



Appeal Decision

Inquiry held between 14 - 17 January 2020

Site visit made on 15 January 2020

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th February 2020

Appeal Ref: APP/Q4625/W/19/3237026

Oak Farm, Hampton Lane, Catherine De Barnes, Solihull B92 0JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr A Simpkin (Minton Care (CdeB) Ltd & Richmond Care Villages Ltd) against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2019/01215/PPFL, dated 29 April 2019 was refused by notice dated 10 September 2019.
 - The development proposed is the demolition of existing buildings and erection of a Continuing Care Retirement Community (CCRC) under Use Class C2, consisting of 50 frail elderly and dementia care beds, 49 care suites, 71 care apartments, 7 care cottages and 4 care bungalows, incorporating Village Care Building and Wellness Centre together with associated landscaping and car parking including closure of existing access off Hampton Lane and improved access off Friday Lane.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development above is taken from the planning application form, but with agreement from both main parties I have removed "*(resubmission of application app 2018/00781/FUL, Block B2 – now wholly single storey, Block C3 – Bungalow now two storey, Block D – Plots 69/70 replaced with different type)*" as this is not an act of development. The number of care apartments also reduced from 72 to 71 during the assessment of the proposal by the Council.
3. A planning obligation was presented in final draft at the Inquiry, discussed, and a signed copy produced shortly afterwards dated 23 January 2020. The content of the planning obligation is firstly to ensure the scheme provides assisted living units for the provision as extra care, and to define the minimum care package to be provided. Secondly, to ensure that the units are initially marketed for sale to local people for a period of 6 months prior to being placed on the open market.
4. The Local Plan Review (LPR) was discussed during the Inquiry and is referred to in evidence. I was presented with a report¹ that outlines a revised timetable for the Local Plan Review, which details that the next step in the plan making process is the publication of the 'draft submission' plan (DSP) in summer 2020,

¹ Inquiry Document 5

with adoption anticipated in spring/summer 2021. It is agreed by the main parties that the DSP would be of limited weight given its very early stage in the examination process.

5. Since the Inquiry, the 2019 Housing Delivery Test results have been published. For this Borough, the results indicate a delivery of 105%, with it being 109% in 2018 Housing Delivery Test result. The difference between results is marginal and does not change the 'consequence' of the test, which is 'none'. Accordingly, I have not sought comments from the main parties.

Main Issues

6. The site is in the Green Belt. Whilst part of the site is previously developed land, it is agreed between the main parties that the proposal as a whole would be inappropriate development in the Green Belt. This is because the proposal would have a greater impact on the openness of the Green Belt than the existing development. I agree.
7. Accordingly, the main issues are:
 - (a) The effect of the proposal on the openness and purposes of the Green Belt; and,
 - (b) 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.

Reasons

The site and proposals

8. The site is located to the east of Catherine De Barnes, a small village located on the outskirts of Solihull, in the Meriden Gap that forms a break of development between Solihull (and the Birmingham conurbation) and Coventry.
9. The previously developed part of the site is used for a mixture of housing, offices and light industrial uses, and caravan storage. This is located on its south western side, adjacent to the Grand Union canal. Aside from an access from Friday Lane, the eastern side of the site is undeveloped land, bound by hedgerows. The north west corner is also undeveloped, being an open paddock with some orchard type trees, bounded by the canal and Hampton Lane.
10. The proposal would comprise large scale development of the whole site to create a Continuing Care Retirement Community (CCRC) village. This includes a village care centre that would contain a wellness centre, restaurant and other facilities along with care beds and extra care units; surrounded by 4 blocks of extra care apartments, cottages and bungalows. The residential uses would all comprise Use Class C2 and would be available to over 55s only who needed, at the very least, some form of domiciliary care.
11. Access would be from Friday Lane and the proposal includes the closure of the existing vehicular access off Hampton Lane. Off-site highway works would include 2 pedestrian crossings and pedestrian access into the village would be provided on the north west corner of the site. A landscaping masterplan proposes some tree retention, along with new planting and hedgerows.

