OUR REF: 3480/SC

PLANNING, DESIGN & ACCESS STATEMENT

BEAN COTTAGE SHELLBANK LANE BEAN DARTRFORD DA2 8AX

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1 INTRODUCTION

1.1 This statement is prepared in support of a full planning application submitted on behalf of the landowner Mr S Haider seeking permission for the following development:

Demolition of existing detached dwelling and outbuildings and erection of replacement dwelling and associated works.

2 SITE CONTEXT

2.1 The application site located on the southeast side of Shellbank Lane approximately 250m south west of its junction with the B255 High Street/Bean Lane and the main part of Bean village. The site extends to approximately 0.23ha in area.

2.2 It is occupied by an existing detached single-storey dwelling erected following a permission granted under application 57/00215/FULA2 on 9 September 1957. The property was constructed shortly after the permission was granted. Permitted development rights were not removed on the permission.

2.3 To the west of the bungalow is an existing garage and lean-to store. The residential curtilage extends to the south of the existing dwelling and is extensive in size and contains a number of buildings and structures.

2.4 The applicant also owns a separate and larger parcel of land (of approximately 0.41ha in size) between Bean Cottage and Shellbank Lane which is separated from the curtilage of Bean Cottage by a former access to Shellbank Lane from the clay workings in what is now Beacon Wood Country Park. This former access is under separate ownership but the applicant has access rights over the line of the former track to enable them to access the land.

2.5 The property is immediately adjoined by Beacon Wood Country Park along its eastern and southern boundaries and to the north by Old Bean Cottage that has been considerably extended in the past. This property is sited very close to the boundary with the application site, approximately 12m currently separates the two dwellings.

2.6 There are no other dwellings adjacent to Bean Cottage along Shellbank Lane. The nearest dwelling other than Old Bean Cottage is Shellbank House which is approximately 275m further southwest along the Lane.

2.7 The application site is located within the Metropolitan Green Belt. Beacon Wood Country Park is a Local Wildlife Site a designation which also extends to the other parcel of land in the applicant's ownership. This land and the country park are also designated as a part of a Regionally Important Geological/Geomorphological Site that covers the area of the Country Park to the same extent as the LWS. The site also lies within an extensive Biodiversity Opportunity Area designation that washes over the countryside around Bean and much of the surrounding area.

3 PROPOSALS

3.1 Full planning permission is sought for the demolition of the existing dwelling and other associated existing buildings and structures on the site and for the erection of a new detached dwelling of two-storeys in height above ground with an underground basement area. The proposed dwelling will accommodate the applicant and their family with accommodation arranged over the three floors including the basement accommodation.

3.2 The proposed dwelling would be re-sited southwards on the plot to a point approximately 24m from the site's north boundary. It would be approximately 25m from Old Bean Cottage at the closest point (NE corner) in its new location. The dwelling would be orientated on a north-south axis with the main entrance facing towards the existing access off Shellbank Lane, which will be improved and new entrance gates provided set back some 7m from the highway to allow vehicles to wait whilst the gates are opened to avoid obstructing the highway.

3.3 The house would be rendered in white/cream externally with rendered quoins of matching colour under a slate roof. Windows and doors would be in powder coated aluminium. The slate roof would have a sunken area in the middle which would be used to accommodate plant and renewables serving the house, without them being visible.

3.4 The ground floor would comprise a central circular lobby with staircases to the first floor and basement. It would provide a reception/cloakroom area, a home office, a guest bedroom, a lounge, a formal dining room, a preparatory kitchen and kitchen/breakfast/family room. Storage rooms, WCs and a lift (accessing all three floors) would also be provided. The lounge, dining room and the family room would open out onto external terraced areas. The dining room would be provided with a green roof.

3.5 The first floor would comprise 2 master bedrooms each with an en-suite bathroom and a dressing room and external balcony, three further bedrooms (two with dressing rooms) and a family bathroom would also be provided. Access to the roof area for maintenance of the plant/renewables is also shown.

3.6 The basement area which is entirely below ground level and thus hidden from view, would comprise a laundry room, gym, plant room, swimming pool/jacuzzi, sauna and steam room, bar, kitchen, cinema a games room and a further guest bedroom. The swimming pool area would be lit via rooflights set into the external terrace above and also incorporate a winter garden. The games room would also be lit by overhead rooflights, as would the guest bedroom, although these would be raised above the level of the ground floor terrace.

3.7 The proposals accord with Nationally Described Space Standards and furthermore, all three levels of the house are fully accessible due to the inclusion of the lift and the ramped access to the main entrance. External terrace areas are also accessible from within the ground floor of the house.

3.8 Parking is shown to the front of the dwelling arranged around one side of circular grassed and landscaped area to the front of the house that incorporates a proposed central water feature.

4 PLANNING HISTORY

4.1 Relevant Planning History for the Bean Cottage site is as follows;
57/00215/FULA2: Erection of New Bungalow and Garage adjacent to Old Bean Cottage (to be demolished) to become Bean Cottage APPROVED 09/09/1957

70/00666/FULA2: Outline: erection of Boarding Kennels for cats and dogs on part of garden: REFUSED 18/02/1971

76/00719/FULA1: Detached house and bungalow: REFUSED 27/04/1977

21/01140/P1AA: Application under Schedule 2, Part 1, Class AA for enlargement of a dwelling by construction of additional storey with a maximum height of 10.6m (NW), 10.2m (SE): PRIOR APPROVAL APPROVED 08/09/2021

21/01173/LDC: Application for a Lawful Development Certificate for proposed erection of a single-storey side extension: PLANNING PERMISSION NOT REQUIRED 14/09/2021

21/01174/LDC: Application for a Lawful Development Certificate for proposed erection of a detached garden building housing gym, home-office, swimming pool and garage/machinery store: APPLICATION WITHDRAWN

21/01175/PDE: Determination pursuant to Schedule 2, Part 1 (Class A.1 (g) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as to whether prior approval is required for the erection of a single storey rear extension: PRIOR APPROVAL NOT REQUIRED 31/08/2021

21/01484/LDC: Application for a Lawful Development Certificate for proposed erection of a detached single-storey outbuilding comprising a swimming pool and gym: PLANNING PERMISSION NOT REQUIRED 16/11/2021

4.2 As can be seen from the planning history set out above there are now various extant consents in place for significant enlargement of the existing dwelling upwards and outwards and which would also allow for the provision of a detached curtilage outbuilding in the general location of the proposed replacement dwelling. The implications of these consents are covered later in the Statement.

5 PLANNING POLICY

5.1 The relevant policies are collected together under separate topic headings. The Development Plan comprises the 2011 Dartford Core Strategy (CS) and the 2017 Dartford Development Policies Plan (DP).

5.2 The Dartford Local Plan to 2037 has been formally submitted for Examination. An examining Inspector has been appointed but the examination hearings have yet to commence. Applicable policies in the new plan do therefore have some weight as a material consideration in the decision making process, but not the full weight of an adopted plan. Copies of the relevant Development Plan and emerging Local Plan Policies are attached at **Appendix One**.

Green Belt

5.3 Policy CS13 of the 2011 Core Strategy reiterates the intention to resist inappropriate development and to manage the Green Belt as a recreational and ecological resource. It identifies a number of projects, which it seeks to implement but none of these affect the application site. In addition, it recognises the need to protect agricultural land uses within the Green Belt, again not relevant to the current proposals.

5.4 At Policy DP22 of the Development Policies Plan 2017 the Council provides further guidance on development in the Green Belt, reiterating that they will resist inappropriate development and setting out criteria amongst others for replacement buildings. Draft Policy M13 in the New Local Plan is similar in its wording and criteria to existing Policy DP22.

Ecology and Biodiversity

5.5 Policy DP25 identifies designated nature conservation sites. It is apparent that any loss of habitat or biodiversity features should firstly be avoided and secondly should be mitigated where possible. This former is the case with the current proposal which will not adversely affect biodiversity or result in loss of any habitat which cannot be mitigated or enhanced.

5.6 Policy M15 in the New Local Plan covers Biodiversity and Landscape. The application site sits within the 6-10km buffer zone of the North Kent Special Protection Areas and Ramsar Sites and as the application seeks approval for a single replacement dwelling it does not fall within the currently adopted threshold for screening proposed residential development for Appropriate Assessment under the Habitat Regulations in this buffer zone.

6 PLANNING ISSUES

6.1 It is considered that there are five main planning issues in this case, and these are addressed below under separate sub-headings.

Green Belt Considerations

6.2 The NPPF at paragraphs 137 and 138 clearly sets out the purposes of the Green Belt.

> *'137. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.*

138. Green Belt serves five purposes:

a) to check the unrestricted sprawl of large built-up areas;

b) to prevent neighbouring towns merging into one another;

c) to assist in safeguarding the countryside from encroachment;

d) to preserve the setting and special character of historic towns; and

e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.'

6.3 In terms of the impact of the currently proposed development on the purposes of the Green Belt as set out in the NPPF, it is clear that the proposed development will not be contrary to the stated purposes of the Green Belt:

- It will not add to the sprawl of a large built up area.
- It will not result in neighbouring towns merging into one another.
- It will have no impact on the countryside in terms of encroachment .
- It will not have any impact on the setting and special character of a historic town.
- It will not have any impact on urban regeneration.

The proposal's impact on the openness of the Green Belt, in the sense as set out in Paragraph 137 of the NPPF, is considered in greater detail below. It is important to note that the site is already partially developed and that the existing dwelling and its curtilage fall under the definition of previously developed land as defined in the NPPF.

6.4 It is also necessary to consider whether the development constitutes inappropriate development in line with the advice of the NPPF and if so, whether there are Very Special Circumstances that exist that are of sufficient weight to outweigh other considerations.

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

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

149. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:
d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;'

6.5 In principle therefore, the replacement of the existing dwelling may not by definition automatically be considered as inappropriate development according to paragraph 149(d).

6.6 It is noted that this NPPF criterion does not relate to or define a building as an 'original building' which is defined elsewhere within the annex of the NPPF as existing on 01 July 1948. A building can therefore include any permitted developments i.e. a fall-back.

6.7 To assist in the consideration of whether the proposed development is inappropriate it is necessary to look at the relevant policy DP22 of the adopted 2017 Development Policies Plan. Criterion 6 of the policy states as follows:

'Replacement Buildings
6. The replacement of a building will be permitted where:

- *The replacement building remains in the same use; and*
- *The replacement building will not be materially larger than the existing building it replaces, taking into account bulk, height, massing and scale. As a replacement, the building should be limited to an expansion of no more than 30% volume of the original building.'*

Note: Original building is defined in the Plan as meaning a building as it existed on 1 July 1948 where it was built before that date, and as it was built when initially built after that date.

6.8 It is therefore clearly important to demonstrate that the proposed dwelling meets this criterion to accord with the provisions of this aspect of the Development Plan. In this regard it is evident that the proposed house is materially large than the original dwelling and as such could be considered as inappropriate development. It is necessary therefore to consider whether there are Very Special Circumstances pursuant to paragraphs 147 and 148 of the NPPF to allow the development.

Very Special Circumstances.

6.9 It is considered that there are Very Special Circumstances that would allow permission to be granted for the development. It is contended that the circumstances exist through the establishment of a fall-back position. We have considered whether the existing dwelling could be lawfully extended or other lawful development take place within the residential curtilage of the property. In addition, the proposals also include the demolition and removal of three existing curtilage buildings.

6.10 On behalf of the applicant as can be seen from Section 4 of this Statement, consent has been secured for a number of extensions to the existing dwelling as well as a curtilage building. The question is therefore, do these amount to an appropriate fall-back position?

6.11 A key legal case in terms of assessing a fall-back is the Court of Appeal decision in Mansell vs Tonbridge and Malling Borough Council [2017] EWCA Civ 1314. The

full judgement is attached at **Appendix Two**. In summary, the main relevant points are:

(Paragraph 5) Ground 2 of the Court of Appeal decision specifically addresses *whether Tonbridge and Malling Council was entitled to accept there was a real prospect of the fallback development being implemented*.

This specific ground is critically analysed in the Court's judgment, and whether the appellant had demonstrated a real prospect of the fallback position was clearly and fully considered. The Court ultimately concluded that there is a relatively low bar to demonstrate a real prospect of a fall-back position.

