



Appeal Decision

Hearing held on 9 May 2023

Site visit made on 9 May 2023

by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Appeal Ref: APP/X0415/W/22/3305400

Farm Cottage Collinswood Road, Farnham Common SL2 3LJ

- 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 Millen Homes Limited against the decision of Buckinghamshire Council - East Area (Chiltern).
 - The application Ref PL/22/0215/FA, dated 19 January 2022, was refused by notice dated 6 May 2022.
 - The development proposed is described as, 'development of 3 detached dwellings and creation of public recreation space on land at Farm Cottage and Collinswood, Farnham Common'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the appeal a signed and dated Unilateral Undertaking was submitted which I have taken into account in my determination of the appeal.

Main Issues

3. During the appeal an updated Flood Risk Assessment and Woodland Survey were submitted which the Council consider have addressed the reasons for refusal relating to surface water drainage and the effect of the proposal on trees subject to a Tree Protection Order. From the evidence I see no reason to disagree.
4. Therefore, the main issues are:
 - the effect of the proposal on Burnham Beeches Special Area of Conservation (SAC);
 - the effect of the proposal on biodiversity including great crested newts;
 - the effect of the proposal on the adjacent woodland; and
 - the effect of the proposal on the living conditions of neighbouring occupiers with regard to outlook.

Reasons

Burnham Beeches SAC

5. The site lies within 500m of Burnham Beeches SAC. The proposal for three dwellings would be likely to increase the number of recreational visitors to Burnham Beeches SAC, potentially resulting in disturbance to the integrity of the habitats of qualifying features. While recreational trips to the SAC from three dwellings may be limited, in combination with other developments, there would be likely significant effects resulting from the proposal. Accordingly, an Appropriate Assessment is necessary.

Appropriate Assessment

6. The qualifying features of Burnham Beeches SAC are Atlantic acidophilous beech forests with *Ilex* and *Taxus* in the shrub layer (*Quercion roburi-petraeae* or *Ilici-Fagenion*); and Beech forests on acid soils. The conservation objectives include maintaining or restoring the structure and function (including typical species) of qualifying natural habitats, and the supporting processes on which qualifying natural habitats rely.
7. The Burnham Beeches Special Area of Conservation Strategic Access Management and Monitoring Strategy Supplementary Planning Document Adopted November 2020 (SPD) includes recommendations made within the Footprint Ecology Report¹.
8. The Burnham Beeches SAC Mitigation Strategy set out within the SPD includes a presumption against residential development within 500 linear metres of the Burnham Beeches SAC boundary. Since the proposal for three dwellings lies within 500m of the SAC, it would conflict with the Burnham Beeches SAC Mitigation Strategy and SPD.
9. Moreover, Natural England's representation in response to the appeal states that this proposal is not in accordance with the Adopted Burnham Beeches SAC Mitigation Strategy SPD. It goes on to say that the site is located within the 500m exclusion zone of the SAC boundary, where evidence indicates that mitigation measures are unlikely to protect the integrity of the SAC.
10. The SAC largely comprises three areas; Burnham Beeches National Nature Reserve (NNR), Egypt Woods and Dorney Wood. The site is around 340m from the nearest point of the SAC at Egypt Woods and around 460m from the nearest entrance to the NNR part of the SAC. The Information for Habitats Regulations Assessment (IHRA) submitted by the Appellant states that the NNR supports the main features of importance in the SAC, these being the ancient, pollarded beech and oak trees. It goes on to say that Egypt Woods and other parts of the SAC do not contain these features.
11. The IHRA states that the buffer zone for cumulative pedestrian / cycle impact is justified at 300m – 400m but no further, and only from the City of London Corporation NNR; the 500m 'no development' buffer applying to the whole SAC is unjustified.
12. I note the evidence comparing recreational levels in the NNR with Egypt Woods. I also acknowledge the evidence regarding the number of visitors from

¹ Impacts of urban development at Burnham Beeches SAC and options for mitigation: update of evidence and potential housing growth, 2019