Green Belt Policy

12. The Government attaches great importance to Green Belts. The National Planning Policy Framework (the Framework) sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy 17 of the Solihull Local Plan (December 2013) (LP) supports national policy and sets out additional provisions.
13. In addition to the LP, there is a neighbourhood plan² (NP) that forms part of the development plan. Objective 5 seeks to safeguard the Green Belt within the Parish as an integral and important part of the local Arden landscape and heritage. No conflict with the NP is asserted by the Council.

Openness and purposes of the Green Belt

Openness

14. The essential characteristics of Green Belts are their openness and their permanence. Whilst there is no definition of openness, it is generally regarded as being free from inappropriate development and the counterpart of urban sprawl. It can comprise spatial and visual aspects.
15. The existing buildings on site amount to some converted barns, workshops, single storey office and modest sized dwellings. Whilst converted to other uses, the structures appear to relate to the site being a former working farm and are akin to structures that one might expect to find in the Green Belt.
16. The proposal would amount to just below 19,000 square metres of floorspace and accommodation ranging between 1-3 floors. The buildings would occupy a large part of the site, spread around in blocks of development, along with car parking and the access road.
17. Given the significant extent of development across the site, together with the massing, height and built form of the buildings, there would be a significant, harmful and extensive reduction in openness both spatially and visually. Introducing such a volume of development on a part of the Green Belt currently covered by either low level structures or undeveloped land would unavoidably harm openness.
18. Whilst parts of the site would be screened by landscaping, and there is surrounding development that influences the site, there would also be views into the site from Catherine de Barnes village, the canal towpath and the public footpath to the south of the site. Added to this would be transient views from road users passing the site on either Friday Lane or Hampton Lane and at the roundabout, because the hedgerow boundary is sparse in places. Whilst the extent of the visual effect would be localised, it would nevertheless be clearly perceived as a reduction in openness as the existing open views across and into the site would be lost.
19. Within the site itself, there would only be limited areas left undeveloped owing to the scale of built development and accompanying parking and servicing areas, and therefore there would be a reduction in openness for any users of the site.

² Hampton in Arden Neighbourhood Development Plan (made July 2017)

20. It is agreed between the main parties that the harm to openness would be substantial. I agree. There would be a very significant reduction in openness, and this would conflict with Policy P17 of the LP and the Framework.

Purposes

21. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. One of the purposes of the Green Belt is to assist in safeguarding the countryside from encroachment. Moreover, one of the objectives of the LP is to maintain the Green Belt in Solihull, to safeguard the key gaps between settlements such as the Meriden Gap and countryside. The site sits within the Meriden Gap and this is seen as a strategically important gap between the Birmingham conurbation and Coventry.
22. Both main parties agree that the proposal would conflict with the purpose of assisting in safeguarding the countryside from encroachment. The Council assert that there would be significant encroachment and the appellants limited.
23. The undeveloped part of the site is adjacent to Friday Lane and separated from the previously developed part of the site by a strip of trees and shrubs that run north-south. The undeveloped part runs up to the roundabout with Hampton Lane, Catherine De Barnes Lane and Solihull Road. To the south is Friday Lane Nurseries, a plant nursery containing outbuildings and polytunnels associated with the use.
24. There is no development surrounding the roundabout junction, only woodland and fields; and the roundabout itself contains well established trees. It is distinctly rural when approaching from the north, south or east; and when exiting Catherine De Barnes from the west, there is an obvious transition from the village to the countryside when approaching the roundabout after passing 254 Hampton Lane.
25. The proposal would introduce development onto this eastern parcel of land, up to the roundabout and near to Friday Lane. Although the site does not contain many intrinsic features of the Arden Parklands landscape character area, this is of little relevance given that it is open and free from development, contributing towards the fundamental aim of Green Belt policy and one of the purposes by safeguarding the countryside from encroachment. Indeed, given its location on the edge of Catherine De Barnes, it also contributes towards maintaining the strategically important Meriden Gap.
26. Despite concerns over access or defensible boundaries; the previously developed part of the site has been included as a draft housing allocation for 80 homes in the DSP³. The undeveloped part of the site is excluded, because *"currently all 4 parcels of land fronting onto the island are open and development free – the 'entrance' to the Catherine De Barnes is some 60m away from the island"*. I heard arguments at the Inquiry and in writing that Friday Lane serves as a more suitable and substantial defensible boundary. However, the LPR and examination of the DSP is the proper forum for considering changes to the Green Belt boundaries in a strategic and comprehensive manner.

