

Grounds of Appeal

Erection of an outbuilding with external verandah for ancillary use in connection with the main dwelling house (retrospective)

At

51 Kentish Lane, Brookmans Park, Hertfordshire, AL9 6NG

LPA Ref - 6/2021/1021/HOUSE

Prepared by Langdale Planning Limited on behalf of Mrs T Flammia

September 2021

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Appendices

Appendix 1 – Planning Decision Notice for Application Ref - 6/2021/1021/HOUSE

Appendix 2 - Delegated Officer Report for Application Ref - 6/2021/1021/HOUSE

Appendix 3 – Historic Correspondence with Welywn Hatfield Council

*Appendix 4 - Extract from Welwyn Hatfield Green Belt Study Stage 3 Appendices (2019)
Parcel 73*

*Appendix 5 - Extract from Welwyn Hatfield Green Belt Study Stage 3 Appendices (2019)
Parcel 74*

Appendix 6 – Fallback Permitted Development Scheme Drawings

1. Introduction

- 1.1 The Grounds of Appeal have been prepared by Langdale Planning Limited on behalf of the Appellant Mrs T Flammia.
- 1.2 The Grounds of Appeal outline the Appellant's case in support of an appeal against the decision of Welwyn Hatfield Council (hereafter referred to as WHC) to refuse planning permission (*LPA Ref - 6/2021/1021/HOUSE*) on the 2nd July 2021 for the:

“Erection of an outbuilding with external verandah for ancillary use in connection with the main dwelling house (retrospective)” at 51 Kentish Lane, Brookmans Park, Hertfordshire, AL9 6NG (hereafter referred to as the Site).
- 1.3 The Application was refused under delegated powers with one reason for refusal on the decision notice (Appendix 1) stating:

“The outbuilding with external verandah would represent inappropriate development in the Green Belt and result in a material loss of Green Belt openness. No very special circumstances exist to clearly outweigh this harm. Consequently, the development would conflict with Policy GBSP1 of the Welwyn Hatfield District Plan 2005 and the National Planning Policy Framework”.
- 1.4 It is proposed that this appeal should be progressed under the Written Representations procedure.
- 1.5 As noted in the Officer Report (Appendix 2) there were two objections to the application from the Parish Council and the neighbour at No.47 Kentish Lane. The points made in these objections are dealt with in the Grounds of Appeal within the wider consideration of the issues raised in the Officer Report.

2. Site Context and Background to Proposals

- 2.1 No.51 Kentish Lane occupies a large residential plot in the Green Belt extending to 4,613 sqm. Whilst the Site is located in the Green Belt, it is not covered by an Article 4 Direction and benefits from Permitted Development Rights.
- 2.2 Figure 1 shows the extent of the plot at No.51 Kentish Lane with a red dashed line.
- 2.3 Various outbuildings have been erected over time in the rear garden.



Figure 1: Aerial Photograph showing indicative extent of rear garden and location of outbuildings

Swimming Pool

- 2.4 The swimming pool was built in the 1980s and covers an area of 36 sqm.



Figure 2: Photograph of Swimming Pool

Outbuilding 1

- 2.5 This is located on the eastern boundary, adjacent to No.53 Kentish Lane. On 1st February 2008, WHC granted planning permission for the erection of a single storey extension to this outbuilding, known as the summer house with a height of 3.9 metres (retrospective). Outbuilding 1 extends to 90 sqm.



Figure 3: Photograph of Outbuilding 1

Outbuilding 2

- 2.6 Outbuilding 2 is located along the rear boundary of the property. As originally constructed, it comprises a flat roof (3.6 metres at the highest point of the parapet and 3 metres to the highest point of the eaves). It also has a central lantern, which extends to a maximum height of 3.9 metres. It is formed of external render which has been painted in a dark grey colour. The front elevation has 4 no. powder coated aluminium framed doors. This outbuilding was built in 2003 and extends to 65 sqm. The roof profile is of an identical design to that on the extended outbuilding 1.



Figure 4: Photograph of Outbuilding 2 taken in 2006. NB - at this time, the Appellant's rear garden was smaller in size. The Appellant subsequently purchased an additional strip of land from the neighbouring residential property at No.53 Kentish Lane to enlarge the rear garden.



