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# Appeal Decision

Site visit made on 18 October 2022

**by R J Jackson BA MPhil DMS MRTPI MCMi**

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

**Decision date: 1 November 2022**

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**Appeal Ref: APP/X0415/W/22/3290156**

**Land at Grooms Cottage, Penfold Lane, Little Missenden HP7 0QU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
  - The appeal is made by Mr Stephen Moles against the decision of Buckinghamshire Council - East Area (Chiltern).
  - The application Ref PL/21/1280/PIP, dated 6 April 2021, was refused by notice dated 28 August 2021.
  - The development proposed is one dwelling with associated vehicular access.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The proposal is for permission in principle. Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted<sup>1</sup>. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted. I have determined the appeal accordingly.
4. In its statement of case the Council indicated that, subsequently to it having issued the decision, it had been notified by Natural England (NE) that the site fell within the Zone of Influence for the Chiltern Beechwoods Special Area of Conservation (the SAC). Here residential development would without mitigation, either on its own or in combination with other development, have an adverse effect on the integrity of that site. The Council therefore indicated that if it were now to determine the appeal application it would have added an additional reason for refusal in this respect as no mitigation is secured.
5. As I am now the competent authority under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) this matter now falls to me to consider. The appellant had the opportunity to respond to this putative reason for refusal and I will discuss this matter below.

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<sup>1</sup> PPG Reference ID: 58-012-20180615

## **Main Issues**

6. In this case there is no dispute that the amount of development, a single dwelling, could be sited on the application site and consequently the main issues relate to the location and land use of the proposed development which 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 on the character, appearance and scenic beauty of the area being within the Chilterns Area of Outstanding Natural Beauty (the AONB);
  - the effect on heritage assets and their settings;
  - the effect on the 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 inappropriate development*

7. The site lies in the Green Belt. Policy GB2 in the Chiltern District Local Plan (the Local Plan), which was adopted in 1997, indicates that most development in the Green Belt is inappropriate. The latest version of the Framework was published in 2021. Paragraph 219 of the Framework indicates that existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. Due weight should be given to development plan policies according to their degree of consistency with the Framework. In this case the Local Plan was prepared on the basis of previous national guidance and the Framework represented a change in policy. Policy GB2 pre-dates the publication of the Framework and is not fully consistent with it. I therefore consider that it is appropriate to utilise the policies in the Framework in assessing whether the proposal represents inappropriate development.
8. Paragraph 149 of the Framework indicates that the construction of new buildings should be regarded as inappropriate development in the Green Belt unless it falls within various exceptions. The appellant considers that the proposal falls within exception (e) which is for 'limited infilling in villages'. It is not in dispute that Little Missenden is a village, rather whether the proposal would represent 'limited infilling in' that village.
9. Built development in Little Missenden on the north side of Penfold Lane falls predominantly to the east of the application site although there is an outbuilding immediately to the north of the eastern part of the appeal site.
10. I consider that when travelling along Penfold Lane on the northern side the dividing line between the village of Little Missenden and the countryside beyond lies on the line of the hedgerow to the west of the access drive to Grooms Cottage and then continues in a northerly direction to include that

outbuilding. Thus, while the eastern part of the appeal site falls within the village, the larger western part falls outside. As the Framework exception only applies for infilling 'in' a village, the proposal as a whole would not comply with this exception.

11. Even if the building only were to be located within the part of the site within the village, I do not consider that the proposal would represent infilling. There is no definition in the Framework of what represents 'limited infilling' so this is a matter of judgement for the decision maker. The Council has referred to Local Plan Policy GB4 where it is stated to mean the construction of one or two houses in an existing row of dwellings, but this policy was drawn up in line with previous national guidance and for the reasons set out above it seems to me that this is not consistent with the current Framework.
12. Infilling is normally taken as having an element of completion. In other words, it needs to fill in a gap between two other elements. In this case where the proposal is for a building the gap would necessarily need to be between two buildings. That would not be the case here.
13. Although this is an application for permission in principle, the proposal is for the whole of the appeal site and as the majority falls outside the village of Little Missenden, and in any event would not represent infilling, I can only conclude that the proposal does not fall within the exception set out in the Framework and would thus represent inappropriate development in the Green Belt.

#### *The effect on openness*

14. Openness has two elements; visual and spatial. I will consider the visual aspect of openness in the next section. The construction of a building on the appeal site would adversely affect the spatial aspect of openness in that it would result in a building where there is currently an absence of building. However, due to the proximity of the village I consider that this proposal would be only moderately harmful to the purposes of the Green Belt.

