

# **ENFORCEMENT APPEAL - APPELLANT'S FULL STATEMENT OF CASE**

**THE OAK (FORMERLY KNOWN AS THE WARWICK OR THE ROYAL OAK), STRATFORD ROAD, HOCKLEY HEATH, B94 5NW**

**ON BEHALF OF WESTBOURNE LEISURE LTD**

**TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)**  
**PLANNING AND COMPULSORY PURCHASE ACT 2004**

**Prepared by: Sarah Butterfield (V2)**



**Pegasus Group**

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## **Preface**

- i. This Statement has been prepared by Sarah Butterfield BSc (Hons) Dip TP MRTPI of Pegasus Group who has been a Member of the Royal Town Planning Institute since 2004 and holds a Bachelor of Science degree in Town and Country Planning and a Diploma in Town Planning, both awarded by Cardiff University. She is a Director at the Birmingham Office of Pegasus Group and has 16 years of experience as a qualified Town Planner.
- ii. In this matter, Pegasus Group are instructed by Westbourne Leisure Limited. Sarah has worked on matters associated with the Appeal Site since 2016 and has most recently been instructed to assist in the preparation and submission of this enforcement appeal following the Stratford upon Avon District Council's issue of an Enforcement Notice in respect of development at the Appeal Site.
- iii. Pegasus Group are familiar with the nature and character of the Site and the background to the development and were instructed to submit this full Statement of Case for the current Enforcement Appeal, which is proceeding via the written representations procedure. The evidence I give is true, given in good faith and represents my professional opinion as to the merits of the development the subject of this enforcement appeal.

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## 1.0 Introduction and Grounds of Appeal

### Introduction

- 1.1 I am instructed in this matter by Westbourne Leisure Limited (the Appellant) in respect of the appeal against the Enforcement Notice (Ref: 13/00765/VARENF) (**Appendix 1**) issued by Stratford District Council on 1st October 2018 relating to:

*"Without planning permission, the erection of an extension in the approximate position hatched black on the Plan."*

on land at The Oak, Stratford Road, Hockley Heath ('the Site').

- 1.2 The Enforcement Notice was due to take effect on Monday 5<sup>th</sup> November 2018 and was issued for the reasons set out in paragraph 4 of the Enforcement Notice (ref: 13/0765/VARENF):

*"1. The site is located in the West Midlands Green Belt, whereby Policy CS.10 of the Core Strategy and paragraphs 133 and 134 of the revised NPPF (July 2018) aim to ensure that the openness of the Green Belt is protected by preventing urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence.*

*In the opinion of the Council, the extension as built, by reason of its appearance and bulk, is harmful to the purposes of including land within the Green Belt, principally due to a loss of openness resulting from the scale and mass of the extension and does not assist in safeguarding the countryside from encroachment. In addition, by reason of its excessive size and bulk, the extension constitutes a 'disproportionate addition over and above the size of the original building. The development is therefore 'inappropriate development' in the Green Belt.*

*Policy CS.10 and paragraph 143 of the NPPF state that inappropriate development is, by definition, harmful to the openness of the Green Belt and should not be approved except in very special circumstances. Furthermore, paragraph 144 of the NPPF goes on to state that substantial weight is given to the harm caused to the Green Belt.*

*The Local Planning Authority does not consider that 'very special circumstances' exist that would sufficiently outweigh the harm cause to the character, purpose and openness of the Green Belt by reason of inappropriateness.*

*For these reasons, the extension as built is considered contrary to Policy CS.10 of the Stratford-on-Avon District Core Strategy 2011-2031 and paragraphs 133, 134 and 143 to 145 of the NPPF July 2018.*

*2. The site falls outside of any of the District's Built-Up Area boundaries as defined by the Stratford-on-Avon Core Strategy 2011-2031. Accordingly, the site falls within the rural part of the district where Policy AS.10 – Countryside and Villages makes provision for a whole variety of activities and development subject to meeting certain criteria.*

*Policies AS.10 and CS.24 together with paragraph 84 of the revised NPPF (July 2018) provide scope for new and extended visitor accommodation so long as it is directly associated with and related to the scale and nature of an existing use and is sensitive to its surroundings.*

*The Council considers that the extension as built, whilst directly associated with the existing lawful pub/restaurant, is not appropriately related in scale and nature to the existing lawful activities on site and is significantly in excess of that which would be considered proportionate to the existing permitted activities on site. The extension is not sensitive to its surroundings and is not sustainable development.*

*The proposal therefore conflicts with the provisions of Policies CS.1, CS.24 and*

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*AS.10 of the Stratford-on-Avon Core Strategy 2011-2031 together with paragraphs 83 and 84 of the revised NPPF as it is not considered to be sustainable development.”*

1.3 The Enforcement Notice requires:

- *“Demolish the extension, in so far as it falls on land within the jurisdiction of Stratford on Avon District Council (to the southwest of the yellow highlighted and dashed line)*
- *Remove from the land any materials arising from 5.a) above*  
OR
- *Reduce the size of the extension to accord with the plans approved under permission reference 16/00451/FUL dated 3<sup>rd</sup> March 2017 (copy of plan showing approved elevations attached to this Notice).”*

1.4 The Appeal against the Council's Enforcement Notice was submitted on 2nd November 2018 (ref: APP/J3720/C/18/3215384) and at the time of submission an Inquiry was requested. However, the appeal is now proceeding by way of the written representations procedure, with a Start Date issued by The Planning Inspectorate ('PINS') of 6th May 2020.

### **Grounds of Appeal**

1.5 In accordance with Section 174 of The Town and Country Planning Act 1990 (as amended) the appeal against the Enforcement Notice was submitted with three grounds of appeal:

- Ground (a) – that, in respect of any breach of planning control which may be constituted by the matter stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.
- Ground (d) – that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
- Ground (g) – that the period specific in the notice in accordance with

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Section 173 (9) falls short of what should reasonably be allowed.

- 1.6 The Appeal was made under grounds (a), (d) and (g) of Section 174 of the Town and Country Planning Act 1990 (as amended). However, it is now only grounds (a) and (g) which are being pursued. Ground (d) is a matter now agreed between the Appellant and Local Planning Authority, as set out in the Statement of Common Ground submitted alongside this Statement of Case.
- 1.7 Contrary to the Local Planning Authority's reasons for issuing the Enforcement Notice, evidence will be provided to demonstrate that the proposal would not conflict with the reasons for including land in the Green Belt. Very special circumstances can be demonstrated which are considered to outweigh any harm caused to the openness of the Green Belt.
- 1.8 Evidence will also be provided to demonstrate that this is an appropriate development in its 'countryside' location, including a robust viability case which demonstrates that the scale of development which exists is the minimum required to retain a commercially viable use and operation on the site.
- 1.9 The evidence will also seek to demonstrate that, should the Enforcement Notice be upheld, the time period for remediation works should be longer than the 8 months specified on the Enforcement Notice.

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## **2.0 The Site, Its Surroundings and the Appeal Development**

- 2.1 The Appeal Site, Surroundings, Planning History and the development the subject of the Appeal are as set out in Sections 2 and 3 of the Statement of Common Ground agreed between the Appellant and the LPA and submitted to the Inspector alongside the Statement of Case.
- 2.2 The Appeal Site falls within two administrative boundaries, Stratford on Avon District Council and Warwick District Council. This appeal relates only to land in the Stratford on Avon District Council administrative area. The boundary line between the two authorities, as it affects the Appeal Site is shown on Plan No. PA-201: Location Plan (Appendix 1 of Statement of Common Ground).
- 2.3 As set out in the agreed Statement of Common Ground (SoCG), all of the existing development within the administrative boundary of Warwick District Council benefits from planning permission and is lawful.
- 2.4 As also agreed in the Statement of Common Ground, within Stratford on Avon District Council, the planning permission granted under LPA ref: 16/00451/FUL for alterations to the existing development to create a 44 bedroom hotel (LPA Ref: 16/00451/FUL, Decision Notice at Appendix 3 of SoCG) means that only a small part of the current, existing development has not received planning permission and it is that area which is at the heart of this appeal. This area, depicted in yellow on Plan No. SK-02: Post Planning Review (Appendix 2 of SoCG) comprises a total external footprint of 135 sqm above all of the consented development on the Site.
- 2.5 As set out in the Council's Enforcement Notice, one option to remedy the identified breach of planning is to "*Reduce the size of the extension to accord with the plans approved under permission reference 16/00451/FUL dated 3<sup>rd</sup> March 2017 (copy of plan showing approved elevations attached to this Notice).*"

### 3.0 Planning Policy

3.1 Section 4 of the Statement of Common Ground submitted as part of the Appeal and agreed by the Appellant and LPA sets out the relevant policies in both the Development Plan and other material considerations, including the National Planning Policy Framework that are relevant to the consideration of the appeal. These are not repeated here except where their detail is relevant to the appeal.

#### **Stratford on Avon Core Strategy 2011-2031 (2016)**

3.2 The Enforcement Notice issued by the Council refers to Policies CS.1, CS.10, CS.24 and AS.10 of the Core Strategy.

3.3 Policy CS.1: Sustainable Development states that the Council will take a positive approach to development proposals that reflect the presumption in favour of sustainable development contained in the NPPF: planning application that accord with the policies in the Core Strategy (and, where relevant, with policies in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise. The policy states that *"The Council supports and will apply the principle that planning to secure a high-quality environment, managed economic growth and social equity are of equal importance."*

3.4 Policy CS.10: Green Belt reflects guidance in the NPPF. It states that the *"... purposes of Green Belt will be upheld by resisting inappropriate development within it, except in cases where very special circumstances are justified in accordance with the provisions of national policy."* The policy identifies a number of forms of development which are no inappropriate development, in principle in the Green Belt, including, inter alia:

*"A small-scale extension or alteration of a building, or the replacement of an existing building for the same use, as long as the replacement building is not materially larger than the one it replaces..."*

*The limited infilling or the partial or complete redevelopment of a previously developed ('brownfield') site, whether redundant or in continuing use (excluding temporary buildings), subject to it not having materially greater impact on the openness of the Green Belt..."*

- 3.5 Policy CS.24: Tourism and Leisure Development states that the role of tourism will be increased by supporting the growth and improvement of existing attractions. Large-scale schemes should, *"wherever possible"* be located within the urban areas. Elsewhere, large-scale proposals for new and major extensions to existing tourism-related development, including accommodation, will need to be justified against a range of criteria:

*"1. the nature of the activity and whether it can only reasonably be located in a rural area;*

*2. The nature of the existing site and its relationship to the local areas;*

*3. Its impact on the character of the local landscape and settlements, including historic and natural features;*

*4. The benefits that the scheme offers to the local communities;*

*5. The benefits that the scheme would secure to wider economic or environmental interests;*

*6. The relationship between the development and major transport routes and impact on the highway network; and*

*7. The accessibility of the site by existing public transport and the scope to improve services."*

- 3.6 Policy AS.10: Countryside and Villages states that to help maintain the vitality of rural communities and a strong rural economy provision will be made for a

wide range of activities and development, including, inter alia: *"An extension to a business in its established location, particularly if it would be unreasonable to expect the business to relocate in order to expand" and "Purpose-built visitor accommodation that is directly associated with and related to the scale and nature of an existing use."*

### **National Planning Policy Framework (NPPF) (2019)**

- 3.7 The Reasons for the Enforcement Notice refer to paragraphs 83, 84, 133, 134, 143, 144 and 145 of the NPPF.
- 3.8 Paragraph 83 encourages planning policies and decisions to support prosperous rural economies through, inter alia, the sustainable growth and expansion of all types of business in rural areas.
- 3.9 Para 84 states that *"Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist."*
- 3.10 Para 133 highlights the great importance that is placed on the Green Belt, whose fundamental aim is to *"prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence."*
- 3.11 The five purposes of the Green Belt are identified at para 134:
- "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."*

3.12 Paragraphs 143-145 refer to development proposals within the Green Belt, highlighting that inappropriate development in the Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

3.13 Para 144 states that in the consideration of any planning application local planning authorities should give substantial weight 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."*

3.14 New buildings should be regarded as inappropriate in the Green Belt, apart from a specific list of exceptions, set out at para 145, which include:

- 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.
- Limited infilling or the partial or complete redevelopment of previously development land, whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt than the existing development.

3.15 Copies of all policies referred to in the Enforcement Notice and those which are relevant to the appeal are included in the Statement of Common Ground agreed between the Appellant and the Local Planning Authority.

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## **4.0 Grounds of Appeal – Appellant's Case**

4.1 As set out in the Statement of Common Ground, the Appeal is now being pursued in respect of grounds (a) and (g):

- Ground (a) – that, in respect of any breach of planning control which may be constituted by the matter stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.
- Ground (g) – that the period specified in the Notice in accordance with Section 173 (9) falls short of what should reasonably be allowed.

### **Ground (a) Appeal Case**

4.2 The Appellant considers that planning permission should be granted for the works comprised in the Local Planning Authority's Enforcement Notice. In this regard, the matters for the ground (a) appeal relate to the Site's location in the Green Belt and the countryside, and perceived conflict with the adopted Development Plan and NPPF, as identified in the Enforcement Notice.

### **Enforcement Notice Reason 1**

4.3 The first Reason for the Council's issue of the Enforcement Notice states that (paraphrased) the development, as built, is harmful to the purposes of including land in the Green Belt, principally that its appearance and bulk result in a loss of openness and that the scale and mass of the extension do not assist in safeguarding the countryside from encroachment. The development is considered a disproportionate addition over and above the size of the original building and is considered to be inappropriate development in the Green Belt.

4.4 The Local Planning Authority do not consider that the very special circumstances identified outweigh the harm caused to the character, purpose and openness of the Green Belt by reason of inappropriateness. The development is considered contrary to Policy CS.10 of the Development Plan

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(Core Strategy) and paragraphs 133, 134 and 143-145 of the NPPF.

- 4.5 The evidence has sought to address the principle of the development in the Green Belt, with reference to the size of the retained development and also the demonstration of very special circumstances, which are such that they outweigh any perceived harm caused to the openness of the Green Belt.

*Development in the Green Belt*

- 4.6 The NPPF's presumption in favour of sustainable development means that local planning authorities should approve development proposals which accord with relevant development plan policies, *"except where specific policies in this Framework indicate development should be restricted."* As set out in Footnote 6 to para 11 the presumption in favour of sustainable development does not apply to land designated as Green Belt, and instead the other tests of the Framework must be applied.
- 4.7 The Government attaches great importance to Green Belts, clearly identifying that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristic of the Green Belt is therefore its openness and permanence (para 133). The NPPF goes on to describe the five purposes for including land within the Green Belt at para 134.
- 4.8 Paras 143 and 144 state that local planning authorities should regard the construction of new buildings as 'inappropriate' in the Green Belt unless 'very special circumstances' can be demonstrated which outweigh the harm caused. It goes on to set out a series of exceptions which are not inappropriate development. The exceptions include:
- *"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...*
  - *Limited infilling or the partial or complete redevelopment of previously developed land...which would not have a greater impact on the openness of the Green Belt than the existing development..."*

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- 4.9 The planning history for the Site establishes that the Council has previously regarded development at the Site as appropriate development that does not harm the Green Belt designation.
- 4.10 The development the subject of this Enforcement Appeal relates to the retention of existing development at the Site. As accepted and agreed in the Statement of Common Ground, the extent of that development which is the subject of consideration is that identified in yellow on Plan SK-02: Post Planning Review (Appendix 2 of SoCG), as it is the only part of the development which is not lawful: to the north land is within Warwick District Council's administrative area and is lawful, and to the south is development approved under ref: 16/00451/FUL.
- 4.11 For the purpose of this appeal, the original building pre-dates 1975 and as built, had a volume of 3,209 m<sup>3</sup>, with a total floorspace of 453 sqm. The subsequent planning permissions granted in 1986 and 1995 for the whole site resulted in a volume of 5,127m<sup>3</sup>, with a total footprint of 807 sqm. The planning permission for the Site, ref: 16/00451/FUL, granted in 2017, results in a volume of 6,029m<sup>3</sup> and a total footprint of 1,890 sqm for the entire development on the Site. This is the quantum of development that would result should the Enforcement Notice be upheld and option (c) on the Enforcement Notice be implemented by the Appellant.
- 4.12 The retention of the development identified in yellow on Plan SK-02: Post Planning Review comprises an additional footprint of 135 sqm, additional floorspace of 522 sqm and additional volume of 935m<sup>3</sup>.
- 4.13 The existing, as built development has a height of 8.26 metres, the same height as that permitted in the 16/00451/FUL permission.
- 4.14 Whilst it increases the overall volume and floorspace, the as built development the subject of this appeal is development on a brownfield site in the same location as a previous extension, and of a height which is considered acceptable as evidence by the Local Planning Authority's grant of planning permission ref: 16/00451/FUL. The retention of the existing as built development is considered

an acceptable addition, which when considered in the context of the Site is not disproportionate and could also be considered infilling on an existing brownfield site. The relevant Green Belt test is therefore whether the development impacts the openness of the Green Belt.

- 4.15 It is accepted (Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466, **Appendix 2**) that openness has both a spatial and visual aspect and it is therefore appropriate to consider both. It has also been held in the Courts (Euro Garages Ltd v SSCLG & Anor [2018] EWHC 1753 (Admin), **Appendix 3**), that rather than treating any change as having a greater impact on openness of the Green Belt, the correct approach is to consider the impact or harm, if any, wrought by the change.
- 4.16 The introduction of additional development at an existing site which has a long history of development not necessarily harming openness of the Green Belt has also been accepted elsewhere. Paragraphs 6-8 of appeal decision (APP/P1805/W/15/3084336) (**Appendix 4**) are of particular note – they conclude that the proposed development, a drive-thru coffee shop at an existing roadside services area in the Green Belt, would not be inappropriate development: *"...The site and wider MSA already contain significant development which has already reduced the openness of the Green Belt ... the proposal would be wholly contained within the existing MSA and would not encroach further into the surrounding countryside. Whilst the coffee shop would be around 60-70, from the main amenity building, it would be adjacent to the prominent fuel filling station, and its scale and bulk would be substantially smaller in comparison ... the redevelopment of this sites would not materially detract from the openness of the Green Belt or have a greater impact on the purpose of including land within it."*
- 4.17 A further appeal decision (ref: APP/C3105/W/18/3210498) (Appeal Decision at **Appendix 5**) dealt with the proposed development of a drive-thru bakery within an existing roadside services facility in the Green Belt. The Inspector in that case found (para 8) that the existing on-site development contributed to the developed appearance of the location and that the development would not add to the encroachment of the site further into the countryside beyond.

Furthermore, the Inspector concluded that the development would be "*readily understood and viewed as part of the existing complex of buildings within which it would be set.*"

- 4.18 The Appeal Site is an existing, established site in the Green Belt which comprises a restaurant, hotel and conference facilities and it is considered that any harm caused by the development must be considered in terms of its context and the other development on the Site.
- 4.19 The retention of the existing development will introduce additional floorspace and volume to the Site, but it will neither change the use of the Site, nor alter its perception in context. It will remain seen as a restaurant, hotel and conference facility and be read in the context of the remainder of the development and use at the Site. The retention of the development that is at the heart of this appeal will not detract any further from the openness of the Green Belt or have a greater impact on the purpose of including land within it.
- 4.20 In addition, the Appeal must be considered in the context of the development that would remain should the Enforcement Notice be upheld. If the Enforcement Notice were upheld and option (c) implemented by the Appellant, it is only that part of the building highlighted in yellow on Plan SK-02 (Appendix 2 of SoCG) that would need to be removed. The development within Warwick District Council's administrative area could also remain in situ.
- 4.21 In visual terms, as set out in the LVA work accompanying this Statement of Case, it is assessed that the existing development with the proposed landscape enhancements would have no material impact on the openness of Green Belt. Even if the limited views along Stratford Road between site entrances and views from the hotel's car park are taken into account, the impact on the openness of Green Belt would be at most negligible at this location, and there would be no impact at all on this landscape receptor in the wider landscape.
- 4.22 The logical approach must be to consider the harm to, and impact on the openness of, the Green Belt if that part of the existing development highlighted yellow were to be retained. As set out in matters relating to landscape below,

leaving a gap between the development the Stratford on Avon District Council area and that in Warwick District Council could be more harmful visually than the retention of the existing development. Whilst spatially the retention of the development would result in additional floorspace in the Green Belt, its impact on openness would be at most negligible given the existing established nature of the Site and the context in which it is understood.

