



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: 15 February 2023

Appeal Ref: APP/K0235/W/22/3290453

Land off St Neots Road, Renhold MK41 0JH

- 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 J Gill against the decision of Bedford Borough Council.
 - The application Ref 20/01971/OUT, dated 1 September 2020, was refused by notice dated 22 July 2021.
 - The development proposed is erection of single storey detached dwelling.
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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:
 - i) Whether the location of the site is suitable for housing with regard to the spatial strategy for the borough.
 - ii) The effect of the proposal on the living conditions of the occupiers of the proposed dwelling with regard to noise.
 - iii) Whether the proposal would affect any heritage assets, and,
 - iv) Whether the proposal would affect protected species (Great Crested Newts).

Reasons

Suitable location for housing

4. Policy 3S of the adopted 2020 Bedford Borough Local Plan 2030 ('LP') sets out the spatial strategy for the borough and stipulates that development should be in sustainable locations and meet identified needs. Reference is also made to safeguarding the intrinsic character and beauty of the countryside. Policy 4S of the LP specifies the amount and distribution of housing development. This includes in and around defined Settlement Policy Area ('SPA') boundaries.
5. In considering the location of development in rural areas, the distinction between settlements and areas of countryside is established by defining Settlement Policy Areas. The aim of the local plan is to direct development to within the defined Settlement Policy Area boundaries and specific site allocations. Within the

countryside it is the intention to maintain the existing open nature, prevent the coalescence of settlements and resist the encroachment of development into the countryside. The countryside is therefore subject to a more restrictive policy.

6. The appeal site is in a rural location and comprises an area of grassland and scrub, located on the south side of the old St Neots Road, to the west of its junction with Water Lane. The main body of the site is separated from the adjacent carriageway by a wide highway verge but is linked to the carriageway by an existing access. This access serves an existing Pumping Station, which is sited just outside the appeal site, on its south-eastern boundary. The appeal site lies outside a SPA. It is, therefore, within the open countryside in planning policy terms.
7. In locations outside SPA boundaries, Policy 7S of the LP, 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 before me, the proposal does not fall within any of these categories.
8. Policy 7S of the LP 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 all met: these require that the proposal responds to an identified community need; there is identifiable community support; its scale is appropriate to serve local needs or to support local facilities; and the development contributes positively to the character of the settlement and the scheme is appropriate to the structure, form, character and size of the settlement.
9. Having regard to case law (*Braintree DC v SSCLG* [2018] EWCA Civ. 610). I acknowledge that the appeal site is not far from other dwellings and therefore is not isolated. Even so, the appeal site is separated from some of these by highway land and others by intervening countryside and therefore these do not form a settlement.
10. Furthermore, the appeal site is located about 0.7km from the nearest part of the Renhold: Green End SPA (the southern boundary) and more than 1km (as the crow flies) from the Bedford urban area boundary. Moreover, the appeal site is physically separated from these areas by the A421. The Great Barford Settlement Policy Area boundary is further away at approximately 2.5km from the site. This is a Key Service Centre and is therefore considered to have a good range of services and is identified in the LP to support further dwellings. Even so, Great Barford is not within reasonable walking distance of the appeal site and while there is a bus stop local to the appeal site, I have limited information of the services from here.
11. Consequently, the appeal site is not well related to a defined SPA, Small Settlement or the built form of other settlements. The appeal site is also significantly remote from areas with good facilities to meet day to day requirements associated with residential use of the site. As such, occupants of a dwelling at the appeal site would be heavily reliant on use of the private motor vehicle for most journeys. The residential use of the site is not located in an accessible location and fails to accord with the strategic housing aims of the LP.
12. Moreover, it has not been shown that the proposal meets all of the criteria under Policy 7S of the LP. In particular, that the proposal responds to an identified community need and there is identifiable community support. Therefore, the proposal is not supported by Policy 7S of the LP. The preamble to Policy 7S states

that this Policy incorporates sufficient flexibility to support the provision of new homes where they will enhance or maintain the vitality of rural communities and meet identified needs. This is broadly consistent with aims of paragraph 79. Accordingly, the proposal is also not supported by paragraph 79 of the National Planning Policy Framework 'the Framework'.

13. Whilst paragraph 69 of the Framework, supports the development of windfall sites, this relates to suitable sites within existing settlements, which is not the case for the appeal site. Paragraphs 84 and 85 of the Framework relate to supporting a prosperous rural economy and are, therefore, of limited relevance given the nature and modest extent of the proposal.
14. Although matters of appearance, scale, landscaping and layout are reserved, the appeal site is free of any significant development. Therefore, a single dwelling at the appeal site, would result in some encroachment of built development in an open countryside location. To this end, the proposal conflicts with the strategic aims of Policy 3S of the LP.
15. The Council's decision notice also refers to Policies 28S, 29 and 30 of the LP. These Policies mainly relate to matters of design and therefore are not relevant at this stage, given that matters relating to design are reserved.
16. Nevertheless, for the above reasons, the proposal which is for residential development on land identified as open countryside, does not accord with the spatial strategy framed by Policies 3S and 4S, nor the development in rural areas strategy, contained in Policy 7S of the LP.

