

Planning Statement

For Mr & Mrs Long | 25-702

Demolition of existing buildings and erection of a single replacement dwelling

Weston House Cottage, North End Lane, Halewood, L26 5QB



Project: 25-702
Site Address: Weston House Cottage, North End Lane, Halewood, L26 5QB
Client: Mr & Mrs Long
Date: May 2026
Author: Gareth Salthouse

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- EP3.** Appeal decision letter: 47 no. dwellings in Billericay, Basildon.
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1. Introduction

- 1.1 This Statement supports our client's planning application for the construction of a replacement dwelling at Weston House Cottage, North End Lane, Halewood, L26 5QB.
- 1.2 The site is located within an established ribbon of built development along North End Lane, and it is bounded by a residential property to one side and a recent residential development comprising 6 no. dwellings to the other side. The proposed scheme comprises redevelopment and/or limited infill development.
- 1.3 In terms of Green Belt policy, the site comprises previously developed land for the purposes of paragraph 154(g) of the Framework. The works proposed would not have a substantial impact on the openness of the Green Belt given the context within which the site is located. The scheme complies with paragraph 154(g) and does not comprise inappropriate development in the Green Belt.
- 1.4 We also set out through this Statement that the scheme would not be 'materially larger' than the existing building for the purposes of paragraph 154(d) of the Framework. In any event, it is sufficient for the scheme to satisfy only one exception at paragraph 154 for it to be considered not 'inappropriate development' in the Green Belt i.e. paragraph 154(g) in this instance. We refer to appeal decisions elsewhere in support of our case.
- 1.5 The proposed scheme would not result in any harm in relation to other matters such as design, highways and ecology. The proposal has been designed by The Design Room Architects (www.thedesignroom.uk) and it would relate well to the general character of the surrounding area.
- 1.6 This Statement demonstrates that the proposed development is compliant with the provisions of the development plan and planning permission should therefore be granted without delay in accordance with paragraph 11(c) of the Framework.



2. The site and surrounding area

- 2.1 The site, known as Weston House Cottage, is located within the Halewood area of the Liverpool region. It falls within the administrative boundaries of Knowsley Council.
- 2.2 Weston House Cottage is a detached property that has been substantially altered over the years and appears as a modern building. There is a sandstone detached building to the east of the main house, and this has been used as a separate dwelling in the past. Although it is understood that this second main building has likely been in-situ since the 19th Century, it has been substantially altered over the years through conversion, extension (e.g. UPVC conservatory) and alterations and window openings in a style and materiality that are at odds with the original building.
- 2.3 The property is located off North End Lane, which is a cul-de sac leading off Gerrards Lane. The lane is characterised by a ribbon of built development comprising residential properties in linear fashion.
- 2.4 The site is bounded by residential development to the northern and southern boundaries. A detached residential property known as Oak View is located to the northern boundary and a recent residential development comprising 6 no. dwellings is located to the southern boundary. North End Lane is to the eastern boundary and there are open fields beyond the western boundary.

Image: Application site edged red bounded by recent residential development and Oak View to the side boundaries



3. Planning policy context

Development plan

- 3.1 The development plan for Knowsley comprises the Core Strategy, adopted in 2016, and the saved policies of the Unitary Development Plan, adopted in 2006. The adopted Policies Map shows that the application site falls within the designated Green Belt.
- 3.2 The most relevant development plan policies are as follows:
- Core Strategy CS5 – Green Belt.
 - Core Strategy CS2 – Development Principles.
 - Core Strategy CS19 – Design Quality and Accessibility in New Development.
 - Core Strategy CS21 – Greenspaces and Trees.
 - Saved UDP Policy G7 – Alteration, Extension or Replacement of Existing Dwellings in the Green Belt.

Other material considerations

National Planning Policy Framework

- 3.3 The following sections are relevant:
- 2. Achieving sustainable development.
 - 4. Decision-making
 - 13. Protecting Green Belt land.

National Planning Policy Guidance (PPG)

- 3.4 Paragraph 64-001 of the PPG advises what factors can be taken into account when considering the potential impact of development on the openness of the Green Belt. It reflects case law such as the Euro Garages Judgment summarised above in noting that the assessment of openness is not confined to spatial considerations:

“openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume”



Supplementary Planning Documents (SPD)

- 3.5 The Knowsley Design Quality in New Development SPD, adopted in 2016, is relevant to the determination of this planning application.

Euro Garages Ltd vs. SoC for CLG and Cheshire West and Chester Council Judgment (2018)

- 3.6 This High Court Ruling related to unauthorised works to a petrol filling station at Red Ensign Service Station on the A540 near Ellesmere Port. The site already contained fuel pumps with a canopy above, food and drink outlets and a car park and the works subject to the legal challenge related to the erection of a storage container and a modestly sized side extension.
- 3.7 The Inspector for the appeal had accepted that the proposed development would constitute limited infilling of a previously developed site for the purposes of paragraph 145(g) of the Framework. Although the Inspector noted that there would be no adverse visual impact on the Green Belt, the Inspector took the view that the increased floor area and volume meant that there would be a greater impact on the openness of the Green Belt and she commented that a lack of visibility did not in itself mean that there would be no loss of openness.
- 3.8 In upholding Euro Garages' challenge to the Inspector's decision, Mrs Justice Jefford made the following observations:
- For there to be a greater impact on the openness of the Green Belt, there must be something more than merely a change.
 - The question as to the impact on the openness of the Green Belt involves an assessment of the harm occasioned by the change.
 - Asking the question whether there is any greater harm is one way of addressing the impact on the openness of the Green Belt.
 - A realistic assessment of the openness of the Green Belt will often have to include the likely perceived effects on openness, if any, as well as spatial effects.
 - It is inherent in the policy that a judgement must be exercised as to the likely visual or perceived impacts on the openness of the Green Belt; it is not simply a question of whether something, which by definition has a spatial impact, is to be built. However, this has subsequently been tempered through the Samuel Smith Old Brewery (Tadcaster) & Ors, R (on the application of) v North Yorkshire County Council [2020] Judgment discussed further below, which confirms that it is for the decision-maker on a case by case basis to assess whether visual openness is relevant, and to what extent.
- 3.9 A copy of this Judgment is at **Appendix EP1** of this Statement.



Samuel Smith Old Brewery (Tadcaster) & Ors, R (on the application of) v North Yorkshire County Council [2020]

3.10 This Supreme Court Judgment followed a Court of Appeal ruling in 2018 concerning the interpretation of the openness of the Green Belt. The key points to note are as follows:

- There is reference to the relevance of PPG2 when interpreting the meaning of the Framework (as opposed to taking the Framework at face value). Lord Carnwath considers the reasons for designating Green Belt and the changes to Green Belt policy in the Framework and suggests that omissions in the Framework are not intended to mark a significant change of approach.
- Lord Carnwath agrees with the conclusions in *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466; [2017] 2 P & CR 1:

“The concept of ‘openness of the Green Belt’ is not narrowly limited to the volumetric approach suggested by [counsel]. 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 ... and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.” (para 14)

- There is no legal requirement for the decision-maker to take visual impacts into consideration when assessing openness, unless they are “obviously material”:

“Paragraph 90 does not expressly refer to visual impact as a necessary part of the analysis, nor in my view is it made so by implication. As explained in my discussion of the authorities, the matters relevant to openness in any particular case are a matter of planning judgement, not law.” (para 39).

- The visual aspect of openness of the Green Belt remains capable of being relevant, and paragraph 64-001 of the PPG remains applicable in terms of having due regard for the spatial and visual aspects. However, it is for the decision-maker to make a judgement as to what aspects of openness are most relevant, having due regard for the site-specific circumstances of the case in question. It will not always be the case that an assessment of the openness of the Green Belt must have due regard for visual and spatial elements (it may be one or the other, or both, in combination sometimes with other factors such as traffic generation).

3.11 The Samuel Smith Judgment in some ways supersedes the findings of the Euro Garages Judgment referred to earlier. However, it remains the case that where visual impacts are a relevant consideration to openness of the Green Belt, the decision-maker should follow the steps set out in the Euro Garages Judgment in terms of there having to be actual tangible harm (as opposed to change) in order to support the proposition that there will be greater impact on openness.

3.12 A copy of this Judgment is at **Appendix EP2** of this Statement.



4. Planning history

- 4.1 Planning permission was granted by the Council in November 2018 for a two storey side extension at Weston House Cottage (LPA ref: 18/00618/FUL).
- 4.2 As noted earlier, the land to the south comprises a recent residential development of 6 no. dwellings. Planning permission for this scheme was granted by the Council in October 2020 and subsequently varied through approval granted in January 2023 (LPA ref: 20/00064/FUL & 22/00218/FUL). This approved scheme included a new build dwelling and this was granted by the Council the basis that it would not result in a greater impact on the openness of the Green Belt i.e. redevelopment/infilling development on previously developed land. Extracts of the approved plans are below.



- 4.3 A residential development for 7 no. dwellings is also under construction at the junction of North End Lane and Gerrards Lane pursuant to planning permission 21/00491/FUL. The LPA concluded that there would not be a significant impact on openness of the Green Belt for this scheme (assessed as moderate) given the surrounding context i.e. partially built development, tree coverage and existing built form in the area.

5. Proposed development

- 5.1 The proposed development seeks full planning permission for the demolition of the existing buildings (house and outbuildings) and the erection of a single dwelling with associated works.
- 5.2 The proposed house would be L-shaped in footprint and constructed in facing brick to the external walls. The overall design concept and fenestration is for a traditional, two-storey house that reflects the general character of the surrounding built form. It incorporates design features that reflect the wider countryside setting such as chimney stacks and gable features.
- 5.3 The driveway off North End Lane would be framed by soft planting and an open area of land to be soft landscaped would be retained between the proposed new house and North End Lane. A requirement for a detailed landscape scheme can be secured by the Council via an appropriately worded planning condition. Parking would be via the integral garage proposed and the driveway.
- 5.4 The scheme has been designed by The Design Room architects (www.thedesignroom.uk).



6. Planning considerations

Green Belt considerations

Paragraph 154(g) of the Framework

- 6.1 The definition of previously developed land in the annex of the Framework is as follows:

“Land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed). It also includes land comprising large areas of fixed surface infrastructure such as large areas of hardstanding which have been lawfully developed. Previously developed land excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.”

- 6.2 Our client’s site comprises 2 no. principal buildings and curtilage and it is not excluded from the above definition because the land is not in the ‘built-up area’. The Collins Dictionary online definition of a built-up area is an area such as a town or city which has lots of buildings in it. Our client’s site is clearly located outside of the built-up area, and is ‘previously developed land’ for the purposes of the Framework; this is consistent with the High Court Judgment in Dartford Borough Council v. Secretary of State for Communities & Local Government (2015).
- 6.3 The proposed development comprises redevelopment for the purposes of paragraph 154(g) of the Framework i.e. demolition and clearance and erection of a new building. It also comprises limited infilling given the existing built form to either side boundary of the application site although it is sufficient for the scheme to equate to either redevelopment or limited infilling for paragraph 154(g) to be engaged.
- 6.4 It has been established that the site is previously developed land and that the proposal comprises redevelopment and limited infilling development. The remaining key policy test for the purposes of paragraph 154(g) is whether the development results in substantial harm to openness. This is a very high threshold, and it exceeds other thresholds such as limited, moderate and significant.



- 6.5 It is not inevitable that the proposed development results in any adverse openness impacts. There must be actual, tangible harm for an adverse impact on openness to be justified; it is not sufficient to merely reference 'change' for alleging such harm and this was the subject of the Euro Garages Judgment we discussed earlier. In the Euro Garages case, the Inspector had wrongly alleged openness harm because of development taking place without taking into account the context and carrying out an assessment as to whether any actual, tangible harm would occur.
- 6.6 It is also the case that the impact of openness cannot be measured at a site-specific level only as per the Euro Garages Judgment. It involves taking a step back from a sole focus on the land on which the new building would be located and taking a broader view of the Green Belt as a whole. It would be wrong to focus on the openness of the site only.
- 6.7 The proposed new house would infill a small gap in a ribbon of built development along North End Lane. The visual element of openness is highly relevant. There would not be any encroachment in built form beyond the existing built-up envelope along the road frontage. There would clearly be some change at a very localised and site-specific level but there would be no actual, tangible material 'harm' to the openness of the Green Belt as a whole when considering the quantitative and qualitative aspects of openness and coming to a rounded assessment.

Image: Application site edged red bounded by built form to both side boundaries with further built development along North End Lane in either direction



- 6.8 Even if one were to allege a loss of openness to the Green Belt, there is no reasonable scenario whereby such an impact could be described as 'substantial'. This is a very high threshold.

6.9 As a benchmark in terms of consideration of openness, we refer to an appeal decision in Billericay, Basildon for the erection of 47 no. two-storey houses that was allowed by the Planning Inspectorate in 2022 (PINS ref: APP/V1505/W/22/3296116). The appeal decision letter is at **Appendix EP3** of this Statement, and the approved site layout plan is at **Appendix EP4**. Although the existing buildings on the site were modest, single storey and the land largely comprised open paddock land with a very substantial quantitative increase in built development proposed, the Inspector concluded that the scheme would result in ‘moderate’ harm only to openness, given visual prominence considerations. Paragraph 16 of the appeal decision letter emphasises the point that the key consideration is the impact on the wider Green Belt as a whole, rather than focusing on the site itself.

“The proposal would result in an increase in built form on the site both in overall footprint and volume and spread across the site. However, the appeal site is largely visually self-contained, with existing housing to Billericay to two sides of the site and the extensive existing and proposed boundary landscaping to the other two sides. Where the boundary planting would be more open the proposal would be seen in the context of the existing housing to Billericay. The harm to openness on the appeal site itself would therefore have limited effect on the wider GB. Allowing for the slightly greater harm to openness of the appeal site itself, the overall harm to the openness of the GB would be moderate.”

6.10 Whereas the above scheme was for 47 no. dwellings on a largely undeveloped site, our client’s scheme is for a single replacement house that would be ‘bookended’ by residential development to both side boundaries and also sits within a ribbon of built development along North End Lane. There is no scenario whereby the impact of the proposed scheme in terms of openness could be reasonably described as anything approaching substantial.

6.11 We summarise our case in relation to paragraph 154(g) of the Framework:

1. It has been established that the site is previously developed land.
2. The appeal proposal comprises redevelopment and/or limited infill development.
3. The appeal proposal would not result in a substantial impact on openness.

6.12 The proposed works are compliant with paragraph 154(g) of the Framework, and therefore the scheme is not inappropriate development within the Green Belt.

6.13 There is no requirement for a scheme such as our client’s to satisfy more than one ‘exception’ at paragraph 154 of the Framework. It may be the case that a scheme is found to be compliant with one ‘exception’ and not another; in such circumstances, the scheme will not be inappropriate development within the Green Belt. We refer to two schemes below that illustrate this point.



- 6.14 Planning permission was granted by the Planning Inspectorate at appeal in October 2025 for the erection of a two-storey side and rear extension, and single storey front extension, at a property in the Green Belt near to Winwick, Warrington. The appeal decision letter is enclosed at **Appendix EP5** of this Statement and the existing and approved plans are at **Appendix EP6**. The site is located within a ribbon of properties in the open countryside.

Image: The appeal site (195 Myddleton Lane) located within a ribbon of built development in the Warrington Green Belt



- 6.15 The cumulative additions to the size of the original property far exceeded 100% and it was agreed by all parties that the scheme represented a disproportionate addition for the purposes of paragraph 154(c) of the Framework. However, the Inspector noted that there was no reason why the scheme could not be assessed against paragraph 154(g) of the Framework; we copy paragraph 5 of the appeal decision below:

“However, I also agree with the view set out in the Counsel opinion provided by the appellant that there is no express or implied exclusion of householder developments from being considered under paragraph 154(g) of the Framework. That is an exception for limited infilling or the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt. There is nothing to my mind in the wording of that paragraph, or indeed in any other associated text in the Framework, which would exclude the appeal development from being considered against this provision.”

- 6.16 The Inspector accepted that the scheme comprised limited infilling of a previously developed site for the purposes of paragraph 154(g) and there would not be a substantial impact on openness. The appeal was allowed on this basis. The Inspector’s conclusion at paragraph 8 is equally applicable to our client’s scheme:



“The bar of substantial harm to openness must, in my view, sit higher than the harm which has resulted from the appeal development. I have found that the development has infilled gaps between existing built development, which reduces the impact that has occurred on Green Belt openness. Whilst there has nonetheless been some loss of openness in both a visual and a spatial sense, given the scale of the built development that has been undertaken and in the circumstances that I have described, this harm has been no more than moderate. As a whole therefore, I find that the development is not inappropriate development in the Green Belt by virtue of paragraph 154g) of the Framework.”

- 6.17 We also refer to an appeal at Bath Cottage in Maidenhead. The appeal decision is enclosed at **Appendix EP7** of this Statement alongside the existing and approved plans at **Appendix EP8** and **Appendix EP9**.

Image: The appeal site (Bath Cottage) located within a pocket of built development in the Maidenhead Green Belt



- 6.18 The householder planning application had been refused because the scheme was ‘disproportionate’ for the purposes of paragraph 154(c) of the Framework (it was 117% larger than the original). However, the appeal was allowed because it was compliant with paragraph 154(g) of the Framework and we copy paragraphs 7, 8 and 11 below:

“The Council assessed the scheme against the exception now listed in paragraph 154 c) of the Framework, which states that the extension or alteration of a building is not inappropriate development provided it does not result in disproportionate additions over and above the size of the original building. However, the appellant’s evidence refers me to other exceptions including paragraph 154 g) of the Framework, which states that development in the Green Belt is not inappropriate where it comprises “limited infilling or the partial or complete redevelopment of previously developed land (PDL) (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt”.



“The appeal site is occupied by Bath Cottage and its garden, as well as an outbuilding and areas of hardstanding. The proposal would partially redevelop the site through the demolition of some structures, and the construction of various extensions and alterations to the host property and its grounds. Due to the site’s location outside of a built-up area, the garden area is not excluded from the Framework’s definition of PDL. The site therefore comprises PDL.”

“..... On this basis, I conclude that the proposal falls within the exception set out in paragraph 154 g) of the Framework and therefore it would not be inappropriate development in the Green Belt. On that basis, it is not necessary for me to consider the proposal against the other exceptions in the Framework, or for very special circumstances to be present. Therefore, there would be no conflict with Policy QP5 of the LP.”

- 6.19 The Inspector found that although disproportionate for the purposes of paragraph 154(c) of the Framework, the proposal should also be assessed based on the exception set out at paragraph 154(g) of the Framework, and it was found to be not inappropriate development accordingly.
- 6.20 Our client’s scheme is compliant with paragraph 154(g) of the Framework, and it does not comprise inappropriate development within the Green Belt. There is a presumption in favour of the grant of planning permission in Green Belt policy terms accordingly.

Saved UDP Policy G7 and paragraph 154(d) of the Framework

- 6.21 Saved UDP Policy G7 states that replacement dwellings in the Green Belt will be allowed provided that the new house would not undermine the openness of the Green Belt. Paragraph 154(d) of the Framework allows for replacement buildings where the new building would not be materially larger.
- 6.22 There is no specific guidance as to what uplift may be acceptable in quantitative terms through the policy wording of Saved Policy G7 or through paragraph 154(d) of the Framework. The supporting text refers to 50% as a general guide only, although this is not expressed as actual policy; the relative quantitative sizes of the proposed scheme provided by The Design Room Architects are enclosed at **Appendix EP10** of this Statement. It is a judgement as to what is materially larger to be decided on a case-by-case basis, and due regard should be had for the visual element as well as the spatial element of openness in accordance with the Samuel Smith Judgment discussed earlier in this Statement.
- 6.23 We do not consider that the proposed scheme would be materially larger for the purposes of Saved UDP Policy G7 and paragraph 154(d) of the Framework for the reasons set out further above in relation to paragraph 154(g). The qualitative aspect of openness is highly relevant to this case given that the context within which the site is located.



- 6.24 Our client's scheme is compliant with Saved UDP Policy G7 and paragraph 154(d) of the Framework, and it does not comprise inappropriate development within the Green Belt accordingly.
- 6.25 If the LPA were to not accept this proposition, the scheme does not comprise inappropriate development in the Green Belt in any event because it is compliant with paragraph 154(g) as discussed earlier.