³ Core Document 3: paragraph 182.

27. Furthermore, whilst of very little weight given there have been no decisions, the applications for the motorway service station⁴ and the development consent order for Junction 6 improvements and a new junction 5A on the M42 serve to demonstrate the pressure that the Meriden Gap is under.
28. Accordingly, the extent of development proposed would result in encroachment into the countryside. I consider that this would be significant given the strategic nature of the Meriden Gap and the extent of development that would be introduced along Friday Lane and at the roundabout. This significant encroachment would amount to substantial harm, conflicting with Policy P17 of the LP and the Framework.

Other harms

Character and appearance

29. The design and layout of the proposal is of a high quality that would be sympathetic to the area. The Council agree that the design quality weighs in favour. However, owing to the quantum of development proposed and urbanisation of the site, there would be an adverse effect on the open and rural character and appearance of the area. The Council do not assert any conflict with the development plan, although this matter is mentioned in the Council's evidence and Officer report. This adds very limited weight against the development in the overall balance.

Other considerations

30. Turning now to the other considerations advanced by the appellants, that they believe collectively amount to very special circumstances.

Need

31. Despite the differences in methodology, it is recognised by both main parties that there is a clear need for older peoples' housing and the LP contains no policies that relate to housing or care for older people. On this matter, the Council give this matter significant weight and the appellant substantial. They are not far apart.
32. Indeed, the note produced prior to the Inquiry sets out the respective positions. In 2019, the shortfall of extra care and bed spaces combined is between 997 (appellants' figure) and 663 (Council's figure). In 2024, this changes to a shortfall of 549 (appellants' figure) and 453 (Council's figure), and in 2029, there would be a predicted shortfall of 913 (appellants' figure) and 704 (Council's figure).
33. It is not necessary to delve into all the areas of disagreements between the parties given the extent of the shortfall and the weight both parties give it. Differences between the age cohort used is largely immaterial to the results, along with the population data. The provision of in-home domiciliary care was promoted by the Council, such that older people would be able to stay in their own homes, yet there remains an identified need for extra care units and care bed spaces.

⁴ Application Ref: PL/2105/51409/PPOL

34. The provision rates used are different, with the Council using the approach outlined in the Planning Practice Guidance⁵ (PPG) and the appellants their own residual calculation approach. Both approaches have their own merits and for the purposes of this appeal, given that there is an identified shortfall in both parties' evidence, it is not necessary to pick a preferred approach. That said, the PPG only gives an example of one tool for working out the future need, and this is the Council's approach.
35. On matters of specific dispute, the Council contend that despite the identified shortfall, the proposal would not deliver affordable care options and thus it would not cater for the whole shortfall, concentrating predominantly on leasehold extra care. The Council detail that, of the 254 (Council's figure) extra care unit shortfall in 2029, only 52 of those would need to be leasehold with the remaining rented. The way this tenure split has been calculated by the Council appears reasonable to me and the appellants did not dispute it.
36. At the Inquiry, I heard that the business model normally offered an 80/20 split between leasehold and rented, but that none of these would be 'affordable', neither was there a policy requiring this. The 80/20 split is market dependant and may change based upon demand.
37. Thus, there is an option to provide rented extra care units as the market demands it. Therefore, even if I were to take the Council's assumption that at 2029 there would be only 52 leasehold units in need, this proposal could account for those and any remaining units could be rented. Additionally, owing to the planning obligation there would be a requirement (at least in the first 6 months of marketing) to provide extra care units to local residents despite the tenure offered. Therefore, the proposal would respond to the identified shortfall, even if only limited provision is made towards the rented demand.
38. The appellants argue that the shortfall in care bed spaces would be much higher if existing care bed spaces that are either shared rooms or without en-suite facilities are removed from the total. This is because they are not seen to be 'market standard' and any new facilities would not be built in this way. I disagree. Whether the bed spaces are 'market standard' is a very different question as to whether they provide a bed space, which they clearly do. As such, given these care homes and/or nursing homes are registered by the Care Quality Commission as providing such facilities and bed spaces, to discount them for not providing a 'market standard' bed space would be unjustified. They provide a bed space and should be accounted for as such.
39. The Council contend that any shortfall would be made up for by allocations coming forward in the DSP and/or windfall development, citing a past trend of windfall permissions, which I accept accounts for a high level of pipeline supply in the short term. However, aside from this proposal, I heard that there were no other developments proposed not already accounted for in the pipeline supply. Therefore, despite past windfall supply and the healthy pipeline supply, there is little evidence that there would be additional windfall supply going forward.
40. Furthermore, the DSP is very early in the process with no sites allocated specifically for older peoples' accommodation. It is of limited weight and to rely

