



Harriet Sanders
Planning and Building Control
St Albans City & District Council
St. Peter's Street
St. Albans
Herts AL1 3JE

Our Ref:

Your Ref:

8th April 2020 (by email)

Dear Ms. Sanders,

Application No. 5/2020/0613

Outline application (access, landscaping, layout and scale sought) for three detached three bedroom self-build/custom-build dwellings following demolition of existing buildings

**On Land adjacent to The Cats Whiskers,
1 Oaklands Lane, Smallford, St. Albans, Hertfordshire**

This is the sixth application for residential development on this Green Belt site, the previous five having either been withdrawn or refused by the Council. (Applications nos. 5/2006/1911; 5/2018/0099; 5/2018/1369; 5/2018/2673 and 5/2019/1015). Having failed to secure permission for market housing, the applicant now has recourse to the Self-build/Custom-build regulations.

The Planning Design and Access Statement notes recent appeal decisions regarding self build and, rightly, now draws the Council's attention to Section 2A of The Self Build and Custom Housebuilding Act 2015, for the Council to "give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area." Research by the applicant indicates that the Council is not currently meeting that demand. The Council will have to take this into account when determining the planning balance, but it is not the only criterion affecting this application.

Rarely have we seen such a plethora of references to appeal decisions and court judgements in an application. We do not intend to respond to all of those here, it is for the council to assess their validity and the weight which can be placed on them. None of the appeal decisions included as appendices refer to sites in the Green Belt.

Under both the National Planning Policy Framework and the Green Belt policies in the current St Albans Local Plan, the applicant is required to demonstrate very special circumstances sufficient to outweigh the harm to the openness of the Green Belt. The applicant puts forward five:

1. The Council cannot demonstrate a 5 year housing land supply.

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It is not the case that in the absence of a 5-year housing land supply Local Plan Policies are superseded. This aspect of the NPPF has been the subject of considerable dispute and in 2017 the Supreme Court (in the case of *Suffolk Coastal DC v Hopkins Homes Ltd. (2017 UKSC 37)*) held that Local Plan policies to protect the countryside from development (such as St Albans Local Plan Policies relating to the Green Belt) are not policies for the supply of housing and therefore are not out of date and should be accorded full weight. In other words, the presumption in favour of the grant of planning permission is not irrefutable and the absence of a five-year supply of housing land will not necessarily be conclusive in favour of the grant of planning permission. (*Crane v. SoS (EWHC 425)*). *Hunston Properties Ltd EWCA Civ 1610* held that *“the weight to be given to such a housing shortfall (and whether it constituted ‘very special circumstances’ for the purposes of the NPPF) was a matter of planning judgment. The weight to be attached to the shortfall may, as a matter of planning judgment, be reduced where a shortfall is inevitable due to a district being subject to policies which restrict development”* (such as Green Belts).

2. The Provision of self build/ custom build housing to meet council’s shortfall.

The quantum of housing proposed is small. In determining the weight it can ascribe to it, the Council will have to take into consideration the 2015 Self Build and Custom Housebuilding Act.

3. The proposal will assist in urban regeneration by encouraging the recycling of derelict land.

Though it is not stated, we assume that this is a reference to National Planning Policy para. 134(e) which sets out this Green Belt purpose. It is not clear to us how the development of a site in the Green Belt will encourage the recycling of derelict land or assist in urban regeneration when the intent of the purpose is to restrict development in the Green Belt in order to promote development in urban areas.

4. There will be benefits to the local economy.

It can be argued that all residential development is likely to contribute to the local economy. This is not exceptional and should be awarded little weight.

5. The development will be deliverable in the short term.

The weight attached to it is a matter of planning judgement, based on the assessment of points 1 and 2 above.

There are numerous and lengthy references to legal definitions of brownfield land and the definition of openness in relation to the Green Belt. We do not agree with all of the conclusions which the Planning Design and Access statement reaches on these points. In our view the site is within the curtilage of the cattery and the Village Vets. The current NPPF definition of brownfield land includes the caveat *“ it should not be assumed that the whole of*



the curtilage should be developed". It is our view that caveat is intended to cover situations where the development would be contrary to other national and local policies, in this case those protecting the openness of the Green Belt. The three houses proposed are clearly more substantial than the current garage and storage on the site and, as such, would have significant impact on the openness of the Green Belt. (We are somewhat puzzled by the statement in the PDAS that "*Whilst there would be an increase in the built form, there will be no apparent intensification of use on the site.*").

The applicant argues that the judgements in *Timmins v. Gedling Borough Council* (EWHC 654) that "*any construction harms openness quite irrespective of its impact in terms of its obtrusiveness or its aesthetic attractions or qualities*" and *Lee Valley Regional Park Authority v Epping Forest DC* EWCA Civ 404) that "*The concept of "openness" here means the state of being free from built development, the absence of buildings as distinct from the absence of visual impact.*" do not apply here. We do not agree, nor do we accept the argument that because the site is surrounded by tree belts and cannot therefore be seen from outside, that openness is not affected. The existing structures on the site are in a derelict state (arguably falling into the exclusions of previously developed land in the glossary of the NPPF) and the buildings proposed to replace them are considerably greater in both footprint and volume. This will clearly impact on both the spatial and visual openness of the Green Belt. The recent Supreme Court judgement in *Samuel Smith Old Brewery (Tadcaster) and others v North Yorkshire County Council* "*requires the decision-maker to consider how those visual effects bear on the question of whether the development would "preserve the openness of the Green Belt"*". At the present time development along Oaklands Lane is restricted to the eastern side of the road. This proposal would alter the current character of the lane and introduce ribbon development, to the detriment of that character.

Fundamentally, approval of this application will result in the redrawing of the Green Belt boundary. Paragraph 136 of the NPPF is clear that: "*Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans.*"

We urge the Council to reject this application.

Yours sincerely,

David Irving