



Appeal Decision

Site visit made on 16 July 2024

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2024

Appeal Ref: APP/K0425/W/23/3330546

Foxfields, Bryants Bottom Road, Bryants Bottom, Buckinghamshire HP16 0JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Millen Homes Limited against the decision of Buckinghamshire Council - West Area (Wycombe).
 - The application Ref is 22/07566/OUT.
 - The development proposed is the development of 2 detached bungalows on land formally part of Franconia, Bryants Bottom Road.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Buckinghamshire Council - West Area (Wycombe) against Millen Homes Limited. This application is the subject of a separate Decision.

Preliminary Matters

3. The application is submitted in outline form with all matters reserved for later consideration except access. Therefore, whilst plans have been submitted suggesting how two dwellings could be accommodated on the site, these have been provided for indicative purposes only.
4. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023 and therefore I have referred to that revised document in my determination of this appeal. I am satisfied that the parts of the Framework most relevant to this appeal have not substantively changed from the previous iteration.
5. Within the submissions there are two names given to the adjacent dwelling - Franconia which is understood to be its former name and Foxfields which is its current name. The planning application form and description differ in their use of these names, and this is reflected in the banner header above. However, in the interests of maintaining consistency, I shall refer to the dwelling as Franconia throughout this decision.

Main Issues

6. The main issues are:

- (i) Whether the development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies
- (ii) Whether occupants of the proposed development would have reasonable access to shops and services
- (iii) The effect of the proposal on trees
- (iv) The effect of the proposal on the natural beauty of the Chilterns Area of Outstanding National Beauty (AONB)
- (v) The effect of the proposal on biodiversity
- (vi) Whether the proposal would lead to increased risk of flooding
- (vii) 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

- 7. Policy DM42 of the Wycombe District Local Plan 2019 (LP) refers back to the Framework in terms of development that is not inappropriate in the Green Belt, subject to a number of its own clarifications. Paragraph 154g) of the Framework states that limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development, can be regarded as not being inappropriate development in the Green Belt. However, with reference to Annex 2 of the Framework, this applies only to land which is, or was, occupied by a permanent structure, including the curtilage of the developed land.
- 8. Although the appellant has provided a statutory declaration attesting to the use of the appeal site as garden land in association with Franconia, they do not counter the Council's assertion that the land was not within the curtilage of Franconia when planning permission was granted for that dwelling. Therefore, whether the lawful use of the appeal site is garden land or not, I cannot be sure that it meets the specific requirement set out in Annex 2 in terms of being within the curtilage of the developed land, in this case the curtilage of Franconia. Consequently, it has not been demonstrated that the proposal would fall within paragraph 154g) of the Framework by virtue of being previously developed land, and thus it would also not find support in Policy DM42 of the LP in this regard.
- 9. Furthermore, Paragraph 154g) is conditional on a development not having a greater impact on the openness of the Green Belt than the existing development. In this instance, there is no built development on the site at all. The erection of two new dwellings, in whatever form or scale, would therefore

have a greater impact on the openness of the Green Belt than the current situation, in both a spatial and visual sense, and would not comply with this requirement of Paragraph 154g). This impact would not be overcome by the intended provision of substantial landscaping or because of the position of the site between existing properties. Whilst the appellant questions how it would ever be possible to infill without having a greater impact on openness, previously developed land includes land on which buildings are already present. It is therefore entirely possible that limited infilling, for example of a small space between existing buildings or infilling of a building itself, could take place without having a greater impact on the openness of the Green Belt than the existing development.

