



Appeal Decision

Site visit made on 21 March 2022

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 May 2022

Appeal Ref: APP/N0410/W/21/3273174

Land Adjacent to Limewood Gate, Poyle Lane, Burnham SL1 8LE

- 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 Mrs Messum against the decision of Buckinghamshire Council - South Area (South Bucks).
 - The application Ref PL/20/0671/OA, dated 22 February 2020, was refused by notice dated 13 November 2020.
 - The development proposed is outline application for development of a single detached dwelling.
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Decision

1. The appeal is allowed and outline planning permission is granted for development of a single detached dwelling at Land Adjacent to Limewood Gate, Burnham SL1 8LE in accordance with the terms of the application, Ref PL/20/0671/OA, dated 22 February 2020, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mrs Messum against Buckinghamshire Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application was made in outline with all matters reserved. I have therefore had regard to the submitted plans but regarded these as indicative.
4. The description of development in the banner heading above is taken from the application form. I have used this in my formal decision but omitted the wording 'outline application' as that is not a description of development.
5. On 1 April 2020, South Bucks District Council ceased to exist and became part of a new Unitary Authority known as Buckinghamshire Council. The development plans for the merged Local Planning Authorities will remain in place for the area within the new Unitary Authority they relate to until such time as they are revoked or replaced. I have therefore determined the appeal having regard to the policies of the South Buck Core Strategy 2011 (the CS) and the South Bucks District Local Plan 1999 (the LP).
6. The appellant has disputed the requirement for a planning obligation at this stage due to the appeal proposal being in outline only. She has also disputed the need to pay a monitoring fee.

7. In order to cover both scenarios in relation to the requirement for a monitoring fee, the appellant has provided 2 unilateral undertakings (UUs) under section 106 of the Town and Country Planning Act 1990 (as amended). They are both signed, one is dated 6 December 2021 (the 2021 UU) and the other 20 March 2022 (the 2022 UU). Both UUs deal with contributions towards mitigation against the impact of development on the Burnham Beeches Special Area of Conservation (BBSAC) which is a protected habitats site. I discuss this in more detail later in my decision.
8. In terms of my formal decision, I confirm that the 2022 UU is the one which I have taken into account.

Main Issues

9. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the proposal on the openness of the Green Belt;
 - the effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on the integrity of a protected habitats site; and
 - whether the submitted planning obligation meets the relevant statutory tests; and
 - if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

10. The appeal site is positioned between residential development, Limewood Gate to the north-west and Dunsinane, to the south-east, fronting Poyle Lane. The site is adjacent to but outside the defined settlement boundary of Burnham which runs between it and Dunsinane. It is within the Metropolitan Green Belt which extends around the village.

Whether inappropriate development in the Green Belt

11. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 sets out that the construction of new buildings is inappropriate within the Green Belt subject to a number of exceptions. Relevant to this appeal is (e) limited infilling in villages. The appellant has also argued that the exception set out under (g)
12. Saved Policy GB1 of the LP also seeks to control development in the Green Belt and restricts the construction of new buildings unless it falls within certain exceptions. This also allows for limited infilling in existing villages in accordance with Policy GB3. It goes on to require such development to meet certain other

general requirements in relation to not adversely affecting the character or amenities of the Green Belt.

