DLA TOWN PLANNING LTD

Planning Statement

Planning Application on behalf of Twelve Apostles Church

Side extension
Twelve Apostles Church, Kentish Lane, Brookmans Park, AL9 6NG

DLA Ref: 18/087
September 2018

CONTENTS

1.0 INTRODUCTION

1.1.0 Background

This report relates to a planning application for the erection of a side extension at Twelve Apostles Church, Kentish Lane, Brookmans Park.

1.2.0 Scope

This document comprises an overarching Planning Report. Sections 2 to 4 consider the physical, economic, social and historical context of the site, identifying the relevant local, regional and national planning policy framework; Section 5 sets out the details of the proposal; and Section 6 details the consultations undertaken prior to the submission of the application. All these sections inform the evaluation of the proposal in Section 7 against the identified planning policy framework. The overall conclusions are set out in Section 8 and which are summarised below at paragraph 1.3.0.

1.3.0 Summary

- The enhancement of an important community facility is a very special circumstance that would outweigh any harm caused by reason of inappropriate development. Furthermore, by reason of its siting and design, the actual harm caused to the openness of the Green Belt is limited.

- The design of the extension would ensure that it does not detract from or dominate the character and appearance of the original building.

2.0 SITE & CONTEXT ANALYSIS

2.1.0 **Site Location**

The application site is to the east of Brookmans Park and south of Essendon. It lies on Kentish Lane B158 at the junction with Woodfield Lane and approximately 1.75km to the north from the junction with the A1000 Great North Road.

2.2.0 **Site Description**

The application site is essentially rectangular with the church building near the corner of Kentish Lane and Woodfield Lane. The church has two vehicular accesses to Woodfield Lane. To the north and east of the church is the graveyard area delineated by a stone wall. To the north and east of the graveyard is the approved car park area with vehicular access from Kentish Lane.

2.2.1 The site is screened by tree planting along Woodfield Lane. Hedging and tree planting is along the boundary with Kentish Lane.

2.2.2 The site is used by the Twelve Apostles Church which is a Greek Orthodox church and also serves other Orthodox communities such as Romanians, Russians, Bulgarians etc. Services are held on Saturday mornings (9.30-10.30am) and evenings (5.00-6.00pm) and Sunday mornings (9.30am-12.30pm). The church serves a wide area as the nearest other Greek Orthodox churches are at London (19km), Luton (29km), Aylesbury, Bedford, Milton Keynes and Cambridge. Average attendance is 160 on a normal Sunday morning. However for some important dates in the Church calendar, such as Easter, attendance can be considerably higher.

2.3.0 **Proposals Map Notation and Other Relevant Designations**

The proposals map of the Welwyn Hatfield District Plan shows the site within the Green Belt. The site is within the North Mymms Common and Newgate Street Farmed Plateau Landscape Area.

2.4.0 **Adjoining Uses**

The site is bounded to the north and east by farm land. To the south on the south side of Woodfield Lane are 4 dwellings and to the west of Kentish Lane is one dwelling.

2.5.0 **Surrounding Area**

The surrounding area is rural with sporadic housing developments. The surrounding roads are rural without pavements.

2.5.1 **Accessibility**

The site has limited access to public transport. Welham Green Station is at a distance of 3.5km (2.2miles) and the Great North Road is 1.7km away. The nearest bus service is the 610 between Hatfield and Enfield stopping at Bradmore Green, Brookmans Park at a distance of 3.6km.

3.0 RELEVANT PLANNING HISTORY

3.1.0 **Application Site**

3.1.1 The relevant history of the application site is summarised in Figure 3.1.0 below.

LPA Ref	Proposal	Outcome
S6/1998/419/FP	Change of use from training centre to church	Approved 28.8.98
S6/1998/917/FP	Extension to church	Approved 11.12.98
S6/1999/490/FP	Extension to form kitchen and toilets	Approved 2210.99
S6/2001/1520/FP	Erection of outbuilding	Approved 14.01.02
S6/2005/0306/FP	Retention of land to use as car parking	Approved 11.05.05
S6/2006/0054/FP	Extension to Priest's office	Refused 13.03.06
S6/2012/1635/FP	Retention of change of use of land to create extended car park	Approved 10.10.12

4.0 POLICY CONTEXT

4.1.0 National Planning Policy Framework

Achieving sustainable development

Requiring good design

Promoting healthy communities

Protecting Green Belt land

4.2.0 Development Plan

Policy No.	Title
GBSP1	Definition of the Green Belt
GBSP2	Towns and Specified Settlements
D1	Quality of Design
D2	Character and Context
D8	Landscaping

4.3.0 Supplementary Planning Guidance / Documents

Parking Standards 2004

5.0 DESCRIPTION OF DEVELOPMENT

5.1.0 **Use**

The site is used as a Greek Orthodox church and this use would remain.

