
Appeal Decision

Site Visit made on 26 October 2021

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2022

Appeal Ref: APP/P0240/W/20/3262147

Land North of 34 Woodside Road, Lower Woodside LU1 4DQ

- 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 G Sayers against the decision of Central Bedfordshire Council.
 - The application Ref CB/20/02118/OUT, dated 17 June 2020, was refused by notice dated 19 August 2020.
 - The development proposed is described on the application form as 'Residential development to create 10 x dwellinghouses (100% affordable) with associated hard and soft landscaping'
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by G Sayers against Central Bedfordshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was made in outline with all matters reserved. I have therefore had regard to the Site Location Plan. The appellant also submitted a site layout plan to the Council and I have had regard to this only insofar as it serves as an indicative plan.
4. The Central Bedfordshire Local Plan 2015-2035 (Local Plan) was adopted on 22 July 2021, after the planning application was determined by the Council. The Council has identified that the Local Plan Review (2004) Policies BE8 (Design Considerations) and H5 (Rural Affordable Housing), as referred to in their reasons for refusal, have been replaced by Local Plan Policies HQ1 (High Quality Development) and H5 (Rural Exception Sites) respectively. Albeit the Council considers that new Local Plan Policy H5 is not relevant to sites in the Green Belt. The Council also considers the following new Local Plan policies to be relevant to the reasons for refusal; EE2 (Enhancing Biodiversity), EE3 (Nature Conservation) and CC5 (Sustainable Drainage). Both parties have provided representations on the new Local Plan policies.
5. In addition, On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework) and I have had regard to it in considering this appeal. The appeal process has afforded suitable opportunity for comment on the foregoing policy changes.

6. On 14 March 2022 Natural England issued a letter to Central Bedfordshire Council advising of emerging evidence which identifies recreational pressure on the Chilterns Beechwood Special Area of Conservation (SAC). A 12.6km Zone of Influence has been identified, which includes the appeal site. Natural England has indicated that all new residential development within the Zone of Influence will require Habitat Regulations Assessment. The proposed development would lead to a net increase of 10 dwellings and there would be resultant recreational pressure on the SAC and as such, likely significant effects on this designated habitat. However, given that I am dismissing this appeal on other grounds it is not necessary to consider this matter further, nor undertake an Appropriate Assessment.

Main Issues

7. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.
- The effect on the openness of the Green Belt.
- The effect of the proposed development on the character and appearance of the appeal site and surrounding area.
- The effect of the proposed development on protected species.
- The effect of the proposed development on flood risk.
- If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

8. The appeal site comprises an agricultural field, located within the Green Belt. Local Plan Policy SP4 states that there is a general presumption against inappropriate development in the Green Belt and that proposals within it will be assessed in accordance with the Framework and national planning practice guidance.
9. Framework Paragraph 149 states that the construction of new buildings in the Green Belt should be regarded as inappropriate development except in certain circumstances. The appellant asserts that the proposed development fulfils two of the exceptions – 'e' and 'f'.
10. Exception 'e' refers to 'limited infilling in villages'. The Framework does not define a 'village'. As a starting point, the appeal site is not located within any settlement boundary as defined within the development plan. However, this is not the determinative factor in considering whether a site is within a village. Indeed, an assessment of the site-specific circumstances is necessary.
11. Lower Woodside comprises a small number of residential properties which are typically orientated in a linear manner along Woodside Road, Manor Road and

Elaine Gardens. The main concentration of residential development is located to the west of Woodside Road. In contrast, the appeal site is located on the eastern side of Woodside Road. In this area, residential development is typically far more sporadic, with properties often separated by intervening swathes of countryside, such as the appeal site.

