

Ms Jennie Townsend
Senior Planning Officer
Development Management
Bury Metropolitan Borough Council
Town Hall
Knowsley Street
Bury
Lancashire
BL9 0SW

20 June 2023
EP ref: 21-694

Dear Ms Townsend

Re: Planning application - Ainsworth Hall Farm, Ainsworth Hall Road, Ainsworth, Bolton – Erection of a domestic outbuilding

We are instructed by our clients, Mr & Mrs Vause, to progress a householder planning application at Ainsworth Hall Farm.

This householder planning application follows on from planning application 68880, which was withdrawn following discussions with the local planning authority on procedural points. Our client remains keen to work with the local planning authority to agree a solution for the site that satisfies all parties.

The site and surrounding area

The wider Ainsworth Hall estate is summarised below:

- The remnants of the former Ainsworth Hall and its gardens. The large manor house was demolished at some point in the past.
- Former workers cottages that were located to the north-eastern part of the application site.
- Ainsworth Hall Farmhouse, which has been extended and altered in the past, and this is where Mr & Mrs Vause live.
- A complex of former agricultural buildings to the southern part of the application site.
- Access to the site is via Ainsworth Hall Road.
- There are a number of trees on the site protected by way of Tree Preservation Order (TPO).

The Ainsworth Hall Farm complex can be seen on the following historic map with the footprint of the former workers cottages clearly visible to the north-eastern corner of the site:



The proposed development

The works subject to this planning application are for the construction of a single storey domestic outbuilding within the garden of Ainsworth Hall Farmhouse. The outbuilding would be of a modest scale and massing and would accommodate ancillary garaging and a garden room.

Planning policy context

The development plan comprises the saved policies of the Bury Unitary Development Plan (UDP), which was adopted by the Council in 1997. The Proposals Map shows that the site is within the designated Green Belt and a Special Landscape Area. Saved Policies directly relevant to The Site include the following:

- EN9/1 – Special Landscape Areas.
- HE2/3 – Extensions and Alterations.

Paragraph 149(c) of the Framework is also relevant to the determination of this planning application alongside the Bury Alterations & Extensions to Residential Properties SPD and the Bury New Buildings and Associated Development in the Green Belt SPD.

Planning considerations

We are aware that there was a dismissed appeal in 2012 for a two-storey outbuilding in the general locality of the single storey outbuilding now proposed (LPA ref: 54931). The Planning Inspector for this appeal concluded that the outbuilding in question must necessarily be treated as a ‘freestanding’ building rather than an extension to Ainsworth Hall Farmhouse. On that basis the Inspector had no alternative but to deem the building as inappropriate development within the Green Belt, which results in definitional harm attracting substantial weight in the decision-making process.

The Inspector for the dismissed appeal referenced above noted that the proposed outbuilding was substantial in scale and massing and there would be adverse impacts on openness and character as a result. There was a gymnasium and games/playroom proposed at first floor level and the roof was dual-pitched and we copy the proposed elevation drawings below:

Image showing the elevation plans for the dismissed appeal scheme for an outbuilding



An overlay of the dismissed outbuilding (outlined in red) is provided on a drawing of the proposed outbuilding subject to this new planning application at Appendix **EP1** of this letter. The proposed outbuilding is substantially smaller than the dismissed building; it has a smaller footprint and is now just 2.9m high whereas the previous building was two-storeys in height.

In planning policy terms, there have been important and material developments in case law since the appeal decision letter was issued in 2012 for 54931. Firstly, there was a High Court Judgment in 2015 in *Tandridge DC vs. SoSCLG* concerning planning permission granted on appeal for the replacement of a dwelling and associated outbuildings in the Green Belt. The Council had challenged a decision by the Planning Inspectorate to incorporate a cluster of outbuildings into the size calculations for the existing house. David Elvin QC (Sitting as a Deputy High Court Judge) dismissed this ground of challenge and found that it was not the intention of the Framework that the word “building” in the 4th bullet of paragraph 89¹ should be read as only meaning the singular. This Judgment therefore confirms that when considering changes in footprint and volume between existing and replacement dwellings, the footprint and volume of other buildings within the same planning unit and associated with the dwelling to be demolished in that case could be considered in the same calculations. A copy of the Judgment can be found at Appendix **EP2** of this letter.

Secondly, a High Court Judgment was issued in August 2022 concerning a domestic outbuilding situation circa. 20m away from the main dwelling house (*Warwick DC vs. SoS Levelling Up, Housing and Communities 2022 EWHC 2145*). The Council challenged a decision by the Planning Inspectorate to allow an appeal based on the erection of the outbuilding representing an extension to the original dwelling rather than a freestanding new building. Paragraphs 47 and 52 of the Judgment are copied below (see Appendix **EP3** for a copy of the Judgment and Appendix **EP4** for a copy of the site plan of the outbuilding in question):

“A building can readily be regarded as being an adjunct to another building even though the two are not physically connected. As Miss Hutton said, buildings can readily be considered to be extensions of other buildings even though the buildings are not physically connected. In the domestic setting it is not artificial to describe garages or other outbuildings as being extensions of the principal dwelling house.”

“Accordingly, I am satisfied that [149(c)] is not to be interpreted as being confined to physically attached structures but that an extension for the purposes of that provision can include structures which are physically detached from the building of which they are an extension.”

¹ Paragraph 149(c) of the 2021 version of the Framework.

In the case of our client's property, the proposed outbuilding would be sited less than 10m away from the existing dwelling house. It would be closely associated with the main house in functional, visual and physical terms and it should be treated as an extension to Ainsworth Hall Farmhouse rather than a freestanding building in the Green Belt.

It is understood that the existing property at Ainsworth Hall Farmhouse has already been extended in the past and those additions may have exceeded one-third of the original size. However, there is no definition of a 'disproportionate addition' to a house for the purposes of paragraph 149(c) of the Framework. The Bury New Buildings and Associated Development in the Green Belt SPD says that a threshold of one-third is normally applied, although each case will be determined on its own merits as to whether the disproportionate threshold has been passed.

The Planning Policy Practice Guidance (PPG) at paragraph 64-001 advises what factors should be considered when assessing openness. It reflects law such as the recent Samuel Smith Old Brewery Supreme Court Judgment (2020)² whereby it is established that visual impacts should be taken into considerations alongside spatial impacts when assessing openness. There is no definition set out through policy or law as to what openness should comprise, and there is no standard methodology as to assessing impact. It may sometimes be the case that volumetric calculations are the most, or only, relevant considerations whereas it may in other cases be more relevant to consider visual prominence or a combination of both.

We draw attention to the following points:

- The proposed outbuilding is modestly sized with a single storey height and reduced footprint compared to what was previously put forward through 54931.
- The siting of the outbuilding is 'bookended' by the substantially sized Ainsworth Hall Farmhouse to the north and the complex of two-storey and single storey former agricultural buildings to the south.
- The outbuilding would be seen in the context of the surrounding built form and the residential character of the domestic garden on which it would be sited.
- The proposed scheme comprises the limited infilling of a small gap between existing buildings as described in the above 2 bullet points.
- An outbuilding in this location to be used in association with a house of the scale and form of Ainsworth Hall would neither be unusual or out of character with this type of dwelling or within this type of Green Belt location. It is sited within the garden/curtilage of the house and does not undermine any of the purposes of the Green Belt.

The proposed outbuilding is not considered to result in a disproportionate addition to the main dwelling house for the purposes of paragraph 149(c) of the Framework. It would result in no material impact on the openness of the Green Belt and there is a presumption in favour of the grant of planning permission in Green Belt planning policy terms.

Furthermore, the site comprises previously developed land within the Green Belt (the definition at Annex 2 of the Framework excludes residential gardens within built-up areas only). The proposed development comprises limited infill development on previously developed land. The proposed outbuilding infills a gap between existing buildings i.e. the substantially sized Ainsworth Hall Farmhouse to the north and the complex of two-storey and single storey former agricultural buildings to the south. As discussed earlier, the proposed outbuilding would not result in any material impact on openness of the Green Belt and the scheme meets the exception at paragraph 149(g) of the Framework.

Even if there was a greater impact on openness, which is not considered to be the case here, it is inherent in the wording of paragraph 149(g) that some loss of openness is inevitable in purely spatial terms. This policy allows the erection of buildings that comprises limited infill development and a purely spatial assessment, which is wrong in case law as the visual element must also be considered, would render this policy ineffective; there will

² R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)

be a spatial impact when carrying out limited infill development on previously developed land as it is plain that the policy envisages development taking place where it is absent at present. As discussed further above, it is not considered that there would be any greater impact on openness in the case of our client's development when taking a rounded assessment with due regard for both the spatial and visual elements of openness.

The proposed development does not comprise inappropriate development within the Green Belt whether this is assessed against paragraph 149(c) or 149(g) of the Framework. There is a presumption therefore in favour of the grant of planning permission.

Other matters

The proposed outbuilding would be a modest scale and massing and it would appear entirely subservient and secondary in relation to the host building at Ainsworth Hall Farmhouse. The design concept integrates with the existing property and there would be no adverse impact on the character and appearance of the area for the purposes of Saved Policies EN9/1 and HE2/3 of the Bury UDP or the Bury Alterations & Extensions to Residential Properties SPD and the Bury New Buildings and Associated Development in the Green Belt SPD.

A Heritage Statement, prepared by Townscape Town Planning Consultants, has been submitted with this planning application and this demonstrates that the outbuilding would not result in harm to the setting of Ainsworth Hall Farmhouse for the purposes of paragraph 203 of the Framework.

We trust that this clarifies our client's position. Should you wish to discuss this any further then please do not hesitate to contact us.

Yours sincerely,
Emery Planning

Gareth Salthouse

Gareth Salthouse BA (Hons), Mplan, MRTPI
Associate Director

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Enc:

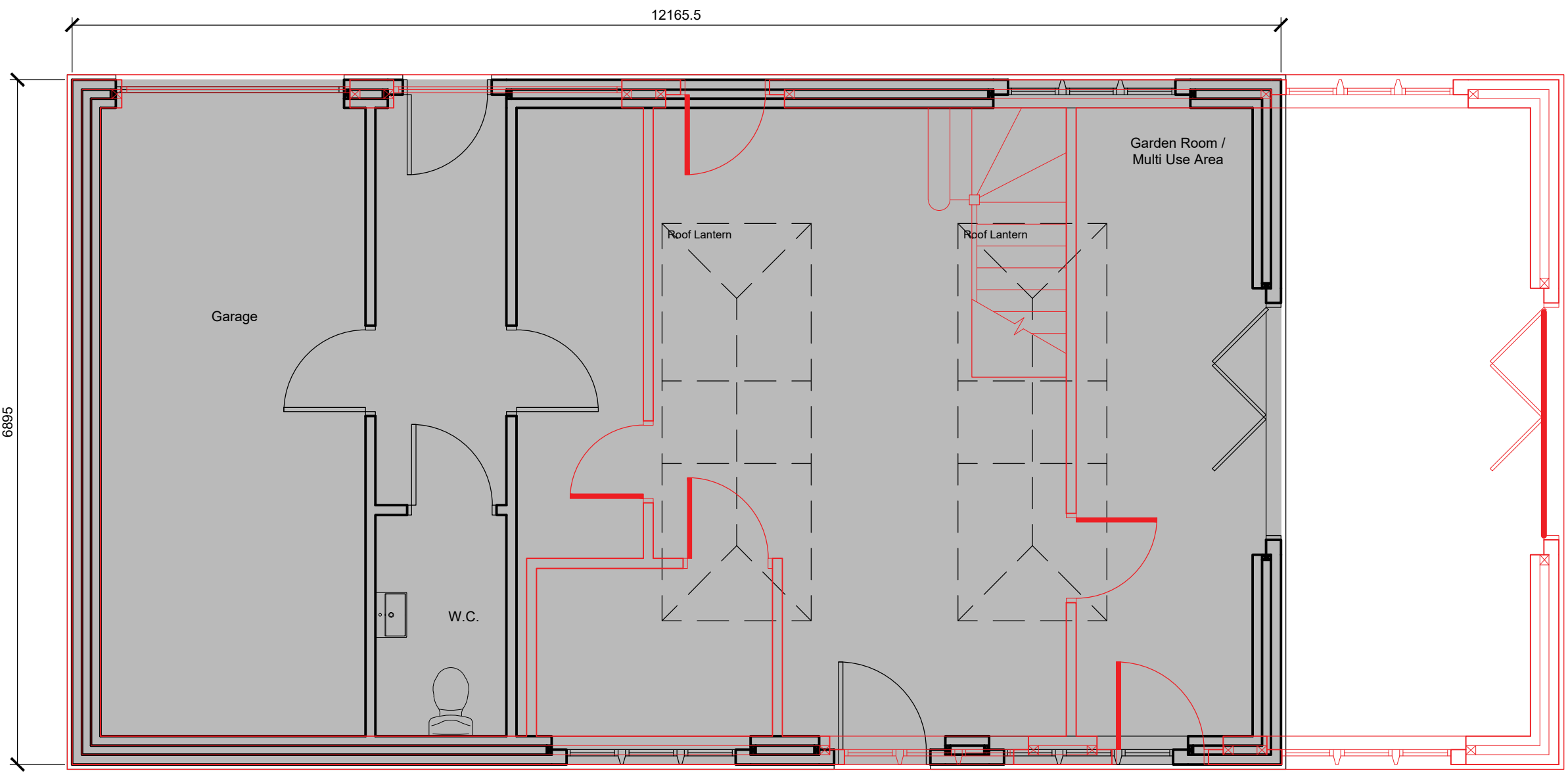
EP1 – Overlay drawing showing the proposed outbuilding and the dismissed outbuilding subject to the 2012 appeal decision LPA ref: 54931

EP2 – Tandridge DC vs. SoSCLG Judgment 2015.

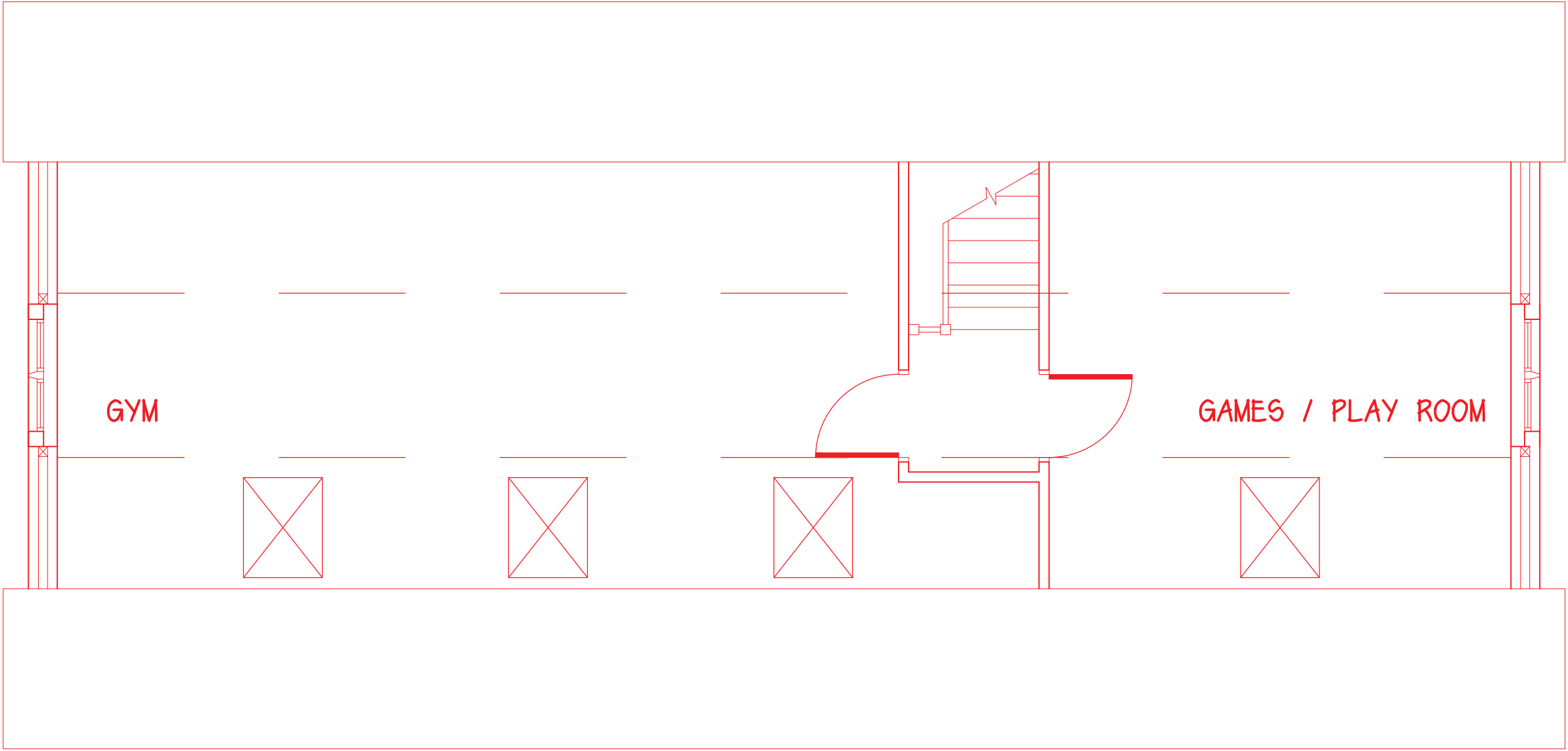
EP3 – Warwick DC vs. SoS Levelling Up, Housing and Communities Judgment 2022.

