The Planning Inspectorate

Appeal Decision

Site visit made on 22 February 2023

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 April 2023

Appeal Ref: APP/K2230/W/22/3297257
Greenacres Farm, Brimstone Hill, Meopham, Gravesend DA13 0BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mrs Joann Hill against the decision of Gravesham Borough Council.
- The application Ref 20211077, dated 25 August 2021, was refused by notice dated 10 November 2021.
- The application sought planning permission for erection of a single storey front extension and change of use from holiday let to annex without complying with a condition attached to planning permission Ref 20151137, dated 12 July 2016.
- The condition in dispute is No. 4 which states that: *The annex herby permitted shall at all times be used for accommodation ancillary to the existing dwelling at Greenacres Farm, Brimstone Hill, Meopham and it shall not at any time be sold, parted, let or exchanged as a separate dwelling.*
- The reason given for the condition is: *To protect the amenity of the area, prevent over intensification of the site and to protect the openness of the Green Belt in accordance with Policy CS02, Policy CS12, Policy CS19 of the Gravesham Local Plan: Core Strategy (September 2014).*

Decision

1. The appeal is allowed and planning permission is granted for erection of a single storey front extension and change of use from holiday let to annex at Greenacres Farm, Brimstone Hill, Meopham, Gravesend DA13 0BN without compliance with condition number 4 previously imposed on planning permission Ref 20151137, dated 12 July 2016, but subject to the following conditions:

    1) The development hereby permitted shall be carried out in accordance with the following plans approved under planning application reference 20151137: Nos PL-1601 Locality Plan; PL-1601/OS/A Site Plan; PL-1601/01/A Existing Plans and Elevations; PL-1601/02/A Proposed Plans and Elevations.

    2) All external facing materials used in the development hereby permitted shall match those of the existing dwelling.

    3) Vehicular and pedestrian access to the building hereby permitted shall at all times be from the existing vehicular and pedestrian access to Greenacres Farm, Brimstone Hill, Meopham.

    4) No external lighting shall be erected or placed within the rear garden area or on the building hereby permitted without the prior written permission of the Local Planning Authority having first been obtained.

Preliminary Matters

2. It has been clarified during the appeal that the appeal site is not within 6kms of the Thames Estuary and Marshes Special Protection Area (SPA) and Ramsar site. The Council has confirmed that refusal ground number 4 of the planning application subject to this appeal[1] was added in error and should be disregarded. I have determined the appeal on this basis.

Background and Main Issues

3. Planning permission[2] for the erection of a single storey front extension and change of use from a holiday let to an annex included a condition (condition 4) that required the annex to, at all times, be used for accommodation ancillary to the host dwelling known as Greenacres Farm, and to not permit the annex to be sold, parted, let or exchanged as a separate dwelling.

4. The removal of condition 4 would allow the occupation of the existing annex in an uncontrolled way under Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) by virtue of section 55(2)(f) of the Town and Country Planning Act 1990. I therefore need to determine whether the potential use of the annex as an independent Class C3 dwellinghouse (hereon referred to as the proposal) would be contrary to the development plan.

5. Although not specifically referred to as a reason for refusal, the Council in their Officer's Report refer to an independent dwelling in this location being an isolated home in the countryside and consider future residents of the proposed dwelling would be likely to rely on private car(s) to reach essential services and facilities.

6. Therefore, the main issues are:

- whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies, including the effect on the openness of the Green Belt.
- whether the location is suitable for the proposal having particular regard to the aims of the Framework and the accessibility of services and facilities;
- whether the proposal would provide satisfactory living conditions for future occupants having particular regard to the amount of external garden space;
- the effect the proposal would have on:
    - the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty and Harvel Wooded Downs Landscape Character Area; and
    - highway safety; and

  if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

[1] Planning Application Reference: 20211077
[2] Planning Application Reference: 20151137

Whether inappropriate development, including effect on openness

7. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

8. Policy CS02 of the Gravesham Local Plan Core Strategy (2014) (Core Strategy) complies with this approach by supporting development in rural areas, outside of rural settlements inset from the Green Belt, where it is compatible with national policies for protecting the Green Belt and policies in the plan.

9. Paragraph 150 of the Framework sets out that the re-use of buildings, which are of permanent and substantial construction, is not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.

10. The proposal would re-use the annex building which is of permanent and substantial construction. It would therefore not be inappropriate development provided it would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it.

11. The annex has three bedrooms and is currently occupied by a family member of the applicant, their partner, and their children. There is no substantive evidence before me that using the annex as an independent dwelling would result in the intensification of this use. Even if it was to change ownership, the amount of accommodation would not increase and, given the modest size of the existing accommodation and that it is currently occupied by a family, it would be unlikely that a more intensive use of the accommodation would occur.

12. I saw on my visit that some external space to the south-west of the annex provides a garden for the occupants of the annex. This space relates well to the annex and is already separated from the host dwelling and its rear and front gardens by the shared access drive and boundary hedging associated with the host dwelling. No additional physical subdivision of the plot from the host dwelling has been proposed.

13. The garden contains residential paraphernalia associated with the occupants of the annex, such as an outdoor table and chairs, flowerpots, a barbeque, swimming pool and children's toys. Taking this into account, in this case, it is not clear why the proposal would lead to additional residential paraphernalia above what is already present or could be provided on the site in its current use as an annex.

14. Accordingly, for the reasons above, the proposal would be unlikely to result in an intensification of the residential use of the site or an increase in residential paraphernalia to a degree that would adversely impact on the openness of the Green Belt either spatially or visually. Thus, it would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it. Given this, it would not constitute inappropriate development in the Green Belt and would comply with Policy CS02 of the Core Strategy and the aims of the Framework in this regard.

Suitability of Location

15. The appeal site is located at the top of Brimstone Hill, a short distance from houses forming ribbon development that extends from Wrotham Road, the main road running through Meopham, along Foxendown Lane. There are a range of services and facilities within walking and cycling distance further north on Meopham Road. There is also bus stops on Meopham Road providing services to Rochester and Sevenoaks, as well as the services and facilities in Meopham and Meopham Station.

16. Brimstone Hill and Foxendown Lane are narrow country lanes with no formal pavements or lighting. However, both the frequency and speed of vehicles are low, and I saw on my visit that the route was being used by both pedestrians and cyclists. While the route may not be attractive in bad weather or after dark, it nevertheless is not unpleasant and provides access to the bus stops on Meopham Road and local services and facilities further north.

17. Opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Therefore, although the occupants of the proposed dwellings would undoubtedly make use of the private car to access facilities needed on a day-to-day basis, there are opportunities for the use of sustainable means of transport. For these reasons I find that there would be a reasonable degree of accessibility from the site to services and facilities by means other than the car. Moreover, the proposal would support these services and enhance vitality of the rural community in line with paragraph 79 of the Framework.

18. While the area surrounding the appeal site is rural in character, there are other properties along Brimstone Hill, some very close to the appeal site. Also, the resulting independent dwelling would be adjacent to the host dwelling. Given this, and my conclusions above regarding accessibility, the proposal would not result in an isolated home in the countryside with regards to paragraph 80 of the Framework.

19. For the reasons above, future occupants of the proposal would not be reliant on private car(s) to reach services and facilities and the proposal would not result in an isolated home in the countryside. The proposal would accord with the aims of paragraph 79 of the Framework and the circumstances set out at Paragraph 80 would not be relevant in this case. Moreover, the Council does not refer to conflict with any specific development plan policies in this regard.

Landscape and Scenic Beauty

20. While the annex building and its associated external space are set well back from the public highway, the rear of the site is open and there is a large degree of intervisibility between it and the Kent Downs Area of Outstanding Natural Beauty (AONB) and Harvel Wooded Downs Landscape Character Area (LCA).

21. Nonetheless, as concluded above, no additional physical subdivision of the plot has been proposed and it is unlikely that a more intensive use of the accommodation would occur. Also, there is already a range of residential paraphernalia associated with the annex within the surrounding external space. For these reasons, the proposal would have a very limited effect on the character and appearance of the appeal site and thus a very limited effect on the special landscape characteristics and qualities of the surrounding

landscape, AONB and LCA. Furthermore, there are houses close to the appeal site that are located behind other properties away from the highway, therefore the proposal would be in keeping with the existing pattern of development.

22. Notwithstanding this, given the slope of the land, the annex building and its associated external space have a much larger degree of intervisibility with the surrounding landscape than the host dwelling. I therefore appreciate the Council's concern regarding the effect of any further permanent extensions, curtilage buildings and fencing resulting from permitted development rights. However, while it may be that an additional separate dwelling on the site would increase the likelihood of further permitted development rights being implemented, there is nothing before me to suggest that the host dwelling does not already benefit from these rights.

23. In any case, the current cluster of buildings integrate well into their landscape setting and, given the Town and Country Planning (General Permitted Development Order) (England) Order 2015 (GDPO) limits the size of permitted development within the AONB, any further permitted development would be modest and would appear as part of the existing cluster.

24. Accordingly, the proposal would conserve the landscape and scenic beauty of the AONB and LCA. I recognise that it would not fully accord with Policy CS12 of the Core Strategy and the aims of the Framework, which seek to also enhance these valued landscapes. However, the proposal would not result in any harm to the AONB or LCA and therefore would not conflict with the fundamental aims of the development plan or Framework. Given it relates to the removal of a condition and would not involve any tangible changes to the built form, the opportunity for enhancement is limited and its absence would not be a reason to dismiss this appeal. The proposal would accord with the aims of the Framework that seeks to ensure development are sympathetic to local character including the landscape setting and that the quality of the approved development is not diminished between permission and completion.

Living conditions

25. The external space currently being utilised by the occupants of the annex as a garden is relatively large. Whether or not it would meet the minimum garden area of 60m^2 required for a three-bedroom houses by the Council's Residential Layout Guidelines Supplementary Planning Guidance 2 (February 1996, amended June 2020), there is sufficient space for sitting out and dining, clothes drying, playing, and swimming, as well as storage, if needed. It is separate from the large front and rear gardens that serve the host dwelling and there is very limited intervisibility between the garden spaces due to the topography of the site and the position of the existing buildings that largely screen it. For these reasons, the proposal provides adequate external garden space and would not result in a poor living environment for future occupants. It would accord with Policy CS19 of the Core Strategy, which seeks, amongst other things, for new development to provide appropriate levels of private amenity space. It would also accord with the aims of the Framework to create places with a high standard of amenity for future users.

