



Appeal Decision

Site visit made on 22 January 2024

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/N0410/W/22/3308526

Land East of Cut Heath House, Parsonage Lane, Farnham Common SL2 3PA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
- The appeal is made by Mackenzie Homes against the decision of Buckinghamshire Council - South Area (South Bucks).
- The application Ref PL/21/4665/FA, dated 3 December 2021, was refused by notice dated 8 April 2022.
- The development proposed is the erection of 7 residential detached dwellings with associated access.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Revised plans¹ have been submitted at appeal stage in response to the Council's sixth reason for refusing planning permission, which relates to residential amenity for future occupiers. The intended revisions have involved the introduction of obscure-glazed elements and new side-facing windows to proposed Plots 1 and 7.
3. In the interests of ensuring that no one with a potential interest in the outcome of the appeal is prejudiced, it is important that the plans considered at appeal stage are essentially the same as those considered by the Council at application stage. I am content that the amendments made to Plot 1 can be considered to fall into this category given their lack of potential implications for existing residential occupiers. However, owing to the intended introduction of a new south-facing window to serve Plot 7, the amendments to this house materially alter the scheme that was refused planning permission. Thus, whilst I can and shall accept one² of the revised plans for determination purposes, I am unable to accept the others³. I shall consider the appeal on this basis.
4. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. The main parties have had the opportunity to provide observations with respect to any relevance of this to the determination of this appeal and I have considered representations received.
5. A Unilateral Undertaking (the UU) pursuant to Section 106 of the Act is before me, dated 11 December 2023. It is signed by the appellant and relevant mortgagee and secures a contribution towards strategic access management and monitoring for the Burnham Beeches Special Area of Conservation (the

¹ Ref: L2000 Rev P3; L2005 Rev P2; L2006 Rev P1

² Ref: L2000 Rev P3 (supersedes L2000 Rev P2)

³ Ref: L2005 Rev P2; L2006 Rev P1

SAC) in the interests of mitigating adverse impacts, as well as a monitoring fee. Given that the Council has indicated its acceptance to this latest revised version of the UU, I shall formulate the appeal's Main Issues on the basis that its second reason for refusing planning permission no longer applies. Nevertheless, I shall return to the SAC and the UU later under Other Matters.

Main Issues

6. The main issues are:

- Whether or not the proposal would be inappropriate development in the Green Belt;
- Whether or not the proposal would lead to an unacceptable loss or deterioration of ancient woodland, in addition to consideration of the effect of the proposal upon on-site protected trees;
- The effect upon biodiversity, having particular regard to protected species and the aim to achieve biodiversity net-gain;
- Whether or not it has been satisfactorily demonstrated that acceptable arrangements for the collection of waste would prevail;
- Whether or not it has been satisfactorily demonstrated that acceptable arrangements for the management of surface water would prevail;
- Whether or not acceptable living conditions would be created for future occupiers of the proposed development, having particular regard to the standard of outdoor amenity space;
- If the proposal would be inappropriate development, whether or not the 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 necessary to justify it.

Reasons

Whether inappropriate development

7. The site falls within the Green Belt. The Framework specifies that the construction of new buildings in the Green Belt shall be regarded as inappropriate development unless one of several stated exceptions apply. Such exceptions include limited infilling in villages.
8. The built-up area of Farnham Common, as illustrated upon the Proposals Map that accompanies the Council's development plan, is inset from the Green Belt. The main body of the appeal site falls outside of this defined built-up area, but adjacent to its edge. For the avoidance of doubt, whilst it is reasonable to presume that this edge/boundary was drawn in recognition of the differing attributes offered by the lands situated to either side, the issue of whether or not the site is situated within a village is a matter of planning judgement to be informed by the particular site circumstances as experienced on the ground.
9. In the absence of a nationally prescribed definition for limited infilling, it is appropriate to consider the Council's development plan for direction in this regard. This is even though its related infilling policy – Policy GB3 of the South Bucks District Local Plan (March 1999) (the LP) – predates the Framework and

is not relied upon by the Council in its first reason for refusing planning permission. Within the LP, infilling is defined as the filling of gaps within the settlement that would normally involve development in a gap in a continuously built-up frontage. This definition offers a degree of flexibility as regards the makeup of eligible sites but is explicit that any such gap shall be located within a settlement.

