



Appeal Decision

Site visit made on 18 October 2022

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 December 2022

Appeal Ref: APP/X0415/W/22/3290584

Traps Meadow, Village Road, Whelpley Hill HP5 3RL

- 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 & Mrs Smith against Buckinghamshire Council.
 - The application Ref PL/21/0405/FA, is dated 2 February 2021.
 - The development proposed is the erection of detached dwellinghouse following demolition of kennels and workshop.
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Decision

1. The appeal is dismissed and planning permission for the erection of detached dwellinghouse following demolition of kennels and workshop is refused.

Preliminary Matters

2. The appeal site address is variously referred to as Traps Meadow and Trapps Meadow. For clarity, it is referred to as Traps Meadow within this decision, as that is the address provided on the application form.
3. The planning application subject of this appeal was previously determined by Buckinghamshire council. A planning permission was granted. The decision was subsequently quashed, and the planning application remitted for redetermination by the High Court (reference CO/1717/2021) on 8 July 2021. The remitted planning application was not determined by the Council, and this appeal proceeds on the basis of the Council's failure to determine the application within the prescribed time.
4. My attention has been drawn to a number of previous planning permissions granted on the site¹. In so far as they are relevant to the development proposal subject of this appeal, I have had regard to these permissions as well as to commentary and references made in relation to the determination of other planning applications.
5. Since the drafting of their delegated report, the Council have indicated that the planning permission approved under application reference PL/19/0587/OA, and which included consent for the construction of a new dwelling within the site, has expired. In the absence of any compelling evidence to the contrary, I proceed on this basis.
6. Appeals referenced APP/X0415/C/22/3293676; APP/X0415/C/22/3293677; APP/X0415/C/22/3293678; and APP/X0415/C/22/3293679 are currently under

¹ PL/19/0587/OA and PL/19/3555/FA

consideration. These are enforcement notice appeals which relate to the site subject of this appeal, and are being considered via a Public Inquiry. However, this appeal which relates to a development proposal, has been assessed upon its own merits.

7. During the course of the application and appeal, Natural England issued advice regarding significant recreational pressure of development upon the Chiltern Beechwoods Special Area of Conservation (the SAC) and that there could be implications for new housing within the 12.6km zone of influence. The 12.6km zone of influence includes the site subject of this appeal. The main parties were given an opportunity to comment on any potential implications and the matter has been treated as a main issue.
8. The proposed development has been screened in accordance with the Environmental Impact Assessment (EIA) Regulations 2017. It has been concluded that the development would not be of a scale and nature likely to result in a significant environmental impact and EIA is therefore not required.

Main Issues

9. The main issues in this appeal are;
 - whether or not the proposal would be inappropriate development in the Green Belt (GB); and
 - the effect of the development upon the Chilterns Beechwoods Special Area of Conservation (SAC).

Reasons

Whether or not the development is inappropriate

10. The roughly rectangular shaped appeal site is within the GB, and located between the residential properties known as Traps Cottage and Chilterns. It fronts on to Village Road, which is the main through road within the settlement of Whelpley Hill. Within the site are a number of buildings which are located within the half of the site closest to Traps Cottage.
11. Saved policy GB2 of the Chiltern District Local Plan 1997, as amended and consolidated (the Local Plan) indicates that most development in the GB is inappropriate and there is a general presumption against such development. However, it also indicates that limited infilling within the areas identified by policy GB4 is one of the exception criteria for which new building within the GB may not be inappropriate. The appeal site is not identified as being within such an area on the proposals map referred to within Policy GB4. Therefore, the appeal scheme would conflict with Local Plan Policy GB2.
12. Paragraph 149 of the Framework indicates that the construction of new buildings in the GB are inappropriate unless the development meets one of a number of stated exceptions. One exception is for the limited infilling in villages. In respect of infill development within villages I do not find policy GB2 to be wholly consistent with the Framework, as it does not allow for an assessment to be made regarding the extent of a village.
13. In this case the main parties agree that Whelpley Hill is a village. The prevailing pattern of development within Whelpley Hill is of a linear form alongside Village Road. The majority of residential development within the village focusses around two main areas. The first, and larger of these is close

to the triangle between Village Road and Grove Lane, and the second centres on the White Hart public house. The density of development reduces, and houses are generally larger and within wider plots, when travelling away from the triangle towards the public house.

