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## **APPELLANT'S STATEMENT OF CASE**

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**LPA REFERENCE DC/22/03243/FULL1 ("APPLICATION")**

**DESCRIPTION OF DEVELOPMENT: DEMOLITION OF PART OF GREENACRES, DEMOLITION OF POLO MEWS NORTH, DEMOLITION OF POLO MEWS SOUTH AND DEMOLITION OF PART OF THE BOTHY. ERECTION OF LINKING EXTENSION BETWEEN POLO MEWS NORTH AND POLO MEWS SOUTH. ERECTION OF A TWO STOREY EXTENSION TO THE BOTHY. ESTABLISHMENT OF NEW VINEYARD. PROVISION OF NEW SOLAR PANEL ARRAY. ERECTION OF HYDROGEN ENERGY PLANT AND EQUIPMENT. ERECTION OF NEW SINGLE STOREY DWELLING. REARRANGEMENT OF THE INTERNAL ACCESS ROADS. ("APPEAL SCHEME")**

**ADDRESS: HOME FARM, KEMNAL ROAD, CHISLEHURST BR7 6LY ("SITE")**

**APPELLANT: MR AND MRS SELBY ("APPELLANT")**

**LPA: LONDON BOROUGH OF BROMLEY**



**Pinsent Masons**

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1. **INTRODUCTION TO THE APPELLANT'S STATEMENT OF CASE**

1.1 This is the Appellant's Statement of Case in support of an appeal under section 78 of the Town and Country Planning Act 1990 against the refusal of planning permission by Bromley London Borough Council as local planning authority (the "**LPA**"), under LPA reference DC/22/03243/FULL1, by decision notice dated 6 September 2023 (**Appendix 1**).

1.2 There are five reasons for refusal (each a "**RfR**") of planning permission stated on the decision notice:-

**RfR1:-**

*"The proposal would result in a form of development which is inappropriate development in the Green Belt. The siting, scale and design of the proposal would also fail to preserve the openness of the Green Belt and would result in harm to the rural character of the locality. The other considerations put forward by the applicant would fail to clearly and demonstrably outweigh the harm by reason of its inappropriateness and other harm. Consequently, very special circumstances have not been demonstrated and the proposal is therefore contrary to the National Planning Policy Framework (2021), London Plan Policy G2, BLP Policies 37, 49 and 51."*

**RfR2:-**

*"The proposed alteration, demolition and extensions to the Bothy cottage, Bothy House and flat, by reason of their excessive size, scale and design would be out of scale and out of keeping with the original buildings. The proposal would also have an adverse impact on its setting and its significance as a group, failing to preserve or enhance the character and appearance of the locally listed buildings and Chislehurst Conservation Area, contrary to the National Planning Policy Framework (2021), London Plan Policies D3 and HC1, BLP Policies 37, 49, 51 and 52."*

**RfR3:-**

*"The proposal alteration, demolition and extensions to No.1 to No.4 Polo Mews, by reason of its excessive size, scale and design would be out of scale and out of keeping with the original buildings. The proposed demolition of No.3 and No.4 Polo Mews, alteration, demolition and extensions to No.1 to No.2 Polo Mews would have an adverse impact on its setting and significance of the locally listed buildings as a group, fail to preserve or enhance the character and appearance of the locally listed buildings and Chislehurst Conservation Area, contrary to the National Planning Policy Framework (2021), London Plan Policies D3 and HC1, BLP Policies 37, 49, 51 and 52.4."*

**RfR4:-**

*"The proposal development, by reason of its excessive number of parking spaces would fail to achieve sustainable development. Insufficient information has been provided to confirm adequate cycle storage spaces and electrical vehicle charging point can be provided, contrary to London Plan Policies T5, T6 and T6.1."*

**RfR5:-**

*"Insufficient and inadequate information has been provided to demonstrate the level of BNG at 18 percent and a 0.3 target score for urban greening factor can be achieved, contrary to London Plan Policies G5 and G6 of the London Plan."*

1.3 This Statement of Case is accompanied by: a list of appendices (which is intended to be used to inform the Core Documents list); a draft Statement of Common Ground ("**SoCG**") which was shared with the LPA on 22 February 2024; an Appeal Procedure Statement setting out the justification for a Local Inquiry.

- 1.4 The Appellant intends to call 7 witnesses covering the subjects of:-
- 1.4.1 Landscape and visual impact: Richard Hammond of EDLA
  - 1.4.2 Design and Architecture: Alex Richards of Holloway (Architects)
  - 1.4.3 Heritage: Dr Jonathan Edis of HCUK
  - 1.4.4 Energy efficiency and sustainability: Ivan Ball of Blue Sky Unlimited
  - 1.4.5 Hydrogen Plant and Infrastructure: James Dodson of Hydrogensis
  - 1.4.6 BNG: Alexia Tamblyn of Ecology Partnership
  - 1.4.7 Planning policy, Green Belt, Very Special Circumstances, and the balancing of issues: John Escott of Robinson Escott LLP

