



Appeal Decision

Hearing held on 30 June 2010
Site visit made on 30 June 2010

by **Kevin Ward BA (Hons) MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gov.uk

Decision date:
4 August 2010

Appeal Ref: APP/P0240/A/10/2118560

Land off Kiln Way, Dunstable, Bedfordshire LU5 4GZ

- 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 Dunmore Developments Ltd against Central Bedfordshire Council.
- The application Ref SB/OUT/09/0162 is dated 12 March 2009.
- The development proposed is the erection of 14 No. new dwellings; access road and associated works with landscaping as a reserved matter.

Decision

1. I dismiss the appeal and refuse planning permission.

Procedural Matters

2. The appeal concerns an application for outline planning permission. Details of scale, layout, appearance and access were included in the application. Landscaping was reserved for later consideration. The Council confirmed that had it determined the planning application it would have been refused. Its concerns lie with the relationship to the proposed Luton Dunstable Busway scheme, the layout, design and appearance of the proposed dwellings, the effect on the living conditions of those living in Jeansway, highway safety and contributions to community infrastructure in the area.
3. The appellant submitted two planning obligations in the form of unilateral undertakings. These concerned contributions to open space and educational facilities in the area.
4. Following the revocation of Regional Spatial Strategies on 6 July 2010, the policies of the East of England Plan no longer form part of the development plan and I have therefore not referred to them in my decision.

Main Issues

5. I consider that the main issues are:
 - a) The relationship to the Luton Dunstable Busway.
 - b) The effect on the character and appearance of the area.
 - c) The effect on the living conditions of the occupiers of properties in Jeansway in terms of outlook and privacy.
 - d) The effect on highway safety.

06 DEC 2011
SCANNED

- e) Whether provision should be made for affordable housing, urban open space and educational facilities in the area and if so, what that provision should be.

Reasons

6. The appeal site forms part of a larger site allocated for housing under Policy H1 of the South Bedfordshire Local Plan Review (the Local Plan). This allocated site is the subject of a development brief (Land at Skimpot Road, Dunstable: Development Brief). The Development Brief was adopted as supplementary planning guidance after public consultation and I have therefore given it significant weight in determining the appeal. The Development Brief splits the allocated site into two phases. Phase 1 is now developed with the dwellings along Kiln Way and Phase 2 is the appeal site. The Council continues to accept that the principle of housing development on the appeal site is appropriate.

The Luton Dunstable Busway

7. The intended route of the proposed Luton Dunstable Busway follows the disused railway line adjacent to the appeal site. The Busway scheme will involve a guided route for buses and is expected to deliver significant transportation and socio-economic benefits. The relevant order under the Transport and Works Act 1992 (the Translink Order) came into effect in December 2006. Funding for the scheme has recently been confirmed and preparatory works are underway. It is anticipated that the scheme will be operational by late 2012. The particular importance of landscape mitigation along this stretch of the route of the Busway, where it will run alongside Blow's Down (part of the Chilterns Area of Outstanding Natural Beauty) was highlighted by the Inspector who conducted the public inquiry into the Translink Order.
8. There is some dispute between the main parties as to the degree of overlap between the proposed development and the land required for the Busway scheme. This is to some extent understandable given the lack of physical boundaries on the ground and the scale of plans available. The appellant accepts however that on the basis of the plans relating to the Translink Order, a portion of the appeal site lies within the limits of deviation for which compulsory acquisition rights exist. Therefore, whilst I am unable to reach a definite conclusion on the exact area of land involved, it is clear that there would be some overlap between the land identified for the Busway scheme and the appeal proposal.
9. It would appear that the land in question is identified for landscaping, rather than the hard surfacing of the Busway itself, although detailed design work has yet to be finalised. However, as I have noted above, landscaping along this stretch of the Busway is considered to be particularly important. There is limited flexibility in terms of the exact route of the Busway, given the need to link with the bridge over Skimpot Road and the close proximity of the Area of Outstanding Natural Beauty, the County Wildlife Site and the Site of Special Scientific Interest on the opposite side of the railway line to the appeal site.
10. It seems that in principle the Busway itself could be physically accommodated alongside the appeal proposal. However, the area of landscaping, which is an integral part of the overall Busway scheme would be reduced. Furthermore, the layout proposed on the appeal site, particularly in respect of the close proximity of Plot 13 and the access way to the site boundary, would reduce the scope for

meaningful landscaping along the Busway. It would also further reduce the flexibility for its exact route.

