



# Planning Statement

Variation of Conditions 2, 3, 4, 6, 7 and 11 to planning permission reference HPK/2017/0643 to allow for provision of basement level accommodation and details regarding boundary and construction materials and asbestos removal at  
Fernlea, Buxton Road, Chinley, High Peak, SK23 6DT

for Messrs R Spicer & A Bains

18-118



Project : 18-118  
Site address : Fernlea, Buxton Road,  
Chinley, High Peak, SK23  
6DT  
Client : Messrs R Spicer & A Bains  
Date : 11 May 2018  
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# 1. Introduction

- 1.1 This planning statement has been prepared to support a Section 73 application to vary the approved plans and provide additional details in respect of application reference HPK/2017/0643 for the demolition of an existing dwelling and outbuildings and the construction of a replacement dwelling and garage at Fernlea, Buxton Road, Chinley.
- 1.2 This statement will demonstrate that the proposed changes to the plans approved under application reference HPK/2017/0643 (involving the addition of a basement) would not materially alter the nature of the development or the acceptability of the proposals in relation to national and local planning policy. Although the resulting dwelling would be volumetrically larger than that shown on the approved drawings, the additional floor space would be entirely below ground and situated beneath the footprint of the new dwelling. As such, there would be no impact on the character, appearance and openness of the Green Belt as a result of the changes. The development would remain preferable to the fallback position, which has been accepted by the LPA as a viable alternative development.
- 1.3 It will also be demonstrated that the details provided in respect of the proposed construction materials are entirely suitable for the context and design of the building, comprising high quality, locally sourced products, with excellent energy efficiency and sustainability benefits.
- 1.4 Other minor amendments proposed to the wording of Conditions 4 and 7 would enable the development to progress whilst details regarding landscaping treatments and biodiversity enhancement strategy were finalised. This would allow more time to be spent developing a landscaping scheme of the highest quality without delaying the build process (resulting in additional costs to the applicant).
- 1.5 In respect of Condition 11, an asbestos survey has been undertaken and a report prepared which outlines the quantities and locations of different types of asbestos, the level of risk and the recommendations for dealing with each. Adherence to the recommendations will ensure that the development can be carried out safely without unacceptable risks in accordance with Policies EQ6 and EQ10 of the High Peak Local Plan 2016 and the National Planning Policy Framework.

- 1.6 In view of the above, it is requested that the Section 73 application is approved in accordance with paragraph 14 of the NPPF, and the presumption in favour of sustainable development.

## 2. The application

- 2.1 The application seeks to vary Conditions 2, 3, 4, 6, 7 and 11 to planning permission reference HPK/2017/0643 for the demolition of the existing bungalow and outbuildings and its replacement with a single storey dwelling.
- 2.2 It is proposed to vary Condition 2 to reference updated plans and drawings which provide for the creation of a basement floor to the property.
- 2.3 The drawings to be referenced within the new decision notice would be as follows:
- 201H – Ground Floor Plan
  - 202G – Section AA
  - 203H – Site Plan
  - 204I – Elevations A+B
  - 205H – Elevations C+B
  - 206C – Sections B-B & C-C (Courtyard Elevations E + F)
  - 207 – Garage Elevations
  - 208A – Basement Plan
- 2.4 The basement would contain a gym, media room, wine cellar, storage area and plant room, and would have a floorspace of 123m<sup>2</sup>. It would be entirely below ground level and with the exception of two small light wells, would be constructed under and within the footprint of the approved replacement dwelling.
- 2.5 It would not therefore materially alter the appearance of the replacement dwelling when viewed from the surrounding area or within the site. Indeed, there would be no visible external changes in relation to the approved plans, save for the light wells, which would be built into the earth banking to the northwest side of the property and would involve a negligible change to the appearance of the property with no increase in the above ground volume of the dwelling.
- 2.6 The building would also meet the UK Passivhaus Standard. The addition of the basement would actually improve the capability of the dwelling to meet the Passivhaus Standard. This is

because there will be a greater surface area of the building walls that are buried, creating a much more efficient insulation system as the earth's subsurface temperature remains stable. This gives a benefit from geothermal mass and heat exchange assisting the building to stay cool in the summer and warm in the winter.

- 2.7 It is also still the applicant's intention that the dwelling would be self-sufficient for at least 9 months of the year, through the use of photovoltaic cells and batteries. Indeed, the addition of the plant room would provide space for the mechanical ventilation and heat recovery system, heating system, batteries and the potential to incorporate additional features such as rainwater harvesting filtration.
- 2.8 The only changes to the approved development relate to the additional basement level, which would include engineering operations to remove approximately 320m<sup>3</sup> of material. Due to the existing and proposed site levels, some of this will not be able to be re-used within the development and would be removed from the site. However any suitable excavated stone would be incorporated within the natural dry stone walls and the stone cladding of the building.
- 2.9 In addition to the drawings relating to the proposed basement, the applicant is also providing additional details, including photographs and details of the proposed construction materials and boundary treatments, together with an Asbestos Pre-refurbishment / Demolition Survey Report. The intention is that these can be assessed and agreed by the LPA as part of this application, thus removing the need for pre-commencement conditions on these matters. Conditions 3 and 6 could either be varied to reference the boundary plan and samples of materials document that are submitted with this application, or these could be added to Condition 2, enabling deletion of Conditions 3 and 6. It is proposed Condition 11 would be revised to require adherence to the recommendations of the Asbestos Pre-refurbishment /Demolition Survey Report prepared by P2 Environmental Consulting Ltd.
- 2.10 The proposed surface materials for the dwelling comprise local stone and living walls as shown and described within the 'Samples of Materials' sheet that accompanies the application. These materials are available on site for inspection
- 2.11 As outlined in the original application, all of the materials would be locally sourced in accordance with the following principles:

- All materials would be sourced from within the UK.
- The materials from the existing building and plot would be recycled on site where possible e.g. stone.
- For items pivotal to the look and feel of the building both internally and externally (e.g. cladding, stairs, kitchen furniture, doors), both materials and artisan workers would be sourced from either within the Peak District National Park/High Peak or from within a 75 mile radius from Chinley.

- 2.12 The living walls would utilise plants that are highly absorbent of carbon dioxide to reflect the roadside location of the building. In terms of the green roof and living wall, there are several different options, with the plants and systems used having different structural requirements. The applicants need to reach a conclusion on both the green roof and the living wall during the development of the construction drawings and to achieve structural approval by the Structural Engineer.
- 2.13 It is proposed that the specific plants (and systems) to be used will be agreed as part of the biodiversity enhancement strategy required by Condition 7 of the planning permission. Alternatively, this could be also done through the landscaping scheme (Condition 4) if this was deemed more appropriate.
- 2.14 Both of these are currently pre-commencement conditions, which prevent the development being commenced until a scheme of hard and soft landscaping and a biodiversity enhancement strategy has been submitted to and approved in writing by the Local Planning Authority. The conditions list the details and measures to be included within the schemes. These could be updated to include plant species and planting details for the green roofs and living walls.
- 2.15 The applicant is also seeking to vary these conditions to allow the submission and agreement of details within 6 months of development instead of prior to the commencement of development. This will enable both schemes to be drawn up whilst the initial groundworks and construction are underway, ensuring that time can be spent developing a landscaping scheme of the highest quality and maximising ecological gains, without knock on effects to project costs as a result of delays in overall timescales. Retention of the current wording as pre-commencement conditions would delay demolition of the existing bungalow and the commencement of groundworks. Neither of these would be affected by the choice of landscaping, biodiversity enhancement measures, or the detailed arrangements for the living



wall and green roof. There is therefore no reason that these initial works should not progress in advance of such conditions being discharged.

### 3. Proposed conditions

- 3.1 The proposed wording for the varied conditions is set out below. It is anticipated that all other conditions would be carried forward from planning permission reference HPK/2017/0643 in their current form.

#### Condition 2

- 3.2 The following wording is proposed for Condition 2:

*"The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Drg Nos. 201H, 202G, 203H, 204I, 205H, 206C, 207 & 208A."*

#### Condition 3

- 3.3 The following wording is proposed for Condition 3:

*"The materials used in the construction of the external walls and roofs of the building shall be strictly as detailed within the document entitled 'Fernlea Samples of Materials Version 1' and dated 14 May 2018."*

#### Condition 4

- 3.4 The following wording is proposed for Condition 4:

*"A scheme of hard and soft landscaping shall be submitted to the Local Planning Authority within 6 months of the commencement of the development and approved in writing by the Local Planning Authority prior to the occupation of the dwelling, the details of which shall include:*

- a) indications of all existing trees and hedgerows on the land;*
- b) details of any to be retained, together with measures for their protection in the course of development;*
- c) all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;*
- d) finished levels and contours;*
- e) means of enclosure;*
- f) car park layouts;*

- g) *other vehicle and pedestrian access and circulation areas;*
- h) *hard surfacing materials;*
- i) *minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc);*
- j) *proposed and existing functional services above and below ground (e.g. drainage, power, communications, cables, pipelines etc indicating lines, manholes, supports etc);*
- k) *retained historic landscape features and proposed restoration, where relevant."*

## **Condition 6**

3.5 The following wording is proposed for Condition 6:

*"The boundary treatments (including the positions, design, materials and type of boundary treatment to be erected) shall be in strict accordance with the details shown in the document entitled 'Fernlea Boundary Treatments Plan' and dated 14 May 2018. The boundary treatments shall be completed in accordance with the approved plan before the building is occupied or in accordance with a timetable agreed in writing with the Local Planning Authority."*

## **Condition 7**

3.6 The following wording is proposed for Condition 7:

*"A biodiversity enhancement strategy shall be submitted to the Local Planning Authority within 6 months of the commencement of the development and approved in writing by the Local Planning Authority prior to the occupation of the dwelling to ensure no net loss for biodiversity. Measures shall include:*

- a) details of bird, bat and insect boxes (positions/specification/numbers). These could be integrated within green walls/roof.*
- b) measures to maintain connectivity throughout the site for wildlife.*
- c) ecologically beneficial landscaping.*
- d) planting specifications for the green roof and living walls.*

*Such approved measures should be implemented in full prior to first occupation of the development and maintained thereafter."*

## Condition 11

3.7 The following wording is proposed for Condition 11:

*"The development shall be carried out in strict accordance with the recommendations of the Asbestos Pre-refurbishment /Demolition Survey Report prepared by P2 Environmental Consulting Ltd. and dated 26th April 2018."*

## 4. Context

### Site location and description

- 4.1 The application site comprises a detached bungalow situated on the south side of the B6062 Buxton Road. The existing property is a three bedroom detached bungalow with detached outbuildings, however planning permission reference HPK/2017/0643 provides for its demolition and replacement with a new 4 bedroom property.
- 4.2 The site is bordered by agricultural land to the east, south and west and Buxton Road itself immediately to the north. There are no neighbouring properties which immediately adjoin the site.

### Planning history

- 4.3 Outline planning permission was refused on 10 October 2014 for the construction of a bungalow with garage on the garden of Fernlea (HPK/2014/0445). This application was made before the applicants owned the site.
- 4.4 A prior notification application was submitted relating to the construction of two single-storey rear/side extensions at Fernlea. The prior notification application was submitted as required by Condition A.4 of Schedule 2, Part 1, Class A of the GPDO 2015. The application was registered on 16 September 2016 under reference HNT/2016/0027. The council confirmed that prior approval was required and approved in a decision dated 28 October 2016.
- 4.5 A Certificate of Lawfulness of Proposed Use or Development was granted on 11 January 2017 for single-storey side/rear extensions, rear dormer window, front porch, roof lights, detached outbuilding and associated hardstanding areas (HPK/2016/0639).
- 4.6 Planning permission was granted for a replacement dwelling on 20 March 2018 (application reference HPK/2017/0643). The approved dwelling is materially larger than the existing dwelling at the site and therefore constitutes inappropriate development in the Green Belt as defined in paragraph 89 of the NPPF. However, the LPA have accepted the very special circumstances put forward by the applicant relating to the fallback position of extensions and alterations to the existing building utilising permitted development rights (see positive Certificate granted above).

- 4.7 The council found that this viable alternative proposal would have a greater impact on the openness of the Green Belt than the replacement dwelling proposed under the above application. This was considered to outweigh the harm to the Green Belt by reason of inappropriateness and justify the grant of planning permission.
- 4.8 The decision notice lists 14 conditions. The current Section 73 application seeks to vary conditions 2, 3, 4, 6, 7 and 11 to this consent as described in Section 2 of this Statement above.

## 5. Policy context

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the relevant development plan unless material considerations indicate otherwise. The National Planning Policy Framework (The Framework) and Planning Practice Guidance (PPG) are material considerations in all planning decisions.

### **National Planning Policy Framework (The Framework) (2012)**

- 5.2 The emphasis of The Framework is on sustainable development, based on 3 inter-dependent roles that are economically, socially and environmentally based. Part of the social role is to provide a supply of housing required to meet the needs of present and future generations by creating a high quality built environment.
- 5.3 The presumption in favour of sustainable development means approving development proposals that accord with the development plan without delay.

### **Core principles**

- 5.4 Paragraph 17 sets out the core land-use planning principles that should underpin plan-making and decision-taking. Of relevance are the following:
- *"Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;"*
  - *"Take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;"*

### **Requiring good design**

- 5.5 Paragraph 56 states that *"The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people"*.

- 5.6 Paragraph 60 refers to planning policies and decisions that should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles.

### **Protecting Green Belt land**

- 5.7 Paragraph 79 states that “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”.
- 5.8 Paragraph 87 states that “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”.
- 5.9 The construction of new buildings is inappropriate development unless it falls within the exception categories as listed in paragraph 89. One of the categories is bullet point 4 that states:

*“the replacement of a building provided the new building is in the same use and not materially larger than the one it replaces.”*

### **Decision-taking**

- 5.10 Paragraphs 186 and 187 require local authorities to approach decision making in a positive way to foster the delivery of sustainable development. In particular they should look for solutions rather than problems and should approve applications for sustainable development where possible. They should also work proactively with applicants to secure development that will improve the economic, social and environmental conditions of the area.

### **Determining applications**

- 5.11 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise (para 196).



