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Standing up for Hertfordshire's countryside

Jacqui Ansell
Planning and Building Control
St. Albans City and District Council
St. Peter's Street
St. Albans
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Our Ref:

Your Ref:

5th June 2020 (by email)

Dear Ms. Ansell,

Application No. 5/2020/0807
Removal of shipping containers and construction of eight, two bedroom dwellings with associated parking and landscaping.
On Land Rear Of 4A Frogmore, St Albans, Hertfordshire

CPRE Hertfordshire oppose this application which the applicant considers to be limited infill within a village, in accordance with paragraph 145(e) of the National Planning Policy Framework.

The applicant draws attention to the case of Woods vs. Secretary of State (2015 EWCA Civ 195.) which determined the need to assess on the ground whether or not the site appears to be part of the village and/or is an infill site.

The site itself is outside the defined settlement boundary. In the Planning Statement the applicant claims that the site is partially in the Green Belt. In fact the site is almost wholly in the Green Belt except for a small portion immediately to the rear of 4A Frogmore (a point acknowledged by the applicant in their side-letter dated 22 May 2020). Similarly it is claimed in para. 52 that "*the site is completely contained by development and views of the site from the surrounding area are limited*." There is only built development to the east and west boundaries. To the south is a car park, to the north west is woodland and to the north further car parking. There are clear views into and through the site from each of these areas. It is a moot point whether or not the land to the north and south consists of 'development' and on the ground the site appears as a tree belt fringing the entrance drive to Frogmore Home Park.

In support of the view that the site can be considered as 'infill', the Planning Statement cites previous appeal decisions which the applicant considers should be material considerations. Unfortunately there is no definition of 'limited infilling' within the National Planning Policy Framework. However, there are now sufficient contrary appeal decisions which have created a generally accepted definition of infilling, which is described as "*the development of a small*

gap in an otherwise continuous built-up frontage, or the small-scale redevelopment of existing properties within such a frontage." (e.g. APP/C3620/W/15/3005744), which this site is not. In the case of R (Tate) v. Northumberland County Council [2018] EWCA Civ 1519 the Court of Appeal confirmed that "*the question of whether a particular proposed development is to be regarded as 'limited infilling' in a village for the purposes of the policy* (in the NPPF) *will always be essentially a question of fact and planning judgment for the planning decision-maker.* The Council will have to form its own judgement as to which appeal decisions are relevant in this instance.

The applicant describes the tree belt on the site as "*some self-seeded sycamores and shrubs scattered around the site*" (para. 2). However this is not supported by the accompanying Tree Survey, which identifies six different species, of which Ash predominates (42% of all trees) and lists all of the trees as mature and in good condition. Google Earth 2020 shows that these trees cover the majority of the site and are clearly a spur of the woodland along the River Ver, (which may well be why the Green Belt boundary was drawn to include them). All of these trees would be removed to facilitate the proposed development.

Similarly the applicant describes the site as a '*brownfield site*' (para 2) whilst acknowledging that it is "*devoid of permanent structures*" (para 54). Allegedly, over the years it has been used as a dump for tyres, cars, containers and other detritus. However these illegal activities do not mean that it is therefore brownfield land. The National Planning Policy Framework defines brownfield land as "*land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed)*". This site is clearly not brownfield.

In the applicant's view the site "*contributes very little in terms of openness*." However it is, in the main, a Green Belt site with no current development on it. Timmins v. Gedling Borough Council (EWHC 654) held 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' means the state of being free from built development, the absence of buildings as distinct from the absence of visual impact.*" Constructing six 2-storey buildings on an open site 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 "*.

The applicant also includes a number of points which they consider cumulatively amount to very special circumstances sufficient to outweigh harm to the openness of the Green Belt. It is for the Council to determine the weight to be attached to each. We wish to comment on two:

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(1) The fact that the Council cannot demonstrate a 5-year supply of housing land.

Case law has made it clear that "*the absence of a five year housing supply will not always be conclusive in favour of the grant of planning permission; the absence of such a supply is merely one consideration required to be taken into account.*" (Tewkesbury BC v. SSCLG). The Government have repeatedly made it clear that: "*unmet need … for conventional housing is unlikely to outweigh harm to the Green Belt or other harm to constitute the very special circumstances justifying inappropriate development in the Green Belt*", expressed in those terms in National Planning Practice Guidance (ID-3-034-20141006).

(2) The site is included in the draft St Stephen's Neighbourhood Plan.

Policy S29 of the draft Neighbourhood Plan does allocate the site for residential development. However the Neighbourhood Plan remains in draft. It has not yet been issued for consultation, far less formal examination or adoption. Consequently it does not form part of the Council's Development Plan and cannot be awarded significant weight.

It terms of design, the layout appears cramped and does not sit easily on the site.(The window of bedroom 1 of the north block is less than 2 metres away from the blank gable wall of the east block.) The bulk of the parking is located in unsupervised positions, with three access points from the single track Frogmore Park driveway, resulting in a substantial amount of roadway and hardstanding and reducing amenity space. The layout does not appear to meet the criteria for access by refuse and emergency service vehicles. Purely as a piecemeal approach the outlook to the north and south of extensive car parking on neighbouring sites is frankly very poor.

We also note the concerns of the residents of Frogmore Park and the management company who point out that the driveway is a private road owned by Frogmore Park, which the applicant has improperly incorporated into the application site. This raises questions about the future maintenance of the driveway, the removal of Frogmore Park's fencing and gates etc. Should this matter not be resolved the construction of the houses would be unviable.

We urge the Council to reject this application.

Yours sincerely,

David Irving