



Appeal Decision

Site visit made on 5 August 2025

by N Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2025.

Appeal Ref: APP/K0425/W/25/3365094

20 Lucas Road, High Wycombe HP13 6QG

- 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 Millen Land Group against Buckinghamshire Council.
 - The application Ref is 24/07886/FUL.
 - The development proposed is 1no Custom/Self build plot.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Millen Land Group against Buckinghamshire Council. This is the subject of a separate decision.

Preliminary Matters

3. There was a discrepancy between the application form and the appeal form in terms of the name of the applicant/appellant. This was subsequently clarified as being, in effect, the same company.
4. During the course of the application additional and amended documents were provided by the appellant. These included revised plans, an addendum statement, Unilateral Undertaking (UU) and revised CIL form and marketing information. It is indeterminate whether the Council, ultimately, would have accepted these documents as the appeal was made prior to a determination of the application. Regardless, it did not undertake any additional consultation on them.
5. Being mindful of the content of these documents, I am satisfied that they did not amount to a substantial difference or a fundamental change to the nature of the application. However, being mindful of the Wheatcroft¹ and Holborn² principles, as no consultation was carried out upon this additional information, there is a risk of procedural unfairness to third parties involved in the appeal who have commented upon it. Nevertheless, as the appeal is to be dismissed, I am satisfied that were there to be any such procedural unfairness, it would not prejudice any party in this instance. I have therefore taken this information into account in reaching my decision here.

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

6. The appellant introduced new evidence at the final comments stage of the appeal and, in accordance with the Procedural Guide: Planning appeals – England, it is within my remit to decline to accept this. However, I recognise that as this is a failure case, the appellant is responding to certain matters expressed by the Council. Were I minded to allow the appeal, it would have been necessary to consult further on these matters, however, again, as the appeal is to be dismissed; there is no prejudice to the Council or third parties in my considering it here as it does not alter the outcome of the appeal.

Background and Main Issues

7. The appeal is made against the failure of Buckinghamshire Council to give notice of its decision within the prescribed period. However, the Council has provided a statement which sets out that were it to have decided the application, its decision would have been to refuse permission due, in summary, to the effect of the proposal on the Amersham Hill Conservation Area (AHCA), insufficient detail on the ecological impact of the proposal and on Biodiversity Net Gain (BNG) and overlooking.
8. Therefore, I consider the main issues to be:
 - 1) whether the proposed development would preserve or enhance the character or appearance of the AHCA,
 - 2) the effect of the development on protected species or habitats and biodiversity, including the provision of BNG, and
 - 3) the effect of the proposed development on the living conditions of neighbouring residents with particular regard to overlooking.

Reasons

Effect on the AHCA

9. The appeal site is set within the AHCA which is focused along and around Amersham Hill and from which the Conservation Area derives its name. This area commonly features detached homes with the earliest of these being Edwardian and Victorian villa style homes. There are numerous examples of later development including homes in an Arts and Crafts vernacular and mid-20th century infill homes. The homes are frequently set in well landscaped grounds with generous proportions and ample space around them giving a verdant setting. It is this spacious and tree-lined impression, along with the frequently fine detailing to individual properties which give the area its significance. Number 20 Lucas Road is an example of an Arts and Crafts style home.
10. The proposal seeks to construct a detached three bedroom home in the rear garden to the existing house. This would be served by a new driveway leading along one side of the existing house and re-utilising an existing access that presently forms one of two to the in-out driveway. The proposed house would be relatively modest in terms of its proportions, being two storey but with the upper floor rooms contained in the roof space.
11. It would, however, be somewhat jarring in this backland location in an area where such individual homes of this nature do exist. Accordingly, it would represent an incongruous pattern of development that does not accord with the arrangement of

homes and buildings around it. The plot size would be markedly smaller than others in the vicinity that address Lucas Road and the host dwelling would have its plot size reduced too. As such, the proposal would fail to preserve or enhance the character or appearance of the AHCA and would cause less than substantial harm to this heritage asset although I accept that this would be towards the lower end of the scale in the spectrum of harm.

