

PROOF OF EVIDENCE OF JOHN ESCOTT PART ONE



Demolition of part of Greenacres,
Demolition, alterations and extensions to
part of Polo Mews North, demolition of Polo Mews
South and demolition, alterations and extensions to
part of The Bothy.

Erection of linking extension between Polo Mews
North and Polo Mews South to create 1 new dwelling.

Erection of two storey extension to The Bothy and
conversion from 3 into 2 dwellings. 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.

At
Home Farm
Kemnal Road
Chislehurst
BR7 6LY



01689 836334



enquiries@replanning.co.uk



www.replanning.co.uk

JOHN ESCOTT

London University 1974 – BA (Hons) Geography & Social Anthropology

Polytechnic of the Southbank – 1978 – Post Graduate Diploma in Town & Country Planning

Royal Town Planning Institute – Chartered Member of the Institute since 1979

Experience

Has over 40 years' experience in Town & Country Planning and have held senior positions in both the public and private sectors including Associate Director with responsibility for planning and development consultancy at a major national firm of Chartered Surveyors.

Formally principal of AJP Planning, the planning consultancy practice of AJP Frankham Ltd, a sizeable multi-disciplinary firm of Architects, Planners, Surveyors and Project Managers. I remain a consultant to this firm.

Consultant to Michael Rogers & Co, Chartered Surveyors with offices in central London and south east England.

Senior Partner of Robinson Escott Planning, Chartered Town Planning & Development Consultants.

Wide ranging experience in all aspects of planning, including cases relating to;

- Residential proposals both large and small.
- Commercial – office and small business unit schemes.
- Leisure uses including sporting facilities.
- Green Belt cases.
- Educational proposals

Represented many large house building and corporate clients as well as a wide range of other bodies and individuals. I have acted for a number of Local Planning Authorities as well as other public bodies such as NHS Trusts.

I am familiar with the site having obtained the original planning permission for Greenacres in 1995.

My practice has been advising Mr and Mrs Selby ever since.

STATEMENT OF TRUTH

The evidence which I have prepared, as set out in this document and the appendices to it, is true and has been prepared in accordance with the guidance of my professional institute, The Royal Town Planning Institute. I confirm that the opinions expressed are mine, and are true and professional opinions, irrespective of by whom I am instructed.

INSTRUCTIONS

I am formally instructed by Mr Alan and Mrs Pauline Selby, who are the owners of the appeal site. Following the grant of planning permission DC/19/05265 on the 23rd September 2020 and the subsequent allowed appeal decision of the 19th April 2021, I was instructed to provide continuing planning advice regarding the masterplanning of the appeal site to include the establishment of the new vineyard, the reconfiguration of existing development and the creation of a unique new dwelling. I am very familiar with the appeal site having been involved with all aspects of the evolution of the site since the acquisition of the site by Mr and Mrs Selby and the grant of the original planning permission for development at the site including the erection of Greenacres in 1995.

STRUCTURE OF THE PROOF

The proof of evidence is structured into two parts.

Part One of the evidence deals with the preliminary matters, planning history, policy and an assessment of appropriateness and Green Belt Openness.

Part Two reviews other material considerations relevant to the VSC case, RfR 2, 3 and 4, the planning balance and overall conclusions.

<u>CONTENTS</u>		<u>Page</u>
<u>1. Introduction</u>	.....	6
Reasons for refusal	.....	7
The issues	.....	7
Scope of evidence - Part One.....		8
Scope of evidence – Part Two.....		9
<u>PART ONE</u>		
<u>2. The Appeal Site & Surrounding Area</u>	.....	10
<u>3. Relevant Planning History</u>	.....	12
The extant permission	.....	15
Other relevant history.....		17
Comparison of extant permission and appeal scheme.....		17
History of the application.....		19
<u>4. Planning Policy Considerations</u>	.....	22
NPPF	.....	22
Development Plan	.....	26
<u>5. Reason for Refusal One</u>	.....	28
Appropriate or inappropriate.....		28
Extent of actual harm – Openness.....		31
<u>PART TWO</u>		
<u>6. Assessment of other Material Considerations</u>	.....	36
Fallback Position.....		37
Hydrogen/Sustainability.....		38
Design & Architecture.....		39
Landscape.....		40
Biodiversity.....		41
Rural Business.....		42
Public Benefits.....		43
Self-Build.....		44

<u>7. Reasons for Refusal Two and Three</u>	46
<u>8. Reason for Refusal Four</u>	47
<u>9. The Planning Balance and Overall Conclusions</u>	49

1. INTRODUCTION

- 1.1. This appeal relates to an application for full planning permission that was submitted to the London Borough of Bromley on the 11th August 2022. The application proposed development at Home Farm, Kemnal Road, Chislehurst BR7 6LY which it is now agreed with the Council in the Statement of Common Ground (SOCG) can be described as follows.

Demolition of part of Greenacres, demolition, alterations and extensions to part of Polo Mews North, demolition of Polo Mews South and demolition, alterations and extensions to part of The Bothy. Erection of linking extension between Polo Mews North and Polo Mews South to create 1 new dwelling. Erection of two storey extension to The Bothy and conversion from 3 into 2 dwellings. 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")

- 1.2. The documents submitted in support of the application are set out as **(CD1.1 – CD2.12)**.
- 1.3. The application was referred to the Mayor of London on the 23rd November 2022. On the 19th December 2022, the Deputy Mayor advised the Council that the application complied with the London Plan and did not need to be referred back to the Mayor. The Stage One Report accompanying the Deputy Mayor's decision stated that given the minor increase in floor area and the small projection of the subterranean home into the Green Belt with a well-considered design approach, GLA officers did not consider this to be a strategic concern. **(CD4.4)**
- 1.4. The application was reported to the Councils Plan Sub Committee on the 31st August 2023 with a recommendation that planning permission be refused. **(CD3.1)**

- 1.5. Prior to the Committee meeting a short “*Summary Brochure*” was produced for Committee Members. As this did not form part of the application documents/submission, a copy is attached at **Appendix 1**.
- 1.6. By decision notice dated 6th September 2023 planning permission was refused on the grounds set out in the decision notice (**CD3.2**)
- 1.7. This appeal against the Councils refusal of planning permission was lodged on the 1st March 2024.

THE ISSUES

- 1.8. In the summary note produced following the Case Management Conference (CMC) of the 4th June 2024, the Inspector identified the likely main issues as being;
- 1) Whether the proposal is inappropriate development in the Green Belt, and if so its effect on openness.***
 - 2) The effect on the landscape.***
 - 3) The effect on significance and special interest of designated and non-designated heritage assets consisting of the Chislehurst Conservation Area, Bothy Cottage, Bothy House and Flat and 1-4 Polo Mews.***
 - 4) Provision of self-build development.***
 - 5) If the development is inappropriate, whether the harm by reason of inappropriateness and any other harm, would be clearly outweighed by other considerations so as to amount to the Very Special Circumstances necessary to justify development in the Green Belt.***
- 1.9. Following the CMC the Council has now confirmed in the Statement of Common Ground (SOCG) that reason for refusal (RfR) 5 relating to Ecology and BNG is now withdrawn.

1.10. Following the CMC the Council has also now confirmed that RfR 4 relating to cycle storage and electric vehicle charging are matters that can be dealt with by condition. However, there remains as an issue;

- ***Whether the Appeal Scheme would result in excessive parking.***

SCOPE OF MY EVIDENCE

1.11. My evidence is essentially directed towards addressing those matters contained within the first reason for refusal (“RfR 1”), which links to the Inspector’s Issue 1. However, in view of the fact that RfR 1 raises separate issues which, although linked, require separate consideration and which the Inspector has also identified separately in the list of issues, this Proof of Evidence is structured into 2 parts.

Part 1

1.12. Part 1 of the evidence firstly explains the background to the proposal and sets the scene with a brief site description.