Highway Safety

26. There is currently a shared driveway that provides access to the host dwelling as well as the existing annex, and there is no substantive evidence before me

that this would not continue to provide adequate access to a separate dwelling. I recognise that the Council has concerns regarding an intensification in the residential use of the annex if it were to be used as a separate dwelling. However, given my conclusions above regarding this, any impact on the highway as a result of the proposal would be negligible and unlikely to result in the intensification of use of the existing access.

27. The exact number and location of parking spaces that would be available to each dwelling has not been explicitly demonstrated. Nevertheless, there is sufficient space on site to provide two dedicated parking spaces for the proposal that would be separate from the existing parking area that serves the host dwelling, as well as a communal visitor space. There is also enough room for cars to manoeuvre so that they can exit the site in a forward gear.

28. Moreover, paragraph 111 of the Framework is clear that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

29. Accordingly, for the reasons above, the proposal would not compromise highway safety. It would accord with saved policies T1 and T5 of the Gravesham Local Plan First Review (1994) and Policy CS11 of the Gravesham Core Strategy. These seek to protect highway safety by, amongst other things, ensuring new development is adequately served by the highway network, accesses are an acceptable standard and sufficient parking is provided.

Other Matters

30. The Council have brought to my attention that there is a Deed of Modification attached to planning permission, Ref 20151137, which covenants the owners not to sell, part with, let or exchange part or whole of the outbuilding as a separate dwelling from the main dwelling. This deed modified a previous obligation attached to planning permission, Ref GR/02/0084, not to use the building for any other purpose than for short term lettings as a holiday cottage. If the appeal was to be allowed and planning permission granted without the disputed condition, it would be necessary to further modify the planning obligation.

31. However, whether or not the existing planning obligation subject to the Deed of Modification would restrict any permission I grant as part of the appeal, my decision is confined to the planning merits, and this is for the parties to resolve outside of the appeal process.

32. While I note the Councils concerns regarding access to the utilities that serve the annex, this would also be for the relevant parties to resolve outside the appeal process.

33. Third parties have also referred to a possible increase in the value of the appellant's property as a result of the proposal. Whether or not this would be the case, this is a purely private interest and not a consideration that I have given any weight to.

Conditions

34. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions

imposed on earlier permissions that continue to have effect. I have therefore imposed all those that the Council have suggested remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

35. In addition to the conditions imposed on the earlier permission[3], the Council have also suggested that a condition is added to remove permitted development rights relating to gates, fences and other means of enclosure. However, taking into account paragraph 54 of the Framework and given that I have found that the proposal would conserve the landscape and scenic beauty of the AONB and LCA, there is no clear justification to do so. This condition is therefore neither necessary nor reasonable.

Conclusion

36. For the reasons above, considering the development plan as a whole and all relevant material considerations, I conclude that the appeal should be allowed. I therefore grant a new planning permission without the disputed condition but retaining those non-disputed conditions from the previous permission[3] that appear to still be relevant.

Hannah Guest

INSPECTOR

[3] Planning Application Reference: 20151137

The Planning Inspectorate

Appeal Decision

Site visit made on 27 June 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Appeal Ref: APP/H1840/W/21/3276064
Land to the north side of The Nook, Tyrells Lane, Lower Bentley, Bromsgrove B60 4HX

- 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 Charles Bratton against the decision of Wychavon District Council.
- The application Ref 20/02716/FUL, dated 2 December 2020, was refused by notice dated 1 April 2021.
- The development proposed is the residential conversion of former agricultural building.
- *This decision supersedes that issued on 20 June 2022. That decision on the appeal was quashed by order of the High Court.*

Decision

1. The appeal is allowed and planning permission is granted for residential conversion of a former agricultural building at land to the north side of The Nook, Tyrells Lane, Lower Bentley, Bromsgrove B60 4HX, in accordance with the application, Ref 20/02716/FUL, dated 2 December 2020 subject to the conditions set out in the schedule to this Decision.

Preliminary Matters

2. This decision supersedes that issued on 20 June 2022. That decision on the appeal was quashed by order of the High Court. My role now is to redetermine the case afresh in light of any material change in circumstances, but not to review the previous appeal decision.

3. The main parties have had the opportunity to present representations on the case following the quashing of the previous appeal decision and I have taken these submissions into account. I have also considered any relevant evidence previously submitted unless it is expressly superseded by its originator during the redetermination process.

Main Issues

4. The main issues are:

   - Whether the appeal site is an appropriate location for residential development with regard to local and national planning policies;
   - The effect of the proposed development upon the character and appearance of the area; and
   - Whether an affordable housing contribution is required to make the proposal acceptable in planning terms.

Reasons

Appropriate location

5. The appeal site is formed of an agricultural building located within a gated field accessed off Hill Lane. The building has a double height central section with subservient wings either side. The central section has a steel frame sitting on a concrete base with a corrugated sheet roof.

6. The appeal site is located in open countryside as defined by Policy SWDP 2 of the South Worcestershire Development Plan (2016) (SWDP) which outlines the development strategy for new development in the area. Part C of the policy states that permission for development in the countryside, beyond any development boundary will only be granted in certain circumstances.

7. The site is some distance from local services in nearby settlements. The surrounding roads are devoid of footpaths and street lighting and there are no cycle routes linking the site. Walking and cycling to and from the site to local services would be difficult and would be especially so for the young, the elderly and those with mobility issues. This would be particularly so during the hours of darkness and inclement weather.

8. In these circumstances the use of a private motor vehicle is the only practical means for residents to access the services they require. This combination of factors demonstrates that the appeal site is not in a location where a new dwelling would normally be considered acceptable.

9. The proposed development would be isolated within open countryside with poor access to services and facilities. It would, therefore, not be an appropriate location for new housing contrary to SWDP Policy 2. It would also be contrary to SWDP Policy 4 which, amongst other things, requires proposals to offer genuinely sustainable travel choices.

10. The National Planning Policy Framework (the Framework), which is a material consideration, at paragraph 80, seeks to avoid the development of isolated homes in the countryside except in certain circumstances. One such exception is where the development would re-use redundant or disused buildings and enhance its immediate setting.

11. Both main parties consider that the appeal site is isolated located within open countryside. Based on the evidence before me I can only come to the same conclusion. The Framework does not set out a definition of 'redundant' or 'disused'. Therefore, I consider it sensible to consider the words in their plain meaning. In this context redundant should be taken to mean 'no longer needed or useful' and disused – 'no longer being used'.

12. Despite the Council's comments, based on the evidence before me including my observations at the site visit the building is no longer being used for any purpose and lays vacant. It is therefore disused.

13. The Council contend that the building could be marketed to others. However, I have not been directed to any local planning policies that require a marketing exercise to be undertaken to demonstrate that the building is no longer required for its original intended use or another one. Nor does the Framework include such a criterion. As such, I give this aspect of the Council's argument negligible weight in coming to my decision.

14. Taking the above into account and the evidence before me, in my judgement, the site is therefore isolated and the building redundant or disused in the context of paragraph 80 of the Framework. I now turn to whether the proposal would lead to an enhancement of the site.

Character and appearance

15. The barn is of a relatively modern construction and has a utilitarian appearance. The appellant's structural information indicates that the building is of robust and permanent construction and minimal works are required to existing structural elements to enable the proposals.

16. In my view the proposed development would be sympathetically designed reflecting the functional appearance of the existing building. Whilst the proposed development would lead to parked cars and domestic paraphernalia it would be limited by the extent of the plot. Given the size of the dwelling and plot it is unlikely that any domestic paraphernalia would be spread over a large area. Parked vehicles would be viewed against the backdrop of the existing building. Furthermore, the site would be enclosed by fencing and planting screening the proposed development from the surrounding area.

17. I am satisfied that urbanisation of the site would be limited and that vehicles and associated domestic paraphernalia would not adversely affect the rural character and appearance of the area.

18. Therefore, the proposed development would accord with SWDP Policy 21 which, amongst other things, requires developments to integrate effectively with its surroundings and to respond to the landscape quality of the local area. It would also lead to an enhancement of the site in the context of paragraph 80 of the Framework.

Affordable housing contribution

19. In order to support the appropriate provision of affordable housing in the district criterion B. v. of SWDP Policy 15 states that a financial contribution towards local affordable housing should be made on sites of 5 dwellings or fewer. Paragraph 64 of the Framework permits local planning authorities to seek affordable housing on smaller sites in designated rural areas.

20. The site is located within a designated rural area - and the appellant has provided a signed and dated Section 106 Agreement by which to deliver a contribution towards affordable housing in the district in accordance with Policy SWDP15.

21. Whilst an affordable housing contribution would not be applicable if the same building was converted under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO). The proposal before me has not been advanced as such and therefore I give this aspect of the appellant's argument limited weight.

22. I am satisfied that the contribution would satisfy the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations (2010). I find that the submitted planning obligation overcomes the Council's concerns in relation to this matter.

23. As such, the proposed development would accord with SWDP Policy 15 and paragraph 64 of the Framework which, amongst other things, seek to secure appropriate affordable housing.

Other Matters

24. The site lies within the Green Belt. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Certain forms of development are not inappropriate in the Green Belt provided they preserve its openness. This includes the re-use of buildings provided that the buildings are of a permanent and substantial construction. I find that to be the case here and therefore the proposal is not inappropriate development in the Green Belt and very special circumstances do not need to be demonstrated in order to justify the proposal.

25. There is no substantive evidence that the access track is unsuitable or that the proposal would adversely affect highway safety.

26. In respect of protected species there is no substantive evidence that the development would result in material harm. A condition for an owl box has been imposed to mitigate any potential impact of the development.

27. Representations have been received concerning the impact upon the living conditions of the occupiers of The Nook in respect of overlooking and privacy. Taking into consideration the separation between the buildings and the orientation and spatial relationship between the main windowed elevations I am satisfied that the proposed development would not result in significant harm to the living conditions of existing occupiers.

28. Comments have been made that the proposal would set a precedent for similar proposals in the area. However, every appeal is considered on its own merits and there is no credible information to indicate that it would result in a precedent.

Planning Balance

29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise.

30. Whilst the SWDP was adopted prior to the current version of the Framework, it sets out, at paragraph 219, that existing policies should not simply be considered out-of-date because they were adopted prior to the publication of it. Due weight should be given to policies depending on their degree of consistency with the Framework.

31. The proposed development conflicts with Policies SWDP 2 and SWDP 4 for the reasons set out above. These are policies that seek to direct new development to the most suitable and accessible locations.

32. Despite the above, the Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities and paragraph 80 permits isolated new homes in the countryside in certain circumstances. The SWDP in this regard is not consistent with the Framework.

