



Appeal Decision

Site visit made on 12 March 2019

by JP Tudor Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 16th April 2019

Appeal Ref: APP/X0415/W/18/3203978

Penn and Tylers Green Football Club, Elm Road, Penn, Buckinghamshire HP10 8LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Penn and Tylers Green Football Club against the decision of Chiltern District Council.
 - The application Ref CH/2017/1958/FA, dated 19 October 2017, was refused by notice dated 23 February 2018.
 - The development proposed is erection of 6 retractable floodlight columns (2.8m rising to 15m) and lamps to light a football pitch plus associated control cabinet.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 6 retractable floodlight columns (2.8m rising to 15m) and lamps to light a football pitch plus associated control cabinet at Penn and Tylers Green Football Club, Elm Road, Penn, Buckinghamshire HP10 8LG in accordance with the terms of the application, Ref CH/2017/1958/FA, dated 19 October 2017, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: numbered 754/BA/1; UKS15618_1a; UKS15618_1; E-CC-G.A.-001 A; PNE200/5/GA2 and PNE200/5/GA3.
 - 3) The floodlights hereby permitted shall remain fully retracted and not in use or illuminated except for football match play and only between the hours of 1900 and 2200 on up to 2 weekday evenings and between the hours of 1500 and 1800 on Saturdays and bank holidays. The floodlights shall not be used or illuminated on Sundays. The period in which the above use can take place will be for no more than 8.5 months of the year, in a scheme to be submitted to and approved in writing by the local planning authority.
 - 4) No other external lighting shall be installed within the site unless first agreed in writing by the local planning authority.
 - 5) The 3 existing 6 metre-high floodlight poles on the site will be removed before the development hereby permitted is brought into use.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in July 2018, after the Council had determined the application. The parties have been able to take any relevant changes into account during the appeal. The Framework was further updated in February 2019, but it was not necessary to revert to the parties for comment as the alterations are minor. I have taken account of the current Framework in my determination of the appeal.
3. For ease and brevity, generally, I shall use the term 'floodlight' in this decision to refer to the whole of each structure, including its composite elements such as columns and lamps.

Main Issues

4. Given the location of the appeal site, the main issues are:
 - whether the proposal would be inappropriate development in the Green Belt (GB), taking into account effects on the openness of the GB and its purposes, with regard to the Framework and relevant development plan policies;
 - the effect on the landscape and scenic beauty of the Chilterns Area of Outstanding Natural Beauty (AONB); and,
 - the effect on the settings of nearby listed buildings and the character and appearance of the adjacent Penn and Tylers Green Conservation Area (CA).

Reasons

Whether inappropriate development in the GB

5. The appeal site comprises the main football ground at Penn and Tylers Green Football Club (the Club). It is located to the rear of a line of houses, several of which are listed, along Elm Road, a main road through the pleasant rural village of Penn. A tennis club and a cricket club are situated to the north. All three sports clubs have use of the Penn & Tylers Green Sports and Social Club building and a car park, which is accessed via a lane from Elm Road. The football club has a second football pitch, just to the south of the main pitch. Open countryside is to the east and the appeal site lies within the GB, the AONB and is adjacent to the CA. It is proposed that 6 retractable floodlights would be sited around the main football pitch.
6. I appreciate that the Council has found that the proposal would not be inappropriate development within the GB. However, given the great importance which the Government attaches to Green Belts and the detailed policies within section 13 of the Framework, it is necessary for me to carefully consider that aspect.
7. The Chiltern District Local Plan (LP)¹ predates the Framework, first published in 2012, and most recently re-published in February 2019. As the Framework sets out the Government's planning policies for England and how these should be applied, it is an important material consideration in all planning decisions.

¹ Adopted 1 September 1997 (including alterations adopted 29 May 2001)
Consolidated September 2007 & November 2011

8. Where existing development plan policies predate the Framework, as in this case, paragraph 213 of the Framework indicates that due weight should be given to policies in the LP according to their degree of consistency with the Framework.
9. Paragraph 145 of the Framework advises that the construction of new buildings, which would include structures, should be regarded as 'inappropriate' within the GB. However, it also provides exceptions to that, including at 145.b): *'the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.'*
10. LP policy GB2 and R6 are similar to the Framework and include exceptions relating to the provision of facilities for outdoor sport. However, policy GB2 refers to 'essential' facilities and policy R6, which deals specifically with floodlights, indicates that it should be demonstrated that they are 'essential' to the use of land for outdoor sport, as well as meeting some other criteria. The requirement in those policies to show that the facilities or floodlights are 'essential' is a more stringent criterion than the requirement in the Framework for the provision of 'appropriate' facilities. Therefore, whilst having broad similarities with the Framework, to that extent policies GB2 and R6 are inconsistent with it. Consequently, I give the LP policies limited weight.
11. Paragraph 133 of the Framework says that the fundamental aim of GB policy is to prevent urban sprawl by keeping land permanently open. Framework paragraph 134 lists the five purposes of the GB, which include *'to assist in safeguarding the countryside from encroachment.'* The proposed floodlights would be used in connection with the existing use of land for outdoor sport. Therefore, the issue is whether they would preserve the openness of the GB and not conflict with its purposes.
12. The concept of 'openness' in the GB has spatial and visual aspects. In spatial terms, the floodlights would not have a substantial footprint, as they are relatively narrow columns and would be spaced out around the football pitch, even allowing for the addition of a control cabinet. Visually, although they extend to around 15 metres in height their main form would be slender and, when retracted, which they would be for most of the time, the floodlight columns would be only about 2.8 metres high. That is lower than the existing 3 x 6 metre floodlights on the northern side of the football pitch and 8 x 8 metre floodlights at the nearby tennis courts.
13. Given those factors, the design of the floodlights and the context of the site, amongst other sporting facilities and behind existing residential housing on the edge of a village, there would not be a detrimental effect on the openness of the GB. Similarly, as they would be sited around an existing football ground, there would be no conflict with the purposes of the GB in terms of, for example, safeguarding the countryside from encroachment or restricting urban sprawl. Indeed, paragraph 141 of the Framework supports the provision of opportunities for outdoor sport and recreation within Green Belts.
14. Floodlights are often used for outdoor sport to enable play in the late afternoons and evenings. Moreover, the appellant has provided persuasive

evidence, including relevant correspondence and documentation,² which explains that the floodlights are needed to meet Football Association (FA) ground requirements to enable two of the Club's senior teams to continue to play at their current level, a Step 6 competition within the FA National League System. That evidence and the nature of the development are sufficient, in my view, to conclude that the floodlights do constitute 'appropriate' facilities for outdoor sport, for the purposes of the Framework.

15. I am aware of the previous appeal decision³ dating from 1997, which allowed floodlights at the adjacent tennis courts. However, as some third parties have alluded to aspects of the Inspector's findings regarding the GB, it is relevant that the methodology and policy for considering that aspect has changed with the advent of the Framework.
16. Overall, I have found that the floodlights would preserve openness and do not conflict with the purposes of including land within the GB. Therefore, the development would not be inappropriate development in the GB, as assessed against the Framework.

The effect on the landscape and scenic beauty of the AONB

17. Policy LSQ1 of the LP appears generally consistent with paragraph 172 of the Framework, which says that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs.
18. The appellant advises that the appeal site is located in a part of the AONB which is characterised by mostly dry valleys separated by ridges and plateau areas. Broadleaved woodland also contributes to the area's character, with the village sitting on a ridge, adjacent to farmland and with views towards woodland. The Council has not taken issue with that description and it appears to be broadly in accordance with what I saw on my site visit.
19. It is also relevant that the football club ground, adjacent to other sporting facilities on the edge of the village, forms part of the landscape of this part of the AONB and, notwithstanding some changes, has been an established feature for over a century. Floodlights would not necessarily be an unexpected or unusual feature at a football ground, seen in the context of a Sports and Social Club, a car park, goalposts, stands and a storage container, even in relation to a small club in a rural village. Indeed, there are already floodlights at the football pitch and the tennis courts.
20. Moreover, the appellant cites examples of other football and tennis clubs in the wider area, which have floodlights and are on the edge of settlements, some of which are within the GB, the AONB or border conservation areas. The Council has not specifically disputed those examples or sought to distinguish them from the appeal proposal. Whilst all proposals and sites have their individual characteristics and some third parties have referred to differences between the appeal site and those other sites, the examples lend support to the general point that the extent of the AONB means that it does encompass some sporting facilities with floodlighting.

