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## Appeal Decision

Site visit made on 18 February 2025

by **B Astley-Serougi BA(Hons) LLM MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 APRIL 2025

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**Appeal Ref: APP/X1925/W/24/3353630**

**Glencoe Villa, Snailswell Lane, Ickleford, Hertfordshire SG5 3TS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr and Mrs A Del Basso against the decision of North Hertfordshire District Council.
  - The application Ref is 24/01868/S73.
  - The application sought planning permission for the erection of one detached four-bedroom dwelling with associated access, car parking and hard and soft landscaping following the demolition of existing structures and hardstanding. Without complying with a condition attached to planning permission Ref 23/00505/S73 dated 19 April 2023.
  - The condition in dispute is No 9 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended no enlargement as set out in Class A, and no development under Class E of Part 1 of Schedule 2 to the Order, (or any subsequent Statutory Instrument which revokes, amends and/or replaces those provisions) shall be carried out without first obtaining a specific planning permission from the Local Planning Authority.*
  - The reason given for the condition is: *Given the nature of this development, the Local Planning Authority considers that development which would normally be "permitted development" should be retained within planning control in the interests of the character and amenities of the area and the openness of the Green Belt.*
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) was published in December 2024. The parties have been provided with the opportunity to comment on the implications of the revisions to their cases. I have taken account of the revised Framework, and any comments made, in my determination of the appeal as necessary.

### Background and Main Issue

3. Planning permission was granted for the erection of one detached four-bedroom dwelling with associated access, car parking, hard and soft landscaping.<sup>1</sup> The approved scheme was found to be not inappropriate development in the Green Belt. The appellant subsequently had a variation of condition application granted in April 2023<sup>2</sup>. The appeal before me seeks to vary condition nine of the previously granted variation of condition permission.

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<sup>1</sup> Planning Application Ref: 22/00172/FP

<sup>2</sup> Planning Application Ref: 23/00505/S73

4. The Council indicates that condition nine is necessary to ensure that the proposal remains acceptable in Green Belt terms, particularly with regard to maintaining the openness of the Green Belt.
5. The Decision Notice and Officer Report indicate that removing the condition would likely have a harmful impact on the openness of the Green Belt. Given this background, the effect of the proposal on the Green Belt is a relevant matter for consideration.
6. Taking into account the background, the main issues are, the effect of the development, without the condition in place, on:
  - the Green Belt, including (i) whether or not the proposal would be inappropriate development in the Green Belt and if relevant (ii) the effect upon the openness of the Green Belt, and
  - if the development is inappropriate, whether any harm by reason of inappropriateness, and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

## Reasons

### *Green Belt*

7. The appeal site is identified as being located in the Green Belt. Accordingly, Policy SP5 of the North Hertfordshire Local Plan 2011-2031 (the LP) seeks to restrict inappropriate development in accordance with the Framework. The Framework establishes that inappropriate development is by definition harmful to the Green Belt. Therefore, inappropriate development should not be approved except in very special circumstances.
8. Paragraph 154(g) of the Framework indicates that the construction of new buildings in the Green Belt should be regarded as inappropriate, except for a number of exceptions. One of these exceptions includes limited infilling or the partial or complete redevelopment of previously developed land (PDL) provided that it would not have a substantial harm on the openness of the Green Belt when compared to the existing development.
9. The appellant refers to the wording of paragraph 154(g) prior to the most recent revision of the Framework. It stated that a new building in the Green Belt would be considered as not inappropriate when the limited infilling or the partial or complete redevelopment of PDL would not have a *greater impact* (my emphasis) on the openness of the Green Belt than the existing development. The current Framework, amongst other things, substitutes 'greater impact' with 'substantial harm'. The appellant considers that had the appeal scheme been determined under the latest revision of the Framework, a larger development would likely have been granted permission and therefore, any additions to the appeal scheme before me under permitted development rights would not constitute substantial harm.
10. However, there is no definition of either 'greater impact' or 'substantial harm' for planning purposes. Consequently, it is a matter of planning judgement as to whether additions permissible under permitted development rights would be inappropriate and result in substantial harm on the openness of the Green Belt.