Figure 5: Photograph of Outbuilding 2 and land adjacent where the extension to the outbuilding has been erected. One of the large pylons at the Brookmans Park transmitting station is also visible.

3. Background to Proposals

- 3.1 During the course of 2020, the Appellant erected a further outbuilding, which was connected to outbuilding 2 and including a covered verandah.
- 3.2 The Appellant has had a successful career in the arts and interior design sector. The Appellant has an extensive private collection of high end art works and household objects including paintings, furniture, fabric and other decorative objects which are showcased and displayed in the outbuilding.
- 3.3 The extension to outbuilding 2 was erected with the sole purpose of creating a space to display these art works for personal enjoyment, ancillary to and in connection with the main dwelling house. The Appellant is willing to accept a planning condition to this effect.
- 3.4 On 11th January 2021, WHC refused a Certificate of Lawfulness for the extended outbuilding 2 (Ref - 6/2020/3010/LAWE).
- 3.5 A retrospective planning application (*LPA Ref - 6/2021/1021/HOUSE*) for full planning permission was subsequently submitted. This application is the subject of the appeal.

The Proposal

- 3.6 The new outbuilding was built adjacent to the Outbuilding 2 and subsequently connected. An external verandah and an area of decking was also constructed.



Figure 6: Construction of new outbuilding on land adjacent to Outbuilding 2



Figure 7: New outbuilding as built, connected to Outbuilding 2

- 3.7 The new outbuilding has a dual pitched slate tiled roof extending to a maximum height of 3.9 metres above ground level. The height of the eaves is 3 metres for the roof covering the verandah and 2.75 metres for the pitched part. The rear elevation of the roof contains small roof light windows finished with powder coated aluminium.
- 3.8 The new outbuilding includes a series of powder coated aluminium doors on the front (north) elevation facing towards the dwelling house. It is finished with painted render.
- 3.9 The new outbuilding is linked to the existing outbuilding via a 'link' element. This is 2.7 metres high (maximum eaves height is also 2.7 metres) and has a large glazed frontage to allow natural light. The roof of the link element is comprised of a fibre glass and bitumen felt flat roof and also incorporates a roof light.



Figure 8: 'Link' Element

- 3.10 Externally, there is a wooden decked area, directly in front of the new 'link' element and an external verandah on the north elevation finished with timber decking. The decking is raised 400mm above ground level. The verandah is covered with a fibreglass covered flat roof to offer protection from inclement weather conditions.
- 3.11 As extended the outbuilding extends to 211 sqm. This can be broken down as follows:
- Existing outbuilding - 65 sqm
 - Link Element - 29 sqm
 - New outbuilding - 80 sqm
 - External Verandah & Decking - 37 sqm
 - TOTAL – 211 sqm (includes original lawful part of existing outbuilding)

4. Decision Making Framework

- 4.1 Before considering the reason for refusal it is useful to consider the appropriate legal and policy framework for this decision.
- 4.2 The decision notice cites **Policy GBSP1** (Definition of the Green Belt) of the Welwyn and Hatfield District Plan and the National Planning Policy Framework.
- 4.3 It is considered that **Policy RA3** (Extensions to Dwellings in the Green Belt) is also of relevance to the appeal.
- 4.4 Permitted development rights set out in Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 are considered a material consideration. The government's 'Permitted development rights for householders Technical Guidance' (September 2019) is also relevant.

National Planning Policy Framework (NPPF)

- 4.5 The NPPF states that the Green Belt serves five purposes:
 - a) to check the unrestricted sprawl of large built-up areas;
 - b) to prevent neighbouring towns merging into one another;
 - c) to assist in safeguarding the countryside from encroachment;
 - d) to preserve the setting and special character of historic towns; and
 - e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- 4.6 Paragraph 147 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in 'very special circumstances'. It goes on to state that when considering planning applications for proposals within the Green Belt, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. The NPPF also notes that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

