



Appeal Decision

Site visit made on 21 February 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2024

Appeal Ref: APP/X0415/W/22/3298566

Traps Meadow, Village Road, Whelpley Hill, Buckinghamshire HP5 3RL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a failure to give notice within the prescribed period of a decision on an application for reserved matters consent.
 - The appeal is made by Mr & Mrs Smith against Buckinghamshire Council.
 - The application Ref PL/22/0601/DE is dated 17 February 2022.
 - The development proposed is described as consent is applied for appearance, access, landscaping, layout and scale of the scheme.
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Decision

1. The appeal is dismissed and reserved matters consent is refused.

Procedural Matters

2. The National Planning Policy Framework was amended on 19 December 2023 (the Framework). However, it has not been necessary for me to seek comments from the main parties about the implications of the updated Framework. This is because there are no material changes in respect of the main issues below.
3. I have separately considered enforcement notice appeals on the same site and the legal grounds of appeal were considered by means of an inquiry which took place on 20 and 21 February 2024 (the enforcement notice appeals).¹ I have issued appeal decisions in respect of the enforcement notice appeals.

Preliminary Matters

4. Outline planning permission was approved on 18 July 2019² for the demolition of an existing commercial building and wooden workshop and erection of a new dwelling. All detailed matters were reserved for a subsequent reserved matters application, namely appearance, access, landscaping, layout, and scale. This appeal relates to such a reserved matters application.
5. Notwithstanding the description of proposed development in the banner heading above, I have proceeded to determine this appeal based on the description of development provided in the appellant's appeal form as it is more precise. This reads, '*approval of reserved matters following outline approval PL/19/0587/OA for demolition of existing commercial building and wooden workshop and erection of new dwelling (matters to be considered: appearance, access, landscaping, layout and scale)*'.

¹ Appeal reference numbers APP/X0415/C/22/3293676, 3293677, 3293678 & 3293679.

² Outline planning permission reference No. PL/19/0587/OA

6. A full planning application for a detached dwellinghouse following demolition of kennels and a workshop was determined at appeal on 18 October 2022³. This appeal related to a dwellinghouse which was similar in size and appearance to the appeal proposal. The Inspector concluded that the proposed dwellinghouse would be '*part of the village*' of Whelpley Hill and would represent '*limited infill development within the village*'. He went on to say that having regard to the requirements of paragraph 149(e) of the National Planning Policy Framework 2021 it '*would not constitute inappropriate development in the Green Belt*'. In reaching this decision, the Inspector noted some conflict with policy GB2 of the Chiltern District Local Plan 1997 (LP) but considered that this policy was not consistent with the Framework as it '*does not allow for an assessment to be made regarding the extent of a village*'. Consequently, the Inspector concluded that any conflict with policy GB2 of the LP be given limited weight. I have no reason to disagree with the assessment made by Inspector who determined the above appeal.
7. The above appeal decision is a material consideration to which I afford significant weight in decision making terms. The appeal was dismissed for one reason only, i.e., following Natural England advice relating to the likelihood of the proposal on its own, or in combination with other projects, having significant effects on the Chiltern Beechwoods Special Area of Conservation (SAC) as a result of recreational pressure and, in the absence of a strategy to deal with such pressure and/or identified suitable mitigation from the applicant, a conclusion that adverse harm would be caused to the integrity of the SAC as a protected European site.
8. The evidence is that when the outline planning application was considered and approved for a dwellinghouse on the site, the assessment of information did not include the more recent evidence from Natural England relating to the effect of recreational pressure on the SAC from the occupiers of new housing development within a 12.6km zone of influence. Given this change, it is necessary that the effect of the development on the SAC is considered as part of this reserved matters application.

Main Issues

9. This appeal has been submitted against the Council's failure to determine the submitted reserved matters application within the statutory timescale.
10. Following its statement of case, the Council has confirmed that it now agrees that the proposal would not be inappropriate development in the Green Belt. While this was, in any event, an in-principle matter considered as part of the outline planning application, the Council is nonetheless satisfied that in terms of appearance, access, landscaping, layout and scale details, the detailed proposal would not conflict with local or national Green Belt policy. I do not disagree with the Council's position and, furthermore, am satisfied that there is no tension between the approved outline planning permission and the proposed reserved matters details from a Green Belt planning policy point of view.
11. Given the above, I consider that the main issue is whether the proposal would cause harm to the integrity of the SAC.

