



Appeal Decision

Site visit made on 25 April 2024

by **C Shearing BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7th June 2024

Appeal Ref: APP/K0235/W/23/3335912

Land off Manor Way, Cotton End, Bedford MK45 3AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Tilston of JRT Architectural Design Limited against Bedford Borough Council.
 - The application Ref is 23/01600/OUT.
 - The development proposed is erection of 9 self-build houses.
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Decision

1. The appeal is allowed and outline planning permission is granted for erection of 9 self-build houses at Land off Manor Way, Cotton End, Bedford MK45 3AH in accordance with the terms of the application Ref 23/01600/OUT, subject to the conditions set out in the schedule below.

Application for Costs

2. An application for costs was made by Mr Tilston of JRT Architectural Design Limited against Bedford Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The proposal seeks outline permission, with all matters reserved except for access. I have considered the appeal on this basis and have treated any plans in relation to matters of appearance, layout, scale and landscaping as illustrative.
4. The appeal is accompanied by a Unilateral Undertaking dated 21 May 2024 (the UU). This relates to matters including affordable housing, open space and forestry contributions, and public footpath upgrades. This has been taken into account in the determination of the appeal.
5. The Council refer to the emerging Local Plan 2040 which is undergoing examination. The Council have not relied on the policies of that emerging plan in its case and neither have I been provided with details of any relevant policies, details of when they may be adopted or what form they may take post-examination. As such I have not considered these matters further and the appeal is determined having regard to the current development plan.

Main Issues

6. Having considered the Council's appeal statement, and the reasons that it would have refused planning permission, the main issues are whether the

proposal would make appropriate contributions to i) affordable housing, and; ii) outdoor space and play space.

Reasons

Affordable Housing

7. The proposal would provide entirely self-build houses, for people who wish to build or commission their own homes, as set out in the description of development. The National Planning Policy Framework (the Framework) sets out that self and custom-build properties could provide market or affordable housing.
8. The Council's Strategic Housing Market Assessment Update and addendum 2018 established the need for housing in Bedford for the plan period, including a need for 4,188 affordable homes. Policy 58S of the Bedford Borough Council Local Plan 2030 (the LP) sets out the Council's policy in respect of affordable housing. The UU includes a provision for 30% of the plots to be provided as affordable housing, with a mix to be agreed with the Council, which adheres to the policy requirement.
9. However, the UU sets a period within which, if a Registered Provider cannot be found to the Council's satisfaction, a contribution towards off-site provision shall instead be made in the form of a commuted sum. Policy 58S sets out that other than in exceptional circumstances, affordable housing provision should be made on site rather than through the payment of commuted sums in lieu of provision.
10. The appellant has detailed the difficulties which would be encountered should some of those proposed homes be affordable, including disconnect in their delivery and the practicalities of Registered Providers taking on a small number of homes. The appellant has attempted to establish examples of where this has been achieved elsewhere and approached Registered Providers to establish whether there would likely be an uptake for affordable units in the development. There is not substantive evidence with the appeal which would lead me to doubt the appellant's assertions or findings, and I have no reason to reach a different view. As such, the sequential approach in the UU would be appropriate and compliant with the Policy.
11. The contribution of £530,090 has been calculated in accordance with the formula set out in an appendix to the LP. That figure is agreed between the main parties and it would be fairly and reasonably related in scale and kind to the development and would meet the statutory tests for a planning obligation.
12. In conclusion on this main issue, the proposal would deliver an appropriate contribution towards affordable housing, which would comply with Policy 58S of the LP.

Open Space and Play Space

13. Policy AD28 of the Bedford Borough Council Allocations and Designations Local Plan 2013 (the ADLP) sets out that where new housing development is of a type likely to create a demand, the Council will require provision of open space and built facilities in accordance with the standards it sets out. The Council's Open Space Supplementary Planning Document (SPD) 2013 also explains the context for Policy AD28 and how it will be applied. That document draws on an

associated evidence base including the Open Space, Sport and Recreation Study, which informed the approach taken. There is little evidence before me regarding the proximity or quality of open space or play space close to the appeal site. However, the proposal would introduce additional permanent residents to the area and would be of a type likely to create demand as described by the Policy, and such a contribution would be necessary to make the development acceptable in planning terms and would be directly related to the development.

