

PLANNING STATEMENT

**RETROSPECTIVE FULL APPLICATION FOR
ERECTION OF ONE DWELLING (NOT BUILT IN
ACCORDANCE WITH CONSENT REF:
18/10970/FUL)**

AT

**LITTLE ORCHARD, LOWER KINGSDOWN ROAD,
KINGSDOWN, CORSHAM, WILTSHIRE, SN13 8BD**

**SUTHERLAND PROPERTY
& LEGAL SERVICES LTD**



PLANNING & ARCHITECTURAL CONSULTANCY SERVICE

1. INTRODUCTION & PROPOSAL

This Planning Statement is submitted on behalf of Mr and Mrs de Witte (“the Applicants”) in respect of Little Orchard, Lower Kingsdown Road, Box, Wiltshire SN13 8BD (the “application site”).

Full planning permission was previously granted in February 2019 for the demolition and replacement of an existing dwelling (planning reference 18/10970/FUL). The Applicants understood that this planning permission was implemented with the demolition of the existing dwelling and the erection of the new dwelling that now occupies the application site.

It is acknowledged by the Applicants that the new dwelling does not accord with the approved plans referenced under condition 2 of the approved planning consent and this application is being submitted to remedy the breach of planning control which has arisen as a result of the failure to construct the dwelling in accordance with the relevant approved plans.

The proposed amendments to the ‘as approved’ scheme ensure that the basement level is screened through re-instating soils to their former level so as the development reads as a partially exposed basement level. It is important that the retained area of habitable floorspace benefits from means of escape in the event of a fire onto the garden area. The justification for this approach is to retain the living space for the Applicants’ daughter who requires specialised accommodation to meet her medical needs whilst significantly reducing the volume and appearance of built form. The Applicants are satisfied that this is an appropriate and proportionate compromise to satisfy all parties. The area shown on previous plans as a ‘storage’ area is no longer proposed to be retained for such use and this area will be closed off from access and it will become an unused void space below the ground floor level.

With regards to the addition of a raised deck, whilst it is acknowledged that this was not included in the planning consent, there was previously a large area of decking connecting the house at the side and back down to the garden. Therefore, the addition of the raised deck is not considered to be a substantive change from the former dwelling on the site. The raised deck area will be fitted with privacy screening to ensure that the living conditions and privacy of the residents of the neighbouring dwelling are protected.

The Applicants did not intentionally construct a different dwelling to that which planning permission had been granted for. When the decision was made to add the basement storey the Applicants agent emailed the LPA to ask whether the erection of a basement would be an issue and received a written reply of response that the Applicants and their agent felt that they could rely on in erecting the basement.

Furthermore, the new dwelling has been constructed in full accordance with building regulations and has been inspected by the local authority building inspector at various stages throughout the course of the build and on completion and benefits from building inspector approval that the new dwelling complies with Building Regulations.

2. RELEVANT PLANNING HISTORY

Attempts to Regularise Works

The pertinent planning application history is listed below.

PL/2023/07905

Variation of condition 2 of 18/10970/FUL - To allow for amendments to the approved floor plans and elevations (Withdrawn).

The above application was submitted to regularise the planning permission to amend the approved plans to incorporate the additional basement storey. However, discussion with the LPA the Applicants agreed to withdraw the Section 73 application and deal with the matter by way of a retrospective planning application.

PL/2024/02925

Retrospective planning application for the retention of dwelling (built not in accordance with the approved plans on 18/10970/FUL)

The application was refused on the following grounds:

The proposed development, by reason of its location, would be contrary to the settlement, delivery and community area strategies and residential development in the open countryside policy and is unacceptable in principle. The proposal fails to accord with Core Policy 1, 2 and 11 of the adopted Wiltshire Core Strategy (Jan 2015), and Saved Policy H4 of the North Wiltshire Local Plan 2011.

The proposed (retrospective) new dwelling is inappropriate development within the Green Belt which is, by definition, harmful. The new dwelling does not comply with the replacement building criteria of paragraph 154 d) of the National Planning Policy Framework. The proposed (retrospective) new building is materially larger than the one it has replaced, and is therefore, by definition inappropriate development which conflicts with the purpose of the Green Belt. The application fails to demonstrate that there are any material considerations or very special circumstances that exist to outweigh this harm and overcome the presumption against such development. The proposal is contrary to Section 13, Paragraphs 142, 143, 152 & 154 of the National Planning Policy Framework (Dec 2023).

The proposed raised terrace/decking area causes an adverse impact to the amenity of adjoining neighbours in terms of privacy due to the overlooking and sense of overlooking from the terrace/decking area. There is a lack of screening to protect the privacy of neighbours. The proposal is contrary to Core Policy 57 vii of the Wiltshire Core Strategy (Jan 2015).

