



Appeal Decision

Site visit made on 24 November 2020

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2021

Appeal Ref: APP/N0410/W/20/3255504

Fulmer Chase Farm, Hay Lane, Fulmer SL3 6HJ

- 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 planning permission.
 - The appeal is made by Mr Terry Daniel against South Bucks District Council.
 - The application Ref PL/19/3553/FA, is dated 16 October 2019.
 - The development proposed is demolition of existing buildings and erection of 4 dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings and erection of 4 dwellings at Fulmer Chase Farm, Hay Lane, Fulmer SL3 6HJ in accordance with the terms of the application PL/19/3553/FA, dated 16 October 2019, subject to the conditions set out in the Schedule to this decision.

Procedural Matter

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details that the development also includes the construction of two stables. The Council have dealt with the proposal on this basis and so shall I.
4. The Council's putative reasons for refusal indicate that the proposed development of 4 dwellings is the matter in dispute. I have no reason to disagree with the Council's conclusion that the proposed stables are acceptable in planning terms. My reasoning below therefore relates to the proposed dwellings.

Main Issues

5. Mindful of the Council's putative reasons for refusal, the main issues are:

- Whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- The effect on the openness of the Green Belt;
- The effect on the character and appearance of the area;
- The effect of the proposed development on the Burnham Beeches Special Area of Conservation (SAC); and
- Whether any 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

Whether the proposed development would be inappropriate development

6. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new dwellings is regarded as inappropriate in the Green Belt save for a number of specified exemptions, one of which is the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt than the existing development.
7. Based on the evidence before me the use of the land and buildings constitute previously developed land and therefore subject to the proposed development not having a greater impact on the openness of the Green Belt than the existing development it would not constitute inappropriate development.
8. Policy GB1 of the South Bucks District Local Plan (1999) (LP) sets out that planning permission will not be granted for development in the Green Belt save for a number of exceptions. The LP predates the Framework and the policy is not as broad as the exceptions outlined in paragraph 145 of the Framework which relates to the construction of new buildings in the Green Belt. In terms of the LP policy, the construction of new dwellings would not meet the policy criteria in this case. However, as the policy is not entirely consistent with the Framework, I afford it limited weight in coming to my decision.

The effect on openness

9. The Framework states that one of the essential characteristics of the Green Belt is its openness. Openness is the absence of development notwithstanding the degree of visibility of the land in question from the public realm. Openness has both visual and spatial aspects.
10. The site contains a number of buildings of varying footprints and heights arranged to create a broad courtyard. Notwithstanding their roof forms existing buildings 2 and 3 are high sided and combined with their large footprints are apparent as tall and bulky structures within the surrounding landscape.

11. I acknowledge that plots 2a, 2b and 3 would have a full two storey appearance. However, the proposed dwellings would largely follow the established form and mass of the existing buildings and would be no taller. The bulk of the proposed dwellings would be kept below eaves height with shallow roofs following the form of existing buildings. Furthermore, the proposed dwellings would also be contained to parts of the site already occupied by buildings and there would be a reduction in the above ground floor space on site. As such, I am satisfied that the form and scale of the proposed dwellings would not result in a greater impact upon openness.
12. The proposed development may lead to a greater level of traffic and activity than currently generated by the use of the site. However, the nature of the traffic and activity would be consistent with nearby dwellings and would not be out of context within the area. As such, it would have a negligible impact upon the openness of the Green Belt.
13. During my site visit I observed associated paraphernalia and miscellaneous items stored within the courtyard and in the open spaces between buildings. Whilst the proposed development would lead to parked cars and domestic paraphernalia there is the potential for a similar quantity of paraphernalia including vehicles and machinery across the site, notwithstanding their rural nature. The replacement of these items with domestic ones whilst resulting in a visual change would not, in my view, diminish the openness of the Green Belt.
14. As such there would be no greater impact on the openness of the Green Belt compared to the existing development. I therefore conclude that the proposal would not be inappropriate development within the Green Belt and accords with the Framework.
15. The Council has referred to two appeal decisions which they consider relevant. In the case of the Trenches Farm appeal¹ it is clearly a materially different case essentially relating to the development of an open site rather than previously developed land. The Baobab² appeal relates to the intensification of a domestic plot and is not comparable to the appeal site. The examples provided do not lead me to reach a different conclusion. In any event every appeal must be considered on its own merits, which is what I have done.

Character and appearance

16. The site neighbours a ménage and is positioned opposite a stable block and is largely surrounded by open countryside which has a verdant appearance. The site whilst contained somewhat detracts from the character of the area due to the condition and appearance of the buildings.
17. I acknowledge that there would be a degree of urbanisation as a result of the proposed development. However, it would be well contained and the layout would largely reflect the position of existing buildings on site. The layout, low scale of the houses, the margin of garden land, green space around the dwellings and generous spacing between them would ensure that the proposed development would not be visually prominent or an intrusive form of development. Furthermore, the appearance of the dwellings incorporating horizontal boarding and shallow roofs would not be out of keeping with their

¹ APP/N0410/W/18/3203243

² APP/N0410/W/18/3201284

rural setting. Overall, the proposed development would successfully integrate into the surrounding rural landscape.