10. The site is comprised of an area of predominantly grassed land that is clear of built development and that once formed part of the residential curtilage of Cut Heath House prior to its demolition to make way for past-consented redevelopment to the west of the appeal site. The site does not occupy an isolated location and sits eastward of (and adjacent to) lands either recently developed or under construction. Further, to the south there is a spacious neighbouring plot containing a single dwelling.
11. However, the site's remaining perimeter, namely its lengthy northern and eastern boundaries, are defined by established and expansive planting belts. Whilst this neighbouring planting provides strong landscaped edges to the site, these are not boundaries abutted by existing development or land that could be fairly regarded to comprise part of a settlement. In this context, the site does not appear or function as a constituent part of the built-up area of Farnham Common. Moreover, notwithstanding the site's past connection to Cut Heath House and its neighbouring land uses to the west and south, the proposal would represent a clear excursion beyond what is experienceable as the built-up limits of the village rather than fill a gap within Farnham Common. Thus, the scheme does not represent limited infilling in a village.
12. Notwithstanding my above findings, I am satisfied that the appeal site adheres to the definition of previously developed land as set out in the Framework. The proposal would thus represent a redevelopment of previously developed land. In accordance with the relevant Framework exception, the scheme can be considered not inappropriate should it not have a greater impact on the openness of the Green Belt when compared to existing development.
13. The proposal's effect upon the openness of the Green Belt would be tempered to some degree by virtue of the site's setback position relative to Parsonage Lane and by virtue of the well-planted nature of much of the site's perimeter and immediate surroundings. Even so, some obtainable views of the proposed development would avail from selected vantage points. Furthermore, in a spatial sense, the introduction of seven two-storey dwellings of not insignificant footprint coverage and cumulative built volume with associated garaging and surface infrastructure would, when considered in the context of the current makeup of the site, lead to an inevitable and considerable loss of Green Belt openness.
14. For the above reasons, the proposal would be inappropriate development in the Green Belt and conflicts with Policy GB1 of the LP and the Framework in so far as these policies set out that inappropriate development is, by definition, harmful to the Green Belt, and that the essential characteristics of Green Belts are their openness and their permanence. For the avoidance of doubt, I attach limited weight to the identified conflict with Policy GB1 on the basis that its requirements exhibit inconsistency with the Framework's Green Belt provisions.

Ancient woodland and on-site planting

15. The site falls within an area that is mapped as ancient and semi-natural woodland on Natural England's Ancient Woodland Inventory (the AWI), which is an important material consideration. The site is also subject to a tree preservation order⁴ (the Woodland TPO) that covers a series of adjacent protected woodlands, including Parson's Wood – the woodland area that incorporates the appeal site. The site contains a fair amount of tree cover. Indeed, a variety of deciduous specimens of differing species and stages of maturity are scattered across open areas that fall inside a site perimeter principally defined by tall coniferous hedges.
16. It has been put to me that the trees present on the site are clearly secondary in nature and likely remnants of its residential garden use, with Cut Heath House having been constructed in the early part of the twentieth century and demolished less than a decade ago. Following my assessments of the submitted evidence and my own site inspection, I accept that no individual specimen is likely to pre-date Cut Heath House. I further acknowledge the presence of non-native species and the predominance of semi-improved grass as ground flora, which are atypical features of an ancient semi-natural woodland environment.
17. The Forestry Commission has indicated that it is continuous woodland cover since 1600AD which classifies a woodland as ancient, even if the trees themselves are not ancient and non-native species have been planted. However, in the case of this particular site, the scattered nature of its current trees means that, with the exception of the southern end of its easternmost part, the site cannot be fairly assessed to presently provide woodland cover. In coming to this finding, I have borne in mind that the site comprises part of a wider ancient woodland classification and that such woodlands can contain areas of open space. However, the extent and nature of the site's open areas, which are predominated by species-poor ground flora consistent with its long-term residential function, corroborate that the main body of the site cannot be fairly considered to form part of an ancient woodland nor to be capable of supporting the genuine restoration of such.
18. The site, I note, sits adjacent to areas covered by the same ancient woodland classification and that would appear to demonstrate typical characteristics consistent with this. Whilst I am led to understand that standing advice states a 15-metre buffer zone should apply between new development and the edge of ancient woodland, having inspected the site's edges, and considered the precise development layout intended, I am satisfied that the scheme could not be realistically anticipated to lead to any material loss or deterioration of ancient woodland. This is subject to precautionary protection/mitigation measures being put in place during the construction phase.
19. Notwithstanding my above finding that, with the exception of a small part, the site cannot be fairly assessed to presently provide woodland cover, the existence of the Woodland TPO remains an important material consideration in this case. The purpose of it is to safeguard protected woodlands taken as a whole, which are dependent upon regeneration or new planting. As such, all trees of whatever size within the identified area are protected. This includes those planted or growing naturally after the Woodland TPO was made.