Paragraphs 22 – 37 of the decision set out how Lord Justice Lindblom confirmed the legal considerations in determining the materiality of a fall-back position as a planning judgement were:

- the basic principle is that for a prospect to be a "real prospect," it does not have to be probable or likely: *a possibility will suffice*;

- there is no rule of law that, in every case, the "real prospect" will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker's planning judgment in the particular circumstances of the case in hand.

6.12 Lord Justice Lindblom concluded that the clear desire of the landowner to develop the site was sufficient to demonstrate there was a real prospect to the GPDO fall-back position in this case he therefore gave material weight to such a fall-back position.

6.13 Therefore in the light of the conclusions in this judgement, for a fall-back position to be given material weight in the decision-making process, there simply needs to be a possibility of it occurring. This therefore means that it does not physically have to be built, or indeed even a consent awarded for the development. The term possibility simply sets out that it could happen.

6.14 In relation to this current proposal to replace the existing dwelling, the applicant has not only set out an intent to utilise the permitted development rights available to the property, but has obtained consent for such rights by way of the four separate applications submitted to the Council and the subsequent positive decisions that have been made by the Council.

6.15 The applicant has therefore met the legal requirements of establishing a fall-back position. This fall-back position is therefore a relevant material consideration when deciding upon the application and whether the new dwelling is inappropriate development.

6.16 The footprint and volume of the dwelling as it exists, the proposed additions to it and the footprint and volume of the curtilage building are set out in the table below. Also shown are the volume and footprint of existing outbuildings on the site which are to be demolished as part of the project.

	Footprint (m^2)	**Volume (m^3)**
Existing dwelling	91.4	458.4
Existing coal bunker	1.9	2.55
Existing oil store	3.3	10.4
Garage/lean-to	26.22	58.36
Shed 1 (Small shed)	3.49	7.2
Shed 2 (Large shed)	20.16	45.75
Upward extension (21/01140/P1AA)	(remains as existing) 91.4	319.9
Side Extension (21/01173/LDC)	41.76	323.44
Larger rear extension (8m) (21/01175/PDE)	78.94	150.78
Curtilage building (21/01484/LDC)	149	470.45
TOTAL	**416.17**	**1847.23**

6.17 The proposed dwelling has a footprint and volume as follows;

	Footprint (m^2)	**Volume (m^3)**
Replacement dwelling	**299.8**	**1835.64**

6.18 In terms of the footprint the proposed dwelling is considerably smaller (by some 116.37m^2) than the fall-back position. In terms of the volume the proposed dwelling also has a smaller volume than the fall-back position.

6.19 It is also important to note three further factors.

1. That the basement accommodation is entirely below ground level.
2. The proposed dwelling would rationalise built form on the site into one location.
3. Care has been taken to ensure that the overall height of the new dwelling has been minimised. The existing dwelling has a ridge height of approximately 7.81m above adjacent ground levels. With the consented upward extension this would increase to a maximum of 10.6m given the sloping nature of the site. The proposed dwelling would be approximately 7.5m in height.

6.20 It is therefore concluded that the proposed dwelling would not be materially larger than the dwelling plus existing curtilage buildings and the extant consents that exist on

the site which constitute the established fall-back position. As such, there are considered to be very special circumstances to allow the development.

Openness

6.21 Notwithstanding the above conclusion, it is also important to consider the impact of the development on the openness of the Green Belt.

6.22 In a spatial sense, the tables set out earlier clearly show that the proposed dwelling would occupy a much smaller ground area of the site than would be the case with the established fall-back position. It is also the case that in a visual sense the development will also improve the openness of the Green Belt by consolidating the extent of development on the site into one location. Reference to submitted drawing 3480.10 clearly illustrates this point, it shows in outline form the existing dwelling with approved extensions and the approved curtilage building in comparison to the proposed dwelling.

6.23 In this regard, the proposed location of the dwelling and the demolition of the existing dwelling and outbuildings will also result in an improvement in terms of openness and space in comparison to Shellbank Lane. By siting the dwelling further southwards into the plot, it will actually be further from the highway than the current dwelling (as permitted to be extended) and existing garage due to the extent and location of the intervening parcel of land that is not part of the current or proposed residential curtilage.

6.24 The existing garage is situated approximately 21m from the road whilst the closest point of the existing dwelling is some 27m from the road.

6.25 In contrast, the new dwelling would be set back some 50m from Shellbank Lane at its closet point with a much greater buffer in between combined with the existing hedgerow and trees along the road, within the adjacent field and along the boundary of the field with the application site itself, than currently exists.

6.26 It is also contended as set out in paragraph 6.3 earlier, that the proposed development will not have an adverse impact on the five principal purposes of the Green Belt as set out in the NPPF.

Green Belt Conclusions

6.27 To conclude, the NPPF is clear that a replacement dwelling that is not materially larger is acceptable development in the Green Belt. Local Policy recognises this position. Case Law confirms that a fall-back position is material consideration. Whilst the new dwelling is materially larger than the original and thus can be considered to be inappropriate development Very Special Circumstances have been demonstrated to exist

6.28 The applicant has demonstrated they have met the legal requirements in seeking to establish a fall-back position, and have demonstrated that the proposed new dwelling will result in an overall reduction in footprint and volume when compared to that fall-back position. As a result, the proposals will in fact result in the enhancement and

improvement of the openness of the Green Belt. This is a benefit that carries significant weight in the overall planning balance. It is contended that Very Special Circumstances have been demonstrated that would allow permission to be granted.

6.29 It is of course necessary to consider all other details of the proposals against remaining relevant Development Plan policies and applicable government advice.

Biodiversity and Ecology

6.30 It is acknowledged that the application site is located adjacent to a designated Local Wildlife Site. As can be seen from the accompanying documentation submitted with the application, appropriate ecological surveys have been undertaken.

6.31 The applicant's additional, and importantly immediately adjacent land, and which is not part of the application site has been identified as potentially suitable as a receptor site given the population levels encountered in the reptile surveys and to provide the necessary mitigation and enhancement for reptiles. The applicant is content to accept a condition along the following suggested lines to ensure this is the case.

The development shall not commence until, a reptile mitigation method statement has been submitted to and approved in writing by the Local Planning Authority. This will confirm the location of the onsite reptile receptor area and include full details of habitat enhancement works and follow-up management. The approved details will be implemented before any development activities are undertaken that could result in disturbance to reptiles.

6.32 With regards to bats, appropriate mitigation will be provided within the site to compensate for the loss of the day roost found in the existing dwelling. The necessary Bat Licence will be sought from Natural England once planning permission is in place. This licence application will provide details of the mitigation measures.

6.33 With these safeguards the proposals provide an opportunity to ensure that biodiversity is preserved and enhanced through careful mitigation and appropriate management and thus accord with the relevant National and local Development Plan guidance, advice and Policy. Screening for Appropriate Assessment under the Habitat Regulations in respect of the North Kent SPA and Ramsar Sites is not required as only one dwelling is proposed and the site is located in the 6-10km buffer zone.

Design

6.34 The application site is not located in an area that has a defined style and form of building or dwelling. It is also not within an area designated as a Heritage Asset due to the quality or historical significance of development in the area. The existing building which can best be described as unremarkable and 'of its time' in its appearance and design has no features worthy of replication in the newly proposed dwelling.

6.35 Old Bean Cottage adjacent to the site, is also a somewhat unremarkable dwelling that has been extended on a piecemeal basis over the years despite it appearing from the original permission for Bean Cottage to have been required to be demolished when

Bean Cottage was completed. Old Bean Cottage is set back from the road behind tall screening and will not be seen in the context of the proposed dwelling. The proposals will, however, improve the spatial relationship between the two dwellings. The most recent development that has taken place in the vicinity, is that of Shellbank House a substantial two and a half-storey brick built and faced dwelling with a range of outbuildings. Given the separation and intervening Ancient Woodland, between Shellbank House and the proposed dwelling, they will also not be 'read' or seen in the same context.

6.36 This is a bespoke dwelling designed to the applicant's requirements, whilst taking account of existing policy constraints and the circumstances of the site. The detailing of the dwelling is well considered. The proposed external materials are not inappropriate in this setting and the overall scale and mass of the house are also appropriate.

6.37 It is considered that the new dwelling will enhance the appearance of the site and generally lift the quality of development in the area. It is considered to accord with the Development Plan and National Policy Guidance.

Impact on Character and Appearance of the Surrounding area

6.38 For the reasons set out and amplified earlier in the statement relating to openness of the Green Belt, it is considered that in landscape terms the proposals will have only limited impact on the character and appearance of the surrounding area, given its location within the site and existing landscaping and screening both within and along the application site's boundary and the boundaries of the adjacent land.

Residential Amenity

6.39 The proposed development has also been considered in terms of any potential impact on the amenities of adjacent residential properties. There is only one such dwelling, as noted above, Old Bean Cottage. This is a detached dwelling located immediately to the north of the site very close to the common boundary with the application site. The new site for the dwelling moves the house considerably further away from the boundary, the closest corner (NE) is now 25m from Old Bean Cottage which is at an angel to the common boundary. This is considered to be sufficient separation to avoid any unacceptable loss of privacy and overlooking from the first floor windows of Bedroom 1 and Bedroom 2 in the new house, especially given the existing tree screen along the site boundary. The location and use of the driveway access off Shellbank Lane will also not significantly change such that it will result in an unacceptable increase in noise.

6.40 The development will not result in any loss of privacy or amenity to Shellbank House further along the Lane.

6.41 The proposed house is set sufficiently-in from the boundary with the Country Park taking into account existing woodland and tree cover and boundary enclosures to

ensure that the occupants of the proposed dwelling do not suffer any loss of amenity from visitors to the Country Park.

Other issues

6.42 The site is less than 1ha in area and located within Flood Zone One so a Flood Risk Assessment is not required. Surface water drainage will be dealt with by utilising a SuDS based approach.

6.43 This is a one-for-one replacement of an existing dwelling and as such issues relating to the sustainability of its location are not truly relevant. However, it is not an isolated site being relatively close to and within walking distance (at 250m) of Bean village and its facilities. Although, it is recognised that the occupiers are likely to be largely reliant on the private car for their day-to-day needs given the nature of Shellbank Lane.

6.44 An appropriate level of car parking provision is proposed and the alterations to the access point will improve highway safety generally through the introduction of a larger area of hardstanding in front of the gates on the drive than is currently the case to enable a vehicle to wait wholly off the carriageway.

7.0 CONCLUSIONS

7.1 The proposals will have limited wider landscape impact and also have no unacceptable adverse impact on the overall character of the area or the amenities of the occupiers of nearby and adjoining dwellings. These are factors that should be given considerable weight in favour of the proposals.

7.2 The proposals would also not be in conflict with the five purposes of the Green Belt as set out in paragraphs and of the NPPF. This also weighs heavily in favour of the proposals.

7.3 Whilst the new dwelling is clearly larger than the original dwelling on the site and thus could be considered as inappropriate development in the Green Belt, a clear fall-back position has been secured and demonstrated and this amounts to Very Special Circumstance sufficient to allow the development.

7.4 The proposed dwelling will not as a result of this clear fall-back position be materially larger than that which it replaces as could be extended and improved. Indeed, it will occupy a smaller overall area of the site and be of a lower overall volume and lower in height, and thus be beneficial overall to the openness of the Green Belt. This is of significant weight in favour of the development.

7.5 All other aspects of the proposals are in accordance with Development Plan policy and applicable National guidance. As such planning permission should, in accordance with the advice at paragraph 11(c) of the NPPF, be approved without delay.

DESIGN & ACCESS STATEMENT

Site
The proposed application site is positioned to the east side of Shellbank Lane, 250m south of its junction with Bean Lane/Bean High Street. The site is orientated north to south and is approximately 0.23ha in area.

The site is currently occupied by a detached single-storey bungalow dating from the late 1950s. This is situated adjacent to the site's northern boundary. Within the site there is a garage/store and a number of other buildings and structures.

Amount of Development
The proposed seeks to provide a replacement two-storey dwelling via a full planning application. The dwelling as proposed would have a footprint of 299.8m². it would be arranged over three floors with the basement entirely below ground level.

Layout
The new dwelling has been moved southwards and further into the site away from site of the existing dwelling. This will significantly improve the relationship to Old Bean Cottage the immediately adjacent house to the north. It also means that there will be a larger buffer between the dwelling and Shellbank Lane due to intervening land (which will not be developed or part of the new dwelling's curtilage) between the site and the road.

