



The countryside charity  
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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:

27<sup>th</sup> March 2020 (by email)

Dear Ms. Anstell,

**Application No. 5/2020/0478**  
**Construction of five dwellings (resubmission following refusal of 5/2018/2775 dismissed on appeal dated 11/07/2019)**  
**On Land r/o 261 Lower Luton Road, Wheathampstead, Hertfordshire AL4 8HW**

CPRE Hertfordshire object to this re-submitted application for stage one of a PIP (Permission in Principle) for residential development on a Green Belt site which will have significant impact on the openness of the Green Belt and which has been dismissed on appeal. It should also be noted that Application 5/2019/0975 for one house and Application 5/2002/1190 for four houses were similarly dismissed on appeal.

The resubmission appears to have been generated by a number of recent appeals (APP/G2435/W/18/3214451; APP/W0530/W/19/3230103; APP/P1615/W/18/3213122 and APP/Y0435/W/17/3178790) which the applicant believes assists their case. The Council will have to take the issues raised by them into consideration when determining the planning balance. None of these sites are in the Green Belt. One of the decisions is based on the site being previously developed land and the other three hinge on the council's ability to demonstrate its ability to meet self build demand. None of the four are direct parallels with the current application and, as one of the Inspectors points out, each application and appeal must be determined on its own individual merits.

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.

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

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As mentioned above, unlike those applications, this site is in the Green Belt.

The applicant continues to claim that this land should be considered as brownfield because of its association with the Cherry Tree Restaurant (261 Lower Luton Road). Access to the proposed development would cross the current restaurant car park, the actual development being on what was a play area which has fallen into dereliction. The current National Planning Policy Framework 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.

*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”. Lee Valley Regional Park Authority v Epping Forest DC EWCA Civ 404) held “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.”*

The recent Supreme Court judgement in Samuel Smith Old Brewery (Tadcaster) and others v North Yorkshire County Council 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, in my view, inherent in the policy. ... In my view, therefore, when the development under consideration ... is likely to have visual effects within the Green Belt, the policy implicitly 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”.*

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. This is now accepted by the Applicant and the following Very Special Circumstances are presented in the Planning, Design and Access Statement:

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

The courts have held that in that case the NPPF does not prescribe the weight which can be given to Local Plan policies which are not for housing supply. Consequently the policies for protection of the Green Belt can be given due weight and taken into account when considering the planning balance. (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 NPPF 87) 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 housing will address the significant shortfall in supply.**

The quantum of housing proposed is relatively 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 but if housing need generally does not justify the very special circumstances to develop in the greenbelt then logically that would apply to all housing.

**3. Self build homes offer more local choice and better value for money.**

This is true, but can hardly be considered a 'very exceptional circumstance' sufficient to outweigh harm to the Green Belt.

**4. 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 this site in the Green Belt will encourage the recycling of derelict land or assist in urban regeneration.

**5. Heads of Terms of a section 106 agreement will ensure the development will meet the definition of self-build.**

This is not a 'very special circumstance'. Should the Council be minded to approve, we would expect it to go further and apply a condition requiring a Unilateral Undertaking to give decision-makers confidence that the development will be delivered for Custom and Self Build housing and not for market housing.

**6. The lower area of the site will be given over to open space.**

and

**7. Wheathampstead Parish Council will be given a donation to upgrade Primary Access Route 11.**

Both of these could be construed as enabling projects needed by the community but the proof of that need is not demonstrated and should be awarded little weight.

**8. The proposal 'is likely' to make a positive contribution 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.

**9. Children will be able to walk to school and the site represents a good location for key worker housing.**

We do not see that these are 'very special circumstances.'

**10. Development of the site will be deliverable in the short term.**

This links back to (1) above and the weight attached to it is a matter of planning judgement.



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 a Permission in Principle should not be granted.

Yours sincerely

David Irving



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