

Appeal Statement

Site Address: White House
Northwood Road
Harefield
Middx
UB9 6PT

Our Ref: 21-141

Council Ref: 66100/APP/2023/1506

Validation Date: 25/05/2023

Determination
Date: 10/08/2023

Appeal made against:

HILLINGDON COUNCIL

in respect of

The refusal to grant planning permission for

**Demolition of existing structures and erection of a replacement single storey
bungalow, hardstanding, access track and associated hard and soft landscaping**

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1. INTRODUCTION

- 1.1. This statement is submitted to support an appeal against Hillingdon Council (The Council) in refusing to grant planning permission for the '*Demolition of existing structures and erection of a replacement single storey bungalow, hardstanding, access track and associated hard and soft landscaping*' ("the Application")
- 1.2. This appeal is made under S78 of the Town & Country Planning Act 1990 (as amended – "the Primary Act"). This statement describes the details, evidence, case law, and other particulars underpinning it. It must be read with all supplementary information, plans, technical reports and other documentation as submitted.

2. SITE & SURROUNDINGS

- 2.1. The White House is a small dwelling which has historically been used for various purposes associated with the management of Harefield Grove Farm. In 2022 an application was granted for the change of use of the White House to a C3 dwellinghouse.
- 2.2. The existing dwelling is single storey in height and of timber construction, featuring a shallow dual-pitched roof with felt tiles.
- 2.3. The field adjacent the application site to the west is paddock land occupied by two small stables. This does not form part of the application site.
- 2.4. The site is situated within the Green Belt but is not subject to any other significant planning constraints.



Figure 1 - Existing Dwelling 'White House'



Figure 2 - Paddock land and Stables to the West of Application Site



Figure 3 -Existing Access from Northwood Road



Figure 4 - Existing Shed and Granular Track

3. PLANNING HISTORY & BACKGROUND

3.1. The table below provides a full list in summary form of the relevant history of the site.

Ref No	Development	Decision
53258/APP/2010/91	Construction of new vehicular access with associated hedgerows, timber fencing and gates	APPROVED
53258/98/1586	Formation of a means of vehicular access to the highway with the installation of a 1.5-metre high gate and posts	APPROVED
66100/APP/2009/1268	Use of existing single-storey building as store, garage, office and part-time residence (for up to 50 days a year) (Application for a Certificate of Lawfulness for an existing use or operation or activity)	APPROVED
66100/APP/2014/548	Change of use from B1 (Offices) to C3 (Dwellinghouses) to create one self-contained flat (Prior Approval)	REFUSED
66100/APP/2022/2374	Change of use of White House from a store, garage, office and part-time residence (for up to 50 days a year) to a Class C3 dwellinghouse	APPROVED
66100/APP/2023/1506	Demolition of existing structures and erection of a replacement single storey bungalow, hardstanding, access track and associated hard and soft landscaping	REFUSED

4. PLANNING POLICY

- 4.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 require applications to be determined per the Development Plan unless material considerations indicate otherwise.
- 4.2. The National Planning Policy Framework (NPPF “Framework”) and Planning Practice Guidance (“PPG”) define the national planning policy. Great weight is afforded to an ‘up-to-date’ Local Development Plan (“the Local Plan”), which accords with national policy.
- 4.3. **Decision-making** should focus on the **acceptability of land-use purposes** rather than the control of processes or emissions (para 183). They **should seek to approve applications consistent with sustainable development principles** (Para 10 and 47). Planning Authorities (“LPA” or “Council”) should also approach decisions on proposed development positively and creatively (Para 38),
- 4.4. If LPAs **cannot demonstrate an up-to-date Local Plan or where the relevant policy/ies are not up-to-date, then the application must be approved unless:**
- I. the policies in the Framework for protecting areas or assets of importance provide a **clear reason for refusal**; or
 - II. 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.
- 4.5. Regarding emerging policies, these will attract an appropriate weighting value according to the following:
- a) the stage of preparation of the emerging plan (the more advanced, the greater the afforded weight);
 - b) the extent to which there are unresolved objections to relevant policies (the less significant these are, the greater the weight that may be given)
- and
- c) the degree to which the policies are consistent with the NPPF (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)
- 4.6. LPAs should consider using **conditions to ensure that development is controlled but only where those conditions are according to the ‘Conditions Tests’**. If this is not possible, then “planning obligations” should only be used if it is not possible to address unacceptable impacts through a planning condition (Para 54).
- 4.7. The NPPF should be used in conjunction with the LP, and both should be used as an objective and reasonable response to decision-making (Para 9).

