

**IN THE MATTER OF  
AN APPLICATION FOR PERMISSION FOR AN EXTENSION  
AT OAK VIEW LODGE, NEWSTEAD ABBEY**

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**OPINION**

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**A. INTRODUCTION AND SUMMARY**

1. On 31 August 2023, Gedling Borough Council refused planning permission for a small first-floor extension to provide a larger office at Oak View Lodge, Station Avenue, Newstead, based on their officers' interpretation of the High Court's judgment in *Guildford Borough Council v Secretary of State for Levelling Up Housing and Communities* [2023] EWHC 575 (Admin) (“**the Guildford Judgment**”).
2. I am asked to advise Mr Mandeir on the correctness of the local planning authority's interpretation of the Guildford Judgment and the lawfulness of the refusal of planning permission.
3. For the reasons set out below, I consider that the authority's officers misunderstood and misapplied the Guildford Judgment and that the refusal of planning permission is vitiated by an error of law. On a correct interpretation of the policy framework, the proposal complies with the relevant Green Belt policies.

**B. THE APPLICABLE POLICY FRAMEWORK**

4. The Guildford Judgment concerned the proper construction of policy P2 of the Guildford Local Plan. That policy is obviously inapplicable to Gedling Borough Council.
5. The relevant provision of the NPPF is paragraph 149, which provides that “*A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are: ... c) the extension or alteration of a building provided that it*

*does not result in disproportionate additions over and above the size of the original building; d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces...". Annex 2 to the NPPF defines "original building" as "A building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally".*

6. Paragraph 149(c) of the NPPF is in different terms to policy P2 of the Guildford Local Plan (the policy that was construed in the Guildford Judgment). Unlike paragraph 149(c) of the NPPF, policy P2 of the Guildford Local Plan provides that "*original building*" means "*the first building as it was originally built*". Inevitably, the High Court held that this meant what it said - the requirements of policy P2 of the Guildford Local Plan applied to the first building as it was originally built.
7. However, the High Court did not hold that "*original building*" in P2 of the Guildford Local Plan had the same meaning as "*original building*" in the NPPF. To the contrary, the Judge's only observation on the NPPF was as follows: "*On one reading of NPPF 149(c), taken on its own, the reference to the original building there may be to the building as existing prior to the proposed extension or addition*" (para.19).
8. Indeed, in my view, that it is the only proper construction of the term "*original building*" in the NPPF. I say that because:
  - 8.1. As a matter of ordinary language, the "*size of the original building*" in paragraph 149(c) NPPF refers to the building at the start of the sentence – viz. "*the extension or alteration of a building*". Thus, what is being referred to is that building prior to extension or alteration.
  - 8.2. That reading is bolstered by the position of the Secretary of State in the Guildford case. The Secretary of State contended that policy P2 of the Guildford Local Plan should be read as referring to the current building on the site (para.15 of the Guildford Judgment). Although the Court rejected that construction of the Guildford Local Plan, the Secretary of State's submission strongly indicates that this is how the Secretary of State considers that his own policy - the NPPF – should be read.

8.3. Not only is this the natural reading the language of paragraph 149(c) but, as the Secretary of State pointed out in the Guildford case, it ensures that the policy is always workable. It will always be possible to ascertain the size of the current dwelling prior to any extension or alteration, whereas it may well be impossible to ascertain the size of a building that has long since been demolished.

9. Policy LPD 13 of Gedling Borough Council's Local Planning Document is even clearer. It provides:

***“Policy LPD 13 - Extensions to Buildings within the Green Belt***

*a) Within the Green Belt, planning permission will be granted for extensions or alterations to buildings provided the proposals do not result in the floorspace of the building being over 50% larger than when originally constructed or as it existed on 1st July 1948.*

*b) In all cases extensions or alterations will be expected to:*

*i. be in keeping with surrounding character in terms of height, bulk, form and general design;*

*ii. conserve any historic significance the building may have;*

*iii. not adversely affect valuable views into or out of settlements or previously developed sites; and*

*iv. not have a detrimental impact on the openness of the Green Belt or the reasons for including land within it.”*

10. The policy refers to “*extensions or alterations to buildings*” and requires that these do not result in “*the building being over 50% larger than when originally constructed*”. It is quite clear that the words “*when originally constructed*” refer to “*the building*” for which permission is being sought for extension or alteration. The words “*when originally constructed*” cannot be read as referring to a prior building that was demolished long ago.

### **C. THE AUTHORITY'S DECISION**

11. The officer's report in this case gave the following explanation of how Policy LPD 13 of Gedling Borough Council's Local Planning Document should be interpreted: “*The recent High Court Decision case no.CO/2321/2022 Guildford Borough Council v Secretary of*

*State for Levelling up Housing and Communities and Christopher Weeks, establishes that the original building is the first building recorded on a site and all volume and/or floor space calculations for extensions relate to the original building”.*

12. The officer then applied that interpretation to policy LPD 13 of the Gedling Local Planning Document and concluded that the application should be refused because the extension would result in the building being more than 50% larger than the previous (long since demolished) dwelling. It was on this basis that the planning application was then refused.
13. I consider that the officer’s reasoning, and the refusal of planning permission, was wrong in law. For the reasons set out in section B above, the “*original building*” referred to in policy LPD 13 of the Local Planning Document and paragraph 149(c) NPPF is the current building prior to any extensions or alterations.
14. It is clear from the officer’s report that, once those policies are properly understood, the proposal complies with policy LPD 13 of the Local Planning Document and paragraph 149(c) NPPF and that, accordingly, the local authority should have granted the application for planning permission.

#### **D. CONCLUSION**

15. For those reasons, I consider that the authority’s refusal of permission based on the officer’s erroneous interpretation of the Guildford Judgment was wrong in law. If the policy framework had been correctly understood, planning permission should have been granted.

**CHRIS BUTTLER KC**  
**MATRIX CHAMBERS**  
**17 OCTOBER 2023**