

fluid planning

**Ragstone
24 Ashen Grove Road
TN15 6YE**

**Two new detached dwellings
Planning Statement
0319**

Contents

3	Introduction
3	Planning matters
12	Summary

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1. Introduction

- 1.1 This statement accompanies a planning application on behalf of Mr Ayton (*'the applicant'*). The proposal is for demolition of part of Ragstone, a single dwellinghouse, and erection of a new detached dwellinghouse to create two (*'the proposal'*). The site is Ragstone, 24 Ashen Grove Road, Sevenoaks TN15 6YE (*'the Site'*).
- 1.2 This application follows planning approval for the Subdivision of existing dwelling to one 4-bed and one 3-bed dwellinghouse with associated elevational changes reference 22/01366/FUL granted by notice dated 09 August 2022.
- 1.3 Planning permission is now sought to demolish 642 m³ of existing lawful volume and 212 m² of existing lawful floorspace. Drawing 545 04 Proposed new dwelling plans then confirms that the proposed new dwelling extends to 632m³ of volume and 192 m² of floorspace. The issue of a separate dwellinghouse and the subdivision of the plot is already established as acceptable against Green Belt policy. The proposed separate dwelling will be located 4m to the side of the remaining and existing dwellinghouse.
- 1.4 The application is supported with a Bat Emergence Survey to demonstrate how the proposal would accommodate protected species.
- 1.5 This planning application seeks to incorporate a fallback position for a new dwellinghouse and create two detached rather than semi-detached dwellinghouses within the same garden area. This proposal will result in two proportionate buildings and visually improve the overall appearance of the site. The issue for the council, in their balancing exercise, is to consider whether a convoluted and scattered existing dwelling that can now function as two, is more or less harmful than two modest side by side dwellinghouses of less overall mass.

2. Planning matters

- 2.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires the decision-maker to take account of (a) the provisions of the development plan, (b) local finance considerations, and (c) any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires determination of applications to be in accordance with the plan unless material considerations indicate otherwise.

2.2 The Development Plan comprises:

- National Planning Policy Framework 2023 (*'Framework'*);
- Core Strategy (*'CS'*);
- Allocations and Development Management Policies (*'ADMP'*); and,
- Green Belt Supplementary Planning Document (*'SPD'*).

The Framework

2.3 Paragraph 11 of the Framework sets out that plans and decisions should apply a presumption in favour of sustainable development. It states that:

"For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."*

2.4 Paragraph 137 of the Framework states that:

"The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.' Paragraph 138 Framework sets out that the Green Belt serves five purposes:

- a) to check the unrestricted sprawl of large built-up areas;*
- b) to prevent neighbouring towns merging into one another;*

- c) *to assist in safeguarding the countryside from encroachment;*
- d) *to preserve the setting and special character of historic towns; and*
- e) *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”*

2.5 Framework paragraphs 147-151 provide guidance on proposals affecting the Green Belt, which materially includes that:

“147. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

148. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

149. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

[...]

d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;

[...]

g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

not have a greater impact on the openness of the Green Belt than the existing development; or

not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an

identified affordable housing need within the area of the local planning authority.”

- 2.6 In this case, while the Proposal can fall within the exemptions to paragraph 149, very special circumstances are also proposed.

Local Policies (Green Belt)

- 2.7 Policy SC1 of the ADMP states that the Council will take a ‘*positive approach*’ when considering development proposals, which reflects the Framework presumption in favour of sustainable development. SC1 goes on to state that ‘*the Council will work pro actively with applicants jointly to find solutions which mean that proposals can be approved wherever possible*’.

- 2.8 ADMP Policy GB4 Replacement Dwellings in the Green Belt goes on to explain four limbs each proposal must comply with:

“Proposals to replace an existing dwelling within the Green Belt which would meet the following criteria will be permitted:

a) the existing dwelling is lawful and permanent in nature;

b) the design and volume proposed does not materially harm the openness of the Green Belt through excessive scale, bulk or visual intrusion;

c) the proposal adheres to the “original” dwelling curtilage; and

d) the applicant provides clear evidence that the total floorspace of the replacement dwelling, together with any retained extensions, alterations and outbuildings would not result in an increase of more than 50% above the floorspace of the “original” dwelling (measured externally).

[...]”

- 2.9 There is further material guidance in the Green Belt SPD section 5, in particular:

“5.15 The volume, scale and bulk of an extension or replacement dwelling should not result in a large, bulky or intrusive building which would adversely impact on the character of the countryside or the openness of the Green Belt.

5.16 The impact of the development on the countryside is clearly greater if located in a highly visible location. However, the test of impact still applies even if there are limited or no public views of it as, if allowed, the argument could be repeated, with a potentially more serious cumulative impact on the openness of the Green Belt and the urbanisation of the countryside and for these reasons would be unacceptable. In some locations any extension or replacement dwelling may be inappropriate.

