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By email – eddie.hughes@communities.gov.uk

2 January 2022

Dear Mr E. Hughes MP,

Re: Your letter reference 12570732

Thank you for your letter which was kindly forwarded to me by my MP Joy Morrissey.

As you kindly confirmed, Government sets the national planning policy for England through the National Planning Policy Framework (NPPF) and local authorities are responsible for local planning matters via the Local Plan.

Unfortunately, the Chiltern & South Bucks District Council Local Plan was aborted. I'm therefore desperately trying to establish the situation in respect of the replacement Buckinghamshire Local Plan, in order that I might make representations and provide input to the Neighbourhood Plan. As you will no doubt recognise, this is impossible to do without knowing the contents of the Local Plan.

Buckinghamshire planners state that the Local Plan cannot move forward due to the fact that the Government's Planning White Paper is now under review. Considering this, I'd like to highlight a few areas in which I strongly believe should be considered as part of the Government review and which are extremely prevalent in this core Conservative area of South Bucks.

Whilst I'm extremely pleased to hear that the Government is fully committed to protecting and enhancing the Green Belt (GB) and that the existing policy on GB will remain in place, there are several significant legislative loopholes which are being exploited regularly by land developers and thus, systematically destroying the GB by stealth.

These loopholes mean that planning departments have very little latitude to deny such applications (and any they do have, is routinely not being used), even though the developers cannot and, routinely do not, provide any evidence that their proposed development within the GB meets any requirements of "special circumstances". I can name at least three such applications that have either been approved or awaiting approval in Taplow alone.

As Local Authorities will continue to use Local Plans to facilitate planning decisions and to ensure that GB is protected in accordance with the NPPF, I feel it is imperative that the revised NPPF considers such loopholes, so that Local Plans can incorporate these factors and prevent such abuse of the planning system.

I have three core matters of concern and these, together with the legislation providing the loopholes and thus enabling entirely new developments within the GB through the back door are detailed below:

1. **Permitted Development within the GB provided by The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 1, Class A and Class Q.**

   This legislation enables a simple two stage process to enable brand new residential development within the GB, all without the need for a full planning application.

   It should be further noted that the lack of need for a full planning application not only restricts a planning department's ability to refuse the proposals, but equally importantly, denies local residents and interested parties their democratic right to make representations or objections and thereby protect or shape their own local area and environment. This surely cannot be right in a democratic or moral society and must surely be an unintended legal consequence of legislation enacted by elected representatives?
   For your ease of reference, the legislation is quoted below:

   > ***The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 1, Class A – Agricultural development on units of 5 hectares or more.***
   >
   > *This legislation permits:*
   >
   > ***The carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of—***
   >
   > *(a)* ***works for the erection, extension or alteration of a building; or***
   >
   > *(b)* ***any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit.***

   i.e. the legislation permits the erection of brand new buildings in the GB provided the agricultural unit (which I understand can be split between fields) is 5 hectares or more. Whilst it can be argued that the legislation requires reasonable agricultural need to be shown and this should provide protection; in reality, it does no such thing. Furthermore, the requirement to show reasonable agricultural need is entirely subjective and very easily circumnavigated.

   We have experience of exactly this happening in Taplow, where it was proved using satellite data that the field was below 5 hectares and thus no new building should have been permitted without going through a full planning application. However, the new owner placed 11 sheep in the field and claimed an agricultural need for 4 barns. This was simply waived through under Permitted Development, Class A.

   I took this matter to the Ombudsman who advised they could not act, despite being satisfied that the field is below 5 hectares, because there is no legislation to require the planning department to verify the size of the field and they are therefore able to rely solely on the applicant's say so. Additionally, the requirement for agricultural need is entirely subjective. It is most certainly the case in the specific example stated, that no

genuine agriculture is taking place. In fact, the applicant has openly admitted to me that he has sought to exploit the legislation and dupe the planning authority.

