



## Appeal Decision

Hearing held on 26 September 2023

Site visit made on 25 September 2023

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

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

**Decision date: 11<sup>th</sup> October 2023**

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**Appeal Ref: APP/X0415/W/22/3308630**

**Ambers Of Amersham, 49 London Road West, Amersham HP7 9DA**

- 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 Millen Homes Ltd against Buckinghamshire Council.
  - The application Ref PL/22/0100/FA is dated 4 January 2022.
  - The development proposed is the demolition of an existing garage/storage and hardstanding and the erection of 2No. new 3Bed dwellings and associated parking and landscaping.
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### Decision

1. The appeal is dismissed and planning permission for the demolition of an existing garage/storage and hardstanding and the erection of 2No. new 3Bed dwellings and associated parking and landscaping is refused.

### Preliminary Matters

2. I have taken the site address from the appeal form, as no street address was included within the original application form.
3. Since the appeal start date, the 2021 iteration of the National Planning Policy Framework (Framework) has been superseded. I am satisfied that the updates to the Framework do not materially affect its content insofar as it is relevant to the main issue of this appeal. I have therefore determined this appeal with regard to the current version, published in September 2023.
4. The Council submitted a number of late documents in response to the arguments raised by the appellant in their final comments. The appellant had the opportunity to review these documents in advance of the hearing, and did not object to them being accepted. The appellant also submitted a map during the hearing which showed a revised working of the Zone of Influence (ZOI), used to assess impacts of development on the Chilterns Beechwoods Special Area of Conservation (SAC). This was referred to in the discussions which took place, which again the Council did not object to. I have accepted each of these documents into evidence.
5. As an appeal against non-determination, the Council did not issue a decision notice. Nonetheless, the Council outlined its proposed reason for refusal had the appeal application been determined in their appeal statement, which has helped inform the main issue in this case.

## Main Issue

6. The sole main issue is the effect of the proposed development on the integrity of the SAC.

## Reasons

7. Part of the appeal site is deemed to fall within a 12.6km ZOI of the SAC. The SAC is afforded protection under The Conservation of Habitats and Species Regulations 2017 (Habitat Regulations) due to the importance of its habitats. These habitats comprise beech forests on neutral to rich soils, semi-natural dry grasslands and scrubland facies on calcareous substrates, and dry grasslands and scrublands on chalk or lime. The SAC is also designated for the protection of the Stag Beetle. Ashridge Commons and Woods Site of Special Scientific Interest (SSSI) and Tring Woodlands SSSI are component parts of the SAC, and are almost entirely publicly accessible. Policy CS24 of the Core Strategy for Chiltern District (2011) (Core Strategy) seeks to ensure that new development conserves and enhances the biodiversity of such sites.
8. Research carried out by Footprint Ecology<sup>1</sup> (Footprint Ecology Study) found that recreational pressure is impacting on the designated features of the SAC, through trampling, vegetation wear, soil compaction, contamination and increased risk of fire. In turn, these impacts pose a threat to the conservation objectives of the habitats found therein. Whilst not adopted policy, the Footprint Ecology Study has been endorsed by Natural England, and is used by the Council to help inform potential impacts of development on the SAC, commensurate with the conservation objectives of Policy CS24.
9. The ZOI was informed using survey data collected as part of the Footprint Ecology Study. The study concluded that any new residential development within 12.6km of the SAC boundary would increase recreational pressure within the SAC. This increased recreational pressure would exacerbate the harms to its designated features, as identified above. Natural England has endorsed the findings of the Footprint Ecology Study, confirming in a letter to the Council<sup>2</sup> that *"the method is robust and consistent with other strategic solutions and we support the conclusions"*.
10. The appeal site is located at the very outer limit of the 12.6km ZOI. Whilst the majority of the appeal site falls within the ZOI, the access point into the appeal site does not. Given this location, the appellant contends that the appeal site should not be captured by the ZOI. In part, this is because anyone travelling to the SAC from the appeal site would need to travel further than 12.6km, on account of the access point falling just outside of the ZOI. The appellant also alleges issues with the evidence base used to inform the ZOI, which have resulted in the ZOI being extended further southwards than is necessary.
11. In terms of methodology, the Footprint Ecology Study obtained survey data from visitors to the SAC, which was collected from various survey locations (mainly car parks and access points) across the SAC. The survey, which recorded the home postcodes of visitors, showed that 75% of visitors to the SAC lived within a 12.6km radius of the survey points chosen. This is described