*Very Special Circumstances*

- 4.23 Notwithstanding, if the retention of the existing development is viewed as a disproportionate addition in this Green Belt location then the NPPF para 144 test of very special circumstances can be applied: Such circumstances do exist with regard to this development.
- 4.24 The site has operated as a public house since 1975, and the Appellant has owned the site since 2005. The site has been leased to a number of experienced tenants for use as a public house and restaurant, however, none have been able to operate a successful business and the Appellant has therefore taken on management, and personally operated the business since 2013.
- 4.25 In 2012 the Appellant concluded that the business would remain unviable without diversification. Planning permission was subsequently applied for and granted (ref: 13/01607/VAR), allowing the demolition of the existing single storey rear extension and erection of a two-storey rear extension comprising 14 bedrooms.
- 4.26 The 14 bedroom scheme was still not considered to be a commercially viable option, a point demonstrated through the submitted Viability Appraisal, undertaken by Bilfinger GVA accompanying the planning application for the planning application ref: 16/00450/FUL (Appendix 6 of SoCG). The Viability Appraisal did demonstrate that the as built, existing development, totalling 62 hotel bedrooms plus public house and restaurant, is at a level which would allow for a return on the investment, to a level that is considered commercially acceptable. A smaller, or non-diversified business would not provide the same

return and the Viability Appraisal demonstrated that the 62 hotel bedroom development the subject of that application, and this appeal, would be the only realistic option to ensure the continued commercial viability of the business on the site.

- 4.27 The Viability Appraisal followed a logical methodology, appraising the surrounding hotel provision and market, analysed future pipeline developments and identified matters likely to affect the future performance of the hotel. Along with a review of management accounts and a 'project rooms' model the Viability Appraisal concluded that the 62 bedroom hotel offer is the only scenario that offers a sustainable level of profit which will ensure the future value of the hotel exceeds the capital cost.
- 4.28 The 62 bedroom hotel resulted in a future Internal Rate of Return (IRR) to equity in Year 3 of the operation, at an acceptable level of 12.9%. Any other scenario results in negative IRRs, meaning the development/business would not be commercially viable and would most likely end up closing.
- 4.29 The Viability Appraisal indicated that without the development of scale the subject of this appeal (as proposed in application 16/00450/FUL), the business would not be viable and likely to close down.
- 4.30 This was accepted by Officers in the report to Planning Committee where it was states (page 7, Appendix 8 of SoCG) *"The detailed planning history and ownership of the site...suggest that operating a viable business in this location has been challenging. As such, Officer's consider there is a reasoned argument for a larger hotel scheme on this site being of benefit to the viability of the site as a whole and concur that this may be considered against the harm to the Green Belt."*
- 4.31 Viability matters were again accepted in planning application ref: 18/00312/FUL which proposed a 60 bedroom hotel on the Site but with amends to the external elevations. The Viability Appraisal submitted with that application (Appendix 7 of SoCG) indicated that the 60-bed hotel scheme would be the appropriate level at which a profitable position could be secured for the

hotel. The Officer's delegated report (**Appendix 6**, page 10) on the application did not dispute this.

4.32 Finally, Appendix 6 attached to the Statement of Common Ground sets out the latest position and Accounts for the Appellant's business. Avison Young have reviewed these accounts and concluded via letter dated 6/07/20 (**Appendix 7**), that both total revenue and EBITDA in 2019 are below the 2016 projected levels, and would be lower still if the hotel was trading with 44 or less bedrooms, rendering such options unviable. In addition, the effects of the COVID-19 pandemic will have a long-term impact on the hospitality and tourism sectors, which will also impact the viability of the hotel in the coming years.

4.33 It is concluded that viability matters clearly demonstrate very special circumstances for the retention of the existing development.

4.34 Alongside the Viability Matters which comprise the Very Special Circumstances that support the quantum of development the subject of this appeal, there are also a number of quantitative and qualitative benefits of the retention of the existing development which collectively contribute to the very special circumstances that exist in respect of this appeal. These are set out below:

- Meeting Green Belt Objectives
- Positive Impact on the Landscape, Visual Amenity and Openness of the Green Belt
- Contributing to Rural Employment
- Providing support for Rural Businesses

4.35 Each of these matters are referred to in turn below.

*Meeting Green Belt Objectives*

4.36 Contrary to the Council's Reason One for the issue of the Enforcement Notice, the retention of the existing development plus alterations would not conflict

with the reasons for including the land within the Green Belt in that:

- The site is physically separated from existing built up areas, namely Hockley Heath to the north and Tanworth in Arden to the south west. It does not contribute to the urban sprawl of a large built up area.
- The location of the Site in the open countryside means that the development does not contribute to the merging of towns.
- The development is linked to an existing business which needs to diversify to remain a viable going concern in the long term. The development has been sited so as to minimise encroachment, so that it remains read as part of the rural area and is seen in the context of the long-established development on the Site.
- The development does not affect the setting of an historic town as it is outside of any defined development boundary.
- There is a functional need for the development as part of the viability of the existing business. The as built development needs to be retained to secure its longevity and prevent the site from lying empty and unused and falling into a state of disrepair.

*Positive Impact on the Landscape, Visual Amenity and Openness of the Green Belt*

- 4.37 NPPF Paragraph 170 states that the planning system should contribute to and enhance the natural and local environment by, inter alia, "*protecting and enhancing valued landscapes*" and Core Strategy Policy CS.5 indicates that development should retain the landscape character of the area and incorporate management measures.
- 4.38 The site is within a defined special landscape area, whose characteristics are a gently rolling topography, a well-defined pattern of small fields and paddocks and mature hedgerows plus mature oaks.
- 4.39 The development retains the existing mature trees and landscaping along the site boundaries and the site topography will not be affected. In addition, the on-site landscaping can be improved further should planning permission be

forthcoming through the dismissing of the Enforcement Notice the subject of this appeal through the addition of a condition as suggested in the Statement of Common Ground. The development is sensitive to the site's setting, replaces the footprint of a previous extension to the main/original building and has been finished in the same style and materials in order to integrate with the established building on the site. It has also been designed to retain the open nature of the area plus the existing mature landscaping.

- 4.40 The proposal will deliver enhancements to the landscape character and visual amenity through the maintenance and upkeep of the existing development as part of the ongoing site management of the open areas. Should the Enforcement Notice be upheld and the business cease to operate, the empty building, which would likely fall into disrepair would have a greater adverse impact on the character of the landscape and openness of the Green Belt than a maintained site, on the basis that it becomes visually unattractive.
- 4.41 The new development comprising the rear extension is in a far better condition and of an improved appearance to the rear extension which it has replaced. The previous rear extension was in a poor state of repair. Officers have acknowledged these points as set out in the Committee Report for application 16/00450/FUL: *"the continued operation of the site ensures that the roadside frontage and landscaped grounds are acceptable maintained and also agree that the newly built form is preferable to a less well maintained rear aspect."* (see page 8, Appendix 8 of SoCG).
- 4.42 A Landscape and Visual Assessment (LVA) has also been undertaken to support the appeal, which is an update to that submitted with planning application 16/00450/FUL for the retention of the existing development and also for 18/00132/FUL (both previous LVAs are attached to the updated document). The current work has re-examined the landscape and visual context of the existing built development at the site, its relationship with the surrounding landscape and visual receptors and has considered the landscape and visual matters associated with the retention of the development on the site as existing as well as the impacts of only the consented elements within both Stratford and Warwick remaining.

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- 4.43 It is established and accepted (through the LVA and the planning history of the Site) that the site is well contained visually, by strong planted boundaries and the vegetated character and undulating topography of the wider landscape which contribute to an overall feeling of enclosure. As a result, the existing built form is only experienced in its entirety when receptors pass directly adjacent to the hotel site along Stratford Road.
- 4.44 The LVA indicates that the difference between the consented scheme (ref: 16/00451/FUL) and the built scheme is marginal and the ability for the sensitive visual receptors to understand the change is very low. Receptors in this location are pedestrians on the highway footpath, pedestrians waiting at the bus stop and drivers along the main road. The scale of the built element not consented is the same as the existing hotel – following the roof line and the pattern of the facade – and represents proportionality a very small section of built form as shown in Appendix 1 of the LVA work.
- 4.45 The LVA work concludes that in landscape terms if the original consented scheme (16/00451/FUL) were to be implemented, those identified receptors would barely appreciate a change at the eastern end of the northern elevation compared to the existing development. The built scheme does not push north into car park, it doesn't compromise the identified open elements of the overall hotel site such as the frontage or the carpark to the north and the overall scale and mass of the hotel remains unchanged. There is no perception or physical encroachment into the countryside, and it does not appear as 'sprawl' of built form. The non-consented element is consistent with the existing hotel and follows the pattern of the previous extensions. There is no change in the experience of the containment of the building within the site, the pattern of the built form and the scale and mass of the hotel.
- 4.46 Further, it is concluded that should the unconsented element within Stratford on Avon District Council's administrative area be removed then the situation would arise where the portion of the hotel approved by Warwick District Council would remain standing as an isolated element 'floating' off the main hotel. This would appear as a detractor in the views, more visually prominent due to the unusual circumstance of the missing elements and appearing incohesive and

disjointed.

- 4.47 Adverse landscape impacts have not been identified by Officers as a concern in previous applications relating to the Site. The Officer report to Planning Committee for application ref: 16/00450/FUL noted that glimpsed views to the site are difficult to achieve in the local landscape and the site is not considered to contribute significantly to the landscape character of the area; it is of relatively low sensitivity to the development as built (page 11, Appendix 8 of SoCG).
- 4.48 The development is therefore in accordance with Core Strategy Policies CS.5 and CS.12 as well as the Framework as it will not have a harmful effect on the character and appearance of the landscape.

*Contributing to Rural Employment and Providing Support for Rural Businesses*

- 4.49 The diversification of the original business to include additional hotel accommodation is supported by para 83 of the NPPF which supports the sustainable growth and expansion of all types of business in rural areas. NPPF para 84 states that sites to meet business needs in rural areas may have to be adjacent to or beyond existing settlements, and the use of previously developed land should be encouraged.
- 4.50 The existing development allows for the diversification of an existing business, which will enable it to remain commercially viable in this rural area. The development employs up to 30 full time equivalent staff, creating jobs for local people as well as through the linked supply chain. This is a matter that has previously been a benefit to which weight can be attributed when considering very special circumstances (see page 8, Appendix 8 of SoCG).
- 4.51 The development and its linked economic benefits assist in the retention of local shops and services and thus support the local community, in accordance with paras 83/84 of the Framework.

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*Summary*

- 4.52 In summary, the very special circumstances relevant to this appeal comprise of matters relating to viability, meeting Green Belt objectives, contributing to rural employment and providing support for a rural business. The development in this Green Belt location would not adversely impact the purposes of including land in the Green Belt and would not harm openness when considered in the context of any harm which may result as a result of the retention of the development, particularly when considered in context. As accepted by Officers (pages 10-11 of the Officer Report to Committee, Appendix 8 of SoCG) the development does not conflict with Policies CS.5 or CS.12 Landscape Areas.
- 4.53 With that in mind, the retention of the existing development would not conflict with Core Strategy Policy CS.10 or the Framework and there are no matters of harm that would outweigh the benefits of the very special circumstances surrounding the case. There is no policy restriction on the grant of planning permission for the retention of the existing development.

**Enforcement Notice Reason 2**

- 4.54 The second Reason for the Council's issue of the Enforcement Notice states that (paraphrased) in a 'countryside' location, whilst directly associated with the existing lawful pub/restaurant, the development is not appropriately related in scale and nature to the existing development, is not sensitive to its surroundings and is not sustainable development.
- 4.55 The development is considered contrary to Policies CS.1, CS.24 and AS.10 of the Development Plan (Core Strategy) and to paragraphs 83 and 84 of the NPPF.

*Development in the Countryside*

- 4.56 There is no specific guidance in the NPPF in terms of development on land defined as falling within the 'open countryside'. However, in supporting a

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prosperous rural economy, Framework para 83 includes support for expansion of all businesses in rural areas.

4.57 Policy AS.10 identifies that extensions to existing visitor accommodation can be supported in rural locations where they are small-scale or are associated within an existing recreational use that justifies overnight accommodation. In addition, Policy AS.10 and Core Strategy Policy CS.24 set out a number of criteria with which proposals for extensions to visitor accommodation should comply.

4.58 The development has been assessed against the criteria of Policies AS.10 and CS.24 as follows.

- The nature of the activity and its appropriateness in a rural area  
The public house and restaurant has been operating since pre 1975 and an established use in the area which is integrated into its surroundings by the very nature of it having been operating for a substantial period.  
The introduction of hotel accommodation is a diversification of the existing use. The hotel accommodation is a use which is considered acceptable in principle. This has been established through the grant of planning permission (Refs: 12/02929/FUL, 13/01607/VAR and 16/00451/FUL).  
The use attracts visitors both for business and on a recreational level and is an appropriate use in the area, serving the local community.
- The nature of the existing site and its relationship to the local area  
As identified, the site comprises an established use and development which is integrated into its surroundings. It is outside of any defined development boundary in the rural area but is set back from the road and maintains the rural feel of the locality with mature vegetation on the northern, eastern and southern boundaries.  
As an established use and development, the activity on the site is an established part of the rural area that contributes to the nature and character of the locality and provides an active use. The Framework supports the retention of existing businesses in the rural area and the development would help support the retention of the business.
- Impact on the character of the local landscape and settlements, including

historic and natural feature

- The development does not adversely affect the local landscape or any settlements and, as set out above, with reference to landscape impact and environmental improvements, will result in a benefit to the locality. It comprises development within an existing site, it replaces a previous extension in the same location and is seen in the context of the existing development.

The development does not result in the site or development being any closer to the nearest settlements or adjacent development and uses, maintaining the network of roads and lanes with belts of mature trees as at present.

- The benefits of the scheme to local communities and in securing wider economic or environmental interest

The development and diversification of the use to provide hotel accommodation at the level which is the subject of this appeal is vital to the continued operation of a long established business in this location, ensuring it remains a going concern with associated benefits to the economy through the creation of jobs for local people. This is a point which has been established in the Viability Work referred to in this Statement of Case.

In addition, the retention of the development the subject of this appeal will result in 30 full time equivalent job opportunities in the countryside, a matter which can be afforded significant weight in the balance of planning issues. In the current COVID-19 pandemic the retention of jobs in the leisure and tourism economy/industry must also be afforded significant weight.

- The relationship between the development and major transport routes and the impact on the highway network

The development has no adverse highways impacts. The site is accessed off Stratford Road which would not alter as a result of the development and there is more than sufficient car parking on the site to serve the hotel and public house/restaurant use. The site's relationship with the local road network would not alter because of the development the subject of this appeal.

- The accessibility of the site by public transport

As set out in the Statement of Common Ground, the site is accessible by

bus services which run 7 days a week along Stratford Road, with bus stops outside the site in both northerly and southerly directions. The site is accessible by modes of transport other than the private car for both staff and visitors.

- 4.59 With reference to Core Strategy Policies AS.10 and CS.24, it has been justified that the level of hotel accommodation the subject of this appeal is necessary to enable existing business to keep operating. Without the level of hotel accommodation that has been developed, the business would likely close.
- 4.60 Notwithstanding, it is noted that the Council's adopted Development Plan policy is contrary to guidance in the NPPF on developments in rural areas.
- 4.61 Whilst referring to para 28 of the 2012 NPPF, there can be a comparison to the 2019 NPPF para 83 in the *Sienkiewicz v South Somerset District Council* [2013] EWHC 4090 (admin), Lewis J case (para 28, **Appendix 9**). In this matter, the Judge agreed with the Defendant that *"The Framework would support the grant of planning permission for even a large scale expansion of a business in a rural area assuming, of course, that any adverse effects of the proposed development were considered acceptable and the proposed development was otherwise acceptable in planning terms. That approach appears, for example, from paragraph 28 of the Framework which says planning policies should support economic growth in rural areas in order to create jobs and prosperity."*
- 4.62 The size of the development the subject of this appeal is considered acceptable in terms of its scale in this location.

#### *Design*

- 4.63 When considered against Core Strategy Policy CS.9, the development can be considered sensitive to its surroundings:
- The development does not adversely affect any characteristics that define the locality. It will enable the retention of a long-established

business on the site as set out above. The view of the development from public vantage points will be no different to the previous views of the now demolished rear extension or that which benefits from extant planning permission when viewed from Stratford Road to the west. From Spring Lane to the east views of the site are fleeting and seen in the context of existing mature landscaping which dominates the foreground view. The development will result in no additional visual impact than that which benefits from extant planning permission ref: 16/00451/FUL were that to be fully implemented on the Site.

- The development replaces the footprint of the previous rear extension and finished in materials that match the main/original building.
- The areas of outside space and existing vegetation will all be retained, ensuring the development is integrated into the context of the site and that there will be no adverse impact on the landscape.
- The development is of a scale which is appropriate to the building and necessary to ensure that the business is able to generate some return on the investment in the site by the appellant.
- The finish of the development has been designed to be in accordance with the existing building, being of a rendered finish similar to the existing building and a uniform pattern of fenestration similar to the existing building. The ridge height of the development ties into the existing building and is the same as that approved under planning permission 16/00451/FUL.

### *Sustainable Development*

4.64 Policy CS.1 and the NPPF make it clear that there are three dimensions to sustainable development, social, economic and environmental. These are mutually dependent, and each is discussed in turn below.

- Economic

The continued use of the site as a public house and restaurant plus the hotel accommodation will directly result in 30 full-time equivalent jobs, a boost to the economy both through job creation and the retention of the

spend of wages in the local economy.

There is also potential for additional economic activity and multiplier effects including jobs, expenditure and income associated with additional local income and supplier purchases and knock-on effects as part of the supply chain as well as employment generation from the construction of the development.

- Social

The development is on an existing site and replaces, for the most part, the footprint of a previous development within the site. It has access to services and facilities at Hockley Heath and Tanworth in Arden and is accessible by modes of transport other than the private car.

The scheme would provide hotel accommodation to serve business and recreational visitors and continue to provide a recreational offer for local residents, improving the quality of the offer and in turn the experience and amenity value for customers.

- Environmental

Retention of the existing development will result in the management of the built development on site, ensuring it does not fall into disrepair and become detrimental to the visual impact of the area. The extension replaces a previous extension which was in a poor state of repair and also improves the visual amenity of the site.

The development also preserves the existing on-site landscaping and vegetation and it will be managed to as to preserve the character of the area.

4.65 Overall, in considering the proposal against each of the Framework's sustainability dimensions, the development can demonstrate that it is socially, economically and environmentally sustainable.

### **Summary**

4.66 The Appellant has sought to invest in the restaurant and public house business and a number of operators have failed to operate a commercially viable operation. Notwithstanding, the Appellant has invested in the business, is running it in-house and has reached a scale of development, which, in

introducing a hotel use, will enable the commercial longevity of the site.

- 4.67 The development has been designed and sited to limit any adverse impact on the openness of the Green Belt. It is to the rear of the main/original building, it replaces a previous function room, is read as part of the site complex and existing business/enterprise and does not result in a disproportionate addition above the size of the 'original' building.
- 4.68 Relevant Green Belt policy and tests have been addressed and there are clear and convincing very special circumstances which support the retention of the existing development. It sits within the context of existing development on the site, has no impact on the permanence of the Green Belt and creates no pressure to review or amend the existing Green Belt boundary. It creates a number of jobs and enables the preservation of an existing established business with beneficial impacts on the character of the landscape in which it is situated. These benefits are not outweighed by any harm and the development is considered to accord with relevant national and local planning policies.
- 4.69 Were the Enforcement Notice upheld then without the scale of development that is present on site, not only would the existing business not be commercially viable, but other negative impacts would also accrue, including negative impacts on Green Belt, landscape, rural employment and lack of support for a rural business.

*Other Matters*

- 4.70 As set out in Section 5 of the agreed Statement of Common Ground, the areas of dispute between the appellant and the Local Planning Authority that are the subject of this appeal are as discussed above. There are no technical matters relating to the development which are the subject of any objection by the LPA.

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## **Ground (g) Appeal Case**

- 4.71 The Grounds of Appeal submitted by the Appellant referred to paragraph 6 of the Enforcement Notice (ref: 13/00765/VARENF) which requires compliance with the remediation options stipulated within paragraph 5 of the Enforcement Notice to occur within 8 (eight) months of the date of the Notice taking effect.
- 4.72 The Appellant's appeal on Ground (g) cited that the 8-month period to complete the remediation works would be unreasonable. The works, in particular those to reduce the size of the extension as set out at paragraph 5(c) of the Enforcement Notice will need to be informed by detailed construction drawings, and contractors and appropriate tradesmen will need to be appointed. In addition, the scheduling of works will need to be carefully programmed in to allow the business to fulfil existing commitments such as wedding bookings and room bookings, and to remain operational during the undertaking of those works.
- 4.73 The Appellant therefore requested a 12 (twelve) month timeframe to complete the works stipulated within paragraph 5 of the enforcement Notice (ref: 13/00765/VARENF) in the original Grounds of Appeal that were submitted with the appeal.
- 4.74 However, since that time, matters have changed in the economy on a global scale due to the COVID 19 pandemic and whilst the LPA accepting that a 12 month period would be appropriate is welcomed, the Appellant would like to request a longer time period for the reasons set out below.
- 4.75 The global COVID-19 pandemic has meant that the business has been closed since March 2020, with a knock-on effect in terms of existing bookings both for the hotel and also the wedding / function facilities, the majority of which have been postponed for 12 months.
- 4.76 By way of background the business hosted 23 weddings in 2019. Up to closure in March 2020, 21 weddings were booked for 2020. In 2021 the business has

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39 weddings booked in, 14 of which have been rescheduled to 2021 from 2020 as a result of the on-going COVID-19 pandemic.