1.13. Secondly, the evidence then focusses on the planning history of the site which is a very important Material Consideration in relation to both the Green Belt and Heritage issues. This matter is also dealt with, amongst other things in the evidence of Mr Selby (The Appellant) Mr Selby’s evidence is attached to my proof as **Appendix 2**.

1.14. The evidence then, thirdly, reviews relevant policy.

1.15. The evidence then addresses specifically the question of whether the appeal proposal constitutes appropriate or inappropriate development in the Green Belt.

1.16. Finally, Part 1 of the evidence will review, with reference to relevant Case Law, the approach to be taken in respect of assessing the impact of the proposal on the openness of the Green Belt and will, in applying these general principles reach a conclusion on the extent, if any, of harm to Green Belt openness arising from the appeal proposal.

Part 2

- 1.17. Having established the baseline in relation to the extent of actual harm to Green Belt openness, and any other harm, the evidence will then review Case Law and the approach to be taken in weighing the benefits and undertaking the balancing exercise to establish whether there are Very Special Circumstances.
- 1.18. The evidence will review each of those Material Considerations relevant to reaching a reasoned and balanced judgement, namely,
- ***The fallback position.***
 - ***Sustainability-energy-Hydrogen house.***
 - ***Design and architecture.***
 - ***Landscape.***
 - ***Biodiversity.***
 - ***Public benefits.***
 - ***Rural agricultural business.***
 - ***Self-build.***
- 1.19. The evidence will finally conclude in relation to RfR 1 by undertaking a balancing exercise of harm against benefits in order to establish whether Very Special Circumstances exist.
- 1.20. Although heritage matters and the Appellants evidence concerning refusal reasons 2 and 3 is largely dealt with by Dr Edis, my evidence then provides an overview on the balancing of this issue.
- 1.21. Finally, the evidence addresses RfR 4 concerning parking.
- 1.22. My evidence concludes with the planning balance and overall conclusions.

2. THE APPEAL SITE & SURROUNDING AREA

- 2.1. The 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.
- 2.2. 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:-
- 2.2.1 **Greenacres:** a substantial detached dwelling and the largest property on the Appeal Site;
 - 2.2.2 **Cherry Tree Cottage:** a detached dwelling located to the east of Greenacres;
 - 2.2.3 **Bothy Cottage, Bothy House and Bothy Flat:** three small dwellings within what was the original Bothy building;
 - 2.2.4 **Polo Mews North:** two semi-detached dwellings; and
 - 2.2.5 **Polo Mews South:** two semi-detached dwellings.
- 2.3. To the north and east of the complex of buildings lies the open space that is the proposed location for the new Vine House.
- 2.4. 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.

- 2.5. 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.
- 2.6. To the south of the Appeal Site is land, now known as Stonebrook House, that is currently being developed with a very substantial detached dwelling.
- 2.7. 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.

3. **RELEVANT PLANNING HISTORY**

- 3.1. 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/FULL1	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/FULL1	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/FULL1	Conversion of southern stable block into two one bedroom houses with four car parking spaces.	Permission 07/12/2000
03/02987/FULL6	Part one/two storey side and rear extension to Bothy Cottage.	Permission 09/10/2003

11/02960/FULL1	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
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/FULL1	Conversion of existing barn to provide a four bedroom dwelling with integral garage.	Application withdrawn 24/10/2019
19/05265/FULL	Reconfiguration of existing seven residential properties at Polo Mews, Bothy Cottage and Bothy House incorporating removal of link to Greenacres 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.	Permission 23/09/2020
19/00550/OPDEV	Appeal against Enforcement Notice issued for unauthorised building.	Appeal allowed 19/04/2021

- 3.2. There are number of previous planning permissions that are, in my view, important material considerations in this case, and which are referred to in my evidence.
- 3.3. The original planning permission for Greenacres was permitted in 1995. Mr Selby explains in his evidence the details of the work undertaken then and subsequently. (**Appendix 2.**) The 1995 permission is attached at **Appendix 3.** It would certainly appear from Mr Selby's

evidence that this permission granted consent for the demolition of the building now described as Polo Mews South.

- 3.4. Planning permission 99/01961/FULL1 permitted the conversion and re-use of Polo Mews North (1 and 2) to form two 2 bedroom units with 4 car parking spaces. A copy of the decision notice and the approved plans are attached at **Appendix 4**.
- 3.5. The significance of this permission is that Polo Mews North can be seen to have been completely gutted, re-elevated, re-fenestrated and to bear very little resemblance if any, to the original stable building. The evidence of Mr Selby (the Appellant) further explains and details the considerable extent of works that were undertaken. All of this leads me to the conclusion that the extent of alterations and changes to Polo Mews North means that the building has little remaining intrinsic interest that is of heritage significance.
- 3.6. I therefore share the view that is expressed by Dr Edis in his proof of evidence.
- 3.7. Planning permission 00/03312/FULL permitted the conversion of the southern stable block (Polo Mews South, 3 and 4) into two 1 bedroom units with 4 car parking spaces. A copy of the decision notice and approved plans are attached **Appendix 5**
- 3.8. The evidence of Mr Selby also explains and details the works that were undertaken to Polo Mews South. In this case, the works were even more extensive and actually involved the demolition of the building and its almost complete rebuilding. I say almost because only the original rear main wall of the building, i.e., the southern elevation, remains and is evident today. Mr Selby gives evidence of this re-building but the signs are also there to be seen, for example, the brickwork used for the walls of Polo Mews South and indeed Polo Mews North, are the same bricks that Mr Selby used to also build the new house at Greenacres. To further illustrate the demolition and re-build point, Mr Selby has exposed part of the brickwork of Polo Mews South from which the cavity wall construction can plainly be seen with a blockwork interior inner skin. If this building were original then it certainly would not have had a cavity wall construction. The exposed brickwork will be available for the Inspector to view.

- 3.9. In the circumstances, I think it can reasonably be concluded that Polo Mews South is a new building dating from about 2001 which, as Dr Edis concludes, has little intrinsic heritage interest in the building itself. As a group with Polo Mews North and Bothy House the significance is modest.
- 3.10. Permission 03/02987 granted planning permission for part one and part two storey side and rear extensions to Bothy Cottage. Bothy Cottage had also previously been altered in 1998 with a single storey extension and alterations to the roof. The point again to be made in this regard is that the building is much altered and has little intrinsic heritage significance.

The Extant Permission

- 3.11. Planning permission was granted under reference 19/05265 ("2020 Permission") for very extensive works including demolition works, extensions and conversion to both of the Polo Mews buildings and to the Bothy building. A copy of the planning permission and the approved plans are attached at **Appendix 6**.
- 3.12. In summary, the permission involved the formation of a 3 bedroom and a 4 bedroom dwelling within the Bothy building. As part of the conversion works an extension would be added to the western side of the building and there would be some demolition to the northern side of the Bothy building. This is perhaps best illustrated on the proposed ground floor plan (S105 Rev A).
- 3.13. At first floor level there is a sizeable extension over the existing ground floor. This is to create a semi-detached dwelling known as Bothy Cottage to the western half of the building. The eastern half of the building would form Bothy House.
- 3.14. The effect of the permitted extensions and alterations in elevational terms in respect of the Bothy building are shown on drawing S152 Rev B. To my mind, the drawing illustrates transformational elevational change.

- 3.15. As far as Polo Mews North is concerned, the eastern section of the building which links Polo Mews North to the garage building of Greenacres would be demolished thus detaching Polo Mews North from Greenacres. Polo Mews North would then be converted into a single dwelling.
- 3.16. In respect of Polo Mews South, a two storey rear extension is permitted together with a garage building to the eastern side. Polo Mews South would then also become a single dwelling.
- 3.17. The officers report in respect of the 2020 Permission is attached at **Appendix 7**.
- 3.18. A review of this report indicates to me that a decisive consideration was the fact that the proposed floor area of the scheme would be less, as a consequence of the proposed demolition work, than the existing floor area and the permitted development extensions. The report concluded that the reduction in floor area and the lack of any harmful visual impact on the openness of the Green Belt were Material Considerations that justified planning permission being granted.
- 3.19. It is illuminating in relation to the Council's current stance on heritage matters that the proposed extension to the Bothy building was regarded as being in keeping with the design of the building and would not result in a significant additional bulk. It would continue to appear in keeping with the scale and character of the host property.
- 3.20. In respect of Polo Mews North, the loss of symmetry was also not considered to be a significant concern and the three new dormers would match existing and be in keeping with the character of the existing property.
- 3.21. In relation to Polo Mews South, it was concluded that the proposed two storey extension at the rear would be well stepped down from the main roof and would be subservient to the host property. I would also observe that whether or not harm would occur in heritage terms to the Non-Designated Heritage Assets appears not to be have considered at all.