## 2. THE APPEAL PROPOSAL IN ITS CONTEXT

- 2.1 The Appeal Scheme has been designed to be sympathetic to the existing landscape, amongst which a bespoke, iconic, uniquely beautiful development will sit (Vine House). The Appeal Scheme will accompany the remodelling and planting proposed for the existing viticultural agricultural use; and will generously improve and enhance free public access to the Appeal Site.
- 2.2 In respect of Vine House (the key part of development pursuant to the Appeal Scheme), this acts as an exemplar for modern building and justifiably falls squarely within the scope of paragraph 134 of the NPPF which states: *"significant weight should be given to outstanding or innovative designs which promote high levels of sustainability or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings."*
- 2.3 The Appeal Scheme is considered to be one of the most exciting and dramatic domestic development proposals to come forward anywhere in Greater London in recent years. The Appeal Scheme is expressly endorsed through by the independent Design South East Review Panel ("**DSERP**"). Their report (**Appendix 16**) notes that the Appeal Scheme *"set[s] a positive precedent, for development in the Green Belt"*.<sup>1</sup>
- 2.4 While the location of the Appeal Site is not isolated, it is in a semi-rural area. Paragraph 80(e) of NPPF also supports the proposal in supporting isolated houses in the countryside where *"...the design is of exceptional quality, in that it is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and would significantly enhance its immediate setting and be sensitive to the defining characteristics of the local area."*
- 2.5 It will be demonstrated that Vine House has been designed to be at one with the landscape works and planting of a vineyard, at the same time as being "better than Zero Carbon" with the principal form of power to be provided by hydrogen; a London-wide first.
- 2.6 Further, the net effect of the development on "openness" of the Appeal Site as a whole is to reduce the overall footprint of built development in the Green Belt ("**GB**").
- 2.7 A striking feature of this Appeal Scheme is that while it is intended to provide new built development in the GB countryside, this is taking place with the support of the local community and its local and regional organisations, such as the Chislehurst Society and the DSERP.
- 2.8 To the extent that the Inspector finds that the Appeal Scheme is '*inappropriate development*' in the GB, it will be demonstrated that the circumstances of the Appeal Scheme are indeed very special,

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<sup>1</sup> Report of Design South East Review Panel, para 1.3

to the point of being unique. It will be evidenced that the benefits of the Appeal Scheme clearly outweigh any alleged harm to the Green Belt.

### 3. **MODE OF DETERMINATION OF THE APPEAL**

- 3.1 The Appellant's advisers consider the nature of the application and the reasons for refusal fully justify the determination of the appeal by public inquiry.
- 3.2 The Appellant's justification for seeking determination by public inquiry is based on the assessment that is contained in the Appeal Procedure Statement prepared by the Appellant's solicitors, Pinsent Masons, and endorsed by Counsel, which is submitted with this Statement of Case.

### 4. **THE SITE AND SURROUNDING AREA**

- 4.1 The Appeal Site is described in detail in section 2 of the Planning Statement (**Appendix 3**) submitted with the Application.
- 4.2 The total Appeal Site amounts to 8.3 hectares (20.5 acres) and currently comprises a small working family farm that is accessed by a private gated driveway leading from Kemnal Road. A sizeable agricultural barn is located in the north-western corner of the site adjacent to the entrance driveway. To the front (east) of the barn is a small lake/pond, which was created as part of the flood defences of Home Farm following a major flooding incident in 2013.
- 4.3 In the south-western part of the Appeal Site is a sizeable complex of mainly residential buildings. There are a total of nine residential units. These comprise:-
  - 4.3.1 **Greenacres**: a substantial detached dwelling and the largest property on the Appeal Site;
  - 4.3.2 **Cherry Tree Cottage**: a detached dwelling located to the east of Greenacres;
  - 4.3.3 **Bothy Cottage, Bothy House and Bothy Flat**: three small dwellings within what was the original Bothy building;
  - 4.3.4 **Polo Mews North**: two semi-detached dwellings; and
  - 4.3.5 **Polo Mews South**: two semi-detached dwellings.
- 4.4 To the north and east of the complex of buildings lies the open space and is the proposed location for the new Vines House.
- 4.5 There is an existing public right of way (PROW – FP042) which runs from the northern boundary of the Appeal Site to a point on the southern boundary before diverting in a south-easterly direction to the boundary. The PROW runs to the eastern side of an existing hedgerow which separates two fields.
- 4.6 To the west of the Appeal Site is Foxbury Manor, a Grade II Listed building in substantial grounds. Home Farm originally comprised the residential, stable, and agricultural buildings of the Foxbury Estate.
- 4.7 To the south of the Appeal Site is land that is currently being developed with a very substantial detached dwelling.
- 4.8 To the north of the Appeal Site is the Kemnal Park Cemetery and Memorial Gardens which also includes substantial areas of woodland known as the Kemnal Woodlands. The Woodlands also extend to the east of the Appeal Site.

## 5. RELEVANT PLANNING HISTORY

- 5.1 There is a very lengthy planning history relating to the Appeal Site, much of which has no direct relevance to the current appeal. Set out below, therefore, are those decisions which have relevance either to the background of the Site or to the issues in the Appeal.