12. I recognise that the AHCA is a conservation area which has evolved in a semi-organic manner over the course of time and this is apparent in the building vernaculars which gently alter over the phases of its development. These however have generally stuck to a fairly organised format with typically older homes addressing through roads. The area has been subject to numerous examples of backland development and this includes the nearby, mid to late 20th century, cul-de-sacs of Bailey Close, Rye View and Rectory Close. I find these examples are, however, very different in their nature as they are more comprehensive with at least a half-dozen homes within them, on much larger areas of land and are niche elements within the wider AHCA.
13. In reaching my conclusions here I have considered the statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the area. I am also mindful of the provisions of paragraph 215 of the Framework which sets out that any less than substantial harm to a heritage asset should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
14. I recognise that the provision of an additional dwelling is a benefit as it would result in a small, but important, increase in the overall housing supply. This, however, does not negate the harm to the AHCA. I recognise that the proposal has been put forward as Self Build and Custom Housebuilding (SBCH), and I will return to this matter in due course.
15. The proposal also features the introduction of new tree planting and this would contribute to the sylvan character of the AHCA which is one of its defining features. Although the site is already well landscaped, this new planting would still represent a benefit. This new tree planting would likely represent an improvement to biodiversity but, in this instance, I have limited evidence to confirm this so can afford this minimal weight.
16. I have had regard to the appeal decisions in Steventon³ and Malmesbury⁴, provided in final comments stage by the appellant. I accept that these cases touch on similar themes but these sites were set in different contexts with differing issues at play such that direct comparisons can only be very limited. Both parties have made reference to an appeal at Rectory Avenue⁵ although neither submitted a copy in evidence. However, there seems to be agreement between the parties that the relevance of this is limited as despite being within the same conservation area, the reasons for refusal and dismissal hinged upon the effect on trees and that, of itself, is not a main issue here.

³ APP/V3120/W/20/3265465

⁴ APP/Y3940/W/23/3317252

⁵ APP/K0425/W/24/3338254

17. The proposal therefore conflicts with policies CP9, CP10, CP11, DM31, DM32, DM34 and DM35 of the Wycombe District Local Plan 2019 (WDLP), Wycombe District Residential Design Guidance 2017 (RDG), Wycombe District Housing Intensification Supplementary Planning Document 2011 and provisions of the Framework. This is insofar as the proposal would fail to conserve, and where possible enhance, the significance, special interest, character and appearance of designated heritage asset.

BNG and protected species and habitats

18. The Council is not entirely clear on its stance on BNG and ecology matters as although its third reason for refusal (were it to have determined the application) related solely to BNG issues, other discussion in its statement and officer report explore the lack of an ecological appraisal. I have therefore considered both these issues.
19. The application was not supported by a Preliminary Ecological Appraisal (PEA) and this sits as a separate, albeit related, issue to BNG, discussed below. In the absence of a PEA, it is not possible to make a considered assessment as to the ecological merits of the site. Whilst I do recognise that the site is largely laid to a domestic lawn and thus may have limited value, it is not the only feature of the site. There is insufficient information that would allow me to form a reasoned conclusion here on the ecological impacts of the proposal.
20. BNG is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (the Act) (inserted by the Environment Act 2021). Under the statutory framework for BNG, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met.
21. There are, however, exceptions to this requirement and this is set out in the PPG. One exemption is where the proposal is for SBCH and consists of no more than 9 dwellings and is carried out on a site which has an area no larger than 0.5 hectares and consists exclusively of dwellings which are SBCH.
22. The proposal could accord with these requirements, subject to my additional observations below, and therefore the development could accord with these provisions. Therefore, in this regard I find the proposal could comply with policies DM13 and DM14 of the WDLP, Framework and provisions of the Act.