² Letter from Chief Executive, UHLSport Hellenic League dated 14 September 2017, inspection report and associated emails between representatives of the Club, Spartan South Midlands League and the FA Group.

³ T/APP/X0415/A/96/267941/P9

21. It seems to me that the key aspects of the proposal are: that the design of the floodlights allows the columns to be lowered to about 2.8 metres and that the floodlights would only be extended and illuminated for limited periods. It is understood that the technology enables them to be fully retracted in less than a minute. Therefore, that should address one of the concerns, expressed by the Parish Council in relation to a previous proposal in 2012,⁴ where the length of time that it would take to lower the floodlights led to doubt about whether that task would be undertaken on a daily basis.
22. The appellant has stated that the use of the floodlights would be limited to football matches on up to two weekday evenings, between 1900 and 2200 hours, and between 1500 and 1800 hours on Saturdays and bank holidays. The appellant has also proposed that the period of use would be further restricted to no more than 8.5 months of the year, reflecting the normal football season, in a scheme to be agreed and approved by the Council. When not in use the floodlights would be fully retracted and unlit. Those aspects could be secured by condition. I see no reason why such a condition could not be enforced.
23. Therefore, their use would be limited essentially to up to 9 hours a week during an 8.5-month period of the year. In practice, the appellants advise that it would be rare that home matches for the first and reserve teams would be scheduled on all 3 days of the same week. Furthermore, floodlighting may be unnecessary for the full periods of some matches during months with longer daylight hours. As a result, it is possible that actual usage may, in fact, be for lesser periods.
24. As the appeal site is behind a row of houses, there would be very limited views of the floodlights in their retracted state from Elm Road or the village green. Whilst they would be visible from the rear of some dwellings, views would be likely to be restricted by hedges and trees along the western boundary of the site, accepting that the effectiveness of screening vegetation would be reduced during the winter months because of loss of foliage. In any event, there are already views from public and private vantage points of existing floodlights at the football pitch and tennis courts which are taller than the proposed floodlights in their retracted state.
25. Views of the retracted floodlights would be obtainable from the surrounding countryside and public rights of way network, but most would be distant, and the floodlights would not appear prominent in their context and against the backdrop of the existing built form of the village.
26. When in use and at night the floodlights would be seen, but although they would be taller, there are already floodlights at the site and the adjacent tennis courts, along with other lighting. Therefore, given that three existing floodlights would be removed, the new floodlights would not, taking into account the limited periods of use, significantly affect the visual landscape.
27. In the appeal decision relating to floodlights at the tennis courts, already referred to, the Inspector considered that *'any impression of the pool of light would be in the wider context of the lighting in the built up area of High Wycombe and the illumination of the club car park and outdoor training area'*.

⁴ CH/2005/2012/FA

That appeal also took account of the absence of street lighting in the village. I take a similar view in relation to the effects of the proposed floodlights.

28. I conclude, therefore, that the development would not harm the landscape and scenic beauty of the AONB. Consequently, it would conserve it. It follows that the proposal would comply with LP policy LSQ1 which advises that development should conserve, and where considered appropriate and practicable, enhance the special landscape character and scenic quality of the AONB. It would not be appropriate or practicable to expect floodlights to enhance the AONB. The proposal would also comply with relevant parts of the Framework.

The effect on the settings of nearby listed buildings and the adjacent CA

29. The Planning (Listed Buildings and Conservation Areas) Act 1990 ss.66(1) and 72(1) require that decision makers have special regard to the desirability of preserving listed buildings and their settings and to preserving or enhancing the character or appearance of conservation areas. The 'setting' comprises the surroundings in which such heritage assets are experienced and can include views to and from the heritage asset.
30. The CA Appraisal⁵ refers to the village green and the mainly original buildings which surround it and formed the old core of the settlement. The large pond and avenue of Elms are described as adding interest to the scene, along with views across open countryside to the east. Several of the attractive, detached and semi-detached houses which are set back from Elm Road, but run alongside it opposite the Green, are grade II listed. Some of the listed buildings and other houses along this part of Elm Road back onto the appeal site which is outside, but immediately adjacent to, the CA. The significance of the CA, therefore, derives broadly from the historic, rural character of Penn. That setting also contributes to the significance of the listed buildings.
31. When retracted, there would be very limited views of the floodlights from Elm Road or the village green. However, when they are extended to some 15 metres and illuminated, there would be visibility from parts of the village green and the road, especially at night. The floodlights along the northern and southern sides of the football pitch would be roughly in alignment with the grade II listed pairs of semi-detached houses at 'The Chestnuts' and 'Collaine', and 'Kenilworth' and 'Japonica', respectively. However, because of the orientation of the pitch, the two lines of three floodlights on each side would be running away from the CA and its listed buildings.
32. The site is also at a lower elevation than the village to the west and the nearest two corner floodlights would be in the region of 40 metres beyond most of the main rear elevations of dwellings on Elm Road. There are also trees on the village green, along the road and between some dwellings with further mature trees to the rear. Therefore, whilst there would be visibility of the floodlights when extended, between or above buildings from the road and the Green, it would be variable and partially dissipated by the above factors. The cowls fitted to the lamps would also help to reduce light intensity when viewed from within the CA.
33. Despite those mitigating factors, and whilst tall trees are a feature of the CA, the floodlights, when extended, with their metallic columns and lamps, rising

⁵ Conservation Area V32 - Penn & Tylers Green – as amended by Chiltern District Council 1992

- above the roofs of dwellings would cause some harm to the semi-rural setting of listed buildings and the character and appearance of the CA.
34. Although the land continues to fall away to the east, the floodlights would also be noticeable, when extended, from the surrounding countryside looking back towards the CA and its listed buildings. That would include some views from the grade II listed Puttenham Place Farmhouse. However, as already described, the floodlights would be seen in the general context of existing sporting facilities on the edge of the village, with residential housing in the backdrop. At night, notwithstanding the absence of street lighting, given the existing floodlights, other lighting at the site and tennis courts and in the conurbations beyond, the effects would be relatively limited. A similar view was taken by the Inspector in the appeal decision relating to the eight floodlights at the tennis courts, previously referred to.
35. As in relation to the other main issues, the key factors, which acknowledge the sensitive location of the site, are the retractable nature of the floodlights and the limited periods of proposed use. The three existing 6m high poles with floodlights currently located on the northern side of the pitch would also be removed.
36. Therefore, taking matters in the round, I conclude that there would be limited harm to the settings of listed buildings and to the character and appearance of the CA, when the floodlights are extended and in use. Consequently, there would be some conflict with policies LB2 and CA2 of the LP which seek to protect the settings of listed buildings and important views within, looking out of, or into a conservation area. However, in the language of the Framework, I consider that the harm would be 'less than substantial'.
37. Paragraph 193 of the Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset, such as a listed building or a conservation area, great weight should be given to the asset's conservation, irrespective of whether the harm amounts to substantial harm, total loss or less than substantial harm.
38. I am also mindful that paragraph 194 of the Framework indicates that any harm to, or loss of, the significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification. Nevertheless, paragraph 196 of the Framework says that: '*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal....*'. That aspect is not reflected in policies LB2 and CA2 of the LP, which predate the Framework. Therefore, they are inconsistent with the Framework to that extent and out-of-date, which limits the weight that can be afforded to the conflict with them.
39. The Club was established in 1905 and is run by volunteers. It has a membership of over 400 and offers sporting opportunities for children and adults in the local community. Indeed, I understand that it provides a range of teams from senior to youth and junior level, including sides for boys and girls. It is also clear that there has been investment in the Club and its facilities over the years, which is said to have been financed by the community and grants from public bodies.