Case	Description	Decision
94/02666/FULMAJ	Demolition of Foxbury Cottage and of various stables, commercial and agricultural buildings, and development comprising; - formation of residential curtilages, erection of detached five-bedroom dwelling, erection of stable block and detached vehicle/equipment store with first floor farm offices, renovation of existing stable block, two storey extensions to Cherry Tree Cottage, rebuilding of wall to enclosed garden, construction of tennis court and enclosure, new access driveway and courtyards.	Permission with legal agreement 11/07/1995
98/00973/FUL	Part of Bothy Cottages block, - change of use from workshop/storage into two-bedroom flat, single storey extension and alterations to roof.	Permitted 06/07/1998
99/01961	Conversion and reuse of northern stable building to form two x two-bedroom units with four car parking spaces.	Permission 07/01/2000
00/01002	Conversion and reuse of former southern stable block to form two x one-bedroom units with three car parking spaces garages and elevational alterations to the site curtilages and landscaping.	Permission 29/06/2000
00/03312/FULL	Conversion of southern stable block into two one-bedroom houses with four car parking spaces.	Permission 07/12/2000
03/02987	Part one/two storey side and rear extension to Bothy Cottage.	Permission 09/10/2003
11/02960	Detached five bedroom house with curtilage, 5 car parking spaces and removal of access drive.	Permission 08/02/2012
15/01995/AGRIC	Agricultural building with access road.	Approved 09/06/2015
07/02426	Two storey front extension, part one/two storey extension to link main house to existing games room to form triple garage with accommodation over within walled courtyard.	Permission 04/09/2017
18/03868/PLUD	Erection of two single storey rear extensions and two front porches to serve existing dwellings and erection of two garage outbuildings within rear gardens (3 and 4 Polo Mews).	Lawful Development Certificate granted
18/05570	Conversion of existing barn to provide a four-bedroom dwelling with integral garage.	Application withdrawn 24/10/2019
<b>19/05265/FULL</b>	<b>Reconfiguration of existing seven residential properties at Polo Mews, Bothy Cottage and Bothy House incorporating removal of link to Greenacres</b>	<b>Permission 23/09/2020</b>

	and other demolition works to enable four family homes to be provided along with provision of part single storey, part two storey side, and first floor rear extensions to Bothy Cottage and first floor rear extension to Bothy House, proposed works also include provision of ground and lower ground rear extension to Polo Mews incorporating excavation works and two garages and elevational alterations to the site curtilages and landscaping.	
20/00032/ENFOP	Appeal against Enforcement Notice issued for unauthorised building.	Appeal allowed 19/04/2021

- 5.2 Particular reference will be made to permission 19/05265/FUL ("**2020 Permission**"), which has been implemented and remains extant (**Appendix 20**). It will be explained that this permission remains part of the Appellant's "Fall-Back" position; setting out what development can take place without the need for further planning permission. The particular relevance of this Fall-Back will be explained in relation to Green Belt and heritage matters. It is evident from the granting of the 2020 Permission, the LPA has already accepted that the change approved by this consent would not cause harm to the Green Belt nor would the change cause harm to the Conservation Area or the Locally Listed buildings.

#### ***Pre-Application Engagement***

- 5.3 In accordance with paragraphs 38-40 of the Framework, a pre-application submission for the Appeal Scheme was made on 7 July 2021. A site meeting took place with the LPA's Planning Officer on 10 September 2021. A further site meeting took place with the LPA's Urban Design Officer on 27 September 2021.
- 5.4 The nature of the discussions at the site meetings will be explained in the evidence of the Appellant.
- 5.5 No formal pre-application response letter has ever been provided by the LPA, which would have assisted in understanding any preliminary concerns the LPA had in respect of the Appeal Scheme. In contrast, following a submission made to the independent DSERP, meaningful engagement took place, notably through a site visit and formal design review meeting on 28 March 2022. The DSERP formulated its pre-application comments through a Design Report.

#### ***The Application***

- 5.6 Following further revisions to the proposed development to follow the advice of the DSERP, the planning application for the Appeal Scheme was submitted on the 11 August 2022 ("**Application**").
- 5.7 The Application was referred to the Mayor of London in accordance with the Town and Country Planning Act 1990 (as amended); Greater London Authority Acts 1999 and 2007; and the Town and Country Planning (Mayor of London) Order 2008.
- 5.8 By letter dated the 19 December 2022, the Deputy Mayor concluded that the Application complied with the London Plan and the Mayor did not need to be consulted again (**Appendix 18**). Reference will be made in the evidence to the Stage 1 Report accompanying the Deputy Mayor's decision and to the conclusion of the Greater London Authority that, given the minor increase in floor area and small projection of the subterranean home into the Green Belt, with a well-considered design approach, the GLA did not consider this to be a strategic concern. As the Strategic Planning Authority for London great weight should be placed on the decision of the GLA.

## 6. **PLANNING POLICY CONSIDERATIONS**

- 6.1 The Development Plan comprises the London Plan 2021 and the Bromley Local Plan 2019. The relevant policies in the Development Plan to which reference will be made in the evidence are listed in the draft SoCG.
- 6.2 Relevant paragraphs in the National Planning Policy Framework, December 2023 ("**NPPF**"), to which reference will be made in the evidence are listed in the draft SoCG.

## 7. **THE MASTERPLAN**

- 7.1 The holistic nature of the Appeal Scheme is evident from the 'Masterplan', which is described in the Design and Access statement submitted with the Application (**Appendix 4**), which has been prepared to guide the future for the whole of the Site. Whilst individual components of the Appeal Scheme proposal will be assessed because they give rise to differing policy considerations, including: landscape impact, heritage impacts, design considerations, etc, it will be submitted that each of the components should be assessed in the overall balance having regard to the full context, the "broader picture" or "vision" for the future of the Appeal Site, as opposed to disaggregating the Appeal Scheme as it presents an untrue picture, as the Appeal Scheme would not come forward in this way.

- 7.2 The Appeal Scheme has three main elements:-

### 7.2.1 **Part One:-**

The various alterations, extensions, demolition and reconfiguration within the existing complex of dwellings within the south western part of the site, namely, Green Acres, Polo Mews, The Bothy and Cherry Tree Cottage.

