



Appeal Decision

Site visit made on 18 June 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2024

Appeal Ref: APP/N0410/W/23/3335048

Grenville Lodge, Hawthorn Lane, Burnham, Buckinghamshire SL2 3TE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Sam Omonua against Buckinghamshire Council - South Area (South Bucks).
 - The application Ref is PL/23/2230/FA.
 - The development proposed is described as the replacement of two existing structures with the erection of two detached dwellinghouses, each with a detached garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published.
3. Nevertheless, I acknowledge that the site is located within the Green Belt, and the draft Framework proposes an alteration that would provide a new 'Grey Belt' designation for some sites which comprise previously developed land (PDL) and make a limited contribution to the five Green Belt purposes. I have given some consideration to whether the proposal would be considered Grey Belt, however as the site is also located within the 500m buffer zone of the Burnham Beeches Special Area of Conservation (SAC), it would be excluded from any potential Grey Belt designation, as this is an area of particular importance listed in footnote 7 of the Framework. As such there would be no fundamental change to the consideration of this matter, and I am satisfied that this has not prejudiced any party.
4. Therefore, in reaching my decision I have had regard to the Framework as published in December 2023, and any reference to paragraph numbers are to this version.
5. The Council failed to give notice of its decision within the prescribed period. However, they have provided a Statement of Case that indicates that they would have refused planning permission for the scheme had they retained the power to determine it.

6. The Council stated that they would have refused the scheme as the proposal represented inappropriate development in the Green Belt, which by definition is harmful, and very special circumstances had not been demonstrated that would clearly outweigh that harm. Also, as the site is located within the 500m buffer zone of the Burnham Beeches SAC it would harm the integrity of its conservation purposes. The appellant had the opportunity to respond to the Council's reasons in their final comments.

Main Issues

7. The main issues are:
- whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies and the effect on openness;
 - the effect of the proposal on the integrity of the Burnham Beeches SAC; and
 - whether any 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 required to justify the proposal.

Reasons

Whether inappropriate development

8. Saved Policy GB1 of the South Bucks District Local Plan (SBLP), adopted March 1999 highlights that new buildings or extensions will not usually be granted in the Green Belt, however it also sets out a number of exceptions. These include but are not limited to extension, alteration or replacement of existing dwellings.
9. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 154 of the Framework establishes that buildings and other forms of development would be inappropriate unless they meet a listed number of exceptions. The exception most relevant to the proposal is criterion 154.d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
10. The appeal site consists of PDL with an existing dilapidated single-storey building which has a lawful use as a dwellinghouse¹ located on it. The site also provides limited evidence of development being commenced for a large, two-storey detached dwelling, originally approved planning permission in April 2008, with a further Section 73 permission² granted to allow an extension of time for the development. Nevertheless, the existing on-site development consists of the single-storey building only, albeit there are some minor preliminary works to the extant permission, as confirmed by the certificate of lawfulness³.
11. The extent of physical built development at the site is a question of fact and does not engage the need for the exercise of any planning judgment. Whilst I acknowledge that the site may have a fallback position, which I will address in other considerations below, none of this development currently exists on site

¹ Buckinghamshire Council - South Area (South Bucks) Planning Ref: 19/2325/EU

² Buckinghamshire Council - South Area (South Bucks) Planning Ref: 10/02043/XFUL

³ Buckinghamshire Council - South Area (South Bucks) Planning Ref: 16/00592/CLOPED

other than the minor preparatory works. Therefore, if no building currently exists on site, then paragraph 154.d) cannot apply as there is no building to be replaced.

12. Consequently, the baseline against which the proposal is to be assessed, i.e. the building which it replaces, consists of the existing development only. The appellants submitted figures⁴ indicate the existing property has a footprint of approximately 104m² with a volume of 333m³, with the proposed development consisting of a footprint approximately 376m² and volume calculation of 2,108m³. This would represent a considerably larger built form than the one it replaces. As such, the exception in paragraph 154.d) of the Framework would not apply and the proposal would represent inappropriate development.

