



Appeal Decision

Site visit made on 12 September 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2023

Appeal Ref: APP/P0240/W/23/3319182

Land to rear of 55 Upton End Road, Shillington, Hitchin SG5 3PE

- 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 Helen Gregory against the decision of Central Bedfordshire Council.
 - The application Ref CB/22/02520/OUT, dated 5 July 2022, was refused by notice dated 27 February 2023.
 - The development proposed is outline application (with all matters reserved) for 4no. dwellings on land to rear of 55 Upton End Road, Shillington, SG5 3PE.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved and I have determined the appeal on this basis. I have had regard to the indicative site layout plan (drawing BP1) but only as far as it is an illustrative indication of the layout of the proposed four dwellings.

Main Issues

3. The main issues are:
 - whether the proposed development would provide a suitable location for housing having regard to the character and appearance of the area; and
 - the effect of the proposed development on biodiversity, in particular Great Crested Newts.

Reasons

Location of development

4. The appeal site lies to the rear of 55, 51 and 49 Upton End Road (Nos 55, 51 and 49) and is set back from the road, behind these properties. The land is currently used for hobby farming and storage, and I saw on my visit that the site contains sheds, static caravans, vehicles, and general storage. The land is currently enclosed, and subdivided within the site, by close boarded fences, metal fencing, trees, and hedges, though the trees and hedges are mainly around the edge of the appeal site.
5. In considering the character of the area, I have had regard to the aerial photographs submitted by the appellant, and I accept that the area is not characterised by linear development, and it has a different character to other

parts of Shillington, as detailed by the Inspector in the Gravenhurst Road appeal referred to by the appellant¹. The properties along Upton End Road are sporadic, situated either along the roadside frontage or back from the road within spacious plots and within gaps along the road.

6. However, even the houses which are set further back from the road continue to have a presence along the road due to the gaps in the built form and the curvature of the road. The spacious pattern of the houses, and the open fields opposite, contribute positively to the open and rural character of the area.
7. Shillington is defined in the Settlement Hierarchy of the Central Bedfordshire Local Plan 2015-2035 (LP) as a 'Small Village'. It is made up of Aspley End and Bury End, otherwise known as the 'Ends'. However, the appeal site lies beyond the settlement boundary identified in the LP and, therefore, falls within land that, in planning terms, should be considered as countryside.
8. Policy SP7 of the LP provides for the consideration of windfall development sites, both within and outside the settlement envelopes. Although Policy SP7 does not prevent development outside of the settlements it does seek to limit the types of development permitted and to recognise the intrinsic character and beauty of the countryside. The appeal before me would not meet any of the exceptions listed in Policy SP7 of the LP.
9. The appellant contends that the list within Policy SP7 of the LP is not an exhaustive list. However, in my judgement the list is a fairly an extensive list and allows for a wide variety of development that would be considered suitable in the countryside. The purpose of SP7 is to help inform where new development should take place and promotes new housing within the settlements listed in the settlement hierarchy and within settlement boundaries. Accordingly, while SP7 does not entirely rule out proposals which fall outside the listed exceptions, the list gives a clear indication of the kind of development that is permissible, and I see nothing in the wording of the policy to encourage development of the kind proposed here. In my judgement the development of four houses on the appeal site would undermine the purpose of Policy SP7.
10. Policy HQ8 of the LP seeks to resist the development of back-land sites which are against the existing pattern and grain, and which would harm the character and appearance of the area. Policy HQ1 aims for all development to achieve high quality development and provides a range of matters that should be taken into consideration. For the reasons outlined above, the appeal proposal is at odds with these policies too.
11. Both main parties have referred to the appeal² at land adjacent to 55 Upton End Road, which related to the site between Nos 55 and 51. That appeal decision has material differences to the appeal before me in that the site has a road frontage. The Inspector, in that decision, concluded that the development would preserve the prevailing pattern of development, sustain the rural feel of the locality, and protect the character of the countryside and would, therefore, not conflict with the development plan policies in force at the time. The development of the plot along the road frontage was considered to be well contained within its host row of houses.