### 7.2.2 **Part Two:-**

The construction of a new subterranean dwelling (Vine House) to be integrated into the existing rolling landscape. Vine House is an exceptional development, not only aesthetically, but also being the first dwelling house in the whole of Greater London to be entirely powered by hydrogen and solar energy, to achieve better than carbon neutrality in its energy generation and needs.

### 7.2.3 **Part Three:-**

The establishment of the vineyard and orchard, and the facilities, landscaping, rationalisation of hard surfaces, parking areas and roads and the tree planting associated with it. It is common ground between the parties that the planting of the vineyard is not a change of use.<sup>2</sup> However, it strongly influences the context and provides a distinctive and semi-formal setting for Vine House and therefore forms part of the Masterplan. Part Three of the Appeal Scheme is therefore an important material consideration in the determination of the appeal.

## 8. **RFR 1 – GREEN BELT**

- 8.1 The first reason for refusal relates to the impact on the Green Belt. Paragraph 152 of the NPPF confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in Very Special Circumstances ("**VSC**").
- 8.2 The Appellant's case is that the benefits associated with the development would in fact clearly outweigh the (limited) harm to the Green Belt (and any other harm) such that VSCs exist.

### ***Harm to Openness***

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<sup>2</sup> See *Millington v SSETR* (1999) 3 PLR 118

8.3 The RfR1 also states that '*[t]he siting, scale and design of the proposal would also fail to preserve the openness of the Green Belt*'. It will be the Appellant's case that aside from the definitional harm caused by the Development in the GB, harm to the openness of the GB would be limited.

8.4 The Appellant notes the following in respect of the developable parts of the Appeal Scheme (Part One and Part Two):-

**Part One:-**

8.4.1 The alterations, demolitions and extensions to the existing dwellings would not result in encroachment of built development beyond the existing developed areas. The alterations would actually result in a significant reduction in overall footprint and volume of built form within this part of the site and would permit views through and between the buildings and would involve a significant reduction in hardstanding and parking areas;

8.4.2 It is also noted that the LPA has already accepted the principle of development on this part of the Appeal Site in granting the extant 2020 Permission. In its committee report for the 2020 Permission, the LPA concluded that there would be no overall impact on the openness of the Green Belt;

8.4.3 It is considered that the Appeal Scheme is undoubtedly an improvement and enhancement as compared to this extant consent. Indeed, the 2020 Permission permits some 87.3 square meters of additional floor area to the Bothy Cottage/Bothy House, and, in relation to Polo Mews, the Appeal Scheme would result in a greater reduction of the existing floor area than that provided by the 2020 Permission, from 450sqm consented to 320 sqm now proposed.

**Part Two:-**

8.4.4 In relation to Vine House, it is accepted that this would involve, in a spatial sense, the encroachment of development onto land where currently none such exists. However, there is no case for describing the development as "urban sprawl"; the antitheses of openness. In any case, however, openness is not just about the spatial dimension. In this instance, the visual aspect of the siting of Vine House is equally, if not more, important to the perception of openness, particularly if the design of the proposal provides relief from the prospect of urban sprawl through the absence of any harmful visual impact;

8.4.5 Although not an isolated dwelling, Vine House clearly meets the criteria in paragraph 84(e) of the NPPF. Vine House has specifically been designed to integrate into sloping land within the landscape. It is of outstanding and innovative design which promotes a high level of sustainability and which paragraph 139 of the NPPF says should, therefore, be given significant weight;

8.4.6 With regard to scale and design, Vine House is designed to make a positive contribution to the intrinsic beauty of the countryside. It will, as NPPF paragraph 131 says, create a "high quality, beautiful and sustainable building and place", which is fundamental to what the planning and development process should achieve;

8.4.7 Further, in order to test the extent of any visual impact arising out of the location and design of Vine House, a full and detailed Landscape and Visual Impact Assessment ("**LVIA**") was submitted with the Application (**Appendix 6**). The conclusion of the LVIA was that Vine House would only be visible at very close range with no longer distance views and would therefore not result in an adverse visual impact that would cause harm to the perception of the openness of the Green Belt;

8.5 It is therefore the Appellant's view that there is no overall harm to the openness of the GB and the Appellant will refer to a number of relevant appeal decisions/case law to support this conclusion, including:

- 8.5.1 *Euro Garages Ltd v SSCLG*<sup>3</sup> – when considering the impact on the GB, there is no check list to be gone through but it requires more than a change to the environment. Further, visual impact, as well as spatial impact, requires consideration, subject to a margin of appreciation;
- 8.5.2 APP/K2230/W/22/3297257 (**Appendix 24**) – it was held by the Inspector that the proposal would not lead to an intensification of the residential use of the site and thus preserve the openness of the GB and not conflict with including land within it;
- 8.5.3 APP/R1038/W/22/3312857 (**Appendix 25**); APP/M0655/W/22/3311986 (**Appendix 21**) – it was held that in some respects the impacts to the GB would be greater and yet in other respects the impacts to the GB would be reduced. A decision as to the impact on openness should be taken in the round, and in overall terms.

8.6 In respect of this point, reliance will also be placed on the further information sought from the LPA on 9 February 2024 but not provided in their response on 20 February 2024 (**Appendix 26 and 27**).