40. I am satisfied that the Club offers an important sporting and recreational community facility, alongside the tennis and cricket clubs and the shared Sports and Social Club. In supporting a prosperous rural economy, the Framework encourages the retention and development of community facilities such as sports venues.⁶ It also acknowledges that sports facilities can enable and support healthy lifestyles and advance the well-being of communities.⁷
41. The Clubs senior teams have played at the current level in the FA National League System for some 34 years. The evidence presented indicates that in order to avoid potential automatic relegation of two of its senior teams, because of a failure to meet the FA's mandatory ground requirements with regard to floodlighting, a temporary arrangement was put in place this season to enable the club to play home games at Amersham Town Football Club. I understand that there are costs associated with that arrangement and the appellant advises that the special dispensation from the FA to allow it was only given pending the outcome of this appeal, which appears to be supported by the surrounding correspondence already referred to.
42. In any event, whilst some third parties have suggested that the ground-share arrangement could continue, if the Club is to remain an important local sporting facility in a rural community, as supported by the Framework, it would be reasonable to expect that its senior teams would be able to play home games within that community, at their home ground. Whilst it is the two senior teams that would be most directly affected, their possible automatic relegation and the inability to play at the current league level would, it is reasonable to think, have a negative impact on the overall standing and continued success of the Club and associated facilities, such as the Sports and Social Club.
43. It is also reasonably likely, in my view, that relegation would harm the Club's ability to attract new players. It could also potentially discourage children and young people from joining and progressing through the junior and youth teams to play at senior level. The ability to do so would help to ensure that the health and well-being benefits associated with regular sporting activity and exercise are sustained into adulthood.
44. Therefore, the proposed floodlights are important to the Club's continued success and role as a sporting, recreational and social facility for this rural community and the surrounding area. I consider that those public benefits are sufficient to outweigh the 'less than substantial' harm that the development would cause to heritage assets, particularly given the limited periods of use sought, which could be secured by condition.

Other Matters

45. In addition to the matters dealt with above, the occupier of 'The Chestnuts', one of the listed buildings along Elm Road, has expressed concern about the proximity of the floodlights to his house and garden, from where I viewed the appeal site. According to the Council, the nearest floodlights would be about 10 metres from the boundary of the nearest house on Elm Road and about 47 metres from the rear elevations of that dwelling, although other residents have suggested that the distance is shorter from some other dwellings.

⁶ Paragraph 83.d)

⁷ Paragraph 91.c) and 96

46. However, what is apparent is that the relevant dwellings along Elm Road are characterised by long back gardens, providing a reasonable separation distance between rear elevations and the football ground. Existing floodlights at the adjacent sporting facilities can already be seen from 'The Chestnuts' and its rear garden. There would be views of some of the new floodlights, even when retracted. Notwithstanding, given existing views, the limited times when the new floodlights would be extended and lit and the separation distances, they would not change the view to an extent that would be significantly overbearing to adjacent residents. I note that the Council reached a similar conclusion and see no reason to take a different view.
47. Other local residents, particularly along Elm Road, have suggested that light spill from the floodlights would lead to sleep disturbance or affect privacy. However, in some cases, the relevant properties do not directly back on to the main football pitch where the floodlights would be sited. Moreover, my understanding is that the 3 existing floodlights (to be removed if the appeal were successful) and some portable floodlights have been used previously.
48. Given the cowls and focussed nature of the proposed lighting, as detailed by the appellant and their lighting engineers,⁸ I am satisfied that it would not have a significant adverse effect on the living conditions of nearby residents. Existing hedges and trees should also mitigate light spill. In addition, it is pertinent that, according to the Council, their Environmental Health Department has no recorded complaints of 'nuisance' at the football club since 2007 and that the proposed illuminance falls within the acceptable guidance limits.
49. Reference has been made by the Council and others to a 'local policy' of disallowing street lighting within the village, although there is no reference to a development plan policy to that effect. In any event, whilst that may be common practice in this and other villages, the proposal is limited to the provision of floodlights to facilitate sporting activities during some late afternoons and evenings.
50. Moreover, as already discussed, there are existing floodlights and other lighting at the football and tennis clubs, with the tennis club floodlights approved at a previous appeal, where the absence of street lighting was also considered. Although all cases must be judged on their individual merits, floodlights at other villages in sensitive rural locations have been referred to in evidence.⁹ Therefore, the absence of street lighting in the area and the effects of floodlights on the night skies do not lead me to alter my decision.
51. The Council refers to the level of local opposition to the proposal in the context of paragraph 172 of the Framework which says that planning permission should be refused for 'major development' in designated areas, such as AONBs, other than in exceptional circumstances and where it can be shown that the development is in the public interest.
52. The Council submits that because of the level of objection, the development would not be in the 'local public interest'. However, given that the development relates to 6 retractable floodlights, which would be in use for limited periods, in terms of nature, scale and setting, I have already found no

⁸ Abacus Lighting Ltd

⁹ Prestwood and District Sports Centre and Great Missenden Tennis Club

significant effect on the AONB. Therefore, the proposal is not 'major development' for the purposes of paragraph 172 of the Framework.¹⁰ In any case, whilst there is strong opposition to the proposal from some local residents and groups, there is also support from other members of the local community and in the wider area.

53. I have also considered alleged effects relating to parking, traffic and highway safety. Most of the houses that I saw along Elm Road appeared to have private off-road parking, but some residents have said that they have difficulty accessing their properties on match days due to inconsiderate street parking. Shouting from the pitch during matches is also referred to and it is suggested that spectators returning to their parked cars on Elm Road cause late night noise. However, the Council has not indicated that their Environmental Health Department has received complaints over recent years regarding noise and the relevant highway authority has not objected to the proposal.
54. Whilst many residents have referred to problems caused by on-street parking along Elm Road during games, there is no compelling evidence to indicate that the proposed floodlights would lead to a significant intensification of use of the ground or generate extra traffic. Rather, they are intended to enable the club's senior teams to continue to play at the ground at their current league level.
55. A submission on behalf of a group of Elm Road residents suggests, amongst other things, that the Club should have sought to negotiate further with the FA regarding compliance with their requirements. However, I have already found that sufficient evidence has been submitted regarding those requirements, as referred to in footnote 2 above, and that special dispensation was negotiated to enable the club to play its senior games elsewhere this season, pending the outcome of this appeal.
56. The planning history of the site is referred to in various submissions along with the fact that some applications appear to have been retrospective. However, there is no bar in law on successive planning applications. Although retrospective applications are not ideal, the law allows applicants to seek to regularise development which has taken place without planning consent, which may have occurred for a variety of reasons. Therefore, no adverse inference should be drawn based on those aspects in assessing the current proposal, which is not retrospective.
57. The absence of an Ecological report is referred to, but the Council has not expressed concern regarding effects on biodiversity and protected species. Given that the appeal site is already in use as a football ground with existing floodlighting, based on the evidence before me, I see no reason to take a different view from the Council on that issue. Submissions that the Council has not taken effective enforcement action in relation to previous alleged breaches of planning control or conditions should be pursued with the Council, if appropriate.
58. It is acknowledged that the proposal has generated a considerable degree of local interest and some controversy. It is also apparent that there are strong and sincerely held views on both sides of the debate. I have carefully considered the objections of various groups and individuals, including Penn & Tylers Green Residents Society, the Campaign for the Protection of Rural

¹⁰ See Footnote 55 to paragraph 172 on p.50 of the Framework.

England (Buckinghamshire Branch), the Chilterns Conservation Board (CCB), the Chilterns Society and the Parish Council. However, whilst I appreciate that my decision will be disappointing to a significant number of groups and individuals in the community, the various matters raised have either been dealt with in the main issues above or are not of sufficient weight to lead me to alter my decision.

