



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: 23rd October 2023

Appeal Ref: APP/P0240/W/23/3319533

Limbersey Nurseries, Limbersey Lane, Maulden, Central Bedfordshire MK45 2EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by N & S Swaney against the decision of Central Bedfordshire Council.
 - The application Ref CB/22/03624/FULL, dated 9 September 2022, was refused by notice dated 22 December 2022.
 - The development proposed is demolition of commercial buildings and erection of one dwelling with associated access, landscaping, and ancillary works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of the appeal, the appellants have submitted a Noise Assessment (LFAcoustics Consulting Engineers, dated March 2023) which, in summary, has assessed the effect of noise from the adjacent commercial and agricultural premises on the proposed development, and also assessed the effect of noise on the existing property from the continued use of the appeal site as a business. Although this represents a change to what was considered by the Council at the application stage, the Council has provided detailed comments on the submitted Noise Assessment within their evidence.
3. On this basis, having regard to the 'Wheatcroft Principles'¹ and the judgement in *Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)*, I do not consider that the additional information results in a substantial or fundamental change to result in a different application. Moreover, as the Council has commented, no party would be unfairly prejudiced and I, therefore, have had consideration to the submitted Noise Assessment in determining this appeal.

Main Issues

4. The main issues are:
 - whether the proposed development would provide a suitable location for housing, having regard to the settlement strategy for the area and with specific regard to the supply of employment premises;
 - the effect of the proposed development on the character and appearance of the area; and

¹ [1] *Bernard Wheatcroft Ltd v Secretary of State for the Environment* [JPL, 1982, P37]

- whether the proposed development would provide appropriate living conditions for the occupiers of the proposed dwelling, with particular regard to noise.

Reasons

Location and supply of employment premises

5. The appeal site lies outside of any of the settlement envelopes identified within the Central Bedfordshire Local Plan, 2021 (LP) and, therefore, falls within land that, in planning terms, should be considered as countryside. Policy SP7 of the LP allows for windfall developments outside of settlement envelopes and includes, amongst other forms, the redevelopment of previously developed land (PDL) as a type of development which would be acceptable, subject to other criteria.
6. The appeal site currently contains two buildings, an area of hardstanding for parking and outdoor storage and two areas of grassed lawn. At the time of my visit the buildings were in use as offices and storage in relation to a construction company operated by the owners of the adjacent dwelling. The appeal site would, therefore, constitute PDL in accordance with the definition in the National Planning Policy Framework (the Framework) and the proposal would result in the redevelopment of PDL, when assessed against Policy SP7 of the LP.
7. Although Policy SP7 supports redevelopment of PDL it goes on to set criteria and does not allow for all redevelopments. In that regard it is different to the Framework, however the requirements set out in SP7 are all in general conformity with other parts of the Framework and I have therefore given full weight to Policy SP7 of the LP. The appeal proposal would not result in the coalescence of settlements and would not harm the living conditions of neighbouring properties or result in detriment to the highway network and would, therefore, comply with these parts of Policy SP7 of the LP.
8. However, although the appeal site is connected to Maulden by public rights of way (PROW) I noted at my visit that the nearest PROW is along the edge of paddocks and agricultural fields. It would, therefore, be unlikely that the PROW would be used by the occupants of the dwelling for access to day-to-day services and it is unlikely to be used after dark or in inclement weather. The PROW would be more likely to be used recreationally or occasionally.
9. The settlements of Ampthill and Clophill are larger settlements in the district, however, although there are public transport links from Maulden I have not been provided with any evidence of public transport access available close to the site.
10. Even though the proposal would not result in a significant development it should still be located where it would enhance or maintain the vitality of rural communities, as required by paragraph 79 of the Framework, and should be focused on offering a genuine choice of transport modes, to comply with paragraph 105 of the Framework. Considering the rural area and the limited opportunities for sustainable transport modes, the proposal would rely heavily on the private car, or home deliveries. As such the scheme would not promote sustainable modes of transport or contribute towards reducing carbon emissions.