Welwyn and Hatfield District Plan

- 4.7 At the local level, the Council's adopted Development Plan (2005) states that the main objectives in respect of the district's Green Belt and settlement pattern are:
 - a) To maintain the Green Belt as the principal means of restraining the physical expansion of the district's urban areas;
 - b) To maintain the existing settlement pattern in the district;
 - c) To concentrate development into the district's main towns and settlements;
 - d) To maintain areas of special restraint between the urban area and the Green Belt, to be safeguarded to meet future growth needs beyond the Plan period and thereby ensure the permanence of the Green Belt boundaries.
- 4.8 **Policy GBSP1** (Definition of the Green Belt) states that the Green Belt will be maintained in Welwyn Hatfield as defined on the Proposals Map. The towns and specified settlements listed in Policy GBSP2 are excluded from the Green Belt. The precise boundaries of the Green Belt around these towns and settlements are defined on the Proposals Map.
- 4.9 Saved **Policy RA3** (Extensions to Dwellings in the Green Belt) also applies to outbuildings for which planning permission is required (Paragraph 15.9 of the Development Plan). The

policy states that permission for extensions to existing dwellings within the Green Belt will be allowed only where all the following criteria are met:

- I. The proposal would not individually or when considered with existing or approved extensions to the original dwelling, result in a disproportionate increase in the size of the dwelling;
- II. It would not have an adverse visual impact (in terms of its prominence, size, bulk and design) on the character, appearance and pattern of development of the surrounding countryside.

Town and Country Planning (General Permitted Development) (England) Order 2015

- 4.10 Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, is a relevant material consideration in the determination of the application.

5. Appellant's Response to Reasons for Refusal

- 5.1 The application was refused under delegated powers with one reason for refusal stating:

“The outbuilding with external verandah would represent inappropriate development in the Green Belt and result in a material loss of Green Belt openness. No very special circumstances exist to clearly outweigh this harm. Consequently, the development would conflict with Policy GBSP1 of the Welwyn Hatfield District Plan 2005 and the National Planning Policy Framework”.

- 5.2 The reason for refusal along with the points raised in the Officer Report (Appendix 2) are assessed below.

Lawfulness of Existing Outbuilding

- 5.3 The original part of Outbuilding 2 was included within the planning application submission for administrative convenience and completeness. Although currently joined the buildings are capable of being decoupled and were separately constructed.
- 5.4 The Officer Report states that the submitted planning statement refers to a planning application being submitted for a garden store in the location of the existing garden store (application number: 6/2003/1434/FP) but then being returned to the applicant by the local planning authority as planning permission was not required.
- 5.5 The Officer Report goes on to note that the garden store (as built and excluding the recent extension) is clearly different in terms of its design and scale relative to that submitted under application 6/2003/1434/FP. The Officer Report states that the garden store (as built and excluding the recent extension) is not lawful.
- 5.6 The Appellant disputes this statement. It is the Appellant's view that the original part of outbuilding 2 is lawful. This is corroborated by written correspondence between the Appellant and the Council (Appendix 3) detailing the following history of events.
- 5.7 On the 2nd September 2003 the Appellant's ex-husband (Mr Luciano Capaldo) wrote to WHC asking two questions, one of which related to the construction of an outbuilding at the rear end of the garden. The sketch drawing showed this outbuilding extending to an area of 29.75 sqm with a maximum height of 4 metres.
- 5.8 On the 16th September 2003 WHC responded stating that the proposed outbuilding would require planning permission. The letter noted that the officer was unable to comment on the acceptability of the proposals but that it would be unlikely to impact upon the neighbouring dwellings in an adverse manner.
- 5.9 Following on from this reply, a planning application was duly submitted for the outbuilding, received by WHC on the 29th September 2003. On 7th November 2003, WHC returned the application stating that planning permission was not required and the application fee was returned.
- 5.10 The Appellant constructed the outbuilding in 2003. Following a complaint from a neighbour, WHC's enforcement officer undertook a review of the property and investigated the outbuildings. This led to retrospective planning permission being granted for an extension to Outbuilding 1 adjacent to the boundary with No.53.
- 5.11 On the 12th December 2007, WHC's enforcement officer sent an email stating:

*“...your planning application for a four metre high, mono-pitch roof structure at the end of your garden was returned because it did not require permission. This is the line which the Council has taken in the past, but it is the current team’s opinion that neither roof can be classified as ‘ridged’ and if it were not for the fact that **the existing structure is now lawful by virtue of the four year rule**, we may well have invited a planning application for this also”.*

- 5.12 A full enforcement investigation into the outbuilding at the rear of the garden was carried out in 2007 and written correspondence from WHC’s enforcement officer confirmed that the Outbuilding 2 as built was lawful. The assertion in the Officer Report that the garden store (as built and excluding the recent extension) is not lawful is incorrect. The existing original outbuilding has been in situ for over 10 years and is lawful in planning terms.
- 5.13 It is submitted that the Mansi principle should apply (Mansi v Elstree RDC [1964] 16 P&CR 153) and that the original Outbuilding 2 as constructed is lawful and that the extension thereto can more properly be considered a separate and distinct operation (further case law in support of this position includes Sage v Secretary of State for the Environment, Transport and the Regions and Others [2003] 2 All ER 689; Ardagh Glass Ltd v Chester City Council and another [2009] EWHC 745 (Admin) and Makanjoula v Secretary of State for Communities [2013] EWHC 3528 (Admin)). Accordingly Outbuilding 2 as constructed and completed is lawful.

Green Belt – Appropriateness

- 5.14 The reason for refusal states that the outbuilding would represent inappropriate development in the Green Belt.
- 5.15 Paragraph 147 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in ‘very special circumstances’. Paragraph 149 provides various exceptions to this general proposition.
- 5.16 Exceptions at 149(c) include “the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building”. As submitted at Paragraph 5.13 above Outbuilding 2 as originally constructed is now lawful due to passage of time. Exception (c) should therefore apply to that building.
- 5.17 In the first instance the Appellant would submit that the extension to Outbuilding 2 is not disproportionate to the size of Outbuilding 2 as originally constructed. In the second instance the Appellant submits that the Outbuilding 2 extensions are not disproportionate to the size of the original dwelling when taking into account the additional outbuilding and large garden (and in these circumstances would also comply with **Policy RA3** and this is addressed below).
- 5.18 If the Inspector does not agree that the development meets Exception 149(c) of the NPPF as submitted by the Appellant then it is submitted that Very Special Circumstances (VSC) are present in this appeal to clearly outweigh the harm caused to the Green Belt, which the Council recognises and confirms is “moderate”.
- 5.19 Accordingly in light of the above assessment it is clear that the development complies with Exception 149(c) of the NPPF and the development should not be considered inappropriate and planning permission should be granted. Case law confirms that where an exception applies there is no need to demonstrate VSC.

Local Planning Policy

- 5.20 At the local level, the exceptions in the NPPF are considered against saved **Policy RA3** of WHC's adopted Development Plan, which is broadly consistent with the NPPF. This policy and accompanying text explicitly state that it covers outbuildings of a size and scale that require planning permission (e.g. stables, kennels, garages etc.), noting that the curtilages of dwellings have an important role in maintaining the openness of the Green Belt.
- 5.21 **Policy RA3** states that permission for extensions to existing dwellings within the Green Belt will be allowed only where all the following criteria are met:
- i. The proposal would not individually or when considered with existing or approved extensions to the original dwelling, result in a disproportionate increase in the size of the dwelling;
 - ii. It would not have an adverse visual impact (in terms of its prominence, size, bulk and design) on the character, appearance and pattern of development of the surrounding countryside.
- 5.22 The Officer Report concludes that the extended outbuilding as constructed is not considered to be a domestic adjunct to the main dwelling given its length of separation from the main dwelling. The Officer Report states that the development cannot therefore be considered under exception 149(c) of the NPPF. For the reasons given above the Appellant disagrees with this assessment.
- 5.23 The Officer Report fails to take account of the extensive plot which the main house at No.51 sits within, which extends to 4,613 sqm (over 1 acre) as well as WHC's **Policy RA3** which specifically applies to proposals requiring planning permission in the Green Belt.
- 5.24 The Officer Report concludes that the subject extension would represent a disproportionate addition having regard to the footprint and scale increase. However, the Officer Report also states that the development would maintain the character of the dwelling and surrounding area and would not amount to overdevelopment of the plot.
- 5.25 The Officer Report states that given the location of the development within the confines of the residential curtilage of the site, and its size and scale, it is considered that it would not conflict with any of the purposes of including land in the Green Belt.
- 5.26 The following analysis is provided to allow the Inspector to understand the scale of the proposal in relation to the size of the main house, other outbuildings and the overall plot.