Conditions

59. The Council has suggested conditions which I have considered, making amendments, if necessary, to ensure compliance with the tests contained in the Framework¹¹ and the Planning Practice Guidance (PPG). A condition setting a time limit for commencement of the development is required by statute. It is appropriate for there to be a condition requiring the development to be carried out in accordance with the approved plans for certainty.
60. It is necessary for there to be a condition restricting the hours and periods of use of the floodlights in order to protect the GB, the AONB, heritage assets and the living conditions of nearby residents. The condition imposed is more restrictive than the Council's suggested condition and in line with a condition suggested by the appellant, in recognition of the sensitive location. It is appropriate for there to be a condition restricting the installation of any other external lighting for similar reasons. I have also included a condition to ensure that the 3 existing floodlight poles are removed, as the proposal was made on that basis and it would also help to safeguard the GB, the AONB and heritage assets.
61. I have considered examples of conditions applied to other developments in AONBs, provided by the CCB. However, they are either covered by the above conditions or do not meet the tests of necessity or reasonableness, referred to within the Framework and the PPG, when applied to the circumstances of this case.

Conclusion

62. To sum up, I have found that the proposal would not harm the GB or the AONB. Less than substantial harm to the settings of listed buildings and the CA was identified leading to some conflict with policies LB2 and CA2 of the LP. However, that less than substantial harm is outweighed, applying the provisions of the Framework, by the public benefits of the proposal.
63. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

JP Tudor

INSPECTOR

¹¹ Paragraph 55



Appeal Decision

Site visit made on 19 February 2019

by **Stephen Brown MA(Cantab) DipArch RIBA**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 03 April 2019

Appeal Ref: APP/X0415/X/18/3202524

Lands Farm, Barrack Hill, Coleshill, Amersham HP7 0LN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is by John Peiser against the decision of Chiltern District Council.
 - The application ref. CH/2017/2068/EU, dated 7 November 2017, was refused by notice dated 26 March 2018.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful is sought is the use of land as a residential garden in conjunction with the dwelling at Lands Farm.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. For the avoidance of doubt, I should explain that the planning merits of the existing development are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Background

3. Lands Farm is a substantial dwelling accessed from a private lane off the north-western side of Barrack Hill, the principal street through Coleshill. The piece for which the LDC is sought is an area of mainly grassed land to the north-east of Lands Farm, separated from it by the lane – which is also a public right of way – leading to the fields beyond. The land has a dense, mainly evergreen, hedge along its south-western boundary, and a brick wall with two gate openings on the north-western boundary. Beyond that wall is a yard with stable buildings. The other two boundaries have fencing, trees, and hedges where the appeal site adjoins residential plots and the site of the village hall.

Reasons

4. The main issue for me to determine is whether the Council's decision to refuse the grant of a LDC was well-founded. In that regard the principal question is whether the use of the land as a residential garden in conjunction with the

dwelling at Lands Farm has subsisted continuously for a period of 10 or more years prior to the date of the LDC application. In a case of this sort the burden of proof is upon the appellant to show that on the balance of probabilities this is the case.

5. The appellant bought Lands Farm in July 2005. In his statutory declaration submitted with the application, he maintains he and his family have used the land as part of their garden since first occupation. This use had included domestic horticulture, planting and tending garden plants and trees, as well as *ad hoc* activities associated with the house. The summer house on the land had been there when the property was bought – and was shown in the estate agent’s sales brochure in 2002. Furthermore, the village fête was held there in June 2006.
6. In a further document submitted by the appellant, he explains that since buying the property the family have used the whole of the land, including the appeal site, and other land around the house for recreation, including cricket with children and grandchildren. Over the years he had grown vegetables and soft fruit, and had cut the grass.
7. The site itself is roughly rectangular, about 75 metres long by 37 metres wide. It is predominantly grassed, except for a semi-circular area defined by the evergreen hedge on the south-western boundary which has an area of gravel hardstanding and a formal bed with birch trees. This latter area is effectively a vehicle turning area off the access lane. There is a summer-house near the north-eastern site boundary, and I also saw a cast-iron seat and a swing-seat. There are a few small trees and shrubs disposed around the site, but otherwise little evidence of cultivation.
8. The garden immediately around the Farmhouse is well contained with high walls and hedging on the boundaries adjacent to the access lane, to the extent that it is not readily visible. The lane itself and the high conifer hedge of the appeal site further separate it from the garden around the Farmhouse.
9. I accept that the grass of the appeal site has been mown, and looking at aerial photographs from before the year 2000 onwards this appears to have been the case throughout. However, mowing of land could well be for other purposes – as a sports pitch for instance, or merely to maintain a tidy appearance – and in itself does not demonstrate use as garden land associated with the house.
10. Moreover, none of the aerial photographs put in by either the appellant or the Council show any particular evidence of horticultural activity or any significant change in the physical appearance of the land, which appears as uniformly grassed. Although I saw that a few trees or shrubs had been planted, it might be expected from what is said by the appellant that vegetable or other cultivation would be apparent, since this is purported to have been continuous since even before the site was owned by Mr Peiser. The evidence is by no means specific as to where such cultivation has taken place, or its extent.
11. Although the appellant refers to holding large annual parties since 2006, he is again by no means specific as to where these have actually been held. Given that the relatively large garden in the immediate vicinity of the house could readily have been used for that purpose, more precise details might be expected.

12. I also accept that a summer-house has been on the land, shown at the earliest on the estate agent's sales brochure of 2002. However, its presence does not necessarily mean it has been used for any particular purpose, or that it has been in continuous use, and none is described.
13. Regarding other activity, there is little to show any continuous or extensive recreational use. One photograph put in by the Council, taken at their site visit in December 2017, shows a portable football goal. This was not there when I saw the site, and the only indications of any leisure use were the two seats.
14. As the appellant acknowledges, in relation to LDC applications for existing uses the government's Planning Practice Guidance advises that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability¹.
15. I accept the Council do not provide contradictory evidence of substance. However, given the long period over which it is claimed the use has occurred I find it surprising there are, for instance, virtually no photographs from the appellant other than Google aerial images and those from an estate agent's brochure. It might reasonably be expected there would be family photographs of recreational events, parties, or the village fête. Furthermore, there is very limited physical evidence of any changes to the land resulting from the claimed horticultural activities. Nor is there any significant evidence of the sort of domestic paraphernalia that might be expected to accrete over time – such as play equipment, a barbecue, garden shed, or greenhouse. Overall, I find the appellant's evidence to be remarkably thin, providing little precision about the nature of the activities or their continuity, and considerable ambiguity as to the actual location of the activities he refers to.
16. I do not find the appellant's evidence sufficiently precise or unambiguous to demonstrate, on the balance of probabilities, that the use has subsisted continuously for 10 or more years prior to 7 November 2017.

Conclusions

17. For the reasons given above, and regarding all other matters raised, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of land as a residential garden in conjunction with the dwelling at Lands Farm, Barrack Hill, Coleshill, Amersham HP7 0LN was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Stephen Brown

INSPECTOR

¹ Planning Practice Guidance – 'Lawful Development Certificates' Paragraph 006 Reference ID: 17c-006-20140306.



Appeal Decision

Site visit made on 26 February 2019

by **P Wookey BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 April 2019

Appeal Ref: APP/X0415/W/18/3217126

Newbury House, 2 Knottocks Drive, Knotty Green HP9 2AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr V Hanspal against the decision of Chiltern District Council.
 - The application Ref CH/2018/0480/FA, dated 14 March 2018, was refused by notice dated 23 November 2018.
 - The development proposed is described as the demolition of existing dwelling and erection of a detached 2.5 storey residential building comprising 9 flats, with accommodation in the roof space, basement with vehicular access ramp, the erection of a bin store, and associated landscaping.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the appeal was lodged the National Planning Policy Framework (the Framework) has been revised. The new version was published and came into effect on 19 February 2019. In light of this, I have sought the views of both parties in writing and taken any subsequent responses into account in reaching my decision.