10. Paragraph 154e) of the Framework refers to limited infilling in villages. Policy DM42 of the LP offers its own clarification that this means limited infilling only within the built up villages identified on the accompanying policies map, and consisting of at most one detached or one pair of semi-detached dwellings. The appeal site does not fall within such an identified village but, in any event, Bryants Bottom would appear to be no more than a linear arrangement of dwellings along a rural road, without the provision of any services or facilities other than a public house. On that basis, I do not consider that it could under any definition that might be used be considered to be a village. Therefore, Paragraph 154e) is not relevant either. Furthermore, the proposal does not fall within any of the other exceptions set out in paragraph 154. Consequently, it would be inappropriate development in the Green Belt.
11. My attention has been drawn to the appeal decision¹ which permitted the construction of Franconia. However, that decision considerably pre-dates both the Framework and the present development plan. For the reasons I have set out, when assessed against current planning policies I have found that the appeal proposal would be inappropriate development in the Green Belt and that it would cause harm to openness. I am not bound by the previous appeal decision to come to a different conclusion on those matters. In terms of the impact on the purposes of the Green Belt, there would be a clear conflict with respect to the aim to assist in safeguarding the countryside from encroachment.
12. In conclusion, the proposal would fail to accord with Policies CP8 and DM42 of the LP and the Framework where they seek to protect the Green Belt.

Shops and services

13. Bryants Bottom is a Tier 6 settlement as set out in Policy CP3 of the LP and is so defined as being a hamlet. The only type of development permissible by Policy CP3 in such locations is rural exceptions affordable housing schemes where the settlement has some local services.
14. I have not been made aware that Bryants Bottom benefits from the provision of any shops or services other than the public house and a bus stop. The Council state that the bus service is extremely infrequent and is primarily aligned with school transport requirements, and this is not disputed by the appellant. It does not therefore appear that the use of a bus would be a feasible alternative means of transport to access day to day services or to

¹ APP/2516/A/58615

reach employment. The absence of pavements and the relative remoteness of Bryants Bottom does not make walking a feasible alternative either.

15. The appellant highlights that the Framework sets out that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. There is however nothing before me to suggest how the appeal development would achieve that aim in Bryants Bottom, given the very limited service provision it has, or how it would contribute to the vitality of nearby rural communities.
16. In conclusion therefore, the proposed development would not provide reasonable access to shops and services for day to day living other than by private motor vehicle. It would fail to accord with Policies CP3 and DM33 of the LP, where they seek to ensure that new development is directed towards sustainable locations. There would also be a conflict with section 9 of the Framework where it seeks to promote sustainable transport.

Trees

17. The site is subject to a woodland Tree Preservation Order (TPO). Although the appellant disputes that this was an appropriate form of order to impose, it remains that it is an order that is in force and which offers legal protection to the trees. They refer to an Arboricultural Impact Assessment in their appeal submissions but a copy of this was not provided. On that basis there is nothing substantive on which to make an assessment of the current condition of the trees on the site and the impact that the proposed development may have on them.
18. The appellant has also not substantiated their position that the trees to the perimeter of the site could be retained. From what can be seen from the road frontage of the site it would appear likely that a number of the most prominent trees to the front would be affected by a development of two dwellings. These trees contribute positively to the character and appearance of the area and the valley. That a detailed landscaping scheme would be provided at reserved matters stage does not overcome the fact that the matter relating to the potential loss of TPO protected trees has not been addressed.
19. It has not therefore been demonstrated that the proposed development would accord with Policies CP10 and DM34 of the LP and Policy DM11 of the Delivery and Site Allocations Plan 2013 (DSAP), where they seek to promote the conservation and enhancement of the natural environment and green infrastructure of the district. There would also be a conflict with section 15 of the Framework where it seeks to conserve and enhance the natural environment.

AONB

20. As a wooded parcel of land located in between two existing dwellings, the appeal site makes a positive contribution to the character and appearance of its rural surroundings. Those dwellings themselves sit within a longer linear row of dwellings along Bryants Bottom Road. The appeal site provides a substantial visual break between Franconia and Hada Hu, which is consistent with the visual separation between Franconia and the next dwelling to its south-east. Given that the proposed dwellings would sit within the line of existing dwellings on the valley bottom, I do not agree with the Council's assessment that the

proposal would have a significant adverse impact on the natural beauty of the AONB.

21. Nonetheless there would be an impact, and if it was not possible to retain or provide trees at least around the perimeter of the appeal site, then the proposal would result in visual harm to the AONB owing to what would be a notable and stark replacement of the natural form with a built form. This would be contrary to the aims of Policies DM30 and DM32 of the LP where they seek to conserve and where possible enhance the natural beauty of the AONB and to protect and reinforce the key characteristics of the landscape. There would also be a conflict with section 15 of the Framework where it seeks to conserve and enhance the natural environment.