Section 2: Sustainable Development

- The heart of the Framework is a presumption in favour of sustainable development (paragraph 11)
- Local Plans must adhere to the 3 objectives (outlined in the above paragraph) and consider local circumstances to reflect the character, needs and opportunities, align toward growth and infrastructure; improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects

Section 9: Sustainable Transport

- Significant development should be focused on locations that can be made sustainable by limiting the need to travel and offering a genuine choice of transport modes—helping to reduce congestion and emissions and improve air quality and public health (para 105).
- Opportunities to maximise sustainable transport solutions vary between urban and rural areas, and this should be considered in both plan-making and decision-making

Section 11: Effective Land Use
(para 120)

- Give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs and support opportunities to remediate despoiled, degraded derelict, contaminated or unstable land.
- Promote and support the development of under-utilised land and buildings, significantly if this would help meet identified needs for housing where land supply is constrained. Available sites could be used more effectively (for example, converting space above shops and building on or above service yards, car parks, lockups, and railway infrastructure); and e) supporting opportunities to use the airspace above existing residential and commercial areas premises for new homes.
- They should allow upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well-designed (including complying with any local design policies and standards), and can support safe access and egress for occupiers

Section 12: Design (para 126)

- Good design is a crucial aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities
- Design Codes and guides should be based on effective community engagement and reflect local aspirations for the development of their area, considering the guidance contained in the National Design Guide and the National Model Design Code.
- Design quality should be considered throughout the evolution and assessment of individual proposals

Section 13: Protecting Green Belt Land

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

4.8. The site lies within the London Borough of Hillingdon, for which the Development Plan for that area will prevail. The London Borough of Hillingdon Local Plan was adopted as part of the borough's development plan at full Council on 16 January 2020 and is therefore afforded full weight.

4.9. The following policies are of direct relevance to the proposed development:

DMEI 4: Development in the Green Belt or on Metropolitan Open Land

DMEI 7: Biodiversity Protection and Enhancement

DMEI 9: Management of Flood Risk

DMHB 11: Design of New Development

DMHB 12: Streets and Public Realm

DMHB 14: Trees and Landscaping

DMHB 18: Private Outdoor Amenity Space

DMT 2: Highways Impacts

DMT 6: Vehicle Parking

5. REFUSAL

5.1. The application was refused for the following reasons as outlined in a decision letter dated 10/08/2023:

1. The proposed development constitutes inappropriate development which is, by definition, harmful to the Green Belt and would have an adverse impact on the openness of the Green Belt. In the opinion of the Local Planning Authority, there are no very special circumstances that would clearly outweigh the harm caused to the Green Belt. The proposed development is therefore contrary to Policy EM2 of the Hillingdon Local Plan: Part One - Strategic Policies (2012), Policy DME1 4 of the Hillingdon Local Plan: Part 2 - Development Management Policies (2020), Policy G2 of the London Plan (2021) and Section 13 of the National Planning Policy Framework (2021).

2. By virtue of its location and its remoteness from existing services and facilities and, in particular, from existing infrastructure in the area, the proposal represents an environmentally unsustainable form of development. In addition, the proposed development fails to promote opportunities to travel by non-car based modes of travel and it fails to provide safe, and suitable access for all users. The proposal is therefore contrary to Policy DMT 1 of the Hillingdon Local Plan: Part 2 - Development Management Policies (2020), Policy T3 of the London Plan (2021) and Sections 2 and 9 of the National Planning Policy Framework (2021).

3. The proposed development, by virtue of its siting, scale, width, mass, height and associated paraphernalia, would appear as an incongruous and highly conspicuous form of development that would be at odds with the rural setting of the site. The proposal would therefore cause unacceptable harm to the character, appearance and visual amenities of the area, contrary to Policy BE1 of the Hillingdon Local Plan: Part One Strategic Policies (2012), Policies DMHB 11 and DMHB 12 of the Hillingdon Local Plan: Part Two – Development Management Policies (2020), Policies D1, D3 and D4 of the London Plan (2021) and the National Planning Policy Framework (2021).

