



# Appeal Decision

Site visit made on 7 June 2022

by **Helen Davies MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 5<sup>th</sup> July 2022.**

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**Appeal Ref: APP/B1605/W/22/3294031**

**The Paddocks, Hyde Lane, Cheltenham, Gloucestershire, GL50 4NZ**

- 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 Castanum Ventures Limited against the decision of Cheltenham Borough Council.
  - The application Ref 21/02505/FUL, dated 2 November 2021, was refused by notice dated 19 January 2022.
  - The development proposed is demolition of the existing property and the construction of two 2 storey dwellings.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. With agreement from both main parties, the description of development was revised during the course of the application, from '2.5 storey' to '2 storey'. I have used the revised description.
3. The site has extant permissions for single storey extensions, and to extend and sub-divide the dwelling into two semi-detached dwellings. A certificate of lawfulness has also been issued for the proposed erection of a detached garage under permitted development rights. These developments have not been implemented.
4. The Council and the appellant have made comparisons between the unimplemented permissions and the proposal subject to this appeal. However, as established by case law<sup>1</sup>, when considering Green Belt policy requirements, unimplemented planning permission, which may include permitted development rights, cannot be considered as the baseline against which a proposal is assessed. Instead, any unimplemented permission should form part of other considerations in assessing whether very special circumstances exist.
5. The appellant makes reference to another piece of case law<sup>2</sup> which they believe allows for the impact on Green Belt openness to be assessed by a comparison between unimplemented permission and the proposal. I disagree, particularly as the case states that a prominent consideration in relation to openness is how built up the Green Belt is now, and how built up it would be if redevelopment occurred. I have undertaken the assessment of this appeal in line with local and national policy and relevant case law.

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<sup>1</sup> Athlone House Ltd v SSCLG [2015] EWHC 3524

<sup>2</sup> R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3

6. There is a minor inconsistency in the site address as it appears on the application form, the appeal form, and the decision notice. For the avoidance of doubt, I have used the address as it appears substantively on the appeal form, which includes reference to 'the Paddocks' rather than 'the Paddock'.

### **Main Issues**

7. The main issues are:
- Whether the proposal would be inappropriate development in the Green Belt having regard to the development plan and the National Planning Policy Framework (the Framework), including the effect on the openness of the Green Belt; and
  - If the proposal is found to be inappropriate development, whether the 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**

8. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Development within the Green Belt is inappropriate, with certain exceptions that are set out in Framework paragraphs 149 and 150. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
9. In line with this, Policy SD5 of the Gloucester, Cheltenham and Tewksbury Joint Core Strategy 2017 (JCS) specifies that development in the Green Belt will be restricted to those limited types of development which are deemed appropriate by the Framework, unless very special circumstances can be demonstrated.

#### *Whether or not it is inappropriate development, including effect on openness*

10. The exception set out in Framework paragraph 149 g) allows for new buildings that amount to the partial or complete redevelopment of previously developed land, provided it would not have a greater impact on the openness of the Green Belt than the existing development. The site is considered to be previously developed land, so the key assessment relates to openness.
11. Openness is an essential characteristic of the Green Belt that has spatial as well as visual aspects. The appeal site is clearly visible from the adjacent highway along Swindon Lane. South of Swindon Lane falls outside of the Green Belt and contains housing development. The site is north of Swindon Lane which is within the Green Belt and characterised by open fields, with sporadically arranged dwellings. The current dwelling stands alone, located within a substantial site. A field separates the site from a pair of semi-detached dwellings to the west and beyond that, open fields. To the north is open fields, with fields and an access track to the east. The openness of the Green Belt is evident around the property and in the wider area to the north of Swindon Lane.
12. The appeal proposal would significantly increase the floorspace, footprint and volume of built form on the site when compared to the existing dwelling. It would also spread the built form across more of the width and depth of the

site. Consequently, the proposal would have a greater impact on the openness of the Green Belt than the existing dwelling and so does not conform to the requirements of exception 149 g).