Scale
The house is proposed to be two-storeys in height at a maximum of 7.5m above ground level. This compares to the 7.81m of the existing bungalow as it stands and 10.6m as approved to be extended upwards.

Appearance
The proposed house will be rendered externally (white/cream) with rendered quoins for detailing and relief. A slate roof is proposed. Windows and doors will be powder coated aluminium.

Landscaping
The development will retain and enhance (subject to a detailed landscaping scheme) existing boundary screening around the site and provide the opportunity to provide a new landscaped area to the front (north) of the dwelling. Besides the more formal garden area on the land associated with the house, the applicant owns the larger field to the west of the house between the site and Shellbank Lane. It is intended that this land will be used as a receptor site for reptiles and that ecological enhancement measures and appropriate monitoring and management of this land will be undertaken.

Access
The existing site-access is to be re-used. Highway safety will be improved by moving the entrance gates 7m back from the highway to enable vehicles to fully park off-the highway whilst waiting for the gates to be opened or to make a delivery.

The house itself will have ramped access to the main entrance and an internal lift providing access to all three floors. Level access from the ground floor will be possible to all external terraced areas.

Conclusion
The layout, design and scale of the proposal is appropriate to its context.

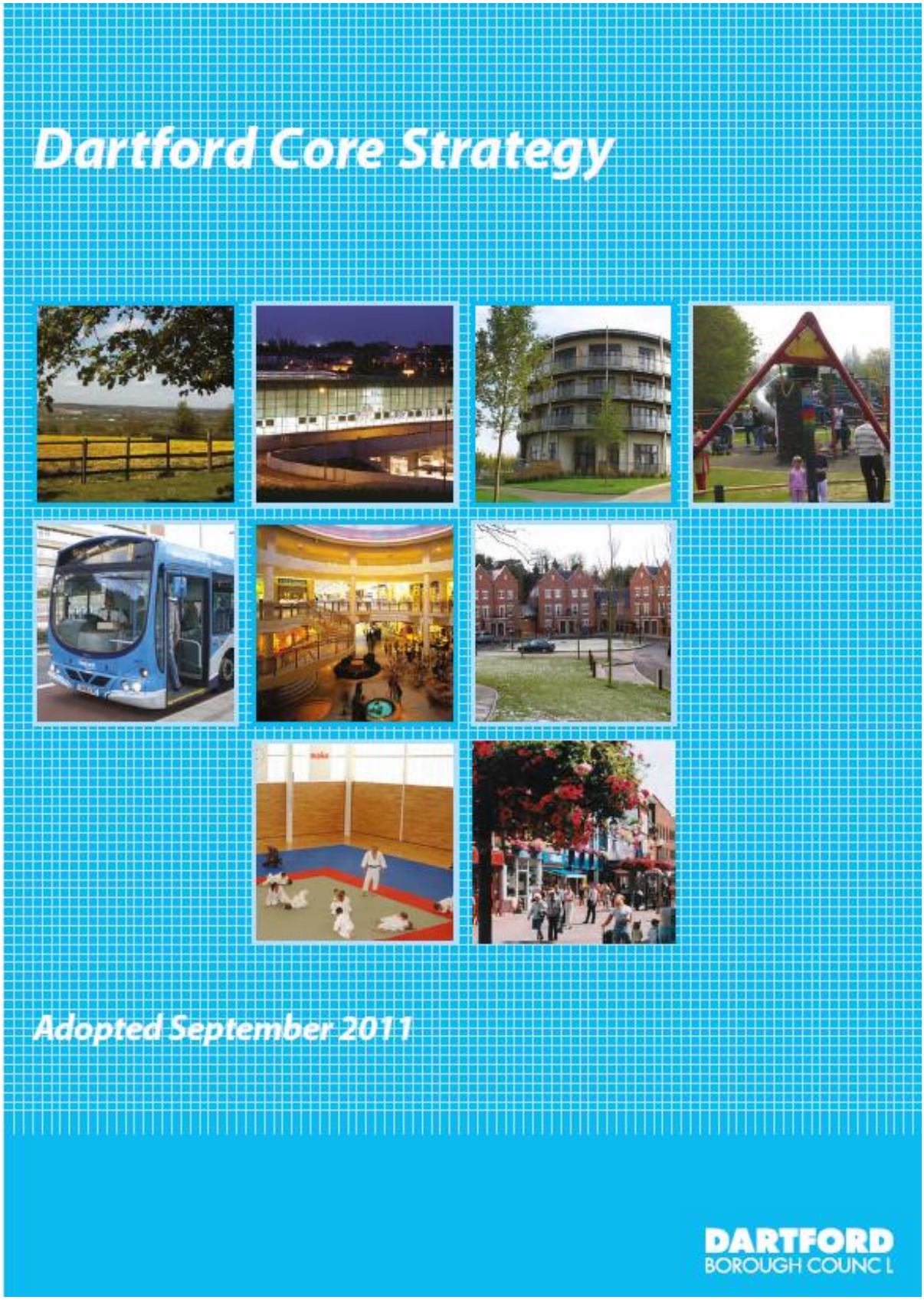
Landscape and ecological enhancements can be secured.

Highway safety will be improved through the proposed changes to the access. The house itself will be fully accessible.

The development as proposed will make a positive contribution to the area that should gain the support of and be approved by the Council.

APPENDIX ONE

DEVELOPMENT PLAN POLICIES


Dartford Core Strategy
Adopted September 2011
DARTFORD
BOROUGH COUNCIL

Policy CS 13: Green Belt

1. In order to protect the openness of the Green Belt the Council will:

   a. Resist inappropriate development, in accordance with PPG2, through its development control decisions.

   b. Work with its partners to actively manage the Green Belt as a recreational and ecological resource, through the provision of green recreational and biodiversity networks linked with the urban area. The following projects will be implemented:

   - Enhancement of rural reaches of the Darenth Valley
   - New Countryside Gateway at South Darenth Lakes
   - Dartford Heath –restoration of heathland
   - Darenth Country Park improvements
   - Darenth Woods natural habitat enhancements
   - Beacon Woods Country Park improvements
   - Former Mabledon Hospital – enhancement of areas of ecological value
   - Better connectivity between Dartford and Gravesham countryside through Ebbsfleet Valley and A2 corridor

2. Agricultural land uses within the Green Belt will be protected. More detailed policies will be set out in the Development Management DPD.

Policy CS 17: Design of Homes

1. To achieve living environments that enrich the quality of life and provide the conditions for communities to flourish the Council will:

   a) Require the application of the principles of the Kent Design Guide in developing housing proposals

   b) Require that the criteria identified as locally important are addressed in the design of homes. These include:

   - Internal spaces that are appropriate and fit for purpose
   - Adequate internal storage and recycling storage space
   - Garages, where provided, are of a fit for purpose size
   - Secure arrangements for management and maintenance of communal areas.
   - Useable private amenity space, usually provided as a garden in family houses and a balcony, patio or roof garden in flats.
   - High quality communal open space
   - Priority for those on foot or bicycle in internal estate roads

2. Further policies and guidance on these matters will be set out in the Development Management DPD and SPD's.

3. Sites will be developed at a variety of densities, depending on their location and accessibility to public transport. The form and density of housing will vary across the larger sites, in response to accessibility and other characteristics of each part of the site. Variations in density across a site should be used to develop different character areas.

4. Broad indications of appropriate average net densities are as follows:

   a) Rural Village sites: below 40 dwellings/ha

   b) Dartford town centre, Northern Gateway, Ebbsfleet Valley Strategic Site, Thames riverside sites (outside Conservation Area) and other major sites which integrate Fastrack: over 50 dwellings/ha

   c) Other urban sites: 35-55 dwellings/ha

Dartford Development Policies Plan

Adopted July 2017

Dartford Local Plan Document

DARTFORD BOROUGH COUNCIL

Policy DP1: Dartford's Presumption in Favour of Sustainable Development

1. The Development Plan, which has been prepared in Dartford in accordance with national objectives to deliver sustainable development, is the statutory starting point for decision making. Planning applications that accord with the policies in the Dartford Core Strategy and this Plan, and policies in neighbourhood plans (where relevant), will be approved wherever possible, unless material considerations indicate otherwise.
2. A positive approach to considering development proposals will be taken in Dartford Borough, reflecting the presumption in favour of sustainable development contained in the National Planning Policy Framework (NPPF) and the development needs of the Borough identified in the Core Strategy. The Local Planning Authority will work proactively with applicants to find design and mitigation solutions to enable appropriately located development that improves the economic, social and environmental conditions in the Borough.

Policy DP2: Good Design in Dartford

1. Development will only be permitted where it satisfies the locally specific criteria for good design in the Borough:
   a) Responding to, reinforcing and enhancing positive aspects of the locality. Opportunities to create high quality places should be taken, particularly using prominent physical attributes (including the Borough's distinctive riverside environments, cliff faces, extensive network of open spaces and tree coverage).
   b) Ensuring appropriate regard is had to heritage assets (see policies DP12 and DP13); and that the character of historic settlements, including the market town of Dartford, is respected.
   c) Facilitating a sense of place, with social interaction, walking/ cycling, health and wellbeing, and inclusive neighbourhoods, through a mix of uses and careful design and layout. Good design should be reinforced and enhanced through integrating new development with the public realm, open space and natural features including rivers and lakes/ ponds. Within large developments, public art reflecting local character and heritage should be included.
   d) Providing permeability through clear pedestrian and cycle linkages, and where appropriate, active frontages, and a fine grain mix of buildings and spaces. Commercial and public facilities should be well integrated into their surroundings, both within the site and the wider locality.
2. In determining planning applications, the Local Planning Authority will consider how the height, mass, form, scale, orientation, siting, setbacks, access, overshadowing, articulation, detailing, roof form, and landscaping of the proposals relate to neighbouring buildings, as well as the wider locality. Appropriate weight will also be given to outstanding or innovative design that will help raise design standards in the wider area. Materials should support a sense of place, and be locally sourced or recycled from within the site where possible. Development shown to be suitable in these respects, and the principles in clause 1 above, will be permitted.

Design and Heritage

3. In areas of additional design sensitivity, and where heritage assets (e.g. Conservation Areas) or their setting is affected, and within Areas of Special Character, developments will need to demonstrate accordance with policies DP12 & DP13 as applicable. Particular consideration should be given to design objectives, including in paragraph 6.2. In these areas, proposals incorporating energy efficiency measures and micro-renewables that yield clear net benefits (in line with Policy DP11:2) will normally be viewed positively, provided that good design mitigates the impact on the townscape and they are in accordance with policies DP12 & DP13.

Safe and Accessible Design

4. Spaces should be designed to be inclusive, safe and accessible for all Dartford's communities, including young, elderly, disabled and less mobile people. The design of buildings, open space and the private and public realm should, where appropriate, reduce the fear of, and opportunities for, crime, paying attention to the principles of Safer Places[6] (or any future equivalent) otherwise development will not be permitted.

Designing for Natural Resources, Flood and Waste Management

5. Layout and design should allow the efficient management/ reuse of natural resources and waste, in order for development to be permitted. Early consideration should be given to the achievement of on-site flood alleviation. Development will also be required to provide adequate and convenient arrangements for the storage of refuse and recyclable materials as an integral part of its design.

Advertisement and Signage Design

6. Signage and advertisements should be of a scale and design that is sympathetic to the building and locality, particularly in the designated Area of Special Advertisement Control, and should not have a negative impact on visual amenity, public safety or the safe and convenient movement of pedestrians, cyclists and vehicles, otherwise permission will not be granted.

Policy DP22: Green Belt in the Borough

1. Dartford's Green Belt is shown on the Policies Map, and its essential characteristics are its openness and permanence. Inappropriate development in the Green Belt will be resisted in accordance with national planning policy.
2. Inappropriate development is by definition harmful to the Green Belt and will only be approved in very special circumstances. Very special circumstances will not exist unless potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
3. In assessing other harm, the Local Planning Authority will use the following criteria:
    a) the extent of intensification of the use of the site;
    b) the impact of an increase in activity and disturbance resulting from the development, both on and off the site, including traffic movement and parking, light pollution and noise;
    c) the impact on biodiversity and wildlife;
    d) the impact on visual amenity or character taking into account the extent of screening required;
    e) impacts arising from infrastructure required by the development.
4. Where developments are considered not inappropriate in line with national planning policy, they will be supported where they contribute to the Core Strategy (CS13) policy objective of conserving the Green Belt as a recreational, ecological and agricultural resource. Such developments will also be assessed against the following clauses where applicable.

