



Appeal Decisions

Site visit made on 15 June 2023

by Jonathan Edwards DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th July 2023

Appeal A Ref: APP/X0415/W/22/3307200

Land Adjacent To Bluebells, Stony Lane, Little Kingshill, Buckinghamshire HP16 0DS

- 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 Ms Patricia Davidson against the decision of Buckinghamshire Council.
 - The application Ref PL/22/0248/FA, dated 20 January 2022, was refused by notice dated 12 April 2022
 - The development proposed is erection of detached dwelling adjacent and vehicular access.
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Appeal B Ref: APP/X0415/W/23/3318105

Land Adjacent To Bluebells, Stony Lane, Little Kingshill, Buckinghamshire HP16 0DS

- 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 Ms Patricia Davidson and the Trustees of the Carton Settlement against the decision of Buckinghamshire Council.
 - The application Ref PL/22/2627/FA, dated 20 July 2022, was refused by notice dated 9 February 2023.
 - The development proposed is erection of detached dwelling adjacent vehicular access.
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Decisions

Appeal A Ref: APP/X0415/W/22/3307200

1. Appeal A is allowed and planning permission is granted for erection of detached dwelling adjacent and vehicular access at Land Adjacent To Bluebells, Stony Lane, Little Kingshill, Buckinghamshire HP16 0DS in accordance with the terms of the application, Ref PL/22/0248/FA, dated 20 January 2022, subject to the conditions set out in the Schedule at the end of this decision.

Appeal B Ref: APP/X0415/W/23/3318105

2. Appeal B is allowed and planning permission is granted for erection of detached dwelling adjacent vehicular access at Land Adjacent To Bluebells, Stony Lane, Little Kingshill, Buckinghamshire HP16 0DS in accordance with the terms of the application, Ref PL/22/2627/FA, dated 20 July 2022, subject to the conditions set out in the Schedule at the end of this decision.

Applications for costs

3. In respect of both appeal A and appeal B, applications for costs were made by the appellants against Buckinghamshire Council. These applications are the subject of a separate Decision.

Preliminary Matters

4. There are 2 appeals that relate to this site. In respect of appeal A, an amended proposed site plan numbered 110-W has been provided by the appellant that was not before the Council at the time it refused the planning application. The revised plan shows a slightly different parking layout as well as amendments to the proposed pathway from Stony Lane to the wooded area to the rear of the site. The Council has raised no objections to the revised plan being considered as part of my assessment of appeal A as the amendments do not fundamentally change the nature of the proposal. Interested parties have had an opportunity to comment on the revised plan and so no injustice would be caused by taking it into account.
5. The 2 appeals relate to exactly the same proposed development, apart from under appeal B I have been provided with a proposed site layout plan numbered 110-X, which shows a slightly wider footpath next to Stony Lane. I have treated the appeals as separate entities and made 2 separate decisions. However, the comments in this notice apply equally to the schemes forwarded under appeal A and appeal B. For ease, I refer to the appeal A and appeal B proposals as "the development" or "the proposed house."
6. Completed agreements under section 106 of the Town and Country Planning Act 1990 have been submitted, one with each appeal (the agreements). The planning obligations in these agreements are the same and they come into effect on the grant of planning permissions. The planning obligations restrict the commencement of the development until a biodiversity offsetting scheme has been submitted to and approved by the Council. The scheme is required to deliver a biodiversity net gain of 4.84% and to include a biodiversity net gain management and monitoring plan. I have had regard to the agreements in my assessment.
7. Interested parties claim that the appellants' written submissions provide measurements for the site and the proposed house that are different to those as shown on the appeal plans. For clarity, I confirm that my assessments are based on the submitted drawings.

Main Issues

8. In light of the revised layout plan and the agreements, the Council no longer wishes to pursue its concerns as set out in refusal reasons 2, 3 and 4 in respect of appeal A and refusal reason 2 in respect of appeal B. Even so, in light of comments from interested parties, the main issues for both appeals are:-
 - whether the development would be inappropriate development in the Green Belt having regard to the policies of the Chiltern District Local Plan 1997 (the LP) and the National Planning Policy Framework (the Framework); and
 - whether the proposed pathway would provide an attractive pedestrian access.