4.77 In terms of other events and functions (for example but not exhaustive birthday parties, christenings, wakes) the business held 108 such events in 2019 and had 73 booked for 2020. Of those 73 bookings in 2020, 51 are being rescheduled to 2021.

4.78 The business also attracts hotel bookings from contractors, particularly including those required to be in the area as part of the development of the High Speed 2 (HS2) Phase One Line where the works are now beginning to accelerate.

4.79 To allow all existing bookings, including rescheduled events, to be fulfilled, which will in turn retain jobs in the current uncertain economic times associated with the global pandemic, an 18 month trading period is requested, with a further 12-18 month period for the works to then be undertaken.

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## **5.0 Summary and Conclusions**

### **Summary**

- 5.1 I am instructed in this matter by Westbourne Leisure Limited (the Appellant) in respect of the appeal against the Enforcement Notice (Ref: 13/00765/VARENF) issued by Stratford District Council relating to: *"Without planning permission, the erection of an extension in the approximate position hatched black on the Plan"* on land at The Oak, Stratford Road, Hockley Heath ('the Site').
- 5.2 The Enforcement Notice was issued for two reasons as set out at para 1.2 of this Statement and it set out three options to remedy the identified breach of planning control.
- 5.3 An Appeal was submitted against the Enforcement Notice and grounds (a) and (g) of Section 174 of the Town and Country Planning Act 1990 (as amended) are relevant to the Appeal.
- 5.4 Contrary to the Local Planning Authority's reasons for issuing the Enforcement Notice, evidence has been provided to demonstrate that the proposal would not conflict with the reasons for including land in the Green Belt. Very special circumstances can be demonstrated which are considered to outweigh any harm caused to the openness of the Green Belt.
- 5.5 Evidence has also been provided to demonstrate that this is an appropriate development in its 'countryside' location, including a robust viability case which demonstrates that the scale of development which exists is the minimum required to retain a commercially viable use and operation on the site.
- 5.6 Robust reasoning has also been put forward to request a longer time period for the implementation of the Enforcement Notice, should the appeal be dismissed.

- 5.7 The Appeal Site falls within two administrative boundaries, Stratford on Avon District Council and Warwick District Council. This appeal relates only to land in the Stratford on Avon District Council administrative area. All the existing development within the administrative boundary of Warwick District Council benefits from planning permission and is lawful.
- 5.8 The planning permission granted under LPA ref: 16/00451/FUL for alterations to the existing development to create a 44 bedroom hotel (LPA Ref: 16/00451/FUL, Decision Notice at Appendix 3 of SoCG) means that only a small part of the current, existing development has not received planning permission. This is depicted in yellow on Plan No. SK-02: Post Planning Review (Appendix 2 of SoCG) and comprises a total external footprint of 135 sqm above all of the consented development on the Site. It is that area which is at the heart of this appeal.
- 5.9 As set out in the Council's Enforcement Notice, one option to remedy the identified breach of planning is to "*Reduce the size of the extension to accord with the plans approved under permission reference 16/00451/FUL dated 3<sup>rd</sup> March 2017 (copy of plan showing approved elevations attached to this Notice).*"

*Ground (a) Appeal Case*

- 5.10 The Appellant considers that planning permission should be granted for the works comprised in the Local Planning Authority's Enforcement Notice. In this regard, the matters for the ground (a) appeal relate to the Site's location in the Green Belt and the countryside, and perceived conflict with the adopted Development Plan and NPPF, as identified in the Enforcement Notice.
- 5.11 The Appellant has sought to invest in the restaurant and public house business and a number of operators have failed to operate a commercially viable operation. Notwithstanding, the Appellant has invested in the business, is running it in-house and has reached a scale of development, which, in introducing a hotel use, will enable the commercial longevity of the site.

- 5.12 Relevant Green Belt policy and tests have been addressed and there are clear and convincing very special circumstances which support the retention of the existing development. It sits within the context of existing development on the site, has no impact on the permanence of the Green Belt and creates no pressure to review or amend the existing Green Belt boundary. It creates a number of jobs and enables the preservation of an existing established business with beneficial impacts on the character of the landscape in which it is situated. These benefits are not outweighed by any harm and the development is considered to accord with relevant national and local planning policies.
- 5.13 Were the Enforcement Notice upheld then without the scale of development that is present on site, not only would the existing business not be commercially viable, but other negative impacts would also accrue, including negative impacts on Green Belt, landscape, rural employment and lack of support for a rural business.

*Ground (g) Appeal Case*

- 5.14 The Appellant's appeal on Ground (g) cited that the 8-month period to complete the remediation works would be unreasonable and requested a 12 month period as the works will need to be informed by detailed construction drawings, and contractors and appropriate tradesmen will need to be appointed.
- 5.15 Since that time, matters have changed in the economy. The global COVID-19 pandemic has meant that the business has been closed since March 2020, with a knock-on effect in terms of existing bookings both for the hotel and also the wedding / function facilities, the majority of which have been postponed for at least 12 months.
- 5.16 The business also attracts hotel bookings from contractors, particularly including those required to be in the area as part of the development of the High Speed 2 (HS2) Phase One Line where the works are now beginning to accelerate.

- 5.17 To allow all existing bookings, including rescheduled events, to be fulfilled, which will in turn retain jobs in the current uncertain economic times associated with the global pandemic, an 18 month trading period is requested, with a further 12-18 month period for the works to then be undertaken.

### **Conclusions**

- 5.18 With reference to the evidence provided in this Statement of Case and the agreed matters in the Statement of Common Ground, the Inspector is respectfully requested to dismiss the Enforcement Notice and grant planning permission for the retention of the existing development, subject to reasonable and relevant conditions as set out in the Statement of Common Ground.

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## **APPENDICES**

1. Enforcement Notice 13/00765/VARENF
2. Turner v SSCLG & East Dorset council [2016] EWCA Civ 466
3. Euro Garages Ltd v SSCLG & Anor [2018] EWHC 1753 (Admin)
4. Appeal Decision APP/P1805/W/15/3084336
5. Appeal Decision APP/C3105/W/18/3210498
6. Officer Delegated Report, ref: 18/00312/FUL
7. Avison Young letter, dated 6th July 2020
8. Landscape and Visual Assessment Work – Influence – July 2020
9. Siekiewicz v South Somerset DC [2013] EWHC 4090 (Admin), Lewis J

**Appendix 1. Enforcement Notice 13/00765/VARENF**

**Appendix 2. Turner v SSCLG & East Dorset council [2016] EWCA Civ 466**

**Appendix 3. Euro Garages Ltd v SSCLG & Anor [2018] EWHC 1753  
(Admin)**

**Appendix 4. Appeal Decision APP/P1805/W/15/3084336**

**Appendix 5. Appeal Decision APP/C3105/W/18/3210498**

**Appendix 6. Officer Delegated Report, ref: 18/00312/FUL**

**Appendix 7. Avison Young letter, dated 6th July 2020**

## **Appendix 8. Landscape and Visual Assessment Work – Influence – July 2020**

**Appendix 9. Siekiewicz v South Somerset DC [2013] EWHC 4090  
(Admin), Lewis J**

**IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**TOWN AND COUNTRY PLANNING ACT 1990  
(as amended by the Planning and Compensation Act 1991)**

**ENFORCEMENT NOTICE**

**ISSUED BY :** STRATFORD-ON-AVON DISTRICT COUNCIL ("the Council")

1. **THIS IS A FORMAL NOTICE** which is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act; at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and enclosures to which it refers contain important additional information.

2. **THE LAND AFFECTED**

The Oak (formerly known as 'The Warwick' or 'The Royal Oak'), Stratford Road, Hockley Heath, Solihull, B94 5NW ("the Land"), edged red on the attached plan ("the Plan")

3. **THE BREACH OF PLANNING CONTROL ALLEGED**

Without planning permission, the erection of an extension in the approximate position hatched black on the Plan

4. **REASONS FOR ISSUING AN ENFORCEMENT NOTICE**

The Council is taking this action pursuant to s.171B(4) of the Act which allows further enforcement action to be taken, in respect of a breach of planning control, within 4 years of earlier action in respect of that breach.

The majority of the volume of the above breach of planning control lies within the jurisdiction of Stratford-on-Avon District Council (approximately 98%) with the lesser part of the breach at the eastern end of the extension lying within the jurisdiction of Warwick District Council. The District boundary is marked by a yellow-highlighted and dashed line on the Plan.

1. The site is located in the West Midlands Green Belt, whereby Policy CS.10 of the Core Strategy and paragraphs 133 and 134 of the revised NPPF (July 2018) aim to ensure that the openness of the Green Belt is protected by preventing urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

In the opinion of the Council, the extension as built, by reason of its appearance and bulk, is harmful to the purposes of including land within the Green Belt, principally due to a loss of openness resulting from the scale and mass of the extension and does not assist in safeguarding the countryside from encroachment. In addition, by reason of its excessive size and bulk, the extension constitutes a 'disproportionate addition over and above the size of the original building. The development is therefore 'inappropriate development' in the Green Belt.

Policy CS.10 and paragraph 143 of the NPPF state that inappropriate development is, by definition, harmful to the openness of the Green Belt and should not be approved except in very special circumstances. Furthermore, paragraph 144 of the NPPF goes on to state that substantial weight is given to the harm caused to the Green Belt.

The Local Planning Authority does not consider that 'very special circumstances' exist that would sufficiently outweigh the harm caused to the character, purpose and openness of the Green Belt by reason of inappropriateness.

For these reasons, the extension as built is considered contrary to Policy CS.10 of the Stratford-on-Avon District Core Strategy 2011 - 2031 and paragraphs 133, 134 and 143 to 145 of the NPPF July 2018.

2. The site falls outside of any of the District's Built-Up-Area Boundaries as defined by the Stratford-on-Avon Core Strategy 2011 - 2031. Accordingly, the site falls within the rural parts of the district where Policy AS.10 - Countryside and Villages makes provision for a wide variety of activities and development subject to meeting certain criteria.

Policies AS.10 and CS.24 together with paragraph 84 of the revised NPPF (July 2018) provide scope for new and extended visitor accommodation so long as it is directly associated with and related to the scale and nature of an existing use and is sensitive to its surroundings.

The Council considers that the extension as built, whilst directly associated with the existing lawful pub/restaurant, is not appropriately related in scale and nature to the existing lawful activities on site and is significantly in excess of that which would be considered proportionate to the existing permitted activities on site. The extension is not sensitive to its surroundings and is not sustainable development.

The proposal therefore conflicts with the provisions of Policies CS.1, CS.24 and AS.10 of the Stratford-on-Avon Core Strategy 2011 - 2031 together with paragraphs 83 and 84 of the revised NPPF as it is not considered to be sustainable development.

The District Council does not consider that planning permission should be granted because planning conditions could not overcome these objections to the development

**5. WHAT YOU ARE REQUIRED TO DO**

- a) Demolish the extension, insofar as it falls on land within the jurisdiction of Stratford-on-Avon District Council (to the south-west of the yellow highlighted and dashed line); and
- b) Remove from the Land any materials arising from 5.a) above

OR

- c) Reduce the size of the extension to accord with the plans approved under permission reference 16/00451/FUL dated 3 March 2017 (copy of plan showing approved elevations attached to this Notice)

**6. TIME FOR COMPLIANCE**

- a) Within 8 months from the date this Notice takes effect
- b) Within 8 months from the date this Notice takes effect
- c) Within 8 months from the date this Notice takes effect

**7. WHEN THIS NOTICE TAKES EFFECT**

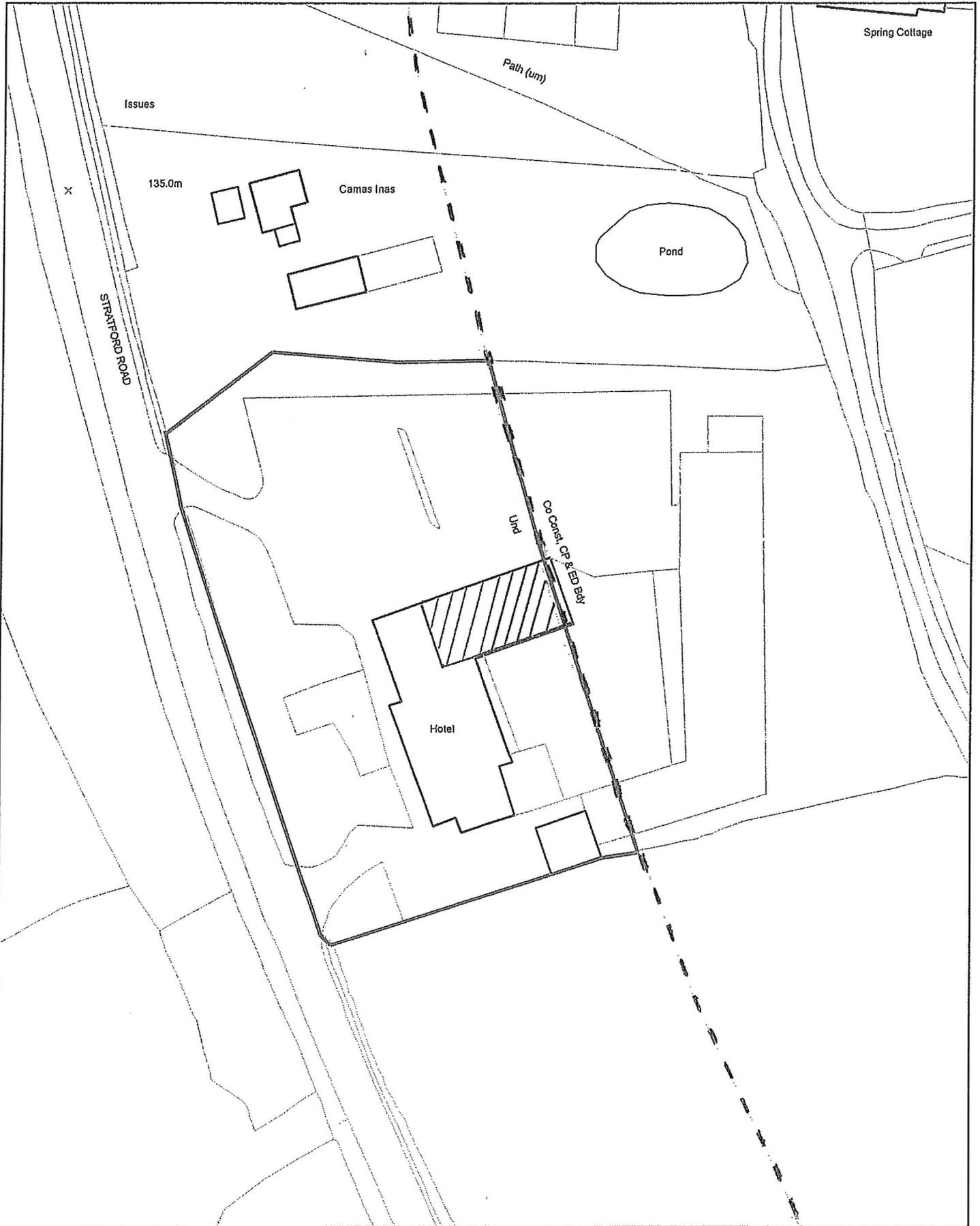
This notice takes effect on **5 November 2018** unless an appeal is made against it beforehand.

**Dated:** 1<sup>ST</sup> OCTOBER 2018

**Signed**.....  
Clare Eynon - Planning Manager  
(Performance, Appeals and Enforcement)

On behalf of:-

Stratford-on-Avon District Council,  
Elizabeth House,  
Church Street,  
STRATFORD-UPON-AVON,  
Warwickshire  
CV37 6HX



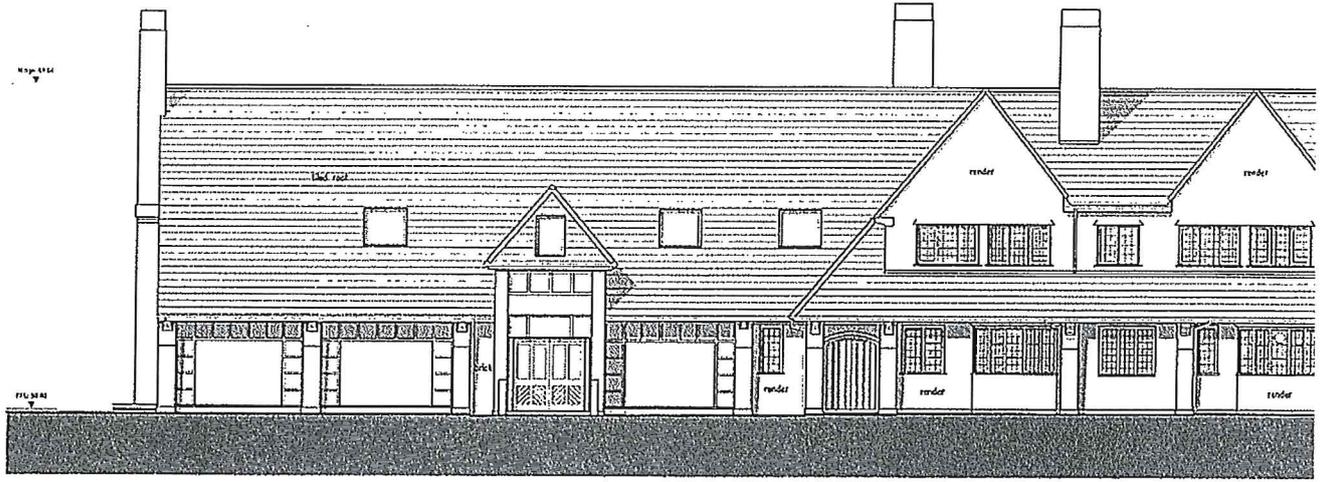
The Oak, Stratford Road, Hockley Heath



Scale 1:1,000



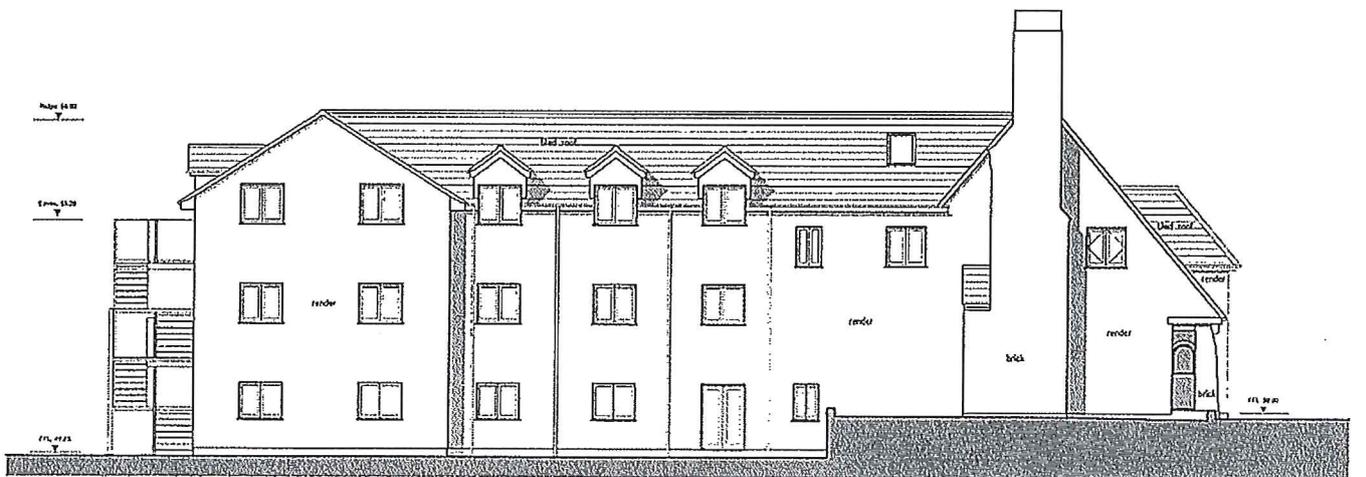
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Ordnance Survey 100024287