EP4 – Site plan subject to the Warwick DC vs. SoS Levelling Up, Housing and Communities Judgment 2022.

EP1



Ground Floor Plan
Scale - 1:50



** First floor plan of previously refused building.

NOTES:
Copyright in all documents prepared by the architect and any works executed from these documents and drawings, shall unless otherwise agreed, remain the property of the architect and must not be reproduced by, lent or disclosed to, a third party without the written consent of Good and Tillotson.

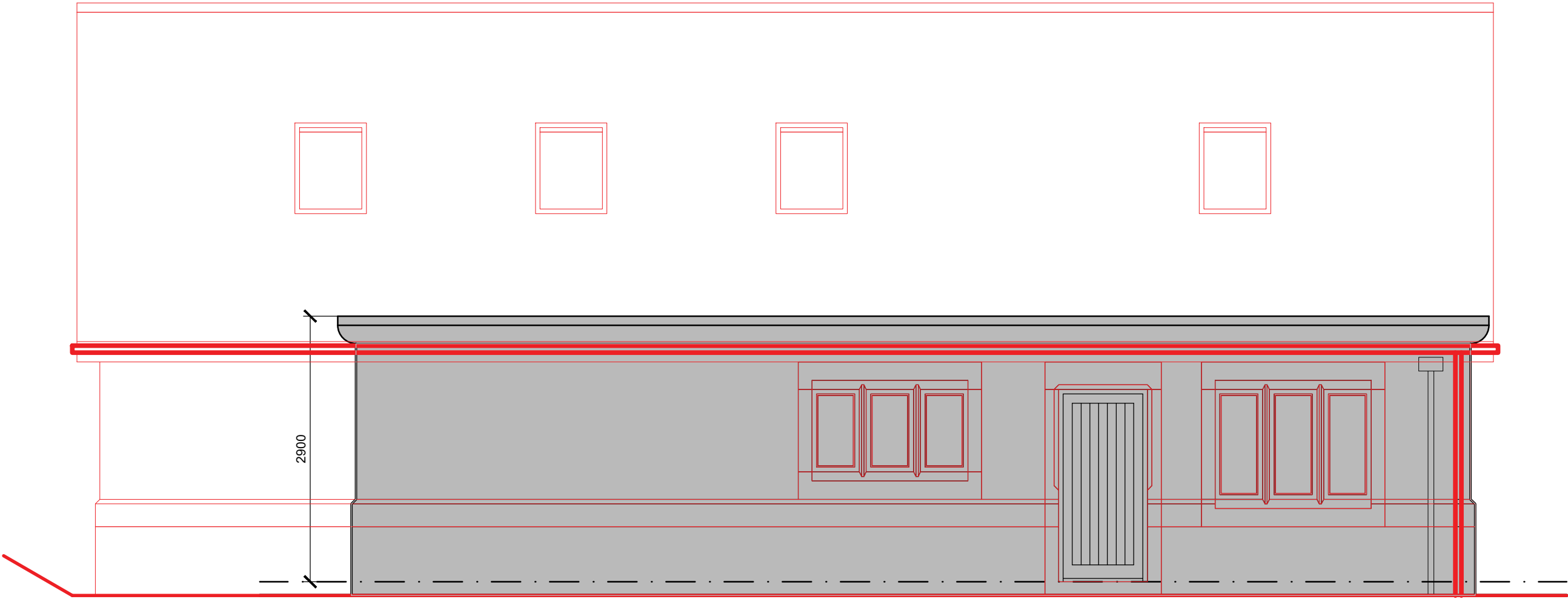
DO NOT SCALE OFF THIS DRAWING.
All dimensions to be checked on site and any discrepancies to be referred to the architect before proceeding.

ALL LEVELS TO BE CHECKED ON SITE.
All discrepancies between information shown on the drawings and the information in the specification to be referred to the architect before proceeding.

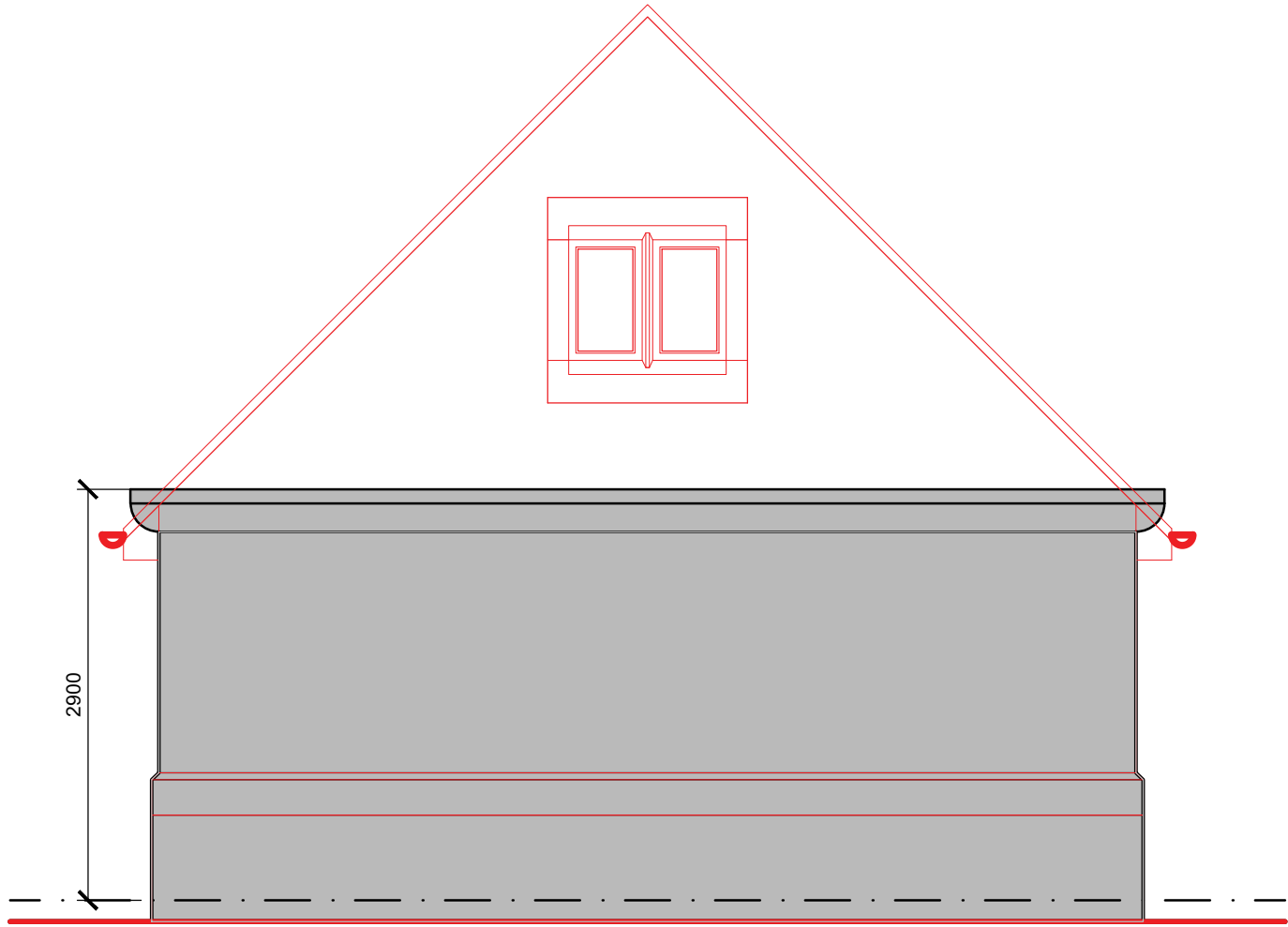
All component sizes and references to be checked prior to the ordering of materials.

Positions and designation (i.e. combined, surface water or foul) of existing drain runs on site are to be checked / confirmed by the building contractor prior to commencement of any drainage works. Any existing drains, to which additional connections are to be made, are also to be checked as necessary to ensure they are suitable to accommodate additional capacity and the type of effluent being connected.

All relevant boundary positions are to be checked prior to proceeding.

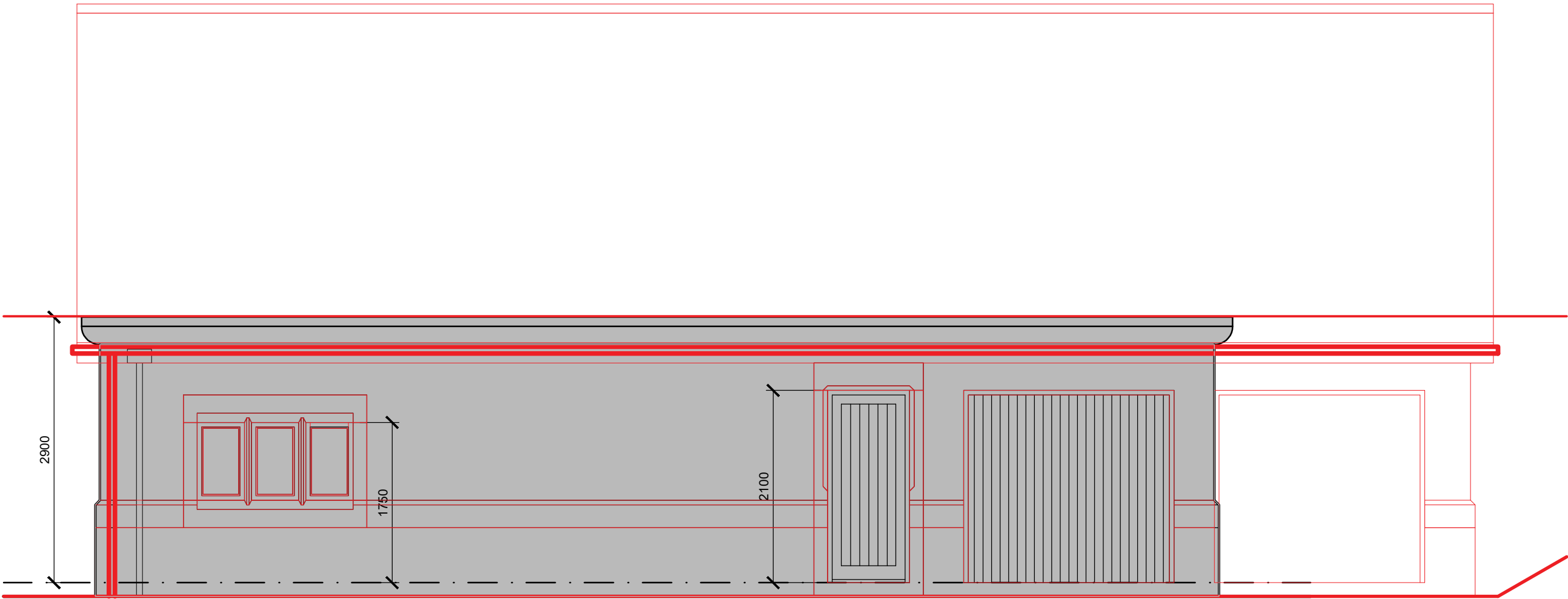


Rear Elevation
Scale - 1:50

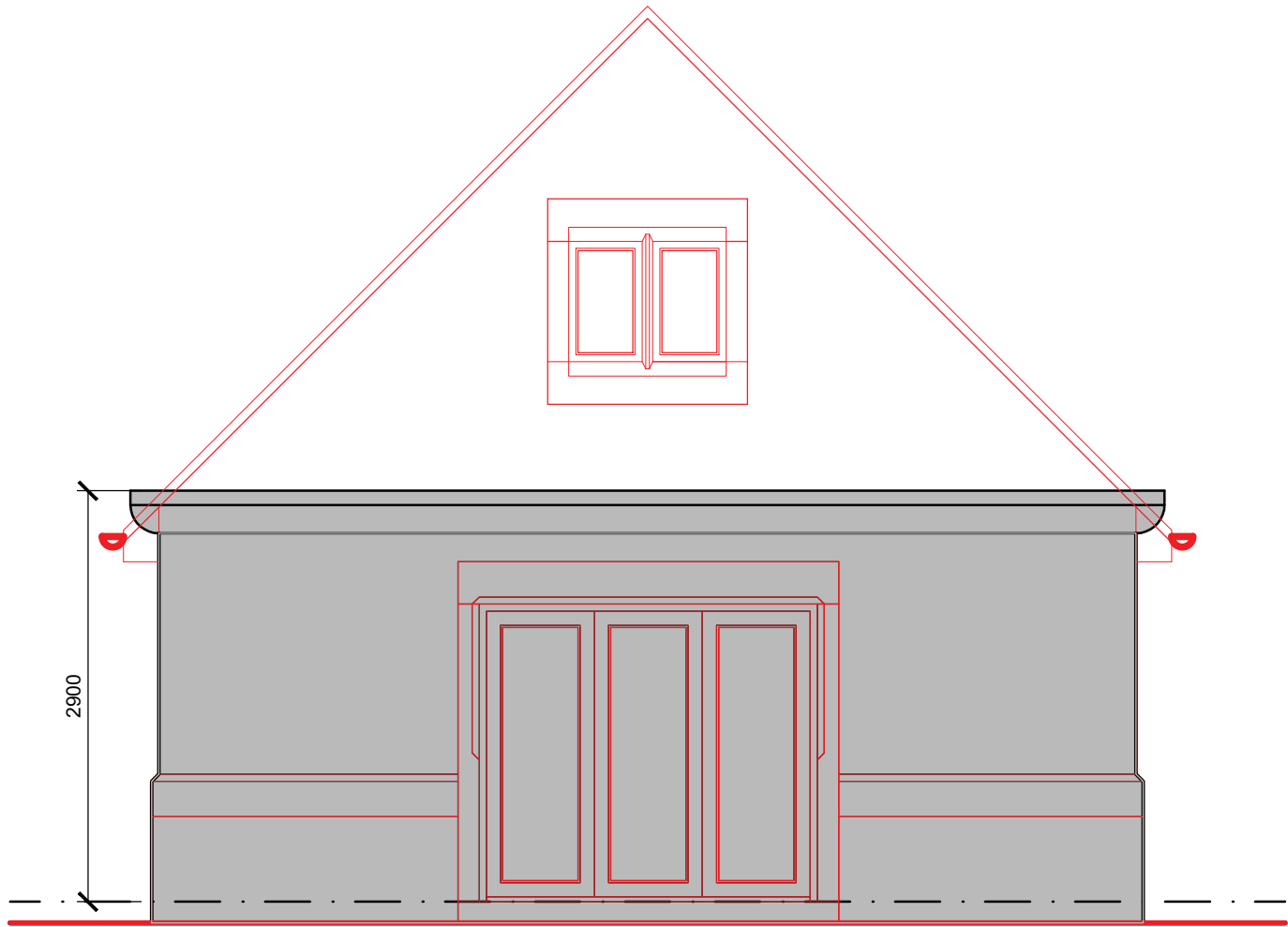


Side Elevation
Scale - 1:50

** red lines indicate size of previously refused building. Shaded areas indicate size of building proposed under new application.