14. Policy AD28 accepts that a financial contribution could be accepted if on-site provision is not possible. The main parties do not dispute that a financial contribution would be more appropriate than an on-site provision here. Considering the size of the site and the quantum of development, and as details of site layout are not before me, I have no strong reason to reach a different view.
15. The size of the houses has not been established at this stage and would fall to be considered at the reserved matters stage. As such it cannot be established with certainty how much demand for play space would be created by future occupiers of the development. For this reason the UU would secure financial contributions which would be calculated for each plot and according to the number of bedrooms in accordance with the Council's Open Space SPD. Those contributions would be due prior to the first occupation of each new dwelling. In these circumstances I consider that this obligation would be fairly and reasonably related to the development proposed, and that it passes the statutory tests.
16. The proposal would make an appropriate contribution towards open space and play space, and would accord with Policy AD28 of the ADLP and the Council's Open Space SPD.

Other Matters

Planning Obligation

17. The UU includes other commitments which could come into effect if planning permission were to be granted. Similarly, I have considered these in light of the statutory tests contained in Regulation 122 of the CIL Regulations. They relate to the following matters:
18. Self-build and custom housebuilding: Given the description of development, the identified need for this type of housing, and the weight which has been attributed to this aspect of the proposal, the obligations would meet the statutory tests.
19. Public Right of way upgrade scheme: The obligation would provide upgrades to the public footpath which exists beyond the northern site boundary. I do not have information to suggest why this would be necessary to make the proposed development acceptable. Neither can it be established with certainty that the works it could entail would be fairly or reasonably related in scale and kind to the development. As such, and together with the Council's concerns relating to the deliverability of those works, I am unable to conclude that this obligation would pass the relevant tests.
20. Forest of Marston Vale Contribution: The obligation would require the submission of Canopy Target Information to agree the extent of a contribution,

if required. Policy 36S of the LP requires proposals within this area to deliver 30% tree cover across the development site. The 'Developing in the Forest of Marston Vale: Design Guidance SPD' explains that in housing developments this may also include consideration of alternative site provision and/or S106 contributions to meet the target elsewhere in the Forest area, and a reasonable formula has been set out by the Forest Development Manager. This obligation is not in dispute between the main parties and it would meet the necessary tests.

Further Matters

21. The Grade II listed building of Bell Cottage exists to the north east of the site. I have had regard to the comments of the Council's Conservation Officer and, given the presence of 20th century development which has already negatively impacted its setting, together with the physical distance of separation and intervening structures, the proposal would not form a part of the setting of that designated heritage asset.
22. The Council have identified that the proposal would conflict with its spatial strategy for new development due to its location outside the Settlement Policy Area, and that it would consequently conflict with certain policies of the development plan. It has, nonetheless, carried out a balancing exercise whereby it was considered that the conflict with the spatial strategy was outweighed by other considerations including the shortfall of self build plots in the Borough as well as the particular circumstances of the site's location, being well related to the existing settlement and with acceptable accessibility to services and facilities, including public transport.
23. The findings of the Cotton End Neighbourhood Plan have been referred to by third parties, which included housing need surveys undertaken in 2020. I do not have details of the status of that Neighbourhood Plan nor how far away it is from adoption. In any event, I do not have details of those surveys and it cannot be established with certainty how the demand for self build was considered at that time. As such I can give these findings only very limited weight and I have no strong reason to reach a different view to the Council in terms of the weight to be given to the delivery of self-build housing. While there is dispute between the main parties regarding the extent of the shortfall in self-build permissions, this is not something I have considered further since it would not change the outcome of the appeal.
24. The Council's Officer report identifies a number of other concerns, including the loss of the plane tree near the access, and the potential for a site layout which conflicts with the established pattern of development in the area. However, it makes suggestions as to how these harms could be reduced or mitigated by conditions, which are discussed in turn below. It is also relevant that the proposal at this stage is in outline and that matters relating to appearance, layout, scale and landscaping would be subject to consideration at a later date.
25. I have had regard to the objections received from interested parties which include the Parish Council, that express a wide range of concerns including, but not limited to: flood risk and surface water issues on the site and in the surrounding area, increased traffic using Manor Way and potential for increased highway and pedestrian hazards including during the construction process, the capacity of local drains and sewers, and of local services including educational facilities and doctors, and harm to trees and biodiversity on the site including

protected species. These matters were considered where relevant by the Council in its Officer Report, and this was informed by technical consultee responses including a Highways Officer, Arboricultural Officer and The Wildlife Trust, among others. While I can understand the concerns of the interested parties, there is no compelling evidence before me which would lead me to come to a different conclusion to the Council on these matters.