Very special circumstances

- 6.26 There is no requirement to demonstrate very special circumstances given that the proposed development comprises 'appropriate development' in the Green Belt as set out above. Notwithstanding this point, we set out below that there are the 'very special circumstances' necessary to justify the grant of planning permission in Green Belt policy terms in any event.
- 6.27 In this scenario, the Green Belt balance requires an assessment of whether the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations to amount to the very special circumstances required to justify the proposal. It is not the case that each individual factor must be 'very special' to warrant the grant of planning permission. Ordinary factors in themselves may combine to create something that collectively clearly outweighs the identified harm i.e. very special circumstances. The Judgment in *Brentwood BC v. SoS for the Environment and Gray* makes this clear:

"the factors which, when together, may clearly outweigh harm so as to generate very special circumstances, are not circumscribed by policy, and a series of "ordinary" factors are capable of generating that outcome."

- 6.28 Inappropriate development is by definition 'harmful' and substantial weight should be afforded to this harm as per paragraph 153 of the Framework. In terms of 'any other harm':
1. There would be no harm to openness or the main purposes of including land in the Green Belt for the purposes of paragraph 143 of the Framework.
 2. There would be no site-specific harm e.g. design, character and appearance, ecology, highways and parking.
- 6.29 The absence of any actual, tangible harm to the openness of the Green Belt, or the main purposes of including land within it, together with benefits of the development such as meeting the needs of the applicant and his family, and economic benefits as a result of the construction phase of development (e.g. creation of construction-related jobs directly and indirectly), combine to clearly outweigh the Green Belt harm (definitional harm only) and this comprises the 'very special circumstances' to justify the grant of planning permission for the proposed development.



Heritage considerations

- 6.30 The Council has not published a list of non-designated heritage assets and locally listed buildings.
- 6.31 Weston House Cottage is largely a new build property having been much rebuilt in the 1980s/90s. It has very little architectural or historic interest.
- 6.32 The smaller outbuilding is shown on a historic tithe map from 1843. See the historic maps of the application site at **Appendix EP11** of this Statement. It is separated from what is now Weston House Cottage, and Weston House, by a road. It is understood that Weston House was a villa-type residence demolished in the 1900s and the road shown on the 1843 map was subsequently diverted to its current arrangement as North End Lane such that the outbuilding in question is now on the same side of the road as Weston House Cottage. The outbuilding appears to have been in separate occupation and function to anything on the western side of the original road alignment given its physical separation and the different tithe plot number as shown on the 1843 tithe map at **Appendix EP11**; plot no. 40 was occupied by the Earl of Derby at the time whereas plot nos. 32 and 32a were occupied by a Spencer James Steers.
- 6.33 The outbuilding appears to have been converted during the 20th Century to residential purposes, and it has been extended and much altered compared to how it would likely have originally appeared e.g. UPVC windows, modern composite front door, UPVC conservatory, front porch addition, re-roofed in slate and areas of rebuilt stone. It now has a much altered and domestic appearance.

Images: The much altered and extended outbuilding



- 6.34 Neither Weston House Cottage nor the outbuilding are considered to have sufficient historic or architectural merit to qualify as non-designated heritage assets.

Design



- 6.35 The proposed replacement house would be L-shaped in footprint and constructed in facing brick to the external walls.
- 6.36 The overall design concept and fenestration is for a traditional, two-storey house that reflects the general character of the surrounding built form. It incorporates design features that reflect the wider countryside setting such as chimney stacks and gable features.
- 6.37 The driveway off North End Lane would be framed by soft planting and an open area of land to be soft landscaped would be retained between the proposed new house and North End Lane. A requirement for a detailed landscape scheme can be secured by the Council via an appropriately worded planning condition.
- 6.38 The scheme, designed by The Design Room architects (www.thedesignroom.uk), would integrate well with the general character of the surrounding area and it is compliant with Core Strategy Policies CS2 and CS19.

Other matters

- 6.39 The proposed scheme would benefit from a number of car parking spaces via the integral garage proposed or otherwise on the driveway.
- 6.40 The proposed scheme would not necessitate the removal of trees and hedgerow and a detailed landscape plan could be secured the Council via a suitably worded planning condition.
- 6.41 In terms of biodiversity net gain (BNG), the scheme will be a self-build project, and it is therefore exempt from statutory BNG. Our client is happy to discuss a suitably worded planning condition or legal agreement if this is considered necessary by officers, although it is considered sufficient for this to be confirmed to be the case through the submitted application forms given the statutory requirements in any event.
- 6.42 A bat report will also accompany the planning application and will demonstrate that the scheme can proceed without any undue harm to protected species.
- 6.43 The proposal is acceptable in terms of highways, residential amenity, trees and ecology for the purposes of Core Strategy Policies CS2, CS19 and CS21.



7. Conclusion

- 7.1 This Statement demonstrates that the proposed development is compliant with the provisions of the development plan and planning permission should therefore be granted without delay in accordance with paragraph 11(c) of the Framework.



EP1

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT (BIRMINGHAM)

Birmingham Civil Justice Centre

Date: 11/07/2018

Before :

MRS JUSTICE JEFFORD DBE

Between :

EURO GARAGES LIMITED	<u>Claimant</u>
- and -	
(1) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	<u>Defendant</u>
(2) CHESHIRE WEST AND CHESTER COUNCIL	

Mr Kevin Leigh (instructed by **Shoosmiths LLP**) for the **Claimant**
Mr Jack Parker (instructed by **Government Legal Department**) for the First Defendant

Hearing date: 16 May 2018

Judgment Approved

Mrs Justice Jefford:

Introduction

1. The claimant, Euro Garages Ltd. (“Euro Garages”), is a company which owns and operates a chain of petrol filling stations across the Midlands and the North of England. Those filling stations commonly incorporate food outlets and shops selling convenience goods.
2. Euro Garages operates such a filling station at the Red Ensign Service Station which lies beside Park Gate Road on the A540 beside a roundabout where the A494 and the A5117 bypass intersect. The M56 also joins the A5117. The site is at the junction of the north-south route between Chester and the Wirral and the east-west route between Liverpool and North Wales. At the service station site there are fuel pumps (with a canopy above), Starbucks and Subway outlets, a Spar convenience shop (which I will refer to as “the shop”) and parking for 20 vehicles. The site and the surrounding area are within the Green Belt.
3. Euro Garages carried out works, principally to the shop, for which they subsequently sought retrospective planning permission. At the time this claim was made, the works were almost complete.

4. The nature of the works is uncontroversial and can be described as follows:
 - (i) a storage area was created on one side of the shop surrounded by close boarded fencing with a link to the shop. A storage container was placed in the storage area. The area had previously contained an LPG storage tank surrounded by palisade fencing.
 - (ii) A side extension was added to the shop to relocate an external ATM with internal storage space behind for the shop and a new entrance, the old entrance becoming a window. Previously this area had been occupied by a storage container.
5. Euro Garages sought retrospective planning consent for these works: the storage area was the subject matter of application 17/00885/FUL and the side extension the subject matter of application 17/00657/FUL. Both applications were refused on the basis that they involved inappropriate development within the Green Belt.
6. Euro Garages appealed. The storage area was the subject matter of appeal A0665/W/17/3181400 and the extension was the subject matter of appeal A0665/W/17/3181397. After the original applications had been refused but before the appeals, Euro Garages realised that what had been built did not match the drawings accompanying the original applications in all details. In the appeals, therefore, Euro Garages sought permission for what was in the drawings on the basis that, if permission was granted, it would alter what had already been built.
7. The appeals were made under section 78 of the Town and Country Planning Act 1990 to the first defendant, the Secretary of State for Housing Communities and Local Government, and transferred by the Secretary of State to an Inspector. The appeal was dealt with by written representations to the Inspector who also undertook an accompanied site visit.
8. The Inspector's decision letter was issued on 29 November 2017 and the Inspector refused the appeals and refused to grant planning permission. Euro Garages then made this claim to quash the Inspector's decision under section 288 of the Town and Country Planning Act 1990 on the grounds principally that the decision is not within the powers of the Act, and alternatively that a relevant requirement has not been complied with. Permission was granted on 16 February 2018. The Secretary of State has contested this challenge to the Inspector's decision. The second defendant Council informed the court that it did not contest the claim and would not be represented at the hearing before me.

General principles

9. The applicable general principles were not in dispute between the parties. In summary:
 - (i) a challenge under s. 288(1)(b)(i) to the validity of a decision on the grounds that it is not within the powers of the Act is made on the same basis as would be a claim for judicial review.
 - (ii) The reasons in the decision letter must be adequate, clear and intelligible so that the person against whom the decision is made may understand why he lost,

ascertain whether the decision maker erred in law, and decide what he may lawfully do in the light of the decision.

10. For the latter propositions, counsel helpfully referred me to the speech of Lord Brown in *South Bucks District Council v Porter (No.2)* [2004] UKHL 33 at [36]:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to any substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponent to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he had genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

I set out this passage in full because it is pertinent not only to a reasons challenge but to the way in which the Decision Letter should be read – that is in a straightforward manner and in context.

The National Planning Policy Framework

11. Before I turn to the Inspector’s decision, it is convenient to set out the relevant provisions of the National Planning Policy Framework (“NPPF”) which provided the basis for that decision.

12. Under the heading Protecting Green Belt land, the NPPF says this:

“79. The government attaches great importance to green belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are that openness and their permanence.

80. Green Belt serves five purposes:

- to check the unrestricted sprawl of the large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns;
- to assist in urban regeneration, by encouraging the recycling derelict and land.

.....

87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
89. A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:
- [1] buildings for agriculture and forestry;
 - [2] provision of appropriate facilities for outdoor sport, outdoor recreation and the cemeteries, so long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;
 - [3] the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
 - [4] the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
 - [5] limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or
 - [6] limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
90. Certain other forms of development are not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt. These are:
- mineral extraction;
 - engineering operations;
 - local transport infrastructure which can demonstrate a requirement for a Green Belt location;
 - the re-use of buildings provided that the buildings are of permanent and substantial construction; and..."

For ease of reference I have numbered the bullet points that appear in the paragraphs of the NPPF.

13. It was common ground that the policy is not to be interpreted as if it were a statute. It was also, however, common ground at the hearing before me that the interpretation of policy was an objective matter for the court to determine: see *Tesco Stores Ltd v Dundee* [2012] UKSC 13. The further decision of the Supreme Court in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] UKSC 37 [22]-[26] emphasises that the role of the court should not be overstated; that the court should start at least from the presumption that specialist planning inspectors will have understood the policy framework correctly; and that it is important to distinguish between issues of interpretation (suitable for judicial analysis) and issues of judgment in the application of policy, which can, in the normal course, only be challenged if irrational or perverse.

The decision letter

14. In the Decision Letter, the Inspector identified the main issues as being:
- (i) whether or not the proposed developments would be inappropriate development in the Green Belt for the purposes of the development plan and the National Planning Policy Framework (the Framework);
 - (ii) the effect of the proposed developments on the openness of the Green Belt and the purpose of including land within it; and
 - (iii) if the development was inappropriate, whether that was outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

No criticism can be made of that identification of the issues.

15. The Inspector identified paragraphs 89 and 90 of the NPPF as the relevant paragraphs. She recorded that the parties agreed that, whilst the volume and floor area of the two proposed developments was limited as a result of previous extensions to the building, both on their own and cumulatively they would represent disproportionate additions to the building so that they would not fall within the exception in bullet point [3] under paragraph 89.
16. The decision, therefore, focussed on bullet point [6]. The Inspector considered that the extension with a floor area of 61m² and the storage area with a floor area of 22.4 m² would be “limited infilling”. As she then said, to fall within the exception in this bullet point, the development must also not have a greater impact on the openness of the Green Belt and the purposes of including land within it.
17. Her analysis and reasoning continued as follows:

“13. Openness is an essential characteristic of the Green Belt. It can be taken as the absence of building and development. Whether harm is caused to openness depends on a variety of factors such as the scale of the development, its locational context and its spatial and/or visual implications.

14. The appellant’s photographic evidence shows that the container would be located in an area that was formerly surrounded by palisade fencing and contained two LPG storage tanks that were around 3.5 m in height, as well as being used for bin storage. Although not as high as these tanks, the overall scale and mass of the container is greater than them, and the proposed 2.6m timber fencing surrounding the container is not as open as the previous palisade fencing.

15. The appellant has indicated that the extension to the shop building would be located in an area that was formerly occupied by a storage container. However, no details have been provided of how large this container was, how long it had been there, or when it was removed. In the absence of any evidence to the contrary, on the basis that this was a standard sized container, I consider that the scale and mass of the proposed extension is likely to be slightly greater than that of a container.

16. In addition, the appellant has calculated that overall the appeal scheme would result in a 9.2% increase in floor area, and a 5% increase in volume on the existing filling station, shop and Starbucks building. Whilst these may be relatively small increases, the scale and mass of the resulting building would still be greater than at present.

17. Overall, I therefore consider that the scale and mass of the proposals would have a slightly greater impact on the openness of the Green Belt than the site did previously. I accept that [the] proposals are, to a certain extent, screened by other development on the site and the boundary treatment to the rear. Nevertheless, whilst visibility can be a factor in considering the effect on openness, this does not mean that the proposals would not affect openness, as a lack of visibility does not, in itself, mean that there would be no loss of openness. Moreover, even a limited adverse impact on openness means that openness is not preserved.

18. The purposes of including land in the Green Belt are set out in paragraph 80 of the Framework. As the proposals would be small additions to an existing building within a previously developed site, I am satisfied that the appeal schemes would not conflict with any of the purposes of including land within the Green Belt.

19. Therefore, although the proposal represents the limited infilling of previously developed site, and would not conflict with the purposes of including land in the Green Belt, it would still represent inappropriate development because it would have a greater impact on the openness of the Green Belt than the site does at present.”

Bullet point [6] and the interpretation of the policy

18. Perhaps precisely because it is not a statute, bullet point [6] does not entirely make sense. A sensible reading requires the insertion of a few words so that the exception reads:

“limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and [conflict more with] the purpose of including land within it than the existing development.”

Not only is this a sensible reading but it accords with the wording used in bullet point [2] of paragraph 89 and in paragraph 90.

19. There are thus two limbs to this exception or two tests which the development must pass to fall within the exception to inappropriateness, namely (i) that the infilling must not have a greater impact on the openness of the Green Belt than the existing development and (ii) that the infilling must not conflict more with the purpose of including land within the Green Belt than the existing development. In the course of the argument before me, Euro Garages appeared to conflate these two. They are distinct elements and the Inspector was right to treat them separately and on the basis that to fall within the exception the development had to meet both tests.
20. So far as the second limb was concerned, the Inspector decided that the development did not conflict with the purposes of including the land in the Green Belt and no issue arises about this. The battleground, therefore, was the meaning of the “greater impact on the openness of the Green Belt” and whether the Inspector had properly interpreted that part of the exception and applied the appropriate test.
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. That is not

merely the wording of the paragraph but must be the case because any infill would, almost by definition, have an impact on the openness of a site.

22. I trust that I will do no injustice to the further detailed submissions of Mr Leigh, on behalf of Euro Garages, on this issue, if I summarise them as follows:
- (i) Firstly, it is submitted that for there to be “greater impact” there must be something more than merely a change. The answer to what is meant by that greater impact and what more is required is to be found in the decision of the Court of Appeal in *Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council* [2018] EWCA (Civ) 489.
 - (ii) Paragraph 90 is concerned with other forms of development which are not inappropriate “provided they preserve the openness of the Green Belt”. It is submitted that, although the wording is different in bullet point [6] of paragraph 89, it amounts to the same thing: if the openness of the Green Belt is preserved, there is no greater impact. Conversely, if the openness of the Green Belt is not preserved, there will be greater impact.
 - (iii) Given that the policy is not to be construed as a statute, one can conclude that greater impact occurs where the openness of the Green Belt is not preserved. In that context “preserved” does not mean not changed but means not harmed. So whether there is greater impact involves, in application, an assessment of the harm occasioned by the change.
23. I largely accept these submissions on behalf of Euro Garages. Firstly it seems to me that Mr Leigh is right to submit that, in the context of the exceptions under paragraph 89, 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]). In the case of infill there will necessarily be a change to the scope of the build. So for there to be a greater impact there must be something more. That view is consistent with the decision in the *Samuel Smith* case to which I refer further below. 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 differs 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. It makes sense, therefore, to consider whether there will be a greater impact from the contemplated limited infilling. Asking the question whether there is any greater harm is one way of assessing the impact.

25. However one expresses it, a judgment must be made as to whether there is greater impact on the openness of the Green Belt. It is a judgment that needs to be exercised.
26. On behalf of the Secretary of State, Mr Parker drew my attention to the decision of the Court of Appeal in *Turner v Secretary of State of Communities and Local Government* [2016] EWCA Civ 466. In that case, Sales L.J. described the concept of “openness of the Green Belt” as open-textured such that a number of factors were capable of being relevant. Visual impact was implicitly part of the concept of openness of the Green Belt. However, the openness of the Green Belt also has a spatial aspect and the absence of visual intrusion “does not in itself mean that there is no impact on the openness of the Green Belt as the result of the location of a new or materially larger building there” [at 25].
27. As I have said, Euro Garages placed reliance on the decision in the *Samuel Smith* case. The case concerned a challenge to the grant of planning permission for a significant extension to a quarry. The matter fell within paragraph 90 of the NPPF. The inspector’s decision was, in part and in summary, challenged on the basis that, although she had considered the visual impact of the development, she had not done so when considering the visual effect on the openness of the Green Belt. At first instance, the court had rejected this challenge, relying on *Turner* as authority for the proposition that the inspector could take into account visual impact but was not obliged to do so. The appeal succeeded on this issue, the Court of Appeal finding that the inspector had taken too narrow a view of the concept of openness of the Green Belt and that she had failed to consider the visual impact of the development on that openness.
28. Euro Garages relied in particular on the following passages in the judgment of Lindblom LJ:

“37. The concept of “openness of the Green Belt” is not defined in paragraph 90. Nor is it defined elsewhere in the NPPF. But I agree with Sales L.J.’s observations in Turner to the effect that the concept of “openness” as it is used in both paragraph 89 and paragraph 90 must take its meaning from the specific context in which it falls to be applied under the policies in those two paragraphs. Different factors are capable of being relevant to the concept when it is applied to the facts of a case. Visual impact, as well as spatial impact, is, as Sales L.J. said “implicitly part” of it. In a particular case there may or may not be other harmful visual effects apart from harm in visual terms to the openness of the Green Belt. And the absence of other harmful visual effects does not equate to an absence of visual harm to the openness of the Green Belt.

38. As a general proposition, however, it seems to me that the policy in paragraph 90 makes it necessary to consider whether the effect of a particular development on the openness of the Green Belt can properly be gauged merely by its two-dimensional or three-dimensional presence on the site in question – the very fact of its being there – without taking into accounts the effects it will have on the openness of the Green Belt in the eyes of the viewer. To exclude visual impact, as a matter of principle, from a consideration of the likely effects of development on the openness of the Green Belt would be artificial and unrealistic. The policy in paragraph 90 does not do that. A realistic assessment will often have to include the likely perceived effects on openness, if any, as well as spatial effects. Whether, in the individual circumstances of a particular case, there are likely to be visual as well as spatial effects on the openness of

the Green Belt, and if so, whether those effects are likely to be harmful or benign, will be for the decision-maker to judge. But the need for those judgments to be exercised is, in my view, inherent in the policy.