1 PROPOSED FRONT ELEVATION



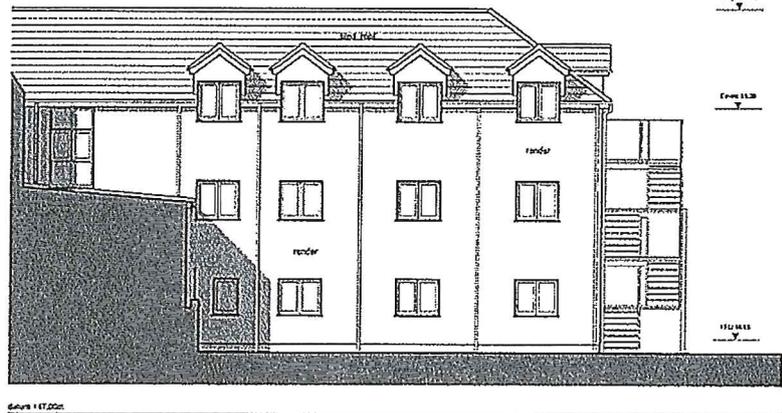
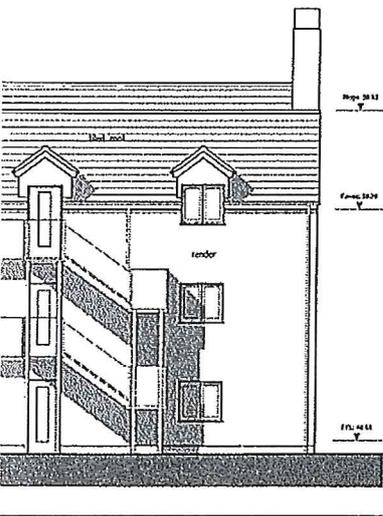
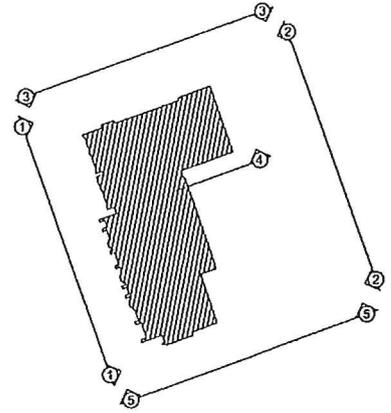
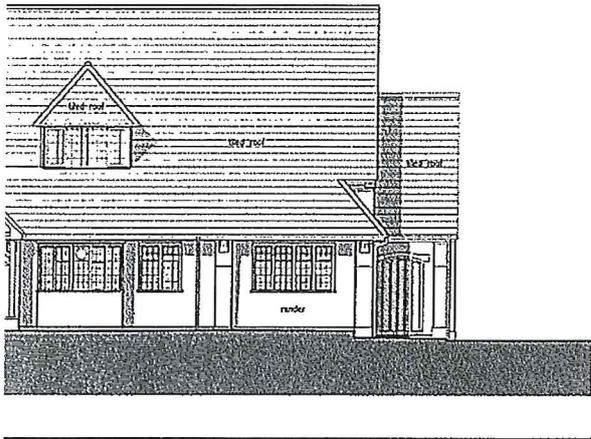
2 PROPOSED REAR ELEVATION



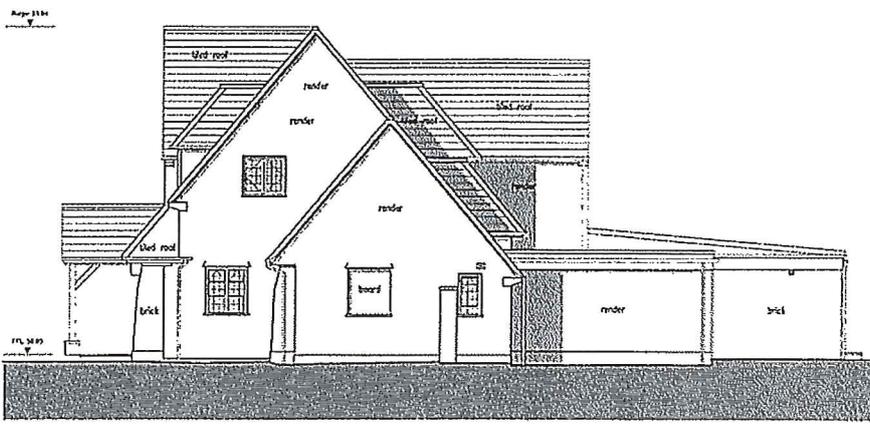
3 PROPOSED SIDE ELEVATION

**Drawing Notes**  
 Drawing based on Ordnance Survey data and is subject to a L14 topographical line & level survey.  
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**Disclaimer**  
 Drawing is based on measured building survey drawings 3325-01 provided by OAKLEY BUILDING SURVEYORS 2015



4 PROPOSED INTERNAL SIDE ELEVATION



5 PROPOSED SIDE ELEVATION

B Elevation 2 amended to address EPA comments. IFC IFC 15.02.17  
 A Elevation 2 amended to address EPA comments. IFC IFC 01.02.17

ref description	drawn	auth	date

**ALIGN ARCHITECTURE**  
 27 Park Street  
 Birmingham, B2 1AB  
 Tel: 0121 625 2222  
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client	Westbourne Leisure		
project	The Oak Hotel Stratford Road, Hockley Heath		
project no	15138	drawing no	PA-111
date drawn	November 2015	rev	B
description	Proposed Elevations		

scale	1:100 @ A1	drawn by	NSC	authorised by	NSC
<small>All unbracketed dimensions and floor levels are subject to verification by Contractors on site.          This drawing and design are © Copyright Align Architecture Ltd. No reproduction or alteration is permitted.</small>					
<small>Purpose of issue:          planning <input type="checkbox"/> building reg. <input type="checkbox"/> tender <input type="checkbox"/> comments <input type="checkbox"/> approval <input type="checkbox"/> construction <input type="checkbox"/></small>					



## ANNEX

### YOUR RIGHT OF APPEAL

If you decide that you want to appeal against the enforcement notice you must ensure that you send your appeal soon enough so that normally it will be delivered by post/electronic transmission to the Secretary of State (at The Planning Inspectorate) before **5 November 2018**.

**Under section 174 of the Town and Country Planning Act 1990 (as amended) you may appeal on one or more of the following grounds:-**

(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

(b) that those matters have not occurred;

(c) that those matters (if they occurred) do not constitute a breach of planning control;

(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

(e) that copies of the enforcement notice were not served as required by section 172;

(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

(g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

**Not all of these grounds may be relevant to you.**

If you appeal under Ground (a) of Section 174(2) of the Town and Country Planning Act 1990 this is the equivalent of applying for planning permission for the development alleged in the notice and you will have to pay a fee of £8,277.50. You should pay this fee to the Council (made payable to Stratford-on-Avon District Council).

The fee has been calculated as follows:

1. *The alleged breach has a gross floorspace of 1,109sq.m*
2. A rate of £462 for every 75sq.m (size above 75 sq m but less than 3,750 sq m) gives a figure of £6,930 (15 x £462)
3. *Adding 50%, as the development straddles a District boundary, gives a figure of £10,395*
4. *Doubling this figure for an enforcement appeal gives a figure of £20,790*

If you decide to appeal, when you submit it, you should state in writing the ground(s) on which you are appealing against the enforcement notice and you should state briefly the facts on which you intend to rely in support of each of those grounds. If you do not do this when you make your appeal the Secretary of State will send you a notice requiring you to do so within 14 days.

If you submit a retrospective planning application after the enforcement notice is issued, the Local Planning Authority may decline to determine your application under section 70C of the Act (as amended). You cannot appeal against a decision to decline to determine your planning application. Therefore if the Local Planning Authority does decline any retrospective application the only way you could ask for the planning merits of the alleged development to be considered is to appeal on ground (a) on your enforcement appeal and pay the fee.

However if you (or anyone else) had already submitted a retrospective planning application and the enforcement notice is issued before the time to decide the application has expired, no-one can appeal against the enforcement notice on ground (a). Although a planning appeal can be pursued if the Local Planning Authority refuse or fail to determine the planning application. This is specified at section 174 (2A)(b) of the Act (as amended).

The Planning Inspectorate has published new guidance on how to Appeal against an Enforcement Notice. It relates to all Notices served on or after 6 April 2012.

#### **WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this enforcement notice, it will take effect on **5 November 2018** and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

#### **LIST OF NAMES AND ADDRESSES OF THE PERSONS ON WHOM A COPY OF THE ENFORCEMENT NOTICE HAS BEEN SERVED**

Mr S. Preece  
General Manager  
The Oak Hotel  
Stratford Road  
Hockley Heath  
Solihull  
B94 5NW

Walsh Taverns Ltd  
(Co. reg number 7550859)  
Outwoods Cottage  
Outwoods  
Newport  
Shropshire  
TF10 9EA

Walsh Taverns Ltd  
C/O 18, Priory Queensway  
Birmingham  
B4 6FD

Westbourne Leisure (Midlands) Ltd  
Co reg: 06457761  
45 Parkfield Road  
Coleshill  
Birmingham  
B46 3LD

AIB Group (UK) plc  
4 Queens Square  
Belfast  
BT1 3DJ

Westbourne Head Office,  
Strawberry Bank Hotel  
72 Main Road  
Meriden  
Coventry  
CV7 7NF

Paul Edward Owens  
Company Secretary  
Westbourne Leisure Limited  
Brockhill Farm  
Seafeld Lane  
Beoley  
Redditch  
Worcestershire  
B98 9BX

Christine Owens  
Company Director  
Westbourne Leisure Limited  
Westbourne Head Office  
Strawberry Bank Hotel  
72 Main Road  
Meriden  
Coventry  
CV7 7NF

Paul Edward Owens  
Company Director  
Westbourne Leisure Limited  
Brockhill Wood  
Brockhill Lane  
Beoley  
Redditch  
B98 9DA

Neutral Citation Number: [2016] EWCA Civ 466  
**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**  
**MRS JUSTICE LANG DBE**  
**[2015] EWHC 2788 (Admin)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18/05/2016

**Before :**

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

-----  
**Between :**

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

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

Hearing dates : 4 May 2016  
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**Judgment**

## **Lord Justice Sales:**

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

### *Factual background*

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

*The policy framework*

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

"79. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

80. Green Belt serves five purposes:

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

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

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

"87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

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

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

- \* buildings for agriculture and forestry;

- \* provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;
- \* the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
- \* the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- \* limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or
- \* limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

90. Certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These are:

- \* mineral extraction;
- \* engineering operations;
- \* local transport infrastructure which can demonstrate a requirement for a Green Belt location;
- \* the re-use of buildings provided that the buildings are of permanent and substantial construction; and
- \* development brought forward under a Community Right to Build Order."

#### *The Inspector's decision*

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

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

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

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

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

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

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

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

*The appeal: discussion*

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

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

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

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

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

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

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

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

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

*Conclusion*

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

**Lord Justice Floyd:**

29. I agree.

**Lady Justice Arden DBE:**

30. I also agree.



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# England and Wales High Court (Administrative Court) Decisions

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Neutral Citation Number: [2018] [EWHC](#) [1753](#) (Admin)

Case No: CO/145/2018

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
PLANNING COURT (BIRMINGHAM)

Birmingham Civil Justice Centre  
11/07/2018

Before:

MRS JUSTICE JEFFORD DBE

Between:

EURO GARAGES LIMITED

Claimant

- and -

(1) THE SECRETARY OF STATE FOR  
COMMUNITIES AND LOCAL GOVERNMENT  
(2) CHESHIRE WEST AND CHESTER COUNCIL

Defendant

Mr Kevin Leigh (instructed by Shoosmiths LLP) for the Claimant  
Mr Jack Parker (instructed by Government Legal Department) for the First Defendant

Hearing date: 16 May 2018

HTML VERSION OF JUDGMENT APPROVED

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Mrs Justice Jefford:

*Introduction*

1. The claimant, Euro Garages Ltd. ("Euro Garages"), is a company which owns and operates a chain of petrol filling stations across the Midlands and the North of England. Those filling stations commonly incorporate food outlets and shops selling convenience goods.
2. Euro Garages operates such a filling station at the Red Ensign Service Station which lies beside Park Gate Road on the A540 beside a roundabout where the A494 and the A5117 bypass intersect. The M56 also joins the A5117. The site is at the junction of the north-south route between Chester and the Wirral and the east-west route between Liverpool and North Wales. At the service station site there are fuel pumps (with a canopy above), Starbucks and Subway outlets, a Spar convenience shop (which I will refer to as "the shop") and parking for 20 vehicles. The site and the surrounding area are within the Green Belt.
3. Euro Garages carried out works, principally to the shop, for which they subsequently sought retrospective planning permission. At the time this claim was made, the works were almost complete.
4. The nature of the works is uncontroversial and can be described as follows:
  - (i) a storage area was created on one side of the shop surrounded by close boarded fencing with a link to the shop. A storage container was placed in the storage area. The area had previously contained an LPG storage tank surrounded by palisade fencing.
  - (ii) A side extension was added to the shop to relocate an external ATM with internal storage space behind for the shop and a new entrance, the old entrance becoming a window. Previously this area had been occupied by a storage container.
5. Euro Garages sought retrospective planning consent for these works: the storage area was the subject matter of application 17/00885/FUL and the side extension the subject matter of application 17/00657/FUL. Both applications were refused on the basis that they involved inappropriate development within the Green Belt.
6. Euro Garages appealed. The storage area was the subject matter of appeal A0665/W/17/3181400 and the extension was the subject matter of appeal A0665/W/17/3181397. After the original applications had been refused but before the appeals, Euro Garages realised that what had been built did not match the drawings accompanying the original applications in all details. In the appeals, therefore, Euro Garages sought permission for what was in the drawings on the basis that, if permission was granted, it would alter what had already been built.
7. The appeals were made under section 78 of the Town and Country Planning Act 1990 to the first defendant, the Secretary of State for Housing Communities and Local Government, and transferred by the Secretary of State to an Inspector. The appeal was dealt with by written representations to the Inspector who also undertook an accompanied site visit.
8. The Inspector's decision letter was issued on 29 November 2017 and the Inspector refused the appeals and refused to grant planning permission. Euro Garages then made this claim to quash the Inspector's decision under section 288 of the Town and Country Planning Act 1990 on the grounds principally that the decision is not within the powers of the Act, and alternatively that a relevant requirement has not been complied with. Permission was granted on 16 February 2018. The Secretary of State has contested this challenge to the Inspector's decision. The second defendant Council informed the court that it did not contest the claim and would not be represented at the hearing before me.

### ***General principles***

9. The applicable general principles were not in dispute between the parties. In summary:
  - (i) a challenge under s. 288(1)(b)(i) to the validity of a decision on the grounds that it is not within the powers of the Act is made on the same basis as would be a claim for judicial review.
  - (ii) The reasons in the decision letter must be adequate, clear and intelligible so that the person against whom the decision is made may understand why he lost, ascertain whether the decision maker erred in

law, and decide what he may lawfully do in the light of the decision.

10. For the latter propositions, counsel helpfully referred me to the speech of Lord Brown in *South Bucks District Council v Porter (No.2)* [2004] UKHL 33 at [36]:

*"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to any substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponent to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he had genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."*

I set out this passage in full because it is pertinent not only to a reasons challenge but to the way in which the Decision Letter should be read – that is in a straightforward manner and in context.

### ***The National Planning Policy Framework***

11. Before I turn to the Inspector's decision, it is convenient to set out the relevant provisions of the National Planning Policy Framework ("NPPF") which provided the basis for that decision.
12. Under the heading Protecting Green Belt land, the NPPF says this:

"79. The government attaches great importance to green belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are that openness and their permanence.

80. Green Belt serves five purposes:

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

.....

87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

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

- [1] buildings for agriculture and forestry;
- [2] provision of appropriate facilities for outdoor sport, outdoor recreation and the cemeteries, so long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;
- [3] 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;
- [4] the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- [5] limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or
- [6] limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

90. Certain other forms of development are not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt. These are:

- mineral extraction;
- engineering operations;
- local transport infrastructure which can demonstrate a requirement for a Green Belt location;
- the re-use of buildings provided that the buildings are of permanent and substantial construction; and..."

For ease of reference I have numbered the bullet points that appear in the paragraphs of the NPPF.

13. It was common ground that the policy is not to be interpreted as if it were a statute. It was also, however, common ground at the hearing before me that the interpretation of policy was an objective matter for the court to determine: see *Tesco Stores Ltd v Dundee* [2012] UKSC 13. The further decision of the Supreme Court in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] UKSC 37 [22]-[26] emphasises that the role of the court should not be overstated; that the court should start at least from the presumption that specialist planning inspectors will have understood the policy framework correctly; and that it is important to distinguish between issues of interpretation (suitable for judicial analysis) and issues of judgment in the application of policy, which can, in the normal course, only be challenged if irrational or perverse.

### ***The decision letter***

14. In the Decision Letter, the Inspector identified the main issues as being:

- (i) whether or not the proposed developments would be inappropriate development in the Green Belt for the purposes of the development plan and the National Planning Policy Framework (the Framework);
- (ii) the effect of the proposed developments on the openness of the Green Belt and the purpose of including land within it; and

(iii) if the development was inappropriate, whether that was outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

No criticism can be made of that identification of the issues.

15. The Inspector identified paragraphs 89 and 90 of the NPPF as the relevant paragraphs. She recorded that the parties agreed that, whilst the volume and floor area of the two proposed developments was limited as a result of previous extensions to the building, both on their own and cumulatively they would represent disproportionate additions to the building so that they would not fall within the exception in bullet point [3] under paragraph 89.
16. The decision, therefore, focussed on bullet point [6]. The Inspector considered that the extension with a floor area of 61m<sup>2</sup> and the storage area with a floor area of 22.4 m<sup>2</sup> would be "limited infilling". As she then said, to fall within the exception in this bullet point, the development must also not have a greater impact on the openness of the Green Belt and the purposes of including land within it.
17. Her analysis and reasoning continued as follows:

*"13. Openness is an essential characteristic of the Green Belt. It can be taken as the absence of building and development. Whether harm is caused to openness depends on a variety of factors such as the scale of the development, its locational context and its spatial and/or visual implications.*

*14. The appellant's photographic evidence shows that the container would be located in an area that was formerly surrounded by palisade fencing and contained two LPG storage tanks that were around 3.5 m in height, as well as being used for bin storage. Although not as high as these tanks, the overall scale and mass of the container is greater than them, and the proposed 2.6m timber fencing surrounding the container is not as open as the previous palisade fencing.*

*15. The appellant has indicated that the extension to the shop building would be located in an area that was formerly occupied by a storage container. However, no details have been provided of how large this container was, how long it had been there, or when it was removed. In the absence of any evidence to the contrary, on the basis that this was a standard sized container, I consider that the scale and mass of the proposed extension is likely to be slightly greater than that of a container.*

*16. In addition, the appellant has calculated that overall the appeal scheme would result in a 9.2% increase in floor area, and a 5% increase in volume on the existing filling station, shop and Starbucks building. Whilst these may be relatively small increases, the scale and mass of the resulting building would still be greater than at present.*

*17. Overall, I therefore consider that the scale and mass of the proposals would have a slightly greater impact on the openness of the Green Belt than the site did previously. I accept that [the] proposals are, to a certain extent, screened by other development on the site and the boundary treatment to the rear. Nevertheless, whilst visibility can be a factor in considering the effect on openness, this does not mean that the proposals would not affect openness, as a lack of visibility does not, in itself, mean that there would be no loss of openness. Moreover, even a limited adverse impact on openness means that openness is not preserved.*

*18. The purposes of including land in the Green Belt are set out in paragraph 80 of the Framework. As the proposals would be small additions to an existing building within a previously developed site, I am satisfied that the appeal schemes would not conflict with any of the purposes of including land within the Green Belt.*

*19. Therefore, although the proposal represents the limited infilling of previously developed site, and would not conflict with the purposes of including land in the Green*

*Belt, it would still represent inappropriate development because it would have a greater impact on the openness of the Green Belt than the site does at present."*

***Bullet point [6] and the interpretation of the policy***

18. Perhaps precisely because it is not a statute, bullet point [6] does not entirely make sense. A sensible reading requires the insertion of a few words so that the exception reads:

*"limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and [conflict more with] the purpose of including land within it than the existing development."*

Not only is this a sensible reading but it accords with the wording used in bullet point [2] of paragraph 89 and in paragraph 90.

19. There are thus two limbs to this exception or two tests which the development must pass to fall within the exception to inappropriateness, namely (i) that the infilling must not have a greater impact on the openness of the Green Belt than the existing development and (ii) that the infilling must not conflict more with the purpose of including land within the Green Belt than the existing development. In the course of the argument before me, Euro Garages appeared to conflate these two. They are distinct elements and the Inspector was right to treat them separately and on the basis that to fall within the exception the development had to meet both tests.
20. So far as the second limb was concerned, the Inspector decided that the development did not conflict with the purposes of including the land in the Green Belt and no issue arises about this. The battleground, therefore, was the meaning of the "greater impact on the openness of the Green Belt" and whether the Inspector had properly interpreted that part of the exception and applied the appropriate test.
21. "Openness" is not a defined term but, in my view, it is clear in this context that it is openness of the Green Belt that must be considered not the site as such. That is not merely the wording of the paragraph but must be the case because any infill would, almost by definition, have an impact on the openness of a site.
22. I trust that I will do no injustice to the further detailed submissions of Mr Leigh, on behalf of Euro Garages, on this issue, if I summarise them as follows:
- (i) Firstly, it is submitted that for there to be "greater impact" there must be something more than merely a change. The answer to what is meant by that greater impact and what more is required is to be found in the decision of the Court of Appeal in *Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council* [\[2018\] EWCA \(Civ\) 489](#).
- (ii) Paragraph 90 is concerned with other forms of development which are not inappropriate "provided they preserve the openness of the Green Belt". It is submitted that, although the wording is different in bullet point [6] of paragraph 89, it amounts to the same thing: if the openness of the Green Belt is preserved, there is no greater impact. Conversely, if the openness of the Green Belt is not preserved, there will be greater impact.
- (iii) Given that the policy is not to be construed as a statute, one can conclude that greater impact occurs where the openness of the Green Belt is not preserved. In that context "preserved" does not mean not changed but means not harmed. So whether there is greater impact involves, in application, an assessment of the harm occasioned by the change.
23. I largely accept these submissions on behalf of Euro Garages. Firstly it seems to me that Mr Leigh is right to submit that, in the context of the exceptions under paragraph 89, for there to be a greater impact on the openness of the Green Belt there must be something more than just some change to the environment. In each of the instances under the bullet points, it is contemplated that there will be some

change to what is presently there. But, despite that change, the openness of the Green Belt will be preserved (bullet point [2]) and/or there will not be a "disproportionate" addition or something "materially larger" (bullet points [3] and [4]). In the case of infill there will necessarily be a change to the scope of the build. So for there to be a greater impact there must be something more. That view is consistent with the decision in the *Samuel Smith* case to which I refer further below. Whether or not there is a greater impact is a matter of judgment.