- 3.22. All of the various changes, extensions and alterations were not considered overall to give rise to harm to the character and appearance of the Chislehurst Conservation Area.
- 3.23. The pre-commencement conditions in respect of the 2020 Permission have been discharged. Material operations have been undertaken and the Council has accepted that the permission remains extant. For this reason, the 2020 Permission forms the Appellant's 'fallback position' and this is further detailed below.

Other Relevant Planning History.

- 3.24. Planning permission was originally granted under Council ref 11/02960 for the demolition of various stable and outbuildings and the erection of a detached house on land to the south of Home Farm and to the east of Foxbury Manor, now known as Stonebrook House. Subsequent permissions involving a basement car park and revisions to the access drive were permitted in 2012, 2013 and 2014.
- 3.25. The most recent permission, which has been commenced, was permitted under reference 16/01360. A copy of the planning permission and approved drawings are attached at **Appendix 8**.
- 3.26. Whilst I accept that the permitted new house is on land that was previously occupied by a number of barns and equestrian buildings and comprised PDL, the Council was still satisfied that a two storey building of rather palatial design would not cause harm either spatially or visually to the openness of the Green Belt. I contrast this with the stance of the Council in respect of the Appeal Scheme that the subterranean house, designed to fold into and become an integral part of the landscape would cause harm to openness.

Comparison of Extant Permission and Appeal Proposal

- 3.27. The Design and Access Statement submitted with the application sets out a spatial comparison of extant versus proposed. This reveals that the appeal proposal would actually result in less

footprint of built development than the extant consent (Table at page 41 of the DAS). For ease of reference this table is attached at **Appendix 9**. This table and the figures contained therein, is now agreed in the SOCG.

- 3.28. In its Statement of Case the Council refers to the Appeal Scheme resulting in a 24% increase in floor area for The Bothy and a reduction of approximately 16% for Polo. In fact, by reference to the Table, the 2020 permission would result in a floor area for The Bothy of 446 sqm. The Appeal Scheme would result in a floor area of 500 sqm, a 54 sqm or 12% increase. But this is more than compensated by Polo where the 2020 permission would result in a floor area of 450 sqm whereas the Appeal Scheme would result in a floor area of 320 sqm, a 29% reduction.
- 3.29. In visual terms, the alterations and extensions to existing buildings within the complex, albeit that the current proposals are different to the extant consent, have already been judged by the Council not to have any visual impact on openness. This is stated in the officer report on the 2020 permission (**Appendix 7**) wherein it is stated,

“The proposed demolished external floor area of Polo A would be 90.6 sqm and the proposed extensions to Bothy House and Bothy Cottage would amount to an additional floor area of 87.3 sqm, which would be a reduction of 3.3 sqm between Polo A and Bothy.” In terms of these two buildings, the proposal would not, therefore, result in an overall visual impact on the openness of the Green Belt (My emphasis added)

- 3.30. The evidence submitted by Mr Hammond demonstrates that the visual impact of Vine House, as part of the Appeal Scheme, would not cause material harm to the openness of the Green Belt, a view that I endorse.
- 3.31. Also relevant to the comparison is the fact that there are existing buildings located to the south of Cherry Tree Cottage. These buildings have the effect of extending the PDL land. These buildings remain under the extant consent. These buildings would be demolished and removed

under the Appeal Scheme, as would the 4 car garage to the rear of Bothy, and thus actually reducing the sprawl/spread of built development on the appeal site.

- 3.32. These are matters that I return to in weighing the various Material Considerations in Part 2 of the evidence.

History of the Application

- 3.33. Given the innovative and, in my experience, the unique nature of this proposal, it was important in the Appellant's view to have early engagement with the Council as paragraphs 39-41 of the National Planning Policy Framework ("Framework") encourage. The more issues that could be resolved at pre-application stage, the greater the benefits. Accordingly, a pre-application submission was made in July 2021. A site meeting took place with the Council's planning officer, a Miss Jessica Lai on the 10th September 2021. The site meeting involved walking the whole of the site including the public footpath (FP042), in order for the planning officer to be able to form a view as to whether, amongst other things, Vine House would actually be visible and (if considered to be visible), the extent of any visibility.
- 3.34. A further site meeting took place with the Council's Urban Design Officer, Mr Terry, on the 27th September 2021. This site meeting also included walking the whole of the site and involved direct discussions between the Appellant's architect, Mr Richards, and Mr Terry.
- 3.35. The Council's Conservation Officer did not attend either site meeting and, as I understand it, has never visited the site until some weeks ago in connection with this appeal.
- 3.36. No formal pre-application response letter has ever been provided by the Council which would have assisted in understanding any preliminary concerns that the Council had in respect of the appeal scheme. There was some subsequent discussion between Mr Richards and Mr Terry who encouraged the Appellant to undertake a Design Review. Accordingly, a submission was made to the Independent Design South East Review Panel (DSERP) and a site visit and formal

design review meeting took place on the 28th March 2022. The report of the DSERP is at **CD4.3**. Mr Richards in his evidence comments further on this.

- 3.37. Revisions were made to the scheme proposal to take account of the comments of the DSERP. Despite repeated chasing, no pre-app response was forthcoming from the Council and so, on the 11th August 2022, the application was submitted.
- 3.38. The application was referred to the Mayor of London on the 22nd November 2022 and, by letter dated 19th December 2022, the Deputy Mayor concluded that the application complied with the London Plan and the Mayor did not need to be consulted again. The letter from the Deputy Mayor and the GLA Stage One is at **(CD4.4)**.
- 3.39. In my experience, it is extremely rare for the Mayor in Green Belt cases not to direct that the application be referred back following the resolution of the Council. This is perhaps explained by the fact that the Deputy Mayor was satisfied that the Appeal Scheme was in compliance with the London Plan and, as the strategic planning authority for the Green Belt in London, the minor increase in floor area and small projection of the subterranean home into the Green Belt with a well-considered design approach was not considered by the GLA to be a strategic concern.
- 3.40. In my view, great weight should be given to the decision of the GLA. I also find it curious that the Council's reasons for refusal allege that the proposal is contrary to London Plan policies G2, D3, HC1, T5 and T6, yet the Mayor, whose Development Plan is the London Plan, is satisfied that the Appeal Scheme complies with these policies.
- 3.41. As might be expected there were a range of statutory consultee comments regarding the Application prior to its determination. These are tabulated below.

3.42.

CONSULTEE	COMMENT
Thames Water	No objection- Subject to sequential approach to surface water disposal.
Highways	No objection – Do not raise an issue regarding parking
Historic England	No advice offered
Natural England	No objection
Environment Agency	No objection subject to conditions
Waste Water	No objection
Water Supply	No objection
Environmental Health	Subject to standard condition- no objection
Orpington Field Club	Raised ecological concerns
Energy/Carbon Officer	Quote from the Office: <i>'It's really pleasing to see a Bromley resident taking a leap forward with a credible sustainable design, that I personally think is very sympathetic to its surrounding and well thought out. I suspect this net zero design will also cost significantly more than the usual designs that we see, which to me demonstrates conviction behind it.'</i>

3.43. Whilst the consultee responses are very much as I would have anticipated, it is interesting to note the response from the Energy Officer which does appear to be somewhat at odds with the officer report which sought to minimise the importance of the energy/sustainability aspect of the proposal and compare it to a scheme with a conventional heat pump and some solar panels. No reference was made to this in the Committee Report.