⁴ Ref: Tree Preservation Order No.12 - 1950

20. In broad terms, consistent with survey work undertaken, the on-site trees appear to be in good health and to typically have long life expectancies. There is also potential for some natural regeneration and new planting to occur, especially now that the site no longer actively functions as part of a residential garden. Moreover, through the introduction of seven residential dwellings and associated surface infrastructure, the proposal would, without satisfactory mitigation, necessitate the removal of a not insignificant number of healthy trees of mainly Category B classification that make a meaningful contribution to the visual amenity of the local area and protected woodland taken as a whole. Further, the scheme would prejudice the realistic potential for this particular part of the protected woodland in question to regenerate/re-establish in a manner befitting of its protected status.
21. It has been suggested that an amendment to the Woodland TPO could be applied for based on a consideration that a woodland designation is likely inaccurate. However, it is not my role to consider the potential merits of any such future application. Moreover, the Woodland TPO provides comprehensive statutory protection in the manner described above and I must consider the merits of the proposal in this context.
22. For the above reasons, whilst it would not lead to any unacceptable loss or deterioration of ancient woodland, the proposal would have an unacceptable effect upon on-site protected trees. The scheme conflicts with Policies L10 and EP4 of the LP, Policy CP9 of the South Bucks Core Strategy (February 2011) (the CS), and the Framework in so far as these policies set out that development proposals will be expected to take account of, and retain, existing planting and landscape features which are or may become important elements in the character and appearance of the site or the wider area.

Biodiversity

23. The scheme is supported by a Preliminary Ecological Appraisal (PEA). This has been updated at appeal stage and includes assessments of the site's existing habitats and flora and of the proposal's anticipated effects upon protected species. Further, an updated Biodiversity Net Gain Assessment supported by a Biodiversity Metric calculation tool has been submitted at appeal stage in addition to an Ecological Enhancement Plan (EEP) and other related written submissions.
24. With respect to great crested newts, I have noted the existence of some suitable habitat on site as well as the presence of multiple ponds in the locality. I also acknowledge that the site falls within an amber impact risk zone, derived, I understand, through advanced modelling. However, having considered all related evidence before me, including pond-by-pond analysis provided by the appellant, and factored in the robust nature of the site's fenced/panelled boundaries, I find that it would be highly unlikely for the development proposal to lead to an offence occurring. Indeed, in view of the precautionary working methods intended, it would be disproportionate to require that further survey work be undertaken.
25. I am similarly content, upon my reading of the submitted evidence, that further survey work with respect to reptiles would be disproportionate and that there is a negligible likelihood of the site supporting roosting bats. Moreover, considering the various mitigation and enhancement measures contained within the updated PEA and the EEP, I am satisfied that there is no reasonable

likelihood of protected species being present or adversely affected by the proposed development.