39. *The first part of the question posed by the preamble in paragraph 90 – whether the development would “preserve” the openness of the Green Belt – cannot mean that a proposal can only be regarded as “not inappropriate in the Green Belt” if the openness of the Green Belt would be left entirely unchanged. It can only sensibly mean that the effects on openness must not be harmful – understanding the verb “preserve” in the sense of “keep ... safe from harm” – rather than “maintain (a state of things)” There may be cases in which a proposed development in the Green Belt will have no harmful visual effects on the openness of the Green Belt. Indeed, there may be cases in which development will have no, or no additional, effect on the openness of the Green Belt, either visual or spatial ... But development for “mineral extraction” in the Green Belt, the category of development with which we are concerned, will often have long-lasting visual effects on the openness of the Green Belt, which may be partly or wholly repaired in the restoration phase – or may not. Whether the visual effect of a particular project of mineral working would be such as to harm the openness of the Green Belt is, classically, a matter of planning judgment.*

40. *In my view, therefore, when the development under consideration is within one of the five categories in paragraph 90 and is likely to have visual effects within the Green belt, the policy implicitly requires the decision-maker to consider how these visual effects will bear on the question of whether the development would “preserve the openness of the Green Belt”. where that planning judgment is not exercised by the decision-maker, effect will not be given to the policy. This will amount to a misunderstanding of the policy, and thus its misapplication, which is a failure to have regard to a material consideration, and an error of law.”*

29. It does not seem to me that this decision defines the meaning of “greater impact” or even of “preserving” the openness of the Green Belt but it supports the view, firstly, that 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. That is a matter of planning judgment but it is a matter that needs to be considered.
30. Mr Parker submitted that the decision in *Turner* should not be regarded as providing a check list of matters that must be considered by the decision-maker in order for there to be a lawful decision. I agree that there is not a check list and the mere fact that the decision maker does not recite a check list and his decisions on each item does not, in itself, invalidate the decision. However, I take Lindblom LJ in the *Samuel Smith* case to say that where the issue of openness of the Green Belt arises, the visual impact of a development will generally require consideration, and that should be the case whether there is likely to be a visual impact or there is no visual impact. On the facts of the *Samuel Smith* case, the court was concerned with a scenario in which the development was likely to have visual effects which had not been considered in the context of the issue of preserving the openness of the Green Belt but, in my view, if there is no visual

impact that ought also to be a material consideration for the obvious reason that it is the less likely that the openness of the Green Belt will be harmed. That seems to me to be consistent with the references in the judgment of the Court of Appeal to the perceived effect on openness “if any” and to cases where the proposed development will have no, or no additional, effect on the openness of the Green Belt. This interpretation of the policy seems to me to be equally applicable to the issue of “greater impact” on openness under paragraph 89.

31. Pulling these points together, the policy requires the decision maker to consider and make an assessment, under bullet point [6], of whether the openness of the Green Belt is impacted or harmed by the proposals to a greater extent than that openness has already been impacted. That is an open-textured assessment and there is no check list to be gone through but, where openness of the Green Belt is in issue, visual impact, as well as spatial impact, requires consideration, subject to a margin of appreciation.

The approach of the Inspector

32. It is entirely clear from the Inspector’s decision letter, as set out above, that she properly identified the test that she should apply as to whether the limited infill in this case fell within the exception at bullet point [6] of paragraph 89. She properly identified that she should consider both whether the development was in conflict with the purposes of including land in Green Belt and whether the development had any greater impact on the openness of the Green Belt. She further, entirely properly, framed the issue of greater impact on openness in terms of harm and she rightly identified that whether there was harm might depend on a variety of factors including the scale of the development, its locational context and its spatial and/or visual implications (paragraph 13). The Inspector made no further reference to the scale of the development (other than in terms of its volume) or its locational context. That was entirely proper: there is no check list. She did, however, address both spatial and visual impact, exercising her judgment as to the relevant considerations.
33. So far as the spatial impact was concerned, the Inspector concluded that the scale and mass of the container was greater than the LPG tanks, although not as high, and the scale and mass of the extension was slightly greater than the previous container. Overall, she concluded that the scale and mass of the resulting building would be greater than at present, although there were relatively small increases.
34. Those conclusions appear in turn to have led to the conclusion in paragraph 17 of the decision letter that *“the scale and mass of the proposals have a slightly greater impact on the openness of the Green Belt than the site did previously.”* The decision letter discloses no reasoning as to why these “relatively small” increases had a slightly greater impact on the openness of the Green Belt.
35. As I have indicated, Mr Parker reminded me that I should give the letter a “benevolent” reading rather than subject it to a close textual analysis and that I should bear in mind that it was written against the background of the parties’ written representations and that it should be sufficient to allow the appellant to understand the Inspector’s reasoning when read in that context. That does not, however, seem to me to assist the Secretary of State here because the written representations put squarely in issue Euro Garages’ argument that the relatively small increase in floor area and volume did not

have a greater impact on the openness of the Green Belt. Euro Garages identified the percentage increases in floor area and volume and argued that “*such an increase would not be regarded as having a material impact on the open character of the Green Belt ...*”. The Decision Letter provides no reasoning as to why the Inspector decided that it did.

36. It seems to me that the only basis on which the Inspector could have reached that conclusion was if she considered that the greater floor area and/or volume necessarily meant that there was a greater impact. The flaw in that reasoning is that any infill (however limited) would necessarily result in greater floor area or volume and it involves the assumption that any change would have a greater impact. As I have said, the concept of greater impact involves something more than that.
37. So far as visual impact of the development is concerned, this was expressly raised in the appellant’s written representations. Visual impact was, at the very least, in the mind of the Inspector and referred to in the Decision Letter. However, the consideration that the Inspector gave to visual impact was less than clear.
38. Firstly, in paragraph 14 of the Decision Letter there is reference to the timber fencing around the new container not being as open as the previous palisade fencing. It is not at all clear whether that was a factor that the Inspector took into account but, if she did, then, looked at on its own, it seems to me that that involved a misinterpretation of the policy, in that it was concerned with the openness of the site and not of the Green Belt. There may, of course, be circumstances in which the replacement of an open fence with a solid structure could impact the openness of the Green Belt but here the open fence surrounded tanks and the solid fence surrounds a container (of lesser height) and it is difficult to see how there could be an impact on the openness of the Green Belt as distinct from the site itself.
39. Secondly, paragraph 17 of the Decision Letter also referred to visual impact. The Inspector referred to the fact that the development is, to some extent, screened and not visible. That implies that she considered there to be some visual impact. Despite that, the Inspector then said “a lack of visibility does not, in itself, mean that there would be no loss of openness.” Read in context, that is a statement of principle and simply does not address the question of whether, in this particular case, the development (to some extent screened but to some extent visible) does or would have an impact on openness. If the sentence is to be read as meaning that the Inspector has concluded that the development has no visual impact, then the only matter she took into account was the spatial impact, which, as I have said, she appears to have approached on the erroneous basis that any change had a greater impact on the openness of the Green Belt.
40. The final sentence of this paragraph which reads “... *even a limited adverse impact on openness means that openness is not preserved*” might, on a benevolent reading, be taken to mean that the Inspector concluded that the development does have such a limited adverse impact visually but if that is what the sentence means, then it amounts to no more than a decision that because the development is visible, it has a greater impact on openness. That seems to me to disclose the same error of assuming that any change has a greater impact on openness.

41. That the decision was reached in the flawed manner I have set out seems to me to be further evidenced by the Inspector's conclusion in paragraph 23 of the Decision Letter that the development would "not adversely affect the character and appearance of the site or this part of the Green Belt". The Inspector regarded the absence of harm in this respect as a neutral factor but that only makes sense if the Inspector regarded some other harm as necessarily flowing from any alteration to the existing site.

Conclusion

42. In my judgment, therefore, what the Inspector in fact did was treat any change as having a greater impact on the openness of the Green Belt, rather than considering the impact or harm, if any, wrought by the change. Although the Inspector appeared to set out the right test, she then either went wrong in her interpretation of the policy or failed to apply the policy. For these reasons, I would grant Euro Garages the relief sought and quash the decision of the Inspector.
43. For completeness, I should add that Euro Garages advanced, before the Inspector and before me, an alternative argument that the development fell within bullet point [3] under paragraph 90 as "local transport infrastructure which can demonstrate a requirement for a Green Belt location." It is not necessary for me to consider this alternative case or express any view, as counsel for Euro Garages invited me to do, as to whether a petrol filling station fell within the definition of "local transport infrastructure".

EP2



Hilary Term
[2020] UKSC 3
On appeal from: [2018] EWCA Civ 489

JUDGMENT

**R (on the application of Samuel Smith Old Brewery
(Tadcaster) and others) (Respondents) v North
Yorkshire County Council (Appellant)**

before

**Lady Hale
Lord Carnwath
Lord Hodge
Lord Kitchen
Lord Sales**

JUDGMENT GIVEN ON

5 February 2020

Heard on 3 December 2019

Appellant
Daniel Kolinsky QC
Hannah Gibbs

Respondents (1 and 2)
Peter Village QC
James Strachan QC
Ned Helme
Ruth Keating

(Instructed by North Yorkshire
County Council Legal Services)

(Instructed by Pinsent Masons LLP
(Leeds))

Respondent (3)
Alison Ogley

(Instructed by Walker Morris LLP)

Respondents:-

- (1) Samuel Smith Old Brewery (Tadcaster)
- (2) Oxton Farm
- (3) Darrington Quarries Ltd

LORD CARNWATH: (with whom Lady Hale, Lord Hodge, Lord Kitchen and Lord Sales agree)

Introduction

1. The short point in this appeal is whether the appellant county council, as local planning authority, correctly understood the meaning of the word “openness” in the national planning policies applying to mineral working in the Green Belt, as expressed in the National Planning Policy Framework (“NPPF”). The Court of Appeal ([2018] EWCA Civ 489), disagreeing with Hickinbottom J ([2017] EWHC 442 (Admin)) in the High Court, held that, in granting planning permission for the extension of a quarry, the council had been misled by defective advice given by their planning officer. In the words of Lindblom LJ, giving the leading judgment:

“It was defective, at least, in failing to make clear to the members that, under government planning policy for mineral extraction in the Green Belt in para 90 of the NPPF, visual impact was a potentially relevant and potentially significant factor in their approach to the effect of the development on the ‘openness of the Green Belt’, ...” (para 49, per Lindblom LJ)

He thought that, having regard to the officer’s own assessment, it was “quite obviously relevant”, and therefore a necessary part of the assessment. The court quashed the permission.

2. In this court, the council, supported by the quarry operator (the third respondent), argues that the Court of Appeal’s reasoning was based on misunderstandings both of the relevant policies and of the officer’s report, and that the permission should be reinstated. The first and second respondents (collectively referred to as “Samuel Smith”) seek to uphold the decision and reasoning of the Court of Appeal.

Green Belt policy

History and aims

3. Although we are directly concerned with the policies in the NPPF (in its original 2012 version), Green Belt policies have a very long history. It can be traced back to the first national guidance on Green Belts in Circular 42/55 (issued in August 1955). More

recently Planning Policy Guidance 2: Green Belts (published in 1995 and amended in 2001) (“PPG2”) confirmed the role of Green Belts as “an essential element of planning policy for more than four decades”; and noted that the purposes of Green Belt policies and the related development control policies set out in 1955 “remain valid today with remarkably little alteration” (para 1.1). The NPPF itself, as appears from ministerial statements at the time, was designed to consolidate and simplify policy as expressed in a number of ministerial statements and guidance notes, rather than to effect major policy changes (see *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386; [2015] PTSR 274, paras 16ff, 22 per Sullivan LJ).

4. In the NPPF the concept of “openness” first appears in the introduction to section 9 (“Protecting Green Belt land”) which gives a statement of the fundamental aim and the purposes of Green Belt policy:

“79. The Government attaches great importance to Green Belts. 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.

80. Green Belt serves five purposes:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”

5. This statement of the “fundamental aim” of the policy and the “five purposes” is unchanged from PPG2. The PPG included a fuller statement of certain “objectives” for the use of land within defined Green Belts, including (for example) providing

opportunities for access to open countryside, and retaining and enhancing attractive landscapes (para 1.6), but adding:

“The extent to which the use of land fulfils these objectives is however not itself a material factor in the inclusion of land within a Green Belt, or in its continued protection. For example, although Green Belts often contain areas of attractive landscape, the quality of the landscape is not relevant to the inclusion of land within a Green Belt or to its continued protection. The purposes of including land in Green Belts are of paramount importance to their continued protection, and should take precedence over the land use objectives.”
(para 1.7)

It is clear therefore that the visual quality of the landscape is not in itself an essential part of the “openness” for which the Green Belt is protected.

Control of development in Green Belts

6. Key features of development control in Green Belts are the concepts of “appropriate” and “inappropriate” development, and the need in the latter case to show “very special circumstances” to justify the grant of planning permission. In *R (Lee Valley Regional Park Authority) v Epping Forest District Council* [2016] EWCA Civ 404; [2016] Env LR 30 (“the *Lee Valley* case”), Lindblom LJ explained their relationship:

“18. A fundamental principle in national policy for the Green Belt, unchanged from PPG2 to the NPPF, is that the construction of new buildings in the Green Belt is ‘inappropriate’ development and should not be approved except in ‘very special circumstances’, unless the proposal is within one of the specified categories of exception in the ‘closed lists’ in paras 89 and 90. ... The distinction between development that is ‘inappropriate’ in the Green Belt and development that is not ‘inappropriate’ (ie appropriate) governs the approach a decision-maker must take in determining an application for planning permission. ‘Inappropriate development’ in the Green Belt is development ‘by definition, harmful’ to the Green Belt - harmful because it is there - whereas development in the excepted categories in paras 89 and 90 of the NPPF is not. ...”

7. These concepts are expressly preserved in the policies for the control of development set out in paras 87ff of the NPPF:

“As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

... ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.” (paras 87-88)

8. Paragraph 89 indicates that construction of new buildings is to be regarded as “inappropriate” with certain defined exceptions. The exceptions include, for example, “buildings for agriculture and forestry”, and (relevant to authorities discussed later in this judgment):

- “- provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;

- limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.”

9. Paragraph 90, which defines forms of development regarded as “not inappropriate” is directly in issue in the present case:

“90. Certain other forms of development are also not inappropriate in Green Belt *provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt*. These are:

- mineral extraction;
- engineering operations;
- local transport infrastructure which can demonstrate a requirement for a Green Belt location;

- the re-use of buildings provided that the buildings are of permanent and substantial construction; and
- development brought forward under a Community Right to Build Order.” (Emphasis added. I shall refer to the words so emphasised as “the openness proviso”)

10. Paragraphs 89-90 replace a rather fuller statement of policy for “Control of Development” in section 3 of PPG2. Paragraphs 3.4-3.6 (“New buildings”), and paras 3.7-3.12 (“Re-use of buildings”, and, under a separate heading, “Mining operations, and other development”) cover substantially the same ground, respectively, as NPPF paras 89 and 90, but in rather fuller terms. The policy for “Mining operations, and other development” was as follows:

“3.11 Minerals can be worked only where they are found. Their extraction is a temporary activity. Mineral extraction *need not be inappropriate development: it need not conflict with the purposes of including land in Green Belts, provided that high environmental standards are maintained and that the site is well restored.* Mineral and local planning authorities should include appropriate policies in their development plans. Mineral planning authorities should ensure that planning conditions for mineral working sites within Green Belts achieve suitable environmental standards and restoration ...

3.12 The statutory definition of development includes engineering and other operations, and the making of any material change in the use of land. The carrying out of such operations and the making of material changes in the use of land are inappropriate development *unless they maintain openness and do not conflict with the purposes of including land in the Green Belt ...*” (Emphasis added)

11. It will be noted that a possible textual issue arises from the way in which the PPG2 policies have been shortened and recast in the NPPF. In the PPG the openness proviso is in terms directed to forms of development other than mineral extraction (it also appears in the section on re-use of buildings: para 3.8). By contrast, mineral extraction is not expressly subject to the proviso, but may be regarded as not inappropriate, subject only to “high environmental standards” and the quality of restoration. In the shortened version in the NPPF these categories of potentially appropriate development have been recast in para 90, and brought together under the same proviso, including the requirement to preserve openness.

12. I do not read this as intended to mark a significant change of approach. If that had been intended, one would have expected it to have been signalled more clearly. To my mind the change is explicable as no more than a convenient means of shortening and simplifying the policies without material change. It may also have been thought that, whereas mineral extraction in itself would not normally conflict with the openness proviso, associated building or other development might raise greater problems. A possible example may be seen in the *Europa Oil* case discussed below (para 26).

Other relevant policies

13. *Mineral policies* A later part of the NPPF (section 13, headed “Facilitating the sustainable use of minerals”) deals with mineral development generally. It emphasises the importance of ensuring a sufficient supply of minerals to support economic growth (para 142); and gives advice on the inclusion of mineral policies in local plans (para 143), and on the determination of planning applications (para 144). The latter includes (inter alia) a requirement to ensure that there are “no unacceptable adverse impacts on the natural and historic environment ...”, and that provision is made for “restoration and aftercare at the earliest opportunity to be carried out to high environmental standards ...”. No issue arises under these policies in the present case, but they show that development which is “appropriate” in Green Belt may be found unacceptable by reference to other policy constraints.

14. *Local plan policies* The proposal was also subject to Green Belt and other policies in the local plan (the Selby District Core Strategy Local Plan). These are summarised by Lindblom LJ (para 9). It is not suggested by either party that these materially affect the legal issues arising in the present appeal.

The application and the officer’s report

15. The application was for an extension to the operational face of Jackdaw Crag Quarry, a magnesian limestone quarry owned and operated by the third respondent, Darrington Quarries Ltd. The quarry, which extends to about 25 hectares, is in the Green Belt, about 1.5 kilometres to the south-west of Tadcaster. It has been operated by Darrington Quarries for many years, planning permission for the extraction of limestone having first been granted in July 1948 and subsequently renewed. The proposed extension is for an area of about six hectares, expected to yield some two million tonnes of crushed rock over a period of seven years.

16. The application had received planning permission in January 2013, but that permission was quashed because of failings in the environmental impact assessment. The application came back to the county council’s Planning and Regulatory Functions Committee on 9 February 2016, when the committee accepted their officer’s

recommendation that planning permission be granted. Following completion of a section 106 agreement planning permission was granted on 22 September 2016.

17. The officer's report, prepared by Vicky Perkin for the Corporate Director, Business and Environmental Services, was an impressively comprehensive and detailed document, running to more than 100 pages, and dealing with a wide range of planning considerations. Under the heading "Landscape impact", the report summarised the views of the council's Principal Landscape Architect, who had not objected in principle to the proposal, but had drawn attention to the potential landscape impacts and the consequent need to ensure that mitigation measures are maximised (paras 4.118, 7.42-5).

18. For present purposes the critical part of the report comes under the heading "Impacts of the Green Belt" (paras 7.117ff). Having summarised the relevant national and local policies, she referred (para 7.120) to the consultation response from Samuel Smith stating that:

"... the application site falling within the Green Belt is critical in the determination of the proposal and added that '*mineral extraction remains inappropriate development in the Green Belt unless it can be demonstrated that the proposal both preserves the openness of the Green Belt and doesn't conflict with the purposes of including land within the Green Belt*'. The objector also stated that one of the aims of the Green Belt, in '*assisting in urban regeneration will be materially harmed by the development*' ..." (her italics)

19. The officer commented:

"7.121 When considering applications within the Green Belt, in accordance with the NPPF, it is necessary to consider whether the proposed development will firstly preserve the openness of the Green Belt and secondly ensure that it does not conflict with the purposes of including land within the Green Belt.

7.122 It is considered that the proposed development preserves the openness of the Green Belt and does not conflict with the purposes of including land within the Green Belt. Openness is not defined, but it is commonly taken to be the absence of built development. Although the proposed development would be on existing agricultural land, it is considered that because the application site immediately abuts the existing operational quarry, it would not introduce development into

this area of a scale considered to conflict with the aims of preserving the openness of the Green Belt.

7.123 In terms of whether the proposed development does not conflict with the purposes of including land within the Green Belt, the proposed quarrying operations are not considered to conflict with the purposes of including land within the Green Belt. Equally, it is not considered that the proposed development would undermine the objective of safeguarding the countryside from encroachment as it should be considered that the site is in conjunction with an operational quarry which will be restored. The proposed development is a temporary use of land and would also be restored upon completion of the mining operations through an agreed [restoration plan].

7.124 The purposes of including land within the Green Belt to prevent the merging of neighbouring towns and impacts upon historic towns are not relevant to this site as it is considered the site is adequately detached from the settlements of Stutton, Towton and Tadcaster. It is also important to note that the A64 road to the north severs the application site from Tadcaster.