## Development plan context

5.12 The development plan comprises the High Peak Local Plan adopted in April 2016. Those policies relevant to the current Section 73 application are as follows:

- Policy S1 Sustainable Development principles
- Policy S1a Presumption in favour of sustainable development.
- Policy EQ1 Climate Change
- Policy EQ2 Landscape Character
- Policy EQ3 Rural Development
- Policy EQ4 Green Belt Development
- Policy EQ6 Design and Place Making
- Policy EQ10 Pollution Control and Unstable Land

## Other material considerations

### **Landscape Character Assessment Supplementary Planning Guidance (March 2006)**

5.13 The purpose of the SPD is to provide guidance for the design of new developments and alterations to existing developments, including associated landscape design. It covers rural parts of the High Peak outside the Peak District National Park. The SPD identifies the site within the Settled Valley Pastures landscape character area.

## Case law

- 5.14 The supporting statement for the original application referred to the interpretation of Green Belt policy relating to the 4th bullet point to paragraph 89 of the NPPF within planning case law.
- 5.15 It has already been established that the approved replacement dwelling is materially larger than the existing dwelling at the site, however the application was approved on the basis of comparisons with the fallback position. As such, the case law remains relevant when considering the proposed amendments, comparing them to the fallback position and

assessing whether the inclusion of a basement level would lead to any additional harm over and above what has been approved at the site.

- 5.16 In this respect, the High Court judgment in *Feather vs SoS DCLG and Cheshire East Council* [2010] (a copy of which is attached at Appendix EP1) is particularly pertinent. This involved a replacement dwelling with a very large basement. Here the overall replacement dwelling would have been 230% larger in terms of floorspace than the existing. Although it was considered that the council had been wrong to disregard the size of the basement when comparing the relative sizes of the existing and proposed dwellings, Langstaff J's stated that:

*"Whether it is "materially larger" has to be answered in accordance with the guidance given by the Court of Appeal; that is, primarily as a question of size. But it is not exclusively a question of size; (paragraph 30)*

*"The expression "materially" invites a consideration of size in context; what is the relevant context? The relevant context necessarily has to be the object of and policies relating to establishing a Green Belt. (paragraph 31)*

- 5.17 The judge concluded that, in the circumstances, it would not have been perverse to conclude that the very large replacement dwelling was not materially larger than the existing.
- 5.18 The Judgment in *John Turner v Secretary of State for Communities and Local Government and East Dorset Council* (a copy of which is attached at Appendix EP2) deals with the concept of openness. Paragraph 14 of the Judgment states that a number of factors are capable of being relevant:

*"Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness, which the Green Belt presents".*

- 5.19 The case continues in paragraph 15 that the question of visual impact is implicitly part of the concept of "openness of the Green Belt".

## Appeal Decisions

- 5.20 In addition to the above case law, various appeal decisions have dealt with issues surrounding subterranean development within the Green Belt and the manner in which it falls to be assessed.

- 5.21 These are relevant in determining whether the amendments to the approved plans would lead to any additional harm in Green Belt terms (in comparison with what has been approved).
- 5.22 One of the most recent cases (Determined on 26<sup>th</sup> January 2018, appeal reference APP/N5090/D/17/3174495) is attached at appendix EP3. This relates to an application for excavation under the footprint of an existing dwelling house to provide a new basement level for ancillary accommodation at Folly Farm, Burtonhole Lane, Mill Hill, London. As the proposals related to an extension rather than a replacement dwelling, they were considered under the 3<sup>rd</sup> bullet point to paragraph 89 of the Framework, with the relevant assessment relating to whether the extension would represent a 'disproportionate addition' to the original building as opposed to whether it would involve a material enlargement. The Inspector in this case noted that although the proposed basement would add considerably to the internal floor area of the existing house, it would not increase the footprint of the building or have a material effect on its external appearance. As a result, it would not amount to a disproportionate addition. The Inspector concluded that the project would not cause any actual harm in relation to planning considerations and that it would preserve the openness of the Green Belt.
- 5.23 In assessing the effects of the construction process and the removal of material from the site, the Inspector found that although the construction process would be difficult (in this instance involving excavations beneath an existing structure), The impact of construction traffic would be for a relatively limited period and was not critical in planning terms.

## 6. Planning considerations

### Green Belt

- 6.1 The application site is situated within the Green Belt.
- 6.2 Policy EQ3 of the Local Plan deals with rural development. It states that replacement dwellings will be allowed provided the replacement does not have a significantly greater impact on the existing character of the rural area than the original dwelling nor would it result in the loss of a building which is intrinsic to the character of the area. The original application was deemed to comply with the requirements of this policy and the amended drawings do not involve changes that would impact upon the character of the area. The proposals therefore satisfy the requirements of this policy.
- 6.3 Policy EQ4 of the Local Plan states that within the Green Belt, planning permission will not be granted for development unless it is in accordance with national policy.
- 6.4 Paragraph 89 of the Framework advises that the replacement of a building is not inappropriate providing the new building would be in the same use and not materially larger than the one it replaces. The NPPF provides no guidance on what would be interpreted as 'materially larger'. However in this case the replacement dwelling has already been assessed as materially larger than the original and therefore constitutes inappropriate development.
- 6.5 The Framework advises that Inappropriate development within the Green Belt should only be approved where there are 'very special circumstances' and that '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.
- 6.6 In assessing application reference HPK/2017/0643, the LPA considered that the harm caused by the approved replacement dwelling was clearly outweighed by other considerations (namely the fallback position). These very special circumstances remain relevant to this application.
- 6.7 The proposed addition of a basement would result in a greater percentage increase in the size of the original dwelling than the approved drawings in terms of its floorspace. However,

the footprint and visible extent of development would be unchanged from what has been approved.

- 6.8 The below tables provide a comparison of the footprint and floorspace for the existing dwelling with PD extensions (the fallback), against the approved replacement dwelling and the replacement dwelling incorporating the proposed revisions to the floorplans. The incorporation of the basement floor results in a 36% increase in floorspace in comparison with the approved development, but has only 17% more floorspace than the fallback position. Once again, all of this is below ground.

**Table 1 – Comparison of fallback, approved and proposed development**

	Floorspace sqm				
	The established fallback (A)	Approved Development (B)	Approved + basement (C)	Difference (B-A)	Difference (C-A)
<b>Habitable floors</b>	360m <sup>2</sup>	310m <sup>2</sup>	306m <sup>2</sup> *	- 50m <sup>2</sup>	-54m <sup>2</sup>
<b>Basement</b>	0m <sup>2</sup>	0m <sup>2</sup>	123m <sup>2</sup>	0m <sup>2</sup>	+123m <sup>2</sup>
<b>Total</b>	360m <sup>2</sup>	310m <sup>2</sup>	429m <sup>2</sup>	-50m <sup>2</sup>	+69m <sup>2</sup>

\*Deduction made due to loss of floorspace at ground floor level for stairs to basement.

- 6.9 The judgement in *Feather vs SoS DCLG and Cheshire East Council* [2010] suggests even where there are large increases in floorspace resulting from the creation of basement level accommodation, it does not follow that the enlargement will always be 'material'.
- 6.10 As the proposals are for inappropriate development, the key issue in respect of this Section 73 application is whether the revised drawings, would give rise to any harm (in Green Belt or other terms) over and above that caused by the approved development and whether it remains preferable to the fallback position (which would provide the applicant with more floorspace than the replacement dwelling as per the approved drawings) and is a viable alternative development.

- 6.11 The impacts of the revised and additional details for the development are assessed below under the relevant subject headings.

## **Openness**

- 6.12 Paragraph 79 of the NPPF states that the essential characteristics of Green Belts are their openness and permanence.
- 6.13 There is no definition of "openness" within the NPPF; however the issue has been considered by the courts.
- 6.14 In the judgment of *Turner v Secretary of State for Communities and Local Government and East Dorset Council* ([2016] EWCA Civ 466) (see Appendix EP2), it is clarified that the "openness of the Green Belt" is not narrowly limited to a volumetric approach. The word "openness" is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.
- 6.15 The changes to the approved plans would have a negligible impact on the openness of the Green Belt as there would be minimal above ground or visible external changes. Although two small light wells would be created within the bank to the site of the house in order to provide light to the basement level below, these would be situated up against the external wall of the dwelling, would be within the curtilage of the property and would have no greater effect on openness than any other ground coverings proposed as part of the landscaping arrangements for the site.
- 6.16 In view of the above, there would be no greater impact on the openness of the Green Belt than with the implementation of the approved plans.
- 6.17 When considering the issue of openness, the Development Control Committee Report (Appendix EP4) for the approved application concluded:

*"The fall back position of permitted development extensions, which has been confirmed as lawful through a recent Lawful Development Certificate and*

*which is a viable alternative proposal, would have a greater impact on the openness of the Green Belt than the proposed replacement dwelling.”*  
(paragraph 8.2)

6.18 There is no change between this and the approved scheme.

### **Green Belt purposes**

6.19 Referring back to the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open and to protect the countryside, we do not consider that harm would be caused to the five purposes of including land within the Green Belt as set out in paragraph 80 of the NPPF:

- To check the unrestricted sprawl of large built-up areas - The proposal would have no impact in this respect;
- To prevent neighbouring towns from merging into one another - The proposal would not cause or contribute to the merging of any towns;
- To assist in safeguarding the countryside from encroachment - The proposal would be entirely contained within the curtilage of the existing dwelling, the use of the site would not extend further into the Green Belt and a significant proportion of the site would remain undeveloped.
- To preserve the setting and special character of historic towns - There would be no impact on the setting and special character of historic towns; and
- To assist in urban regeneration, by encouraging the recycling of derelict and other land - There would be no harm caused to urban regeneration initiatives elsewhere. The land is previously developed.

6.20 This is in line with the conclusions of the case officer for the previous application, who stated at paragraph 7.12 of the Development Control Committee Report that:

*“the proposal would have no impact on the purposes of including land within the Green Belt.”*

6.21 None of the changes proposed under this Section 73 application are capable of affecting that conclusion.

### **Design and visual appearance**

6.22 The changes to the scale of the property proposed under this application would have no adverse impact on the character and appearance of the area in comparison with the

approved plans. There would continue to be an improvement to the character and appearance of the site as a result of the proposed development.

- 6.23 Policy EQ6 of the Local Plan deals with design and place making. It requires all development to be well designed and of a high quality that responds positively to both its environment and the challenge of climate change whilst also contributing to local distinctiveness and sense of place.
- 6.24 In respect of the additional details that have been submitted for the proposed construction and boundary materials, these show that the property would be constructed in locally sourced stone and that the detailing for the natural dry stone walls in terms of the arrangement and placement of stones would follow that found in the immediate vicinity of the site, as shown in the 'samples of materials' document that accompanies this application.
- 6.25 The addition of the basement would involve no above ground changes, save for two small linear light wells set against the northwest wall of the property. This is a negligible change which would not alter the positive contribution that the new dwelling would make to the character and appearance of the area.

## **Residential amenity**

- 6.26 The proposed variations to the conditions would have no significant impacts on the amenity of any neighbouring resident. There would be a small increase in construction related traffic as a result of the additional excavation and building work, however this would be relatively short lived. This issue was considered in the appeal case reference APP/N5090/D/17/3174495, where the Inspector concluded that the temporary additional traffic was not critical in planning terms.
- 6.27 The loading of all vehicles involved in the extraction work would be done within the site and would not block the road. Additional details regarding this and other aspects of the works will be outlined in the Site and Traffic Management Plan, which will be issued to the LPA for their approval prior to the commencement of development and which will ensure that all activities are undertaken as sensitively as possible.
- 6.28 Overall, there would be no conflict with policies in the Development Plan to protect residential amenity and the additional accommodation that would be created as a result of the



amended plans would provide a high standard of amenity for the future occupiers of the development.

## **Access and highways issues**

- 6.29 No change to the site access is proposed. The basement level does not involve the creation of additional bedrooms and would not therefore increase the number of household vehicles that could be anticipated either now or in the future. There would be no intensification in the overall use of the site when the development was complete.
- 6.30 The existing access does not have sufficient space to turn a car meaning that vehicles have no option but to reverse into or out of the property, for which there is poor visibility. Therefore there would continue to be an improvement to highway safety as a result of the replacement dwelling.
- 6.31 There would be a small increase in construction traffic as a result of the additional excavation to create the basement, however this would be temporary and would not pose any significant nuisance or highway safety risks.

## **Climate change and sustainability**

- 6.32 The applicants are seeking to achieve a highly sustainable and energy efficient replacement dwelling. The energy performance of the building would not be affected by the changes to the approved plans. Policy EQ1 of the Local Plan sets out how High Peak seeks to achieve a low carbon future. The sustainability features which are proposed to be incorporated into the new dwelling would support the aims of Policy EQ1.

## **Landscape**

- 6.33 Policy EQ2 of the Local Plan relates to landscape character. Map 3 shows that the site falls within the settled valley pastures. Policy EQ2 requires new development to be informed by, and sympathetic to the distinctive landscape character areas as defined in the Landscape Character SPD (amongst other things).
- 6.34 The Landscape Character SPD sets out design principles to enable applicants to think about how new development can be made to fit in with its surroundings. It states on page 37 that:

*"This does not mean trying to replicate the traditional style but to promote buildings that fit in with it in order to maintain the strong local character and identity of this part of the High Peak. This does not rule out appropriate contemporary design that demonstrates a response to the landscape."*

6.35 Key features in respect of the proposed variations (i.e. proposed materials and boundary treatments) are:

- The rural landscape character must be considered when developing at the urban rural edge.
- The impact of hardstanding and other surfaces should be considered, including the colour, brightness and reflectivity of the surface and how it would appear from a distance.
- Development should be contained in low, gritstone, drystone walls.

6.36 The proposed dwelling and boundary treatments involve a simple palette of local stone and living walls/roofs. Design cues have been taken from the immediately surrounding area and would be contained within low gritstone walls in the local tradition and design, with the retention and enhancement of an existing native species hedge. The development therefore directly accords with the above requirements.

6.37 It is considered that the proposal would enhance the landscape character and the requirements of Policy EQ2 and the Landscape Character SPD are met.