Accordingly, the above grounds for refusal form the basis of the 'Main Issues' that will be addressed through this Statement.

Historic Applications

18/10970/FUL

Demolish and replace existing dwelling (Approve with Conditions 13/02/2019).

The above application is the original application that was approved to demolish the existing house and erect a new dwelling. This has been implemented insofar as the existing dwelling was demolished but the new house that has been erected has an additional basement storey.

18/02372/FUL

Remove side, rear extensions including front store and replace with new extensions, remove main house roof and rebuild with new design (Approved with conditions 01/06/2018).

After the above application was approved the applicants employed a structural engineer to evaluate the building prior to the approved works taking place. This revealed many defects in the original building and concluded it was inadequate to support the new loads with additional hazards in its construction (Health and Safety). The most viable way forward was deemed to be demolition and replacement and hence this permission was not implemented and the application for demotion and replacement was made to the local planning authority and was subsequently granted.

16/05386/FUL

Two storey rear extension (Approved with conditions 09/08/2016).

Importantly this application included the addition of a basement storey to the property, not dissimilar to the additional basement storey that has now been constructed. The plans submitted as part of this application also clearly show the existing terrace area which once again is not dissimilar to the raised deck proposed by this application.

3. SITE DESCRIPTION & CONSTRAINTS

The site is located to the southern end of Kingsdown, a hamlet of linear development between Bathford and the village of Ashley. The properties are mixed, many detached properties of varying age and design style. Materials are varied also: rendered or stone walls under hipped clay and concrete tiled roofs. Typically, traditional cottages in natural stone with stone or slate roofs intermixed with the modern reconstructed stone dwellings.

The application site is approximately 1646 sqm is roughly rectangular in shape and slopes steeply down to the rear (northwest) boundary into the open valley.

The site boundaries are mixed with well-established hedges and shrubs within the garden area. A Public Right of Way (BOX 85) runs in a north to south direction through the woodland some distance away to the northwest of the site down in the valley.



Figure 1: Site in Context with PRow BOX85¹

The site lies within an Area of Outstanding Natural Beauty and forms part of the Green Belt. The site is not in a Conservation Area.

4. PLANNING POLICY

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 requires planning applications to be determined in accordance with the provisions of the Development Plan (DP) unless material considerations indicate otherwise.

In this instance the adopted Development Plan comprises the following:

- Wiltshire Core Strategy (adopted 2015)
- Saved policies from the former District Council Local Plans
- Chippenham Site Allocations Plan
- Wiltshire Housing Site Allocations Plan

¹ Adapted from Google Maps

- Minerals and Waste Plans
- Made Neighbourhood Plans

The application site falls within the Box Neighbourhood Plan area. The status of Box Neighbourhood Plan is currently 'designated' meaning that draft policy under the Neighbourhood Plan has not yet been consulted on or adopted.

Emerging Plans

A number of plans are currently in preparation and as they progress towards adoption will begin to carry more weight in the decision making process;

- Wiltshire's Local Plan
- Neighbourhood Planning

OTHER RELEVANT MATERIAL CONSIDERATIONS

National Planning Policy Framework (Framework)

The Framework was last updated in December 2024, and it sets out the government's planning policies for England and how these are expected to be applied.

The revised Framework continues to set out a presumption in favour of sustainable development. It identifies three facets of sustainable development: economic, social and environmental, noting that they are interdependent and need to be pursued mutually.

Paragraph 11 sets out for decision taking, the presumption in favour of sustainable development means approving development proposals that accord with the development plan, and where the development plan is absent, silent or relevant policies are out of date, granting planning permission unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

Housing

Section 5 of the Framework, *Delivering a sufficient supply of homes* places significant weight on the need to 'boost significantly' the supply of homes. Paragraph 61 recognises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built out quickly.

Previously Developed Land

It is clear that the appeal site is "previously developed land" and meets the definition of such land as set out in Annexe 2 of the Framework: "*Land which is or was occupied by a permanent structure, including the curtilage of the developed land*".

Paragraph 124 of the Framework states:

“Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions...”

Grey Belt

The revised NPPF was published In December 2024. Among its key changes, were a new method for calculating housing need and the concept of the ‘Grey Belt.’ Grey belt policy has arisen from the Government’s acknowledgment that there is insufficient brownfield land to meet development needs. It also responds to calls to look to poorly performing Green Belt sites, before looking to develop other Green Belt and/or green field sites.

The definition of the grey belt is in two paragraphs:

Grey belt: For the purposes of plan-making and decision-making, ‘grey belt’ is defined as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143.

‘Grey belt’ excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development.

This definition creates a two-step test. The first is a Green Belt contributions assessment, against three Green Belt purposes (rather than five in the consultation NPPF), which requires consideration of the land in question. The second is an areas and assets assessment, which requires consideration of the development proposed.

