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7 October 2023

Bracknell Forest Council (BFC)  
Planning Department  
Time Square  
Market Street  
Bracknell  
Berkshire  
RG12 1JD

*Submitted via the Planning Portal (Ref: PP-12483502)*

Dear Sir/Madam

**Demolition of the existing dwellinghouse, annexe and outbuildings and the erection of a replacement dwelling with an electric charging point. Stopping up of the southern access. Laying of a reinforced gravel driveway with cobble rumble strip to site entrance. Landscaping works including an outside kitchen and the laying of a deck surround to a swimming pool (to be built pursuant to decision 23/00460/CLPUD)**

Fredrick Adam Ltd has been instructed by Mr and Mrs B Adolph, to submit a planning application for the following on land within the planning unit of Blackthorn Cottage ("the site"):

**"Demolition of the existing dwellinghouse, annexe and outbuildings and the erection of a replacement dwelling with an electric charging point. Stopping up of the southern access. Laying of a reinforced gravel driveway with cobble rumble strip to site entrance. Landscaping works including an outside kitchen and the laying of a deck surround to a swimming pool (to be built pursuant to decision 23/00460/CLPUD)."**





## 1.0 SUBMISSION MATERIALS

The application comprises the following documents, plans and supporting information:

### Fee, Forms and Correspondence

- Completed planning application form, certificate 'a' and agricultural holdings certificate.
- A fee for the sum of £526 to cover the statutory planning application fee (paid via the Planning Portal).
- Cover letter dated 7 October 2023 prepared by Fredrick Adam Ltd summarising the submission material and the proposal.
- Completed Community Infrastructure Levy (CIL) - Form 1: CIL Additional Information dated October 2023.
- Community Infrastructure Levy (CIL) - Form 2: Assumption of Liability dated October 2023.
- Community Infrastructure Levy (CIL) - Form 7: Self Build Exemption Claim Form, Part 1 dated October 2023.

### Supporting Reports

- **Design and Access Statement** prepared by John Pardey Architects (JPA) dated September 2023.
- **Planning Supporting Letter** prepared by Fredrick Adam Ltd dated 7 October 2023.
- **Preliminary Tree/Landscape Report & Indicative Tree Protection Plan** prepared by Draffin Associates dated 6 September 2023.
- **Landscape Proposal** prepared by Nicholas Dexter Ltd dated 1 July 2023 Rev. B.
- **Bat Survey Ecological Impact Assessment** prepared by GS Ecology dated 28 September 2022.

### Plans and Application Drawings

- **2303\_P\_100:** Site Location Plan.
- **2303\_P\_101:** Existing Site Block Plan.
- **2303\_P\_102:** Proposed Site Block Plan.
- **2303\_P\_201:** Proposed Ground Floor Plan.
- **2303\_P\_202:** Proposed Roof Plan.
- **2303\_P\_203:** Existing Round & First Floor Plans.
- **2303\_P\_204:** Existing Roof Plan.
- **2303\_P\_301:** Proposed Section.



- **2303\_P\_302:** Existing Section.
- **2303\_P\_401:** Proposed East & West Elevations.
- **2303\_P\_402:** Proposed North & South Elevations.
- **2303\_P\_403:** Existing Elevations

#### Background Information

- Decision notice dated 1 September 2023 & Case Officer's Report for a Certificate of lawfulness for the proposed construction of an external swimming pool and associated garden store for pool plant<sup>1</sup>.
- Pre-Application advice from BFC dated 14 March 2023 (LPA Ref: PRE/22/00867).
- Letter to BFC<sup>2</sup> from Fredrick Adam Ltd dated 15 June 2023.
- Email from Fredrick Adam Ltd to BFC dated 15 June 2023 and response from BFC dated 16 June 2023.
- Decision notice dated 30 November 2021 & approved plans<sup>3</sup> for the demolition of the existing buildings and the erection of 2x replacement dwellings (LPA Ref: 21/00218/FUL<sup>4</sup>).
- Decision notice & case officer's report dated 6 December 2012 for the retention of the annexe as a separate dwelling (LPA Ref: 12/00844/LDC).