## **Trees, landscaping and ecology**

6.38 No changes are proposed to the details of the scheme in respect of trees, landscape or ecology. A variation is sought to condition 4 of the original planning permission as outlined at paragraphs 2.12 - 2.13 of this statement, however this would have no detrimental effects on landscape, arboricultural or ecology interests.

6.39 The proposals continue to be compliant with Policy EQ5 on biodiversity.

## **Ground conditions and flood risk**

6.40 There would be no increased risk of flooding or pollution as a result of the proposed changes to the planning conditions.

## **Asbestos**

- 6.41 An asbestos survey, risk assessment and report is submitted with the application. This outlines the quantities and locations of different types of asbestos within the existing buildings at the site and provides recommendations for each. Out of 7 locations in which asbestos has been identified or is presumed to be present, 6 are classified as low or very low risk and one is classified as medium risk. It is proposed that these materials will be removed and disposed of prior to and at the beginning of the demolition process, in line with advice contained within the report. Adherence to the report's recommendations will ensure that the development can be carried out safely without unacceptable risks in accordance with Policies EQ6 and EQ10 of the High Peak Local Plan 2016 and the National Planning Policy Framework.

## **Very special circumstances**

- 6.42 As previously noted, very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Although the proposed revisions to the approved plans would result in a further increase in the scale of the dwelling at the site (over and above what has been approved), it is maintained that this would not be material and that at any rate, development within the Green Belt is either inappropriate or it is not. There are not degrees of inappropriateness.
- 6.43 The method of assessment for the application therefore remains the same as for the original planning application and if no significant additional harm is found, it follows that the very special circumstances of the fallback position will justify approval of the proposed variations to the conditions to application reference HPK/2017/0643 put forward within this Section 73 application.
- 6.44 As the variations to the conditions would involve negligible above ground changes and due to the fact that the basement would only extend fractionally beyond the approved footprint of the replacement building (to the northeast), there would be no impact upon the openness of the Green Belt as a result of the changes to the scheme and no effects on the purposes of including land within the Green Belt.

## The fallback position

- 6.45 Chinley, Buxworth and Brownside Parish Council were consulted as part of the Certificate of Lawfulness application reference HPK/2016/0639 and made the following comments which are of note with regard to the fallback position:

*"Chinley, Buxworth and Brownside Parish Council is unable to comment on whether the proposals are lawful development. However, the resultant development would be an unsightly hotchpotch of extensions, additions and alterations of no architectural merit. We urge the Borough Council to negotiate either a more appropriate design solution or demolition and re-build to ensure a design in-keeping with the area is developed from the outset."*

- 6.46 The amended development would secure replacement of the existing already badly extended dwelling, with a contemporary, high quality, architect-designed home, which would appear no different to the dwelling that has already been approved.

- 6.47 In respect of this design, the Development Control Committee Report notes at paragraph 8.2 that:

*"The fall back position of permitted development extensions, which has been confirmed as lawful through a recent Lawful Development Certificate and which is a viable alternative proposal, would have a greater impact on the openness of the Green Belt than the proposed replacement dwelling. The proposed development is consistent with all of the purposes of including land within the Green Belt. For these reasons, the principle of the development is accepted."*

- 6.48 Accordingly, the third strand of the legal test in respect of fallback is met, and it continues to carry compelling weight in favour of the variations proposed to the existing planning permission.

## 7. Summary and conclusions

- 7.1 This Section 73 application seeks to vary a number of conditions to planning permission reference HPK/2017/0643 for the demolition of an existing dwelling and outbuildings and the construction of a replacement dwelling and garage at Fernlea, Buxton Road, Chinley.
- 7.2 The applicant is seeking to substitute the approved plans for updated drawings showing the addition of a basement to the property, together with additional drawings and details that would be referenced within the new decision notice and which would enable the deletion of conditions 6 and 3 to the permission. A change of wording has been requested to conditions 4 and 7 to enable the submission of details on landscaping and biodiversity enhancements within 6 months of development being commenced on site.
- 7.3 The approved dwelling represents inappropriate development within the Green Belt, however permission was granted on the basis of very special circumstances in the form of a fallback position. This statement has demonstrated that the proposed changes to the plans would not materially alter the appearance of the development in relation to the approved scheme; its method of assessment in planning policy terms; or the acceptability of the proposals in relation to national and local planning policy.
- 7.4 As a result of the proposed changes, the dwelling would be larger than shown on the approved drawings, however the additional floor space would be entirely below ground and situated beneath the footprint of the new dwelling. As such, there would be no impact on the character, appearance and openness of the Green Belt.
- 7.5 The development would remain preferable to the fallback position, which has been accepted by the LPA as a viable alternative development.
- 7.6 The proposed construction and boundary materials and details are entirely suitable for the context and design of the building, comprising high quality, locally sourced products, with excellent energy efficiency and sustainability benefits, which have been selected with reference to the immediately surrounding area in line with the advice of local planning policy and guidance.
- 7.7 Other minor amendments proposed to the wording of conditions 4 and 7 would enable the development to progress whilst details regarding landscaping treatments and biodiversity

enhancement strategy are finalised. This would allow more time to be spent developing a landscaping scheme of the highest quality without delaying the build process (resulting in additional costs to the applicant).

- 7.8 The Asbestos Pre-refurbishment / Demolition Survey Report outlines the appropriate means for dealing with the presence and removal of asbestos at the site. Adherence with the recommendations of the report will ensure that the development can be carried out safely without unacceptable risks in accordance with Local Plan Policies EQ6 and EQ10.
- 7.9 In view of the above, it is requested that the Section 73 application is approved in accordance with paragraph 14 of the NPPF, and the presumption in favour of sustainable development.

## 8. Appendices

- EP1. Feather vs SoS DCLG and Cheshire East Council [2010]
- EP2. Turner vs SoSCLG and East Dorset Council [2016]
- EP3. Appeal Decision Ref. APP/N5090/D/17/3174495
- EP4. Development Control Committee Report to Application ref. HPK/2017/0643

EP1



Case No: CO/12308/2009

Neutral Citation Number: [2010] EWHC 1420 (Admin)  
IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT

Sitting at:  
Manchester Civil Justice Centre  
1 Bridge Street West  
Manchester  
M3 3FX

Date: Tuesday, 11<sup>th</sup> May 2010

**Before:**

**MR JUSTICE LANGSTAFF**

-----

**Between:**

**FEATHER**

**Claimant**

**- and -**

**CHESHIRE EAST BOROUGH COUNCIL**

**Defendant**

**MR CHRISTOPHER WREN AND MRS SUSAN WREN**

**Interested Parties**

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**Mr Jonathan Easton** appeared on behalf of the **Claimant**.

**Mr Ian Albutt** appeared on behalf of the **Defendant**.

The **Interested Parties** did not attend and were not represented.

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**Judgment**  
**(As Approved)**  
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**MR JUSTICE LANGSTAFF:**

1. This is an application for judicial review of a planning permission which was granted on 24 July 2009. Permission to appeal was granted on a renewed application by Foskett J on 17 February following a hearing on 12 February this year. The application relates to a planning permission granted by the Cheshire East Borough Council (the Northern Area Planning Committee were essentially responsible for the decision) for a development comprising a replacement dwelling at Broad Heath House, Over Alderley, Macclesfield. The property is owned by a Mr and Mrs Christopher Wren. The claimant, Mr Simon Feather, owns and lives at Broad Heath Farm, adjacent to Broad Heath House. Both properties are in the Green Belt, and Green Belt planning policies govern the approach to development in the area.
2. Those policies derive from national planning guidance, which is set out in what is known as PPG 2. The relevant paragraph of PPG 2 is paragraph 3, which sets out the policies in respect of control over development. Paragraph 3 begins with a presumption against inappropriate development. A new building is to be regarded as inappropriate, unless it falls within one of a specified number of exceptions. Amongst those is:

“Limited extension, alteration or replacement of existing dwellings (subject to paragraph 3.6 below).”

I emphasise the word “limited”. Paragraph 3.6, which is central to this application, reads as follows:

“Provided that it does not result in disproportionate additions over and above the size of the *original* building, the extension or alteration of dwellings is not inappropriate in Green Belts. The replacement of existing dwellings need not be inappropriate, providing the new dwelling is not materially larger than the dwelling it replaces. Development plans should make clear the approach local planning authorities will take, including the circumstances (if any) under which replacement dwellings are acceptable.”

There were no relevant local development plans at the time at which this application fell for consideration. Accordingly, regard had to be had, and had only to paragraph 3, insofar as the policies there set out were concerned.

3. The paragraphs to which I have already referred do not sit in a vacuum. Within paragraph 3 itself, for instance at paragraph 3.8, it is noted that:

“The re-use of buildings inside a Green Belt is not inappropriate development providing:

(a) it does not have a materially greater impact than the present use on the openness of the Green Belt and the purposes of including land in it.”

And it continues. Of particular relevance in this case, and in particular in understanding, in my view, aspects of the planning officer’s advice, is paragraph 3.15. That reads:

“The visual amenities of the Green Belt should not be injured by proposals for development within or conspicuous from the Green Belt which, although they would not prejudice the purposes of including land in Green Belts, might be visually detrimental by reason of their siting, materials or design.”

4. By way of broader background, reference might be made to paragraph 1.4, which sets out what is said to be the fundamental aim of Green Belt policy, which is to prevent urban sprawl by keeping land permanently open. The most important attribute of Green Belts, it says, is their openness. The purposes of including land in Green Belts are set out further at paragraph 1.5, and the use of land at 1.6. Paragraph 2.10 may also be worthy of further note, because it considers the consequences for sustainable development, of channelling development toward urban areas inside an inner Green Belt boundary, therefore away from the Green Belt itself.
5. The terms of this guidance, and in particular paragraph 3.6, were the subject of a decision at appellate level, binding upon me. It is common ground that the relevant legal principles are to be found in *R (Heath & Hampstead Society v Camden London Borough Council)* [2008] EWCA Civ 193. That case involved a decision to grant planning permission for a house in the Vale of Health. It was to replace an existing 1950s dwelling house which was in part two storeys high with one which was in part three storeys high. The various calculations could broadly be summarised (see paragraph 3) by saying that there would be a three-fold increase in floorspace, perhaps a four-floor increase in built volume, and between a two and two and-a-half times increase in the footprint of the building. The planning officers in the council had not considered the question of size when determining whether the building was materially larger, but had rather asked whether the relative visual impact of the replacement building was materially different from that of the existing building.
6. The decision to which the court came, the leading judgment being that of Carnwath LJ, with which Sedley and Waller LJJs agreed, was that that approach was wrong. It drew attention, basing itself upon the policy guidance which I have just set out, first to the concept of appropriate development, as compared to that which was inappropriate development; and that the relevant test as to whether a proposed replacement dwelling was appropriate was whether it would be not materially larger than the dwelling it replaced (see paragraph 12). The issue before the Court of Appeal was expressed at paragraph 13 in these terms:

“...whether the ‘materially larger’ test imports, solely or primarily, a simple comparison of the size of the existing

and proposed buildings; or whether it requires a broader planning judgment as to whether the new building would have a materially greater impact than the existing building on the interests which MOL policy is designed to protect [this policy is indistinguishable from that in PPG 2 which I have cited]. Mr Elvin's case [he appearing for the counsel], in a nutshell, is that, in the context of policies designed to protect the MOL, the development cannot said to be 'materially' larger, if the increase has no 'material' impact on the objectives of the MOL; or at least that the authority could reasonably take that view."

The court observed at paragraph 17 that that argument had been rejected at first instance by Sullivan J. He had relied in part upon the reasoning of Deputy Judge Christopher Lockhart-Mummery QC in Surrey Homes Limited v Secretary of State for the Environment (unreported) CO/1273/2000, in which the Deputy Judge had observed that the physical dimension which was most relevant for the purpose of assessing the relative size of the existing and replacement dwelling houses would depend upon the circumstances of the particular case, and might be floorspace, footprint, build volume, height, width etc, although he thought that in most cases, floorspace would be the starting point if not the most important criterion.

7. The court concluded that Mr Elvin's argument, as rejected by Sullivan J, that the argument (see paragraph 33) was to the effect that "material" meant material in planning terms; that it was a settled principle that matters of planning judgment, including the weight to be given to material considerations, were for the local planning authority and not the courts, and that the authority in that case had correctly identified the increased size of the building in all its aspects as a relevant consideration, but had decided on the facts that it was not material; that that was a judgment for them, and involved no issue of law justifying the intervention of a court. As to that, the Court of Appeal said (paragraph 34 of the judgment of Carnwath LJ):

"Although I see the force of that submission, it ignores the context in which the word is used. The words "materially larger" in paragraph 3.6 should not be read in isolation. There are two important aspects of the context. First is that paragraph 3.6 is concerned with the definition of "appropriate development", as contrasted with inappropriate development, which is "by definition harmful to the Green Belt" (see para 8 above). This first stage of the analysis is concerned principally with categorisation rather than individual assessment."

I pause there to note that Mr Albutt, who appears here for the council, draws attention to the word "principally"; he does so to note the point that it is not the only matter to which the planning authority may have regard.

8. The judgment continues (see paragraph 35), making the point in the last sentence of that paragraph that if it had been intended to make appropriateness dependent upon a broad “no greater impact” test, the same words could have been used; but instead, the emphasis was on relative size, not relative visual impact. Then this, at paragraph 36:

“36. That leads to the second aspect of the context, which is that of paragraph 3.6 itself. It is part of the test for a category which covers “limited extension, alteration or replacement...” “Limited” to my mind implies a limitation of size. Paragraph 3.6 deals with both extension and replacement. An extension must be “proportionate” to the size of “the *original* building”. The emphasis given to the word “original” shows how tightly this is intended to be drawn, in order presumably to avoid a gradual accretion of extensions, each arguably “proportionate”. It would be impossible, in my view, to argue that “proportionate” in this context is unrelated to relative size. For example, an extension three times the size of the original, however beautifully and unobtrusively designed, could not, in my view, be regarded as “proportionate” in the ordinary sense of that word.