Reasons

Whether inappropriate development in the Green Belt

9. The appeal site is in designated Green Belt. Under LP policy GB2, limited infilling is not inappropriate in the Green Belt provided it is in accordance with LP policies GB4 and GB5. The site is in the defined settlement boundary for Little Kingshill, which under LP policy GB5 is identified as a settlement where limited infilling is acceptable. LP policy GB4 defines infilling as “the construction of 1 or 2 dwellings in a small gap in an existing row of dwellings and other substantial buildings, which form an otherwise fully developed frontage to a road”. Further criteria require the width of the plot, size and shape of the curtilage and the siting, scale and appearance of the dwelling to be comparable to adjoining development.
10. LP policies GB2, GB4 and GB5 are generally consistent with the Framework, which at paragraph 149(e) identifies limited infilling in villages as not inappropriate development in the Green Belt. By defining limited infilling, LP policy GB4 goes beyond the provisions of the Framework. Even so, LP policy GB4 is part of the adopted development plan and so the issue as to whether the development would accord with the definition is a material factor in my assessment.
11. The introduction of a single house would accord with LP policy GB4 in terms of the number of dwellings. Also, it would be limited development in line with paragraph 149(e) of the Framework. As such, the development would not be inappropriate provided it constitutes infilling.
12. The proposed house would be between Bluebells to the east and a dwelling to the west called Witches Moon. Bluebells is fairly close to Stony Lane but Witches Moon is set back further from the road. A narrow access drive to it and Hunters Lodge runs along the western boundary of the appeal site. On the other side of the driveway is the side boundary and flank wall of Lammas House. This is accessed off St Christopher’s Close, a residential cul de sac that leads off Stony Lane just before the driveway to Witches Moon.
13. The appeal site’s width is similar to the other residential plots along Stony Lane. Therefore, it is appropriate to define the space between the side wall of Bluebells and the flank of Witches Moon as a small gap between buildings.
14. From the location plan provided with the appeals, a line of buildings can be identified running from the end of Stony Lane on the northwest side of the road and continuing along the northern side of St Christopher’s Close. This line is not entirely straight and Witches Moon and Hunters Lodge are set further back compared to other dwellings. Even so, the overhead depiction indicates a row of buildings with the only significant gap being the appeal site.
15. On my visit, I saw that Witches Moon is screened from Stony Lane when approaching from the south. From this direction, trees to the front interrupt the sight of buildings. However, the interruption is short and when directly in front of the appeal plot Witches Moon and Bluebells are clearly seen. Such views reinforce the sense of a vacant site between 2 residences. Moreover, Bluebells is clearly viewed as part of a line of dwellings on the northwest side of Stony Lane. Therefore, the proposed house would appear to fall in a row of buildings.

16. LP policy GB4 provides no definition for the term “fully developed frontage to a road”. However, it would be unreasonable to interpret the term so as to exclude situations where buildings are set behind and partially obstructed by roadside planting or where there are small breaks between buildings. In arriving at this view, I am conscious that the Framework provides no requirement for schemes to be in a fully developed frontage for limited infilling to be not inappropriate development in the Green Belt.
17. As the access drive is narrow, the setback position of Witches Moon and Hunters Lodge does not prevent a fully developed frontage to Stony Lane and St Christopher’s Close. Furthermore, the side boundary of Lammas House forms part of a developed frontage as its flank elevation faces and is close to Stony Lane, albeit behind a roadside hedge. Given these factors and the run of houses on Stony Lane and St Christopher’s Close, I find the appeal site is a small gap in a row of buildings that form a fully developed frontage to a road.
18. The Council raises concern that the development would not totally fill in the gap between buildings in a row. However, the proposed house would occupy most of the space between Bluebells and Witches Moon. Moreover, it is not a requirement of LP policy GB4 for development to completely close any gap.
19. Several appeal decisions are referred to by the Council in support of its case. These relate to schemes with different contexts to the appeal site, such as where houses are proposed next to extensive gardens or open tracts of land. None of the appeals relate to proposals so similar to the development to set a precedent that is bound to be followed.
20. The width and size of the site is comparable to other residential plots on Stony Lane, albeit larger than Witches Moon. Also, the proposed house would generally be in line with Bluebells and so compatible in terms of its position. Dwellings in the vicinity vary in appearance and size and so the proposed house would not be out of character in terms of its design and scale. Therefore, the development would accord with all of the criteria set out at LP policy GB4. The proposed house would reduce the openness of the site but neither LP policy GB4 nor the Framework require limited infilling in a village to preserve openness.
21. For the above reasons, I find the development would accord with the definition of infilling as set out under LP policy GB4. As such, I conclude it would not be inappropriate development in the Green Belt and so it would be acceptable under the terms of LP policies GB2, GB4 and GB5. Also, the proposed house would accord with the exception set out at paragraph 149(e) of the Framework and so it would not be inappropriate development in the Green Belt having regard to national planning policy.