## **2.0 PLANNING APPLICATION OVERVIEW**

The site measures 1,720m<sup>2</sup> (0.42 acres) and is located outside a defined settlement, in the Green Belt (GB) and comprises: a detached 5-bedroom dwelling, a 1-bedroom dwelling<sup>5</sup> and an ancillary residential storage barn/stables<sup>6</sup>.

The main dwelling is located on the southeast section of the site and is set back from Chawridge Lane. The annexe and storage barn/stables are located along the northern boundary.

The 1-bedroom dwelling was created by virtue of a technicality. A certificate of lawfulness was issued on 6 December 2012 for the retention of the annexe as a separate dwelling<sup>5</sup>.

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<sup>1</sup> Drawing number 2303\_PD\_102: Proposed Site Block Plan

<sup>2</sup> Letter addressed to the case officer - Ms Horwood

<sup>3</sup> 3736/201 Rev. A, 3736/202 Rev. A, 3736/203 Rev. A, 3736/204 Rev. B

<sup>4</sup> The case officer report is not available in the Council web site

<sup>5</sup> LPA Ref: 12/00844/LDC

<sup>6</sup> A certificate of lawfulness was issued on 28 July 2020 for use of the barn for ancillary residential storage (C3 use class) (LPA Ref: 12/00844/LDC). The approved 'red line' extends around the entire building.



A review of the planning history on the BFC web site confirms the Council has also approved the following decisions at the site:

- **LPA Ref: 601512:** erection of a single storey side extension.
- **LPA Ref: 604007:** erection of a double garage.
- **LPA Ref: 606678:** erection of a single storey side extension for study and bedroom (allowed at appeal).
- **LPA Ref: 610937:** single storey rear extension forming bedroom, kitchen, WC and lobby.
- **LPA Ref: PD/04/00218:** garage conversion.
- **LPA Ref: 21/00218/FUL:** demolition of existing buildings and erection of 2 no. replacement dwellings<sup>7</sup>.
- **LPA Ref: 23/00460/CLPUD:** certificate of lawfulness for proposed construction of external swimming pool and associated garden & bike store store.

The extant permission<sup>4</sup> is a material consideration which respectfully we contend should be afforded significant weight in the determination of this application. It confirms the Council agree the following:

- The demolition of the existing buildings is acceptable.
- The replacement of existing dwellings constitutes appropriate development in the Green Belt (GB).
- The footprint of the existing buildings can be offset to replacement buildings.
- The site constitutes previously developed land<sup>8</sup> (PDL)<sup>9</sup>.
- Subject to detailed design and an assessment on openness, the volume of the existing buildings can be offset to the replacement dwellings.
- Blackthorn Cottage has a GEA of 142.4m<sup>2</sup> and a volume of 464m<sup>3</sup>.
- The annexe has a GEA of 31.2m<sup>2</sup> and a volume of 103m<sup>3</sup>.

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<sup>7</sup> The case officer's report is not available on-line (i.e. is not accessible on the Council web site)

<sup>8</sup> Annex 2: Glossary of the NPPF - "Previously developed land: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape".

<sup>9</sup> Criterion g) of paragraph 149 of the NPPF



- The storage barn has a GEA of 78.9m<sup>2</sup> and a volume of 382m<sup>3</sup>.
- The floor area which can be offset to the replacement building measures 397.8m<sup>2</sup>. The total volume measures 1138.8m<sup>3</sup><sup>10</sup>.

In the determination of this planning application, we consider the main matters to be:

1. Whether the proposal would be inappropriate development in the Green Belt having regard to the NPPF and any other relevant Development Plan (DP) documents;
2. Whether the proposal results in the loss of a dwellinghouse and the weight that should be given to any conflict with DP policy; and
3. If the development is inappropriate, whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

Other planning matters for consideration include:

4. Whether the detailed design is acceptable (i.e footprint, height, scale, bulk, mass, materials) and the effect of the proposal on the character and appearance of the area;
5. The effect of the development on protected species;
6. The effect of the proposal on the safe operation of the local highway network.