11. Taking account of the appeal decision the appellants have drawn to my attention², I acknowledge that some travel by private vehicles is likely in rural areas and that Maulden is close enough to not result in long journeys to access services and facilities. However, the appeal before me is being considered under different local plan policies and is not for a small dwelling with limited occupation.
12. Moreover, at the time of my visit I observed that Limbersey Lane, for a narrow rural road, was frequently used by large vehicles. The access to the appeal site also serves as access to other business uses which would result in a higher level of traffic movements. Although not heavily trafficked it is not typical of a rural road. This is, therefore, another difference between the appeal noted above and the current appeal. Although the site may be similar in its proximity to a settlement, the appeal provided in Appendix 6 is, therefore, materially different from the appeal before me.
13. The consent at The Bungalow on Limbersey Lane, provided at Appendix 7, was for replacement of one dwelling with one dwelling and is, therefore, also materially different to the appeal before me. Furthermore, the consent at West Park Farm, provided at Appendix 8, related to a proposal where there was a genuine fallback position which was considered to result in greater harm than the application proposal. The Council considered that site to be not in a sustainable location, albeit not isolated, but balanced this against the fallback position and the lack of a five-year housing land supply in granting approval.
14. The proposal before me is, therefore, different to the three schemes identified by the appellants. It would not be well connected to the surrounding area or accessible to nearby services and facilities as required by Policies HQ1 and SP7 of the LP and therefore would not comply with the criteria for redevelopment of PDL set out within Policy SP7 of the LP. Although the site is redevelopment of PDL the site is not, and cannot be made, accessible to nearby services and facilities and the reliance on the car would result in moderate harm.
15. Policy EMP2 of the LP also seeks to resist proposals for non-employment generating uses on identified employment land, except where it meets a number of criteria. In relation to unallocated sites, such as the appeal site, the policy sets four criteria. The appellants accept that the site is currently used for employment generating uses. The proposal, therefore, does not comply with the first criterion of Policy EMP2 of the LP.
16. However, the appellants contend that there is no reasonable or viable prospect of the site delivering employment generating uses once the appellants' business has relocated. The appellants contend that business use of the site could not coexist with the existing dwelling under separate ownership, due to the need to provide a turning area for HGVs and this turning area is directly to the front of the existing house, on their driveway.
17. Furthermore, the submitted noise assessment has detailed the potential noise levels that would arise from the use of the existing access for HGV manoeuvring and the adverse effect that this would have on the living conditions of the occupants of the existing dwelling. These two assertions are also supported by the letter from Eales & Co Chartered Surveyors submitted by the appellants.

² APP/X1925/W/22/3290692

18. However, although it would not be reasonable for the appellants to have to sell their family home to allow for the continued use of the business premises, I cannot be certain that all feasible options for continued employment generating use have been considered on the site. The appeal before me proposes a new vehicle access for the existing dwelling and alterations to the existing access to serve the appeal site. Although this requires the removal of the office building, the storage building could be retained and re-used with separate access provided for the dwelling. This would allow for the continuation of the employment generating use and would remove the potential conflicts and noise issues identified above.
19. For the above reasons, I do not find the appellant's evidence that there is no reasonable or viable prospect of the site continuing to deliver an employment use compelling. The proposal would, therefore, also not comply with the second criteria of Policy EMP2 of the LP and would not comply with Policy EMP2 of the LP, as a whole by the harm that would result from the loss of the employment use.
20. Drawing these matters together I conclude that the proposal would not provide a suitable location for housing having regard to the development strategy for the area and the accessibility of services and facilities. In addition, it would result in the loss of an employment generating use to the detriment of the supply of employment premises. The proposal would, therefore, be contrary to Policies SP7, HQ1 and EMP2 of the LP which, taken together, seek to restrict development in the rural areas, require development to be well connected to surrounding areas, and seek to resist non-employment generating uses on identified employment land.
21. For the same reasons I also find that the proposal would not comply with the guidance within paragraphs 79 and 105 of the Framework which, taken together, promote sustainable development in rural areas which enhance or maintain the vitality of rural communities and focus on locations which are, or can be made, sustainable.

Character and appearance

22. Policy HQ1 of the LP seeks to ensure that developments are of the highest quality, respond positively to their context and enhance or reinforce the local area. The appeal site lies within a small group of houses and business premises surrounded by open fields. The wider area is rural and the buildings around the site are houses, agricultural buildings, and commercial buildings, predominately with pitched or hipped roofs. Overall, the character of the area is rural, and the appearance of the existing buildings contribute positively to the character.
23. The proposal includes the demolition of all of the existing business buildings on the site and, taking the appellants figures, although the total floorspace of the proposed dwelling would not exceed the total floorspace of the business buildings, the dwelling would have a far greater footprint than either the office building or storage building individually.
24. Moreover, the proposal is for a three-storey building with the lowest storey sunken into the ground. The sunken storey would mirror the adjacent dwelling; however, the proposal provides two storeys above ground, with multiple flat roof levels. The size, scale and massing of the proposed dwelling would be significantly greater than the either of the existing buildings on the site and