⁵ Paragraph: 004 Reference ID: 63-004-20190626 Revision date: 26 June 2019

on the DSP to deliver the quantum of shortfall by 2029, even on the Council's figures, is unrealistic.

41. The Council refer to the Written Ministerial Statement (WMS) of December 2015, which indicates that unmet housing need is unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. The WMS pre-dates the 2019 Framework, which does not include this provision and similar guidance in the PPG has been removed. Even so, unmet need on its own, is highly unlikely to amount to very special circumstances.
42. Therefore, having regard to the arguments presented from both main parties, I find that there is a clear shortfall for older persons accommodation now and up to 2029. The proposal would deliver 50 care beds – to which there is a clear identified and relatively undisputed need, and 131 extra care units. This would contribute significantly towards the identified shortfall, even if the proposal caters for a higher end predominantly private leasehold market. The PPG sets out that the need to provide housing for older people is critical⁶, and therefore I attach substantial weight to this matter.

Availability of other sites

43. The Council did not contest the appellant's evidence that there were no alternative sites. Furthermore, the appellant disaggregated the facility and looked for smaller sites, but also found no alternatives. The Council's planning witness could point to no other suitable alternatives during cross examination.
44. I note that as part of the DSP, large scale Green Belt release is anticipated. These releases would be strategically planned and assessed, and only sites that meet the requirements set out in the Framework would be released. It could be the case that there may be preferable Green Belt options of land brought forward to accommodate older persons accommodation. However, the DSP is at a very early stage with no sites currently allocated.
45. The alternative site search focussed on sites between 0.6 and 0.8 hectares for a care home and sites between 1 and 2.4 hectares for extra care. The appellant's witness for this matter identified that modern care homes or extra care units could be constructed on smaller sites, but these would not provide the same level of amenities as this proposal. Given the type of proposal is for a CCRC, I agree with the appellant that the site search was appropriate.
46. Therefore, I am satisfied that there are no available alternative sites at the time. This matter attracts significant weight.

Provision of housing

47. The Council cannot demonstrate a 5 year supply of housing land. The appellants argue the supply is 4.12 years and the Council 4.64 years. The difference between parties is not substantial and, in any event, having regard to footnote 7 of paragraph 11 d) ii of the Framework, the tilted balance would only apply were I to find that very special circumstances existed.
48. Nonetheless, in the context of there being an identified shortfall in general housing supply, the provision of 131 extra care units would be of significant

⁶ Paragraph: 001 Reference ID: 63-001-20190626 Revision date: 26 June 2019

weight. Additionally, there would also be a consequential effect of freeing up existing, potentially under occupied, housing to the general market from older people moving into the development. This also weighs in favour.