Built Element	Footprint (sqm)
Plot	4,613
House	294 (GEA is 730)
Swimming Pool	36
Outbuilding 1	90
Outbuilding 2	65
Outbuilding 2 Extension	
<ul style="list-style-type: none"> • Main Build • Link Element • External Verandah & decking 	<p style="text-align: right;">80</p> <p style="text-align: right;">29</p> <p style="text-align: right;">37</p>
Total Built Footprint	631 (14%)
Total Built Footprint within Garden	337 (7%)

- 5.27 The extended outbuilding (including the original lawful part) measures 211 sqm. However, cumulatively, only 7% of the total garden area will be built upon, rising to 14% if the footprint of the main house is taken into account. As such it is not considered that the proposed outbuilding is disproportionate for the host property and its site.

Openness

- 5.28 Openness is an essential characteristic of the Green Belt.
- 5.29 National planning guidance does not set out a definition of what constitutes the openness of the Green Belt and there is no prescribed method for assessing the impact of a development on openness. The effect of development on openness is, therefore, a matter of balanced planning judgement.
- 5.30 In April 2020, the Supreme Court¹ ruled that:
- “The word ‘openness’ is open-textured and a number of factors are capable of being relevant... Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs ... and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.”*
- 5.31 Further, it is clear from recent case law (see Sefton MBC v SSHCLG [2021] EWHC 1082 (Admin)) that the harm to Green Belt does not require any quasi-mathematical weighing of harm, nor does Green Belt considerations require substantial weight to be allocated to each element of harm. It is a single exercise of judgment.
- 5.32 In assessing the impact on the openness of the Green Belt the Officer Report notes that the development would not be visible from public vantage points and there would only be limited views from the gardens of adjoining neighbours.
- 5.33 The boundary with No.47 is formed of large, mature trees and hedges which screen the entire garden of No.51 Kentish Lane from No.47 as shown in the photograph in Figure 9



Figure 9 – Boundary treatments adjoining neighbouring property at No.47 Kentish Lane

¹ Samuel Smith Old Brewery (Tadcaster) and others v North Yorkshire County Council [2020]

- 5.34 There are limited views to the neighbouring property at No.53 Kentish Lane and the outbuilding is not visible from any part of the domestic area adjunct to the main property at No.53, although it is noted that No.53 has a large outbuilding within their rear garden as shown in Figure 10.



Figure 10 – Boundary treatments adjoining neighbouring property at No.53 Kentish Lane. View towards outbuilding within No.53’s garden from the outbuilding at No.51.

- 5.35 Notwithstanding this, the Officer Report states that the development would be a sizeable structure and there would be a clear spatial impact and as a consequence of the footprint, scale and bulk of the development, there would be a material loss of openness and visual permeability of the Green Belt. The Officer Report concludes that the degree of harm would be moderate.
- 5.36 The Appellant disagrees that the size of the proposal and its scale, footprint and bulk would lead to a loss of openness. Indeed, elsewhere within the Officer Report it states that given the location of the development within the confines of a residential curtilage, its scale and size does not conflict with any of the purposes of including land in the Green Belt and the development would maintain the design and character of the area and not amount to overdevelopment.
- 5.37 The Appellant asserts that the lack of visual impact of any magnitude effectively ameliorates any impact on openness in spatial terms. The Appellant also notes that the form of development proposed would be appropriate and is not out of place with the scale, bulk and massing of development within the vicinity including various outbuildings in neighbouring plots (assessed in paragraph 5.44 below) and the presence of the Brookmans Park Transmitting Station (assessed in paragraph 5.43 below).
- 5.38 The Welwyn Hatfield Green Belt Study Stage 3 (2019) prepared by LDC on behalf of WHC comprises a rigorous and comprehensive assessment of the Green Belt to inform the Examination of the Local Plan.
- 5.39 The accompanying appendices provide an assessment of Parcel 73 (Appendix 4) covering the Brookmans Park Transmitting Station stating:

“presence of the transmission station buildings, dwellings and garden centre compromises the openness of the parcel within their immediate vicinity. The

presence of the transmission masts compromise openness across the parcel as, due to their height, they are visible across much of the parcel”.