14. Although there is a small gap in built form within the appeal site, there is no significant break in built development between the triangle and Traps Cottage, on the appeal site side of the road. The appeal site therefore reads as part of the village when travelling in both directions along Village Road past the site.
15. In determining an appeal for residential development on the appeal site in 1991², the Inspector found that the frontage south of the Chilterns changes from being one where buildings predominate to one characterised by a strong roadside hedgerow, and that the Traps does not relate strongly to the dwellings to the north. The appeal site frontage is now demarked by a young uniform hedgerow set well behind a wide grass verge. Furthermore, the neighbouring Traps Cottage which is further from the main core of the village beyond has no roadside hedgerow. The frontage of the appeal site and that of neighbouring properties, are well maintained and now have a character and appearance more closely associated with a village location than that of the nearby countryside. The facts on the ground which informed the previous appeal decision have therefore materially changed, and as such it is reasonable to come to an alternative view, regarding the site context.
16. Although the house at Chilterns is set back from the highway further than either Foxglove Cottage or Traps Meadow, it clearly reads as part of the frontage development within the street scene.
17. The houses either side of the appeal site are substantial and occupy large and wide plots. The frontage of the appeal site is wider than that of either of the adjacent roadside properties and the proposed house on its own would not close the gap between the buildings at Traps Meadow and Chilterns. However, the house, its gardens and driveway would extend across the whole of the gap between the houses and gardens at Chilterns and Traps Meadow. Even if the appeal site were to also accommodate commercial activities, this would not alter my finding that the development proposal would infill the gap between Traps Meadow and Chilterns.
18. Given the site context, the proposal to erect a single large house on the site, which would front onto Village Road in a manner similar to neighbouring properties, is deemed to represent limited infill development within the village. Having regard to the requirements of paragraph 149 (e) of the Framework, such development would not constitute inappropriate development in the GB.
19. 2 appeals have been referenced within the Council's delegated report³. I have not been provided with copies of these decisions. However, within the extract of the decision provided by the Council in respect of the Hog Lane case, the Inspector found that the appeal site was not within an area where there was a concentration of development, physically or visually. I have not found this to be the case with the appeal scheme. I have not been provided with sufficient information in respect of the Marylands appeal to make comparisons between that and the development subject of this appeal.

² T/APP/X0415/A/90/171368/P7

³ APP/X0415/W/20/32564 and APP/X0415/W/20/3263934

20. The Council have also referred to a number of additional appeal decisions within their statement of case. Whilst I do not have the full details of the cases, from the information I have been provided with, they all differ from the appeal scheme. In respect of the appeals cited at appendix C, D, E, and F⁴ of the Council's statement, the appeals sites were located within different planning authority areas from that subject of this appeal. As such the decisions were made based of differing planning policy contexts. The appeals cited at Appendix G, H, I and J⁵ are within Buckinghamshire, but in the cases of the appeals at appendix G and J, the appeal sites did not fill the entirety of the gap between neighbouring properties. In the appeal cited at appendix H, no site plan has been provided, and the site was found to be bounded on 3 sides by undeveloped fields. In the case of the appeal at appendix I the Inspector found that the development would represent an extension beyond the existing and consistent form of development, and that it would not therefore reasonably be considered to constitute limited infilling. None of the cases cited are directly comparable with the development subject of this appeal, and they do not lead me away from my findings in this case.
21. As the appeal scheme represents limited infill development within a village, it is not necessary to also consider its effect on the openness of the GB.
22. I have found that the appeal proposal is contrary to policy GB2 of the Local Plan. However, in terms of this appeal, I find the policies to be inconsistent with the relevant parts of the Framework. Given the degree of variation between the policies and the Framework, I accord only limited weight to the conflict between the appeal scheme and Local Plan policy GB2.
23. For the afore mentioned reasons, the proposed development would not be inappropriate development in the Green Belt (GB). Consequently, and although it would not strictly comply with the wording of policy GB2, it would accord with its objective to prevent inappropriate development in the greenbelt. Furthermore, and in respect of this main issue, the development would not conflict with the parts of paragraphs 137, 138, 147, 148 or 149 of the Framework, where they seek to prevent inappropriate development within the GB.