12. Indeed, the appeal site has a wide frontage with Woodside Road and it provides a substantial separation between the pair of semi-detached dwellings to the south and the recently constructed dwellings to the north. As such, the appeal site marks a significant change in character in contrast to the more built-up character of Lower Woodside to the west of Woodside Road. Taking these characteristics into account, the appeal site is located outside of the concentration of development in Lower Woodside, regardless of whether or not Lower Woodside is classified as a village. For this reason, the proposed development would not comprise limited infilling in a village within the terms of Framework Paragraph 149(e).
13. Exception 'f' of Framework Paragraph 149 refers to 'limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites)'. Local Plan (2021) Policy H5 provides the Council's policy on Rural Exceptions Sites. However, policy H5 applies only to rural exception sites 'outside of the Green Belt'. Paragraph 8.7.1 of the Local Plan explains, however, how 'There is a need for affordable housing in the Green Belt settlements and the Council will consider favourably the provision of affordable housing on rural exception sites in the Green Belt.' There is also some in principal support for rural exception sites as a form of windfall development via policy SP7, albeit a number of criteria must be met and this policy does not address development in the Green Belt. Paragraph 11.5.2 speaks of the importance of rural exception sites to affordable housing provision.
14. Therefore, although there is some broad support for exception sites, there is no express provision in the Local Plan policies for such sites within the Green Belt (within the terms of Framework paragraph 149 (f)). In the absence of a direct reference in that context, or any form of stated precedence in terms of local policy relative to the Framework, on a fair reading, rural exception sites in the Green Belt will need to be justified by very special circumstances.
15. The appellant has referred to a previous planning permission granted by the Council at a site on Mancroft Road¹, near the village of Caddington (the 'Mancroft Case'). The evidence before me suggests that this case involved a rural exception site in the Green Belt. However, that application was determined within a different development plan context, where Local Plan Review (2004) Policy H5, on Rural Exceptions Sites, applied. That policy was applicable to sites within the Green Belt. As such, the approach taken there does not provide a comparable indication of the proper application of the recently adopted Local Plan (2021) Policy H5. I note the appellant's reference to a third-party Local Housing Needs Assessment (LHNS) submitted in support of the Mancroft Case, however given my reasoning above I will return to that in determining whether or not very special circumstances exist (it is of relevance to other material considerations in favour of the scheme rather than to the issue of whether or not the proposal is intrinsically inappropriate development).

¹ Council Planning Application Reference: CB/19/0049/OUT

16. In summary, exceptions 'e' and 'f', as set out under Framework Paragraph 149, do not apply to the proposed development. The proposal would therefore be inappropriate development in the Green Belt.

Openness

17. Framework Paragraph 137 states that the essential characteristics of Green Belts are their openness and permanence. An assessment of openness involves a consideration of both spatial and visual aspects.
18. The site comprises an agricultural field which is currently free from development. Although the proposed development is for outline planning permission, with all matters reserved, the development of the site to provide 10 dwellings would inevitably result in a harmful spatial impact upon the openness of the Green Belt. This would result from a significant proliferation of buildings, their residential curtilages and the associated residential paraphernalia which would likely be accommodated within these curtilages. This would lead to a significant reduction in the spatial openness of the Green Belt.
19. Turning to the visual aspect of openness, the site is predominantly bounded by hedgerows and trees, including along the boundary with the highway. However, these trees and hedgerows include several gaps and the site is clearly visible from the highway in several locations, including through the existing access. Therefore, despite the presence of these boundary treatments, the site itself is fairly extensive and contributes significantly to the openness of the Green Belt within the surrounding context of sporadic residential development. In addition, although the site slopes down from the highway in parts, it rises to the north-east and development on this side of the appeal site would be particularly prominent.
20. Whilst I acknowledge that the proposed layout plan is indicative, the evidence before me demonstrates that the provision of 10 dwellings on the appeal site would have a harmful visual impact upon the openness of the Green belt.
21. In summary, the proposed development would result in a significant spatial and visual reduction in the openness of the Green Belt. It would therefore fail to preserve its openness and would thus conflict with Local Plan Policy SP4 in this regard.

Character and Appearance

22. The appeal site is bounded by trees along Woodside Road, many of which are large and mature specimens. These trees create a verdant character, which softens the urban form of Lower Woodside as it blends into the countryside beyond. Dwellings located on this side of Woodside Road are typically linear and are more sporadic than those opposite the appeal site, which form the primary concentration of residential development in Lower Woodside.
23. The Council has suggested that the development would necessitate the removal of some of the existing trees to the front of the appeal site, in order to provide adequate visibility splays. The appellant accepts that at least some of the existing trees/hedgerow on the boundary will need to be removed in order to accommodate the required visibility splays of any proposed access. However, it is not clear how many trees would need to be removed, given that access is a reserved matter.