33. Having regard to the merits of the case before me the proposal is physically separated from any settlement and is in open countryside. In terms of paragraph 80 of the Framework the proposed development would result in an isolated home in the countryside. However, in my judgement, the development would re-use a redundant or disused building and enhance its immediate setting meeting the requirements of paragraph 80 c). Therefore, I give the conflict with the development plan limited weight.

34. The proposal would be contained protecting the surrounding landscape in accordance with Paragraph 174 b) of the Framework. The proposed development would contribute to the Council's housing supply and there would be economic benefits through the construction phase. There would also be some positive contribution, albeit limited, to the vitality of nearby rural communities, thus in this regard it would accord with Paragraph 79 of the Framework. These are all benefits of the scheme.

35. Taking the above into consideration the adverse impacts do not significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. The proposal therefore benefits from the presumption in favour of sustainable development.

36. In this case the presumption in favour of sustainable development is a material consideration which outweighs the conflict with the development plan. A decision should thus be taken otherwise than in accordance with the development plan.

Conditions

37. I have considered the imposition of conditions in accordance with the Framework and Planning Practice Guidance. In addition to the standard time limit condition, I have imposed a condition specifying the relevant drawings as this provides certainty.

38. Conditions relating to materials and soft and hard landscaping have been imposed to ensure a satisfactory appearance. In the interests of sustainability, a condition for details of the surface and foul water drainage has been imposed. In the interests of safeguarding wildlife, a condition for details of an owl box has been imposed.

39. The Council has suggested removing permitted development rights for the enlargement, improvement or other alteration of a dwellinghouse, additions to the roof, or buildings or enclosures incidental to the enjoyment of the dwellinghouse falling within Classes A, B and E of Schedule 2, Part 1 of the GPDO.

40. I acknowledge that paragraph 54 of the Framework advises planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. However, in this particular instance it is necessary and reasonable to remove permitted development rights to ensure the satisfactory appearance of the development that reflects its rural context.

Conclusion

41. For the reasons set out above the appeal succeeds.

B Thandi

INSPECTOR

Schedule of conditions

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Layout Plan and Location Drawing Number 20/340-01; Existing Plan and Elevations Drawing Number 20/430-02 and Proposed Plans and Elevations Drawing Number 20/340-03.

3) No development above ground shall commence until details of the materials to be used in the construction of the external surfaces of the proposed development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) No development above ground shall commence until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

6) The development hereby permitted shall not be occupied until works for the disposal of surface water and foul drainage shall have been provided to serve the development, in accordance with details that have first been submitted to and approved in writing by the local planning authority.

7) The development hereby permitted shall not be occupied until a scheme of hard surfacing have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to occupation.

8) The development hereby permitted shall not be occupied until details of a barn owl box have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to occupation and retained thereafter for the lifetime of the development.

9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration of the dwellinghouse, additions to the roof, construction of buildings or enclosures incidental to the enjoyment of the dwellinghouse falling within Classes A, B and E shall be constructed.

Neutral Citation Number: [2018] EWCA Civ 610

Case No: C1/2017/3292

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MRS JUSTICE LANG DBE
[2017] EWHC 2743 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 March 2018

Before:

Lord Justice McCombe
and
Lord Justice Lindblom

- -

Between:

Braintree District Council	**Appellant**
- and -	
(1) Secretary of State for Communities and Local Government **(2) Greyread Ltd.** **(3) Granville Developments**	**Respondents**

Dr Ashley Bowes (instructed by **Sharpe Pritchard LLP**) for the **Appellant**
Mr Stephen Whale (instructed by **the Government Legal Department**) for the **First Respondent**
Mr Paul Shadarevian Q.C. and Mr John Dagg (instructed by **Ellisons Solicitors**) for the **Second and Third Respondents**

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Hearing date: 14 March 2018

Judgment Approved by the court for handing down (subject to editorial corrections)

Lord Justice Lindblom:

Introduction

1. Did an inspector determining a planning appeal misinterpret and misapply government policy in paragraph 55 of the National Planning Policy Framework ("the NPPF") that local planning authorities "should avoid new isolated homes in the countryside unless there are special circumstances …"? That is the central question in this appeal. It involves no controversial issue of law.

2. With permission granted by Lewison L.J. on 8 January 2018, the appellant, Braintree District Council, appeals against the order of Lang J., dated 15 November 2017, dismissing its application under section 288 of the Town and Country Planning Act 1990 challenging the decision of an inspector appointed by the first respondent, the Secretary of State for Communities and Local Government, allowing appeals by the second and third respondents, Greyread Ltd. and Granville Developments, respectively under section 174 and section 78 of the 1990 Act. Granville's section 78 appeal was against the council's refusal, on 13 April 2016, of an application for planning permission for the erection of two detached single-storey dwellings on the sites of two agricultural buildings with landscaping on land to the east of Lower Green Road, Blackmore End, Wethersfield in Essex.

3. The site is in the village of Blackmore End, but was outside the settlement boundary defined in the emerging development plan. It lies between Wright's Farmhouse to the north and Lealands Farmhouse to the south. Two pre-fabricated agricultural buildings that had once stood on the site were demolished in 2015. Greyread's section 174 appeal was against an enforcement notice issued by the council on 25 April 2016 against an alleged breach of planning control on the same site, involving, on one part of the site, the demolition of a cattle shed and the partial erection of a single-storey building, the laying of footings and a concrete base, and on the other, the demolition of a cattle shed and the laying of footings and a concrete base.

4. The two appeals were dealt with together, on the parties' written representations. The inspector undertook a site visit on 17 January 2017. His decision letter allowing the appeals, and granting planning permission for the development, is dated 3 February 2017.

The issue in the appeal

5. The council's challenge to the decision was on a single ground, which was that the inspector had misunderstood and therefore misapplied the policy in paragraph 55 of the NPPF. That argument, rejected by Lang J., is now pursued in this court. The crucial issue is the meaning of the word "isolated" in the expression "new isolated homes in the countryside".

Paragraph 55 of the NPPF

6. Paragraph 55 of the NPPF is in section 6, "Delivering a wide choice of high quality homes". It states:

> "55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:
>
> - the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
> - where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
> - where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
> - the exceptional quality or innovative nature of the design of the dwelling. Such a design should:
>
> – be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
> – reflect the highest standards in architecture;
> – significantly enhance its immediate setting; and
> – be sensitive to the defining characteristics of the local area."

7. The corresponding guidance in paragraph 50-001-20160519 of the Planning Practice Guidance ("the PPG") states:

> "How should local authorities support sustainable rural communities?
>
> - It is important to recognise the particular issues facing rural areas in terms of housing supply and affordability, and the role of housing in supporting the broader sustainability of villages and smaller settlements. This is clearly set out in [the NPPF], in the core planning principles, the section on supporting a prosperous rural economy and the section on housing.
> - A thriving rural community in a living, working countryside depends, in part, on retaining local services and community facilities such as schools, local shops, cultural venues, public houses and places of worship. Rural housing is essential to ensure viable use of these local facilities.
> - Assessing housing need and allocating sites should be considered at a strategic level and through the Local Plan and/or neighbourhood plan process. However, all settlements can play a role in delivering sustainable development in rural areas – and so blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided unless their use can be supported by robust evidence … .
> - [The NPPF] also recognises that different sustainable transport policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas [NPPF Part 4 "Promoting sustainable transport" para 34]."

The council's refusal of planning permission and statement of case

8. The council refused planning permission for three reasons. The relevant part of the decision notice, in the first reason for refusal, states:

> "1. … Guidance on new development within rural areas is also set out in [the NPPF]. … Para.55 states that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. …
>
> The site is located in the countryside beyond any defined settlement boundaries and in a location where there are limited facilities, amenities, public transport links and employment opportunities. … The proposal would introduce new housing development beyond the defined settlement limits and would be contrary to the objectives of securing sustainable patterns of development and the protection of the character of the countryside. Development at this location would undoubtedly place reliance on travel by car. … ."

9. In its statement of case, under the heading "Environmental Considerations (Reason 1)", the council amplified that reason for refusal. Having noted that Greyread and Granville had in their statement of case referred to paragraph 55 of the NPPF, it acknowledged that "the NPPF encourages LPAs to be responsive to rural circumstances and to plan housing developments to reflect the local need". It went on to say:

> "As highlighted by the appellant [the NPPF] also requires the intrinsic character and beauty of the countryside to be recognised, seeks to support the transition to a low carbon future in a changing climate, conserving and enhancing the natural environment and reducing pollution. This is in addition to actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.
>
> Quite clearly, as with many planning decisions, there is a need to balance all material considerations and it is highly likely that future occupants of the two dwellings proposed would be heavily reliant upon the private motor car to access everyday services, community facilities and sources of employment.
>
> … ."

The inspector's decision letter

10. The inspector identified four main issues in the section 78 appeal: first, "[the] effect of the development on the character and appearance of the area"; second, "[the] effect on the setting of neighbouring listed buildings"; third, "[accessibility] to services and facilities"; and fourth, "[the] overall balance and whether the appeal proposal constitutes sustainable development in the countryside" (paragraph 2).

11. Before dealing with those four issues, the inspector considered relevant planning policy in the development plan and in the NPPF. He said that Policy CS5 of the Braintree District Council Local Development Framework Core Strategy (adopted in September 2011) "strictly controls development outside town development boundaries and village envelopes to uses appropriate to the countryside", and that Policy RLP2 of the Braintree District Local Plan Review (adopted in July 2005) "has a similar effect" (paragraph 3). He referred to the policies in paragraphs 49 and 14 of the NPPF (paragraph 4), noted that the council "now acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites"

(paragraph 5), concluded that "[on] the most favourable analysis, deliverable housing sites fall significantly below the 5-year supply required by the Framework", and that "Policies CS5 and RLP2 … must be considered out-of-date so that Framework paragraph 14 is also engaged" (paragraph 6).

