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# Appeal Decision

Site visit made on 4 October 2022

**by James Blackwell LLB (Hons) PgDip**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 October 2022**

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**Appeal Ref: APP/N0410/W/22/3298130**

**Land adjacent to 801 Bath Road, Burnham, SL6 0PR**

- 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 MSS Property Development Ltd against the decision of Buckinghamshire Council.
  - The application Ref PL/21/3542/FA, dated 17 August 2021, was refused by notice dated 1 December 2021.
  - The development proposed is construction of terrace of 4 no. 3-bed affordable dwellinghouses.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are:
  - whether the proposal would constitute inappropriate development within the Green Belt having regard to the National Planning Policy Framework 2021 (Framework) and any relevant development plan policies;
  - the effect of the proposal on the living conditions of the occupiers of 801 Bath Road; and
  - the effect of the proposal on the integrity of the Burnham Beeches Special Area of Conservation.

## Reasons

### *Inappropriate Development*

3. The appeal site is located within the Metropolitan Green Belt. The Framework is explicit that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. 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. The Framework further establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions set out in paragraph 149.
4. One of these exceptions, listed under paragraph 149(g), is the partial or complete development of previously developed land, which would not cause substantial harm to the openness of the Green Belt, and which would contribute to meeting an identified affordable housing need within the area of

the local planning authority. The appellant alleges that the proposal would fall within this exception. In order to meet this exception criteria, the key components are therefore whether the development would comprise previously development land; whether the development would cause substantial harm to the openness of the Green Belt; and whether the proposal would contribute to an identified need for affordable housing within the Council's area. Each of these points is considered in turn.

#### *Previously Developed Land*

5. It is common ground between the parties that the appeal site comprises previously developed land. This reflects my own observations during site visit. I am therefore satisfied that the proposal would meet this criterion of the exception under paragraph 149(g).

#### *Openness*

6. The appeal site comprises a parcel of land on the southern side of Bath Road, between Burnham and Taplow. It sits within the corner junction of an access road which runs south off Bath Road.
7. The proposed development would introduce a terrace of four two-storey houses to the north of the plot. Each of the dwellings would benefit from a garden and parking area to the rear. Given that the appeal site does not currently include any buildings, any development in this location would invariably lead to some loss of openness.
8. However, owing to the proposed ground excavation to accommodate the new dwellings, as well as the sloping topography of the land, the majority of the ground floor of the new units would sit below ground level. This means only the second storey and roof of the dwellings would be visible from along Bath Road. In turn, the development would appear relatively low level within its surrounding context, which would minimise its impact on the prevailing openness of the Green Belt.
9. The appeal site sits adjacent to a residential property to the east. There is also a retail park with associated car park opposite the site to the north, and some temporary residential housing immediately to its south. Notwithstanding the more open land to its west, this means the site is surrounded on three of its sides by built development. The new houses would therefore be seen within a context of neighbouring built form. This would allow them to assimilate effectively with their surroundings, without causing extensive disruption to the openness of the Green Belt.
10. Whilst the development would lead to some loss of the openness, the associated harm attributed to this loss would therefore be limited. On this basis, I consider that the development would satisfy the second limb of the exception criteria under paragraph 149(g), as the associated harm would not be substantial.

#### *Affordable Housing Need*

11. The new dwellings would be provided as affordable rented units. The Council has confirmed there is an identified need on the Council's housing register for three-bedroom homes for affordable rent. Subject to securing the affordable

nature of the proposed units, the development would conceivably meet the final criterion of paragraph 149(g).

12. The appellant has submitted a signed unilateral undertaking (UU) as part of this appeal to secure the affordable nature of the new units. Nonetheless, under Part 3 of the First Schedule to the UU, if the appellant has been unable to enter into a binding contract with an Affordable Housing Provider to manage the dwellings as affordable housing dwellings, then it would instead pay an affordable housing contribution to the Council, in lieu of any on site provision.
13. The fall back option in the UU means there is no guarantee that the proposed units would be delivered as affordable dwellings. Instead, if an Affordable Housing Provider could not be found, the units would be delivered as market housing. Whilst I acknowledge any off-site affordable housing contribution would still contribute to affordable housing within the Council's area, given this is a unilateral agreement, I cannot be certain that any such contribution would be used by the Council to deliver affordable housing for which there is a specific identified need (noting that the proposed three-bedroom units for affordable rent would meet a particular local need).
14. On this basis, the UU provides insufficient certainty that the proposed development would contribute to an identified need for affordable housing within the Council's area. This means the development would fail to properly meet the exception criteria under paragraph 149(g).
15. In turn, I am left with no option but to conclude that the proposal would be inappropriate development within the Green Belt. The development would therefore conflict with Policy GB1 of the South Bucks District Local Plan (1999) (Local Plan), which seeks to ensure the Green Belt is properly safeguarded from new development within the Council's area. As already set out above, the development would also conflict with the provisions of the Framework, which places a great emphasis on the protection of Green Belt.