Front Elevation
Scale - 1:50



Side Elevation
Scale - 1:50

Rev.	Revision	Int.	Date			
Client: Mr G. Vause						
Project: Proposed Garden Room						
Location: Ainsworth Hall Farm Ainsworth Hall Road Ainsworth Bolton BL2 5QT						
Good & Tillotson Chartered Architects						
2 The Studios, 318 Chorley Old Road, Bolton, BL1 4JU Tel: 01204 497700 Email : info@goodandtillotson.co.uk Web: www.goodandtillotson.co.uk						
Drawing Title: Garden Room Comparison drawing						
G&T Job No:	Scale:	Drawn:	Checked:	Date:		
2250	1:50@A1	MDJ	RPW	01.09.22		
Drawing Purpose:				Status:	Revision:	
Planning Drawing				S4		
BIM Project	Origin:	Zone:	Level:	Type:	Role:	Dwg No:
2250-GTA-XX-XX-DR-A-1013						

EP2

CO/486/2015

Neutral Citation Number: [2015] EWHC 2503 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 24 June 2015

B e f o r e:

DAVID ELVIN QC
(Sitting as a Deputy High Court Judge)

Between:
TANDRIDGE DISTRICT COUNCIL

Claimant

v.

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

JASON SYRETT

Defendants

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Mr S Stemp (instructed by Tandridge District Council) appeared on behalf of the **Claimant**

Ms I Tafur (instructed by Government Legal Department) appeared on behalf of the **First Defendant**

The **Second Defendant** appeared in person

J U D G M E N T
(As approved by the Court)
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THE DEPUTY JUDGE (DAVID ELVIN QC):

Introduction

1. In this application brought under section 288 of the Town and Country Planning Act 1990, Tandridge District Council contends that the first defendant's inspector erred in law in granting planning permission for a new dwelling in the Green Belt as a replacement for a small group of existing buildings. The inspector's decision was given by a decision letter dated 22 December 2014 ("the DL"). That decision concerned two appeals by the second defendant on the same site referred to as Appeals A and B. The inspector refused permission for Appeal A but allowed Appeal B and granted permission subject to conditions. This challenge is concerned only with the grant of permission for Appeal B.
2. Mr Jason Syrett, the second defendant, who appears in person, also disputes the fairness of the procedure and contends that he was not properly served with the papers concerning the challenge in accordance with CPR Part 6.
3. I am grateful to both counsel, Mr Scott Stemp for the claimant and Miss Isabella Tafur for the Secretary of State, and indeed to Mr Syrett, for their clear and concise submissions.
4. Planning permission was sought by Mr Syrett from the Council for two alternative schemes on his land at Castleneau, Ricketts Hill Road, Tatsfield, Surrey ("the site"). The site currently includes a single storey double garage, access from a shared driveway, from which steps lead down around 10 metres to the middle of the site where a detached house is located. The house has three bedrooms and is part single and part two storey. Immediately adjacent to the house is a utility outbuilding, which is a single storey rendered building. Two timber storage sheds lie adjacent to the outbuilding.
5. In respect of Appeal B, Mr Syrett applied for planning permission to demolish the existing dwelling house, the utility building, the detached garage and a number of identified trees, and to construct a replacement dwelling house and driveway. The DL refers to the differences between the two schemes and I will deal with them in that

context. The Council refused permission for both schemes and in the case of the Appeal B scheme, the reasons given for refusal on 1 October 2014 were:

- i. "The proposed replacement dwelling would be materially larger than the dwelling it replaces. Furthermore the new driveway, by reason of its extent and form, would result in significant harm to the openness of the Green Belt. As such, the proposal constitutes inappropriate development in the Green Belt resulting also in a significant reduction in openness. It is considered that there are insufficient very special circumstances to clearly outweigh the harm by reason of inappropriateness and actual harm to the openness of the Green Belt. The proposal is therefore considered to be contrary to policy DP13 of the Tandridge local plan part 2 detailed policies."
6. The appeal was determined by written representations. There was a fundamental disagreement between the claimant and the second defendant as to the interpretation of national Green Belt policy in the National Planning Policy Framework ("the NPPF") at paragraph 89, which is replicated in policy DP13 of the Tandridge local plan which was adopted in July 2014. Policy DP13 provides for a number of exceptions to the normal Green Belt restrictions on inappropriate development, including that found at DP13(F):
 - i. "F. The replacement of buildings within the Green Belt (outside the defined villages), where the proposed new building:
 - b. Is in the same use as the building it is replacing;
 - c. Is not materially larger than the building it is replacing; and
 - d. Is sited on or close to the position of the building it is replacing, except where an alternative siting within the curtilage demonstrably improves the openness of the Green Belt."
7. This adds little, if anything, to the NPPF, which provides at paragraphs 87 to 89:
 - i. "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.
 - ii. 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.

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

- 8. Buildings for agriculture and forestry;
- 9. 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;
- 10. 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;
- 11. The replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- 12. Limited infilling in villages, and limited affordable housing for local community needs under policies set out in the local plan; or
- 13. Limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), 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."
- 14. The appeal here was run on the basis of the fourth indented paragraph of 89, i.e. -
 - i. "The replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces."
- 15. The explanatory text of the local plan policy makes it clear that DP13 was intended to replicate the policy in the NPPF, and it is therefore plain that it should be interpreted consistently with it. Neither counsel urged me to take a different view, and it was therefore common ground that the issue before me is to be resolved by reference to paragraph 89 of the NPPF. In the case of both versions of the policy, the claimant emphasised the use of the singular "building" in the relevant exception.
- 16. On appeal to the Inspector, the second defendant contended that this exception to inappropriate development in the Green Belt applied not only to single buildings but to groups of buildings which were to be demolished and replaced by a new dwelling. In this

case, it was proposed to demolish the three buildings which sat relatively close to each other as part of a single residential curtilage, as I have already described. It was argued that both in the case of Appeals A and B that the proposed new dwellings were "not materially larger" than the buildings proposed to be replaced.

17. The correct approach to Green Belt policy in the NPPF as compared to earlier versions of the policy, particularly in PPG2, has been considered twice recently by the Court of Appeal in Redhill Aerodrome Limited v Secretary of State [2015] PTSR 274 and R (Timmins) v Gedling Borough Council [2015] JPL 816, which dealt with different aspects of Green Belt policy in the NPPF - though neither were concerned with the specific issue before me. In Timmins at [24] Richards LJ made an observation of general application:

- i. "There is no dispute as to the correct general approach towards the interpretation of the NPPF. Policy statements of this kind should be interpreted objectively in accordance with the language used, read as always in its proper context, which is not to say that such statements should be construed as if they were statutory or contractual provisions (see per Lord Reed JSC in Tesco Stores Ltd v Dundee City Council [2012] UKSC 13, [2012] PTSR 983, at paragraphs 18-19). The NPPF is on the face of it a stand-alone document which should be interpreted within its own terms and is in certain respects more than a simple carry-across of the language in the guidance it replaced (see Europa Oil and Gas Limited v Secretary of State for Communities and Local Government and Others [2014] EWCA Civ 825, [2014] JPL 1259, in particular at paragraphs 15 and 32). But the previous guidance, in this case the guidance on Green Belt policy in PPG2, remains relevant. In Secretary of State for Communities and Local Government and Others v Redhill Aerodrome Limited [2014] EWCA Civ 1386 the Court of Appeal rejected a submission that "any other harm" in paragraph 88 of the NPPF had a narrower meaning than in paragraph 3.2 of PPG2, which would have made it less difficult than under PPG2 to establish the existence of very special circumstances justifying a development."

18. It is common ground here that the meaning of the replacement building exception should be approached in a similar manner to the earlier manifestation of the exception considered in R (Heath and Hampstead Society) v Camden LBC [2008] 2 P&CR 13. I will return to this point when considering the first ground of challenge.

19. The Inspector's Decision

20. At DL 5, the inspector identified the following issues, which are not criticised:

- i. "5. The main issues are:

21. Whether the proposals would be inappropriate development in the Green Belt;

22. The effect of the proposals on the openness of the Green Belt; and

23. If the developments are inappropriate, whether the harm, by reason of inappropriateness, and any or harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the developments."

24. The inspector then turned to the substance of the issues. I will refer to both appeals, since the approach to Appeal A also sheds light on the Inspector's decision in Appeal B:

- i. "6. The framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings should be regarded as inappropriate development in the Green Belt. A number of exceptions are set out in paragraph 89. Of these, the parties agree that bullet four of this paragraph, allowing for the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces, is most relevant to the appeal proposal.
- ii. 7. The appeal schemes are for replacement dwellings and, as such, meet the first part of this criterion. The dispute between the parties centres on (a) whether it is appropriate for the demolition of the other buildings on the site, as well as the existing dwelling, to be included in any allowance for the size of the replacement dwellings and (b) whether the replacement dwellings are, therefore, 'materially larger' than the extant dwelling.
- iii. 8. The site is currently occupied by a single storey double garage, accessed from a shared driveway, from which steps lead down around ten metres to the middle of site where the house, a utility building and two sheds are located. The house is a three bedroomed, detached dwelling and is part single, part two storey.
- iv. 9. With regard to the first matter in dispute, notwithstanding the precise wording of bullet four, there is no reason why the principle of redevelopment should not apply to a group of buildings being replaced by one. Indeed, in my experience this approach to the

redevelopment of brownfield sites in the Green Belt is not unusual. The additional buildings in question, noted above, are domestic in scale, part of the same planning unit, clearly ancillary to the residential use of the existing house and not widely dispersed around the site. Thus, I am not persuaded that, in this instance, the loss of these ancillary buildings and the dwelling, with their replacement by a single appropriately sized dwelling, would be at odds with the fundamental aim of Green Belt policy, which is to keep land permanently open."

25. Having concluded that the policy exception applied in principle to more than one building, and having considered the relationship between those buildings by reference to the touchstone of Green Belt openness, the inspector then turned to consider the question of "not materially larger":

- i. "10. Turning to the second matter, the total combined footprint of the existing house, garage and utility building, as set out in the appellant's statements, is around 195 square metres. No assessment appears to have been made for the footprint of the sheds. The total combined volume of the existing house, garage, utility building and sheds, which is not disputed by the Council, is cited as around 821 cubic metres.
- ii. 11. Notwithstanding that they have been provided, the appellant has questioned the use of volumetric measurements as a means of assessing whether a building is materially larger than the one(s) it replaces. The Council has drawn my attention to another appeal decision, in which the inspector indicates that the Council has, in the past, used a 'rule of thumb' of up to 15 per cent uplift in volume as appropriate, although it is evident from correspondence between the Council and the appellant that volume increases of around 20 per cent may be acceptable. Notwithstanding these points, however, the adopted development plan does not set out any volumetric, or other, standards. Nor does it, or the framework, provide any detailed guidance on how 'materially larger' should be assessed. Thus, I agree with the inspector in the decision cited that this is, ultimately, a matter for the decision maker. In my view, the term has its ordinary meaning and an assessment should consider all of the relevant circumstances, which could include, among other things, the floor area, volume and form of the relevant buildings.
- iii. 12. With regard to Appeal A, the footprint and volume of the proposed dwelling is given by the appellant as around 243 square metres and 1717 cubic metres respectively. The Council officer's

report cites a volume of 1760 cubic metres. However, even taking the smaller assessment into account, this would mean that the proposed dwelling would be around 25 per cent larger in terms of footprint, and result in an increase in volume of around 109 per cent, over the existing buildings. The dwelling would also, with the exception of the proposed swimming pool, be two stories with a pitched roof. This would have a ridge height around three metres higher than the existing dwelling. As such, although the proposal would sit in the same location as the existing dwelling and have no significant impact upon mature trees, it would result in a significant increase in bulk and mass over the existing buildings. Taking these factors in the round, I conclude that the proposed dwelling would be materially larger than those it replaces. It would, therefore, be inappropriate development in the Green Belt and I give this consideration substantial weight. It would also conflict with policy DP13 of the local plan part 2, which seeks to ensure, among other things, that new replacement buildings in the Green Belt are not materially larger than the building being replaced."

26. The inspector therefore concluded that Appeal A was inappropriate development and in conflict with policy. However, with regard to Appeal B, he reached a different conclusion:

- i. "13. With regard to Appeal B, the footprint and volume of the proposed dwelling are assessed as around 152 square metres and 985 cubic metres respectively. However, the latter calculation excludes the space under the house, agreed as 475 cubic metres. How this space is utilised, be it for parking or a garden patio area, is moot. It would clearly be an integral part of the design and purpose of the building, used to support the first floor over it, albeit that it is not enclosed to all sides. Thus, its inclusion within the volumetric calculations, whatever its use, is appropriate.
- ii. 14. This would mean that the proposed dwelling would have a volume of 1460 cubic metres. Although it would be around 78 per cent larger in volume than the existing buildings, it would be around 22 per cent smaller in terms of footprint. It would stand around one metre taller at its highest point than the dwelling that it replaces, yet its flat roofed design, long with the use of an extensive single storey element, would serve to break up its bulk and massing, reflecting the scale and form of the extant dwelling. In the context of this specific proposal, therefore, weighing the relevant factors in the balance I conclude that it would not be materially larger. Subsequently, it would pass the

exception test of bullet four of paragraph 89 of the framework. Thus, it would not be inappropriate development in the Green Belt. It would accord, therefore, with policy DP13 of the local plan part 2, which seeks to ensure, among other things, that new replacement buildings in the Green Belt are not materially larger than the building being replaced."

27. The inspector found that Appeal A would impact adversely on openness in that it:

- i. "Would be materially larger than the building it replaces, with its scale and mass increasing the amount of development on the site."

28. However, he reached a different conclusion with regard to Appeal B:

- i. "16. The proposal under Appeal B would, in purely volumetric terms, be larger than the dwelling it replaces. There would, therefore, be a small loss to openness. However, for the reasons I have set out above it would not, in my judgment, be in overall terms materially larger. Thus, openness would be preserved. Furthermore, I do not consider that such a small loss of openness justifies refusal, given the framework's identification of the appeal scheme as not inappropriate development in the Green Belt."

29. Having rejected the contention that his assessments were altered by a consideration of the proposed driveway or hard standing, he ended paragraph 17 as follows:

- i. "This being so it would be, in principle, not inappropriate development in the Green Belt in accordance with bullet 2 of paragraph 90 of the framework. I conclude that the proposal under Appeal B would not have an adverse effect upon openness."

30. He then turned to "other considerations" with regard to Appeal A, which did not cause him to alter his conclusion that Appeal A was harmful and should be refused but concluded that Appeal B should be allowed:

- i. "21. I have identified that the proposal under Appeal A would be inappropriate development in the Green Belt and, thus, harmful to it. The framework is clear that such harm should be afforded substantial weight. I have also concluded that the proposal would harm the openness of the Green Belt, which is a factor to which I also afford significant weight. I have considered the matters cited in support of the proposal but I conclude that taken together they do not clearly outweigh the harm that the scheme would cause. Subsequently, I do not consider that the very special circumstances

exist that are necessary to justify inappropriate development in the Green Belt. Thus, for the above reasons, and taking all other matters into consideration, I conclude that Appeal A should be dismissed.