24. I would not wish to decide, for all purposes, that the concepts of not having a greater impact on the openness of the Green Belt and of preserving the openness of the Green Belt are identical. Having said that, there is an obvious reason why the wording in different paragraphs and bullet points differs. Where there is no existing development, consideration must be given to whether the development preserves the openness of the Green Belt. Where there is some existing development, the openness of the Green Belt has not been wholly preserved and there will necessarily have been some impact on the openness of the Green Belt already. It makes sense, therefore, to consider whether there will be a greater impact from the contemplated limited infilling. Asking the question whether there is any greater harm is one way of assessing the impact.
25. However one expresses it, a judgment must be made as to whether there is greater impact on the openness of the Green Belt. It is a judgment that needs to be exercised.
26. On behalf of the Secretary of State, Mr Parker drew my attention to the decision of the Court of Appeal in *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466. In that case, Sales L.J. described the concept of "openness of the Green Belt" as open-textured such that a number of factors were capable of being relevant. Visual impact was implicitly part of the concept of openness of the Green Belt. However, the openness of the Green Belt also has a spatial aspect and the absence of visual intrusion "does not in itself mean that there is no impact on the openness of the Green Belt as the result of the location of a new or materially larger building there" [at 25].
27. As I have said, Euro Garages placed reliance on the decision in the *Samuel Smith* case. The case concerned a challenge to the grant of planning permission for a significant extension to a quarry. The matter fell within paragraph 90 of the NPPF. The inspector's decision was, in part and in summary, challenged on the basis that, although she had considered the visual impact of the development, she had not done so when considering the visual effect on the openness of the Green Belt. At first instance, the court had rejected this challenge, relying on *Turner* as authority for the proposition that the inspector could take into account visual impact but was not obliged to do so. The appeal succeeded on this issue, the Court of Appeal finding that the inspector had taken too narrow a view of the concept of openness of the Green Belt and that she had failed to consider the visual impact of the development on that openness.
28. Euro Garages relied in particular on the following passages in the judgment of Lindblom LJ:

*"37. The concept of "openness of the Green Belt" is not defined in paragraph 90. Nor is it defined elsewhere in the NPPF. But I agree with Sales L.J.'s observations in Turner to the effect that the concept of "openness" as it is used in both paragraph 89 and paragraph 90 must take its meaning from the specific context in which it falls to be applied under the policies in those two paragraphs. Different factors are capable of being relevant to the concept when it is applied to the facts of a case. Visual impact, as well as spatial impact, is, as Sales L.J. said "implicitly part" of it. In a particular case there may or may not be other harmful visual effects apart from harm in visual terms to the openness of the Green Belt. And the absence of other harmful visual effects does not equate to an absence of visual harm to the openness of the Green Belt.*

*38. As a general proposition, however, it seems to me that the policy in paragraph 90 makes it necessary to consider whether the effect of a particular development on the openness of the Green Belt can properly be gauged merely by its two-dimensional or three-dimensional presence on the site in question – the very fact of its being there – without taking into account the effects it will have on the openness of the Green Belt in*

*the eyes of the viewer. To exclude visual impact, as a matter of principle, from a consideration of the likely effects of development on the openness of the Green Belt would be artificial and unrealistic. The policy in paragraph 90 does not do that. A realistic assessment will often have to include the likely perceived effects on openness, if any, as well as spatial effects. Whether, in the individual circumstances of a particular case, there are likely to be visual as well as spatial effects on the openness of the Green Belt, and if so, whether those effects are likely to be harmful or benign, will be for the decision-maker to judge. But the need for those judgments to be exercised is, in my view, inherent in the policy.*

*39. The first part of the question posed by the preamble in paragraph 90 – whether the development would "preserve" the openness of the Green Belt – cannot mean that a proposal can only be regarded as "not inappropriate in the Green Belt" if the openness of the Green Belt would be left entirely unchanged. It can only sensibly mean that the effects on openness must not be harmful – understanding the verb "preserve" in the sense of "keep ... safe from harm" – rather than "maintain (a state of things)" .... There may be cases in which a proposed development in the Green Belt will have no harmful visual effects on the openness of the Green Belt. Indeed, there may be cases in which development will have no, or no additional, effect on the openness of the Green Belt, either visual or spatial ... But development for "mineral extraction" in the Green Belt, the category of development with which we are concerned, will often have long-lasting visual effects on the openness of the Green Belt, which may be partly or wholly repaired in the restoration phase – or may not. Whether the visual effect of a particular project of mineral working would be such as to harm the openness of the Green Belt is, classically, a matter of planning judgment.*

*40. In my view, therefore, when the development under consideration is within one of the five categories in paragraph 90 and is likely to have visual effects within the Green belt, the policy implicitly requires the decision-maker to consider how these visual effects will bear on the question of whether the development would "preserve the openness of the Green Belt". where that planning judgment is not exercised by the decision-maker, effect will not be given to the policy. This will amount to a misunderstanding of the policy, and thus its misapplication, which is a failure to have regard to a material consideration, and an error of law."*

29. It does not seem to me that this decision defines the meaning of "greater impact" or even of "preserving" the openness of the Green Belt but it supports the view, firstly, that a mere change in the current build is not sufficient to establish that there is a greater impact on the openness of the Green Belt. Put another way, whether the openness of the Green Belt is preserved, or conversely harmed, is not simply a question of whether something, which by definition has a spatial impact, is to be built. Further, the question of whether the openness of the Green Belt is preserved will generally involve an assessment of the visual or perceived impact. That is a matter of planning judgment but it is a matter that needs to be considered.
30. Mr Parker submitted that the decision in *Turner* should not be regarded as providing a check list of matters that must be considered by the decision-maker in order for there to be a lawful decision. I agree that there is not a check list and the mere fact that the decision maker does not recite a check list and his decisions on each item does not, in itself, invalidate the decision. However, I take Lindblom LJ in the *Samuel Smith* case to say that where the issue of openness of the Green Belt arises, the visual impact of a development will generally require consideration, and that should be the case whether there is likely to be a visual impact or there is no visual impact. On the facts of the *Samuel Smith* case, the court was concerned with a scenario in which the development was likely to have visual effects which had not been considered in the context of the issue of preserving the openness of the Green Belt but, in my view, if there is no visual impact that ought also to be a material consideration for the obvious reason that it is the less likely that the openness of the Green Belt will be harmed. That seems to me to be consistent with the references in the judgment of the Court of Appeal to the perceived effect on openness "if any" and to cases where the proposed development will have no, or no

additional, effect on the openness of the Green Belt. This interpretation of the policy seems to me to be equally applicable to the issue of "greater impact" on openness under paragraph 89.

31. Pulling these points together, the policy requires the decision maker to consider and make an assessment, under bullet point [6], of whether the openness of the Green Belt is impacted or harmed by the proposals to a greater extent than that openness has already been impacted. That is an open-textured assessment and there is no check list to be gone through but, where openness of the Green Belt is in issue, visual impact, as well as spatial impact, requires consideration, subject to a margin of appreciation.

### *The approach of the Inspector*

32. It is entirely clear from the Inspector's decision letter, as set out above, that she properly identified the test that she should apply as to whether the limited infill in this case fell within the exception at bullet point [6] of paragraph 89. She properly identified that she should consider both whether the development was in conflict with the purposes of including land in Green Belt and whether the development had any greater impact on the openness of the Green Belt. She further, entirely properly, framed the issue of greater impact on openness in terms of harm and she rightly identified that whether there was harm might depend on a variety of factors including the scale of the development, its locational context and its spatial and/or visual implications (paragraph 13). The Inspector made no further reference to the scale of the development (other than in terms of its volume) or its locational context. That was entirely proper: there is no check list. She did, however, address both spatial and visual impact, exercising her judgment as to the relevant considerations.
33. So far as the spatial impact was concerned, the Inspector concluded that the scale and mass of the container was greater than the LPG tanks, although not as high, and the scale and mass of the extension was slightly greater than the previous container. Overall, she concluded that the scale and mass of the resulting building would be greater than at present, although there were relatively small increases.
34. Those conclusions appear in turn to have led to the conclusion in paragraph 17 of the decision letter that *"the scale and mass of the proposals have a slightly greater impact on the openness of the Green Belt than the site did previously."* The decision letter discloses no reasoning as to why these "relatively small" increases had a slightly greater impact on the openness of the Green Belt.
35. As I have indicated, Mr Parker reminded me that I should give the letter a "benevolent" reading rather than subject it to a close textual analysis and that I should bear in mind that it was written against the background of the parties' written representations and that it should be sufficient to allow the appellant to understand the Inspector's reasoning when read in that context. That does not, however, seem to me to assist the Secretary of State here because the written representations put squarely in issue Euro Garages' argument that the relatively small increase in floor area and volume did not have a greater impact on the openness of the Green Belt. Euro Garages identified the percentage increases in floor area and volume and argued that *"such an increase would not be regarded as having a material impact on the open character of the Green Belt ..."*. The Decision Letter provides no reasoning as to why the Inspector decided that it did.
36. It seems to me that the only basis on which the Inspector could have reached that conclusion was if she considered that the greater floor area and/or volume necessarily meant that there was a greater impact. The flaw in that reasoning is that any infill (however limited) would necessarily result in greater floor area or volume and it involves the assumption that any change would have a greater impact. As I have said, the concept of greater impact involves something more than that.
37. So far as visual impact of the development is concerned, this was expressly raised in the appellant's written representations. Visual impact was, at the very least, in the mind of the Inspector and referred to in the Decision Letter. However, the consideration that the Inspector gave to visual impact was less than clear.
38. Firstly, in paragraph 14 of the Decision Letter there is reference to the timber fencing around the new container not being as open as the previous palisade fencing. It is not at all clear whether that was a

factor that the Inspector took into account but, if she did, then, looked at on its own, it seems to me that that involved a misinterpretation of the policy, in that it was concerned with the openness of the site and not of the Green Belt. There may, of course, be circumstances in which the replacement of an open fence with a solid structure could impact the openness of the Green Belt but here the open fence surrounded tanks and the solid fence surrounds a container (of lesser height) and it is difficult to see how there could be an impact on the openness of the Green Belt as distinct from the site itself.

39. Secondly, paragraph 17 of the Decision Letter also referred to visual impact. The Inspector referred to the fact that the development is, to some extent, screened and not visible. That implies that she considered there to be some visual impact. Despite that, the Inspector then said "a lack of visibility does not, in itself, mean that there would be no loss of openness." Read in context, that is a statement of principle and simply does not address the question of whether, in this particular case, the development (to some extent screened but to some extent visible) does or would have an impact on openness. If the sentence is to be read as meaning that the Inspector has concluded that the development has no visual impact, then the only matter she took into account was the spatial impact, which, as I have said, she appears to have approached on the erroneous basis that any change had a greater impact on the openness of the Green Belt.
40. The final sentence of this paragraph which reads "*... even a limited adverse impact on openness means that openness is not preserved*" might, on a benevolent reading, be taken to mean that the Inspector concluded that the development does have such a limited adverse impact visually but if that is what the sentence means, then it amounts to no more than a decision that because the development is visible, it has a greater impact on openness. That seems to me to disclose the same error of assuming that any change has a greater impact on openness.
41. That the decision was reached in the flawed manner I have set out seems to me to be further evidenced by the Inspector's conclusion in paragraph 23 of the Decision Letter that the development would "not adversely affect the character and appearance of the site or this part of the Green Belt". The Inspector regarded the absence of harm in this respect as a neutral factor but that only makes sense if the Inspector regarded some other harm as necessarily flowing from any alteration to the existing site.

### ***Conclusion***

42. In my judgment, therefore, what the Inspector in fact did was treat any change as having a greater impact on the openness of the Green Belt, rather than considering the impact or harm, if any, wrought by the change. Although the Inspector appeared to set out the right test, she then either went wrong in her interpretation of the policy or failed to apply the policy. For these reasons, I would grant Euro Garages the relief sought and quash the decision of the Inspector.
43. For completeness, I should add that Euro Garages advanced, before the Inspector and before me, an alternative argument that the development fell within bullet point [3] under paragraph 90 as "local transport infrastructure which can demonstrate a requirement for a Green Belt location." It is not necessary for me to consider this alternative case or express any view, as counsel for Euro Garages invited me to do, as to whether a petrol filling station fell within the definition of "local transport infrastructure".

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## Appeal Decision

Site visit made on 6 November 2015

**by Y Wright BSc (Hons) DipTP MSc DMS MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 18 December 2015**

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**Appeal Ref: APP/P1805/W/15/3084336**

**Hopwood Park Services, Redditch Road, Alvechurch, Worcestershire  
B48 7AU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Rod McKie (Welcome Break Holdings Ltd) against the decision of Bromsgrove District Council.
  - The application Ref 15/0026, dated 12 January 2015, was refused by notice dated 9 April 2015.
  - The development proposed is erection of new detached drive thru coffee shop A3 and A5 use.
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### Decision

1. The appeal is allowed and planning permission is granted for erection of new detached drive thru coffee shop A3 and A5 use at Hopwood Park Services, Redditch Road, Alvechurch, Worcestershire B48 7AU in accordance with the terms of the application, Ref 15/0026, dated 12 January 2015, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan, topographical survey, 2014/109/02, 2014/109/03/D and 2014/109/04/A.
  - 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 4) No development shall take place until details of the proposed foul and surface water drainage for the site, have been submitted to and approved in writing by the local planning authority. The development shall not be first occupied until the works have been carried out in accordance with the approved scheme.

### Main Issue

2. The appeal site is located within the West Midlands Green Belt and therefore the main issue is whether the development is inappropriate development for

the purposes of the National Planning Policy Framework and development plan policy.

### **Reasons**

3. Paragraph 89 of the National Planning Policy Framework (the Framework) indicates that, except for a small number of exceptions, the construction of new buildings within the Green Belt should be regarded as inappropriate. An exception to this is where development would include the limited infilling or the partial or complete redevelopment of a previously developed site, provided there is no greater impact on the openness of the Green Belt or the purpose of including land within the Green Belt than the existing development.
4. The proposed development is for the construction of a drive thru coffee shop on a site which currently forms part of the extensive car parking area for the Hopwood Park Motorway Service Area (MSA). The site backs on to one of the MSA roads on the opposite side of which is the fuel filling station which is a substantial size. The main MSA amenity building is located to the north east. The site is immediately surrounded by car parking areas to the east, south and west interspersed with significant landscaping.
5. The appeal site meets the definition of previously developed land as set out within Annex 2 of the Framework as it already contains fixed surface infrastructure and is an integral part of the MSA. The proposal would therefore amount to the partial redevelopment of previously developed land.
6. The effect on openness is an integral part of deciding whether the development would be inappropriate or not in this instance. The site and wider MSA already contain significant development which has already reduced the openness of the Green Belt, including the effect of extensive vehicle parking. The proposal would be wholly contained within the existing MSA and would not encroach further into the surrounding countryside. Whilst the coffee shop would be around 60-70 m from the main amenity building, it would be adjacent to the prominent fuel filling station, and its scale and bulk would be substantially smaller in comparison. Based on the evidence before me and my observations on site I am satisfied that the redevelopment of this site would not materially detract from the openness of the Green Belt or have a greater impact on the purpose of including land within it.
7. In addition, the development would not be unduly prominent within the MSA, due to the proximity of existing large scale buildings and vehicle parking areas, and the significant landscaping which would be retained.
8. Consequently, the proposal would not be inappropriate development in the Green Belt. It would therefore comply with the Framework in this regard and would accord with Bromsgrove District Local Plan 2004 (LP) Policy DS2 which seeks to protect the Green Belt from inappropriate development.

### **Conditions**

9. I have considered the conditions suggested by the Council in light of the advice given in the Planning Practice Guidance (PPG). As such I have amended some in the interests of precision and enforceability. I am satisfied that the conditions set out in my decision meet the tests within the PPG.

10. I attach a condition specifying the approved plans for the avoidance of doubt and in the interests of proper planning. I impose a condition requiring details of the materials to be used to safeguard the character and appearance of the area. I also attach a condition to ensure the site is adequately drained, though have stated that this should be implemented prior to first occupation.

**Conclusion**

11. For the reasons given above, and having taken into account all other matters raised, I conclude that the appeal should be allowed.

*Y. Wright*

INSPECTOR



## Appeal Decision

Site visit made on 23 April 2019

**by Kenneth Stone BSC Hons DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 9<sup>th</sup> May 2019**

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**Appeal Ref: APP/C3105/W/18/3210498**

**Former Little Chef, Family Farm Service Station, A34 Northbound, Weston on the Green, OX25 3QQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Euro Garages Limited against the decision of Cherwell District Council.
  - The application Ref 18/00034/F, dated 9 January 2018, was refused by notice dated 1 March 2018.
  - The development proposed is described as the 'erection of a new building to provide a drive thru bakery (Use Class A1) and a sandwich shop (Use Class A1) plus a compound building, retention of the existing car parking, landscaping and all other associated works. Construction of a drive thru access lane in association with the use of the former Little Chef building as a drive thru coffee shop (Use Class A1).'
- 

### Decision

1. The appeal is allowed and planning permission is granted for the erection of a new building to provide a drive thru bakery (Use Class A1) and a sandwich shop (Use Class A1) plus a compound building, retention of the existing car parking, landscaping and all other associated works. Construction of a drive thru access lane in association with the use of the former Little Chef building as a drive thru coffee shop (Use Class A1) at Former Little Chef, Family Farm Service Station, A34 Northbound, Weston on the Green, OX25 3QQ in accordance with the terms of the application, Ref 18/00034/F, dated 9 January 2018, subject to the conditions contained in the schedule at the end of this decision.

### Procedural and background matters

2. The Council decision was issued before the publication of the July 2018 revision to the National Planning Policy Framework. The parties' statements were provided after the publication of this revision and took account of the revised Framework. Further revisions to the National Planning Policy Framework were published in February 2019 but did not affect policy in the Framework relevant to the matters in dispute in this appeal. References in my reasoning below to the National Planning Policy Framework (the Framework) refer to the latest February 2019 version.
3. The Council originally refused the application for two reasons one related to inappropriate development in the Green Belt and a second related to flood risk. The Council indicate that it's second reason for refusal was based on objection to the scheme from the Environment Agency. However, on submission of the appeal the appellant submitted further flood risk work, including additional modelling, which has led the Environment Agency to withdraw its objection.

The Council have confirmed that on this basis it no longer seeks to defend this second reason for refusal. I return to this matter further in 'other matters' below.

### **Main Issue**

4. On the basis of the above the main issue is whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.

### **Reasons**

5. The appeal relates to a site at an existing service area, known as Family Farm Service Station off the northbound carriageway of the A34. The site within the control of the appellant includes the building formerly occupied as a Little Chef, which is now operated as a Starbucks, a car parking area, landscaped area and a petrol filling station (PFS). The wider service area also includes a motor garage which is outside the blue line of land in the appellant's control.
6. The development plan for the area comprises The Cherwell Local Plan 2011 - 2013 – part 1, adopted July 2015 (CLP 2031) and the saved policies of the Cherwell Local Plan 1996 (CLP 1996). Policy ESD14 of the CLP 2031 states that the Oxford Green Belt will be maintained, in terms to meet the five purposes of Green Belt, and that development proposals within the Green Belt will be assessed in accordance with government guidance in the NPPF and NPPG. Adding that development within the Green Belt will only be permitted if it maintains the Green Belt and does not conflict with the purposes of the Green Belt or harm its visual amenities. This is reasonably consistent with government policy expressed in the Framework in section 13.
7. Paragraph 145 g of the Framework identifies as an exception to new buildings to be regarded as inappropriate development limited infilling or the partial or complete redevelopment of previously developed land. This is caveated by two bullet points; firstly, the building would not have a greater impact on the openness of the Green Belt than the existing development; and secondly, a matter concerning the contribution to meeting an identified affordable housing need which is not relevant here.
8. It is not disputed that the appeal site is located in the Oxford Green Belt within Cherwell district. Furthermore, the Council accept that the proposed sandwich shop/drive thru bakery building and associated compound would be within previously developed land. The proposal would result in redevelopment of an area of the site which is previously developed. The location of the proposed sandwich shop/ drive thru bakery and compound is currently laid out as a grassed and treed area but forms part of the wider site and would have been developed as part of the wider area. Whilst there is a degree of separation between the Starbucks unit and the canopy and PFS shop the buildings are read as a group as part of the service area. The canopy over the petrol pumps the circulation areas the parking area all contribute to the developed appearance of the location. The small landscaped section is seen in this context and as part of the wider developed area. The introduction of the proposed small additional buildings would not add to the encroachment of the site further into the countryside beyond and would be readily understood and viewed as part of the existing complex of buildings within which it would be set. In this context I would view the development as representing infill

development. The proposal therefore falls squarely to be considered in the context of paragraph 145g of the Framework.

