



Planning Statement of Case

Appeal under s.78 of The Town and Country Planning Act, 1990.

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

On behalf of
Mr and Mrs de Witte

SPL0014
Appeal Statement
1.0
29 July 2026

REPORT

Quality Management

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Prepared by:

Sutherland Planning Ltd
PO Box 149,
Okehampton,
Devon, EX20 9BU

Prepared for:

Mr & Mrs de Witte
LITTLE ORCHARD, LOWER KINGSDOWN ROAD, KINGSDOWN,
CORSHAM, WILTSHIRE, SN13 8BD

Christopher Lecointe
Director

PO Box 149
Okehampton, EX20 9BU

E chris@sutherlandplanning.com

T [Telephone]

E [Email]

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1 INTRODUCTION & SITE DESCRIPTION

- 1.1 This appeal is submitted on behalf of Mr Willem De Witte, “The Appellant”, in respect of land at Little Orchard Lower Kingsdown Road Corsham Wiltshire SN13 8BD, (the “appeal site”).
- 1.2 The appeal is made against the refusal of planning permission by Wiltshire Council on 2 July 2026. A copy of the refusal notice is attached to this statement at [Appendix 1](#).
- 1.3 The reasons for refusal are:
1. *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;*
 2. *The proposed new dwelling is inappropriate development within the Green Belt which is, by definition, harmful. The new dwelling does not comply with any of the exceptions within paragraph 154 to the National Planning Policy Framework. 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, 153, and 154 of the National Planning Policy Framework.*
- 1.4 This appeal is made under the provisions of Section 78 of the Town and Country Planning Act 1990 (as amended).
- 1.5 On 2 February 2026, the planning authority also served an enforcement notice. The notice was due to take effect on 2 August 2026 unless appealed beforehand and allowed a period of 12 months from the date it took effect for compliance. The Enforcement Notice required the following steps to be undertaken:

1) Demolish the dwellinghouse in full and restore the levels of the Land to those shown in the attached plan entitled “Levels Survey Plan”.

2) Remove all resulting materials arising from Step 1) from the Land.

- 1.6 In summary, the Appellant believes planning permission should be granted for the development, and that case is set out in both this Planning Statement of Case and in the Enforcement Notice appeal Statement of Case. The Appellant respectfully requests that the section 78 planning appeal and section 174 enforcement appeal be conjoined and determined by the same Inspector. Both appeals concern the same building, planning history, drawings, technical evidence and overlapping questions concerning the implementation of permission 18/10970/FUL.
- 1.7 In the event that the Secretary of State disagrees with the Appellants planning case, and dismisses the appeal, then the Appellant considers that there are alternative options to remedy the breach available to the Inspector as opposed to the punitive requirement to demolish the existing dwelling and remove the resultant materials.
- 1.8 As the planning authority will be responsible for the enforcement case alongside the planning one, the Appellant also submits, as part of their planning appeal, the plans that describe the two development options in place of the demolition case made as part of the enforcement appeal. These can be found at [Appendix 2 and 3](#). The purpose in including these plans is as a ‘back stop’ under the planning appeal which the Inspector may want to approve if he finds against the Appellant and their case to retain the dwelling as shown on the submitted plans.
- 1.9 Briefly, the first back stop option is physically sealing up the basement area, rendering it devoid of any residential use, and it becoming an integral part of the foundations design (as was originally envisaged in any event) for the dwelling at ground and first floor level. The surrounding ground levels associated with the former approved dwelling would be reinstated, so reverting back to conditions (the built form) that was previously found to be acceptable. That development is presented in [Appendix 2](#).
- 1.10 A second possibility is to do exactly the same as above with one small exception – that being to afford limited access to a small plant room, presently located in the basement, but strictly restricting access to this space via a floor hatch (no stair

access). The corridors around the plant room would also be permanently sealed off, rendering the rest of the basement devoid of any residential use ([Appendix 3](#)). This measure would avoid the immensely disruptive work that would otherwise be required to relocate all the existing heating plant and equipment, and attendant pipework, to elsewhere within the property, without causing harm or be in conflict with relevant planning policy. The Appellant is satisfied that, in the event of planning permission being granted to retain the dwelling, a conditional approval would be sufficient to prohibit the basement area from being used as habitable space.

Site description

- 1.11 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, size and design. Materials are varied also with 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.
- 1.12 The application site is approximately 1646 sqm, broadly rectangular in shape and slopes steeply down to the rear (north west) boundary, itself lined with a thick belt of woodland, into the open valley beyond.
- 1.13 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

- 1.14 The site lies within a National Landscape (former Area of Outstanding Natural Beauty) and forms part of the Green Belt. The site is not in a Conservation Area.
- 1.15 Photographs of the external view of the property can be found at [Appendix 4](#). [Appendix 5](#) contains a plan of photographs taken internally of the basement area.
- 1.16 The neighbouring dwellings are physically remote when compared to modern residential design and layout standard, in generous plots, and in the Appellants experience cannot reasonably be said to be overlooked or their amenity detrimentally affected by the Appellants property. The Appellant would say the reverse is true as the property to the east has windows that directly overlook the Appellants property.