7.125 As mentioned in the response from [Samuel Smith], one of the purposes of the Green Belt is assisting in urban regeneration which the objector claims will be undermined by the proposed development. Given the situation of the application site, adjacent to an existing operational quarry and its rural nature, and the fact that minerals can only be worked where they are found, it is considered that the site would not, therefore, undermine this aim of the Green Belt.

7.126 The restoration scheme is to be designed and submitted as part of a section 106 Agreement, it is considered that there are appropriate controls to ensure adequate restoration of the site. Due to the proposed restoration of the temporary quarry and the fact that it is considered the proposal doesn't conflict with the aims of the Green Belt, it is considered that the proposed development would not materially harm the character and openness of the Green Belt, and would, therefore, comply with Policy SP3 and SP13 of the Selby District Core Strategy Local Plan and NPPF."

20. Section 8 of the report gives the planning officer's conclusion:

“8.4 It is considered that the proposed screening could protect the environment and residential receptors from potential landscape and visual impacts.

8.5 Due to the proposed restoration of the temporary quarry and the fact that it is considered the proposal doesn’t conflict with the aims of the Green Belt, it is considered that the proposed development would not materially harm the character and openness of the Green Belt.”

Legal principles

21. Much time was taken up in the judgments below, as in the submissions in this court, on discussion of previous court authorities on the relevance of visual impact under Green Belt policy. The respective roles of the planning authorities and the courts have been fully explored in two recent cases in this court: *Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd intervening)* [2012] UKSC 13; [2012] PTSR 983, and *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] UKSC 37; [2017] 1 WLR 1865. In the former Lord Reed, while affirming that interpretation of a development plan, as of any other legal document, is ultimately a matter for the court, also made clear the limitations of this process:

“Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse ...” (para 19)

In the *Hopkins Homes* case (paras 23-34) I warned against the danger of “over-legalisation” of the planning process. I noted the relatively specific language of the policy under consideration in the *Tesco* case, contrasting that with policies:

“expressed in much broader terms [which] may not require, nor lend themselves to, the same level of legal analysis ...”

22. The concept of “openness” in para 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: “to prevent urban sprawl by keeping land permanently open ...”. Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land.

23. It seems surprising in retrospect that the relationship between openness and visual impact has sparked such legal controversy. Most of the authorities to which we were referred were concerned with the scope of the exceptions for buildings in para 89 (or its predecessor). In that context it was held, unremarkably, that a building which was otherwise inappropriate in Green Belt terms was not made appropriate by its limited visual impact (see *R (Heath and Hampstead Society) v Camden London Borough Council* [2007] EWHC 977 (Admin), upheld at *R (Heath and Hampstead Society) v Vlachos* [2008] EWCA Civ 193; [2008] 3 All ER 80). As Sullivan J said in the High Court:

“The loss of openness (ie unbuilt on land) within the Green Belt or Metropolitan Open Land is of itself harmful to the underlying policy objective. If the replacement dwelling is more visually intrusive there will be further harm in addition to the harm by reason of inappropriateness ...” (para 22)

To similar effect, in the *Lee Valley* case, Lindblom LJ said:

“The concept of ‘openness’ here means the state of being free from built development, the absence of buildings - as distinct from the absence of visual impact.” (para 7, cited by him in his present judgment at para 19)

24. Unfortunately, in *Timmins v Gedling Borough Council* [2014] EWHC 654 (Admin) (a case about another familiar Green Belt category - cemeteries and associated buildings), Green J went a stage further holding, not only that there was “a clear conceptual distinction between openness and visual impact”, but that it was:

“wrong *in principle* to arrive at a specific conclusion as to openness by reference to visual impact.” (para 78, emphasis in original)

25. This was disapproved (rightly in my view) in *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466; [2017] 2 P & CR 1, para 18. This concerned an inspector’s decision refusing permission for a proposal to replace a mobile home and storage yard with a residential bungalow in the Green Belt. In rejecting the contention that it was within the exception for redevelopment which “would not have a greater impact on the openness of the Green Belt”, the inspector had expressly taken account of its visual effect, and that it would “appear as a dominant feature that would have a harmful impact on openness here”. The Court of Appeal upheld the decision. Sales LJ said:

“The concept of ‘openness of the Green Belt’ is not narrowly limited to the volumetric approach suggested by [counsel]. 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 ... and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.” (para 14)

Before us there was no challenge to the correctness of this statement of approach. However, it tells one nothing about how visual effects may or may not be taken into account in other circumstances. That is a matter not of legal principle, but of planning judgement for the planning authority or the inspector.

26. The only case referred to in argument which was directly concerned with mineral extraction as such was *Europa Oil and Gas Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2643 (Admin); [2014] 1 P & CR 3 (upheld at [2014] EWCA Civ 825; [2014] PTSR 1471). That concerned an application for permission for an exploratory drill site to explore for hydrocarbons in the Green Belt, including plant and buildings. The inspector had considered the potential effect of the development on the Green Belt:

“... I consider Green Belt openness in terms of the absence of development. The proposal would require the creation of an extensive compound, with boundary fencing, the installation of a drilling rig of up to 35 metres in height, a flare pit and related buildings, plant, equipment and vehicle parking on the site. Taking this into account, together with the related HGV and other traffic movements, I consider that the Green Belt openness would be materially diminished for the

duration of the development and that there would be a conflict with Green Belt purposes in respect of encroachment into the countryside over that period.” (quoted by Ouseley J at para 16)

He refused permission, taking the view that it did not fall within the exception for “mineral extraction”, and that there were no very special circumstances to out-weigh the harm to the Green Belt identified in that passage.

27. It was held that he had erred in failing to treat the proposal as one for mineral extraction, and therefore potentially within the exception in NPPF para 90. Ouseley J noted the special status of mineral extraction under Green Belt policy. As he said:

“67. One factor which affects appropriateness, the preservation of openness and conflict with Green Belt purposes, is the duration of development and the reversibility of its effects. Those are of particular importance to the thinking which makes mineral extraction potentially appropriate in the Green Belt. Another is the fact that extraction, including exploration, can only take place where those operations achieve what is required in relation to the minerals. Minerals can only be extracted where they are found ...

68. Green Belt is not harmed by such a development because the fact that the use has to take place there, and its duration and reversibility are relevant to its appropriateness and to the effect on the Green Belt ...”

28. However, he made clear that it remained necessary for the decision-maker to consider the proposal under the proviso to para 90. Affirming his decision in the Court of Appeal, Richards LJ said (para 41):

“The key point, in my judgment, is that the inspector approached the effect on Green Belt openness and purposes on the premise that exploration for hydrocarbons was necessarily inappropriate development since it did not come within any of the exceptions. He was not considering the application of the proviso to para 90 at all: on his analysis, he did not get that far. Had he been assessing the effect on Green Belt openness and purposes from the point of view of the proviso, it would have been on the very different premise that exploration for hydrocarbons on a sufficient scale to require planning permission is nevertheless capable in principle of being appropriate development. His mind-set would have been different, or at least it might well have been different ...”

Although the decision turned principally on a legal issue as to the meaning of “mineral extraction”, it is significant that the impact on the Green Belt identified by the inspector (including a 35 metre drill rig and related buildings) was not thought necessarily sufficient in itself to lead to conflict with the openness proviso. That was a matter for separate planning judgement.

Material considerations

29. Section 70(2) of the Town and Country Planning Act 1990 (“the Act”) required the council in determining the application to have regard to the development plan and “any other material consideration”. In summary Samuel Smith’s argument, upheld by the Court of Appeal, is that the authority erred in failing to treat the visual effects, described by the officer in her assessment of “Landscape impact” (para 17 above) as “material considerations” in its application of the openness proviso under para 90.

30. The approach of the court in response to such an allegation has been discussed in a number of authorities. I sought to summarise the principles in *Derbyshire Dales District Council v Secretary of State for Communities and Local Government* [2009] EWHC 1729 (Admin); [2010] 1 P & CR 19. The issue in that case was whether the authority had been obliged to treat the possibility of alternative sites as a material consideration. I said:

“17. It is one thing to say that consideration of a possible alternative site is a potentially relevant issue, so that a decision-maker does not err in law if he has regard to it. It is quite another to say that it is *necessarily* relevant, so that he errs in law if he fails to have regard to it ...

18. For the former category the underlying principles are obvious. It is trite and long-established law that the range of potentially relevant planning issues is very wide (*Stringer v Minister of Housing and Local Government* [1970] 1 WLR 1281); and that, absent irrationality or illegality, the weight to be given to such issues in any case is a matter for the decision-maker (*Tesco Stores Ltd v Secretary of State for the Environment and West Oxfordshire District Council* [1995] 1 WLR 759, 780). On the other hand, to hold that a decision-maker has erred in law by *failing* to have regard to alternative sites, it is necessary to find some legal principle which compelled him (not merely empowered) him to do so.”

31. I referred to the discussion of this issue in a different context by Cooke J in the New Zealand Court of Appeal, in *CreedNZ Inc v Governor General* [1981] 1 NZLR

172, 182 (adopted by Lord Scarman in the House of Lords in *In re Findlay* [1985] AC 318, 333-334, and in the planning context by Glidewell LJ in *Bolton Metropolitan Borough Council v Secretary of State for the Environment and Greater Manchester Waste Disposal Authority* (1991) 61 P & CR 343, 352):

“26. Cook J took as a starting point the words of Lord Greene MR in the *Wednesbury* case [1948] 1 KB 223, 228:

‘If, in the statute conferring the discretion there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters.’

He continued:

‘What has to be emphasised is that it is only when the statute *expressly or impliedly identifies considerations required to be taken into account by the authority as a matter of legal obligation* that the court holds a decision invalid on the ground now invoked. It is not enough that it is one that may properly be taken into account, nor even that it is one which many people, including the court itself, would have taken into account if they had to make the decision ...’ (Emphasis added)

27. In approving this passage, Lord Scarman noted that Cook J had also recognised, that -

‘... in certain circumstances there will be some matters so obviously material to a decision on a particular project that anything short of direct consideration of them by the ministers ... would not be in accordance with the intention of the Act.’ (*In re Findlay* at p 334)

28. It seems, therefore, that it is not enough that, in the judge’s view, consideration of a particular matter might realistically have made a difference. Short of irrationality, the question is one of statutory construction. It is necessary to show that the matter was one which the statute expressly or impliedly (because ‘obviously

material’) requires to be taken into account ‘as a matter of legal obligation’.”

32. Mutatis mutandis, similar considerations apply in the present case. The question therefore is whether under the openness proviso visual impacts, as identified by the inspector, were expressly or impliedly identified in the Act or the policy as considerations required to be taken into account by the authority “as a matter of legal obligation”, or alternatively whether, on the facts of the case, they were “so obviously material” as to require direct consideration.

The reasoning of the courts below

33. Hickinbottom J in the High Court held in summary that consideration of visual impact was neither an implicit requirement of the openness proviso, nor obviously relevant on the facts of this case. He said:

“64. I stress that we are here concerned with differential impact, ie the potential adverse visual impact over and above the adverse spatial impact. On the facts of this case ... it is difficult to see what the potential visual impact of the development would be over and above the spatial impact, which, as Mr Village concedes, was taken into account. In any event, even if there were some such impact, that does not mean that openness would be adversely affected; because, in assessing openness, the officers would still have been entitled to take into account factors such as the purpose of the development, its duration and reversibility, and would have been entitled to conclude that, despite the adverse spatial and visual impact, the development would nevertheless not harm but preserve the openness of the Green Belt.

65. In this case, the potential visual impact of the development falls very far short of being an obvious material factor in respect of this issue. In my judgment, in the circumstances of this case, the report did not err in not taking into consideration any potential visual impact from the development. Indeed, on the facts of this case, I understand why the officers would have come to the view that consideration of visual impact would not have materially added to the overarching consideration of whether the development would adversely impact the openness of the Green Belt.”

34. Lindblom LJ took the opposite view. He summarised the visual impacts described by the officer:

“42. The proposed development was a substantial extension to a large existing quarry, with a lengthy period of working and restoration. As the Principal Landscape Architect recognized in her response to consultation, and the officer acknowledged without dissent in her report, there would be permanent change to the character of the landscape (paras 4.109 and 4.115 of the report). The ‘quality of the Locally Important Landscape Area as a whole would be compromised’ (para 7.41). *The exposed face of the extended quarry would be as visible as that of the existing quarry, if not more so* (paras 4.111 and 7.42). *Long distance views could be cut off by the proposed bunding and planting.* Agricultural land would ultimately be replaced by a ‘deep lower level landscape’ of grassland (para 4.113). The ‘character and quality’ of the landscape would be ‘permanently changed’ and the ‘impact cannot be described as neutral’ (paras 4.115 and 7.44). Concluding her assessment of ‘Landscape Impact’, the officer was satisfied that the ‘proposed screening could protect the environment and residential receptors from potential landscape and visual impacts’, and that with the proposed mitigation measures the development would comply with national and local policy (paras 7.47 and 8.4).

43. That assessment did not deal with the likely effects of the development on the openness of the Green Belt as such, either spatial or visual. *It does show, however, that there would likely be - or at least could be - effects on openness in both respects, including the closing-off of long distance views by the bunding and planting that would screen the working* (para 4.111 of the officer’s report). The officer’s conclusion overall (in para 7.47) was, in effect, that the proposed screening would be effective mitigation, without which the development would not be acceptable. But this was not followed with any discussion of the harmful effects that the screening measures themselves might have on the openness of the Green Belt.” (Emphasis added)

35. He then directed particular attention to para 7.122 of the report, which he understood to encapsulate her views on the application of the openness proviso under NPPF para 90:

“45. So it is to para 7.122 that one must look, at least in the first place, to see whether the officer considered the relevance of visual impact to the effect of this development on the openness of the Green Belt. Did she confront this question, and bring the committee’s attention to it? I do not think she did. *She neither considered, in substance, the likely visual impact of the development on the openness*

of the Green Belt nor, it seems, did she ask herself whether this was a case in which an assessment of visual impact was, or might be, relevant to the question of whether the openness of the Green Belt would be preserved. Indeed, her observation that openness is 'commonly taken to be the absence of built development' seems deliberately to draw the assessment away from visual impact, and narrow it down to a consideration of spatial impact alone. And the burden of the assessment, as I read it, is that because the further extraction of limestone would take place next to the existing quarry, the 'scale' of the development would not fail to preserve the openness of the Green Belt. This seems a somewhat surprising conclusion. But what matters here is that it is a consideration only of spatial impact. Of the visual impact of the quarry extension on the openness of the Green Belt, nothing is said at all. That was, it seems to me, a significant omission, which betrays a misunderstanding of the policy in para 90 of the NPPF.

46. One must not divorce para 7.122 from its context. The report must be read fairly as a whole. The question arises, therefore: did the officer address the visual impact of the development on the openness of the Green Belt in the remaining paragraphs of this part of her report, or elsewhere? I do not think she did. *Her consideration of the effects of the development on the 'purposes of including land in the Green Belt', in paras 7.123 to 7.125, is unexceptionable in itself. However, she did not, in these three paragraphs, revisit the question of harm to the openness of the Green Belt, either in spatial or in visual terms.* The conclusion to this part of the report, in para 7.126, is that the 'character and openness of the Green Belt' would not be materially harmed by the development - a conclusion repeated in para 8.5 - and that the proposal would therefore comply with Policy SP3 and Policy SP13 of the local plan and the NPPF. But I cannot accept that this conclusion overcomes the lack of consideration of visual impacts on 'openness' in the preceding paragraphs. It seems to treat 'character' as a concept distinct from 'openness'. Even if these two concepts can be seen as related to each other, and however wide the concept of 'character' may be, there is no suggestion here that the officer was now providing a conclusion different from that in para 7.122, or additional to it.

47. The same may also be said of the officer's earlier discussion of 'Landscape Impact' in paras 7.41 to 7.47. Her assessment and conclusions in that part of her report are not imported into para 7.122, or cross-referred to as lending support to her conclusion there ...” (Emphasis added)

36. This led to the overall conclusion in para 49 (quoted in part at the beginning of this judgment):

“49. I can only conclude, therefore, that the advice given to the committee by the officer was defective. It was defective, at least, *in failing to make clear to the members that, under government planning policy for mineral extraction in the Green Belt in para 90 of the NPPF, visual impact was a potentially relevant and potentially significant factor* in their approach to the effect of the development on the ‘openness of the Green Belt’, and hence to the important question of whether the proposal before them was for ‘inappropriate’ development in the Green Belt - and, indeed, in implying that the opposite was so ... One can go further. *On the officer’s own assessment of the likely effects of the development on the landscape, visual impact was quite obviously relevant to its effect on the openness of the Green Belt. So the consideration of this question could not reasonably be confined to spatial impact alone.*” (Emphasis added)

37. Although it is necessary to read the discussion in full, I have highlighted what seem to me the critical points in Lindblom LJ’s assessment of the failure to take account of visual effects; in summary:

i) In paras 42 and 43, he extracts from the officer’s own landscape assessment the observation that “the exposed face of the extended quarry would be as visible as that of the existing quarry, if not more so ...” and that “long distance views could be cut off by the proposed bunding and planting”. This leads to the view that:

“there would likely be - or at least could be - effects on openness in both respects, including the closing-off of long distance views by the bunding and planting that would screen the working.”

ii) In para 7.122, where the officer purported to address the issue of openness, she failed to consider the likely effect of such visual impact nor its relevance to whether the openness of the Green Belt would be preserved. Instead, by in effect equating openness with absence of built development, she tended to narrow the issue down to a consideration of spatial impact alone. That betrayed a misunderstanding of the policy in para 90 of the NPPF.

iii) The subsequent paragraphs dealt with other aspects of the effect on the purposes of the Green Belt, and were unexceptionable in themselves; but they did not revisit the question of visual impact or so make up for the deficiency in para 7.122.

iv) The officer's advice was defective in this respect. Further on her own assessment visual effect was "quite obviously relevant" to the issue of openness, and the committee could not reasonably have thought otherwise.

38. I hope I will be forgiven for not referring in detail to the arguments of counsel before this court, which substantially reflected the reasoning respectively of the High Court and the Court of Appeal. I note that Mr Village QC for Samuel Smith made a further criticism of para 7.122, not adopted by Lindblom LJ, that the officer treated the fact that the site abutted the existing quarry as reducing its impact on openness.

Discussion

39. With respect to Lindblom LJ's great experience in this field, I am unable to accept his analysis. The issue which had to be addressed was whether the proposed mineral extraction would preserve the openness of the Green Belt or otherwise conflict with the purposes of including the land within the Green Belt. Those issues were specifically identified and addressed in the report. There was no error of law on the face of the report. Paragraph 90 does not expressly refer to visual impact as a necessary part of the analysis, nor in my view is it made so by implication. As explained in my discussion of the authorities, the matters relevant to openness in any particular case are a matter of planning judgement, not law.

40. Lindblom LJ criticised the officer's comment that openness is "commonly" equated with "absence of built development". I find that a little surprising, since it was very similar to Lindblom LJ's own observation in the *Lee Valley* case (para 23 above). It is also consistent with the contrast drawn by the NPPF between openness and "urban sprawl", and with the distinction between buildings, on the one hand, which are "inappropriate" subject only to certain closely defined exceptions, and other categories of development which are potentially appropriate. I do not read the officer as saying that visual impact can never be relevant to openness.

41. As to the particular impacts picked out by Lindblom LJ, the officer was entitled to take the view that, in the context of a quarry extension of six hectares, and taking account of other matters, including the spatial separation noted by her in para 7.124, they did not in themselves detract from openness in Green Belt terms. The whole of paras 7.121 to 7.126 of the officer's report address the openness proviso and should be read together. Some visual effects were given weight, in that the officer referred to the restoration of the site which would be required. Beyond this, I respectfully agree with Hickinbottom J that such relatively limited visual impact which the development would have fell far short of being so obviously material a factor that failure to address it expressly was an error of law. For similar reasons, with respect to Mr Village's additional complaint, I see no error in the weight given by the officer to the fact that

this was an extension of an existing quarry. That again was a matter of planning judgement not law.

