
Appeal Decisions

Hearing Held on 24 February 2021

Site visit made on 3 March 2021

by Stephen Wilkinson BA (Hons) BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th April 2021

Appeal A Ref: APP/N0410/W/20/3245197

Macs Farm, Farthing Green Lane , Stoke Poges, Buckinghamshire, SL2 4JQ

- 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 Tony McGovern against the decision of South Buckinghamshire District Council.
 - The application Ref PL/19/1634/FA, dated 8 May 2019, was refused by notice dated 19 August 2019.
 - The development proposed is change of use of the existing ancillary outbuilding to an independent dwelling (Use Class C3).
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Appeal B Ref: APP/N0410/W/20/3248594

Macs Farm, Farthing Green Lane , Stoke Poges, Buckinghamshire, SL2 4JQ

- 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 Tony McGovern against the decision of South Buckinghamshire District Council.
 - The application Ref PL/19/3599/FA, dated 17 October 2019, was refused by notice dated 2 January 2020.
 - The development proposed is the change of use of the existing ancillary building on site to an independent dwelling (class C3) which would be for the sole use of the applicant at Mac's Farms and would constitute a personal permission, reverting back to its existing use when no longer needed by the Applicant.
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Decisions

1. Appeal A - The appeal is allowed and planning permission is granted for change of use of the existing ancillary outbuilding to an independent dwelling (Use Class C3) at Macs Farm Farthing Green lane, Stoke Poges, Buckinghamshire, SL2 4JQ in accordance with the terms of the application, Ref PL/19/1634/FA, dated 8 May 2019, and the plans submitted with it, subject to the conditions included in the schedule to this letter.
2. Appeal B - The appeal is allowed and planning permission is granted for change of use of the existing ancillary outbuilding to an independent dwelling (Use Class C3) which would be for the sole use of the applicant at Mac's Farms and would constitute a personal permission, reverting back to its existing use when no longer needed by the Applicant at Macs Farm Farthing Green lane, Stoke Poges, Buckinghamshire, SL2 4JQ in accordance with the terms of the application, Ref PL/19/3599/FA, dated 17 October 2019, and the plans

submitted with it, subject to the conditions included in the schedule to this letter.

Procedural Matters

3. The applications were submitted to and determined by South Buckinghamshire District Council. However, due to local government re-organisation the district was merged with 2 neighbouring districts to form Buckinghamshire Council from 1 April 2020.
4. The applicant submitted Unilateral Undertakings with both appeals containing a series of blue line clauses. During the Hearing it was evident that minor drafting changes were required and accordingly, completed Undertakings, each dated 3 March were received for both appeals. I consider these later in this letter.
5. The 2 appeals are each for the same form of development apart from a reference in the description of development of Appeal B for a personal permission. I address this matter below.
6. The Council in its evidence has referred to the emerging South Bucks and Chiltern Local Plan 2036 but has not referred to any policies in evidence. I accord this only limited weight.

Main Issues

7. The main issues raised by the proposals, which are common to both appeals are:
 - Whether the proposed development would be inappropriate development in the Green Belt, including the effect the proposals would have on openness
 - The effect of the proposals would have on the character and appearance of the area, and
 - The recreational impacts of the proposals on the Burnham Beeches Special Protection Area.

Summary planning history of the appeal site

8. By virtue of a CLOPD¹, a large building (this forms the appeal site) was erected as an ancillary building to the rear of, Macs Farm, a detached dwelling house accessed from Farthing Green Lane. However, what was in fact erected was a separate dwelling which became the subject of enforcement action with a Notice being served in 2012² requiring its demolition and the removal of all resulting materials from the land.
9. An appeal against notice was dismissed but this decision was subject to a High Court Challenge. At the interim hearing the Judge suggested Alternative Dispute Resolution as a means of resolving the differences between the parties. Through this process both parties agreed a Section 106 agreement in 2014 which 'stayed' the effect of the Notice which remains valid. The agreement requires the retention of the building as ancillary to the main dwelling. The agreement specified various internal and external works to ensure that the

¹ 09/01302/CLOPED

² RB/E3/1227

lawful use was put into effect. Both parties at the Hearing confirmed that these measures had been completed and remained in place.