- would introduce substantial built development in the countryside, in a form that would be different to, and therefore would not respect, the buildings in the surrounding area.
25. Although the proposal would be orientated the same as the existing dwelling on the site, the materials, appearance, and massing of the proposal would not relate well to the existing dwelling or the other buildings within the locality. The proposal would, therefore, not respect the rural character or appearance of the area.
26. The supporting text of HQ1 advises that outstanding or innovative design will be supported provided it is sympathetic to local character and fits in with the form and layout of the area. Although the design would be contemporary, the details on the elevation plans are limited and it has not been adequately demonstrated that the development would result in a high-quality scheme. Moreover, in my judgement, the proposal would be neither outstanding nor innovative. The other flat roofed buildings, referred to by the appellants in Appendix 5 of their Statement, are some distance from the appeal site and not characteristic of the area where most buildings have pitched roofs. The design of the proposal would not be of a high-quality and would not be sympathetic to local rural character and appearance.
27. The site is currently screened from the access road and adjacent premises by mature conifer tree planting and the existing office building. However, the proposal would include the demolition of this building which would open up views of the proposed dwelling from the access point. The proposal may not be intrusive in the street scene, as it would be set-back from the road, and still be partially screened. However, this does not justify the scale, bulk, massing, or design. The harm which would result from the proposal would not be off-set by it not being visually intrusive in the street-scene.
28. For the above reasons I find that the proposal would adversely affect the character and appearance of the area contrary to Policy HQ1 of the LP which, amongst other matters, seeks high quality development which responds to its context, enhances or reinforces local distinctiveness, and in which the size, scale, massing, orientation, materials and appearance relate well to the local surroundings.
29. The proposal would also conflict with Section 12 of the Framework, specifically paragraphs 126 and 130, which seek to ensure that development is of high quality and visually attractive.

Living conditions of future occupiers

30. The appeal site is immediately adjacent to commercial and agricultural premises at Melita Farm and the Council's decision notice included a reason for refusal relating to the potential effect of commercial noise on the living conditions of the future occupiers of the property, which are protected through Policy HQ1 of the LP.
31. The appellants have submitted a Noise Assessment with the appeal, and I have accepted this as additional supporting information given that the Council has provided a detailed response to it in their appeal statement. The Noise Assessment shows that, on the basis of the current business operating at Melita Farm, the noise levels that would be experienced by the future occupiers

of the dwelling, both during the day and night-time, would be low. Therefore, the living conditions of the future occupiers would be acceptable, providing the operations at Melita Farm continued as present.

32. However, the Council has queried the adjustment and noise limits used and predict a higher noise level within the property. Furthermore, the operations at Melita Farm could change and, from the evidence before me, there are no restrictions on the hours of use or on the vehicle movements associated with the building adjacent to the appeal site.
33. Given these uncertainties I cannot be certain that the use of the adjacent commercial and agricultural business would not result in adverse living conditions for the future occupiers, with specific regard to noise. However, both main parties agree that a sound insulation scheme, which could be secured by an appropriately worded condition, would mitigate against this harm. I have no substantive evidence to disagree with the main parties on this matter.
34. Therefore, subject to an appropriate condition, the proposed development would not have an adverse effect on the living conditions of the future occupiers of the dwelling, with specific regard to noise, and would, in regard to this matter, comply with the requirements of Policy HQ1 of the LP which seeks to protect against unacceptable adverse effects on living conditions.
35. The proposal would also accord with the guidance at paragraphs 174 and 185 of the Framework in preventing new development from being adversely affected by noise pollution and mitigating and minimising noise and also comply with the general design guidance in regard to living conditions in section 12 of the Framework.

Other Matters

36. The appeal would provide one additional dwelling which would assist in the delivery of the Council's housing target and comply with the Framework aim to boost the supply of housing. The development would also have energy efficiencies and make provision for high-speed broadband. Moreover, the proposal would have associated social and economic benefits both during and post construction. However, given the small scale of the development these benefits carry limited weight.
37. The proposal would significantly reduce traffic generation in comparison with the employment use of the premises, not cause detrimental impact to highway safety and complies with the Council parking standards. The reduction in traffic would be a positive benefit arising from the proposal to which I attribute moderate weight.
38. That there is scope for additional planting and landscaping to enhance biodiversity, that the site is not of high environmental value or within Green Belt or any other local landscape designation, that the development would not impact bats, is within Flood Zone 1 and would not affect the living conditions of the occupiers of neighbouring properties are neutral factors and do not weigh in favour of the proposal.
39. The positive benefits to the appellants' company and private life from relocating the business are not public benefits and I have no compelling evidence before me to show that these benefits could not be achieved without the

redevelopment of the site to a dwelling. I, therefore, attach negligible weight to this matter.

Conclusion

40. For the reasons given above I have found that, the proposed development, subject to appropriate mitigation, would not have an unacceptable adverse effect on the living conditions of the future occupiers of the property. However, due to the location of the site, the loss of the employment use and the adverse effect on the character and appearance of the area the proposal is contrary to the development plan, as a whole, and the Framework. There are no other material considerations that would indicate that the proposal should be determined other than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

K Townend

INSPECTOR