#### 1.0 Inappropriate Development in the Green Belt

Saved policy GB1 of the Local Plan 2002 sets out that approval will not be given except in very special circumstances for any new building in the Green Belt (GB) unless it is acceptable in scale, form, effect, character and siting, would not cause road safety or traffic generation problems and is for one of the stated purposes including (iv) replacement, alteration or limited extension of existing dwellings; or (v) construction of domestic outbuildings incidental to the enjoyment of an existing dwelling.

Criterion ii of policy CS9 of the Core Strategy confirms the Council will protect the land outside settlements for its own sake, particularly from development that would adversely affect the character, appearance or function of the land and maintain the GB boundary within Bracknell Forest and protect the GB from inappropriate development.

Paragraph 149 of the National Planning Policy Framework<sup>11</sup> regards the construction of new buildings as inappropriate development in the Green Belt, subject to a limited number of exceptions. The replacement of a building is one of the listed exceptions, provided that the new buildings are in the same use and not materially larger than the ones they replace<sup>12</sup>.

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<sup>10</sup> Based upon the approved drawings for the extant permission plot 1 measures 266.7m<sup>2</sup> and plot 2 measures 131.1m<sup>2</sup> (GEA over two stories)

<sup>11</sup> NPPF September 2023

<sup>12</sup> Criterion d) of paragraph 149 of the NPPF



Limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would inter alia: ‘not have a greater impact on the openness of the Green Belt than the existing development<sup>13</sup>’ is another exception.

It is proposed to demolish the existing buildings and erect 1x replacement dwelling. The site is located outside a built-up area and it is agreed the site constitutes PDL.

The replacement building would be in the same Class C3 use<sup>14</sup> satisfying the provisions of DP policy and the first test set out at criterion d) of paragraph 149 of the NPPF. The second test is a matter of judgement based on the evidence - the NPPF does not define ‘materially larger’.

In the judgement of *R (Heath and Hampstead Society) v Camden LBC [2008] EWCA Civ 193* it was held that the words ‘replacement’ and ‘not materially larger’ must be read together and in the same context, with ‘size’ being the primary test. The general intention is that the new building should be similar in scale to that which it replaces and not have a greater impact on openness.

In the decision of the High Court in *Surrey Homes Ltd v Secretary of State for the Environment, Transport and the Regions CO/1273/2000* Sullivan J stated:

**“Which physical dimension is most relevant for the purpose of assessing the relative size of the existing and replacement dwelling, will depend on the circumstances of the particular case. It may be floor space, footprint, bulk, volume, height, width etc...”**

Table 1 below confirms the footprint, volume and floor areas of the existing buildings.

	Footprint m <sup>2</sup> GEA	Volume m <sup>3</sup>	Ancillary Residential Floorspace m <sup>2</sup>
<b>MAIN DWELLING</b> *Original Dwelling	142.4	464	Loft space & storage in the eaves 102.3m <sup>2</sup>
<b>ANNEXE</b>	31.2	103	N/a
<b>STABLES/ STORAGE BARN</b>	78.09	382	78.09

<sup>13</sup> Criterion g) of paragraph 149 of the NPPF

<sup>14</sup> Dwelling-houses - The Town and Country Planning (Use Classes) Order 1987 (as amended)



	<b>Footprint m<sup>2</sup> GEA</b>	<b>Volume m<sup>3</sup></b>	<b>Ancillary Residential Floorspace m<sup>2</sup></b>
<b>TOTAL:</b>	251.69	949	251.69

*Table 1: Existing Built Form within the Planning Unit*

The footprint of the main dwelling measures 142.4m<sup>2</sup> (GEA), the footprint of the 1-bedroom dwelling measures 31.2m<sup>2</sup> (GEA) and the footprint of the storage barn measures 78.09m<sup>2</sup> (GEA). Total built form measures 251.69m<sup>2</sup> (GEA)<sup>15</sup>.

The volume<sup>16</sup> of the main dwelling, annexe and ancillary residential storage barn measures 949m<sup>3</sup>.

The existing main dwelling has accommodation over two storeys with the first floor being set within the volume of the roof. The annexe is also set over two storeys with habitable accommodation at ground floor and loft space at first floor. The stable/barn building is separated from the annexe by 1.6 metres and comprises a single storey with sections of clear roof to allow light into the building.