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<sup>1</sup> Visitor survey, recreation impact assessment and mitigation requirements for the Chilterns Beechwoods SAC and the Dacorum Local Plan, Footprint Ecology (2022)

<sup>2</sup> Letter from Natural England to Buckinghamshire Council, dated 14 March 2022

as the "Q3 Percentile". This data was then extrapolated to inform the 12.6km ZOI, which was applied from the SAC boundary.

12. The ZOI was calculated using an average of the linear measurement of distance between the home postcodes of visitors to the SAC and the survey points chosen, and not the distance travelled. The Q3 Percentile distance was then applied from the boundary of the SAC. This approach is consistent with best practice for establishing zones of influence, as set out in the Habitats Regulations Assessment Journal article, 'Zones of influence for strategic housing growth and recreation impacts: review and best practice'<sup>3</sup> (Best Practice Guidance). Whilst not adopted policy, this is nonetheless material to assessment of the appeal application.
13. Whilst the access point from the appeal site to the public highway would be just outside of the ZOI, the houses themselves would be within it. Consequently, the occupiers of the houses would live within 12.6km of the SAC boundary. The inclusion of the appeal site within the ZOI therefore reflects the Best Practice Guidance, and is consistent with the approach taken in respect of other zones of influence elsewhere in the UK.
14. The application of the ZOI from the boundary of the SAC rather than from the survey points again reflects this Best Practice Guidance. This seems logical, as any application of the ZOI from individual survey points would result in a complex ZOI which would be difficult to manage in practice, particularly as car parks and access points can be susceptible to change. It would therefore not be appropriate to apply the ZOI from the closest survey point to the appeal site instead of from the boundary of the SAC.
15. The closest survey point to the appeal site for the purposes of the Footprint Ecology Study was Northchurch Common (survey point 6). Whilst Northchurch Common is near to it, no survey data was collected from the southernmost boundary of the SAC. The appellant contends that had survey data been collected from the southernmost boundary, which is closer to the appeal site, then the resultant Q3 Percentile would have been less than 12.6km, and the appeal site would have been outside of the ZOI. This is because the survey data showed that visitors to the southern parts of the SAC, including Northchurch Common, typically live much closer than 12.6km.
16. Whilst the appellant's argument is not without merit, the same could be true if additional survey points from within the busiest parts of the SAC had been chosen. For example, the Q3 Percentile from Monument Drive Café, which attracts visitors from further afield due to its visitor facilities, was 24.8km. If additional survey points had been chosen closer to this area, then the Q3 Percentile could have been higher than 12.6km. Much like the appellant's argument, it is therefore possible that a different choice of survey locations would have extended the ZOI, and not reduced it. However, without any comprehensive data to demonstrate otherwise, such arguments are largely conjecture.
17. I note that there are parks, areas of woodland and nature trails in close proximity to the appeal site. Whilst these areas would provide alternative recreational opportunities much closer to home for future occupiers of the

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<sup>3</sup> Zones of influence for strategic housing growth and recreation impacts: review and best practice, Liley, Panter and Chapman, The Habitats Regulations Assessment Journal (2021)