24. Indeed, it is possible that a significant proportion of the trees could be retained, even taking into account the likely provision of a new access. As such, the verdant character of this part of Woodside Road could be largely retained and the development would not have an unacceptable harmful effect on character and appearance in this regard.
25. I have reasoned above that the proposal would have an adverse effect on openness, which might be said to be a facet of landscape character here. However, other than falling within the Green Belt, the site is not protected on account of its landscape character (such as an Area of Outstanding Natural Beauty or local character area).
26. Whilst I accept that the scheme would introduce residential development where none is currently present, in my view the site could be developed in a manner which broadly reflects the character and appearance of other residential development in the surrounding area.
27. Moreover, the scheme is currently in outline, and therefore subject to a sensitive approach being taken to layout, scale, appearance and landscaping, the proposal would be capable of suitably assimilating with its surroundings without causing harm to character and appearance beyond that which I have reasoned would arise in respect of Green Belt qualities. Consequently, the proposed development would comply with Local Plan Policy HQ1, which seeks to ensure that new development is of a high-quality design which responds to local context.
28. The proposed development would also comply with Framework Paragraph 130, which, in part, requires that new development is sympathetic to local character.

The effect of the proposed development on protected species

29. The planning application did not include an ecological appraisal or assessment to provide information on existing habitats within the site and in particular, to establish whether any protected species are likely to be present.
30. Given that the appellant has clearly indicated an intention to remove at least some of the trees and hedgerows, and that the scheme will inevitably alter the characteristics of what is presently an open and natural site, it is necessary that sufficient information is provided to allow an assessment of any potential impact upon protected species. Although the majority of the site is devoid of trees or vegetation, it too should be assessed to establish the potential impact of the development upon potential habitats and protected species.
31. Circular 06/2005 advises that, where there is a reasonable likelihood of protected species being present (which in this case I cannot discount on the basis of the limited evidence before me) it is essential that the presence of protected species, and the extent to which they would be affected by the development, is established prior to planning permission being granted. Whilst ecological surveys can be carried out under conditions attached to a planning permission, this should only be done in exceptional circumstances; clarity up-front as to the material effects of a scheme is important.
32. Therefore, in line with the approach set out in paragraph 99 of Circular 06/2005, it has not been demonstrated that the proposed development would not have an unacceptable adverse impact on protected species. As such, the

proposed development would conflict with Local Plan Policy EE3, which seeks to ensure that new development does not adversely affect protected species.

33. Local Plan Policy EE2, relates to net biodiversity gain. In the absence of an ecological appraisal, it is likewise not possible to ascertain whether the development would provide a net gain in biodiversity and it would therefore also conflict with this policy.

The effect of the proposed development on flood risk

34. On the evidence before me, the appeal site has a low probability of flooding arising from rivers (or the sea). However, on account of the landform and geology, the evidence before me indicates that substantial parts of the appeal site are either at 'high' or 'medium' risk of surface water flooding, as indicated on the Environment Agency Flood Map.
35. Framework Paragraph 167 states that, where appropriate, applications should be supported by a site-specific FRA. Footnote 55 advises that an FRA should be required for proposals in Flood Zone 1 where development is proposed on land that may be subject to 'other sources of flooding'. In this case, surface water flooding is one such 'other source of flooding' relevant to the appeal site.
36. The identified risk of surface water flooding on the appeal site therefore necessitates the provision of a FRA. The appellant suggests, however, that Sustainable Drainage Systems (SuDS) can be implemented and controlled by planning condition. However, in the absence of a FRA it is not possible to properly ascertain the likely effect of the proposed development upon flood risk elsewhere, the likely effect of flooding upon the proposed development, or whether proposed measures to deal with these effects would be appropriate.
37. Within this context, it would not be appropriate to rely on a planning condition to address issues pertaining to flood risk and drainage, given that a site-specific assessment of the risks has not been undertaken. As such, it has not been demonstrated that the proposed development would not be susceptible to a risk of flooding, or that it would not give rise to increased flood risk off-site. It would therefore be contrary to Local Plan Policy CC5 and Framework Paragraph 167, which both require that development proposals are accompanied by sufficient information pertaining to sustainable drainage and flood risk respectively.

Other Considerations

38. Framework Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 states that 'very special circumstances' will not exist unless the potential harm to the Green Belt and any other harm, is clearly outweighed by other considerations. The proposed development would provide 10 affordable dwellings. This would result in social and economic benefits associated with the increase in the stock of affordable dwellings.
39. The Council can currently demonstrate a Housing Land Supply of 5.4 years². The Appellant has made various representations in relation to the Housing Land Supply, including questioning whether the calculation incorporates an appropriate buffer of 5%. However, the Council's Five Year Housing Land

² Central Bedfordshire - Five Year Housing Land Supply Statement (October 2021)

Supply Statement (HLS Statement) includes such a buffer. The appellant also asserts that the Council is incorrectly relying on previous years of oversupply in order to reduce the future housing requirement. However, and regardless as to whether that may be an appropriate approach, the HLS Statement does not deduct previous oversupply from the requirement calculation, it merely states past delivery for the purposes of considering the appropriate buffer to be applied.