The existing built form extends across the full width of the site and spreads out along more than 50% of the northern boundary.

A comparison of the size of the existing and proposed buildings is required to determine whether the replacement building is materially larger than the ones it replaces.

Table 2 confirms the footprint, volume and floor area of the proposed dwelling.

	<b>Footprint m<sup>2</sup> GEA</b>	<b>Volume m<sup>3</sup></b>	<b>Ancillary Residential Floorspace m<sup>2</sup></b>
<b>PROPOSED DWELLING</b>	291.5	1,137	Carport + bin and log store 59.1m <sup>2</sup>

*Table 2: Proposed Replacement Dwelling*

The footprint of the proposed building measures 291.5m<sup>2</sup> GEA; which is 39.8m<sup>2</sup> more than footprint of the existing buildings. This represents an uplift of 15.8%.

<sup>15</sup> These figures are all confirmed on page 10 of the DAS for the extant decision LPA Ref: 21/00218/FUL

<sup>16</sup> Oxford Dictionary “the amount of space that the object occupies or that is enclosed”



The volume of the proposed dwelling is 1137m<sup>3</sup>; which is 188m<sup>3</sup> more than the volume of the existing buildings on site (i.e. an uplift of 19.8%, but significantly the proposed volume is 1.8m<sup>3</sup> less than the extant permission (i.e 1138.8m<sup>3</sup> was approved)<sup>17</sup>.

The proposal results in a reduction of built form along the northern boundary. Whilst the spread of built form across the site is spatially comparable, the reorientation of the replacement dwelling results in an increase in visual openness and a perceived reduction in built form. One's perception in size of a new building has been recognised in law to be relevant to the materiality of a measured increase in size.

Table 3 confirms the height, width, length and depth of the existing buildings and the proposed dwelling, including the percentage of the site which is covered.

	<b>EXISTING MAIN DWELLING</b>	<b>ANNEXE</b>	<b>STORAGE BARN</b>	<b>PROPOSED REPLACEMENT DWELLING</b>
<b>HEIGHT</b>	To ridge 5.67m To eaves 2.3m	To ridge 4.90m To eaves 2.39m	To ridge 2.75m To eaves 2.02m	To pitch 5.62m To eaves 2.83m
<b>WIDTH</b>	17.1m	5.6m	6.6m	25m at longest point
<b>LENGTH</b>	10.8m	5.5m	25m	25m at longest point
<b>% SITE COVERAGE</b>	15.2%			18.6% (including the car port) or 15.4% (excluding the car port)

*Table 3: Comparison Figures - Existing Dwelling vs Proposed Replacement Dwelling*

The ridge height of the replacement dwelling will be lower than the existing in addition the central section of the proposed dwelling, as illustrated on drawing number 2303\_P\_301 will be significantly lower (i.e. 2.93m lower than the existing ridge height). This is important when considering views into the site and any 'impact' on openness.

Whilst the replacement dwelling will be wider and longer than the existing, these increases need to be read in the context of the total existing built form on site, the revised orientation of the replacement dwelling and with weight to the extant permission.

The previously scattered trio of mismatched buildings has been transformed into a cohesive single family home. The main sections of the proposed structure now align gracefully with the tree-lined perimeters; ensuring the central area of the site remains notable spacious, - visually and spatially.

<sup>17</sup> LPA Ref: 21/00218/FUL



The existing street facing elevations onto Chawridge Lane currently spans 110.5m<sup>2</sup> in vertical surface and roof area, whilst the proposed design presents a 17.5% reductions measuring some 91.2m<sup>2</sup>.

The relevant exercise in respect of criterion d) of paragraph 149 of the NPPF is primarily an objective one by reference to size rather than visual impact.

Given the lawful use of the existing buildings, we contend all three can be seen to facilitate a replacement building pursuant to criterion d) of paragraph 149 of the NPPF, saved policies EN8 and GB1 of the Local Plan 2002, and policy CS9(ii) of the Core Strategy 2008.

On any objective measure of size, the proposed dwelling would not be materially larger than the existing buildings on site. Accordingly we respectfully contend the proposed scheme constitutes appropriate development in the GB.