11. Notwithstanding the potential to control noise affecting the dwelling on Plot 13 through a condition, the Busway would run very close to its rear garden and balcony at first floor level, significantly reducing the enjoyment of these external private amenity areas for the occupiers of the dwelling concerned.
12. Given the emphasis on landscaping along this stretch of the Busway and the constrained situation on the opposite side of the railway line, I see no reason to suggest that all of the land within the limits of deviation will not be required. On this basis, it is clear that most of the land identified for the proposed rear gardens of Plots 13 and 14 would not be available. It may also be that land identified for the proposed dwelling on Plot 13 and part of the access way would not be available. There is a realistic prospect therefore that the appeal proposal could not be implemented in conjunction with the Busway scheme.
13. Despite the powers of acquisition relating to the Busway scheme, the existence of a planning permission for the appeal proposal could result in some delay and potential additional costs. Implementation of the appeal scheme would further complicate the situation.
14. I consider therefore that on the basis of the evidence before me, the proposed development would have a prejudicial effect on the full and timely implementation of the Luton Dunstable Busway.

The character and appearance of the area

15. Despite the presence of fences, vegetation, garages and other garden structures, the proposed dwellings would be visible, albeit in glimpses, from the street through the gaps between the properties along Jeansway. There would be limited visibility from Kiln Way, given the orientation of the access road.
16. The proposed dwellings would be seen mainly from the elevated and publicly accessible areas of Blow's Down, from the Busway and the path that would run alongside it. From this perspective, they would be viewed partly in the context of the recent development at Kiln Way, which despite being built at a relatively high density, incorporates gaps in the form of parking and landscaped areas. The buildings along Kiln Way also have traditional style pitched roofs. The immediate backdrop to the proposed dwellings would however be provided by the lower density, traditionally styled, semi-detached houses along Jeansway and their lengthy rear gardens.
17. In terms of blocks of development and orientation, the appeal proposal would comply with the indicative layout shown in the Development Brief. However, the limited gaps between the dwellings on Plots 1-12 would create the impression of an almost continuous run of buildings. Although providing adequate amenity space for their occupants, the gardens would be very small in comparison with those on Jeansway. In many cases the frontages of the dwellings would be close to the access way. There would only be modest gaps between the sides of the dwellings on Plots 13 and 14 and the site boundaries. Whilst I accept that the size and shape of the appeal site limits options, the particular layout proposed would result in the development having an unduly cramped appearance.

18. The form of the roofs of the proposed dwellings with their very shallow pitches would help to reduce overall building height. However, they would be noticeably different to those found on houses along Jeansway and indeed the recent development on Kiln Way. The resultant effect on the overall appearance of the proposed dwellings would be out of keeping with the context provided by existing development in the locality.
19. I acknowledge the scope for innovative design under the right circumstances, however, in this case, taking account of the context provided by existing development and the position of the appeal site on the edge of the built up area, I consider that the proposed development would adversely affect the character and appearance of the area.

