



---

## Appeal Decision

Site visit made on 26 November 2019

**by Matthew Jones BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 January 2020

---

**Appeal Ref: APP/X1925/W/19/3233286**

**189 High Street, Codicote SG4 8UD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Aldenham Residential against the decision of North Hertfordshire District Council.
  - The application Ref 18/03347/FP, dated 21 December 2018, was refused by notice dated 31 May 2019.
  - The development proposed is described as *'The demolition of the existing dwelling and the erection of 4 x 4-bedroom dwellings with associated parking, bin/cycle storage and improvements to existing vehicular access.'*
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The appeal site is a bungalow, its garden and land beyond it. The boundary to the Metropolitan Green Belt runs through the site and it is common ground between the main parties that the part of the site which is within the Metropolitan Green Belt does not have a lawful residential use. As such, any use of this area as part of the garden to the existing bungalow is not a matter for me to address in this appeal and was not determinative in my reasoning.
3. A revised drawing Ref 1416\_A\_2000 P10 accompanies the appeal. It adds patios to the rear gardens of Plots 01, 02 and 03 and brings the three houses between 1.5m and 2m closer to the High Street. The amendments to the siting of the dwellings would materially change their effect on the living conditions of neighbouring residents. As such, and pursuant to the Wheatcroft principles<sup>1</sup>, I did not have regard to this drawing in my decision, as to do so would have likely prejudiced other parties.

### Main Issue

4. The main issue in relation to the Green Belt is:
  - whether the proposal would be inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy; and,
  - if there is harm by reason of inappropriateness, would it be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

---

<sup>1</sup> Bernard Wheatcroft Ltd v Secretary of State for the Environment and Another [1980]

## Reasons

### *Whether the proposal would be inappropriate development in the Green Belt*

5. The Framework establishes that the construction of new buildings in the Green Belt is inappropriate subject to a number of exceptions. Paragraph 146 of the Framework, amongst other things, states that the material change of use of land within the Green Belt is not inappropriate provided such proposals would preserve its openness and would not conflict with the purposes of including land within it. Of most relevance to this appeal, this includes the safeguarding of the countryside from encroachment.
6. Policy 2 of the North Hertfordshire District Local Plan No.2 with Alterations (adopted 1996) (NHLP) requires for the openness of the Green Belt to be protected and restricts inappropriate development, unless there are very special circumstances. Paragraph 2.1 of the NHLP lists types of development that it considers not inappropriate. Although the given list does not accurately reflect the Framework, Paragraph 2.1 does not itself form policy. As such, it does not alter my view that Policy 2 is broadly consistent with the Framework.
7. The scheme seeks to replace No 189 High Street with a dwelling just to the south east (Plot 04), and three properties which would be set along, but outside the Green Belt (Plots 01, 02, 03). Although the main parties have referred to the rear gardens of Plots 01, 02, 03 as being divided by post and rail fencing, this is not shown on the proposed plans. Given such, all buildings within the proposal would be outside the Green Belt.
8. Whilst there is some disagreement as to the current use or definition of the area of the site within the Green Belt, it is undisputed that the proposal would materially change its use. It follows that the development would not be inappropriate provided the rear gardens serving Plots 01, 02, 03 would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it.
9. The openness of the Green Belt has a spatial aspect as well as a visual aspect<sup>2</sup>. Visually, the site is largely enclosed from surrounding fields by boundary vegetation which has the effect of limiting its association with the more obvious countryside to the north. Public visibility of the site is restricted to Rabley Heath Road and the Public Right of Way network a good distance to the north east. When viewed from these areas, the site appears to relate well to the village. As such, the visual openness of the Green Belt within the appeal site is limited and would be unharmed by its use as gardens.
10. However, aside from a couple of small-scale structures which occupy its periphery and the presence of limited post and rail fencing, the Green Belt within the site is grassland absent of operational development. This leads it to exhibit a significant degree of spatial openness.
11. There would be no buildings in the Green Belt and their future erection could be restricted by a condition. However, the residential use of the Green Belt would inevitably bring with it domestic paraphernalia. Typical items such as toys and play equipment, paddling pools, ornaments and washing lines would be, in my view, unavoidable. This is in addition to the presence of boundary treatments,