37. The words “replacement” and “not materially larger” must be read together and in the same context. So read, I do not think that the meaning of the word “material”, notwithstanding its use in planning law more generally, can bear the weight which the authority sought to give it. Size, as Sullivan J said, is the primary test. The general intention is that the new building should be similar in scale to that which it replaces. The *Surrey Homes* case, [2000] EWHC 633 (Admin), illustrates why some qualification to the word “larger” is needed. A small increase may be significant or insignificant in planning terms, depending on such matters as design, massing and disposition on the site. The qualification provides the necessary flexibility to allow planning judgment and common sense to play a part, and it is not a precise formula. However, that flexibility does not justify stretching the word “materially” to produce a different, much broader test. As has been seen, where the authors of PPG2 intend a broader test, the intention is clearly expressed.”

9. Reference is made in his submissions by Mr Albutt to the fact that here, reference is made to such matters as design and disposition on the site as relevant to the question of whether one building is materially larger than another. Neither design nor disposition are themselves direct references to size. They are, however, plainly, and in this paragraph recognised to be, relevant planning considerations.

10. Mr Easton, appearing as he does for the claimants, argues for his part that in this paragraph a distinction is made between a small increase in physical size, measured objectively, as to which planning considerations may make the difference between an increase in size which is material and that which is not, and a larger increase in size, as to which he submits, bearing in mind the example given obiter at the conclusion of paragraph 36, the focus on size simply leaves no space for planning judgment to play a part. It is said here that the planning authority failed in two respects. It is argued by the claimants that the authority did not pay regard to the size of the building as it should have done, and it is said it reached a conclusion to which no reasonable authority could, on the facts, have come.
11. I turn, therefore, to look in greater detail at what was proposed, the advice given by the planning officer, in this case to the Northern Area Planning Committee, and subsequently to those two officials to whom that committee delegated the ultimate decision, and to review the arguments in detail against that background. The proposal in outline was to replace a 5-bedroom house, built in two storeys, which had an attached single-storey element reaching 5.8 metres in height. That existing dwelling has a stepped roof design, acting as a visual break in the overall appearance of the dwelling. The replacement dwelling would take the form of what was described by the planning officer as a solid two-storey dwelling of grand appearance, fabricated in facing brick, render and slate roof. The proposed design, as to a lay observer is manifestly apparent from looking at the architect's pictures and elevations, would be of solid appearance with a solid ridge line, therefore differing from the current stepped character of the existing building. The planning officer noted that the proposed dwelling would be approximately one metre taller than the existing dwelling, but that the overall height would increase only 0.2 of a metre; that may be a reflection of the fact that the replacement dwelling was to be sited further back from the road on the application site than the existing building, and that some minor excavation works were to be carried out. The overall depth and span of the replacement dwelling was to provide a small reduction upon that which exists.
12. In the planning officer's report which was compiled first on 28 May 2009, then updated on 22 June (see page 100 in the bundle) and updated again on 9 July (see page 138), the detail continued as follows:

“In assessing whether the replacement dwelling would be materially larger than the existing it is important to assess the overall scale and appearance of the building, and also comparing the footprint and floorspace of each dwelling. As discussed above, the overall scale and appearance of the dwelling is considered to be relatively similar to the existing. The proposed replacement dwelling would provide a smaller footprint, approximately a reduction of 11%. The amount of floorspace afforded to the replacement dwelling would increase by approximately 30%. This increase in floorspace to the dwelling must be considered in conjunction with the overall scale and

appearance of the dwelling. The increase in floorspace is noted, however, it is considered that as the overall appearance of the building would be broadly similar, therefore it is not considered that the replacement dwelling would be materially larger; therefore, it is considered that the proposal would comply with paragraph 3.6 of PPG2.”

13. One can well understand those observations in relation to the building described in the terms I have already described it; however, that would be to omit what is a very significant feature of the proposed dwelling. It is this: it is proposed that the dwelling has a basement. The basement, so the plans show, extends well beyond the ground-level footprint of the existing dwelling, or the dwelling as described; it is completely subterranean and enclosed. It contains, or is to contain, a swimming pool, changing rooms, and associated plant and equipment. It is plainly an extensive and large basement area. There is no indication in the extracts which I have thus far read from the report to council of the existence of such a basement, or how the area and volume of the basement is to be taken into account in considering the size or scale of the building, and whether it has any relevance at all to the issue whether the building to be erected is or is not materially larger than the existing. But I have omitted to read a short paragraph which immediately follows that which I have already quoted. It reads:

“It is noted that the dwelling would be afforded a large basement area underneath the dwelling. This area would be fully subterranean and therefore it is considered that there would be no impact on the visual amenity of the area.”

14. The advice to the council in each of its forms, that in May, that in June, and that in July, returned toward the end to consider again the question of whether the proposed building was materially larger than the existing. These words are used:

“... as discussed within the body of this committee report it is considered that the proposal would not result in a materially larger dwelling. This assessment has been made using several tests relating to increase in floorspace, foot print, and the scale and massing of the proposed replacement dwelling. The figures used regarding the potential increase in floorspace of the dwelling have been assessed within the report as 32% using the Council’s own figures. The agent has also put forward floorspace counts that demonstrate that the percentage increase in floorspace would be 36%. Whilst this would increase the level of habitable floorspace afforded to the dwelling, it is not considered to result in an unreasonable increase.”

15. The approach which a court should take to the reasoning of a decision made by a planning officer or planning inspector has been expounded in the House of Lords by Lord Brown

of Eaton-under-Heywood in South Buckinghamshire District Council v Porter (No. 2) [2004] UKHL 33 at paragraph 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 a 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 opponents 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 has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

16. Here I draw attention to these features arising from the case of Heath & Hampstead to which the council was obliged to pay particular attention. First, the question of “materially larger” is regarded as a threshold question. Secondly, that visual amenity is not the determinant of that question, though it is separately and importantly relevant (see paragraph 3.15 of PPG 2). I must bear in mind that the planning officer’s advice fulfils a number of functions. It must draw attention when it is addressed to the committee to the law which applies, to the threshold question, and to those matters which it is relevant to consider in respect of that threshold question; but it must also necessarily consider the other several planning issues which arise. One would thus expect it to contain a mixture of observation about design, size, appearance and the like. And in the light of the approach to be taken (see South Buckinghamshire), it cannot be a valid criticism of that advice or report that it runs a number of matters together. I have to, however, recall that a building which is not materially larger is not thereby necessarily rendered appropriate. It may be, it may not be; that will depend upon other considerations, and one must expect the planning authority to have regard to those other considerations. But what can



certainly be said is that a building which is materially larger cannot be appropriate; except, that is, in very special circumstances indeed, none of which applies here.

17. With those considerations in mind, I turn to look more closely at was, and what was not, said in the planning officer's report to the council, bearing in mind the forgiving approach which must necessarily be adopted to its wording. Under the heading "Scale and Design", it is plain that the planning officer directed the attention of committee members to issues of size. However, Mr Easton complains that it is clear textually, and on any sensible reading of the paragraph, that it does not include any reference to the basement. It is common ground between counsel that the size of the basement is relevant to the question whether the dwelling is materially larger than that which it is designed to replace. He points to the reference to the amount of floorspace increasing by approximately 30%. It is quite plain, he says, that that 30% can relate in context only to the portion of the building which is at ground level and above, and does not contain any consideration of the size of the basement, swimming pool and adjacent area.
18. Indeed, that point, it seems to me, is obvious simply from looking at the plans for the proposed building; but if it were not so, it has as a matter of objective fact been put beyond doubt, and without any dispute from Mr Albutt, in general terms, by a report -- albeit compiled after the decision was taken -- by a Mr Turley, from which it is apparent that if the floorspace of the basement were to be included, there would be an increase in floor area not of 30% but of some 230%.
19. The footprint of the proposed building which is referred to, it might be added, is referred to in the text as being smaller by 11% than the existing; that plainly looks, and looks only, at the footprint of the building as measured at ground level; it does not look at the basement, which extends considerably beyond the confines of the original foundations. I might add that the paragraph itself indicates that the author drew a distinction between the "dwelling" and "the basement". She posed the question whether the replacement dwelling would be materially larger. She answered that by saying that the replacement dwelling would not be materially larger, but the reference to the footprint of the dwelling, and the reference which immediately follows to the large basement area being *underneath the dwelling*, leads a reader naturally to conclude that when considering the question of material size and largeness, one has regard to that which is built from ground level upwards as constituting the dwelling, and not that which is beneath the dwelling.
20. When the author returned towards the conclusion of her report, and referred to the proposal not resulting in a materially larger dwelling, she mentioned as I have noted that assessment fell to be made using several tests relating to an increase in floorspace, footprint, scale and massing; but all that was said about floorspace, or footprint and scale, and massing, related to the building at ground level and above. The conclusion to which I am bound to come is that any reader of this report would understand that the question of material increase in size was important; but they would think the answer to the question lay in the size of the dwelling above ground level, and would not necessarily include the basement.

21. It is said in his submissions by Mr Easton that there are two reasons for holding the decision made by the council to be flawed. The first is that the council did not take account of a material consideration. He argues that the evidence shows that the council considered, and considered only, the building at and above ground level, and did not take into account the basement. It is accepted by Mr Albutt that the council were bound to have regard to the size of the basement, though he asks me to see it in context. Mr Easton augments his submission by noting that there was no comparison made here in the report between the built volume of the house as is, and the house as was to be. He urges the court to have regard to the fact, as he submits, that the increase in floorspace and in built volume is so significant that it the report to the committee is inadequately stated.
22. As a second point, he argues that a house of this proposed size, containing the basement as it is designed to do, could not be granted planning permission by any reasonable council upon a proper understanding of the law; it would be perverse to do so. He argues this by reference to the material which has emerged since the decision was taken in two reports by Mr Turley, containing a calculation of the built volume; there was no calculation of built volume before the council. He draws my attention to the tables contained in a report dated 15 April 2010 (the second report from Mr Turley). Those tables show that if the floorspace and volume of the basement is to be included, the built volume (see table 1, page 4 of the second report) is 209% larger; that on different scenarios, there is a range of values, all indicating a greater than doubling of the existing volume. This, he says, could not possibly be regarded by any council as not being materially larger.
23. In response, Mr Albutt argues first, that on the evidence, I should conclude that the relevant Planning Committee and Officials did indeed have regard to the size of the basement in determining whether the building was to be materially larger. He relies on a witness statement of Susie Helen Bishop of 26 March 2010. She explains that she is a planning assistant who was the planning officer responsible for the planning application which is subject to challenge. She describes how that application was not determined by her, but was called in for consideration by the Northern Planning Area Committee -- hence it going to committee -- and that at the meeting of that committee on 10 June, oral representations were made by the applicant's agent, Peter Yates (the architect who had designed the replacement building) and by neighbours, including the claimant. The claimant, she reports, drew the basement area to the attention of members, and gave its dimensions to perform floorspace calculations. She notes that that figure was also included within letters of representation received during the course of the application, and reports that during the meeting, members requested a site visit, in order to provide better clarity and understand of the proposal in the context of the site itself. They requested that the basement area be marked out on site. And she comments that they were fully aware of the basement being *part of* the proposed replacement dwelling: I note that her observation here is not to the same effect as that given by a fair reading of the reports which she made to the committee, which as I have noted drew a distinction between the dwelling and the basement.
24. Her statement then says this at paragraph 17:

“The site visit held by the Council’s Northern Area Planning Committee was attended by 13 out of 14 members who considered the application at the meeting of the committee on 1 July 2009. [I should add, the site visit was on 26 June, therefore before that meeting]. As requested by members the basement area was pegged out using hooks and white tape. The area was measured by the attending planning officers, Emma Tutton, Principal Planner and me. The area followed the submitted plans. The planning application plans were also provided during the site visit for members to view. This level of detail enabled members to be better informed of both the application sites site-specific issues and the scale of the basement.”

She went on to describe that the application was not finally determined by the committee on 1<sup>st</sup>. July because of a letter making representations being missing, but that the members resolved to approve the application, subject to the contents of that missing letter not raising any issues material to the decision-making process which had not already been considered by them. It delegated the decision to its head of planning and policy, John Knight. Miss Bishop comments at paragraph 20:

“The letter of representation was located ... and its contents assessed after the committee meeting on the 1 July. The letter made reference to the basement area, and stated that it should form part of the assessment of whether the replacement dwelling would be materially larger. This was the approach I had adopted in the assessment of the application. The basement area had been considered as part of the proposal in terms of whether the replacement dwelling would be materially larger.”

25. That is evidence that Miss Bishop had in mind the basement as relevant to the issue of size, and had considered it herself as such. It is not, however, evidence that that is how the members of committee saw it. I have no direct evidence from any member of committee. I have no evidence from Miss Bishop or from anyone that the committee were told in terms that they should consider the size of the basement when they came to consider the size of the dwelling. Indeed, I have a repeated description in each of the three planning reports to which I have referred which deal with the “materially larger” question which excludes, rather than includes, the basement, and which appears to deal with the question of the basement by considering whether it would have any visual impact or not; a highly relevant planning consideration under paragraph 3.15 for instance, but not obviously relevant when one is considering the question of material size.
26. There were matters, Mr Albutt asks me to note, which I could conclude directed the minds of the committee on 1 July to having regard to the size of the basement as part of their determination of what was or was not materially larger. Thus, the letters of objection were fairly summarised in Miss Bishop’s reports to council. Thus, the size of

the basement was orally drawn to the attention of the members in committee. One has to ask why it was the members of the committee asked that the basement area be indicated on the ground surface by tape and post, as they did, if they did not fully appreciate the size and scale of the basement. In my view, all these are significant and important points.