³ Appeal reference No. APP/X0415/W/22/3290584

Reasons

Effect on the SAC

12. Natural England wrote to the Council on 14 March 2022 to inform it of emerging evidence prepared by Footprint Ecology which identifies significant recreational pressure on the SAC, more specifically the Ashbridge Commons and Woods Site of Special Scientific Interest (SSSI) component. The SAC has been designated due to the importance of its habitats including beech forests on neutral to rich soils and semi-natural dry grasslands and scrubland facies on calcareous substrates and dry grasslands and scrublands on chalk or lime. Natural England has advised the Council that with increasing residential development within the surrounding district/area, the SAC will experience further pressure from people using the designated site for recreation. This is from trampling and vegetation wear, soil compaction and erosion, nutrient enrichment, increased risk and incidence of fire, and other impacts including harvesting and activities associated with site management.
13. Based on the evidence, Natural England has applied a 12.6km zone of influence (ZOI) from the SAC where likely significant effects on it from net increases in development due to recreational pressures cannot be ruled out, thereby triggering a need for an Appropriate Assessment. The evidence is that the appeal site falls within the ZOI. This was a position also reached by the Inspector who determined appeal APP/X0415/W/22/3290584. I have no reason to disagree with the position adopted by Natural England that the proposal on its own, or in combination with other projects, would be likely to have significant effects on the SAC.
14. In the context of the above, it falls to me as the competent authority to undertake an Appropriate Assessment. In this case, the appellant has not provided me with sufficient information to provide the certainty and control needed to rule out adverse effects on the integrity of the SAC. The kind of necessary mitigation to ensure that harm is not caused to the integrity of the SAC that has been suggested by the Council relates to Strategic Access Management and Monitoring (SAMM) and the provision of Suitable Alternative Natural Greenspaces (SANG) within the zone of influence of the SAC and as part of an agreed mitigation strategy.
15. The Council intends to provide SANG in the area, but the evidence is that there have been delays. In the absence of SANG being provided in the area, or any other acceptable mitigation offered by the appellant, I cannot therefore conclude that the proposal would not cause harm to the integrity of the SAC as a European protected site.
16. The appellant has submitted a completed planning obligation (dated 5 December 2022) under Section 106 of the Act which along with a SAMM financial payment, would seek to defer a financial payment towards a SANG upon commencement of development '*or any later trigger date*'. The completed planning obligation does not provide a suitable mechanism to deal with mitigating adverse effects on the SAC. This is because plans or projects can only proceed where a plan or project would, beyond all reasonable scientific doubt, not result in an adverse effect on the integrity of a site. Section 63 of the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) states that before giving consent or permission the competent

authority must make an appropriate assessment of the implications of the plan or project.

17. In this case, SANG is not in existence in the area and an appropriate strategy for dealing with adverse effects is not yet in place. This would be needed to comprehensively determine, as part and parcel of the determination of the reserved matters application, the acceptability of the proposal from the point of view of not causing harm to the integrity of the SAC.
18. In respect of mitigation, the proposal does not therefore include the necessary certainty, precision, and control for me to conclude that the proposal would not have an adverse effect on the integrity of the SAC and hence can proceed. Furthermore, in this case there are no imperative reasons of overriding public interest which indicate that the project should proceed.
19. Consequently, the proposal would not accord with the biodiversity requirements of paragraph 186 of the Framework and the Habitat Regulations. Paragraph 188 of the Framework states that 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.

Other considerations

20. I recognise that the proposal would seek to deliver a dwellinghouse on the site and, in that regard, would have the effect of boosting the supply of homes in the area. There is common ground between the main parties that the local planning authority cannot demonstrate a deliverable five-year supply of housing sites based on its 8 January 2024 Housing Land Position Statement. I have no reason to disagree with this position.
21. This is not, however, a matter that needs to be considered in respect of the defined wording of any of the reserved matters. It is a matter that goes to the heart of the acceptability of the principle of a dwellinghouse being erected on the site. The principle of a dwellinghouse on the site has already been considered at outline planning application stage. Even if this were a relevant matter as part of the consideration of this reserved matters application, paragraph 11d of the Framework is not engaged given footnote 7 and my conclusion in respect of the SAC which constitutes a clear reason for refusing planning permission. In addition, even if it were relevant to weigh in the balance the housing under-supply position as a benefit and as part of the consideration of this reserved matters application, such a benefit would not be sufficiently weighty to outweigh or alter my planning balance and conclusion below.
22. While allowing the appeal would no doubt lead to construction employment, this would be a short-lived benefit. I do not doubt that occupiers of the proposed dwelling would support amenities and services in the area, thereby resulting in some additional economic benefits. However, these are also not matters that are directly relevant to specific reserved matters. Even if they were, they would not be sufficiently weighty to outweigh my conclusion in respect of the SAC which is a decision matter.

23. In respect of the enforcement notice appeals, I have separately decided to uphold the enforcement notice. In accordance with section 173(11) of the Act, the effect of upholding the notice is that planning permission has been approved on part of the site for a mixed use, including a residential use component. While I accept that there is more than a theoretical possibility of part of the land being used for a residential use as part of a mixed use (i.e., a fallback position), for the reasons outlined in the enforcement notice appeals decision letter, I do not afford the likelihood of this happening any more than limited weight in decision making terms. Even if one were to disagree with this weighting, it is not a matter that alters or outweighs the requirements of section 63 of the Habitats Regulations and my inability to conclude now that the proposal would not cause harm to the integrity of the SAC. The latter is a matter of overriding concern.

Planning Balance and Conclusion

24. On the evidence that is before me, I cannot conclude that the proposal would not cause harm to the integrity of the SAC. In accordance with the Habitat Regulations, I cannot permit a proposal where adverse effects might occur. While in planning terms the reserved matters details are acceptable in all other respects, my conclusion in respect of the SAC is a decisive matter and is not outweighed by any other material planning considerations. Therefore, the appeal should be dismissed.

D Hartley

INSPECTOR