10. A related matter concerns the Council's recent decision to grant planning permission³ for a change of use of stables into 2 dwellings on a site lying in the Green Belt, on the appellant's estate.

Reasons for Appeals A and B

Whether the proposal is inappropriate development

11. The National Planning Policy Framework (the Framework) identifies the protection of the Green Belt as a core planning principle. It says one of the fundamental aims of the Green Belt is to keep land permanently open, and openness is one of its essential characteristics. Moreover, checking the unrestricted sprawl of large built-up areas and safeguarding the countryside from encroachment are among the 5 purposes it says the Green Belt serves. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
12. Paragraph 146 of the Framework identifies that certain forms of development are not inappropriate in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. Paragraph 146d) allows the reuse of buildings provided that they are of permanent and substantial construction.
13. The appeal schemes seek the use of the existing ancillary building as a dwelling house independent from Macs Farm. Although Macs Farm is a detached residential property, its owner owns a large area of land to the rear which includes several barns and stables set in paddocks as part of an equine business. The whole site and the string of houses of which the main dwelling forms a part of are in the Green Belt.
14. The owner, for reasons of age and declining health, wishes to live in the appeal site, moving from Macs Farm and his daughter will move to.
15. The Council accept that the existing building is of permanent and substantial construction and is capable of conversion without major rebuilding. Having inspected the building, I see no reason to take a contrary view on this matter.
16. The crux of this issue is whether the use of the existing building as a separate dwelling and surrounding land would preserve the openness of the Green Belt.
17. The appeal site lies to the rear of Macs Farm and it has its own separate vehicular access via a long drive taken from Grays Park Road (B146). The site has a parking forecourt with small lawn and to the rear a patio with garden. A tall laurel hedge through which there is a gap allows access to Macs Farm.
18. The front garden and forecourt are well screened by both a wall and a long line of conifers which lies the length of the other side of the access from the appeal site. The rear garden to the appeal site is entirely screened by the building. The location of the large barn serving the paddocks also shields views of the appeal site from footpath STP/8/1.

³ PL/18/4398/FA

19. Accordingly, the Council's concerns over the degree of impact arising from the visibility of paraphernalia and cars using the access are overstated. If the typical domestic activities associated with a forecourt and a garden including the use of a trampoline, as identified by the Council, were carried out at the site these activities would be difficult to spot. Accordingly, these activities and their associated paraphernalia would not detract from the openness of the Green Belt.
20. Furthermore, the vehicular access to the appeal site is used to service the barn which generates about 10-12 vehicle movements per day. The addition of 6 daily vehicular movements, as calculated by the Council, whilst being proportionally a large increase would not result in an excessive pattern of activities which would detract from the openness of the Green Belt in this location. The pattern of additional vehicles using this access would not introduce an intensification in the use of this site, to the extent that it would detract from its openness.
21. Whilst the creation of a separate dwelling would lead to limited activity and paraphernalia as there are 2 separate dwellings within what is now a single planning unit the physical context of this site together with its boundary treatment means that there would be minimal harm resulting from these matters. Accordingly, I do not regard the appeal proposal as an encroachment into the Green Belt.
22. The decision of my Inspector colleague who dismissed the appeal against the enforcement notice in 2012⁴ focussed more on the impact of the new building than the potential impact of activities and paraphernalia on the openness of the Green Belt. Whilst I understand the need for consistency between Inspector decisions the context for the two appeals has altered given that in 2012 there was an unauthorised building which is now lawful but for these appeals it is activities associated with normal domestic use which is the matter of contention between the parties.
23. I therefore conclude, that the appeal schemes would reuse a building of permanent and substantial construction which would preserve the openness of the Green Belt and would not conflict for the purposes of including land within it. The appeal scheme falls within Paragraph 146d) of the Framework.
24. Saved Policies GB1 and GB2 of the South Bucks Local Plan 2004 seek to protect the Green Belt and to ensure that where buildings are reused this does not detract from the open and undeveloped character of the Green Belt.
25. For the above reasons, I conclude that the proposed development for each appeal, would not be inappropriate development within the Green Belt for the purposes of the Framework and would not be in conflict with Policies GB1 and GB2 of the South Bucks District Local Plan 1999 which seeks to protect the Green Belt and require that the re-use of buildings is in keeping with their open and undeveloped character.