¹ Adapted from Google Maps

- 1.17 To ameliorate this overlooking, the Appellant is able to protect their own amenity and privacy by erecting opaque glazed screening if he so wishes – this is labelled as ‘optional’ on the plans at [Appendix 2](#) and [3](#) as it is not necessary from a planning perspective and the Appellant is happy not to erect them should the Inspector consider that they cause harm by reason of their built form in this Green Belt location.
- 1.18 Whilst the property has extensive views out to surrounding countryside along its south western elevation, along with many properties along this road, views back into the property are not available from any nearby public vantage points to the north, leaving only filtered or far reaching views where the property is small to the human eye, rendering it harmless in terms of its impact on the wider countryside and views.

2 PLANNING HISTORY & BACKGROUND CONTEXT

- 2.1 Planning permission was granted on the subject site for a replacement dwelling in 2019. The dwelling now built does not accord with the approved plans. The Appellant has sought to regularise the planning position three times by way of retrospective applications, all unsuccessfully. Whilst the Appellant recognises that the built form is not in accordance with the plans, he has at all times asserted that there are options available to mitigate any harm that could be attributable to the difference in built form. Given the lack of support for rectification solutions, the Appellant has no option but to seek an appeal decision to provide clarity on the suitability of the resolutions proposed. That situation has led to this Enforcement and Planning appeal.
- 2.2 The relevant planning history of the appeal site is listed below. A summary of each application is also provided below.

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 31/05/2018)

- 2.3 This application related to the former 1.5 storey dwelling which was in situ at the appeal site prior to the unauthorised replacement dwelling being erected. The development authorised by this consent was not implemented. However, the application did create a fallback position as this consent was extant at the time when the next application in this list was determined.

18/10970/FUL - Demolish and replace existing dwelling (approved 13/02/2019)

- 2.4 This is the application which authorised the demolition of the former 1.5 storey replacement dwelling and the erection of a new two storey dwelling to replace the former dwelling. Consent reference: 18/02372/FUL was a material consideration in this application because the consent was still extant at the time. The additional floorspace and volume increases authorised by the extant consent were taken into

consideration by the LPA when they determined the application. The LPA concluded that the size of the replacement dwelling, when the extant consent was also taken into account, was policy compliant in terms of Saved Policy H4, the relevant provisions of the NPPF and Policy CP51 (AONB, now National Landscape).

- 2.5 Work began on site with the demolition of the existing property in February 2019 and at about the same time studies were commissioned to explore ground conditions and develop foundation designs.

PL/2023/07905 - Variation of condition 2 of 18/10970/FUL - To allow for amendments to the approved floor plans and elevations (application withdrawn by the Applicant prior to a decision being issued)

- 2.6 At the time of this application, in early September 2023, it was now clear that the replacement dwelling which had been erected at the appeal site had not been constructed in accordance with planning consent reference: 18/10970/FUL. The dwelling which had been constructed had significant works below ground floor level – a box or basement element with extensive piling beneath and around, which were not expressly referenced on the approved plans, and there were also other small discrepancies such as the width of the replacement dwelling (approx. 650mm wider) and the size of the front porch (see [Appendix 6](#) which shows the ‘as built’ dwelling superimposed on top of the ‘as approved’ dwelling to provide the Inspector with an indication of the deviations from the approved plans).
- 2.7 Following a site visit by the Councils enforcement officer, it was judged by them that the permission for the replacement dwelling had not implemented’ due to the construction method’. They stated that the basement level had to be constructed prior to the rest of the dwelling. Consequently, in their opinion, it could not be considered that the 18/10970/FUL permission was implemented, with an unauthorised extension – the whole dwelling was therefore deemed as unauthorised.
- 2.8 The Appellant did not share the Councils view in terms of the implementation of the permission, as in their view these ground works were a necessary part of the

foundations on which the approved dwelling could then be built. Demolition of the existing 1.5 storey dwelling is also evidence that the works authorised by the extant permission had been commenced at that point in accordance with the definition of a 'material operation' as per s.56(4)(aa) of the 1990 Act. Nevertheless, the Appellant took a pragmatic stance at that time seeking to work with, rather than against the council, to try to achieve a sensible and acceptable outcome for all and entered into discussions on what might be acceptable retrospective applications to regularise the position.

- 2.9 As a consequence, this s.73 application to vary the plans condition application was considered to be invalid by the authority.