If the Council disagree with our assessment against criterion d) of paragraph 149 of the NPPF, we respectfully contend that the proposed scheme should also be assessed against criterion g), which allows for limited infilling or the partial or complete redevelopment of PDL which would not have a greater impact on the openness of the GB than the existing development. We consider this further below.

### Openness

A mathematical comparison of relevant dimensions is clearly relevant to the consideration of whether the replacement building would be materially larger, but regard to other matters is also valuable when considering openness and impacts, particularly in the context of criterion g) of paragraph 149 of the NPPF.

Paragraph 137 of the NPPF confirms that the fundamental aim of GB policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of GBs are their openness and permanence.

Openness is recognised as being the absence of development. It can have spatial as well as visual elements, with the dimensions working in tandem, not in isolation.

In the Court of Appeal judgement of *John Turner v Secretary of State for Communities and Local Government* it was said that 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case.

A comparison of the existing and proposed block plans<sup>18</sup>, the proposed section drawing<sup>19</sup> and the information contained within the DAS confirm the following:

- The southern access is being stopped up with new hedge planting along the eastern boundary of site (western boundary of Chawridge Lane). The hard standing within the planning unit at this point will be reduced.
- Currently the first floor mass of the existing dwelling runs parallel with Chawridge Lane and is experienced by road users for the majority of the plot width. The proposed scheme relocates this first floor mass to the north and south boundaries and changes the orientation so that it runs east to west.

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<sup>18</sup> Drawing numbers 2303\_P\_101, 2303\_P\_102

<sup>19</sup> Drawing number 2303\_P\_301



The remaining central section is proposed to have a flat green roof. The reduction in mass at the centre of the site will significantly increase visual openness<sup>20</sup> and improve the characteristics of the plot.

- The removal of the annexe from the northeast corner of the site spatially opens up this section<sup>21</sup>.
- The relocation of the southwest mass of the existing building to the front of the plot increases the spatial openness to the rear of the property. The relocation of the mass within the new scheme creates coherent spatial areas.

Separately, the extent permission presents 151.3 vertical surface and roof area facing Chawridge Lane whereas the proposed scheme provides a 39.8% reduction to this at 91.2m<sup>2</sup>.

The spread of proposed built form would not adversely affect the openness of the GB and the proposal is in accordance with the provisions of criterion ii of policy CS9 of the Core Strategy, saved policies EN8 and GB1 of the Local Plan 2002 and criterion g) of paragraph 149 of the NPPF.

## 2.0 Retention of Housing Stock

Criteria (iv) and (v) of saved policy GB1 of the Local Plan<sup>22</sup> confirms that the construction of a replacement dwelling and outbuildings incidental to the enjoyment of the existing dwelling are acceptable in the GB, subject to scale, form, effect, character, siting and road safety and traffic generation<sup>23</sup>.

The Local Plan was adopted in January 2002, it is dated. Saved policy GB1 and was not tested against national policy and is not wholly consistent with the provisions of paragraph 149 of the NPPF.

Saved policy H11 of the Local Plan prevents any loss of the existing dwelling stock unless inter alia (ii) the continuation of a residential use would result in adverse local environmental conditions.

The purpose of policy H11 is to preserve the existing stock of small unit accommodation, yet paragraphs 5.76 and 5.77 of the supporting text confirm there can be exceptions:

**“[5.76] To make full use of the dwelling stock, the Borough Council will for the most part resist (our emphasis) any development, including changes of use, which would result in the loss of, or prejudice the retention of, residential units.”**

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<sup>20</sup> See drawing number 2303\_P\_301

<sup>21</sup> A small car port is proposed in this broad location

<sup>22</sup> Local Plan 2002

<sup>23</sup> Paragraph 4.35 of the supporting text states: “In assessing whether a replacement dwelling is materially larger, regard will be had to the bulk, including height and gross floorspace. Other factors that will be taken into account are its impact on the openness and character of the Green Belt; whether the proposal would allow for provision of basic amenities; whether the proposal would enhance the visual character of the site.”



