



## Appeal Decision

Site visit made on 25 May 2021

**by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 June 2021.**

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**Appeal Ref: APP/P1940/W/20/3260554**

**Land adjacent to 2 Coles Farm, Chequers Lane, Abbots Langley, Herts, WD25 0GL**

- 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 Mr Terry Murphy against the decision of Three Rivers District Council.
  - The application Ref 20/0065/OUT dated 3 December 2019, was refused by notice dated 18 April 2020.
  - The development proposed is outline consent: subdivision of the site and erection of a four bedroom detached dwelling with associated parking and access (layout and scale reserved).
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. I have utilised the Council's description of the development as per the decision notice as I feel it more concisely describes the development.
3. The appeal was submitted, according to the appeal form, with the intention of submitting a S106 agreement to secure a contribution to affordable housing provision to overcome the first refusal reason. The appellant was advised by the Planning Inspectorate, on 4 January 2021, that such documents should be submitted within seven weeks of the start letter but that given that the case had not, at that stage, been allocated to an Inspector it was in their interests to supply the document as soon as possible and that late acceptance was at the Inspector's discretion.
4. In May 2021, before my site visit, the appellant was allowed an additional two weeks to forward an executable S106 agreement but did not do so within the extended time limit. There are no special circumstances which justify why the agreement has not been completed following submission of the appeal on 4 October 2020. Therefore, on this occasion, I have proceeded without the document in question and determined the appeal based on the evidence before me.
5. The proposal is submitted as an outline proposal with layout and scale as reserved matters as per the application form. The National Planning Practice Guidance (NPPG) states that where details have been submitted as part of an outline application, they must be treated by the Local Planning Authority as forming part of the development for which the application is being made. The Local Planning Authority cannot reserve that matter by condition for

subsequent approval once submitted. The exception to this is where the applicant has made it clear that the details have been submitted for illustrative purposes only.

6. The appeal plans before me are not labelled as indicative or illustrative and have clearly been treated as details forming part of the proposal for which the application is being made by both parties within their submissions. Based upon this I have taken the submitted plans into account as part of this appeal in order to address the issues arising as a result of the reasons for refusal.

## **Main Issues**

7. The main issues are:

- i) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework 2019 (the Framework) and relevant development plan policies;
- ii) The effect on the openness of the Green Belt;
- iii) If the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it;
- vi) whether a suitable mechanism is in place to secure appropriate contributions to affordable housing, and;
- v) the impact of the proposal upon the amenity of existing occupiers with regard to overlooking.

## **Reasons**

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

8. The appeal site is occupied by a two-storey dwelling (semi-detached) and a single storey mono-pitched outbuilding accessed off Chequers Lane. The site is located within the Metropolitan Green Belt (the Green Belt). The proposal seeks outline consent for subdivision of the site and erection of a four-bedroom detached dwelling with associated parking and access following demolition of the existing detached outbuilding.
9. Paragraph 145 of the National Planning Policy Framework 2019 (the Framework) states that a Local Planning Authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are included within paragraph 145 a) to g) inclusive. This approach is reflected within both the Core Strategy 2011 (CS) Policy and Development Management Policies Local Development Document 2013 (DMP LDD).
10. The appellant raises the potential issue of isolation in terms of site location and cites Braintree District Council v Secretary of State and Others (2018) (the Braintree Case). I do not find the Council's refusal reasons are based upon concern regarding isolation but rather that the assessment is based upon whether the site falls within the village. Taking into account the Braintree Case, whilst the site is not isolated, I do not find that the appeal site stands to fall within the village given its location approximately half a mile from the defined key centre combined with the general lack of connectivity to services

other than by private car. The latter is accepted by the appellant in paragraph 6.14 of their statement. I do not find, therefore, that the proposal is one which could fall within the exception laid out in paragraph 145 e) of the Framework.

11. The existing outbuilding is ancillary to the enjoyment of the dwelling house. The proposal seeks consent for an independent residential unit which I find is a materially different use to the ancillary outbuilding currently occupying the site. Indeed, if the ancillary building was proposed to be utilised as an independent residential dwelling it would require formal planning consent as a material change of use. As a result of this, whilst the proposal would theoretically replace an existing attached outbuilding, regardless of scale, I do not find that the proposal would result in the new building being in the same use as that which it would replace. I do not find, therefore, that the proposal is one which could fall within the exception laid out in paragraph 145 d) of the Framework.
12. Notwithstanding this both parties concur that the proposal would represent limited infilling and I have no reason to conclude differently taking into account the site context and built form surrounding the appeal site. Paragraph 145 g) allows, as an exception, limited infilling. This exception does, however, specifically contain a second test in that limited infilling must not have a greater impact on the openness of the Green Belt than the existing development. It therefore follows that, in considering whether the proposal is inappropriate development, an assessment as to openness must be undertaken.

