



Appeal Decision

Site visit made on 6 December 2022

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 February 2023

Appeal Ref: APP/K0235/W/21/3284159

Land Between 61 and 69 Oakley Road Clapham

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr D Reeve against the decision of Bedford Borough Council.
 - The application Ref 20/02359/OUT, dated 7 October 2020, was refused by notice dated 23 April 2021.
 - The development proposed is erection of two self/custom build dwellings (outline - all matters reserved except for means of access).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application is made in outline form with all matters (appearance, landscaping layout and scale) except for access, reserved to be determined at a later date.

Main Issues

3. The main issues are:
 - a) Whether the site is in a suitable location for housing with regard to the spatial strategy for the borough.
 - b) Whether the proposal would provide satisfactory living conditions for occupiers with regard to noise.
 - c) The effect of the proposal on biodiversity, including protected species.

Reasons

Whether the site is in a suitable location for housing

4. The appeal site lies outside of the Settlement Policy Area ('SPA') as defined in the Bedford Borough Local Plan 2030 ('BBLP'). It is, therefore, within the open countryside in planning policy terms.
5. In locations outside SPA boundaries, Policy 7S of the BBLP aims to incorporate sufficient flexibility to support the provision of new homes where they will enhance or maintain the vitality of rural communities and meet identified needs and to prevent isolated homes in the countryside. This Policy limits new development to that appropriate to the countryside, which includes re-use of rural buildings, replacement dwellings and development that accords with

'made' neighbourhood development plans. On the information available to me, the proposal does not fall within any of these categories.

6. Policy 7S of the BBLP goes on to state that, exceptionally, development proposals will be supported on sites that are well related to a defined SPA, Small Settlement or the built form of other settlements provided a list of criteria are met; these include responding to an identified community need, having identifiable community support, being of an appropriate scale, and contributing positively to local character.
7. In terms of responding to an identified community need, the appellant asserts that the proposal is intended to deliver self and custom-built housing plots.
8. The Council's briefing note to BBLP Policy 7S, although of limited weight, provides guidance on how this Policy should be applied for consistency. This identifies that a local need could be established by a local study and for housing to be shown to be specifically required. Whilst not in itself determinative, the briefing note demonstrates the general requirements sought by the Council to address an issue of need.
9. BBLP Policy 7S and the briefing note do not preclude self and custom-built housing plots. I am also aware that there is support for this type of housing in national and local policy. Even so, I have not been referred to evidence of a specific local community need for such plots in and around Clapham.
10. In any event, the wording of BBLP Policy 7s (vii) requires that: There is identifiable community support and it is made or supported by the parish council. Indeed, the briefing note to Policy 7s, clarifies that whilst support from a parish council is required, this alone does not satisfy the additional need for identifiable community support. As such, even though Clapham Parish Council have supported the proposal, this in itself does not meet the identifiable community support requirement of this Policy.
11. Therefore, irrespective of whether or not the site is well related to Clapham or any other settlement, the proposal does not meet all the criteria under Policy 7s of the BBLP and is therefore not a form of development which is supported by the spatial strategy for the borough in a countryside location.

Whether or not the proposal would offer a suitable environment for housing with regard to noise

12. The submitted Environmental Solutions, December 2020 report ('Noise Report') outlines the existing noise sources in proximity of the site and their likely impact on the proposal. These include the railway line to the rear of the appeal site and the A6.
13. Due to Covid-19 lockdown restrictions in place at the time, the Noise Report consists of a predicted set of environmental data and calculations, which are based on a single day's visit.
14. The predictions include assumptions about the usage associated with the railway line. The information about the number of trains per hour at daytime is based on a single visit during lockdown when it is likely that trains would have been operating at different levels of service to those expected outside of lockdown. Also, the night-time activity is not clearly substantiated. As such,

there is no validation that this was typical and/or representative of normal flow conditions on the railway line.