18. I conclude that the proposed development would not undermine the character and appearance of the area. As such, it would accord with LP Policy EP3 which, amongst other things, requires development to be compatible with the character and amenities of the site itself, adjoining development and the locality in general and to create attractive groupings of buildings and spaces between them.

Impact on Burnham Beeches SSSI

19. The site lies within 5.6km of Burnham Beeches SAC. The SAC is one of the richest sites for deadwood invertebrates, retains important epiphytic communities and has an extensive area of acid mire. Recreational activities within the SAC has resulted in adverse impacts including contamination, trampling and harvesting.
20. As the appeal site is in close proximity to the SAC, and residential development is of a type that is likely to result in recreational visits to the protected habitat and the creation of new paths, path widening, erosion and nutrient enrichment. It is necessary for me, as the competent authority for the purposes of the Habitat Regulations³, to conduct an Appropriate Assessment (AA) in relation to the effect of the development on the integrity of the SAC.
21. The Strategic Access Management and Monitoring Strategy (SAMMS) produced with Natural England requires a mitigation payment from all new development between 0.5km and 5.6km of the SAC. This payment is to be secured by way of a planning obligation.
22. The appellant has produced a signed and dated planning obligation by Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990. The UU would ensure a payment towards the SAMMS strategy.
23. Taking into consideration the submitted UU which would mitigate the proposed development and the absence of an objection from Natural England I conclude that the proposal would not have an adverse effect on the SAC.

Other considerations and overall balance

24. I am not convinced that were planning permission to be granted, other schemes would be likely to come forward as I have no substantive evidence to support such an argument.
25. Notwithstanding the representations received regarding additional cars and traffic, the highway authority had raised no objection to the planning application. There is no compelling evidence before me so as to lead me to a different decision in respect of this matter. In respect of the potential for disruption during construction works, this would be short term. I therefore find that the proposed development would not adversely affect the safe operation of surrounding roads.

³ Conservation of Species and Habitats Regulations 2017 (as amended)

26. In terms of flood risk, I note that the lead local flood authority raised no objection to the planning application, and I see no reason to disagree with their advice. A planning condition would manage surface water drainage.
27. It appears that historically refuse or waste materials have been deposited on the site. Based on the evidence before me I am not persuaded that this amounted to a landfill operation or that it would adversely affect human health. In any event planning conditions in respect of land contamination have been imposed.
28. There is no substantive evidence before me to suggest that the proposed development would unduly affect wildlife. A planning condition has been imposed requiring works to be undertaken in accordance with the submitted reports.
29. Given my conclusion above that the proposal is not inappropriate development it is not necessary for it to be demonstrated that there are other considerations so as to amount to very special circumstances necessary to outweigh the harm by way of inappropriateness.
30. The Council accepts that they cannot demonstrate a deliverable five year supply of housing land as required by paragraph 73 of the Framework. In such instances Paragraph 11 d) sets out that the most important development policies for determining the application are out-of-date unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Whilst footnote 6 states that the Green Belt is one such protected area, I have not found that there is a clear reason for refusing the proposed development in respect of Green Belt impact.
31. Paragraph 177 of the Framework indicates that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an AA has concluded that the plan or project will not adversely affect the integrity of the habitats site. I have undertaken such an assessment and found that the proposed development would not result in an adverse impact upon the SAC.
32. I have found that the proposed development would not be inappropriate development in the Green Belt and would not result in a greater impact on the openness of the Green Belt compared to the existing built form on site.
33. The construction of four dwellings would make a moderate contribution towards housing supply in the area in a location within a reasonable distance of a range of day to day services and facilities.
34. The proposed development would not undermine the character and appearance of the area due to its architecture and layout. It is also unlikely to have an adverse impact on the SAC. Future occupiers would help to enhance or maintain local services and the proposal would reuse previously developed land. These are all factors in the schemes favour.
35. As such, no adverse impacts have been identified and there are no other policies in the Framework or the development plan which weigh against the proposal. Accordingly, taking all considerations into account, I conclude that the adverse impacts of granting planning permission would not significantly and

demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework taken as a whole. Under the presumption in favour of sustainable development in paragraph 11 d) of the Framework, this means permission should be granted.

36. Even if I were to conclude that the 'tilted balance' was not engaged in this case, applying the balance under Section 38(6) of the Planning and Compulsory Purchase Act, the proposed development would accord with the development plan. Accordingly, the appeal should be allowed.