- ii. 22. I have found that Appeal B would be not inappropriate development in the Green Belt and would preserve openness. This being so, for the above reasons, and taking all other matters into consideration, I conclude that Appeal B should be allowed."

31. The issues

32. Mr Stemp on behalf of the Council argued:

- a. The inspector erred in that he misconstrued the term "building" in the Tandridge local plan and the NPPF at paragraph 89 to include "buildings" and should have concluded that as a matter of law the policy meant that a proposed new building could only be compared with a single existing building. Mr Stemp contended that by adopting the approach he did, the inspector effectively adopted the "no greater impact" approach criticised by Carnwath LJ, as he then was, in the Heath and Hampstead case; and
- b. The inspector reached an irrational conclusion in applying the "not materially larger" policy in reaching a conclusion to that effect, notwithstanding a 22 per cent decrease in the footprint of the proposed development over the existing buildings, a 78 per cent increase by volume over the existing buildings, and a 138 per cent increase by volume over the existing dwelling house.

33. Miss Tafur for the Secretary of State, with the support of Mr Syrett, resisted the challenge on the basis that the inspector correctly construed and applied Green Belt policy. On the first ground, she pointed in particular to the Green Belt context of the preservation of openness and that depending on the circumstances, this fundamental objective may be met, in some cases possibly better met, by allowing the replacement of a group of buildings by a single building. In the case of the second ground, she relied upon the court's general reluctance to interfere with planning judgments on the facts noting that there was nothing on the facts of this case which justified interference.

34. Discussion

35. I will not repeat the well-established principles of law which apply to the consideration of decision letters and whether they reveal an error of law; see for example Seddon Properties v Secretary of State for the Environment [1981] 42 P&CR 26, Clarke Homes Ltd v Secretary of State for the Environment [1993] 66 P&CR 263 and Lindblom J's more recent distillation of the applicable principles in Bloor Homes East Midlands Ltd v Secretary of State for Communities & Local Government [2014] EWHC 754 (Admin) at [19]. The interpretation of policy is a matter for the court, as noted by Richards LJ in Timmins, but the application of policy properly understood to the facts remains a matter for the judgment of the decision maker, subject to the court's supervision on Wednesbury grounds: Tesco Stores Ltd v Dundee City Council [2012] PTSR 983 per Lord Reed JSC, especially at [17] to [19].
36. Here the apparently simple question is whether "building" should be understood as meaning only a single building and excluding any group of two or more buildings. I agree that this term, and its role as an exception to the general principle that new buildings are inappropriate development in the Green Belt, should be considered in its context of the NPPF as a whole and in the context of the Green Belt policies in particular: see Richards LJ in Timmins above at [24]. Paragraphs 79 and 80 of the NPPF set out the long-standing purposes of the Green Belt:
- i. "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 characters of Green Belts are their openness and their permanence.
 - ii. 80. Green Belt serves five purposes:
37. To check the unrestricted sprawl of large built up areas;
38. To prevent neighbouring towns merging into one another;
39. To assist in safeguarding the countryside from encroachment;
40. To preserve the setting and special character of historic towns; and.

41. To assist in urban regeneration, by encouraging the recycling of derelict and other urban land."
42. Mr Stemp submits that the approach to the fourth exception in paragraph 89 should focus precisely on the language used, namely the use of the singular "a building", which contrasts with the various uses of "building" or "buildings" elsewhere in paragraph 89. He accepted that the context of the NPPF has changed since PPG2, at least to the extent that the reference to "dwelling" in the former paragraph 3.6 of PPG2 has been replaced by "building". To that extent it is wider than the former policy, which only applied to dwellings. He also relied on the fact that there is no reference to making any judgment under the fourth exception by reference to the effect on the openness of the Green Belt, which he contrasts with the second and sixth exceptions, which do refer to it in terms.
43. Mr Stemp relied on Timmins and the rejection there of the unsuccessful attempt to imply a category of appropriate development of material changes of use which had been present in PPG2 but was omitted from the NPPF. He relied in particular on Richards LJ's judgment at [24] (quoted above) and at [31]:
- i. "31. ... The drafting of the NPPF could have been clearer but it seems to me that paragraphs 89 and 90 are properly to be read as closed lists. Paragraph 89 states the general rule that the construction of new buildings is inappropriate development and sets out the only exceptions to that general rule. Paragraph 90 sets out other forms of development (mineral extraction, engineering operations, etc) that are appropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. It is not stated expressly but is implicit that other forms of development apart from those listed in paragraph 90 are inappropriate. I do not think that the NPPF gives any scope to local planning authorities to treat development as appropriate if it does not fall within paragraph 89 or paragraph 90. In particular, there is no general test that development is appropriate provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land within the Green Belt. Had such a general test been intended, in my view it would have been spelled out in express terms and would also have affected the way in which the specific exceptions were expressed."
44. I also note that Richards LJ added at [33] and [34] that:

- i. "... even if it was unintentional, there is no proper basis for reading the provision into the NPPF. If there is a material omission, the right course is for the Secretary of State to amend the policy, not for the court to adopt a strained interpretation of the policy.
- ii. 34. Nor do I accept that this interpretation of the NPPF leads to absurdity or to such anomalous consequences as to compel a different interpretation. Even if my preferred interpretation produces some odd results, that is not a sufficient reason for reading into the NPPF a general provision which is conspicuously absent from it, to the effect that any material change of use (or, on a more limited basis, any material change of use to use for sport or recreation, or to use as a cemetery) is appropriate development provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land in the Green Belt."

45. However, while noting the change in language from PPG2, the exception under consideration here is still found in the NPPF, and all parties urged me to adopt the same approach in respect of the "not materially larger" test as was endorsed in the Heath and Hampstead case with regard to paragraph 3.6 of PPG2.

46. I agree that this is the appropriate approach, because it appears to me that the exceptions, though modified, generally replicate those in PPG2 and more importantly the underlying purpose of this exception does not appear to me to have changed. This is not a case like Timmins where the court is being asked to imply a category of appropriate development omitted from the NPPF, but concerns the interpretation of a category of appropriate development which has been included, and is broadly similar to its predecessor. Paragraph 3.6 of PPG2 had stated:

- i. "3.6. 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."

47. Although there clearly have been drafting changes between the exception as found in PPG2 and that now found in paragraph 89 of the NPPF, and there is no longer reference

to development plans, apart from the change from "dwelling" to "building", the general tenor and language of the exception remains the same. Therefore the question is not in my judgment whether the inspector introduced a new category of appropriate development which would not have been permissible, but simply what is meant by the fourth exception, which he purported to apply.

48. Mr Stemp's linguistic analysis will only take the interpretation of the exception so far, since it is also necessary to examine the underlying purpose of the exception, as made clear by Richards LJ in Timmins. This is, as the Secretary of State submits, to recognise that a replacement may be made because of the existence of buildings in the Green Belt which already have some effect on the openness on the Green Belt. The reason for the "not materially larger" test is to confine the extent to which the replacement may differ in scale from that which it replaces.

49. As Buxton LJ pointed out in Petter & Harris v Secretary of State for Environment [2000] 79 P&CR 214 at pp. 223-4 in the context of policy relating to agricultural dwellings in the form of PPG7, it is necessary not to overlook the purpose and objective of policy that is being applied, and to consider that purpose when applying the policy to the individual facts of the case. In that particular case, the inspector was criticised for not having considered the purpose and objective of the policy when applying the particular policy wording under consideration.

50. In the case of the "not materially larger" test, Carnwath LJ stated in Heath and Hampstead at [37]:

- i. "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 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 ..."

51. In my judgment, the explicit reference to openness in the second and sixth exceptions in paragraph 89 is not a contraindication to its being the underlying purpose of the fourth exception, but merely that in the cases of the second and sixth exceptions, the exceptions are not dealing with the extension, alteration or replacement of existing buildings which provide the baseline for testing their acceptability and the acceptability of proposals, but with proposals without such baselines where it is necessary to consider their effect on openness. If anything, the explicit reference in those cases underlines the fact that it is implicit in exceptions 3 and 4. The fifth of the exceptions allows for provision to be made in local plans where doubtless consideration will be given to the issue of openness the policies are set. The first exception is simply dealing with agricultural and forestry operations which are doubtless considered consistent with the openness of the Green Belt.
52. In Heath and Hampstead, Carnwath LJ was concerned in the context of metropolitan open land with the "not materially larger" test as I have mentioned; see his judgment at [6] to [12]. As I have mentioned, although that context has changed to some degree, it remains generally as found in the context of PPG2 as referred to by Carnwath LJ at [33] to [37] of his judgment. In my judgment, the exceptions to the general inappropriateness of new building in the Green Belt are generally expressed restrictively in order to limit the impact on openness, as in the case of the conclusion reached in Heath and Hampstead on the question of "not materially larger". In reaching that conclusion, Carnwath LJ, as had Sullivan J at first instance, referred with approval to the judgment of Christopher Lockhart-Mummery QC sitting as a Deputy High Court Judge in Surrey Homes Limited v Secretary of State for Environment unreported [2001] JPL 379 (note).
53. Since the fundamental aim is to preserve openness, the question then arises as to whether that suggests an answer to the question of whether "building" should be read in the singular or could include the plural. I do not regard that fundamental aim, or any of the other purposes of the Green Belt, as leading to the conclusion that only one building may be taken into account. Depending on the circumstances, it may be that there are benefits

to the Green Belt and its openness from the replacement of a cluster of buildings rather than merely a single building. In my judgment, provided the inspector considers the relationship of the buildings to each other, and to the issue of openness, and does not simply undertake an arithmetical exercise, regardless of the relationship of the buildings to themselves and to the openness of the Green Belt, there is no reason in principle why the objectives of Green Belt policy cannot be met by the application of the exception to a group of buildings as opposed to a single building.

54. To take an extreme example, a single building may comprise of a series of linked individual blocks, all of which impact on the Green Belt. It is difficult to see why in terms of impact on openness it should fall to be considered under the council's approach to the exception, whereas if those blocks were all separate, though only by a small distance, they would not so qualify. Similarly, buildings of specific footprint and size may not differ greatly in their impact on openness than a cluster of smaller buildings of similar total scale. The issue appears to me to be a typical one of planning judgment having regard to the facts of the application.
55. Miss Tafur for the Secretary of State, supported by Mr Syrett, submits that it is consistent with the underlying aim of preserving openness to construe "building" as the inspector did, that the issue was a question of fact and degree, and the application of the "not materially larger" test should secure an outcome which is consistent with that purpose. She submitted that if, as Mr Stemp suggested, the exception were applied to each building individually, even though they were located within a group, rather than making an overall judgment on "not materially larger" by reference to a single replacement building, it could result in a greater increase in floor space and volume than if multiple buildings were replaced by a single building. This was the case, as Miss Tafur and Mr Syrett explained, with the most recent grant of planning permission for the site by the Council which considered each of the buildings separately.
56. I do not determine this issue on the basis of that example, however, but on the basis of the underlying policy. That is to allow a replacement for buildings which are constrained in their size in order to prevent greater impact on Green Belt openness. That is why the "not

materially larger" test is a test based on size, since the question of the effect on openness, at least in the terms of appropriate development, is determined by the application of that policy which confines replacement buildings to those not materially larger than the originals. As the Court found in Heath and Hampstead, acceptability is not to be determined by applying a general impact test to the replacement.

57. It is also significant that Mr Stemp was unable to provide any reason why, if the replacement of one building resulted in a particular size of new building, there would be any lesser consistency with the preservation its openness if three related buildings of similar total size were replaced by a similar replacement building. Indeed, he did not articulate, other than by means of his linguistic analysis, why a result which was neutral in terms of impact on the openness of the Green Belt should lead to a different conclusion depending on the use of singular or plural. In any event, an unduly precise linguistic analysis may not lead to the correct conclusion in construing planning policy which is generally not approached as if it had been drafted by Parliamentary Counsel. See Lord Reed in Tesco v. Dundee, at [19].

58. In my judgment, therefore, the question of whether more than one building may be taken into account, as in the case of the issue of comparative size under the "not materially larger" test, is to be determined on the facts by reference to the objectives of Green Belt policy. As the Deputy Judge held in the Surrey Homes case, even the issue of "not materially larger" does not always depend simply on a floor space comparison but must also be judged by reference to other factors which might affect openness:

- i. "23 ... In most cases floor space will undoubtedly be the starting point, if indeed it is not the most important criterion. But I entertain no doubt that the concept of whether a dwelling is 'materially larger' can be assessed by reference to matters such as bulk, height, mass and prominence. These are all matters going to the openness of the Green Belt. They are plainly all material considerations relevant to deciding on the meaning of the term in the context in which it arises, namely Green Belt policy.
- ii. 24. Indeed, were it otherwise, absurd results could arise. One could have equivalent or possibly even reduced floor space, but disposed within a tower-like structure, having far more impact on

the Green Belt. It would be a strange result, in my judgment, if an Inspector were debarred from concluding that the proposed structure harmed openness and was inappropriate development."

59. Here the inspector considered the relationship of the group of buildings in DL 9 by reference to their function, their dispersal and the issue of openness:

- i. "... there is no reason why the principle of redevelopment should not apply to a group of buildings being replaced by one. Indeed, in my experience this approach to the redevelopment of brownfield sites in the Green Belt is not unusual. The additional buildings in question, noted above, are domestic in scale, part of the same planning unit, clearly ancillary to the residential use of the existing house and not widely dispersed around the site. Thus, I am not persuaded that, in this instance, the loss of these ancillary buildings and the dwelling, with their replacement by a single appropriately sized dwelling, would be at odds with the fundamental aim of Green Belt policy, which is to keep land permanently open."

60. It is also relevant to note that the use of the term "building" has a particular meaning in the planning context (see e.g. section 55 of the Town and Country Planning Act 1990). In Timmins at [7] and [30] Richards LJ applied the statutory definition in the 1990 Act to paragraph 89.

61. Section 336(1) of the 1990 Act defines it as including:

- i. "Any structure or erection, and any part of a building, as so defined, but does not include plant and machinery comprised in a building."

62. As a statutory term, "building" is subject to section 6C of the Interpretation Act 1978, which provides, subject to proof of a contrary intention, that:

- i. "Words in the singular include the plural and words in the plural include the singular."

63. There is nothing in the statutory context of the 1990 Act which would militate against reading "building" in the plural where appropriate. Whilst the Interpretation Act does not apply directly to the construction of policy language, the context of the 1990 Act usage and lends at least indirect support to the view that the plural may be appropriate in the context of paragraph 89 of the NPPF which uses the language of the 1990 Act.

64. In conclusion on this aspect of the challenge, I do not consider that "building" should be read as excluding more than one building, providing as a matter of planning judgment they can sensibly be considered together in comparison with what is proposed to replace them. In my judgment, the inspector, particularly at DL 9, considered the matter correctly and reached a conclusion which cannot be faulted as a matter of law.
65. On the second issue, Mr Stemp argues that the inspector reached an irrational judgment and effectively reintroduced the impact based approach criticised in Heath and Hampstead. I disagree. The inspector considered the relative sizes of the existing buildings and the two proposals before him and reached a conclusion by comparing their physical dimensions, noting that the local plan provided no guidance as to how to approach the issue of "not materially larger", nor sought to place any limits on what might qualify as such. The inspector's reasons at DL 14 appear to me to reflect the approach of the Deputy Judge in Surrey Homes, which while starting from floor area also considered that bulk, height, mass and prominence may be relevant.
66. I do not agree with Mr Stemp's criticism of the Inspector's consideration of the use of a flat roof breaking up the bulk and massing of the building, having regard to the scale and form of the existing dwelling and to the design of the new. It does not seem to me that it is an impermissible reintroduction of the impact test criticised in Heath and Hampstead, but merely an application of the approach set out in Surrey Homes and endorsed in Heath and Hampstead. As Sullivan J had found at first instance in Heath and Hampstead [2007] 2 P&CR 19 at [44]:
- i. "44. ... the question is not whether the replacement dwelling would be more visually intrusive from the public realm, but whether it would be materially larger than the existing dwelling. That is principally a question of size, actual rather than perceived size. It is one thing to say that the perception of size may be relevant in deciding whether a measured increase in size is material, it is quite another to substitute an assessment of visual impact for a measurement of size. Although the perception of size may be relevant in marginal cases, the tail must not be allowed to wag the dog. On any basis it is impossible to avoid the conclusion that this replacement dwelling was materially larger, very much larger, than the existing house."