Conclusion

42. For these reasons, I would allow the appeal and confirm the order of the High Court dismissing the application.

EP3

Appeal Decision

Inquiry held on 20 to 23 September 2022

Site visit made on 22 September 2022

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2022

Appeal Ref: APP/V1505/W/22/3296116

Land at Maitland Lodge, Southend Road, Billericay CM11 2PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Inland Homes against Basildon Borough Council.
 - The application Ref 21/01687/FULL, is dated 17 November 2021.
 - The development proposed is the demolition of Maitland Lodge and the construction of 47 new homes (Class C3) with vehicular access onto Southend Road, together with associated infrastructure and landscaping works.
-

Decision

1. The appeal is allowed, and planning permission is granted for the demolition of Maitland Lodge and the construction of 47 new homes (Class C3) with vehicular access onto Southend Road, together with associated infrastructure and landscaping works, in accordance with the terms of the application Ref 21/01687/FULL, dated 17 November 2021, subject to the conditions at Annex C of this Decision.

Preliminary Matters

Planning policy

2. The Development Plan for the area includes the Basildon District Local Plan Saved Policies September 2007 (the LP). The emerging Basildon Borough Local Plan 2014-2034 was withdrawn in March 2022. Its policies, therefore, have no weight, although the plan and its evidence base remain material considerations in the determination of the appeal.

Documents and evidence

3. A number of submissions were received during the inquiry, as set out in Annex B. I am satisfied that in all cases the material was directly relevant to, and necessary for, my Decision. All parties were given opportunities to comment as required and there would be no prejudice to any party from my consideration of these documents. The appeal is therefore determined on the basis of the revised and additional documents and drawings.

Putative Reasons for Refusal

4. The proposal was taken to planning committee in June 2022, where the Council agreed two putative reasons for refusal. The first reason is that the proposal

represents inappropriate development in the Green Belt (GB) and that 'very special circumstances' do not exist. It states that the proposal would cause substantial harm to openness and that its poor design would exacerbate this harm and would fail to provide a high quality beautiful place.

5. The second reason is in relation to securing adequate provision for on and off-site infrastructure, effects on the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (Essex Coast RAMS), and the provision of affordable housing. Subsequent to the planning committee, a s106 planning obligation, dated 7 October 2022, has been submitted. It secures:
 - a healthcare contribution to expand South Green Surgery;
 - an employment and skills contribution to broker job opportunities;
 - an open space, culture, play and sports provision contribution;
 - a contribution in respect of the Essex Coast RAMS;
 - a County Council monitoring fee and a Council monitoring fee;
 - a primary education contribution towards primary education facilities within three miles of the development and/or within Basildon Primary Group 1 (Billericay);
 - a secondary education contribution towards secondary education facilities within three miles of the development and/or within Basildon Secondary Group 2 (Billericay);
 - 16 of the proposed dwellings to be affordable housing, of which 15 would be affordable rented units at least 20% below local open market rent, and one would be shared ownership where the purchaser would have an initial equity share of not less than 25% and not more than 75%;
 - an Affordable Housing Scheme, requiring details of the location of the proposed affordable housing, and a Shared Ownership Marketing Strategy;
 - a further five of the dwellings to be First Homes, allocated to first time buyers at a discount to the market rate of 30%;
 - an Employment and Skills Plan;
 - a management company to carry out the long term management and maintenance of the on-site Open Space; and,
 - an Open Space Specification and the Management Plan regarding the open space.
6. The Council and Essex County Council's joint CIL Compliance Statement sets out the detailed background and justification for each of the obligations. I am satisfied that the provisions of the submitted agreement would meet the tests set out in Regulation 122 of the CIL Regulations 2010 (the CIL Regulations) and the tests at paragraph 57 of the National Planning Policy Framework (the Framework), and I have taken them into account. The s106 therefore responds to these concerns and this putative reason for refusal is not a main issue for the appeal. I return to matters of weight and detail of the s106 throughout my Decision as appropriate.

Main Issues

7. The main issues are:
 - whether or not the proposal would be inappropriate development in the GB, including assessment of the effect of the proposal on the openness of the GB; and,
 - the effect of the proposal on the character and appearance of the area, in particular on landscape character.

Reasons

Green Belt

Inappropriate development

8. The majority of the appeal site lies in the GB. The area of the site outside the GB is Maitland Lodge and its garden and a thin sliver of land to the north east corner running along the back of the properties to the west of Southend Road. It is proposed to construct a number of new buildings within the GB land.
9. The GB land provides equestrian facilities, other buildings or built form and paddocks directly linked to the equestrian facilities and forming part of the curtilage of the equestrian buildings. The Framework states that the curtilage of developed land can be considered as, but is not necessarily, previously developed land (PDL). In this instance, the functional relationship of the paddocks to the developed stables and other buildings on the site is clear. The paddocks themselves include some built form and are a human intervention on the site. It is also common ground, and I agree, that none of the appeal site is in agricultural use. The residential garden areas to Maitland Lodge are within the part of the appeal site that is within the built-up area of Billericay. These are not, therefore PDL, as defined by the Framework. However, these areas are outside of the GB. I therefore agree with the appellant and the Council, who under cross-examination conceded this position, that all of the GB land within the appeal site is PDL.
10. It is also common ground, and I agree, that the proposal would include affordable housing that would meet an identified need within the Borough. This is expanded upon later in this Decision. Paragraph 149 of the Framework states that new buildings are inappropriate development in the GB, subject to a number of exceptions. Part g), second bullet point, relates to the redevelopment of PDL where the proposal would contribute to meeting an identified affordable housing need, and is therefore relevant to the appeal proposal. The bullet point states that, in such circumstances, development would not be 'inappropriate' if it would not cause substantial harm to the openness of the GB. I therefore assess the effect of the proposal on openness below.

Openness

11. The GB element of the appeal site is within a wider parcel of land in the GB called 'Area 25' as identified in the Basildon Borough Green Belt Topic Paper, October 2018 (the Topic Paper 2018). The appeal site is a small area of land within this wider parcel. There is open countryside to the west and the south, however there is extensive, mature boundary planting to the west, and lesser, but still significant, boundary planting to the south. The land to the east and west of the site is already built-up. The site is therefore highly visually constrained and makes only a limited contribution to the openness of the GB. This is a view shared by the Topic Paper 2018.
12. The GB element of the appeal site contains a number of buildings and structures associated with its equestrian and other uses. These are largely single storey. The proposal would be for 28 buildings, including a mix of houses and two blocks of flats, at up to three storeys but mostly either two or two and a half storeys in height. Overall, the proposal would result in an 80% increase

in footprint and a 124% increase in volume of built-form on the GB element of the appeal site. The level of the proposed increase in built-form would therefore be relatively significant.

13. The proposed garages would link several of the buildings. The layout would be relatively dense, there would be runs of rooflines that would be fairly close together and prominent, and relatively limited landscaping, save for incidental street trees and an area of open space to the south west corner. These design detail considerations influence the harm to openness of the proposal but only to a limited degree, as was accepted by the Council under cross-examination.
14. In addition, the proposal would spread built form across the whole site, rather than being concentrated to the eastern edge adjacent to the existing housing. There would also be a significant increase in activity on the site in comparison to the existing use for equestrian purposes and the gardens of the proposed dwellings would likely also be the subject of residential paraphernalia once occupied, further negatively affecting openness on the site.
15. However, the appeal site is largely visually self-contained by the mature planting to the west and existing development to the north and east. The southern boundary also has a relatively mature hedgerow but is more open. The proposed landscaping scheme, including some trees, would lessen this openness but the proposal would still be more visible from the south through this boundary than the existing built form. Importantly, though, as viewed from the south the proposed development would be seen in the context of the existing housing of Billericay. The existing housing rises slightly up the hill as viewed from the south and is clearly visible and fairly prominent.
16. Overall, there is relatively significant existing built form and the GB element of the appeal site is only a small part of a much wider parcel of GB land. The proposal would result in an increase in built form on the site both in overall footprint and volume and spread across the site. However, the appeal site is largely visually self-contained, with existing housing to Billericay to two sides of the site and the extensive existing and proposed boundary landscaping to the other two sides. Where the boundary planting would be more open the proposal would be seen in the context of the existing housing to Billericay. The harm to openness on the appeal site itself would therefore have limited effect on the wider GB. Allowing for the slightly greater harm to openness of the appeal site itself, the overall harm to the openness of the GB would be moderate.
17. It is important to note that the threshold for the proposal to be considered as inappropriate development is substantial harm. This is a high bar and the proposal clearly falls below it. The proposal is therefore 'not inappropriate' development in the GB. I do not, therefore, need to further consider issues in relation to GB development or make a determination on 'very special circumstances'.

Character and appearance

18. The Council's case with regard to character and appearance relates primarily to the effect of the proposal on landscape character, which I assess in this section. The Council also raised matters regarding detailed design that fall outside the above, which I turn to in the Other Matters section later in my Decision.

Existing

19. The appeal site includes a detached house along the western side of Southend Road, with the majority of the site lying behind this house. The area behind comprises a number of buildings and stables and associated hardstanding, fences and other ancillary development. There are also two grass paddocks which take up the western and central part of the site. The existing buildings have an equestrian use character and are single storey apart from Maitland Lodge. Some buildings are in poor condition and the site has grown organically with no discernible pattern to the layout.
20. To the east and north of the rear part of the site lies the existing edge of Billericay, with a mix of houses lining Mill Road, Homefield Close and Southend Road. The Maitland Lodge house is one of the properties on Southend Road. The surrounding properties are of a variety of architectural styles, being either detached or semi-detached houses or bungalows, and there is little to unify the architectural character. It is a typical, unremarkable, suburb. To the south and west are fields with mostly open countryside beyond. The site sits within Landscape Character Area 12¹, defined as an area of sloping farmland. However, it is only a small part of this wider area, which includes the extensive open farmland surrounding Billericay. The appeal site does not contain most of the key characteristics of the area, such as large fields.
21. Other than the entrance element where Maitland Lodge sits, the appeal site is mostly visually self-contained. The dwellings to the north and east only afford glimpsed views through to the site. There is a very mature hedgerow including substantial trees to the western boundary and a less mature and lower hedgerow, but which is still relatively substantial, to the southern boundary. Even views from neighbouring properties are at least partially screened by existing vegetation and boundary features. The appeal site is, however, visible from the south, largely to drivers approaching Billericay along Southend Road, but there are also some footpaths at mid-distance from the site to the south and west. However, where the site is visible, it is seen in the context of the urban edge of Billericay. The existing properties are clearly visible, set on rising land towards the north.
22. The wider landscape to the south and west is largely open farmland and is of higher quality. However, whilst pleasant countryside, this is also largely unremarkable agricultural fields. It is common ground, and I agree, that the wider landscape is not a 'valued landscape' within the meaning of paragraph 174 of the Framework. I assess the wider area to have moderate sensitivity to change. The appeal site itself, however, is of low sensitivity, through a combination of the partly-urbanising effect of the existing buildings and ancillary structures and hard standing, the edge-of-settlement character and the visual containment.

Proposed

23. It is proposed to demolish all the existing buildings and structures on the site and comprehensively redevelop to provide 47 dwellings. The proposed layout includes an access road from Southend Road which turns into a circle within the main/rear part of the site. A building, containing two houses, is proposed to the Southend Road frontage, adjacent to the proposed access road. A variety

¹ As set out in the Landscape Character and Green Belt Landscape Capacity Study December 2014

of dwellings are proposed within the site, including detached and semi-detached houses at two or two and a half storeys, and two blocks of flats at two and three storeys. Many of the proposed houses are also provided with car ports and there would be additional off and on-street car parking, including on driveways and in small car parks. An area of communal open space is proposed to the south west corner, which would also incorporate a balancing pond drainage feature. Some new planting is proposed, including trees, to the southern boundary.

Assessment

24. There would be a fair degree of consistency in the proposed architectural style of the buildings in terms of scale and layout but a certain amount of variety through different fenestration patterns and materials. The Essex Design Guide 2018 advises to avoid or conceal wide gable ends to roofs. Some relatively wide gable ends are proposed, but these are largely to side elevations not viewed directly from the proposed street. These side elevations often also would have car ports, adding articulation. There would be a variety of roof forms, silhouettes and detailing which is a positive factor which contributes to the architectural interest of the proposal. Overall, the architectural approach achieves a successful balance and would be in-keeping with the varied detailed design but consistent suburban character and appearance of the wider area.
25. The proposal is relatively dense and the proposed car ports would visually and physically link many of the buildings. However, these would be set back and would be lower than the host buildings and would remain subservient to them. The density would be similar to the surrounding area. The proposed open space would be relatively limited, but it is in the location of the site that would most benefit from visual softening, in the south west corner surrounded by open fields, and as stated in the Basildon Outline Landscape Appraisals of Potential Strategic Development Sites 2017. Paragraphs 119 and 124 of the Framework promote the effective and efficient use of land to provide homes. In this physical and policy context, the proposal would be of an acceptable density.
26. Nevertheless, the proposal would undeniably result in a change in character and appearance to the appeal site from the current equestrian use and building styles, and an increase in density and built form across the site, particularly to the currently open paddocks to the west and centre of the site. However, the overall density and detailed design of the proposal would be in-keeping with the character and appearance of the area. The appeal site is also of low sensitivity, is highly visually self-contained and, where more visible from the south, would be seen in the context of the existing housing of Billericay to the north, limiting any effects on the wider area.
27. Consequently, the proposal would not result in material harm to the character and appearance of the area, with regard to landscape effects. The proposal would therefore comply with Policy BE12(i) of the LP, which resists residential development that would harm the character of the surrounding area.

Other Matters

Housing

Market housing

28. A housing land supply range has been agreed between the parties, of between 1.6 and 2.33 years. Anywhere within this range is a very substantial shortfall against the target to identify a five year supply of housing land as set out in paragraph 68 of the Framework. In numerical terms, the shortfall equates to between 3,345 and 4,200 homes. There is also an under-delivery of housing in the Borough. The Government's 2021 Housing Delivery Test figures confirm a delivery rate of 41% against the housing requirement. Footnote 8 of the Framework states that even a delivery rate of 75% should be considered as substantially below the requirement. 41% is therefore a very substantial under-delivery. The delivery is also on a downward trend, with the most recent results being 45% in 2020, 44% in 2019 and 75% in 2018.
29. Under cross-examination, the Council accepted that housing delivery has been persistently poor over several years. This is also stated at paragraph 2.4 of the Council's Draft Housing Delivery Test Action Plan July 2021 (the Action Plan 2021). It would be difficult to come to any other conclusion on the basis of the above evidence. The shortfalls in housing land supply and housing delivery are stark. There is also no evidence before me that there is likely to be a marked improvement in the delivery of housing in the short to medium term. The Council's Action Plan 2021 states that the level of supply is not expected to significantly improve until a new Local Plan is adopted. In this regard, the Council's emerging Local Plan was recently withdrawn and its tentative timetable for the production of a new Local Plan would result in adoption, at best, in 2027.
30. It is important to remember that there are real world implications from the under-delivery of homes, including increased house prices, decreased affordability and an increasing number of individuals and families being forced to remain in unsuitable accommodation for their current needs. I therefore place very substantial positive weight on the proposed 26 open market homes.

Affordable housing

31. The Council's affordable housing need is agreed between the main parties to be 860 dwellings per annum (dpa), based on removing the backlog in addition to ongoing requirements. The current overall shortfall is 2,494 homes. Over the past seven years, the net delivery of affordable housing, ie after accounting for Right to Buy sales, is just 5 dpa. Affordable housing delivery is abysmal. The shortfall is acute and persistent. As with market housing, there is no evidence before me that there is likely to be a marked improvement in the delivery of affordable housing in the short to medium term.
32. The length of the waiting list on the housing register is up by 44% in the past year. The multiple of the income of people on lower quartile incomes necessary to buy a home in the Borough is 32% higher than seven years ago. These statistics sit in the middle of a much wider socio-economic and political conversation, not all which, I accept, will have been driven by the lack of affordable housing delivery. However, the persistent extremely low affordable housing delivery in the past years has contributed towards this real-world

harm. Each of the 2,494 affordable homes that should have been built, but have not, represent a missed opportunity to help alleviate the housing concerns of individuals and families. The situation represents a significant conflict with the economic and social overarching objectives set out in paragraph 8 of the Framework.

33. Policy BAS S5 of the LP sets a requirement for affordable housing of between 15 to 30% of the total number of units on a development site. The 'split' of the affordable housing between different affordable tenure types is not prescribed in policy and all tenures of affordable housing contribute to the affordable housing supply for the Borough. The proposed provision of 45% of total units, at 21 homes, is in excess of the policy requirements. However, given the critical situation regarding affordable housing delivery in the Borough, I place very substantial positive weight on all of the proposed affordable homes, not just those over and above policy requirements.

Appeal site location and nature

Previously Developed Land (PDL)

34. As established above, the element of the appeal site in the GB is PDL. Most of the remainder of the appeal site is also PDL, as it is land with existing built form and associated hard standing. However, there are two small residential garden areas associated with Maitland Lodge that lie outside of the GB, both of which do not constitute PDL, as defined by the Framework. Nevertheless, a significant majority of the site is PDL. Despite this, the site is not particularly intensively used, with large relatively open spaces for the paddocks. The proposed development to provide 47 houses would therefore represent an efficient use of land for homes, on a mostly brownfield site, partly within and partly directly adjacent to an existing settlement.
35. In light of the above, and as directed by paragraph 120(c) of the Framework, I place substantial positive weight on the proposed dwellings on the part of the appeal site within Billericay. I also place significant positive weight on the remainder of the development in this regard, which accords with the promotion of the effective use of land to provide homes at paragraph 119 of the Framework.

Sequential preference

36. The Council's Development Plan is out-of-date. The Local Plan was adopted in 1998, based on the period 1991-2001, with a housing requirement based on a previous Structure Plan adopted in 1982. The GB boundaries are therefore based on very old housing requirements and a completely different planning policy and political backdrop. Most of the Borough outside the three main towns is GB. It is common ground, and I agree, that due to the significantly higher housing requirements that the Council now faces, and that it cannot demonstrate a five year supply of housing land, significant GB release is inevitable.
37. It would be preferable if the GB release could be managed through the emerging Local Plan process, as set out at paragraphs 15 and 140 of the Framework. However, as set out above, a new Local Plan is at least five, and potentially many more, years from being adopted. It is therefore necessary to

consider proposals that come forward in the GB ahead of adoption of the new Local Plan.

38. In this regard, the now withdrawn Local Plan and its evidence base is still a material consideration. The evidence base allocated the site for development² and the withdrawn Plan carried this through to a site allocation (Site H21b), albeit for around 20 self-build homes rather than the 47 dwellings proposed as part of the appeal proposal³. However, the important consideration is that the site was found to be suitable for development and to be removed from the GB. In addition, this inquiry has established that the GB element of the appeal site is all PDL.
39. Therefore, the appeal site in general is sequentially preferable to non-PDL sites in the GB, which make up the majority of GB land in the Borough. In any event, as established above, the specific appeal proposal is 'not inappropriate' development in the GB. I therefore find no harm from the location of the proposal in the GB in addition to its sequential preference over non-PDL GB sites. This is a significant positive benefit of the proposal in the context of a Borough where GB release is accepted as being inevitable to meet its housing needs.

Accessibility

40. The appeal site is directly adjacent to Billericay and accessible to its large range of services and facilities, and also easily accessible to a range of bus routes and also Billericay train station. It is common ground, and I agree, that the appeal site is in a highly accessible location. I place significant positive weight on this factor.

Economic

41. The proposal would create short term employment during construction and would result in long term economic benefits from expenditure from the future occupants on goods and services in the area. Some of the future occupants would potentially have only moved a short distance and already be in the local area, but many are likely to be from further afield. As required by paragraph 81 of the Framework, I place significant positive weight on the economic benefits.

Biodiversity

42. A package of mitigation measures, such as tree protection fencing or sensitive site clearance, is set out in the Ecological Impact Assessment May 2022 and could also be secured by condition. Compensation is also proposed, for example through the contribution towards the Essex Coast RAMS. It is therefore proposed to follow the hierarchy set out at paragraph 180 of the Framework by first mitigating ecological effects and only then compensating for them. In addition, a biodiversity net gain of 10% is proposed and could be secured by condition. The Framework only requires 'a' net gain, rather than a gain of 10%. The proposal therefore goes beyond policy requirements in this regard. I place significant positive weight on this benefit.