Chiltern Beechwoods Special Area of Conservation

24. The above considerations point me towards allowing the appeal. However, my attention has been drawn to potential adverse effects resulting from the proposal on the Chiltern Beechwoods SAC.
25. The site is within the 12.6km zone of influence of the Chiltern Beechwoods SAC. The SAC supports a range of habitats which qualify under Annex 1 of the European Habitats Directive. These include beech forest woodland habitats that also make up a large amount of the SSSI.
26. Having regard to research carried out by Footprint Ecology in 2021, Natural England recognise that new housing development within 12.6km of the SAC can be expected to result in an increase in recreational pressure on the SAC. Given this, the advice from Natural England is that likely significant effects on

⁴ APP/H4315/W/16/3158141, APP/C3620/W/15/3005744, APP/P3420/A/14/2227000 and APP/J1535/W/18/3197421

⁵ APP/K0425/W/19/3241262, APP/X0415/W/20/3246783, APP/X0415/W/20/3257963 and APP/X0415/W/20/3252681

the SAC, particularly when combined with other development within the zone of influence, cannot be ruled out in the absence of mitigation.

27. It is therefore necessary for me, as competent authority under the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations), to conduct an Appropriate Assessment in relation to the likely significant effects of the proposal on the integrity of the SAC.
28. Impacts upon the designated features of the SAC as a result of increased recreational pressure, include further trampling and vegetation wear, soil compaction and erosion, contamination including nutrient enrichment (e.g. dog fouling), litter and invasive species, and increased risk of fire. I understand that the evidence underpinning these likely significant effects identifies potential mitigation solutions to overcome them, including Strategic Access Management and Monitoring (SAMM) and Suitable Alternative Natural Green Space (SANG). Natural England is working alongside the Council to prepare a mitigation strategy to identify and implement these mitigation measures in perpetuity. In their document titled Chiltern Beechwoods Special Area of Conservation Frequently Asked Questions dated November 2022 (FAQs), the Council indicate that a SAMM Strategy has been agreed with its partner authorities and Natural England, and that solutions for offsite SANG will be identified in Winter 2022/2023 with host sites coming forward in 2023.
29. As competent authority, I need to be certain that the proposal would not cause adverse effects on the integrity of the SAC. Natural England has advised that further information is required to determine the significance of the proposal's impacts and the scope for mitigation. From the evidence before me, although it appears that mitigation will be possible, given the terms of that mitigation have not yet been fully agreed, I cannot rule out adverse effects on the integrity of the SAC. I acknowledge that the effect of one additional residential unit would be limited, however my assessment must include the in-combination effects of the proposal with other planned development within the zone of influence.
30. On the evidence before me, I cannot conclude that the full terms of the Council's mitigation strategy have been agreed. It has been put to me by the appellant that any adverse effects of the development could be addressed by a unilateral undertaking to make a financial contribution towards a scheme of mitigation. A UU has been prepared and submitted to this effect. However, given the terms of the mitigation strategy have not yet been fully agreed, I cannot be certain that the terms of the UU would deliver the required mitigation.
31. Even if planning permission reference PL/19/0587/OA had not lapsed, then this would not alter my findings in respect of the effect of the development subject of this appeal on the SAC.
32. In the case of the appeal reference APP/A1910/W/21/3274531 the Inspector found that they would have needed to undertake an appropriate assessment had they not been dismissing the appeal on other grounds. In this case the undertaking of an appropriate assessment was necessary, because I was otherwise minded to allow the appeal.
33. For the reasons above, there is insufficient evidence to provide the certainty needed to rule out adverse effects on the integrity of the SAC and I must take a precautionary approach. Consequently, the proposal would conflict with the aims of chapter 15 of the Framework and the Habitats Regulations. Moreover,

the Habitats Regulations confirm that I cannot permit a proposal where significant adverse effects might occur. Therefore, this consideration is decisive, and the appeal should be dismissed.

Other Matters

34. The Council have indicated that they do not have a five-year supply of deliverable housing sites. In such circumstances paragraph 11d) of the Framework should be applied. 11d) sets out that permission should be granted for proposals that constitute sustainable development unless certain circumstances apply. One such circumstance is where the policies of the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 includes habitat sites, which would include SAC's. Given that I cannot rule out adverse effects on the integrity of the SAC as a result of the development, the presumption given by paragraph 11d) would not be triggered in this case.

Planning balance

35. In terms of benefits, the proposal would provide one net additional dwelling, which would contribute towards the borough's housing supply. It would also bring benefits to the construction industry and social benefits. However, given the small scale of the development, the weight that can be attached to these benefits is limited.
36. Overall, I have found the development proposal would not be inappropriate development in the GB. However, the Habitats Regulations confirm that I cannot approve the proposal where likely significant adverse effects cannot be ruled out. Even accounting for the benefits, this material consideration is decisive.

Conclusion

37. For the afore reasons, I conclude that the appeal should be dismissed and planning permission refused.

V Simpson

INSPECTOR