### **Conclusions**

27. In reply, Mr Easton has pointed out to me what is contained in a documentary update to the agenda of 29 June 2009 (see page 131). In that, in the first paragraph under the heading “issues”, it is noted that the basement was to be sited within the confirmed garden area, it therefore being considered that the potential outstanding enforcement issues on site would have no impact on the determination of the proposal. That was a reference to the potential for the dwelling -- and one has in mind here the basement of it -- to encroach into agricultural land to the rear of the site. The siting of the basement was thus materially important for that reason.
28. It is impossible for me to determine whether it was for that reason (to be assured there was no material encroachment on agricultural land) or because the members wished to have some proper idea of the size of the basement relative to the existing building, that they asked for it to be mapped out. What was relevant for the consideration of the committee, and the two Officers to whom the decision was delegated thereafter, was how they should approach the question of “materially larger”. Can I be satisfied that they took into account the basement area and size? The planning officers’ reports, upon a fair and not over-technical reading, were to the effect that that was not something which fell for consideration; those precise words are not used, but that is the sense of it. There is no evidence that anything different was said to the members during the course of the hearings. There is no material to indicate to me that they were told to accept as legally valid the point which the objectors were making; one bears in mind that objections are frequently made, so have to be evaluated, and the committee will make that evaluation, one supposes, by reference to the guidance which the Officers of the council can give. And here there was no steer, in terms to which Mr Albutt can point, to assist them to make it properly.
29. I have, therefore, come to the conclusion that in this case, I cannot be satisfied that the council had regard to what was, it is accepted, a material consideration; namely, the size and scale of the basement. I, therefore, cannot be satisfied that the council took that into account in determining whether the building was or was not materially larger. Indeed, such indications as there are in the papers before me indicate, and if necessary I would hold, that they did not do so. That being my conclusion, Mr Albutt accepts that the necessary consequence will follow that the decision made by the council as local planning authority must be quashed, because it was reached in the absence of a consideration to which material regard should have been had.
30. However, I am conscious that the matter of perversity has been fully argued before me, and I should deal with that, since I can see that it may be relevant to the parties in what may follow consequent upon my decision upon the ground on which it was reached. Here, I conclude that all necessarily depends in an assessment of “materially larger” upon the particular facts and circumstances of a case. It can be said, usually, whether one

building is or is not larger than another; though reference may need to be had to particular measurements in respect of which it is said to be larger than the other. Whether it is “materially larger” has to be answered in accordance with the guidance given by the Court of Appeal; that is, primarily as a question of size. But it is not exclusively a question of size; I entirely accept Mr Albutt’s submissions as to that.

31. The expression “materially” invites a consideration of size in context; what is the relevant context? The relevant context necessarily has to be the object of and policies relating to establishing a Green Belt. It is possible to give several examples which may illustrate this, and may demonstrate that it is not a sufficient answer, as Mr Easton would propose, to suggest that a qualitative analysis is only relevant within very small increases in size. The first example was that given in the Surrey Homes case. There, the Deputy Judge pointed out that a building might have a much smaller footprint, and have the same overall floorspace, because it was built as a tower; yet if a tower replaced a bungalow, it is not difficult to see how the relevant considerations of size would have nothing to do with footprint, and nothing to do with floorspace, but everything to do with height. In the context of affecting the openness which green belt policy emphasises, the tower might be said to have much greater impact than the bungalow.
32. It is equally not difficult to see that some buildings may have a much larger floorspace as newly-built than those than they replaced, without altering in any way the external dimensions and footprint of the original building. For instance, where a large barn is converted or rebuilt; where a high-ceilinged building is replaced by one with more floors, and therefore more floorspace, but with no change to exterior dimensions. Similarly, it is not difficult to see how, if one replaced a bungalow with a two-storey building on a narrower footprint, the planning considerations relevant to a determination of material largeness would not depend at all upon floorspace or footprint, but in that case upon height and depth of the building.
33. The dictum of Carnwath LJ at the end of paragraph 36 made the point that if an extension were three times the size of the original -- and I note that would mean a building four times the size of the original, being the original plus the extension - it could not be regarded as proportionate. When looking at a replacement building, the test is not what is “proportionate”, though material largeness is to be read in the same spirit. But that is very different, as it seems to me, from the situation here. It seems to me that, in this particular case, a very important fact and issue to which the local planning authority will wish to have regard in attributing whatever weight it thinks is appropriate to the size of the basement is the fact that, as part of the dwelling, that basement is intended to be entirely below ground level.
34. I could not, in short, have said that it would necessarily and obviously have been perverse for the local authority in this case to have concluded, if it did so having had regard to all proper considerations, that the replacement building was not *materially* larger than the existing. Providing it did not lose sight of the overall size and floorspace of the basement, the authority would be entitled, in my view, to come to a conclusion that the building above ground was such, and the basement such, that overall, the building, in the contexts to which I have referred, was not materially larger. Indeed, it is plain from Susie

Bishop's statement that she did not regard that conclusion as being to her, as an experienced planning officer, necessarily perverse.

35. But it does not follow that I can say that the decision to be reached by the local authority will necessarily be the same if it has regard to the matters to which it should properly have regard as that it actually reached which is the subject of this litigation; indeed, Mr Albutt has not sought to argue that I should sustain the decision upon the basis that it is plainly and obviously right. It seems to me that the size of the basement is significant. As a matter of sheer size, the issue of how that affects a conclusion as to whether it is or is not such as to make the building as a whole materially larger than that which it replaces, is not one which I can say necessarily should be determined one way or the other.
36. Although this last part of my decision, from paragraph 30 onward, is necessarily obiter, I hope that those observations are of assistance to the parties.
37. In conclusion, for the reasons I have given, this application must succeed. The decision ultimately taken on 24 July 2009, and signed by Head of Planning and Policy for Cheshire East Borough Council, must be quashed, and I shall hear counsel as to any consequential orders which they may seek.

**Order:** Application granted.

**MR EASTON:** My Lord, I am grateful. I do have an application for costs against the local authority defendant. My Lord, I have a schedule, a copy of which has been handed to my learned friend and his instructing solicitor, I regret only recently.

**MR ALBUTT:** And we agreed that to be fair and sensible.

**MR EASTON:** I do not understand there to be any objection in principle but it is agreed between the parties, subject to anything my Lord has to say, that the costs should be set off to a detailed assessment if not agreed.

**MR JUSTICE LANGSTAFF:** Very well.

**MR EASTON:** That is the order that we propose.

**MR JUSTICE LANGSTAFF:** So be it.

**MR EASTON:** I am very grateful.

**MR ALBUTT:** My Lord, there is only one other matter. First of all, with regard to your Lordship's obiter comments towards the end, I express our gratitude, because in terms of the guidance that we can obviously adopt. The next matter that arises is obviously the question of permission to appeal. Clearly, my Lord, I accept that there is a great deal that you have decided clearly upon the particular facts of this case; what I can point to is that is obviously

of considerable importance to the authority, and in addition it is, so far as I am aware, the first case really regarding the application of the test of “materially larger” in circumstances where there is a wholly-enclosed basement. Certainly all of the other cases that have been tested on appeal all relate to where there is some impact, because it is a part of the basement. So my Lord, I do, with respect, seek permission to appeal on those grounds.

**MR JUSTICE LANGSTAFF:** I do not need to trouble you. No; the reasons are these. You are absolutely right in saying that there has not been a case, so far as I am aware, which involves an enclosed area such as the basement, but in this case it was common ground between counsel before me that the size of the basement was relevant, and my decision was that the council as a matter of fact, so far as I can determine it, did not have regard to that matter. And therefore, it is no more and no less than a failure to take into account what was agreed to be a relevant criterion. It follows that no new principle of law or no issue of law really arises; and if, in the light of that, you wish leave to appeal, you will have to get it from the Court of Appeal.

**MR ALBUTT:** My Lord, we will see if we can interest the Court of Appeal or not.

**MR JUSTICE LANGSTAFF:** I should add that on the issue of substance which interests you, I appreciate that Mr Easton may in due course have something to say, that you rather succeeded rather than failed.

**MR ALBUTT:** Yes, indeed.

**MR JUSTICE LANGSTAFF:** But that was obiter.

**MR ALBUTT:** I know, my Lord, and I am most grateful. Thank you.

**MR JUSTICE LANGSTAFF:** Can I thank you both for the economic way in which you presented your submissions.

**MR EASTON:** Thank you, my Lord.

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EP2



Neutral Citation Number: [2016] EWCA Civ 466

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**  
**MRS JUSTICE LANG DBE**  
**[2015] EWHC 2788 (Admin)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18/05/2016

**Before :**

**LADY JUSTICE ARDEN**  
**LORD JUSTICE FLOYD**  
and  
**LORD JUSTICE SALES**

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**Between :**

<b>John Turner</b>	<b><u>Appellant</u></b>
<b>- and -</b>	
<b>(1) Secretary of State for Communities and Local Government</b>	<b><u>Respondents</u></b>
<b>(2) East Dorset Council</b>	

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**Michael Rudd** (instructed by **Hawksley's Solicitors**) for the **Appellant**  
**Richard Kimblin QC** (instructed by **Government Legal Department**) for the **Respondent**  
The 2nd Respondent did not appear and was not represented

Hearing dates : 4 May 2016

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**Judgment**

## Lord Justice Sales:

1. This is an appeal from the judgment of Lang J in which she dismissed an application under section 288 of the Town and Country Planning Act 1990 to quash a decision of a Planning Inspector to refuse to grant planning permission for development of a plot of land on Barrack Road, West Parley, Ferndown, Dorset (the site). The site is located in the South East Dorset Green Belt. The appellant developer submits that the Inspector erred in his interpretation and application of para. 89 of the National Planning Policy Framework (the NPPF) concerning the circumstances in which development on the Green Belt may not be regarded as inappropriate and in his approach to the concept of the openness of the Green Belt.

### *Factual background*

2. Barrack Road is characterised by a mix of residential and commercial properties spasmodically placed along the road. The eastern side of the road where the site is located does not have a continuously built up frontage. The site is in open countryside, and not in an urban area or settlement.
3. There is a static single unit mobile home stationed on the site which is used for residential purposes. Adjacent to this is a substantial area of a commercial storage yard which is used for the storage of vehicles; the preparation, repair, valeting and sale of commercial vehicles and cars; the ancillary breaking and dismantling of up to eight vehicles per month; and the ancillary sale and storage of vehicle parts from a workshop on the site. A certificate of lawful existing use was granted in 2003 for the mobile home and lawful use has been established in respect of the storage yard in a planning appeal decision. We were told that the storage yard has capacity to park some 41 lorries as an established lawful use of the site.
4. The appellant's application for planning permission is for a proposal to replace the mobile home and storage yard with a three bedroom residential bungalow and associated residential curtilage. Another area of land adjacent to the site would be retained to continue the existing commercial enterprise. In his application, the appellant compared the proposed redevelopment with the existing lawful use of the land for the mobile home and 11 parked lorries in order to suggest that the volume of the proposed bungalow would be less than the volume of the mobile home and that many lorries and that, accordingly, the proposed redevelopment would not have a greater impact on the openness of the Green Belt than the existing lawful use of the site, with the result that it should not be regarded as inappropriate development in the Green Belt (para. 89 of the NPPF).
5. The local planning authority refused the application. The Inspector, Mr Philip Willmer, dismissed the appellant's appeal. He found that the proposed redevelopment was inappropriate development in the Green Belt, notwithstanding that it would replace the existing lawful use of the site, and that there were no 'very special circumstances' (para. 87 of the NPPF) which would justify the grant of permission for the development. The judge dismissed the application to quash his decision.

### *The policy framework*

6. This appeal turns on the application of the NPPF, and in particular para. 89. Section 9 of the NPPF is headed "Protecting Green Belt land". It starts at paras. 79-81 with a statement of some broad principles:

"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.

81. Once Green Belts have been defined, local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land."

7. The provisions relating to inappropriate development are at paras. 87-90:

"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.

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

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

- \* buildings for agriculture and forestry;

- \* 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;
- \* 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;
- \* the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- \* limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or
- \* 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 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."

### *The Inspector's decision*

8. An important part of the appellant's case before the Inspector was his contention that his application fell within the sixth bullet point in para. 89 of the NPPF, so that the proposed development by building the bungalow would not count as inappropriate development in the Green Belt. The Inspector dismissed this contention in paras. 8 to 15 of his decision. At para. 8 he set out the sixth bullet point and recorded the appellant's argument and at para. 9 he explained that the development would not constitute limited infilling. The issue therefore turned on the question of impact on the openness of the Green Belt. The Inspector dealt with this as follows:

10. The appellant contends that if the development were to go ahead then, in addition to the loss of the volume of the mobile home, or potentially a larger replacement double unit, a further volume of some 372.9 cubic metres, equivalent to eleven commercial vehicles that he has demonstrated could be stored on the appeal site, might also be off set against the volume of the proposed dwelling, thereby limiting the new dwelling's impact on the openness of the Green Belt.

11. Openness is essentially freedom from operational development and relates primarily to the quantum and extent of development and its physical effect on the appeal site. The Certificate of Lawful Existing Use conveys that the use of the land may be for a mobile home rather than a permanent dwelling. In this respect the mobile home may be replaced with another and I have no doubt, if planning permission is not granted for this development, that over time this may well occur. However, the Certificate of Lawful Existing Use is for the use of the land for the siting of a mobile home for residential purposes, which is distinct from the replacement of one dwelling with another.

12. In my view, therefore, no valid comparison can reasonably be made between the volume of moveable chattels such as caravans and vehicles on one hand, and permanent operational development such as a dwelling on the other. While the retention of the mobile home and vehicles, associated hardstandings etc., will inevitably have their effect on the openness of the Green Belt, this cannot properly be judged simply on measured volume which can vary at any time, unlike the new dwelling that would be a permanent feature. I am therefore not persuaded that the volume of the mobile home and the stored/displayed vehicles proposed to be removed should be off-set in terms of the development's overall impact on openness.

13. Accordingly, while the replacement of the current single unit mobile home, or even a replacement double unit and vehicles, with the new dwelling might only result in a marginal or no increase in volume, these two things cannot be directly compared as proposed by the appellant.

14. I noted that existing commercial vehicles were parked on either side of the access road to the site during my site visit. However, as I saw, due to their limited height they do not close off longer views into the site. On the other hand the proposed bungalow, as illustrated, that would in any case be permanent with a dominating symmetrical front façade and high pitch roof, would in my view obstruct views into the site and appear as a dominant feature that would have a harmful impact on openness here.

15. For the reasons set out I consider that the proposed development would have a considerably greater impact on the openness of the Green Belt and the purpose of including land within it than the existing lawful use of the land. I therefore conclude that the proposal does not meet criterion six of the exceptions set out in paragraph 89 of the Framework and, therefore, would be inappropriate development, which by definition is harmful to the Green Belt. I give substantial weight to this harm.