**“[5.77] The Borough Council will sympathetically view applications involving a loss of residential accommodation in the circumstances indicated in the policy above.”**

Policy H11 is not reproduced in the more recent Core Strategy, but is taken forward into the Emerging Local Plan through policy LP21, which states:

**“Development which would lead to the net loss of residential accommodation within Class C3 dwelling houses or residential care homes and nursing homes within Class C2, or the change of use of land currently or last used for residential purposes, (including empty homes) will be permitted where:**

- vii. the continuation of residential use is undesirable because of environmental conditions; or**
- viii. the development forms part of a wider comprehensive scheme which would result in an overall net increase in residential units; or**
- ix. the proposal delivers overriding public benefits which outweigh the loss of the residential use; or**
- x. a change from residential use is the only viable way of ensuring the protection of a heritage asset; or**
- xi. it has been demonstrated that residential use has been abandoned.”**

Paragraph 12.4 of the supporting text to policy LP21 states:

**“Any development proposal that leads to the net loss of residential accommodation whether through change of use or redevelopment will be resisted unless there are overriding public benefits that would justify the loss of the residential use. However, the Council recognises that there may be particular circumstances that justify the loss of residential uses and the circumstances where such a loss may be acceptable are set out in this policy.”**

Paragraph 12.5 of the supporting text to policy LP21 states inter alia:

**“In the event that the accommodation is not lawful, its use for residential purposes will be addressed in the context of the prevailing policies of the plan relating to the assessment of a new dwelling.”**

The Council is required to determine this application in accordance with the provisions of the DP unless material considerations indicate otherwise<sup>24</sup>. The extant permission is a material consideration, which we contend should be given significant weight in the determination of this application.

For the purpose of this application, the DP comprises the saved policies of the Local Plan 2002, the Core Strategy 2008, the Site Allocations Local Plan 2013 and the Policies Map. Winkfield Parish Council has prepared a Neighbourhood Plan (NP) but it has not been adopted. Once adopted it will form part of the DP.

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<sup>24</sup> Section 38 of the Planning and Compulsory Purchase Act 2004



The Council is preparing a new Local Plan. Paragraph 48 of the NPPF confirms that weight may be given to relevant policies in emerging plans according to a) the stage of preparation<sup>25</sup>, b) the extent to which there are unresolved objections to relevant policies<sup>26</sup>; and c) the degree of consistency of the relevant policies in the emerging plan to the NPPF<sup>27</sup>. Weight should be given to emerging policy LP21 in the determination of this application.

Pre-application advice issued by the Council under cover of letter dated 14 March 2023 confirms the following:

- A replacement dwelling is appropriate development in the GB.
- The loss of one lawful dwelling is contrary to saved policy H11 and policy LP21 of the emerging Local Plan.
- It is unlikely the proposed dwelling would adversely impact upon the residential amenities of surrounding properties.
- There is scope for a more contemporary style of dwelling on the site.
- Redevelopment of the site should safeguard existing trees of amenity value and existing hedgerows.

The proposal will lead to the loss of 1x residential dwelling, which is contrary to the provisions of saved policy H11 and emerging policy LP21. We respectfully contend the following:

- i. The 1-bedroom dwelling is only lawful by virtue of a technicality. The property measures 38.64m<sup>2</sup> and 13.42m<sup>2</sup> of floorspace at first floor has a maximum height of 1.6 metres, which is accessed via the open plan kitchen/dining room. The annexe falls under National Housing Standards<sup>28</sup> and there is no protected escape route from first floor, which does not meet Building Regulations. Any continuation of residential use is undesirable because of environmental conditions and the proposal delivers overriding public safety benefits, which outweigh the loss of the residential use (i.e. the annexe cannot be used safely as a separate dwelling and does not provide the required amount of space for the occupants to live comfortably);
- ii. The annexe makes no contribution to the wider housing market. The purpose of saved policy H11 and emerging policy LP21 is to prevent adverse cumulative impact on the Council's housing stock. The loss of the annexe would have no planning consequences. If the Council considers otherwise, we welcome confirmation on the following:
  - Has the annexe been included in the Council's housing land supply figures as a 'windfall'?