- certain areas and that the data used to inform the Footprint Ecology Report suggests a decline in visitor rates out to 300m, beyond which the pattern is less clear.
13. However, the data also indicates that a substantial number of people within the 500m zone travel to the SAC by foot three or more times a week. Therefore, I consider that the precautionary approach taken by the Footprint Ecology Report in recommending a 500m zone where a presumption against development would apply, is justified.
 14. The scheme includes a proposed walking route through an area of woodland adjacent to the site proposed as Public Open Space (POS) to direct recreational visitors away from the SAC. A signed Unilateral Undertaking was submitted which seeks to secure the use of the woodland for public recreational use. The UU includes an undertaking that the owners and Appellant would apply to the Council for the designation of the proposed footpath as a Public Footpath. As the Council are not party to the UU, there is no legal obligation for the Council to designate the footpath as a Public Footpath. Notwithstanding this, the UU requires the Management Company to maintain the POS as permanent amenity land for the benefit of the public in perpetuity.
 15. It is likely that the proposed POS would be used by future residents of the proposed dwellings as well as the dwellings in the vicinity of the site. However, the woodland area is of a limited size such that woodland walks through the site would be likely to be restricted in distance. As such, while I accept that the POS would reduce recreational pressure on the SAC, it is unlikely that it would prevent or significantly reduce the number of visits to the SAC given the close proximity of the site to a number of entrances to the SAC. As such it would not provide adequate mitigation for the likely significant impacts of the proposal on the SAC.
 16. The above is reflected in Natural England's response to the appeal which states that the proposed site layout looks small and there is not a circular walk of suitable length. Therefore, the site is not likely to be an attractive alternative to the Beeches and is unlikely to function as a SANG (Suitable Alternative Natural Greenspace).
 17. I note the evidence regarding a lack of existing SANG to direct recreational visitors away from the SAC. However, for the foregoing reasons, I agree with Natural England and consider that the proposed POS would be unlikely to mitigate the adverse effects on the integrity of the SAC that would be likely to occur as result of the proposal.
 18. Therefore, even if the UU was effective in creating a POS for public use in perpetuity, it would not mitigate the adverse effects of the proposal on the integrity of the site.
 19. I note the other developments in the surrounding area that have been granted planning permission by the Council. However, as they were granted prior to the adoption of the SPD, they are not directly relevant to this appeal and have not altered my findings on this main issue.
 20. Consequently, the proposal would adversely affect the integrity of Burnham Beeches SAC. Therefore, it would conflict with Core Policy 9 of the Core Strategy Development Plan Document Adopted February 2011 (CS) which

states that the conservation and enhancement of Burnham Beeches SAC, and its surrounding supporting biodiversity resources, will be achieved through restricting the amount of development in close proximity to the site, and ensuring that development causes no adverse effect on the integrity of the SAC.

Biodiversity

21. The site lies within the South Bucks Heaths and Parks Biodiversity Opportunity Area (BOA). CS Core Policy 9 seeks, among other things, a net gain in local biodiversity resources within the Biodiversity Opportunity Areas.
22. The Calculation of Biodiversity Net Gain using Defra Metric 3.1 which was submitted by the Appellant concludes that the development would achieve a biodiversity net gain, which has been calculated at 16.80% for habitats and no change for hedgerows.
23. The report says that all the existing trees and hedgerows are proposed for retention, with a small section of existing trees and hedgerow removal at the site frontage. It also states that this has been mitigated for within the proposed layout by native tree and shrub planting, partially at the boundaries to provide strengthening of boundary habitats and improve connectivity.
24. The Biodiversity Net Gain – Supplementary Planning Document Version 20 dated July 2022 (BNG SPD) and Interim Strategic Significance & Spatial Risk Guidance for Biodiversity Net Gain in Buckinghamshire Council's Local Planning Authority Area Interim Guidance February 2023 state that it is important to remember that each parcel of habitat (each row within the metric) must be allocated a specific Strategic Significance category in the metric.
25. Strategic Significance is determined with reference to local policies and in consultation with the LPA. The woodland to the north of the site is a Habitat of Principal Importance - Priority Habitat Deciduous Woodland. Moreover, as the Priority Habitat Deciduous Woodland lies within a BOA, a high strategic significance allocation for the off-site woodland would be appropriate.
26. The Appellant's BNG calculations has set the baseline strategic significance of the woodland as low. The Appellant indicated at the hearing that even if the BNG metric calculation accounted for a High Strategic Significance, the difference in the overall metric outcome would have been limited. Notwithstanding this, given the site and woodland designations, the reliability of the metric calculation is in doubt.
27. The Council considers the pond on the site to be suitable for the common toad, which is a priority species. The Phase 1 Habitat Survey did not record any amphibians other than common frogs. However, a traditional amphibian survey had not been carried out to confirm the absence of common toad. The pond on site is not allocated as a priority habitat within the Appellant's BGN metric. I also note the definition of priority habitat in the Joint Nature Conservation Committee UK Biodiversity Action Plan Priority Habitats Descriptions which includes ponds supporting exceptional populations of numbers of key species. Notwithstanding this, given the uncertainty regarding the numbers of common toads present in the pond, and that the pond would be lost as result of the proposal, the reliability of the BNG metric calculation is further weakened.