Employment benefits

49. The proposal would employ in the region of 150 full time equivalent staff. Added to this, the construction costs of the proposal would benefit the local economy and I heard that over 1000 tradespeople would be anticipated on site during construction.
50. However, there would be a loss of employment on the site, in the region of around 30 jobs. I heard at the Inquiry⁷ that re-locating these existing uses in Solihull may be difficult as they are small-scale units.
51. I have seen proposals from the appellant to help these existing businesses re-locate and provided monetary compensation. As I have no method to secure this delivery, it is of no weight overall; but if it did come forward, it would contribute towards re-location costs.
52. The loss of employment on site is of limited weight against the development. However, when considering the proposed employment levels and the employment during construction, overall, this matter would be of significant benefit to the economy.

Social and wellbeing benefits of a CCRC

53. There is no dispute from the Council that specialist accommodation for older people brings about social and wellbeing benefits. The ExtraCare Charitable Trust Research Report (March 2019)⁸ details that significant improvements can be found in ExtraCare residents' health and well-being along with low levels of depression and lower levels of loneliness than national averages. It is also asserted there would be savings to the NHS. However, the Council point out that the report did not focus solely upon CCRC developments, encompassing all types of C2 facilities.
54. I agree with the Council that although the studies indicate clear improvements to the health of those people in care as opposed to living independently, much of these benefits could be gained from any extra care setting and are not exclusive to a CCRC. Nevertheless, the benefits of a CCRC delivered on this site would be clearly similar, and potentially greater than other more basic C2 facilities, given the amount of supplementary facilities proposed.
55. Furthermore, the concept of the CCRC provides a variety of accommodation choices, particularly for couples, along with on-site progression through the levels of care as needs change. PPG recognises such benefits, stating that "*offering older people a better choice of accommodation to suit their changing needs can help them live independently for longer, feel more connected to their communities and help reduce costs to the social care and health systems.*"⁹
56. Therefore, when comparing living independently with domiciliary care, as opposed to living in a CCRC such as the appeal proposal, the social and health

⁷ Mr Osbourne's evidence

⁸ Core Document 58

⁹ Paragraph: 001 Reference ID: 63-001-20190626 Revision date: 26 June 2019

benefits gained and the reduced sense of isolation would be positive for the occupants. I give this significant weight.

Other benefits

57. Members of the public would be able to use the facilities on site for a cost, such as the wellness centre. A condition was suggested by both parties to secure this, yet a planning obligation would secure the provision more successfully. Furthermore, transport on the CCRC's minibus by local residents is proposed along with improved linkages to the canal tow path and agreed parking for Solihull Canoe Club. These benefits to the wider general public are of moderate weight.
58. The proposal may result in increased local spend, but it is likely that given the planning obligation requirements and evidence from the appellant, many occupants would be from within 5 miles. Therefore, much of this increase local spend would come from people occupying the vacated dwellings in the area and not directly as a result of the development. This is of limited weight.
59. The off-site highway works would be necessary to make the development acceptable, and although there would be improvements to pedestrian safety; these are of limited weight in the overall balance. The scheme's design quality is of very limited weight in the balance.

Other Matters

Planning obligation

60. The provisions contained in the planning obligation would meet the tests set out in the Framework and the Community Infrastructure Levy Regulations 2010 (as amended); given that the accommodation proposed would meet a specific need for local older people. However, given my findings below, it has not been necessary to examine the planning obligation any further.

Planning history

61. The Council's officers recommended approval for a similar scheme in 2018, however, it was ultimately refused. The appellants refer to this in written and oral evidence, citing an inconsistent approach. Although the appellants may be frustrated by the outcome, this previous planning decision is of very limited weight given the final decision; and the fact that every case falls to be determined upon its own merits.

Other Sites

62. Evidence of planning permissions granted by the Council for similar facilities in the Green Belt was presented to me. Added to this were other appeal decisions, of reference was the West Malling Decision¹⁰ because it was for an extra care development in the Green Belt. Clearly, the proposed development and site circumstances are different to this appeal, being in a different part of the country with different housing needs and where an entirely different development plan applies. Furthermore, whilst the Inspector attached substantial weight to the overall harm to the Green Belt, the harm to openness and encroachment was mitigated by the site's visual containment and limited public visibility. This is very different to the appeal before me.