The living conditions of the occupiers of properties in Jeansway

20. I accept that in many cases, the outlook from the rear of the properties along Jeansway over towards Blow's Down is already affected by fencing, vegetation and structures within the gardens. I also accept that the separation distances between the existing and proposed dwellings would, under other circumstances, be adequate. However, the appeal site occupies an elevated position in relation to the existing houses. Given the limited size of their rear gardens, the dwellings on Plots 1-12 would be close to the common boundaries with properties along Jeansway. In the case of Plot 14 the side of the dwelling would be almost right up against the boundary. As I have noted above, the limited gaps between the dwellings on Plots 1-12 would give the appearance of an almost continuous run of buildings.
21. Despite the use of shallow pitched roofs, the relative height of the proposed dwellings along with their position and layout would make them unduly dominant and overbearing features in the outlook from the rear of properties along Jeansway, particularly from their gardens. The dwellings on Plots 1 and 7 would extend to three storeys, contrary to the design principles set out in the Development Brief which refers to a maximum height of two storeys.
22. The proposed design would avoid main habitable rooms at first floor level facing the properties on Jeansway. In a number of cases, side facing windows in oriel bays would be employed. However, the dwellings on Plots 2-6 would have full length doors and Juliet balconies serving bedrooms at first floor level. Notwithstanding the fencing and vegetation along the boundaries, this would give rise to some potential for overlooking into the rear gardens along Jeansway and a subsequent loss of privacy.
23. The Development Brief envisages two storey houses and given the indicative layout, some effect on outlook and privacy would be inevitable. However, the particular layout and design proposed in the appeal scheme would in my view have an unacceptable impact.
24. I consider therefore that the proposed development would adversely affect the living conditions of the occupiers of properties in Jeansway in terms of outlook and privacy.

Highway safety

25. The proposed site plan submitted with the application (Ref B11455/200) appears to indicate that a paved footway would run alongside the access road for most of its length. It is clear from the Design and Access Statement and subsequent correspondence however that the intention is for a 5m wide shared surface access way with a service strip running in front of the dwellings. I have considered the appeal on this basis.
26. The Council's concern in terms of highway safety relates to the length of the straight section of the access way and the potential vehicle speeds that could occur, putting pedestrians at risk. The appellant accepts this concern but suggests that traffic calming measures could be employed to reduce vehicle speeds to an acceptable level and that such measures could be the subject of a condition.
27. I agree that it may be possible to incorporate traffic calming measures within the layout proposed. However, no specific proposals were put forward by the appellant and I note the Council's concerns that effective traffic calming measures may not be feasible given the number and position of accesses serving the proposed dwellings.
28. In the light of this I consider that there is insufficient evidence before me to demonstrate that a practical and effective solution could be achieved through the imposition of a condition. I find therefore that the proposed development would adversely affect highway safety.

Affordable housing, urban open space and educational facilities

29. The Council accepts that whilst in principle the appeal proposal should contribute towards affordable housing provision, given development costs and other contributions sought, this would render the scheme unviable. It did not pursue the issue of affordable housing provision therefore.
30. Policy H4 of the Local Plan seeks the provision of affordable housing on all suitable residential sites of 1 Ha or more or where at least 25 dwellings are proposed subject to a number of criteria. In exceptional cases the policy allows for financial contributions to be made to enable affordable housing provision on an alternative site. Planning Policy Statement 3: Housing (PPS3) sets out a national indicative minimum site size threshold of 15 dwellings in terms of providing for affordable housing.
31. As noted above, the appeal site forms part of a larger allocated site for which there is a single development brief. Paragraph 2.6 of the Development Brief states that affordable housing provision will be sought from each phase. However, the Development Brief also makes it clear that the Phase 1 development should include provision for an access road up to its boundary with Phase 2 (the appeal site), with rights of passage to enter and leave the site via Phase 1. It goes on to state that this will require dialogue between parties before planning permission is granted for Phase 1 or the entire site.
32. The subsequent planning obligation relating to Phase 1 required an access road up to a point 1m from the boundary with the appeal site. It appears that there was no dialogue between the relevant parties on this matter prior to the planning

permission being granted for Phase 1. This leaves the situation where the appellant does not have rights of access to the appeal site from Kiln Way. The key aspect of the Development Brief which links the two phases has not therefore been implemented.