### ***Very Special Circumstances***

- 8.7 The term "very special circumstances" has no statutory or policy definition and is a matter of planning judgement for the decision maker. Although there is no requirement that each of the benefits of a development proposal needs to be a "very special circumstance" and the "very special circumstances" can include matters which may include circumstances both individually special and circumstances which are not very special individually, but collectively their benefits are sufficient to outweigh harm from inappropriate development and any other harm.<sup>4</sup> It is the Appellant's case that, in accordance with the NPPF, 'very special circumstances' exist, and as such, that harm is far outweighed by the benefits of the development.
- 8.8 There are several factors identified in paragraphs 7.32 to 7.82 of the Appellant's Planning Statement submitted with the Application which would either individually or together amount to the very special circumstances. These are set out below and shall also be expanded upon in the Appellant's proofs of evidence.

### **Fallback Position**

- 8.8.1 A key consideration for the Inspector will be the Appellant's 'Fallback Position': the 2020 Permission (**Appendix 19 and 20**).
- 8.8.2 The Appellant will present the results of a detailed comparison against the 2020 Permission, which will demonstrate the Appeal Scheme would not result in any increase in the overall floor area of built development on the Appeal Site but that there would actually be a reduction. Further, the Appeal Scheme would result in a very significant reduction in the overall amount of hardstanding on the Appeal Site.
- 8.8.3 The removal of buildings to the south of Cherry Tree Cottage and the substantial detached garage building to the north of the Bothy will reduce the spread of the PDL area of the existing residential complex. The demolitions that are proposed through the Appeal Scheme would also enable key views to be opened up through the site particularly between Greenacres and Polo Mews and thus have a positive impact upon the openness of the GB.
- 8.8.4 In addition to the overall net reduction in the total amount of built development from the Appeal Scheme, the evidence will also demonstrate that the notional spread of development that Vine House involves, which the Mayor regarded as a small projection into the GB, would be more than compensated by the reduction in spread to the south of Cherry Tree Cottage and to the north of the Bothy.

<sup>3</sup> [2018] EWHC 1753 (Admin)

<sup>4</sup> See *Basilidon v SSE* [2004] EWHC 2759 (Admin) per Sullivan J. at [17]

- 8.8.5 The Inspector will also be required to consider the related benefits associated with the Appeal Scheme, which would otherwise not come forward through the 2020 Permission. These benefits are set out immediately below as each is considered to amount to a 'very special circumstance' in its own right, however, they also need to be considered as part of the Inspector's assessment of the fallback position and significant weight should be attached to this in the overall planning balance.<sup>5</sup>

### **Sustainability - First Hydrogen House in London**

- 8.8.6 Paragraph 156 of the NPPF advises that the environmental benefits associated with increased production of energy from renewable sources is capable of constituting a 'very special circumstance' in GB policy terms. Paragraphs 157 and 163 also state that support should be given to transition to a low carbon future and that even small scale projects that provide a valuable contribution to cutting greenhouse gas emissions should be approved if the impacts are acceptable.
- 8.8.7 A simplified summary of the proposed hydrogen system to be adopted is explained in the Vision Document (**Appendix 17**) and also referred to in the Sustainability and Energy Assessment (**Appendix 9**) both submitted with the Application. The evidence of James Dodson of HydroGenesis will also expand upon this as well as setting out the sustainability benefits associated with the system.
- 8.8.8 The Appellant considers that the LPA has misunderstood the use of the hydrogen system and conflated this with other sustainability models more commonly adopted, such as solar. By doing so the LPA has not considered this to be a very special circumstance. This misunderstanding is set out in paragraph 6.1.16 of the committee report, where the LPA refers to the affordable housing scheme at Brindley Way. It will be set out in Mr Dodson's proof of evidence that Brindley Way is a solar scheme and does not in any way match the exemplar proposals of the Appeal Scheme nor its associated sustainability benefits.

### **Design and Architecture**

- 8.8.9 The design and architecture of the proposals is an exemplar that will help raise the standards of architecture in London, and potentially even wider.
- 8.8.10 The appropriateness of the design has been tested throughout the Application stages. Notably through the DSERP whose comments have been fully integrated into the Appeal Scheme.
- 8.8.11 The evidence of Alex Richards of Hollaway will explain the principles of the design and how it is 'exemplar' in nature. Further, it will be demonstrated that the Appeal Scheme celebrates the surrounding locality, with openness being a key consideration. Further, it will be evidenced how the reconfiguration of the existing buildings (Part One) has been approached cautiously and sympathetically.
- 8.8.12 Mr Richards will also respond to and rebut the comments of the LPA in the committee report which consider the design to be inappropriate for the locality of the Appeal Site.
- 8.8.13 The NPPF is clear that great weight should be applied to outstanding/innovative designs which promote sustainability or good design in an area, providing they complement the surroundings (paragraph 139). The Appellant therefore submits that substantial weight should be attached to this very special circumstance.<sup>6</sup>

### **Landscape**

<sup>5</sup> The Appellant shall refer to APP/M0655/W/22/3311986 (**Appendix 21**) where the Inspector applied significant weight to the fallback position – noting that the fallback would be more harmful than the present proposal and would not provide the same environmental benefits (biodiversity and sustainability)

<sup>6</sup> APP/V3120/A/12/2188869 (**Appendix 22**); APP/P2935/W/19/3225482 (**Appendix 23**)

- 8.8.14 The Appeal Scheme would result the creation of a new iconic landscape which, as the National Design Guide emphasises, is a critical component of well-designed places.
- 8.8.15 The new iconic landscape would be achieved by a holistic design, which defines the Site via a number of landscape character areas. These landscape character areas would improve the sense of arrival into the Site and set the existing buildings within a new parkland and meadow setting, along with new contemporary style gardens with extensive tree planting. The landscape structure around the vineyards would be improved via new woodlands and extensive orchards (including heritage fruit varieties), which would transition into a new public picnic area and community orchard, adjacent to PROW FP042 in the south-east part of the Site (**Appendix 5**).
- 8.8.16 The benefits associated with the landscaping of the Appeal Scheme will be addressed in the proof of evidence of Richard Hammond of EDLA.