The Government has explained that the grey belt definition deliberately includes land that is not previously developed *“as we believe it is important that we also consider the development potential of land which, though it may be formally designated as Green Belt, no longer adequately serves the Green Belt purposes”*.

Stage 1: Grey belt tests

Test 1: Contribution assessment – relating to the land

(This test derives from the first paragraph of the grey belt definition)

The Green Belt serves five purposes (para 143), which have not been amended and remain as follows:

- 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.

To be considered grey belt, land will not strongly contribute to Green Belt purposes a), b) or d) - even if it performs well against c) and e). Conversely, land strongly contributing to any of these three criteria would not be considered grey belt.

Furthermore, land that contributes to Green Belt purposes a), b) or d), but does not strongly contribute to any of those purposes, can be grey belt. (All subject to the protected assets and areas/footnote 7 assessment at Test 2, see below.)

The Government has provided guidance intended to ensure a more consistent approach to the identification of grey belt land and how the performance of Green Belt should be assessed. The following text is taken from the Planning Practice Guidance (PPG) which was updated on 27 February 2025:

How should the contribution land makes to the relevant Green Belt purposes be assessed?

When making judgements as to whether land is grey belt, authorities should consider the contribution that assessment areas make to Green Belt purposes a, b, and d.

Considerations for informing these judgements are set out below:

Purpose A – to check the unrestricted sprawl of large built up areas

This purpose relates to the sprawl of large built up areas. Villages should not be considered large built up areas.

Contribution	Illustrative features
Strong	Assessment areas that contribute strongly are likely to be free of existing development, and lack physical feature(s) in reasonable proximity that could restrict and contain development. They are also likely to include all of the following features: - be adjacent or near to a large built up area - if developed, result in an incongruous pattern of development (such as an extended “finger” of development into the Green Belt)
Moderate	Assessment areas that contribute moderately are likely to be adjacent or near to a large built up area, but include one or more features that weaken the land’s contribution to this purpose a, such as (but not limited to): - having physical feature(s) in reasonable proximity that could restrict and contain development - be partially enclosed by existing development, such that new development would not result in an incongruous pattern of development - contain existing development - being subject to other urbanising influences

Contribution	Illustrative features
Weak or None	Assessment areas that make only a weak or no contribution are likely to include those that: - are not adjacent to or near to a large built up area - are adjacent to or near to a large built up area, but containing or being largely enclosed by significant existing development

Purpose B – to prevent neighbouring towns merging into one another

This purpose relates to the merging of towns, not villages.

Contribution	Illustrative Features
Strong	Assessment areas that contribute strongly are likely to be free of existing development and include all of the following features: - forming a substantial part of a gap between towns -/- the development of which would be likely to result in the loss of visual separation of towns
Moderate	Assessment areas that contribute moderately are likely to be located in a gap between towns, but include one or more features that weaken their contribution to this purpose, such as (but not limited to): - forming a small part of the gap between towns - being able to be developed without the loss of visual separation between towns. This could be (but is not limited to) due to the presence or the close proximity of structures, natural landscape elements or topography that preserve visual separation
Weak or None	Assessment areas that contribute weakly are likely to include those that: - do not form part of a gap between towns, or - form part of a gap between towns, but only a very small part of this gap, without making a contribution to visual separation

Purpose D – to preserve the setting and special character of historic towns

This purpose relates to historic towns, not villages. Where there are no historic towns in the plan area, it may not be necessary to provide detailed assessments against this purpose.

Contribution	Illustrative Features
Strong	Assessment areas that contribute strongly are likely be free of existing development and to include all of the following features: - form part of the setting of the historic town - make a considerable contribution to the special character of a historic town. This could be (but is not limited to) as a result of being within, adjacent to, or of significant visual importance to the historic aspects of the town
Moderate	Assessment areas that perform moderately are likely to form part of the setting and/or contribute to the special character of a historic town but

Contribution	Illustrative Features
	include one or more features that weaken their contribution to this purpose, such as (but not limited to): - being separated to some extent from historic aspects of the town by existing development or topography - containing existing development - not having an important visual, physical, or experiential relationship to historic aspects of the town
Weak or None	Assessment areas that make no or only a weak contribution are likely to include those that: - do not form part of the setting of a historic town - have no visual, physical, or experiential connection to the historic aspects of the town

‘Purpose A’ assessment:

The PPG makes it clear that “*Villages should not be considered large built up areas*” and the application site is located within a village. The site is also bordered by existing development, notably residential development. The PPG advises that when a site is “*adjacent to or near to a large built up area, but containing or being largely enclosed by significant existing development*” then that site’s contribution to the Green Belt is ‘weak or none’.

‘Purpose B’ assessment:

The PPG advises that assessment areas that contribute weakly are likely to include those that “*do not form part of a gap between towns*” or those that “*form part of a gap between towns, but only a very small part of this gap, without making a contribution to visual separation*”.