4. In the absence of an Arboricultural Impact Assessment, Method Statement and Tree Protection Plan, it has not been demonstrated that the proposed development could be constructed without undue loss of trees at the site which currently provide high visual amenity value. The potential harm caused to the trees would cause unacceptable harm to the character, appearance and visual amenity of the area. The proposal would therefore be contrary to Policy BE1 of the Hillingdon Local Plan: Part One Strategic Policies (2012), Policies DMHB 11, DMHB 12 and DMHB 14 of the Hillingdon Local Plan Part 2: Development Management Policies (2020), Policy G7 of the London Plan (2021) and the National Planning Policy Framework (2021).

5. In the absence of a preliminary ecology report, there is insufficient information to demonstrate that the proposed development would not cause any harm to protected species (which includes bats). The proposal therefore fails to demonstrate that no harm would be caused to protected species and their habitats, contrary to Policy G6 of the London Plan (2021), Policy DME1 7 of the Hillingdon Local Plan: Part 2 - Development Management Policies (2020) and the National Planning Policy Framework (2021).

6. ISSUES TO BE CONSIDERED

6.1. The points of consideration in this appeal are as follows:

- Whether the development is inappropriate development in the Green Belt
- Sustainability and Transport Considerations
- Design and Impact of the proposals on the openness of the Green Belt
- Effect of the Development on the Character and Appearance of the Locality
- Whether the harm to the Green Belt by reason of inappropriateness and any other harm is outweighed by other considerations amounting to very special circumstances necessary to justify the development
- Ecological Considerations and Landscaping

7. ASSESSMENT

Principle

- 7.1. The site is located in the Green Belt where, in accordance with Chapter 13 of the NPPF, most development is considered to be inappropriate development. Paragraph 143 of the NPPF states that inappropriate development, is by definition, harmful to the Green Belt and should only be approved in very special circumstances.
- 7.2. As defined in para 138 of the NPPF, the Green Belt serves five purposes:
- 'a) to check the unrestricted sprawl of large built-up areas;*
 - b) to prevent neighbouring towns merging into one another;*
 - c) to assist in safeguarding the countryside from encroachment;*
 - d) to preserve the setting and special character of historic towns; and*
 - e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.'*
- 7.3. Paragraph 149 of the NPPF sets out exceptions to inappropriate development in the Green Belt. These exemptions include:
- 'd) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces'*
- 7.4. Policy DME1 4 of the London Borough of Hillingdon Local Plan, *'Development in the Green Belt or on Metropolitan Open Land'* states that:
- A) Inappropriate development in the Green Belt and Metropolitan Open Land will not be permitted unless there are very special circumstances.*
 - B) Extensions and redevelopment on sites in the Green Belt and Metropolitan Open Land will be permitted only where the proposal would not have a greater impact on the openness of the Green Belt and Metropolitan Open Land, and the purposes of including land within it, than the existing development, having regard to:*
 - i) the height and bulk of the existing building on the site;*
 - ii) the proportion of the site that is already developed;*
 - iii) the footprint, distribution and character of the existing buildings on the site;*
 - iv) the relationship of the proposal with any development on the site that is to be retained; and*
 - v) the visual amenity and character of the Green Belt and Metropolitan Open Land.*
- 7.5. The previously approved application reference 66100/APP/2022/2374 established the change of of the existing building on the site from a store, garage, office and part-time residence (for up to 50 days a

year) to a Class C3 dwellinghouse. The Council, in deeming the proposals inappropriate development in the Green Belt, appear to have not given this extant planning permission any weight in their refusal of the appeal proposals whatsoever.

- 7.6. Whilst we accept that this consent has currently not been implemented and the Council are not technically incorrect in deeming the proposals a form of inappropriate development, to ignore the extant consent which formalises the permanent C3 use of the existing residential building on the site is a significant oversight which has led to a fundamentally flawed assessment of the appeal proposals in our view.
- 7.7. The appeal proposals should have at the very least been determined in the context of the extant consent given that if the extant permission for change of use were implemented, the appeal proposals would constitute the replacement of an existing building for the same use. We consider on this basis that the appeal proposals should be deemed acceptable in principle, provided that it can be demonstrated that they would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it.
- 7.8. In any case, the extant consent represents a material consideration which should be taken into consideration in the overall planning balance and a very special circumstance which, considered cumulatively, could outweigh any harm to the Green Belt arising from the proposed development.