28. For the foregoing reasons, it has not been demonstrated that the proposal would result in a biodiversity net gain as required by CS Policy Core Policy 9.
29. Turning to great crested newts, although four ponds are identified within the site and within 500m of the site on OS maps, one pond appears to have been filled in and another a dry basin with little wetland. A pond at Willow Cottage was not surveyed due to access permission being denied.
30. The pond was calculated as 'good' from the Habitat Suitability Index (HSI) survey and is therefore considered suitable for great crested newts. The site also falls within the red impact risk zone for great crested newts. The eDNA samples were collected and tested in 2022 and resulted in a negative outcome. Notwithstanding this, as the pond at Willow Cottage adjacent to the site was not surveyed, the presence of great crested newts cannot be ruled out.
31. The proposed compensation for possible impacts of the development on great crested newts is that the Appellant would enter into a District Licensing Scheme where a payment is made which is used to enhance populations of great crested newts at distance from the development. The submitted UU requires the owners and appellant to apply to and follow the requirements of the Council and NE with regard to investigations and surveys to establish the existence of any habitat of great crested newts. It also requires the owners and Appellant to accord with the requirements for obtaining a District Licence.
32. However, while I note the evidence regarding the requirement for surveys as part of the District Licensing scheme, as the Council is not party to the UU, there is no certainty that a District Licence would be issued. As such, it has not been demonstrated that the proposal would not have an adverse effect on great crested newts.
33. Consequently, the proposed development would adversely affect biodiversity including great crested newts. Therefore, it would conflict with CS Policy Core Policy 9 which seeks, among other things, the conservation, enhancement and net gain in local biodiversity resources within the Biodiversity Opportunity Areas.

Woodland

34. The proposed POS includes a woodland walk through the woodland adjacent to the site. The woodland is included in the Ancient Woodland Inventory.
35. The Framework defines ancient woodland as an area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites.
36. The Ancient Woodland Inventory Handbook for England by NE (AWI Handbook) states that 'Continuously wooded' in the above definition does not require there to have been a continuous physical cover of trees and shrubs across the entirety of a site.
37. There is a dispute between the parties as to whether the woodland is ancient as defined in the Framework. A Woodland Survey was submitted by the Appellant which states that by 1960 there was no woodland on the presumed ancient woodland site, with another land use, probably amenity use as part of Colinswood House. It also states that woodland was not present even as far back as 1925, when individual trees were mapped instead of woodland.

38. An Ordnance Survey map dated 1925 shows individual tree symbols in the POS area, rather than symbols of groups of three trees. However, a key for the map is not before me to confirm the intended interpretation of the symbols. The AWI Handbook states that some engravers may have had a tendency to skim on symbol density more than others and that there was clearly variance among the different draughtsmen and engravers who interpreted their work. As such, the individual trees noted on the 1925 map are not necessarily an indication that the woodland was not present at that time.
39. The 1946 and 1960 maps do not show any trees on the area north of the site. The remains of a number of structures are on the site as I observed during my site visit, which do not appear on the maps.
40. Although the 1946 map does not show any trees on the proposed POS, it also does not show any trees elsewhere on the map section in the Woodland Survey document including the area to the north and west of the area. This is contrasted with the 1960 map which shows the area north and west of the proposed POS with interspersed tree symbols and the annotation 'Ponds Wood'. The AWI Handbook states that the 20th century is surprisingly often an area of weakness in the cartographic record of woodland sites.
41. On this basis the absence of trees in the 1946 map do not demonstrate that the area was cleared of woodland. Although some trees in the proposed POS may have been felled resulting in a less densely wooded area, it nevertheless appears to have remained part of a wider woodland in 1960.
42. I note that a mature Yew tree in the woodland appears to have been planted as it is not found in the slightly acid soils of the wider area. I also acknowledge the spreading of branches which indicate a less densely wooded environment. There are non-native species on the site such as cherry laurel as well as remains of former buildings and drainage network. However, these do not necessarily indicate that the entire proposed POS area was cleared. Given that 'continuously wooded' does not require there to have been a continuous physical cover of trees and shrubs across the entirety of a site, I consider the woodland to the north of the site to meet the definition of ancient woodland in the Framework.
43. The proposal includes retention of mature trees and some removal of small-scale removal of ornamental shrubs and non-native species and replacement with site-appropriate native species. The paths would be unsealed and surfaced with woodchips. The Woodland Survey also states that levels of use would not be so great that significance soil compaction or root damage would occur.
44. Notwithstanding the above, the woodland walk would be likely to result in a number of impacts including some soil compaction, damaging of ground flora, increase of dog fouling and litter/fly tipping.
45. The UU requires the owners and appellant to submit to the Council a detailed landscape and management plan for the POS. It also requires the management company to display rules and regulations on the POS for observance by the general public that the Council may provide. As the Council are not party to the UU, there is no legal obligation for the Council to provide such requirements or agree a landscape or management plan for the POS.

