



Appeal Decision

Site Visit made on 7 April 2021

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29/04/2021

Appeal Ref: APP/K0235/W/20/3258381

Land West of Pavenham Road, Oakley, Bedfordshire MK43 7SY

- 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 Land Allocation Ltd against the decision of Bedford Borough Council.
 - The application Ref 20/00433/MAO, dated 12 February 2020, was refused by notice dated 12 June 2020.
 - The development proposed is an outline application for residential development of up to 20 dwellings including access with all other matters reserved.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved apart from access. I have considered the appeal on this basis. All plans have been treated as indicative unless related to the access arrangements.
3. A signed and dated Unilateral Undertaking (UU) was submitted with the appellant's 'final comments'. This sets out obligations to secure affordable housing, open space and financial contributions toward health service provision. In the interests of fairness, I gave the Council the opportunity to comment on this and I have regard to their response in my decision. I shall return to this matter below.

Main Issues

4. The main issues in this appeal are:
 - Whether the development is in an appropriate location for residential development, having regard to local and national planning policies and the effect of development on the character and appearance of the area;
 - The effect of the development on best and most versatile agricultural land; and
 - Whether the development makes adequate provision for affordable housing, open space and equipped play areas and health services.

Reasons

Location

5. The appeal site is an open agricultural field located outside the defined 'Settlement Policy Area' (SPA) boundary of the rural service centre of Oakley.

For the purposes of development plan policy, the site is therefore located in the open countryside. Development in such locations is addressed by Policy 7S of the Bedford Borough Local Plan (BBLP) (2020). This seeks to control residential development outside SPAs, subject to a number of exceptions. There is no dispute that the development would not meet any of the exceptions set out in criteria i-v. However, as the site lies directly adjacent to the SPA boundary it falls to be considered under criteria vi-ix. All relevant criteria must be satisfied to meet the policy's requirements.

6. The first of these is that the development would respond to an identified community need. BBLP Policy 4S establishes a requirement for Oakley of 25-50 dwellings. This policy also states that all sites needed to meet these needs will be identified in Neighbourhood Plans. The Oakley Neighbourhood Plan (ONP) was made in March 2020 and allocates two sites for a total of around 40 dwellings. The ONP therefore makes provision within the range identified in the BBLP. The ONP therefore meets the identified local need without reliance on windfall sites outside the SPA. No substantive evidence has been provided which suggests any identified need other than that shown in the ONP. Generalised assertions about the overall need for housing in the borough do not in my view meet the policy's requirements. As such, the development would conflict with criterion vi. As all relevant criteria must be met, the proposal falls at the first hurdle and cannot comply with Policy 7S.
7. Policy 7S also requires there to be identifiable community support for the proposal. The Parish Council has objected to the development and my attention has been drawn to several objections from local residents. There is therefore no identifiable support and thus the development also conflicts with this requirement. The appellant has questioned whether this approach is consistent with the National Planning Policy Framework (the Framework). However, I am mindful that the policy requires *all* relevant criteria to be met. As I have found conflict in terms of meeting local needs and character and appearance below, the development would conflict with Policy 7S irrespective of this criterion and thus this issue is not determinative.
8. The recently made ONP also has relevant criteria for the consideration of housing outside the SPA. Policy HG1 states that development will be supported in such locations where it meets all relevant criteria. Being an outline application, I am satisfied that the criterion relating to garden space could be satisfied. It is also debateable whether the illustrative plans suggest the development would constitute further ribbon development. However, the development clearly fails the first requirement of the policy as it cannot be considered as 'infill' within an existing housing row or cluster. Irrespective of other criteria, the development would clearly be at odds with Policy HG1 and thus would not be supported by the Neighbourhood Plan.
9. Importantly, both Policy 7S and HG1 contain additional criteria relating to the effect of development on the character and appearance of the area. The illustrative plans show a scheme of 20 dwellings arrayed around a loop road from the single point of access on Pavenham Road. Although layout is a reserved matter, these plans provide a reasonable basis for assessing the likely impacts of development in this location.
10. The site is bounded by a hedgerow along Pavenham Road, but the site does not relate to any other natural boundaries within the wider field. The introduction

of housing across the site would inevitably have a very significant effect on the existing character and appearance of the edge of the village. Whatever final form the development took, it would be likely to erode the rural edge of the village and represent a substantial urbanising encroachment into the countryside.