5.2.0 **Layout**

An existing office and side entrance to the northern elevation would be demolished. These would be replaced with a single-storey extension with a total width of 20.5m and an overall depth of 8m. The new layout would conclude a Sunday school / adult baptism area, a vestry, a new office and a consulting / confession room.

5.3.0 **Appearance & Scale**

The proposed extension would have a pitched roof but would be set well below the main ridge of the existing building. Three timber framed stained glass windows on the current north elevation would be reused for the proposed extension. The new windows on the east elevation would match an existing opening on this side of the building. Materials would include red brick, stonework and quoins with knapped flint to match existing.

5.4.0 **Landscaping**

The proposal would not impact on any existing landscape features.

5.5.0 **Access**

No alterations are proposed to the access arrangements. The application is accompanied by a Travel Plan which explains how the site will be managed with a view to reducing travel by private motor car.

6.0 CONSULTATIONS

6.1 A pre-application enquiry was submitted in December 2018. The proposal was similar to that sought by this application, but included a pitched roof. A written response was received on 19 February 2018 and is summarised below:

- The size of the extension would not be a proportionate addition to the existing building and so would be inappropriate Green Belt development in the context of paragraph 89 of the NPPF.

- Insufficient information had been submitted to demonstrate a very special circumstance that would outweigh the harm caused by inappropriate development.

- Although the proposed materials and finishes are of high quality, the extension would fail to respect the architecture of the church by reason of its size, scale, design and height.

- Given the ancillary use of the extension, the car parking provision may be considered acceptable.

- In order to demonstrate a very special circumstance that would clearly outweigh the harm caused by inappropriate development, information should be supplied to demonstrate that there is a need for the size of extension proposed. In addition, it should be demonstrated that there are not alternative sites available elsewhere.

6.2 Following the submission of the full planning application, the Officer advised that a pitched roof to the extension would be preferable to a flat roof design.

7.0 PLANNING CONSIDERATIONS

Based on the analysis set out in Sections 2 to 6, I consider that the application proposal raises the following issues, which I will consider in turn below:

1. Principle
2. Layout & Design
3. Highway Safety & Access

7.1.0 **Issue No 1: Principle**

7.1.1 The site is within the Metropolitan Green Belt wherein paragraph 89 of the NPPF regards the construction of new buildings as inappropriate with certain exceptions. These exceptions 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."

7.1.2 The planning history for the site indicates that previous extensions have resulted in an increase in floor area of 74% over the size of the original building. The current scheme proposes the net addition of 107m^2 of floorspace, which would result in an overall increase of some 120%. Whilst the NPPF does not define what amounts to *"disproportionate addition"*, it is acknowledged that extensions of this scale are unlikely to fall within the above exception.

7.1.3 Notwithstanding the above, it must also be accepted that, in the context of case law and the NPPF, even when a proposal is considered inappropriate development in a Green Belt, this should not result in the application being automatically refused. A balancing exercise is required to show that the advantages of a proposal in the particular circumstances are such as to outweigh any harm to a Green Belt caused by it. On this occasion, I consider that there is a very special circumstance that would clearly outweigh any harm caused by inappropriate development. I will describe the very special circumstance below, but I will begin by assessing the actual level of harm that would result.

7.1.4 **Impact on openness**

Whilst openness is also not defined in the NPPF, it is generally taken to mean the absence of built development. The proposed extension would therefore inevitably result in some loss of openness. However, as established by a recent Court of Appeal judgement, *John Turner v Secretary of State for Communities and Local Government & East Dorset Council [2016]* (Appendix 1), the physical presence of a building is not the only consideration when assessing the impact on openness. The court ruled that there is also a visual dimension.

"The concept of 'openness of the Green Belt' is not narrowly limited to the volumetric approach suggested by Mr Rudd. 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 relevant to how built up the Green Belt is now and how built up it would be if development occurs (in the context of which, volumatic 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 presents."

7.1.5 Sales LJ found that Green J in *Timmings v Gedling Borough Council [2014]* had erred in suggesting that there was a clear conceptual distinction between openness and visual impact. He determined that, whilst the absence of visual intrusion does not in itself mean that there is no impact on openness, it does not follow that openness of the Green Belt has no visual dimension.

7.1.6 The High Court in *Goodman Logistics Developments (UK) Ltd v Secretary of State for Communities and Local Government and another (2017)* followed the approach in *Turner*. The judge found that visual harm was an obviously material consideration and that the effect on openness could be influenced by matters such as the visual perception of development.

