



Appeal Decision

Site visit made on 26 January 2024

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 February 2024.

Appeal Ref: APP/P0240/W/23/3322042

Land adjacent to 228 Hitchin Road, Henlow SG16 6BA

- 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 Mr & Mrs Horner against the decision of Central Bedfordshire Council.
 - The application Ref CB/22/03346/FULL, dated 15 August 2022, was refused by notice dated 16 November 2022.
 - The development proposed is demolition of existing barn and erection of 3No private dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The 2022 Housing Delivery Test (HDT) results and the revised National Planning Policy Framework (2023) (the Framework) were published on 19 December 2023. I have given the Council and Appellant the opportunity to comment upon these and taken comments into account in determining this appeal. The references and numbering below reflects the revised Framework.

Main Issues

3. The main issues are:
 - the effect of the proposed development upon biodiversity;
 - the effect of the proposed development upon the character and appearance of the area;
 - the effect of the proposed development upon highway safety; and,
 - the accessibility of services and facilities by means other than private motor vehicle.

Reasons

Biodiversity

4. The appellant's Phase 1 Habitat Survey and Protected Species Assessment from July 2019 did not undertake a full data search of records within 2km of the site, but does explain the results of a habitat survey. The site is surrounded by some tree cover, agricultural and paddock land, and domestic gardens. The

- survey concluded the trees and buildings had a negligible potential for bat roosts, there was no suitable habitats for reptiles on site, no badger setts were present, there were no suitable aquatic habitats within 500m for Great Crested Newts, but there was a high potential for effects upon nesting birds. Its results remain valid for 12 months¹, but this has long since passed and from what I saw that there has been some change and succession in habitats on the site.
5. The appellant's survey explains that badgers are known to be present in the surrounding area, and scrub and compost heaps might afford suitable habitat for reptiles. Within the site are trees of varying maturity, a barn, log and brash piles, some degraded or composting wood chip piles, scrub, and extensive areas of ruderal vegetation. The trees will have matured over time and could have developed features with potential for roosting bats, and there may be potential for badger setts.
 6. Circular 06/2005 referred to in paragraph 185a) of the Framework, states that it is essential the presence or otherwise of protected species, and the extent that they may be affected is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances. However, protected species surveys should not be required unless there is a reasonable likelihood of them being present and affected by the development.
 7. No recent data records are before me, and there are habitats on site capable of supporting protected species that are not the subject of a recent survey. Suitable habitat would be disturbed or lost as a result of the development. In the absence of substantive up-to-date evidence to the contrary, it would appear there is a reasonable likelihood protected species could be present. The Council's adviser sought an updated preliminary ecological appraisal prior to determination, and none is submitted.
 8. Therefore, I cannot be certain there would not be significant and direct adverse effects upon protected species, that it would be possible to adequately mitigate any adverse effects, or, that any necessary duties under the Conservation of Habitats and Species Regulations 2017 (as amended) can be discharged. No exceptional circumstances are advanced for coverage by conditions, and future ecological enhancements do not mitigate or outweigh these concerns.
 9. For the reasons set out, I cannot be certain the proposed development would not result in significant harm to biodiversity. This would conflict with the aims of Policy EE3 of the Central Bedfordshire Local Plan (2021) (the CBLP) which requires up to date comprehensive ecological surveys for developments that would affect protected species. It would also conflict the aims of paragraph 186a) of the Framework which states that if significant harm to biodiversity resulting from a development cannot be avoided adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Character and appearance

10. The appeal site and its immediate surrounds are in the countryside outside designated settlement boundaries. Its character and appearance can be characterised as one that includes clusters of dwellings and other buildings of a

¹ Paragraph 3.3 of the Phase 1 Habitat Survey and Protected Species Assessment (2019) by Clive Herbert.

variety of age, scale, vernacular and layout, around and bisected by highways, within a rural, largely open and well-landscaped setting. Though it includes a modest building and former yard with some boundary enclosure, it includes trees and much of the site is now colonised by vegetation. It has a somewhat informal and verdant appearance, that overall makes a minor positive contribution to the character and appearance of the area.