Living conditions of neighbours

23. The proposed new dwelling would incorporate a first floor and include three rear facing windows at first floor level. One would be a centrally located bathroom in a gable and the other two form dormer windows to bedrooms. The Council consider the back-to-back distance between the proposed house and the nearest neighbours to the rear, at 3 Rectory Close and 37 and 39 Rye View, with the latter being expressed as a concern, would be around 24.5 metres. Moreover, this relationship is compounded by a change in levels with 20 Lucas Road being set at a higher level. The appellant nominates the back-to-back distances are over 25 metres and thus accord with the RDG.
24. In this regard, I note that the bedroom windows are set further into the site and thus further away from the nearest neighbour at 39 Rye View. There is a change in

levels, however this is not especially substantial. Furthermore, the closest gable end window is to a bathroom and therefore could be obscure glazed through the use of a planning condition and this is shown on the plans.

25. Therefore, I find that there would not be a material increase in overlooking towards 39 Rye Road. The proposal therefore would not adversely affect the living conditions of the occupants, and the proposal complies with policy DM35 of the WDLP and provisions of the RDG.

Planning Balance and Conclusion

26. The proposed development is nominated as being SBCH. The Self-Build and Custom Housebuilding Act 2015 together with the Self-build and Custom Housebuilding Regulations 2016 provides that authorities must give suitable development permission in respect of enough serviced plots of land to meet the demand for SBCH in the authority's area, in each base period. It requires local planning authorities to establish and publicise a register of those who are seeking to acquire serviced plots of land in the authority's area for their own self-build and custom housebuilding. Authorities must have regard to their register when carrying out their planning functions.
27. The appellant introduced the number of entries on the SBCH register at final comments stage and this has denied the Council the opportunity to comment upon this. A copy of any monitoring report or the register was not provided. Moreover, I have no evidence to indicate the extent to which the Council is meeting its requirement and whether or not insufficient permissions have been given to meet demand in accordance with the statutory duty. Accordingly, I am unable to afford this a great deal of weight here.
28. The appellant has supplied a draft UU to secure the development as SBCH. However, no certified and executed copy of this UU has been provided and thus I have not considered this further, especially as the appeal is to be dismissed on other grounds. Additionally, I have not explored the clauses of the UU for the same reason. Whilst the appellant suggests that SBCH could be secured by condition, I am not satisfied that any such condition would meet the tests at paragraph 56 of the Framework or as detailed in the PPG and a planning obligation would be required.
29. Even so, I have conceded that the proposal could be delivered as SBCH, thus exempting it from the requirement to deliver BNG. However, this concession falls away in the absence of a planning obligation to deliver it as such. As a result, the exemption from mandatory BNG does not apply. Moreover, this further means I am unable to give the provision of SBCH any weight in terms of benefits that could outweigh the harm to the heritage asset.
30. It has also been put forward that the Council cannot demonstrate a five year supply of deliverable housing land. The Council recognises this as being 1.96 years as of January 2025. It accepts a considerable shortfall in this regard.
31. However, paragraph 11 d) of the Framework explains that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date and, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites, granting planning

permission. This is unless the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed.

32. In this case, I have already highlighted above that the proposal would cause less than substantial harm to the heritage asset as it fails to preserve or enhance the character or appearance of the AHCA and that the public benefits do not outweigh this harm. This, therefore, represents a strong reason for refusal having regard to footnote 7 of the Framework and the provisions of paragraph 11 d) i. are engaged.
33. The proposal conflicts with the development plan due to the adverse effect on the AHCA. Whilst it may represent a form of SBCH, there is no mechanism in place to secure this and without this mechanism BNG is required and no metric for the existing site has been provided. The proposal further lacks a PEA to establish the baseline ecological conditions of the site. Other neutral considerations, including that I have found no harm to the living conditions of neighbours, weigh neither for, nor against, the proposal.
34. For these reasons the proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

N Bowden

INSPECTOR