#### *Character, appearance and scenic beauty*

15. The appeal site lies within the AONB. Paragraph 174 of the Framework indicates that planning decisions should contribute to and enhance the natural environment by protecting valued landscapes. Paragraph 176 goes on to indicate that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs.
16. The Council indicates that only the eastern part of the appeal site has planning permission for use for purposes incidental to an adjoining residential use and that any structures or indications of such use on the remainder of the appeal site or the land to north and west should not be taken into account. It is not for me in this appeal to make any comment on the lawful use of these areas. However, it seems to me that I do need to take account of what I could see on site and how the appeal site relates to its context.
17. The appeal site forms part of the valley floor in which the village of Little Missenden is located. The majority of the site forms part of the wider landscape to the west and exhibits countryside characteristics.
18. Although the design of any building would be the subject of technical details consent, I can reasonably assume that it would have a mass and form which

would intrude into the landscape of the countryside wherever it was located within the site. Whether this would be direct effects from the building or from domestic paraphernalia associated with the use of the dwelling does not matter.

19. The Council has also expressed concern about the potential effects of locating an access on Penfold Lane, particularly in relation to the creation of sight lines both for their direct effect and whether they could be achieved on land within the control of the appellant. It is also concerned that, as speed surveys have not been undertaken, the 'y' distance along Penfold Lane is not clear and the extent of the necessary sight lines is also uncertain.
20. This proposal is for permission in principle, and thus the illustrative layout provided can only be that. It is not for me to speculate whether the access would be directly via Penfold Lane or another way. If the effects of an access were to be harmful, whether to the countryside and AONB, highway safety, or for any other reason, then technical details consent could be refused at that stage. I therefore do not find that the access would necessarily be harmful to the vicinity.
21. Notwithstanding my conclusion on the potential effects of an access the proposal as a whole would result in harm to the character and appearance of the countryside and be harmful to the scenic beauty of this part of the AONB. It would, therefore, also result in harm to the visual aspects of openness in the Green Belt.
22. As to the degree of harm, in my view, due to the proximity to the village of Little Missenden this would be only limited but this should nevertheless be given great weight in respect of the effect on the scenic beauty of the AONB.
23. The Council has referred to Policy CS20 of the Core Strategy for Chiltern District (the Core Strategy) which deals with the quality of design. It seems to me that this would relate to consideration of technical details rather than the permission in principle.
24. Notwithstanding that, the proposal would result in harm to the character and appearance of the countryside and would be harmful to scenic beauty in the AONB. As such it would be contrary to Policies GC1 and LSQ1 of the Local Plan and Policy CS22 of the Core Strategy which require development to relate well to its site and conserve and enhance the natural beauty of the landscape of the AONB. It would also be contrary to paragraphs 174 and 176 of the Framework cited above.

#### *Heritage Assets*

25. A small part of the appeal site in the north-eastern corner, described by the Council as a 'sliver', lies within the Little Missenden Conservation Area (the Conservation Area) with the remainder outside and forming part of the setting of the Conservation Area. Thus, the proposal would have effects on the Conservation Area and its setting. There are a number of listed buildings to the north and east, the nearest being the Kings Barn which is used a dwelling, and Town Farmhouse and a granary to the west of Town Farmhouse. All are listed Grade II.
26. As the proposal would affect the setting of listed buildings and a conservation area, I have had special regard to sections 66(1) and 72(1) of the Planning

(Listed Buildings and Conservation Areas) Act 1990. Whilst not a statutory requirement I have also had regard to the policies in the Framework which indicate consideration should be had to the effect on setting of a Conservation Area.

27. Policy CA1 of the Local Plan indicates that permission will not be granted for new buildings in a Conservation Area which do not preserve or enhance the character or appearance of that Area. Policy CA2 indicates the development that does not preserve or enhance important views within or out of a Conservation Area will be refused. It seems to me that neither of these policies is fully consistent with the Framework in that neither include a balancing mechanism for considering any harm. I therefore will predominantly utilise the policies in the Framework in considering this issue.
28. Paragraph 199 of the Framework indicates that great weight should be given to the conservation of a heritage asset and this is irrespective of the level of harm that may occur. It is also emphasised that the more important the asset, the greater the weight should be. Paragraph 200 of the Framework indicates that any harm to the significance of a heritage asset, or from development within its setting, should require clear and convincing justification.
29. The significance of the Conservation Area relates to its history dating back to at least the Domesday Book and from the appearance and juxtaposition of buildings both along what was the main road between Great Missenden and Amersham and the side streets. The appeal site lies on the edge of the Conservation Area where development has a less tight grain, with the setting of the Conservation Area being a countryside landscape.
30. I have been provided with an extract from the conservation area map from 1971 showing 'important views'. One of these is from the edge of the appeal site looking west and another is from Penfold Lane looking southwest. The view to the southwest would not be affected by the proposal, but the view to the west would be interrupted. However, it seems to me that this is not a public view and it would appear to have been much altered over the last fifty years by changes in vegetation.
31. As the proposal would result in an urbanisation of this area through a tightening of the grain of development it would have a harmful effect on the Conservation Area and its setting. In the terms of the Framework as the main part of the Conservation Area would be unaffected by the proposal and the effects should be considered against the Conservation Area as a whole, this would represent less than substantial harm to the significance of the designated heritage asset. Great weight and special attention should nevertheless be paid to this harm.
32. In relation to the listed buildings, it seems to me that their significances for the purpose of this appeal derive predominantly from their external appearance and the relationship of the spaces surrounding them. The proposal would have no direct effect on the listed buildings and any effects would be on setting.
33. In relation to Kings Barn there are already a number of buildings between the appeal site and the listed building. Given those intervening buildings and that the design would be subject to technical details consent, I am satisfied that an appropriately designed building would not increase the effect on its setting, which would therefore be preserved. I am also satisfied for the same reasons