² Housing and Economic Land Availability Assessment (HELAA) Review 2018, September 2018 (Site SS0189)

³ Basildon Borough Revised Publication Local Plan 2014 – 2034, October 2018 (Site H21b) and Housing Options Topic Paper November 2018 (New Site 3)

Detailed design

43. The proposed layout with a circular road leading to a single access point logically responds to the square shape of the rear part of the site and the narrow access area to Southend Road. The proposed building along Southend Road retains a building fronting onto the road, in-keeping with the established character of the road. Nevertheless, there would be limited harm to the character and appearance of this frontage through the proposed relatively wide access road.
44. The proposed three storey block of flats would be slightly taller and more bulky than the proposed and existing semi-detached properties in the area. However, it would be relatively small, towards the centre of the site and not readily visible from public or private views. The proposed public open space would be relatively small but is proposed in the south west corner of the site which is the most appropriate location for open space as it is furthest away from Billericay and one of the most visible parts of the appeal site. The open space would also incorporate a drainage feature but the detail of this could be controlled by condition to be attractive and there would be sufficient remaining space for recreational use by the future residents. The proposed shared surface approach to the internal road would work well in the context of the relatively small scale of the proposal. The Highways Authority raises no objection to this approach in terms of highway safety.
45. Matters of detailed design of the proposed buildings and the proposed hard and soft landscaping could be controlled by condition(s). Overall, the detailed design of the proposal would be in-keeping with the character and appearance of the area and would be acceptable. This weighs neutrally in the planning balance.

Appropriate Assessment

46. The appeal site falls within the Zone of Influence (ZoI) for the Blackwater Estuary Special Protection Area and Ramsar (the SPA). The proposal is for residential development and the future occupants are likely to travel to the SPA for recreation purposes, due to the proximity and as established by the appeal site falling within the ZoI. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an Appropriate Assessment (AA) in such circumstances. As the Competent Authority, I have therefore undertaken an AA.
47. The conservation objectives for the SPA include maintaining or restoring the habitats for a number of breeding and non-breeding birds. The specific qualifying features likely to be affected by the potential increase in recreational pressure include the mudflat habitat that supports internationally and nationally important numbers of overwintering waterfowl, and semi-improved grassland that includes nationally scarce plants and rare invertebrates. The proposal would therefore likely result in adverse effects on the SPA, by itself and in combination with other development projects.
48. Consequently, I am satisfied that a mitigation payment is required to avoid an adverse effect on the integrity of the SPA. In this regard, the s106 secures a financial contribution, proportionate to the number of dwellings proposed, towards mitigating the effects of the likely increased recreational pressure. The payment has been calculated in accordance with the Essex Coast RAMS, which

applies to a number of protected areas include the SPA relevant to this appeal. The RAMS is a detailed strategy which has carefully considered the mitigation measures necessary to protect the designated sites. Natural England has confirmed that the contribution is appropriate and proportionate, and that, subject to the contribution, the proposal would not have an adverse effect on the integrity of the site. I am therefore satisfied that the mitigation would be effective. I am also satisfied that the planning obligation meets the tests set out in Regulation 122(2) of the CIL Regulations and paragraph 56 of the Framework.

49. Consequently, I consider that, subject to the s106, there would be no adverse effect on the integrity of the protected site, both on its own and in combination with other developments.

Interested parties

50. Several objections have been submitted, including from the Billericay District Residents Association, Great Burstead and South Green Village Council and the Campaign to Protect Rural England. The objections have commented on the issues covered above and also on drainage, flooding, highway safety, free-flow of traffic, harm to living conditions of neighbouring occupiers through lack of light and noise and outlook, contamination of groundwater, impact on local infrastructure eg schools and doctors, disruption during construction, and deterioration in air quality. Some neutral comments were also submitted requesting a horticultural scheme.
51. I have taken all of these factors into consideration. Most are not in dispute between the main parties. The Council concluded that there would be no material harm in these regards and I also note that both the Local Lead Flood Authority and Highways Authority have no objection to the proposal. No substantiated evidence has been submitted that leads me to any different view. Other concerns are addressed in my reasoning above, can be addressed by conditions or are dealt with by the planning obligations secured.

Conditions

52. A schedule of conditions was agreed between the parties ahead of the inquiry. This was discussed through a round-table session at the inquiry. I have considered the conditions against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents and in the interests of clarity, precision, and simplicity. The appellant has confirmed acceptance of the pre-commencement conditions. I set out below specific reasons for each condition:
- In addition to the standard time limit condition, a condition specifying the relevant drawings provides certainty;
 - Construction Management Plan (CMP) and Site Waste Management Plan (SWMP) and Construction Environmental Management Plan (CEMP) conditions are necessary to protect the living conditions of neighbours, biodiversity, highway safety and the free-flow of traffic during construction;
 - The Biodiversity Survey and Biodiversity Enhancement Strategy, Landscape and Ecological Management Plan (LEMP), lighting design, Arboricultural Impact Assessment, and Ecological Impact Assessment conditions are necessary to protect existing biodiversity, to secure the proposed 10% biodiversity net gain, and to ensure maintenance of the relevant measures;

- Land contamination and remediation, archaeology, Secured by Design and waste and recycling conditions are necessary to ensure the proposal would have acceptable effects with regard to these technical considerations;
 - Tree protection, hard landscaping, soft landscaping, waste and recycling conditions, and Arboricultural Impact Assessment conditions are necessary to ensure a satisfactory standard of development protect and to protect and enhance biodiversity;
 - The materials and finished floor levels conditions are necessary to ensure a satisfactory standard of development;
 - The surface water drainage systems, maintenance of surface water drainage systems and finished floor levels conditions are necessary to ensure that suitable mitigation is provided regarding surface water drainage and flooding;
 - An Energy and Sustainability Strategy condition is necessary to ensure that the proposal reduces carbon dioxide emissions and therefore to mitigate climate change and assist in moving to a low carbon economy as set out in paragraph 8 of the Framework;
 - The visibility splays, access junction details and internal road and footway layout condition is necessary to protect highway safety and the free-flow of traffic;
 - The cycle parking and Residential Travel Information Pack conditions are necessary to encourage the use of a range of modes of transport other than the car; and,
 - The condition requiring details of upgrade works to nearby bus stops and pedestrian crossings is necessary to encourage the use of a range of modes of transport other than the car and to partially mitigate the increased pressure on public transport from the future occupiers of the development. It is necessarily worded as a Grampian type condition, since it relates to land outwith the control of the appellant.
53. A condition requiring electric vehicle charging points for all the proposed car parking spaces was requested by the Council but it is unnecessary because this provision is already set out in Requirement S1 of The Building Regulations 2010, Approved Document S 2021 Edition.
54. The CMP/SWMP, CEMP, Biodiversity Survey, land contamination and remediation, archaeology, tree protection, and hard and soft landscaping conditions are necessarily worded as pre-commencement conditions, as a later trigger for their submission and/or implementation would limit their effectiveness or the scope of measure which could be used.

Planning Balance

55. The proposal would not conflict with any Development Plan policies, including the four identified as most relevant to the appeal in the Statement of Common Ground, namely Policy BAS GB1 which sets the GB boundaries but has no specific control over GB development, Policy BAS S5 which sets affordable housing thresholds which the proposal exceeds, Policy BAS BE12 which requires proposals to conserve the character of the area, and Policy BAS BE24 which is in relation to crime prevention which could be adequately controlled by condition.
56. The proposal would not harm the character and appearance of the area, either with regard to landscape or detailed design. It would be 'not inappropriate'

development in the Green Belt. The s106 secures appropriate mitigation against any harms from the proposal on the SPA. These factors all weigh neutrally in the planning balance.

57. The proposed open market housing and affordable housing would be very substantial benefits of the proposal. The part of the proposal outside of the GB to be developed for housing would be a substantial benefit due to the use of suitable brownfield land within settlements for homes.
58. The remainder of the appeal site represents the effective use of land to provide homes. The appeal site is sequentially preferable to non-PDL sites in the GB in a Borough where GB release is inevitable to meet its housing needs. The appeal site is easily accessible to public transport, services and facilities, a biodiversity net gain over and above minimum policy requirements is proposed, and there would be both short term and long term economic benefits. These are all significant benefits.

Conclusion

59. The Council cannot demonstrate a five year supply of housing land and there is no clear reason for refusing the proposal related to areas or assets of particular importance. Having regard to paragraph 11d of the Framework, I have found no conflict with the Development Plan and a number of weighty benefits. Therefore, for the reasons above, the appeal is allowed.

O S Woodward
INSPECTOR

ANNEX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson, of Counsel. He called:

Emily Beavan ARB	Principal Urban Design Officer, Basildon Borough Council (BBC)
Louise Cook MRTPI	Principal Planning Officer, BBC
Christine Lyons MRTPI	Head of Planning, BBC
Adeola Pilgrim MRTPI	Principal Planner, BBC
Lisa Richardson	Principal Planner, BBC
Charlotte McKay cFILEX	Principal Lawyer, BBC
Anne Cook	Principal Infrastructure Planning Officer, Essex County Council

FOR THE APPELLANT:

Zack Simons, of Counsel. He called:

Colin Pullan	Head of Urban Design and Masterplanning, Lambert Smith Hampton
Charles Crawford CMLI	Director, LDA Design
Hywel James MRTPI	Associate, Nexus Planning
Oliver Bell MRTPI	Director, Nexus Planning
James Stacey MRTPI	Senior Director, Tetlow King Planning Ltd
Ben Standing	Partner, Browne Jackson
Dominick Veasey MRTPI	Director, Nexus Planning
Hywel James MRTPI	Associate, Nexus Planning

ANNEX B: DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Addendum to Statement of Common Ground – Housing Issues, dated 20 September 2022
- 2 Affordable Housing Proof of Evidence Addendum and Errata Note of James Stacey BA (Hons) Dip TP MRTPI
- 3 *Herbert Hiley and The Secretary of State for Levelling Up, Housing and Communities vs East Lindsey District Council* [2022] EWHC 1289 (Admin)
- 4 Appellant's Opening and List of Appearances
- 5 Opening Statement on behalf of the LPA
- 6 Site Visit Routes, dated September 2022
- 7 Email regarding conditions 27 and 28 from Hywel James, dated 23 September 2022
- 8 Open Space Plan/Management Plan Ref 1760/L/02
- 9 Closing submissions on behalf of the LPA, by Giles Atkinson, dated 23 September 2022
- 10 Appellant's Closing Submissions, by Zack Simons and Isabella Buono, dated 23 September 2022

ANNEX C: CONDITIONS SCHEDULE

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Refs 16007/400; 1760/P/01 Rev B; 16007-10, 11 Rev B, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 Rev A, 35, 36, 37, 38, 39, 100, 101.

Pre-commencement

- 3) No development shall commence, including any works of demolition, until a Construction Environmental Management Plan (CEMP) and Site Waste Management Plan (SWMP) for the proposed development has been submitted to and approved in writing by the Local Planning Authority. The Plans shall incorporate details of:
 - a) the parking of vehicles of site operatives and visitors (construction traffic management);
 - b) loading and unloading and the storage of plant and materials used in constructing the development;
 - c) the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
 - d) wheel and underbody washing facilities;
 - e) measures to control the emission of noise, dust and dirt during construction;
 - f) a scheme for recycling/disposing of waste resulting from demolition and construction works; and,
 - g) details of a nominated developer/resident liaison representative with an address and contact telephone number to be circulated to those residents consulted on the application by the developer's representatives. This person will act as first point of contact for residents who have any problems or questions related to the ongoing development.

The approved CEMP and SWMP shall be implemented for the entire period of the construction works.

No materials produced as a result of the site development or clearance shall be burned on site.

- 4) Prior to the commencement of development, a construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the Local Planning Authority following the recommendations made within the Ecological Impact Assessment ref. INL20854_EcIA dated 17.05.2022. The CEMP: Biodiversity shall include the following:
 - a) Risk assessment of potentially damaging construction activities;
 - b) Identification of "biodiversity protection zones";

- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- d) The location and timing of sensitive works to avoid harm to biodiversity features;
- e) The times during construction when specialist ecologists need to be present on site to oversee works;
- f) Responsible persons and lines of communication;
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; and,
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 5)

A. No above ground new development, including demolition, shall commence until an updated Biodiversity Survey has been submitted to and approved in writing by the Local Planning Authority.

B. A Biodiversity Enhancement Strategy for any identified protected and priority species in accordance with the Biodiversity Survey approved at A., shall be submitted to and approved in writing by the Local Planning Authority, prior to the commencement of the relevant part of the development. The content of the Strategy shall include the following:

 - a) measures equivalent to a 10% net gain in biodiversity;
 - b) purpose and conservation objectives for the proposed enhancement measures;
 - c) detailed designs to achieve stated objectives;
 - d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
 - e) locations of proposed enhancement measures by appropriate maps and plans;
 - f) persons responsible for implementing the enhancement measures; and,
 - g) details of initial aftercare and long-term maintenance (where relevant).

C. The Strategy shall be implemented in accordance with the approved details and timetable and, where appropriate, shall be retained in that manner thereafter.
- 6) No development shall commence, including any works of demolition, until an updated desk-top study has been submitted to and approved in writing by the Local Planning Authority, to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the proposed development.
- 7) If identified as being required following the completion of the desk-top study required pursuant to condition 6, a site investigation shall be carried out prior to commencement of development and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk

assessment that adopts the Source-Pathway-Receptor principle, in order that any potential risks are adequately assessed, taking into account the sites existing status and proposed new use. The site investigation and findings shall be submitted to and approved in writing by the Local Planning Authority within three months of their completion.

- 8) If identified as being required following the completion of the site investigation pursuant to condition 7, a written method statement detailing the remediation requirements for land contamination and/or pollution of controlled waters affecting the site, shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development. Development shall be carried out in accordance with the written method statement. If, during redevelopment, contamination not previously considered is identified, then the Local Planning Authority shall be notified immediately, and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspected contamination has been submitted to and approved in writing by the Local Planning Authority and all requirements shall be implemented and completed in accordance with the approved method statement.
- 9) Following completion of measures identified in the remediation scheme pursuant to condition 8, a full closure report shall be submitted to and approved in writing by the Local Planning Authority. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved method statement(s).
- 10) A. No development shall commence until:
 - i. A programme of archaeological investigation has been secured in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority; and,
 - ii. Any fieldwork required in accordance with the submitted WSI has been completed.

B. A Final Archaeological Report shall be submitted to and approved in writing by the Local Planning Authority, prior to occupation of the development.

C. The deposition of a digital archive with the Archaeological Data Service must be submitted within six months of the completion of any fieldwork required.
- 11) No development shall commence, including any works of demolition, until all trees to be retained have been protected by secure, stout exclusion fencing erected at a minimum distance equivalent to the branch spread of the trees and in accordance with BS5837:2012 Trees in relation to design, demolition and construction – Recommendations. The protective fencing shall be retained for the duration of the construction process.
- 12) The hard landscaping scheme set out in drawing Ref INL20854-12-Sheets 1, 2 and 3 and drawing Ref INL20854_10 shall be updated to accord with the additional landscaping features shown on drawing Ref 1760/P/01 Rev B. The updated hard landscaping scheme shall be submitted to and

approved in writing by the Local Planning Authority prior to the commencement of development. The approved hard landscaping scheme shall be implemented prior to occupation of the development in accordance with the approved details.

- 13) The soft landscaping scheme set out in drawing Ref INL20854-11-Sheets 1, 2 and 3 and drawing Ref INL20854_10 shall be updated to accord with the additional landscaping features shown on drawing Ref 1760/P/01 Rev B. The revised soft landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation or completion of the development, whichever is the sooner. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Specific triggers

- 14) Prior to installation of external façade surfaces, full details, including samples, specifications, annotated plans and fire safety ratings, of all materials to be used in the construction of the external surfaces shall be submitted to and approved in writing by the Local Planning Authority. The external façade surfaces shall only be implemented in accordance with the approved details and shall be retained at all times thereafter.
- 15) No above ground new development shall commence, until an updated and detailed surface water drainage scheme for the proposed development, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following:
- a) Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event;
 - b) Final modelling and calculations for all areas of the drainage systems for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change; and,
 - c) A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.

The approved scheme shall be implemented prior to occupation of the development.

- 16) No above ground new development shall commence until an Energy and Sustainability Strategy has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to occupation of the development and shall be maintained at all times thereafter.
- 17) No above ground new development shall take place until details of the existing and finished site levels and the finished floor and ridge levels of the proposed development have been submitted to and approved in

writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Pre-occupation

- 18) Prior to occupation of the development, a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. This must include details of management of trees on site. The content of the LEMP shall include the following:
- a) Description and evaluation of landscape and ecology to be managed to include all woodland;
 - b) Ecological trends and constraints on site that might influence management;
 - c) Aims and objectives of management (The southern and western boundary hedgerows will be protected from the development with garden fences, to prevent inappropriate management by the residents. The hedgerows will be appropriately managed long term by a management company);
 - d) Appropriate management options for achieving aims and objectives;
 - e) Prescriptions for management actions;
 - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - g) Details of the body or organisation responsible for implementation of the plan; and,
 - h) Ongoing monitoring and remedial measures.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved LEMP shall be implemented in accordance with the approved details.

- 19) A. Prior to occupation of the development, the access at its centre line shall be provided with a visibility splay with dimensions of 2.4 metres by 63 metres to the north and 2.4 metres by 64 metres to the south, as measured from and along the nearside edge of the carriageway to a 1 metre offset, as shown in principle on planning application drawing Ref 151883/PD02 rev A prepared by Vectos. Such vehicular visibility splays shall be retained free of any obstruction at all times.
- B. The width of the access at its junction with the highway shall not be less than 6 metres and shall be provided with two appropriate kerbed radii as shown in principle on planning application drawing Ref 1760/P/01 rev B prepared by Archtech.
- C. Prior to occupation of the development, footways a minimum of two metres wide shall be provided on both sides of the vehicular access. The footways shall extend from the site around the bellmouth junction, include a dropped kerb pedestrian crossing point and tie in with the existing footways on Southend Road.

- D. Prior to occupation of the development the internal estate road and footways shall be constructed as shown in principle on planning application drawing Ref 1760/P/01 rev B prepared by Archtech.
- E. Prior to occupation of the development, vehicular turning facilities, as shown on planning application drawing Ref 1760/P/01 rev B prepared by Archtech shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.
- 20) Prior to first occupation of the flats, details of the proposed secure and covered cycle parking for future occupiers of these units shall be submitted to and approved in writing by the Local Planning Authority. The cycle parking shall be made available prior to first occupation of the flats in accordance with the approved details and thereafter permanently retained.
- 21) No dwelling shall be occupied unless and until the existing bus stops known as Factory Site located on Southend Road adjacent to the site have been upgraded to provide raised Kassel kerbs, associated footway reprofiling, installation of bus stop clearway markings for both northbound and southbound stops, and a dropped kerb pedestrian crossing point provided on both sides of Southend Road in the vicinity of the northbound and southbound bus stops, in accordance with details that shall have previously been submitted to and approved in writing by the Local Planning Authority.
- 22) Prior to the first occupation of the relevant dwelling, a Residential Travel Information Pack (RTIP) for sustainable transport shall be submitted to and approved in writing by the Local Planning Authority. The RTIP shall subsequently be provided to the first occupant(s) of the relevant dwelling prior to first occupation of that dwelling. The RTIP shall include six one day travel vouchers for use with the relevant local public transport operator.
- 23) Prior to the first occupation of the proposed development, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate technical specification) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. No external lighting shall be installed other than in accordance with the specifications and locations set out in the approved scheme and maintained thereafter in accordance with the scheme.
- 24) Prior to occupation of the development, a Maintenance Plan detailing the maintenance arrangements, including who is responsible for different elements of the surface water drainage system, and the maintenance activities / frequencies, shall be submitted to and approved writing by the Local Planning Authority. Should any part be maintainable by a maintenance company, details of long-term funding arrangements should also be provided. Drainage maintenance shall be carried out thereafter in accordance with the approved details. The applicant(s) or any successor(s) in title must maintain yearly Drainage Logs of maintenance which should be carried out in accordance with any approved

Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

- 25) Prior to occupation a detailed residential refuse and recycling strategy for the development, including the design and location of the refuse and recycling stores, shall be submitted to and approved in writing by the Local Planning Authority. The approved refuse and recycling stores shall be provided before the occupation of the development and thereafter permanently retained.