Noise

17. Whilst it is unfortunate that a noise assessment was not requested by the Council during the application stage, it is also unclear if the appellant sought pre-application advice. A pre-application could have identified the requirement for a noise assessment earlier in the application process.
18. Irrespective, the appeal site is in proximity of the A421 and a pumping station. There are, therefore, two potential noise sources that could result in harm to the living conditions of the occupiers of the dwelling.
19. Notwithstanding that there appears to be no complaint or history concerning noise from the pumping station, the proposal would introduce a new dwelling appreciably closer to this than other development. As such, some assessment of any noise from the pumping station on the proposed dwelling at the appeal site is necessary.
20. The Council advises that two new dwellings were approved in May 2020 on the other side of the road to the appeal site, as part of a scheme which included the restoration and refurbishment of the Grade II listed Great Dairy farmhouse. An Environmental Noise Assessment accompanied that application and the Council's Environmental Health Officer reviewed the report and considered the proposed recommendations to be acceptable. As such, because the appeal site is further away from the A421 than the approved development, I do not consider that effects of mitigating against road noise would be unsurmountable.
21. Although the Council has statutory rights under the Environmental Pollution regulations to control noise from a third party, the agent of change principle applies and in accordance with paragraph 187 of the Framework, the appellant

should therefore, if necessary, provide suitable mitigation before the development has been completed.

22. For the above reasons and in the absence of a suitable noise assessment, I cannot be certain that the occupiers of the proposed dwelling would not be subject to unacceptable noise levels or that the noise would be satisfactorily mitigated. The proposal is, therefore, contrary to Policy 32 of the LP, which requires that development proposals should ensure that they minimise and take account of the effects of pollution and disturbance.

Heritage

23. To the immediate east of the site are the remains of the Howbury Ringwork scheduled monument. In accordance with the Framework, this is a heritage asset of the highest significance. Accordingly, any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
24. Because of the outline nature of the proposal, and subject to this appeal succeeding, there would be scope at the reserved matters stage to ensure that the effect of the proposed development on the setting of the Howbury Ringwork scheduled monument is properly assessed and the relevant heritage balance of the Framework undertaken.
25. The appellant's a Desk Based Archaeological Assessment concludes that the proposed development has high potential to encounter buried archaeological remains related to the Prehistoric Period onwards. As such, the appeal site is located within a landscape that has the potential to hold archaeological interest in particular associated with the remains of the Howbury Ringwork scheduled monument.
26. However, on the information available to me, I cannot be certain of the potential for non-designated heritage assets of archaeological interest to survive below-ground within the site and the full significance of any archaeological remains, including upstanding earthworks, which do survive on the site.
27. A potential solution would be to undertake a pre-determination archaeological trial trench evaluation as part of an assessment to fully establish the presence or absence of archaeological remains, and to establish their significance. Prior to this investigation work, a full survey should be made of the earthworks within the appeal site to characterise their significance and any relationship they have with the adjacent Howbury Ringwork scheduled monument.
28. I see no reason why through careful planning a trial trench evaluation could be undertaken without any ecological harm. In particular, without such information, as the decision maker, I cannot ascertain the effect of the proposal on the significance of a non-designated heritage asset, in determining the planning application, as required by paragraph 197 of the Framework.
29. Even though the proposed dwelling is intended to be single storey, on the submissions before me, I cannot be certain that its foundation design and any required services would not interfere with or damage any potential surviving archaeological remains on the site.
30. For the above reasons, insufficient information has been submitted to show a full assessment of those heritage assets that may be impacted upon by the

development proposed, and how their significance may be affected, with regard to archaeological aspects. The proposal is therefore contrary to the objectives of Policy 41S of the LP, which amongst other things states that the effect of proposals on the significance of non-designated heritage assets will be taken into account in determining applications for development. Applications which result in harm or loss of significance to non-designated heritage assets will only be supported if clear and convincing justification has been demonstrated. In making a decision, the Council will weigh the significance of the heritage asset affected against the scale of any harm or loss to it.

Protected species

31. Based on modelling to create a species distribution map which predicts presence of Great Crested Newts ('GCN'), the appeal site falls within the green zone, which is of moderate suitability and therefore GCN may be present.
32. The submitted Preliminary Ecological Appraisal ('PEA') also identifies that the appeal site is considered to be of importance for GCN at a site level. Further, that the construction of the proposed development would result in the loss of 0.4 ha of habitat, which is suitable for great crested newts.
33. Due to the risk of an offence being likely, a protected species mitigation licence for GCN would be required to be obtained from Natural England before works proceed on the appeal site. In this case, the appeal site lies within an area which is covered by a district licence scheme ('DLS') for GCN.
34. Whilst the appellant has no objection to paying the appropriate tariff and joining the DLS. This needs to be undertaken prior to the determination of the application to allow the appropriate required conditions to be attached to the Decision. At this stage, on the information before me I am not aware that the appellant has joined the DLS.
35. As such, I cannot be certain that the proposal would not have a negative impact on GCN or that it can take appropriate measures to avoid mitigate and, as a last resort, compensate for any negative effects on GCN.
36. Therefore, the proposal is contrary to Policy 42S of the LP which requires 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.

Conclusion

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

M Aqbal

INSPECTOR