12. On the first main issue, the effect of the development on the character and appearance of the area, the inspector said (in paragraphs 8 and 9 of his decision letter):

> "8. Blackmore End is a recognisable village and is characterised by linear development extending along several roads. There is a dispersed pattern of development along Lower Green Road. The Council refers to the change to village character and to the suburbanising effect it considers would result from the development. However, the site has previously been occupied by two agricultural buildings and the two dwellings would reflect the footprint of those buildings. The proposed dwellings would be single storey and would be of a simple form. The site is well screened in views from the road by hedging, although the provision of visibility splays would reduce that to some extent. Much of the appeal site would remain undeveloped and further planting could be required by condition. A condition could also control extensions and further buildings, so that the site could retain much of its open character. The fenestration and doors shown on the submitted drawing would give the dwellings an inappropriate suburban character. However, there is scope to require revised details of those matters, allowing a more appropriate design to be achieved. Details of materials could also be controlled by condition to reflect local character.
>
> 9. I conclude that subject to appropriate conditions the development would not result in material harm to the character and appearance of the surrounding area. The site is not within a settlement boundary and the development would therefore conflict with policies CS5 and RLP2. It would not accord with the development plan's approach of concentrating development in towns and in village envelopes. On the other hand there are a number of dwellings nearby and the development would not result in the new isolated homes in the countryside to which Framework paragraph 55 refers."

13. On the second main issue, the inspector concluded that there would not be material harm to the settings of the grade II* listed Wright's Farmhouse to the north of the site or to the setting of the grade II listed Lealands Farmhouse to the south (paragraph 13).

14. On the third main issue, the accessibility of services and facilities, he concluded (in paragraph 14):

> "14. Blackmore End has a very limited range of services and facilities. There is, for example, no local shop, the nearest being about 2 miles away. In its emerging Local Plan the Council identifies 5 Service Villages. They do not include Blackmore End, the nearest being Sible Hedingham which is about 4 miles away. It is likely that those occupying the dwellings would rely heavily on the private car to access everyday services, community facilities and employment. While this weighs against the development, it is consistent with the Framework that sustainable transport opportunities are likely to be more limited in rural areas."

15. Under the heading "The Overall Balance and Sustainable Development", the fourth main issue, the inspector stated his main conclusions (in paragraph 16):

> "16. Accessibility to services, facilities and employment from the site other than by car would be poor. On the other hand, the development would make a modest contribution to meeting housing need. In addition, subject to appropriate conditions, there would not be material harm to the character and appearance of the surrounding area or to the setting of listed buildings. A minor economic benefit would arise from developing the site and the economic activity of those occupying the dwellings. There would be conflict with policies CS5 and RLP2 but those policies are out-of-date and are worthy of limited weight. Applying the test set out in Framework paragraph 14, I find that there are not adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits, when assessed against Framework policies as a whole. Nor are there specific policies in the Framework which indicate that the development should be restricted. The proposal would amount to sustainable development. Permission should be granted in accordance with the Framework's presumption in favour of sustainable development."

Did the inspector misinterpret and misapply the policy in paragraph 55 of the NPPF?

16. The relevant legal principles are clear and uncontentious. They need not be set out at length. The interpretation of planning policy, whether in the development plan or in statements of national policy, is ultimately a matter for the court. When the meaning and effect of a planning policy are contested, the court must avoid the mistake of treating the policy in question as if it had the force or linguistic precision of a statute – which it does not – and must bear in mind that broad statements of policy do not lend themselves to elaborate exegesis. The court's task is to discern the objective meaning of the policy as it is written, having regard to the context in which the policy sits (see the judgment of Lord Reed in *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13, at paragraphs 19 to 22, Sullivan L.J.'s judgment in *Redhill Aerodrome Ltd. v Secretary of State for Communities and Local Government* [2015] P.T.S.R. 274, at paragraph 18, and the judgment of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2017] UKSC 37, at paragraph 24, and the judgment of Lord Gill at paragraphs 72 to 74). The application of policy, however, is for the decision-maker, on a true understanding of what the policy means, but with freedom to exercise planning judgment as the policy allows or requires – subject to review by the court on *Wednesbury* principles alone (see my judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, at paragraphs 41 and 42).

17. The court will not lightly accept an argument that an inspector has proceeded on a false interpretation of national planning policy or guidance (see Lord Carnwath's judgment in *Suffolk Coastal District Council*, at paragraph 25). Nor will it engage in – or encourage – the dissection of an inspector's planning assessment in the quest for such errors of law (see my judgment in *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, at paragraph 7). Excessive legalism in the planning system is always to be deprecated (see my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraphs 22 and 50).

18. The policy with which we are concerned – the policy in paragraph 55 of the NPPF – has already received some attention in this court – though only slight. In *Dartford Borough Council v Secretary of State for Communities and Local Government* [2017] EWCA Civ 141, Lewison L.J., in paragraph 15 of his judgment, said the relevant definition of previously developed land took as its starting point that the proposed development would be within the curtilage of an existing permanent structure, and it followed, therefore, that "a new dwelling within that curtilage will not be an 'isolated' home" for the purposes of the policy in paragraph 55.

19. In the court below, Lang J. recorded the council's argument, in the light of the policies in paragraphs 28 and 55 of the NPPF and the corresponding guidance in the PPG, that "in applying [paragraph 55 of the NPPF], and considering whether proposed development amounted to "new isolated homes in the countryside", it was irrelevant that the development was located proximate to other residential dwellings", and that "[the] key question was whether it was proximate to services and facilities so as to maintain or enhance the vitality of the rural community" (paragraph 22 of the judgment).

20. The judge noted that the word "isolated" in paragraph 55 is not defined in the NPPF. In her view, however, it was to be given its "ordinary objective meaning of "far away from other places, buildings or people; remote" …" (paragraph 24 of the judgment). As for the "immediate context" of the policy, she said "[this] suggests that "isolated homes in the countryside" are not in communities and settlements and so the distinction between the two is primarily spatial/physical" (paragraph 25). In its "broader context" the policy was, in her view, seeking to "promote the economic, social and environmental dimensions of sustainable development, and to strike a balance between the core planning principles [in paragraph 17 of the NPPF] of "recognising the intrinsic character and beauty of the countryside" and "supporting thriving rural communities within it" …". Thus the council's "analysis of the policy context [was] far too narrow in scope" (paragraph 26). The policy in favour of locating housing "where it will "enhance or maintain the vitality of rural communities"" was "not limited to economic benefits". The word "vitality" was "broad in scope and includes the social role of sustainable development …". The council's restriction of "isolated" homes to those that were "isolated from services and facilities" would "deny policy support to a rural home that could contribute to social sustainability because of its proximity to other homes" (paragraph 27). Paragraph 55 of the NPPF "cannot be read as a policy against development in settlements without facilities and services since it expressly recognises that development in a small village may enhance and maintain services in a neighbouring village, as people travel to use them" (paragraph 28). She concluded that the council was "seeking to add an impermissible gloss to [paragraph 55 of the NPPF] in order to give it a meaning not found in its wording and not justified by its context" (paragraph 29). She saw support for her interpretation of the policy in what Lewison L.J. had said about it in his judgment in *Dartford Borough Council* (paragraphs 30 and 31).

21. It followed, in the judge's view, that the inspector's understanding of the policy, in paragraph 9 of his decision letter, was correct (paragraph 32). She saw nothing unlawful in the remainder of his assessment of the proposal on its planning merits (paragraphs 33 to 37). She was satisfied, therefore, that the inspector had "correctly interpreted [paragraph 55 of the NPPF], and applied it properly to the facts and matters which arose in this appeal" (paragraph 38).

22. For the council, Dr Ashley Bowes submitted that the policy in paragraph 55 of the NPPF establishes a presumption against "new isolated homes in the countryside", which competes with the "presumption in favour of sustainable development" in paragraph 14. It is capable of disengaging the so-called "tilted balance" in that paragraph, because it is one of the "specific policies" in the NPPF that "[indicates] development should be restricted" (see my judgment in *Barwood v East Staffordshire Borough Council*, at paragraph 22). If a proposal offends the policy in paragraph 55, its prospects of gaining planning permission may therefore be much reduced. Dr Bowes submitted that the inspector, having failed to grasp the true meaning of the policy in paragraph 55, also failed to apply the policy for the "presumption in favour of sustainable development" in paragraph 14 of the NPPF, and that his decision was therefore unlawful.

23. Dr Bowes' main submission was that Lang J.'s construction of the policy in paragraph 55 was incorrect, that the word "isolated" in the third sentence of paragraph 55 can mean either physical or functional isolation, and that, in the application of the policy, both of these two concepts are relevant and significant. The judge's focus on physical isolation, as opposed to functional, was in error. A decision-maker must always consider two questions: first, "whether the site is physically isolated relative to settlements and other development", and secondly, of equal importance, "whether the site is functionally isolated relative to services and facilities". Only if both of those questions are answered in the negative will the proposal comply with the policy – unless "special circumstances" are demonstrated. To consider only the first question would be to ignore, and fail to give effect to, the basic purpose of the policy, which is to sustain the rural economy by supporting local services and facilities. The Government's intention here, Dr Bowes submitted, was that new housing in rural areas should be located so as to support those services and facilities, and thus maintain and enhance the vitality of rural communities. As the guidance in paragraph 50-001-20160519 of the PPG makes plain, housing has an "essential" role to play in ensuring the viability of those services and facilities. Therefore, Dr Bowes contended, under the policy in paragraph 55 of the NPPF, housing that would be "isolated" from services and facilities should be avoided unless there are "special circumstances".

24. This argument seems somewhat different from that presented to the judge. The contention before her, as I understand it, was that the fact of a site's presence within a rural settlement, close to other dwellings, was irrelevant under the policy in paragraph 55, at least if the settlement lacked services and facilities of its own.

25. Lang J.'s analysis was supported by Mr Stephen Whale for the Secretary of State and Mr Paul Shadarevian Q.C. for Greyread and Granville.

26. In my view the judge's conclusions were sound, and her understanding of the policy in paragraph 55 correct.

27. Our task, as Mr Whale and Mr Shadarevian submitted, is to construe the words of the policy itself, reading them sensibly in their context. This is not a sophisticated exercise, and it need not be difficult. It is, in fact, quite straightforward. Planning policies, whether in the development plan or in the NPPF, ought never to be over-interpreted. As this case shows, over-interpretation of a policy can distort its true meaning – which is misinterpretation.

28. The first thing to be said about the policy in paragraph 55 is that it is expressed in general and unprescriptive terms. It does not dictate a particular outcome for an application for

planning permission. It identifies broad principles and indicates a broad approach. Local planning authorities are advised what "should" be done. The policy is not expressed as containing a "presumption", and I would not read it as creating one. Rather, it indicates to authorities, in very broad terms, how they ought to go about achieving the aim stated at the beginning of paragraph 55: "[to] promote sustainable development in rural areas". It does not set specific tests or criteria by which to judge the acceptability of particular proposals. It does not identify particular questions for a local planning authority to ask itself when determining an application for planning permission. Its tenor is quite different, for example, from the policies governing the protection of the Green Belt, in paragraphs 87 to 92 of the NPPF. The use of the verb "avoid" in the third sentence of paragraph 55 indicates a general principle, not a hard-edged presumption.