## Openness

11. The approved scheme under 23/00505/S73 was found by the Council to result in a dwelling which would be considered as not inappropriate in the Green Belt. This was because the scale and height of the eaves would result in a development smaller than a previously refused variation of condition application<sup>3</sup> and an eaves height similar to those approved on the dwelling approved by the original planning permission<sup>4</sup>. Condition nine was imposed to prevent the possibility of inappropriate development like that which was assessed and refused by the Council in the 2022 variation of condition application and dismissed on appeal<sup>5</sup>.
12. Class A Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO) limits the size and height of extension or alterations that are permitted. However, sizable extensions could be permitted via Class A in certain circumstances to achieve extensive enlargements because of this permitted development right.
13. The appeal scheme would be visible from the road and from the Public Right of Way that is located to the eastern boundary of the site. Consequently, extensive additions permitted by Class A Part 1 would likely result in a substantial harmful impact upon the openness of the Green Belt in conflict with paragraph 154(g) of the Framework. Accordingly, such alterations would undermine the acceptability of the approved scheme due to further enlargement to its scale and massing.
14. The appeal site is adjacent to a limited number of dwellinghouses as well as a small estate of park homes. The houses are part of a linear development and therefore are bordered by fields. To the rear of the site are open agricultural fields and therefore whilst there are other dwellings proximate to the appeal site, the overall character is rural. The Council have previously granted an application for a dwelling on the site and whilst this does result in an acceptance of a level of domestication of the appeal site, it does not equate to the acceptance of sizable extensions. Given the appeal site abuts open fields and the overall rural character of the Green Belt and surrounding area, condition nine provides a safeguard against any scale of future extensions that would result in harm to the openness of the Green Belt. It is therefore necessary to retain the condition to make the approved scheme acceptable.
15. Class E Part 1 of the GPDO permits any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse or the maintenance, improvement or other alteration of such a building or enclosure. It also permits a container used for domestic heating purposes for the storage of oil or liquid petroleum gas. The right does establish that the development must not exceed 50% of the total area of the curtilage. Given the linear form of development on Snailswell Lane and consequently its relatively exposed siting, the addition of much of the developments permitted by Class E would likely lead to an unacceptable reduction in the visual and spatial openness of the Green Belt.
16. Planning Practice Guidance states that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity and need to be precisely defined<sup>6</sup>. In this case I find condition nine is

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<sup>3</sup> Planning Application Ref: 22/02627/S73

<sup>4</sup> Planning Application Ref: 22/00172/FP

<sup>5</sup> Planning Appeal Decision: APP/X195/W/23/3321454

<sup>6</sup> Planning Practice Guidance Paragraph 017 Reference ID: 21a-017-20190723

precisely defined by reference to the specific provisions of the GPDO and is confined to the areas associated with Classes A and E.

17. The appellant refers to examples in the GPDO where there is a restriction on permitted development rights for sites within national parks or conservation areas. The appellant states that it is therefore reasonable to conclude that if it was the intention to limit permitted development rights in the Green Belt the GPDO would have done so. Notwithstanding the fact that permitted development rights have not been withdrawn in total or in part in the Green Belt in the GPDO, I have found in this case that there is clear justification for removing permitted development rights under Class A Part 1 and Class E Part 1 of the GPDO. This is because the potential for the enlargement of the approved scheme would likely result in it being materially larger than the approved scheme and similar to the previously refused and dismissed appeal scheme<sup>7</sup>. Accordingly, this would fail to accord with paragraph 154 (g) of the Framework. Furthermore, given the location of the appeal site and its close relationship with the open character of the Green Belt which I have identified above, development under Class A Part 1 would result in significant harm to the spatial and visual openness of the Green Belt.
18. For the reasons given above, I find that the development under Class A Part 1 and Class E Part 1 of the GPDO would likely cause substantial harm to the openness of the Green Belt and conflict with Policy SP5 of the LP and fail to accord with paragraph 154(g) of the Framework. This would amount to the clear justification to restrict Class A and Class E of Part 1, Schedule 2 of the GPDO.

*Other Considerations and Very Special Circumstances*

19. Development under Class A Part 1 and Class E Part 1 of the GPDO would lead to a loss of openness of the Green Belt. Substantial weight is given to the harm to the Green Belt and development should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt, and any other harm resulting from the proposal, are clearly outweighed by other considerations.
20. I do not have the full details of the cited appeal decisions at St Vincents Lane, West Malling<sup>8</sup>, Newmarket Road, Stow-Cum-Quy<sup>9</sup> and Sandy Lane, Guildford<sup>10</sup> and therefore cannot be certain that they are wholly comparable to the appeal before me. The Inspector in the Sandy Lane appeal decision highlighted that the appeal site was on article 2(3) land given it was located in an Area of Outstanding Natural Beauty (now designated as a National Landscape in the Levelling Up and Regeneration Act 2023). Therefore, it was already subject to a further level of restriction unlike the appeal site before me.
21. Regarding the appeal decision at Newmarket Road the Inspector describes the dwelling having been extensively renovated and extended as well as being enclosed on all sides with fencing and gates. Additionally, the planning history of this other site, including a planning refusal and appeal dismissal for a larger scheme, has not been shown to be similar in this case. Consequently, it is not directly comparable to the appeal site before me.

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<sup>7</sup> Planning Application Ref: 22/02627/S73 Planning Appeal Decision Ref: APP/X1925/W/23/3321454

<sup>8</sup> Planning Appeal Decision Ref: APP/H2265/W/20/3264915

<sup>9</sup> Planning Appeal Decision Ref: APP/W0530/W/21/3272766

<sup>10</sup> Planning Appeal Decision Ref: APP/Y3615/W/22/3290698

22. There is limited information before me to establish whether the appeal site in the St Vincents Lane appeal decision is comparable to the appeal before me. The appeal decision is concise and again I cannot be certain that the planning history is directly comparable to the appeal before me. Nevertheless, each case is determined on its own merits including its own planning context.
23. Accordingly, I have found condition 9 is reasonable and necessary and the other considerations before me do not clearly outweigh the harm that I have identified. Accordingly, the very special circumstances necessary to justify development under Class A Part 1 and Class E Part 1 of the GPDO do not exist.

### **Conclusion**

24. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

*B Astley-Serougi*

INSPECTOR