Main Issue

3. The main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

4. The appeal site, No 2 Knottocks Drive, is a prominent, spacious corner plot with Penn Road, which is occupied by an existing detached dwelling. Access to the appeal would be from Knottocks Drive, which is characterised by large detached dwellings with open frontages and as the road progresses further into the estate, the dwellings have a more uniform vernacular, characterised by steep roofs and Anglo-Scandinavian design elements. The appeal site has a green, verdant character.
5. This contrasts with Penn Road, which is a busy arterial road leading to Beaconsfield and is characterised by large detached dwellings and more recent apartment blocks on large plots, set back from the main road frontage. The appeal site is adjacent to the Established Residential Area of Special Character.

6. The development proposed would demolish the existing property and construct a detached 2.5 storey building, containing 9 flats. Parking would be in a basement facility, accessed via a ramp. Most of the existing mature trees around the boundaries would be retained.
7. From Penn Road the visibility of the appeal site would be largely obscured by the retained mature trees along the boundary and therefore the visual effect of the development proposed would be significantly less from this perspective. Whilst the appellant contests that the appeal site is not characteristic of other properties along Knottocks Drive, it is from this perspective, by reason of its scale, design and bulky appearance that the new building would have the greatest visual impact. It would be markedly different to the prevailing pattern of development and in this context it would appear as incongruous and a harmful addition to the streetscene along Knottocks Drive.
8. The design of the new building aims to represent two detached dwellings, connected by a flat roofed, glazed link section in the middle connecting the two wings of the building. Accommodation would be incorporated in the roofspace and the resulting visual effect would be a building of scale and design significantly larger and uncharacteristic to the other dwellings along Knottocks Drive. The glazed mid-section would not be a characteristic architectural feature of this predominantly residential area, and therefore it would be visually intrusive and have an unbalancing effect on the established pattern of development.
9. The appellant has referred to recent apartment developments in the vicinity, mainly on Penn Road, which I observed during my site visit. These were generally set back slightly from the road frontage and are visually prominent, which did not make them directly comparable to the development proposed, which would be partially screened by the trees along its boundary and set in a significantly different pattern of surrounding residential development.
10. Further, whilst the new building has reasonable separation distances from the site boundaries, by reason of its sheer scale and bulky appearance, it would nevertheless appear to be a cramped form of development and not typical of the prevailing pattern of spacious development on other parts of Knottocks Drive.
11. I therefore conclude, that the development proposed would be contrary to policies GC1 and H3 of the Chiltern District Local Plan (1997) (including alterations adopted 2001) Consolidated 2007 and 2011 (LP) and policy CS20 of the Core Strategy for Chiltern District (2011) (CS), which seek amongst other things to ensure development respects the character and appearance of its surroundings and achieves high standards of design.

Other Matters

12. The appellant has made reference to the planning history of the appeal site, but on the basis of the evidence submitted, these schemes were significantly different in scale and design. Therefore, they have not altered my decision, which has to be based on the merits of the appeal proposal and the evidence submitted.

13. Whilst the appellant has referred to issues during the council's decision-making process, these are not matters to be considered in a Section 78 appeal.
14. I note that the appellant has stated that the appeal site is in a sustainable location and that the development proposed would be an effective and efficient re-use of the land. However, this factor alone would not outweigh the harmful effects identified with regards the main issue and its failure to comply with the development plan policies

Conclusions

15. For the reasons given above, the appeal is dismissed.

Paul Wookey

INSPECTOR

Appeal Decision

Site visit made on 26 February 2019

by P Wookey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th March 2019

Appeal Ref: APP/X0415/W/18/3216486

Whitethorns Farm, Ashley Green Road, Chesham, Buckinghamshire

HP5 3PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Stanley against the decision of Chiltern District Council.
 - The application Ref CH/2018/0679/FA, dated 12 April 2018, was refused by notice dated 2 November 2018.
 - The development proposed is described as Agricultural building (Unit 2) part retrospective involving alterations and retention of part of building the subject of enforcement notice 2015/00016/AB/EN1.
-

Decision

1. The appeal is dismissed.

Procedural matter

2. From my site visit I noted that Unit 2 has already been constructed.

Main Issues

— The site falls within an area of Green Belt. Accordingly, the main issues in this case are: a) Whether the proposal is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework and development plan policy; and b) the effect of the development on character and appearance of the area.

Reasons

Inappropriate development

4.3. The National Planning Policy Framework (the Framework) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings should be regarded as inappropriate in the green Belt, subject to a number of exceptions as set out in paragraph 145. One of the exceptions is a building for agricultural use.

5.4. The saved policies GB2 and GB27 Chiltern District Local Plan (1997, Consolidated September 2007 and November 2011) (LP) states that most development in the Green Belt is inappropriate with certain exceptions, including agricultural buildings providing the proposed building is reasonably

required for the functioning of the agricultural enterprise. Therefore, both of these policies are consistent with the Framework.

~~6.5.~~ Unit 2 forms part of three agricultural units, forming an 'L' shape, with Units 1 and 2 being linked and the detached Unit 3 located a short distance across the yard. During my site visit I observed that Unit 1 was being used for cattle and Unit 2 for hay storage. Structural alterations were being made to Unit 3 and therefore was not in use. Elsewhere on the farm yard there are a number of older agricultural buildings, some of which were in relatively poor condition.

~~7.6.~~ The Council's agricultural consultant had concerns that by reason of the siting outside of the established farm yard, the applicant had not demonstrated that the building is reasonably required for the functioning of the agricultural enterprise and that's its use would not be an identified need for the building in its first instance. However, based on the use as shown in the application and on my own observations, Unit 2 was being used for agricultural purposes. I have therefore concluded that it meets the exception set out in paragraph 145 of the Framework and as an agricultural building it is not inappropriate development within the Green Belt and the appeal has been determined on that basis.

Character and Appearance

~~8.7.~~ Unit 2 forms part of a group of buildings at Whitethorns Farm which is located on the brow of Nashleigh Hill and is highly visible from the roads approaching Ashley Green and from Chesham within the Chess Valley. It sits within the Green Belt and within the Chilterns Area of Outstanding Natural Beauty (AONB), to which the Framework attaches great weight in order to conserve its landscape and scenic beauty

~~9.8.~~ Unit 2 is an existing building attached to Unit 1, adjacent to the detached Unit 3, which together form an 'L' shaped layout. It is the same height as Unit 1 and both are constructed of the same materials of green coloured cladding to the front and side elevations and grey fibre cement roofing material. Unit 2 has a footprint of approximately 283m² and a height of approximately 6.7m.

~~10.9.~~ It has a box like design, which when combined with its height and strident colours results in it having an adverse visual impact on the skyline and with its rural surroundings. The appellant has proposed no changes to the design or use of materials but has proposed tree planting to provide a screening effect. Given that Unit 2 is in such a prominent location, highly visible from a wide area, I am not persuaded that the planting of trees would achieve the necessary screening effect and therefore it would continue to have a significant adverse impact on the appearance of the surrounding area.

~~11.10.~~ I have therefore concluded that as Unit 2 is not inappropriate development it complies with policy GB2, but due to its significant adverse visual impact on the surrounding character and appearance it would be contrary to policies, GB27 and LSQ1 of the LP and CS19, CS4, CS20 and CS22 of the Core Strategy for Chiltern District (2011) (CS) and the Framework, which when read together seek to preserve or enhance the special landscape character of the AONB and the Green Belt and where development is permitted it should be of the highest quality design and sustainable form of development.

Other Matters

~~12.11.~~ The appellant asserts that Unit 2 is resonant of the appearance of other agricultural buildings, but also acknowledges that Whitethorns Farm is in a unique location on the brow of the hill, when most other farmsteads nearby are in the bottom of valleys, suggesting that it is supported by guidance in the AONB Chiltern Buildings Design Guide. In this case, it is its very appearance and its resulting significant adverse visual impact that makes it harmful in this location.

