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# Appeal Decision

Site visit made on 11 July 2024

**by Mark Philpott BA(Hons) MA MRTPI**

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

**Decision date: 30 August 2024**

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## **Appeal Ref: APP/N0410/W/23/3335905**

### **Boveney Court Farm, Boveney Road, Dorney, Buckinghamshire SL4 6QG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Eton College against the decision of Buckinghamshire Council - South Area (South Bucks).
  - The application Ref is PL/22/3562/FA.
  - The development proposed is demolition of open sided barn, conversion, alteration and change of use of existing buildings from Use Class B8 to Use Class C3 to provide 7 residential units and construction of 5 new residential units, to provide a total of 12 residential units (2x2 bedroom; 6x3 bedroom; and 4x4 bedroom) including hard and soft landscaping, attenuation pond, bin and cycle stores, car parking, infrastructure and associated works.
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## **Decision**

1. The appeal is dismissed.

## **Preliminary Matters**

2. The National Planning Policy Framework (Framework) was revised in December 2023, after the Council refused the planning application. The appellant, the Council and interested parties have been able to comment on any implications of this during the appeal process. The main parties and Dorney Parish Council also provided comments on potential reforms to the Framework and other changes to the planning system, which are currently undergoing consultation.
3. The appellant and the Council agree that the proposal would require a bat mitigation licence to be issued by Natural England. Consequently, Regulation 9 of the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) necessitates that I have regard to the requirements of the Habitats Directive<sup>1</sup> and consider whether it is likely that a licence would be issued. Additionally, the appellant's Ecological Impact Assessment (EcIA) and Update Bat and Bird Survey (BBS) indicate that further surveying for protected and important habitats and species may be necessary in some instances. The main parties were given an opportunity to provide views regarding these matters, which are considered in the second main issue identified below.
4. In an attempt to address the Council's third refusal reason, a Unilateral Undertaking (UU) dated 16 April 2024 has been submitted that would provide a financial contribution of £280,000 towards affordable housing. Although the Council's appeal statement indicates that such a contribution would address the refusal reason, the appellant has explained that a new dispute has arisen as to

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<sup>1</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

which of the figures in the main parties' viability evidence should inform a review mechanism to ascertain whether a further affordable housing contribution should be provided. This is addressed in the final main issue.

## **Main Issues**

5. The main issues are:

- whether or not the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
- the effect of the proposal on protected and important species and habitats, with particular regard to bats;
- the effect of the proposal on the character and appearance of the Boveney Conservation Area (CA); and
- whether or not the proposal would make a satisfactory contribution towards affordable housing.

## **Reasons**

### *Whether inappropriate development*

6. The site is located in the Green Belt towards the northern end of the hamlet of Boveney. It includes several vacant former farmstead buildings that were reportedly last used by Eton College's Grounds Maintenance Team for equipment storage and maintenance, an open field and an area of overgrown flora broadly north of the buildings, and internal roads that connect to a vehicular access with Boveney Road. Rows of trees and vegetation are near the site's roadside and northern boundaries. A public footpath is also present near the northern boundary, which connects to other footpaths through open fields.
7. The buildings comprise a grade II listed barn<sup>2</sup> near the site's entrance (Unit B), a series of attached buildings set further back (Units C to G), and an open sided barn that runs roughly parallel with the road. Another grade II listed barn<sup>3</sup> is located just outside the site (Unit A). The site is bordered by Dorney Common to the west and north. The access is also partially on common land. The part of the common in the vicinity of the site is principally characterised by its openness. A limited number of dwellings and other buildings are evident in Boveney.
8. The South Bucks District Local Plan (LP) and the Framework both refer to inappropriate development in the Green Belt. Paragraph 152 of the Framework makes clear that this is harmful by definition and should not be approved except in very special circumstances. LP Policy GB1 and Section 13 of the Framework provide exceptions to inappropriate development. None set out by LP Policy GB1 are applicable and so the proposal conflicts with it, but the main parties agree that the exception at paragraph 154(g) of the Framework is potentially relevant. This provides for limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would: (i) not have a greater impact on the openness of the Green Belt than the existing

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<sup>2</sup> List Entry Name: Barn on North Side of Farmyard at Boveney Court Farm; List Entry Number: 1124436

<sup>3</sup> List Entry Name: Barn on South Side of Farmyard at Boveney Court Farm; List Entry Number: 1332691

- development; or (ii) not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
9. It is common ground between the main parties that the use of the site falls within Class B8<sup>4</sup> and it therefore constitutes previously developed land. This is informed by a lawful development certificate<sup>5</sup>. Interested parties question the validity and scope of the certificate, including whether it applies to the whole site. However, the Council's views have been reaffirmed in its appeal statement, and it is not my role to reappraise the certificate application. Accordingly, the proposal aligns with this aspect of the exception.
  10. In respect of the exception's second leg, the UU includes a contribution of £280,000 to the Council for use towards affordable housing, which would be payable prior to the commencement of development. A further payment may potentially be made depending on the review mechanism adopted within the UU. While the Council is not party to the UU, I have no reason to doubt that it would use the contribution(s) as intended. It is undisputed that there is an identified need for affordable housing, and nothing within the Framework indicates that any specific level or form of provision must be secured for the exception to apply. As such, the development would not be inappropriate, subject to any harm to the openness of the Green Belt being less than substantial.
  11. The proposal principally entails residential conversions of Units B to G, the replacement of the open sided barn with a terrace comprising 3 houses, and the construction of a pair of semi-detached houses on the site of hardstanding beside Unit G. External changes to the retained units would mostly be limited to fenestration alterations, with their size unchanged. The new dwellings would comprise 2-storeys and be similar in height to Unit B. Accordingly, the terrace would be notably taller but have a slightly smaller footprint than the open sided barn. Each of the 12 resulting dwellings would have private gardens. Amongst other things, the internal road would be altered, hardstanding and grasscrete would be laid for paths or parking spaces, and bin and cycle stores with screen fencing are proposed. An attenuation pond and flood compensation area would also be created to the north, and new trees and vegetation are proposed mainly around the edges of the new built form.
  12. According to the appellant's figures there would be an overall increase in the footprint and volume of the buildings on the site by around 46 square metres and 864 cubic metres, which would equate to increases of around 3.9 and 15.3 percent, respectively. The increases are largely due to the new semi-detached houses, but the figures underestimate the actual values as the bin and cycle stores are not included in the calculations. While there would be a reduction in the extent of development across the site, including a significant decrease in hardstanding, this does little to compensate for the floorspace and volume increases. Consequently, I consider that there would be a moderate impact on the openness of the Green Belt spatially.
  13. The majority of the proposed development would be within the bounds of the existing built form and hardstanding in the southern part of the site. Retained

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<sup>4</sup> Class B of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987

<sup>5</sup> Council reference: PL/19/4124/EU

and proposed landscaping would provide further containment to the built form and filter public views of the development to an extent. Nonetheless, the new terrace would be proximate and visible to those travelling along the road and on the common, and seen in longer distance perspectives from the public footpath and across the fields. The terrace would be more prominent than the lower open sided barn, particularly in winter months when much of the vegetation would not be foliate. Moreover, views through the open sided barn are achievable when nothing is being stored within it, whereas the terrace would foreshorten views. The semi-detached houses would also be visible in longer views from the public footpath and across fields. However, from most viewpoints both the terrace and the semi-detached houses would be largely seen alongside or against a backdrop of established and little altered buildings.

14. The proposed domestic features, including the dedicated parking, bin and cycle stores and fencing, and potentially any residential paraphernalia in the gardens, would be visible to varying extents; however, the resulting effects from these would be limited by having a low level of prominence. The landscaping would also filter views of these lower heightened features. Overall, there would be a modest impact on the openness of the Green Belt visually. Activities such as recreation and vehicle movements would also have low prominence, be compatible with the largely residential context of the hamlet, and have little impact on openness. Furthermore, the openness of the common and the surrounding area would otherwise be sustained.
15. In reaching these views, I have had regard to the appellant's Landscape and Visual Impact Appraisal and Green Belt Openness Appraisal insofar as it is relevant, as well as the verified images provided with the appeal. The appellant argues that although the wider area makes a strong contribution to the purposes of the Green Belt, the contribution made by the site's more immediate surroundings is modest. It is also contended that the proposal would not undermine the purposes of the Green Belt. However, these factors are not directly relevant to the Framework paragraph 154(g) exception, and do not alter my findings in respect of openness in any case.
16. Drawing the above together, the proposal would have a greater impact on the openness of the Green Belt than the existing development. However, the harm to the openness of the Green Belt would be moderate on the whole. The harm would therefore not be substantial, and the proposal would satisfy the exception at paragraph 154(g)(ii) of the Framework. Although there is conflict with LP Policy GB1 as set out above, the proposal would not constitute inappropriate development for the purposes of the Framework. Accordingly, very special circumstances do not need to be demonstrated to justify the development.