Re-use of Buildings

5. Applications for re-use should relate to lawful permanent buildings of substantial construction. They should take into account the character and scale of the existing building(s). In circumstances where character and scale are important to the local setting, excessive external alterations and additions will not be permitted.

Replacement Buildings

6. The replacement of a building will be permitted where:
    a) The replacement building remains in the same use; and
    b) The replacement building will not be materially larger than the existing

building it replaces, taking into account bulk, height, massing and scale. As a replacement, the building should be limited to an expansion of no more than 30% volume of the original[31] building.

Extensions to Buildings

7. Extensions to buildings will be permitted where:

   a) They are proportionate and subservient in appearance, bulk, massing and scale of the original building; and

   b) The proposal would not result in a disproportionate addition to the original building. The extension must constitute no more than a 30% volumetric increase over and above the original building, and maximising the footprint of the building will not be appropriate in every circumstance.

Infilling or Redevelopment of Previously Developed Sites

8. Proposals should not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. Developments that lead to over-intensification of the site will not be permitted.

Agricultural Development

9. Development should not result in the loss of the best and most versatile agricultural land and should not impede the continuation of a lawfully existing agricultural development and/ or land use.

10. The change of use of an agricultural building should, where planning permission is required, demonstrate it is no longer needed for its current or intended agricultural use and should not result in a need to create any further building(s) to replace it.

11. New agricultural buildings will be permitted where it can be demonstrated that there is a need for the proposed development and where they are sited and designed to minimise their impacts as outlined in clause 3.

12. Proposals for farm diversification, including shops, processing, workshops or sports and recreation, should be ancillary to the existing main use. It should be demonstrated that the activity is related to the main farm use and that the proposal will not create the need for new buildings or supporting infrastructure and facilities that may harm rural character.

Equine Development

13. Proposals for the use of land for horses or for the erection of stables and associated facilities and/ or operational development will be carefully considered. Assessment will include the location/ layout of all structures; and quality of the provision and landscaping proposed.

Development for Outdoor Sport and Recreation

14. Proposals for outdoor sport and recreation should not materially impact on the character and amenity of the locality or result in the deterioration of the land, landscape or biodiversity. The scale, siting, design, use and level of activity of built recreation development will be taken into account when assessing the impact of a proposal.

15. Supporting infrastructure and facilities should not unacceptably harm local character. They should be directly associated with the main use and be of a scale, quality and design to minimise their impact.

Policy DP25: Nature Conservation and Enhancement

1. Development on the hierarchy of designated sites, featuring nationally recognised and locally protected sites, shown on the Policies Map will not be permitted. Development located within close proximity to designated sites, or with likely effects on them, should demonstrate that the proposal will not adversely impact on the features of the site that define its value or ecological pathways to the site.
2. Proposals should seek to avoid any significant adverse impact on existing biodiversity features. Any potential loss or adverse impact must be mitigated, including with reference to the following guidance points:
    a) Where mitigation measures require relocation of protected species this will only be acceptable when accompanied by clear evidence that the proposed method is appropriate and will provide for successful translocation.
    b) Proposals should include provision for protection during construction, and mechanisms for on-going management and monitoring.
3. Developments will be expected to preserve and, wherever possible, enhance existing habitats and ecological quality, including those of water bodies, particularly where located in Biodiversity Opportunity Areas. Particular regard should be had to points a) and b) below. Development proposals where the primary purpose is to enhance biodiversity will normally be permitted where:
    a) New biodiversity areas make use of native and local species as set out in the Kent Biodiversity Strategy and consider ecological links and adaptability to the effects of climate change
    b) Biodiversity features strengthen existing green and ecological corridors; and contribute to the creation and enhancement of the Green Grid.

Large residential development and North Kent European Protected Sites

4. Large residential developments located within 10km from the North Kent European Protected sites that are located outside the Borough will be required to undertake a Habitats Regulation Assessment to demonstrate that the mitigation measures proposed are satisfactory to avoid potential adverse recreational effects to protected features. Information on mitigation options is available on the Council's website.

Trees

5. In all development proposals existing trees should be retained wherever possible. If retention is demonstrated not to be feasible, replacement provision should be of an appropriate tree species and maturity and/ or canopy cover taking into account the tree that is being replaced and the location.

DARTFORD LOCAL PLAN
TO 2037

Pre-Submission
(Publication) Document
September 2021

DARTFORD
BOROUGH COUNCIL

Policy M1: Good Design for Dartford

1. Development must demonstrate that it is designed in line with the National Design Guide and the National Model Design Code, considers the principles of Kent Design, and satisfies all of the following locally specific criteria for good design in the Borough:
    a) Responding to, reinforcing and enhancing positive aspects of the locality. Opportunities to create appropriately distinctive high quality and beautiful places should be taken, particularly using and enhancing prominent physical attributes which include the Borough's distinctive riverside environments, extensive open spaces, biodiversity assets, landscape and tree coverage;
    b) Ensuring appropriate regard is had to heritage assets and that the character of historic towns and villages and Areas of Special Character are respected;
    c) Facilitating a sense of place with social interaction, a physical environment encouraging health and wellbeing, attractive active environments and travel options, and secure, inclusive and integrated neighbourhoods through a mix of uses and careful design and layout that ensures that commercial and public facilities are well integrated within the site and the wider locality;
    d) Providing permeability for the site to sufficiently connect to its surrounds and for the public to traverse the site, through clear pedestrian and cycle linkages and, where appropriate, active frontages, open streets, and a fine grain mix of buildings and spaces;
    e) Reinforcing and enhancing good design by integrating new development with the public realm/ open space, and providing biodiversity gain and natural features including rivers and lakes/ ponds; and
    f) Meeting the requirements set out in any supplementary local design guidelines which will be produced after public consultation consistent with these principles and national requirements, to be adopted as formal Supplementary Planning Documents or design codes.

2. Development must be shown to be suitable in terms of its height, mass, form, scale, orientation, siting, access, overlooking, overshadowing, articulation, detailing, roof form, and landscaping relative to neighbouring buildings and the wider locality. Materials must support a sense of place and relate well to the local character. Outstanding or innovative design which helps raise design standards in the wider area will be supported on appropriate sites which are not closely related to sensitive areas or assets.

3. The appropriate scale and density of development at a site should be the outcome of securing high quality development through a design-led process and demonstrated by agreed masterplans on large sites, having proper regard to:
    a) the current built environment context including heritage assets;
    b) the location of the site in the Borough and its characteristics:

i) Assessment of development potential using locally specific design or conservation guidance documents, and fulfilling applicable Plan objectives for the area;
ii) Outside the urban area, design should, in particular, be sympathetic to local landscape and townscape character;

c) providing spacious, green and good quality developments including clearly meeting or exceeding nationally described space standards for new homes, and fulfilling policy for amenity space and green infrastructure provision; and

d) the principle of securing a mix of uses and residential types, achieving efficient re-use of land where appropriate, and delivering regeneration at urban locations well-served by public transport and services.

4. Public spaces in and outside buildings and all accommodation must be designed to be inclusive, safe and accessible for all Dartford's communities, including young, elderly, disabled and less mobile people. The design of buildings, open space and the private and public realm must be in accordance with active design principles and reduce the fear of, and opportunities for crime.

5. Signage and advertisements must be of a scale and design that is sympathetic to the building and locality, particularly in the designated Area of Special Advertisement Control, and must not have a negative impact on visual amenity, public safety or the safe and convenient movement of pedestrians, cyclists and vehicles.

Policy M13: Green Belt

1. Dartford Borough's Green Belt is shown on the Policies Map, and its essential characteristics are its openness and permanence. Inappropriate development in the Green Belt will be resisted in accordance with national planning policy.

2. Inappropriate development is by definition harmful to the Green Belt and will only be approved in very special circumstances. Very special circumstances will not exist unless potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

3. In assessing other harm, the local planning authority will use the following criteria:
   a) The extent of intensification of the use of the site;
   b) The impact of an increase in activity and disturbance resulting from the development, both on and off the site, including traffic movement and parking, light pollution and noise;
   c) The impact on biodiversity and wildlife;
   d) The impact on visual amenity or character taking into account the extent of screening required; and
   e) Impacts arising from infrastructure required by the development.

4. Where developments are considered to be not inappropriate in line with national planning policy, they will be supported where they contribute to the objective of conserving the Green Belt as a recreational, ecological and agricultural resource. Such developments will also be assessed against the following criteria where applicable.

Re-use of Buildings

5. Applications for re-use of buildings must relate to lawful permanent buildings of substantial construction. The change of use of the curtilage to the building, any extension required to facilitate the change of use, and the impacts of such changes in use on the purposes of the Green Belt will be taken into account. The lack of demand for the existing lawful use will need to be demonstrated. In circumstances where character and scale are important to the local setting, excessive external alterations and additions will not be permitted.

Replacement Buildings

6. The replacement of a building will be permitted where:
   a) The replacement building remains in the same use; and
   b) The replacement building will not be materially larger than the existing building it replaces, taking into account bulk, height, massing and scale. As a replacement, the building should be limited to an expansion of no more than 30% volume of the original building*.

Extensions to Buildings

7. Extensions to buildings remaining in the same use will be permitted where:
   a) They are proportionate and subservient in appearance, bulk, massing and scale of the original building; and
   b) The proposal would not result in a disproportionate addition to the original building. The extension must constitute no more than a 30% volumetric increase over and above the original building*, and maximising the volume of the building to 30% will not be appropriate in every circumstance.

Infilling or Redevelopment of Previously Developed Sites

8. Proposals for the infilling or redevelopment of previously developed sites must not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. Developments that lead to over-intensification of the site will not be permitted.

Changes of Use

9. Changes of use of land must not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing use. Consideration will be given to the impacts on the Green Belt in terms of other harms set out in criterion 3 and of the impacts of associated works.

Agricultural Development

10. Development must not result in the loss of the best and most versatile agricultural land, disturb or damage soils of high environmental value, or impede the continuation of a lawfully existing agricultural development and/ or land use.

11. Proposals for farm diversification, including shops, processing, workshops or sports and recreation, must be ancillary to the existing main use. It must be demonstrated that the activity is related to the main farm use and that the proposal will not create the need for new buildings or supporting infrastructure and facilities that may harm rural character.

Equine Development

12. Proposals for the use of land for horses or for the erection of stables and associated facilities and/ or operational development will be carefully considered. Assessment will include the location/ layout of all structures, the need for the size of structures and buildings proposed to serve the use of the land, and the quality of the structures, buildings and landscaping proposed. Structures, engineering works and buildings serving equine uses should be removed from the site when they are no longer in use and are no longer required to serve the equine use of the land.

Development for Outdoor Sport and Recreation

13. Proposals for outdoor sport and recreation must not adversely impact on the character and amenity of the locality or result in the deterioration of the land, landscape or biodiversity. The scale, siting, design, use and level of activity of built recreation development, together with the supporting infrastructure and services, will be taken into account when assessing the impact of a proposal.

14. Supporting infrastructure and facilities must not unacceptably harm local character. They must be directly associated with the main use and be of a scale, quality and design to minimise their impact.

Policy M15: Biodiversity and Landscape

1. Development on sites designated for their biodiversity value will not be granted planning permission unless it can be clearly demonstrated that the biodiversity value will not be adversely affected by the proposals. Proposed development located on or in close proximity to designated sites, priority or other irreplaceable habitats or priority species, or with potential effects on them, must demonstrate that it will not adversely impact on the biodiversity value or ecological pathways. Residential developments of more than 15 dwellings located within 10km of the North Kent Special Protection Areas and Ramsar sites will be subject to screening and, if necessary, assessment under the Habitats Regulations. This may require the implementation of mitigation measures to ensure that there are no likely significant effects on the protected features of those sites.

2. Developments will be expected to protect and enhance biodiversity. In the event that development adversely affects any existing habitats, this must be replaced by compensatory habitat of a similar type, size and condition in close proximity to that which is being lost. The new national biodiversity net gain requirements will apply to all applicable developments. Local delivery of net gains should preferably be made by enhancing existing habitats and/ or creating new habitats on-site or, in cases where this is not achievable, off-site within the Biodiversity Opportunity Areas. These will need to be informed by and link to the Dartford Green Grid network and any Local Nature Recovery Strategy.