7.1.7 The proposed extension would in part replace an existing office and would link to an existing kitchen. Whilst there would be an overall increase in development, the extension would not be higher than the ridge above the office and would not exceed the width of the kitchen. Therefore, the visual perception of the extension would not be as significant as the increase in floorspace suggests. Furthermore, the extension would be relatively well screened from any views outside of the site. From the south it would be hidden by the main section of the church and there is relatively good tree screening to the eastern and western boundaries. There are some more open views of the site from along Kentish Road to the north, but from here the extension would be largely subsumed by the existing building and partly obscured by a detached building on the boundary.

7.1.8 **Very Special Circumstance**

I consider that the enhancement of a community facility is a very special circumstance that would outweigh any harm caused by inappropriate development. Chapter 8 of the NPPF advises that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. It states that planning policies and decisions should plan positively for the provision of community facilities such a places of worship. It also advises that existing facilities should be able to develop in a sustainable way for the benefit of the community. The Twelve Apostles Church provides an essential service for the communities which it serves. It is part of the fabric of many people's lives and permitting the enhancement of this community facility would reflect the policy direction of the NPPF.

7.1.9 The pre-application response advised that an application should demonstrate both a need for the additional development and that there were not suitable alternative sites available. I will consider each of these factors in turn:

7.1.10 **Need**

The Twelve Apostles Church is a Greek Orthodox Church which also serves other Orthodox communities such as Romanians, Russians and Bulgarians. The Church moved to its current

location in 1999, at which point it had an average attendance of 90. The congregation has steadily grown to reflect a general movement of the Orthodox community from London to surrounding town and villages. The Church's catchment area includes Potters Bar, Hatfield, Cheshunt and Cuffley. The nearest alternative Greek Orthodox churches are in Barnet, Enfield to the south and Luton and Cambridge to the north. The Church currently has 300 members.

7.1.11 The Church holds regular services on Sunday mornings and Saturday mornings and afternoons. The average Sunday morning attendance is between 150 and 200. Services at Easter, Christmas and the Twelve Apostles Day generate significantly higher attendances. In addition, last year the Church accommodated 193 christenings (of which 30 were adult baptisms), 58 weddings and 31 funerals. All of these events can potentially be attended by large numbers of people.

7.1.12 The additional space is required for the following reasons:

- **To provide an area for a children's service** During the main services, the children receive a separate service / teaching which occurs in the existing kitchen. This is usually attended by between 25 and 30 children. The kitchen is not an appropriate location for this function and a larger space is needed to provide the children with a suitable and safe environment.

- **To provide an area for adult baptisms** As noted above, the Church performed 30 adult baptisms last year. The number of adult baptisms has increased in recent years, predominantly due to people from within the Orthodox faith marrying people from outside. The Church does not currently have suitable facilities to perform the baptisms and relies on a mobile font. The extension would allow for the creation of a pit with a walk-on cover and which would provide a dignified setting for this function.

- **To provide a confession / consultation room** The Church currently lacks an appropriate space where the priest can speak to members of the congregation in private. Currently these meetings would have to occur in the office, but this does not provide an ideal space. It is filled with paraphernalia required for the general administration of the Church and it also acts as a fire escape. The proposal would provide a quiet, dedicated space where the priest can listen to confessions or provide support.

- **To provide a vestry** Similarly, the Church currently lacks a changing area for the priest or somewhere to keep his possessions. The extension would allow for the creation of a vestry and a store room.

7.1.13 **Location**

The Twelve Apostles Church has been based at its current location for nearly 20 years. It is therefore an established part of the community. There have been many weddings, funerals and christenings held at the venue and so the congregation has formed strong emotional attachments to the existing site.

7.1.14 All of the uses listed at 7.1.12 above need to be located at the same site as the existing Church functions. For example, the children's service occurs at the same time as the main Sunday service. Similarly, adult baptisms usually occur directly after a scheduled service. The improved priest facilities are needed to support the functions he performs within the Church. It would therefore be completely impractical to separate these activities from the existing building. Not least, it would generate a large number of additional trips with the same family having to visit two locations.