In the case of the application site, it is highly debatable as to whether or not it forms ‘part of a gap between towns’, given the separation distances between it and the nearest towns.

However, even if the site is deemed to form part of such a gap, then it is clearly evident that it is only a minute part of the relevant gap between the nearby towns and given the prevalence of existing built form around the site, it is impossible to see how the site is capable of making any form of notable contribution to the ‘visual separation’ of these neighbouring towns.

‘Purpose D’ assessment:

What is a historic town?

The updated PPG attempts to address this, but only partially. It offers limited clarification on the definition of a historic town, stating:

“This purpose relates to historic towns, not villages. Where there are no historic towns in

the plan area, it may not be necessary to provide detailed assessments against this purpose”.

While it is helpful that villages are explicitly excluded, historic towns are not defined. Cities are not mentioned but are presumably included. There is also an implicit suggestion that not all plan areas will contain a historic town, implying that a selective approach should be applied - though no formal criteria are provided. This leaves applicants and decision makers to debate what qualifies as a historic town.

The main reasonable questions to consider here would be:

- i) Does it contain a significant number of surviving historic buildings, streets, and spaces?
- ii) Does the town have a distinct historic identity and special character?
- iii) Is the town famous or notable for its historic significance?

The Applicants are of the view that the settlement in which the application site is located is not a ‘town’ for the purposes of grey belt policy. Even if it was deemed to be in a ‘town’ for the sake of this policy, it is highly unlikely to satisfy the criteria set out in points (i) to (iii) above.

Test 2: Protected assets and areas assessment – relating to proposed development (This test derives from the second paragraph of the grey belt definition).

To be considered grey belt development, development that is proposed on Green Belt land, which does not strongly contribute to green belt purposes a) b) or d) (i.e. has passed Test 1 above), either:

- does not fall within a footnote 7 asset or area; or
- where, within a footnote 7 asset or area, the application of the footnote 7 related NPPF policies would not provide a strong reason for refusing development. Footnote 7 is a footnote to paragraphs 11b and d of the NPPF, ‘presumption in favour of sustainable development’, which lists certain assets and areas. Footnote 7 says: *“The policies referred to are those in this Framework (rather than those in development plans) relating to:*

- *habitats sites (and those sites listed in paragraph 189 [or, more likely, para 194]) and/or designated as Sites of Special Scientific Interest;*
- *land designated as Local Green Space,*
- *a National Landscape,*
- *a National Park (or within the Broads Authority) or defined as Heritage Coast;*
- *irreplaceable habitats;*
- *designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 75); and*
- *areas at risk of flooding or coastal change”.*

The reference to footnote 7 within the grey belt definition makes clear that where the application of policies listed at footnote 7 would not give a strong reason for refusing or

restricting development, that development is not excluded from being grey belt. The reference to “strong reason for refusing” is a reference to a planning decision.

Restricting in the context of a planning application would mean refusing at determination. There are references to restriction by condition in the NPPF, but restricting is the terminology used in para 11b(i), which also refers to footnote 7. Therefore, it is much more likely that the Government has replicated the terminology used in both paragraphs that refer to footnote 7 – refusing for decision making and restricting for plan-making. For this reason, the Applicants do not consider that planning applications on potential grey belt sites need to consider what restriction means.

The revised definition of grey belt (compared with the consultation version) has provided confirmation that land is not to be ruled out of being grey belt simply if it is a footnote 7 asset or area. But rather, where applicable, NPPF policy regarding those assets and areas will need to be applied to the proposal in question, in order to determine whether a site is grey belt or not as well as to determine whether a proposed development satisfies those specific policies.

‘Grey Belt’ Conclusion:

At the end of the application of Tests 1 and 2 of Stage 1 it is concluded that the application site is capable of being treated as grey belt land.

Stage 2 – ‘Appropriateness tests’ – is the development ‘not inappropriate’?

Where land is identified as grey belt land, any proposed development of that land should be considered against paragraph 155 of the NPPF, which sets out the conditions in which development would not be inappropriate on grey belt land.

- The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;
- There is a demonstrable unmet need for the type of development proposed (defined in footnote 56 for housing); [and]
- The development would be in a sustainable location.

The Stage 2 appropriateness tests for grey belt

a) What is not fundamentally undermining the purposes (taken together) of the remaining Green Belt?

The Green Belt PPG says, at para 008: *“In reaching this judgement, authorities should consider whether, or the extent to which, the release or development of Green Belt Land would affect the ability of all the remaining Green Belt across the area of the plan from serving all five of the Green Belt purposes in a meaningful way”*.

The Green Belt covers a significant area of the Council’s District and in that context, the limited extent of the application site and form of proposed development would not

fundamentally undermine the purposes (taken together) of the remaining Green Belt across the district.

b) What is demonstrable unmet need?