9. It is this part of the Inspector's reasoning which is under challenge. (I should mention that although in paras. 11 and 12 of the decision the Inspector referred to 'operational development' rather than simply 'development', the judge correctly found that this was an immaterial slip and there is no appeal in that regard). Having found that the redevelopment was inappropriate development in the Green Belt, it is unsurprising that the Inspector found that there were not adequate grounds to justify the grant of planning permission.

*The appeal: discussion*

10. On the appellant's section 288 application the appellant had three grounds of challenge to the Inspector's decision, of which two are relevant on this appeal: (i) the Inspector failed to treat the existing development on the site as a relevant material factor to be taken into account in considering whether the sixth bullet point of para. 89 was applicable, and (ii) the Inspector wrongly conflated the concept of openness in relation to the Green Belt with the concept of visual impact. The judge rejected all the grounds of challenge and the appellant now appeals to this Court, relying again on these two grounds.
11. In his oral submissions, Mr Rudd developed the first ground somewhat. His submission was that the Inspector was wrong to say that no valid comparison could be made between the volume of moveable chattels (mobile home and lorries) on the site and a permanent structure in the form of the proposed bungalow; on the proper construction of the concept of 'openness of the Green Belt' as used in the sixth bullet point in para. 89 of the NPPF the sole criterion of openness for the purpose of the comparison required by that bullet point was the volume of structures comprising the existing lawful use of a site compared with that of the structure proposed by way of redevelopment of that site ('the volumetric approach'); a comparison between the volume of existing development on the site in this case in the form of the mobile home and 11 lorries as against the volume of the proposed bungalow showed that there would be a lesser impact on the openness of the Green Belt if the existing development were replaced by the bungalow and the Inspector should so have concluded; and the Inspector erred by having regard to a wider range of considerations apart from the volume of development on the site (including the factor of visual impact) in para. 14 of the decision on the way to reaching his conclusion at para. 15. This last point overlaps with the second ground of challenge and it is appropriate to address both grounds together, as the judge did.
12. I do not accept these submissions by Mr Rudd. First, in so far as it is suggested that the Inspector did not address himself to the comparative exercise called for under the sixth bullet point in para. 89, the suggestion is incorrect. The Inspector set out that

bullet point and then proceeded to make an evaluative comparative assessment of the existing lawful use and the proposed redevelopment in paras. 10 to 15 of the decision.

13. The principal matter in issue is whether the Inspector adopted an improper approach to the question of openness of the Green Belt when he made that comparison. The question of the true interpretation of the NPPF is a matter for the court. In my judgment, the approach the Inspector adopted was correct and the judge was right so to hold.
14. The concept of openness of the Green Belt is not narrowly limited to the volumetric approach suggested by Mr Rudd. The word openness is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.
15. The question of visual impact is implicitly part of the concept of openness of the Green Belt as a matter of the natural meaning of the language used in para. 89 of the NPPF. I consider that this interpretation is also reinforced by the general guidance in paras. 79-81 of the NPPF, which introduce section 9 on the protection of Green Belt Land. There is an important visual dimension to checking the unrestricted sprawl of large built-up areas and the merging of neighbouring towns, as indeed the name Green Belt itself implies. Greenness is a visual quality: part of the idea of the Green Belt is that the eye and the spirit should be relieved from the prospect of unrelenting urban sprawl. Openness of aspect is a characteristic quality of the countryside, and safeguarding the countryside from encroachment includes preservation of that quality of openness. The preservation of the setting of historic towns obviously refers in a material way to their visual setting, for instance when seen from a distance across open fields. Again, the reference in para. 81 to planning positively to retain and enhance landscapes, visual amenity and biodiversity in the Green Belt makes it clear that the visual dimension of the Green Belt is an important part of the point of designating land as Green Belt.
16. The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the concept of openness of the Green Belt has no visual dimension itself.
17. Mr Rudd relied upon a section of the judgment of Green J sitting at first instance in *R (Timmins) v Gedling Borough Council* [2014] EWHC 654 (Admin) at [67]-[78], in which the learned judge addressed the question of the relationship between openness of the Green Belt and visual impact. Green J referred to the judgment of Sullivan J in *R (Heath and Hampstead Society) v Camden LBC* [2007] EWHC 977 (Admin); [2007] 2 P&CR 19, which related to previous policy in relation to the Green Belt as set out in Planning Policy Guidance 2 (PPG 2), and drew from it the propositions

that ‘there is a clear conceptual distinction between openness and visual impact’ and ‘it is therefore wrong *in principle* to arrive at a specific conclusion as to openness by reference to visual impact’: para. [78] (Green J’s emphasis). The case went on appeal, but this part of Green J’s judgment was not in issue on the appeal: [2015] EWCA Civ 10; [2016] 1 All ER 895.

18. In my view, Green J went too far and erred in stating the propositions set out above. This section of his judgment should not be followed. There are three problems with it. First, with respect to Green J, I do not think that he focused sufficiently on the language of section 9 of the NPPF, read as part of the coherent and self-contained statement of national planning policy which the NPPF is intended to be. The learned judge does not consider the points made above. Secondly, through his reliance on the *Heath and Hampstead Society* case Green J has given excessive weight to the statement of planning policy in PPG 2 for the purposes of interpretation of the NPPF. He has not made proper allowance for the fact that PPG 2 is expressed in materially different terms from section 9 of the NPPF. Thirdly, I consider that the conclusion he has drawn is not in fact supported by the judgment of Sullivan J in the *Heath and Hampstead Society* case.
19. The general objective of PPG 2 was to make provision for the protection of Green Belts. Paragraph 3.2 stated that inappropriate development was, by definition, harmful to the Green Belt. Paragraph 3.6 stated:
 

‘Provided that it does not result in disproportionate additions over and above the size of the original building, the extension or alteration of dwellings is not inappropriate in Green Belts. The replacement of existing dwellings need not be inappropriate, providing the new dwelling is not materially larger than the dwelling it replaces’
20. It was the application of this provision which was in issue in the *Heath and Hampstead Society* case. It can be seen that this provision broadly corresponds with the fourth bullet point in para. 89 of the NPPF and that it has a specific focus on the relative size of an existing building and of the proposed addition or replacement.
21. The NPPF was introduced in 2012 as a new, self-contained statement of national planning policy to replace the various policy guidance documents that had proliferated previously. The NPPF did not simply repeat what was in those documents. It set out national planning policy afresh in terms which are at various points materially different from what went before. This court gave guidance regarding the proper approach to the interpretation of the NPPF in the *Timmins* case at para. [24]. The NPPF should be interpreted objectively in accordance with the language used, read in its proper context. But the previous guidance ‘specifically in *Timmins*, as in this case and in *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386; [2015] 1 P & CR 36 to which the court in *Timmins* referred, the guidance on Green Belt policy in PPG 2 ‘remains relevant. In particular, since in promulgating the NPPF the Government made it clear that it strongly supported the Green Belt and did not intend to change the central policy that inappropriate development in the Green Belt should not be allowed, section 9 of the NPPF should not be read in such a way as to weaken protection for the Green Belt: see the *Redhill Aerodrome* case at [16] per Sullivan LJ, quoted in *Timmins* at [24].



22. The *Heath and Hampstead Society* case concerned a proposal to demolish an existing residential building on Metropolitan Open Land (which was subject to a policy giving it the same level of protection as the Green Belt) and replace it with a new dwelling. Sullivan J rejected the submission that the test in para. 3.6 was solely concerned with a mathematical comparison of relevant dimensions: [19]. However, he accepted the alternative submission that the exercise under para. 3.6 was primarily an objective one by reference to size, where which particular physical dimension was most relevant would depend on the circumstances of a particular case, albeit with floor space usually being an important criterion: [20]. It was not appropriate to substitute a test such as 'providing the new dwelling is not more visually intrusive than the dwelling it replaces' for the test actually stated in para. 3.6, namely whether the new dwelling was materially larger or not: [20]. As Sullivan J said, 'Paragraph 3.6 is concerned with the size of the replacement dwelling, not with its visual impact': [21]. In that regard, also at para. [21], he relied in addition on para. 3.15 of PPG 2 which made specific provision in relation to visual amenities in the Green Belt. Neither para. 3.6 of PPG 2 (with its specific focus on comparative size of the existing and replacement buildings) nor para. 3.15 of PPG 2 refer to the concept of the 'openness of the Green Belt'. They do not correspond with the text of the sixth bullet point in para. 89 of the NPPF, and section 9 of the NPPF contains no provision equivalent to para. 3.15 of PPG 2. It is therefore not appropriate to treat this part of the judgment in *Heath and Hampstead Society* as providing authoritative guidance on the interpretation of the sixth bullet point in para. 89 of the NPPF. At paras. [22] and [36]-[38] Sullivan J emphasised that the relevant issue in the case specifically concerned the application of para. 3.6 of PPG 2 and whether the proposed replacement house was materially larger than the existing house.
23. At para. [22] Sullivan J said, 'The loss of openness (i.e. unbuilt on land) within the Green Belt or Metropolitan Open Land is of itself harmful to the underlying policy objective'. Since the concept of the openness of the Green Belt has a spatial or physical aspect as well as a visual aspect, that statement is true in the context of the NPPF as well, provided it is not taken to mean that openness is *only* concerned with the spatial issue. Such an interpretation accords with the guidance on interpretation of the NPPF given by this court in the *Timmins* and *Redhill Aerodrome* cases, to the effect that the NPPF is to be interpreted as providing no less protection for the Green Belt than PPG 2. The case before Sullivan J was concerned with a proposed new, larger building which represented a spatial intrusion upon the openness of the Green Belt but which did not intrude visually on that openness, so he was not concerned to explain what might be the position under PPG 2 generally if there had been visual intrusion instead or as well.
24. Sullivan J gives a general reason for the importance of spatial intrusion at para. [37] of his judgment:
- 'The planning officer's approach can be paraphrased as follows:
- The footprint of the replacement dwelling will be twice as large as that of the existing dwelling, but the public will not be able to see very much of the increase.'

It was the difficulty of establishing in many cases that a particular proposed development within the Green Belt would of itself cause demonstrable harm that led to the clear statement of policy in para. 3.2 of PPG 2 that inappropriate development is, by definition, harmful to the Green Belt. The approach adopted in the officer's report runs the risk that Green Belt of Metropolitan Open Land will suffer the death of a thousand cuts. While it may not be possible to demonstrate harm by reason of visual intrusion as a result of an individual or possibly very modest proposal, the cumulative effect of a number of such proposals, each very modest in itself, could be very damaging to the essential quality of openness of the Green Belt and Metropolitan Open Land.

25. This remains relevant guidance in relation to the concept of openness of the Green Belt in the NPPF. The same strict approach to protection of the Green Belt appears from para. 87 of the NPPF. The openness of the Green Belt has a spatial aspect as well as a visual 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 a result of the location of a new or materially larger building there. But, as observed above, it does not follow that openness of the Green Belt has no visual dimension.
26. What is also significant in this paragraph of Sullivan J's judgment for present purposes is the last sentence, from which it appears that Sullivan J considered that a series of modest visual intrusions from new developments would be a way in which the essential quality of the openness of the Green Belt could be damaged, even if it could not be said of each such intrusion that it represented demonstrable harm to the openness of the Green Belt in itself. At any rate, Sullivan J does not say that the openness of the Green Belt has no visual dimension. Hence I think that Green J erred in *Timmings* in taking the *Heath and Hampstead Society* case to provide authority for the two propositions he sets out at para. [78] of his judgment, to which I have referred above.
27. Turning back to the Inspector's decision in the present case, there is no error of approach by the Inspector in his assessment of the issue of impact on the openness of the Green Belt. In paras. 11 to 13 the Inspector made a legitimate comparison of the existing position regarding use of the site with the proposed redevelopment. This was a matter of evaluative assessment for the Inspector in the context of making a planning judgment about relative impact on the openness of the Green Belt. His assessment cannot be said to be irrational. It was rational and legitimate for him to assess on the facts of this case that there is a difference between a permanent physical structure in the form of the proposed bungalow and a shifting body of lorries, which would come and go; and even following the narrow volumetric approach urged by the appellant the Inspector was entitled to make the assessment that the two types of use and their impact on the Green Belt could not in the context of this site be directly compared as proposed by the appellant (para. 13). The Inspector was also entitled to take into account the difference in the visual intrusion on the openness of the Green Belt as he did in para. 14.

*Conclusion*

28. For the reasons given above, I would dismiss this appeal.

**Lord Justice Floyd:**

29. I agree.

**Lady Justice Arden DBE:**

30. I also agree.

EP3

# Appeal Decision

Site visit made on 19 September 2017

**by R C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCI Arb MCIL**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 January 2018**

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## **Appeal Reference: APP/N5090/D/17/3174495**

### **'Folly Farm', Burtonhole Lane, Mill Hill, London NW7 1AS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr D Beare against the decision of the Barnet London Borough Council.
  - The application (reference 17/0554/HSE, dated 31 January 2017) was refused by notice dated 29 March 2017.
  - The development proposed is described in the application form as "excavation under the footprint of the existing dwelling house to provide a new basement level for ancillary accommodation".
- 

## **Decision**

1. The appeal is allowed and planning permission is granted for "excavation under the footprint of the existing dwelling house to provide a new basement level for ancillary accommodation", at 'Folly Farm', Burtonhole Lane, Mill Hill, London NW7 1AS, in accordance with the terms of the application (reference 17/0554/HSE, dated 31 January 2017), subject to the conditions set out in the attached Schedule of Conditions.

## **Application for costs**

2. An application for costs was made by the Appellant against the London Borough of Barnet Council. This application is the subject of a separate Decision.

## **Main issues**

3. The first main issue to be determined in this appeal is whether the proposal is "inappropriate development" in terms of Green Belt policies. If so, it is necessary to consider whether the harm by reason of inappropriateness, and any other harm would be clearly outweighed by other considerations; if not, it is nonetheless necessary to consider the impact of the proposed development on the surroundings.