26. There will inevitably be effects on the outlook from those properties and gardens which currently enjoy views across the appeal site. However, this would not cause unacceptable harm to the living conditions of those properties. The closed nature of Manor Way would also be subject to change by additional vehicles passing through to the development. However, similarly this change would not result in unacceptable harm to its character, given the number of houses proposed. Some disturbance may occur during the construction process, however this would be temporary and could be controlled where possible by conditions as well as other legislation outside the planning system. A report has been provided relating to drainage at the site of the primary school in 2017, which suggested conditions which should be imposed in that case. However, given the passage of time and distance from the site, and in the absence of evidence to the contrary, I cannot be satisfied that the ground conditions are the same.
27. Reference is made to other development proposals which have been refused outside the Settlement Policy Area. I do not have full details of those proposals or the Council's assessment of them. As such I cannot be satisfied that their circumstances are the same as the appeal scheme before me. There is also evidence of earlier proposals relating to this site, however, their consideration would appear to pre-date the current development plan. There are concerns that more properties would be built on the site over time. However, I am required to assess the proposal before me, which describes nine houses.
28. Representations have been made to the effect that the rights of some nearby occupants, under Article 8 as set out in the Human Rights Act 1998, would be violated if the appeal were allowed. However, it has been found that the proposal would not result in unacceptable harm to the living conditions of those occupants. The proposal would not conflict with the development plan in this respect and I am satisfied that a grant of outline planning permission would not unacceptably interfere with those resident's right to a private and family life and home. It is proportionate in the circumstances to allow the appeal.

Conditions

29. The Council has provided a list of suggested conditions that it considers would be appropriate. I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
30. A condition is necessary to secure matters of appearance, layout, scale and landscaping with the standard conditions specifying when the reserved matters applications must be submitted and when the development must be commenced by. In the absence of details of why it is necessary for all plots to be commenced within the same period, the commencement condition relates to the development as a whole. A condition listing the approved drawings in relation to access is also necessary to provide clarity and a condition required

to secure details of phasing. In order not to compromise any future consideration of layout, I have not conditioned the appellant's phasing plan.

31. To ensure appropriate treatment of archaeological remains and protection of retained trees, a mitigation strategy and protection details are required. For reasons of amenity and highway safety, a Construction Management Plan and controls on construction hours are necessary and, for environmental reasons, provisions for surface water drainage, landscape management and ecological mitigation are required. A Design Code should also be provided, which establishes principles for the development plots. These matters are necessary prior to commencement of development as a later trigger for their submission or implementation would limit their effectiveness or the scope of the measures which could be used.
32. To ensure appropriate provision of access, parking and cycle facilities, a condition is necessary to ensure these facilities are provided and maintained thereafter and, to ensure infrastructure for good living conditions, appropriate provisions for broadband connections are also required. For visual reasons, information on final ground levels and external lighting are necessary, and to comply with the development plan requirement water efficiency should be conditioned.
33. I do not find it necessary to condition details of, for example, pedestrian, vehicular and cycle access, visibility, turning points, building materials, landscaping and boundary details, since the Council will assess the adequacy and acceptability of the proposal in those respects at the reserved matters stage. Consideration of building heights would also be subject to later consideration as part of the reserved matters of scale and appearance and as part of the Design Code, and it is not necessary to impose a strict restriction here. Matters relating to the provision of fire hydrants would fall under Building Regulations and there is not evidence as to why they would need to be secured as part of this planning permission. In light of the character of the area, I see no strong reason for permitted development rights to be removed relating to boundary treatments. As the field access to the north of the site is not shown as an access to the site it is not necessary to prevent access here by a condition. Given the contribution to the Forest of Marston Vale Canopy is a matter covered by the UU, and as details of landscaping would be considered at a later date, it would not be precise or reasonable to condition replacement of any relevant trees at this stage, given it is unclear what that may entail.