### *Openness*

13. Paragraph 145 g) is clear that limited infilling must not have a greater impact on the openness of the Green Belt than the existing development. Layout and scale are reserved matters, however, the appellant is clearly referring to matters relating these points (in terms of footprint of the proposal) within their submissions and, as outlined in procedural matters, the submitted drawings are not labelled indicative.
14. The original application form states that the existing outbuilding has an existing gross internal floor area (GIA) of 63 sq./m. It is not clear, therefore, why the appellant's final comments reference the building as being 73 sq./m. Notwithstanding this a comparison between the proposed block plan, access layout (BP-2-2200) and existing block plan, access layout (BP-2-1100) demonstrates a footprint which appears notably larger.
15. I acknowledge that, from the public realm, the site is limited in views and thus its potential visual impact is limited but it would be prominent within the appeal site when viewed from neighbouring dwellings which are single storey and in close proximity. The proposal seeks to replace a single storey mono-pitch building with a 6.45m high dwelling with accommodation over two storeys (accommodation noted in the roof). This would be combined with the subdivision of the site, parking for the existing dwelling, three car parking spaces for the proposed dwelling, turning and general intensification as a result of greater domestication and urbanisation.
16. I find that this would result in limited infilling which would have a greater impact on the openness of the Green Belt than the existing development. The proposal is not proposed as one which would meet an identified affordable

housing need. I do not find, therefore, that the proposal is one which could fall within the exception laid out in paragraph 145 g) of the Framework.

17. The Council's lack of a five-year housing land supply is considered below. The proposal would be inappropriate development in the Green Belt and would not meet any of the defined exceptions set out within the Framework. The proposal would be contrary to CS Policy CP11 seeks to implement a general presumption against inappropriate development that would not preserve the openness of the Green Belt and DMP LDD Policy DM2 which replicates that new buildings will not be given approval other than for those specified in national policy or other relevant guidance.

#### *Very Special Circumstances*

18. For the reasons given, the total weight of the other considerations does not clearly outweigh the substantial weight that must be given to the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the proposal do not exist nor have any been put forward for consideration.

#### *Affordable housing*

19. The appellant's comments regarding the importance of small sites is noted as is the Council's lack of a five-year housing land supply. Despite this, the proposal is required to secure a contribution towards the provision of affordable housing, however, at the point of determination no executable undertaking is before me as outlined above within procedural matters.
20. Had an executable agreement been before me at the point of determination this would have overcome this refusal reason and this is acknowledged by the Council, however, even if the executable agreement had been in place the appeal would still have failed for the other reasons within this decision letter.
21. The proposal would be contrary to CS Policy CP4 and the Affordable Housing Supplementary Planning Document 2011 which require all new development resulting in a net gain of one or more dwellings to contribute to the provision of affordable housing.

#### *Amenity of existing occupiers*

22. The appeal proposal is stated to be located 5.6m off the boundary with the existing dwelling. The rear dormer windows would face the remaining parcel of amenity space serving no. 2 and both parties have discussed the possibility of obscurely glazing the dormer windows. Despite this I do not find that this would be appropriate from the perspective of future occupiers of the proposed dwelling. From the plans before me the dormer windows would serve bedroom 1 and bedroom 3. Obscurely glazing the dormer windows would mean that none of the bedrooms have any outlook other than skylights and, in the case of bedroom 3, its only source of light would be obscurely glazed.
23. Without obscure glazing the proposal would result in overlooking of no. 2's amenity area resulting in an unacceptable loss of privacy for neighbouring occupiers. The addition of such features, such as obscure glazing, is only necessary to attempt to overcome the shortfalls in separation distances which is as a result of the plot characteristics and separation distances not lending themselves to a proposal of this nature. Even with the obscure glazing, given

the distances involved and regardless of overall plot size, I find there would be perceived overlooking.

24. The proposal would be contrary to CS Policy CP12 which seeks to protect residential amenities by taking into account the needs for adequate levels and disposition of privacy and DMP LDD Policy DM1 requires development not to result in loss of residential amenity. The proposal would also be contrary to the guidance in appendix 2 of the DMP LDD which requires, where garden length alone is relied on for privacy, a minimum of 14m should be retained. I do not find direct conflict with CS Policy CP1 with regard to this matter given that this policy is more concerned with the Council's overarching policy on sustainable development.

### **Other Matters**

25. I note there are a number of objections to the proposal. I have dealt with many of the concerns raised within this decision letter already. The Council have assessed the proposal and have not found reason for refusal relating to overlooking of any other property than no. 2. From my site visit I have no evidence before me to conclude differently. I have no evidence before me to suggest the proposal would not be able to provide adequate sewage management nor that it would affect water pressure or internet connectivity.

### **Planning Balance**

26. The Council cannot currently demonstrate a five-year housing land supply and therefore paragraph 11 of the Framework is engaged but it does not mean that the proposal would automatically be appropriate. It falls to consider the proposal in the context of a planning balance but acknowledging that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 6 specifically includes the Green Belt within this.
27. The contribution the site would make to affordable housing cannot be given weight in the absence of an executable S106 agreement. The proposal would make a limited contribution to housing supply through the supply of a single dwelling. There would be limited economic benefits in terms of construction work and longer term economic benefits through occupiers local expenditure. Notwithstanding this the proposal represents inappropriate development in the Green Belt which carries great weight against the proposal as well as being contrary to the Local Plan in terms of affordable housing contribution and impact upon residential amenity. In accordance with paragraph 11 d) i) the application of policies in the Framework provide a clear reason for refusing the development.

### **Conclusion**

28. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be dismissed.

*Eleni Randle*

INSPECTOR