26. As regards the site's habitats and flora, survey findings contained within the updated PEA indicate that, as experienced on the ground, the site's habitats tend to be common, widespread, and of low ecological value. I witnessed nothing upon inspection to lead me to different findings. Indeed, consistent with my reasoning on the previous Main Issue, the proposal would not result in the loss or deterioration of irreplaceable habitats.
27. The Council has raised concern with respect to some of the inputs contained within the Biodiversity Metric calculation tool that has been submitted and has queried inconsistencies with respect to net gain figures stated. However, the suite of technical evidence submitted provides satisfactory assurances that an appropriate net gain in biodiversity would be achievable through the implementation of on-site measures. To my mind, there is no clear reason why, at this point in time, final details of the enhancement measures to be implemented could not be secured via planning condition in the event the appeal be successful.
28. For the above reasons, having particular regard to protected species and the aim to achieve biodiversity net-gain, the proposal would have an acceptable effect upon biodiversity. The scheme accords with Policy CP9 of the CS and the Framework in so far as these policies support measurable biodiversity net gains and require that biodiversity resources within South Bucks will be conserved and enhanced.

Waste collection

29. The proposed site layout incorporates a turning head feature designed to provide refuse collection vehicles with the opportunity to turn and thus leave the site in a forward gear. This is consistent with swept path assessment contained within the Transport Statement (November 2021). Although this assessment indicates a turning refuse vehicle needing to over sail a parking space designated to Plot 4, it is the case that three further spaces (including two within an adjacent detached garage) would serve this plot.
30. As such, without necessitating an under-provision of parking for Plot 4, it would be possible, although far from ideal given the immediate proximity of private garaging, to secure via condition a scheme detailing the measures to be taken to provide assurances that the space in question would be retained free from parked vehicles or other obstructions at all times. Such a scheme could, if suitably robust, offer satisfactory assurances that acceptable arrangements for the collection of waste from the site would prevail. I also note that the Council's Waste Services team has at appeal stage raised no objection to the scheme. The proposal complies with saved Policies H9 and EP3 of the LP in so far as these policies require satisfactory access to be available for emergency vehicles and for refuse collection. Further, identifiable conflict with the Buckinghamshire Council Waste Management Planning Guide has not been clearly demonstrated.

Surface water management

31. A Flood Risk Assessment (November 2021) (the FRA) has been produced, which sets out an intended drainage regime. With respect to the management

of surface water, the sustainable drainage hierarchy has been referenced and various options (including ground infiltration) have been ruled out for site-specific reasons. As such, it is intended that surface water run-off be attenuated/stored on-site via a series of pipes and manholes before being discharged to a nearby pump station that is connected to the foul water sewer network. It is proposed that discharge be controlled via a hydrobrake to a rate akin to the minimum self-cleansing velocity.

32. The Lead Local Flood Authority has suggested that a viable method of surface water disposal has not been demonstrated, has commented that Thames Water would need to permit any additional discharge to the public sewer, and has suggested that any potential approach involving additional attenuation tank storage has not been demonstrated to be feasible. However, in view of the site-specific circumstances to hand and the technical supporting evidence provided to date, there is no clear reason to discount the appellant's assertion that the discharge rate could, if ultimately required, be maintained at the same rate already agreed with regard to neighbouring consented residential development.
33. As such, I am suitably satisfied that a comprehensive surface water drainage scheme, to include details of permission to connect to the foul network and of the management and maintenance responsibilities that would apply in perpetuity, could be secured via planning condition should the appeal be successful. It has thus been satisfactorily demonstrated that acceptable arrangements for the management of surface water would prevail. The proposal therefore complies with Policy CP13 of the CS and with the Framework in so far as these policies require development to be made safe for its lifetime without increasing flood risk elsewhere.