5.17 Where a development is acceptable in principle, its form should be well proportioned and present a satisfactory composition with the house. Rural buildings often have a simple form or may possess a visual symmetry which should not be significantly altered” (emphasis added)

2.10 Paragraphs 5.18 through to 5.21 of the Green Belt SPD tackles floorspace increase:

“5.18 National and local policies allow for a limited extension or moderately increased replacement dwelling directly related to the original dwelling. The size of the original building rather than the size of the plot will be used in assessing the appropriate size increase that is likely to be acceptable.

5.19 An appropriately proportioned enlargement, for the purpose of dwellings in the Green Belt is considered to be a floorspace increase of no more than 50% of the original floorspace of the dwelling and does not constitute a 50% increase per planning application. This is consistent with the approach of the previous Local Plan, but Policies GB1 and GB4 also emphasise the scale, bulk or visual intrusion; impact on openness and any cumulative impact.

5.20 Development proposals that increase the floorspace of the original dwelling by 50% are likely to be substantial in size, and most likely to increase the impact of the dwelling on the Green Belt.

5.21 Applicants should be aware that an addition may be considered ‘disproportionate’ or ‘materially larger’ as a result of unacceptable design even where it is below a 50% floorspace increase, depending on the other individual circumstances of the site, and what type of development is proposed.”

Impact on Openness of the Green Belt

2.11 The Site is within an area of open countryside, with some immediate neighbour: as

such, the proposed development would not contradict the fundamental aim of Green Belt policy, which is to prevent urban sprawl (Paragraph 137 Framework). Nor would it play any role in allowing neighbouring towns to merge.

2.12 The land has previously been developed, and will qualify as appropriate Green Belt development if the proposed redevelopment would not have a greater impact on the openness of the Green Belt than the existing development (Paragraph 149).

2.13 The courts have provided some legal guidance on how planning judgment should be exercised in this context. In *Euro Garages Ltd v SoS CLG* [2018] EWHC 1753 (Admin), the High Court said:

“21 “Openness” is not a defined term but, in my view, it is clear in this context that it is openness of the Green Belt that must be considered not the site as such...

23 ...in the context of the exceptions under paragraph 89 [now 149], for there to be a greater impact on the openness of the Green Belt there must be something more than just some change to the environment. In each of the instances under the bullet points, it is contemplated that there will be some change to what is presently there. But, despite that change, the openness of the Green Belt will be preserved (bullet point [2]) and/or there will not be a “disproportionate” addition or something “materially larger”: bullet points [3] and [4]...Whether or not there is a greater impact is a matter of judgment.

24 I would not wish to decide, for all purposes, that the concepts of not having a greater impact on the openness of the Green Belt and of preserving the openness of the Green Belt are identical. Having said that, there is an obvious reason why the wording in different paragraphs and bullet points differs. Where there is no existing development, consideration must be given to whether the development preserves the openness of the Green Belt. Where there is some existing development, the openness of the Green Belt has not been wholly preserved and there will necessarily have been some impact on the openness of the Green Belt already...

29 ...a mere change in the current build is not sufficient to establish that there is a greater impact on the openness of the Green Belt. Put another way, whether the openness of the Green Belt is preserved, or conversely harmed, is not simply a question of whether something, which by definition has a spatial impact, is to be built. Further, the question of whether the openness of the Green Belt is preserved

will generally involve an assessment of the visual or perceived impact” (emphasis added).

2.14 In *John Turner v SoS CLG* [2016] EWCA Civ 466 the Court of Appeal held that:

“14. The concept of “openness of the Green Belt” is not narrowly limited [...]The word “openness” is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents”. (emphasis added)

2.15 The Supreme Court ruled authoritatively on the meaning and application of the concept of “openness” within the Green Belt, in *R (Samuel Smith Old Brewery) v North Yorkshire County Council* [2020] UKSC 3. The case law confirms that:

- The visual quality of the landscape is not in itself an essential part of the openness for which the Green Belt is protected (paragraph 5).
- Rather, openness is the counterpart of urban sprawl, linked to the purposes of the Green Belt, and not necessarily a statement about the about the visual qualities of the land. Applying this broad policy concept is a matter of planning judgment, not law (paragraph 22).
- Nor does openness imply freedom from any form of development (paragraph 22).
- The concept of openness means the state of being free from buildings. It is open textured and a number of factors are capable of being relevant (paragraph 25).

2.16 It follows from the above authorities that the task in a case like this is to consider the ‘marginal’ impact on the openness of the Green Belt of the proposed development in relation to the existing use of the land and dwelling, rather than the total impact on openness of the proposed development because the openness of the Green Belt has already, to some extent, been harmed by the existence of the original building or activity taking place within the Site. This also extends to the fallback position that two dwellings and subdivision of the garden with resultant overall increase in activity levels can happen. Very special circumstances, in this case exist in tandem with compliance with conformity to the exclusions within paragraph 149..