67. Therefore, providing the inspector properly applied the "not materially larger" test, the fact that he considered issues such as bulk, massing, scale and form does not mean that he substituted an impact test, but was merely considering the issue of materiality of the comparative scale in accordance with Surrey Homes. In my judgment, the inspector did not apply the incorrect test and proceeded consistently with authority.
68. Once the first ground dealing with the scope of the paragraph 89 exception is disposed of, all that remains in the claimant's submissions is the bald assertion that no reasonable inspector could have concluded that a structure some 78 per cent greater by volume than a group of structures, and one metre taller than the highest point of the building to be replaced, was not "materially larger" than the structure currently in situ.
69. It is relevant to recall that the problem in Heath and Hampstead was that Camden Council had accepted a building more than twice the size of the existing in terms not only of floor space but also of volume and footprint (see Carnwath LJ at [24] to [32] and [38]) and had approached the question primarily by reference to whether it was visible and caused harm to the MOL: see also Sullivan J at [44], quoted above. That is not what the inspector did here, and he applied his judgment to the physical factors indicating relative size in accordance with authority. He considered actual, not perceived, size, and this was underscored by his rejection of Appeal A as being materially larger than what it was to replace, which can be compared with the exercise undertaken in respect of Appeal B.
70. The claimant does not demonstrate that the judgment here was reached irrationally simply because of the factors mentioned of increases in volume and height, when it is clear that they were only part of the inspector's consideration of scale and went to the issue of materiality. This is ultimately a question of planning judgment and, absent compelling reasons to interfere with it, I reject the second ground of challenge.

71. Service on the second defendant

72. I have left this issue until last since it is largely academic in view of my judgment on the merits of the grounds of challenge. The claim form was issued on 2 February 2015, the last day of the six week period prescribed by section 288(3) of the 1990 Act, so could not

have been served earlier. The papers were left at the appeal site, which was a valid location for service under the CPR, although the Council might have given further attention to the fact that the second defendant had requested on several occasions that correspondence be sent via his business address (he was acting as his own agent), that they knew he was not in occupation of the site, and that the appeal form had referred to that business address. That said, there was some evidence of inconsistency in the use of addresses by the second defendant.

73. It is not disputed that the second defendant was informed of the grounds of challenge by email on the day of issue, 2 February, even if he did not receive all the papers in the proceedings until the following day, just before 10 am. The delay, if such it was, was therefore less than 24 hours.
74. Whilst section 288 requires an application to be made within six weeks of the decision under challenge, the rules for service are those set out in the Part 8 PD8A, section 22 (see Part 8APD.22.3. The rules for service allow for an extension of time, unlike the mandatory statutory requirement to issue proceedings within 6 weeks of the decision. Even if there had been a failure to serve in time, it was clear the prejudice complained of by the second defendant results from the making of the challenge itself rather than the delay of a day in effecting service. The same issues with respect to prejudice would have arisen had the second defendant been served on 2 February.
75. Until the amendments to section 288 are brought into force, which will require permission to be obtained for bringing a section 288 challenge, a section 288 claim may still be brought as of right by a person aggrieved, and this will have an effect of putting at risk the grant of a planning permission, and thus deterring implementation, even if the claim is ultimately dismissed.
76. Nonetheless, if service had been late, it only caused a very minor delay and, since no prejudice arose from the delay itself, I would have extended time for service, having regard to the overriding objective. However, since I reject the grounds of challenge that issue does not arise.

77. In conclusion, the claim is dismissed.

78. THE DEPUTY JUDGE: Thank you.

79. MS TAFUR: I'm grateful, my Lord. In those circumstances, I do have an application for costs. I wonder if your Lordship has seen a schedule.

80. THE DEPUTY JUDGE: Yes, I have. I have had schedules from both of you.

81. MS TAFUR: Thank.

82. THE DEPUTY JUDGE: That is both the represented parties. Yes. And you're seeking £8,011?

83. MS TAFUR: That's right, my Lord.

84. THE DEPUTY JUDGE: Is that resisted, Mr Stemp?

85. MR STEMPE: Not at all, my Lord.

86. THE DEPUTY JUDGE: No. In fact it's cheaper than your costs.

87. MR STEMPE: It is, yes.

88. THE DEPUTY JUDGE: Very well. I shall order the claimant to pay the first defendant's costs summarily assessed in the sum of £8,011. Are there any other matters?

89. MR STEMPE: No thank you, my Lord.

90. THE DEPUTY JUDGE: No. Thank you all very much.

EP3



Neutral Citation Number: [2022] EWHC 2145 (Admin)

Case No: CO/820/2022

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT
(Sitting in Birmingham)

Civil Justice Centre
33 Bull Street, Birmingham B4 6DS

Date: 12th August 2022

Before :

MR JUSTICE EYRE

Between :

WARWICK DISTRICT COUNCIL
- and -
SECRETARY OF STATE FOR LEVELLING UP,
HOUSING AND COMMUNITIES
- and -
MR JULES STORER
MRS ANN LOWE

Claimant

First
Defendant

Second
Defendants

Ben Fullbrook (instructed by **Warwickshire Legal Services**) for the **Claimant**
Victoria Hutton (instructed by **Government Legal Department**) for the **First Defendant**
The **Second Defendants** did not appear other than by a noting observer

Hearing date: 19th July 2022

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HON. MR JUSTICE EYRE

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be **10:30am** on **12th August 2022**

Mr Justice Eyre:

Introduction.

1. This case arises out of the Claimant council's refusal of the Second Defendants' application for planning permission for the demolition of an existing outbuilding and its replacement by a garden room/home office. Both the existing structure and the proposed replacement are physically detached from the relevant dwelling house. The Second Defendants' property is in the Green Belt and the Claimant's refusal of permission was on the basis that the proposed structure did not fall within any of the exceptions to the principle that the construction of new buildings in the Green Belt is inappropriate. The Second Defendants appealed that decision and the appeal was allowed by the First Defendant's inspector ("the Inspector") on the basis that the new building was within the exception identified at paragraph [149(c)] of the National Planning Policy Framework namely "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".
2. The Claimant applies with the permission of Lang J for planning statutory review of the Inspector's decision pursuant to section 288 of the Town & Country Planning Act 1990. The Claimant had originally sought to proceed by way of judicial review rather than statutory review but Lang J permitted the reconstitution of the claim by way of amendment. The case turns on the proper interpretation of the [149(c)] exception. The Claimant says that the interpretation of that provision is a matter of law and that on its proper interpretation in order for a new building to be an extension of an existing building the former must be physically attached to the latter. As a consequence it is said that the Inspector erred in law in concluding that the exception applied. The First Defendant says that this is not a case where it is appropriate for the court to express a view on the meaning of the term "the extension ... of a building". Alternatively he says that the proper interpretation of that term does not require the extension to be physically attached to the building of which it is an extension.

The Factual and Procedural Background and the Applicable Policies.

3. The Second Defendant's property is in Vicarage Road in Stoneleigh. The village of Stoneleigh is "washed over" by the West Midlands Green Belt. The Second Defendant's property consists of a Grade II timber-framed cottage ("the Cottage"), a garden, a garage, and a currently disused timber structure. That structure has a footprint of 10.2m² and appears to have been originally used as the garage for the property but that use has been superseded by a more recently-built garage. This timber structure is in the garden of the Cottage but is approximately 20m from the Cottage itself. The Second Defendants sought permission to demolish the timber structure and to replace it with a garden room/home office with a footprint of 16m².
4. Policy DS18 of the Claimant's Local Plan addressed the Green Belt and provided that the Claimant would "apply national planning policy to proposals within the green belt".
5. The relevant national planning policy is set out in the NPPF. The current version of the Framework was introduced in July 2021 which was between the date of the Claimant's refusal of permission and the Inspector's determination of the appeal. Although there was a change in the paragraph numbering the text of the relevant

passages was unaltered and I will use the current paragraph numbering throughout. The relevant provisions are:

“137. 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.

138. Green Belt serves five purposes:

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

...

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

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

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

- a) buildings for agriculture and forestry;
- b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
- c) 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;
- d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- e) limited infilling in villages;
- f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and
- g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
 - not have a greater impact on the openness of the Green Belt than the existing development; or

– not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.”

6. Section 336 of the 1990 Act defines “building” as including “any structure or erection, and any part of a building, as so defined but does not include plant or machinery comprised in a building”.
7. On 30th April 2021 the Claimant refused the application for planning permission on the basis that the proposed structure constituted inappropriate development in the Green Belt and that there were no very special circumstances outweighing the harm which inappropriate development would by definition cause. The Officers’ Report concluded that none of the exceptions in NPPF [149] applied and the Claimant’s decision to refuse permission was on that basis. Neither the report nor the decision addressed [149(c)] directly but instead focused on the possible application of [149(d)] and concluded that it did not apply because the proposed garden room/home office would be materially larger than the existing disused garage which was to be replaced.
8. The Second Defendants appealed the Claimant’s refusal of planning permission. They made four points in support of the appeal. First, it was said that the proposed new building was within the exception at [149(d)] because the addition of 6m² did not cause it to be materially larger than the building being replaced. Next, the Second Defendants contended that the proposed garden room/home office was a “normal domestic adjunct” to the Cottage and as such was an extension within the scope of [149(c)]. In that regard they invoked the decision of Malcolm Spence QC sitting as a deputy judge in the case of *Sevenoaks DC v Secretary of State for the Environment & another* [1997] EWHC 1012 (Admin) (“*Sevenoaks*”) which I will consider below. Then, the Second Defendants invoked [149(g)] arguing that the proposed structure amounted to limited infilling or the partial redevelopment of a previously developed site. Finally, they pointed to a number of matters which they said combined to constitute very special circumstances such as to warrant the grant of permission even if none of the exceptions applied.
9. By her decision of 20th January 2022 the Inspector allowed the appeal in the light of the assessment contained in the Appeal Planning Officer’s report. In doing so she agreed with the Claimant that the exception at [149(d)] did not apply. In that regard she concluded that the additional 6m² would amount to a “significant enlargement” of the existing structure and that the proposed building would also be “visibly larger in scale and bulk than the existing building”. However, she did conclude that the proposed building would be an extension within the meaning of [149(c)] setting out the reasoning in that regard as follows:

“9. Framework paragraph 149 (c) permits 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 existing building was the original garage to the house and as such could reasonably be considered to have been a normal domestic adjunct to it. Likewise, the proposed outbuilding would be used for purposes clearly related to the occupation of the dwelling. It would be in the same location on the site, relatively close to the dwelling and within a group of buildings closely associated with it. Therefore, I am satisfied that the proposed out building can be considered as an extension to the dwelling.

10. The evidence before me is that there have been various extensions to the original building and a detached garage. Planning permission has recently been granted to replace the rear single storey extension with something similar in scale and the garage is relatively small in relation to the dwelling. The proposed outbuilding would be located behind this building and would be much smaller in scale compared with the host dwelling. Given the modest scale of these existing additions and the limited additional footprint from the proposed outbuilding, I find that the proposal, in combination with previous additions, would not result in disproportionate additions to the host dwelling.”

10. In the section 288 review the Claimant raises a single ground of challenge namely that the Inspector’s interpretation of [149(c)] was erroneous in that it was not open to her to conclude that a structure which was not physically attached to another building could be an extension of that other building.

The Issues.

11. The Claimant and the First Defendant were agreed that the issue between them was whether in order to be an extension for the purposes of [149(c)] the structure said to be an extension must always be physically attached to the building of which it is purportedly an extension. In the course of counsel’s submissions it became apparent that there were really two issues between the parties. The first was whether the court should embark on the exercise of defining “the extension ... of a building” for these purposes. The First Defendant said that I should not engage in that exercise but should instead regard the meaning of that provision as a matter for the judgement of planning decision makers to be applied on a case by case basis. The second was as to the meaning of the exception if I did engage in determining that meaning. In that regard the Claimant contended that a purported extension had necessarily to be attached to the building of which it was an extension whereas the First Defendant said that physical attachment was not necessary and that a building could be an extension of another building even though the two were not physically attached to each other.
12. The Second Defendants did not attend the hearing before me (other than by way of an observer taking notes). At the time when the Claimant had applied for judicial review the Second Defendants had responded pointing out the inappropriateness of that procedure; saying that they did not propose filing an Acknowledgement of Service; and contending that the Claimant’s challenge to the Inspector’s decision was “oppressive and disproportionate”. However, their planning consultant had responded in rather more detail to the Claimant’s pre-action protocol letter. In that response the *Sevenoaks* decision was invoked again and reference was made to a number of instances in which planning inspectors had given planning permission for freestanding buildings in the Green Belt on the footing that they were extensions to existing buildings. It was said that these illustrated “the well-established principle that detached outbuildings can be treated as extensions to dwellings (for the purposes of Green Belt planning policy) in accordance with the *Sevenoaks* approach”.
13. In that response it was also said on behalf of the Second Defendants that although they had made reference to [149(c)] and to the *Sevenoaks* approach in their planning appeal the Claimant had not made any submissions in that regard and that the point was now being raised for the first time. The First Defendant expanded on that point in his Detailed Grounds of Defence. There the First Defendant said that although the

Claimant had responded to the Second Defendants' appeal documentation it had not in its response addressed the argument based on *Sevenoaks*. The First Defendant said that the fact that the Claimant was now advancing an argument which it had not previously advanced was to be seen "as an indication of the 'unrealistic and unpersuasive nature'" of the Claimant's legal challenge (adopting the language used by Holgate J in *R (Gosea) v Eastleigh BC* [2022] EWHC 1221 (Admin) at [129]) and referring also to the judgment of Coulson LJ in *R (Gathercole) v Suffolk CC* [2020] EWCA Civ 1179 at [56] – [57]). I do not find this criticism persuasive. Holgate J and Coulson LJ were considering instances where at a late stage environmental assessments had been said to be inadequate as a matter of law in circumstances where the alleged inadequacy had not been raised previously. In such circumstances it is readily understandable that the failure to raise the point at an earlier stage was seen as indicating that the party raising the point did not in truth regard the statement as inadequate. The position is different here where the Claimant's stance throughout has been that none of the [149] exceptions apply and where the issue is one of pure interpretation of the terms of the NPPF. The arguments now advanced are to be considered on their merits and such force as the Claimant's contentions might otherwise have is not reduced by the fact that they were not asserted in the same terms previously.

Is the Meaning of "the Extension ... of a Building" a Matter of Definition for the Court or of Judgement for the Decision Maker?

14. The First Defendant contended that there was no one objective meaning which would be applicable in all circumstances to the term "the extension ... of a building". Miss Hutton submitted that as a consequence the court should not engage in seeking to define that term but should instead regard it as a matter for the judgement of planning decision makers on a case by case basis. It was, Miss Hutton said, not appropriate for the court to set out one part of a definition of that term but to leave other elements at large.
15. In support of that argument Miss Hutton referred me to *Tesco Stores Ltd v Dundee CC* [2012] UKSC 13, [2012] PTSR 983 where referring to policy statements in development plans and similar documents Lord Reed said at [19]:

"19 That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse: *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759,780, per Lord Hoffmann. Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean"
16. Miss Hutton relied on the middle portion of that passage and said that the application of the language of [149(c)] to the facts of any given case was a matter of judgement for the planning decision maker. She sought to contrast the language of [149(c)] with that which Lieven J had considered in *Wiltshire Council v SSHCLG* [2020] EWHC

954 (Admin), [2020] PTSR 1409 where the issue of the meaning of the words in question was “capable of one objective answer regardless of the facts of any particular case” (see at [26]).

