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Standing up for Hertfordshire's countryside

Jacqui Anstell  
Planning and Building Control  
St. Albans City and District Council  
St. Peter's Street  
St. Albans  
Herts AL1 3JE

Our Ref:

Your Ref:

26<sup>th</sup> August 2020 (by email)

Dear Ms. Anstell,

**Application No. 5/2020/1289**

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

**The Cherry Trees Indian Restaurant, 261 Lower Luton Road,  
Wheathampstead, Hertfordshire AL4 8HW**

CPRE Hertfordshire object to this latest application for residential development on a Green Belt site which will have significant impact on the openness of the Green Belt and which has been repeatedly refused by the Council and dismissed on appeal. (Applications 5/2002/1190, 5/2018/2774, 5/2019/0975). The most recent application refused by the Council, 5/2020/0478, has now been lodged for appeal.

As the applicant says in the Planning Statement, this application for five dwellings seeks to replicate the most recent application but differs by suggesting the demolition of all structures on site. In our view the demolition of the existing Restaurant is intended to render the site as previously developed land, hence engaging paragraph 145g of the National Planning Policy Framework which permits development of previously developed land in the Green Belt, only where this will have no greater impact on the openness of the Green Belt than the existing. 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.

Taking all of the existing structures into account, the footprint of the existing development is 343 sq.m. and the volume 1080 cubic m. The collective footprint of the proposed new dwellings is 485 sq. m. and their volume 2030 cubic m. That represents an increase in footprint of 41% and of volume 88%. By any measure that is substantial intensification of development on the site which will have a commensurate impact on the openness of the Green Belt. In the Applicant's view "*The increase in footprint is just over 40%, a figure acceptable in most Green Belt applications for extensions to buildings.*" And that "*Residential*

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CPRE Hertfordshire is a Charitable Incorporated Organisation

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*development will replace a use that has a far greater impact on nearby residential amenity, reduces considerably the use of vehicles, improves road safety, introduces more planting to the site and removes a very dominant structure from the street scene and thus improves the openness of the Green Belt*” The Restaurant building is a familiar local landmark that adds to the character of the locality, it currently provides a social amenity and contribution to the local economy. While there will be a reduction in vehicular traffic it is debatable whether this in itself impacts in road safety. The removal of one building to replace it with five does not improve the openness of the Green Belt.

It is also the view of the applicant that the application site is contained by existing development and that the proposal would not result in the outward spread of the built-up area. That is not true. As a site visit and all of the map extracts included in the Planning Statement show, the site is surrounded by open space on three sides. Current development is restricted to a small portion at the north of the site adjacent to Lower Luton Road. The proposed development would extend almost the whole of the length of the site.

Later in the Planning Statement the applicant asserts that while “ *there will inevitably be some loss of openness, ... this will not extend beyond the site itself as it is very well screened from all public vantage points*” and that the (Rights of Way) “*definitive map shows that there are no views into the site from any footpaths, the only view into the site from a public viewpoint is from the main Lower Luton Road and Cherry Tree Lane.*” Again a site visit demonstrates that there are views into the site from all sides. In terms of statutory designations, the land on either side is registered common land and Cherry Tree Lane is a designated Bridleway (No. 100), as is shown on the Definitive Map.

As with previous applications the applicant cites numerous legal cases and appeal decisions. In essence these come down to three points: 1. the law regarding Self-Build and Custom Housebuilding, 2. the law regarding ‘openness of the Green Belt, and 3. what constitutes ‘very special circumstances’.

1. In our response to the previous application we pointed out that there is a statutory duty under Section 2A of The Self Build and Custom Housebuilding Act 2015 (as amended), 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.” The absence of a policy to support Custom and Self Build can heighten the risk of Councils losing planning appeals, given the support which the National Planning Policy Framework gives to the need for Councils to plan for people who wish to commission or build their own homes. The Council will have to take this into account when determining the planning balance, but it is not the only criterion affecting this application. In addressing this point the applicant considers that, in determining the suitability of sites for Custom and Self Build houses, for the Council “*to attempt to deny their suitability due to location in the Green Belt is*



*silly.*" In our opinion it is silly to assume that such sites are exempt from Green Belt policies and that those policies do not influence their suitability.

2. In the course of a long discussion, the applicant rightly refers to the case of *Turner v Secretary of State for Communities and Local Government* [EWCA Civ 466] which held 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."* and specifically draws attention to the Supreme Court judgement in *Samuel Smith Old Brewery (Tadcaster) and others v North Yorkshire County Council* which held that *"in the individual circumstances of a particular case, there are likely to be visual as well as spatial effects of the openness of the Green Belt, and, if so, whether those effects are likely to be harmful or benign, will be for the decision-maker to judge. But the need for those judgments to be exercised is inherent in the policy."*

3. In relation to the Very Special Circumstances which are put forward as factors which outweigh the harm to the openness of the Green Belt, the applicant draws attention to the case of *Basildon v FFS Temple* (2004), which established that a number of "ordinary" factors may, when combined together, result in something defined as "very special." That balance, of course, is one for the Local Planning Authority to determine.

In setting out their 'Very Special Circumstances' the applicant does so as a series of ripostes to what they say are *"the Planning Officer's conclusion of our proposed Special Circumstances ... are shown in red."* Unfortunately these were not the Officer's much more detailed reasons for refusal, but the comments made by us in our letter of 27 March 2020. We will not enter into a tit-for-tat refutation of the applicant's refutation of our comments. As we still stand by them we will not repeat them here as the Applicant quotes them in full in the Planning Statement.

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."* When this site was put forward for consideration under the Strategic Housing Land Availability Assessment it was rejected by the Council because: *"This site is clearly rural in nature and whilst substantially screened by mature trees and hedgerows around its perimeter, residential development would still result in encroachment into open countryside. Development here would also create further development pressure to the open fields to the south and west."* The revision of Green Belt boundaries is being undertaken through the revision of the St Albans Local Plan which is currently subject to Examination in Public. Approval of this application would pre-empt that process.



We consider this site to be inappropriate for residential development in both location and land use and that the Council should reject it.

Yours sincerely,

David Irving