Pedestrian access

22. Currently, there is a route across the centre of the site that allows pedestrian access from Stony Lane to the wooded plantation to the rear and to Priestfield Arboretum. The appeal site, plantation and arboretum are all privately owned but I understand that access is allowed to community groups and to local school children. Also, I saw that access by the general public across the site to the woods is not meaningfully restricted nor prohibited. An application to add the path to the definitive public rights of way map has been made but as far as I am aware no decision on this application has been issued.

23. The proposed house would obstruct the existing path although a new pathway along the western boundary of the site would preserve a pedestrian route to the woods. The plans show this path would vary in width. For privacy and security reasons, fencing with trellis on top would be provided between the pathway and the proposed house and its garden and parking area. There is already fencing along parts of the boundary with Witches Moon.
24. The proposed pathway would be long and fairly narrow and it would feel enclosed where there is fencing to both sides. Also, it would include several trees to be retained at the front and towards the rear of the site. These would emphasise the sense of enclosure, impede pedestrian movement and restrict forward visibility. Therefore, the path would not provide an attractive route where users would feel safe, particularly when compared to the existing access.
25. Thames Valley Police have lifted their objections to the development in light of the amendments to the path and fencing as shown on the revised plans. Subsequently, the Council no longer has concerns in these regards. I note the advice that the area is not subject to significant levels of crime and so I am unconvinced the path is bound to lead to anti-social behaviour. However, this does not address nor justify the poor environment it would provide for users. Moreover, even with a trellis on top of the fence, there would be no meaningful natural surveillance of the path given the position of first floor windows in the proposed house. Rooflights on the elevation nearest to the path would direct views skywards rather than towards walkers on the ground.
26. The appellants suggest a planning condition that requires the approval of further details regarding the path and how it would take account of retained trees. However, it is unclear how any amendments or additions to the details already provided would address the identified shortcomings. The omission of gates from either end of the path would not overcome the sense of enclosure nor the obstruction to movement and views caused by the trees.
27. The path would not be a public right of way. Even so, for the reasons given above, I conclude it would not provide an attractive access where users would feel safe. In these regards, the development would not accord with design advice provided at paragraphs 92(b) and 130(f) of the Framework, which seek to create safe and accessible places, particularly through attractive, well-designed pedestrian routes. Consequently, I conclude the development would not accord with policy CS20 of the Core Strategy for Chiltern District 2011 (CS), which seeks a high standard of design.

Other matters and raised concerns

28. Groups of trees to the front and rear of the site are the subject of a tree preservation order. These create an attractive natural feel to the site and make a marked positive contribution to the visual qualities of the locality. Of 31 trees identified in the submissions, 6 are proposed to be removed. All of these are rated as being of low or poor quality and value. Significant tree cover would remain to the front and rear of the site and the Council accepts that the parking as shown on the revised plans would avoid harm to the well-being of trees. Also, the Council suggests a planning condition that would require measures to protect root systems during construction. Therefore, the development would adequately safeguard trees and their positive effect on the visual qualities of the area.