46. Since there is no certainty that a management plan could adequately compensate for the deterioration of the ancient woodland, conditions requiring a management plan to be agreed and implemented would not be reasonable.
47. As such, while it may be common for woodland walks to exist within ancient woodlands such as a Langley Park, for the foregoing reasons, there is no certainty that the UU would provide adequate mitigation or compensation against the adverse effects of recreation in the ancient woodland and resulting harm to landscape character.
48. Consequently, the proposed development would harm the adjacent woodland. Therefore, it would conflict with CS Core Policy 9 which resists, among other things, harm to landscape character.

Living conditions

49. Willow Cottage lies adjacent to the proposed dwelling at Plot 3. The part of Willow Cottage closest to the boundary is a single storey element. Given the steep roofs of the proposed dwelling and proximity to the boundary, it is likely that the proposed dwelling would be visible from Willow Cottage. However, Willow Cottage is set at an angle to the boundary that the proposed dwelling would not be directly opposite the windows and set a distance away from the boundary such that it would not appear obtrusive. In addition, given the size of the plot at Willow Cottage as well as the orientation of the building, there is outlook in other directions such that the living conditions of the occupiers would not be adversely affected.
50. The approved dwelling at Springdale also lies adjacent to the site. The proposed dwelling at Plot 3 would not be located directly opposite this dwelling. Therefore, views of the dwelling of Plot 3 from within the house would be at an angle. The proposal would be visible from the garden of the approved dwelling. However, from the evidence there would be outlook in other directions such that the proposal would not result in oppressive living conditions for neighbour occupiers.
51. Consequently, the proposed development would not harm the living conditions of neighbouring occupiers with regard to outlook. Therefore, it would not conflict with Policies EP3 and H9 of the South Bucks District Local Plan (adopted March 1999) and CS Core Policy 8 in this particular respect which requires, among other things, that the scale of a proposal should be compatible with and not adversely affect amenities of neighbouring properties for example through overdominance or obtrusiveness and seek a high quality of design.

Other Matters

52. I note the comments of the Inspector for the case at South Caldecotte. However, that scheme appears to have been for a number of non-residential uses, was in a different district and determined under a different development plan. As such, it is not directly comparable with this appeal and has not altered my overall decision.
53. The Council are not able to demonstrate a five-year supply of housing. However, the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not

adversely affect the integrity of the habitats site, as stated in paragraph 182 of the National Planning Policy Framework. As such, this matter has not altered my overall decision.

Conclusion

54. For the reasons given above, the proposed development would conflict with the development plan and in the absence of material considerations to indicate otherwise, the appeal is dismissed.

R Sabu

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Vincent Millen	Millen Homes Ltd
Ben Lowry	Millen Homes Ltd
Nick Sibbet	Ecology and Woodland Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Richard Regan	Principle Planning Officer
Agni-Louiza Arampoglou	Ecology Officer
Kaya Allnut	Planning Officer

INTERESTED PARTIES:

Victoria Grazebrook	Local resident
Lester Gleeson	Local resident
Anthony Birkett	Parish Council representative

DOCUMENTS

1. Signed Statement of Common Ground
2. Signed unilateral undertaking
3. Natural England SANGS Guidance
4. UK Biodiversity Action Plan Priority Habitat Descriptions – Ponds
5. Biodiversity Net Gain - Supplementary Planning Document Version 20
6. Ancient woodland, ancient trees and veteran trees: advice for making planning decisions
7. Natural England - Ancient Woodland Inventory Handbook for England May 2018
8. Interim Strategic Significance & Spatial Risk Guidance for Biodiversity Net Gain in Buckinghamshire Council's Local Planning Authority Area Interim Guidance February 2023
9. Map of Langley Park Ancient Woodland
10. Assessment guide: ancient woodland, ancient and veteran trees – January 2022
11. Ancient Woodland Inventory for the Chilterns Report and Inventory Maps July 2012