Openness

13. The Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness has both spatial and visual aspects and the proposal would introduce a substantial quantum of residential development on to a site which, other than the modest single storey dwelling, is relatively open and free from any significant permanent development. Therefore, the introduction of built form, as proposed, would have an adverse impact on the openness of the Green Belt in spatial terms.
14. The proposed dwellings would be sited close together and would be considerably larger, taller and of a greater bulk and site coverage, than any built development that currently exists on the appeal site. It is acknowledged that the front boundary consists of well-established trees, hedges and shrubs, which provide a good screen of the proposal from Hawthorn Lane, reducing the impact of the proposal to glimpse views only. However, views of the proposal would be more evident when experienced on the approach from the track between the appeal site and the adjoining development at Orchard Bungalow. As such, given the variation between the existing and proposed I conclude in visual terms, that the scheme would have a harmful effect on the openness of the Green Belt.
15. Overall, I find that the proposal would lead to a significant loss of Green Belt openness and would therefore conflict with the fundamental aim of Green Belt Policy, as set out above.

Other considerations

16. I have found that the development constitutes inappropriate development in the Green Belt. I have also found that it would be harmful to the openness of the Green Belt, harm which carries substantial weight. The Framework is clear that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
17. The appellant draws my attention to a potential fallback position, given the issue of a certificate of lawfulness⁵ and prior approval⁶ for various works to the

⁴ Appendix 15 – Volume and floorspace comparison

⁵ Buckinghamshire Council - South Area (South Bucks) Planning Ref: 19/3900/SA

⁶ Buckinghamshire Council - South Area (South Bucks) Planning Ref: 19/4460/PNE

existing dwelling. Furthermore, consideration should be had to the extant planning permission for the new detached dwelling house. I have considered the Court of Appeal decision⁷ which concluded that the clear desire of the landowner to develop and maximise the value of the site was sufficient to demonstrate that there was a real prospect to a fallback position. As such, I have had regard to the clear desire on the appellants part to redevelop the site in considering the weight to be given to the schemes which have already been given consent.

18. For significant weight to be afforded to a fallback position there needs not only to be a real possibility of it being carried out, but it would also need to be equally or more harmful than the appeal scheme. With regard to impact on spatial openness, it is acknowledged that the appeal scheme would represent a more modest quantum of development than that proposed under the various approvals. I also accept that there would be little difference regarding the impacts of the respective schemes in each of the proposals on the visual openness of the Green Belt.
19. However, I have not been supplied with sufficient evidence that all the approved schemes could be built out as a whole. I have noted the appellants reference to the judgement⁸ relating to the effect of implementing one planning permission on another planning permission at the same site. However, from the limited information before me, the positioning of the existing dwelling and extant permission would provide an unusual relationship between these properties, with the proposals aligning awkwardly with one another making it unlikely that the schemes would be brought forward together. Furthermore, due to the length of time that has lapsed, since the extent consent was granted, it raises doubts as to whether the scheme is a probable alternative. Therefore, I have given the fallback position modest weight.
20. The proposal would also result in some small social and economic benefits, including the support future occupiers would give to local businesses and services. The proposed development would also deliver two new homes on the site, providing good quality accommodation. The site could be redeveloped quickly, and it would represent a more efficient use of PDL. To these benefits I apportion modest weight given the scale and nature of the proposed development.

Integrity of the Burnham Beeches SAC

21. The appeal site falls within the 500m buffer zone of the Burnham Beeches SAC. This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations'). The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SAC, either alone or in combination with other plans and projects.
22. The Council has advised that the proposed development may adversely impact the SAC due to the net increase in residential units on the site, an opinion shared by Natural England, who raised an objection following consultation. The appellant highlights that given the fallback position, the net increase of

⁷ Mansell v Tonbridge and Malling BC & others [2017] EWCA Civ 1314

⁸ Hillside Parks Ltd v Snowdonia National Park Authority [2022] UKSC 30

dwellings at the site would be zero. However, given the uncertainties in respect to the fallback position as highlighted above, it would be prudent to adopt a precautionary approach. As such, as I am dismissing the appeal on Green Belt grounds, I do not need to consider this matter further, as no significant likely effects on the Burnham Beeches SAC site would arise from my decision.

Green Belt Balance

23. I have concluded that the appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. I have also concluded that the appeal scheme would result in harm to the openness of the Green Belt. Paragraph 153 of the Framework states that in considering a planning application substantial weight should be given to any harm to the Green Belt.
24. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. As explained above I give modest weight to the other material considerations cited in support of the proposal. However, I conclude these circumstances do not clearly outweigh the harm the scheme would cause.
25. Consequently, very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist. The proposal is therefore in conflict with SBLP Policy GB1 and paragraph 153 of the Framework.

Conclusion

26. For the reasons set out above, the proposal would conflict with the development plan, when read as a whole and the Framework. Material considerations do not indicate that a decision should be taken other than in accordance with that plan. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR