
Appeal Decision

Site visit made on 19 November 2024

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2024

Appeal Ref: APP/X0415/W/24/3347638

Land North Of Cherry Tree Lane, Lee Common, Buckinghamshire HP16 9LB

- 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 Permission in Principle.
 - The appeal is made by Mr Andrew Smith of Narvo Asset Management against Buckinghamshire Council.
 - The application Ref is PL/24/1636/PIP.
 - The development proposed is described as 'permission in principle for between four and six two-storey residential units, including an affordable first home in garden land north of Cherry Tree Lane, Lee Common HP16 9LB'.
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Decision

1. The appeal is dismissed, and Permission in Principle is refused.

Preliminary Matters

2. The proposal is for Permission in Principle. The Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. This has two stages. The first establishes whether a site is suitable in principle. The second stage, for Technical Details Consent (TDC), is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
3. The scope of the considerations at this stage is limited to location, land use and the amount of development. All other matters are considered as part of a subsequent TDC application if Permission in Principle is granted. In this case, the application form refers to a range of between four and six dwellings. I have determined the appeal on this basis, having regard to the relevant legislation and the PPG. An indicated layout has been provided, which I have treated as being illustrative.
4. The appeal results from the failure of the Council to determine the planning application within the prescribed period. As a result, there is no formal decision notice. However, the Council's Statement of Case sets out the reasons why it would have refused planning permission had it been empowered to do so.
5. During the appeal, the appellant has submitted a planning obligation by way of a Unilateral Undertaking (UU). This seeks to mitigate the effects of the proposal on the Chiltern Beechwoods Special Area of Conservation (SAC). I have taken the UU into account in reaching my decision. I shall return to this issue under Other Considerations below.

Main Issues

6. The main issues are whether the location, land use and amount of development proposed would be suitable, in respect of:
- whether it would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies, including the effect of the proposal on the openness of the Green Belt,
 - the effect of the proposal on the character and appearance of the area, including the Chilterns National Landscape within which the site sits, and
 - if the proposal is inappropriate, whether 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 required to justify the proposal.

Reasons

Green Belt

7. The site lies within the Metropolitan Green Belt. Paragraph 152 of the Framework makes clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 states that substantial weight should be given to any harm to the Green Belt, and 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.
8. Framework Paragraph 154 sets out exceptional categories of development that are not inappropriate. New buildings are inappropriate unless, relevant to this appeal, they constitute limited infilling in villages under Paragraph 154(e). Policy GB2 of the Chiltern District Local Plan (CDLP), adopted September 1997¹, also identifies types of development that are not inappropriate. Under GB2(d), these include limited infilling within areas identified in CDLP Policy GB4.
9. It is common ground that Lee Common constitutes a village. The site lies outside of the parts of the village where Policy GB4 allows the infilling of up to two dwellings within a small gap. However, the Court of Appeal judgement in *Wood*² has made clear that the boundary of a village as defined in a local plan may not be determinative for Green Belt purposes. The appeal site lies between the village recreation ground on one side, and dwellings and their outbuildings and gardens on another. These give a sense of built development close by.
10. Nevertheless, the site also faces countryside. Beyond Flintstone Cottage and Orchard Cottage, Cherry Tree Lane is poorly surfaced, lined with leavy vegetation, and has only sporadic development such as Garden Cottage. The appeal site is described by the appellant as garden land but has the appearance of a small field or paddock, separate from any dwelling and is not

¹ Including alterations adopted 29 May 2001, consolidated September 2007 and November 2011.

² *Julian Wood v SSCLG, Gravesham Borough Council* [2015] EWCA Civ 195

previously developed. As a result, the area including the appeal site has a distinctly rural and countryside appearance. Consequently, I consider that it lies outside of the village and its built-up area.

11. The site is a parcel of land of appreciable size. It is large enough to accommodate the proposal for up to six dwellings reasonably comfortably and its width is more than a gap in a frontage. Given the size and nature of the site, I conclude that the proposal could not be described as either limited or infill. For the reasons given above, it would not therefore benefit from the provisions of Framework Paragraph 154(e).
12. A fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land open. The site is currently open and essentially devoid of development. The proposal would introduce at least four dwellings to the site, together with the associated gardens and residential paraphernalia. This would give the site a much more built-up form.
13. The proposal would therefore cause a permanent reduction in the openness of the site. For these reasons, I conclude that it would result in significant harm to the openness of the Green Belt. It would also encroach into the countryside formed by the site, conflicting with one of the Green Belt purposes identified at Framework Paragraph 143(c).
14. For the reasons given above, the location, land use and the amount of development proposed would constitute inappropriate development in the Green Belt, having regard to the Framework. I attach substantial weight to the harm that this by definition would cause, in accordance with Framework Paragraph 152. It would also have a harmful effect on the openness of the Green Belt and conflict with one of its purposes, to which I attach further significant negative weight.
15. For the same reasons, the proposal would also conflict with CDLP Policy GB2. However, this policy significantly pre-dates the Framework and does not refer to 'very special circumstances' which may permit inappropriate development. It is not therefore entirely consistent with the Framework. Accordingly, having regard to Framework Paragraph 225, I give the conflict with Policy GB2 only moderate negative weight.

Character and Appearance

16. The site and its surroundings lie within the National Landscape. As such, although on the edge of a village, they have a high degree of landscape sensitivity. The site is within the Lee and Buckland Common Undulating Plateau character area of the Chiltern Landscape Character Assessment (LCA), October 2011. Amongst other things, the LCA describes the area as a mosaic of small and medium arable and pastoral fields, with occasional paddocks. It also refers to smaller fields on the edge of settlements. Key characteristics of the area include the rural landscape.
17. The proposal would retain the current field pattern. It would remain enclosed, with existing conifers being replaced with more appropriate native planting and landscaping. As an application for Permission in Principle, no fixed details of the dwellings or their positioning are before me, but their layout and design could reflect others nearby.

18. Nevertheless, I have already found that the proposal would inevitably result in significant permanent built form on the site, together with residential paraphernalia. It would also include any necessary improvements for vehicles, such as a turning area. As a result, it would urbanise the site and its immediate surroundings.
19. During construction of the proposal and for many years subsequently, it would have a high magnitude of change and a substantial adverse effect on the site, harming its character as a small field or paddock on the edge of the settlement. The maturing of the perimeter planting may reduce the impacts of the proposal over time, but this would not overcome its inherently urbanising and long-lasting effects. Although to a lesser degree, for similar reasons the proposal would also diminish the wider character area and its rural landscape.
20. The appellant's updated Landscape and Visual Appraisal (LVA) also assesses the impact of the proposal from visual receptors. Cherry Tree Lane is a private road, but the LVA acknowledges that it is also used by walkers, cyclists and horse riders to connect with footpaths and the recreation ground. There is no dispute that open views of the proposal from the Lane would be obtainable at the entrance(s), which may well require alteration or widening and the loss of vegetation.
21. Whilst existing housing can already be seen by users of the Lane, the urbanising visual effects of the proposal would be at least moderately adverse during and post-construction. Existing and new planting may ameliorate these effects over time. However, landscaping cannot be relied upon for screening, particularly in winter months when foliage is reduced. Nor can its survival be guaranteed. Furthermore, even with landscaping, the harmful effects of the proposal would remain permanently, through the entrance(s). I therefore consider that the LVA under-estimates the effects of the proposal in the longer term.
22. A public footpath (TLE/31/1) dissects the allotments and recreation ground. The existing belt of planting, and the distance from the site, would limit the visual effects of the proposal for users of the footpath. Housing is also already apparent in views from this route. Even so, as reflected in the LVA, glimpses of the proposal would be obtainable from the footpath, of low-to-medium magnitude during construction and initially post-completion. For the reasons I have given, landscaping would not necessarily overcome its harmful longer-term effects.
23. I therefore conclude that the location, land use and amount of development proposed would have harmful effects on the landscape character and visually, and so would fail to conserve or enhance the scenic beauty of the site and its surroundings. As such, it would harm the character and appearance of the area, including the National Landscape.
24. Consequently, the proposal would conflict with Policy CS22 of the Chiltern District Core Strategy (Core Strategy), adopted November 2011, which requires that the special landscape character and distinctiveness of what is now the National Landscape³ is preserved. I give great weight to the need to conserve the scenic beauty of the National Landscape in accordance with the Framework, with which the proposal would also conflict.

³ Formerly known as the Chilterns Area of Outstanding Natural Beauty.

25. CDLP policy LSQ1 makes similar requirements to Core Strategy Policy CS22, but also requires consideration of very exceptional circumstances, which I will consider below. Core Strategy Policy CS20 and CDLP Policy GC1 are both focused on design. This is not before me, and so I find no conflict with these policies.

Other Considerations

26. Framework Paragraph 152 is clear that inappropriate development should not be approved except in very special circumstances. There is no dispute that the Council cannot demonstrate an adequate supply of housing land, being significantly below five years. Furthermore, the poor housing supply position seems likely to remain for some time and has been described as chronic in an appeal decision at Little Chalfont⁴.
27. I am also mindful that any development within the Parish, such as that identified by the former District Council's Settlement Capacity Study, would need to be provided within the Green Belt and National Landscape. The proposal includes an affordable first home, details of which could be secured at TDC stage. I do not doubt that there is a growing disparity between house prices and average earnings, both in Buckinghamshire and in the Council ward which includes the site. For the reasons given above, I give the provision of housing as proposed very significant positive weight.
28. It is intended to provide turning space for vehicles using Cherry Tree Lane, and improved visibility at its junction with Ballinger Road. This would also have wider advantages for the occupiers of existing properties on the Lane. The Council has not pursued the concerns of the Highway Authority, at least at this stage. I therefore attach limited positive weight to these benefits.
29. Construction of the proposal would make a positive economic contribution to the area, for example to the building industry, whilst its occupiers would bring additional economic and social benefits such as to local businesses. The proposal would be close to services and facilities and could be developed fairly quickly. Given the relatively small number of dwellings proposed, I give these benefits limited positive weight.

Planning Balance and Conclusion

30. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
31. In weighing up the harms with the benefits already set out above, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the proposal do not exist. Similarly, very exceptional circumstances referred to by CDLP Policy LSQ1 also do not exist, and so the proposal would conflict with this Policy.
32. In considering Framework Paragraph 11(d), the policies in the Framework that protect areas or assets of particular importance, namely the Green Belt and

⁴ PINS reference APP/X0415/W/22/3303868.

the National Landscape, provide clear reasons for refusing the proposal. As such, the presumption in favour of sustainable development is not engaged.

33. The Council's third reason for refusal refers to the effect of the proposal on the SAC, which is protected pursuant to the Conservation of Habitats Regulations 2017. Had I found no harm in respect of the main issues, as competent authority I would have carried out an Appropriate Assessment of the impact of the proposal on the SAC, including the effect of the UU. However, as I have found that permission should be refused for other reasons, this matter need not be considered any further in this case.
34. For the reasons given, I have found conflict with the Development Plan as a whole. The material considerations in this case do not indicate a decision other than in accordance with the Development Plan. This leads me to conclude that the appeal should be dismissed.

O Marigold

INSPECTOR