



Appeal Decision

Site visit made on 21 September 2022

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 NOVEMBER 2022

Appeal Ref: APP/X0415/W/22/3291033

Land at 4-6 Broad Street, Chesham HP5 1HR

- 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 Cairnpark LBS Properties against the decision of Buckinghamshire Council.
 - The application Ref PL/21/0897/FA, dated 4 March 2021, was refused by notice dated 7 September 2021.
 - The development proposed is construction of a four-storey block containing 10 flats, and new 1.2 metre railings with hedge planting.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During the course of the appeal, Natural England issued new advice regarding significant recreational pressure upon Chiltern Beechwoods Special Area of Conservation and that there could be implications for new housing within the 12.6km zone of influence. The 12.6km zone of influence includes land within Buckinghamshire Council and the site subject to this appeal. The main parties were given an opportunity to comment on any potential implications and the matter has been treated as a main issue under the appeal.

Main Issues

3. The main issues are the effect of the proposal on the:
 - character and appearance of the area; and
 - integrity of the Chiltern Beechwoods Special Area of Conservation.

Reasons

4. The appeal site is located in a prominent position on the Elgiva Roundabout where Broad Street, White Hill and St Mary's Way meet. The entrance to Chesham High Street also joins White Hill close to this roundabout.
5. The roundabout sits on the edge of the town centre between it and the more residential area around Broad Street and as a result has a context of its own. It is made up of a mixture of 2 to 4 storey buildings, which vary in their form, age, style, and materials. However, 3 buildings in particular add specifically to its character. These are a 3-storey commercial building adjacent to the appeal site known as Link House, a 4-storey mixed-use block on the opposite side of Broad Street (Nos 1-29), and the flank end of No. 152 High Street. In this

context, Link House and the 4-storey block on the opposite side of Broad Street are viewed as the appeal site's neighbours. Although the smaller scale residential buildings on Broad Street are the appeal site's tangible neighbour, in views from St Mary's Way, White Hill and High Street they are screened by a mature street tree. Also, Broad Street has a different character, and the houses are not read as forming part of the same context as the roundabout.

6. I saw on my visit that the 3-storey block of 9 flats permitted by PL/20/1663/FA is almost complete. The block integrates well with its surroundings, reflecting the height and massing of neighbouring Link House and Nos 1-29 Broad Street. Given the flat roofed finish to the building, its height was also comparable to the houses on Broad Street. The large chimney stacks of these houses making them taller overall.
7. The proposal would add a fourth storey to the block of flats in the form of a flat-roofed box that is set back from the front and flank elevations. I appreciate that apartment block buildings within the town centre fringe, as defined by the Chiltern and South Bucks Townscape Character Study (2017), are generally three-storeys high. However, despite the extra height resulting from the additional storey, the building would remain a similar height to those that form part of its immediate setting, that is Link House and Nos 1-29 Broad Street. Notwithstanding the limited views of the houses on Broad Street, it would also be of a comparable height to these when taking account of the chimney stacks.
8. The additional storey would be constructed in a contrasting facing material of gun grey metal cladding, which would help reduce the overall bulk when compared to the effect of continuing the brickwork used for the three-storey block. It would also reflect and be in keeping with the darker roofs of Link House and the houses on Broad Street. Furthermore, I saw there are boxes constructed of a relatively dark material on top of Nos 1-29 Broad Street, that although are significantly smaller in scale, have a similar feel and character to the additional storey being proposed.
9. Accordingly, for these reasons, the proposal would not appear overly prominent, large, or bulky and, therefore, would not harm the character and appearance of the area. It would accord with policy GC1 of the Chiltern District Local Plan (1997), and the aims of the National Planning Policy Framework (the Framework) and National Design Guide (2021) which seek to deliver development of a high standard that reflects and respects the character of the surrounding area.

Chiltern Beechwoods Special Area of Conservation

10. The above consideration points me towards allowing the appeal. However, my attention has been drawn to potential adverse effects resulting from the proposal on the Chiltern Beechwoods Special Area of Conservation (SAC).
11. The site is within the 12.6km zone of influence of the Ashridge Commons and Woods Site of Special Scientific Interest (SSSI), which forms part of the SAC. The SAC supports a range of habitats which qualify under Annex 1 of the European Habitats Directive. These include beech forest woodland habitats that also make up a large amount of the SSSI.
12. Research carried out by Footprint Ecology to inform Dacorum Borough Council's emerging Local Plan found that new housing within the zone of influence, such

as the proposal, can be expected to result in an increase in recreational pressure on the SAC. Given this, the advice from Natural England¹ is that likely significant effects on the SAC, particularly when combined with other development within the zone of influence, cannot be ruled out in the absence of mitigation. It is therefore necessary for me, as competent authority under the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations), to conduct an Appropriate Assessment in relation to the likely significant effects of the proposal on the integrity of the SAC.

