

THE SPINNEY, HIGH ROAD, ESSENDON,

HERTFORDSHIRE

OPINION II

Introduction

1. I provided an Opinion dated 24 April 2016 [Op1] on a proposal to redevelop the above site, which is occupied by a single dwelling with its outbuildings, to provide two separate dwellings on the site.
2. The site is located within the Green Belt so the key questions that arose under the Green Belt policy set out in the Framework related to whether the proposals constituted appropriate development and, if not, whether there were very special circumstances arising that clearly outweighed the harm to the Green Belt and any other harm arising from the proposal.
3. In summary, I advised, having regard to recent authority, the proposals constituted appropriate development as they involved redevelopment within the curtilage of a dwellinghouse. I advised, in the alternative, that the combination of the Prior Approval and Certificate of Lawful Development both granted in June 2015 which permitted further extensions to the existing dwelling established what in law is described as a 'fall back position' for the redevelopment of the site. I then compared the consequences of the fall back position with the proposal in terms of harm to the

openness of the Green Belt to understand the weight that might be given to the fall back position when making an assessment of very special circumstances in this case. In terms of the key metrics to test openness, namely footprint area of built form and hardstanding, floorspace and volume of built form, substantial reductions were proposed that would all be beneficial to the openness of the Green Belt in this location. These were: footprint area reduced by 130 m² (14%), floorspace reduced by 212 m² (30%) and volume reduced by 300 m³ (10%). These features of the proposal were capable of forming very special circumstances for the purposes of the application of the policy test. The Council subsequently accepted that assessment in making the grant of planning permission for the proposal.

4. Since I expressed my opinion on the matter the following has occurred:
 - October 2016 planning permission was granted for the two dwelling scheme on which I advised with layout plan 1511-A-20- Rev C.
 - Planning permission was granted under s.73 of the 1990 Act to vary the above layout to create greater separation between the dwellings with layout 1610-20 Rev D approved.
 - There is now a proposal to redevelop the site to provide three units in substitution for the two permitted along the lines illustrated in the layout 1610-30-Rev V8.

The Issue

5. This opinion concerns the acceptability in Green Belt policy terms of the last proposal for three units as shown on Drawing 1610-A-30 v8.

Discussion

6. The proposal should be considered in the light of my first Opinion since there has been no change in the relevant law or policy since that time. The discussion in terms of the law has merely been to reinforce the conclusions that I drew in my first

opinion as to the role of fall back positions in decision making on planning applications: see Linblom LJ in Mansell v. Royal Borough of Tunbridge and Malling Council [2017] EWCA Civ 1314.

7. In my opinion therefore it is clear that any assessment of the acceptability of the current three unit scheme in terms of Green Belt policy should bear in mind as weighty material considerations potentially providing very special circumstances the comparison with any fall back scheme that is likely to be constructed in the alternative. There are now two fall backs with which to make a comparison. The original fall back of reliance on the authorizations granted in 2015 to substantially extend the current dwelling which was relied upon by the Council when it granted permission to the two unit scheme. The second potential fall back lies in both the recently permitted two dwellings schemes.
8. The Summary Area Schedule submitted with the application demonstrates by reference to the metrics by which openness is conventionally measured that the current three unit proposal is superior to the permitted two dwelling scheme in terms of all three measures as the three unit proposal presents comparative reductions in Floorspace (2.1% or 18 m²), Footprint (16 m² or 2.8%) and Volume (122 m³ or 4.2%). The margins of difference may not be great, but they demonstrate that the three unit scheme performs better in terms of retaining the openness of the Green Belt than the permitted two dwelling scheme that will otherwise be developed.
9. Further, although there are three dwellings where one is now and two are authorised to be constructed, it should be noted that there are no additional means of access to the highway proposed than permitted to serve the two dwellings nor are there any more domestic gardens proposed since the entire site is currently in use as the garden to the single unit.

10. Of course, there are other material considerations for the planning authority to weigh in the balance. They will include the need for housing, the landscape and visual consequences of the proposals and other material considerations which fall outside the scope of this advice. But, it is plain to me, all other things being equal that the only rational conclusion to the authority on the evidence is that the three unit scheme would be more beneficial in terms of the protection of the openness of the Green Belt than the permitted two unit scheme.

Conclusion

11. Accordingly, assuming a rational approach is taken by the local planning authority and a degree of consistency in decision making is employed, I conclude that the three unit scheme could not sensibly be refused on the ground of harming the openness of the Green Belt having regard to the planning history of this site and the likely fall back positions that emerge from it.

22 March 2018

Mark Lowe QC

Cornerstone Barristers