Pre-completion

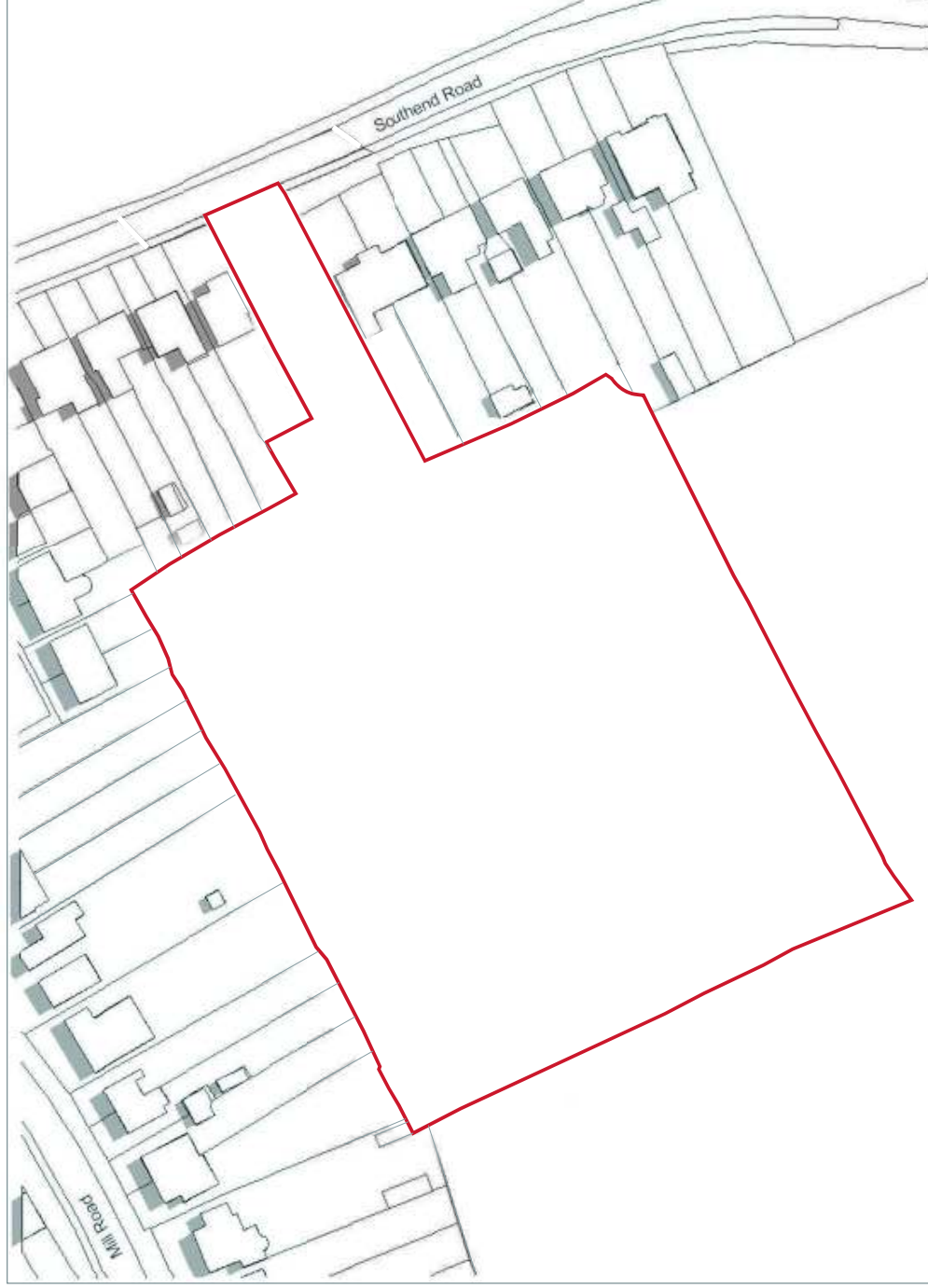
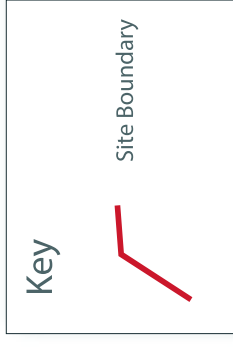
- 26) A. The development hereby permitted shall use reasonable endeavours to achieve a Gold award of the Secured by Design for Homes (2019 Guide) or any equivalent document superseding this Guide.
- B. A certificated Post Construction Review, or other verification process agreed with the Local Planning Authority, shall be provided upon completion of the development confirming that the agreed standards at A. have been met.
- C. In the event that the agreed standards at A. are not achievable then prior to completion of the development the applicant shall submit to the Local Planning Authority for approval in writing justification for this and details of the highest award of the Secured by Design for Homes (2019 Guide) or any equivalent document superseding this Guide which is achievable for the development.
- D. A certificated Post Construction Review, or other verification process agreed with the Local Planning Authority, shall be provided upon completion of the relevant Phase of the development, confirming that the agreed standards at C., as relevant, have been met.

For observation

- 27) All works shall take place in accordance with the recommendations set out in the approved Arboricultural Impact Assessment and Method Statement Ref INL20854aia-amsA Rev A dated 10/02/2022 and the associated Tree Protection Plan Ref INL-20854-03 Rev B. Any works connected with the approved scheme within the branch spread of the trees shall be by hand only. No materials, supplies, plant or machinery shall be stored, parked or allowed access beneath the branch spread or within the exclusion fencing. Any trees that are damaged or felled during construction work must be replaced with semi-mature trees of the same or similar species in the next planting season, if not sooner.
- 28) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the updated Ecological Impact Assessment (May 2022).

=====END OF SCHEDULE=====

EP4



Project: Maitland Lodge
Client: Inland Homes

Drawing title: Site Location Plan
Drawing reference: 16007/400

Scale: 1:2000 @A3
Date: 10/03.2018





EP5

Appeal Decision

Site visit made on 30 September 2025

by **Graham Wraight BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 October 2025

Appeal Ref: APP/M0655/W/25/3369894

195 Myddleton Lane, Winwick, Warrington WA2 0RL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Chadwick against the decision of Warrington Borough Council.
 - The application Ref is 2025/00229/FULH.
 - The development is a two-storey side and rear extension and single storey front extension with associated works.
-

Decision

1. The appeal is allowed and planning permission is granted for a two-storey side and rear extension and single storey front extension with associated works at 195 Myddleton Lane, Warrington WA2 0RL in accordance with the terms of the application, Ref 2025/00229/FULH, subject to the following conditions:
 - (1) The development hereby permitted shall be carried out in accordance with drawing nos: 4746-001 Revision B and 4746-101 Revision A.
 - (2) All materials to be used in the approved scheme shall be as stated/shown on the application form and approved drawings and shall not be varied without the prior written approval of the local planning authority.

Preliminary Matter

2. The development has already been undertaken and therefore I have determined this appeal on the basis that it is a retrospective proposal.

Main Issue

3. The main issue is whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and relevant development plan policies.

Reasons

4. Policy GB1 of the Warrington Local Plan 2023 (LP), states that other forms of development defined in national planning policy to be an exception to inappropriate development within the Green Belt, will be supported, subject to meeting other relevant Local Plan policies and any relevant Supplementary Planning Documents. I would concur with the Council that the usual strand of the Framework against which a development such as that subject to this appeal would be considered against would be paragraph 154c), which refers to the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. There is no dispute between the

parties that the appeal development is a disproportionate addition and therefore that the exception set out in paragraph 154c) does not apply.

5. However, I also agree with the view set out in the Counsel opinion provided by the appellant that there is no express or implied exclusion of householder developments from being considered under paragraph 154g) of the Framework. That is an exception for limited infilling or the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt. There is nothing to my mind in the wording of that paragraph, or indeed in any other associated text in the Framework, which would exclude the appeal development from being considered against this provision.
6. There are, therefore, a number of assessments to be made. In terms of infilling, what has been built does infill between existing built development that has taken place at the two dwellings immediately adjacent. This is the case on all three elevations on which extensions have been built to the appeal property. The amount of development that has taken place is no more than that which has served to infill the gaps, and as such this can reasonably be considered to be limited infilling. The definition of previously developed land set out in Annex 2 of the Framework excludes land in built-up areas such as residential gardens. The question in that respect is therefore whether the appeal site can be said to be located within a built-up area or not. Although the Council refers to the matter of whether the appeal dwelling is isolated, that is not the relevant test.
7. The appeal dwelling is one of twelve dwellings which form a short ribbon of development which is quite distinct from the settlement of Winwick. To the east of the settlement the Winwick Link Road in effect forms a physical barrier to the existing edge of the built-up area and the twelve dwellings are separate from this, with part of an agricultural field intervening. That large field extends behind the dwellings, and directly opposite the dwellings on the other side of Myddleton Lane there is another large agricultural field. Whether walking from Winwick, stood to the front of the appeal dwelling or within its rear garden area, there is no sense of being within a built-up area. Therefore, the appeal site falls to be considered as previously developed land.
8. The bar of substantial harm to openness must, in my view, sit higher than the harm which has resulted from the appeal development. I have found that the development has infilled gaps between existing built development, which reduces the impact that has occurred on Green Belt openness. Whilst there has nonetheless been some loss of openness in both a visual and a spatial sense, given the scale of the built development that has been undertaken and in the circumstances that I have described, this harm has been no more than moderate. As a whole therefore, I find that the development is not inappropriate development in the Green Belt by virtue of paragraph 154g) of the Framework.
9. The Council draws my attention to two recent appeal decisions in its administrative area. The Avenue appeal decision¹ refers only to paragraph 154c) of the Framework. As the appeal was dismissed and the matter of paragraph 154g) is not referred to at all in the decision, I would infer that the appellant, as the losing party,

¹ APP/M0655/D/24/3353372

did not seek to make a case with respect to paragraph 154g). The second case at Hatton Lane² is an appeal that I was the appointed Inspector for. Whilst there are some uncannily striking similarities between that appeal site and the current appeal site in a locational sense, the dwelling in question at Hatton Lane sits immediately adjacent to a plot of relatively open land on which several garages of only a very small scale are found.

10. The appellant in that case referred to paragraph 154g) briefly in their submissions. There was not a case to be made that that proposed development would have been infill of any form, given the nature of the site immediately to the side of where the proposed extension would have taken place. What was proposed would clearly not have been the partial or complete redevelopment of previously developed land, as no redevelopment would have taken place. It is pertinent to note that the appellant in this current appeal case does not suggest that the development now before me should be considered to be a partial or complete redevelopment, and that I would not have found in their favour on this point if they had put it forward.
11. I acknowledge that the appeal development has already been subject to an earlier appeal which was dismissed³. However, the appellant's case is now materially different and thus I have assessed it upon its own merits. I do not agree with the Council's concern that a favourable finding on paragraph 154g) of the Framework would in effect permit any extension at a dwelling under that exception, in particular as it is evident from my assessment that there are a number of separate tests that must be satisfied to meet that part of Green Belt policy.
12. In conclusion, I find that the development is not inappropriate development in the Green Belt as it falls within the exception listed in paragraph 154g) of the Framework. Consequently, the development accords with Policy GB1 of the LP.

Conclusion

13. The development would not be inappropriate development in the Green Belt. The Council has raised no further concerns with respect to any other aspect of the development, and I find no reason to disagree.
14. It is necessary to impose conditions specifying the approved plans and the approved materials, to provide certainty. The condition the Council suggests relating to the time period to commence development is not necessary as the development has already commenced. The suggested condition regarding parking spaces lacks precision as it could be satisfied by providing parking spaces for something other than a car. But, in any event, the site frontage is already surfaced and appears to be available for the parking of three cars. Such a condition is therefore not necessary either.
15. Subject to the two conditions outlined, the appeal should be allowed.

Graham Wraight

INSPECTOR

² APP/M0655/D/25/3360750

³ APP/M0655/D/23/3321327

EP6

All elevations are to be detailed and the work of respondents are to be subject to the Architect's review and comments. Do not submit the drawings for construction purposes.
The drawings are to be submitted to the Architect for review and comments. Do not submit the drawings for construction purposes.
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GA
Grays
Architecture
Limited

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Website: www.graysarchitecture.co.uk

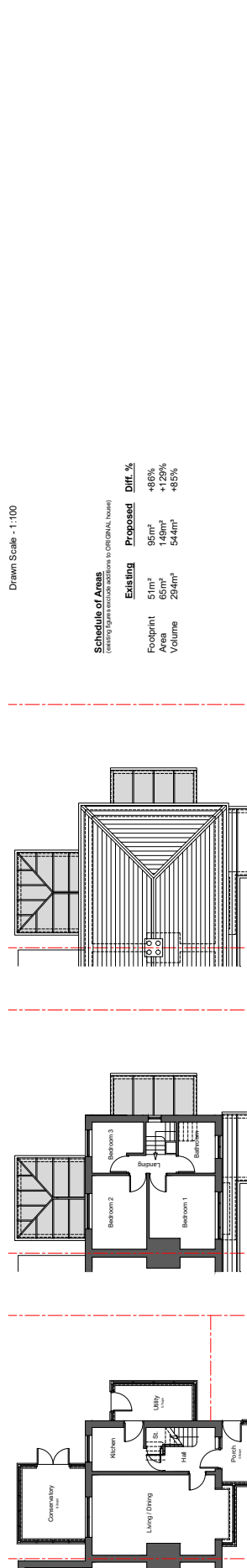
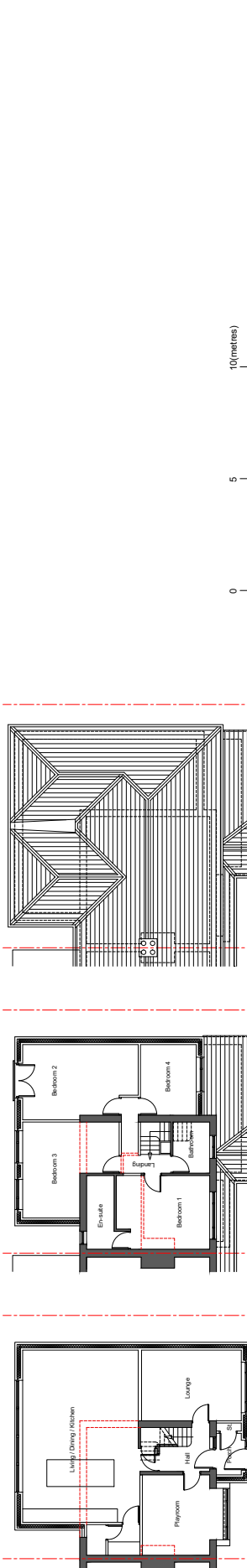
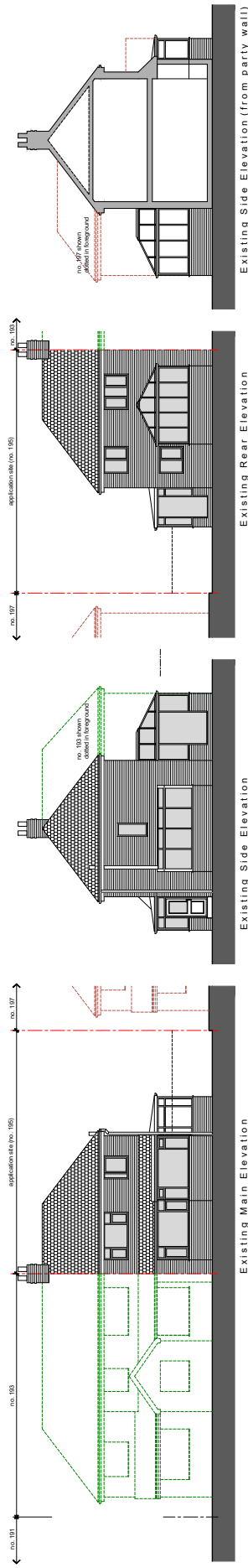
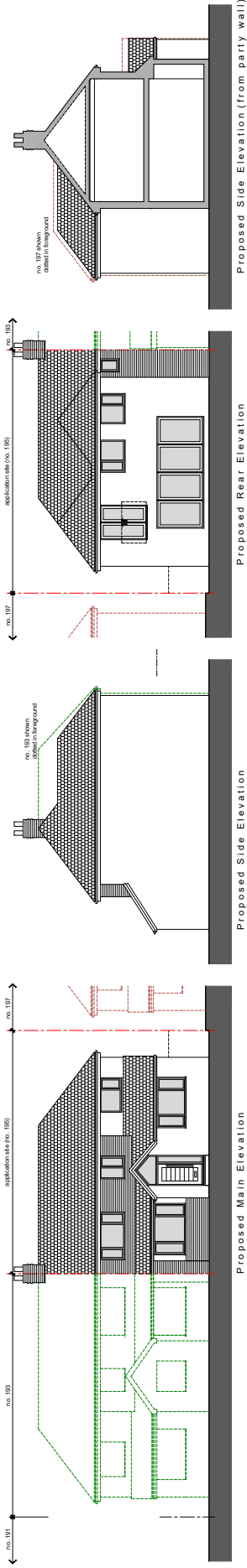
Mr & Mrs Chadwick

Project
195 Myddleton Lane, Winwick, WA2 0RL

Drawing No
Existing & Proposed Plans / Elevations

Scale
1:100 / @ A1 December 2024

Drawing No
4746-101 A



Schedule of Areas
(existing figures exclude additions to ORIGINAL house)

	Existing	Proposed	Diff. %
Footprint	51m ²	95m ²	+86%
Area	65m ²	149m ²	+129%
Volume	294m ³	544m ³	+85%



Drawn Scale - 1:100

EP7

Appeal Decision

Site visit made on 18 March 2025

by **E Catcheside BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 03 April 2025

Appeal Ref: APP/T0355/W/24/3352921

Bath Cottage, Bath Road, Littlewick Green, Maidenhead SL6 3QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Werakso against the decision of The Council of the Royal Borough of Windsor and Maidenhead.
 - The application reference is 24/01276.
 - The development proposed is relocation of the front entrance with new canopy, part single, part first floor, part two storey side/rear extension with attached store, 2no. rear bay windows, new mansard roof, 2no. front dormers, 3no. rear dormers, increase in height to the existing chimney, alterations to fenestration, new drop kerb and relocation of the existing vehicular access following the demolition of the single storey rear elements and detached outbuilding.
-

Decision

1. The appeal is allowed and planning permission is granted for relocation of the front entrance with new canopy, part single, part first floor, part two storey side/rear extension with attached store, 2no. rear bay windows, new mansard roof, 2no. front dormers, 3no. rear dormers, increase in height to the existing chimney, alterations to fenestration, new drop kerb and relocation of the existing vehicular access following the demolition of the single storey rear elements and detached outbuilding at Bath Cottage, Bath Road, Littlewick Green, Maidenhead SL6 3QR in accordance with the terms of the application, reference 24/01276, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with drawing numbers 0173-GA-0015 Rev P01, 0173-GA-0016 Rev P01, 0173-GA-0017 Rev P01, 0173-GA-0018 Rev P01, and 0173-GA-0019 Rev P01.
 - 3) Notwithstanding the details shown on the approved drawings, no development shall take place above slab level until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
 - 4) No development shall take place above slab level until details of biodiversity enhancements, to include but not be limited to one bat roosting opportunity installed integral to the building (tile, brick, or box), have been submitted to and approved in writing by the local planning authority. The biodiversity enhancements shall thereafter be installed prior to the first occupation of the development hereby permitted.

- 5) No external lighting shall be erected or installed on the site other than in complete accordance with an external lighting scheme that has first been submitted to and approved in writing by the local planning authority. The external lighting scheme shall include:
- A lighting layout plan with beam orientation
 - A schedule of lighting equipment
 - Measures to be taken to avoid glare
 - Measures to be taken to avoid adverse impacts on wildlife
 - Details of locations of bat boxes, tiles, and/or bricks.