11. The appellant's Landscape and Visual Impact Assessment (LVIA) concludes that the development would have only a minor adverse effect on the Oakley Great Ouse Limestone Valley East and Oakley Great Ouse Limestone Valley West landscape character sub-areas. This is largely on the basis that development would be set in the context of existing housing, would retain existing hedgerows, would be well screened and that important landscape features would not be lost. The LVIA also concludes that there would be minor adverse to moderate adverse visual effects from viewpoints near to the site along Pavenham Road. However, from other selected viewpoints, the assessment concludes that impacts would be negligible given the lack of visibility. This includes from the John Bunyan National Trail public right of way, which runs across fields to the north of the site.
12. Having considered the site from a range of vantage points, including those in the LVIA, I accept that the development would be relatively well screened, particularly from medium and long distance views. This is either as a result of local topography, intervening landscaping, the existing built form or a combination of these factors. It is also the case that when viewed from some areas to the north of the site, particular from longer distances, any housing would be seen in the context of the backdrop of the existing dwellings. This would mitigate the visual impacts to an extent.
13. Nevertheless, the site is still highly prominent from localised views on Pavenham Road. The development would have a significant visual impact from these locations. There are also areas to the north on the John Bunyan Trail where the site can be seen fleetingly in gaps in the trees. In my view, the visual effect from some points on this trail would be more significant than suggested by the appellant. Comments from interested parties also drew my attention to a 'permissive path' near to Stafford Bridge, which provides a route along the north bank of the River Great Ouse. This provides direct and nearby views of the site across the river.
14. From the vicinity of the site, particularly LVIA viewpoint 3, extensive views of the site and swathe of countryside beyond can be seen across the drive of No 31. Indeed, this dwelling creates a clear and definitive edge to the built form of Oakley. The site therefore represents a distinct change in character. The long stretch of hedgerow fronting the site, which corresponds to that on the opposite side of the road, is also a prominent and attractive feature that further helps to demonstrate a change from the built form to the open countryside. When viewed from the north, the site provides an open buffer between the built form, the river, and Stafford Bridge. I note in this regard that the ONP identifies the area surrounding Stafford Bridge as a Locally Significant Landscape Area under ONP Policy LE1. The policy seeks to maintain the open character of these areas and sites within their setting.
15. I recognise that the site as a whole is not within any nationally defined landscape designation. The field is also not necessarily an unusual feature in the wider landscape and only part of it would be affected by the development.

The effects on landscape character would also be relatively localised. However, that these effects may diminish with distance from the site does not mean that they are not important or harmful.

16. Part of the hedgerow would have to be removed to accommodate the access and appropriate sightlines. This would have a greater impact on local character than described by the appellant. The puncturing of this feature with an engineered access would clearly diminish its current contribution to the street scene. The access would differ significantly to adjacent dwellings. These are detached and semi-detached dwellings with individual accesses fronting the road. A 5-metre-wide access serving several dwellings, possibly in the form of a loop road, would not complement the prevailing appearance of housing along this side of Pavenham Road.
17. The remaining hedgerow would filter views of the development from the roadside to an extent, but it would still be clearly discernible in gaps. The access arrangements and position 'set back' behind the hedgerow would also ensure that any development would appear and function as a small, self-enclosed and poorly integrated estate. Indeed, the illustrative plans suggest a disjointed and awkward bolt-on to the village with little regard for the established character of nearby housing. The relatively loose knit and low-density linear form of development would change abruptly to a substantially higher density and non-linear form of development. The layout suggested would be completely at odds with the density and grain of housing leading to the site. The jarring visual impact of this would be emphasised by the site being at the interface with the open countryside.
18. The introduction of this form of development would be an incongruous and unsympathetic addition to the settlement in this location. In coming to this conclusion, I have had regard to the cul-de-sacs of The Furlong and Farrows Close on the opposite side of the road. However, these are set in a different design context, being bounded by the railway line and allotments. The two sides of Pavenham Road have very different appearances. There is nothing to suggest that development of the appeal site would respect the layout, grain, or density of development on the western side of the road.
19. I acknowledge that layout and appearance are reserved matters and the final form of development might differ to the illustrative plans. However, I must be satisfied that there is a reasonable certainty that an acceptable form of development could be achieved. The illustrative plans provide no comfort that this could be the case. There are no other proposals before me showing how a different form of layout or lower density scheme could be achieved. The position of the access also means that it would be reasonable to assume any form of development would utilise some form of distributor road and estate layout. In my view, this would inevitably result in the discordant form of development considered above. There is therefore no evidence which would persuade me that a different layout or reduced number of dwellings would be able to achieve an acceptable form of development.
20. The appellant has placed great weight on the potential for additional landscaping to mitigate the impacts. Planting within and around the edge of the site would provide some additional screening in the long term, but this would take a significant time to mature to have any effect. Nevertheless, this would still be unlikely to fully address visual impacts, particularly in winter months.