13. Saved Policy GB3 sets out that infilling within villages should take place within the boundaries of defined Green Belt Settlements. Whilst this policy has not been cited within the Council's decision notice it has been referred to by the Council in its officer report, concluding that the proposal does not accord with it. Case law¹ has established that limited infilling is applicable to all villages and not just restricted to sites that fall within settlement boundaries identified in local plans. Therefore, in restricting infill to within defined settlement boundaries, Policy GB3 is more restrictive than the approach advocated within the Framework. As such, these LP policies set requirements that go beyond that set out within the Framework and are therefore inconsistent.
14. Neither the Framework nor the development plan defines 'limited', infilling' or 'villages'. There is no dispute between the parties that Burnham is a village. The Wood judgment has established that whilst a village boundary as defined in a local plan would be a relevant consideration, it would not necessarily be determinative. This would be a question of planning judgement based on an assessment of the position on the ground.
15. The appeal site is on the edge of the densely built-up development within Burnham and lies within its more loosely developed fringes. Limewood Gate lies within close proximity to the defined village edge with only the appeal site separating its entrance gate from the defined village boundary. With no further built development beyond on this side of Poyle Road, Limewood Gate, which is denoted by a brick built wall and entrance gate, therefore appears on the ground as a more logical edge to the settlement. Despite the development becoming looser, it nevertheless appears as the end of a linear strip of residential development. For this reason, I consider that the appeal site, which is positioned closer to the defined village, would be located within a village for the purposes of applying the policy.
16. In my experience, in order to be infilling a proposal must fill a space or gap between two other buildings or structures whether within a continuous built-up frontage or within built development. The Council has acknowledged that the proposed dwelling would be set between 2 residential plots and would infill a gap between the respective buildings at Limewood Gate and Dunsinane. It therefore follows that the proposal would be infilling within a village. The scheme proposes a single dwelling and would therefore be very limited.
17. As I have found that the proposal would meet the exception within paragraph 149 set out under (e) there is no need for me to consider whether it would meet the exception under (g).
18. Concerns have been raised by third parties about such a development setting a precedent for similar types of development within the Green Belt. However, I have assessed this scheme on the basis of policy and the individual merits of the scheme before me. Any other development proposals would have to be considered in a similar manner.
19. Consequently, I find that the proposed development would be not inappropriate development within the Green Belt. The proposal would comply with Saved

¹ Wood v SoS CLG and another [2014] EWHC 683 and Julian Wood v SSCLG and Gravesham Borough Council [2015] EWCA Civ 195

Policy GB1 of the LP and paragraph 149 of the Framework which seeks to protect the Green Belt from inappropriate development. As the proposal complies with these policies an assessment on the effect on openness and whether very special circumstances apply is not required.

Character and appearance

20. The appeal site is an irregular shape, reasonably long, narrow towards the site frontage and widening out to the rear. It is located between residential development on the fringes of the village with domestic gardens abutting both its northern and southern boundaries. There are open fields behind a vegetated boundary on the opposite side of the road and an area of woodland wraps around the site and the garden to Limewood Gate.
21. Residential development within the surrounding area varies in terms of plot sizes and scale. Properties to the south-east of the appeal site are mostly positioned within rectangular plots with houses and garages occupying much of the width of the plot. Directly adjacent to the site, Dunisnane is a semi-detached property on a similar shaped plot to the appeal site where the building extends across much of the width of the plot. Although Limewood Gate is set within a more spacious plot, when viewed in the context of Dunisnane and other properties along Poyle Lane, the indicative layout does not show a property that would be uncharacteristically or unacceptably cramped within its plot. It would not therefore appear harmful on this village fringe.
22. The Council has suggested that the proposed house would be set just behind the narrowest point within the plot. However, given that the scheme is in outline with all matters reserved at this stage, this position is not set. Nevertheless, the proposed house would not be visually prominent from the road being set some distance back within the site in a similar position to adjacent properties. In these circumstances, the outline proposals for this development would not be out of character.
23. I appreciate that the installation of a front boundary wall and gate has changed the character of the site frontage as shown on photographs submitted by the Council. However, these have been granted a Certificate of Lawfulness² and could exist irrespective of the appeal scheme.
24. I conclude that the proposed development would not harm the character and appearance of the area. It would therefore accord with Saved Policies EP3 and H9 of the LP and Core Policy 8 of the CS which together require development to be compatible with the character of the site, adjoining development and make a positive contribution to the character of the surrounding area.

Burnham Beeches Special Area of Conservation

25. The appeal site is located within the 500m to 5.6km zone of influence around the internationally designated BBSAC. This site is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations). Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of the European site. I am the competent authority for the purposes of this appeal.