29. Secondly, the policy explicitly concerns the location of new housing development. The first sentence of paragraph 55 tells authorities where housing should be "located". The location is "where it will enhance or maintain the vitality of rural communities". The concept of the "vitality" of such a community is wide, and undefined. The example given in the second sentence of paragraph 55 – "development in one village" that "may support services in a village nearby" – does not limit the notion of "vitality" to a consideration of "services" alone. But it does show that the policy sees a possible benefit of developing housing in a rural settlement with no, or relatively few, services of its own. The third sentence of the paragraph enjoins authorities to avoid "new isolated homes in the countryside". This is a distinction between places. The contrast is explicitly and simply a geographical one. Taken in the context of the preceding two sentences, it simply differentiates between the development of housing within a settlement – or "village" – and new dwellings that would be "isolated" in the sense of being separate or remote from a settlement. Under the policy, as a general principle, the aim of promoting "sustainable development in rural areas" will be achieved by locating new dwellings within settlements and by avoiding "new isolated homes in the countryside". The examples of "special circumstances" given in the policy illustrate particular circumstances in which granting planning permission for an isolated dwelling in the countryside may be desirable or acceptable. But what is perfectly plain is that, under this policy, the concept of concentrating additional housing within settlements is seen as generally more likely to be consistent with the promotion of "sustainable development in rural areas" than building isolated dwellings elsewhere in the countryside. In short, settlements are the preferred location for new housing development in rural areas. That, in effect, is what the policy says.

30. Thirdly, the adjective "isolated", which was the focus of argument before us, is itself generally used to describe a location. It is not an unfamiliar word. It is commonly used in everyday English. Derived originally from the Latin word "insula", meaning an "island", it carries the ordinary sense of something that is "… [placed] or standing apart or alone; detached or separate from other things or persons; unconnected with anything else; solitary" (The Oxford English Dictionary, second edition). This was the meaning favoured by the judge (in paragraph 24 of her judgment), and there is no dispute that in this respect she was right.

31. In my view, in its particular context in paragraph 55 of the NPPF, the word "isolated" in the phrase "isolated homes in the countryside" simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is, or is not, "isolated" in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.

32. What constitutes a settlement for these purposes is also left undefined in the NPPF. The NPPF contains no definitions of a "community", a "settlement", or a "village". There is no specified minimum number of dwellings, or population. It is not said that a settlement or development boundary must have been fixed in an adopted or emerging local plan, or that only the land and buildings within that settlement or development boundary will constitute the settlement. In my view a settlement would not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house nearby, or public transport within easy reach. Whether, in a particular case, a group of dwellings constitutes a settlement, or a "village", for the purposes of the policy will again be a matter of fact and planning judgment for the decision-maker. In the second sentence of paragraph 55 the policy acknowledges that development in one village may "support services" in another. It does not stipulate that, to be a "village", a settlement must have any "services" of its own, let alone "services" of any specified kind.

33. Does this reading of the policy in paragraph 55 fit the broader context of the policies for sustainable development in the NPPF and guidance in the PPG? I think it does.

34. Paragraph 7 of the NPPF refers to the "three dimensions to sustainable development: economic, social and environmental", in which the "social role" involves "supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being …". Of the 12 "core land-use planning principles" in paragraph 17, the fifth is to "take account of the different roles and character of different areas … recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it". The eleventh is "actively [to] manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable". And the twelfth is to "take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs". Paragraph 28 states that local and neighbourhood plans should "promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship". The policy in paragraph 29 recognizes that "different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas". And the policy in paragraph 34 says that "[plans] and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised", but that "this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas".

35. None of those policies suggests a different understanding of the policy in paragraph 55 from mine. Indeed, if anything, I think they tend to confirm it.

36. In my opinion the language of paragraph 55 is entirely unambiguous, and there is therefore no need to resort to other statements of policy, either in the NPPF itself or elsewhere, that might shed light on its meaning. Mr Whale suggested that the use of the PPG to assist in construing policies in the NPPF would be inappropriate in principle. This is not something we have to decide, because the meaning of the policy we are dealing with here is plain on its

face and requires no illumination from the PPG or any other statement of national policy or guidance. But I doubt that it would be right to exclude the guidance in the PPG as a possible aid to understanding the policy or policies to which it corresponds in the NPPF. There may be occasions when that is necessary. But this, in my view, is not such a case.

37. In any event, the interpretation of the policy that I consider to be right seems entirely consistent with the guidance on plan-making in paragraph 50-001-20160519 of the PPG, including the proposition that "settlements can play a role in delivering sustainable development in rural areas – and so blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided unless their use can be supported by robust evidence".

38. This all seems at one with Lewison L.J.'s observation about the policy – brief as it was – in paragraph 15 of his judgment in *Dartford Borough Council*.

39. I do not accept Dr Bowes' argument that the word "isolated" in paragraph 55 must be understood as meaning either (a) "physically isolated" or (b) "functionally isolated" or "isolated from services and facilities"; that the decision-maker must therefore address two questions – first, whether the proposed new dwelling would be physically separate or remote from any other dwelling, and secondly, whether it would be isolated from services and facilities; and that if the proposed development would be either separate or remote from other dwellings or separate or remote from services and facilities, it offends the policy. This would be a strained and unnatural reading of the policy. In my view it is neither necessary nor appropriate to gloss the word "isolated" by reading an additional phrase into paragraph 55 whose effect would be to make the policy more onerous than the plain meaning of the words it actually contains. No such restriction is apparent in the policy, or, in my view, implicit in it.

40. On the interpretation suggested by Dr Bowes, the question of whether a proposed new dwelling on a site within a rural settlement would be an "isolated" new home under the policy would depend, or at least potentially depend, on the presence or absence of services in that particular settlement, rather than, say, in a neighbouring village. This could have the surprising consequence that a proposed dwelling on a site within a settlement, perhaps with several existing dwellings either side of it or surrounding it, would have to be regarded as a "new isolated [home] in the countryside", simply because that settlement did not have any "services" of its own, whereas a similarly located dwelling in a smaller settlement that happened to have "services" of some kind within it – perhaps a shop or a public house – would not be "isolated". Dr Bowes did not seek to deny this. And it would also follow that each and all of the existing dwellings in a settlement without "services" of its own would then have to be regarded as "isolated" too. It seems to me that this would be not merely an artificial construction of the policy, but also wholly unrealistic. I cannot accept that the Government intended the policy to have such an effect, or, if it did, that it would have failed to spell this out in paragraph 55.

41. Reading the policy as I would read it, as we were urged to do by the Secretary of State through Mr Whale, and as I think the Government plainly did intend, reflects common sense – as well as being the literal and natural construction. As the judge acknowledged (in paragraph 27 of her judgment), a policy directed to enhancing and maintaining the "vitality" of rural communities is a policy that embraces the "social" dimension of sustainable development. And as she said, to restrict the concept of an "isolated home" to one that is

"isolated from services and facilities" would be to deny the policy's support – indeed, would turn it against – proposed dwellings that "could contribute to social sustainability because of [their] proximity to other homes". This would seem contrary to the aim of the policy to maintain and enhance "the vitality of rural communities", and would diminish the acknowledged benefit of development in one settlement supporting "services" in another.

42. I therefore reject Dr Bowes' submission that the inspector took too narrow a view of the expression "new isolated homes in the countryside". To give effect to the policy in paragraph 55, the inspector was not obliged to ask himself whether the proposed development would be "functionally" isolated as well as "physically". He was required only to consider whether it would be physically isolated, in the sense of being isolated from a settlement. And he did that.

43. None of the descriptive parts of paragraphs 8 and 9 of the decision letter is said to be wrong in fact. There is no dispute that the inspector was right to describe Blackmore End as he did in paragraph 8 of his decision letter: "a recognisable village". As he said in paragraph 9, there were "a number of dwellings nearby". It is also undisputed that Blackmore End is not a settlement without any services and facilities. The inspector found, in paragraph 14 of the decision letter, that the settlement "has a very limited range of services and facilities". That Blackmore End is indeed a settlement, and that there are dwellings a short distance to the north of the appeal site, others a short distance to the south, and another on the other side of the road, to the west, is obvious when one looks at a map. And it is not contested, or contestable, that if the word "isolated" in paragraph 55 of the NPPF means physically isolated in the sense of being isolated from a settlement, the inspector was entitled – as a matter of fact and planning judgment, if not simply as a matter of fact – to conclude at the end of paragraph 9 that "the development would not result in the new isolated homes in the countryside to which Framework paragraph 55 refers".

44. In the circumstances, there was no need for "special circumstances" to be identified to justify a development of "new isolated homes in the countryside". This was not such a development.

45. In my view therefore, the inspector did not misinterpret or misapply the policy in paragraph 55 of the NPPF. His understanding of the policy was accurate, and his application of it impeccable.

46. Nor did he fail to apply the policy for the "presumption in favour of sustainable development" in paragraph 14, given the agreed absence of a five-year supply of housing land (see paragraph 22(2) of my judgment in *Barwood v East Staffordshire Borough Council*). Even if one were to assume that the policy in paragraph 55 fell within the ambit of the exception in paragraph 14 for "specific policies" in the NPPF that "indicate development should be restricted" – which may or may not be so – the inspector, having understood the policy correctly and applied it lawfully, concluded in paragraph 9 of his decision letter that the proposal did not offend it. And he went on, in paragraph 16, to conclude not only that there were no "adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits, when assessed against Framework policies as a whole" – the first exception, or the first limb of the exception, in paragraph 14 – but also, expressly, that there were no "specific policies in the Framework which indicate that the development should be restricted" – the second exception, or the second limb. He was satisfied that the proposal amounted to "sustainable development". And he was also satisfied that it earned the

"presumption in favour of sustainable development". This conclusion demonstrates a true understanding and proper application of the policy in paragraph 14 of the NPPF.

47. As Mr Shadarevian pointed out, when one reads the decision letter fairly as a whole, it is clear that in assessing the proposal on its planning merits the inspector considered all three dimensions of "sustainable development": the "economic" role, the "social", and the "environmental". He did not neglect the fact that Blackmore End "has a very limited range of services and facilities". He found it was "likely that those occupying the dwellings would rely heavily on the private car to access everyday services, community facilities and employment". He acknowledged that "this weighs against the development". But he also recognized that it was "consistent with the Framework that sustainable transport opportunities are likely to be more limited in rural areas" (paragraph 14 of the decision letter). And in drawing together his conclusions on the main issues when he came to consider "The Overall Balance and Sustainable Development", he took into account his finding that "[accessibility] to services, facilities and employment from the site other than by car would be poor" (paragraph 16). Those conclusions did not, however, lead him to the view that any policy of the NPPF was breached. This was a matter of planning judgment for him. I do not think his approach can be faulted. His conclusions are not vitiated by any misinterpretation or misapplication of NPPF policy. They are unassailable in a legal challenge.