15. The observations about railway noise, in part, appear to be made from the appeal site's entrance, which is some distance from the railway line, and where road traffic noise was noted as prevalent. Thereby, introducing a potential element for the masking of noise. Moreover, the assessment describes railway noise as not noticeably loud. Given the separation between the site entrance and railway line, had the observer been closer to source this may have altered perception.
16. It is also unclear how the extent of noise varied across the site. In particular, on-site measurements would have provided additional confirmation of sound levels by measuring at relevant distances and producing a sound exposure level for different train events to inform any layout. There is also limited consideration of the combined effects of road and rail noise.
17. The appellant has also referred to BS8233:2014 (Section 7.7.3.2 Design criteria for external noise). In summary, this states that in higher noise areas, such as city centres or urban areas adjoining the strategic transport network, a compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure development needs can be met, might be warranted. In such a situation, development should be designed to achieve the lowest practicable levels in these external amenity spaces but should not be prohibited. Even so, this is guidance and the appeal site is in a countryside location where occupants would have some expectation of a tranquil environment.
18. Furthermore, compliance with the external noise guidance, is subject to the provision of a barrier. The submitted barrier calculation is based on a position 20m from the proposed fence. This only accounts for a small section of the site. In addition, the proposed barrier would be in the form of a bund / fence which would total about 5m in height. This is likely to be development in its own right, requiring a separate application to determine its suitability. Therefore, I cannot rely upon this, in determining the appeal.
19. There are dwellings adjacent to the appeal site which incorporate external amenity spaces. The two properties to the east of the appeal site occupy deeper plots and the property to the west includes a buffer of mature landscaping between this and the railway line. Therefore, I do not consider these sites to be directly comparable to the appeal site. In any event, I need to be satisfied that the proposal is acceptable on its merits.
20. Whilst the appellant states that a noise methodology was submitted to the Council, on the information before me, I cannot be certain of this or if this was agreed with the Council.
21. For the above reasons, whilst I acknowledge that the predictive method used is based on a number of assumptions, I cannot conclude that these assumptions are realistic and robust. Particularly, given that the nearby noise sources already exist and there is limited corroborative evidence of prediction including train service timetables and using monitoring equipment. To this end, and notwithstanding the appellant's submissions, I consider the site to be sufficiently secure to accommodate unmanned monitoring equipment.

22. As such, insufficient information has been provided to demonstrate that the potential noise impacts from both road traffic and rail sources would not cause harm to the living conditions of the occupiers of the proposed development and that a suitable living environment for the occupiers of the proposed dwellings could be achieved. The proposal is therefore contrary to Policy 28S (ii), 30 (i) and 32 (iii) of the BBLP. Together, these policies require that development proposals should ensure that they minimise and take account of the effects of pollution and disturbance.

Whether or not the proposal would affect protected species and biodiversity

23. The submitted Preliminary Ecological Appraisal ('PEA') concludes that the site comprises of poor condition neutral grassland, mixed scrub, hedgerows and trees along the site boundaries. The trees and hedgerows at the site hold inherent ecological value and should be retained and protected during the development works. These features and in particular the scrub on site also possess the potential to support breeding birds and hibernating hedgehogs and works should also be timed to avoid the hibernation period of hedgehog and the breeding bird season.
24. However, the PEA also identifies that the neutral grassland holds potential to support reptiles. Therefore, surveys to determine the presence or absence of reptiles at the site will be needed. As such, the evidence before me is inconclusive in respect of reptiles.
25. Whilst the appellant suggests that the further detailed surveys identified as necessary within the PEA could be dealt with as conditional matters, Paragraph 99 of Circular 06/2005 'Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within The Planning System' advises that it is essential that the presence or otherwise of protected species that may be affected by a proposed development is established before planning permission is granted. The reason for this is to ensure that all relevant material considerations are addressed in making the decision. Despite the appellant's willingness to accept a condition in relation to protected species, the Circular refers to the use of planning condition in "exceptional circumstances" when surveys can be carried out after the grant of planning permission. No such exceptional circumstances have been demonstrated.
26. The PEA identifies opportunities for mitigation and to enhance the biodiversity of the site post development. Even so, because of the uncertainty about the impact on existing protected species, reptiles in particular. I cannot be certain, that the proposal would enhance biodiversity.
27. For the above reasons, I cannot be certain that the proposal would not adversely affect protected species and biodiversity and conflicts with the aims of Policy 42S of the BBLP, which states that where protected species or priority habitats of principal importance are adversely affected, the application will need to demonstrate how the proposed mitigation will reduce the adverse effects. If adequate mitigation is not possible, the application will need to demonstrate that the overriding reasons outweigh the impacts on the biodiversity and geodiversity of the borough otherwise the development will be refused. Accordingly, I also find conflict with Policy 43 of the BBLP which requires that proposals should provide a net increase in biodiversity.

Other Matters

28. If I were to accept the appellant's evidence in support of the need for self-build and custom housebuilding, in general in the borough, the proposal would deliver up to 2 self/custom plots. These would be in a location which is reasonably accessible to a range of services and facilities in Clapham and would therefore provide some support for the local community. This would also diversify the housing market, increase consumer choice and would make a modest but important contribution to national policy objectives of significantly boosting the supply of housing. However, this and any associated economic and social benefits arising from the provision of two dwellings would be modest and therefore attract limited weight. Therefore, such support is not sufficient to outweigh the harm I have identified and does not extend to allowing developments that are in conflict with the development plan.
29. On the information before me, the Clapham Neighbourhood Plan ('NP') is at an advanced stage and can be given considerable weight. Accordingly, I have had regard to this, including the policies referred to me by the main parties. However, the provisions of the NP do not alter my findings on the main issues.

Conclusion

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

M Aqbal

INSPECTOR