Sustainability and Transport Considerations

- 7.9. The second reason for refusal relates to the site's location, stating that:

'By virtue of its location and its remoteness from existing services and facilities and, in particular, from existing infrastructure in the area, the proposal represents an environmentally unsustainable form of development. In addition, the proposed development fails to promote opportunities to travel by non-car based modes of travel and it fails to provide safe, and suitable access for all users. The proposal is therefore contrary to Policy DMT 1 of the Hillingdon Local Plan: Part 2 - Development Management Policies (2020), Policy T3 of the London Plan (2021) and Sections 2 and 9 of the National Planning Policy Framework (2021).'

- 7.10. The Council's failure to acknowledge and give weight to the extant planning permission 66100/APP/2022/2374 which establishes the permanent residential use of the site is apparent in this reason for refusal. Furthermore, the Council's assessment in this regard is directly contrary to the assessment carried out in respect of the change of use application which raised no concerns whatsoever in relation to the sustainability of the site's location and lack of access to alternative modes of transport.
- 7.11. It is unclear why the Council have reached a completely different conclusion in respect of the appeal proposals, stating that:

'Whilst the proposal might not in itself generate a large number of traffic movement, it would nevertheless result in unsustainable journeys being made due to the rural location of the site. Accordingly, the principle of development is not acceptable in this unsustainable location because future occupiers of the proposed dwelling would be reliant on the private motor vehicle to meet their basic need.'

7.12. Whilst we do not dispute that the appeal site has relatively poor access to alternative sustainable modes of transport and future occupants of the proposed dwelling would be reliant on private motor vehicles. To refuse the proposed development on these grounds is not defensible as the permanent residential use of the site has already been established by virtue of a previous extant planning permission.

7.13. Indeed, the comments of the highway authority on the appeal proposals directly supports this view:

'There are no envisaged transport/highway related implications related to this replacement bungalow based on the proposed '3 parking space' provisions within the site envelope, the satisfactory reconfiguration of the established access road and the anticipated negligible variance in activity between the existing and proposed residential use. In particular, the recently approved CoU of the 'White House' to a dwellinghouse (66100/APP/2022/2374) further supports the principle of residential development. The only demands would be related to the provision of 1 'active' electric vehicle charging point with 2 commensurate 'passive' provisions together with 2 secure and accessible cycle spaces which are feasible demands and hence can be secured by way of condition. There are no further observations. The application has been reviewed by the Highway Authority who are satisfied that the proposal would not discernibly exacerbate congestion or parking stress, and would not raise any measurable highway safety concerns, in accordance with Local Plan: Part 2 Development Plan (2020) Policies DMT 1, DMT 2 & DMT 6 and Policies T4 and T6 of the London Plan (2021).'

7.14. On this basis of the above, we consider that the second reason for refusal cannot be reasonably justified. Furthermore, due to the appellants partners disability (which the Council were not aware of when determining the application), the future occupants of the site will inherently rely on private motor vehicles due the limitations placed upon them by virtue of their physical disability. These matters will be expanded upon in respect of the very special circumstances of the case.

7.15. The Council did not raise concerns in respect of the appeal proposals on the basis of the transport impacts of the development and this matter is therefore not in dispute.

Design and Impact on the Openness of the Green Belt

7.16. Whilst the Council in their determination of the appeal proposal have deemed the development inappropriate in principle, in terms assessing the tangible impacts of the development on the openness of the Green Belt, we feel that it is logical to take the existing building on the site with an extant consent for change of use to a C3 dwelling as the 'original dwelling'.

- 7.17. At the very least, given that the site represents previously developed land, the re-development or replacement of existing buildings on the site should be considered acceptable in principle provided it would not have a greater impact on the openness of the Green Belt and Metropolitan Open Land, and the purposes of including land within it, than the existing development,
- 7.18. The 'original dwelling' on the site represents the existing dwelling and ancillary buildings which were approved as part of planning application reference 66100/APP/2022/2374. The proposed replacement dwelling would only represent a very modest increase in the floorspace/footprint of the existing dwelling of 35% when the outbuildings to be removed are also considered. The breakdown of existing and proposed floorspace on the site is set out in the table below:

	Gross External Area (M2)	Floor Space Increase (%)
Existing Dwelling	52.9	100%
Existing Outbuildings	8.9 + 24.3	n/a
Proposed Dwelling	116	135%

- 7.19. The Council state in the published officers report that:

'The proposed dwelling, by virtue of its scale, width, mass and height, would represent a significant increase in volume to the existing single storey structures at the site. It is considered that the proposed residential development would appear incongruous and completely at odds with the rural setting of the site. This, in turn would have a negative impact on the character, appearance and visual amenity of the area.'