3.44. In relation to local representations, the officer report notes that there were no objections from local residents and, indeed, four letters of support from neighbouring residents. Of further note, the application was also supported by the Chislehurst Society and further supported by the three Ward Councillors. The local support for the Appeal Scheme was evidenced in the Appeal Procedure Statement (**CD4.1**).

4. PLANNING POLICY CONSIDERATIONS

National Planning Policy Framework 2023

- 4.1. Those paragraphs in the Framework that are relevant in this appeal are set out in the SOCG and I do not propose to rehearse all of these. However, there are certain key paragraphs which do bear more decisively on the issues in this appeal.

Protecting Green Belt Land

- 4.2. **Paragraph 142** advises that the fundamental aim of Green Belt policy is to prevent urban sprawl and that the essential characteristics of Green Belts are their openness and their permanence.
- 4.3. **Paragraph 143** sets out the 5 purposes of Green Belt policy. These provide a useful test in relation to assessing impact on openness.
- 4.4. **Paragraph 152** advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in Very Special Circumstances.
- 4.5. **Paragraph 153** advises that substantial weight should be given to any harm to the Green Belt. Very Special Circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
- 4.6. **Paragraph 154** confirms that the construction of new buildings in the Green Belt is inappropriate unless one or more of the specified exceptions applies. One of these exceptions at Paragraph 154 (g) is the limited infilling or the partial or complete redevelopment of Previously Developed Land provided that it would not have a greater impact on the openness of the Green Belt than the existing development.

4.7. **Paragraph 156** advises that elements of many renewable energy projects will comprise inappropriate development which will need Very Special Circumstances to be demonstrated. Such Very Special Circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.

4.8. It is the above paragraphs that are key in respect of RfR 1.

Achieving Well Designed and Beautiful Places

4.9. **Paragraph 131** advises that the creation of high quality, beautiful and sustainable building and places is fundamental to what the planning and developmental process should achieve. Good design is a key aspect of sustainable development.

4.10. **Paragraph 139** states that 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.

4.11. These paragraphs will be key in relation to the weight to be attached to the exemplary design and landscaping proposals as Material Planning Considerations in the overall balance.

Meeting the challenge of Climate Change

4.12. **Paragraph 157** states that the planning system should support the transition to a low carbon future in a changing climate. It should support renewable and low carbon energy and associated infrastructure.

4.13. **Paragraph 159** states that new development should be planned for in ways that can help to reduce greenhouse gas emissions.

4.14. These paragraphs are key in assessing the weight to be attached to the hydrogen and energy proposals as a Material Planning Consideration in the overall balance.

Conserving and Enhancing the Natural Environment

- 4.15. **Paragraph 180** states that planning decisions should contribute to and enhance the natural and local environment by providing net gains by biodiversity.
- 4.16. **Paragraph 186** confirms that opportunities to improve biodiversity in and around development should be integrated as part of their design especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.
- 4.17. These paragraphs are key to assessing the weight to be given to the BNG and ecological benefits of the scheme as Material Planning Considerations in the overall balance.

Building a strong competitive economy

- 4.18. **Paragraph 88** states that planning decisions should enable the sustainable growth and expansion of all types of business in rural areas through well designed beautiful new buildings and also the development and diversification of agricultural and other land based rural businesses.
- 4.19. This paragraph is important in relation to the establishment of the Vineyard as part of the overall Masterplan and to deciding the weight to be attached to this as a Material Planning Consideration in the overall balance.

Delivering a sufficient supply of homes

- 4.20. **Paragraph 70** confirms that support should be given to small sites coming forward for self-build and custom build housing.
- 4.21. This paragraph is relevant in assessing the weight to be attached to Vine House as a self-build project as a Material Planning Consideration in the overall planning balance.

4.22. **Paragraph 84 (e)** notes that planning decisions should avoid the development of isolated homes in the Countryside, unless the following circumstances applies;

- *Where a design is of exceptional quality in that it:*
 - *Is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards more generally in rural areas; and*
 - *Would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.*

Healthy and Safe Communities

4.23. **Paragraph 104** states that planning decisions should protect and enhance public rights of way and access including taking opportunities to provide better facilities for users.

4.24. This paragraph is relevant in respect of the enhancement of the footpath FP042 and the creation of a new community orchard and picnic area as a public benefit to be weighed in the overall balance as a Material Planning Consideration

Conserving and Enhancing the Historic Environment

4.25. **Paragraph 208** states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset this harm should be weighed against the public benefits of the proposal.

4.26. **Paragraph 209** states that the effect of an application on a non-designated heritage asset should be taken into account when determining the application. A balanced judgement will be required having regard to the scale of any harm and loss and the significance of the heritage asset.

4.27. These paragraphs are relevant in relation RfRs 2 and 3 in respect of harm to non-designated heritage assets and the Conservation Area.

Promoting Sustainable Transport

- 4.28. **Paragraph 111** advises that, if setting local parking standards for residential development policies should take into account matters such as the accessibility of the development, availability of public transport and local car ownership levels.
- 4.29. **Paragraph 112** state that maximum parking standards for residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network.
- 4.30. **Paragraph 115** states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

The Development Plan

- 4.31. The Development Plan comprises the London Plan 2021 and the Bromley Local Plan 2019.

The London Plan 2021

- 4.32. The GLA considers that the appeal proposal is in compliance with London Plan policies. In the circumstances, I do not propose to explain and review these policies further other than to note that the policies were Bromley takes a different view are G2 – Green Belt, D3- Optimising site capacity through the Design Led approach, HC1 – Heritage, conservation and growth and T5 – Cycling and T6 - car parking.

The Bromley Local Plan 2019

- 4.33. Policy 30 relates to parking. The policy sets out minimum parking standards of 2 parking spaces per 4 bedroom dwelling in areas of low PTAL. The explanatory justification to the policy notes that Bromley has one of the highest car ownership levels in London.

- 4.34. Policy 37 relates to the general design of development. The policy requires all development to be of a high standard of design and sets out a number of criteria.
- 4.35. Policy 49 relates to the Green Belt. The policy essentially repeats National Policy set out in the Framework.
- 4.36. Policy 51 concerns dwellings in the Green Belt. The policy seeks to restrict extensions or alterations to dwelling houses in the Green Belt. However, in this case, the Council has already permitted extensions and alterations to the existing dwelling houses through the 2020 Permission.
- 4.37. Policy 52 concerns replacement dwellings in the Green Belt. I do not believe policies 51 or 52 actually have any relevance to the issues in this appeal and would appear to have been cited in error.
- 4.38. Policy 39, which is not listed in the reasons for refusal relates to Locally Listed buildings and is, therefore, a relevant policy. The policy states that proposals to alter, extend or change the use of Locally Listed buildings will be permitted provided that it is sympathetic to the character, appearance and special interest of the building and it respects its setting. Proposals to replace such buildings will be assessed against paragraph 135 (now 209) of the NPPF.
- 4.39. Policy 41, which is also not referred to in the reasons for refusal, relates to Conservation Areas and is also, therefore, relevant. The policy requires proposals for new development to preserve and enhance the character or appearance of the Conservation Area.

5. REFUSAL REASON ONE – WHETHER THE PROPOSAL IS INAPPROPRIATE DEVELOPMENT IN THE GREEN BELT.

5.1. The appeal proposal falls broadly into 3 component parts.

Part One

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

Part Two

5.3. 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.

Part Three

5.4. 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. However, it strongly influences the context and provides a distinctive and semi-formal setting for Vine House. Part Three of the Appeal Scheme is therefore an important material consideration in the determination of the appeal.

5.5. The complex of dwellings and related ancillary buildings in the south-western part of the site, namely, Greenacres, Polo Mews, The Bothy and Cherry Tree Cottage comprises Previously Developed Land within the definition set out in Annex 2 of the Framework. The residential complex is separate and quite distinct from the agricultural land situated to the north and east.