---

<sup>2</sup> As confirmed in *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 and *Samuel Smith Old Brewery (Tadcaster) & Oxtou Farm v North Yorkshire CC & Darrington Quarries Ltd* [2018] EWCA Civ 489

- in whatever form they would take. Although the effect would be modest, the spatial openness of the Green Belt would not be preserved. As the gardens would likely be used extensively, the harm would not be mitigated by the removal of the existing innocuous structures or fencing.
12. The appellant has suggested that such domestic trappings could be avoided through restrictive covenants. To my mind residents should have free range to use their gardens for typical domestic activity. The use of covenants in this way would therefore be an unreasonable imposition, failing to provide a good standard of amenity, as set out within Paragraph 127 of the Framework.
  13. The appellant has compared the proposed garden use to the other exceptions listed within Paragraph 146. Although I accept the other exceptions may be potentially more prejudicial to the openness of the Green Belt than residential gardens, this does not justify the harm I have identified in this case. I also acknowledge that, given the site's enclosure and relationship to the village, the development's encroachment within the countryside would be limited<sup>3</sup>. However, this purpose of Green Belt policy would not be met.
  14. My attention has been drawn to allowed appeals in the Green Belt which pertained to the change of use of an allotment to a garden and a tennis court respectively<sup>4</sup>. Whilst it is clear from the appellant's evidence that there are some similarities between those cases and this appeal, their detailed circumstances are not before me. In addition, the former significantly predates the Framework, and the date of the latter has not been provided. Given such, they carry very limited weight in my assessment.
  15. I therefore find that the proposal would be inappropriate development as described by the Framework. The proposal would conflict with Policy 2 of the NHLP and the relevant aims of the Framework. The Council has also referred to Policy SP5 of the emerging North Hertfordshire Local Plan 2011-2031, which is at an advanced stage of preparation. Policy SP5 also seeks to avoid inappropriate development in the Green Belt and therefore does not alter my conclusion on this matter.

#### *Other considerations*

16. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It goes on to advise that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness is clearly outweighed by other considerations.
17. The scheme would contribute to meeting an identified shortfall in family housing in the area. The appellant is a local SME house builder specialising in this scale of development and I have no reason to doubt that the scheme would be delivered quickly. Given the scale of the proposal, I consider the delivery of the housing to be a moderate benefit.
18. The houses would be situated at a village designated for housing growth, with good access to services and facilities, the wider cycle network and bus services to further afield. The new families would likely enhance the vitality of these

---

<sup>3</sup> Taking into account the cited findings of the North Hertfordshire Green Belt Study (2016) and its update (2018)

<sup>4</sup> Refs: APP/C0630/A/08/2062944 and APP/B1930/W/15/3132841

facilities through an increase in use. Developing the housing would also provide an economic boost to the developer and its supply chain of contractors and suppliers. These are also modest benefits.

19. The widening of the site access, which is not an essential aspect of the scheme, would likely improve the safety of vehicles and pedestrians to a very modest degree. That the Council has previously granted a now lapsed planning permission for residential use of this area of Green Belt also attracts very modest weight<sup>5</sup>.
20. The appellant has referred to the Framework's promotion of the effective reuse of land. As I have identified harm to the Green Belt, the scheme would not meet this aim. The provision of adequate garden space appears to me to be a prerequisite for the housing, not a benefit. Given that the openness of the Green Belt would not be preserved, the restrictions to residential activity and development suggested by the appellant do not weigh in the scheme's favour. These matters are therefore of neutral influence in the balance.
21. The cumulative moderate and modest benefits I have identified do not clearly outweigh the harm to the Green Belt by reason of inappropriateness, which attracts substantial weight. Consequently, the very special circumstances necessary to justify the development do not exist.
22. Whilst the evidence indicates that the Council is unable to demonstrate a five-year supply of deliverable housing sites, Footnote 6 to paragraph 11(d)(i) of the Framework provides a clear reason for dismissing the appeal as the Green Belt is deemed to be a protected area of particular importance.

### **Conclusion**

23. For the reasons given above, the proposal would conflict with the development plan and the Framework when taken as a whole.
24. Having considered all other relevant matters raised, including the pre-application enquiry and the subsequent officer recommendation for planning permission to be granted, I conclude that the appeal should be dismissed.

*Matthew Jones*

INSPECTOR

---

<sup>5</sup> Ref 14/00401/1