17. I do not accept this contention. To adopt the course proposed by the First Defendant would amount to prejudging the core question before me.
18. The approach to be taken to the interpretation of planning policy documents and the distinction between the interpretation of policy and the application of the policy when properly interpreted were explained in *Tesco Stores Ltd v Dundee CC* and in *Hopkins Homes Ltd v SSCLG* [2017] UKSC 37, [2017] 1 WLR 1865. I adopt the summary of the principles to be derived from those authorities which Dove J set out in the following terms in *Canterbury CC v SSCLG & another* [2018] EWHC 1611 (Admin), [2019] PTSR 81 at [23]:

“In my view in the light of the authorities the following principles emerge as to how questions of interpretation of planning policy of the kind which arise in this case are to be resolved:

- i. The question of the interpretation of the planning policy is a question of law for the court, and it is solely a question of interpretation of the terms of the policy. Questions of the value or weight which is to be attached to that policy for instance in resolving the question of whether or not development is in accordance with the Development Plan for the purpose of section 38(6) of the 2004 Act are matters of judgment for the decision-maker.
- ii. The task of interpretation of the meaning of the planning policy should not be undertaken as if the planning policy were a statute or a contract. The approach has to recognise that planning policies will contain broad statements of policy which may, superficially, conflict and require to be balanced in ultimately reaching a decision (see *Tesco Stores* at paragraph 19 and *Hopkins Homes* at paragraph 25) Planning policies are designed to shape practical decision-taking, and should be interpreted with that practical purpose clearly in mind. It should also be taken into account in that connection that they have to be applied and understood by planning professionals and the public for whose benefit they exist, and that they are primarily addressed to that audience.
- iii. For the purposes of interpreting the meaning of the policy it is necessary for the policy to be read in context (see *Tesco Stores* at paragraphs 18 and 21). The context of the policy will include its subject matter and also the planning objectives which it seeks to achieve and serve. The context will also be comprised by the wider policy framework within which the policy sits and to which it relates. This framework will include, for instance, the overarching strategy within which the policy sits.
- iv. As set out above, policies will very often call for the exercise of judgment in considering how they apply in the particular factual circumstances of the decision to be taken (see *Tesco Stores* at paragraphs 19 and 21). It is of vital importance to distinguish between the interpretation of policy (which requires judicial

analysis of the meaning of the words comprised in the policy) and the application of the policy which requires an exercise of judgment within the factual context of the decision by the decision-taker (see *Hopkins Homes* at paragraph 26)”.

19. In *Wiltshire Council v SSHCLG* Lieven J was addressing the meaning of the phrase “subdivision of an existing residential dwelling” for the purposes of the version of the NPPF then in force. The issue before Lieven J was whether for those purposes a dwelling was limited to a single building or could extend to a “wider residential unit that can include secondary buildings within the same plot”. It was in that context that the judge concluded that the issue was capable of only one objective answer in all circumstances and that “subdivision of a dwelling implies a single building” (see at [27]). It is of note that Lieven J was not providing a definition which would remove the need for judgement in all circumstances. Similarly she was not purporting to say what would or would not amount to “subdivision of an existing residential dwelling” in all circumstances. Rather she was setting the parameters of the legitimate interpretation of that expression and saying that there were particular circumstances to which it could not extend outside (to apply the language of Lord Reed) “the world of Humpty Dumpty”.
20. If the Claimant is right to say that for the purposes of [149(c)] an extension must be attached to the building of which it is an extension the exercise I am being asked to undertake would not amount to setting out one part of a definition and leaving the other elements at large. Instead (as was the case in *Wiltshire Council v SSHCLG*) it would be the entirely legitimate exercise of identifying some situations to which the term could not apply on the basis that in all circumstances the question of whether the extension and the building being extended had to be physically attached was capable of only one objective answer. A conclusion that the Claimant’s interpretation was correct would not determine whether a particular attached structure was or was not an extension for these purposes. That would remain a matter of judgement. It would, however, identify structures which were not capable as a matter of law of being extensions.
21. It follows that the exercise is one in which I should engage and where I have to consider whether the meaning of [149(c)] is limited in the way asserted.

The Sevenoaks Decision and its Relevance to the Interpretation of NPPF [149(c)].

22. The Second Defendants had relied on the *Sevenoaks* decision in support of their appeal. In their response to the Claimant’s pre-action correspondence they again made reference to the decision. They also cited a number of instances where planning inspectors appear to have applied the approach derived from that decision and have permitted the construction of detached outbuildings in the Green Belt on the basis that they were extensions to existing dwellings.
23. The Claimant says that part of the reason why the Inspector fell into error was that she also had regard to the *Sevenoaks* approach. That approach was applicable to the former policy contained in PPG2 which addressed extensions to dwellings. It is not, the Claimant says, applicable to the current policy as set out in the NPPF and which is concerned with the extension of buildings.

24. Although Miss Hutton emphasised that the invocation of the *Sevenoaks* approach formed only one of the First Defendant's arguments she nonetheless contended that the decision was relevant and could not be distinguished from the present case. She submitted that the use of the word "building" in the NPPF rather than "dwelling" as had been used in PPG2 was "neither here nor there" and that focus in *Sevenoaks* as before me was on the proper meaning of "extension".
25. *Sevenoaks* concerned a dwelling house in the Green Belt. Before me there was some question as to whether the proposed new car shelter which was the subject matter of the relevant application there was to be physically attached to an existing structure. It was, however, clear that the deputy judge proceeded on the footing that it was physically detached from the dwelling house in question.
26. The relevant planning policy was set out in PPG2. This provided that "the construction of new buildings inside a Green Belt is inappropriate unless for the following purposes". There then followed a list of five matters the relevant one of which was:
- "limited extension, alteration or replacement of existing dwellings (subject to paragraph 3.6 below)
- 3.6 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"
27. The local planning authority had refused planning permission but this had been granted on appeal. The inspector had concluded that the proposed car shelter was within the exception and so not inappropriate because it was a "normal domestic adjunct" to the dwelling house even though it was not physically attached to it. The claimant council brought a statutory review contending that the inspector's decision was incorrect. The council's case was, at least in part, based on the fact that the proposed car shelter was physically detached from the dwelling house.
28. The deputy judge rejected that argument. He said, at [26]:
- "In my judgment, the Inspector was fully entitled to hold that the garage was part of the 'dwelling', in the sense that it was a normal domestic adjunct, and thus to treat the appeal proposal as an extension of it. The words 'extension... of existing dwellings' are certainly capable, in my judgment, of having that meaning, and he was entitled to form his opinion in determining this matter in that way. The garage is an important domestic adjunct, just as the coal shed was in earlier days, and for example, an outside playroom often is. The mere fact that any of these uses is physically separated from the main house does not prevent them from being part of the dwelling. It is a matter of fact and degree in every case and, for example, if the garage had been at the bottom of the garden, the Inspector would doubtless have taken a different view."
29. I can derive only very limited assistance from the *Sevenoaks* decision and it certainly does not bear the weight which the Second Defendants (and to a lesser extent the First Defendant) sought to place on it.

30. As Mr Fullbrook pointed out considerable caution is needed in applying to the NPPF decisions considering the different wording of PPG2: see *Turner v SSCLG* [2016] EWCA Civ 466, [2017] 2 P& C.R. 1 at [17] – [21] per Sales LJ.
31. In addition to that general need for caution it is not safe to assume a simple “read across” from “dwelling” to “building”. It cannot be assumed that development which would be an extension of a dwelling could necessarily be regarded as an extension of a building. Thus a dwelling can readily be regarded as including a number of structures physically separated from each other each of which would be a separate building for the purposes of the 1990 Act (and so for the purposes of the NPPF) but which would nonetheless form part of the same dwelling and be “normal domestic adjuncts” of the relevant dwelling house. A garage would be a prime instance of this as would be a coal shed or an ice house to name some of the somewhat dated examples mentioned in argument before me. That view of a dwelling as capable of including a number of physically separated buildings is not precluded by Lieven J’s decision in *Wiltshire Council v SSHCLG*. There the judge was not purporting to define “dwelling” for all purposes nor even for the entirety of the NPPF. Instead she was addressing the meaning of “subdivision of an existing residential dwelling” for the purpose of a particular part of the NPPF.
32. It would, therefore, be possible to conclude that a particular structure was an extension of a dwelling but not an extension of an identified building. [149(c)] of the NPPF is concerned with “the extension ... of a building” not with the extension of a dwelling. As noted above the definition of a building is a wide one and covers a range of structures. In her skeleton argument Miss Hutton referred to stadia, warehouses, factories, art installations, and a range of other structures. Many of those would or could have adjuncts or ancillary structures but those could not readily be described as “normal domestic adjuncts”.
33. The decision in *Sevenoaks* is, accordingly, distinguishable from the circumstances which I have to consider. In that case the deputy judge was considering different wording from that of [149(c)] in a similar but different context and where there cannot simply be a transposition from “dwelling” to “building”. In those circumstances Mr Spence’s reasoning provides little assistance with the task I have to undertake.
34. There is, however, force in the First Defendant’s argument that the Claimant’s interpretation of [149(c)] would mean that the introduction of the NPPF had the effect of restricting the scope for the extension of dwellings in the Green Belt from that which had previously applied. It would mean that the scope for the erection of normal domestic adjuncts to dwelling houses in the Green Belt had been reduced because those would no longer be seen as permissible extensions if physically detached from the relevant dwelling house. That restriction could not, in all cases, be overcome through the use of permitted development rights: for example, those rights do not apply to listed buildings such as the Cottage and so would not come into play here. It follows that if the Claimant’s interpretation is correct the structure proposed by the Second Defendants would not have been inappropriate development for the purposes of PPG2 but would be for the purposes of the NPPF. That restrictive effect would, the First Defendant says, be contrary to the apparent purpose of the relevant part of the NPPF. In that regard the First Defendant says that the use of the term “building” in this portion of the NPPF should be seen as widening the scope for development in the Green Belt subject to the protections in the policy and as identifying a wider range of

structures that can safely be extended without causing harm to the Green Belt. The First Defendant then says that it would be inconsistent with that change for a narrow reading of extension to be adopted so as to reduce the scope for the extension of dwelling houses. This argument is far from determinative of the proper interpretation of [149(c)] but it is a relevant and weighty consideration.

35. Mr Fullbrook invited me to conclude that decision in *Sevenoaks* was in any event bad law and that the deputy judge had erred in concluding that the proposed structure was an extension of the relevant dwelling. I can deal with that argument very briefly. The first point is that I am concerned with the proper interpretation of part of the NPPF and it is neither necessary nor appropriate for me to purport to determine definitively the correct interpretation of the now superseded PPG2. Second, as I have explained at [31], the concepts of the extension of a dwelling and of the extension of a building are not necessarily the same and Mr Spence's interpretation of the former is understandable and persuasive. Finally, although I have derived little assistance in my interpretation of [149(c)] from the sundry decisions of inspectors to which reference was made those do show the *Sevenoaks* approach being applied in practice. It follows that the approach being taken in practice and the position as it was in the light of authority at the time of the introduction of the NPPF was that the extension of dwellings in the Green Belt was governed by the decision in *Sevenoaks*. That, in turn, suffices to form the basis for the First Defendant's argument that the Claimant's interpretation of [149(c)] would mean that the introduction of that provision effected a restriction on the scope for installing normal domestic adjuncts to dwellings in the Green Belt.

The Meaning of "the Extension ... of a Building".

36. As already noted the approach to be taken to the interpretation of planning policy was summarised by Dove J in the passage I have quoted at [18] above. In short the language used is to be read in the context of the subject matter; the policy framework; and the planning objectives of the policy in question and having regard to the broad nature of statements of planning policy.
37. Mr Fullbrook advanced a number of matters as supporting the Claimant's interpretation of [149(c)].
38. He focused, first, on the wording of that provision. He emphasised that it referred to "the extension ... of a building" and that the proviso to it was concerned with the "size of the original building". Alongside that point Mr Fullbrook noted that the reference was to "the extension or alteration" of a building and said that the reference to alteration indicated that the paragraph was concerned with the physical effect on a single building. He contrasted the extension or alteration of a building with the erection of an outbuilding saying that such an erection was not an extension of the existing building but the creation of a separate building.
39. Mr Fullbrook noted the change from the language of PPG2 and the change from a reference to a "dwelling" to one to a "building" saying that this was significant and required attention to be focused on the physical structures.
40. In addition Mr Fullbrook said that the emphasis on the building as a single structure and that interpretation of [149(c)] was supported by the terms of [149(d)] with its

focus on the size of the building being replaced. That reference was supplemented by the argument that the First Defendant's interpretation of [149(c)] would enable the restrictions contained in [149(d)] to be subverted. It would mean that, as in this case, a new structure could be erected by way of replacement of an existing building in circumstances where the requirements of [149(d)] were not met. Mr Fullbrook argued that such a result should be regarded as contrary to the intention of the policy. Instead buildings replacing existing buildings should only be permitted under [149(d)]. On this view sub-paragraphs (c) and (d) operated to provide that there could only be additional building if there was an extension physically attached to an existing building or the replacement of such an existing building subject to meeting the proviso to [149(d)]. The difficulty with this argument is that sub-paragraphs (c) and (d) are not the only parts of [149]. Mr Fullbrook's argument treated them as a comprehensive code and overlooked the other sub-paragraphs which would permit the construction of new buildings which did not satisfy the requirements of either (c) or (d).

41. Mr Fullbrook placed considerable stress on what he characterised as the "everyday meaning" and the dictionary definition of "extension". He said that as a matter of normal usage "an extension of a building is a structure which is added to an existing building and is physically connected to it. A detached building is not an extension." In addition Mr Fullbrook referred to the Oxford English Dictionary definition which gave the primary meaning of the word as "a part that is added to something to enlarge or prolong it; a continuation". As an illustration of that meaning the example of "the railway's southern extension" was given and reference was also made to "a room or set of rooms added to an existing building." Although physical attachment of the extension to the object extended is not said there to be an essential part of the meaning of the word "extension" there is considerable force in Mr Fullbrook's contention that physical attachment is inherent in the examples given. However, it is to be noted that as part of the primary meaning of the word the dictionary also refers to its use as a mass noun to describe "the action or process of becoming or making something larger". Physical attachment is not necessarily inherent in that use (although normally the process will involve physical attachment) and the use in [149(c)] of the words "the extension or alteration of a building" could be read as a reference to such a process.
42. Next, Mr Fullbrook contended that because the sub-paragraphs of [149] set out exceptions to the general principle that the construction of new buildings is inappropriate in the Green Belt they should be construed narrowly. That is in order to avoid undermining that principle. At first sight this is a powerful argument and Miss Hutton accepted it albeit subject to the important qualification that the exceptions are to be seen in the context of the policy as a whole. However, a degree of care is needed as to what is meant by a narrow construction. The First Defendant's acceptance that a narrow construction was appropriate was made by reference to the decision of Green J (as he then was) in *Timmins & another v Gedling BC* [2014] EWHC 654 (Admin). It is apparent that Green J was not indicating there that an artificial approach is to be taken to the interpretation of the exceptions to the principle that the construction of new buildings in the Green Belt is inappropriate development. Instead he was at pains to stress that he was applying the normal canons of construction (see at [25] – [28]) and the absence of any special rule was indicated also by Richards LJ in the Court of Appeal's upholding of Green J's decision (see at [24] in [2015] EWCA Civ 10, [2015] PTSR 837). Green J was explaining that unless

development fell properly within one of the exceptions it was inappropriate by definition. As a consequence care was needed to consider whether particular development was within the exception. The exception was not to be expanded artificially and in particular a category of development was not to be regarded as characterised as appropriate by inference. It follows that the construction of the exceptions is to be narrow in the sense that they are not to be regarded as applying by inference or artificial extension to categories of development not properly within the language used. It is not, however, to be narrow in the sense of being artificially restrictive and excluding categories of development which are within the exception on a proper reading of that language. The construction is to be narrow but not artificial and as with statements of planning policy more generally the meaning of the exceptions is to be derived from the language used when seen in the context of the subject matter and the purpose of the policy in accord with the principles summarised by *Dove J* and set out above. Here the context and purpose are to be seen as the importance of the Green Belts and the purposes which they serve as identified in [137] and [138] of the NPPF having regard to the particular points that inappropriate development is by definition harmful to the Green Belt and that the construction of new buildings is inappropriate development unless within one or more of the exceptions.