### *Species and habitats*

17. The site is near a Local Wildlife Site and a range of potentially ecologically important habitats including woodland and water bodies. The EcIA is dated May 2022 and informed by a desk study and surveys that in some cases were last undertaken in 2019 or 2020. Paragraph 5.4.1 of the EcIA states that where survey data is 18 months or older, it is likely that updated surveys and reporting will be required for planning purposes. Updated appraisals or surveys were subsequently undertaken in relation to bats, birds, reptiles and badgers, but otherwise the evidence is of considerable age. The appellant puts forward

that habitat management on site has not changed and it is reasonable to expect that the presence and distribution of species remains the same, but this assertion conflicts with the limitations specified in the EcIA and cannot be relied upon particularly for more mobile species.

18. Furthermore, the BBS is from December 2022 and underpinned by surveying most recently undertaken in September of that year. It confirms that bat roosts would certainly be destroyed in Unit B and probably be destroyed in Units C, D and F. Bats using those roosts would likely be disturbed, injured or killed. A mitigation licence would therefore need to be sought from Natural England for the work. However, paragraph 6.3.1 of the document sets out that where the bat survey data is 12 months or older, it is likely that update surveys and reporting will be required for mitigation licence applications.
19. Circular 06/2005<sup>6</sup> states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before planning permission is granted. It would therefore be inappropriate to condition the undertaking of further surveys. While avoidance, mitigation and compensation measures are proposed throughout the appellant's ecological evidence, I cannot be sure that these would be appropriate in the absence of up-to-date surveying. The use of conditions to require potentially alternate measures to be undertaken would also be inappropriate in the absence of further surveying. This is because there can be no certainty that such measures would satisfactorily address any harm that might occur. Consequently, I cannot be sure that the proposal would not have unacceptable impacts on protected or important species or habitats.
20. Notwithstanding the above, I must take a precautionary approach and proceed on the basis that bats would be harmed by the development. Three derogation tests must be passed for a licence to be issued by Natural England.
21. One of the tests requires that derogation from the Habitats Directive would not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range. While there have been two seasons worth of bat surveys, given my concerns regarding the age of that work, the measures detailed in the EcIA and BBS do not give me sufficient confidence that this test would be passed. Another test requires that no satisfactory alternative exists. While there is extensive detail in the proposal relating to the alterations and much of the work comprises repairs, it has not been demonstrated that less extensive work to the buildings or an alternate form of development would be incapable of preventing the deterioration of the buildings or otherwise achieving acceptable outcomes. Consequently, I am not satisfied that no alternative with lesser impacts exists.
22. The remaining test requires that the activity is in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment. There are no known risks to public health or safety in this case. I will draw together the benefits of the scheme later in the decision but, in any case, a licence is unlikely to be issued as the development would not pass the other derogation tests.

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<sup>6</sup> Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within The Planning System.

23. I therefore conclude that the proposal would likely have a harmful impact on bats, and it has not been demonstrated that the development would have an acceptable effect on protected and important species and habitats in other respects. The appellant's ecologist has identified that Core Policy 9 of the Core Strategy Development Plan Document requires biodiversity to be conserved and enhanced. The proposal would conflict with that policy, together with the Habitats Regulations and paragraph 186 of the Framework, which sets out that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

*Character and appearance*

24. The former farmstead buildings, field and other open space within the site provide Boveney Court Farm with a quintessentially rural character and appearance. Units A and B make particularly strong contributions to its agrarian attributes as a result of their historic and architectural interest as former barns of significant age and traditional construction, even though both have been subject to numerous interventions. Units C to G exhibit similar qualities despite varying in age, condition and character, and it is undisputed that at least Units C, D and E are curtilage listed. In contrast, the open sided barn has a tired appearance and little merit of its own but, notwithstanding this, the buildings have group value, with the historic form of the farmstead remaining legible irrespective of the site's Class B8 use and the farmhouse being beyond its southern boundary.
25. The CA contains the majority of Boveney and the southern part of the common. It also includes much of the site, which forms part of its northern extent. The CA and its wider context are mainly within the Dorney Floodplain Landscape Character Area according to the South Bucks District Landscape Assessment, which is defined by a flat, low lying floodplain landscape, the open character of the common, and dispersed and linear settlements often with strong historic character. The Boveney Conservation Area Document (CAD) provides complementary analysis, but also highlights the rural tranquillity and low density of the hamlet, identifies the common land at its centre and leading northwards past the site as important open space, and regards Boveney Court Farm as influential in reinforcing the rural nature of the area.
26. The CA reflects these characteristics insofar as it includes a limited number of mostly residential properties of varying ages, sizes and designs, including a high proportion of listed ones, which are scattered between spacious gardens and other open spaces generally enclosed by vegetation or fencing. Notably, the common, open farmland and tree belts and other mature landscaping are also evident at its margins.
27. The special interest and significance of the CA are informed by the architectural quality and variety of the built environment and the legibility of Boveney as a small, rural and largely historic hamlet, together with its common land and farmland context and a high proportion of greenery within and around it. The site acts as a gateway location to the CA as well as the principal part of the common to the north and, accordingly, its rural qualities contribute positively to the character and appearance of the CA and its setting. I have already set out that the development would be visible from public vantage points, but the

CAD also highlights the importance of views in and out of the CA from both the road and the adjacent common land.

