocated in the Framework.
17. The supporting text to the Policy though does state that settlement envelopes were drawn to protect the coalescence of settlements and to assist with the operation of the development strategy stated in LP Policy CS1. That strategy being to direct new housing to larger more accessible settlements, an approach which is consistent with the Framework. Nevertheless, only moderate weight can be attached to the Policy as it is not wholly consistent with the Framework.
18. This approach to LP Policy DM4 is similar to that taken by the Inspector in the appeal decisions to which the appellant has referred⁴. These appeal decisions also highlight that sites have been allocated for development outside settlement envelopes through the adoption of the Council's Site Allocations Plan, 2011, and state that various permissions have also been granted, either by the Council, or on appeal, for development in the countryside. It is therefore clear that LP Policy DM4 has not been acting as a complete bar to development for some time. I note the appellant also takes this view, and in their submission state that LP Policy DM4 and the approach to settlement envelopes have been honoured more in the breach than the observance.
19. During the consideration of the first withdrawn scheme, there appears to have been some concern raised by the Council in relation to the proposed built development extending further east towards Chapel Road. These concerns however do not appear to hinge on LP Policy DM4, and the Council did not raise any in principle concerns to development outside the settlement envelope. Similarly, there are no apparent concerns highlighted in relation to the density, as proposed, or any further increase to housing numbers within that same site area.

⁴ APP/P0240/W/18/3206495 & APP/P0240/W/19/3220640

20. The Council's comments are focused on the requirement for any scheme of increased density to make provision for affordable housing and that, procedurally, any increase in the number of dwellings on the site could not be considered as an amendment, and would require the submission of a new planning application.
21. It is evident that the appellant's focus however was on clarifying the affordable housing threshold required by revisions to the Framework, and I consider the conclusion on this matter was the key influence in the subsequent withdrawal of that application and splitting of the site.
22. The development on the appeal site has changed little, if at all, from the first withdrawn scheme, and a higher density was subsequently approved as part of the adjacent scheme, which is wholly outside the settlement envelope.
23. Taking all these factors into consideration, I am not persuaded that the sites could have been considered to fall within a significantly different policy context to the extent that one may have prejudiced the other, nor that the splitting of the first scheme was driven by concerns in relation to the settlement envelope or LP Policy DM4.
24. On the ground the appeal site would appear as a continuation of the adjacent site, with no physical features that subdivide the two areas. Whilst the two applications were not made at the same time, the appeal site would be reliant on certain aspects of the adjacent development, such as the access, footpath to Fildyke Road and, as indicated in the Design and Access Statement (D&A) is anticipated to connect into the drainage system of the adjacent scheme.
25. Furthermore, the D&A states that landscaping would reflect that approved on the adjacent scheme, to further integrate the two developments as one. The ACD Environmental Landscape Management and Maintenance Plan submitted to the appeal, although slight, also shows some crossover between the sites.
26. I saw on my site visit that whilst heras fencing is in place, it does not correspond to the site boundaries. The rear part of the appeal site was being used, at the time of my visit, for equipment and materials storage for the adjacent site currently under construction.
27. The dwellings proposed would also be of the same style, design and utilise the same materials palette as the adjacent scheme. It is acknowledged that this would maintain the character and appearance of the area, and individually would not be reason to treat the two areas as being a single development. However, collectively, all of the factors identified above lead me to conclude that the site is part of a wider residential development. It is therefore entirely reasonable that they should be considered together, and the proposal make provision for affordable housing and local infrastructure.
28. There is identified need for affordable housing in the area and, with regards to local infrastructure, the Council have provided detailed evidence in relation to the need for education provision. This is based on the most up-to-date projections, and clearly sets out the impact of the proposed development and the appropriate level of mitigation that would be required.
29. The appellant has queried the consistency of the Council's approach to affordable housing provision as an adjacent site was not required to include such provision. That application was however supported by an independent

viability assessment, and the findings of that assessment accepted by the Council. This is not the case with the appeal scheme.

30. There is no clear evidence that the development would not give rise to demand for affordable housing and education provision, nor has any assessment been submitted to demonstrate that such provision would render the proposed development unviable. Therefore, in the absence of any provision or mechanism to provide the affordable housing or contribution towards education, the proposal conflicts with LP Policies CS2 and CS7, which require the provision of affordable housing and contributions to local infrastructure.

Planning Balance

31. The Council can demonstrate a 5-year housing land supply, and this is no longer a matter of contention between the parties. Paragraph 213 of the Framework states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework. In relation to the main issue Policies CS2 and CS7 are afforded substantial weight and the tilted balance is not engaged in this appeal.
32. Nevertheless, the proposed dwellings would make a contribution toward local housing supply and this would be a benefit of the scheme. Any employment created during construction though would only result in temporary and modest benefits.
33. That the proposed dwellings would achieve minimum space standards and raise no concerns in relation to character and appearance, highways, flood risk and impact on neighbouring properties would have a neutral effect and these matters do not, therefore, weigh in favour of the appeal.
34. However as detailed above the scheme fails to make provision for education or affordable housing. The absence of such provision weighs heavily against the proposal and any benefits in this case do not clearly outweigh that harm.

Conclusion

35. For the above reasons I conclude that the appeal should be dismissed.

A Denby

INSPECTOR