Thus, using this piece of legislation, anyone can buy a GB grazing field and if the site is over 5 Hectares (no proof from the applicant is required, just a statement to that effect), then under Permitted Development, Class A, put up agricultural buildings for a fictious requirement. The protections supposedly provided in the supporting planning guidance (PPG 7, Annex E) are entirely toothless and provide no means to refuse any "application".

The next step in the process is provided by The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 1, *Class Q – agricultural buildings to dwelling houses. For reference, this allows:*

> ***Development consisting of—***
>
> (a) ***a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and***
>
> (b) ***building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.***
>
> **Class Q.1 further provides that:**
>
> *Development is not permitted by Class Q if—*
>
> *(a) the site was not used solely for an agricultural use as part of an established agricultural unit—*
>
> *(i) on 20th March 2013, or*
>
> *(ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or*
>
> *(iii) in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins;*

Thus, once the "agricultural unit" has been erected (under Permitted Development, Class A above) for ten years, it can simply be converted to residential, again with only prior notification under Permitted Development, Class Q.

This two-stage process is well known by developers and is being abused in order to enable entirely new residential development within GB, completely side stepping all GB protections and more worryingly, it passes under Permitted Development with no notification of applications to local residents and no ability for the general public to object effectively.

The two pieces of legislation discussed above are being used together. This is why so many GB sites are being purchased in this 'sit and wait' game to circumnavigate

applying for a full planning application in the GB, which would likely to be refused, as no very special circumstances apply.

2. **The second area of concern is the ability to circumnavigate the GB protections and avoid the need for 'significant special circumstances" by claiming the exemption of Previously Developed Land (PDL) cited in the NPPF, paragraph 149(g).**

   Paragraph 149(g) of NPPF provides an **exemption** to protections in relation to PDL. However, agricultural buildings are excluded from being PDL (Annex 2) and so under a planning application for demolition and rebuild, a developer would need to show "significant special circumstances" and jump through all other GB protections.

   However, we are aware of two independent circumstances in Taplow alone, which are currently seeking to exploit this loophole of PDL to demolish barns and build brand new stand-alone residential properties within the GB.

   One of these barns has only ever been used as equestrian and this is acknowledged by the applicant. Thus, they are seeking to draw a distinction between agricultural use and equestrian. As PDL does not apply to agricultural buildings, they are claiming the barn is not agricultural, but equestrian and so meets the requirements of PDL and thus, the planning authority are under pressure to simply waive through a new residential development within the heart of the GB and adjacent to the only local bridleway.

   The second situation, again in Taplow, involves a barn which has only ever had equestrian use. However, the owner claimed it was solely agricultural in order to gain Permitted Development under Class Q (above) to convert to residential. Despite many representations that the barn was equestrian only, the local planning department waived through the conversion. Predictably, having in their minds, established future residential use, the owners are now seeking to demolish the equestrian barn and build a new stand-alone residence on the basis that the barn constitutes PDL. Clearly, as they have claimed sole agricultural use previously to establish Permitted Development, they should be caught by the exemption at Annex 2 providing that agricultural barns do not constitute PDL.

   These situations demonstrate clearly, the attempted abuse of the legislation facilitated by the lack of clarity around definitions of equestrian and agricultural barns. Why should it be the case that stand alone barns housing horses can form PDL but agricultural barns do not? Surely this was not the intention of the legislators? The very fact that the legislation specifically excludes agricultural buildings, surely suggests that barns per se were intended to be excluded from the definition of PDL and developers are simply attempting to muddy the waters by bringing in equestrian use?

   In the cases above, it appears that the Council do not apply a distinction between equestrian and agricultural use. The Council have very recently opted to determine that there is no distinction between equestrian and agricultural use. It remains to be seen how they therefore reconcile and decide these two cases.

   Thus, it is clear that another loophole is the difference between land that has been solely used for agriculture or solely used as equestrian. There is no distinct definition that defines the difference between one from the other within the NPPF nor the Town and Country Planning Act 1990. However, developers can use this to circumnavigate yet another GB protection, flip-flopping between the uses, according to their current desires.

3. Another concerning issue is that Chiltern & South Bucks District Council have recently admitted to our Parish Council that they do not consider planning objections unless they are made by sworn statutory declaration. I cannot find any legislation requiring this and this information is not made available to local residents who do oppose applications.