9. The construction of new buildings should be regarded as inappropriate in the Green Belt unless it falls with an exception as set out in paragraph 145 of the Framework. 145 g would see the proposed building and compound treated as an exception if, in this context, it does not have a greater impact on openness of the Green Belt than the existing development.
10. The courts<sup>1</sup> have confirmed that openness has both a spatial and visual aspect and that it is important to consider both.
11. It has been held in the High Court<sup>2</sup> that rather than treating any change as having a greater impact on openness of the Green Belt, the correct approach is to consider the impact or harm, if any, wrought by the change. It was further noted that whether any change will have an adverse impact, and so cause harm to openness, might depend on factors such as the scale of the development, its locational context and its spatial and/or visual implications.
12. Turning firstly to the spatial aspect of the buildings (and here I include the compound) they are in the context of the existing buildings of a lower height and significantly smaller in scale and bulk. They would be substantially lower than the canopy over the pump islands and would represent a relatively small increase in the overall built form on the site. Presently the area is a grassed and treed area so there is an increase in enclosed space by the buildings. Whilst in the context of the site this could be seen to be a reduction in its openness it is relatively small in scale seen in the context of the other buildings and structures with which it is associated. The additional built form would add little in my view to the perception of the built up and urbanised nature of the site more than it presently has and this would have little impact on the openness of the wider Green Belt.
13. In terms of the visual aspect the site is itself relatively well screened from the wider countryside and Green Belt beyond by heavy tree screening. This protects views on the approaches on both sides of the A34 and from the wider countryside outside the site. The visibility of the site is contained within a relatively narrow window travelling along the A34 and from within and opposite the site. In this context the view is of an existing service station facility with a number of buildings parking area and structures. The proposed buildings would add to this group of buildings but would not be seen as resulting in additional encroachment out in to the wider countryside and would be contained within the exiting built up area of the service station. The relatively small scale and bulk of the buildings, given the overall height dimensions and space enclosed would be limited. There would be a small change in the appearance of enclosure to the site given that they are additional buildings. But this would be limited and given the contained nature of the site would have little additional impact on the openness of the wider Green Belt.
14. Whilst paragraph 145g no longer makes reference to the purpose of including land within the Green Belt, as paragraph 89 bullet point 6 in the original Framework had done and under which the Council's decision was taken, this reference remains in the development plan policy ESD14 and is still of

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<sup>1</sup> *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466

<sup>2</sup> *Euro Garages Ltd v SSCLG & Anor* [2018] EWHC 1753 (Admin)

- relevance to the government's overall policy in the context of Green Belts. The proposed development would not substantially alter the nature and impact of the existing site. This is physically separate from existing built up areas and the proposal would represent infilling development and is on previously developed land. It would therefore not contribute to urban sprawl or the merging of towns, or result in further encroachment on the countryside. The development would not therefore conflict with the purposes of the Green Belt.
15. I have addressed the impact on openness in the context of whether the development would amount to inappropriate development and therefore have not addressed the matter further as a separate issue.
  16. The proposal also includes a drive through lane around the back of the Starbucks unit this is an engineering operation and the Council's Officer report concluded that it was in accordance with policy ESD14 and the Framework. There is only additional hard surfacing and no impact on openness and I see no reasons to differ from these conclusions in that regard in this appeal.
  17. The Council were concerned that the additional facilities could add to additional usage of the parking area over greater time periods which could be seen as an additional impact on openness. Additional parking could through its use add to an additional impact on openness but there is no additional parking proposed. There could be an intensification of use of the existing parking but no analysis of this has been provided to give any empirical evidence to suggest that there would be a significant increase in parking levels such that would materially affect openness. The spaces exist and there will be fluctuations in use over time. With an increase in facilities there may be a minor increase in use of the spaces but also with increases in accessibility and drive thru provisions this may reduce the amount and time of vehicles parking. No robust assessment has been provided to support the Council's contentions in this regard.
  18. On the basis of the above I conclude that the proposed development would not be inappropriate development in the Green Belt. Consequently, it would not conflict with policy ESD14 of the CLP 2031 or the Framework.

### **Other matters**

19. The existing site is contained by a strong wooded tree screen. It is an existing service station facility that contains a number of buildings and hard surfaced areas. The limited size and scale of the proposed buildings will add little to the overall complex of buildings and will be viewed as a minor infill element. There will be no wider impact on the character and appearance of the surrounding area, and therefore there would be no harm to the visual amenities of the Green Belt.
20. As noted above the Council included a reason for refusal related to flood risk on its original decision. The appellant has produced an additional report including further modelling following the Environment Agency's original comments. The Environment Agency have withdrawn its objection on the basis of the new information but have suggested the imposition of a condition requiring that the development is carried out in accordance with the new flood risk assessment and incorporates a minimum finished floor level. The above assessment of the impact on openness has taken account of the finished floor levels which has no significant affect on the conclusions reached.

21. Oxfordshire County Council objected to the planning application on Highway safety grounds in respect of the drive thru lane around the Starbucks unit. The concern expressed in the consultation response being the headlights dazzling on coming traffic travelling on the Northbound carriageway of the A34. The Council did not maintain this as a reason for refusal instead noting the matter could be addressed by way of a suitably worded condition. The appellant has provided an amended site plan which illustrates a screen fence that would address the concerns expressed by the highway authority. I am satisfied that there is a method in which glare from vehicles using the drive thru lane could be incorporated in the design and this could be the subject of a suitably worded condition. One way may be the fencing as part of a landscaping scheme but this will be a matter for the Council.

### **Overall conclusions and conditions**

22. I have considered the parties' suggested conditions in the context of the advice in the Planning Practice Guidance and the model conditions set out in the annex (which remains extant) to the otherwise now cancelled Circular 11/95, the use of conditions in planning permissions.
23. I have imposed a condition in respect of the approved plans as this is best practice and creates certainty for all parties. A condition in respect of the flood risk assessment and finished floor levels is required for the reasons explained above.
24. A condition to control external lighting is required in the interest of highway safety and in the interests of the ecology of the area. Also in the interests of Highway safety a condition requiring details of the carpark with associated signage and lining is required.
25. A landscaping condition is required in the interest of the appearance of the development and to include details of the measures to preclude glare from drivers using the drive thru lane upon users of the A34 in the interest of highway safety.
26. As the site is previously developed land and given the nature of the existing use a condition is required in the event that not previously identified contamination is found to ensure any future risk is adequately mitigated.
27. I have not imposed an arboricultural working method condition given the limited nature and size of trees to be removed/surrounding the development. Other matters can be addressed through the landscaping condition.
28. The development would not amount to inappropriate development in the Green Belt for the reasons I have given above and there would be no material harm that arises from flood risk, highway safety or the effect on the character and appearance of the surrounding area. The proposal is in accordance with the development plan as a whole and the Framework and there are no material considerations that indicate a decision otherwise than in accordance with the development plan would be appropriate.
29. For the reasons given above I conclude that the appeal should be allowed.

*Kenneth Stone*

INSPECTOR

**Schedule of conditions for Appeal Decision APP/C3105/W/18/3210498**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the details provided by the following plans: Drawing Numbers 170687-01-B; 170687-02-D; 170687-03-B; 170687-05; and 170687-06.
- 3) The development permitted by this planning permission shall be carried out in accordance with the Flood Risk Assessment and Drainage Strategy, prepared by WYG Engineering Limited, reference A103345, revision A, dated 2 August 2018, and the following mitigation measure detailed within the FRA:
  - Finished floor levels are set no lower than 65.5m AOD (Section 5.3 and 6.0).

The mitigation measure(s) shall be fully implemented prior to first occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

- 4) The external lighting shall be carried out strictly in accordance with the Lighting Plan by Express Electrical dated February 2018 and the Lighting Report by Express Electrical dated February 2018, unless otherwise agreed with the Local Planning Authority.
- 5) Prior to the construction of the development hereby approved above slab level, a plan showing car parking provision for vehicles to be accommodated within the site, with associated road signing and lining, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, and prior to the first occupation of the development, the parking spaces shall be laid out, surfaced, drained and completed in accordance with the approved details and shall be retained for the parking of vehicles at all times thereafter.
- 6) Prior to the construction of the development hereby approved above slab level, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:-
  - a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas. This should include mitigation for loss of habitats and enhancements to ensure no net loss to biodiversity.
  - b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,
  - c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps,
  - d) details of measures of mitigate the potential for glare from the drive-thru lanes upon the users of the A34

Thereafter, the development shall be carried out in strict accordance with the approved landscaping scheme.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.

- 7) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

END

## DELEGATED REPORT

<b>Application Ref.</b>	18/00312/FUL
<b>Site Address</b>	The Oak, Stratford Road, Hockley Heath, B94 5NW
<b>Description of Development</b>	Part retrospective application for retention of existing development on site comprising 60-bedroom hotel. Including demolition of existing function room, three storey rear extension and conversion of space on ground and first floors of existing public house/restaurant. Ground floor extension to existing restaurant and external alterations including amendments to rear extension to provide amended roof line and new windows, 2 no. gables on rear elevation, plus associated landscaping and car park alterations.
<b>Applicant</b>	Westboure Leisure Limited - Mr Paul Owens,
<b>Case Officer</b>	Dave Kenyon
<b>Ward Member(s)</b>	Councillor G. Atkinson
<b>Town/Parish Council</b>	Tanworth-in-Arden
<b>Description of Site Constraints</b>	Green Belt Special Landscape Area
<b>Summary of Recommendation</b>	REFUSE

DB

## **DESCRIPTION OF PROPOSAL**

This is a part retrospective planning application.

Retrospective planning permission was sought during May 2016 for the retention of a 62 bedroom hotel extension (ref 16/00450/FUL). That proposal included demolition of an existing function room, the retention of a three storey rear extension containing 45 bedrooms and the conversion of space on ground and first floors of existing public house/restaurant to provide 17 bedrooms. In addition, the retention of a ground floor extension to the existing restaurant and external alterations including 2 no. gables on rear elevation, plus associated landscaping and car park alterations.

Planning permission was refused on 3<sup>rd</sup> March 2017 for the following reasons:

*1. The site is located in the West Midlands Green Belt and the application seeks permission for development which is considered inappropriate and harmful to the Green Belt by definition. Policy CS.10 and paragraphs 79-80 & 87-89 of the NPPF require that the Green Belt shall be protected from inappropriate development except in cases where 'very special circumstances' are demonstrated. The applicant has sought to demonstrate that 'very special circumstances' do exist in this case on a number of grounds. The Local Planning Authority consider that of these the viability of the business and the need to ensure local employment can be considered 'very special circumstances'. However, having considered the nature of the application the Local Planning Authority does not consider that the identified circumstances sufficiently outweigh the harm caused to the character, purpose and openness of the Green Belt by reason of the proposals excessive size and bulk. For these reasons, the proposal is considered to be contrary to Policy CS.10 of the Stratford-on-Avon District Core Strategy 2011 - 2031 and paragraphs 79-80 & 87-89 of the NPPF*

*2. The application site falls outside of any of the District's Built-Up-Area Boundaries as defined by the Stratford-on-Avon Core Strategy 2011 - 2031. Accordingly, the site falls within the rural parts of the district where Policy AS.10 - Countryside and Villages makes provision for a wide variety of activities and development subject to criteria. It provides under point (t) Tourism and Leisure that purpose built visitor accommodation can be acceptable in principle so long as it is directly associated with and related to the scale and nature of an existing use. The Local Planning Authority considers that the proposed development, whilst directly associated with the pub/restaurant, is not appropriately related in scale and nature to the existing activities on site. The development proposed secures 62 rooms of accommodation. The Local Planning Authority considers this is significantly in excess of that which would be considered proportionate to the existing permitted activities on site. The proposal therefore conflicts with the provisions of Policy AS.10 of the Stratford-on-Avon Core Strategy 2011 - 2031 and is not considered sustainable development*

This current application seeks to address these reasons for refusal. The proposed development seeks to retain 19 bedrooms (18 hotel bedrooms and 1 staff room) on the ground, 1<sup>st</sup> and 2<sup>nd</sup> floors of the main building and to retain the rear extension comprising 43 bedrooms (42 hotel bedrooms and 1 staff room). This totals 60 hotel bedrooms and 2 staff rooms. Physical alterations / amendments to the existing building that are being proposed comprise:

- the reduction in number of bedrooms (2 no.);
- removing part of existing roof and replacing it with a roof at a lower level;

- replacing 5 no. dormer windows with 5 no. rooflights on the external side elevation of the building and replacing 6 no. dormer windows with 3 no. rooflights on the internal side elevation;
- extensions of walls and roof slopes along the external side elevation;
- use of timber support posts, buttress walls, roof features, replacement windows, black rainwater goods and painted brick below DPC level to match the original building; and
- the extension of the existing wall along the length of the external side elevation.

## **DESCRIPTION OF SITE AND SURROUNDINGS**

The application site is located on the eastern side of Stratford Road (A3400) which runs south to north between junction 16 of the M40 and Hockley Heath. The Pub Restaurant known as the Oak sits within landscaped grounds in the open countryside forming part of the west Midlands Green Belt. The original building presents a long, low, 'arts and crafts' style frontage to Stratford Road featuring prominent dormers and tall chimneys. The building is finished in white render and red tiled roof. To the north of the site there is substantial area of car parking which is also broken up by areas of landscape planting. The whole of the site amounts to around 1.39 hectares and is characterised by a significant degree of enclosure provided by substantial mature hedgerows and trees to all boundaries other than the road frontage.

## **DEVELOPMENT PLAN AND MATERIAL CONSIDERATIONS**

### **Development Plan**

#### Core Strategy

- CS.1: Sustainable Development
- CS.2: Climate Change and Sustainable Construction
- CS.3: Sustainable Energy
- CS.4: Water Environment and Flood Risk
- CS.5: Landscape
- CS.6: Natural Environment
- CS.8: Historic Environment
- CS.9: Design and Distinctiveness
- CS.10: Green Belt
- CS.12: Special Landscape Area
- CS.24: Tourism and Leisure Development
- CS.25: Healthy Communities
- CS.26: Transport and Communications
- AS.10: Countryside and Villages

#### Tanworth-in Arden Neighbourhood Plan

A Neighbourhood Plan area was designated for Tanworth-in-Arden in October 2014. Further progress has not been made at this time.

### **Other Material Considerations**

#### Central government guidance

- NPPF 2012 & PPG 2014
- Circular 06/05: Biodiversity and Geological Conservation

#### Other documents

- Stratford on Avon District Design Guide.
- Historic England Good Practice Notes 2015:
  - GPA 1 – The Historic Environment in Local Plans

- GPA 2 – Managing Significance in Decision-Taking in the Historic Environment
- GPA 3 – The Setting of Heritage Assets

#### **Other Legislation**

- Human Rights Act 1998
- Natural Environment and Rural Communities (NERC) Act 2006
- The Conservation of Habitats and Species Regulations 2017
- Localism Act
- Planning (Listed Buildings & Conservation Areas) Act 1990

#### **SUMMARY OF RELEVANT HISTORY**

<u>Reference Number</u>	<u>Proposal</u>	<u>Decision and date</u>
95/00219/FUL	ERECTION OF SINGLE STOREY REAR EXTENSION TO FORM CHILDRENS PLAY ROOM AND ERECTION OF NEW ENTRANCE	Approved 20.04.1995
09/01714/OUT	Erection of two storey 70 bed hotel with replacement function and conference suite.	Refused 09.12.2009
10/02699/OUT	Demolition of existing function room and erection of extension to provide 40 bedrooms and replacement function room (re-submission of 09/01714/OUT)	Refused 07.07.2011 Appeal dismissed
12/02929/FUL	Demolition of part of existing building and erection of new extension providing overnight hotel accommodation (C1 use) and minor alterations to part of car park. (14 bed)	Approved 12.03.2013
13/01607/VARY	Variation of condition 2 of planning permission 12/02929/FUL for the demolition of part of the existing building and erection of a new extension providing overnight hotel accommodation. Variation of condition 2 allows for the addition of drawing number 03B, 04A, 05B and 08 which show reinstatement of the roof between the main building and extension, insertion of dormer windows into the roof and use of the roofspace as additional overnight accommodation	Approved 04.09.2013
14/00622/FUL	Retrospective demolition of part of existing building and erection of new extension providing overnight hotel accommodation (Use Class C1) and minor alterations to part of car park. (14 bed)	'Finally disposed of' 24.05.2017 in accordance with Article 40(13) of the Town & Country Planning (Development Management

		Procedure) (England) Order 2015
16/00450/FUL	Retrospective application for retention of 62 bedroom hotel extension. Including demolition of existing function room, three storey rear extension containing 45 bedrooms, and conversion of space on ground and first floors of existing public house/restaurant to provide 17 bedrooms. Ground floor extension to existing restaurant and external alterations including 2 no. gables on rear elevation, plus associated landscaping and car park alterations	Refused 03.03.2017
16/00451/FUL	Retrospective application for demolition of function room and retention of 2 no. gables on rear elevation, extension to restaurant on ground floor and existing garage building. Planning permission for alterations to existing three storey extension and internal alterations to provide a total of 44 hotel bedrooms plus relocation of existing fire escape.	Approved 03.03.2017

The application site has a detailed planning history which reflects its use as a roadside pub. This includes advertising consents and approvals for minor extensions and adjustments to the building and car park. Of more significance as shown above is the history of applications seeking consent for rear extensions. These began with a substantial approved extension to house a children's play area and was later followed by various proposals to replace this with hotel accommodation.

Prior to 2016, a single application (12/02929/FUL – now lapsed) was approved for hotel accommodation in this location. All other applications were either refused or dismissed at appeal.

During 2016 retrospective applications were submitted by the current applicant (16/00450/FUL and 16/00451/FUL). These applications arose because the applicant proceeded with construction to the rear of The Oak but did not undertake the work in accordance with any approval.

Application 16/00450/FUL sought permission for the retention of the entirety of the unconsented works (Total of 62 bedrooms, including 3 storey rear extension containing 45 bedrooms). This was refused planning permission on 3<sup>rd</sup> March 2017.

Application 16/00451/FUL sought to regularise the development by seeking retrospective planning permission for part of the development but which would also result in the demolition of a portion of the unconsented rear extension (total 44 bedrooms, including 27 bedrooms in the retained part of the rear extension). Planning permission was granted on 3<sup>rd</sup> March 2017. This was subject to a condition requiring the development to be commenced within 12 months from the

date of approval and brought into full accordance with approved plans within 18 months of the approval. In addition condition 7 required the submission of a drainage report to be approved by the LPA within 12 months from the date of the permission and condition 8 required the submission and approval of a landscaping scheme prior to commencement of development. At the time of compiling this report, conditions 7 and 8 have not been discharged and no drainage report or landscaping scheme has been approved by the LPA.

This current application seeks to regularise some of the unauthorised works by carrying out various amendments to the design of the building in question in an attempt to make the scheme as a whole acceptable in planning terms.

An Enforcement Notice was issued in February 2016 but subsequently withdrawn. The enforcement case will be reviewed pending the outcome of this application.

## **REPRESENTATIONS**

### **Applicant's Supporting Documents**

#### List of documents:

- Application Form
- CIL form
- Design and Access Statement. December 2017.
- Energy and Sustainability Statement. November 2017.
- Green Belt Volume Statement. November 2017.
- Landscape Visual Appraisal. 04/01/2018.
- Viability Appraisal – Operating projections. December 2017.
- Flood Risk Assessment. 22/12/2017.
- Transport Statement (V4). 11.0116 (should be 11/01/17)
- Planning Statement. January 2018.
- Plans, levels, sections and elevational drawings

### **Ward Member - Cllr George Atkinson**

14.03.2018

*As the principle of judging a planning application is to judge its merits as submitted my reasoning is to satisfy that objective.*

*The proposals meet SDC policy as expressed in the Corporate Strategy and conform to the principles outlined in the NPPF as well as the Core Strategy about the preservation of rural business because of the economic benefit derived but obviously not an enterprise which would detract from a setting and have a considerable adverse impact upon the Green Belt.*

*For many years there has been a similar operation from the site although the existing hotel is an extension of activity but in general I do not read the structure has a dramatic adverse impact upon the setting or Green Belt and therefore reason the proposals do not breach the protection afforded to it. The site is on a major road network in an area with built form of residential and business outlets in easy reach with that adjacent being not only housing but a business, part of which is retailing coal. Also close to the site is an important motorway junction. All therefore contribute to the belief these are some very special circumstances in favour of the application.*

*The Sustainability of the business meets the 3 basic principles within the brand which reflect the financial demand the development has to achieve as a tourist etc. source for the area which I believe are also very special circumstances.*

*If the application needs to be referred to Committee then a site visit is essential so that members can have the benefit it will give them.*

15.06.2018 – previous comments support the application.