- 5.40 Parcel 74 (Appendix 5) covers land on the north eastern edge of the settlement of Brookmans Park, where the appeal Site is located. The appendices note that the land predominantly comprises residential dwellings and their associated gardens. A line of dwellings follows the western side of Kentish Lane. The majority of the dwellings are large and set back from the road, surrounded by trees and large gardens. It notes that the northwest of the parcel adjoins the site of a transmission station - the land nearest the parcel comprises an open field containing masts and satellite dishes, with the station buildings present beyond. It also states:

“The presence of the lines of dwellings and individual dwelling in the centre of the parcel compromises the openness of the parcel within their immediate vicinity”.

And:

“The land contains the characteristics of the countryside but there are significant areas of residential development within the parcel that compromises the sense of openness particularly in the western and eastern parts of the parcel”.

- 5.41 The surrounding land is not open agricultural fields free from built development. Neither are there any public footpaths. This is reflected in WHC’s Green Belt Study which notes that the openness of the Green Belt in this location is comprised, particularly by the presence of the masts and satellite dishes associated with the Brookmans Park Transmitting Station. The Brookmans Park Transmitting Station is located to the rear of the appeal Site and the Appellant considers that the outbuilding which is the subject of this appeal will not have any impact on views or the openness or permanence of the Green Belt in this location.
- 5.42 Openness in this part of the Green Belt is severely compromised by the telecommunications masts and satellite equipment associated with the Brookmans Park Transmitting Station to the rear of the site.
- 5.43 The Transmitting Station is founded on engineering principles and functionality with little if any regard to its design or impact on the Green Belt. The area of the Transmitting Station immediately to the rear of the Site comprises a large mast (visible from the rear garden of No.51), as well as large satellite dishes, mobile telephone masts and telecommunications equipment. In order to protect the equipment, there is a significant amount of unattractive concrete post metal fences with barbed wire.



Figure 11 – Google Earth Image showing extent of Brookmans Park Transmitting Station. NB – this does not show the impact of the bulk and height of the transmitter equipment and security fencing and its impact on the Green Belt is far more significant than shown in the aerial image.



Figure 12 – Photograph of Brookmans Park Transmitting Station from the rear boundary of the Appellant's garden.

5.44 Furthermore, other outbuildings and residential properties have been built in the rear gardens of nearby residential properties along Kentish Lane, in particular a large outbuilding in the garden of No.53 Kentish Lane, the property at No.31 Kentish Lane and a large indoor swimming pool at No.27 Kentish Lane. No. 45 Kentish Lane also has a stable block and hay barn.

- 5.45 In conclusion the Appellant contends that the outbuilding will not diminish the importance of the Green Belt and there will be no adverse effects upon the spatial sense of openness of the Green Belt.

Very Special Circumstances (VSC)