#### **Biodiversity**

- 8.8.17 The Appeal Scheme proposes to make a biodiversity net gain ("**BNG**") of 18%. The evidence of Alexia Tamblin of Ecology Partnership will demonstrate how this has been calculated and how it will be achieved. References in the evidence will also be made to the inter-related reason for refusal (RfR 5) which is addressed separately in this SoC.
- 8.8.18 The LPA appears to have not taken this into account when considering the Appeal Scheme's very special circumstances. It is not clear whether this is because the LPA believed (incorrectly) that some of the net gain (i.e. 10%) would be required in any event, through forthcoming legislation. However, this approach would be incorrect, and the Inspector must consider the entire gain (i.e. 18%).<sup>7</sup>
- 8.8.19 The Appellant considers that the very sizeable gain of 18% should be afforded very significant weight and is a very special circumstance. In respect of this point, reliance will also be placed on the further information received from the LPA on 20 February 2024 (**Appendix 26 and 27**).

#### **Public Benefits**

- 8.8.20 The appeal proposals would involve improvements to PROW FP042, a very well used public footpath. As set out above, in respect of the landscape, the proposals would also result in the creation of a dedicated picnic area for the public and a new community orchard. This will be addressed further through the evidence of John Escott of Robinson Escott LLP and Mr Hammond.

#### **Rural Agricultural Business**

- 8.8.21 Significant investment has already been made in the new vineyard and the creation of a modern, unique wine estate. Whilst consent is not required for this element, it still forms part of the Appeal Scheme as it is fundamental to the Masterplan proposals.
- 8.8.22 The NPPF encourages support for the sustainable growth for all types of rural agricultural businesses. The evidence of Mr Escott will set out how the vineyard will function and sit within the Masterplan. Mr Escott will also set out how if the Fallback Position was to come forward, the same level of benefits would not arise from the existing vineyard.

#### **Self-Build**

- 8.8.23 The construction of a new self-build dwelling would comply with paragraph 70 of the NPPF which states that planning decisions should support small sites coming forward for self-

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<sup>7</sup> NRS Saredon Aggregates Ltd v SSLUC [2023] EWHC 2795 (Admin)

build housing. The evidence of Mr Escott will explore this very special circumstance and how the LPA has failed to apply the correct test in its committee report.

- 8.8.24 In respect of this point, reliance will also be placed on the further information received from the LPA on 20 February 2024 (**Appendix 26 and 27**).

***Very Special Circumstances – Weight to Previously Developed Land***

- 8.9 In assessing the VSC case set out above, it is also vital that the Inspector considers this in light of the amount of development taking place on previously developed land (PDL), as this is in itself a material consideration.
- 8.10 The Appellant notes the following in respect of the developable parts of the Appeal Scheme:
- 8.10.1 **Part One:** the Bothy, Polo Mews, Greenacres, and Cherry Tree Cottage comprise PDL within the definition set out in Annex 2 of the Framework. This point is not disputed by the LPA in its committee report.
- 8.10.2 **Part Two:** this part of the Development will be undertaken on what is open field. It is accepted by the Appellant that this is non-PDL.
- 8.11 The split between PDL and non-PDL is as follows:
- 8.11.1 Development on PDL: circa. 4.46 acres, or 93% of the Appeal Scheme (Part One).
- 8.11.2 Development on non-PDL: circa. 0.348 acres, or 7% of the Appeal Scheme (Part Two).<sup>8</sup>
- 8.12 Development will therefore take place overwhelmingly on PDL, which is a material consideration for the Inspector when assessing the weight to be allocated to the above benefits and whether they amount to VSC outweighing the definitional harm to the GB.
- 8.13 The decision of *Whitley Parish Council, R (On the Application Of) v North Yorkshire County Council*<sup>9</sup> will be relied upon by the Appellant, where the judge found:
- "Although the "very special circumstances" requirement means the overall balance remains loaded against inappropriate development in the Green Belt, it made perfect sense for the OR to examine the issue of harm arising from the built element of the proposals, by considering whether - in the light of the buildings etc already on the site (some of which would be demolished) - that element could be said to have "a greater impact on the openness of the Green Belt than the existing development" (7.21). It is clear from the OR - in particular, the passages cited above - that it was not being suggested that the built element was being given a "free go". The overarching question remained whether there were "very special circumstances". However, the ascertainment of whether such circumstances existed could only properly be achieved by understanding the overall nature of the harms. So far as the built element was concerned, its overall impact fell to be assessed in the light of the existing buildings etc. In short, whether the built development, viewed in its own terms, would be inappropriate development in terms of paragraph 145 of the NPPF, was relevant to the overall assessment of whether the "very special circumstances" test was met." [96] (emphasis added)*
- 8.14 The judge confirms that this does not conflict with the *Kemnal Manor*<sup>10</sup> principle, as this is not the same as seeking to divide up the development when determining whether a scheme amounts to inappropriate development.
- 8.15 It is the Appellant's case that, in accordance with *Whitley*, the Inspector must take into account the fact that over 90% of development proposed by the Appeal Scheme will be undertaken on PDL. If