Whilst Mr and Mrs Selby live in Greenacres, there is no agricultural restriction condition and Greenacres does not function as an agricultural dwelling.

- 5.6. Paragraph 154 (g) of the Framework and Policy 49 of the Bromley Local Plan confirm that the partial or complete redevelopment of previously developed land would not constitute inappropriate development in the Green Belt provided that there would be no greater impact on the openness of the Green Belt than the existing development.
- 5.7. The proposal for this part of the site involves alterations and partial redevelopment of the existing dwellings. The proposals, in essence, are a revision to the extant consent (the 2020 Permission).
- 5.8. The alterations, demolitions and extensions to the existing dwellings would not result in any spread or sprawl of development beyond the existing developed areas. The alterations would actually result in a significant reduction in overall built form within this part of the site, would permit views through and between the buildings and would involve a significant reduction in hardstanding and parking areas.
- 5.9. Thus, the proposals would not have any greater impact on the openness of the Green Belt than the existing development permitted through the 2020 Permission. Indeed, the Council accepted in relation to the 2020 Permission that there would be no overall impact on the openness of the Green Belt and the current scheme is undoubtedly an improvement and enhancement as compared to this extant consent.
- 5.10. In my view, therefore, if Part One was the only element of the Appeal Scheme, then it would constitute development that is not inappropriate in the Green Belt in compliance with paragraph 154(g) of the Framework and policy 49 of the Bromley Local Plan.

- 5.11. Part Two of the appeal proposal is the construction of a new subterranean dwelling (Vine House). This is proposed to be located on land that currently comprises part of one of the fields of the farm.
- 5.12. Paragraph 154 of the Framework and policy 49 of the Bromley Local Plan state that the construction of new buildings is inappropriate in the Green Belt unless the building falls within one of the exceptions.
- 5.13. Vine House is proposed to be occupied by the appellants, Mr and Mrs Selby and, whilst they are intending to play an active role in the family operation of the new viticultural business, both are now retired and the house is not sought to be justified on the grounds that it is a dwelling that is necessary for the purposes of agriculture. It is not argued, therefore, that the new dwelling would fall within the exception set out at paragraph 154(a) of the Framework, namely, that it is a building for agriculture.
- 5.14. None of the other exceptions to Green Belt policy would apply and it is accepted, therefore, that Vine House constitutes inappropriate development and should only be approved if there are very special circumstances that would clearly outweigh any potential harm to the Green Belt and any other harm resulting from the proposal.
- 5.15. Part Three of the Masterplan proposals is the new Vineyard which has now already been established, together with the related picnic area and visitors' information adjacent to the public footpath in the south eastern corner of the site.
- 5.16. The existing lawful use of the farmland is for agricultural purposes and the viticultural business that has now been established falls within the definition of agriculture set out in Section 336 of the Act and thus did not involve a material change of use requiring planning permission. In any event, it is a use of land which preserves the openness of the Green Belt and does not conflict with the purposes of including land within it and, therefore, would not be inappropriate by virtue of paragraph 155 of the Framework.

5.17. In summary, therefore, Part One and Part Three of the appeal proposals constitute development that is not inappropriate in the Green Belt whereas Part Two constitutes inappropriate development. However, I do not seek to argue that the development should be divided up into its different parts. It is a single development proposal which, when viewed holistically, incorporates an inappropriate development element and which, therefore, requires Very Special Circumstances to be demonstrated in order for planning permission to be granted for this element of the scheme. This would accord with the principle enunciated in ***Kemnal Memorial Gardens Ltd V First Secretary of State [2005] EWCA Civ 835***.

5.18. However, a vitally important Material Consideration in assessing the Very Special Circumstances case is the fact that the overwhelming majority of the appeal proposal takes place on Previously Developed Land and comprises not inappropriate development. This is a Material Consideration that I return to in assessing the Very Special Circumstances case and the weight to be attached to this factor in the overall balance because, as the Court of Appeal held in ***Kemnal Manor***, despite the inappropriateness of the development, the real issues about the Green Belt were how harmful the development would be to the objectives of the Green Belt and whether there were Very Special Circumstances which would justify permission being granted.

EXTENT OF ACTUAL HARM – IMPACT ON OPENNESS

5.19. Paragraph 153 of the Framework confirms that substantial weight should be given to any harm to the Green Belt and such harm arises, by definition, from development that is inappropriate development. However, any assessment needs also to consider whether a development proposal, as opposed to simply involving definitional harm by reason of inappropriateness, causes any actual harm so that a judgement can be made as to the weight to be applied in the overall planning balance.

5.20. Green Belt openness as a concept was considered by the Supreme Court in ***Samuel Smith Old Brewery & Others v North Yorkshire County Council [2020] UK SC3***. The judgement held that

the assessment of openness was essentially a matter of planning judgement. Reference was made to the decision of the Court of Appeal ***Turner v SOS for Communities and Local Government [2016] EWCA Civ 466*** and, in particular, paragraphs 14 and 15 of the judgment in *Turner*. The Supreme Court held that there was no challenge to the correctness of the statement of approach in paragraphs 14 and 15 of *Turner*.

5.21. **Lord Justice Sales** said in paragraph 14 that in relation to assessing openness;

‘The concept of openness of the Green Belt is not narrowly limited to the volumetric approach suggested by Counsel. The word ‘openness’ is open textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors as to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which volumetric matters may be a material concern but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt represents.’

5.22. **Lord Justice Sales** continued in paragraph 15;

‘The question of visual impact is implicitly part of the concept of openness of the Green Belt as a matter of the natural meaning of the language used in para 89 of the NPPF (now paragraph 149)..... Greenness is a visual quality: part of the idea of the Green Belt is that the eye and the spirit should be relieved from the prospect of unrelenting urban sprawl. Openness of aspect is a characteristic quality of the countryside.’

5.23. Applying this approach to the Appeal Scheme, it is clear that that part of the proposal that relates to alterations and extensions within the existing complex of dwellings would not result in the Green Belt appearing any more built up as a result of the development taking place as compared to how built up it is now.

- 5.24. In relation to Vine House, it is accepted that this would involve, in a spatial sense, the spread of development onto land where currently none such exists. However, openness is not just about the spatial dimension.
- 5.25. In this particular case, the visual aspect 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.
- 5.26. Vine House is proposed to be integrated into an area of sloping land within the landscape which, in effect, folds into and around the building. 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 undertaken at application stage **(CD1.7)**.
- 5.27. It is important to note as part of any consideration of the visual impact of Vine House on the openness of the Green Belt that the only public views of the proposal that may or may not be possible are from the public footpaths along the northern boundary of the site (FPO34) and along the eastern side of the site where FP042 passes through the existing fields. All other views looking towards Vine House from the west and the south are private views.
- 5.28. The LVIA at application stage demonstrated the very limited visual impact of Vine House. This would have been clear to the planning officer during the site visit and yet this is not reflected in the officers' report. Indeed, in the Council's Statement of Case it is not alleged that there would be a greater impact on openness merely that this is likely although it is not explained what gives rise to this likelihood.
- 5.29. It is also asserted in the Council's Statement of Case at paragraph 6.6 that *"fundamentally, Green Belt openness takes account of the absence of built form, irrespective of visual impact, although its visibility might prove an aggravating factor."* That is not what is said in the **Turner** judgment nor what the NPPG says.