13. The appellant has suggested that the exception set out under paragraph 149 d) would also be relevant. This applies to the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. The proposed development would replace a single building with two separate buildings, even though the use would be the same. Whilst there is no legal or policy definition of 'materially larger', the significant increases in floorspace, footprint and volume, as set out above, would amount to the proposed two dwellings being materially larger than the existing single dwelling. As a result, the proposal does not conform to the requirements of exception 149 d).
14. For the above reasons, the appeal proposal does not meet the criteria of any of the exceptions set out under paragraph 149 of the Framework. Hence it would be inappropriate development in the Green Belt. The proposal would also conflict with Policy GB2 of the Cheltenham Plan 2020 which, amongst other things, requires development to have no greater impact on openness than the existing development. Inappropriate development in the Green Belt is, by definition, harmful. However, as there is already a dwelling on the site, the degree of harm to openness caused by the proposal would be moderate. Notwithstanding this, in accordance with the Framework, I attach substantial weight to this harm to the Green Belt.

#### *Other considerations*

15. As set out in preliminary matters the site has extant permission which has not been implemented. However, the recent string of applications seems to indicate an intention to develop the site and bring it back into use. Consequently, there is a greater than theoretical possibility that extant permission will be implemented, so this constitutes a realistic fallback position. Hence, the impact of the proposal in comparison with the fallback position needs to be considered.
16. In making a comparison between the proposal and the unimplemented extant permission, I have paid regard to the appellant's figures on floorspace, footprint, volume and height. I have no substantive evidence that leads me to dispute the figures provided. The appellant states that considerations of what constitutes materially larger often range from around 15 to 50%. They provide no substantive evidence to back this assertion and no such local or national policy or guidance has been drawn to my attention.
17. A straightforward comparison between the plans for the extant permission and the proposal show that the proposal extends two storey built form across a larger proportion of the site, with the two storey element being higher than the extant permission. A single storey garage would be the only element to the east of the site under the extant permission, and while the dwellings would be semi-detached, there would be a significant gap between the garage and the dwellings. By contrast, the proposal has a two storey dwelling occupying the eastern half of the site, with only a modest gap between it and the dwelling to the west. The proposal would also extend across a greater depth of the site. Taken together, these changes indicate that the proposed development would be materially larger than the extant permission and regardless of the materials used, would have a greater impact on openness.

18. Consequently, even when assessed against the extant permission, rather than the existing situation, the proposal would still be inappropriate development in the Green Belt. Therefore, the fallback position does not weigh in favour of the proposal.
19. I acknowledge that the proposed dwellings would be energy efficient. Although the details are not before me, I have considered an appeal<sup>3</sup> referenced by the appellant where energy efficiency was taken into account. However, the site and context in that appeal were different to this appeal and the harm to the openness of the Green Belt in that case was considered to be limited. In any event, each case must be considered on its own merits and impacts and direct parallels are not easily drawn. In addition, as extensive works would be required to implement the extant permission, I have no reason to conclude that the extant permission could not also be implemented in a way that ensured high quality design and energy efficiency. Therefore, in the context of a Green Belt assessment, I can afford the stated energy efficiency of the dwelling only limited weight in favour of the proposal.
20. The provision of two dwellings would make a contribution towards the supply of housing, in an area with an ongoing under supply. There would be economic benefits arising from the construction period and future spend of occupants giving support to local services and facilities. As noted by a neighbour, there would also be social and environmental benefits from redevelopment of the site as it would be likely to reduce the issues associated with its current derelict state. Landscaping would also improve visual appearance. However, given that implementation of the extant permission would result in very similar benefits, I can give this only limited weight in favour of the proposal.
21. I find that the other considerations, taken together, do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the proposed development do not exist. Therefore, the proposal conflicts with the Framework and Policy SD5 of the JCS.
22. It is common ground that Cheltenham cannot currently demonstrate a 5 year housing land supply. Consequently, Framework paragraph 11 d)i. specifies that permission should be granted, unless the application of policies in the Framework that protect areas of particular importance, including Green Belt land, provides clear reason for refusing the development proposed. As set out above, there are clear reasons for refusing the proposed development, so the presumption in favour of sustainable development does not apply.

### **Conclusion**

23. The proposal would be inappropriate development in the terms set out by the Framework and would result in a harmful loss of openness in the Green Belt. The Framework requires that substantial weight should be given to any harm to the Green Belt. The harm to the Green Belt would not be clearly outweighed by other considerations and, therefore, the very special circumstances required to justify a grant of planning permission have not been demonstrated. Consequently, the appeal is dismissed.

*Helen Davies*

INSPECTOR

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<sup>3</sup> APP/J1535/W/21/3273098 & APP/J1535/W/21/3277828