3. All new developments should be designed and laid out in a way which is sympathetic to their landscape setting. Major developments will be expected to deliver a landscaping scheme that is visually attractive, enhances biodiversity, uses native species, incorporates sustainable drainage measures, and helps to mitigate and adapt to climate change. This will need to incorporate the following elements:
    a) New trees and other landscape features should be used to create attractive new streets and provide appropriate natural shading on buildings, at street level and on open spaces.
    b) Planting of particular species should be considered to reduce the impact of air pollution.
    c) Management and maintenance of the landscape for the lifetime of the development will be required to ensure that landscape and biodiversity features are maintained.

4. In all development proposals, including works to trees protected under a Tree Preservation Order, existing tree coverage, hedgerows and other landscape features should be retained wherever possible. If retention is demonstrated not to be feasible and/ or removal is justified, replacement provision should be of an appropriate native tree species or landscape feature which reflects the maturity, canopy cover and location of that being replaced.

APPENDIX TWO

Michael Mansell vs Tonbridge and Malling Borough Council: [2017] EWCA Civ 1314

Court of Appeal Judgement

Neutral Citation Number: [2017] EWCA Civ 1314

Case No: C1/2016/4488

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MR JUSTICE GARNHAM
[2016] EWHC 2832 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 September 2017

Before:

The Chancellor of the High Court
Lord Justice Lindblom
and
Lord Justice Hickinbottom

- -

Between:

Michael Mansell	**Appellant**
- and -	
Tonbridge and Malling Borough Council	**Respondent**
- and -	
(1) Croudace Portland	**Interested**
(2) The East Malling Trust	**Parties**

- -
- -

Ms Annabel Graham Paul (instructed by **Richard Buxton Environmental and Public Law**)
for the **Appellant**
Mr Juan Lopez (instructed by **Tonbridge and Malling Borough Council Legal Services**)
for the **Respondent**
The interested parties did not appear and were not represented

Hearing date: 4 July 2017

- -

Judgment Approved by the court
for handing down
(subject to editorial corrections)

Lord Justice Lindblom:

Introduction

1. Should the judge in the court below have quashed a local planning authority's grant of planning permission for the redevelopment of the site of a large barn and a bungalow to provide four dwellings? That is what we must decide in this appeal. It is contended that the authority misdirected itself in considering a "fallback position" available to the landowner, and also that it misapplied the "presumption in favour of sustainable development" in the National Planning Policy Framework ("the NPPF") – a question that can now be dealt with in the light of this court's recent decision in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893.

2. The appellant, Mr Michael Mansell, appeals against the order of Garnham J., dated 10 November 2016, dismissing his claim for judicial review of the planning permission granted on 13 January 2016 by the respondent, Tonbridge and Malling Borough Council, for development proposed by the first interested party, Croudace Portland, on land owned by the second interested party, the East Malling Trust, at Rocks Farm, The Rocks Road, East Malling. The proposal was to demolish the barn and the bungalow on the land and to construct four detached dwellings, with garages and gardens. Mr Mansell lives in a neighbouring property, at 132-136 The Rocks Road – a grade II listed building. He was an objector.

3. It was common ground that the proposal was in conflict with the development plan. Rocks Farm is outside the village of East Malling to its south-east, within the "countryside" as designated in the Tonbridge and Malling Borough Core Strategy. The site of the proposed development extends to about 1.3 hectares. The barn, about 600 square metres in area, had once been used to store apples. The bungalow was lived in by a caretaker. The application for planning permission came before the council's Area 3 Planning Committee on 7 January 2016. In his reports to committee the council's planning officer recommended that planning permission be granted, and that recommendation was accepted by the committee. The officer guided the members on the "fallback position" that was said to arise, at least partly, through the "permitted development" rights for changes of use from the use of a building as an agricultural building to its use as a dwelling-house, under Class Q in Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO").

4. Mr Mansell's challenge to the planning permission attacked the officer's approach to the "fallback position" and his assessment of the proposal on its planning merits. Garnham J. dismissed the claim for judicial review on all grounds. Permission to appeal was granted by McCombe L.J. on 21 February 2017.

The issues in the appeal

5. The appeal raises three main issues:

    (1) whether the council correctly interpreted and lawfully applied the provisions of Class Q in the GPDO (ground 1 in the appellant's notice);

(2) whether the council was entitled to accept there was a real prospect of the fallback development being implemented (ground 2); and
(3) whether the council misunderstood or misapplied the "presumption in favour of sustainable development" (ground 3).

Did the council correctly interpret and lawfully apply the provisions of Class Q?

6. When the council determined the application for planning permission the permitted development rights under Class Q were in these terms, so far is relevant here:

> "Q. Permitted development
>
> Development consisting of –
> (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and
> (b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.
>
> Q.1 Development not permitted
>
> Development is not permitted by Class Q if –
> …
> (b) the cumulative floor space of the existing building or buildings changing use under Class Q within an established agricultural unit exceeds 450 square metres;
> (c) the cumulative number of separate dwellinghouses developed under Class Q within an established agricultural unit exceeds 3;
> …
> (g) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;
> (h) the development under Class Q (together with any previous development under Class Q) would result in a building or buildings having more than 450 square metres of floor space having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;
> … ."

The permitted development rights under Class Q are subject to several "Conditions" in paragraph Q.2, none of them controversial here.

7. In section 6 of his main report to committee for its meeting on 7 January 2016 the officer dealt at length with the "Determining Issues". In discussing those issues he considered the "fallback position" in paragraphs 6.14 to 6.19:

> "6.14 In practical terms for this site, the new permitted development rights mean that the existing agricultural barn could be converted into three residential units. Some representations point out that only a proportion of the barn could be

converted in such a manner (up to 450sqm) but the remainder – a small proportion in terms of the overall footprint – could conceivably be left unconverted and the resultant impacts for the site in terms of the amount of residential activity would be essentially the same. The building could be physically adapted in certain ways that would allow for partial residential occupation and the extensive area of hardstanding which exists between the building and the northern boundary could be used for parking and turning facilities.

6.15 The existing bungalow within the site could be replaced in accordance with policy CP14 with a new residential building provided that it was not materially larger than the existing building. Such a scenario would, in effect, give rise to the site being occupied by a total of four residential units albeit of a different form and type to that proposed by this application. This provides a realistic fallback position in terms of how the site could be developed.

6.16 I appreciate that discussion concerning realistic 'fallback' positions is rather complicated but, in making an assessment of any application for development, we are bound to consider what the alternatives might be for a site: in terms of what could occur on the site without requiring any permission at all (historic use rights) or using permitted development rights for alternative forms of development.

6.17 In this instance a scheme confined to taking advantage of permitted development would, in my view, be to the detriment of the site as a whole in visual terms. Specifically, it would have to be developed in a contrived and piecemeal fashion in order to conform to the requirements of the permitted development rights, including the need to adhere to the restrictions on the floor space that can be converted using the permitted development rights.

6.18 I would also mention that should the applicant wish to convert the entire barn for residential purposes, above the permitted development thresholds, such a scheme (subject to detailed design) would wholly accord with adopted policy. Again, this provides a strong indicator as to how the site could be developed in an alternative way that would still retain the same degree of residential activity as proposed by the current application but in a more contrived manner and with a far more direct physical relationship with the nearest residential properties.

6.19 The current proposal therefore, in my view, offers an opportunity for a more comprehensive and coherent redevelopment of the site as opposed to a more piecemeal form of development that would arise should the applicant seek to undertake to implement permitted development rights."

8. For Mr Mansell, Ms Annabel Graham Paul submitted to us, as she did to the judge, that the officer's advice in those six paragraphs betrays a misunderstanding of the provisions of Class Q in the GPDO, in particular sub-paragraphs Q.1(b) and Q.1(h). She argued that the restriction to 450 square metres in sub-paragraph Q.1(b) applies to the total floor space of the agricultural building or buildings in question, not to the floor space actually "changing use". Before the judge, though not in her submissions in this court, Ms Graham Paul sought to bolster that contention with a passage in an inspector's decision letter

relating to a proposal for development on a site referred to by the judge as "Mannings Farm". The inspector had observed that "[the] floor space of the existing building … far exceeds the maximum permitted threshold, of 450 sq m, as set out in [sub-paragraph] Q.1(b)", and that "the intention is to reduce the size of the building as part of the proposal but Q.1(b) clearly relates to existing floorspace and there is no provision in the GPDO for this to be assessed on any other basis".

9. Garnham J. rejected Ms Graham Paul's argument. In paragraph 30 of his judgment he said:

> "30. In my judgment this construction of paragraph Q.1(b) fails because it disregards the definition section of the Order. The critical expression in subparagraph (b) is "*the existing building or buildings*". Paragraph 2 of the Order defines "*building*" as "*any part of a building*". Accordingly, the paragraph should be read as meaning "*the cumulative floor space of the existing building or any part of the building changing use* …". If that is right, it is self-evident that the limit on floor space relates only to that part of the building which is changing use."

10. The judge found support for that conclusion in several inspectors' decisions, one of them a decision on proposed development at Bennetts Lane, Binegar in Somerset. In correspondence in that case the Department for Communities and Local Government had pointed to the definition of a "building" in the "Interpretation" provisions in paragraph 2 of the GPDO. Because that definition included "any part of a building", their view was that "in the case of a large agricultural building, part of it could change use … and the rest remain in agricultural use" (paragraph 32 of the judgment). However, as was accepted on both sides in this appeal, the court must construe the provisions of the GPDO for itself, applying familiar principles of statutory interpretation.

11. In paragraph 34 of his judgment Garnham J. said this:

> "34. Ms Graham Paul contends that that construction of subparagraph (b) means that it adds nothing to subparagraph (h). I can see the force of that submission and, as a matter of first principle, statutory provisions should be construed on the assumption that the draftsman was intending to add something substantive by each relevant provision. Nonetheless, giving the interpretation section its proper weight, I see no alternative to the conclusion that Class Q imposes a floor space limit on those parts of the buildings which will change use as a result of the development. In those circumstances, I reject the Claimant's challenge to the Officer's construction of the Class Q provisions in the 2015 Order."

12. Ms Graham Paul submitted that this interpretation of the relevant provisions would render sub-paragraph Q.1(b) of Class Q redundant, because sub-paragraph Q.1(h) already limits the residential floor space resulting from the change of use under Class Q to a maximum of 450 square metres. The statutory provisions for permitted development rights in the GPDO ought to be interpreted consistently. The interpretation favoured by the judge, submitted Ms Graham Paul, depends on reading into sub-paragraph Q.1(b) the additional words "any part of a building" after the words "the existing building or buildings", which, she said, is wholly unnecessary. Statutory provisions ought to be construed on the

assumption that the draftsman was intending to add something of substance in each provision. The judge's interpretation offends that principle, said Ms Graham Paul, because it would, in effect, subsume sub-paragraph Q.1(b) into sub-paragraph Q.1(h). Only her interpretation of sub-paragraph Q.1(b) would enable sub-paragraph Q.1(h) to add something of substance to the provisions of Class Q. And in principle, Ms Graham Paul argued, it makes good sense to prevent, without an express grant of planning permission, the partial conversion of large agricultural buildings to accommodate residential use, leaving other parts of the building either in active agricultural use or simply vacant.

13. Ms Graham Paul sought to reinforce these submissions by pointing to other provisions of the GPDO where similar wording is used: Class M, which provides permitted development rights for changes of use of buildings in retail or betting office or pay day loan shop use to Class C3 use, and states in sub-paragraph M.1(c) that development is not permitted if "the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres"; and Class N, which provides permitted development rights for changes of use from specified sui generis uses, including use as an amusement arcade or centre, and use as a casino, to Class C3 use, and states in sub-paragraph N.1(b) that development is not permitted if "the cumulative floor space of the existing building changing use under Class N exceeds 150 square metres".

14. I cannot accept Ms Graham Paul's argument. I think the judge's understanding of Class Q was correct. The provisions of Class Q relating to the scope of permitted development rights should be given their literal meaning. When this is done, they make perfectly good sense in their statutory context and do not give rise to any duplication or redundancy.