Conclusion

1. For the above reasons, having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, the appeal is allowed.

C Shearing

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters" shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) An application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans only insofar as they relate to site access: HD/2023-01/02A and 230319-RAP-XX-XX-DR-TP-3200 Rev.P04.
- 5) Prior to commencement of development, a phasing plan for the delivery of plots within the development shall be submitted to, and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing plan.
- 6) A Design Code for the development shall be submitted to, and approved in writing by the Local Planning Authority, not later than the submission of the first reserved matters application. The details to be submitted in the reserved matters applications shall be in accordance with the principles established in the approved Design Code.
- 7) No development on any phase shall take place until a Construction Management Plan for that phase of the development has been submitted to and approved in writing by the Local Planning Authority. This shall include details of the following aspects of the stages of the construction process:
 - (a) location of parking for vehicles;
 - (b) location of loading and unloading of plant and materials
 - (c) the erection and maintenance of any hoarding or scaffolding which may affect the highway;
 - (d) wheel washing facilities;
 - (e) measures to control the deposition of dirt and mud on the surrounding roads during construction;
 - (f) footway or road closures needed during the construction process;
 - (g) traffic management needed;
 - (h) times, routes and means of access and egress for construction traffic and delivery vehicles.The development shall be carried out in accordance with the approved details.
- 8) Any construction work associated with the development shall be limited to: 08:00 and 18:00hrs Monday to Friday, and 09:00 and 13:00hrs on Saturday. There shall be no working on Sundays and Bank Holidays and no deliveries outside these hours.

- 9) No development shall take place until details of a surface water drainage scheme for the site has been submitted to, and approved in writing by the Local Planning Authority. The scheme shall be implemented and maintained in accordance with the approved details.
- 10) No development shall take place until an archaeological strategy for evaluation and if necessary, further mitigation strategy based on the outcome of the evaluation, have been submitted to and approved in writing by the Local Planning Authority. This strategy shall include a timetable and the following components:
 - (i) fieldwork and/or preservation in situ of archaeological remains;
 - (ii) a post-excavation assessment report, to be submitted within six months of the completion of fieldwork;
 - (iii) a post-excavation analysis report, preparation of a site archive ready for deposition at a store approved by the Local Planning Authority, completion of an archive report, and submission of a publication report to be completed within two years of completion of fieldwork.

The archaeological mitigation strategy shall be carried out in accordance with the approved details and timings.
- 11) No development shall take place until an Arboricultural Method Statement and Tree Protection Plan has been submitted to and approved in writing by the Local Planning Authority, relating to the site in its entirety. The submitted details shall show accordance with BS5837 2012 (Trees in Relation to Design, Demolition and Construction- Recommendations) and shall include a timetable for the implementation and maintenance of the protection measures relevant to the phasing of the development. The development shall be carried out in accordance with the approved details and timescales.
- 12) Details to be submitted at reserved matters stage shall include a Landscape Environmental Management Plan for the site in its entirety. This shall include a detailed scheme and timetables for delivering biodiversity net gain and ecological enhancement on the site including future management, based on the recommendations contained in the Biodiversity Net Gain Report by Elite Ecology dated June 2023. The development shall be carried out in accordance with the approved details and timescales.
- 13) Details submitted at reserved matters stage shall include avoidance and mitigation measures for biodiversity as set out in Section 5 of the Preliminary Ecological Appraisal by Elite Ecology dated June 2023, including submission of a herptile method statement, updated survey and precautionary measures for badgers during construction. The development shall be carried out in accordance with the approved details.
- 14) The submission of reserved matters for appearance shall include detailed drawings showing the existing ground levels and the proposed ground and finished floor levels. The development shall be carried out in accordance with the approved plans.
- 15) Prior to the first occupation of each new dwelling, that dwelling shall achieve and maintain the higher water efficiency standards in the Building Regulations as set out in Approved Document G: Sanitation, hot

water safety and water efficiency, 2015 (or similar replacement standard).

- 16) Prior to the first occupation of each new dwelling, all roads and footways which provide access to that building shall be completed and cycle and vehicular parking facilities for that dwelling shall be installed in full and shall remain available for this purpose at all times.
- 17) No external lighting shall be installed to the site unless details have first been submitted to and approved in writing by the Local Planning Authority. Any external lighting shall be installed only in accordance with those details.
- 18) Within 3 months of the first occupation of each new dwelling, that dwelling shall be served with appropriate infrastructure to enable high speed and reliable broadband connection.

End of Schedule