Conditions

37. In addition to the standard time three-year limit condition for implementation; it is necessary to specify the approved plans in the interests of certainty.
38. Conditions relating to external materials, hard surfacing and external lighting have been imposed to ensure the satisfactory appearance of the development. A condition relating to the parking and turning areas has been imposed in the interests of highway safety.
39. In the interests of health, I have imposed conditions for an assessment of the potential of land contamination and in the event that contamination is found during construction works. In the interests of sustainability a condition for details of a sustainable drainage scheme has been imposed.
40. In the interests of protecting trees and wildlife a condition has been imposed for the development to be carried out in accordance with the submitted ecological and tree appraisals. Whilst the Council has suggested conditions for the submission of further information in the form of an ecological landscape and management plan I find that sufficient information has already been provided.
41. A condition restricting the use of the stables has been imposed in the interests of maintaining the character and appearance of the area.
42. The Council has suggested a condition for the method of disposal of extracted materials from the site. However, there is no substantive evidence before me to suggest that this condition is necessary to make the proposal acceptable in planning terms therefore the condition has not been imposed.
43. The Council has suggested a condition for a method statement for the protection of birds during the proposed works. However, the protection of wild birds is dealt with by different legislation and as such I do not consider it reasonable to impose this condition.
44. The Council has suggested a condition for a soft landscaping scheme showing existing trees and landscaping. However, sufficient information is shown within the submitted information and thus has not been imposed. I have still found it necessary to ensure that dead or diseased plants are replaced for 5 years following completion of the development and therefore a condition requiring this has been imposed.
45. The Council has suggested removing permitted development rights for the enlargement, improvement or other alterations of a dwellinghouse falling within Classes A, B and E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GDPO).

46. I acknowledge that Paragraph 53 of the Framework advises planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In this particular instance taking into consideration the Green Belt context of the proposed development, in my judgement, conditions to remove permitted development rights are necessary and reasonable to ensure the satisfactory appearance of the development.

Conclusion

47. 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:
 - Plots 1, 2a, 2b, 3 Proposed Location Plan Drawing Number 357 D-16E
 - Proposed Stables Drawing Number 357 D-13
 - Plots 1, 2a, 2b, 3 Existing Passing Bay Plan Drawing Number 357 D-22C
 - Plots 1, 2a, 2b, 3 Proposed Passing Bay Plan Drawing Number 357 D-23C
 - Plots 1, 2a, 2b, 3 Proposed Site Plan Drawing Number 357 D-19D
 - Plot 3 (Barn 4) Proposed Plans Drawing Number 357 D-10
 - Plot 3 (Barn 4) Proposed Elevations and Section Drawing Number 357 D-11
 - Street Scenes Viewed from Lane Drawing Number 357 D-12
 - Plots 1, 2a, 2b and 3 Site Comparisons Drawing Number 357 D-18C
 - Barn 2 – Plot 1 Proposed Plans, Sections and Elevations Drawing Number 357 D-03
 - Plot 2a (Barn 1) Proposed Plans Drawing Number 357 D-06A
 - Plot 2a (Barn 1) Proposed Sections and Elevations Drawing Number D-07A
 - Plot 2B (Barn 1) Proposed Plans and Section Drawing Number 357 D-08A
 - Plot 2B (Barn 1) Proposed Elevations Drawing Number 357 D-09A
 - Plots 1, 2a, 2b and 3 Proposed Landscaping and Site Plan Drawing Number 357 D-02E
 - Existing Buildings Drawing Number 2799-02
 - Existing Buildings, Sizes and outlines Drawing Number 2799-03
- 3) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site.
- 4) No development shall take place where following the risk assessment land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have 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 is occupied.

- 5) 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 is resumed or continued.
- 6) No development shall take place until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall include a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 7) Prior to the commencement of works above ground details and samples of the materials to be used in the construction of the external surfaces of the proposed development and hard surfacing hereby permitted shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and samples.
- 8) The development shall not be occupied until the parking and turning areas have been laid out and completed in accordance with 'Plots 1, 2a, 2b and 3 Proposed Landscaping and Site Plan' Drawing Number 357 D-02E. These areas shall always thereafter be kept available for those purposes for the lifetime of the development.
- 9) Prior to the occupation of the development an external lighting scheme shall be implemented in accordance with details, which shall first be submitted to and approved in writing by the local planning authority. The scheme shall thereafter be retained for the lifetime of the development.
- 10) All plantin'g, seeding or turfing comprised in the approved landscape details shown on Plots 1, 2a, 2b and 3 Proposed Landscaping and Site Plan' Drawing Number 357 D-02E shall be carried out in the first planting and seeding seasons following the occupation of the buildings 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.

- 11) The development hereby permitted shall be carried out in accordance with the recommendations set out in the Ecological Appraisal Original Report 2014; Revision 1: June 2016; Addendum: October 2017 and Addendum: September 2019; Reptile Mitigation and Enhancement Plan – Four Unit Scheme (September 2019) and the Report on the impact on trees of proposals for development (18 September 2019).
- 12) The stable blocks hereby approved shall only be used in connection with the use of the land edged in blue for the keeping of horses and shall not be used as a livery or for any commercial purposes.
- 13) 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 dwellinghouses, additions or buildings or enclosures incidental to the enjoyment of the dwellinghouses falling within Classes A, B and E shall be constructed.