Preliminary Matters

2. The description of development reflects the wording agreed between the parties during the application process.
3. The appeal documents included a Preliminary Ecological Appraisal (PEA) and Ecological Survey Report (ES). These documents were not before the Council when it determined the application. The additional information does not alter the appeal scheme but rather provides technical information to address the Council's concerns regarding the effect of the proposal on protected species. The Council has reviewed the PEA and ES as part of the appeal process, and has stated that the content is satisfactory, subject to suggested conditions. Based on the evidence I have no reason to take a different view. I am satisfied that no procedural unfairness arises from me considering the documents, and I have therefore proceeded on the basis that the second reason for refusal, and any conflict with Policy NR2 of the Borough Local Plan 2013-2033 (Adopted 8 February 2022) (LP) no longer applies.
4. A revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. The parties have had an opportunity to comment on the revised Framework as part of the appeal process. The paragraph numbers in this decision refer to the latest version of the Framework.

Main Issue

5. The main issue is whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies.

Reasons

6. The appeal site lies within the Green Belt. Paragraph 154 of the Framework states that development in the Green Belt is inappropriate, other than in a few exceptions. Policy QP5 of the LP also seeks to protect the Green Belt from inappropriate development, as defined by the Framework, unless very special circumstances are demonstrated.
7. The Council assessed the scheme against the exception now listed in paragraph 154 c) of the Framework, which states that the extension or alteration of a building is not inappropriate development provided it does not result in disproportionate additions over and above the size of the original building. However, the appellant's evidence refers me to other exceptions including paragraph 154 g) of the

Framework, which states that development in the Green Belt is not inappropriate where it comprises *“limited infilling or the partial or complete redevelopment of previously developed land (PDL) (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt”*.

8. The appeal site is occupied by Bath Cottage and its garden, as well as an outbuilding and areas of hardstanding. The proposal would partially redevelop the site through the demolition of some structures, and the construction of various extensions and alterations to the host property and its grounds. Due to the site's location outside of a built-up area, the garden area is not excluded from the Framework's definition of PDL. The site therefore comprises PDL.
9. Notwithstanding that some existing structures would be removed as part of the proposal, the scheme would significantly enlarge the width, height, and overall volume of built form on the site, and the extended dwelling would fill most of the space between the side boundaries of the plot. At two-storeys high, and given its width, the side extension would block views from Bath Road through to the gardens and upwards towards the sky. Therefore, there would be a loss of openness in both visual and spatial terms.
10. However, owing to its location at the end of a short and well-treed lane, there are very limited views of the site from the surrounding area, including the A4 road. Indeed, the development would only be observable from the footpath and road immediately outside of the site and in glimpsed views through trees from neighbouring properties. Even then, the appeal site is well-enclosed by other buildings and vegetation such that there are limited opportunities for longer views through the garden towards open space. When considered together with the modest scale and nature of the proposal, the loss of openness would be localised. It follows that, whilst there would be harm to the openness of the Green Belt, the harm would not be substantial.
11. On this basis, I conclude that the proposal falls within the exception set out in paragraph 154 g) of the Framework and therefore it would not be inappropriate development in the Green Belt. On that basis, it is not necessary for me to consider the proposal against the other exceptions in the Framework, or for very special circumstances to be present. Therefore, there would be no conflict with Policy QP5 of the LP.

Conditions

12. The Council provided a list of suggested conditions, which I have considered against the tests set out in the Framework. Where appropriate, I have adjusted the wording of the conditions to improve precision and enforceability.
13. In addition to the standard time limit condition, I have attached a condition to define the permitted drawings to provide certainty.
14. I have imposed a condition to control external materials to protect the character and appearance of the area. The Council suggested this could be a compliance condition, however the details on the submitted plans are limited and do not include references to colour for example. Therefore, I have required the details to be submitted for approval.

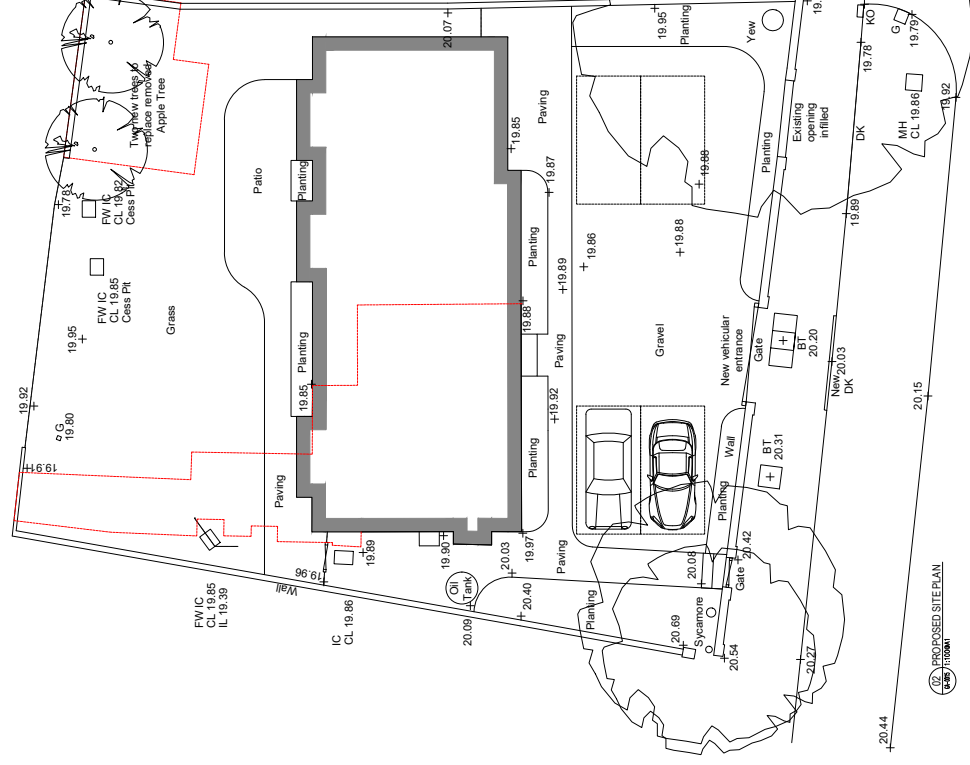
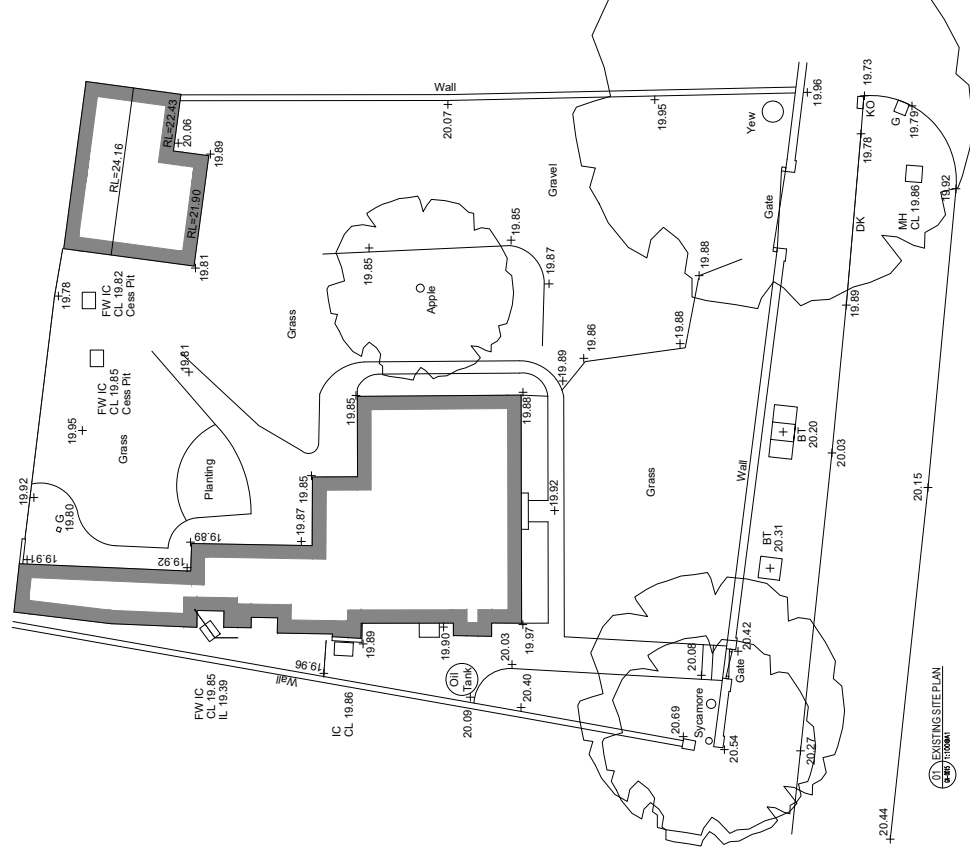
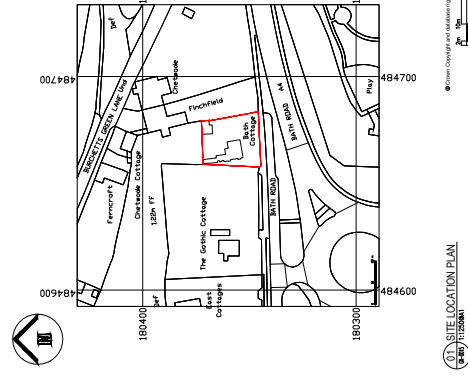
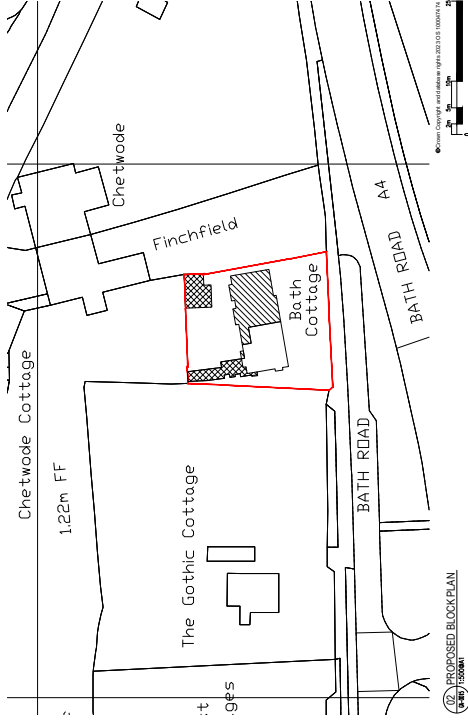
15. A biodiversity enhancement scheme is required to be submitted through a condition, to ensure the site delivers biodiversity enhancements.
16. A condition is included to prevent external lighting other than where this has been approved by the Council. This is necessary to protect local character, and to safeguard protected species.
17. It is not necessary to include an informative advising the appellant to cease works if protected species are unexpectedly found to be present because this is covered by separate legislation.

Conclusion

18. For the reasons given above the appeal should be allowed.

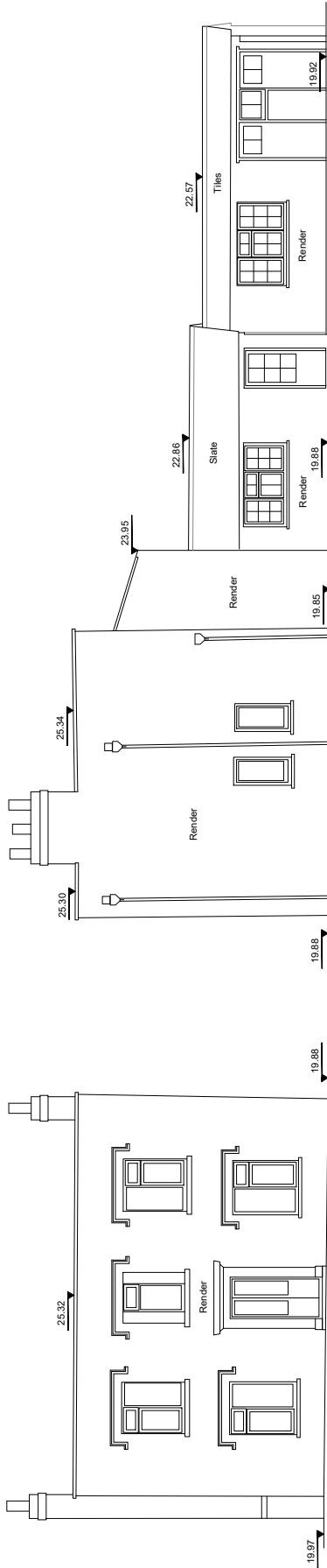
E Catchside
INSPECTOR

EP8





NOTES:
DRAWING REMAINS COPYRIGHT OF THE ARCHITECT.



Datum 19.00m

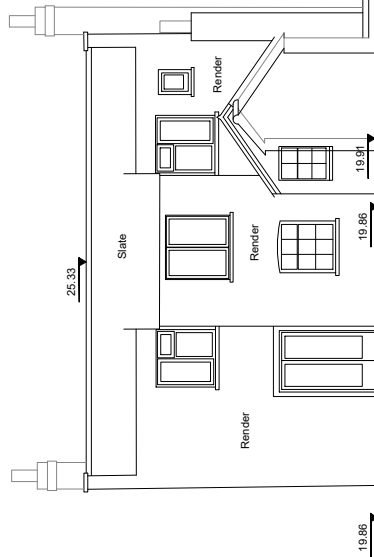
South Elevation

Datum 19.00m

East Elevation

01- EXISTING FRONT ELEVATION
19.97 19.88

02- EXISTING SIDE ELEVATION
19.85 23.95 22.85 22.57 19.88 10.92

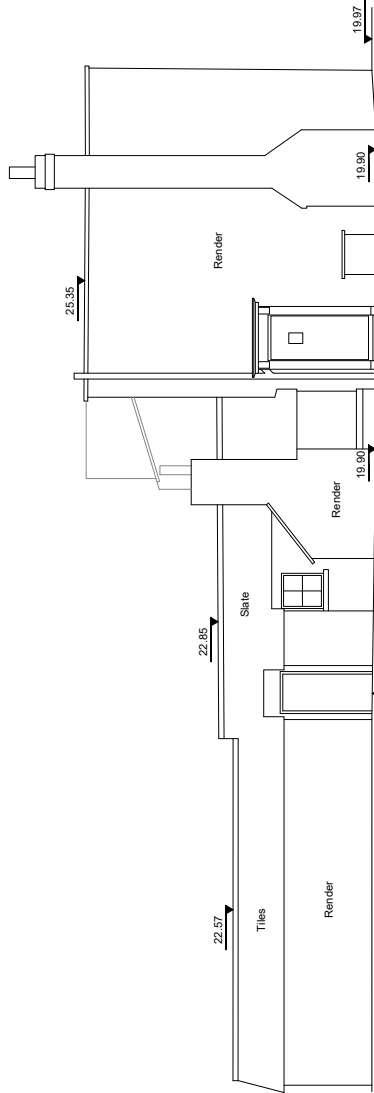


Datum 19.00m

North Elevation

Datum 19.00m

West Elevation



03- EXISTING REAR ELEVATION
19.86 19.88 25.33 19.85 19.81 22.85 22.57 19.80 19.97

04- EXISTING SIDE ELEVATION
19.85 23.95 22.85 22.57 19.88 10.92

PROJECT: 0173-GA-0005
DATE: 01/12/2024
REV: 001
DESCRIPTION: EXISTING ELEVATIONS

CONNECTED
ARCHITECTURE

CLIENT:
Mr & Mrs Werliso
Address:
Bath College, Bath Road
Llunbeck Green, SL6 5GR
Elevation:
Existing Elevations

DATE: 01/12/2024
SCALE: 1:1000
STATUS: PRELIMINARY
DRAWING NO: 0173-GA-0005
REV: 001
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EP9

EP10

WESTERN HOUSE COTTAGE - MAY 26



Existing Buildings

	Footprint Sq/ft	Gross Internal Area Sq/ft	Gross External Area Sq/ft	Gross External Volume m3
Farmhouse	1023			478
Garage	323			107
Annex	926			295
Total	2272	0	0	880

Proposed New Build

	Footprint Sq/ft	Gross Internal Area Sq/ft	Gross External Area Sq/ft	Gross External Volume m3
Main House inc Garage	3679			1831
Total	3679	0	0	1831

EP11



Figure 2. Extract from the Halewood Tithe map from 1843



Figure 3. Extract from the Ordnance Survey 6" map of 1849



Figure 4. Extract from the Ordnance Survey 6" map of 1894



Figure 5. Extract from the Ordnance Survey 25" map of 1904

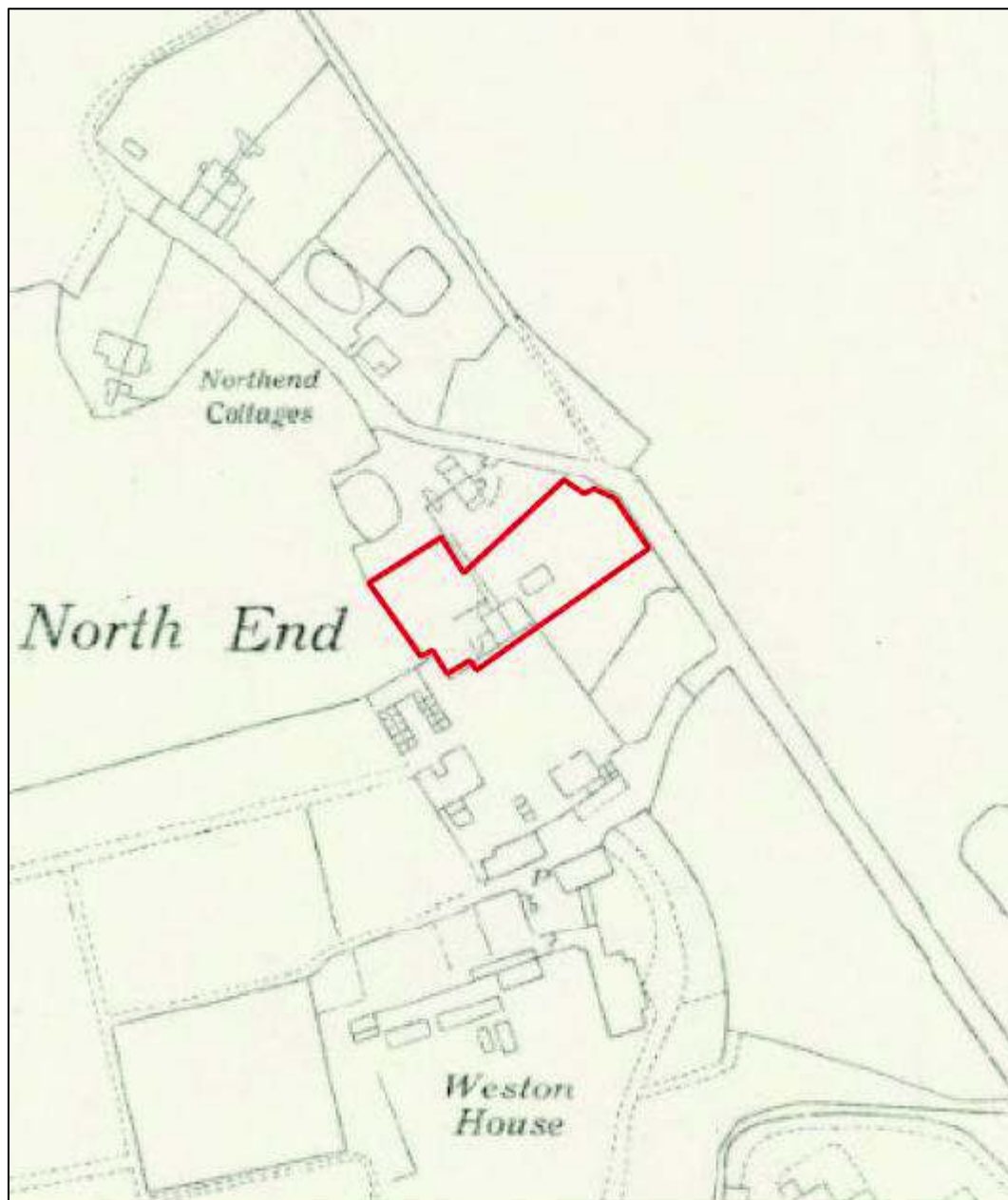


Figure 6. Extract from the Ordnance Survey 25" map of 1945