02.07.2018

*I have considered the issues involved and concluded my comments should be 'No representations'. This is because an element of the application is retrospective which amounts to my suggesting support for unauthorised development.*

(The full responses are available in the application file)

### **Parish/Town Council**

OBJECT for the following planning reasons.

*The Parish Council considers that planning permission should not be granted for the same reasons given by the District Council when refusing permission for the previous application 17/00450. A reduction from 62 bedrooms to 58 bedrooms and minor changes to the roof line do not justify permission. The Parish Council would also comment that confidence in the planning system would be severely damaged if a 62 bedroom hotel deliberately built without permission (despite earlier refusals and dismissed appeal) in the Green Belt should essentially be allowed to remain. (12.03.2018)*

### **Third Party Responses**

The planning-related comments made by third parties have been summarised by the case officer.

No letters of objection from local residents have been received.

A single letter from the CPRE objecting to the proposal has been received (12.03.2018). The planning grounds for objection relate to inappropriate development in the Green belt without the benefit of very special circumstances on a site outside a built up area of the District.

4 letters of support received. Comments relate to:

- The proposed changes to the rear extension will create an attractive, less substantive structure which will help settle the buildings into the landscape.
- Proposed new design will help reflect details and appearance of original structure.
- Proposal is preferable to the previous structure granted permission.
- Very little impact on the amenities of the neighbouring property.
- Critical that the site remains in use - the proposal supports this
- Provides a useful community facility
- Provides employment for local people
- Impact on the Green Belt is minimal
- Renovations have enhanced the pub and the amenities of the village in general
- Previous owners have failed to run successful businesses in this location

(The full responses are available in the application file)

### **Consultations**

The full responses are available in the application file.

**WCC Rights of Way** – No Objection but requires public footpath W& to remain open and unobstructed at all times. (12.03.2018)

**WCC Ecology** – No representation (12.03.2018)

**Warwickshire Police** – No objections (22.02.2018)

**SDC Environmental Health** – No representation (06.03.2018)

**WCC Highways** – No objection subject to condition required to secure appropriate visibility splays (14.03.2018)

**WCC Lead Local Flood Authority** – No comments received.

**Environment Agency** – No comments received.

**Severn Trent Water** – No comments received.

**Fire and Rescue Service** - No comments received.

## **ASSESSMENT OF THE KEY ISSUES**

### **Principle of Development**

The Council is required to make a decision in line with the Development Plan, unless material considerations indicate otherwise. (Section 38(6) PCPA 2004 and Section 70(2) TCPA 1990). The National Planning Policy Framework (NPPF) is a key material planning consideration:

The application site has had two previous refusals for large hotel schemes, and approvals for more modest proposals.

Application 10/02699/OUT which proposed a 40 room hotel which was refused and the appeal dismissed after consideration of the following issues:

- a) Whether the proposal constitutes inappropriate development in the Green Belt and if so whether there were very special circumstances
- b) The impact of the proposal on the quality of the area
- c) The impact of the proposal on tourism
- d) Whether the proposals constitute sustainable development

The approval 12/02929/FUL secured permission for hotel accommodation comprising 14 beds and included a rear extension amounting 196.9 Square metres with an overall height of 7.3 metres.

Since these decisions the Stratford-on-Avon Local Plan has been superseded by the Core Strategy. As detailed at the outset of this report, application 16/00450/FUL to retain a 62 bedroomed hotel (including the unauthorised 45 bedroomed rear extension) was refused permission during March 2017. The reasons for refusal were two-fold. First, the development was contrary to Green Belt Policy CS.10 in the adopted Stratford-on-Avon District Core Strategy and pertinent paragraphs 79, 80, 87, 88 and 89 contained within the National Planning Policy Framework. Whilst certain 'very special circumstances' were identified, these were not considered to outweigh the harm caused to the character, purpose and openness of the Green Belt by reason of the excessive size and bulk of the development proposal. Second, the proposal was contrary to Policy AS.10 of the Core Strategy because it was not appropriately related in scale and nature to existing activities on this site, located as it is outside any Built-Up Area Boundary.

Nevertheless a separate application 16/00451/FUL for demolition of part of the existing building resulting in a total of 44 bedrooms was approved during March 2017. When considering the reduced scale of this hotel bedroom proposal, and weighing the harm to the Green Belt against 'very special circumstances' (such as opportunities for employment in the rural area and supporting the rural economy) this reduced scheme was considered acceptable. Whilst the 'very special circumstances' warranted only moderate weight, nevertheless the harm to the Green Belt through a loss of openness was to be reduced and also mitigated to some extent by the location and setting of the site.

In respect of this current application 18/00312/FUL for a 60 bedroomed hotel the policies which relate to the determination of this application are detailed above. Policies CS.10 and AS.10 of the Core Strategy are of particular relevance as indeed they were when determining the two recent applications 16/00450/FUL and 16/00451/FUL briefly summarised above. In addition, it is considered that Core Strategy Policy CS.24 is particularly relevant to this proposal, although no references to this Policy were made when considering the previous applications 16/00450/FUL and 16/00451/FUL.

Policy CS.10 requires that the purposes of the Green Belt will be upheld by resisting inappropriate development within it, except in cases where very special circumstances can be identified in accordance with national policy.

New buildings within the Green Belt are considered inappropriate development with a number of exceptions. Amongst those exceptions category 'b' of policy CS.10 identifies that - a small-scale extension or alteration of a building will be considered an exception to inappropriate development. The NPPF at paragraph 89 provides that the extension or alteration of a building may be an exception provided that it does not result in 'disproportionate additions' over and above the size of the 'original building'. This guidance is reflected in the Development Management Considerations detailed in the Core Strategy.

In this context, the hotel as constructed amounts to 2,412 square metres of floor space. (1,105 square metres of the new floorspace falls within the three storey rear extension as has been constructed). This is compared to 807 square metres of floorspace which existed pre-2012; a total of 1436 square metres of floorspace which had been permitted under 12/02929/FUL (but which had not been implemented) and 1890 square metres of floorspace allowed under 16/00451/FUL for the 44 hotel bedrooms scheme.

The submitted "Design and Access Statement" clarifies that the extension the subject of this current application would occupy an additional footprint area of approximately 135 square metres compared with the approved footprint in the 16/00451/FUL scheme. There would be an additional total internal floor area of approximately 372 square metres over three floors. It should be noted that the submitted "Planning Statement" states that this current application is seeking permission for additional floorspace of 348 square metres above the floorspace approved under application 16/00451/FUL.

It is recognised that the volume and floor space of this facility has grown over time. Nevertheless, the development currently being proposed is considered to be disproportionately larger than the original building.

Being an extension or building which is disproportionately larger than the original, the development is 'inappropriate development' and is therefore, by definition, harmful to the Green Belt. Accordingly, permission should not be approved unless

'very special circumstances' are found which outweigh the harm. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

In recognition of this, the applicant has submitted within the "Planning Statement" a number of matters which are believed to amount to 'very special circumstances'. These are available in full on the application file but can be summarised as follows:

- Viability – the approved 44 bedroom scheme is not a commercially viable option;
- The proposal would meet Green Belt objectives;
- Positive impact on the landscape, visual amenity and openness of the Green Belt;
- Contributing to rural employment
- Providing support for rural business
- Meeting Core planning principles

Accordingly, it is necessary to consider whether these matters amount to 'very special circumstances' either individually or collectively.

### **Viability**

A "Viability Appraisal – Operating Projections" document has been submitted as part of the application which supports the quantum of development proposed.

It is argued that the current scheme of a 60 bedrooms hotel is the only scheme that would be a sustainable, profitable position for the hotel, ensuring the future value and operation of the hotel and employment of its staff. The document sets out its reasoning behind this and also provides evidence to support the view that the approved smaller 44 bedrooms hotel would not be operationally viable.

The detailed planning history and ownership of the site (which has changed hands on a number of occasions) suggests that operating a viable business in this location has been challenging. As such, I consider that there is a reasoned argument for a larger hotel scheme on this site being of benefit to the viability of the development and concur that this may be considered against the harm to the Green Belt.

### **Meeting Green Belt objectives**

The applicant maintains that the proposal would not be harmful to the purposes of including land within the Green Belt and suggest that this of itself amounts to a very special circumstance.

Whilst the various proposed alterations to the existing building, including lowering part of the roof, are material considerations, I do not concur with this opinion and consider that the proposal would be harmful to the purposes of including land within the Green Belt, principally due to a loss of openness. In addition, the proposal does not assist in safeguarding the countryside from encroachment, contribute to restricting the sprawl of built up areas or encourage the urban regeneration through the recycling of derelict and other urban land.

Even if it were the case, that the proposal did appear to preserve the objectives of including land in the Green Belt, I do not agree that this would amount to a 'very special circumstance' in its self. Doing so would set an unacceptably low bar for 'very special circumstances' and set a precedent which could be easily replicated elsewhere in the District.

The impact of the development on the objectives of the Green Belt allocation are considered in further detail below.

### **Positive Impact on the Landscape**

The applicant maintains that the proposal would result in improvements to the landscape and amenity of the area. The development's impact on the landscape is considered in detail below. It is not disputed that the continued operation of the site ensures that the roadside frontage and landscaped grounds are acceptably maintained. Also it is agreed that the newly built form is preferable to a less well maintained rear aspect.

That noted, I cannot agree that this is a 'very special circumstance' which supports an increased scale of development where such a scale would be inappropriate. This is because the same benefits could also be secured by a smaller development which could also be appropriate development within the Green Belt, as evidenced by the March 2017 permission for the smaller 44 hotel bedrooms. It is also notable that such benefits are capable of being transitory. The LPA has no control over the frequency of building and landscape maintenance beyond that which may be reasonably imposed by condition.

### **Contributing to Rural Employment & Providing Support for Rural Business**

The applicant maintains that the proposed large scale 60 bedroom hotel development ensures a significant element of rural employment. The submitted "Viability Appraisal – Operating Projections" document advises that the proposed 60 bedrooms hotel would provide 23 FTE jobs (compared to 20 FTE jobs in respect of the approved 44 bedrooms hotel development). The submitted "Planning Statement" states that the "continued use of the site as a public house and restaurant plus the proposed hotel accommodation will directly result in 27 full-time equivalent jobs".

I agree that opportunities for employment in rural areas and supporting the rural economy are important benefits, which a large scale scheme such as that proposed can deliver. However, based on the information set out above, the current proposal to provide a 60 bedrooms hotel development secures only an additional 3 FTE jobs over and above the approved 44 hotel bedroom development. Whilst it is appropriate to give weight to this special circumstance of providing the additional jobs against the harm to the Green Belt, nevertheless it must also be recognised that the level of increase in FTE jobs provision is limited in number. At the same time it is acknowledged that the current proposal would secure these additional jobs and would deliver benefits (albeit small scale) over and above that which could be secured by a smaller development.

### **Meeting Core Planning Principles**

The applicant considers that meeting the core planning principles detailed within the NPPF amounts to a 'very special circumstance'. Although the benefits of the scheme can be related to a number of the NPPF's core principles, nevertheless this does not provide specific support for the development as proposed. Indeed meeting the core principles set out in the NPPF is a minimum requirement and, as such, I do not agree that this amounts to 'very special circumstances'.

### **Summary of 'Very Special Circumstances'**

The LPA considers that there are 'very special circumstances' which may be weighed against the Green Belt harm in this case. These are the enhanced viability which a larger scheme brings in this location and, arising from that, the benefit of rural employment which a viable scheme will deliver.

Whilst these matters are capable of being 'very special circumstances', such an approach cannot be entirely open ended, as that could allow development without limits. The Core Strategy and NPPF require consideration of 'very special circumstances' in the context of the harm which would be done to the Green Belt and the degree to which the particular considerations outweigh that harm. Where the harm is not outweighed by those considerations, 'very special circumstances' will not be seen to exist.

In the above context, whilst it is agreed that the hotel development as proposed represents a viable scheme which delivers valuable local employment, however it remains necessary to assess the harm of the scheme to the Green Belt. If the harm is not/cannot be outweighed then permission should be refused.

### **Harm to the Green Belt**

Decision makers should attach substantial weight to any the harm to the Green Belt.

The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Thus the defining characteristics of Green Belts are their openness and permanence. A "Landscape Visual Appraisal" has been submitted which addresses the landscape impacts of the development, although it should be noted that the consideration of openness is distinct from landscape character and visual impacts. In addition the LVA has concluded that the proposed development would not have a material impact on the openness of the Green Belt, such impact being "negligible".

This opinion is not accepted by the LPA. The proposed alterations to the 'as built' unauthorised development would result in a significant loss of openness whether measured by volume of development or by square metres. The appearance and bulk of the extension 'as built' is considered inappropriate and as such is harmful to the Green Belt. Because of its scale and mass its appearance serves to emphasise the loss of openness. The proposed alterations, whilst seeking to reduce the scale / bulk of the extension and the impact on openness, would not, in my opinion, reduce the extent of harm to the Green Belt to any significant degree as to justify planning permission being granted.

The NPPF identifies 5 purposes for the Green Belt. These include checking unrestricted sprawl of large built up areas, safeguarding the countryside from encroachment and assisting urban regeneration by encouraging the reuse of land in urban areas. I conclude that the above purposes are harmed by the inappropriate development of a considerable hotel development within the countryside.

The degree to which the identified harm is considered to be outweighed by the circumstances of the development is a matter of judgement and decision makers will need to draw their own conclusions on the nature of the harm. In this instance, there is considerable concern that the scale of development implemented and the remedial alterations being proposed here is unacceptable even when the benefits of securing a viable business on site and securing local employment in a rural context are considered.

Accordingly, I have concluded that the harm is not outweighed by other considerations. As such, 'very special circumstances' do not exist in this case.

Notwithstanding the above conclusions, I shall continue below to consider the remaining Core Strategy Policies.

## **Core Strategy Policies – Tourism and Leisure**

### CS.24 – Tourism and Leisure Development

Large-scale schemes for visitor attractions or overnight accommodation should, wherever possible, be located within the urban areas of Stratford-upon-Avon or a Main Rural Centre. Elsewhere in the District, unless established through other provisions of the Plan, large-scale proposals for new and major extensions to existing tourism-related development, including accommodation, will need to be justified taking into account:

1. the nature of the activity and whether it can only reasonably be located in a rural area;
2. the nature of the existing site and its relationship to the local area;
3. its impact on the character of the local landscape and settlements, including historic and natural features;
4. the benefits that the scheme offers to the local communities;
5. the benefits that the scheme would secure to wider economic or environmental interests;
6. the relationship between the development and major transport routes and impact on the highway network; and
7. the accessibility of the site by existing public transport and the scope to improve services.

Large-scale visitor accommodation may be justified in the rural parts of the District where it is directly associated with and genuinely ancillary to a major existing tourist, recreation, conference or other form of business use. Within the "Development Management Considerations" part of this policy, clarification is provided for schemes involving large-scale hotels or similar accommodation in rural locations. Such accommodation should be directly associated with an existing use which has to be of such a nature and scale that it can justify the provision of overnight accommodation in its own right. It must be genuinely ancillary to the needs of the existing use on the site. Consequently any proposal should be of a scale appropriate to the needs of that use, and it will be a requirement for all applicants to justify why the accommodation proposed is appropriate in relation to the particular existing use.

Small scale tourism and visitor-based schemes, including those for new or extensions to existing visitor accommodation and conference facilities, will be supported where they are appropriate to the size and role of the settlement and/or to the specific nature of the location.

All forms of tourism and leisure development should be sensitive to the character of the area and designed to maximise the benefits for the communities affected in terms of job opportunities and support for local services.

### AS.10 – Countryside and Villages

The application site falls outside of any of the districts Built-Up Area Boundaries. As such Policy AS.10 – Countryside and Villages applies. AS.10 provides that all proposals will be thoroughly assessed against the principles of sustainable development including the need to:

- minimise impact on the character of the local landscape, communities and environmental features;
- minimise impact on the occupiers and users of existing properties in the area;
- avoid a level of increase in traffic on rural roads that would be harmful to the local area;

- make provision for sustainable forms of transport wherever appropriate and justified;
- prioritise the re-use of brownfield land and existing buildings; and
- seek to avoid the loss of large areas of higher quality agricultural land.

It states that the following forms of development and uses are acceptable in principle, noting at point (n) that 'An extension to a business in its established location, particularly if it would be unreasonable to expect the business to relocate in order to expand'. It further states at point (t) that purpose built visitor accommodation that is directly associated with and related to the scale and nature of an existing use can be considered an acceptable form of development within the countryside.

Within the submitted "Planning Statement", the applicant has sought to demonstrate that the hotel accommodation is in compliance with Policies CS.24 and AS.10.

The LPA accepts that the proposal does form an extension to a business in its established location, and it would be unreasonable to expect the business to relocate in order to expand. Indeed, the latter point was a consideration when planning permission was granted to allow the 44 bedroom hotel use on the site under application 16/00451/FUL.

Notwithstanding this, the policies require the proposed development to take into account the nature of the existing site and its relationship to the local area; its impact on the character of the local landscape; and to be directly associated with and related to the scale and nature of an existing use. As such, whilst well connected, the existing leisure use on site is a roadside pub/restaurant. This does not immediately suggest the need for a 60 bedroom scale hotel. The previously granted permission allowed for 44 bedrooms to be developed whereas this proposal delivers some 60 units of hotel accommodation. This suggests a significant change in the use of the site. Whilst the LPA has accepted through application 16/0451/FUL a hotel use on the site to be appropriate, that has been limited in scale and numbers of bedrooms to 44 no. in total. An increase in scale to 60 bedrooms hotel is considered by the LPA to be significantly in excess of what is appropriate and disproportionate to the existing permitted activities on site.

As such, whilst Policies CS.24 and AS.10 support the principle of expanding the existing business in its current location, nevertheless there is conflict as the intensity of the proposal does not adequately reflect the scale and nature of the leisure use on site. This conflict with Core Strategy policies therefore indicates that the development may not properly be defined as sustainable development and should be refused on these grounds.

#### **Impact on the Landscape and Character of the Area**

The submitted "Landscape and Visual Appraisal" acknowledges that the site falls within Green Belt and within a Special Landscape Area. As such, Policies CS.5: "Landscape", CS.10: "Green Belt" and CS.12: "Special Landscape Areas" are engaged (Policy CS.10 has been considered in detail above).

The NPPF requires as part of its core principles (paragraph 17 (5)), that, amongst other things, planning should take account of the different roles and character of different areas and recognise the intrinsic character and beauty of the countryside. Policy CS.5 requires development to minimise and mitigate impacts on the landscape character and quality, including cumulative impacts. Paragraph 109 of the NPPF also states that the planning system should contribute to and

enhance the natural and local environment by protecting and enhancing valued landscapes. In addition, Policy CS.5 advises that the landscape character and quality of the district will be maintained by ensuring that development takes place in a manner that minimises and mitigates its impact and, where possible, incorporates measures to enhance the landscape.

Policy CS.12 provides that the high landscape quality of the Special Landscape Areas, including their associated historic and cultural features, will be protected by resisting development proposals that would have a harmful effect on their distinctive character and appearance.

In respect of the above, the application site falls within National Character Area 97: Arden. At the regional scale the Warwickshire Landscape Guidelines identify the site as falling within the Arden Character Area. This is described as "An historic region of former wood pasture and heath characterised by ancient woodlands and mature hedgerow oaks and a dispersed settlement patten of brick and half-timbered farmsteads and wayside cottages."

The application site and existing buildings are heavily enclosed by surrounding vegetation. As such, the submitted landscape appraisal demonstrates that open views towards the site are difficult to achieve within the local landscape. Some glimpsed views are possible from Spring Lane and from the two footpath to the south and east of the site.

Equally, due to its enclosure the site is not considered to contribute significantly to the landscape character of the area. Accordingly, the site is considered to be of relatively low sensitivity to the development as proposed. A scheme of landscape enhancements is proposed which would result in a net gain in planting around the site. This mitigation would ensure that views towards the site would not be unacceptable and the general appearance and amenity of the site would be improved.

Accordingly, I consider that the development does not conflict with Policies CS.5 and CS.12.

#### **Impact on Heritage Assets**

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, "In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

The nearest listed building lies some 195m to the north west of the application site, a scheduled ancient monument, Packwood Hall Moated Site, lies 1.9KM to the north east, Packwood House Garden, a Registered Park and Garden lies 1.6Km to the north and a National Trail – the Millennium Way runs in a north to south direction approximately 1Km to the east of the development.

The nearest conservation area is situated within Lapworth.

Whilst each application must be considered on its own merits, nevertheless the decision relating to application 16/00450/FUL to refuse the 'as built' 62 bedrooms hotel development is a material consideration. The reasons for that refusal did not include any reference to unacceptable impact on nearby heritage assets or their settings. Conservation advice received in respect of that previous application made clear that there were no substantive heritage concerns as the nearby assets

are sufficiently removed so as to avoid any harm to their settings. It was noted that The Oak itself has some interest as a non-designated heritage asset, but that interest is limited and in any regard the works were not considered to harm the building in a way which would engage paragraph 135 of the NPPF. As such it was concluded that the development under 16/00450/FUL did not conflict with the requirements of Core Strategy Policy CS.8: "Historic Environment".