7.1.15 Case law has established that the need to extend an existing building in the Green Belt can be capable of being a very special circumstance. In *Herba Foods Ltd v Secretary of State for Communities and Local Government and South Cambridgeshire DC [2008]* (Appendix 2) the claimant sought to quash an Inspector's decision which dismissed an appeal against a refusal to allow an extension to a factory. The factory lay outside of the Green Belt but the proposed extension would have been inside. The Inspector acknowledged that extending the existing building would be preferable to seeking alternative accommodation elsewhere; however, he gave less weight for the need for additional floorspace because he regarded it as a commonplace consideration. The Court determined that the approach of looking for an unusual or rare factor was erroneous. The words 'very special' were not to be treated as the converse of 'commonplace'. The Inspector's decision was therefore quashed and a subsequent planning application was approved.

7.1.16 Whilst the application building is not a commercial property, I consider that the principle established in *Herba Foods Ltd* still applies. There is a clear functional need for additional floorspace in this location and the NPPF recognises that places of worship contribute towards creating healthy communities.

7.1.17 **Conclusion**

To conclude this issue, whilst it is acknowledged that the extension represents inappropriate Green Belt development, by reason of its design, size and siting, the actual harm caused to openness would not be significant. Furthermore, the enhancement of a community facility is a very special circumstance that would outweigh any harm caused by reason of inappropriate development.

7.2.0 **Issue No 2: Layout & Design**

7.2.1 The extension has been designed to appear subservient to the original building but also to be sympathetic in respect of its design. It would incorporate a pitched roof, but this would be set 2.5m below the main ridge of the church to ensure that the form of the original building would remain predominant. The use of good quality, matching materials would ensure architectural compatibility.

7.2.2 The existing stain glass windows would be relocated to the new outer wall and the extension would incorporate high quality finishes, such as stone detailing and quoins with knapped flint facing, to match the existing features. The proposal would therefore ensure the building continues to present an attractive flank elevation.

7.2.3 A new pathway would be laid adjacent to the proposed extension. Drawing 16A demonstrates that this would not impact on the nearest grave / gravestone.

7.2.4 In these circumstances, I consider that the proposal would reflect the advice of Local Plan Policies D1 and D2. The extension would be of a high-quality design with the use of appropriate materials and detailing. It would appear as subordinate to the main building and would not mask its original form.

7.3.0 **Issue No 3: Highway Safety & Access**

7.3.1 No changes are proposed to the existing vehicular entrances or car parking arrangements. The proposal is designed to provide enhanced facilities for the existing congregation rather than to attract new members. The proposal would not generate additional car trips, as the people using the extension would be attending the Church on that day anyway. If the Church had to split its function and services across more than one site, then car trips on the surrounding highway network would increase.

7.3.2 The application is accompanied by a Travel Plan. This sets a number of objectives, including maximising the use of public transport and reducing single-occupancy car trips. It also sets out the initiatives that will be continued or implemented to ensure the success of the plan. These would include making visitors aware of public transport options and operating a car share scheme.

7.3.2 In the above circumstance the proposal would not be prejudicial to highway safety and would not conflict with the Supplementary Planning Guidance 2004.

8.0 CONCLUSIONS

8.1.0 **Background**

This report relates to a planning application for the erection of a side extension at the Twelve Apostles Church, Kentish Lane, Brookmans Park. The proposal is promoted in the following circumstances:

1) By reason of its design, size and siting, the actual harm caused to openness would not be significant. Furthermore, the enhancement of a community facility is a very special circumstance that would outweigh any harm caused by reason of inappropriate development.

2) The proposal would reflect the advice of Local Plan Policies D1 and D2. The extension would be of a high-quality design with the use of appropriate materials and detailing. It would appear as subordinate to the main building and would not mask its original form.

3) The proposal would not be prejudicial to highway safety and would not conflict with the Supplementary Planning Guidance 2004.

9.0 APPENDICES

9.1 Appendix 1 – Court of Appeal judgement, *John Turner v Secretary of State for Communities and Local Government & East Dorset Council [2016]*

9.2 Appendix 2 – High Court judgement, *Herba Foods Ltd v Secretary of State for Communities and Local Government and South Cambridgeshire DC [2008]*

APPENDIX 1

Case No: C1/2015/3507

Neutral Citation Number: [2016] EWCA Civ 466
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT
MRS JUSTICE LANG DBE
[2015] EWHC 2788 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/05/2016

Before :

LADY JUSTICE ARDEN
LORD JUSTICE FLOYD
and
LORD JUSTICE SALES

- -

Between :

John Turner	**Appellant**
- and -	
(1) Secretary of State for Communities and Local Government	**Respondents**
(2) East Dorset Council	

- -
- -

Michael Rudd (instructed by **Hawksley's Solicitors**) for the **Appellant**
Richard Kimblin QC (instructed by **Government Legal Department)** for the **Respondent**
The 2nd Respondent did not appear and was not represented

Hearing dates : 4 May 2016

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Judgment

Lord Justice Sales:

1. This is an appeal from the judgment of Lang J in which she dismissed an application under section 288 of the Town and Country Planning Act 1990 to quash a decision of a Planning Inspector to refuse to grant planning permission for development of a plot of land on Barrack Road, West Parley, Ferndown, Dorset ("the site"). The site is located in the South East Dorset Green Belt. The appellant developer submits that the Inspector erred in his interpretation and application of para. 89 of the National Planning Policy Framework ("the NPPF") concerning the circumstances in which development on the Green Belt may not be regarded as inappropriate and in his approach to the concept of the "openness" of the Green Belt.