13. The appellant has brought to my attention two appeal decisions that have recently been issued for sites within the zone of influence where the Inspector did not consider the impact of the development upon the SAC. Whatever the reason these decisions did not include an Appropriate Assessment, the information before me shows that with regards to this appeal one is required.
14. Impacts upon the designated features of the SAC as a result of increased recreational pressure, include further trampling and vegetation wear, soil compaction and erosion, contamination including nutrient enrichment (e.g. dog fouling), litter and invasive species, and increased risk of fire. I understand that the evidence underpinning these likely significant effects identifies potential mitigation solutions to overcome them. The appellant has brought to my attention the report to the Dacorum Borough Council Strategic Planning and Environment Overview and Scrutiny Committee on 21 September 2022. It includes a copy of the Draft SAC Mitigation Strategy, which is marked for discussion only. The Draft Mitigation Strategy confirms that Natural England has advised that proposals within the zone of influence can be sufficiently mitigated (or avoided) through measures set out in the strategy. These include Strategic Access Management and Monitoring (SAMM) and Suitable Alternative Natural Green Space (SANG) that proposals will be expected to contribute towards or directly deliver. However, while the Draft Mitigation Strategy appears to be at an advanced stage, there are no details of the projects making up the SAMM Strategy and the total and apportioned costs of this have not been identified or agreed. There are also no details on how SANG will be secured.
15. As competent authority, I need to be certain that the proposal would not cause adverse effects on the integrity of the SAC. Natural England has advised that further information is required to determine the significance of the proposal's impacts and the scope for mitigation. From the evidence before me, although it appears that mitigation will be possible, given the terms of that mitigation have not yet been fully agreed, I cannot rule out adverse effects on the integrity of the SAC. I acknowledge that the effect of one residential unit would be limited, however my assessment must include the in-combination effects of the proposal with other planned development within the zone of influence.
16. It has been put to me by the appellant that, in line with the Council's document titled Chiltern Beechwoods Special Area of Conservation Frequently Asked Questions dated September 2022 (FAQs), they are willing to accept a planning obligation requiring the payment of a financial contribution in accordance with the Mitigation Strategy. They propose that the obligation is secured by a negatively worded planning condition. This would allow time for the Mitigation

¹ in their capacity as the statutory nature conservation body under the Conservation of Habitats and Species Regulations 2017.

Strategy to be finalised and adopted so that the appellant can enter into a legal agreement setting out the required planning obligation.

17. Yet, the proposal before me is for a 4-storey block of 10 flats, of which 3 of the 4 storeys, containing 9 of the flats, are permitted by an extant permission. This extant permission has been implemented and the building work is almost complete. It would therefore not be possible to impose a negatively worded condition requiring a planning obligation to be entered into before the development can commence, as the development for which permission is being sought has already commenced. Moreover, government guidance on conditions states that the best way to deliver sufficient certainty is by ensuring that any planning obligation or other agreement is entered into prior to granting planning permission. This is particularly fundamental in providing the certainty required by the Habitats Regulations. Understandably, given the terms of the mitigation strategy have not yet been fully agreed, there is no S106 bilateral or unilateral undertaking before me. There is, therefore, no certainty that the required mitigation, whether or not this is solely a monetary payment, would be delivered.
18. For the reasons above, there is insufficient evidence to provide the certainty needed to rule out adverse effects on the integrity of the SAC and I must take a precautionary approach. Consequently, the proposal would conflict with the aims of chapter 15 of the Framework and the Habitats Regulations.

Other Matters

19. The appeal site is located close to the northern end of the Chesham Conservation Area (CCA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character of the CCA.
20. The Council have not set out any assessment of the proposal on the setting of CCA in the evidence before me. The appellant has concluded that, given there is no visibility between the streetscape views of the CCA and the appeal site, apart from at the northern end of the high street, the appeal site makes very little contribution to the setting of the CCA. Based on my site visit, I am also of the view that the lack of intervisibility between the appeal site and CCA limits any effect of the proposal on the setting and subsequently there would be no harm to the significance of the CCA. The lack of any harm to the CCA is a neutral factor in this case.
21. In terms of benefits, I acknowledge that the proposal would provide a net increase of one dwelling in an accessible location close to public transport, services and facilities, which would contribute towards the borough's housing supply. The Council cannot demonstrate a five-year supply of deliverable housing sites. Its current five-year housing supply figure is 4.18 years, which shows there to be a moderate shortfall in supply. However, while the net increase of one dwelling weighs in favour of the scheme, its contribution would be limited.

Planning Balance

22. Given the shortfall in housing supply, paragraph 11d) falls to be considered. In this case permission should be withheld only where the application of policies in

the Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed.

23. I cannot rule out adverse effects on the integrity of the SAC. Consequently, the application of policies in the Framework that protect habitats and biodiversity provide a clear reason for refusing the development proposed and the proposal would not benefit from the presumption in favour of sustainable development outlined at paragraph 11 of the Framework.
24. Overall, I have found there would be no harm to the character or appearance of the area and the proposal would conform with the development plan. However, the Habitats Regulations confirm that I cannot approve the proposal where significant adverse effects might occur. Even accounting for the benefits, this material consideration is decisive and therefore the appeal should be dismissed.

Hannah Guest

INSPECTOR