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<sup>25</sup> The more advanced its preparation, the greater the weight that may be given

<sup>26</sup> The less significant the unresolved objections, the greater the weight that may be given

<sup>27</sup> The closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given

<sup>28</sup> Statutory guidance: Technical Housing Standards - nationally described space standard (27 March 2015) amended on 19 May 2016



- Do the Council have a five-year housing land supply?
  - Why would the loss of the annexe have a significant consequence for the overall supply of housing?
  - Has the Council adopted technical housing standards and if so, is it agreed the National Standards are a material consideration for replacement dwellings?
- iii. The annexe is only lawful by virtue of the certificate of lawfulness. Under s193(7) of the Town and Country Planning Act 1990, an LDC can be revoked. It is not a planning permission. The annexe was vacant upon sale and there was no sitting tenant. An LDC could be sought to confirm that on the 'balance of probabilities,' use of the building for non-habitable purposes has ceased. If the Council consider significant weight should be given to the loss of the dwelling, we welcome confirmation on the following:
- Would the Council accept a revision to the proposed scheme to confirm the inclusion of an annexe of the same size within the replacement dwelling?
  - If an application were submitted for structural alterations to the annexe and its retention as a separate dwelling, would the Council consider the application favourably on the basis it would fail to meet National Standards?
  - Do residential permitted development (PD) rights remain intact at Blackthorn Cottage and the annexe, what weight would be given to an application for a certificate of lawfulness to extend both buildings to create a valid planning fallback? (i.e. what weight at the Council given to the environmental benefits associated with the loss of the annexe and the opening up of this section of the site)?
- iv. The current owners have no intention of using the property as a separate unit of accommodation, now or in the future. They have no intention of investing in repairing the existing building for use as a separate dwelling. If the Council consider significant weight should be given to the loss of the dwelling, we welcome confirmation on the following:
- What weight would the Council give to a statutory declaration confirming the use of the dwelling as a separate dwelling ceased in 2020/2021 and will never reconvene?

If the Council consider the weight to be given to any conflict with saved policy H11 and policy LP21 significant, we contend it is not automatically bound to refuse support to the scheme if the proposal accords with the DP "as a whole".

In *R v Rochdale Metropolitan Borough Council, ex parte Milne* [2000] EWHC 650 (Admin) it is confirmed:

**"It not unusual for development plan policies to pull in different directions. A proposed development may be in accord with development plan policies which, for example, encourage development for employment purposes, and yet be contrary to policies which seek to protect open countryside. In such cases there may be no clear cut answer to the question: "is this proposal in**



**accordance with the plan?” The local planning authority has to make a judgement bearing in mind such factors as the important of the policies which are complied with or infringed, and the extent of compliance or breach.”**

Sullivan J then referred to the observations to that effect made by *Lord Clyde in City of Edinburgh Council v Secretary of State for Scotland [1997] 1 W.L.R. 1447 (at p.1459D-F)*:

**“...[The decision maker] will...have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will be required to assess all of these and then decide whether in the light of the whole plan the proposal does or does not accord with it...”. Sullivan J. went on to say (in paragraphs 49 to 51):”**

**“[49] In the light of that decision I regard as untenable the proposition that if there is a breach of any one policy in a development plan a proposed development cannot be said to be “in accordance with the plan”. Given the numerous conflicting interests that development plans seek to reconcile: the needs for more housing, more employment, more leisure and recreational facilities, for improved transport facilities, the protection of listed buildings and attractive landscapes etc., it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan. Numerous applications would have to be referred to the Secretary of State as departures from the development plan because one or a few minor policies were infringed, even though the proposal was in accordance with the overall thrust of development plan policies.”**

We respectfully put forward that it is unrealistic for planning officers to assume that a proposed development does not comply with the DP simply because there is a breach of any one policy.

It is for the Council to consider which policy should be given greater weight in relation to this proposal.

In this very specific instance we respectfully contend that far greater weight should be given to the policies that protect the GB and limited weight should be given to saved policy H11 and emerging policy LP21.

If the Council disagree, we contend very special circumstances exist<sup>29</sup>. This is considered below.