### *Living Conditions*

16. The proposed terrace would be located next to 801 Bath Road, a residential property. This property benefits from garden to its north, south and western sides. The eastern flank elevation of the new terrace would be approximately 9.4 metres from the western flank elevation to no. 801. There are no habitable room windows on this elevation, so any potential impact from the new dwellings would not readily be experienced from inside the neighbouring property itself.
17. In terms of the garden, the eastern elevation of the new terrace would occupy approximately 32% of the total shared boundary between the two properties. This means 68% of the shared boundary would remain open. Moreover, as the ground floor of the new units would effectively be subterranean, the flank elevation of the terrace that would be visible from the garden to no. 801 would appear as single-storey only. Together, these factors would help ensure the new dwellings would not have an overbearing nor intrusive impact on 801. Such arrangement would be typical of neighbouring residential properties in any event.
18. On account of these factors, I am satisfied that the proposal would not cause undue harm to the living conditions of the occupiers of no. 801. The

development would therefore be consistent with Policies EP3 and H9 of the Local Plan, both of which seek to protect neighbouring amenity as part of any new development proposals. The development would also be consistent with the amenity principles of the Framework, which require new development to promote a high standard of amenity for existing and future units. Policy CP8 of the Council's Core Strategy<sup>1</sup> does not appear directly relevant, as this concerns the built and historic environment.

### *Burnham Beeches SAC*

19. The appeal site is within 5.6km of the Burnham Beeches Special Area of Conservation (SAC), which comprises extensive areas of woodland and public open space. These are home to an abundance of ancient beech and oak trees, which are important habitat to a number of species.
20. The additional residential units have the potential to lead to increased recreational pressure on the SAC. In combination with other similar small-scale development, this means the proposal could result in increased disturbance to the protected habitats and species found in these areas. As a result, it is not possible to rule out likely significant effects on the SAC.
21. Nonetheless, the Burnham Beeches Special Area of Conservation, Strategic Access Management and Monitoring Strategy (2020) (SAC SPD) sets out measures to help mitigate against the potential effects from new housing. This mitigation is achieved through financial contributions towards Strategic Access Management and Monitoring (SAMM). The primary objective of SAMM is to directly educate and manage visitor behaviour, when visiting the SAC.
22. The appellant has provided a completed unilateral undertaking (UU) to secure a payment towards SAMM, in line with the requirements of the SAC SPD. Nonetheless, as I am dismissing the appeal on other grounds, further consideration of this factor, including an appropriate assessment under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended), is not required. I have therefore not discussed this matter further.

### **Planning Balance**

23. As per the Framework, given that the development would constitute inappropriate development within the Green Belt, by definition, it would be harmful. The Framework is clear that substantial weight must be attributed to this harm.
24. Whilst the development would help contribute to the Council's housing stock, four new dwellings would be a modest contribution in this instance. In itself, this benefit would not be sufficient to outweigh the substantial harm by reason of inappropriateness. As such, very special circumstances have not been demonstrated to justify the proposal.

### **Other Matters**

25. The Council cannot demonstrate a five-year supply of deliverable housing, which means its policies relating to delivery of housing are out of date. This means paragraph 11(d) of the Framework is engaged. Nonetheless, pursuant

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<sup>1</sup> South Bucks Local Development Framework, Core Strategy, Development Plan Document (2011)

to paragraph 11(d)(i), permission need not be granted where policies in the Framework that protect areas or assets of particular importance (in this case the Green Belt), provide a clear reason for refusing the development. Given the content of the Framework with regard to Green Belt protection set out above, the policies in the Framework do provide a clear reason for refusing the development. The presumption in favour of sustainable development would therefore not apply.

### **Conclusion**

26. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

*James Blackwell*

INSPECTOR