48. In my view therefore, the inspector made no error of law, and the judge was right to uphold his decision.

Conclusion

49. For the reasons I have given, I would dismiss this appeal.

Lord Justice McCombe

50. I agree.

The Planning Inspectorate

Appeal Decision

Inquiry held on 5-7 September 2017
Accompanied site visit made on 6 September 2017

by M C J Nunn BA BPL LLB LLM BCL MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 December 2017

Ref: APP/W0530/W/17/3172541
Land off Grafton Drive, Caldecote, CB23 7UE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 Welbeck Strategic Land II LLP & Mr B J Fletcher and Mrs J S Fletcher against South Cambridgeshire District Council.
- The application Ref: S/2764/16/OL is dated 17 October 2016.
- The development proposed is described as 'residential development of up to 58 dwellings with associated infrastructure, landscaping and public open space; all matters reserved except for access'.

Decision

1. The appeal is allowed and planning permission granted for an outline planning application for a residential development of up to 58 dwellings with associated infrastructure, landscaping and public open space (with all matters reserved except for access) on land off Grafton Drive, Caldecote, CB23 7UE, in accordance with the terms of application Ref S/2764/16/OL, dated 17 October 2016, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The application is made in outline with all matters except for access reserved for subsequent determination. In addition to my accompanied site visit, I made unaccompanied visits to the site and its surroundings on other occasions, before, during and after the Inquiry.

3. The Council failed to determine the application within the prescribed period. On 4 August 2016, the Council's Planning Committee refused planning permission for a duplicate application[1] and agreed that the same three reasons for refusal should apply to this appeal scheme.

4. A planning obligation, dated 7 September 2017, has been submitted. I deal with this in the body of my decision[2].

[1] Ref S/1144/17/OL [CD 5.3]
[2] Inquiry Document (ID) 19

Main Issues

5. The main issues are:

   i. the locational accessibility of the site, in terms of shops and services, and public transport;

   ii. the effect on highway safety;

   iii. the effect on living conditions at residential properties in Grafton Drive, with regard to noise; and

   iv. in the absence of a five year supply of deliverable housing sites, whether the adverse impacts would significantly and demonstrably outweigh the benefits of the scheme.

Reasons

Planning Policy Context

6. The relevant legislation[3] requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The statutory development plan comprises the Core Strategy (CS) and Development Control Policies (DCP), both adopted in 2007. The Council, in its putative reasons for refusal, cites Policies ST/6 of the CS, and DP/1(b), DP/6 and NE/15 of the DCP.

7. Policy ST/6 of the CS identifies Highfields Caldecote as a 'Group Village', where residential development and redevelopment of up to 8 dwellings will be permitted within the village framework (or boundary), or up to about 15 dwellings where it would make the best use of a brownfield site. The supporting text to Policy ST/6 notes that Group Villages are generally less sustainable locations for new development (as compared with Rural Centres and Minor Rural Centres), having fewer services and facilities, allowing only some of the basic day-to-day requirements of residents to be met without the need to travel outside the village. The appeal site falls outside the village 'framework' or boundary, where in accordance with Policy DP/7[4] of the DCP, development is restricted to uses such as agriculture, horticulture, forestry, outdoor recreation and other uses which need to be located in the countryside.

8. Policy DP1 of the DCP states that development will only be permitted where it is consistent with the principles of sustainable development, as appropriate to its location, scale and form. The Policy sets out various Criteria (a) to (r). The Council, in its putative reasons for refusal, specifically mentions Criterion (b) which requires development to minimise the need to travel and to reduce car dependency. Policy DP/6 of the DCP relates to construction methods and provides guidance for development likely to have some adverse impact upon the local environment and amenity during construction. Policy NE/15 of the DCP relates to noise pollution, and states amongst other things that development will not be permitted that has an unacceptable adverse impact on the indoor and outdoor acoustic environment of existing or planned development.

[3] Section 38(6) of the 2004 Act
[4] This policy is not cited in the putative reasons for refusal

9. The National Planning Policy Framework ('the Framework') sets out the Government's up-to-date planning policies and is a material consideration in planning decisions. The Framework does not change the statutory status of the development plan for decision making. Importantly, however, the Framework advises at Paragraph 215 that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.

10. Both the CS and DCP are formally 'time expired', their end date being 2016. The mere age of a plan does not mean that it loses its statutory standing as the development plan. Nonetheless, there is no dispute that the Council cannot demonstrate a deliverable five year supply of housing land, as required by the Framework. According to the Council, the five year supply is around 4.1 years[5]. Although the Council states that the shortfall has reduced since the Highfields Road appeal[6], the shortfall in supply remains significant.

11. In such circumstances, Paragraph 49 of the Framework is clear that the relevant policies for housing supply should not be considered up-to-date. The parties differ as to which policies should be considered 'relevant policies for the supply of housing', with the Council highlighting that recent case law has effectively narrowed the definition[7]. Given that Policy ST/6 seeks to restrict housing to only 8 or 15 units within village frameworks, and that Policy DP/7 restricts the provision housing development outside village frameworks, their effect is to constrain the supply of housing. Such an approach runs counter to the objectives of Paragraph 47 of the Framework which seeks to boost significantly the supply of housing. This diminishes the weight that can be attached to any conflict with these policies.

12. Even if, on the Council's case, Policies ST/6 and DP/7 should not be considered as relevant policies for the supply of housing, it is clear that their application is not leading to sufficient housing being provided in accordance with the Framework[8]. Accordingly, Paragraph 14 of the Framework is triggered. This is clear that where the development plan is absent, silent or out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

13. Turning to other policies cited by the Council, Policy DP/1(b) seeking to minimise the need to travel and reduce car dependency, Policy DP/6 relating to construction methods, and Policy NE/15 dealing with noise pollution, are all broadly consistent with the Framework, and can be accorded full weight.

14. A new plan is currently being prepared, the replacement South Cambridgeshire Local Plan ('the Emerging Plan). The putative reasons for refusal cite Policy S/10 (Group Villages), Policy CC/6 (Construction Methods) and Policy SC/11 (Noise Pollution) from the Emerging Plan. This Plan was originally submitted to the Secretary of State for examination in 2014, but was suspended pending further work to address concerns about the proposed level of housing provision, amongst other things. The examination has now

[5] ID 5, Statement of Common Ground, Paragraph 5.8
[6] APP/W0530/W/16/3149854, dated 5 July 2016; in this case, the supply ranged between 3.58 or 3.79 years, based on the different calculations of the Council and appellant
[7] *Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2017] UKCS 37*
[8] Paragraph 47

restarted but the Emerging Plan has yet to be found 'sound'. It is still subject to various outstanding objections, and its policies may be subject to change. It is still a considerable way from adoption. In these circumstances, I cannot give its policies significant weight in this appeal.

Locational accessibility

15. The appeal site forms a flat area of agricultural land accessed from Grafton Drive, a privately maintained cul-de-sac comprising modern housing. The appeal site was previously used as a piggery. The site contains remnants of the previous use, including areas of hardstanding and other assorted structures including a barn. Originally, the piggery activity included land now occupied by the dwellings in Grafton Drive. The western part of the site comprises woodland. To the south is a recreation ground, and to the west is Bourn Airfield.

16. The village of Caldecote has limited shopping facilities, although it does have a coffee shop and a hairdressers. There is a SPAR shop at the petrol station on St Neots Road, at a distance of around 1.6km. This is the closest outlet to buy groceries and other essentials, although the range of goods is rather limited. A large supermarket is located at Cambourne. Although the use of internet shopping is growing, it is clear that for most shopping needs, residents of the village need to travel further afield to Cambourne or Cambridge, which is likely to generate trips by car.

17. There are no medical or dental practices in the village, and there are limited employment opportunities. Although some residents may work from home, many would need to commute to larger centres, such as Cambourne or Cambridge for work. There is a primary school in the village very close to the site, although the secondary school is around 6 kms away in Comberton. Other local facilities include a village hall, a sports pavilion, social club, sports pitches and children's play area[9].

18. Public transport is limited. There is no railway station. The number of bus services has recently reduced with only a single service remaining: the 'Citi 4' bus. This runs to Cambridge and Cambourne, at reasonably frequent intervals from Monday to Saturday, (and hourly on Sundays) from a bus stop at the Highfields Road / St Neots Road roundabout, around 1.6 km from the appeal site, resulting in an approximately 20-25 minute walk. There was much debate as to the practicality of walking on a regular basis to this stop, or whether people would cycle or be dropped off by car. It seems to me that the distance is walkable, if not especially convenient. Cycling is a possibility as there are some cycle parking stands at the bus stop.

19. I understand that there is an existing car share scheme, but it is short of volunteers, requires notice and is limited to use with those with a genuine need. I also gather that there is a 'pill run' service for those with repeat prescriptions. Whilst these are useful services, they are limited and are not a realistic choice for most residents. They would not avoid the need to use the private car.

[9] ID 5, Statement of Common Ground, Paragraph 2.15

20. A number of measures have been proposed by the appellant to improve the accessibility of the scheme. As part of the planning obligation, the appellant has agreed to pay up to £30,000 as a 'community transport contribution' towards the cost of providing and maintaining a community transport vehicle. The Council has agreed that this contribution complies with the relevant tests in the Framework[10] and Community Infrastructure Levy Regulations[11], but it has questioned how the scheme would operate in practice. Others at the Inquiry also doubted the effectiveness of this contribution. It seems to me that further liaison will be required to crystallize the exact details and mechanics of this scheme, but it should not be discounted as potentially improving transport links and accessibility.

21. The appellant also proposes improvements to the footway along Highfields Road running towards St Neots Road, thereby improving connectivity, as well as the provision of additional cycle parking at the bus stop on St Neots Road. These measures could be secured by condition. A Travel Plan, also secured by condition, is a way to facilitate sustainable travel modes. All these measures will go some way to improving the site's accessibility to sustainable transport, taking account of the aims of Policy DP/1 (b) of the DCP, concerned with minimising the need to travel and reduce car dependency.