Living conditions – standard of outdoor amenity space

34. Specific concerns have been raised by the Council with respect to the overlooking of the rear garden spaces intended to serve Plots 3 and 6 from the rear-facing first floor windows of Plots 1 and 7 respectively, in-part owing to the proximity of these relationships.
35. As regards Plot 3, it is my view that the introduction of elements of obscure glazing to the rear of Plot 1 (including to the first-floor bedroom window intended to be situated closest to Plot 3) have suitably removed the potential for any undue privacy effects (or perception of any such undue effects) to occur. For the avoidance of doubt, I am also satisfied that appropriate levels of outlook would avail for future occupiers of Plot 1.
36. With respect to Plot 6, the position of the rear facing elevation of Plot 7 would be offset from the core of the rear garden space intended to serve Plot 6. It is also relevant that the layout of Plot 6 would offer a meaningful expanse of outdoor amenity space along its eastern edge. In this context, even in the absence of obscure glazing to the proposed rear elevation of Plot 7, I am satisfied that acceptable standards of privacy would avail for future occupiers of Plot 6.
37. I have noted additional concerns raised with respect to the intended depth of the rear garden to serve Plot 6. However, having inspected the makeup of planting along the site's southern boundary and factored in the intention to locate part of the property's private garden space to the side of the plot and

thus stepped away from the rear boundary, there is no clear reason for me to consider that future occupiers of Plot 6 would suffer excessive shading to the material detriment of their amenities.

38. For the above reasons, I find that, having particular regard to the standard of outdoor amenity space, acceptable living conditions would be created for future occupiers of each newly proposed residential plot. The scheme satisfactorily accords with Policies EP3 and H9 of the LP, the South Bucks District Council Residential Design Guide Supplementary Planning Document (October 2008), and the National Design Guide in so far as these policies and guidance promote the provision of useable amenity space and indicate that private gardens should incorporate an area free from overlooking. For the avoidance of doubt, given the lack of explicit reference to considerations in a living conditions context, I find Policy CP8 of the CS to be of little relevance to this main issue of the appeal.

Other Matters

39. The site lies in proximity to the SAC. The Conservation of Habitats and Species Regulations 2017 (as amended) require that, where a project is likely to have a significant effect on (a) European site(s) (either alone or in combination with other plans or projects), the competent authority must, before any grant of planning permission, make an appropriate assessment of the project's implications in view of the relevant conservation objectives. However, as I have found the development to be unacceptable for other reasons, it is not necessary for me to undertake an appropriate assessment. For the avoidance of doubt, even if I had done so and identified compliance with Policy CP9 of the CS due to the relevant mitigation payment secured through the UU, it would not have affected my overall conclusions on this appeal.
40. I have noted objections/concerns raised by interested parties with respect to matters including highway implications and noise pollution. However, as I have found the proposal to be unacceptable for other reasons, it is unnecessary for me to explore these matters further here.

Whether very special circumstances apply

41. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework also indicates that substantial weight should be given to any harm identified to the Green Belt.
42. The proposal would deliver seven additional well-designed family-sized dwellings in an accessible location and within a local authority area where a very significant shortfall of deliverable housing sites is apparent. Indeed, the figures most recently published by the Council indicate a mere 1.3-year supply. As such, even though seven additional units would not make a clear or noticeable difference to the extent of the identified shortfall, I attribute significant weight to the benefit of new housing.
43. The scheme would also create jobs during the construction phase and provide support to the local economy and local community facilities once occupied. I afford these benefits moderate weight in view of the number of dwellings proposed. A net-gain in biodiversity would also attract some positive weight in

the planning balance, although minor in degree owing to the non-strategic nature of the proposal.

44. The scheme's benefits, when considered cumulatively, are significant and attract great weight. However, in my judgement, they would not outweigh the substantial harm I have identified to the Green Belt (including harm derived from loss of openness), and the additional identified harm derived from the effect of the proposal upon on-site protected trees, so as to amount to the very special circumstances necessary to justify the development.
45. For the avoidance of doubt, as the application of the Framework's policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, the presumption in favour of sustainable development, as set out at paragraph 11 of the Framework, is not engaged. Moreover, the scheme conflicts with the development plan when read as a whole and material considerations do not lead me to a decision otherwise.

Conclusion

46. For the above reasons, the appeal is dismissed.

Andrew Smith

INSPECTOR