Factual background

2. Barrack Road is characterised by a mix of residential and commercial properties spasmodically placed along the road. The eastern side of the road where the site is located does not have a continuously built up frontage. The site is in open countryside, and not in an urban area or settlement.

3. There is a static single unit mobile home stationed on the site which is used for residential purposes. Adjacent to this is a substantial area of a commercial storage yard which is used for the storage of vehicles; the preparation, repair, valeting and sale of commercial vehicles and cars; the ancillary breaking and dismantling of up to eight vehicles per month; and the ancillary sale and storage of vehicle parts from a workshop on the site. A certificate of lawful existing use was granted in 2003 for the mobile home and lawful use has been established in respect of the storage yard in a planning appeal decision. We were told that the storage yard has capacity to park some 41 lorries as an established lawful use of the site.

4. The appellant's application for planning permission is for a proposal to replace the mobile home and storage yard with a three bedroom residential bungalow and associated residential curtilage. Another area of land adjacent to the site would be retained to continue the existing commercial enterprise. In his application, the appellant compared the proposed redevelopment with the existing lawful use of the land for the mobile home and 11 parked lorries in order to suggest that the volume of the proposed bungalow would be less than the volume of the mobile home and that many lorries and that, accordingly, the proposed redevelopment "would not have a greater impact on the openness of the Green Belt" than the existing lawful use of the site, with the result that it should not be regarded as inappropriate development in the Green Belt (para. 89 of the NPPF).

5. The local planning authority refused the application. The Inspector, Mr Philip Willmer, dismissed the appellant's appeal. He found that the proposed redevelopment was inappropriate development in the Green Belt, notwithstanding that it would replace the existing lawful use of the site, and that there were no "very special circumstances" (para. 87 of the NPPF) which would justify the grant of permission for the development. The judge dismissed the application to quash his decision.

The policy framework

6. This appeal turns on the application of the NPPF, and in particular para. 89. Section 9 of the NPPF is headed "Protecting Green Belt land". It starts at paras. 79-81 with a statement of some broad principles:

> "79. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
>
> 80. Green Belt serves five purposes:
>
> * To check the unrestricted sprawl of large built-up areas;
>
> * to prevent neighbouring towns merging into one another;
>
> * to assist in safeguarding the countryside from encroachment;
>
> * to preserve the setting and special character of historic towns; and
>
> * to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
>
> 81. Once Green Belts have been defined, local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land."

7. The provisions relating to inappropriate development are at paras. 87-90:

> "87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
>
> 88. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
>
> 89. A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:
>
> * buildings for agriculture and forestry;

> * provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;
>
> * 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;
>
> * the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
>
> * limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or
>
> * limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
>
> 90. Certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These are:
>
> * mineral extraction;
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> * engineering operations;
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> * local transport infrastructure which can demonstrate a requirement for a Green Belt location;
>
> * the re-use of buildings provided that the buildings are of permanent and substantial construction; and
>
> * development brought forward under a Community Right to Build Order."

The Inspector's decision

8. An important part of the appellant's case before the Inspector was his contention that his application fell within the sixth bullet point in para. 89 of the NPPF, so that the proposed development by building the bungalow would not count as inappropriate development in the Green Belt. The Inspector dismissed this contention in paras. 8 to 15 of his decision. At para. 8 he set out the sixth bullet point and recorded the appellant's argument and at para. 9 he explained that the development would not constitute limited infilling. The issue therefore turned on the question of impact on the openness of the Green Belt. The Inspector dealt with this as follows:

“10. The appellant contends that if the development were to go ahead then, in addition to the loss of the volume of the mobile home, or potentially a larger replacement double unit, a further volume of some 372.9 cubic metres, equivalent to eleven commercial vehicles that he has demonstrated could be stored on the appeal site, might also be off set against the volume of the proposed dwelling, thereby limiting the new dwelling’s impact on the openness of the Green Belt.