15. The focus here is on the provisions as to development that is "not permitted" under paragraph Q.1, and in particular the provisions of sub-paragraphs Q.1(b) and Q.1(h). Sub-paragraph Q.1(b) establishes the "cumulative floor space of the existing building or buildings" that is "changing use under Class Q …". The limit on such "cumulative floor space …" is 450 square metres. This restriction is stated to be a restriction on the change of use, not on the size of the building or buildings in which the change of use occurs. Sub-paragraph Q.1(b) relates to a single act of development in which the building in question, or part of it, is "changing use". The floor space limit set by it relates not to the total floor space of the building or buildings concerned. It relates, as one would expect, to the permitted development rights themselves, which apply to the "cumulative" amount of floor space actually "changing use under Class Q". The use of the word "cumulative" in this context – as elsewhere in the GPDO – is perfectly clear. It connotes, in relevant circumstances, the adding together of separate elements of floor space within a building or buildings, or, again in relevant circumstances, a single element of floor space, which in either case must not exceed 450 square metres. The total floor space of the building or buildings concerned may itself be more than 450 square metres. But the cumulative amount of floor space whose use is permitted to be changed within that total floor space must not exceed 450 square metres.

16. This interpretation of sub-paragraph Q.1(b) avoids arbitrary consequences in the application of the permitted development rights under Class Q. It does not make the availability of those rights for a qualifying "agricultural building" depend on the total floor space of the building itself. It would not, therefore, create a situation in which the permitted development rights under Class Q would be available for a building whose total floor space was 450 square metres, but not for a building with a floor space of 451 square

metres or an area greater than that. If the consequence is that the permitted development rights, when fully used, would result in a building partly in use as a dwelling-house and partly still in agricultural use, that is an outcome contemplated by the GPDO. I see no difficulty in that.

17. Had the draftsman intended to confer permitted development rights under Class Q only to a building or buildings whose total floor space was not more than 450 square metres, the relevant provision would have been framed differently. There would have been no need to use the word "cumulative" or some other such word. The provision would simply have stated, for example, "the total floor space of the existing building or buildings within an established agricultural unit in which the change of use under Class Q is being undertaken does not exceed 450 square metres". But that is not what sub-paragraph Q.1(b) says, or, in my view, what it means.

18. Nor can I see how an interpretation of sub-paragraph Q.1(b) in which the restriction of 450 square metres applies not to the floor space actually changing use but to the total floor space of the building or buildings in which the change of use is taking place can be reconciled with the definition of "building" in paragraph 2 of the GPDO as including "part of a building". Unless one disapplies that part of the definition of a building to sub-paragraph Q.1(b), one must read that provision as meaning "the cumulative floor space of the existing building or buildings or part of a building changing use under Class Q … exceeds 450 square metres" (my emphasis). That understanding of sub-paragraph Q.1(b) would not sit happily with the concept that the restriction of 450 square metres applies not to the floor space changing use but to the total floor space of the building itself.

19. My interpretation of sub-paragraph Q.1(b) does not leave sub-paragraph Q.1(h) redundant. Sub-paragraph Q.1(h) achieves a different purpose. It prevents, for example, a change of use as "permitted development" in an agricultural building of which part is already in Class C3 use, or an aggregation of successive changes of use through separate acts of development, that would result in more than 450 square metres of floor space in a building or buildings being in Class C3 use. Neither of those outcomes would necessarily be prevented by sub-paragraph Q.1(b).

20. Finally, there is nothing in the provisions of Class M and Class N, or in any other provision of the GPDO, to suggest a different understanding of Class Q. The provisions in sub-paragraphs M.1(c) and N.1(b) also contain the word "cumulative" in referring to the floor space "changing use", not to the total floor space of the "existing building or buildings" in which the change of use is taking place. And in both Class M and Class N the draftsman has also included a provision – respectively in sub-paragraphs M.1(d) and N.1(c) – stating that "the development (together with any previous development under [the relevant class]) would result in more than 150 square metres of floor space in the building having changed use under [the relevant class]". Although we are not deciding those questions, it seems to me that the same analysis would hold good for those provisions too.

21. In my view, therefore, the officer did not misrepresent the permitted development rights under Class Q in his advice to the committee on the "fallback position". The provisions of Class Q were correctly interpreted and lawfully applied.

Was the council entitled to accept that there was a real prospect of the fallback development being implemented?

22. Garnham J. accepted that the council was entitled to conclude that there was a "realistic" fallback. In paragraphs 36 and 37 of his judgment he said:

> "36. In paragraph 6.15 of the report the Officer concluded that the fall back position was "realistic". In my judgment he was entitled so to conclude. The evidence establishes that there had been prior discussions between the Council and the Planning Agent acting for the East Malling Trust who owns the site. It was crystal clear from that contact that the Trust were intending, one way or another to develop the site. Alternative proposals had been advanced seeking the Council's likely reaction to planning applications. It is in my view wholly unrealistic to imagine that were all such proposals to be turned down the owner of the site would not take advantage of the permitted development provided for by Class Q to the fullest extent possible.
>
> 37. It was not a precondition to the Council's consideration of the fall back option that the interested party had made an application indicating an intention to take advantage of Class Q. There was no requirement that there be a formulated proposal to that effect. The officer was entitled to have regard to the planning history which was within his knowledge and the obvious preference of the Trust to make the most valuable use it could of the site."

23. The judge accepted the submission of Mr Juan Lopez for the council that the committee did not have to ignore fallback development that included elements for which planning permission would be required and had not yet been granted. He noted that "[the] building could be converted, so as to provide dwelling houses limited in floor space to 450m^2 by the construction of internal walls without using the whole of the internal space of the barn" (paragraph 40). And he went on to say (in paragraph 41):

> "41. In my judgment therefore, it would have been unrealistic to have concluded that, were the present application for permission to be rejected, the interested party would do nothing to develop this site. On the contrary it was plain that development was contemplated and that some development could have taken place pursuant to Class Q. The Council was entitled to have regard to the fact that there might be separate applications for permission in respect of some elements of the scheme and to advise that appropriate regard must be had to material planning considerations including the permitted development fall back position. Accordingly I reject the second element of the Claimant's challenge on ground 1."

24. Ms Graham Paul criticized the judge's approach. She said it would enable permitted development rights under the GPDO to be relied on as a fallback even where there was no evidence that the landowner or developer would in fact resort to such development. The judge did not consider whether the council had satisfied itself that there was a "real prospect" of the fallback development being implemented (see the judgment of Sullivan L.J. in *Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government* [2009] J.P.L. 1326, at paragraph 21). The "real prospect", submitted Ms Graham Paul, must relate to a particular fallback development contemplated by the

landowner or developer, not merely some general concept of development that might be possible on the site. Only a specific fallback makes it possible for a comparison to be made between the planning merits of the development proposed and the fallback development. The relevance of a fallback depends on there being a "finding of actually intended use as opposed to a mere legal or theoretical entitlement" (see the judgment of Mr Christopher Lockhart-Mummery Q.C., sitting as a deputy judge of the High Court, in *R. v Secretary of State for the Environment and Havering London Borough Council, ex parte P.F. Ahern (London) Ltd.* [1998] Env. L.R. 189, at p.196).

25. Ms Graham Paul said there was nothing before the council to show that either the East Malling Trust or Croudace Portland contemplated the site being developed in the way the officer described in his report. On the contrary, the conversion of the barn for residential use – as opposed to its demolition and replacement with new dwellings – seems to have been regarded as impracticable or uneconomic. The East Malling Trust's planning consultant, Broadlands Planning Ltd., had submitted a "Planning Statement" to the council in December 2013, seeking the council's advice before the submission of an application for planning permission. In that document two possible schemes for the site were referred to (at paragraph 26). Neither could have been achieved using permitted development rights. One involved the retention of the barn and its conversion to four dwelling-houses, the other a "wholesale redevelopment of the site", perhaps with the replacement of the bungalow, to create five new dwellings. In a letter to Broadlands Planning Ltd. dated 30 January 2014 the council's Senior Planning Officer, Ms Holland, said she was "not convinced that the proposal would result in the building being converted, but rather [that] large portions would be removed and a new building created". And the East Malling Trust's marketing agent, Smiths Gore, in a letter to potential developers dated 27 February 2014, suggested it was "unlikely that a developer would contemplate the conversion of the Apple Store". There was, said Ms Graham Paul, no other contemporaneous evidence to lend substance to the fallback scheme to which the officer referred in his report, and no evidence of the council trying to find out what, if anything, was actually contemplated. The evidence did not demonstrate a "real prospect" – as opposed to a merely "theoretical" prospect – of such a development being carried out. The judge should have recognized that the fallback development referred to in the officer's report was not a material consideration.

26. I cannot accept that argument. In my view the officer did not misunderstand any principle of law relating to a fallback development. His advice to the members was sound.

27. The status of a fallback development as a material consideration in a planning decision is not a novel concept. It is very familiar. Three things can be said about it:

    (1) Here, as in other aspects of the law of planning, the court must resist a prescriptive or formulaic approach, and must keep in mind the scope for a lawful exercise of planning judgment by a decision-maker.

    (2) The relevant law as to a "real prospect" of a fallback development being implemented was applied by this court in *Samuel Smith Old Brewery* (see, in particular, paragraphs 17 to 30 of Sullivan L.J.'s judgment, with which the Master of the Rolls and Toulson L.J. agreed; and the judgment of Supperstone J. in *R. (on the application of Kverndal) v London Borough of Hounslow Council* [2015] EWHC 3084 (Admin), at paragraphs 17 and 42 to 53). As

Sullivan L.J. said in his judgment in *Samuel Smith Old Brewery*, in this context a "real" prospect is the antithesis of one that is "merely theoretical" (paragraph 20). The basic principle is that "… for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice" (paragraph 21). Previous decisions at first instance, including *Ahern* and *Brentwood Borough Council v Secretary of State for the Environment* [1996] 72 P. & C.R. 61 must be read with care in the light of that statement of the law, and bearing in mind, as Sullivan L.J. emphasized, "… "fall back" cases tend to be very fact-specific" (ibid.). The role of planning judgment is vital. And "[it] is important … not to constrain what is, or should be, in each case the exercise of a broad planning discretion, based on the individual circumstances of that case, by seeking to constrain appeal decisions within judicial formulations that are not enactments of general application but are themselves simply the judge's response to the facts of the case before the court" (paragraph 22).

(3) Therefore, when the court is considering whether a decision-maker has properly identified a "real prospect" of a fallback development being carried out should planning permission for the proposed development be refused, there is no rule of law that, in every case, the "real prospect" will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker's planning judgment in the particular circumstances of the case in hand.

28. In this case, in the circumstances as they were when the application for planning permission went before the committee, it was plainly appropriate, indeed necessary, for the members to take into account the fallback available to the East Malling Trust as the owner of the land, including the permitted development rights arising under Class Q in the GPDO and the relevant provisions of the development plan, in particular policy CP14 of the core strategy. Not to have done so would have been a failure to have regard to a material consideration, and thus an error of law.

29. That the East Malling Trust was intent upon achieving the greatest possible value from the redevelopment of the site for housing had by then been made quite plain. The "Planning Statement" of December 2013 had referred to two alternative proposals for the redevelopment of the site (paragraph 26), pointing out that both "[the] redevelopment and replacement of [the] bungalow" and "[the] conversion of the existing storage and packing shed" were "permissible in principle" (paragraph 35). The firm intention of the East Malling Trust to go ahead with a residential development was entirely clear at that stage.

30. In my view it was, in the circumstances, entirely reasonable to assume that any relevant permitted development rights by which the East Malling Trust could achieve residential development value from the site would ultimately be relied upon if an application for planning permission for the construction of new dwellings were refused. That was a simple and obvious reality – whether explicitly stated by the East Malling Trust or not. It was accurately and quite properly reflected in the officer's report to committee. It is

reinforced by evidence before the court – in the witness statement of Mr Humphrey, the council's Director of Planning, Housing and Environmental Health, dated 18 March 2016 (in paragraphs 6 to 24), in the witness statement of Mr Wilkinson, the Land and Sales Manager of Croudace Portland, also dated 18 March 2016 (in paragraphs 4 to 7), in the first witness statement of Ms Flanagan, the Property and Commercial Director of the East Malling Trust, dated 17 March 2016 (in paragraphs 4 to 6), and in Ms Flanagan's second witness statement, dated 17 June 2016 (in paragraphs 2 to 5).