² Council Ref: 15/02288/CLOPED

26. Natural England (NE) has advised that new housing within the zone of influence would, in combination with other plans and projects, have a significant effect on the protected sites through additional recreational pressures including dog walking which would be harmful to the BBSAC.
27. Accordingly, and when following a precautionary approach, the proposal for a new dwelling, in combination with other plans and projects, would be likely to have a significant adverse effect on the BBSAC. As the competent authority, I am therefore required to carry out an appropriate assessment, in accordance with the Regulations, to consider the implications of the proposal on the SAC in view of its conservation objectives.
28. The SAC is an area of beech forest which contains many ancient pollarded beech and oak trees which are the main features of important for nature conservation. Its conservation objectives seek to maintain and restore the woodland, thereby ensuring the site integrity is maintained. In order to avoid any harm to the woodland, suitable mitigation would be required for new housing within the zone of influence.
29. The Council has adopted the Burnham Beeches SAC Mitigation Strategy (March 2020) (BBSAC Mitigation Strategy). This sets out that in order to avoid any such harmful effects, financial contributions from all net new development within the zone of influence towards a Strategic Access Management and Monitoring Strategy (SAMMS) at the BBSAC will be required.
30. The appellant has agreed to make a financial contribution to SAMMS. The submitted 2022 UU secures a payment of £2,023.87 for this which would accord with the requirements for a single dwelling set out within the BBSAC Mitigation Strategy. This contribution would be paid to the City of London Corporation who own the site and used alongside other contributions for various projects related to the BBSAC aimed at surveys, monitoring and raising awareness.
31. This approach is supported by NE who have confirmed that these mitigation measures would be effective in addressing the likely significant effects arising from the development of this site when considered in combination with other plans and projects. I have no reason to reach a different conclusion.
32. I am satisfied that the planning obligation is necessary to make the development acceptable and the contribution would be fairly and reasonably related in scale and kind to the development. Moreover, there is no reason to doubt that the City of London Corporation, as a responsible public body, will spend the money in the way it is intended.
33. As such, I have been able to complete my appropriate assessment and to conclude that the proposal would not adversely affect the integrity of the habitats sites. The scheme would therefore comply with the Regulations.

Planning Obligation

34. The appeal proposal is made in outline. An outline planning permission agrees the general principles of how a site can be developed. The determination as to whether the proposed development would adversely affect the SAC relates to the principle of whether the site can be developed as proposed. Therefore the planning obligation securing the required mitigation to make the development acceptable is appropriate at the outline stage.

35. Paragraph 57 of the Framework sets out that planning obligations must only be sought where they meet all of the following tests: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.
36. Both submitted UUs would secure the required mitigation for the SAC as set out above. However, the 2021 UU does not include a clause requiring a monitoring fee to be paid to the Council. The 2022 UU does. The appellant disputes the requirement for this fee but submitted an alternative UU (the 2022 UU) to address this, if I were to find that a monitoring fee would be required.
37. The Planning Practice Guidance (PPG) advises at paragraph 36³ that authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of that section 106 obligation. Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation. It goes on to explain that in all cases, monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring. Provisions for charging a monitoring fee are made under Regulation 122(1) of the Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019 (the CIL Regulations).
38. The Council has set out that the monitoring fee is a set amount and that it covers the administrative costs of monitoring the obligation, such as recording and monitoring the accounts where the contribution is held and further delivering the funds for its intended use, updating the monitoring database and organising site visits.
39. The provision of a monitoring fee accords with both the PPG and CIL Regulations. Moreover, in view of the various costs associated with monitoring, the fee appears both reasonable and proportionate. Since the 2022 UU makes this provision, it would meet the tests.
40. The Council has advised that any agreed UU or a draft of such would need to be displayed on the Council's website for a minimum of 3 days prior to the issue of planning permission being granted. This is to ensure that interested parties have the opportunity to view and consider the UU which the appellant has completed.
41. Whilst the submitted UU has been altered during the course of the appeal, these amendments relate to administration and monitoring fees in relation to the UU rather than the substance of the planning obligation which relates to the financial contributions towards mitigation of harm to the protected habitats sites. I am therefore satisfied that interested parties have had the opportunity to comment on these matters.
42. In the light of the 2022 UU, the 2021 UU, which would not secure the monitoring fee, has now become unnecessary and therefore no longer meets the tests. I have therefore given it no weight in my decision.