11. Openness is essentially freedom from operational development and relates primarily to the quantum and extent of development and its physical effect on the appeal site. The Certificate of Lawful Existing Use conveys that the use of the land may be for a mobile home rather than a permanent dwelling. In this respect the mobile home may be replaced with another and I have no doubt, if planning permission is not granted for this development, that over time this may well occur. However, the Certificate of Lawful Existing Use is for the use of the land for the siting of a mobile home for residential purposes, which is distinct from the replacement of one dwelling with another.

12. In my view, therefore, no valid comparison can reasonably be made between the volume of moveable chattels such as caravans and vehicles on one hand, and permanent operational development such as a dwelling on the other. While the retention of the mobile home and vehicles, associated hardstandings etc., will inevitably have their effect on the openness of the Green Belt, this cannot properly be judged simply on measured volume which can vary at any time, unlike the new dwelling that would be a permanent feature. I am therefore not persuaded that the volume of the mobile home and the stored/displayed vehicles proposed to be removed should be off-set in terms of the development’s overall impact on openness.

13. Accordingly, while the replacement of the current single unit mobile home, or even a replacement double unit and vehicles, with the new dwelling might only result in a marginal or no increase in volume, these two things cannot be directly compared as proposed by the appellant.

14. I noted that existing commercial vehicles were parked on either side of the access road to the site during my site visit. However, as I saw, due to their limited height they do not close off longer views into the site. On the other hand the proposed bungalow, as illustrated, that would in any case be permanent with a dominating symmetrical front façade and high pitch roof, would in my view obstruct views into the site and appear as a dominant feature that would have a harmful impact on openness here.

> 15. For the reasons set out I consider that the proposed development would have a considerably greater impact on the openness of the Green Belt and the purpose of including land within it than the existing lawful use of the land. I therefore conclude that the proposal does not meet criterion six of the exceptions set out in paragraph 89 of the Framework and, therefore, would be inappropriate development, which by definition is harmful to the Green Belt. I give substantial weight to this harm."

9. It is this part of the Inspector's reasoning which is under challenge. (I should mention that although in paras. 11 and 12 of the decision the Inspector referred to "operational development" rather than simply "development", the judge correctly found that this was an immaterial slip and there is no appeal in that regard). Having found that the redevelopment was inappropriate development in the Green Belt, it is unsurprising that the Inspector found that there were not adequate grounds to justify the grant of planning permission.

The appeal: discussion

10. On the appellant's section 288 application the appellant had three grounds of challenge to the Inspector's decision, of which two are relevant on this appeal: (i) the Inspector failed to treat the existing development on the site as a relevant material factor to be taken into account in considering whether the sixth bullet point of para. 89 was applicable, and (ii) the Inspector wrongly conflated the concept of openness in relation to the Green Belt with the concept of visual impact. The judge rejected all the grounds of challenge and the appellant now appeals to this Court, relying again on these two grounds.

11. In his oral submissions, Mr Rudd developed the first ground somewhat. His submission was that the Inspector was wrong to say that no valid comparison could be made between the volume of moveable chattels (mobile home and lorries) on the site and a permanent structure in the form of the proposed bungalow; on the proper construction of the concept of "openness of the Green Belt" as used in the sixth bullet point in para. 89 of the NPPF the sole criterion of openness for the purpose of the comparison required by that bullet point was the volume of structures comprising the existing lawful use of a site compared with that of the structure proposed by way of redevelopment of that site ("the volumetric approach"); a comparison between the volume of existing development on the site in this case in the form of the mobile home and 11 lorries as against the volume of the proposed bungalow showed that there would be a lesser impact on the openness of the Green Belt if the existing development were replaced by the bungalow and the Inspector should so have concluded; and the Inspector erred by having regard to a wider range of considerations apart from the volume of development on the site (including the factor of visual impact) in para. 14 of the decision on the way to reaching his conclusion at para. 15. This last point overlaps with the second ground of challenge and it is appropriate to address both grounds together, as the judge did.

12. I do not accept these submissions by Mr Rudd. First, in so far as it is suggested that the Inspector did not address himself to the comparative exercise called for under the sixth bullet point in para. 89, the suggestion is incorrect. The Inspector set out that

bullet point and then proceeded to make an evaluative comparative assessment of the existing lawful use and the proposed redevelopment in paras. 10 to 15 of the decision.

13. The principal matter in issue is whether the Inspector adopted an improper approach to the question of openness of the Green Belt when he made that comparison. The question of the true interpretation of the NPPF is a matter for the court. In my judgment, the approach the Inspector adopted was correct and the judge was right so to hold.

14. The concept of "openness of the Green Belt" is not narrowly limited to the volumetric approach suggested by Mr Rudd. 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 relevant 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 presents.