33. Under these circumstances I consider it unreasonable to continue to regard Phases 1 and 2 as part of a single site for the purposes of affordable housing provision. In itself the appeal proposal falls below the thresholds set out in Policy H4 of the Local Plan and PPS3. There is therefore no need for the on site provision of affordable housing or a financial contribution to provision elsewhere.
34. Policy R10 of the Local Plan requires the provision of or contribution towards children's play areas for housing developments of 12 or more dwellings unless there is adequate provision within 200m of the site. I saw that there is an equipped play area within such a distance of the appeal site, accessed via Kiln Way. This appeared to have been improved recently. I am satisfied that there is no need for the provision of or financial contribution to children's play facilities therefore. The Council did not provide any evidence to the contrary.
35. The provision of or financial contribution towards urban open space as part of residential development is required by Policy R11 of the Local Plan. The Council accepts that given the size and shape of the appeal site, direct provision of such open space on the site would be impractical. It has suggested that a contribution of £1,000 per dwelling should be made to The Wildlife Trust for the improvement and management of Blow's Down.
36. Following completion of the Busway scheme, residents of the proposed dwellings would not have direct access to Blow's Down. However, access could be gained via Kiln Way and Skimpot Road and I am satisfied that given its proximity, the residents of the proposed dwellings would be likely to make use of the open space available. In my view, improvements to public access and infrastructure at Blow's Down would be directly related to the proposed development.
37. In the light of the above I find that in principle a contribution towards the improvement of Blow's Down as an area of public open space would be justified, provided that it was fairly and reasonably related to the proposed development.
38. It is the responsibility of the Council to set out clearly the contribution sought and the justification for it. The figure of £1,000 per dwelling appears to have been suggested by The Wildlife Trust on the basis of what has been accepted on other sites in the area. There is no evidence to link this level of contribution with the expected additional demands on the open space as a result of housing developments. Other figures had been suggested in the past during consideration of the application. The Council was unable to explain how any of these figures related to the development proposed.
39. It is not clear that the suggested contribution of £1,000 per dwelling would be fairly and reasonably related to the proposed development. Whilst I note that the planning obligation submitted by the appellant includes such a contribution, I can give it no weight in my decision, as it fails to satisfy the tests set out in Circular 05/2005 and the requirements of Regulation 122 of the Community Infrastructure Levy Regulations.

40. Policy 25 of the Bedfordshire Structure Plan provides the basis for the Council to seek contributions towards the provision of infrastructure in relation to new development. This includes contributions to educational facilities.
41. I appreciate that the appellant was advised in 2008 that no contributions towards the provision of educational facilities were required. However, I consider it reasonable for the Council to have re-assessed the situation regarding school capacities following the receipt of the planning application for the appeal scheme. In particular it is appropriate to take account of the effect of other housing developments in the area in establishing whether there would be adequate capacity to accommodate the additional demand generated from the appeal proposals.
42. I note that the Council agreed not to apply the Supplementary Planning Document on Planning Obligations adopted in October 2009 (the SPD) to applications submitted prior to 5 January 2010. Whilst this SPD provides detailed clarification in relation to the calculation and application of planning obligations, including those concerning contributions to educational facilities, it is clear that the principle of seeking contributions where appropriate is long established and has a sound basis in Policy 25 of the Structure Plan.
43. Given the information before me, I am satisfied that a contribution in the order of £81,749 as suggested by the Council would be justified, regardless of whether the SPD should be applied in this case.
44. In reaching this conclusion I am mindful of the potential effect on the viability of the proposed development, particularly taking into account the need to gain access to the site from Kiln Way. However, the costs of obtaining access would be a matter of negotiation between the appellant and the adjacent landowner. I see no reason why these negotiations could not take into account the funds available to the appellant, following the contribution to educational facilities and other costs associated with the development. I consider therefore that the suggested contribution would not necessarily undermine the viability of the proposed development.
45. The planning obligation submitted by the appellant would result in a contribution of approximately £39,809 and would only satisfy the additional demand for upper school places. The obligation would not be fairly and reasonably related in scale and kind to the proposed development and it would not make it acceptable in planning terms. It fails the tests of Circular 05/2005 and does not satisfy the requirements of Regulation 122 of the Community Infrastructure Levy Regulations. I cannot therefore give the obligation any weight in my decision.

Conclusion

46. For the above reasons and taking account of other matters raised I find that the proposed development would be contrary to Policies T4 and BE8 of the Local Plan, Policy 25 of the Bedfordshire Structure Plan and the Development Brief for the site and conclude that the appeal should be dismissed.