~~13.12.~~ Whilst the appellant has stated that Unit 2 is required to justify the economic need for Unit 2, I have attached little weight to this when making my decision, as it would not outweigh the harm to character and appearance identified.

~~14.13.~~ I have also noted the appellants reference to case law¹, but as I concluded that Unit 2 is not inappropriate development within the Green Belt the impact on openness is implicitly taken into account in the exceptions to development stated in paragraph 145 of the Framework and therefore is not a determinative factor in this case and has not been assessed further.

~~15.14.~~ I have had regard to the fall-back options put forward by the appellant, including the use of trailers, sheeting and fencing to provide protection for the storage of hay. However, these options would result in significant visual harm and impact on the farm's red tractor status and produce high levels of wastage. On the limited information submitted I have therefore attached only limited weight to the fall-back options presented as there is no certainty they would be implemented for the reasons set out above.

~~16.15.~~ Whilst I note the Council's officer's report makes reference to an agreement in writing by the applicant to demolish a substantial part of Unit 2, which would open up the space between Units 1 and 3, no copy of that agreement has been submitted as evidence and therefore it has had no significant bearing on my decision. I note the appellants reference to matters relating to the delay in the decision-making process, which are not matters for consideration in a Section 78 appeal.

~~17.16.~~ I have been made aware that the development has been subject to a previous appeal. I am not bound by the previous Inspectors decision and have based my decision on the planning merits of the application and on the evidence submitted.

Conclusions

~~18.17.~~ While the scheme is not inappropriate development in Green Belt policy terms, I have identified significant harm to the character and appearance of the area, contrary to the development plan and there are no material considerations of sufficient weight to indicate a decision otherwise than in accordance with the development plan. For the reasons given, the appeal is dismissed.

Paul Wookey

INSPECTOR

¹ Lee Valley Regional Park Authority v Valley Grown Nurseries Ltd (2016)



Appeal Decision

Site visit made on 13 March 2019

by JP Tudor Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 18 April 2019

Appeal Ref: APP/X0415/W/18/3214700

Sunnyside, London Road, Chalfont St Giles, Buckinghamshire HP8 4NN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr M Durston against the decision of Chiltern District Council.
 - The application Ref PL/18/2180/FA, dated 7 June 2018, was refused by notice dated 18 October 2018.
 - The development proposed is demolition of existing garage, erection of two-storey side extension to form one flat and erection of a detached rear building to form one flat with associated garage and hard landscaping.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. I have taken the description of development in the banner heading above from the Council's decision notice and the appeal form, rather than from the planning application form, as the proposal was amended before the Council reached its decision.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the living conditions of occupiers of a neighbouring bungalow, known as Bon Accord, with particular regard to outlook;
 - the living conditions of future and existing occupiers, with particular regard to privacy, noise and disturbance and outlook; and,
 - the character and appearance of the area.

Reasons

Living conditions of neighbouring occupiers

4. The appeal site comprises a two-storey detached dwelling, which sits in a prominent, elevated position on the east side of London Road, near a roundabout. It is divided into flats. To the rear is a courtyard and an unprepossessing garage/workshop structure. It is here that the new detached building, with a garage area on the ground floor and residential accommodation above, would be built into the bank, as the land rises.

5. The new building would stand adjacent to the patio and garden of a neighbouring bungalow, known as Bon Accord, which lies immediately to the south. The design was amended during the application process to increase the set-in from the shared boundary to between 5 and 6 metres. Nevertheless, the building would still form a substantial structure, with its gable end and pitched roof rising some 7.8 metres to the ridge, above the boundary fence and existing vegetation. It would be significantly higher than the existing single storey garage/workshop structure and project beyond the rear elevation of the adjacent bungalow.
6. I had the benefit of viewing the appeal site from Bon Accord during the course of my site visit. Views would be oblique from the rear windows of that dwelling. However, the overall height, bulk, design and proximity of the new detached building would have an overbearing and visually intrusive effect, seen from the rear patio and rising garden of that modest neighbouring bungalow. Therefore, I conclude that the proposed rear building would have a significant adverse effect on the living conditions of occupiers of that neighbouring property, with particular regard to outlook.
7. Consequently, that element of the proposal would conflict with policies GC3 and H14 of the Chiltern District Local Plan (LP)¹, which seek to ensure that development protects the living conditions of occupants of neighbouring properties from significant harm. Although the LP is of some age, the policies relevant to this appeal appear to be broadly consistent with the National Planning Policy Framework (the Framework).² The scheme would also conflict with paragraph 127 f) of the Framework, which seeks to ensure a high standard of amenity for existing users.

Living conditions of future and existing occupiers

8. The new detached building would be across the courtyard to the rear of the main house and its proposed side extension. According to the Council, there would be a distance of only about 8.5 metres between the buildings, although the appellant suggests that it would be slightly more.
9. Based on the submitted plans, the one bedroom first floor flat, within the rear detached building, would have two windows facing directly towards the courtyard, main house and side extension, one of which would serve a living room and the other a landing. A first floor bedroom window in the flat in the new side extension would face towards it. There are also several dormer, first floor and ground floor windows within the rear elevation of the main house opposite the proposed detached building.
10. It seems to me that, given the relatively limited separation distance and the orientation of the buildings, the relationship would inevitably result in overlooking and the perception of being overlooked. Consequently, there would be a harmful effect on the privacy of occupiers of the new detached building, the proposed side extension and existing flats within the main house.
11. Much of the ground floor of the rear detached building would be taken up by a sizeable garage, with three doors, whilst a further parking space would be located in the courtyard. They would be accessed from the main drive via an

¹ Adopted 1 September 1997 (including alterations adopted 29 May 2001), Consolidated September 2007 & November 2011

² Published February 2019

opening beneath the proposed side extension. Given the relatively constricted space within the courtyard, it is likely that there would be a good deal of manoeuvring of vehicles in this area. The constraints of the site mean that would be close to ground floor windows of the main house and to other new and existing residential units above.

12. The parking arrangements would, therefore, be likely to cause significant noise and disturbance to occupiers of the existing house and the proposed new units. An Inspector who dealt with a previous appeal at the site³ took a similar view and considered that it would be difficult to effectively control the hours and frequency of such movements. Whilst there are differences between that scheme and the current proposal, I still have serious concerns regarding the parking elements and the likely resulting noise and disturbance within a confined courtyard from, for example, engines starting, vehicles manoeuvring, headlights at night and car doors slamming.
13. It is appreciated that the design seeks to satisfy the Council's parking space requirements, relative to the number of residential units. However, taking into account the constraints of the site, the number of units and the likely level of parking in the garage and courtyard area, the noise and disturbance connected with vehicle movements would cause harm to the living conditions of residents. Given the cumulative total of individual residential units at the site, with associated parking, which would result from the development, I do not agree with the appellant that the situation or negative effects would be equivalent to two properties sharing one or two parking spaces.
14. The Council's decision notice and appeal statement also refers to a poor or negative outlook for future occupiers of the rear building. However, although some windows of the new first floor flat would face towards the higher main house, the submitted plans indicate that French windows serving a living room, and kitchen and bedroom windows would face out onto a rear garden area. Therefore, whilst one living room window would face towards the house a short distance away, on balance, I do not consider that future occupiers would suffer from significantly poor outlook.
15. The above factors lead me to conclude that, whilst outlook would be acceptable, the proposed development would provide poor living conditions for future and existing occupiers, with regard to privacy and noise and disturbance. Therefore, the proposal would be contrary to LP policy GC3 and the Framework⁴, which seek to safeguard living conditions for existing and future occupiers from significant harm.

Character and appearance

16. Although the Council does not express concern about the side extension, it holds that the rear detached building would exacerbate the cramped nature of development on the site and have an adverse effect on the character and appearance of the area. However, given the sizeable nature of the existing two storey house, with the proposed side extension providing further screening, there would be very limited views from London Road of the development to the rear, which I understand has been reduced in scale compared with previous schemes.