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. I consider that this interpretation is also reinforced by the general guidance in paras. 79-81 of the NPPF, which introduce section 9 on the protection of Green Belt Land. There is an important visual dimension to checking "the unrestricted sprawl of large built-up areas" and the merging of neighbouring towns, as indeed the name "Green Belt" itself implies. 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, and "safeguarding the countryside from encroachment" includes preservation of that quality of openness. The preservation of "the setting … of historic towns" obviously refers in a material way to their visual setting, for instance when seen from a distance across open fields. Again, the reference in para. 81 to planning positively "to retain and enhance landscapes, visual amenity and biodiversity" in the Green Belt makes it clear that the visual dimension of the Green Belt is an important part of the point of designating land as Green Belt.

16. The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the concept of openness of the Green Belt has no visual dimension itself.

17. Mr Rudd relied upon a section of the judgment of Green J sitting at first instance in *R (Timmins) v Gedling Borough Council* [2014] EWHC 654 (Admin) at [67]-[78], in which the learned judge addressed the question of the relationship between openness of the Green Belt and visual impact. Green J referred to the judgment of Sullivan J in *R (Heath and Hampstead Society) v Camden LBC* [2007] EWHC 977 (Admin); [2007] 2 P&CR 19, which related to previous policy in relation to the Green Belt as set out in Planning Policy Guidance 2 ("PPG 2"), and drew from it the propositions

that "there is a clear conceptual distinction between openness and visual impact" and "it is therefore wrong *in principle* to arrive at a specific conclusion as to openness by reference to visual impact": para. [78] (Green J's emphasis). The case went on appeal, but this part of Green J's judgment was not in issue on the appeal: [2015] EWCA Civ 10; [2016] 1 All ER 895.

18. In my view, Green J went too far and erred in stating the propositions set out above. This section of his judgment should not be followed. There are three problems with it. First, with respect to Green J, I do not think that he focused sufficiently on the language of section 9 of the NPPF, read as part of the coherent and self-contained statement of national planning policy which the NPPF is intended to be. The learned judge does not consider the points made above. Secondly, through his reliance on the *Heath and Hampstead Society* case Green J has given excessive weight to the statement of planning policy in PPG 2 for the purposes of interpretation of the NPPF. He has not made proper allowance for the fact that PPG 2 is expressed in materially different terms from section 9 of the NPPF. Thirdly, I consider that the conclusion he has drawn is not in fact supported by the judgment of Sullivan J in the *Heath and Hampstead Society* case.

19. The general objective of PPG 2 was to make provision for the protection of Green Belts. Paragraph 3.2 stated that inappropriate development was, by definition, harmful to the Green Belt. Paragraph 3.6 stated:

> "Provided that it does not result in disproportionate additions over and above the size of the original building, the extension or alteration of dwellings is not inappropriate in Green Belts. The replacement of existing dwellings need not be inappropriate, proving the new dwelling is not materially larger than the dwelling it replaces …"

20. It was the application of this provision which was in issue in the *Heath and Hampstead Society* case. It can be seen that this provision broadly corresponds with the fourth bullet point in para. 89 of the NPPF and that it has a specific focus on the relative size of an existing building and of the proposed addition or replacement.

21. The NPPF was introduced in 2012 as a new, self-contained statement of national planning policy to replace the various policy guidance documents that had proliferated previously. The NPPF did not simply repeat what was in those documents. It set out national planning policy afresh in terms which are at various points materially different from what went before. This court gave guidance regarding the proper approach to the interpretation of the NPPF in the *Timmins* case at para. [24]. The NPPF should be interpreted objectively in accordance with the language used, read in its proper context. But the previous guidance – specifically in *Timmins*, as in this case and in *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386; [2015] 1 P & CR 36 to which the court in *Timmins* referred, the guidance on Green Belt policy in PPG 2 – remains relevant. In particular, since in promulgating the NPPF the Government made it clear that it strongly supported the Green Belt and did not intend to change the central policy that inappropriate development in the Green Belt should not be allowed, section 9 of the NPPF should not be read in such a way as to weaken protection for the Green Belt: see the *Redhill Aerodrome* case at [16] per Sullivan LJ, quoted in *Timmins* at [24].