Kevin Ward

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Dent	Architect and Planning Consultant
Mr Furby	Dunmore Developments Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Spurgeon	Principal Planning Officer
Mr Ager	Principal Highways Development Control Officer
Ms Rigg	Principal Assistant (School Places)
Mr Aldridge	Luton Borough Council

INTERESTED PERSONS:

Mr Peskett	Local resident
------------	----------------

DOCUMENTS

- 1 E mail relating to latest situation with Luton Dunstable Busway
- 2 Plan showing General Vesting Declaration for Luton Dunstable Busway
- 3 Diagram showing potential visibility of proposed dwellings submitted by Council
- 4 Information on calculation of contributions to open space
- 5 E mail relating to archaeological investigation



Appeal Decision

Site visit made on 28 February 2011

by **Martin Whitehead LLB BSc(Hons) CEng MICE**

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

Decision date: 18 March 2011

Appeal Ref: APP/P0240/A/10/2136390

Land at Kiln Way, Dunstable, Bedfordshire LU5 4GZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Robin Furby against the decision of Central Bedfordshire Council.
 - The application Ref CB/09/06851/OUT, dated 4 December 2009, was refused by notice dated 12 March 2010.
 - The development proposed is erection of 13 new dwellings, access road and associated works.
-

Procedural and Preliminary Matters

1. The application was submitted in outline form with landscaping as the only matter of detail reserved for later consideration.
2. Following the site visit, Drawing No 5087626/809/TP/TG/PL03, compiled by Atkins on behalf of Luton Borough Council (LBC) Busway Project Team, has been submitted. It shows the Luton Guided Busway Order boundary and the Land Registry boundary that had been set out at the site visit. The appeal site boundary, as indicated on the application plans and taken from Plan No CD-J86D-01, has been added to the drawing. It is significantly different from the Land Registry boundary. These boundaries have been agreed with the appellant, who suggests that the Land Registry plan is not determinative of the position of the site boundary. On this basis, I have determined the appeal using the site boundary shown on Plan No CD-J86D-01, and not the Land Registry boundary that was set out on site.
3. The appellant has submitted two S106 planning obligations in the form of Unilateral Undertakings (UUs) to secure contributions towards education and recreational open space/outdoor sport/children's play. I have taken these into account as material considerations in my determination of the appeal.

Decision

4. I dismiss the appeal.

Main Issues

5. The main issues are the effect of the proposal on the proposed Luton Dunstable Busway, and its effect on community infrastructure.

Reasons

Luton Dunstable Busway

6. The Luton Dunstable Translink Order gives LBC powers to construct a guided Busway on land that includes part of the appeal site. The guided Busway is a major local transport project that is expected to deliver significant benefits to local transport. It is at an advanced stage and funding has been confirmed. The contract for it is a 'design and build' which could result in the Busway being located on any acceptable alignment within the defined corridor. The area of land that is within this corridor which the Order gives powers to acquire for the Busway has been agreed by the appellant as including part of the proposed access road to the appeal development and parts of proposed plots 12 and 13.
7. The appellant has accepted that, should the land up to the northern boundary of the Busway be required, the proposed scheme could not be implemented. He has prepared Drawing No B11455/500E to illustrate how 11 houses may be delivered within the reduced site in such a situation, but this would need to be assessed following the details of the Busway in order to determine its acceptability. Whilst the serving of a further General Vesting Order would normally be a relatively quick procedure, the granting of planning permission for development on that land could delay and complicate proceedings.
8. With regard to the landscaping, the Inspector's concerns expressed in the report on Translink are related mainly to the proposed landscaping to the south. However, the appeal proposals were not before that Inspector and so he could not determine the importance of the landscaping to the north in relation to them. Although the appellant has suggested that there should be a solution to the landscaping to mitigate any impact from the Busway on the proposed garden at Plot 13, such as a 2m fence and a beech hedge, he has not produced details to show that it would be achievable and acceptable.
9. In terms of noise, the appellant has indicated that the garden to Plot 13 would be in Noise Category A in accordance with Planning Policy Guidance: *Planning and Noise* (PPG24). However, this is based on the predicted LAeq daytime noise contour map produced for Luton Dunstable Busway project of which the Assistant Project Manager has indicated in his letter, dated 15 January 2010, that the modelling was prepared without knowledge of the proposed development and only considered the impact on the residential properties in Jeansway. Therefore, this is insufficient information to show that the effect of noise from the proposed Busway on the living conditions of future occupants of the proposed houses would not unacceptably restrict the design and future operation of the Busway.
10. For the reasons given above, I find that the appeal proposal would, at best, result in a reduction in the area that would be available alongside the Busway for landscaping and noise mitigation adjacent to the proposed development. At worst, the proposed pair of semi-detached houses on Plots 12 and 13 and the access road would need to be redesigned to accommodate the Busway. Given that I have no confirmation that the alignment of the Busway in that area has been finalised, and that the corridor width is restricted by the close proximity of Blow's Downs Site of Special Scientific Interest (SSSI), the proposed development would unacceptably compromise the route of the Busway. Therefore, I conclude on this issue that the proposal would have an adverse effect on the proposed Luton Dunstable Busway, and would fail to accord with