Character and appearance

26. The appeal site lies to the rear of Macs Farm, one of a row of large detached properties with deep gardens. The site lies next to a large portal framed barn

⁴ APP/N0410/C/12/2180317

with elevations of brick and metal cladding. This is served by an extensive area of hardstanding used.

27. Whilst the new dwelling would have a reduced curtilage compared to neighbouring properties, this would not adversely impact on the character and appearance of the area. Its location in relation to the existing barn and with the rear of the properties along Grays Park Road would be largely hidden.
28. I do not agree with the appellant's conclusion that the site lies in an urban fringe context. This is a Green Belt site and whilst the size the appeal site contrast with the pattern of development along Penny Farthing Lane it would not be incongruous with the general pattern of development in its immediate context and for this reason it would not result in harm. The amenity of nearby properties would not be impacted by the proposed use of the appeal site.
29. Policy EP3 require that new development will only be allowed where it is compatible with both the site and the character of the local area. Furthermore, Policy H9 is consistent with Policy EP3 but in addition seeks the protection of the amenities of nearby properties.
30. For the above reasons I conclude that there would not be conflict between the appeals proposals and Policies EP3 and H9 of the South Bucks District Local Plan 1999.

Burnham Beeches

31. In 2018, the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage⁵. This responsibility now falls to me within this appeal.
32. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of European sites either alone or in combination with other plans or projects.
33. Burnham Beeches Special Area of Conservation (SAC) comprises around 380ha of woodland and common land. The appeal site lies within the Zone of Influence of the Burnham Beeches Recreational Avoidance and Mitigation Strategy (RAMS). The SAC qualifies as being internationally important for its ancient pollarded beech and oak trees which are the main features of importance for nature conservation. Associated habitats such as heath land and valley mire are of national significance. The trees are important because of the quantity and quality of the decaying wood habitat found within them and the species that are associated with this increasingly rare habitat.
34. This area is used for public recreation and there was no dispute between the parties that it cannot be ruled out that the proposal, when considered alone or in combination with other schemes, would have likely significant effects on the aforementioned qualifying features of the Special Protection Area (SAC)s due to the increased recreational use.
35. After carefully reviewing the evidence, I agree that this would be the case and therefore it is incumbent upon me to undertake an Appropriate Assessment. As

⁵ People Over Wind and Peter Sweetman v Collite Teoranta ECJ (2018) C-323/17

part of this process, I may consider any conditions or other restrictions which could secure mitigation of this harm, and which would therefore allow development to proceed in the knowledge that the conservation objectives of this site would not be compromised.

36. Natural England and the Council have indicated that there is an agreed strategic solution to mitigate the effects of the proposal, in the form of the RAMS. This strategy requires financial contributions from developments and allocates detailed and costed infrastructure and non-infrastructure projects to proposals dependent on their scale and location.
37. The main parties agree that the mitigation can be delivered via the appellant entering into an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (the Act). The appellant has supplied a completed Unilateral Undertaking agreement with all requisite signatories upon it which addresses the additional dwellings which the new scheme includes.
38. Policy CP9 of the Councils Core Strategy 2013 seeks to enhance the integrity of the Burnham Beeches SAC provides policy for the RAMS.
39. The Undertaking, submitted with the appeal, through the provision of financial contributions, would therefore serve to mitigate the recreational impacts arising from the proposal.
40. On this basis, I am able to conclude that the required mitigation would be properly secured through the requirements of Schedule 1, Clause 5, of the Undertaking and accordingly, that the proposals would not have an adverse effect on the identified SAC either alone or in combination with other projects.

Interested parties

41. The Parish Council has objected to the appeal scheme on Green Belt grounds in respect of Appeal A. I consider that the preceding sections fully address its concerns.