There is opportunity for the grey belt to appear suitable for development in decision taking, as the NPPF makes clear that green belt development should not be regarded as inappropriate where:

- Development would utilise grey belt land in sustainable locations
- In the case of ‘major development’, the so-called ‘Golden Rules’ are satisfied:
 - o at least 15% affordable housing (above relevant policy requirement, up to 50% cap), with appropriate proportion of social rent, subject to viability
 - o it provides necessary improvements to local or national infrastructure
 - o it provides new or improved green spaces accessible to the public
- LPAs cannot demonstrate a five-year housing supply or where the Housing Delivery Test indicates less than 75% delivery over the previous three years
- There is a demonstrable need for land to be released for development of local, regional or national importance.

c) Establishing whether the development would be in a sustainable location

Criterion c) is that *“the development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework”*. NPPF paras 110 and 115 provide policy regarding sustainable growth patterns and transport, cost effective, vision-led mitigation of significant highway safety and transport network impact and safe, well designed development that reflects national guidance. The reference to these paragraphs is intended *“to illustrate the importance that issues around transport have for considerations of sustainability”*.

It seems that Government would like this approach to apply as much to applications as to the allocation of sites (para 011 of the Green Belt PPG is clear on this point). The development which is proposed is considered to be sustainably located given the proximity of the site to local services, facilities and public transport links – all of which are within reasonable walking distance of the site and which provide bus services to nearby settlements and the services and facilities which are contained within those larger settlements, as well as those which are already present within the vicinity of the application site itself.

In applying the ‘tilted balance’, the proposal is for a single new self-build dwelling which was a replacement for the dwelling which was in situ prior to the erection of the new dwelling. The contribution of the proposal to the housing land supply and mix of available housing types in the area would very small, but should be given weight nonetheless.

The economic investment into the local area through the use of local services and facilities is a long-term associated benefit to the economy given the scale of development.

Overall, it is considered that there would be no significant harm caused to the application site and the local area in which is located by approving the proposed development.

Five Year Housing Land Supply

As of 18 June 2025, Wiltshire Council were only able to demonstrate a 2.42 year supply (source: Wiltshire's Housing Land Supply Statement – Briefing Note No.25-04). Consequently, for the purposes of paragraph 155.b. of the Framework, there is a demonstrable unmet need for the type of development proposed.

For completeness, the proposed development is not major development, and therefore the requirement of paragraph 155.d. of the Framework, to satisfy the 'Golden Rules', are not applicable to the appeal proposal.

Overall, the proposed development would utilise grey belt land and would satisfy all the relevant criteria of paragraph 155 of the Framework. For this reason, the proposed development would not be inappropriate development within the Green Belt. Consequently, the development should not be regarded as harmful to either the openness of the Green Belt or to the purposes of including land within it in accordance with footnote 55 of the Framework.

Green Belt

The NPPF identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open (para 142). The construction of new buildings should be regarded as inappropriate development in the Green Belt, subject to a number of exceptions as set out in paragraph 154 of the NPPF.

In this instance exception "d) *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces*" (Paragraph 154, Framework) is relevant.

The Applicants also present that exception g) is relevant:

*"limited infilling or the partial or **complete redevelopment of previously developed land** (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause **substantial harm to the openness of the Green Belt**"* (para 154, NPPF) [SPLS emphasis].

The latter exception is viewed as most relevant given the LPAs grounds for refusal (PL/2024/02925) which are specific to the construction of a 'new dwelling'.

If development meets one or more of the exceptions set out at paragraph 154 of the NPPF the proposal does not need to demonstrate that "very special circumstances" exist.

Very Special Circumstances

Notwithstanding the above, the Applicants also progress the clear case for very special circumstances in this instance.

Paragraph 153 of the NPPF states; *‘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’.*

In this instance, harm arising to the Green Belt is very low given that the addition of the basement storey has not impacted the openness or function of the Green Belt. Furthermore, the site is previously developed land and can comfortably be considered as ‘Grey Belt’ land as already set out above. Since the pre-application inquiry was submitted to the LPA prior to this application being made, the amount of floorspace within the basement area has been significantly reduced so that the amount of floorspace being proposed at basement level is now sufficient to provide accommodation for the disabled occupant who requires their own dedicated space within the dwelling.

Furthermore, very special circumstances arise from one of the occupants of the property being disabled and therefore requiring a bedroom accessible via a lift which have necessitated the addition of the basement storey. There is no question on this requirement as evidenced by (Confidential) medical records which have already been provided to the LPA in confidence during the pre-application process.

Presumption in Favour - Tilted Balance

There are two aspects to understanding whether planning permission as prescribed by Paragraph 11(d) of the Framework should be granted and whether policies which are most important to determining the application are out of date. The first is where the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development.