¹⁰ APP/H2265/W/18/3202040

63. The other decisions by the Council were made under a different set of situations and I do not know the individual reasons that amounted to very special circumstances, save that there would have been a greater identified need as these now form part of the pipeline supply. In any event, I have determined this appeal on its own merits.

The Green Belt Balancing Exercise and Conclusion

64. Substantial weight is attached to the Green Belt harm arising from inappropriateness, the very significant reduction in openness and the significant encroachment into the countryside in this strategically important Meriden Gap. These are 3 separate and important strands of substantial and permanent harm. Additionally, there would be very limited harm to the character and appearance of the area.

65. Substantial weight is attached to the identified need for the proposal. Significant weight is attached to the lack of available sites, the contribution to the shortfall in general housing land supply, the creation of jobs and the social benefits of a CCRC. Attracting moderate weight are the benefits to the wider general public and I attach limited weight to increased local spending and the highways improvements, and very limited weight to the high quality design.

66. When drawing this together, it is my judgement that the other considerations advanced by the appellants would result in a very finely balanced decision. However, for very special circumstances to exist, the other considerations would need to *clearly* outweigh the substantial harm to the Green Belt by reason of inappropriateness, openness and purposes of the Green Belt, along with the other very limited harm to character and appearance. In other words, for the appeal to succeed, the overall balance would have to favour the appellants' case, not just marginally, but decisively.

67. Consequently, when applying the Green Belt balance, despite the significant merits of the proposal, these would not clearly outweigh the conflict with the development plan and national policy with regard to the totality and permanence of harm.

68. For this reason, the very special circumstances necessary to justify the proposed development have not been demonstrated and thus, it falls that the appeal should be dismissed.

Katie McDonald

INSPECTOR

APPEARANCES

For the Local Planning Authority:	
Mr S Bird QC	Instructed by Mr S Gill, Team Leader of Litigation and Planning for the Council's Legal Services
He called	
Mr L Osborne Dip TP, MRTPI	Major Projects Team Leader, Solihull Metropolitan Borough Council
Mr J Pitcher BA (Hons), MSc, MCIH	Planning Policy Team Leader, Solihull Metropolitan Borough Council
Mr P McColgan BA (Hons), MSc	Director, GL Hearn
For the appellant:	
Mr R Walton QC	Instructed by Donna Savage, DS Planning
He called	
Ms D Savage BSc (Hons) Dip TP, MRTPI	Director, DS Planning
Mr M Flatman BA (Hons) DipLA (Hons) CMLI	Chartered Landscape Architect and Director, Liz Lake Associates
Mr J Chapman MRICS	Director, Pinders
Mr A Simpkin	Appellant
Interested parties:	
Mr M Faizey	Land owner
Mr D Cuthbert	Catherine De Barnes Residents' Association
Mr S Fisher	Local resident objecting to the proposal
Mrs K Fisher	Local resident objection to the proposal

INQUIRY DOCUMENTS

- ID1 Mr Osborne's updated Proof of Evidence on building height ranges
- ID2 SHOP@ Market Split 2035 Options for deprivation/affluence
- ID3 Additional conditions
- ID4 Corrections to Mr Osborne's Proof of Evidence
- ID5 Revised timetable for the Local Plan Review Report to the Solihull Borough Cabinet Member for Climate Change, Planning and Housing
- ID6 Appeal Decision APP/K0235/W/17/3171641 and Planning Obligation
- ID7 Collection of planning application forms for other developments referred to in Appellant's Proof of Evidence
- ID8 Additional information to Mr Pitcher's Proof of Evidence
- ID9 Signed update to suggested condition 7
- ID10 Full copy of the Draft Local Plan Supplementary Consultation
- ID11 Executed planning obligation (dated 23 January 2020)