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<sup>29</sup> Paragraphs 147 & 148 of the NPPF



### 3.0 Planning Balance

Paragraph 148 of the NPPF states:

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

The proposal comprises appropriate development within the GB and does not adversely impact on openness.

In accordance with policies CS1 and CS7 of the Core Strategy and saved policies EN8 and EN20 of the Local Plan, the proposal results in the removal of buildings with no architectural merit and a high quality replacement<sup>30</sup> dwelling, which enhances the local housing market.

The proposal would have a positive impact on the character of the site and area - it is far more attractive and visually interesting than the existing built form and would result in the development of PDL.

In accordance with policy CS12 of the Core strategy the proposed replacement will have a far better energy performance than the existing and will be fitted with low carbon technology.

In accordance with saved policies EN1, EN2 and EN3 of the Local Plan, trees and hedges of importance will be retained and additional planting is proposed. The site is visually well contained with screening to all boundaries. The proposal would only have a localised effect on this part of the GB and the broad thrust of function and purpose in this location would remain and there would be no significant encroachment into the countryside.

In accordance with policy CS23 of the Core Strategy, and saved policies EN22 and M9 of the Local Plan, the proposal will not effect the safe operation of the local highway network. In addition there are no Public Rights of Way within close proximity to the site. The closest footpath is Right of Way No. 9, which is located to the south<sup>31</sup>. Additional planting is proposed, not to provide screening although this is a positive benefit, but to improve biodiversity.

Personal circumstances are themselves capable of being a material consideration, this is well established in law. The applicants own the property and have confirmed the annexe would not be sold as a separate dwelling or rented out. The property provides absolutely no benefit to the local housing market.

These factors all need to be balanced against any breach of saved policy H11 and emerging policy LP21.

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<sup>30</sup> Page 7, paragraph 1 of pre-application advice dated 14 March 2023 confirms that as the site is not immediately adjoined by existing buildings there is scope for a more contemporary style of dwelling

<sup>31</sup> ROW Unique ID WIN FP9



The applicants sought a legal opinion<sup>32</sup> from a Planning Barrister at 6 Pump Court who in relation to this matter advised:

- (a) **"Whilst it is important to recognise the importance of the retention of housing stock within Policy H11, in light of the remainder of the policies which the proposed development is in compliance with, taking the development plan as a whole, the former is in line with the latter;**
- (b) **In addition, in any event, I note that both Policy H11 and saved Policy L21 refer to a list of exemptions which a proposed development will need to satisfy to be in accordance with them. The supporting text to Policy H11 suggests that the LPA has some discretion over its application on the basis that it: "will for the most part resist" development which results in the loss of or prejudices the retention of residential units. This suggests that there may be cases where the LPA may not resist development, even if there is a loss or prejudice to the retention of residential units.**
- (c) **Whilst there is no specific case law on the point, it is further arguable that the annexe's failure to comply with National Standards (as set out above) could amount to a material consideration, in circumstances where it achieved lawful planning status based on a historic planning history under the LDC, rather than on planning merits.**

**In conclusion, therefore, whilst I appreciate that the LPA has applied Policy H11 literally, there is, in my view, scope for less weight to be given to the policy by virtue of recent case law from the Court of Appeal, per Corbett which suggests that the requirement under legislation for a decision-maker to take into account the "development plan as a whole" can, in appropriate cases, be complied with, even if a proposed development does not comply with a single policy, taking matters into account objectively."**

On balance we respectfully contend the factors set out herein are sufficiently material to outweigh - in this specific instance, any conflict with DP policies protecting the net loss of residential dwellings.

We trust the information submitted is sufficient to enable the Council to determine this planning application. I await your confirmation of registration and details of the case officer so that a site visit can be arranged.

I welcome a planning update from the case officer following the end of the three-week statutory consultation period and an opportunity to respond to any matters raised during the 8-week determination period.

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<sup>32</sup> Dated 9 July 2023



If further details are required please do not the hesitate to contact me via email at:

[REDACTED]

Kind regards

Yours faithfully

[REDACTED]

[REDACTED]

**KERRY DAMES**

**DIRECTOR**

For and on behalf of Fredrick Adam Ltd