Unilateral Undertaking for Appeals A and B

42. Each appeal was lodged with a Unilateral Undertaking which includes blue line clauses in Schedule 1. I have already concluded in respect of the clause regarding the necessity of the financial contribution to the Burnham Beeches SAC above, (Clause 5).
43. A large part of the appellants case is predicated around the need to offset the creation of the new dwelling on the openness of the Green Belt, thereby reducing the impacts on openness by offering to revoke the recent permission granted for the conversion of the stable block. Given that I do not regard the appeal scheme as impacting on openness I do not consider that the clauses (Clauses 1 and 2) which address this matter are required.
44. I acknowledge that the appeal site and its planning history are unusual. However, the nature of the appeal proposal involving the creation of a new dwelling in the garden of a large residential property in the Green Belt is something which could be replicated across the District. For this reason, I consider that clause 6 which makes the appeal personal to the appellant are necessary.

45. During the Hearing there was discussion on the status of the 3rd and 4th clauses within the schedule and whether they had the power to revoke the Section 106 agreement completed in 2014 following the extant enforcement notice.
46. Having considered this matter and taken representations from both parties during the Hearing I accept that clause 2.8 within the Section 106 Agreement allows for the revocation of the agreement. Accordingly, as I am allowing this appeal the provisions included in the First Schedule to the Agreement are no longer enforceable and should be removed from the register of Local Land Charges.
47. The effect of Clause 7, would be to ensure that in the event of the appellant's death the house would become part of the same planning unit as Macs Farm where the appellant's daughter would remain. This would prevent the sale of the 2 properties separately thereby perpetuating 2 separate dwellings. This clause should remain part of the Undertaking.

Appeal B

48. The only difference between Appeal A and B is that the latter includes in its description of development reference to the application being personal to the applicant. Although, both appeals reference personal considerations of the appellant in respect of his age and health appeal B includes a direct reference to these matters.
49. I acknowledge the Council's comments in respect of the Guidance regarding the use of personal permissions. However, the site has an unusual planning history and the personal permission would be consistent with the Undertaking submitted with each appeal. Accordingly, the appeal is to be allowed on this basis.

Conclusions

50. For the above reasons I allow these appeals.

Conditions for Appeals A and B

51. I have imposed conditions which are the same for both appeals. For reasons of certainty I have specified the plans. Furthermore, given the site's location in the Green Belt I have included a condition to address permitted development rights. This would ensure that the Council would have full control on any works to the appeal site which could increase impact on the openness of the Green Belt.
52. Finally, I have imposed a condition regarding visibility splays at the junction of the access to the site with Grays Park Road. The Council's stated reason is that this would be necessary given the anticipated increase in traffic using this access. I accept that this would be necessary.

Stephen Wilkinson

INSPECTOR

Schedule of Conditions for Appeal A

- 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: Location Plan 8226-103-P1; Existing plans and elevations of outbuilding 8226-26-P1; Proposed plans and elevations of outbuilding 8226-27-P1.
- 3) Notwithstanding the provisions of Article 3 and Classes A, B, C, D and E of Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other Order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration (including the erection of a garage, stable, loose box or coach house within the curtilage) of or to the dwelling house, the subject of this permission, shall be carried out nor shall any building or enclosure required for a purpose incidental to the enjoyment of any said dwelling house as such be constructed or placed on any part of the land covered by this permission.
- 4) Prior to the occupation of the development minimum vehicular visibility splays of 79 metres from 2.4 metres back from the edge of the carriageway from both sides of the existing access onto Grays Park Road shall be provided in accordance with the approved plans and the visibility splays shall be kept clear from any obstruction between 0.6m and 2.0m above ground level.

Schedule of Conditions for Appeal B

- 5) The development hereby permitted shall begin not later than 3 years from the date of this decision
- 6) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 8226-103-P2; Existing plans and elevations of outbuilding 8226-26-P1; Proposed plans and elevations of outbuilding 8226-27-P1.
- 7) Notwithstanding the provisions of Article 3 and Classes A, B, C,D and E of Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other Order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration (including the erection of a garage, stable, loose box or coach house within the curtilage) of or to the dwelling house, the subject of this permission, shall be carried out nor shall any building or enclosure required for a purpose incidental to the enjoyment of any said dwelling house as such be constructed or placed on any part of the land covered by this permission.
- 8) Prior to the occupation of the development minimum vehicular visibility splays of 79 metres from 2.4 metres back from the edge of the carriageway from both sides of the existing access onto Grays Park Road shall be provided in accordance with the approved plans and the visibility

splays shall be kept clear from any obstruction between 0.6m and 2.0m above ground level.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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