- 7.20. We consider that the Council have significantly overstated the visual impact of the appeal proposals in the context of the existing development on the site. Whilst the proposed replacement dwelling is slightly larger than the existing building, its design has been carefully considered to ensure that its overall bulk and massing are limited, and it would not be visible in the context of the wider countryside. The dwelling features an overall low-eaved character and shallow pitched roof with a ridge height of only 4 metres. The roof slope of the dwelling would have a simple uncluttered appearance as there would not be sufficient head room to provide any habitable accommodation within it.
- 7.21. The proposals contain few design embellishments, being designed around the principle of providing modernised, practical, and compact living arrangements at ground floor level to meet the physical requirements of the appellants partner, without increasing the prominence or visual impact when compared with existing buildings on the site. The main design feature of the dwelling is an oriel window on the gable end adjacent the small, covered entrance porch.
- 7.22. The overall character of the replacement dwelling would be very similar to the existing building it replaces. The dwelling would feature a simple gable-ended design with two subservient projecting gables

to the side accommodating the living areas of the dwelling. This design keeps the overall bulk and massing of the building limited.

7.23. In the Council's assessment of the proposed development on the street scene, they state that:

'The residential nature of the proposed development would have a profound effect to the appearance of the site and how it is perceived in the landscape. Whilst there are trees around the perimeter of the site, views of the upper floor and roof form of the proposed dwelling would nevertheless be visible from public vantage points. Consequently, the proposal would result in a loss of openness which would be harmful to the character and appearance of the area.'

7.24. Firstly, The Council are factually incorrect to refer to the proposed dwelling as having an 'upper floor'. The proposed dwelling is a bungalow with no accommodation within the roof. Indeed, the height and pitch of the roof is such that conversion to habitable use would not be feasible in the future. The dwelling is intended to address the physical requirements of the appellants partner, who requires ground floor accessible accommodation to better manage their physical disability.

7.25. Regarding the impact of the appeal proposals on surrounding character, the existing building is set within a generous plot which would remain largely free of built development following the proposed replacement dwelling. Indeed, the removal of the existing outbuilding and stables would reduce the extent of built development across the site and consolidate the footprint of numerous structures into one single form.

7.26. Whilst it is acknowledged that the proposed dwelling is larger than the buildings it replaces, the proposed dwelling would also be well set back within the site, utilising the existing trees and hedgerows within the site to effectively screen the development entirely from views from the south/east. The layout and vehicular access arrangements of the site are such that the presence of a dwelling on the site could not be perceived from vantage points adjacent the existing vehicular access.

7.27. Overall, the site is visually well contained, and the proposed replacement dwelling would not be perceived from public vantage points adjacent the site given the presence of the existing mature hedgerow and landscape features on the boundary of the site with Northwood Road. It is unclear as to which public vantage points the Council refer when stating the roof form would be visible. They have not identified any such vantage points, such as public rights of way from which the development could be seen. The residential curtilage of the replacement dwelling is the same as the existing dwelling, the field within the existing building sits. This part of the site cannot be seen from the access point on Northwood Road.

7.28. In terms of the prominence of the site in the context of longer distance views, the site is bounded by agricultural fields to the north and west, of which there is no public access. The presence of a significant

area of woodland at Pearsons Wood to the north effectively screens the site in the context of longer views from the north. There is public footpath to the south of the site on the opposite side of Northwood Road which connects the eastern end of Harefield to Jackets Lane adjacent the Willow Farm traveller's site. This is the only public right of way within close proximity of the site and does not provide any long-distance views of it.