Additional planting would also not alter the poor integration with the rest of the village or the likely discordant nature of the development's potential scale and layout.

21. In conclusion, for the reasons given above, the development would not meet the requirements for development outside a SPA in either BBLP Policy 7S or ONP Policy HG1. Consequently, the development would also conflict with BBLP policies 3S and 4S which establish the spatial strategy for the borough and the distribution of housing. As well as compounding any conflict with policies 7S and HG1, the harm caused to the character and appearance of the area would also conflict with BBLP policies 28S, 29S and 30S and ONP policies LE1, DH1 and DH2. Amongst other things, these policies seek to ensure that development contributes positively to the character of the settlement, has a positive relationship with the surrounding area, integrates well and complements local character and resists harm to the setting of locally significant landscape areas.

Agricultural land

22. The site is classed as the Best and Most Versatile Agricultural Land (BMVL) as defined by the National Planning Policy Framework (the Framework). In line with footnote 53 of the Framework, BBLP Policy 46S seeks to direct 'significant' development to areas of poorer quality agricultural land. The plan does not define what it means by 'significant' development and there is some dispute between the parties as to whether the proposal falls into this category.
23. In lieu of any clear guidance in the development plan, the parties have turned to Natural England's (NE) Guide to Assessing Development Proposals on Agricultural Land. I am not persuaded that the requirement to consult NE on development of over 20 hectares means that all development below this threshold should not be considered 'significant' for the purposes of the policy. This is not least because the guidance also suggests that Councils should take account of smaller losses of under 20ha if they're significant when making their decision and that decisions should avoid the unnecessary loss of BMVL. This implies that 'significance' is something to be assessed on the merits of the case and the likely impact of development.
24. My attention has been drawn in this regard to the recent Hookhams Lane appeal¹ where the Inspector concluded that the loss of a substantially larger area of Grade 3a agricultural land would not be in conflict with Policy 46S. I have not been provided with all of the evidence before that Inspector, though note that he concluded that much of the district falls into the BMVL category and that there is very little land of poorer quality available. Notwithstanding the apparent lack of conflict with Policy 46S, he still considered the loss of BMVL should weigh against the development in the planning balance.
25. In this case, the development would amount to the loss of just over 1ha of Grade 3a land. Even in comparison to parts of the field that would be retained, this is a relatively small area. The Council has provided no evidence to demonstrate what economic or other impact the loss of land would have either locally or to the borough as a whole. On this basis, I have insufficient evidence to conclude that the loss of BMVL would be significant either in terms of scale or direct impacts. There is no evidence to suggest a shortage of BMVL in the

¹ Appeal reference: APP/K0235/W/20/3256134

Oakley area or the district as a whole. Therefore, while any loss of BMVL may weigh against the development to an extent, any harm caused in this case would be negligible.

26. While my consideration of the Council's housing strategy and land supply suggests the development of BMVL is not 'necessary' in this instance, I am not persuaded that the development falls into the category of significant for the purposes of Policy 46S. As such, there is no conflict with this policy.

Affordable housing, open space and health services

27. I am satisfied that the submitted UU meets the requirements of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the Framework. As such, I have taken account of the obligations relating to affordable housing, open space and healthcare.
28. The UU makes provision for not less than 30% affordable housing. Within this, it requires 22% to be in shared ownership and the remainder to be affordable housing for rent. On the face of it, this would satisfy the Council's broad requirements. The Council has raised concern about the definition of 'shared ownership', suggesting that it should identify a range of initial equity of between 25%-75% rather than 80% as indicated in the UU. A disagreement about this definition does not invalidate the UU. The definition is clear and understandable and I have no evidence to suggest it would not be achievable. Moreover, both BBLP Policy 58S and the Council's appeal statement refer to a range of 25%-80%. As such, whether or not there are different definitions that could be used, the obligation appears consistent with the development plan.
29. I am also satisfied that the UU does not rob the Council of sufficient control on the layout, scale and design of affordable housing. The UU requires an affordable housing plan to be submitted alongside any reserved matters application. The consideration of any such application would require the Council to consider whether a policy compliant form of development was proposed. I have also noted the concerns raised about the clauses relating to the obligations on mortgagees. However, these do not invalidate the UU and would result in limited risks in practice. This is not sufficient for me to disregard the contribution toward affordable housing.
30. While there is no indication as to the amount of open space that would be provided, the UU would require the submission of a public open space plan and sets out requirements over phasing. This establishes a flexible approach, where specific requirements could be addressed through the reserved matters application. I am therefore satisfied that the UU would secure adequate open space provision.
31. Finally, the UU would require a contribution of £878 per dwelling toward health service provision. This is consistent with the figure set out in the Council's evidence. The Council has not commented on this obligation and thus it would be reasonable to assume that this level of contribution would satisfy their concerns.
32. I am therefore satisfied that the development would make sufficient provision for affordable housing, health services and open space. Accordingly, there would be no conflict with BBLP policies 58S, 86S or Bedford Allocations or Designations Local Plan (ADLP) Policy AD28 which seek to ensure the provision