## **Reasons**

4. The appeal site is located in a rural setting on the edge of Mill Hill and is relatively secluded, with open land immediately adjoining. The existing house is set in a substantial plot, set with lawns, shrubs and trees, which includes a

- separate garage building, a tennis court and a swimming pool, among other things.
5. The existing house is constructed of two storey and single storey sections, on a large footprint that appears to have evolved over a period of time. The elements have a variety of roof forms but the whole is unified by a consistent use of external materials, giving the house a coherent contemporary appearance, overall. Internally, the living spaces on the ground floor flow into each other in a modern layout, with some ancillary rooms. Bedrooms and other rooms are located on the first floor.
  6. The appeal concerns a proposal to construct a new basement beneath the existing building, to provide leisure facilities associated with the house, including an indoor swimming pool, sauna and steam room, together with other facilities and equipment. The new basement would be constructed entirely beneath the existing building without light-wells or other external manifestation. Some additional (but non-controversial) minor works also form part of the total scheme for which permission is sought, however.
  7. The 'National Planning Policy Framework' makes it plain, at paragraph 89, that the construction of new buildings is not normally acceptable in the Green Belt and that they should only be permitted in "very special circumstances". Nevertheless, the extension of an existing building in the Green Belt can be acceptable *"provided that it does not result in disproportionate additions over and above the size of the original building"*.
  8. National planning policies are reflected in 'The London Plan' and in 'Barnet's Local Plan' and local planning policies likewise impose strict Green Belt controls. Policy CS7 of 'Barnet's Local Plan: Core Strategy' emphasises the importance of protecting the Green Belt, among other things, while Policy DM15 of 'Barnet's Local Plan: Development Management Policies' provides more detailed policies against which proposed development within the Green Belt must be considered. In the particular context of this appeal, Policy DM15 provides that *"extensions to buildings in Green Belt ... will only be acceptable where they do not result in a disproportionate addition over and above the size of the original building or an over intensification of the use of the site"*.
  9. I have no doubt that all the circumstances of any particular case need to be taken into account and each case decided on its own merits.
  10. The proposed new basement would add considerably to the internal floor area of the existing house, though it would not increase the footprint of the building and would not have a material effect on the external appearance of the building or on its visual bulk in the Green Belt. In the circumstances of this particular case, therefore, and notwithstanding the guidance given in the Council's 'Residential Design Guidance SPD', I have concluded that the proposed development, for which planning permission is now sought, can be categorised as not amounting to a "disproportionate addition" to the existing building and, hence, as "not inappropriate" development in terms of Green Belt policies. It is, nonetheless, necessary to consider the impact of the development on its surroundings.
  11. In reality, the scheme would have no material visual impact on the surroundings, as has been pointed out, while the house would continue to

generate traffic as a single dwellinghouse, albeit a rather larger one. In consequence, it can be concluded that the project would not cause any actual harm in relation to planning considerations and that it would preserve the openness of the Green Belt.

12. Obviously, the construction process would be difficult in practice, since it would involve the excavation of a new basement beneath the existing structure. Construction traffic would be generated as a result of the project, of course, but the impact would be for a relatively limited period and the objections that have been made in relation to construction traffic are not critical in planning terms. Moreover, such harm as would be caused can be mitigated by the imposition of a condition to require the preparation and implementation of a Construction Management Plan.
13. The appeal scheme would provide useful additional space and I have concluded that the project would not be in conflict with the national legislation or the Development Plan, in principle. In short, I am persuaded that the scheme before me can properly be permitted and, although I have considered all the matters that have been raised in the representations, I have found nothing to cause me to alter my decision.
14. I have, however, also considered the need for conditions and, in imposing conditions, I have taken account of those suggested by the local planning authority in the usual way (without prejudice to their main arguments in the appeal). I have concluded that conditions are necessary, to define the planning permission and to ensure that quality is maintained. An additional condition is necessary, to require the implementation of a Construction Management Plan, as stated above.

*Roger C Shrimplin*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings:  
drawing no. 922 P001 01 (Proposed Basement Plan);  
drawing no. 922 P002 01 (Proposed Ground Floor Plan);  
drawing no. 922 P002e 01 (Existing Ground Floor Plan);  
drawing no. 922 P003e 01 (Existing First Floor Plan & Roof Floor Plan);  
drawing no. 922 P004 00 (Existing & Proposed Section Looking West);  
drawing no. 922 P005 00 (Existing & Proposed Section Looking North);  
drawing no. 922 P006 00 (Existing & Proposed North Elevation);  
drawing no. 922 P007 00 (Existing & Proposed South Elevation);  
drawing no. 922 P008 00 (Existing & Proposed East Elevation);  
drawing no. 922 P009 00 (Existing & Proposed West Elevation);  
drawing no. 922 P010 00 (Site Plan & Location Plan).
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
- 4) No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the Construction Management Plan.



EP4

**HIGH PEAK BOROUGH COUNCIL  
DEVELOPMENT CONTROL COMMITTEE**

*Date 19<sup>th</sup> March 2018*

<b>Application No:</b>	HPK/2017/0643	
<b>Location</b>	Fern Lea, Buxton Road, Chinley	
<b>Proposal</b>	Replacement dwelling	
<b>Applicant</b>	Messrs R Spicer and A Bains	
<b>Agent</b>	Mrs Caroline Payne, Emery Planning Partnership	
Ward/parish	Blackbrook Ward / Chinley, Buxworth and Brownside Parish	Date registered 13 <sup>th</sup> December 2017
<b>If you have a question about this report please contact:</b> Mark Ollerenshaw Mark.Ollerenshaw @highpeak.gov.uk 01538 395400 ext. 4921		

## **1. REFERRAL**

The application is referred to Development Control Committee because it is of local interest.

## **SUMMARY OF RECOMMENDATION**

<b>APPROVE subject to conditions</b>
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## **2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS**

2.1 The application site comprises a small detached bungalow, associated residential curtilage and ancillary buildings including a garage, situated on the south side of Buxton Road within the Green Belt and Open Countryside. The site is bordered by agricultural land to the east, south and west with the road immediately to the north. There are no immediate neighbours.

## **3. DESCRIPTION OF THE PROPOSAL**

3.1 This application seeks full planning permission for demolition of the existing bungalow and outbuildings and a replacement dwelling of single storey construction. The proposal would be constructed partially on the footprint of the existing dwelling and that of permitted development extensions (see application HPK/2016/0639).

3.2 The proposed replacement dwelling would be sited close to the back of pavement on Buxton Road, nestled down below a traditional dry stone wall that runs the length of the site. The site is sloping and the proposal takes the form of a half-buried single storey house, with two wings and wrapped around a sheltered courtyard / enclosed garden.

3.3 The applicant intends that the dwelling will be highly sustainable and would incorporate design features required to meet the Passivhaus Standard in the UK. Whilst the applicants would like the building to be independent of the National Grid, this may not be possible due to the fewer daylight hours between November and January. However, it is the intention that, with the use of photovoltaic cells and batteries, the building will be fully energy self sufficient for at least 9 months of the year. The proposed dwelling incorporates green roofs and a living wall on part of the building side facing Charley Lane and also on the garage wall facing Buxton Road.

3.4 The scheme was amended during the course of the application. The revised drawings and visual impact comparison show the height of the front boundary wall reduced from 1.5m to 1.25m. Additional details were also submitted indicating the level of excavation required, which shows that all the material excavated would be re-used on the site. The additional details also provide more information on the proposed energy efficiency and sustainable design features.

3.5 The application, the details attached to it, including the plans, supporting documents, comments made by residents and the responses of the consultees can be found on the Council's website at:

<http://planning.highpeak.gov.uk/portal/servlets/ApplicationSearchServlet>

#### **4. RELEVANT PLANNING HISTORY**

HPK/2016/0639 – Lawful Development application for proposed construction of a single-storey side/rear extension, single-storey rear extension, rear dormer window, front porch, roof lights, detached outbuilding and associated hardstanding areas – Approved 11/01/2017.

<http://planning.highpeak.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=212307>

HNT/2016/0027 – Proposed single storey rear and side extensions – Approved 28/10/2016.

<http://planning.highpeak.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=210945>

HPK/2014/0445 – Proposed outline planning permission for bungalow with garage – Refused 05/11/2014.

<http://planning.highpeak.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=172844>

#### **5. PLANNING POLICIES RELEVANT TO THE DECISION**

##### **Adopted High Peak Local Plan 2016**

S1 – Sustainable Development Principles

S1a – Presumption in Favour of Sustainable Development  
 S2 – Settlement Hierarchy  
 S6 – Central Sub-area Strategy  
 EQ1 – Climate Change  
 EQ2 – Landscape Character  
 EQ3 – Rural Development  
 EQ4 – Green Belt  
 EQ5 – Biodiversity  
 EQ6 – Design and Place Making  
 EQ8 – Green Infrastructure  
 EQ9 – Trees, Woodland and Hedgerows  
 EQ10 – Pollution Control and Unstable Land  
 EQ11 – Flood Risk Management  
 CF6 – Accessibility and Transport

## National Planning Policy Framework

Para 14 Presumption in Favour of Sustainable Development  
 Para 17 Core Planning Principles  
 Section 1 Building a Strong, Competitive Economy  
 Section 4 Promoting Sustainable Transport  
 Section 7 Requiring Good Design  
 Section 9 – Protecting Green Belt Land  
 Section 10 - Meeting the challenge of climate change, flooding and coastal change  
 Section 11 - Conserving and enhancing the natural environment

## 6. CONSULTATIONS CARRIED OUT

<b>Site notice</b>	Expiry date for comments: 12/02/2018
<b>Neighbours</b>	Expiry date for comments: 11/01/2018
<b>Press notice</b>	Expiry date for comments: N/A

## Neighbours

4 no. emails/letters of support have been received, in which the following observations are made:

- Proposal is an improvement on the permitted development allowance.
- Innovative design.
- Sympathetic / in-keeping with the area.
- The proposal opens up views across surrounding fields and countryside.
- Low impact on neighbours.

## Consultations

<b>Consultee</b>	<b>Comment</b>	<b>Officer response</b>
DCC Highways	No objection subject to: (1) Applicant maintaining 3 no. off street parking spaces of 2.4m x 5.5m minimum	Paras 7.23 - 7.27

	<p>dimension clear of adequate manoeuvring space to enable all vehicles to enter and exit the site in a forward gear.</p> <p>(2) Development remaining private residential with no future sub letting, sub division or selling off.</p> <p>(3) Prior to commencement of any works, applicant is required to submit details of off street space for storage of plant and materials and all site operatives vehicles with the scheme to be implemented and retained throughout the duration of the works.</p>	
Chinley, Buxworth and Brownside Parish Council	Support this application on the basis that it is an innovative and sustainable design solution for the site, it would not compromise the openness of the green belt and is much better than the unsatisfactory fall-back position of adding various extensions, additions and alterations to the existing dwelling established under the Certificate of Lawfulness.	
Environmental Health	No objection subject to conditions.	Para 7.30
Arboricultural Officer	No objections as long as works undertaken in accordance with Arboricultural Statement.	Para 7.35
Derbyshire Wildlife Trust	<p>The survey information provided is sufficient to determine the planning application and no significant ecological constraints were identified.</p> <p>Welcome the incorporation of green walls and roof and encourage the inclusion of additional habitat boxes to complement these features and benefit wildlife. Note that no desk study was undertaken, which is contrary to the CIEEM guidelines, and would encourage the ecological consultant to carry these out as standard in the future.</p> <p>Should the LPA be minded to approve the application, it is recommended that a biodiversity enhancement strategy be submitted for approval – to include details of bird, bat boxes etc, measures to maintain connectivity throughout the site for wildlife, and ecologically beneficial landscaping.</p>	Paras 7.32 – 7.34

<p>Design Review Panel</p>	<p>The existing property is a small unassuming and simple bungalow constructed in slate and render. It is currently in a poor and dilapidated condition and separated from neighbouring residential development by fields in agricultural use.</p> <p>The application proposes the demolition of the bungalow and its replacement with a contemporary style house with a high level of sustainable design. The dwelling will be sited towards the back of the pavement sheltered from the road by a high stone boundary wall. The house itself will be half buried and single storey, wrapping around, on 3 sides, a central rear courtyard.</p> <p><b>Comments:</b>  There is no doubt that the revised house design would open up views across the site and would preserve the openness of the green belt. The design response is contemporary but utilises traditional walling materials and sedum roofs to assimilate it into the landscape. The visual comparison document is useful in assessing its impact against the existing bungalow and fall back position. Design concerns raised by the Panel are as follows:</p> <ol style="list-style-type: none"> <li>1. The significant excavation required to reduce the land levels and impact of the house.</li> <li>2. The increase of the height of the front boundary wall over and above what would normally be the expected height of around 1100mm.</li> </ol> <p>There is no in principle objection to the proposed house style and the Panel felt that this was a less sensitive site, where a more contemporary approach could be accommodated. However, there was concern expressed regarding the reduction in ground levels and the increase in height of the boundary wall. It was felt that the existing topography was being artificially altered to lessen the impact of the development. The impact of this would have to be balanced against the merits of the</p>	<p>Paras 7.13 – 7.22</p>
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	design and the enhancement of views across the green belt.	
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## **7. POLICY AND MATERIAL CONSIDERATIONS AND PLANNING BALANCE**

### **Policy Context**

7.1 The determination of a planning application is to be made pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004, which is to be read in conjunction with section 70(2) of the Town and Country Planning Act 1990.

7.2 Section 38(6) requires the Local Planning Authority to determine planning applications in accordance with the development plan, unless there are material circumstances which 'indicate otherwise'. Section 70(2) provides that in determining applications the Local Planning Authority "shall have regard to the provisions of the Development Plan, so far as material to the application and to any other material considerations." The Development Plan consists of the adopted High Peak Local Plan 2016.

7.3 Paragraph 14 of the NPPF explains that at the heart of the Framework is the presumption in favour of sustainable development, for decision makers this means that when considering development proposals which accord with the development plan, they should be approved without delay, but where the development plan is absent, silent or relevant policies are out of date, grant planning permission unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

### **Principle of development / Green Belt**

7.4 The presumption in favour of sustainable development, which is reflected in Policies S1 – Sustainable Development Principles and S1a – Presumption in favour of Sustainable Development of the adopted Local Plan. Paragraph 7 of the NPPF identifies the three dimensions to sustainable development; economic, social and environmental.

7.5 The Core Principles of the Framework are set out in paragraph 17 and among other criteria seek to proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. High quality design should be sought and secured and a good standard of amenity provided for all existing and future occupants of land and buildings.