PL/2024/02925 - Retrospective planning application for the retention of dwelling (built not in accordance with the approved plans on 18/10970/FUL) (refused 07/08/2024)

- 2.10 This application was submitted by the Appellant in March 2024, with the intention of regularising the apparent breach of planning control which was caused by the replacement dwelling not being erected in accordance with 18/10970/FUL. The application was made in respect of the new building in its 'as built' state with no changes, and it included all of the deviations from the approved plans. However, the application was refused for the following reasons on 7 August 2024:

- 1) *The new dwelling was not in accordance with Saved Policy H4 because the replacement dwelling was not of a similar size and scale to the former dwelling which it replaced and it was not a dwelling which was required in connection with the essential needs of agriculture or forestry or other rural based enterprise;*
- 2) *The new dwelling was deemed to be inappropriate development in the Green Belt, as per the NPPF, because it was materially larger than the building which it replaced and no very special circumstances had been demonstrated; and*
- 3) *The impact of the raised terrace/decking area was considered to be detrimental to the living conditions of neighbouring residents due to overlooking of the adjoining properties.*

ENQ/2025/00341 – Pre-application inquiry concerning amendments to the ‘as built’ design (LPA response issued on 30/04/2025)

- 2.11 To try to more accurately gauge how to rectify the planning position, the Applicant then sought pre-application (pre-app) advice. A copy of the pre-application inquiry and the LPA’s response is attached as **Appendix 7**. The pre-app included amended plans which showed an altered internal layout of the new dwelling which included proposed amendments to the ‘as built’ scheme to ensure that the basement level was screened through re-instating soils to their former level so as the development reads as a partially exposed basement level.
- 2.12 In their response, the LPA advised that re-instating some of the soil to help conceal part of the additional level would be a positive proposal, as this would reduce the impact when considering openness. The LPA also recommended that a privacy screen be fitted to the terrace/raised decking area to prevent overlooking of the adjoining properties and they advised that very special circumstances would need to be demonstrated if the habitable space within the basement area was to be retained. The LPA also opined that they did not consider the appeal site to be ‘grey belt’ land because it was in an unsustainable location.

PL/2025/09915 - Retrospective full application for erection of one dwelling (not built in accordance with consent ref: 18/10970/FUL) (resubmission of PL/2024/02925) (refused 02/07/2026)

- 2.13 This application is the most recent application which was made by the Appellant in December 2025 in an attempt to regularise the planning position arising from the erection of the dwelling at the appeal site. Unlike the application before it, this application proposed significant internal changes to the ‘as built’ design to reflect feedback received during the pre-application consultation in March the same year. The amendments included in the application were the removal of a large part of the habitable space in the basement level – which was to be turned into a void area beneath the ground floor level, the partial reinstatement of the earth bank to the

rear of the basement area and a reduction in the amount of terrace/raised decking area with the addition of privacy screens on either side.

- 2.14 In the supporting planning statement provided by the Appellant, it was made clear to the LPA that the Appellant considered Paragraph 154 (g) of the NPPF to be most relevant to the application, as in the absence of compliance with Policy H4, the proposal nevertheless involved 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. The Appellant also provided a detailed analysis in the planning statement which sets out the reasons why the development was capable of being considered as grey belt development. A copy of this planning statement is attached as [Appendix 8](#).
- 2.15 During the application process, between the beginning of February 2026 to the end of April 2026, the Appellant's Agent sent a number of emails to the Planning Officer concerning the application. The Applicant was obviously keen to ensure this application secured approval and so the Agent proactively engaged with the planning officer to monitor the application and to respond to any issues and concerns. These email exchanges are attached as [Appendix 9](#).
- 2.16 It can readily be seen that the tone of those emails from the Appellants perspective were positive, with the only matters raised by the planning authority's case officer being the extent of the decking area, and whether to erect privacy screens to the decking. The Appellant should like the Inspector to note that despite detailed submissions and justification made in support of the revised plans, including the very special circumstances case made, none of these matters were raised by the authority as issues requiring attention during this critical time. The Appellant had reasonably thought that given the adjustments made to the dwelling and after extensive communications with the authority, that they might expect the application to be finally approved.
- 2.17 On 2nd February 2026, the Council took the decision to issue an enforcement notice requiring the dwelling to be demolished and the landform to be reinstated to original

levels. The notice was due to take effect on 2 August 2026 unless appealed beforehand, and allowed a period of 12 months from the date it took effect for compliance.

- 2.18 On 2 July 2026, the planning application was refused because once again the dwelling was considered not to be compliant with Saved Policy H4 due to its size and also because the authority did not consider that the proposal fell within any of the exceptions listed in Paragraph 154 of the NPPF and no very special circumstances had been demonstrated.

Refusal reason 1

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

Refusal Reason 2

The proposed new dwelling is inappropriate development within the Green Belt which is, by definition, harmful. The new dwelling does not comply with any of the exceptions within paragraph 154 to the National Planning Policy Framework. 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, 153, and 154 of the National Planning Policy Framework.

- 2.19 Given that the enforcement notice was due to take effect on 2 August 2026 unless appealed beforehand, there was no further opportunity for the Applicant to deliver a scheme that the authority might find acceptable. As a result, an appeal has been made against the LPA's decision to refuse consent, as well as an appeal made

against the enforcement notice. The Appellant assumes both appeals will be conjoined and determined together.