that the proposals would preserve the settings of the other nearby listed buildings in the area.

34. Overall, therefore, the settings of the various listed buildings would be preserved but there would be less than substantial harm to the Conservation Area and its setting. Therefore, in line with paragraph 202 of the Framework, this should be weighed against the public benefits of the proposal. I will consider that below.
35. Notwithstanding that, the proposal would be contrary to Policies CA1 and CA2 of the Local Plan as set out above, even if I have given them lesser weight.

#### *Habitat effects*

36. Article 5B(1) of the Town and Country Planning (Permission in Principle) (Amendment) Order 2017 provides that permission in principle cannot be given for habitats development. This is defined in Article 5B(5) as development which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of the site; and for which the competent authority has not given consent, permission, or other authorisation in accordance with Regulation 63 of the Habitats Regulations.
37. Regulation 63 of the Habitats Regulations prevents a competent authority from granting permission unless the proposal would not adversely affect the integrity of the European site.
38. The PPG<sup>2</sup> explains that where development is likely to have a significant effect on the European site without any mitigating measures in place, an appropriate assessment should be undertaken before consideration of the grant of permission in principle.
39. NE is concerned about recreational pressure on the SAC from additional population within a 12.6km Zone of Influence. The appeal site falls within this zone. The proposal would increase the number of people living in the Zone of Influence. This would be likely to have a significant effect on the protected habitats site on its own or in combination with other plans and projects. It is immaterial that the individual effect of a proposal may be, in overall terms, small or the site located towards the edge of the Zone of Influence, since it is the in combination effects that are material.
40. The appellant argues that because the form of development is not clear at the permission in principle stage it follows that the effects would not crystallise until technical details consent stage and that any mitigation could and should wait until that time. It also provides communication from NE relating to another site which it takes as supporting that view.
41. I have to disagree with the appellant. While I would accept that the PPG<sup>3</sup> does indicate that there is no scope to secure planning obligations under section 106 of the Town and Country Planning Act 1990 (as amended) (the TCPA) at the permission in principle stage I need to be certain that the proposal would not have an effect on the SAC. Section 106 of the TCPA is a free-standing power and does not have to relate to a planning permission or any other authorisation

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<sup>2</sup> Reference ID: 58-005-20190315

<sup>3</sup> Reference ID: 58-022-20180615

to allow land to be developed and could be utilised to ensure that effects would be mitigated. It would also be possible to draft a planning obligation to provide different, appropriate, mitigation depending on precisely what was consented at technical details consent stage. As no obligation is in front of me, I cannot be certain that the adverse effects on the SAC from recreational disturbance would be mitigated.

42. That being the case, I am not able to conclude as an appropriate assessment that the proposal, in combination with other plans and projects, would not adversely affect the integrity of the SAC. Therefore, Article 5B(1) means that permission in principle cannot be given for the proposal.

#### *Other considerations*

43. The appellant points out that the Council cannot demonstrate a five year supply of land for housing. As the proposal would not mitigate its effects on a habitats site footnote 7 of the Framework indicates that the so called 'tilted balance' set out in paragraph 11 d) does not apply. Notwithstanding that, the lack of a five year supply is of itself a material consideration of some moderate weight in favour of the proposal.

#### **Planning balance**

44. The proposal would represent inappropriate development in the Green Belt. Paragraphs 147 and 148 of the Framework makes clear, inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances and substantial weight should be given to any harm to the Green Belt. I give it that weight.
45. In looking at the heritage balance, given the less than substantial harm to the Conservation Area and its setting and the extent of the shortfall in housing land supply, I consider that a single dwelling would provide public benefits from its addition to the housing stock and from the short and longer term economic benefits so as to balance that harm. The preservation of the settings of the other designated heritage assets in the vicinity is neutral in the final balance.
46. There would also be harm to the character, appearance and scenic quality of this part of the countryside forming part of the AONB to which I give great weight and, as set out above, the proposal would adversely affect a habitats site.
47. Taken together I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

#### **Conclusion**

48. While the proposal would comply with some parts of the development plan it would conflict with others. Overall, I conclude it would not comply with the development plan taken as a whole.

49. The proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended), the appeal should be dismissed.

*RJ Jackson*

INSPECTOR