- 7.29. On this basis, the potential visual impact associated with the proposed replacement dwelling is minimal given the very limited prominence of the site in the surrounding countryside. In any case, the erection of any additional structures on the site following the proposed replacement dwelling could be controlled via the removal of relevant permitted development rights as appropriate.
- 7.30. In respect of ancillary works, these are essentially limited to the formalisation of the existing internal access track which is currently a granular track comprising hardcore material. The proposals would improve this to provide a permeable compacted gravel driveway with associated areas for parking and manoeuvring adjacent the building.
- 7.31. The site is clearly distinct from the agricultural land to the north/west, marked by hedgerows and the presence of building/use of the land as paddocks. As per the existing arrangements, the use of the area of land immediately surrounding the building would be utilised as residential garden space without the need for additional means of enclosure/boundary treatment. The residential curtilage of the replacement dwelling is the same as the existing dwelling, the field within the existing building sits. This part of the site cannot be seen from the access point on Northwood Road.
- 7.32. On the basis of the above assessment, we conclude that any adverse impact on the openness of the Green Belt in this case would be minimal and, as the later section of the report will demonstrate, will be clearly outweighed by the very special circumstances of the case.

Ecological Considerations and Landscaping

- 7.33. The fourth and fifth reasons for refusal related to trees and ecology respectively and the lack of associated arboricultural and ecological reports.
- 7.34. We accept that these reports were missing from the planning portal submission, and this was down to an administrative error. A Preliminary Ecological Appraisal and Arboricultural Impact Assessment were prepared in advance of the planning submission and accompany the appeal.
- 7.35. The Council claim in their officer's report that a Preliminary Ecology Report did not accompany this application, '*despite one being requested by Officers*'. We received no correspondence whatsoever from the Council during the determination of the application and no record of any such request for an ecological appraisal being made.

- 7.36. The conclusions of the submitted Preliminary Ecological Appraisal demonstrate that that no further surveys are necessary to demonstrate that the appeal proposals would not adversely impact upon protected species. Compliance with the suggested mitigation and enhancement measures could be conditioned.
- 7.37. The submitted Arboricultural Impact Assessment concludes that the principal arboricultural features can be retained and adequately protected during development activities and that no significant or important trees will be lost to facilitate the proposed scheme. Again, conditions could be imposed as necessary to ensure that trees would be adequately protected during the construction phase.
- 7.38. Had requests for the required information been made during the process of the application, these reasons for refusal therefore could have been avoided.

Very Special Circumstances (VSCs)

- 7.39. There are a number of material considerations in this case which the Council either disregarded or were not aware of at the time of the application. While none of the individual factors on their own may be considered 'special', collectively, they can potentially be regarded as very special circumstances.
- 7.40. In assessing VSCs, it is important to understand what a material consideration is. Firstly, the case of *Creed NZ v Governor General*¹ points out that:
- 'it is only when the statute expressly or impliedly identifies considerations required to be taken into account by the authority as a matter of legal obligation that the court holds a decision invalid on the ground now invoked.'*
- 7.41. In the case of *Finley*² determined that
- 'in certain circumstances, there will be some matters so obviously material to a decision on a particular project that anything short of immediate consideration of them by the ministers ... would not be per the intention of the Act.'*
- 7.42. The courts have held, however, that anything related to land use and development can be relevant and that such material considerations are a matter of planning judgement³.
- 7.43. This report has previously referenced the application recently granted by the Council on the appeal site (66100/APP/2022/2374) which establishes the permanent residential use of the site and remains extant. The Council in their determination of the appeal proposals appear not to have given this application any weight whatsoever in their overall consideration of the case. Whilst we accept that the appeal proposals

¹ *Creed NZ v Governor General* [1981] 1 N.Z.L.R. 172

² *Findlay* [1985] AC 318

³ *Stringer v Minister of Housing and Local Government* [1971] 1 All. E. R. 65 and *Working Titles Films Limited v Westminster CC* [2016] EWHC 1865 Admin at [25] – as also outlined in Samuel Smith regarding openness, disproportionate etc.

technically represent inappropriate development in the Green Belt until this consent is implemented, it represents a significant material consideration and very special circumstance in our view.