<sup>8</sup> The Appellant will provide more precise percentages in the relevant proof(s) of evidence

<sup>9</sup> [2022] EWHC 238 (Admin) (09 February 2022)

<sup>10</sup> *Kemnal Manor Memorial Gardens Ltd v First Secretary of State* [2006] 1 P. & C.R. 10

Part One were to be viewed on its own, this would not be inappropriate development in terms of (what is now) paragraph 152 of the NPPF, and this is highly relevant to the overall assessment of the Appellant's VSC case.

**Conclusions: RFR1**

8.16 It will be the Appellant's case that aside from the definitional harm caused by the Development in the GB, harm to the openness of the GB would be limited.

8.17 The Appellant also considers that there are a number of very special circumstances which apply, and should be afforded substantial weight. The very special circumstances evidently outweigh any purported harm alleged by the LPA to the GB.

**9. RFR2 AND RFR3: IMPACT ON CHARACTER AND APPEARANCE OF HERITAGE ASSETS AND THEIR SETTINGS**

9.1 These two refusal reasons arise from the proposed works to the Bothy Cottage/Bothy House (the "**Bothy**") and to Polo Mews. It is alleged that the works would be out of scale and out of keeping with the original buildings, which are "locally listed", non-designated heritage assets.

9.2 The evidence of Mr Selby (of the Appellant), which will be provided in the form of a sworn Statutory Declaration, will provide the factual basis for the conclusion that the LPA has vastly exaggerated the heritage significance of the "locally listed" buildings, and arrived at a conclusion that cannot reasonably be consistent with the thrust of paragraph 209 of the NPPF or of local heritage policy.

9.3 In respect of the Bothy, Mr Selby's evidence will set out how the building was completely reconfigured and had extensions added to it in the early 2000s. The building as it exists today cannot therefore be said to be "original".

9.4 In respect of Polo Mews, Mr Selby will further confirm that Polo Mews North (1 and 2) were completely reconfigured in the early 2000s. In respect of Polo Mews South (3 and 4), the original building was demolished and a new building erected in the early 2000s.

9.5 It cannot be said that the locally listed buildings, therefore, are "original". Further, through the granting of the 2020 Permission (the Fallback Position), the LPA has already accepted the principle of change to both the Bothy and Polo Mews. It is considered that the Fallback Position would result in greater harm to these buildings than any caused by the Appeal Scheme.

9.6 The evidence of Dr Jonathan Edis of HCUK Group will be that, whilst the Inspector has a statutory duty to consider the effect of the proposal on the setting on Foxbury (for the reasons explained at paragraph 4.3 and Appendix 2 of the Heritage Impact Assessment (**Appendix 7**)), there will be no significant impact on the setting of the Listed Building or a reduction in its significance. This conclusion appears to be agreed by the LPA, as RfR 2 and RfR 3 do not refer to any harm to Foxbury (or its setting).

9.7 In relation to the effect of the Chislehurst Conservation Area, the evidence of Dr Edis will be that, for the reasons explained at paragraphs 4.4 - 4.6 of the Heritage Impact Assessment, the overall reduction of building footprint will have a positive impact and paragraph 208 of the NPPF will not be engaged.

9.8 In relation to the "locally listed" buildings (non-designated heritage assets), the evidence of Dr Edis will be that, having regard to the evidence of Mr Selby, the heritage significance of the "locally listed" buildings has been vastly exaggerated and that the LPA has arrived at a conclusion that cannot be consistent with the thrust of paragraph 209 of the NPPF, which requires only that the effect on their significance is to be "*taken into account*". The NPPF test is a less onerous requirement than the statutory requirement which applies to designated heritage assets. Further, as demonstrated through the evidence of Mr Selby, the LPA has already confirmed the acceptability of harm to the locally listed buildings, through the granting of the 2020 Permission.

- 9.9 In respect of these RfRs, reliance will also be placed on the further information received from the LPA on 20 February 2024 (**Appendix 26 and 27**).

**Conclusions: RFR2 and RFR3**

- 9.10 The Appellant will demonstrate that the locally listed buildings have little or no intrinsic merit as heritage assets. Further, the principle of harm to the locally listed buildings (the Bothy and Polo Mews) has already been accepted through the granting of the 2020 Permission, which would cause greater harm to the buildings.
- 9.11 The evidence will also show that there is no harm to the special architectural or historic interest of the Chislehurst Conservation Area. In fact, the Appeal Scheme will result in a net enhancement of the character and appearance of the Chislehurst Conservation Area.

**10. RFR 4: EXCESSIVE PARKING SPACES, INADEQUATE CYCLE AND ELECTRIC VEHICLE CHARGING**

- 10.1 The Appeal Scheme will result in less parking spaces than currently exist on the Appeal Site. It will be the Appellant's case that the criticism by the LPA of excessive parking spaces is unfounded and misconceived.
- 10.2 There is no justification for alleging that electric vehicle charging facilities cannot be provided and similarly that cycle parking is inadequate. It is considered that both of these issues could have been resolved through pre-application discussions with the LPA, had the matters been raised at that point. However, the Appellant is content to resolve the LPA's concerns here and intend to engage with the LPA, in advance of the Inquiry, with the aim of removing this RfR.
- 10.3 This RfR will be dealt with through Mr Escott's evidence with reference to the Transport and Highways Technical Note (**Appendix 10**), however, it is considered that the LPA's concerns could be resolved by way of planning condition.