28. The proposed alterations to the retained buildings would not substantively alter their character or appearance and so their contribution to the CA would be retained. Furthermore, the removal of the open sided barn would not be harmful due to its limited value. The new dwellings have been designed to reflect the vernacular of other buildings in the CA, such as through the use of multi-paned fenestration, and materials that reflect those identified in the CAD and the retained buildings. The height of the new buildings would not be incongruous given their similarities to Unit B in that regard. Moreover, the new dwellings would also be comparable to the ostensibly 20<sup>th</sup> century semi-detached dwellings identified in the CAD as 'New Cottages', which are located along a lane spurring from Boveney Road and an established part of the CA. Although photovoltaic panels proposed to the rear of the terrace would be visible from the road and the common, a condition could be used to ensure that these would be designed sensitively and limited in prominence.
29. Otherwise, the internal road would provide a clear connection between the buildings and the field within the site and new planting would have an appropriately informal feel. The positions of the new dwellings and the aforementioned domestication of the site would not diminish the legibility of the site's agricultural past or the remaining historic farmstead arrangement, but be compatible with the residential uses that now characterise the CA.
30. The Council does not allege that there would be harm to heritage assets other than the CA. Indeed, it has approved listed building consents<sup>7</sup> for work at the site. Based on the evidence and my internal inspections of the buildings, the proposal would help maintain their condition through repair work and the adaptations would encourage their ongoing use and long term conservation. In these respects, the special interest and significance of the buildings would be enhanced, and thereby result in a slight enhancement to the CA.
31. While the proposal would bring about a significant increase in the amount of housing in the hamlet, setting aside ancillary structures, only two new modestly sized residential buildings are proposed that would be befitting of the character and appearance of the site and its surroundings. Furthermore, I have already set out that there would be limited impacts arising from activities generated by the proposed use. As such, the development would not be overly dense, or undermine the tranquillity of or otherwise urbanise Boveney.
32. The CAD discourages any further development or intensity in the use of the settlement by visitors, but this negative approach is inconsistent with the Framework's balanced approaches to development in rural areas and heritage assets, such as specified at paragraphs 83 and 212. Moreover, the duties imposed by Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and relevant policies in the development plan take primacy, and I find no conflict with these in respect of this main issue.
33. The proposal would result in a slight enhancement to the character and appearance of the CA. Accordingly, its setting and significance would also be enhanced. The proposal therefore accords with LP Policies EP3 and C1 and Core Policy 8 of the CS, which set out that development will not be permitted where

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<sup>7</sup> Council references: PL/21/1884/HB; PL/22/3563/HB

it would be out of scale or character with their surroundings or fail to preserve or enhance the character and appearance of a conservation area, and that it should protect or enhance the district's historic environment.

*Affordable housing*

34. Core Policy 3 of the CS requires schemes comprising 5 or more dwellings to include at least 40 percent affordable housing, unless it is clearly demonstrated that this is not economically viable. It also confirms that financial contributions or off-site provision may be provided instead where there are sound reasons for doing so. It is common ground that the contribution provided by the UU would equate to 2.5 residential units or 21 percent of the scheme. Evidence suggests that registered housing providers would not be willing to take on 2 units as that quantity of housing is too low and the site is too far from their existing stock. I see no reason to conclude otherwise and so a contribution is appropriate in principle.
35. The contribution is the result of a negotiation between the appellant and the Council following disagreements regarding inputs determining the viability of the scheme. Based on the final position adopted by the Council, this would be at the limits of what is viable, whereas if I were to accept the appellant's inputs, the contribution would essentially come at the expense of their profit. However, the appellant nevertheless put forward the contribution figure, and so it is unlikely to render the development undeliverable.
36. The Council's viability assessment and subsequent addendums recommend that a review mechanism is secured, which is due to the amount of affordable housing being less than sought by Core Policy 3 of the CS and as there are a lack of directly comparable sales values. This is rational given the atypical characteristics of Boveney and as the scheme would involve the conversion of former agricultural buildings. Further, the appellant has not expressly argued that a review mechanism is inappropriate in this case but indicates that such are justified by paragraph 8.12 of the Affordable Housing Supplementary Planning Document (SPD). In that context, the review mechanism satisfies the tests for obligations set out by paragraph 57 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010.
37. The UU enables me to decide which of the main parties' gross development value and deficit figures should be input into the review mechanism. The inputs would otherwise be the same. The appellant proposes a slightly lower gross development value and considerably larger deficit than the Council.
38. The Council's gross development value represents the midpoint between both parties' figures, which is a logical compromise and factors in a reasonable uplift given that the build costs specified in the UU are also the result of an uplift. The deficit figures are derived from various components, but critically the appellant's one incorporates ambiguous third party costs of £300,000. I appreciate that the appellant considers this information to be commercially sensitive and offered to provide it to the Council subject to a non-disclosure agreement being signed, which was refused. However, the Planning Practice Guidance<sup>8</sup> makes clear that any viability assessment should be prepared on the basis that it will be made publicly available other than in exceptional circumstances and that, where an exemption from publication is sought, the