11. The proposed development would result in a greater amount of relatively dense development by three new dwellings, associated hardstanding areas, parking, paraphernalia, subdivision and boundary treatments, thereby urbanising the site and eroding its contribution to the countryside. Therefore, there would be a negative effect upon openness and rural character. However, the site is partly contained and quite well defined by existing vegetation along parts of some boundaries and the single storey height, modest scale and design of the dwellings would limit their effect.
12. The depth of built development would be at odds with the pattern of, and extend development further into the site than the nearby terraced dwellings, so would have some negative effect in this regard. However, the site is also viewed in the wider context of other building clusters, which have varying arrangements and layouts. The proposed new buildings would not extend beyond the existing building rear of the site, would have much less depth than the buildings at Middlefield Close, and appear of a similar depth rear of the highway as two clusters either side of the Middlefield Lane junction.
13. In its wider visual context, as a matter of planning judgement, the proposal would not be viewed as being stridently out of keeping with the surrounding depth and pattern of development. Taken together with retaining some of the existing mature vegetation fronting Hitchin Road, some trees to the side and rear, neighbouring dwellings, the removal of the barn, and a high-quality landscape scheme secured by planning condition, the siting of the dwellings would not be unduly prominent and there would be a modest perception of and effect from increasing the extent of linear development.
14. Therefore, the effects of the development including upon the street scene, would be limited. However, some adverse effects would be visible from parts of the terraced properties to the southwest, Middlefield Close, and rural land to the north. There would be some more limited and filtered visibility from land to the northwest, west, from Hitchin Road, and some properties opposite.
15. For the reasons set out above the proposed development would be harmful to the character and appearance of the area. It would conflict with Policies SP7, HQ1 and EE5 of the CBLP, which amongst other things require development recognises and safeguards the intrinsic character and beauty of the countryside, and is complementary to, maintains and enhances the existing natural environment and landscape character. It would also conflict with paragraph 135c) of the Framework which expects development to be sympathetic to local character, including the surrounding built environment and landscape setting.

Highway safety

16. The appeal site is accessed via a wide kerbed cross-over on the outside of a bend on a 50mph speed limit highway, where the Council requires a visibility splay should be 2.4m x 160m. There is no dispute this is achievable to the

- south. From the north the Transport Statement (TS) survey measured the 85th percentile vehicle speed at 49.6mph, suggesting alone there would be little scope if any for reducing the required standard of the splay. I saw nothing that would suggest the measured traffic speeds and flows were inaccurate.
17. The splay achievable to the north on land within which I am told by the Council is part of the public highway or under the appellant's control, is approximately 2.4 x 117m, so it is significantly below the required standard to ensure safe driver to driver intervisibility. The appellant does not dispute that land through which some of the indicated splays are shown, is not highway land. The substantive data and evidence provided of vehicle speed, volume, the DRMB² and MfS³, does not demonstrate a significantly reduced splay is justified.
 18. The scale and nature of the site suggests existing vehicle movements could well be rather limited. The TS indicates vehicle movements for a fall-back use are less than are shown to result from this proposal⁴, with a reduction in an Ordinary Goods Vehicle movement. However, that position is based upon a storage use, which has the potential to have a different level and type of movements from the authorised use an agricultural workshop and store. The TS does not state the number of movements expected for an agricultural use.
 19. The appellant also advances there would be less more dangerous agricultural movements from the appeal proposal. However, details of the number and type of vehicles as experienced or typically expected from the lawful and recent use are not detailed. The limited evidence has not demonstrated a fall-back position or lawful use has resulted or would be likely to result, in a combination of vehicle types and/or volume, that has or would result in a similar or greater level of harm to highway safety than from the proposal. It does not justify a significant reduction in splay or demonstrate that a sufficiently safe splay can be achieved in land under the appellant's control and the public highway.
 20. Therefore, it is not demonstrated the proposed development would not harmfully affect highway safety. This would conflict with the aims of Policy T2 of the CBLP which requires that development must not have a detrimental effect on highway safety or patterns of movement, and has regard to the Council's standards. It would also conflict with the aims of paragraph 115 of the Framework which seeks to ensure development does not result in an unacceptable impact upon highway safety.