22. Overall, however, I acknowledge that this is a location with limited public transport accessibility. There is also a limited range of other essential shops and services. As a consequence, any residents of the new development are likely to travel further afield for shops, services and employment which will very likely necessitate trips by private vehicles. However, and importantly, the Framework, although seeking to promote sustainable transport, recognises that different policies and measures will be required in different communities, and opportunities to maximise sustainable transport solutions will vary from urban to rural areas[12]. It seems to me that South Cambridgeshire is primarily a rural district, which means many areas within it have restricted access to public transport, and limited facilities. This requires a realistic approach to the general travel method of its residents.

23. To sum up, although the site falls within a village with limited facilities, employment opportunities and limited accessibility to public transport, much of the district is predominantly rural in character. This inevitably means that residents are generally more likely to be reliant on private transport. Residents of the appeal development would be in no different position to many other existing residents in the village, including those already living in Grafton Drive. Importantly, road access to Cambourne and Cambridge is reasonably straightforward. Cambridge itself has a Park and Ride facility to facilitate travel to the city centre. Measures are proposed as part of the scheme to improve accessibility and encourage sustainable transport. Weighing all the above matters in the balance, and notwithstanding some conflict with Policy ST/6 of the CS and Policy DP/7 of the DCP, I am satisfied that this proposal can be justified in this location. Furthermore, by introducing new market and affordable housing along with the associated economic benefits, the proposal

[10] Paragraph 204
[11] Regulation 122 & 123
[12] Paragraph 29

would comply with the Framework, which advocates supporting a prosperous rural economy[13].

Effect on highway safety

24. Grafton Drive would provide access to the development. It is currently a cul-de-sac with limited traffic. At present, because of the limited traffic, the road functions as a shared space, with children often playing on it. There are no parking restrictions and residents often park on the road. The road also bends which reduces visibility in certain places. Concerns have been raised that the proposed development would adversely affect highway safety.

25. The appellant's technical evidence indicates that Grafton Drive is a 5.5m road, and that this is of sufficient width to allow an HGV and private car to pass unhindered. Tracking has also been undertaken which shows that construction and refuse vehicles can safely pass a parked car[14]. It is also the case that the existence of parked cars is likely to reduce vehicle speeds, creating safer conditions. Notwithstanding the bend in the road, forward visibility is good for the majority of Grafton Drive, enabling drivers to take appropriate action and avoid any conflict. There is no record of any accidents occurring along Grafton Drive.

26. The technical evidence shows that the proposed development would generate a total of 53 traffic movements in the morning peak, and 42 in the afternoon peak, and that little or no queuing would be expected during peak hours at the junction of Grafton Drive and Highfields Road. The assessment also included traffic growth to 2021, taking into account recently approved developments[15]. Although more cars would pass along Grafton Drive, it is predicted that the existing road network would operate well within its existing capacity. It is notable that no technical objections were raised to the original planning application on highway grounds in relation to either safety or capacity by the County Highway Authority, subject to securing an upgrade to the footpath and provision for community transport. In the absence of cogent technical evidence to the contrary, I see no reason to take a different view.

27. A further concern relates to the impact of construction vehicles. A Construction Management Plan (CMP) is before the Inquiry in draft form[16]. Criticisms have been made that a number of the measures within it are unenforceable because Grafton Drive is privately owned. For example, the draft CMP proposes that an agreement be reached with residents to restrict parking on the roadway between certain hours during the construction period. This is to avoid hold ups for construction traffic, and prevent damage to residents' cars. It was said at the Inquiry that there is no indication that residents' agreement for such measures would be forthcoming. Other measures to alleviate problems were suggested by the appellant during the Inquiry, including an on-site 'compound' where residents could park during the construction phase, but these were similarly criticised because of lack of clarity as to operation.

[13] Paragraph 28
[14] Mr Markides Proof of Evidence, pages 29-30
[15] For example, the Gladman and Cala Homes Schemes
[16] Mr Markides Proof of Evidence, Appendix F

28. It seems to me the usual practice is for a detailed CMP to be agreed and approved during the discharge of planning conditions once permission has been granted. I accept that this is a more unusual situation in that the site access is via a private cul-de-sac. That said, I see no reason why, following full and proper engagement with residents, it would not be possible to satisfactorily address areas of concern and devise appropriate measures during the construction phase that are acceptable to all parties. A condition could be applied to any permission requiring the approval of a CMP that complies with Policy DP/6 of the DCP dealing with construction methods.

29. To sum up on this issue, it would not be reasonable to withhold permission for this scheme on the basis of concerns in relation to highway effects. I accept that the proposal would lead to an intensification in the use of Grafton Drive. However, there is no technical evidence before me to suggest there have been any vehicle accidents or that unacceptable traffic congestion or prejudice to highway safety would result from the scheme. Paragraph 32 of the Framework is clear that development should only be prevented or refused on transport grounds where the residual cumulative impacts are severe. The evidence does not indicate that this would be the case here.

Living Conditions - Noise

30. Many of the existing houses in Grafton Drive directly abut the pavement or have limited front gardens. As a consequence, there is little distance between the highway and the properties. Nonetheless, a Noise Assessment Report[17] carried out by the appellant concluded that the additional traffic from the development would lead to an increase of 4.4 dbA at the facades of the Grafton Drive houses fronting on to road. It stated that noise levels at the facades of the dwellings would be no higher than 51.4 dB L_{Aeq} 16 hours[18], and that with a typical insulation level of 32 dB(A), internal noise levels would be no higher than 19.4 dB L_{Aeq} 16 hours[19]. The increase in noise levels within existing dwellings, described as 'minor adverse', would be barely perceptible. Most of the external amenity space is to the rear of the houses, so that the attenuating effect of the buildings and the intervening distance means noise levels would be significantly below levels for external areas specified in BS 8233[20]. I see no reason to doubt the Noise Assessment Report's technical findings, which have not been seriously challenged by the Council.

31. The Noise Assessment Report was concerned with assessing the effects of the completed development, and did not consider construction traffic, although the appellant adduced evidence that the noise impact during construction is unlikely to be worse than the situation following the completion of the development. The Council mentions annoyance caused by peaks in noise from large HGVs. However, any approved CMP could limit the hours of operation of construction traffic, and include other measures, so as to mitigate such impacts, and ensure compliance with Policy DP/6 of the DCP.

32. Overall, I acknowledge that there would inevitably be some increase in traffic from the development, and that residents may notice a change in the local

[17] CD 1.17
[18] LAeq provides an average noise level over a period of time
[19] Mr Dawson's Proof, Section 3
[20] BS 8233:2014 Guidance on Sound Insulation and Noise Reduction for Buildings

environment as a consequence of 'through traffic' to the new houses. Some disturbance may result during the construction phase. However, based on the technical evidence before me, I find that there are no reasonable grounds to conclude that the noise effects of the scheme would be unacceptable, or that Policy NE/15 of the DCP would be breached. The scheme would be consistent with the requirement of the Framework[21] that decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life.

Planning Obligation

33. A planning obligation dated 7 September 2017 has been completed by the appellant, the Council and the County Council. The obligation secures the provision of affordable housing at a rate of 40%. It secures various financial contributions, including towards the cost of providing an extension to Caldecote Village Hall (up to £28,000), an extension to Caldecote Sports Pavilion (up to £62,000), a community transport contribution (up to £30,000) for the provision of a community vehicle over a 5 year period. The obligation also secures open space and an equipped play area, financial contributions towards healthcare (to increase consulting capacity at Bourn and/or Comberton Surgery), education (both early years and primary), libraries (towards improvements at mobile library services serving the development), and waste and recycling (to provide waste receptacles within the development).

34. I have no reason to doubt that the formulae and charges used by the Council and County Council to calculate the various contributions are other than soundly based. In this regard, the Council and County Council have produced detailed Compliance Statements[22] which demonstrate how the obligations meet the relevant tests in the Framework[23] and the Community Infrastructure Levy Regulations[24]. The development would enlarge the local population with a consequent effect on local services and facilities. I am satisfied that the provisions of the obligation are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development, thereby meeting the relevant tests in the Framework and the Community Infrastructure Levy Regulations.

Other Matters

35. Concerns have been raised by residents regarding rights of access over Grafton Drive to the appeal site. To be clear, private land issues are not a matter for this Inquiry, nor are they relevant in terms of the acceptability of the scheme in planning terms. The Council has not raised this matter as going to the deliverability of the scheme. The appellant has produced a note which states that there is a right of way over Grafton Drive and there is no land ownership impediment to the construction or occupation of the scheme[25]. I have no reason to doubt the note's accuracy.

[21] Paragraph 123
[22] ID 17 & ID 18
[23] Paragraph 204
[24] Regulation 122 & 123
[25] ID16

36. Concerns have been raised by residents in respect of surface and foul water drainage. The scheme proposes a Sustainable Urban Drainage System (SUDS) to reduce surface water runoff and direct it to the watercourse. The SUDS may include ponds, water butts, permeable paving, and re-grading of the site to direct flows to drainage ditches. No objections have been raised on this issue by the relevant Flood Authority.

37. Foul water drainage would be connected to the existing sewerage network via an upgraded sewer along Grafton Drive. Although there have been incidences of flooding and operational problems in the past at the Caldecote pumping station, I understand that Anglia Water has recently carried out maintenance, upgrading and improvements. Anglia Water has indicated that the Bourn Water Treatment Plant has sufficient capacity to accommodate the proposed development. Overall, I am satisfied that, subject to appropriate conditions, both surface and foul water flows can be satisfactorily accommodated.

38. Although not raised by the Council as a reason for refusal, concerns have been raised about the possible coalescence of the village with Bourn Airfield to the west, particularly if this appeal were to be allowed. The Emerging Plan identifies the Airfield for development of approximately 3,500 dwellings[26]. However, as previously noted, the Emerging Plan is still to be adopted, and is subject to outstanding objections and its policies may be subject to change. Therefore I cannot place significant weight on the Airfield proposals at this stage, and do not consider they are a reason for this appeal to fail.

Planning Balance and Overall Conclusions

39. The relevant legislation requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The Framework states that proposals should be considered in the context of the presumption in favour of sustainable development, which is defined by economic, social, and environmental dimensions and the interrelated roles they perform. These dimensions give rise to the need for the planning system to perform a number of roles.

40. In this case, the additional housing would be a weighty benefit for the area, by introducing much needed private and affordable housing for local people. It would boost the supply of housing in accordance with the Framework, contributing up to 58 homes, of which up to 24 would be affordable. It would bring about additional housing choice and competition in the housing market. The scheme would bring about social and economic benefits. It would create investment in the locality and increase spending in shops and services. It would result in jobs during the construction phase. The new homes bonus would bring additional resources to the Council.