- 5.30. In order further to assess the issue of openness, expert evidence is given by Mr Hammond based on a further LVIA that now takes account of the Vineyard. He is clear in his view that Vine House would have a limited visual impact on the openness of the Green Belt. I share this view as a matter of planning judgement.
- 5.31. It does seem to me that an assessment of impact on openness should also always include an assessment in relation to the purposes of Green Belt policy.
- 5.32. In this case, the erection of a subterranean house on the appeal site would not prejudice the Green Belt purpose of restricting the sprawl of large built areas. It is worth noting that the original purpose of London's Green Belt was to establish a "*girdle*" of open space around London to contain its outward expansion and sprawl.
- 5.33. The Appeal Scheme would not result in neighbouring towns merging into one another. Nor would it prejudice the setting and special character of historic towns nor discourage urban regeneration.
- 5.34. The only basis on which the purposes of Green Belt policy would interrelate with the appeal proposal is to the extent that Vine House would encroach into the countryside. However, as the GLA commented, the minor increase in floor area and small projection of the subterranean home (Vine House) into the Green Belt, with the well-considered design approach is not a matter of strategic (Green Belt) concern. I agree with this view.
- 5.35. Taking all of these points into consideration, I am led firmly to the conclusion, therefore, that the Appeal Scheme would not result in a material adverse impact on Green Belt openness. The only harm to the Green Belt would be definitional.

PROOF OF EVIDENCE OF JOHN ESCOTT PART TWO



Demolition of part of Greenacres,
Demolition. Alterations and extensions to
part of Polo Mews North, demolition of Polo Mews
South and demolition, alterations and extensions to
part of The Bothy.

Erection of linking extension between Polo Mews
North and Polo Mews South to create 1 new dwelling.

Erection of two storey extension to The Bothy and
conversion from 3 into 2 dwellings. 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.

At
Home Farm
Kemnal Road
Chislehurst
BR7 6LY

01689 836334
enquiries@replanning.co.uk
www.replanning.co.uk

Robinson Escott Planning LLP,
Downe House, 303 High Street, Orpington, Kent BR6 0NN

Appeal Ref: APP/G5180/W/24/3339919
Inquiry date 30th July 2024

6. ASSESSMENT OF OTHER MATERIAL CONSIDERATIONS

6.1. I propose firstly to look at how one should approach the question as to whether there are other Material Considerations that would clearly outweigh harm to the Green Belt by reason of inappropriateness and any other harm.

6.2. It has long been a matter of settled approach since *Pehrsson V Secretary of State for the Environment (1991) 61P. and C. R. 266* where Lord Donaldson said

“If it was considered to be inappropriate to the Green Belt, the decision taker has to go on to express a view on the weight of the damage which would be done to the Green Belt if permission were granted and the weight or lack of weight which he attaches to the countervailing considerations based upon the alleged advantages which would stem from allowing the development to proceed.”

That a balancing exercise must be undertaken which weighs benefits versus harm.

6.3. In this case, whilst there is definitional harm to the Green Belt by reason of inappropriateness and the Framework states that substantial weight should be given to this, in my view, for the reasons set out in Part One of my evidence, the actual harm to the Green Belt and to its openness is limited. In the balancing exercise that must be undertaken it seems to me that the countervailing benefits need only to be of commensurately greater weight in order to establish Very Special Circumstances.

6.4. It also needs to be borne in mind that “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 the harm from inappropriate development and any other harm¹

¹ 1.Basildon V SSE [2004] EWHC 2759 (Admin).

6.5. The Very Special Circumstances relied upon by the Appellant are as follows:

THE FALLBACK POSITION

6.6. The fallback position in this case is established by the planning permission granted under reference 19/05265/FULL which remains extant (the 2020 Permission).

6.7. I find it rather surprising that the fallback position and the extant 2020 Permission are barely referred in the officer's report to Committee. All that is said is that the Appeal Scheme is materially different from the previous approved scheme which was also within a different red line boundary. No assessment is made as to the materiality of this extant 2020 permission to the Green Belt issue and to the weight that should be attached to it in the planning balance.

6.8. In its Statement of Case the Council now acknowledges the fallback position but seems to imply that no weight should be given to this consideration because the Council has not seen any evidence that the 2020 permission has been implemented. The Council has now accepted in the SoCG that the 2020 permission remains extant and is a material consideration.

6.9. In relation to built development, the table set out at page 41 of the DAS **(CD1.5)** demonstrates that a comparison of the current Appeal Scheme with the 2020 Permission would result in an overall reduction in the amount floor area on the appeal site.

6.10. A more detailed comparison of what precisely would result from the extant consent in comparison to the appeal scheme is set out in the evidence of Mr Richards.

6.11. I consider that an important benefit of the Appeal Scheme in comparison to the 2020 Permission is that the appeal scheme will result in the removal of buildings to the south of Cherry Tree Cottage and also the removal of the substantial detached garage building to the

north of The Bothy. This will reduce significantly the spread of the PDL area of the existing residential complex. This reduction in spread will, in my opinion, more than compensate for the minor projection into the Green Belt that Vine House would involve.

- 6.12. The extant scheme would retain the extensive areas of hardstanding currently on the site. However, in comparison to this fallback, the appeal proposal would result in a significant reduction in the overall amount of hardstanding on the appeal site. Some 1134 sqm would be removed and landscaped.
- 6.13. It should be noted, in relation to the fallback position, that the appeal scheme would enable key views to be opened up through the site, as explained in the evidence of Mr Richards, which would be a positive benefit arising out of the appeal scheme. This would not occur from the 2020 Permission.
- 6.14. The final and very important point to my mind in considering the fallback position is that none of the benefits set out below (which each amount to a Very Special Circumstance) that would come forward through the Appeal Scheme would be delivered by the 2020 Permission
- 6.15. In my view, the fallback position is a material consideration to which substantial weight should be given.

FIRST HYDROGEN HOUSE IN LONDON – SUSTAINABILITY AND ENERGY BENEFITS.

- 6.16. Paragraph 156 of the Framework advises that the environmental benefits associated with the increased production of energy from renewable sources is capable of constituting a “Very Special Circumstance” in GB policy terms.
- 6.17. Paragraphs 157 and 163 of the Framework also state that support should be given 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.

- 6.18. Detailed evidence on the benefits of the proposed Hydrogen system is given by Mr Dodson. Further supplementary evidence in respect of energy is provided by Mr Ball.
- 6.19. There is no doubt in my mind that this is a unique and pioneering proposal which is entirely in accordance with relevant policy in the Framework concerning the climate agenda moving forward.
- 6.20. Given the pioneering science and technology that is an important part of the appeal proposal, I was most surprised that the officer's report contained no acknowledgement or assessment of this element of the appeal proposal and simply said that generating renewable energy to address climate change is a Development Plan policy requirement, a point that is re-stated in the Council's Statement of Case. The fact that the Council then makes reference to a Council affordable housing scheme at Brindley Way, which Mr Dodson/Mr Ball refer to in their evidence, demonstrates a complete misunderstanding of the use of the Hydrogen system and the benefits associated with it. Indeed, the Planning Officer seems to disregard the comments of the Council's Energy Officer who described the proposal as taking a leap forward with a credible sustainable design.
- 6.21. I am in no doubt the appeal proposal would result in a very important environmental benefit which would signal a way forward in addressing the climate crisis that we are currently facing. As such, substantial weight should be given to this benefit.

DESIGN AND ARCHITECTURE

- 6.22. Paragraph 131 of the Framework advises that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what planning and development process should achieve. Good design is a key aspect of sustainable development.

- 6.23. Paragraph 139 states that significant weight should be given to outstanding or innovative design 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.
- 6.24. The Council acknowledges in the SOCG that outstanding and innovative design is capable of being a Very Special Circumstance to which significant weight should be given. Further, in its Statement of Case the Council also acknowledges the uniqueness of its design. Yet, despite what the Framework says, the Statement of Case says that this factor should only be afforded limited weight because *“Similar arguments could be used in order to bypass Green Belt policy”*. This seems a very curious argument to me because paragraph 139(b) does not seek to disapply its applicability to designs within the Green Belt. Outstanding or innovative design which promotes high levels of sustainability should be given significant weight wherever the design is proposed. This is a point for the planning balance and does not seek to bypass the ‘Very Special Circumstances’ test which the Appellant must overcome.

LANDSCAPE.