- proposed houses, there is no way to be sure that occupiers would use these areas exclusively, and not the SAC for similar purposes.
18. As also acknowledged in the Footprint Ecology Study, the survey data was collected when the Covid pandemic was still ongoing, which meant visitor numbers to the SAC may have been higher than usual. This is because people were more commonly seeking access to the countryside and outdoor recreational space. However, without any new or updated survey data to demonstrate otherwise, I have no way of ascertaining how much the ZOI may have been affected by this factor. The Footprint Ecology Study is the only comprehensive data before me.
  19. These factors must be considered in the context of the precautionary principle, which requires that where it is unclear whether the effect of a development would be significant, it must be assumed that such effect would be, unless there is objective evidence to the contrary.
  20. In this instance, whilst I sympathise with the appellant's position, no alternative survey data has been collected to disprove the data or conclusions drawn from the Footprint Ecology Study. Without robust and objective evidence to the contrary, I am therefore unable to conclude with any degree of certainty that the appeal site should not be captured by the ZOI. In turn, and in accordance with the precautionary principle, I consider that the appeal site should be treated as being within the ZOI, as evidenced by the Footprint Ecology Study and supported by Natural England.
  21. As already mentioned, Natural England says any new housing within the ZOI risks increased recreational pressure on the SAC, which would exacerbate the impacts on its designated features, as identified above. Whilst the proposal is for just two dwellings, when considered in combination with other new housing, the development would therefore have a likely significant effect on the SAC. This finding is consistent with the consultation response of Natural England.
  22. In such circumstances, Natural England says that mitigation is required in order to rule out adverse effects on the SAC's integrity. This should comprise provision of Suitable Alternative Natural Green Space (SANG) or financial contributions towards a strategic SANG, and financial contributions towards a Strategic Access Management and Monitoring (SAMM) strategy for the SAC.
  23. Whilst the Council is developing a strategic solution for the provision of SANG and SAMM in conjunction with Natural England, this strategic solution has not yet been adopted. This means there are currently no mechanisms in place to mitigate against the impacts of increased recreational pressure on the SAC. Without mitigation, I am unable to rule out the possibility of adverse effects on the SAC's integrity.
  24. As the development comprises just two new dwellings, it could be accommodated in an alternative location outside of the ZOI, where it would have a lesser effect on the integrity of the SAC. There have also been no imperative reasons of overriding public interest presented as part of the appeal which would justify permission being granted in the absence of adequate mitigation.
  25. On this basis, I conclude as competent authority, that the development would risk adverse effects on the integrity of the SAC. The development would

therefore not pass the appropriate assessment required under Regulation 63(3) of the Habitat Regulations, which says a competent authority may only agree to a plan or project after having ascertained that it will not adversely affect the integrity of any relevant European site.

26. The development would conflict with Policy CS24 of the Core Strategy for Chiltern District (2011), which seeks to ensure all habitats of importance for wildlife or geology are adequately protected as part of new development. The proposal would also conflict with the conservation objectives, including for protected sites, set out in section 15 of the Framework.

### **Other Matters**

27. Irrespective of the Council's housing land supply position, the presumption in favour of sustainable development will not apply in this case, as in accordance with paragraph 182 of the Framework, I have not been able to rule out likely significant effects on the SAC, nor adverse effects on its integrity.
28. For completeness, the appeal site is located in close proximity to a number of listed buildings. I have therefore had special regard to the desirability of preserving these listed buildings and their settings, in line with my statutory duty under s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. I note that the Council's heritage officer confirmed that the proposal would be acceptable with regard to these listed buildings, and there is no evidence before me to conclude otherwise. However, this is a neutral factor which does not alter the overall outcome of the appeal.

### **Conclusion**

29. The development risks adverse effects to the integrity of the Chilterns Beechwoods Special Area of Conservation, and would therefore fail the appropriate assessment required under Regulation 63 of the Habitat Regulations. The proposal would also conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, that would outweigh this finding. Therefore, and for the reasons given, the appeal is dismissed and planning permission is refused.

*James Blackwell*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT**

Ben Lowry

Vincent Millen

Dr Alex Williams (Counsel)

### **FOR THE COUNCIL**

Agni-Louiza Arampoglou (Buckinghamshire Council)

Mike Shires (Buckinghamshire Council)

David Wood (Buckinghamshire Council)