29. Concerns are raised by interested parties over the removal of trees and vegetation that has already taken place and how this has been carried out. While sympathetic to the concerns, such clearance works do not form part of the development before me. As such, they fail to influence my assessment.
30. The planning obligations would ensure a net biodiversity gain by offsetting the loss of biodiversity on the site with enhancements elsewhere. The submissions demonstrate that this could be achieved by improving the quality of part of the woodland to the rear. I am satisfied that the planning obligations are reasonable, fair and necessary to ensure compliance with CS policy CS24.
31. The site is in the Chilterns Area of Outstanding Natural Beauty (AONB). The Framework states that great weight should be given to conserving the landscape and scenic beauty of such areas. Through the presence of the mature trees the site adds to the natural qualities of the locality. However, the introduction of a dwelling would not look out of place given the adjoining residences on either side. From the road, the house would appear to be a similar size to others on Stony Lane and it would be of a design that fits in with the street scene. Moreover, the natural feel to the site would remain through the retention of most of the trees. As such, the development would not harm the scenic qualities of the AONB and it would have an acceptable effect on the character and appearance of the area.
32. The development would not impact on the wooded area to the rear and whilst there are concerns over the pathway, an access route to the plantation would be retained. As such, the development would not lead to a loss of any amenity or community space nor prevent access to such areas.
33. The proposed house would be visible from the windows and the gardens at Witches Moon and Bluebells. However, by virtue of its relative position and design with the roof sloping down towards the side boundaries, the house would avoid unacceptable dominating effects or overshadowing of neighbouring properties. The change to the outlook from the first floor windows in Witches Moon that face the site would not lead to unsatisfactory living conditions due to the separation distances. Views from the rooflights on the west elevation of the proposed house would be towards the sky rather than towards Witches Moon's windows or private garden areas. As such, they would avoid intrusive overlooking. Also, it would be reasonable to impose a planning condition to require obscured glazing to first floor side windows on the east elevation to prevent overlooking onto Bluebells.
34. The proposed pathway would be closer to Witches Moon than the existing route across the site. However, boundary treatments would prevent significant overlooking from the path onto the neighbouring property. Also, I envisage the path would be used mainly by local people for recreation purposes. Therefore, it is likely that the level of use would avoid unacceptable noise disturbance or harm to living conditions. The construction of the proposed house would generate noise but works would be temporary and would avoid excessive disturbance as the development is a single dwelling. Also, the proposed house would not cause a level of additional traffic so as to compromise highway safety, either during or after construction.
35. The development would change views of the site from properties on the other side of the road. However, the proposed house would be set back and so it would avoid harm to the living conditions for occupiers of these properties.

36. As onsite parking is proposed the development would not meaningfully increase parking on the road. There is little evidence to suggest the occupants of the proposed house would put undue pressure on local infrastructure or services. Indeed, by supporting local facilities, occupiers of the proposed house would make a minor contribution towards the vitality and vibrancy of the village. Also, allowing these appeals would not set a precedent in support of the development of the wooded area to the rear.
37. None of the above concerns and issues provide a sound reason to refuse planning permission. As such, they do not influence my overall assessment.

Planning balance

38. The development would be acceptable in relation to Green Belt policy but it would include an unattractive pedestrian route that would feel unsafe. As such, it would not accord with development plan policies when read as a whole. Therefore, I need to consider whether other factors justify decisions that depart from the development plan.
39. The Council is unable to demonstrate the minimum 5 years' supply of housing land as required under the provisions of the Framework. As of April 2022, the Council has confirmed a 2.1 year supply. There is no evidence to indicate the position has improved. This is a considerable shortfall against the 5 year minimum requirement.
40. In light of the housing land supply position and footnote 8 of the Framework, paragraph 11(d) of the Framework is applicable. As I have found the development would accord with Green Belt policy, the provisions of paragraph 11 (d)(i) of the Framework do not apply. As such, paragraph 11(d)(ii) requires an assessment of the benefits and adverse impacts of the development.
41. The development would contribute towards the supply of housing. I attach moderate weight to this benefit given the poor housing land supply position. The identified shortcomings of the proposed pathway mean the development would conflict with the provisions of the Framework. However, I am mindful a pedestrian route to the woodlands would remain and the development would have no effect on the attractiveness of the pathways through the woods themselves. For these reasons, the adverse impacts of the development attract modest weight.
42. Therefore, the identified harm would not significantly and demonstrably outweigh the benefits of the development. The presumption in favour of sustainable development as set out at paragraph 11 of the Framework applies. In such circumstances, the Framework states planning permission should be granted. With this in mind, I find the factors in favour of the schemes and other considerations justify decisions other than in accordance with the development plan.

Conditions

43. I have considered the conditions suggested by the Council, having regard to the tests set out in the Framework. Where appropriate, I have amended the wording for reasons of precision and to avoid unnecessary pre-commencement conditions.