40. Indeed, there is no compelling evidence before me to suggest that the position in the HLS Statement is incorrect. Thus, on the basis of the evidence before me, in that context, Framework paragraph 11d (ii) is not engaged.
41. The appellant has submitted a signed Unilateral Undertaking (UU), to secure the provision of affordable housing. The UU has been accepted by the Council. The appellant also submitted a LHNS with the planning application. The LHNS was produced by a third-party (not in support of this current proposal) in November 2018 in respect of the Mancroft Case (a site elsewhere in the District). The LHNS focuses on a 'study area' which includes Caddington and Slip End Parishes. The appeal site is therefore located within the study area.
42. The LHNS concluded that there was a need for 34 affordable homes at the time the report was published. However, there are several considerations which reduce the weight which can be afforded to the LHNS in the case of this appeal. Firstly, several years have passed since the publication of the LHNS and it is by no means clear whether or not the conclusions remain extant. For example, the LHNS identifies that there are four different tenures of affordable housing sought by those surveyed but these needs may have changed over time or may have already been accommodated elsewhere. In addition, the LHNS pre-dates the very recently adopted Local Plan, which must have been found to be consistent with the Framework in terms of policies designed to meet the affordable housing needs within the district. For these reasons the weight to be afforded to the LHNS is minimal.
43. Furthermore, the UU provided by the appellant does not specify how this development would meet the specific needs identified in the LHNS. For example, it does not specify the house type or tenure to be provided. Whilst this could be addressed through later variations to the planning obligation, there is no guarantee at this stage that the development would meet the specific needs identified in the LHNS (notwithstanding the minimal weight which can be afforded to the LHNS in any case).
44. The benefits in general terms of providing additional affordable housing are significant. However, as reasoned above, there is little substantive evidence that the scheme before me would meet a current need in this particular location, as is intrinsically required via a rural exception site. As such, I attribute moderate weight to these benefits.
45. The appellant indicates that the site is located in a sustainable location with good transport links. However, there are no significant local services and facilities within Lower Woodside. Whilst there may be services further afield, accessible by sustainable modes of transport, the location of the site in terms of accessibility is a factor that carries neutral weight and is not a benefit of the proposed development itself.

46. There would be some social and economic benefits through the construction period, resulting from support for construction jobs. However, these would only be temporary. There would also be an increase in the local population and a resultant increase in economic support for local services and facilities. However, these benefits would be minor given the small scale of the proposed development. As such, they can only be afforded limited weight.
47. The appellant has suggested that there would be benefits associated with the New Homes Bonus (NHB), Community Infrastructure Levy (CIL) and potential for footpath improvements and open space. However, the NHB and CIL are designed, inter alia, to ensure that the effects of new development are adequately accommodated and they apply equally to development advanced as a rural exception site as to all other relevant development. They do not offer compelling support for this particular scheme.
48. I accept that footpath improvements and open space could be provisions via planning obligation or conditions associated with reserved matters, however in both those instances such provision must be fairly and reasonably related to the development proposed within the terms of the Framework (rather than offering broader benefits, which are not articulated via deed before me). As such those aspects of the proposal would largely be neutral rather than one which carry weight in favour of allowing the appeal

Conclusion

49. The scheme would be inappropriate development, which by definition, would be harmful to the Green Belt. There would also be a significant spatial and visual reduction in the openness of the Green Belt as a result of the proposed development. Framework Paragraph 148 states that any harm to the Green Belt should be attributed substantial weight.
50. In addition, whilst I have concluded that the development would not be harmful to the character and appearance of the surrounding area in broader terms, there is insufficient evidence before me to conclude that it would not result in ecological harm, including to protected species. Neither has it been demonstrated that the proposed development would not be susceptible to a risk of flooding, or that it would not give rise to increased flood risk off-site.
51. The provision of 10 affordable dwellings would carry social and economic benefits to which I attribute moderate weight, albeit this weight is not as great as it might have been had there been a more up to date LHNS undertaken. There are some other minor benefits, but these only carry limited weight for reasons already outlined.
52. In conclusion, whilst there are some significant benefits associated with the proposed development, the substantial weight to be given to Green Belt harm and other harm is not clearly outweighed by the other considerations. Therefore, the very special circumstances necessary to justify the proposal do not exist. As such, having regard to the development plan as a whole and all other relevant material considerations, the appeal should be dismissed.

Luke Simpson

INSPECTOR