Biodiversity

22. The appellant has referred to a Preliminary Ecology Assessment (PEA) in their appeal submission but not provided a copy of such. It does however appear from their final comments that a PEA has not in fact been undertaken. Whilst they refer to there not being any ecological interests that would be affected by the proposed development, the appeal site is subject to dense tree and vegetation coverage and the Council refers to the site being within the Amber Zone for Great Crested Newts. As I have noted above, it has not been demonstrated whether or not trees would need to be removed. There would certainly be the need to remove some vegetation to facilitate the proposed development.
23. The appellant's position on there being no impact on biodiversity is not evidenced, and I do not concur with them that this is an instance where it could be said that there is not a reasonable likelihood of protected species being present. That trees may have been removed recently does not mean that protected species would not be affected by the proposed development and whether or not the Council's Ecologist visited the site is not of relevance as the onus was on the appellant to provide the preliminary information. Matters relating to protected species require assessment prior to planning permission being granted, so that the full extent of the impact is understood, that legal obligations are met, and that any necessary mitigation can be secured. This is not therefore a matter that could be subject to a planning condition.
24. Whilst the appellant correctly notes that the now mandatory biodiversity net gain requirements do not apply to the appeal proposal, this does not preclude it from needing to address development plan policies on this matter. Policy DM34 of the LP sets out the requirements for delivering green infrastructure and biodiversity in development. The Council further refers to its Biodiversity Net Gain Supplementary Planning Document 2022 (SPD) which provides guidance on how the requirements of Policy DM34 can be met. Although the appellant states that they have agreements in place to secure biodiversity credits off site and that a legal agreement would be submitted, no such agreement has been provided.
25. In the absence of a PEA, no evidence has been provided as to the impact that the proposal would have on biodiversity, how any loss could be mitigated against and how the biodiversity net gain required by development plan policy would be achieved. Therefore, it has not been demonstrated that the proposed development would be in accordance with Policy DM34 of the LP and with Policies DM13 and DM14 of the DSAP, where they collectively seek to protect

biodiversity interests. There would also be a conflict with section 15 of the Framework where it seeks to conserve and enhance the natural environment.

Flooding

26. Whilst the appeal site is located in Flood Zone 1, the highway outside of it is identified as being at a high risk from surface water flooding. The proposal would increase the impermeable area of land on the site and whilst the appellant says that infiltration testing has confirmed that SUDs drainage is likely to be possible, they have not provided documentary evidence of this testing and its findings. No comfort has been provided in terms of a possible alternative drainage solution existing, for example highway or foul drainage network options.
27. Therefore, although I note that there was no objection received from the Lead Local Flood Authority in so far as it does not appear they were consulted, it has not been shown that the proposal would accord with Policy DM39 of the LP where it requires the management of surface water run-off. There would also be a conflict with section 14 of the Framework which seeks to meet the challenge of climate change, flooding and coastal change. This is not a matter that could be left to planning conditions as there is a risk there may not be a workable solution.

Other Considerations

28. The proposed development would contribute new dwellings to the housing supply and would do so on a small site. However, owing to the quantum of development proposed this is a consideration which carries only limited weight in favour of the proposal.

Conclusion

29. The Framework at Paragraphs 152 and 153 establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 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 development, is clearly outweighed by other considerations.
30. The proposed development would be inappropriate development in the Green Belt and would result in harm to its openness. The location of the site does not provide reasonable access to the shops and services needed for day to day living and the impacts that it would have on protected trees, the AONB, biodiversity and surface water flooding have not been demonstrated. The other considerations put forward in this case do not clearly outweigh the harm to the Green Belt and the other areas of actual and potential harm I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
31. For the reasons given above, I conclude that the proposal conflicts with Policies CP8 and DM42 of the LP, and with the objectives of the Framework where they seek to protect the Green Belt. Therefore, the appeal should be dismissed.

Graham Wraight INSPECTOR