¹ APP/P0240/W/20/3245286

² APP/P0240/W/21/3270902

12. The current appeal proposal would be materially different to the above appeal as the development would not infill a gap in the road frontage. Although the proposed development would not be isolated in that the site is close to other dwellings, the proposal would result in the development of a parcel of land to the rear of the existing, and approved, properties. The proposal would, therefore, not preserve the prevailing pattern and grain, would not replicate the context and built form of the surrounding area and would be out of keeping with the character and form of the locality.
13. The appeal site, at the time of my visit, was in active use, albeit for storage and hobby farming, however the current condition of the site does not justify the harm that would arise from the proposed development. The current use of the site is not harmful to the character and appearance of the area and is a form of use expected in rural areas.
14. I also acknowledge that the appeal site would not extend into the Important Countryside Gap, as shown on the Shillington policy map. Nor would it result in coalescence between the various 'Ends' of the settlement. While the appellant contends that it would not result in incremental planning creep, the proposal would result in four houses in a form of development which would be at odds with the existing pattern and grain of development in the area. This would have an urbanising effect and erode the contribution that the existing land makes to the character of the area.
15. For the above reasons, the proposal would not be a suitable location for housing as the appeal proposal would be out of context with, and harmful to, the character and appearance of the area. The proposal would, therefore, conflict with Policies SP7, HQ1 and HQ8 of the LP.
16. Moreover, the development would be contrary to Section 12 of the National Planning Policy Framework (the Framework) and the aims of achieving well-designed places which are sympathetic to local character.

Biodiversity

17. The appeal site comprises a number of fields which have been used for hobby farming and storage. The submitted Preliminary Ecological Appraisal has confirmed that there is a likelihood of the presence of Great Crested Newts in the area and advises that further species-specific surveys are considered necessary.
18. Although the appellant has advised that they are willing to join the District Licencing Scheme, the evidence submitted in the Preliminary Ecological Appraisal, and in Appendices B and E of the appellant's statement, advises that an additional report is required prior to obtaining planning permission.
19. Circular 06/2005³ states that "*it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision*". Ecological mitigation should only be employed where it is not possible to avoid the impact. Furthermore, mitigation measures should be specific to an identified harm. Without the additional report it is not possible to

³ ODPM Circular 06/2005: Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system.

fully understand the baseline ecological potential of the site. Therefore, it is not possible to know whether the proposed development would have an adverse impact on biodiversity, whether there would be an opportunity to avoid the impact, or what mitigation could be used.

20. The appellant has suggested that membership of the District Licencing Scheme could be secured by condition. Although the finer details of the mitigation strategy and landscaping could be secured by condition, once the baseline and the extent of the presence of protected species has been established, it is not appropriate to condition the requirements for a survey to establish the baseline. Given the advice in Circular 06/2005, without the additional report and mitigation proposals, I cannot be certain that any harmful effects arising from the proposal could be adequately avoided or mitigated, even with the proposed biodiversity net gain shown in the appellant's submission.
21. In the absence of this detailed information, I am not satisfied that the proposed development would not harm biodiversity, in particular Great Crested Newts. The proposal would, therefore, be contrary to the requirement of Policy EE3 of the LP which, amongst other matters, requires up to date and comprehensive ecological surveys and only supports development which is designed to prevent adverse impacts on protected species. Furthermore, the proposal would be contrary to paragraph 174 of the Framework which aims to minimise the impact on biodiversity.

Other Matters

22. The Council, in their latest submission, advise that they have a 5.29-year supply of deliverable housing sites, and this evidence is more recent than the two appeal decisions set out in the appellant's evidence⁴. As such, the position has moved on since the two appeal decisions referred to by the appellant and I have not been provided with any substantive evidence that the Council's published figure is not currently accurate. Paragraph 11d) of the Framework does, therefore, not apply in this case.
23. The Government's objective is, nevertheless, to significantly boost the supply of homes. The development would provide four additional houses, at an appropriate density, which would add to the housing supply in the area with energy efficiencies and associated social and economic benefits, both during and post construction. This weighs in favour of the scheme.
24. That there are no refusal reasons, based on the detail submitted with this outline proposal, relating to living conditions of existing or proposed occupiers, or highway, drainage or tree matters are neutral factors. That the proposal would not result in coalescence of the 'Ends' or development on the designated Important Countryside Gap does not alter my view on the main issue.
25. There would be adverse environmental impacts on the character and appearance of the area and on biodiversity, contrary to the elements of the NPPF referred to above. The conflict with the development plan and the adverse impacts are afforded significant weight and would not be outweighed by the limited benefits of the scheme.

⁴ APP/P0240/W/21/3289401 & APP/P0240/W/21/3289675

Conclusion

26. For the reasons set out above I conclude that the proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this. Therefore, the appeal should be dismissed.

K Townsend

INSPECTOR