³ APP/X0415/A/12/2186975

⁴ Paragraph 127. f)

17. Whilst it would be seen by occupiers of the existing main house and some neighbours, there is already built form to the rear in the shape of a somewhat unappealing garage/workshop structure with its corrugated roof. In that context, although an extra storey would be added, I do not see that the proposed design would have a materially adverse effect on the character and appearance of the area. Therefore, it would not conflict with LP policies GC1, H3 and H11 or policy CS20 of the Core Strategy for Chiltern District⁵, insofar as they seek to ensure that development and design respect the character and distinctiveness of the relevant area.

Other Matters

18. The appellant's 'Planning Support & Design & Access Statement' and the previous appeal decision, already referred to, indicate that the former Pheasant Inn, opposite the appeal site, is a grade II listed building. The Council has not referred to heritage assets and, as it is on the other side of a reasonably wide road, I do not consider that the proposal would have a detrimental effect on the setting of that listed building.

Conclusions

19. The Council has not objected to the proposed side extension. Whilst I have considered the possibility of issuing a split decision, in functional terms, there would appear little purpose in allowing a side extension dominated by a vehicular underpass to access the rear of the site, without the other part of the scheme to the rear being approved. Moreover, the appellant has not signalled any interest in such a possibility.
20. Overall, I have not found harm in respect of outlook for future occupiers of the site or to the character and appearance of the area. However, harm has been identified to the living conditions of neighbouring occupiers at Bon Accord, with regard to outlook. Additionally, I have found that there would be adverse effects on the living conditions of future and existing occupiers of the appeal site, in relation to privacy and noise and disturbance. These harmful effects are significant compared with any limited benefits associated with the proposal, such as the provision of some additional residential accommodation and the use of previously developed land, supported by the Framework.
21. Even if there were no 5-year housing land supply, the adverse impacts of granting permission would significantly and demonstrably outweigh the limited benefits of the proposal, when assessed against the policies in the Framework, taken as a whole. The most relevant Framework policies have already been referred to.
22. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR

⁵ Adopted November 2011



Appeal Decision

Site visit made on 12 March 2019

by Rachael A Bust BSc (Hons) MA MSc LL.M MInstLM MCMi MEnvSci MRTPI
an Inspector appointed by the Secretary of State

Decision date: 02 April 2019

Appeal Ref: APP/X0415/W/18/3212793

Land south of substation, Lycrome Road, Lye Green HP5 3LD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Harmony Energy Storage Ltd against the decision of Chiltern District Council.
 - The application Ref PL/18/2421/FA, dated 21 June 2018, was refused by notice dated 24 August 2018.
 - The development proposed is energy storage facility to provide energy balancing services to the National Grid.
-

Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. An updated revised National Planning Policy Framework (the Framework) was published on 19 February 2019. I have had regard to the updated revised Framework. However, as the amendments are not directly relevant to this appeal proposal, I have not re-consulted the main parties.

Main Issues

3. The main parties have agreed that the appeal proposal would constitute inappropriate development in the Green Belt. Having regard to Saved Policy GB2 of the Chiltern District Local Plan¹ (LP) and the Framework I see no reason to disagree with the main parties on this point. Accordingly, the main issues are:
 - The effect of the proposal on the openness of the Green Belt;
 - The effect of the proposal on the character and appearance of the surrounding area; and
 - Whether the harm to the Green Belt by way of inappropriateness and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

¹ The Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011

Reasons

Openness

4. The parties agree that the proposal constitutes inappropriate development in the Green Belt. Paragraph 133 of the Framework states 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. In considering openness an assessment of both a spatial and a visual aspect is needed.
5. The appeal site is part of an undeveloped grassed field and is currently used for grazing horses. From Lycrome Road this area provides a sense of openness which flows through the dispersed settlement pattern of Lye Green.
6. The proposed development comprises 38 banks of battery energy storage units together with associated supporting infrastructure. The battery containers themselves would be a stated 2.2m high and the tallest element of the scheme would be the 33kV metering house which would be a stated 4.045m high. Notwithstanding this represents a reduction in the bulk and scale from the previous scheme² on a nearby site. However, it would still introduce substantial built development where there is currently none and this is a fact that is recognised by the appellants.
7. It would be seen in a variety of public viewpoints. The predominant viewpoint would be from the public right of way (CHS/66/1) which aligns with the proposed access road for the site, heading north-west. This right of way also provides longer range views through the appeal site and beyond to the north-east. These longer views have been somewhat eroded with the introduction of the existing electricity sub-station. Consequently, the appeal development, together with the proposed landscaping (which I note would take approximately 15 years to mature according to the appellants Landscape and Visual Appraisal), would diminish these long-range views still further.
8. Therefore, I find that the spatial and visual presence of the proposed development would harm the openness of the Green Belt.

Character and appearance

9. The appeal site set within a larger field does have a degree of enclosure; however, the undeveloped nature and rural use of field does make a positive contribution to the rural character and appearance of Lye Green. As such the introduction of further industrial style utilitarian development would represent an erosion of the positive contribution that the site as part of the wider field makes to the rural character and appearance of the dispersed settlement pattern of Lye Green. I find therefore that it would harm the character and appearance of the surrounding area and conflict with Saved Policies GC1 and GB30 of the LP which both aim to ensure development respects its surroundings.

² Appeal decision APP/X0415/W/17/3174634

Other considerations and the Green Belt balance

10. Given that it is not disputed that the appeal proposal constitutes inappropriate development in the Green Belt, paragraph 143 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt. Consequently, very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. I now turn to these other considerations.
11. It is recognised that as part of the transition to a low carbon economy National Grid needs to balance the supply and demand for electricity. As such battery storage represents one solution to the balancing process. The batteries would be charged solely from the intermittent renewable energy sources (predominantly wind and solar energy) during low network demand and then released into the National Grid when required to balance electricity demand and ensure a constant supply of power. Whilst I recognise National Grid's approach to the planning system, I do note that they are agnostic about the proposed technology.
12. I acknowledge that for battery storage projects to be developed their connection to the Grid has to be both financially and technically viable. The appellants contend that because the appeal site is within close proximity of a strategic substation with available capacity it is therefore both financially and technically viable. I recognise that the majority of the search area surrounding this particular substation is within the Green Belt.
13. The relevant distribution company covers a wide area including London, the South East and East of England. Given the appellants' focus on the chosen substation at Lye Green, I have insufficient evidence presented to me which would help me to understand whether this is the only strategic substation with available capacity in the overall geographical area covered by the distribution company. I note the response from the distribution company indicates that there are very few substations within their network with available capacity. However, I am not satisfied that this represents substantive evidence relating to this point.
14. Even if I were to accept that this substation is the only one with available capacity within the whole of the distribution company's area, there is no detailed evidence before me that demonstrates what other options have been explored to justify the very special circumstances that would enable the development to be permitted in this particular Green Belt location. For example, siting the battery storage within the confines of the existing strategic substation compound. Given that this appeal proposal also involves a different scale of proposal and incorporates different batteries to those proposed in the previous scheme, it would suggest that there is some flexibility in the choice of technology and therefore the scale of the development.
15. I note that the appellants indicate that the previous Inspector accepted the locational constraints and there were no other suitable sites. Be that as it may, I must determine this appeal on the evidence presented to me and as such I do not have the benefit of seeing the evidence that was before the other Inspector.