- 6.25. Paragraph 130 of the Framework states that decisions should ensure that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping and are also sympathetic to landscape setting.
- 6.26. The National Design Guide also emphasises that natural and designed landscapes contribute to the quality of a place and are a critical component of well-designed places.
- 6.27. Home Farm at the moment is a relatively enclosed landscape with different character areas. However, as the photographs contained within the original LVIA and in the evidence of Mr Hammond demonstrate, much of the landscape is featureless grassland interspersed with groups of trees and roads.
- 6.28. The Appeal Scheme incorporates a complete landscape re-design of Home Farm which will improve significantly the scenic and landscape quality of the site.

- 6.29. The new iconic landscape would be achieved by a holistic design which incorporates new areas of meadow, woodland links, water, wildlife, and SuDs features. New contemporary style gardens, extensive tree planting and a landscape structure centred around the Vineyards would result with orchards and a new public picnic area.
- 6.30. In contrast to the current landscape character and quality, I consider that the Appeal Scheme would result in a significant landscape enhancement in accordance with the guidance set out in the National Design Guide. This enhancement is a benefit to which moderate weight should be given.

BIODIVERSITY

- 6.31. The Council has now withdrawn its biodiversity reason for refusal. However, the biodiversity net gain of 15% to be provided by the Appellant is still relevant as a Very Special Circumstance.
- 6.32. In its Statement of Case, the Council notes that *'such BNG is now a requirement rather than an expectation of new development. This factor should attract limited weight.'*
- 6.33. This is plainly incorrect. At the time the application was submitted, it was not caught by the provisions of s.90A and Schedule 7A of the Town and Country Planning Act which came into effect on 12 February 2024. The Act does not have retrospective effect. The Environment Act 2021 (Commencement No.8 and Transitional Provisions) Regulations 2024 (SI 2024/44) provides that the provisions of Schedule 7A do not apply to any planning permission where the application was made prior to 12 February 2024.
- 6.34. The Appellant has already referred the Council to the relevant case law on this point, *NRS Saredon Aggregates Ltd v SSLUC* [2023] EWHC 2795 (Admin). In that case, the Court quashed a decision to reduce the weight to the benefit of delivering BNG based on an incorrect view of the law.

- 6.35. The BNG gain should therefore not attract 'limited weight', and the entire gain should be taken into account. The Appeal Scheme delivers on the Framework guidance that opportunities to improve biodiversity around developments should be integrated as part of their design especially where, as in this case, this can secure measurable net gains for BNG and enhance public access to nature where this is appropriate.
- 6.36. It is my view that the biodiversity net gain should be afforded significant weight.

RURAL BUSINESS

- 6.37. Paragraph 88 of the Framework states that planning decisions should enable the sustainable growth and expansion of all types of business in rural areas through well designed beautiful new buildings and also the development and diversification of agricultural and other land based rural businesses. The Council accepts in the SOCG **(CD6.3)**
- 6.38. Significant investment has already been made in the new Vineyard and the creation of a modern, unique Wine Estate. While consent was not required for this element, it still forms a fundamental and inseparable part of the overall Masterplan proposals for the Appeal Scheme. This is further explored in the statement from Mr Selby.
- 6.39. The erection of Vine House as part of this new Wine Estate would very much mirror traditional, continental vineyard estates.
- 6.40. As Vine House is seen as being directly connected to the Vineyard and an integral component of the Masterplan, the unilateral undertaking will include a planning obligation to link Vine House to the Vineyard by securing use of the Vineyard for that purpose for a period of at least 20 years. This means in practical terms, the Council can be comfortable that Vine House is not intended to be severed off and sold but remain part of the wider Masterplan. .
- 6.41. Securing the long term viable future of the farm accords with policy in the Framework and is, therefore, a significant benefit which weighs in favour of the appeal.

PUBLIC BENEFITS

- 6.42. Paragraph 104 of the Framework states that decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users.
- 6.43. Paragraph 186 of the Framework advises that opportunities should be taken to enhance public access to nature where this is appropriate.
- 6.44. The Appeal Scheme would involve significant enhancements to FP042, a very well used public footpath. As set out in Alan Selby's Statutory Declaration, it is proposed to provide a much wider path along the existing walking route and to extend Footpath FP042 to include the perimeter of the entire eastern Vineyard. This 300m extension would allow a much greater interaction with the Vineyard.
- 6.45. Mr Selby explains in some detail in his evidence the nature of public usage of the footpath and the extent to which the land functions as a recreational resource. In its Statement of Case the Council argues that the public benefits should only be given limited weight. However, it does seem to me that this completely undervalues the uniqueness in London of the Vineyard, the picnic area, the associated visitor information and the community fruit orchard.
- 6.46. The Appellant is aware that the eastern most field is often used for informal picnicking. The Appeal Scheme includes the laying out of a dedicated picnic area for the public in the southern part of the eastern field adjacent to where the footpath turns to the south east. The landscaped picnic area would also include a community orchard and would provide visitor information regarding the Boroughs first commercial Vineyard. This was a matter that the Design Review Panel felt was an important public benefit, and one to which, in my view, significant weight should be given.

SELF- BUILD

- 6.47. Vine House is proposed as a self-build dwelling for Mr and Mrs Selby who have been active participants in the evolution of the design.
- 6.48. Paragraph 70 of the Framework states that planning decisions should support small sites that come forward for self-build and custom build housing.
- 6.49. This element of the appeal proposal is addressed in the evidence of Mr McColgan.
- 6.50. On the basis of his analysis, Mr McColgan is of the view that the Councils position fails to demonstrate that it has permitted enough plots to meet the identified demand within their self-build register. He also considers it likely that the Councils position significantly underestimates the true undersupply situation in the Borough. He concludes that the Councils supply position overestimates what has truly been delivered as custom and self-build housing because the Council relies on CIL Part One returns which require no evidence of final use.
- 6.51. Given that the supply and demand balance for custom and self-build plots in Bromley is likely to be considerably worse than the Councils stated position, the Inspector should place significant weight on the provision of a net additional self-build dwelling on the appeal site.

The Extent of PDL and Non-PDL

- 6.52. A further important Material Consideration in establishing the context for weighing the benefits is the fact that the overwhelming majority of the appeal proposal would take place on Previously Developed Land. (PDL)
- 6.53. The split between PDL and non PDL is;
- **Development on PDL: Circa 4.461.8 hectares (4.4 acres) – 93% of the appeal scheme (Part One)**
 - **Development on non PDL: Circa 0.14 hectares (0.35 acres) – 7% of the appeal scheme (Part Two)**

6.54. This is a factor which, in my view, should be taken into account in the balancing exercise. In the decision of ***Whitley Parish Council, R (on the application of) V North Yorkshire County Council [2022] EWHC 238 (Admin)***. The Court held that

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.
(emphasis added)

7. REASONS FOR REFUSAL TWO AND THREE

- 7.1. The Council now accepts in the SoCG that the 2020 permission is extant and that this is a material consideration. The 2020 permission approved significant alterations and extensions to Bothy House, Bothy Cottage and Polo Mews. In granting planning permission, the Council was plainly of the view that the alterations and extensions would not cause unacceptable harm to the character or appearance of the Chislehurst Conservation Area nor to the non-designated heritage assets. Indeed, the officer's report in relation to the 2020 permission (**Appendix 7**) specifically confirms that the proposed extensions, alterations and structures would complement the host property, (i.e. The Bothy and Polo) and would not appear out of character with surrounding development and would preserve the appearance of the Chislehurst Conservation Area.
- 7.2. In its Statement of Case, all that is said is that the 2020 permission is not identical to the Appeal Scheme and that the Appeal Scheme is considered to be out of scale and keeping which would result in further harm to the significance and setting of these non-designated heritage assets and to the character and appearance of the Conservation Area. No explanation is given as to why. Neither is there an explanation as to why, if demolition of Polo Mews South was considered acceptable in the 1995 permission, it is not considered acceptable now.
- 7.3. Dr Edis in his evidence sets out cogent and compelling reasoning as to why, in his view, the Appeal Scheme would preserve the character and appearance of the Conservation Area and have minimal effect on the significance of non-designated heritage assets. He concludes that paragraphs 207 and 208 of the Framework are not engaged and that there will be enhancement for the purposes of the Statutory duties.
- 7.4. I endorse his view in relation to RfR 2 and 3. I also do not consider that any other harm would arise in heritage terms that would need to be weighed in the overall planning balance.