43. Finally, Mr Fullbrook asked how the scope of [149(c)] was to be confined if the meaning of “extension” was not restricted to structures which were physically attached to the building being extended. It is right that the interpretation proposed by the Claimant would provide a clear “bright line” definition. That is far from being a conclusive argument and there was considerable force in Miss Hutton’s response that rejection of the Claimant’s interpretation would not remove all restraint on purported extensions. Instead it would be a matter of fact and degree having regard to the proximity of the new building to the existing building; to the purpose and use of the buildings; and to factors such as the size of the buildings whether the new building was or was not an extension with the result that some detached structures would be found to amount to extensions of existing buildings but that others would not.
44. There are a number of factors which support the First Defendant’s interpretation of [149(c)].
45. I have already noted the point that on the Claimant’s interpretation the replacement of PPG2 and the *Sevenoaks* approach by the NPPF will have reduced the scope for the installation of normal domestic adjuncts to dwelling houses in the Green Belt and that is a result which appears to run counter to the more expansive tenor of this part of the NPPF.
46. It is to be noted that [149] is concerned with “the construction of new buildings”. The wide definition of “building” means that the addition of a new part to an existing building will itself be a new building but such additions are clearly not the main focus of [149]. Rather the provisions of the paragraph as a whole are more naturally read as concerned with new buildings in the sense of new free-standing structures.
47. A building can readily be regarded as being an adjunct to another building even though the two are not physically connected. As Miss Hutton said, buildings can readily be considered to be extensions of other buildings even though the buildings are not physically connected. In the domestic setting it is not artificial to describe

garages or other outbuildings as being extensions of the principal dwelling house. In non-domestic settings it is similarly not artificial to see sundry ancillary structures as being ancillary to and extensions of the main building. To adopt an example advanced by Miss Hutton this would not be an artificial way of characterising freestanding entrance kiosks erected outside a sports stadium or a commercial use such as a factory or warehouse.

48. [149(c)] is to be read in the context of the NPPF as a whole and, more particularly, in the light of the purposes of the Green Belt. It is apparent from the sub-paragraphs of [149] that there are a number of instances in which the erection of a new building will not be inappropriate in the Green Belt. To read [149(c)] as permitting extensions which are physically distinct from the building being extended is not obviously harmful to the Green Belt or inconsistent with the thrust of [149] read as a whole. The requirement that the structure in question must not result in “disproportionate additions over and above the size of the original building” operates to provide protection for the purposes of the Green Belt. There is force in the First Defendant’s argument that a physically separate structure may have less impact on the openness of the Green Belt than a physically attached extension. The interpretation advanced by the Claimant could lead to artificial and arbitrary consequences not necessary for furthering the purposes of the Green Belt and arguably inconsistent with those purposes. Thus on the Claimant’s approach a building very close to but physically separate from an existing building could never be seen as a permissible extension to that building regardless of its size or purpose whereas (subject to meeting the other requirements of [149(c)]) a structure the bulk of which is further away from a building but connected to it by a covered walkway could be an extension. Putting the point rather more shortly the presence or absence of a physical connection between the original building and the new building is not conclusive as to and arguably is of minimal relevance to the degree of impact on the Green Belt. The artificiality resulting from the Claimant’s interpretation is heightened when it is remembered that there are circumstances in which it will be undesirable for a new structure to be attached to the existing building. In the current case the Cottage dates from the Seventeenth Century and has a Grade II listing. As such it does not have the benefit of permitted development rights and although permission has been given for a replacement rear extension the scope for extensions which are physically attached to the building will inevitably be limited by the need to have regard to its special character. One can readily envisage circumstances where that the installation of a detached outbuilding close to a listed dwelling in the Green Belt would be less harmful both to the purposes of the Green Belt and to the character of the listed building than an attached structure. The Claimant’s interpretation of [149(c)] would exclude the possibility of such detached structures and would preclude any extension where an attached extension was precluded by reason of the building’s listed character.
49. Mr Fullbrook accepted that the Claimant’s interpretation of [149(c)] could lead to results which might appear arbitrary or artificial. He said, however, that this should not cause a different interpretation to be adopted. Rather he said that such results were the inevitable consequence of the use of language which has a particular meaning and that the risk of such results should not cause the court to adopt a strained or artificial reading of the words of the sub-paragraph. In addition he submitted that the allegedly artificial consequences and the apparent prohibition of all detached outbuildings save

where permitted development rights could be invoked would or could be obviated in practice by application of the doctrine of a fallback development. In essence the contention was that a person seeking permission for a detached outbuilding would be able to use the fallback doctrine to establish that there were very special circumstances warranting approval by saying that if permission were not given that person would rely on [149(c)] to install an attached extension (which on this hypothesis would be less desirable). I need not explore in any detail the extent to which that analysis would work in practice though it faces the difficulty that falling within [149(c)] does not give an entitlement to permission but rather provides that the construction is not inappropriate by definition. It suffices to note that the argument involved overcoming artificiality by a chain of reasoning which was itself artificial or at least convoluted.

50. Miss Hutton contended that the fact that [149(c)] was concerned with “the extension or alteration” of a building supported the First Defendant’s position because it indicated that there could be an extension which did not constitute an alteration of the existing building. This point was not persuasive. The use of those words was indicating that the sub-paragraph addressed both those alterations which added to the extent of the building in question and those which did not. Their use was not an indication that an extension could be physically separate from the building.
51. Similarly, I did not derive assistance from the First Defendant’s references to the use of the word “extension” in other parts of the NPPF. Those references showed that the word could be used in different contexts but did not assist in determining the meaning of “the extension ...of a building” still less in determining whether such an extension had necessarily to be physically attached to the building being extended.
52. Looking at the matter in the round no one of the points advanced is conclusive by itself but I am persuaded by the combined weight of the points advanced by the First Defendant. It is right to note that if the language of [149(c)] were to be considered in isolation from its context then the Claimant’s interpretation of the words used would be the more natural reading of those words. It is not, however, the only legitimate reading of the words and the First Defendant’s interpretation that an extension of a building can include a physically detached structure is also a tenable reading of the words used. The First Defendant’s interpretation is, in my judgement, the reading which accords considerably more readily with the content and purpose of the relevant part of the NPPF. While the Claimant’s interpretation has the potential to lead to artificial distinctions which would do nothing to further the purposes of the Green Belt whereas that advanced by the First Defendant would remove the risk of that artificiality without jeopardising those purposes. Accordingly, I am satisfied that [149(c)] is not to be interpreted as being confined to physically attached structures but that an extension for the purposes of that provision can include structures which are physically detached from the building of which they are an extension.

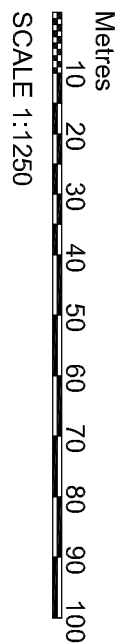
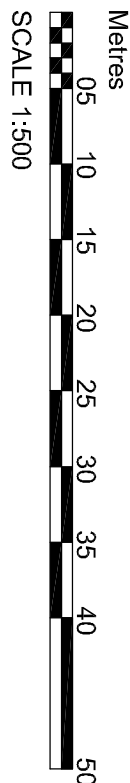
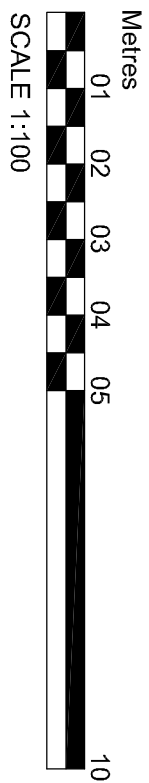
Conclusion.

53. If, as I have found, an extension can be detached from the building of which it is an extension the Inspector did not err in law in granting planning permission and this claim fails.

EP4

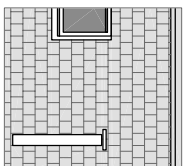
Notes

1. This drawing remains the copyright of the Designer and may not be copied in whole or part without prior written consent;
2. Do not scale from plans. Use figured or on site dimensions only;
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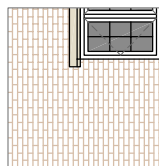