2.17 The openness of the Site needs to be considered in relation to its immediate surroundings/spatial context (rather than some abstract notion of what the Green

Belt is). It is a relevant contextual feature that the proposed development would not contribute to urban sprawl or the merging of towns. The nature of the site is the openness of this particular very small area of land is already compromised.

- 2.18 In other words, there are various features on the landscape, not least the extant curtilage to the dwellinghouse. This is not a virgin landscape: the scale of the proposal needs to be considered proportionately to that context and the wider and long established landscape features.
- 2.19 In line with GB4 of the ADMP, the existing dwelling is lawful and permanent in nature. The design responds to the original form and appearance of the building. In this particular case, the design and volume is less than can be achieved on site through implementation of the fallback position and the Proposal would remain within the original curtilage. The scale and bulk of the proposed development is entirely appropriate for this site, and cannot be characterised as excessive in the context of what is reasonably required for a residential dwelling. Two dwellings separate versus one large mass is not necessarily harmful and in any case is highly subjective.
- 2.20 Alternatively, even if it is considered that the impact on the openness of the Green Belt is such that the proposed development would be inappropriate, the Council must consider whether there are very special circumstances justifying approval. Any harm to the Green Belt must be given substantial weight but is capable of being [clearly] outweighed by other considerations (Paragraph 148 Framework).
- 2.21 To qualify as 'very special', circumstances do not have to be other than 'commonplace', i.e. they do not have to be rarely occurring (*R (Wildie) v Wakefield MDC* [2013] EWHC 2769 (Admin) at [29]). A number of factors combined can together amount to very special circumstances, and the weight to be given to each factor is a matter for the decision-maker. The planning balance will be considered qualitatively rather than quantitatively, as a value judgment made by the decision-maker.
- 2.22 In this case, there exists a powerful and readily implemented fall back position allowed through the 2022 Permission for two dwellings. The potential for significant financial gain adds weight the fallback position will be built out

The fallback position

- 2.23 For ease, the fallback position is quantified again here. The existing section of the

host dwelling to be demolished amounts to 642 m³ of existing lawful volume and 212 m² of existing lawful floorspace. Drawing 545 04 Proposed new dwelling plans then confirms that the proposed new dwelling extends to 632m³ of volume and 192 m² of floorspace. The difference is material and an overall reduction.

Materiality of Fallback Position

- 2.24 The law on the materiality of fallback positions was summarised in *Mansell v Tonbridge And Malling Borough Council* [2017] EWCA Civ 1314 at [27]. The fallback position of a particular site will be a material consideration where there is a possibility of implementation: this is a lower bar than a ‘probability’ or ‘likelihood’. Fall-back cases will be fact-specific, and the role of planning judgment is vital. Consideration is an exercise of broad planning discretion based on the individual circumstances of each case.
- 2.25 It follows that in assessing the impact on openness of the green belt, it is necessary to compare the impact on openness which would be allowed under otherwise lawful use of the site (*Sharma v SoS HCLG* [2018] EWHC 2355 (Admin) at [52]).
- 2.26 The applicant’s previous successful application to secure the principle of two dwellinghouses carries significant and material weight. The prospects of implementation are particularly high in this case by reason of land values in this area. Simply, there is significant financial gain that will drive implementation.
- 2.27 In this case, the relative impact on openness of the proposed development and the full fallback position should be weighed in the balance as a key planning consideration. Trading the existing mass with a complex form for two coherent dwellinghouse will enhance the visual impact of development at the Site, allowing for better-proportioned, more symmetrical development.
- 2.28 The relationship with the fallback position should therefore be accorded great weight in the planning balance.

Other matters

- 2.29 Policy EN2 of the ADMP requires proposals to provide adequate residential amenities for existing and future occupiers of the development, while ensuring it would not result in excessive overlooking, visual intrusion, vibration, odour, air pollution,

vehicle movements, or a loss of privacy and light enjoyed by the occupiers of nearby properties and occupants of future developments. The orientation of the site and the distances from the site boundary and neighbouring properties, means there can be no significant overlooking or loss of privacy would occur. Therefore, the proposal would not have a detrimental impact on the amenity of adjoining occupiers and is in accordance with policy EN2.

- 2.30 The application is supported by a bat emergence survey. This assessment demonstrates the proposal allows for the ongoing protection of bats using the existing building.

3. Summary

- 3.1 This explanation of the law on Green Belt policy considerations and the material weight rightly to be afforded to the fallback positions confirms the proposal is policy compliant. It follows planning permission should now be granted.

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