44. I include conditions listing the approved drawings for reasons of clarity. To preserve the site's contribution to the natural environment and character of the area, conditions on tree protection measures are also imposed.
45. Conditions that require approval of external material details for the proposed house are not needed as sufficient information is provided on the approved plans. However, I attach conditions regarding hard surfacing materials to ensure a satisfactory appearance. Conditions regarding the access, driveway and parking are included to prevent roadside parking and a risk to highway safety. I have imposed conditions on obscure glazing to windows to prevent unacceptable overlooking of Bluebells.
46. The appellant has suggested the imposition of conditions that would require the submission and approval of further details of the pathway. However, I have found that planning permissions should be granted notwithstanding the inadequacies with the path as shown on the appeal drawings. As such, the conditions are not needed. However, it is necessary to ensure the pathway is provided so a suitable access to the woodlands as an amenity asset is maintained. Conditions to this effect are imposed.
47. I see no need for conditions that remove permitted development rights (PDRs) for the proposed house simply because it is in the Green Belt. However, harm may be caused to the well-being of retained trees through enlargements to the proposed house that would increase its footprint. Also, development within the curtilage may threaten the trees. Therefore, it is necessary and reasonable to attach conditions that remove PDRs that would allow an increase in the footprint of the proposed house or that permit the provision of buildings, enclosures, pools, containers and hardstanding within its curtilage. Alterations to the roof would not cause risk of harm to the trees and so there is no need for conditions that remove associated PDRs.
48. The site is fairly flat and so conditions that require approval of level details are not required to protect the character or appearance of the area or living conditions at nearby properties. Also, conditions that require further ecological enhancements or planting are unnecessary given the biodiversity net gains secured through the planning obligations.

Conclusion

49. For the reasons given, I conclude the appeals should both succeed.

Jonathan Edwards

INSPECTOR

Schedule of Conditions – Appeal A Ref: APP/X0415/W/22/3307200

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: drawings numbered 001, 100, 110-W, 111, 112, 113 and 114.

- 3) The development hereby permitted shall not commence until an arboricultural method statement and tree protection plan have been submitted to and approved in writing by the local planning authority. These shall detail all work within the root protection areas of the retained trees within and around the site. Also, they shall include details of protection measures for the trees during construction works and information about any excavation work, any changes in existing ground levels and any changes in surface treatments within the root protection areas of the trees, including plans and cross-sections. In particular, the statement and plan shall show details of proposals to avoid damage to the nearby trees by the construction of the drive and parking areas. The development work shall be carried out in accordance with the approved method statement and tree protection plan.
- 4) Prior to the commencement of any construction works above slab level, details of hard surfacing materials to be used in the construction of external hard surfaces as part of the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) Prior to the first occupation of the house hereby permitted, the access, driveway and parking spaces as shown on the approved plans shall be laid out. Thereafter these areas shall be retained and shall only be used for the parking, turning and manoeuvring of vehicles associated with the house hereby approved.
- 6) The house hereby permitted shall not be first occupied until the windows at first floor level in the east side elevation have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before any of the windows are installed and once installed the obscured glazing shall be retained thereafter.
- 7) The house hereby permitted shall not be first occupied until the pathway along the western boundary of the site as shown on the approved plans has been provided. The pathway shall thereafter be retained.
- 8) Notwithstanding the provisions of Article 3(1) 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),
 - (i) no enlargement or improvement of the house that extends beyond its footprint as shown on the approved plans; or
 - (ii) no building, enclosure, pool, oil or liquid gas container or hard surface within the curtilage of the house hereby permittedshall be erected, constructed or laid out unless shown on the approved plans.

Schedule of Conditions – Appeal B Ref: APP/X0415/W/23/3318105

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: drawings numbered 001, 100, 110-X, 111, 112, 113 and 114.
- 3) The development hereby permitted shall not commence until an arboricultural method statement and tree protection plan have been submitted to and approved in writing by the local planning authority. These shall detail all work within the root protection areas of the retained trees within and around the site. Also, they shall include details of protection measures for the trees during construction works and information about any excavation work, any changes in existing ground levels and any changes in surface treatments within the root protection areas of the trees, including plans and cross-sections. In particular, the statement and plan shall show details of proposals to avoid damage to the nearby trees by the construction of the drive and parking areas. The development work shall be carried out in accordance with the approved method statement and tree protection plan.
- 4) Prior to the commencement of any construction works above slab level, details of hard surfacing materials to be used in the construction of external hard surfaces as part of the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) Prior to the first occupation of the house hereby permitted, the access, driveway and parking spaces as shown on the approved plans shall be laid out. Thereafter these areas shall be retained and shall only be used for the parking, turning and manoeuvring of vehicles associated with the house hereby approved.
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 - (i) no enlargement or improvement of the house that extends beyond its footprint as shown on the approved plans; or
 - (ii) no building, enclosure, pool, oil or liquid gas container or hard surface within the curtilage of the house hereby permittedshall be erected, constructed or laid out unless shown on the approved plans.