3 OVERALL CONTEXT FOR THE ACTIONS TAKEN BY THE APPELLANT.

- 3.1 Due to a series of unforeseen circumstances and, in hindsight, not fully thought through decision making, the Appellant has found itself in a position of having to regularise unauthorised works. However, it is important from the Appellants perspective to explain the circumstances and logic they applied during the build of this dwelling to allow the inspector to better judge whether there are circumstances and a planning case to support the Appellants position.
- 3.2 There are two pertinent reasons why the additional basement level was added to the new dwelling.
- 3.3 Firstly, during the groundwork and foundations phase of the build a structural issue was identified relating to the fact that the land, which is located on a steep bank, is made up of Fuller's earth, which in this location is inherently unstable. The advice received at the time from a structural engineer was to provide a box-basement structure as a part of the foundations of the build. This was because a structural box element, or basement, would not only remove weight away from the underlying slip plane geological features (the previous property (and other properties in the area e.g. the near Public House) had slipped down the slope), thus reducing risk of slippage, but it would at the same time serve to help divert water away from the ground floor (water emerging during the construction phase was significant, flowing from road side down the slope) of the replacement dwelling, again reducing risk of ground failure and slippage. That box feature combined with extensive piling was the recommended foundation design (see note from Foundation Piling Ltd at [Appendix 10](#)).
- 3.4 Secondly, in 2018 the Appellant's daughter became ill. By 2020, while the build was still underway, her condition deteriorated such that she was rendered wheelchair bound. Therefore, during the evolution of the foundation design, it was decided to construct the box-basement element at approximately 3m in depth (which was one of several depths considered by the Geotechnical engineers (ranging from 1.0m depth up to a 5.0m depth box element – see [Appendix 11](#)), and thought was then

given to using this feature as accommodation for the Appellant's daughter – to suit her particular needs. As part of these works, 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.

3.5 These issues are explained more fully below.

Foundation Design

3.6 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. A Geotechnical Report was prepared prior to commencement of construction (April 2018) (**Appendix 11**) 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'*.

3.7 Consequently, some form of piled foundation was considered to be appropriate. From the company's past experience, bored piling was to be preferred to driven. Bored piles should be taken an adequate depth below the basal landslip surface.

3.8 The company advised that 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.

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

3.10 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 Appellants' daughter, the option of basement foundation with

piling was taken forward as this provided the required foundation design as well as living space and a suitable response to the unstable geology (see [Appendix 10](#)).

- 3.11 The Appellants' intention was to construct the new dwelling as per the approved planning permission. However, during the groundwork and foundations phase of the build, advice from a structural engineer was to provide a box structure or basement as a part of the foundations of the build.
- 3.12 The Appellant would suggest that if it the development had been built to the recommended foundation design (as it has been), *but not occupied for residential purposes*, and the land re-instated as originally envisaged, none of the action now taken by the authority is likely to have arisen. It would simply be another, albeit extremely complex, foundation, necessary to have taken place in order to build out the approved dwelling.
- 3.13 Notwithstanding, concerned that these works were going beyond that approved in 2019, the then architect emailed the head of planning south at Wiltshire in May 2019, who confirmed that:

“ Following your email below, I have looked at the permission and the plans and documents to which it relates.

The submission and permission appears to envisage a degree of earthworks; notably, the updated Structural Survey prepared by Mark Lovell Design Engineers (dated Feb 2019), which, inter alia, confirms the existing property is moving down the escarpment and that suitable foundation works will be necessary in the event of reconstruction. Although not shown on the approved plans, I can reasonably infer from the submission that those foundations will be necessarily extensive.

For the above reason, I am confident that the permission granted does reasonably envisage and allow for below ground foundation works to be carried out; the form and nature of those foundations requiring no further permission from the Local Planning Authority. I would advise however, that your client must satisfy themselves that any such below ground works do not alter that above ground development for which planning permission has been granted. In such a circumstance, it is possible that a further planning permission may be required so as to accommodate those above ground changes.

I trust the foregoing is of some use to you. Please do not hesitate to contact me again if you wish for further clarification.”

(see [Appendix 12](#))

3.14 The architect made clear that:

“..in order to stabilise the new structure in conjunction with the existing topography and bad soil a rigid concrete box underground is required under the proposed footprint so the building effectively floats on the soft sub ground..”

3.15 So, the consideration of that foundation design solution - a box structure with piling, was seen as a sensible and logical thing to do to support the replacement dwelling as approved. That approach was supported by the planning authority.

3.16 In the Appellants view, the deviation from the approved permission is fundamentally the use to which the basement has been put, and the absence of reinstating the earthworks. Those decisions were taken as their daughter became disabled at the same time.

3.17 That operational work associated with creation of the foundations was necessary in order to implement the approved dwelling; the occupation of that space for residential purposes, and the absence of reinstation the earthworks around that level, however, was not in compliance with the approval granted by the planning authority. This is something the Appellant regrets and continues to seek to rectify the position.

3.18 The purpose of this appeal is for the Appellant to be able to retain the dwelling as shown on the plans as submitted but refused. However, the Appellant also acknowledges that this may not be possible and, under this circumstances, proposes an alternative design for consideration under the Ground (f) enforcement notice appeal, where the habitable space within the basement area is completely removed from the dwelling and the excavated earth area to the rear of the basement area is reinstated entirely back to original levels. These plans associated with the enforcement appeal are something the authority will now be aware of and on that basis they are included in this planning appeal for consideration as well ([Appendix 2 and 3](#)).

Health Condition

- 3.19 In 2018, just before consent was issued for the replacement dwelling, the Appellants daughter became ill.
- 3.20 The nature of her condition is confidential information. However, as it is an important part of the planning justification as to why the basement area was adapted to suit her needs, we have a signed letter from her General Practitioner, which details her condition at various stages of the project together with her ongoing accommodation needs. This at [Appendix 13](#).
- 3.21 In summary her condition can be life threatening if suitable care, including medication, is not provided or available in a timely fashion. If medication fails, then she must have immediate care and facilities to accommodate that care. This amounts to as a minimum, a bedroom with suitable wheelchair access, and a bathroom with wheelchair access. The space required for such facilities cannot be provided within the footprint of the ground or first floor. An internal lift access has been designed to allow her to move between the ground and basement floors and an external lift is intended to be provided near the entrance to the property too.
- 3.22 In planning terms, it is reasonable to make provision for the Appellants daughter - these are very special circumstances that justify this provision, to which significant weight should be attributed in the planning balance.

4 PLANNING STATUS OF THE SITE

- 4.1 Compliance with policy depends in part upon whether the replacement dwelling permission has been implemented or not.
- 4.2 This is assessed in more detail below, but in the Appellants view there are two approaches to this issue, each depending on the view one takes to the planning status of the site i.e. to what extent is the development lawful and in particular whether the approved planning permission has been implemented. If the former, one need not argue about the principle of the development. However, if it has not been implemented then one has to look at how a new dwelling is compatible with relevant planning policy.
- 4.3 In both scenarios, it is submitted that other material consideration are relevant to the planning balance.

Planning Status of the site

- 4.4 The local authority position, assumes that the replacement dwelling (18/10970/FUL, granted on 13 February, 2019) has not been implemented and so in policy terms the current development should be considered as a **new** dwelling in the open countryside against which only strategic locational policies apply, along with any other material considerations.
- 4.5 The alternative approach, which the Appellant considers more appropriate, is to consider that the consent for the replacement dwelling has been implemented, but due to operational requirements has deviated from the approved plans, in which case one focuses on whether the use as additional accommodation below ground level, and the absence of not reinstating the earthworks, is appropriate and justified in this location having regard to relevant policy and any other material considerations.
- 4.6 There is, however, a difference of opinion as to whether the approved replacement dwelling under consent ref 18/10970/FUL, granted on 13 February, 2019 has been implemented.

- 4.7 This is explored further below.
- 4.8 The most recent application was for a retrospective residential dwelling within the open countryside. The application site is a plot of land which had a residential dwelling “Little Orchard” in situ until this was demolished and a replacement residential dwelling erected in its place.
- 4.9 The planning permission was for demolition of the previous dwelling with a replacement dwelling. The Appellant stated that this was implemented and attempted to vary the plans with a S73 application in September 2023 (PL2023/07905). However, following enforcement investigation considering the method of construction, it was concluded by the authority that this permission had not been implemented, and the erected building was a wholly unauthorised dwelling. The Appellant withdrew that application as they did not consider it to be prudent to challenge the authority’s conclusion at that point prioritising instead the need to try to ‘negotiate’ a consent.
- 4.10 The authority’s position is that as the previous residential dwelling has been demolished, the application was not a replacement dwelling application, rather an application for a new open market dwelling.
- 4.11 The Appellant disagrees. Whilst the Appellant accepts that the demolition clearly took place to enable the implementation of the consent and therefore there was no longer a dwelling on the site at the point, the Appellant considers that the intention to implement the consent is a relevant factor, along with the fact that the planning history of an extant dwelling and a replacement consent is a material consideration when weighing the planning balance in decision-making. It believes it is reasonable to conclude that the approved scheme *was* implemented and remains extant, albeit with unauthorised elements to it. The reason for this position is as follows.
- 4.12 The permission was to ‘Demolish and replace existing dwelling’. The demolition has been undertaken, and as such means the permission was commended and partially implemented. The replacement dwelling has since largely been completed. There are however, unauthorised works related to its implementation, and the Appellant believes these are confined to:

1. The use of the basement foundation works for residential accommodation, designed for the needs of a disabled person;
2. The insertion of windows and doors to this area;
3. The absence of the re-instatement of earthworks which were originally shown to cover the basement floor up to about ground level of the main dwelling; and
4. The small increase in width of the overall dwelling by approx 650mm and a slight increase in depth of the porch (see [Appendix 6](#))

4.13 The appellant does not consider that the operational works to construct the box basement structure and the associated piling work, were in themselves a breach, as these were necessary to construct the approved dwelling.

4.14 The approved scheme required a foundation and, as it transpired, post consent, given the sloping site and difficult geology (Fullers earth - see below), the foundation design was not going to be a simple or straightforward matter. This, unfortunately, was not fully explored at the planning stage. As it transpired, the works below approved ground floor level became more substantial and complex than was originally envisaged. At the time, no express consent for foundation design was sought or asked for. It is, of course, not uncommon or usual to seek express consent for foundation design as that is normally resolved through the Building Regulation approval process. Building regulation approval was secured for all works to the house.

4.15 In other words, a foundation structure below ground level would have to have been created in one way or another in any event, in order to allow the approved development to be constructed safely and without risk of future ground subsidence. The slope of the site and poor geological conditions meant those works were going to be substantial. After consent, the Appellant had explored a number of different foundation design options, with and without basement, and basements of different depths too (from 1m to 5m) to try to identify a technically appropriate and proportionate foundation solution. The feasibility report stated that “*..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.* ([Appendix 10 and 11](#))

- 4.16 Had the subsequent combination of a foundation design, incorporating a basement element to it, not have been occupied for residential use, and the earthworks not removed (that were originally intended to go up to ground floor level), the Appellant would suggest that the authority would not have considered it necessary or expedient to take enforcement action to remove the foundation/basement works on which it was necessary to implement the approved permission. Indeed, the email communication between the Appellants architect and the planning authority in [Appendix 12](#) makes clear the authority were expecting substantial works and did not believe there would be a breach of planning control by implementing those works.
- 4.17 It was the choice to go for a foundation/basement design which was then *occupied* for habitable purposes that was the error. Not, in the Appellants opinion, the design or operational works themselves.
- 4.18 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.
- 4.19 Following this assessment and coupled with the emerging health requirements of the Appellants daughter, the option of a basement design was taken forward as this was not only a cost effective approach to designing the foundations but also provided the required living space and a suitable response to the unstable geology.
- 4.20 On that basis, and including the fact that the first material operation was the demolition of the existing dwelling, means that in the Appellants view the permission has been begun and implemented. The ground and first floor level and design has not materially changed from the approved plans, and the substantial underground structures created where necessary – without them, the replacement dwelling could not have been built at all.
- 4.21 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.

5 CASE FOR THE APPELLANT

- 5.1 The authority has refused the appeal application for the following two reasons:

Reason for Refusal 1

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

Refusal Reason 2

The proposed new dwelling is inappropriate development within the Green Belt which is, by definition, harmful. The new dwelling does not comply with any of the exceptions within paragraph 154 to the National Planning Policy Framework. 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, 153, and 154 of the National Planning Policy Framework.

Reason for Refusal 1

- 5.2 The appellant is of the opinion the replacement dwelling has been begun implemented and so the principle need not be considered again. Core Policy 1, 2 and 11 of the Wiltshire Core Strategy (Jan 2015), which relate to spatial, settlement and delivery strategies do not therefore apply.
- 5.3 Even if one accepts the authority's position that the dwelling is wholly unauthorised, then the Appellant still considers there is sufficiently strong planning justification to retain the dwelling without conflict to the above stated policies and without harm to interests of acknowledged importance.
- 5.4 Saved policy H4 from the North Wiltshire Local Plan 2011 allows for new dwellings in the countryside provided that:

i) It is in connection with the essential needs of agriculture or forestry or other rural based enterprise;

ii) It is a replacement for an existing dwelling where:

a. The residential use has not been abandoned; and

b. the existing dwelling is incapable of retention in its current state, is unsightly or is out of character with its surroundings and

c. the replacement dwelling is of a similar size and scale to the existing dwelling within the same curtilage.

5.5 The authority has accepted that in granting approval for the replacement dwelling, this policy was met. They accepted too there was no harm to Green Belt or the National Landscape. The authority now asserts, however, that criteria 'c' is no longer met as it goes beyond being of a similar size or scale to dwelling it replaced.

5.6 For the reasons explained previously, the Appellant considers they have properly commenced development by demolishing the existing dwelling and have largely completed the main house. However, whilst not shown on the approved plans, both the authority ([Appendix 12](#)), and the Appellant accepted that substantial underground works were required to implement the approved dwelling. The Appellant accepts, however, that there are some unauthorised works related to its implementation, but the Appellant believes these are confined to:

1. The use of the basement foundation works for residential accommodation, designed for the needs of a disabled person;
2. The insertion of windows and doors to this area;
3. The absence of the re-instatement of earthworks which were originally shown to cover the basement floor up to about ground level of the main dwelling; and
4. The small increase in width of the overall dwelling by approx 650mm and a slight increase in depth of the porch (see [Appendix 6](#))

5.7 The Appellants justification for works 1 to 3 inclusive, rest with the need to provide dedicated disabled accommodation for the Appellants daughter. This is a material consideration and the letter from her GP, at [Appendix 12](#), sets out in detail why the

accommodation provided is necessary. Whilst it was never intended to occupy the basement area in this way, the circumstances were effectively forced upon the Appellant, and they acted in a way that most others would act and sought to support and care for their daughter in the most appropriate way they had available.

- 5.8 External door and windows are an inevitable consequence in providing such accommodation, and the letter makes reference to these too.
- 5.9 For these reasons, the Appellant would seek to claim special circumstances as sufficient justification to support the Appellants occupation of and related works to the basement.
- 5.10 In terms of the small increase in width to the main dwelling and small increase in size of the porch (see Appendix 6), these are considered to be de minimis and not considered to be so material as to be in conflict with the criteria in policy H4 or any other policy.
- 5.11 In the Appellants opinion they are in substantial accordance with policy H4 and when combined with the special circumstances of that additional accommodation then that outweighs any increase in size above the original dwelling.
- 5.12 Notwithstanding, even if one accepts that the development is new, and not a replacement dwelling that has already been implemented, then the Appellant also argues that their proposals should be considered on their own merit and individual set of circumstances as in policy terms they are unique; there are no policies that fully anticipate the following merits of the proposal and its own unique set of circumstances:
1. The appeal site has a lawful residential use and has had a permanent residential building on the site for more than 50 years. At no point has this site been without a residential dwelling – the buildings and use persist and have not been abandoned. The Appellant has commenced development;
 2. The site and building forms part of a well established linear form of residential development, surrounded by other residential properties – there is strong reason to deviate from this settlement pattern by refusing to allow a residential dwelling on the appeal site ;

3. The current dwelling provides purpose designed disabled accommodation, necessary for the current occupants – there is no local planning policy that appears to accommodate this type of need;
4. The current dwelling is no more or less sustainable in terms of its location, then the former dwelling it replaced;
5. The above ground part of the current dwelling is not materially different in form and design to the approved dwelling in this location, and on that basis causes no harm to the National Landscape (former AONB), or Green Belt in which it is situated.
6. The below ground structure is necessary to provide the purpose built disabled accommodation necessary for the Appellants daughter, and given its discrete location and within the footprint of the approved dwelling, causes no harm to the National Landscape (former AONB), or Green Belt in which it is situated.
7. It is not sustainable to demolish an existing dwelling, which causes no harm to interests of acknowledged importance and contributes to the health and well being of the Appellants family and is important to retain in the absence of a 5 year supply of housing.

And yet the planning authority's position is that this is a new dwelling in open countryside and must be refused, and for the current dwelling to be removed and not replaced. The Appellant is of the view that instead it should be considered on its individual merits.

- 5.13 In respect of refusal reason no.1 therefore, the Appellant does not accept that 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. It is not unacceptable in principle.

Reason for Refusal 2

- 5.14 The National Planning Policy Framework (NPPF) 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 authority refer to several paragraphs within it that all refer to Green Belt.

5.15 The Appellant is of the view that the principal planning argument for why the dwelling should be retained (as shown on the submitted plans), accords with para 154 of NPPF as no harm to openness, and the very special circumstances surrounding the Appellant's daughter's health condition.

5.16 Para 153 states that:

When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

5.17 Para 154 then states:

Development in the Green Belt is inappropriate unless one of the following exceptions applies:

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), including buildings, 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 (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.

h) Other forms of development provided they preserve its openness and do not conflict with the purposes of including land within it.....”

5.18 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) .

5.19 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. In the Appellants view criterion g) is applicable to this case.

5.20 Even accepting the authorities position that the site no longer benefits from the replacement dwelling provision under Policy H4, then this still comprises 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.

Other Considerations

National Landscape

5.21 The site was previously developed and in approving the replacement dwelling, the authority accepted that here was no harm caused to the national landscape.

- 5.22 In the Appellants view, the authorised works make little difference to the effect upon the National Landscape.
- 5.23 In visual terms the unauthorised parts of the development are discrete and/or limited in size, remote from any public vantage points and largely contained within the footprint of the approved dwelling.

Housing

- 5.24 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".
- 5.25 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..."*
- 5.26 In terms of the Council's 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. It is surprising and disappointing that in the circumstances of this case, the authority has reached the conclusion that the deviation from the approved plans causes such harm that it outweighs such a significant benefit in providing a family home which meets the specialist needs of a disabled child in the face of such a HLS position. Furthermore, it is not considered that the authority has attributed the correct weight to the other matters cited above in reaching a conclusion on the planning balance.

Grey Belt

- 5.27 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.
- 5.28 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.*
- 5.29 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.
- 5.30 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*”.
- 5.31 The Appellant has analysed whether the appeal site benefits from ‘Grey Belt’ and has concluded it does (see [Appendix 14](#)).
- 5.32 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.
- 5.33 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.

- 5.34 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’.
- 5.35 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 due to the subterranean nature of the works. 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.
- 5.36 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 and included for the Inspector’s attention only at [Appendix 13](#).
- 5.37 The revised NPPF 2024, 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.

- 5.38 Paragraph 11 sets out that for decision taking, the presumption in favour of sustainable development means approving development proposals that accord with the development plan without delay. Or, where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, then permission should be granted unless any other conflict with the NPPF provides a strong reason to reject the application. Or, thirdly, any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, 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.
- 5.39 Considered on its merits and with other relevant material considerations, the Appellant considers there is no strong reason to refuse this development. The benefits of its retention demonstrably outweigh any harm or conflict with local planning policy.
- 5.40 The Inspector is also respectfully invited to have due regard to the Public Sector Equality Duty under section 149 of the Equality Act 2010. Disability is a protected characteristic, and the decision should take account of the consequences for the disabled occupant's safety, care and independence if the purpose-designed accommodation is lost.

6 CONCLUSION

- 6.1 The Appellant accepts there are matters associated with the replacement dwelling that need to be regularised. Despite multiple attempts to resolve the unauthorised works, and the positive engagement they had with the planning authority, not only was permission refused again, but the authority now required the dwelling to be demolished, and presumably, not replaced.
- 6.2 In the Appellants experience the action by the planning authority seems unnecessarily harsh and punitive given the individual circumstances and merits of this case.
- 6.3 Weighing against the Appellant are the following unauthorised works:
1. The use of the basement foundation works for residential accommodation, designed for the needs of a disabled person;
 2. The insertion of windows and doors to this area;
 3. The absence of the re-instatement of earthworks which were originally shown to cover the basement floor up to about ground level of the main dwelling; and
 4. The small increase in width of the overall dwelling by approximately 650mm and a slight increase in depth of the porch (see Appendix 6)
- 6.4 In the Appellants opinion, matters weighing in favour of allowing the appeal are:
1. It has been demonstrated that the works below ground level were necessary in order to implement the replacement dwelling. They were accepted as implied by the planning authority and the only technical design solution appropriate for this site (see [Appendix 10](#) and [11](#)). These works therefore were not undertaken at a whim but were driven by engineering necessity; that should not count against the Appellant;
 2. In the Appellants opinion, this is not a new dwelling; it is still a replacement dwelling, and one that has been implemented. It remains extant;

3. There are very special circumstances in the form of the need of the Appellant to provide suitable accommodation to support and care for their disabled daughter. That need is supported by the Appellants daughter's GP ([Appendix 13](#));

6.5 In addition, even if the Inspector is not persuaded by the Appellants assertion that the permission for the replacement dwelling has been implemented (but with some matters that still need to be regularised), the Appellant still considers that there is sufficient planning justification to approve a dwelling in this location, and as a new dwelling. If allowed, it will not create an undesirable precedent that would undermine the policies on which the authority would normally rely to control the location of development. The circumstances of this case are sufficiently unique, highly unlikely to repeated elsewhere, and as such will avoid any undesirable precedent being set. A new dwelling in this location should be approved on its merits and based on other material considerations it its favour including:

1. It is not inappropriate development in the Green Belt, and constitutes acceptable infilling;
2. Will not give rise to harm to the National Landscape as, in all material ways, it remains within the footprint approved for the replacement dwelling, which was accepted by the planning authority. It is also remote from surrounding public vantage points reducing it impact within the wider landscape;
3. There is a severe housing supply shortage in Wiltshire Council which the retention of the replacement dwelling will avoid making that position worse – there remains an unmet housing need;
4. It can be classified as previously developed land and grey belt, where development can be accepted.

6.6 The appellant sees no substantive conflict with the local plan policies listed in reason for refusal 1.

6.7 The polices of the Core Strategy are not applicable as they relate to new development, which the Appellant say the current house is not. It is a replacement dwelling. The policies referred to are strategic in nature and relate to spatial, settlement and delivery strategies. The appellant considers they are substantially

in accordance with saved policy H4, and to the extent there is any conflict in terms of the additional purpose designed disabled accommodation, and other changes, these are outweighed by the special circumstances surrounding the need to provide disabled accommodation for the Appellants disabled daughter.

6.8 The Appellant sees no conflict with the NPPF and, in particular, no conflict with Green Belt. Reason for refusal 2 is therefore not justified either.

6.9 There are also other considerations why development should be allowed as shown on the submitted plans and these include:

- a. The appeal site has a lawful residential use and has had a permanent residential building on the site for more than 50 years. At no point has this site been without a residential dwelling – the buildings and use persist and have not been abandoned. The Appellant has implemented its permission for a replacement dwelling;
- b. The site and building forms part of a well-established linear form of development, surrounded by other residential properties – retention of the replacement dwelling would not conflict with this settlement pattern;
- c. The current dwelling is no more or less sustainable in terms of its location, then the former dwelling it replaced;
- d. The below ground structure is necessary in engineering terms and almost by chance was available to be converted to provide the purpose-built disabled accommodation necessary for the Appellants daughter, which amounts to very special circumstances;
- e. It is not sustainable to demolish an existing dwelling, when there is no strong reason to reject the application. Demolishing and not replacing the dwelling is unnecessarily punitive and a waste of a valuable resource. It causes no harm to interests of acknowledged importance and supports to the health and well-being of the Appellants and their disabled daughter.

6.10 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) No other policies work against the Appellants development.

- 6.11 Notwithstanding, in the event that the Inspector is not persuaded by the planning case in support of the dwelling, then it is the Appellant's view that a satisfactory remedy to the unauthorised development is capable of being achieved by means of an alternative approach, one which would still address the key concerns of the planning authority. This alternative approach is only offered on the basis that its' planning appeal, running concurrently alongside the enforcement appeal, fails, so triggering the need to adopt a more extreme solution to remedy the unauthorised works. These alternatives are contained in [Appendix 2](#) and [3](#) and in essence re-instate the replacement dwelling as approved.
- 6.12 For all of the reasons set out in this statement, the Appellant respectfully requests that the Inspector allows their appeal which will enable him and his family to retain their family home.