South Bedfordshire Local Plan Review (SBLPR) Policy T4, as it would not safeguard the Translink route.

Community Infrastructure

11. The provision of contributions to meet the costs of necessary associated infrastructure is supported by Policy 25 of the Bedfordshire Structure Plan. The appeal proposal would not provide any on-site public open space, as required by SBLPR Policy R11. Blow's Downs SSSI, which is owned and managed by the Wildlife Trust, is within easy access of the appeal site and therefore the proposed additional residents would be likely to make use of it for recreation. The Council has indicated that the contribution that would be made under the UU would go towards the management of Blow's Downs. A letter from the Wildlife Trust Conservation Officer, dated 30 September 2010, justifies the contribution and the appellant has not contested its contents.
12. With regard to education, the Council's *Planning Obligations Supplementary Planning Document for Southern Bedfordshire* gives details of the methodology for calculating contributions. It takes account of whether there is insufficient capacity in the local catchment area to provide for additional educational needs arising from the proposed development. The Council has re-assessed the required contribution resulting from the proposed 13 dwellings to be £66,922.96, based on the need for additional places at lower and upper school levels. The appellant's UU would only secure the £36,965.76 required towards upper school education.
13. The details provided by the Council to support the contribution towards education take account of future projections and add in the anticipated impact of new housing. However, a contribution towards lower school education does not have sufficient justification, as the projection for St Christopher's Lower is 14 surplus places in 2014 and the appellant has suggested that most of the anticipated new housing listed by the Council was occupied by 2008. The Council has not provided any evidence to show otherwise. On this basis, the occupants of the new housing should already have had an impact on school places. Therefore, sufficient lower school places should be available to cater for the proposed development and the contribution secured by the UU would adequately address the impact of the proposed development on education.
14. Taking the above into account, I am satisfied that the above contributions would be directly related to the proposed development and would be necessary to make it acceptable in planning terms. Therefore, the obligations to provide contributions towards open space and education meet the Community Infrastructure Levy (CIL) Regulation 122 tests and the tests in Circular 05/2005: *Planning Obligations*.
15. I conclude on this issue that the S106 Unilateral Undertakings would address the effect of the proposed development on community infrastructure. I have given the planning obligations in relation to these contributions significant weight. Without them, the proposal would have an unacceptable effect on community infrastructure and would fail to accord with SBLPR Policy R11, in respect of the provision of public open space, and Bedfordshire Structure Plan Policy 25, with regard to contributions to meet the cost of necessary associated infrastructure.

Overall Conclusions

16. I have found that, taking account of the Unilateral Undertakings, the proposal would not have an adverse effect on community infrastructure. However, the harm that it would cause to the proposed Luton Dunstable Busway provides a compelling reason on its own why planning permission should not be granted. Therefore, having regard to all matters raised, I conclude that the appeal should fail.

M J Whitehead

INSPECTOR