- 7.44. Furthermore, we believe that the physical disability of appellants partner, Mrs Celia A Timms, is a material consideration that also amounts to VSCs. Mrs. Timms physical disability and mobility issues arise various issues set out in the letter dated 28 September 2012 from Mr Andre Olivier MBChB (SA) MMed Orth (SA) SpR of the Royal National Prthopaedic Hospital which is attached in evidence in Appendix 1 alongside recent correspondence from the Department for Work and Pensions in April 2023 reagrding Mrs. Timms disability living allowance.
- 7.45. Mrs. Timms health issues are inherently debilitating and significantly affect her mobility. Her various issues are of a nature that are likely to continue to deteriorate over time, meaning that her long-term independence and overall quality of life will depend on her residential accommodation being designed around her needs. Specifically, due to issues surrounding her hips, knees, and ankles, Mrs. Timms mobility is very limited to the point where she is unable to go up and down stairs without assistance.
- 7.46. The purpose of the appeal proposals is to allow Mr and Mrs Timms to downsize from their nearby two-storey detached dwelling and move to a bungalow in the local area, purpose built around Mrs Timms needs. This allows Mr and Mrs Timms to remain in the area they have lived for several years, close to the frinds and family who provide a support network for Mrs Timms in coping with her disability.
- 7.47. Allowing the appeal proposals would have the additional benefit of allowing the large, detached dwelling currently occupied by Mr and Mrs Timms to be sold to the open market, making a positive contribution to the availability of family sized homes in the locality.
- 7.48. This information was not made available to the LPA at the time of the application. It is submitted here as a material consideration. S149 of the Equality Act 2010 requires a decision maker to reach a relevant decision "to have due regard to the need to (a) eliminate discrimination and advance equality of opportunity between people with protected characteristics and those *without*".
- 7.49. In evidence, we submit a similar case in Conway (Appendix 2) that was determined not to be inappropriate development, notwithstanding the above contextual matters. The extensions or improvements were for the applicant's mentally disabled son. They would ordinarily amount to inappropriate development, having breached the 30% increase limit above the original dwellinghouse as defined in the policy. However, in contrast to the LPAs determination in this application, the Inspector noted that the development was well-screened, as would be the case here and read in the context of the rural street scene. He also noted that the extension would be large and intrusive but highlighted that it was unusual. He explained his reasons in para 10.

'Such personal circumstances do not necessarily override the objectives of the Development Plan...However, in this case, the family will likely reside at this property for a considerable period. The fact that the applicants are willing and able to house and look after their son reduces a possible burden on the social services...the unusual personal circumstances are a material consideration which, in my view, outweighs the policy objection given its limited effect on the appearance of the open countryside.'

- 7.50. A similar case in Waverley (Appendix 3) also considered disability as a material consideration. The development, in that case, a telescopic pool canopy, was determined to amount to inappropriate development. However, as in the Conway example, the Inspector took the view that given the personal circumstances of the case, it outweighed the harm caused.
- 7.51. In conclusion, any harm to the openness to the Green Belt arising from the appeal proposals has been shown to be very limited given the marginal increase in scale of the proposed dwelling when compared with the extant permission and the appeal site being visually well contained. In such circumstances and the above context, we believe that combination of circumstances put forward, particularly the extant planning permission for permanent residential use and Mrs. Timms disability amount to VSCs that clearly and demonstrably outweigh the harm to the Green Belt in this case.

8. CONCLUSION

- 8.1. The proposal is for the 'Demolition of existing structures and erection of a replacement single storey bungalow, hardstanding, access track and associated hard and soft landscaping'
- 8.2. The appeal follows a previously approved application reference 66100/APP/2022/2374 which established the change of the existing building on the site from a store, garage, office and part-time residence (for up to 50 days a year) to a Class C3 dwellinghouse. Whilst the Council may be technically correct in deeming the proposals inappropriate development in the Green Belt given this permission has not been implemented, it does still establish the permanent residential use of the site.
- 8.3. Whilst it is acknowledged that the proposed dwelling is larger than the buildings it replaces, it would also be well set back within the site, utilising the existing trees and hedgerows within the site to effectively screen the development entirely from public vantage points to the south/east. Any harm to the openness to the Green Belt arising from the appeal proposals has been shown to be very limited given the marginal increase in scale of the proposed dwelling when compared with the extant permission and the appeal site being visually well contained.
- 8.4. We believe that combination of circumstances put forward, particularly the extant planning permission for permanent residential use and Mrs. Timms disability amount to VSCs that clearly and demonstrably outweigh the harm to the Green Belt in this case.

8.5. Given the evidence we have presented, we consider that the proposal conforms with the Local Development Plan, the Framework, read as a whole and accords with Practice Guidance, including any other material consideration as to be appropriate. For the reasons outlined above, the Inspector is respectfully requested to uphold the appeal and grant permission to apply planning conditions as deemed necessary and appropriate.