Accessibility

21. The Council's first reason for refusal alleges the location of the proposed development would result in a reliance upon the private car for access to services and facilities, specifically because of an unsafe crossing point to the existing footpath link to nearby settlements. It does not seek to argue the appeal site location is in principle unsustainable, or the width or construction of the pavement and route makes it such.
22. In practice the number of vehicle movements from the proposed development and using the access serving the neighbouring terrace is likely to be limited. Were they to wish to not use the grass verge and cross to the footway, pedestrians are likely to either utilise the hardsurfaced access or at least part

² Design Manual for Roads and Bridges;

³ Manual for Streets and Manual for Streets 2;

⁴ Tables 4-1 to 4-4 of the Transport Statement by SLR (August 2022).

of the grass verges to its side. Either way they would be significantly further forward than the 'X' distance used for vehicle splays, so pedestrian visibility would be likely to be greater than that of a private motor vehicle.

23. The evidence does not demonstrate visibility and traffic flows would prevent safe crossings by pedestrians of a sufficient fitness and mobility that intend to travel local services and facilities. Therefore, the case has not been made that the ability of pedestrians to cross the highway would, of itself, result in a reliance upon the private vehicles to access services and facilities.
24. For the reasons set out above, it is not demonstrated the access arrangements would prevent the accessibility of services and facilities by means other than the private motor vehicle. Therefore, the proposed development would not conflict with the aims of Policies SP7, HQ1 and T2 of the CBLP insofar as these seek that developments promote walking and cycling, healthy lifestyles, are connected by safe and attractive routes, and is accessible to nearby services and facilities. It would also not conflict with paragraphs 96 and 114 of the Framework, which have similar objectives.

Other Matters

25. The Council's delegated report states the site is located in an area at high risk of surface water flooding. The maps for surface water flooding in the appellant's Flood Risk Assessment indicate that part of the access and site that would be used for parking spaces would be within the extents for 1 in 30 and 1 in 100 surface water events⁵. As I am dismissing this appeal for other reasons, I have not considered this matter in detail.

Planning Balance

26. The proposed development would result in a moderate temporary economic benefit during construction and once complete there would be a modest on-going spend in the local economy, with support to local services and facilities. Though it is not a ceiling, the evidence suggests at 1 October 2023 the Council could identify a Housing Land Supply of the order of 5.52 years, and its latest HDT result was 144%. Noting matters such as government objectives to significantly boost housing supply, the contribution of small sites to housing delivery, meeting local needs, and issues with local affordability ratios, the contribution of these three dwellings would be a moderate benefit to supply.
27. The proposed development could result in a limited beneficial effect from further landscaping. There is some potential for a biodiversity net gain through the provision of features such as habitat boxes and planting. However, in the absence of an adequate understanding of the value of the current habitats and species using the site, it is uncertain whether there would be an overall benefit at all. Though as a benefit, I attribute this potential, limited weight in favour of the scheme. It is likely that subject to the implementation of a suitable drainage scheme as set out in the detailed suggested planning conditions, overall, there might be a moderate benefit in respect of drainage.
28. Were I to agree the proposed development is considered, or subject to the imposition of suitably worded conditions could be made compliant with policies in respect of matters, such as the living conditions of future and neighbouring occupiers, parking provision, arboricultural matters, refuse storage and

⁵ Appendix 4 of the Flood Risk Assessment and SuDS Strategy by MTC Engineering (2022).

collection, contamination and flood risk, these would be neutral matters in the balance. Compliance with policies in respect of the accessibility of services and facilities is also a neutral matter. Overall, the policy compliance and benefits of the proposed development attract moderate weight in favour of the scheme.

29. However, the proposed development would be harmful to the character and appearance of the area. The level of harm is one that attracts limited weight against the scheme. It has not been demonstrated the development would not result harmful effects to protected species, and would not result in conditions harmful to highway safety. The nature of each of these policy conflicts and potential for harm are such that they attract significant weight against the scheme. Overall, the policy conflicts and harm from the proposed development are such that these significantly outweigh its matters of policy compliance and benefits. Therefore, the appeal should not succeed.

Conclusion

30. The proposed development conflicts with the development plan taken as a whole. There are no material considerations, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR