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Standing up for Hertfordshire's countryside

Adam Ralton
Development Management (Planning)
Three Rivers District Council
Northway
Rickmansworth
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Our Ref:

Your Ref:

3rd July 2020 (by email)

Dear Mr Ralton,

Application No. 20/0898/OUT

Outline Application: Demolition of the existing farm building and comprehensive development of the site, delivering up to 300 no. residential dwellings (Use Class C3), associated access, and supporting amenity space, landscaping, green infrastructure and sustainable drainage systems (all matters reserved except for access)

On Land East Of Green Street And North Of Orchard Drive Chorleywood Hertfordshire

And

Application No. 20/0882/OUT

Outline Application: Demolition of the existing farm building and comprehensive development of the site, delivering up to 800 no. residential dwellings (Use Class C3), associated access, and supporting amenity space, landscaping, green infrastructure and sustainable drainage systems (all matters reserved except for access)

On Land East Of Green Street And North Of Orchard Drive Chorleywood Hertfordshire

CPRE Hertfordshire object to these applications for inappropriate development in the Green Belt and the Chilterns Area of Outstanding Natural Beauty, contrary to the policies in the National Planning Policy Framework, the current Three Rivers Development Plan and the Chilterns AONB Management Plan.

We are responding to both applications together as, apart from the quantum of housing, the support documentation for both applications is essentially the same and the justifications for the developments are identical. The layout of 20/0898/OUT has been extracted from the masterplan of 20/0882/OUT with minor adjustments to the eastern boundary (this is demonstrated in figures 3.2 and 3.3 of the Design and Access Statement accompanying 20/0898/OUT) and will facilitate future development of the 800 dwellings should the 300 be approved.

This site is currently open farmland on the eastern side of Green Street, outside the Chorleywood settlement boundary and not included in the current Three Rivers Site Allocation LDD. It lies entirely within the Green Belt and the Area of Outstanding Natural

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President: Sir Simon Bowes Lyon, KCVO
Chairman: Richard Bullen

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Beauty. As such, under the provisions of the NPPF and the Three Rivers Development Plan, the applicant has to demonstrate very special circumstances sufficient to overcome the resulting harm of development to the Green Belt and exceptional circumstances and national interest in the case of the AONB.

To get the location of this site in context, in the Final Report of the Landscapes Review of National Parks and AONBs commissioned by the Government and published in September 2019, the point is made that the Chilterns AONB is of such significance that the report recommends that it is re-designated as a National Park (pages 119-121). In discussing the Chilterns AONB the report notes that “ *In the south east of England, in particular, the pressure of development is immense and may only get greater. Some national landscapes, the Chilterns for instance, risk changing very fast as a result and mostly not for the better. We shouldn’t just accept this as sadly unavoidable.*” ... “*The ‘exceptional circumstances’ provision in the National Planning Policy Framework, which was intended to limit development in national landscapes, is being used to argue for major development instead, on the grounds that no other sites outside AONBs are available. We believe strongly that this is in contravention of the purpose of designation.*” (pages 102 and 107). These applications fall into this description.

The documentation accompanying both applications is voluminous, but essentially the planning balance rests on NPPF para. 11(d) (Presumption in favour of sustainable development) and NPPF Sections 13 (Protecting Green Belt Land) and 15 (Conserving and Enhancing the Natural Environment).

NPPF Para. 11(d) Presumption in favour of sustainable development

The interpretation of NPPF para. 11(d) has been clarified in a comprehensive and lucid way following the judgement in *Monkhill Ltd v SoSCLG* [2019] EWHC 1993 (Admin):

(a) Where the relevant development plan policies for determining the application are out-of-date planning permission should be granted, unless either sub-section 11(d)(i) or 11(d)(ii) is satisfied. Footnote 7 makes it clear that policies are to be treated as out of date where a local authority cannot demonstrate a 5 year housing land supply or meet the Housing Delivery Test.

Three Rivers cannot currently demonstrate a 5 year supply. However, it should be noted that the most recent 2018-based household projections for Three Rivers, issued by The Government’s Office for National Statistics on 29 June 2020, indicate a highly significant 13% reduction when compared to the 2014-based projections on which the Council’s current assessments are based. This will substantially impact on the Council’s 5 year housing land supply, which needs to be taken into account in determining this application.



- (b) Sub-section (i) takes precedence over (ii).
- (c) If either (i) or (ii) is satisfied, the presumption in favour of sustainable development ceases to apply.
- (d) Sub-section (i) refers to policies within the Framework that protect areas or assets of particular importance which, if satisfied will exclude the application from a presumption in favour of sustainable development. (Footnote 6 lists the areas covered by the relevant policies. These include both Green Belts and AONBs).
Sub-section (ii) requires any adverse impacts of the application to significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- (e) Where more than one “footnote 6” policy is engaged, sub-section (i) is satisfied, and the presumption in favour of sustainable development overcome, where the individual or cumulative application of those policies produces a clear reason for refusal.
- (f) In applying (i) only the policies in footnote 6 can be taken into account.(NPPF 172 on the AONB can fall within (i), even if the application is not for major development)
- (g) The application of the policies requires all relevant planning considerations to be weighed in the balance.

The Applicant argues that neither Sub-sections (i) or (ii) are satisfied and consequently the presumption in favour of sustainable development applies and the applications should be approved. We do not agree.

If we return to NPPF footnote 7 regarding out of date policies, the judgement in *Wavendon Properties [2019] EWHC 1524 (Admin)* requires the Local Planning Authority to take a global view of the most important policies. It is not enough simply to say that one of the policies is out of date(as the applicant does here). The decision-maker must consider which are the most important policies and determine which of them are out of date. In our view the most important policies applying here are those for housing supply, those relating to the Green Belt and those relating to the AONB.

It is not the case that in the absence of a 5-year housing land supply all Development Plan Policies are superseded. 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 those relating to the Green Belt and the AONB) 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. Similarly NPPF para. 213 says that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework.

We need, therefore, to discuss the applications against NPPF Sections 13 and 15.

NPPF Section 13 Protecting Green Belt Land

Paragraph 143 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Para. 145 states that, apart from a limited number of exceptions, which these applications do not meet, the construction of new buildings should be regarded as inappropriate in the Green Belt.

It is the view of the Applicant that the policies which protect Green Belt land “*do not provide a clear reason for refusing the developments proposed*”. (Planning Statement para 7.10) and yet in para. 7.5 they say that “*this [Planning] Statement demonstrates that whilst development of the site would by its nature result in harm to the Green Belt, this harm would be localised and limited given the individual site circumstances.*” This is tacit agreement that as the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, the developments would cause harm through inappropriateness and damage to the openness of the Green Belt.

In para. 6.11 the Applicant acknowledges that the proposal does not meet any of the criteria in NPPF para. 145 and consequently would be inappropriate development. However, in their view, as the site is adjacent to the built up area of Chorleywood “*the harm arising from the development would be limited and have no significant adverse effect on the wider rural character.*” (para. 6.15) Harm to openness has both a spatial and a visual aspect, a point specifically made in para 001(2) of the National Planning Practice Guidance. *Timmins v. Gedling Borough Council* [2014] EWHC 654 and *Lee Valley Regional Park Authority v Epping Forest District Council* [2016] EWCA Civ 404 held that: “[any] construction harms openness quite irrespective of its impact in terms of its obtrusiveness or its aesthetic attractions or qualities.” That point was endorsed by the Supreme Court in *Samuel Smith Old Brewery (Tadcaster) and others v North Yorkshire County Council* [2020] UKSC 3. The Supreme Court also accepted the judgement in *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466 that “*The concept of ‘openness of the Green Belt’ is not narrowly limited to the volumetric approach. The word ‘openness’ is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the*



Green Belt is now and how built up it would be if development occurs." At the present time this part of the Green Belt is free of any development. Should the proposal for 800 dwellings go ahead it will be almost entirely covered. Should the 300 dwelling scheme proceed, the encroachment of open countryside, as perceived from Green Street, would be comparable to the 800 dwelling scheme.

NPPF para. 134 sets out the purposes of the Green Belt:

(i) to check the unrestricted sprawl of large built-up areas;

The Applicant argues that being on the urban fringe of Chorleywood and protected by strong defensible boundaries, the site's development would not result in the unrestricted sprawl of Chorleywood. (Planning Statement Table 7) The NPPF does not define sprawl, but it is generally taken as the contiguous expansion of an existing settlement into the surrounding countryside. These developments would do precisely that.

b) to prevent neighbouring towns merging into one another;

The Applicant does not consider Chorleywood to be a town and so this purpose does not apply. This depends on how strictly you define 'town'. As even the most cursory glance at a map will illustrate, Chorleywood is part of a conurbation which includes Rickmansworth and Croxley Green. The Green Belt separates that conurbation from those consisting of Amersham and Little Chalfont and the coalesced settlements along the A413.

c) to assist in safeguarding the countryside from encroachment;

"Development of the site would ... result in minimal and constrained encroachment into the countryside." We are not sure how any encroachment into the countryside, however minimal and constrained, safeguards the countryside from encroachment. We do not accept that an encroachment of 300m as viewed from the public highway of Green Street frontage could be in any way be viewed as 'minimal'.

d) to preserve the setting and special character of historic towns;

and

e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

"The clear and significant need to deliver more housing in Three Rivers demonstrates that sufficient land within the urban area is not available to meet current housing need in the



District. Development of the site would therefore not discourage urban regeneration." This is a somewhat convoluted argument which doesn't actually address the Green Belt purpose. The development of the site would not assist in urban regeneration.

The Applicant considers that the site is poorly performing Green Belt which does not contribute to the landscape. (Planning Statement para.7.2). However it is not the quality of Green Belt land which is protected but the function it fulfils. The land is currently used for grazing, which is not an inappropriate use in the Green Belt. The Applicant considers the present use is not 'optimal'. We assume that this is intended to mean not the 'best' or 'most favourable' use, which begs the question 'for whom?'. Residential development, which is inappropriate, would certainly not be the optimal use for either the purposes of the Green Belt or the AONB., but would give a financial return to the Applicant. The Applicant's intention is to *"Make most efficient use of poorly performing Green Belt and land which does not contribute to the landscape and scenic beauty of the AONB."* However the site fully performs its Green Belt purposes and the quality of the landscape of an area should not be a consideration when assessing the contribution of Green Belt to the fulfilment of those Green Belt purposes. The arguments used by the applicant are frequently applied by developers to urban edge sites in the Green Belt; if accepted they form a circular argument. The site is released from the Green Belt and the next site up then becomes the urban edge and the same argument is then applied to that and the Green Belt is gradually eroded.

In terms of the visual impact on openness, the Applicant considers that this will be extremely limited, but then acknowledges that *"there will be some significant changes to the views of adjacent residents and recreational users of the Common. Similarly, views will significantly change from the public footpath immediately to the south of the site and Orchard Drive beyond as well as the two footpaths around the field to the north of the site."* In other words, there will be significant impact when viewed from three of the four sides of the site, including from Public Rights of Way (Prows 11 and 014) and longer distance impact from other parts of the Green Belt. This is borne out by the photographs of receptor sites included in the documentation. Apart from the receptors mentioned above, the development would also be clearly visible from a number of other sites. e.g. View 5 Amersham Road where it is claimed that *"the site is screened by hedgerow vegetation even during the late winter"*, (except, unfortunately, in this photograph.)

The Planning Statement says that the focus of these planning applications is not the removal of the land from Green Belt (para 6.28) but that is precisely what they will do. NPPF Paragraph 136, states that Green Belt boundaries should only be altered where exceptional circumstances are "fully evidenced and justified" and such alterations should be carried out through the Local Plan process. We agree, fundamental strategic planning should be undertaken through the local plan process, not ad hoc speculative applications.



At the present time the Council is developing its emerging Local Plan. Given the recent dramatic reductions in future household projection for Three Rivers, the impact that the proposals will have on the Green Belt and the national status of the AONB, approval would have a significant effect on the Local Plan process by predetermining decisions about the scale, location and phasing of new development that are central to an emerging plan, and NPPF para. 49 on prematurity may be engaged.

NPPF Section 15 Conserving and Enhancing the Natural Environment.

This section of the NPPF includes the protection of the AONB. Much of the argument put forward by the applicant for developing on it is the same as that discussed above under Green Belt and we will not repeat those points here. There are additional points, however.

The AONB is statutorily protected in the National interest through the Countryside Rights of Way Act 2000. Its protection and enhancement is therefore at the highest possible weighting in the overall planning balance.

Section 84 of the Act states that a Local Planning Authority whose area consists of or includes the whole or any part of an AONB has power to take all such action as appears to them expedient for the accomplishment of the purpose of conserving and enhancing the natural beauty of that area. That includes prohibiting inappropriate development.

Section 85 of the Act places a statutory duty on all relevant authorities requiring them to have regard to the purpose of AONBs when coming to decisions or carrying out their activities relating to or affecting land within these areas. This is known as the 'duty of regard'. It is the responsibility of the Local Planning Authority to fully justify its recommendations for approval of development proposals by referring to the criteria for the AONB's special qualities.

NPPF para. 172 limits the scale and extent of development within AONBs. There is a clear emphasis for a higher level of importance to be placed on the purpose of the designation when assessing development proposals that impact upon it. Major development is unacceptable unless exceptional circumstances exist and where it can be demonstrated that the development is in the public interest. 'Exceptional' circumstances are more onerous than 'very special' circumstances. (As so often, the NPPF does not define 'Major' development but footnote 55 states that it is to be assessed by reference to the nature, scale, setting and effect of a given proposal and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.) Clearly an estate of 300 houses, far less 800 houses, is major development.



NPPF Paragraph 172 sets out what should be assessed when considering applications in AONBs:

(a) The need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy.

The Applicant, rightly, draws attention to the national pressure for more houses and the deficiencies in the Council's supply of housing. The Government's focus on increasing housing supply often seems to dominate Local Planning Authorities' thinking (and that of Applicants) and results in an assumption that objectively assessed housing needs must be met, or exceeded, at all costs. National planning policy does not require development that causes harm to nationally designated landscapes to be automatically approved. Planning Practice Guidance, as revised in July 2019, states "*The National Planning Policy Framework makes clear that the scale and extent of development in these areas [AONBs] should be limited, in view of the importance of conserving and enhancing their landscapes and scenic beauty. Its policies for protecting these areas may mean that it is not possible to meet objectively assessed needs for development in full through the plan-making process, and they are unlikely to be suitable areas for accommodating unmet needs from adjoining (non- designated) areas*". Paragraph: 041 Reference ID: 8- 041-20190721.

While there is reference in the documentation to the potential positive impact on the local economy should the developments be permitted, there is little on the impact if it is refused, or analysis of any negative impacts. In assessing the planning balance the Local Planning Authority need to take into account the negative impacts of the proposed developments on the 13 benefits of the AONB listed in pages 15-18 inc. of Natural England document 'NCA 110 Chilterns'. The assessment of public interest must also take into account the value that people place on nationally important landscapes and the impact on them of its loss.

(b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way;

The Final Report of the Landscapes Review National Parks and AONBs says that "*AONBs should not be the place for major intrusive developments unless, as is stated in the NPPF, they are truly in the national interest without any possible alternative locations being available*".

Regulation 18 (3)d of the Environmental Impact Assessment Regulations 2017 requires a description of the reasonable alternatives studied by the developer, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons



for the option chosen, taking into account the effects of the development on the environment.

The current Chilterns AONB Management Plan 2019-2024, which is a material consideration, requires any such development proposal to be accompanied by a report setting out a sequential approach to site selection. This should evidence the extent to which alternative sites have been assessed before the selection of sites within the AONB, and clearly identify why sites outside of the designated area could not be developed. The report should also identify and evidence why the need for the development could not be met in some other way.

In considering alternative site options, the Environmental Statement Non-Technical Summary says : *“The 2017 Regulations do not require the full assessment of all potential alternatives, only a reasonable account of those actually considered by a developer prior to the submission of the planning application. For this Site there are two realistic types of alternatives, the ‘do nothing’, where the existing site remains in its current state, or alternative layouts to the Proposed Development submitted for planning approval. Under the ‘do nothing’ scenario, there would not be development and the Site would remain underused in terms of its economic and social potential. The Site would not contribute to the local and regional housing needs of both private and affordable tenure and there would be no socio-economic benefit from the Site. This is not an alternative option that has been considered further.”* (paras 1.81 - 1.83). This is inadequate and self-serving. There are references in the Planning Statement to other sites which were brought forward in the Council’s call for sites consultation, but no objective, rigorous analysis as required by both the Regulation and the AONB Management Plan.

(c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

The Applicant’s response to this is essentially the same as those outlined under ‘Green Belt’ above. It is considered that *“the land does not contribute to the landscape and scenic beauty of the AONB”* (Planning Statement para. 7.2); *“harm to the AONB would be localised and limited”*. (para. 7.5) The Design and Access Statement says that the site *“does not have a remote feel or many characteristics typical of the Chilterns [AONB].”*(para. 1.10.79). There are many different characteristics in different parts of the AONB and we fail to see the relevance of whether a part of it has a remote feel or not. Again, none of these comments is supported with rigorous, objective evidence.

The applicant puts forward a series of points which they consider to be either 'very special' or 'exceptional' circumstances to meet the requirements of the NPPF policies. These distil into the following headings.

(a) the amount of housing which will go towards national and local need.

This is considered to be an exceptional circumstance and is rightly a material consideration of significant weight, but, as we have pointed out, Planning Practice Guidance says policies for protecting the AONB may mean that it is not possible to meet objectively assessed need for development in full and the AONB is unlikely to be a suitable area for accommodating unmet needs and the extent of public interest in the need for housing has to be balanced against that in the Green Belt and the AONB.

(b) the amount of affordable housing;

This too is a material consideration, but what is being proposed is no greater than the requirement in the Council's Development Plan.

(c) the proposal is sustainable;

In most respects this is true, but there are areas of concern, such as the fact that within a 2 km walkable catchment from the Site there are four primary schools which were assessed to have no spare capacity. It is estimated that this will have a negative impact on the primary school pupils in the Walkable Impact Area resulting in a major adverse effect over the long term. (Design and Access Statement para. 1.10.4) and similarly the proposed development is estimated to have a negative impact on secondary school pupils resulting in a moderate adverse effect over the long term. (para 1.10.9). It is proposed that this will be mitigated by a suitable financial contribution to allow the local planning authority to fund places elsewhere. In other words pupils will have to go out of the area for education, which is not satisfactory for them and will exacerbate car use.

(d) the land doesn't contribute to the scenic beauty of the AONB;

This is covered above. There is no justification for this opinion and it cannot be considered as a very special circumstance. Rather the proposals detract from the setting of the AONB and have an adverse impact on views into and out of the area.

It is interesting that the Applicant holds this view. Recently they submitted a planning application for the golf course on the other side of Green Street, directly opposite this site,



which is also in their ownership. (Application no. PL/20/0429/FA to Buckinghamshire Council Chiltern Area) The Landscape and Visual Impact Assessment accompanying that application says that that site “enjoys many of the special qualities of the Chilterns AONB”, “has unique landscape characteristics defining the region” and “many attractive elements relating to the landscape context”. It seems strange that those special, unique and attractive landscape qualities evaporate when you cross the road.

(e) peppercorn rents for the Chorleywood Common Youth football club and Chorleywood golf club to use land on Chiltern Hills Golf Club and the construction of a clubhouse for the football club.

These are acceptable benefits to the local community, but raise other issues.

The application to Buckinghamshire Council Chiltern Area includes the erection of a temporary clubhouse and a ‘Green plateau’ for use as football playing pitches. That application is as yet undecided. Consequently the offer is speculative and cannot at this stage be considered as a genuine ‘very special circumstance’

As mentioned Chiltern Hills Golf Club is also the Applicant for the current applications under discussion here. They have a vision for the future development of the Golf Club site into a community sports hub. The development proposes a new golf driving range, a public running track and completion of the previously approved 9-hole golf course as well as the football pitches and clubhouse. It already has permission for a new golf clubhouse and parking. The Council will have to satisfy itself that the current applications are not intended to be enabling development to facilitate the expansion of the golf course into a community sports hub. If so, then other factors come into play in determining the planning balance.

(f) new open space for young people.

There is a recognised need for such a facility in Chorleywood. The Council will have to decide how much weight can be given to this circumstance and whether it is ‘very special’

We note that on page 4 of the Statement of Community Involvement the applicant has given an undertaking to withdraw the application for 800 units should the Council resolve to grant planning permission to the 300 unit scheme. These applications are not a binary choice. Each must be considered on its own merits and the council could (and should) refuse them both. It also begs the question of what happens to the residual farm land in the case of the approval of the 300 unit scheme. That would leave the bulk of the existing field unused for development. Will it continued to be farmed or will it be used for some other purpose? That



point is not addressed in the documentation. Either way, it leaves the possibility for further development in the future, which would negate the offer made in the Statement.

In our view, contrary to the Applicant's assertion, the individual and cumulative application of the policies in NPPF foot note 6 produce clear reasons for refusal and we urge the Council to reject these applications.

Yours sincerely,

David Irving