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<sup>8</sup> Reference ID: 10-021-20190509

decision maker must be satisfied that the information to be excluded is commercially sensitive. Like the Council, I have not seen the information and so cannot be sure that it is sensitive or whether its inclusion in the assessment is warranted. As the third party costs affect the viability of the scheme substantially, using the appellant's deficit figure would be inappropriate.

39. Accordingly, the Council's terms are the more appropriate inputs for the review mechanism, which comply with the relevant tests set out by the Framework and the Community Infrastructure Levy Regulations 2010. Moreover, the proposal would make satisfactory provision towards affordable housing. It thereby accords with Core Policy 3 of the CS and the Affordable Housing SPD.

### **Other Matters**

40. The Council can reportedly demonstrate 1.3 years supply of deliverable housing sites. In that context, the proposed use of previously developed land to provide 12 dwellings constitutes a significant benefit, even though this is a low number of units in absolute terms. I also acknowledge that the Framework highlights that small sites can make an important contribution to meeting housing requirements. The affordable housing contribution would also be highly beneficial, particularly as the Council has not contested that it is among the poorest performing authorities for affordable housing delivery. In addition, the review mechanism could potentially provide a further contribution towards affordable housing, particularly based on the Council's viability terms.
41. I have already identified that there would also be enhancements to heritage assets, but there would also be benefits arising from substantial biodiversity net gain and associated with the construction and occupation of the development from social and economic perspectives. Furthermore, notwithstanding the ecological issues raised above, there would be benefits arising from proposed wildlife enhancements. I also have no reason to doubt that the scheme would generate less noise and disturbance than the existing use. The appellant also argues that there would be benefits from the provision of new landscaping, including by improving existing publicly accessible green spaces, and flood risk reduction measures, but these are neutral factors as they are principally necessary to mitigate impacts generated by the development itself.
42. The Council identifies that the proposed loss of the Class B8 use technically conflicts with Core Policy 10 of the CS, which sets out a general presumption that employment sites will be retained in employment use. However, evidence has been submitted which indicates that there is limited demand for the use. The Council does not dispute the evidence nor conclude that there would be harm in a substantive sense in that regard. I see no reason to disagree and consider that conflict with the policy attracts negligible weight. Additionally, LP Policy GB1 has limited consistency with the Framework in respect of Green Belt considerations. Given that the proposal accords with the Framework regarding such matters, the conflict with this policy also attracts negligible weight.
43. The arguments put by the main parties and Dorney Parish Council regarding potential forthcoming revisions to the Framework and the planning system do not alter my findings, both having regard to the particular points raised relevant to my own assessment of the scheme, and as I cannot be certain as to whether and how any changes may take shape.

## **Planning Balance and Conclusion**

44. The presumption in favour of sustainable development as set out by paragraph 11(d) of the Framework is applicable due to the Council's housing supply position. The application of policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing the proposal. Accordingly, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
45. The sum of the benefits delivered by the development would be considerable. However, this would be significantly and demonstrably outweighed by the likely harm to bats, which is determinative. Moreover, the benefits do not amount to imperative reasons of overriding public interest for the purposes of the outstanding derogation test. Therefore, the Framework does not indicate in favour of the development and, moreover, the scheme conflicts with the development plan as a whole. While the material considerations in favour of the proposal are considerable, these do not indicate that a decision should be made other than in accordance with the development plan.
46. For the above reasons, the appeal is dismissed.

*Mark Philpott*

INSPECTOR