- 5.46 Should the Inspector disagree with the Appellant's interpretation of Paragraph 149(c) of the NPPF and its application to this appeal it is submitted that there are VSC which outweigh the harm to the Green Belt despite the conclusion to the contrary by the Council in the Officer Report.
- 5.47 The Officer Report states that the degree of harm to the openness of the Green Belt is moderate. It is therefore considered that the level of VSC required to overcome the asserted harm should be reduced accordingly.
- 5.48 51 Kentish Lane is not covered by an Article 4 Direction and Permitted Development Rights exist. The Officer Report is flawed in so far as it attributes no weight to the Appellant's ability to erect an alternative development with the potential for a far worse impact under Permitted Development Rights both in terms of form, scale, visibility and bulk.
- 5.49 One of the relevant criteria set out in Class E of the General Permitted Development Order is that the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwelling house) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwelling house). Given the extensive size of the Appellant's garden, it is feasible that a significantly larger outbuilding could be erected without exceeding the limits set out in the General Permitted Development Order.
- 5.50 Class E of the General Permitted Development Order states that development would be permitted subject to the height of the building not exceeding:
- i. 4 metres in the case of a building with a dual-pitched roof;
 - ii. 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwelling house; or
 - iii. 3 metres in any other case;
- And that the height of the eaves of the building would not exceed 2.5 metres.
- 5.51 The Appellant maintains that it is the design of the roof and the construction of a verandah and decking which mean that planning permission is required for the appeal proposal. If the maximum eaves height on the roof of the new outbuilding was reduced by 0.5 metres, the maximum eaves height of the roof of the link element was reduced by 0.2 metres, the height of the decking is reduced by 100mm, and the external verandah is either removed or subsumed within the building, then the proposal would have been permitted development.
- 5.52 Notwithstanding this, the Appellant could construct a much less desirable form of development in the Green Belt under Permitted Development Rights. An example of such a scheme is included in Appendix 6. This would be located over 2 metres from the boundaries of neighbouring properties and has a dual-pitched roof with a maximum height of 3.9 metres and a maximum height of 2.4 metres to the eaves. It measures 14.6 metres by 20.5 metres. In addition, the Appellant could construct a large area of decking with a maximum height of 0.3 metres under permitted development rights. This clearly results in far greater bulk and would have a more significant impact on neighbouring properties and the openness of the Green Belt, than the current carefully designed and attractive outbuilding which is in situ.
- 5.53 The Appellant contends that this fall-back position represents VSC and should be given substantial weight.

- 5.54 In recognition of the rights that could be exercised under the GPDO 2015 (as amended) which would result in a more harmful development both in terms of character and appearance and impact on the Green Belt, the Appellant is prepared to accept withdrawal of Classes E and F Part 1 Schedule 2 Permitted Development Rights if this is considered appropriate by the Inspector. It is submitted that the removal of these Permitted Development Rights amount to a VSC weighing substantially in favour of granting planning permission for the development.
- 5.55 Finally, the outbuilding is used to store an extensive private collection of high end art works and household objects including paintings, furniture, fabric and other decorative objects. The purpose of the Outbuilding is to ensure that those items can be properly preserved and looked after by the Appellant. It is submitted that this should be considered a VSC for the purposes of appeal.
- 5.56 Paragraph 148 of the NPPF states that 'Very Special Circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
- 5.57 It is considered that the potential harm to the Green Belt by virtue of the moderate harm to its openness as asserted in the Officer Report is clearly outweighed by the ability of the Appellant to construct an alternative development under Permitted Development Rights in the garden of No.51 Kentish Lane which would potentially have greater consequences and will result in a higher level of harm on the Green Belt.

6. Conclusion

- 6.1 The Appellant maintains that the appeal scheme would be an appropriate form of development in the Green Belt and would comply with adopted development plan **Policy RA3** and **Policy GBSP1**, as well as the NPPF.
- 6.2 However, if it is considered to constitute inappropriate development in the Green Belt then there are VSC to justify the approval of planning permission. The Appellant could construct a far worse form of development in the Green Belt under Permitted Development Rights, which would have a greater impact on the Green Belt.
- 6.3 The Appellant contends that this fall-back position represents VSC and should be given substantial weight. Furthermore, the position of the outbuilding at the rear of the garden next to the Brookmans Park Transmitting Station in an area where WHC's Green Belt study notes that the openness of the Green Belt is comprised, particularly by the presence of the masts and satellite dishes associated with the Brookmans Park Transmitting Station should be given significant weight. Together this constitutes VSC to justify the approval of planning permission.
- 6.4 Notwithstanding the very strong VSC, the Appellant holds the view that the outbuilding would be an appropriate form of development in the Green Belt. The outbuilding is of a size and scale suitable for the wider plot and will be used by the Appellant for personal enjoyment, incidental to the use of the main dwelling house and will not impact on the openness or permanence of the Green Belt.
- 6.5 Planning permission should therefore be granted in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004.