The current proposal involves works to the existing building which will not cause unacceptable impact on nearby heritage assets. As was the case with application 16/00450/FUL this current proposal does not conflict with Policy CS.8.

#### **Design, Layout, Scale, and Appearance**

The 'as built' extension is to the rear and set back from the principle elevation. It comprises three storeys with a single projecting bay. The fenestration is small and simply arranged. The entire elevation is completed in render – all in white excepting for the projecting bay which is finished in a cream colour. When considering application 16/00450/FUL, concern was expressed that the extension appears as a very significant addition, which is greater than or equivalent in scale to the entirety of the original building. This is contrary to ordinary planning practice and Green Belt policy which would guide towards a need for extensions to be subordinate in both size and character to the original building.

In addition concern was raised about the design of this 'as built' extension when considering application 16/00450/FUL, most notably the roof design being significantly different from that of the original property as it is comparatively shallow pitch and its eaves are higher. Consequently the roof does not extend down as far as that of the original building and does not reflect the characterful arts and crafts style appearance of the original building.

Notwithstanding the above it was noted that a number of letters of support for the 'as built' development had been received from the local community which cite the well-kept appearance of the new building and the improvements which have been undertaken to the main building and in the car park as reasons for approval of the application. There were no neighbour objections and, by virtue of the distances between this building any sensitive receptors who would be harmed by its scale and mass, it was considered that was no unacceptable impact on residential amenity as a result of that development.

Accordingly, whilst the design of the 'as built' rear extension was considered unacceptable in design terms, this was given only moderate weight to those findings given the local support for the scheme and did not form part of a reason for refusing application 16/00450/FUL

As part of this current application, the proposed alterations to the 'as built' extension involve reducing in height part of the existing roof, removal of dormer windows, extending roof slope and walls to provide lower eaves levels, the use of timber posts and buttress piers and replacement windows and doors to reflect the style and appearance of existing fenestration in the principal front elevation.

These proposed alterations are considered to be more in keeping with and reflect the arts and crafts style appearance of the original building.

Notwithstanding the proposed alterations, the extension would still appear as a very significant addition. However, this is not considered to be so unacceptable in terms of design and Core Strategy Policy CS.9 as to justify a reason to refuse the proposal.

### **Highways Matters**

The Local Highway Authority raises no objections to the proposal, subject to a condition necessary to secure appropriate visibility splays are provided and kept clear for the remaining access. I concur with the above view.

Mindful that the scheme for a 62 bedroom hotel was not subject to a highways reason for refusal under application 16/00450/FUL, it would be unreasonable to impose a highways related reason for refusal for this proposal for 60 bedrooms.

As such, I consider that there would be no conflict with Policy CS.26 of the Core Strategy.

### **Flood Risk and Drainage**

The County Council as Lead Local Flood Authority (LLFA) has made no comment in response to this current application. However, the LLFA raised no objection to the previous application 16/00450/FUL for 62 bedrooms. Therefore it is reasonable to assume that there are no overriding flood risk and drainage objections to this current proposal for 60 bedrooms.

I consider that there would be no conflict with Core Strategy Policy CS.4.

### **Ecological Impacts**

The County Council Ecologist offers no representations to the current proposals. As such, I consider that there would be no conflict with Core Strategy Policy CS.6.

### **Conclusions**

I consider that the current application should be determined in accordance with the adopted Development Plan. I can identify no material considerations that warrant an alternative approach.

Policy CS.1 states that the Council will take a positive approach to applications that reflect the presumption in favour of sustainable development contained in the NPPF.

On the basis of the considerations set out in this report, and the identified conflict with Policies CS.10, CS.24 and AS.10 of the Core Strategy, in my opinion, the development does not comply with the Core Strategy and therefore cannot properly be characterised as sustainable development for the purposes of the NPPF. I therefore consider that the presumption in favour does not apply in this case and conclude that Planning Permission should be refused

### **RECOMMENDATION**

It is therefore recommended that the application be REFUSED for the following reasons:

1. The site is located in the West Midlands Green Belt and the application seeks permission for development which is considered inappropriate and harmful to the Green Belt by definition. Policy CS.10 and paragraphs 79-80 & 87-89 of the NPPF require that the Green Belt shall be protected from inappropriate development except in cases where 'very special circumstances' are demonstrated. The applicant has sought to demonstrate that 'very special circumstances' do exist in this case on a number of grounds. The Local Planning Authority considers that of these the viability of the business and the need to ensure local employment can be considered 'very special circumstances'. However, having considered the nature of the application, the Local Planning Authority does not consider that the identified circumstances

sufficiently outweigh the harm caused to the character, purpose and openness of the Green Belt by reason of the excessive size and bulk of the proposal. Although the Authority notes the proposed amendment to the roofline of the development, it is maintained that the identified harm to the openness of the Green Belt remains unjustified. For these reasons, the proposal is considered to be contrary to Policy CS.10 of the Stratford-on-Avon District Core Strategy 2011 - 2031 and paragraphs 79-80 & 87-89 of the NPPF.

2. The application site falls outside of any of the District's Built-Up-Area Boundaries as defined by the Stratford-on-Avon Core Strategy 2011 - 2031. Accordingly, the site falls within the rural parts of the district where Policy AS.10 - Countryside and Villages makes provision for a wide variety of activities and development subject to criteria. It provides under point (t) Tourism and Leisure, that purpose built visitor accommodation can be acceptable in principle so long as it is directly associated with and related to the scale and nature of an existing use. The Local Planning Authority considers that the proposed development, whilst directly associated with the pub/restaurant, is not appropriately related in scale and nature to the existing activities on site. The development proposed secures 60 rooms of accommodation. The Local Planning Authority considers this is significantly in excess of that which would be considered proportionate to the existing permitted activities on site. The proposal therefore conflicts with the provisions of Policy AS.10 of the Stratford-on-Avon Core Strategy 2011 - 2031 and is not considered sustainable development.

Notes:

1. The local planning authority has also taken into account paragraphs 186 and 187 of the National Planning Policy Framework concerning the need to work positively with applicants to secure developments that improve the economic, social and environmental conditions of the area. However, the applicant did not enter into pre-application discussions and it has not been possible to overcome all of the objections to the proposal through discussions as part of the application process.

**ROBERT WEEKS**  
**HEAD OF PLANNING AND HOUSING**



19.7.18



# **Landscape and Visual Appeal Statement**

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## **Enforcement Appeal**

**The Oak (Formerly known as the Warwick  
or The Royal Oak), Stratford Road,  
Hockley Health, B94 5NW**

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**July 2020  
INF\_N0689\_R01**



Produced by: Influence Environmental Ltd  
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## Appendix

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Appendix 3	Officers Report extract 16/00450/FUL
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Appendix 5	Landscape and Visual Appraisal N0468_R01 rev A

# 1 Introduction

## Qualifications and Experience

- 1.1 My name is Sara Boland. I am a Director of Influence Environmental Ltd (Chartered Landscape Architects, Urban Designers and Environmental Planners).
- 1.2 I hold a BA Hons and Postgraduate Diploma in Landscape Architecture from Leeds Metropolitan University and am a Chartered Member of the Landscape Institute. I have worked as a Landscape Architect for over 15 years, at Hyland Edgar Driver, before joining Influence as a founding Director in 2008.
- 1.3 I have significant experience in advising on landscape matters, on a range of projects in all sectors. These include carrying out Landscape and Visual Impact Assessments, Feasibility Studies, developing Strategic Masterplans and advising on mitigation.
- 1.4 The evidence which I have prepared and provided for this Statement is true to the best of my knowledge. It has been prepared and is given in accordance with the Code of Practice of the Institute of Environmental Management and Assessment and I confirm that the opinions expressed are my true and professional opinions.

## Outline

- 1.5 This Landscape and Visual Proof of Evidence has been prepared by Influence Environmental Limited, a chartered Landscape Architecture and Environmental Planning practice, to support the applicants submission on an Enforcement Appeal against the erection of an extension in the approximate position hatched on the Enforcement Notice<sup>1</sup>.
- 1.6 The Reasons for Issuing an Enforcement Notice, relative to landscape and visual are;
  - The extension as built, is harmful to the purposes of including land in the Green Belt, principally due to a loss of openness resulting from the scale and mass of the extension and does not assist in safeguarding the countryside from encroachment;
  - The extension constitutes disproportionate addition over and above the original building'
  - The extension is not appropriately related in scale and nature of the existing.....and is significantly in excess of that which would be considered proportionate to the existing permitted activities;
  - The extension is not sensitive to its surroundings and is not sustainable development.
- 1.7 The options presented in the Enforcement Notice are to demolish the extension so far as it falls within Stratford on Avon's (SoA) jurisdiction or reduce the size of the extension to accord with the consented scheme. (16/00451/FUL)

## Site Visit

- 1.8 The site was revisited by Ms. Sara Boland, the author of this report, on 10<sup>th</sup> June 2020 in order to review the baseline conditions to confirm that they remain as set out in the original

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<sup>1</sup> Reference Pegasus Statement of Case Appendix 1

LVA for planning application 16/00450/FUL and also in planning application 18/00312/FUL (which are referred to in the Planning Statement of Case) and review any additional representative viewpoints.

- 1.9 It is confirmed that the baseline remains as originally described and recorded. No new viewpoints have been submitted to support this statement.

## Planning History

- 1.10 For clarity set out below is a summary of the pertinent planning history<sup>2</sup>;
- **Stratford on Avon District Council Ref: 16/00450/FUL** for a retrospective application for demolition of function room and retention of 2 no. gables on rear elevation, extension to restaurant on ground floor and existing garage building. Planning permission for alterations to existing three storey extension and internal alterations to provide a total of 44 bedrooms plus relocation of existing fire escape reduced scheme on the Site – **Refused** 03/03/2017
  - **Stratford on Avon District Council Ref: 18/00312/FUL** for the part retrospective application for retention of existing development on site comprising 60 bedroom hotel. **Refused** 19/07/2018.
  - **Warwick District Council Ref: W/18/0805** for same description of development as ref: 18/00312/FUL. **Approved** by Warwick District Council on 18/07/2018 for that part of the existing development which falls within their administrative area.
- 1.11 These decisions, if enforced, could ultimately result in the existing portion of the building without planning permission being demolished, leaving that part of the building still within Warwick's jurisdiction standing.
- 1.12 Influence submitted the following Landscape and Visual Appraisals (LVAs);
- Stratford on Avon District Council Ref: 16/00450/FUL – Refused N0343\_R01
  - Stratford on Avon District Council Ref: 18/00312/FUL – Refused N0468\_R01 rev A
- The previous LVA's referred to are in Appendices 2 and 5.

## Stratford upon Avon Planning Position - Landscape and Visual

- 1.13 Although the application 16/00450/FUL was refused, this refusal is founded in the judged impacts on the Green Belt and not on the Landscape and Visual Impact. These concerns are then followed through into the Enforcement Notice and are broadly as set out below;
- 1.14 The Officers Report (OR 16/00450/FUL, Statement of Common Ground Appendix 8) sets out that
- 'Although the applicant has provided an LVIA which addresses the landscape impacts of the development it should be noted that the consideration of openness is distinct from landscape character and visual impact'
  - 'The appearance and bulk of the extension as built is considered inappropriate and as such harmful to the Green Belt. Because of its scale and mass its appearance serves to emphasise the loss of openness'

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<sup>2</sup> Further detail in the Pegasus Statement of Case

- 1.15 However, with regard to impact on landscape character and visual amenity;
- The application site and existing buildings are heavily enclosed by surrounding vegetation. As such, the submitted landscape appraisal demonstrates that open views towards the site are difficult to achieve within the local landscape. Some glimpsed views are possible from Spring Lane and from the footpath to the south of the site'
  - Equally due to its enclosure the site is not considered to contribute significantly to the landscape character of the area. Accordingly the site is considered to be of relatively low sensitivity to development as built.....mitigation would ensure that views towards the site would not be unacceptable and the general appearance and amenity of the site would be improved.
  - Accordingly, I consider that the development does not conflict with the policies CS.5- Landscape or CS.12 Special Landscape Areas.
- 1.16 Refer to the extract from the OR at Appendix 3

### **Warwick Planning Position – Landscape and Visual**

- 1.17 The Landscape Officer had no comments regarding the landscape and visual impact of the proposals, simply stating that
- If permission is granted, I recommend that a condition is attached requiring a landscape scheme to be submitted for approval.
- 1.18 Commentary in the OR on the issues relating to Green Belt states that it was not considered to harm the openness of the Green Belt.
- 1.19 Regarding character and visual amenity, the OR states that *'the development as proposed is considered to reflect the design of the main part of the property and is not considered to be harmful to the street scene.'*
- 1.20 Refer to the extract from the OR at Appendix 4.

### **Purpose of the Statement**

- 1.21 The detailed commentary in the Officers Report, as set out above is categorical that the issues in relation to the refusal are not landscape and visual, however there is a question over the impact on the openness of the Green Belt.
- 1.22 This statement will
- Set out the commentary in relation to Green Belt as considered in the LVA submitted as part of the documentation to support 18/00312/FUL the question of openness and provide further landscape and visual narrative based on the comparative scenarios of;
    - retention of all elements of the Hotel as existing within SoA jurisdiction; and
    - consider the landscape and visual implications of only the consented elements of the Hotel (Within Warwick and SoA) remaining in situ.

## Planning Policy context

### *Stratford on Avon District Core Strategy 2011-2031*

- 1.23 The site falls within Stratford-on-Avon District Council. Since the original application was made in early 2016, the *Local Plan Review (1996-2011)* has been replaced by the *Stratford on Avon District Core Strategy 2011-2031* (adopted July 2016). The document sets out the vision, objectives and policies to help deliver the development required within the district.
- 1.24 Policies from the Core Strategy that are considered relevant to the LVA and development proposals are:
- **Policy CS.5 Landscape:** The Policy states “The Landscape character and quality of the District will be maintained by ensuring that development takes place in a manner that minimises and mitigates its impact and, where possible, incorporates measures to enhance the landscape/ The cumulative impact of development proposals on the quality of the landscape will be taken into account”. The Policy expands further on the relevance of Landscape Character and Enhancement, the need to consider Visual Impacts on the local landscape, or townscape and the site’s wider setting; the protection of Trees, Woodland and Hedges and the need for relevant landscape proposals;
  - **Policy CS.10 Green Belt:** This Policy states “The purposes of the Green Belt will be upheld by resisting inappropriate development within it, except in cases where very special circumstances are justified in accordance with the provisions of national policy”. The Policy states that some small-scale development or extension to meet the needs of the local community would not be inappropriate;
  - **Policy CS.12 Special Landscape Areas:** This Policy states “The high landscape quality of the Special Landscape Areas, including their historic and cultural features, will be protected by resisting development proposals that would have a harmful effect on their distinctive character and appearance which make an important contribution to the image and enjoyment of the District”. The site sits on the edge of the Arden SLA;

## The Openness of the Green Belt

- 1.25 The fundamental aim of the Green Belt is to prevent urban sprawl by keeping lands permanently open. The essential characteristics of Green Belts are their openness and their permanence. Through both refused planning applications and the approved application under Warwick, it has been established that there is no conflict with policies considering landscape or visual impact.
- 1.26 The OR for SoA makes it clear that it is the physical appearance and bulk of the extension, and its scale and mass which serve to emphasise the loss of openness.
- 1.27 The openness of the Green Belt was considered in paragraphs 7.10 and 1.11 of the LVA INF\_N0648 Ro1 revA (Appendix 5);
- Openness of Green Belt is one of the key receptors identified in the landscape baseline. While Green Belt is a planning designation aimed to prevent urban sprawl and therefore not a ‘typical’ landscape receptor, analysis of development’s impact on landscape ‘openness’ is one of the tools used in judging the acceptability of development proposals located within Green Belt, which is reflected in local Policy CS.10.

- In the light of the above comments on landscape character, very limited visibility of the existing development in the surrounding landscape, and taking account of the proposed Landscape Strategy, it is assessed that the existing development/ proposed alterations with the proposed landscape enhancements would have no material impact on the openness of Green Belt. Even if the limited views along Stratford Road between site entrances and views from the hotel's car park are taken into account, the impact on the openness of Green Belt would be at most negligible at this location, and there would be no impact at all on this landscape receptor in the wider landscape.

### **Landscape and Visual observations of the consented and non-consented schemes.**

- 1.28 Although there is a distinct difference in the consideration of 'openness' compared to landscape and visual impact there is also a large degree of cross over in terms of landscape and visual characteristics and their contribution to openness.
- 1.29 It is established and accepted (through the LVA and the OR) that the site is well contained visually, by strong planted boundaries and the vegetated character and undulating topography of the wider landscape which contribute to an overall feeling of enclosure, particularly on the site itself. As a result, the existing built form is only experienced in its entirety when receptors pass directly adjacent to the hotel site along Stratford Road.
- 1.30 Detailed planting plans were a condition of the approved 16/00451/FUL and indeed the Statement of Common Ground sets out a condition for a detailed landscape plan should the Enforcement Notice be dismissed. The proposed landscape scheme would contribute further to the enclosure and seeks to soften the elevations of the buildings across all schemes.
- 1.31 The Hotel is positioned relatively centrally to the plot and configured in an 'L' shape with the carpark to the north of the building and the private gardens within the enclosure of the 'L'. The hotel is set back from Stratford Road and there is a feeling of 'space' around the eastern and northern extents. The Hotel does not extend to the extremities of the site. None of the applications ask to extend the built element beyond the area understood to relate to the hotel currently nor extend beyond what is defined as the context and extent of the hotel grounds.
- 1.32 Historic maps show that a Public House called the Royal Oak has stood on this location since at least the late 1880's and more recent maps from the early 2000's show a number of expansion which increase the size and footprint on the site. The frontage element is retained, and the direction of the expansions have followed the 'L' shape we see today.
- 1.33 The difference between the consented scheme and the built scheme is marginal and the ability for the sensitive visual receptors to understand the change is very low. Receptors in this location are pedestrians on the highway footpath, pedestrians waiting at the bus stop and drivers along the main road. The scale and mass of the consented scheme is consistent with the as built hotel- following the roof line and the pattern of the facade - and represents proportionality a very small section of built form. This is clearly represented in Appendix 1 with reference to Viewpoint 2 from the 2017 document recorded from Stratford Road. For the purposes of this statement the area not consented has been marked in yellow.
- 1.34 If the original consented scheme (16/00451/FUL) were to be implemented, those identified receptors would barely appreciate a change at the eastern end of the northern elevation. The

built scheme does not push north into carpark changing the arrangements of the building, it doesn't compromise the identified open elements of the overall hotel site such as the frontage or the carpark to the north and the overall scale and mass of the hotel remains unchanged. There is no perception or physical encroachment into the countryside, and it does not appear as 'sprawl' of built form. The non-consented element is consistent with the existing hotel and follows the pattern of the previous extensions. There is no change in the experience of the containment of the building within the site, the pattern of the built form and the scale and mass of the hotel.

- 1.35 Should the unconsented element within SoA be removed then the situation would arise where the portion of the hotel approved by Warwick would remain standing as an isolated element separated from the main hotel. There would be the doubling up of exterior stairwells and a gap between the main hotel and an unusual detached portion. This would appear as a detractor in the views, more visually prominent due to the unusual circumstance of the missing elements and appearing incohesive and disjointed. By reference to Viewpoint 2 in Appendix 3 it is clear to see how incoherent and fragmented the eastern end of the hotel would appear with the yellow portion removed.

## 2 Summary and Conclusion

- 2.1 In summary this statement sets out a Landscape and Visual response to the question of openness and provides further landscape and visual narrative based on the comparative scenarios of;
- retention of all elements of the Hotel as existing within SoA jurisdiction; and
  - consider the landscape and visual implications of only the consented elements of the Hotel (Within Warwick and SoA) remaining in situ.
- 2.2 The submitted LVA INF\_N0648\_R01 rev A (Appendix XX) judged that there would at most be a negligible impact on the openness of the Green Belt because of the proposals. The scale and mass of the unconsented extension are in alignment with the consented and existing elements, the extension does not extend into the space on the Site and is contained wholly within the area which is physically and perceptually understood to be the context of the Hotel.
- 2.3 Considering the differences between the consented and non-consented schemes, the change experienced by receptors of both schemes would be barely discernible. The built scheme does not introduce unfamiliar elements on to site or an alien scale or form. the extension does not change the pattern and general footprint of the Hotel and is consistent with the expansion of the hotel over time.
- 2.4 If the unconsented elements of the scheme were removed the permitted portion of the Hotel within Warwick would remain as an unusual separated part to the Hotel, with the doubling up of exterior staircases and a gap to the disconnected part of the Hotel, resulting in a fragmented appearance to this northern elevation. This would result in more harm in landscape and visual terms than the existing building remaining in place., by virtue of being unusual and distracting from the currently established hotel setting.

## **Appendices**

Appendix 1

Representative Viewpoint from Stratford Road