Key

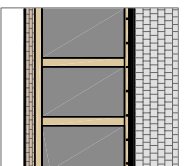
Tile roof to match



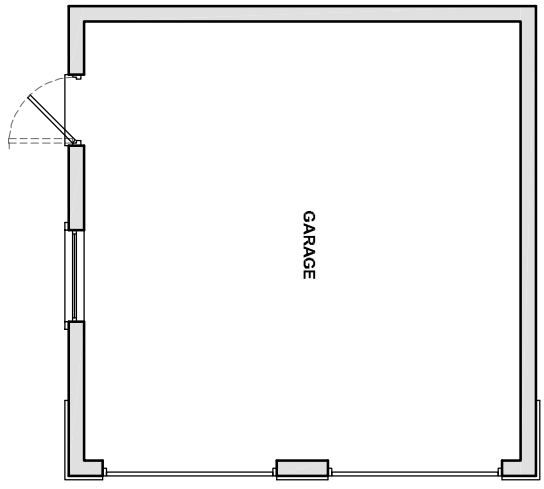
Brick walls to match



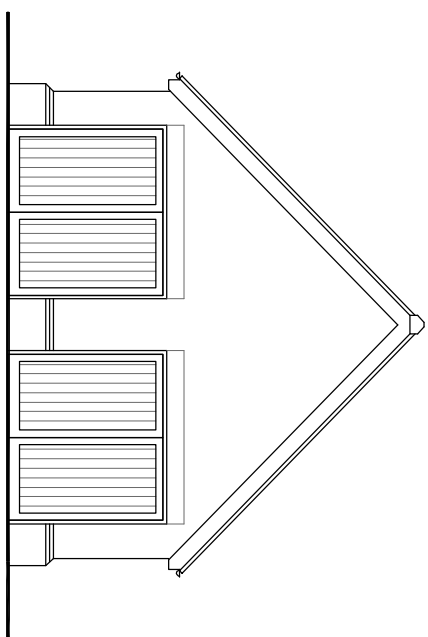
Oak Frame to match



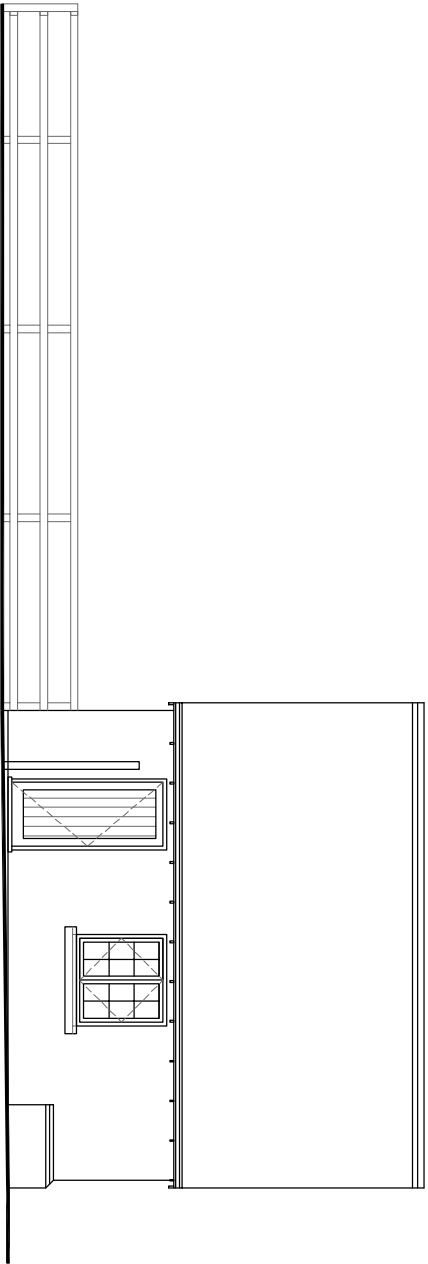
Existing Floor Plan 1:100



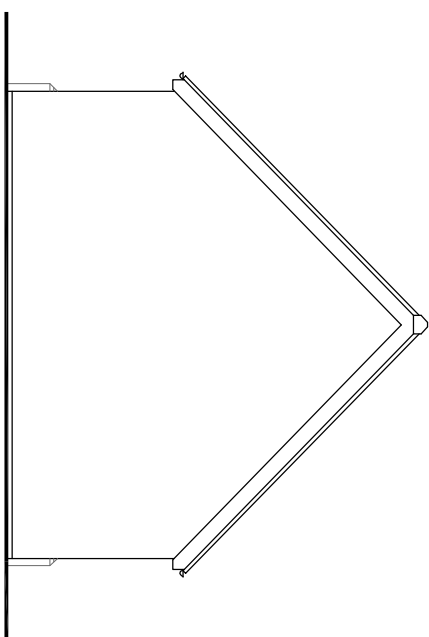
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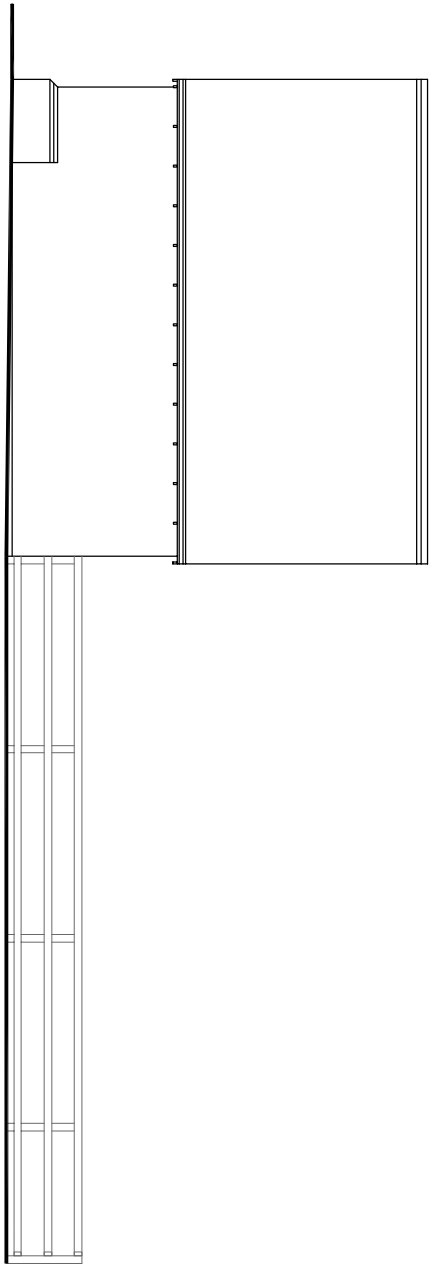
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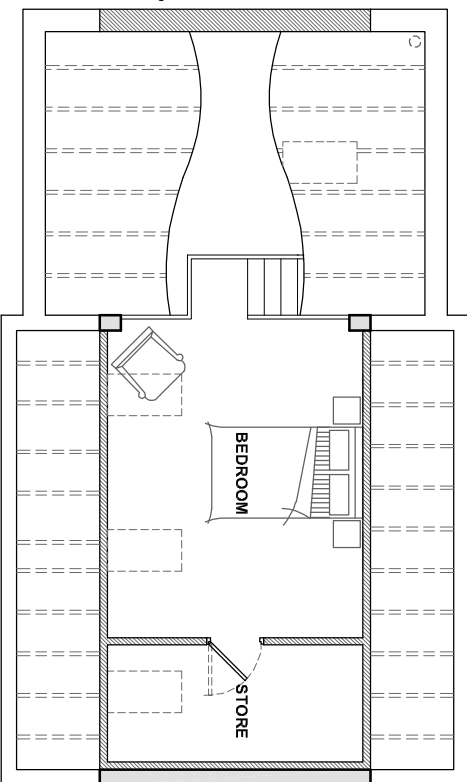
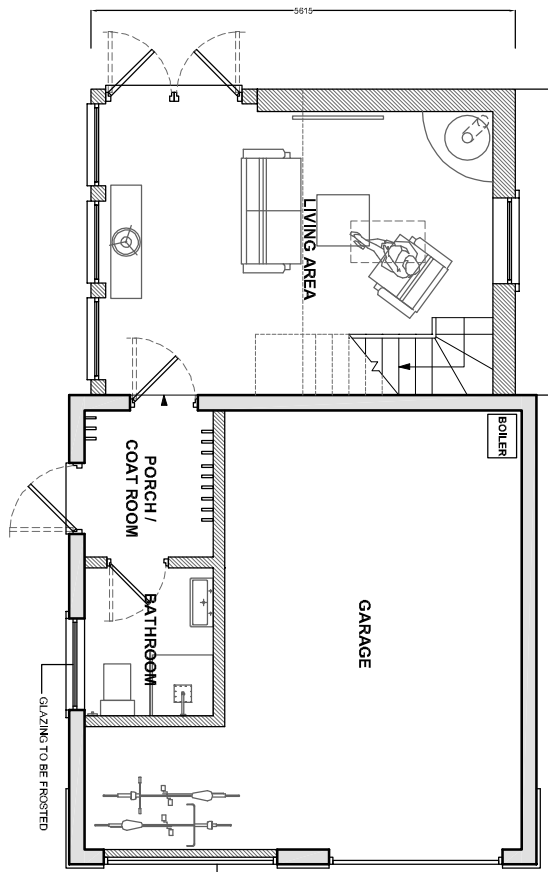
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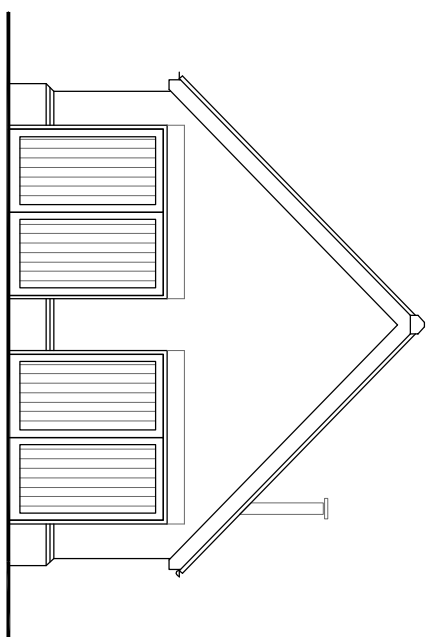
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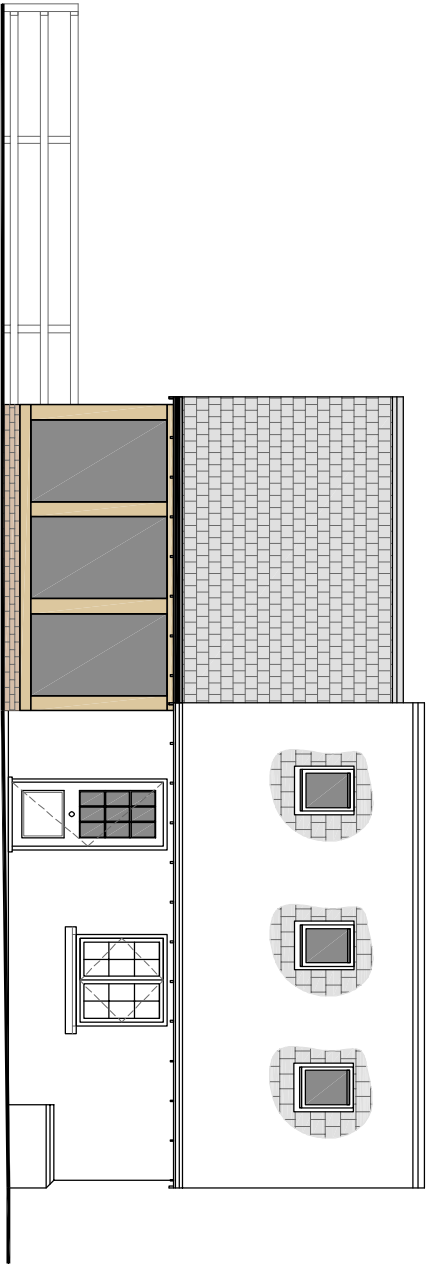
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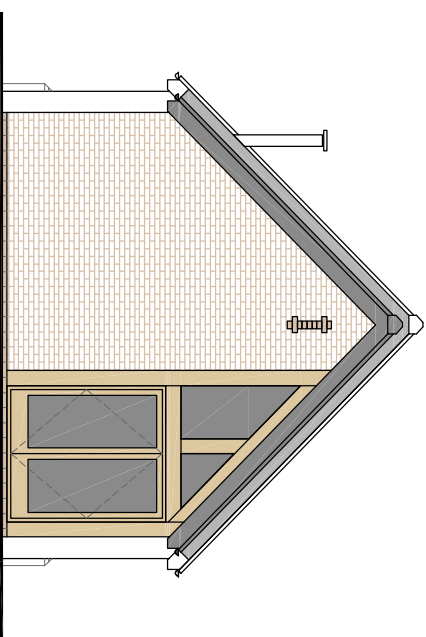
Proposed West Elevation 1:100



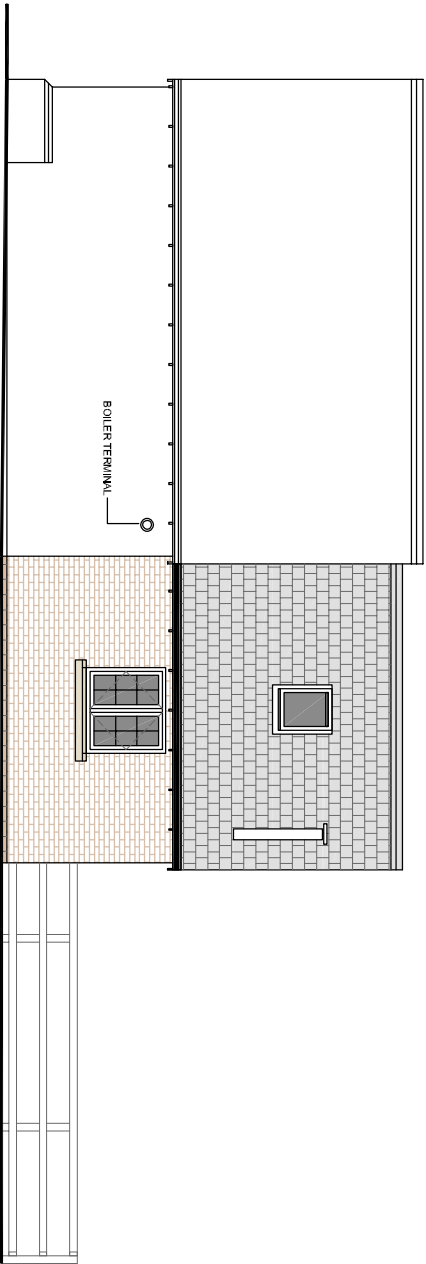
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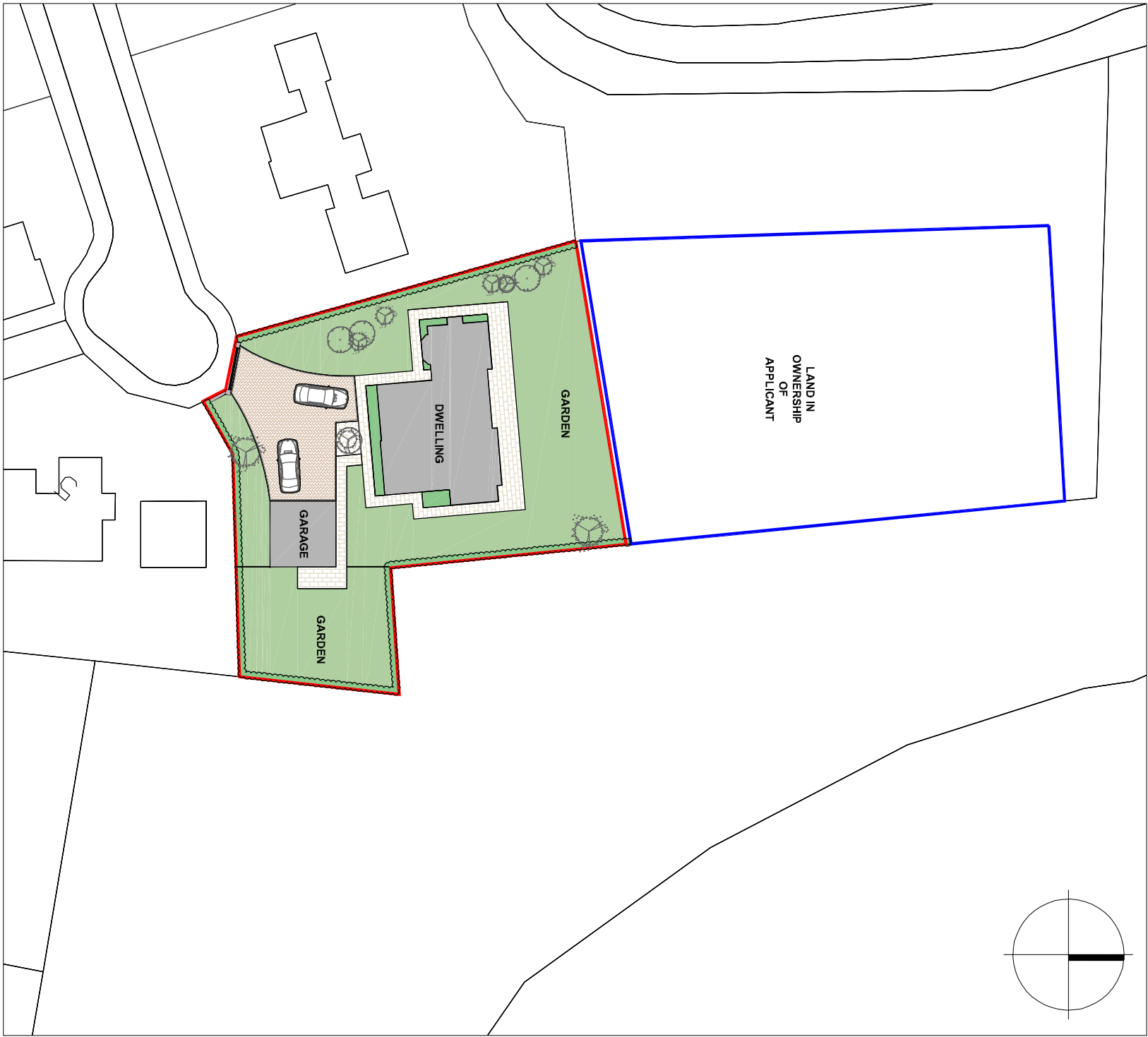
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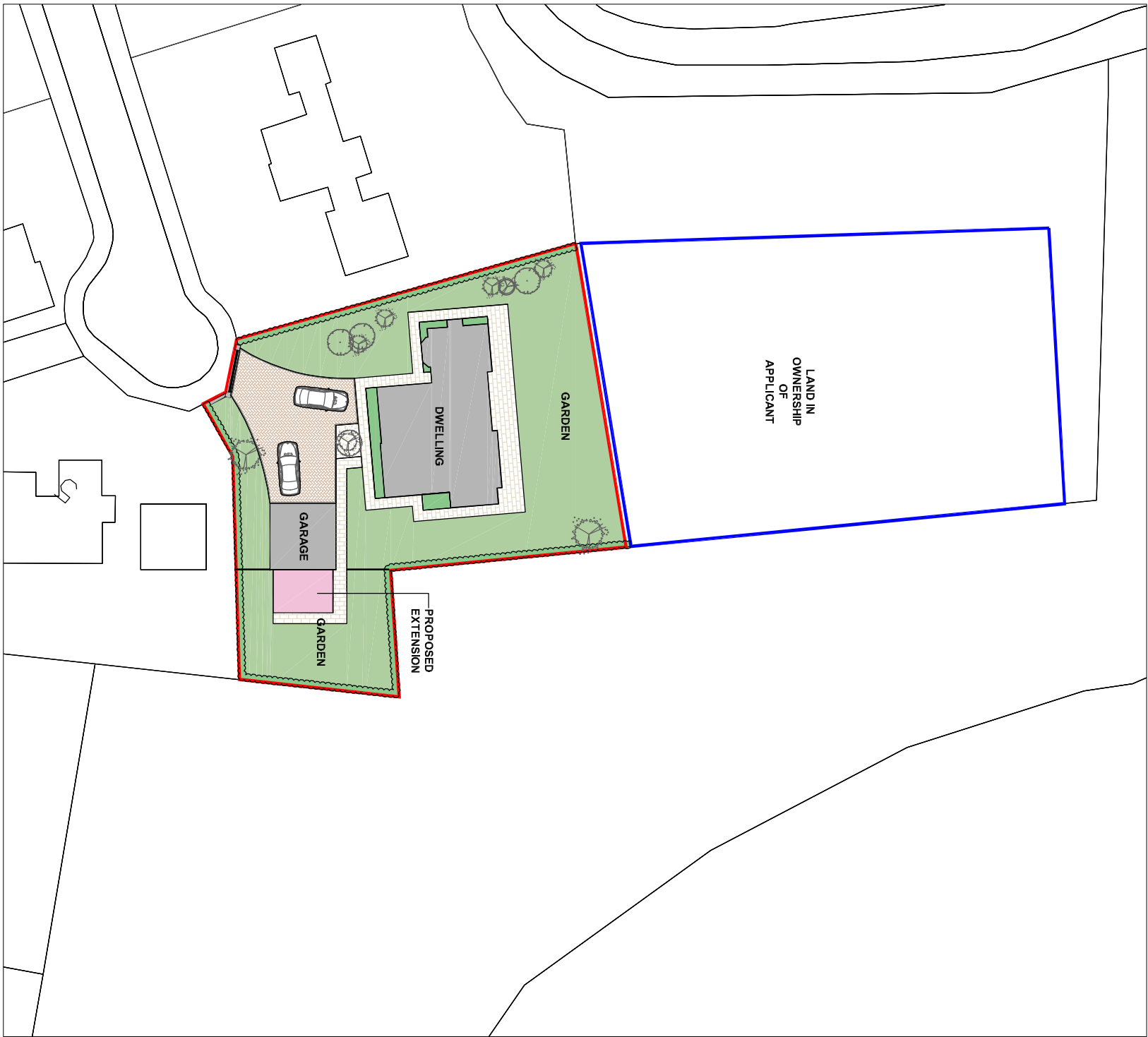
Proposed South Elevation 1:100



Existing Block Plan 1:500



Proposed Block Plan 1:500



Rev	Date	Description
B	06.06.22	JB - Door to garage removed
A	31.05.22	JB - Oak porch removed

Client	Scale	Paper Size	Date
Mr Lewis	As Shown	A1	18.10.21
Project	Drawn	Checked	Stage
Proposed Dwelling Garage Extension to Convert to Annex, Thyme House	NIB	JB	PLANNING
Drawing Title	Job Number	Drawing No.	Revision
Plans, Elevations, Site Location and Block Plans	21083	1	B
As Existing / Proposed			

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Proposed Garage Extension to Convert to Annex, Thyme House