7.6 The key issue relating to the principle of development concerns the location of the proposed development as it affects a site located beyond the defined settlement boundary within the designated North Derbyshire Green Belt.

7.7 The construction of new buildings in the Green Belt is to be regarded as being inappropriate development which by definition is harmful to the Green Belt. It should not be approved except in very special circumstances. These will not exist unless the

potential harm the development would cause to the Green Belt, by reason of inappropriateness, and by any other harm, is clearly outweighed by other considerations. Substantial weight should be given to any harm to the Green Belt.

7.8 There are exceptions to this and these are set out in the Framework. One such exception is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Therefore, provided the proposed replacement dwelling does not have a materially greater impact on the openness of the Green Belt or the purposes for including land within the Green Belt, the proposals will not constitute inappropriate development and will be acceptable in principle. This advice is reflected in Policy EQ3 of the Local Plan which allows for a replacement dwelling in areas outside the settlement boundaries provided it does not have a significantly greater impact on the existing character of the rural area than the original dwelling nor result in the loss of a building which is intrinsic to the character of the area.

7.9 By applying the above test that the new development should not having a greater impact on the openness of the Green Belt, the proposal would be materially larger than the existing dwelling and this is accepted by the applicant. The application indicates that the footprint of the existing dwelling is 160 sq.m compared to the proposed dwelling footprint of 310 sq.m, which represents an increase of 94% on the existing. It must therefore be concluded that the proposal is an inappropriate form of development.

7.10 The harm which arises in this case results from the inappropriateness of the development and the harm caused to the openness of the Green Belt when compared to the existing dwelling. However, it is necessary to consider whether there are any very special circumstances relating to the proposal. The very special circumstances in this case relate to the fall back position represented by the permitted development extensions and alterations to the existing dwelling. A Certificate of Proposed Lawfulness (HPK/2016/0639) application was granted in January 2017 for construction of a single-storey side/rear extension, single-storey rear extension, rear dormer window, front porch, roof lights, detached outbuilding and associated hardstanding areas. There is therefore an alternative development which could be implemented as a fall back.

7.11 Whilst the fall back position is not the applicants' preferred option, it is considered that there is a likelihood that if the applicants are unable to obtain planning permission for a replacement dwelling then they would extend the dwelling using permitted development rights to achieve as close as possible to the additional accommodation they require. In terms of a comparison between the proposed development and the fall back, the permitted development extensions would result in a dwelling that would be similar to the proposed replacement dwelling. The fall back position would be 16% larger in floor area than the proposed development. Although the footprint of the proposal would be slightly larger than the fall back, a large proportion of this would be underground and therefore this would not adversely affect the openness of the Green Belt. The permitted development extensions on either side of the existing dwelling would increase the perceived width of the dwelling compared with the existing. It is considered that the submitted Visual Impact Comparison demonstrates that the fall back would be more prominent in the street scene and surrounding landscape than the replacement dwelling.



7.12 The above analysis demonstrates that the fall back position would result in an increase in the amount of development on the site if planning permission was not granted for the replacement dwelling. The proposed development would not have a greater impact on openness than the fall back position. Significant weight is attached to this fall back position as it is a realistic and viable alternative to the proposal. It is therefore considered that there are very special circumstances relating to this case which outweigh the harm to the Green Belt by reason of inappropriateness and any other harm. Furthermore, the proposal would have no impact on the purposes of including land within the Green Belt.

7.13 Taking the above in account, it is considered that the principle of this development is acceptable.

### **Design and Visual Amenity**

7.14 Policy EQ6 requires development to contribute positively to an area's character, history and identity in terms of scale, height, density, layout, appearance, materials, and the relationship to adjacent buildings and landscape features.

7.15 Policy EQ2 is relevant as it seeks to protect, enhance and restore the landscape character of the Plan Area.

7.16 The NPPF places high value on the importance of enhancement of the natural environment, especially valued landscapes. It asserts that the aim should be to encourage the effective use of land by re-using land that has been previously developed where practical. That being the case, further advice within the Framework iterates the importance of conserving the natural environment including retaining existing mature trees and protecting biodiversity interests.

7.17 The proposed dwelling would be a highly sustainable design which will comply with the Passivhaus Standard. A building that complies with this standard is very low energy, consuming less than 20% of the energy of the equivalent building built to current building regulations. The new building would have sustainable features such as photovoltaic solar panelled cells to charge batteries, green/sedum roof coverings and living walls featuring plants that have high absorption rates for carbon dioxide to contribute to reducing pollution levels. The proposal therefore presents a significantly more sustainable building than can be achieved by the existing house or the fall back position of extending the existing house. This attracts weight in the overall planning balance.

7.18 With regard to landscape impacts, the site is in a prominent location on Buxton Road and is visible from a number of vantage points as demonstrated by the Visual Impact Comparison. The Visual Impact Comparison shows the proposal from a number of vantage points and compares the landscape impact against both the existing bungalow and the existing bungalow as extended.

7.19 It is acknowledged that the existing dwelling is a dilapidated building and of little architectural merit. The proposed replacement dwelling would be situated close to the back of pavement on Buxton Road such that the building line would reflect other properties in the immediate area. From the roadside, the proposal would have the

appearance of being sunk into the site and partially concealed behind the front boundary wall and raised area of planting with the stone frontage wall of the dwelling beyond. The garden would be situated on the side away from the road where it will benefit from reduced road noise. The proposed garage would be of the same construction and materials as the proposed house and will replace the existing three dilapidated outbuildings.

7.20 The site is within the Settled Valley Pastures Landscape Character Area. Whilst the proposal is not of traditional form and design in this Character Area, it does seek to respond to the landscape by being partially buried within the sloping site thereby reducing the impact on the character of the countryside when compared to the existing building and fall back position and opening up views to the surrounding landscape.

7.21 By using the site levels the proposal would have a low profile and be nestled into the site and partially hidden from Buxton Road by the front boundary wall. However, it would still be clearly visible from Buxton Road, particularly the north side of the building. The dwelling would be constructed in traditional drystone walls, with living walls and green roofs. This would help assimilate the proposal into the landscape from more distant views. Elevations on the south (rear) would be extensively glazed to take advantage of passive solar gain from the sun which will provide natural light and heat. Concerns were expressed by officers regarding the height of the front boundary wall. The amended scheme reduces the height of the wall to 1.25m, which is a more typical height for a drystone wall in the rural area.

7.22 A concern was raised regarding the extent of excavation required to facilitate the proposal. However, the applicant's schedule of cut and fill indicates that the difference between cut and fill is relatively minor. All excavated material would be re-used on the site.

7.23 In summary, whilst the proposal is of a design and appearance that does not reflect the traditional building forms found in the area, this should be weighed against the alternative proposal, using the fall back of permitted development rights. On balance, it is considered that the proposal is of innovative design, which, subject to conditions requiring details of construction materials and a good quality landscaping scheme, complies with Policies EQ2, EQ3 and EQ6 of the Local Plan and Section 7 of the NPPF.

### **Access and Parking**

7.24 The Framework promotes sustainable transport and recommends that local planning authorities should seek to encourage and facilitate where possible sustainable patterns of transport using practical alternatives to private motor vehicles so that people have a real choice about how they travel. All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment and decisions should take account of whether:

- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;

- safe and suitable access to the site can be achieved for all people; and improvements can be undertaken within the transport network that cost effectively limits the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

7.25 Policy CF6 of the adopted Local Plan seeks to ensure that new development proposals provide a safe means of access and are located where the road network can accommodate additional traffic generation.

7.26 It is not proposed to change the site access. There is currently no provision within the site for turning meaning that cars currently have to reverse into or out of the site. Off road parking provision would be enhanced and the proposed development would enable cars to exit the site in a forward gear and therefore there would be an improvement to highway safety.

7.27 The Highway Authority does not object to the proposal and recommends a condition requiring details of space within the site for the storage of plant and materials and all site operatives' vehicles. Such a condition has been attached to the recommendation.

7.28 In summary, and subject to the condition recommended by the Highway Authority, the proposals would not adversely affect highway safety and thereby accord with Local Plan Policy CF6 in this regard.

### **Impact on the amenities of nearby residents**

7.29 The Framework is particularly concerned with the impact that new development may have on the amenities of local residents. Amongst the core land-use planning principles that it embodies, those that affect this particular issue include the need to secure high quality design and a good standard of amenity for all existing and future occupants. Section 7 of the Framework is concerned with promoting good design and re-affirms previous national guidance that permission should be refused for development of poor design.

7.30 Policy EQ6 of the adopted Local Plan requires that development achieves a satisfactory relationship to adjacent development and does not cause unacceptable effects by reason of visual intrusion, overlooking, shadowing, overbearing effect, noise, light pollution or other adverse impacts on local character and amenity.

7.31 The nearest residential properties are situated at Toll Bar View to the north west and Maybank Close to the north east (the latter being on other side of Buxton Road and Railway line). These neighbouring properties are over 30 metres away from the site boundary. Given the separation distances and the low lying nature of the replacement dwelling, it is considered that there would be no adverse impact on the neighbours in terms of loss of light or privacy. There exists the potential for noise disruption during the construction phase. A noise related condition to restrict the hours of work is considered appropriate to prevent disturbance during unsociable hours. The Environmental Health officer raises no objections to the application in terms of contamination and this matter could be dealt with by way of an appropriately worded condition.

7.32 It is concluded that the development will not have an adverse effect upon the amenities of local residents and is compliant with Policy EQ6 of the local plan.

### **Biodiversity / Trees**

7.33 The Conservation of Habitats and Species Regulations 2010 requires local authorities to give due weight to the presence of protected species on a development site. Planning permission may be granted provided there is no detriment to the maintenance of the species population at favourable conservation status in their natural range. The Regulations advise that if any detriment would be caused by the proposed development, planning permission should only be granted provided:

- There is no satisfactory alternative; and
- The development is in the interests of public health and safety, or other imperative reasons of over-riding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.

7.34 The Framework places high importance on protection of biodiversity interests and new development should minimize impacts on biodiversity. Planning permission should be refused where significant harm from a development cannot be avoided. Policy EQ5 seeks to ensure that development proposals will not significantly harm biodiversity interests.

7.35 Derbyshire Wildlife Trust advises that the submitted Ecology Report is sufficient to determine the planning application and no significant ecological constraints have been identified. No evidence of bat activity was found and the main dwelling and other outbuildings on site are considered to offer negligible bat roost suitability. The proposed incorporation of green walls and roof in the proposed development is welcomed and it is considered necessary and reasonable to attach a condition requiring submission of a biodiversity enhancement strategy, as recommended by DWT, to provide bird and bat boxes, maintain connectivity through the site for wildlife, and provide ecologically beneficial landscaping. The development would therefore meet Policy EQ5.

7.36 Policy EQ9 seeks to ensure that existing trees, woodlands and hedges will be retained and integrated into development unless the need for and benefits of the development clearly outweigh their loss. The submitted Tree Survey recommends the removal of two moderate quality B category trees, five low C category trees, an area of shrubs and three boundary hedges. A hedge along the rear site boundary would be retained and protected during the demolition/ construction works. The loss of the category C trees and hedges would not adversely affect wider amenity and can be mitigated through provision of new trees and soft landscaping. Whilst the loss of two category B trees is regrettable, these trees are not the subject of a TPO and will be replaced. The benefits of this scheme is that the proposed dwelling would replace a building which visually poor, to the benefit of the landscape. The Council's Arboricultural Officer does not object to the proposals, subject to conditions, and therefore the development would meet the requirements of Policy EQ9.

## **8. PLANNING BALANCE AND CONCLUSION**

8.1 The site is located within the Green Belt where there is a presumption against inappropriate development. The erection of new buildings is inappropriate development unless it falls within one of a number of categories including replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.

8.2 The new development would have a greater impact on the openness of the Green Belt than the existing dwelling. However, there are very special circumstances relating to the fall back position of extensions and alterations to the existing building utilising permitted development rights. The fall back position of permitted development extensions, which has been confirmed as lawful through a recent Lawful Development Certificate and which is a viable alternative proposal, would have a greater impact on the openness of the Green Belt than the proposed replacement dwelling. The proposed development is consistent with all of the purposes of including land within the Green Belt. For these reasons, the principle of the development is accepted.

8.3 The proposal dwelling has been designed to operate to Passivhaus levels of environmental performance and demonstrates sustainable design principles. Subject to appropriate conditions, the design of the proposal is innovative and would not be harmful to the landscape. With no adverse impacts on highway safety, nearby residential amenity, biodiversity or trees, the proposal is considered to comply with the relevant Local and National Planning Policies set out at the beginning of this report and, in the absence of any other material considerations, accordingly is recommended for approval.

## 9. RECOMMENDATIONS

**A: APPROVE, subject to the following conditions:**

### Conditions

Condition ref number	Brief description	Comment
TL01	Development to begin within 3 years	
AP01	Development in accordance with amended plans	
DE01	Samples of construction materials to be submitted for approval	
LA01	Hard and soft landscaping scheme to be submitted for approval	
LA02	Landscaping scheme to be carried out and maintained	
LA09	Boundary treatment to be submitted for approval	
NSTD	Biodiversity Enhancement Strategy to be submitted for approval.	

NSTD	Arboricultural Statement recommendations to be implemented in full.	
NSTD	Hours of demolition / construction works restricted	
NSTD	Submission of a scheme and risk assessment to control any unexpected contamination found on site	
NSTD	Submission of a pre-demolition asbestos survey and risk assessment	
NSTD	Submission of a scheme for provision of space within the site for storage of plant and materials and site operatives vehicles	
NSTD	Removal of permitted development rights for extensions, curtilage buildings and boundary treatments	
NSTD	Prior to occupation of the dwelling hereby approved, details shall be submitted confirming that the dwelling has been constructed to Passivhaus Standards	

**B In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add conditions/informatives/planning obligations or reasons for approval/refusal) prior to the decision being issued, the Operations Manager – Development Services has delegated authority to do so in consultation with the Chairman of the Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.**

### **Informative**

This recommendation is made following careful consideration of all the issues raised through the application process and thorough discussion with the applicants. In accordance with Paragraph 187 of the NPPF the Case Officer has sought solutions where possible to secure a development that improves the economic, social and environmental conditions of the area.

### **Site Plan**