   I would be obliged if you could please clarify the requirements in this regard. It seems that to require a statutory declaration for any planning objection to be considered, is to disregard any democratic process. The vast majority of the general public will not know how to prepare the document, how to get it sworn and also be unable to engage a solicitor to do the work for them as this would be very expensive, frightening and off putting for many people. Thus, this situation creates yet another imbalance of power between developers and local residents, with planning departments seemingly always opting to back the applicant/developer.

   This coupled with the inability of local residents and interested parties to make representations in relation to entirely new structures being erected within open GB due to the loopholes of Permitted Development, as discussed above, creates an extremely unpalatable taste in the mouths of the electorate and a deep distrust of our elected representatives and the true intentions of Government and legislators – surely not the way to win votes?

Summary and suggested solutions

<u>Permitted Development – two stage process</u>

The loophole and consequent two-stage process for open abuse of GB protection, must be closed in any future NPPF legislative changes. For clarity, whilst it may be necessary to provide for genuine agricultural buildings, such applications must be subject to far more scrutiny than is the case and the second step of automatic conversion to residential from barns, must be completely removed.

At the very least the period of time from construction of the agricultural barn to the possibility of conversion to residential use must be signifincatly increased from the current 10 years and then only by way of full planning application i.e. no Permitted Development. 30 years would seem more appropriate in order to deter developers from simply land banking GB and playing a waiting game. The current 10 years means that any field is only ever safe from residential development for 10 years, a short enough time for developers to wait.

Without this change to the legislation, no GB field is in fact safe from residential development under Permitted Development, thus making a complete farce of any other legislative protections. The protections of which the public are advised and of which you advised in your letter to me simply do not provide any protection whilst this two-stage process to development exists.

In brief, all new buildings or conversions within the GB must all go through a full planning application and not come under Permitted Development. Otherwise, GB will not have the protection that you believe the legislation provides.

<u>Previously Developed Land</u>

In light of the above lack of clarity, resulting in abuse of the legislation, the definition of PDL must be tightened to unequivocally exclude barns used for either housing horses or cattle or other agricultural use.

It seems ludicrous that a barn is considered differently depending on what type of animal/equipment it houses. This cannot have been the legislators' intention. As agricultural barns are excluded, it logically follows that this was intended to encompass barns per se, i.e. irrelevant of the species residing within!

As this lack of clarity also potentially pertains to "agricultural use" within Class Q above, there must be a clear definition of agricultural use and whether this does indeed include a barn housing equines.

Additionally, closing these loopholes is not only essential from a planning perspective but also from an environmental perspective. Environmental targets and protection cannot be achieved unless back-door building in the GB is stopped.

At the recent COP26 conference in September last year with the U.K. in the presidency role, many methods and strategies were discussed as to how we can reduce our CO2 output, improve our biodiversity and achieve our goal of becoming net zero by 2050. If we are to be taken seriously in our objectives and bottom lines, we must include improving and maintaining our areas of GB.

Further, it is clear from the COVID pandemic that natural green space is essential for communities' wellbeing and mental health. To continue to erode this piece by piece and fail to protect it from urban sprawl, will undoubtably have severe consequences on local people, the National Health Service and natural habitat/wildlife. It is for this reason, any amendments and review of the Government's Planning White Paper, must not only protect the GB as it currently stands, but also enhance this by ensuring that any legislative loopholes are removed. There must also be clear accountability and guidance for local planning departments, enabling them to be able to defend such breaches, presumably as the legislation was intended to do so?

We all hope that 2022 will be a year for delivery from both the Government and the Conservative Party. The focus must be getting on with the job, people's priorities and ensuring a sustainable future for the UK.

I therefore urge you to consider these matters in the proposed Government's Planning White Paper review and ensure that Local Plans can defend robustly against such legislative loopholes, preventing a continued erosion of our treasured GB.

Yours sincerely,

Cllr Spencer Norton
Taplow Parish Council

cc. Mrs Joy Morrissey MP