As the Planning Officer’s Report (POR) for PL/2024/02925 records in respect of impact (or rather lack of) on the National Landscape the Applicants find that there is no footnote 7 policies (Green Belt is excluded as set out above) which would provide a clear reason for refusing the development.

The POR clearly finds:

“The dwelling sits in place of a previous residential dwelling, and seen within the context of a row of dwellings, where it is bordered on both sides by residential dwellings. The character of the site remains similar, aside from a bulkier dwelling.

AND

... it is not considered the proposal would cause harm to the Cotswold National Landscape given the site context and appropriate materials" (p9, POR).

Accordingly, it is clear that there is no 'strong reason' for refusing the development proposed.

Therefore, the development should be granted planning permission unless:

"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole". (Para 11, d) ii), Framework)

This is the context in which the proposals must be assessed and determined.

5. SUMMARY & CONCLUSION

Summary

The main issues in this application are considered to be:

- Main Issue 1: Whether the principle of a dwelling in this location is acceptable having regard to all relevant material planning considerations.
- Main Issue 2: Whether the dwelling is considered to be inappropriate development within the Green Belt
- Main Issue 3: Whether there are very special circumstances.
- Main Issue 4: Whether the proposed terrace/decking area has an acceptable impact on adjoining neighbours.
- Main Issue 5: Whether there are other relevant material considerations to weigh in the favour of approval in the planning balance.

Main Issue 1: Whether the principle of a dwelling in this location is acceptable having regard to all relevant material planning considerations.

Firstly, it is important to refer the LPA back to the planning history of the site and the most recent planning approval for a replacement dwelling on the appeal site (ref 18/10970/FUL).

The site has benefitted from a dwelling and the proposals represent an amended replacement dwelling scheme. The reasons for the amended scheme are outlined against Main Issue 3 below.

Notwithstanding the above, it is clear that the site represents the filling of a small gap within the existing built area of the settlement.

The development is in keeping with the prevailing linear pattern of development.

Consequently, the site is viewed in context with the wider built form of the settlement.

Finally, as discussed above in Section 4, under the headings 'Grey Belt', 'Five Year Housing Land Supply' and 'Tilted Balance' the principle of a dwelling in this location is acceptable.

Main Issue 2: Whether the dwelling is considered to be inappropriate development within the Green Belt

Firstly, the development is clearly a replacement dwelling and not the erection of a new dwelling on a site which has not accommodated residential development previously. This was the intent of the Applicants and remains as such now. The principle of a replacement dwelling had been approved previously through planning permission 18/10970/FUL. A replacement dwelling is specifically allowed under exception d) of para 154 of the NPPF. If the LPA considers that this is a new dwelling, discounting the relevant planning history of the site, then the proposal equally complies with exception e) limited infilling in villages.

The matter of 'Grey Belt' and the appropriate assessment provided above is the overriding policy consideration which weighs in favour of approval in respect of the principle of development. The Applicants accept that this policy intervention was not published at the time of the LPAs previous decision, but it now represents a significant policy shift and one which must be viewed as an enabling policy for housing delivery as per its intention.

Main Issue 3: Whether there are very special circumstances.

As mentioned earlier in this statement, in 2018 the Applicant's daughter, who was 18 years old at the time, became ill. By 2020, while the build was still underway, the daughter's condition deteriorated such that she was rendered wheelchair bound. Therefore, a disabled lift was provided from the ground floor to the basement and disabled facilities were provided within the basement level including a bedroom and bathroom for the daughter. It was not practicable to provide such a lift to the first floor of the dwelling for technical reasons to do with the layout of the build.

Paragraph 153 of the Framework states; '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.'

The addition of additional floorspace at basement level has had a significant positive impact on the occupants quality of life. As outlined above, the addition of new floorspace at basement level has no impact on the openness or function of the Green Belt, particularly in the context of the site being classified as Grey Belt. Therefore, when assessing the balance of no harm to the Green Belt against the important difference the basement storey made to the occupants quality of life, it is clear that the planning balance tilts in favour of granting planning consent for the basement storey (and the dwelling as a whole).

The UN Convention on the Rights of Persons with Disabilities came into force on 3 May 2008. Its purpose under Article 1 is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities,

and to promote respect for their inherent dignity. The UK agreed to adopt the UN Convention.

Under Section 149 of the Equality Act 2010 a public authority must, 'in the exercise of its functions, have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.' In determining this planning application positively, the LPA has the opportunity to advance the equality of the disabled occupant of the new dwelling by granting them the opportunity to enjoy accommodation that has been specifically designed to improve their quality of life.

The Equality Act 2010 is clear in that the focus of the disability is upon the 'impairment' on the ability to carry out day-to-day activities. It is clear that the applicant's daughter requires their assistance and are her carers. The Applicants, being carers, are protected by the Carers (recognition & Services) Act 1995 and the Care Act 2014.

The PPG chapter on Housing Needs of Different Groups states that authorities must consider the implications of their duties under the EA 2010 when considering the identified needs of specific groups.

Furthermore, The Human Rights Act 1998 confirms that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. The word "act" in that context, under s6(6), includes a failure to act.

The LPA are referred to the supporting medical evidence which has already been provided as a confidential document to the previously submitted pre-application enquiry.

It is therefore clear that on this point alone that very special circumstances do exist and clearly outweigh the negligible harm discussed above from the provision of additional floorspace at basement level that is only visible from one elevation. The property's basement level is not visible from public vantage points.

Consideration should also be given to the circumstances that preceded the addition of the basement floorspace within the subject dwelling. The site is located on a steep bank which is made up of land-slipped Fuller's earth, which means that development in this area can slip on an arch down the bank. This is well known locally with evidence in the past of this occurring.

Whilst a Geotechnical Report was prepared prior to commencement of construction which concluded; 'If no basement is to be included in the scheme, the new foundations will need to extend through the Landslip, and into the undisturbed strata beneath. Consequently, some form of piled foundation will be appropriate. From past experience, bored piling will be preferred to driven. Bored piles should be taken an adequate depth below the basal landslip surface. Depending on the overall scheme of piling adopted, the piles could extend almost twice the depth of the Landslip thickness. 10-15m piles could be appropriate, unless supplementary raking piles are included in the scheme.

For a scheme without a basement, and HRF of about 40 kN/m² a new retaining structure, may well be appropriate. If a basement is to be included within the scheme, then a

contiguous bored pile wall may be the most technically and cost-effective method to adopt. That wall can accommodate a 2-3m deep basement, and may need to be designed for an HRF in the range 150 – 200 kN/m2.

At this stage it would be appropriate to issue a copy of this report to an experienced bored piling contractor to estimate the size of bored piles required, together with the appropriate reinforcement. That will enable realistic costings to be prepared for both the 'no basement' and 'basement' options so that appropriate decisions can be reached.'

The report therefore commented on both a basement and non-basement option but concluded that the most appropriate solution would only be apparent following further assessment of the ground conditions. Following this assessment and the requirements of the Applicant's daughter the option of basement floorspace was taken forward as this provided the required living space and a suitable response to the soil's qualities.

The Applicants' intention when embarking on the construction works was to construct the new dwelling as per the approved planning permission without the basement. However, during the groundwork and foundations phase of the build, advice from a structural engineer was to provide a basement as a part of the foundations of the build.

The addition of the basement storey was therefore a practical solution in response to the issues encountered during the construction of the dwelling. Paragraph 124 of the Framework states; 'Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions'. (Paragraph 124, Framework).

The addition of the basement storey represents an effective use of the land with no significant adverse environmental impacts whilst providing the applicant with a healthy living environment that responds to their specific disability needs.

Main Issue 4: Whether the proposed terrace/decking area has an acceptable impact on adjoining neighbours.

The previous (now demolished) dwelling had a large area of decking connecting the house at the side and back down to the garden and therefore the inclusion of a raised deck to the new property is simply recreating the situation that existed prior to the redevelopment of the property. This is evidenced in Figure 2 below which demonstrates a directly comparable extent of decked area.

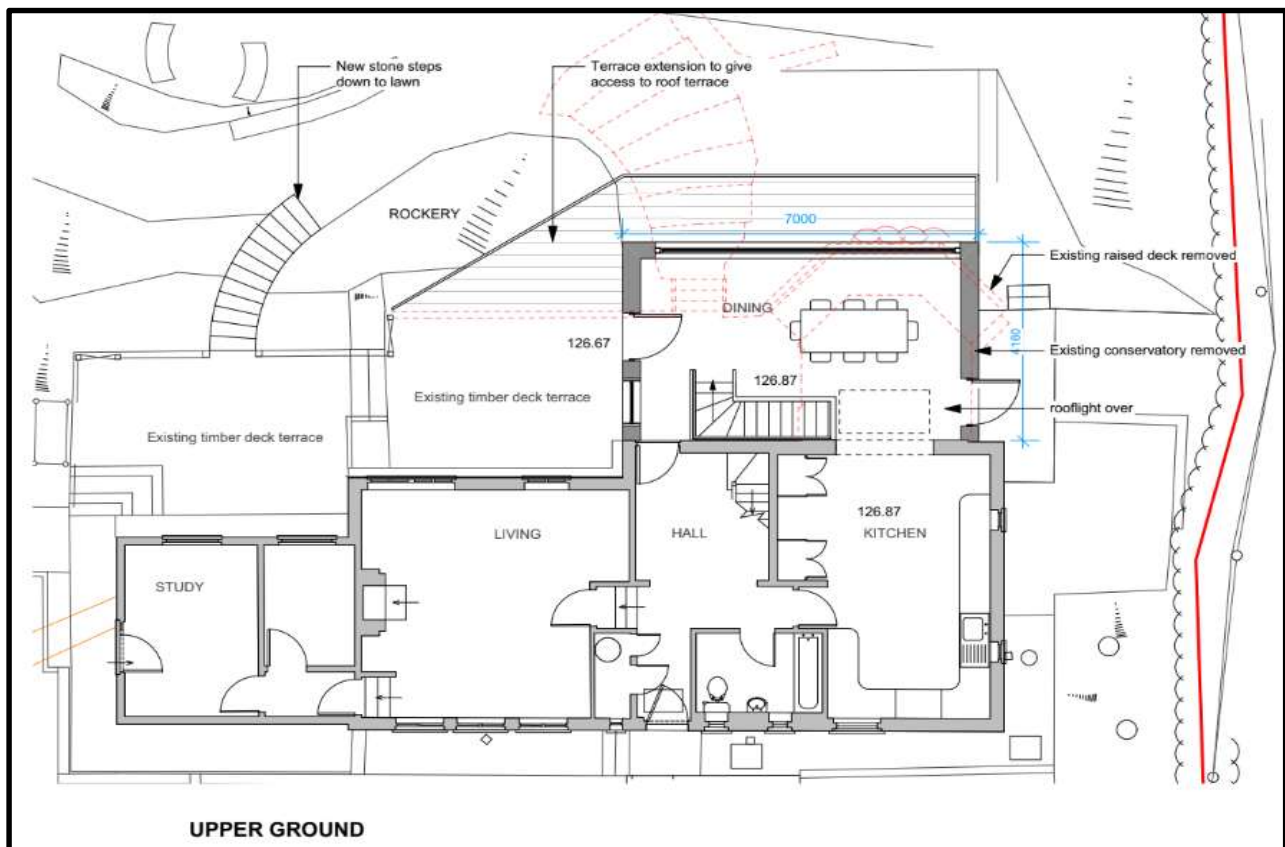


Figure 2: Plans Demonstrating Existing Timber Deck under Approval 16/05386/FUL

The new property and the adjacent properties either side are set within substantial plots with generous separation distances between the properties and intervening, well-established boundary treatments. There is therefore a separation distance between the proposed raised deck and the neighbouring house and garden. This, coupled with the orientation of the neighbouring properties either side ensure that the decked area is set back behind the rear building line of the property to the south west and angled away and largely behind the property to the north east.

Notwithstanding this, a privacy screen is now proposed to the south west elevation to ensure that there is no significant detrimental impact on the amenity of the adjoining property.

Main Issue 5: Whether there are other relevant material considerations to weigh in the favour of approval in the planning balance.

The Council cannot demonstrate a five year supply of housing land. The Framework makes clear that one of the objectives of the Government is to significantly boost the supply of housing.

The site is previously developed land and constitutes 'Grey Belt' in a sustainable location and the proposed development would be making an efficient use of the land.

The scheme would provide a small boost to housing supply, on an infill site, which is anticipated within the Development Plan and national policy.

The proposals provide specialised accommodation to meet the needs of the Applicants' disabled daughter.

There would be social and economic benefits in subsequent occupation.

There is a clear benefit in this instance in regards to sustainability is the fact that the proposals re-use an existing building. This allows for embodied carbon from construction to be retained.

The cumulative benefits afford considerable weight in favour of approval beyond the fact that the proposals accord with the Development Plan and revised Framework when read as a whole.

As set out above, the proposals achieve the three dimensions of sustainable development and result in significant social, economic and environmental benefits which are considered to carry further substantial weight in favour of the proposals.

Accordingly, the Applicants respectfully request that the LPA support the pre-application enquiry and allow the Applicants to proceed with a full planning application to regularise the development.

Conclusion

On balance, it is not considered that the partially exposed basement level is contrary to the aims and purposes of the Green Belt. The revised Framework provides an enabling policy context for the dwelling on what is considered to be 'Grey Belt' land.

The entire removal of the basement storey from forming part of the residential living area would negatively impact the living environment of the occupant whilst making no discernible visual or environmental enhancement to the dwelling or its surroundings. The amount of basement level floorspace which is unnecessary has been excluded from the proposal and will be reverted to a unused void space below the ground floor level – which is not abnormal for a dwelling which is located on sloping land.

Furthermore, as discussed above, there was a need for structural changes during construction to allow for stability as well as provide for quality of life for the Applicants' disabled daughter.

The addition of a raised deck does not create an unacceptable impact on the amenity of neighbouring properties and has been adequately mitigated through the provision of a privacy screen.

It is considered, as set out in this supporting statement, that there is sufficient planning merit to grant planning consent to regularise the planning position with respect to the new dwelling with the partially exposed basement and raised deck.