41. Whilst the development would result in the loss of open agricultural land (albeit with some existing structures on it), the Council has not objected to the scheme in terms of its effect on the character and appearance of the area, nor its effect on the landscape. The site is physically reasonably well contained, and visually well related to the built up area of the village. I have found the objections relating to highway safety and noise not sufficiently well founded to

[26] Policy SS/6: New Village at Bourne Airfield

cause the appeal to fail. I am satisfied that the planning obligation accords with the Framework and relevant regulations, and have taken it into account in my deliberations.

42. I accept that this is a location with limited public transport links and other essential shops and services. As a consequence, any residents of the new development are likely to travel further afield for shops, services and employment which will very likely necessitate trips by private vehicles. However, and importantly, the Framework, although seeking to promote sustainable transport, recognises that different policies and measures will be required in different communities, and opportunities to maximise sustainable transport solutions will vary from urban to rural areas. South Cambridgeshire is primarily a rural district, which means many areas within it have restricted access to public transport, and limited facilities. This requires a realistic approach to the general travel method of its residents, and this should not weigh against the development. In addition, various measures are proposed as part of this scheme to improve accessibility and encourage sustainable transport.

43. There would be some conflict with Policy ST/6 of the CS and Policy DP/7 of the DCP. Importantly, however, the Council cannot demonstrate a five year supply of housing. This diminishes the weight that can be attached to any conflict with these policies. The ongoing housing shortfall attracts substantial weight in favour of granting permission for the proposals, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. I am satisfied that none of the reasons put forward for opposing the development establishes that the harm would be significant or would demonstrably outweigh the benefits. Therefore, notwithstanding any conflict with Policies ST/6 and DP/7, it follows that the appeal should succeed, subject to conditions. I deal with these conditions below.

Conditions

44. I have reviewed the suggested conditions in the light of the discussion at the Inquiry and advice in the Planning Practice Guidance (PPG). Where necessary, I have reworded them for clarity and simplicity, and have also amalgamated some of the conditions to avoid duplication.

45. Commencement conditions are necessary to comply with the relevant legislation. A condition requiring compliance with the submitted plans and specifying the maximum number of dwellings is necessary for the avoidance of doubt. A condition specifying the scope of requirements in relation to reserved matters is necessary to ensure these matters are properly dealt with and to ensure a high quality scheme.

46. Conditions relating to landscaping, site clearance /preparatory work, foul and sustainable surface drainage, ecology, vehicular access details, provision of fire hydrants and contamination are required to ensure these matters are appropriately addressed. Conditions requiring a travel plan, the upgrading of the footpath along Highfields Road and provision of cycle parking at the bus stop are required to minimise private car trips and encourage sustainable modes of transport.

47. A condition requiring electric vehicle charging points is necessary to encourage sustainable transport. A condition requiring the provision of on-site renewable energy is necessary to achieve a sustainable and energy efficient form of development. A condition requiring a Construction Management Plan is necessary to minimise disturbance to local residents. A number of the conditions relate to pre-commencement activities. In each of these cases, the requirement of the condition is fundamental to make the scheme acceptable in planning terms.

48. In reaching my decision, I have carefully considered the serious concerns voiced by Caldecote Parish Council, the Ward Councillor and local residents. I also note the concern of local people that granting planning permission would create a precedent for further housing proposals in Caldecote. However, any future proposals would have to be considered on their merits bearing in mind all material factors. In this case, I have judged the balance falls in favour of granting permission because the adverse impacts would not significantly and demonstrably outweigh the benefits. That judgement is specific to this proposal and would not necessarily be the same if applied to other cases. Subject to the conditions in the attached schedule, I conclude that the appeal should be allowed.

Matthew C J Nunn

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) Application for the approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.

3) The development hereby permitted shall begin not later than two 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 general accordance with the Site Plan 7393-L-05 Rev B and the number of dwellings shall not exceed 58.

5) Details of appearance, landscaping and layout required to be submitted and approved under Condition 1 shall include details of:

    i. All trees and hedgerows on the land and details of those to be retained and how they will be protected during construction;

    ii. Additional planting along the boundaries of the site, including specification of trees, hedges, and shrub planting, including details of species, density and size of stock;

iii. Refuse / recycling storage and collection points, including a Waste Management Plan for the site;

iv. Cycle storage and parking to serve each dwelling;

v. The dwelling mix (including market and affordable housing), including size and type of houses;

vi. The design, form, height and architectural features of the dwellings (which shall not exceed 2.5 storeys), including details of the external surfaces and materials to be used;

vii. Noise mitigation measures within the dwellings;

viii. The public realm including the colour, texture and quality of surfacing of footpaths, roads, parking areas and other shared surfaces;

ix. The design and layout of street furniture;

x. The hierarchy of roads and public spaces;

xi. Visitor parking provision, including up to 10 spaces; and

xii. An external lighting strategy to ensure adequate illumination of roads and paths and to avoid unnecessary light pollution.

6) The landscaping works shall be carried out in accordance with the approved details in accordance with a programme agreed by the local planning authority; and any trees or plants which within a period of 5 years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the local planning authority gives written approval to any variation.

7) No site clearance, preparatory work or development shall take place until an arboricultural method statement (in accordance with British Standard BS 5837) for the protection of trees & hedgerows including appropriate working methods has been submitted to and approved in writing by the local planning authority. The method statement for the protection of retained trees & hedgerows shall be carried out as approved. Any removal of trees, scrubs or hedgerow shall not take place in the bird breeding season between 15 February and 15 July inclusive, unless a mitigation scheme for the protection of bird nesting habitat has been previously submitted to and approved in writing by the local planning authority.

8) No development shall commence until a scheme for foul water drainage and a sustainable surface water drainage strategy have been submitted to and approved in writing by the local planning authority. Both schemes shall be implemented and thereafter managed and maintained in accordance with the approved details.

9) The dwellings shall not be occupied until a Travel Plan to promote and encourage the use of alternative modes of transport to the car has been submitted to and approved in writing by the local planning authority. The scheme shall include, for the first occupier of each dwelling, a travel information welcome pack for sustainable modes of transport.

10) No development shall take place until an updated Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall provide for: details of how construction traffic will access the site from Grafton Drive; the proposed hours and days of working; proposals to minimise disruption to the adjacent local area from ground works, construction noise and site traffic; the parking of vehicles of site personnel, operatives and visitors; loading and unloading of plant and materials; the contractors' site storage areas and compounds; vehicle wheel washing facilities; measures to guard against the deposit of mud or other substances on the highway; a strategy for the minimisation of noise, vibration and dust (including from any piling works). The approved details shall be adhered to throughout the construction period.

11) Before the development is first occupied, details of a scheme for electrical vehicle charging points shall be submitted to and approved in writing by the local planning authority. The scheme shall be carried out as approved before the dwellings are first occupied, or in accordance with a programme agreed by the local planning authority. The approved scheme shall be permanently retained thereafter.

12) No development shall commence until a scheme for the provision of on-site renewable energy to meet 10% of the projected energy requirements of the development has been submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with the approved scheme.

13) No development shall commence until details of schemes for the following have been submitted to and approved in writing by the local planning authority:

    i. The upgrading of the footway along Highfields Road running towards St Neots Road; and

    ii. Provision of additional cycle parking at the bus stop on St Neots Road.

    The works shall be completed in accordance with the approved schemes before the occupation of the first dwelling on site.

14) No development shall commence until a detailed scale plan of the vehicular access from Grafton Drive to the site (including details of any visibility splays) has been submitted to and approved in writing by the local planning authority. The dwellings shall not be occupied until the access has been constructed in accordance with the approved details, and it shall be permanently retained thereafter.

15) No development shall commence until an ecological method statement has been submitted to and approved in writing by the local planning authority. The survey shall include:

    i. An updated survey recording badger activity on the site (including the woodland area to the west). The survey shall include appropriate mitigation measures to be approved by the local planning authority. No development shall be undertaken

except in full accordance with the approved scheme of mitigation; and

ii. Details of measures for encouraging biodiversity within the site. The works shall be undertaken in accordance with the approved measures.

16) No development shall take place until a scheme for the provision and location of fire hydrants to serve the development has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the approved scheme has been implemented.

17) No development shall begin until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the local planning authority (in addition to any assessment provided with the planning application). This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175, and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include: (i) a survey of the extent, scale and nature of contamination; (ii) the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland, service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, and archaeological sites and ancient monuments.

No development shall take place where (following the risk assessment) land affected by the contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out (and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority) before the development (or relevant phase of the development) is occupied.

Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development (or relevant phase of development) is resumed or continued.

APPEARANCES

FOR THE COUNCIL:

Annabel Graham Paul	of Counsel, Instructed by South Cambridgeshire District Council

She called

Sarah Ballantyne-Way	SBW Planning Ltd

FOR THE APPELLANT:

Jonathan Easton	of Counsel, Instructed by NJL Consulting

He called

Andreas Markides	Markides Associates (Highways & Accessibility)
Mark Dawson	Wardell Armstrong (Noise)
Graham Whitehouse	Wardell Armstrong (Drainage)
Mark Saunders	NJL Consulting (Planning)

INTERESTED PERSONS

Councillor Philip Claridge	Caldecote Parish Council
Councillor Dr Tumi Hawkins	South Cambridgeshire District Council

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Document regarding Cambridge to Cambourne Busway
2. Document regarding bus services in Cambridgeshire
3. Table showing comparison of centres and bus accessibility
4. Journey to Work Mode Share Data
5. Statement of Common Ground, signed 5 September 2017
6. Opening Submissions of appellant
7. Land Registry Document
8. Internal Memorandum of Council's Environmental Health Officer, dated 10 November 2016
9. Notes on Bus Services

10. Google Streetview of Grafton Drive
11. Plan of Cala Homes Scheme
12. Extract showing Google driving distance from Cambridge Science Park to Grafton Drive
13. Submissions of Caldecote Parish Council
14. Submissions of Councillor Dr Hawkins
15. Council's Note regarding Emerging Local Plan
16. Note by appellant regarding land ownership of site
17. Planning Obligation Note: justifying provisions by Cambridgeshire County Council
18. Planning Obligation Note: justifying provisions by South Cambridgeshire District Council
19. Planning Obligation: dated 7 September 2017
20. Schedule of Suggested Conditions
21. Closing Submissions on behalf of the Council
22. Closing Submissions on behalf of the appellant