31. As Ms Flanagan says (in paragraph 2 of her second witness statement):

> "2. At paragraph 6 of my first witness statement, I state that there was no doubt that the Trust would consider alternatives to the preferred scheme. To further amplify, the Trust (as a charitable body) is tasked with obtaining best value upon the disposal of its assets. A number of alternative uses were considered for the site, including industrial uses. However the Board was aware that a residential scheme of some type would provide the best value for the application land, even were that to include a conversion of the existing agricultural building."

Ms Flanagan goes on to refer to Smiths Gore's letter of 27 February 2014 (in paragraphs 4 and 5):

> "4. … This letter … states that at that time [Smith Gore's] opinion was that it was unlikely that a scheme of conversion would be contemplated by any developer. However, this letter pre-dated the permitted development rights that subsequently came into effect in April 2014. By the time the planning application had formally been submitted, these permitted development rights were in effect.
>
> 5. Had no other scheme proven acceptable in planning terms, and if planning permission had been refused for the development the subject of the planning application, the Trust would have built out a "permitted development" scheme to the fullest extent possible in order to realise the highest value for the land, in order to thereafter seek disposal to a developer."

32. That evidence is wholly unsurprising. And it confirms the East Malling Trust's intentions as they were when the council made its decision to grant planning permission in January 2016, by which time the current provisions for "permitted development" under Class Q of the GPDO had come into effect. It states the East Malling Trust's position as landowner at that stage – as opposed to the view expressed by an officer of the council, and an opinion by a marketing agent in a letter to developers, almost two years before. It is consistent with what was being said on behalf of the East Malling Trust in its dealings with the council from the outset – in effect, that the site was going to be redeveloped for housing even if this had to involve the conversion and change of use of the barn to residential use. It reflects the fiduciary duty of the trustees. And it bears out what the council's officer said about the "fallback position" in his report to committee.

33. I do not see how it can be said that the officer's assessment of the "fallback position", which the committee adopted, offends any relevant principle in the case law – in particular the concept of a "real prospect" as explained by Sullivan L.J. in *Samuel Smith Old*

Brewery. It was, in my view, a faithful application of the principles in the authorities in the particular circumstances of this case. It also demonstrates common sense.

34. The officer did not simply consider the fallback in a general way, without regard to the facts. He considered it in specific terms, gauging the likelihood of its being brought about if the council were to reject the present proposal. In the end, of course, these were matters of fact and planning judgment for the committee. But the officer's advice in paragraphs 6.14 to 6.19 of his report was, I believe, impeccable. He was right to say, in paragraph 6.14, that the "new permitted development rights" – under Class Q in the GPDO – would enable the barn to be converted into three residential units; in the same paragraph, that the building "could be physically adapted in certain ways that would allow for partial residential occupation …"; and, in paragraph 6.15, that the bungalow "could be replaced in accordance with policy CP14 with a new residential building provided that it was not materially larger than the existing building". He was also right to say, therefore, that the site could be developed for "four residential units albeit of a different form and type to that proposed by this application". All of this was factually correct, and represented what the council knew to be so. It did not overstate the position. It went no further than the least that could realistically be achieved by way of a fallback development – through the use of permitted development rights under Class Q and an application for planning permission complying with policy CP14.

35. The officer also guided the committee appropriately in what he said about the realism of the "fallback position". At the end of paragraph 6.15 of his report he said that the fallback development he had described was "a realistic fallback position in terms of how the site could be developed". He was well aware of the need to take into account only a fallback development that was truly "realistic", not merely "theoretical". He came back, in paragraph 6.16, to the question of "realistic 'fallback' positions", again reminding the members that this was what had to be considered. He went on to acknowledge, rightly, that the council had to consider what could be achieved "using permitted development rights for alternative forms of development". The context for this advice was that in his view, as he said in paragraph 6.15, he was dealing with "a realistic fallback position". He went on in paragraph 6.17 to consider what "would" happen if a scheme taking advantage of permitted development rights came forward. And in paragraph 6.18 his advice was that a redevelopment involving the conversion of "the entire barn for residential purposes, above the permitted development thresholds … would wholly accord with adopted policy". That was a legally sound planning judgment. The same may also be said of the officer's conclusion in paragraph 6.19, where he compared the proposal before the committee with the "more piecemeal form of development that would arise should the applicant seek to undertake to implement permitted development rights".

36. In short, none of the advice given to the council's committee on the "fallback position" can, in the particular circumstances of this case, be criticized. It was, I think, unimpeachable.

37. In my view, therefore, the council was entitled to accept that there was a "real prospect" of the fallback development being implemented, and to give the weight it evidently did to that fallback as a material consideration. In doing so, it made no error of law.

Was the judge right to conclude that the council did not misunderstand or misapply the "presumption in favour of sustainable development" in the NPPF?

38. Paragraph 14 of the NPPF states:

> "14. At the heart of [the NPPF] is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.
>
> …
>
> For decision-taking this means:
>
> - approving development proposals that accord with the development plan without delay; and
> - where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
>   – any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole; or
>   – specific policies in [the NPPF] indicate development should be restricted."

39. In *Barwood v East Staffordshire Borough Council* this court stated its understanding of the policy for the "presumption in favour of sustainable development" in the NPPF, and how that presumption is intended to operate (see paragraphs 34 and 35 of my judgment). In doing so, it approved the relevant parts of the judgment of Holgate J. in *Trustees of the Barker Mill Estates v Secretary of State for Communities and Local Government* [2016] EWHC 3028 (Admin) (in particular paragraphs 126, 131, 136, and 140 to 143). Three simple points emerged (see paragraph 35 of my judgment). The first and second of those three points need not be set out again here. The third, however, is worth repeating – because it bears on the issue we are considering now. I shall emphasize the most important principle for our purposes here:

> " …
>
> (3) <u>When the section 38(6) duty is lawfully performed, a development which does not earn the "presumption in favour of sustainable development" – and does not, therefore, have the benefit of the "tilted balance" in its favour – may still merit the grant of planning permission. On the other hand, a development which does have the benefit of the "tilted balance" may still be found unacceptable, and planning permission for it refused … . This is the territory of planning judgment, where the court will not go except to apply the relevant principles of public law</u> … . The "presumption in favour of sustainable development" is not irrebuttable. Thus, in a case where a proposal for the development of housing is in conflict with a local plan whose policies for the supply of housing are out of date, the decision-maker is left to judge, in the particular circumstances of the case in hand, how much weight should be given to that conflict. The absence of a five-year supply of housing land will not necessarily be conclusive in favour of the grant of planning permission. This is not a matter of law. It is a matter of planning judgment (see paragraphs 70 to

74 of the judgment in [*Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin)]).”

40. The judgments in this court in *Barwood v East Staffordshire Borough Council* entirely supersede the corresponding parts of several judgments at first instance – including, most recently, *Reigate and Banstead Borough Council v Secretary of State for Communities and Local Government* [2017] EWHC 1562 (Admin). In those cases, judges in the Planning Court have offered various interpretations of NPPF policy for the “presumption in favour of sustainable development”, and have explained how, in their view, the presumption should work. There is no need for that to continue. After the decision of the Court of Appeal in *Barwood v East Staffordshire Borough Council*, it is no longer necessary, or appropriate, to cite to this court or to judges in the Planning Court any of the first instance judgments in which the meaning of the presumption has been considered.

41. The Planning Court – and this court too – must always be vigilant against excessive legalism infecting the planning system. A planning decision is not akin to an adjudication made by a court (see paragraph 50 of my judgment in *Barwood v East Staffordshire Borough Council*). The courts must keep in mind that the function of planning decision-making has been assigned by Parliament, not to judges, but – at local level – to elected councillors with the benefit of advice given to them by planning officers, most of whom are professional planners, and – on appeal – to the Secretary of State and his inspectors. They should remember too that the making of planning policy is not an end in itself, but a means to achieving reasonably predictable decision-making, consistent with the aims of the policy-maker. Though the interpretation of planning policy is, ultimately, a matter for the court, planning policies do not normally require intricate discussion of their meaning. A particular policy, or even a particular phrase or word in a policy, will sometimes provide planning lawyers with a “doctrinal controversy”. But even when the higher courts disagree as to the meaning of the words in dispute, and even when the policy-maker’s own understanding of the policy has not been accepted, the debate in which lawyers have engaged may turn out to have been in vain – because, when a planning decision has to be made, the effect of the relevant policies, taken together, may be exactly the same whichever construction is right (see paragraph 22 of my judgment in *Barwood v East Staffordshire Borough Council*). That of course may not always be so. One thing, however, is certain, and ought to be stressed. Planning officers and inspectors are entitled to expect that both national and local planning policy is as simply and clearly stated as it can be, and also – however well or badly a policy is expressed – that the court’s interpretation of it will be straightforward, without undue or elaborate exposition. Equally, they are entitled to expect – in every case – good sense and fairness in the court’s review of a planning decision, not the hypercritical approach the court is often urged to adopt.

42. The principles on which the court will act when criticism is made of a planning officer’s report to committee are well settled. To summarize the law as it stands:

    (1) The essential principles are as stated by the Court of Appeal in *R. v Selby District Council, ex parte Oxton Farms* [1997] E.G.C.S. 60 (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court, notably by Sullivan L.J. in *R. (on the application of Siraj) v Kirklees Metropolitan Borough Council* [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J., as he then was, in *R. (on the application of*

Zurich Assurance Ltd., t/a Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708 (Admin), at paragraph 15).

(2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R. (on the application of Morge) v Hampshire County Council* [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in *R. v Mendip District Council, ex parte Fabre* (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in *Palmer v Herefordshire Council* [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.

(3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council* [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere.

43. Was the officer's advice to the members in this case flawed in that way? I do not think so.

44. In paragraph 6.1 of his report the officer said:

"6.1 As Members are aware, the Council in its role as Local Planning Authority is required to determine planning applications and other similar submissions in accordance with the Development Plan in force unless material considerations indicate otherwise. … The NPPF and the associated [Planning Practice Guidance] are important material considerations."

He went on to consider the relevant policies of the development plan, in particular policies CP11, CP12, CP13 and CP14 of the core strategy, and then advised the committee, in paragraph 6.6:

> "6.6 With the above policy context in mind, it is clear that the proposal relates to new development outside the village confines (on land which is not defined as "previously developed" for the purposes of applying NPPF policy), is not part of a wider plan of farm diversification and is not intended to provide affordable housing as an exceptions site. Consequently, the proposed development falls outside of the requirements of these policies and there is an objection to the principle of the proposed development in the broad policy terms."

and in paragraph 6.7:

> "6.7 It is therefore necessary to establish whether any other material planning considerations exist that outweigh the policy objections to the scheme in these particular circumstances."

45. In paragraph 6.8 the officer acknowledged, in the light of the relevant guidance in the Planning Practice Guidance, that "the policies contained in … the NPPF are material considerations and must be taken into account", and, in paragraph 6.9, that since the core strategy had been adopted in 2007 it was "necessary to establish how consistent the above policies are with the policies contained within the NPPF". His advice in paragraphs 6.10 to 6.13 of his report was this:

> "6.10 With this in mind, it must be noted that paragraph 49 of the NPPF states that applications for new housing development should be considered in the context of the presumption in favour of sustainable development. Paragraph 50 of the NPPF emphasises the importance of providing a wide choice of high quality homes, to widen opportunities for home ownership and create sustainable, inclusive and mixed communities. Paragraph 55 states that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.
>
> 6.11 These criteria all demonstrate a clear government momentum in favour of sustainable development to create new homes and drive economic development. The proposed development would create four high quality new homes on the very edge of an existing village settlement.
>
> 6.12 A further indicator of such emphasis is borne out of the recent changes to the regime of permitted development rights set out by national government by the Town and Country Planning (General Permitted Development) Order 2015. This allows for far more development to take place without the need for planning permission from Local Authorities and generally provides a steer as to government's thinking on how to boost the country's economy through the delivery of new homes.
>
> 6.13 Such continued emphasis from government is a material consideration that must be balanced against the policy context set out in the TMBCS."

46. I have already referred to the officer's advice on the "fallback position" in paragraphs 6.14 to 6.19 of his report. In paragraphs 6.20 to 6.42 he considered the planning merits of the proposal and its advantages by comparison with the fallback development, drawing the committee's attention to relevant policies both in the core strategy and in the NPPF. He advised that the design and density of the proposed development were acceptable and beneficial (paragraphs 6.20 to 6.23). In paragraph 6.24 he said:

> "6.24 With these considerations in mind, particularly the emphasis contained within the NPPF concerning sustainable development generally, the impetus behind the provision of new homes, the benefits of removing existing structures and the permitted development "fallback" position, it is my view that, on balance, other material considerations can weigh in favour of the grant of planning permission."