16. It is acknowledged that the appellants have sought to respond to concerns of both the Council and the Inspector in relation to the previous scheme. Paragraph 3.22 of the Planning Statement indicates that the scheme would have an energy storage capacity of 25 megawatts. However, this figure is not set in a context in order to demonstrate what contribution this storage facility would make to the Grid as a whole. This type of energy storage would make a positive contribution to the process of decarbonising the energy supply and as such it carries moderate weight.
17. The appellants have made reference to the potential removal of land from the Green Belt³. However, any changes to the Green Belt boundaries are a strategic matter to be determined through the Local Plan process and not an individual planning application or appeal. In addition to comments regarding the Green Belt as covered above, interested parties have also raised concerns regarding the implications of the proposed development for human health and noise. I have no substantive evidence before me regarding the health point. A Noise Impact Assessment was submitted with the application. Whilst I recognise concerns about noise measurements at night, the Council's Environmental Health Officer did not share these concerns and indicated that the proposed acoustic fence should be subject to a planning condition if planning permission were acceptable in all other respects. I have no alternative evidence to persuade me otherwise and therefore I agree with the Council in relation to noise.
18. Paragraph 147 of the Framework indicates the wider environmental benefits may constitute very special circumstances to facilitate renewable energy projects. The ability to store energy generated from renewable sources could assist in the production of more energy from renewable sources. However, there is no proven direct link demonstrated that would be the case in this scheme.

Conclusion

19. Taking into account all of the points raised, including the landowners' support, I find that the other considerations in this case do not clearly outweigh the harm I have identified. Consequently, the very circumstances necessary to justify the appeal proposal do not exist. The adverse impacts of the proposal significantly and demonstrably outweigh the benefits when assessed against the development plan and the Framework taken as a whole.
20. For the reasons set out above, having regard to all matters raised, the appeal should be dismissed.

Rachael A Bust

INSPECTOR

³ Chiltern and South Bucks District Councils Emerging Local Plan - Green Belt Development Options Appraisal, published November 2017



Appeal Decision

Site visit made on 28 March 2019

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 9th April 2019

Appeal Ref: APP/X0415/D/19/3222119 40 Copperkins Lane, Amersham HP6 5QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs S. Saywell against the decision of Chiltern District Council.
 - The application Ref: PL/18/3422/FA dated 17 September 2018, was refused by notice dated 16 November 2018.
 - The development proposed is car port.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the proposal on the appearance and character of the local area.

Reasons

3. The appeal property is a recently built, detached dwelling on a good sized plot on the north east side of Copperkins Lane. It has a gravel driveway to the front with entrance gates and a laurel hedge planted along the front boundary.
4. The proposal would introduce an open sided car port in the south east corner of the front garden, measuring 6m by 6m with a flat, glazed sloping roof, 2.6m at the front reducing to 2.3 m at the rear.
5. The detached houses of individual design on both sides of the road are set back from the road frontage with generally planted and landscaped front gardens, which together with the deep grass verges and mature street trees on either side provide a very verdant and attractive setting to the local area, all of which contribute to the distinctive character and appearance of the local area. I am advised that the site is situated within an Established Residential Area of Special Character although limited information is provided in this respect. Nonetheless, the very verdant character and appearance of Copperkins Lane contributes to its local distinctiveness.
6. Whilst the majority of the houses in the vicinity of the appeal site do not have garages forward of the main dwellings and encroaching into the front garden areas, there are a small number of exceptions, mainly on the other side of the road. Most of these, although higher than the proposal before me, are set further back from their front boundary and so have limited impact on the

- character and appearance of the local area. I agree that there are one or two exceptions where the garages are sited closer to the frontage and are very prominent and visually discordant in the street scene, including on the side of the road of the appeal property.
7. The proposed design of the carport before me would keep the structure as simple, open and low as functionally possible. However, even with the laurel hedge in front, I still consider that the structure and glazed roof would be seen in front of the dwelling tight to the front boundary and from various places approaching the property both to the south east and more particularly the north west. Although I do not consider that the relationship would detract from the character and appearance of the existing dwelling, taken on its own, the introduction of a built form so close to the frontage would harmfully detract from the more verdant and open setting to the appeal dwelling and street scene.
 8. I agree that there are a very small number of exceptions where there is a garage built close to the front boundary, including close to the appeal property. However, I have no further information in respect of these garages, and each proposal must be considered on its individual merits. I do not consider that the existence of a very small number of examples of visually over prominent garages close to the front boundary is a reason to permit another, even taking into account the differences in the design, given the harm I have found.
 9. I therefore conclude that the proposal would unacceptably harm the character and appearance of the local area. This would conflict with Policies GC1, H13 (ii) and H20 of the Adopted Chiltern District Local Plan 1997 (including the Adopted Alterations May 2001 and July 2004) Consolidated September 2007 & November 2011, Policy CS20 of the Core Strategy for Chiltern District (Adopted November 2011) and the Residential Extensions and Householder Development SPD - Adopted 10 September 2013 as well as the National Planning Policy Framework, and in particular Section 12, all of which seek a good standard of design which respects the local context and local distinctiveness.
 10. I have sympathy with the Appellants' personal reasons for seeking to park cars under cover, but these reasons do not justify me granting planning permission, given the harm I have concluded to the character and appearance of the local area. The Appellant has offered to accept a condition to ensure that the open sides of the car port would not be subsequently infilled, but for the reasons set out above, that would not overcome the harm I have found.
 11. The previous planning history includes for a proposed garage which was refused permission by the Council and dismissed at appeal under the reference: APP/X0415/D/15/3140656. I have been provided with a copy of that decision. Although I agree with the Inspector's findings in respect of the character and appearance of the local area, I have noted the clear differences in that proposal and the proposal before me. My decision is based on the planning merits of the proposal before me.
 12. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

L J Evans

INSPECTOR



Appeal Decision

Site visit made on 28 March 2019

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 1st April 2019

Appeal Ref: APP/X0415/D/19/3222124
26 Abrahams Close, Amersham HP7 9FA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Miss Hoar and Cox against the decision of Chiltern District Council.
 - The application Ref: PL/18/4129/FA dated 7 November 2018, was refused by notice dated 15 January 2019.
 - The development proposed is rear dormer to facilitate a loft conversion.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Amended plans were received at the application stage which reduced the size of the dormer and were the plans determined by the Council. These are therefore the plans which are also before me for determination.

Main Issue

3. The main issue in this appeal is the effect of the proposal on the character and appearance of the existing property and of the local area.

Reasons

4. The appeal property is a recently built mid-terrace, two storey property in a small residential estate with a mix of properties, including some detached properties as well as a small development of flats.
5. The proposal relates to a rear dormer. The proposed dormer would be centrally sited on the rear roof slope and set in from the roof edges. Nonetheless it would, by reason of both its width and height and therefore overall size, be a very prominent and over dominant feature on the rear roof slope and in relation to the modest scale of the property, including its roof form. The dormer and its window would be wider than the existing window at first floor level which would further exacerbate its overly large scale and form.
6. Although sited at the rear, it would be seen from other rear gardens as well as the passageway running along the rear gardens and the public footpath further to the rear. From all these viewpoints, the proposed dormer would be an incongruous and overly large addition to the property and the terrace. This would detract from the character and appearance of the local area.

7. I therefore conclude that the proposal would harm the character and appearance of the existing property and of the local area. It would conflict with Policies GC1, H13, H15 and H18 of the Chiltern District Local Plan 1997 (including alterations Adopted 29 May 2001) Consolidated September 2007 & November 2011 and Policy CS20 of the Core Strategy for Chiltern District (Adopted November 2011) and the Residential Extensions and Householder Development Supplementary Planning Document (September 2013) as well as the National Planning Policy Framework, and in particular Section 12 on *Achieving well-designed places*, all of which seek a good standard of design which respects the local context.
8. I acknowledge the reasons for the proposed design and in particular the need to ensure adequate headroom within the proposed loft room, but these reasons do not outweigh the harm I have concluded.
9. The Appellants have provided evidence of other loft dormers which have been granted permission in the wider locality. Each proposal must be considered on its individual merits, but I have, nonetheless, taken these other examples into account. However, I am not persuaded that they are directly comparable with the proposal before me and that planning permission should be granted in this case, given the harm I have concluded.
10. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

L J Evans

INSPECTOR