8. REASON FOR REFUSAL FOUR

- 8.1. The Council has now agreed in the SoCG that cycle parking and electric vehicle charging points are matters that can be dealt with by way of condition.
- 8.2. The residual allegation of harm, therefore, is that the Appeal Scheme would result in an excessive level of car parking, even though the level of car parking in the Appeal Scheme would be substantially less than currently exists at the site. It would also mean that the grant of consent would have the effect of retrospectively removing existing lawful parking for Greenacres and Cherry Tree Cottage, which I would regard as unreasonable.
- 8.3. In its Statement of Case the Council simply says that the proposal would not accord with the adopted parking standards in the London Plan and would be excessive. Yet no explanation is provided as to the harm that would, in the Councils view, occur as a consequence.
- 8.4. I acknowledge that policy T6.1 of the London Plan states that new residential development should not exceed the maximum parking standards that are set out. This would mean no more than 9 parking spaces for 6 dwellings.
- 8.5. However, this policy is not consistent with the later guidance in the Framework which says at paragraph 112 that maximum parking standards for residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network. It is also said at paragraph 111 that if local parking standards for residential development are to be set they should take into account matters such as the accessibility of the development, the availability of opportunities for public transport and local car ownership levels.
- 8.6. In the Committee report, the Councils highway officer is clearly not concerned at the impact of the local highway network and noted that Kemnal Road is a private road.

- 8.7. The Appeal site has a low PTAL (public transport availability level) and has only limited availability of public transport. Moreover, paragraph 4.0.5 of the Bromley Local Plan notes that Bromley has one of the highest car ownership levels in London. This is why the Local Plan set minimum levels of parking for residential development which, for 4 bedroom dwellings was a minimum of 2 spaces per unit.
- 8.8. In my view, therefore the proposed level of car parking would not be excessive and would not conflict with paragraph 115 of the Framework which says that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

9. PLANNING BALANCE AND OVERALL CONCLUSIONS

- 9.1. The Appeal Scheme is for a development that is overwhelmingly located on Previously Developed Land, would not cause any greater harm to openness than existing and would, of itself, constitute not inappropriate development. Part of the proposed development however, namely the new dwelling at Vine House, would constitute inappropriate development in the Green Belt and substantial weight is to be given to the definitional harm arising from inappropriate development. But, for the reasons that are explained earlier in this evidence, I consider that there would be limited harm to the openness of the Green Belt from this element of the scheme thus, this is a scheme where the harm to the Green Belt is definitional harm in nature with little or no actual harm.
- 9.2. I endorse the evidence of Dr Edis and do not consider that there is any other harm that would arise in heritage terms.
- 9.3. On the other side of the planning balance there are a number of identifiable benefits that would accrue from the scheme, all of which are material considerations that are capable of being regarded as Very Special Circumstances.
- 9.4. **Firstly**, the fallback position in this case is that there is an extant consent that would result in a greater amount of built development in the Green Belt than the appeal proposal. The extant consent would not result in a reduction in hard standing as compared to the appeal scheme. The extant consent would not involve a reduction in the spread of PDL as would be the case in the appeal scheme. The extant consent would not deliver any of the benefits that would accrue from the appeal scheme.
- 9.5. In the circumstances, I am of the view that this is a Material Planning Consideration that should be afforded substantial weight.

- 9.6. **Secondly**, the appeal proposal includes the first hydrogen-powered, zero carbon house in the Borough and, as far as is known, anywhere in London. A solar panel array will provide the renewable energy necessary to produce the hydrogen, which is stored in the fuel cell to compensate for times when the solar panels are not generating sufficient electricity. The net result of the proposed Hydrogen system is that the new Vine House will be entirely energy self-sufficient and will not need to be connected to or buy energy from the grid. The Hydrogen solution provides pioneering technology which will demonstrate the ability of such zero carbon systems to become a more widely adopted solution in tackling the climate crisis. The proposal would create a significant contribution to achieving Bromley's net zero target.
- 9.7. The energy strategy also highlights the sustainability measures that are proposed in the scheme as a whole including provision of impermeable areas throughout, water efficiency measures and sustainable construction.
- 9.8. The sustainability of the appeal proposals and the contribution that would be made to tackling the climate crisis is a benefit of the scheme to which, in my opinion, substantial weight should be given.
- 9.9. **Thirdly**, the proposed design of Vine House is of exemplary architectural quality displaying the highest standards of design. The scheme proposals for the other dwellings on the estate are of an equally high standard of architecture. The benefits that arise in helping to raise the standards of design, enhance the setting of the development and contribute to a better appreciation of existing heritage assets are Material Considerations to which, as the Framework confirms, significant weight should be given.
- 9.10. **Fourthly**, the appeal proposals include significant landscape enhancements to Home Farm including new meadows, woodlands and water and wildlife features. In my opinion these are benefits to which moderate weight should be given in the balance.
- 9.11. **Fifthly**, the appeal proposals include a 15% increase in biodiversity net gain. Proposals incorporated into the appeal scheme include various further ecological enhancements. As a

result, there is no doubt in my mind that the appeal proposal would result in a benefit to which significant weight should be given.

- 9.12. **Sixthly**, the establishment of the new Vineyard, the first in Bromley, will secure a viable long term for a modest family run farm. All of the benefits that would arise from this element of the proposal including farm diversification, sustaining a rural business as well as protecting the land for the future, are factors to which significant weight should be given.
- 9.13. **Seventhly**, given the popularity and usage of the existing footpaths through Home Farm and the fact that they will now traverse a commercial Vineyard, the provision of a landscaped public picnic area together with visitor information regarding the Vineyard would set, as the DSRP commented, a positive precedent for the Green Belt and would constitute a public benefit to which significant weight should be given.
- 9.14. **Eighthly**, the appeal proposal is for a new self-build dwelling for Mr and Mrs Selby. The evidence of Mr McColgan demonstrates that the Council is not meeting its statutory duty to grant sufficient permissions for such development. In my view, therefore, this is a factor to which significant weight should be given.
- 9.15. Weighing all these considerations in the balance, I am led to the conclusion on this issue that the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by the benefits identified above such that Very Special Circumstances exist in this case.
- 9.16. In my view, therefore, reason for refusal RfR one is not well founded.
- 9.17. I also take the view that RfRs 2,3, and 4 are not well founded.

OVERALL CONCLUSIONS

- 9.18. Whilst the appeal proposal would in its totality, constitute inappropriate development in the Green Belt, there are Very Special Circumstances in this case that would clearly outweigh the identified harm and justify planning permission being granted. I conclude that there is no conflict with policies G2 of the London Plan or policies 37 and 39 of the Bromley Local Plan.
- 9.19. In relation to heritage matters and reasons for refusal two and three, the evidence of Mr Selby and Dr Edis is such as to lead me to conclude that the appeal proposals would not have an adverse impact on the setting and significance of the Locally Listed buildings (non-designated heritage assets) and that there would be no harm to the character or appearance of the Chislehurst Conservation Area. Accordingly, the appeal scheme would comply with policies HC1 of the London Plan and policies 39 and 41 of the Bromley Local Plan.
- 9.20. The Appeal Scheme would not involve an excessive level of car parking being provided. In fact, the Appeal Scheme would result in an overall net reduction in parking on the appeal site with a consequential increase in green space and landscaping.
- 9.21. The parking and highways proposal of the Appeal Scheme would not result in an unacceptable impact on highway safety or severe residual cumulative impact on the road network. The Appeal Scheme would in this regard, be compliant with the Framework.
- 9.22. Thus, the appeal proposal would accord with the policies of the Development Plan when read as a whole and constitutes sustainable development.
- 9.23. I would respectfully submit, therefore, that the appeal should be allowed.