of affordable housing and necessary infrastructure to mitigate the impact of development and open space.

Other Matters

33. Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. Although the development may comply with some policies of the plan, it would still conflict with the Council's overarching strategy for the delivery of housing and result in harm to the character and appearance of the area. It would also conflict with the approach to housing development as set out in the ONP. The development would therefore conflict with the development plan when considered as a whole.
34. My attention has been drawn to recent appeal decisions at Hookhams Lane and Willington² where the Inspectors concluded that the Council can demonstrate a five-year supply of deliverable housing land. The appellant has provided no substantive evidence which suggests I should come to a different conclusion. I am also satisfied that the most important policies for the determination of the application, which are all in recently adopted plans, are consistent with the Framework and thus up-to-date. As such, the so-called 'tilted balance' set out in paragraph 11d(ii) of the Framework does not apply in this case.
35. I have had regard to the appellant's concerns about the Council's approach to the so-called 'oversupply', the implications of the standard housing requirement methodology and other comments relating to housing delivery and the requirement for the Council to carry out an early review of the BBLP. However, none of these factors suggest either a failure to meet the five-year housing land requirement or a reticence to boost significantly the supply of housing.
36. Importantly, neither Inspector in the above cases concluded that it is was unreasonable to discount the surplus of development earlier in the plan period against the five-year requirement. The logical conclusion of *not* taking surplus delivery into account is that a plan could be rendered out-of-date even where it was on-track to meet the overall housing requirement. This is alluded to in paragraph 115 of the BBLP Inspectors' Report, which is referred to in both recent decisions. The Framework requires the overall housing requirement to be delivered in the plan period and the Council appears to be meeting this.
37. Both the Hookhams Lane and Willington appeals considered this, and the other issues raised, and neither Inspector concluded that the Council could not demonstrate a five-year supply or failed other delivery requirements. These decisions are of particular importance given they were determined recently and considered these issues in the context of the BBLP. I therefore give them substantial weight and prefer the approach taken to other decisions put to me by the appellant which pull in different directions, but are not as recent and relate to different districts.
38. Nevertheless, it is well understood that the five-year housing requirement is a minimum figure and the provision of up to 20 dwellings remains a benefit of development which weighs in favour of the proposal. The UU requires the

² Appeal reference: APP/K0235/W/20/3259981

- provision of 30% affordable housing, which would equate to up to 6 dwellings. This is an additional benefit of the proposal. The development would also provide some support for local services and facilities and, in the short term, economic benefits from construction. The development would also generate income for the Council in relation to New Homes Bonus and Council Tax.
39. Given the overall scale of development, I have given only moderate weight to these benefits. Moreover, while the site may be well related to Oakley and its facilities, this is no more than is expected by local and national policies. The benefits are therefore limited in this regard. It also does not alter my conclusion that the development would conflict with the development plan strategy for the distribution of housing. Similarly, it would be expected for new development to be energy efficient and thus this carries little justification for allowing development contrary to the plan.
40. Any new landscaping would be mitigation for the harm caused by the development. This does not constitute a particular benefit of the development, particularly as the site currently causes no harm to the character and appearance of the area. While this may provide some associated biodiversity benefits, these are significantly outweighed by the negative impact of development. New open space could be utilised by existing residents, but this benefit carries little weight. There are no other factors that I consider weigh in favour of the development. Contrary to the appellant's assertion, a lack of harm in relation to flood risk is a neutral factor and weighs neither for nor against the development.
41. On this basis, I am not persuaded that the moderate benefits of development would outweigh the clear conflict with the development plan outlined above. There are therefore no material considerations that would lead me to a decision other than in accordance with the development plan in this case.

Conclusion

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

S J Lee

INSPECTOR