47. He concluded that the effects of the development on the settings of listed buildings and the setting of East Malling Conservation Area would not be harmful (paragraphs 6.25 to 6.30). He also found the proposed arrangements for access to the site and for car parking acceptable (paragraphs 6.31 to 6.36). He advised that "… the existing barn could be partially converted and the existing access retained for use by those units which arguably could have a greater impact on amenity in terms of activity, noise and disturbance than the proposed development simply by virtue of the greater degree of proximity to the existing residential properties" (paragraph 6.33). He told the committee that in his view it "would be counterproductive to seek affordable housing contributions as this would merely limit the ability of the Trust to recycle funds to provide wider support for the Trust" (paragraph 6.37). And the loss of Grade 2 agricultural land was "not … a justifiable reason to refuse planning permission …" (paragraph 6.39).

48. The final paragraph of the officer's report is paragraph 6.42, where he said this:

> "6.42 In conclusion, it is important to understand that the starting point for the determination of this planning application rests with the adopted Development Plan. Against that starting point there are other material planning considerations that must be given appropriate regard, not least the requirements set out within the NPPF which is an important material consideration and the planning and design of the proposal for the site in the context of the permitted development fallback position. The weight to attribute to each of those other material planning considerations, on an individual and cumulative basis, and the overall balance is ultimately a matter of judgement for the Planning Committee. My view is that the balance can lie in favour of granting planning permission."

49. In recording the argument on this issue in the court below, Garnham J. noted Ms Graham Paul's submission that "the presumption in favour of sustainable development set out in paragraph 14 of [the NPPF] was not operative" in this case – because the development plan was in place and up-to-date and the council was able to demonstrate a five-year supply of deliverable housing sites (paragraph 43 of the judgment). Ms Graham Paul had conceded that "sustainability may be capable of being a material consideration in considering a conflict with a development plan". What the officer had done in paragraph 6.10 of his report, said the judge, had been "to invite the committee to note the effect of paragraphs 49, 50 and 55 [of the NPPF]". It was not suggested that those paragraphs of the

NPPF had been misrepresented. Nor was it suggested that the officer had failed to point out that the proposed development "fell outside the local plan"; he had done that in paragraph 6.6 of his report. In those circumstances, said the judge, "it cannot sensibly be argued that the officer misled the committee in any material respect" (paragraph 47). The judge also rejected the submission that paragraphs 49, 50 and 55 of the NPPF were irrelevant. He observed that the NPPF "provides for a presumption in favour of sustainable development which it says should be seen "as a golden thread" running through decision-taking". He added that "[the] weight to be given to those considerations in any given case is a matter for the planning authority but it cannot, at least on facts such as the present, be said that the underlying principle is irrelevant" (paragraph 48). He rejected the submission that the officer had not justified the departure from the development plan. The officer's report, he said, "accurately and fairly sets out the competing considerations and it was a matter for the judgment of the planning authority how those considerations were resolved" (paragraph 49).

50. In the submissions they made to us at the hearing, though not in their respective skeleton arguments, both Ms Graham Paul and Mr Lopez recast their arguments in the light of what this court has now said about the "presumption in favour of sustainable development" in *Barwood v East Staffordshire Borough Council*, including the basic point that the presumption is contained solely in paragraph 14 of the NPPF (see paragraph 35 of my judgment in that appeal). They were right to do so.

51. It was common ground before us, as it was in the court below, that the "presumption in favour of sustainable development" did not apply to the proposal. And the council's officer did not advise the committee that it did. As Ms Graham Paul acknowledged, the only reference to the "presumption in favour of sustainable development" in the officer's report is in the first sentence of paragraph 6.10. But, she submitted, in view of what the officer said in that paragraph of the report, and also in paragraph 6.42, we should conclude that the committee took the presumption into account as a material consideration, which it ought it not to have done. Ms Graham Paul did not submit that the proposal was given the benefit of the so called "tilted balance". But she argued that the effect of the officer's advice was that the "presumption in favour of sustainable development" was one of the "requirements set out within the NPPF …", which the officer treated as "an important material consideration" and a significant factor weighing in favour of the proposal in the planning balance.

52. I disagree. In my view the argument fails on a straightforward reading of the officer's report, in the light of the judgments in this court in *Barwood v East Staffordshire Borough Council*. I do not accept that the officer counted the "presumption in favour of sustainable development" as a material consideration weighing in favour of planning permission being granted.

53. The reference to the "presumption in favour of sustainable development" in paragraph 6.10 of the officer's report is a quotation of the first sentence of paragraph 49 of the NPPF, not of paragraph 14. The quotation is correct. In the same paragraph of the report the officer also referred to two other passages of policy in the NPPF, namely paragraphs 50 and 55. The policies are correctly summarized. The common factor in those three passages of NPPF policy is not the "presumption in favour of sustainable development". It is the promotion, in national planning policy, of sustainable housing development. That this is

what the officer had in mind in this part of the report is very clear from what he went on to say in paragraphs 6.11, 6.12 and 6.13, and then in paragraph 6.24.

54. In those paragraphs the officer was not purporting to apply the "presumption in favour of sustainable development" to the proposal. Nor did he advise the committee that the presumption was engaged, or that it was, in itself, a material consideration weighing in favour of the proposal. He referred, in paragraph 6.11, to "[these] criteria" – meaning the matters to which he had referred in paragraph 6.10 – as demonstrating "a clear government momentum in favour of sustainable development to create new homes and drive economic development"; in paragraphs 6.12 and 6.13 respectively, to "such emphasis" and "[such] continued emphasis from government"; and in paragraph 6.24 to "the emphasis contained within the NPPF concerning sustainable development generally …" (my underlining). The language in those paragraphs is very distinctly not the language one would have expected the officer to have used if he thought he was applying the "presumption in favour of sustainable development". The intervening and subsequent assessment, culminating in his final conclusion on the planning merits of the proposal in paragraph 6.42, is concerned with its credentials and benefits – and advantages when compared with the fallback – as sustainable development.

55. Paragraph 6.42 of the officer's report does not, in my view, betray a misunderstanding of NPPF policy for the "presumption in favour of sustainable development". The advice given to the committee in that paragraph was not inaccurate or misleading. The officer did not undertake the planning balance in terms of the policy for "decision-taking" in paragraph 14 of the NPPF. There can be no suggestion that, contrary to his earlier conclusion and advice in paragraphs 6.6 and 6.7 of his report, he was treating this as a case in which the proposal accorded with the development plan, so that it was to be approved "without delay" under the first limb of the policy for "decision-taking" in paragraph 14. Nor can it be suggested that, contrary to the whole tenor of his assessment of the proposal in paragraphs 6.1 to 6.41, this was a case in which the development plan was "absent" or "silent" or any "relevant policies" of it were "out-of-date", so that the second limb of the policy for "decision-taking" in paragraph 14 applied.

56. This case is clearly and materially different from *Barwood v East Staffordshire Borough Council* – a case that shows what can go wrong when a decision-maker is misled as to the meaning and effect of government policy for the "presumption in favour of sustainable development". Here the officer did not commit an error of the kind made by the inspector –and conceded by the Secretary of State – in that case: the mistake of discerning a "presumption in favour of sustainable development" outside paragraph 14 of the NPPF and treating that wider presumption as a material consideration weighing in favour of the proposal (see paragraphs 43 to 48 of my judgment in *Barwood v East Staffordshire Borough Council*). The officer did not say, as the inspector did in *Barwood v East Staffordshire Borough Council*, that "where a proposal is contrary to the development plan [the "presumption in favour of sustainable development"] is a material consideration that should be taken into account" (paragraph 12 of the decision letter in that case). Unlike the inspector in that case (in paragraphs 37 to 41 of his decision letter), he did not bring the "presumption in favour of sustainable development" into the balancing exercise as a material consideration (see paragraphs 26 and 29 of my judgment). And, in my opinion, it cannot realistically be suggested that the members would have thought they were being invited to apply that presumption in government policy, or to give it weight as a material consideration, in their assessment of the proposal.

57. The "presumption in favour of sustainable development" did not, in fact, feature as a material consideration to which the officer gave any positive weight when undertaking the planning balance. The exercise he conducted in paragraph 6.42 of his report was an entirely conventional and lawful balance of other material considerations against the identified conflict with the development plan, as section 38(6) of the Planning and Compulsory Purchase Act 2004 requires. It was, in fact, a classic example of that provision in practice. This is not to say that in his assessment of the proposal he had to refrain from considering the extent to which it complied with relevant NPPF policies – in particular, in the specific respects to which he referred, the sustainability of the proposed development in the light of NPPF policy, as well as its compliance with relevant policies of the development plan. That was a perfectly legitimate, and necessary, part of the planning assessment in this case. Had the officer left it out, he would have been in error, because he would then have been failing to have regard to material considerations. But he did not make that mistake. He assessed the proposal comprehensively on its planning merits, exercising his planning judgment on the relevant planning issues. He took into account the sustainability of the proposed development in the light of NPPF policy, but without giving it the added impetus of the "presumption in favour of sustainable development". I cannot fault the advice he gave.

58. Finally on this issue, I do not accept the suggestion made by Ms Graham Paul in reply that the council's response to Mr Mansell's solicitors' pre-application protocol letter, in its solicitors' letter dated 22 February 2016, can be read as conceding the error for which Ms Graham Paul contended. In fact, it squarely denied that error. Having referred to the quotation of the first sentence of paragraph 49 of the NPPF in paragraph 6.10 of the officer's report, it acknowledged that the proposal was a "departure from the development plan" and that the development plan was not "absent" or "silent" nor were relevant policies "out-of-date". It then said that neither the officer nor the committee had treated the "presumption in favour of sustainable development" under paragraph 14 of the NPPF as "operative" in this case. It acknowledged, therefore, that neither of the limbs of the policy for "decision-taking" in paragraph 14 of the NPPF could have applied here. And it said that the officer's report "does not begin to suggest otherwise". I agree.

59. It follows that this ground of appeal must also fail.

Conclusion

60. For the reasons I have give, I would dismiss this appeal.

Lord Justice Hickinbottom

61. I agree with both judgments. Without diminishing my concurrence with anything my Lords have said, I would wish expressly to endorse the observations of Lindblom L.J. in paragraphs 39-40 to the effect that, in future, reference to pre-*Barwood v East Staffordshire Borough Council* authorities on the meaning and operation of the presumption in paragraph 14 of the NPPF should be avoided; and in paragraph 41, supported by the further comments of the Chancellor, on the respective roles of planning decision-makers and the courts in planning cases.

The Chancellor of the High Court

62. I too agree with Lord Justice Lindblom's judgment, but would add a few words from a more general perspective. In the course of the argument, one could have been forgiven for thinking that the contention that the presumption in favour of sustainable development in the NPPF had been misapplied in the planning officer's report turned on a minute legalistic dissection of that report. It cannot be over-emphasised that such an approach is wrong and inappropriate. As has so often been said, planning decisions are to be made by the members of the Planning Committee advised by planning officers. In making their decisions, they must exercise their own planning judgment and the courts must give them space to undertake that process.

63. Appeals should not, in future, be mounted on the basis of a legalistic analysis of the different formulations adopted in a planning officer's report. An appeal will only succeed, as Lindblom L.J. has said, if there is some distinct and material defect in the report. Such reports are not, and should not be, written for lawyers, but for councillors who are well-versed in local affairs and local factors. Planning committees approach such reports utilising that local knowledge and much common-sense. They should be allowed to make their judgments freely and fairly without undue interference by courts or judges who have picked apart the planning officer's advice on which they relied.

64. It is also appropriate to reiterate what Lindblom L.J. said at paragraph 35 of the *East Staffordshire* case to the effect that planning decision-makers have to exercise planning judgment as much when the presumption in favour of sustainable development is applicable as they do they do when it is not. The presumption may be rebutted when it is applicable, and planning permission may be granted where it is not. In each case, the decision-makers must use their judgment to decide where the planning balance lies based on material considerations. It is not for the court to second guess that planning judgment once it is exercised, unless as I have said it is based on a distinct and material defect in the report.

65. I agree that this appeal should be dismissed.