**11. RFR 5: BIODIVERSITY NET GAIN**

- 11.1 The Appellant will demonstrate through the evidence of Ms Tamblyn that the development will achieve at least 18% BNG.
- 11.2 The LPA appears to have misunderstood the BNG proposal presented in the Ecological Appraisal submitted with the Application (**Appendix 8**), as it considers that insufficient and inadequate information has been provided. The Appellant sought clarification from the LPA on 9 February 2024 for clarification as to how it reached its conclusions, however, the Appellant will set out that the information provided by the LPA on 20 February 2024 simply does not justify this conclusion (**Appendix 26 and 27**).
- 11.3 The Appellant maintains that this gain can be achieved and is confident that this issue can be resolved through active engagement with the LPA in advance of the Inquiry.

**12. THE OVERALL PLANNING BALANCE**

- 12.1 The development of the first Hydrogen powered, zero carbon house in the whole of Greater London and the overall sustainability of the appeal proposal and the contribution that would be made to tackling the climate crisis is a benefit of the scheme to which substantial weight should be given, in accordance with policy and the NPPF.
- 12.2 It will be demonstrated that the design of Vine House is of an exemplary and outstanding architectural quality displaying the highest standards of design. The benefits that arise in raising the quality of architecture in the area, enhancing the setting of the development, and contributing to a better appreciation of existing heritage assets is a material consideration to which substantial weight should be given.

- 12.3 The appeal proposal would also result in an 18% increase in BNG. This is a benefit of the scheme to which significant weight should also be given.
- 12.4 The creation of a new, unique, designed and integrated landscape which has been master-planned to relate directly to the design of the new Vine House, and should be assessed holistically with the building, providing a benefit of the scheme to which substantial weight should be given.
- 12.5 The Appeal Scheme would provide further valuable public benefits identified in the Planning Statement, including: a landscape picnic area, visitor information, community orchard and an appreciation of nature. These are benefits to which substantial weight should be given.
- 12.6 The Appeal Scheme would also result in a net enhancement to the character and appearance of the Conservation Area. They would allow for a better appreciation of the significance of the locally listed buildings. These are heritage benefits to which substantial weight should be given.
- 12.7 The proposed Vine House would involve construction of a new self-build dwelling. This would contribute to meeting the shortfall in supply of self-build dwellings and the failure of the LPA to meet its duty under the Self-Build and Custom House Building Act 2015 is a factor to which significant weight should be given.
- 12.8 Securing a long-term future for Home Farm through the establishment of the new viticultural business, which is an integral component of the overall Masterplan, is a benefit to which very significant weight should be given.
- 12.9 The Inspector must also consider the Appellant's Fallback Position, and the fact that greater harm would be caused to the locally listed buildings through the implementation of the 2020 Permission. Further, the Inspector must also consider that a number of key benefits (set out above) would only come forward through the Appeal Scheme. The Fallback Position should be allocated significant weight.

### 13. **DRAFT CONDITIONS AND OBLIGATIONS**

- 13.1 The Appellant will seek to agree conditions and obligations (to be included in a section 106 agreement) with the LPA, in order to ensure that the Appeal Scheme's key benefits, which form its VSC case, are properly secured.
- 13.2 It is considered these will include (but not be limited to) the following:

#### ***Conditions***

- 13.2.1 **Hydrogen** – in order to secure the benefit of this part of the VSC, the condition could require the Appellant to provide an Energy Statement setting out how the hydrogen power will be used and to be agreed with the LPA. The condition could also restrict occupation of Vine House until the Statement has been implemented.
- 13.2.2 **BNG** – a suitably worded condition could be agreed with the LPA to ensure the delivery of 18% BNG and maintenance of the same.
- 13.2.3 **Landscaping** – a suitably worded condition could be agreed with the LPA to secure the landscaping details and ensure development is undertaken in accordance with the same and maintained accordingly.

#### ***Obligations***

- 13.2.4 **Use of the vineyard** – the Appellant proposes an obligation in the section 106 agreement which would effectively restrict the area of land to be used only as a vineyard for a designated period of time.

13.2.5 **Public benefits** – the Appellant proposes including obligations to secure the proposed public benefits (improvements to PROW FP042, creation of a dedicated picnic area and a new community orchard).

**14. OVERALL CONCLUSIONS**

- 14.1 It will be the Appellant's case that aside from the definitional harm caused by the Development in the GB, harm to the openness of the GB would be limited.
- 14.2 The Appellant also considers that there are a number of very special circumstances which apply, and should be afforded substantial weight. The very special circumstances evidently outweigh any purported harm alleged by the LPA to the GB.
- 14.3 The Appeal Scheme represents sustainable development, creating a new and beautiful landscape and buildings. The grounds for refusing permission set out in the LPA's reasons for refusal are not made out.
- 14.4 The Appeal Scheme is in accordance with the Development Plan and NPPF. The Appeal should be allowed, the Appeal Scheme should be approved and full permission, subject to appropriate conditions and obligations (pursuant to a section 106 agreement).

**Pinsent Masons LLP**

**1 March 2024**