³ Paragraph: 036 Reference ID: 23b-036-20190901

Other Matters

43. I have had regard to concerns arising in relation to the impact of the proposal on wildlife. However, no substantive evidence has been put before me that the site is of specific importance for biodiversity or any protected species. Furthermore, I have imposed a condition requiring biodiversity enhancements which would improve the ecology of the site.
44. There are trees to the site boundaries which the Design and Access Statements states will be retained to provide screening of the proposal. These also contribute to the verdant character of the area. Some of these trees may be covered by an area Tree Preservation Order (TPO)⁴ which includes the appeal site. Although details of landscaping are to be submitted as reserved matters, the protection of trees to be retained on the site would be appropriate and a condition securing this would be reasonable.
45. A concern has been raised about noise and disruption that occurred during site clearance work and future disturbance during the construction phase. Given the small size of the plot, that it has been substantially cleared already and the limited scale of the proposed development, the degree of noise and disturbance arising from the works would not be so significant as to cause an unacceptable impact on adjoining neighbours. I have, however, imposed a condition restricting the hours of work to protect the living conditions of nearby occupiers during periods when they could reasonably expect peace and quiet.
46. Concerns have also been raised about the impact of the proposed development on the living conditions of neighbours, including matters of privacy and overlooking, loss of outlook and safety. As the proposed development is in outline with details of site layout and scale still to be determined, I have not considered these in my decision. Nevertheless, there was no evidence before me to suggest that these matters could be appropriately addressed through the reserved matters stage.
47. A question has been raised about whether the existing drainage network would have capacity to serve the new development which is already subject to blockages. However, there is no evidence that the proposed development could not be satisfactorily connected to the public sewers. Furthermore, the appellant has identified that the appeal site benefits from covenants enabling the proposed new house to be connected to the sewer which crosses the site.

Conditions

48. The Council has suggested a number of conditions including those which I have already referred to earlier in my decision. I have considered these and imposed where they meet the tests set out in Paragraph 56 of the Framework, amending where necessary for the sake of simplicity, clarity and precision.
49. In addition to the standard conditions relating to the submission of reserved matters it is necessary to identify the plans to which the decision relates, but only insofar as they relate to reserved matters for consideration at this stage, as this provides certainty.
50. I have imposed a condition requiring details of parking, manoeuvring and loading and unloading on the site to be provided in accordance with the

⁴ TPO No 3/1963

Council's car parking standards in the interests of highway safety and avoiding inconvenience to users of the adjoining highway. A condition restricting permitted development rights for the enlargement of the approved dwelling or the construction of outbuildings within its curtilage is reasonable and necessary to maintain the openness of the Green Belt.

Conclusion

51. For the reasons given I conclude that the appeal should be allowed.

Rachael Pipkin

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: 20.511 100B.
- 5) Prior to the commencement of development on site, a schedule of all trees on the site to be retained shall be submitted to and agreed by the local planning authority.

All the 'retained' trees on site and/or any trees whose canopies overhang the site shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

- 6) Construction works shall take place only between 0800 and 1800 on Monday to Friday, 0800 and 1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 7) No development shall take place above ground level until a scheme of ecological enhancements shall be submitted to and approved in writing by the local planning authority to ensure an overall net gain in biodiversity will be achieved. The scheme will include details of native landscape planting of known benefit to wildlife and provision of artificial roost features, including bird and bat boxes. The scheme shall be carried out in accordance with the approved details prior to the occupation of the dwelling hereby approved and the roost features retained thereafter.
- 8) The details to be submitted for the approval of the local planning authority shall include a scheme for parking, garaging and manoeuvring and the loading and unloading of vehicles in accordance with the South Bucks District Local Plan Appendix 6 (Parking Standards). The approved scheme shall be implemented and made available for use before the development hereby permitted is occupied and that area shall not be used for any other purpose.

- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alterations to (including the erection of a garage, stable, loosebox or coach-house within the curtilage of) the approved dwelling other than those expressly authorised by this permission shall be erected.

End of Schedule