22. The *Heath and Hampstead Society* case concerned a proposal to demolish an existing residential building on Metropolitan Open Land (which was subject to a policy giving it the same level of protection as the Green Belt) and replace it with a new dwelling. Sullivan J rejected the submission that the test in para. 3.6 was solely concerned with a mathematical comparison of relevant dimensions: [19]. However, he accepted the alternative submission that the exercise under para. 3.6 was primarily an objective one by reference to size, where which particular physical dimension was most relevant would depend on the circumstances of a particular case, albeit with floor space usually being an important criterion: [20]. It was not appropriate to substitute a test such as "providing the new dwelling is not more visually intrusive than the dwelling it replaces" for the test actually stated in para. 3.6, namely whether the new dwelling was materially larger or not: [20]. As Sullivan J said, "Paragraph 3.6 is concerned with the size of the replacement dwelling, not with its visual impact": [21]. In that regard, also at para. [21], he relied in addition on para. 3.15 of PPG 2 which made specific provision in relation to visual amenities in the Green Belt. Neither para. 3.6 of PPG 2 (with its specific focus on comparative size of the existing and replacement buildings) nor para. 3.15 of PPG 2 refer to the concept of the "openness of the Green Belt". They do not correspond with the text of the sixth bullet point in para. 89 of the NPPF, and section 9 of the NPPF contains no provision equivalent to para. 3.15 of PPG 2. It is therefore not appropriate to treat this part of the judgment in *Heath and Hampstead Society* as providing authoritative guidance on the interpretation of the sixth bullet point in para. 89 of the NPPF. At paras. [22] and [36]-[38] Sullivan J emphasised that the relevant issue in the case specifically concerned the application of para. 3.6 of PPG 2 and whether the proposed replacement house was materially larger than the existing house.

23. At para. [22] Sullivan J said, "The loss of openness (i.e. unbuilt on land) within the Green Belt or Metropolitan Open Land is of itself harmful to the underlying policy objective". Since the concept of the openness of the Green Belt has a spatial or physical aspect as well as a visual aspect, that statement is true in the context of the NPPF as well, provided it is not taken to mean that openness is *only* concerned with the spatial issue. Such an interpretation accords with the guidance on interpretation of the NPPF given by this court in the *Timmins* and *Redhill Aerodrome* cases, to the effect that the NPPF is to be interpreted as providing no less protection for the Green Belt than PPG 2. The case before Sullivan J was concerned with a proposed new, larger building which represented a spatial intrusion upon the openness of the Green Belt but which did not intrude visually on that openness, so he was not concerned to explain what might be the position under PPG 2 generally if there had been visual intrusion instead or as well.

24. Sullivan J gives a general reason for the importance of spatial intrusion at para. [37] of his judgment:

> "The planning officer's approach can be paraphrased as follows:
>
> > 'The footprint of the replacement dwelling will be twice as large as that of the existing dwelling, but the public will not be able to see very much of the increase.'

> It was the difficulty of establishing in many cases that a particular proposed development within the Green Belt would of itself cause 'demonstrable harm' that led to the clear statement of policy in para. 3.2 of PPG 2 that inappropriate development is, by definition, harmful to the Green Belt. The approach adopted in the officer's report runs the risk that Green Belt of Metropolitan Open Land will suffer the death of a thousand cuts. While it may not be possible to demonstrate harm by reason of visual intrusion as a result of an individual – possibly very modest – proposal, the cumulative effect of a number of such proposals, each very modest in itself, could be very damaging to the essential quality of openness of the Green Belt and Metropolitan Open Land."

25. This remains relevant guidance in relation to the concept of openness of the Green Belt in the NPPF. The same strict approach to protection of the Green Belt appears from para. 87 of the NPPF. The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there. But, as observed above, it does not follow that openness of the Green Belt has no visual dimension.

26. What is also significant in this paragraph of Sullivan J's judgment for present purposes is the last sentence, from which it appears that Sullivan J considered that a series of modest visual intrusions from new developments would be a way in which the essential quality of the openness of the Green Belt could be damaged, even if it could not be said of each such intrusion that it represented demonstrable harm to the openness of the Green Belt in itself. At any rate, Sullivan J does not say that the openness of the Green Belt has no visual dimension. Hence I think that Green J erred in *Timmins* in taking the *Heath and Hampstead Society* case to provide authority for the two propositions he sets out at para. [78] of his judgment, to which I have referred above.

27. Turning back to the Inspector's decision in the present case, there is no error of approach by the Inspector in his assessment of the issue of impact on the openness of the Green Belt. In paras. 11 to 13 the Inspector made a legitimate comparison of the existing position regarding use of the site with the proposed redevelopment. This was a matter of evaluative assessment for the Inspector in the context of making a planning judgment about relative impact on the openness of the Green Belt. His assessment cannot be said to be irrational. It was rational and legitimate for him to assess on the facts of this case that there is a difference between a permanent physical structure in the form of the proposed bungalow and a shifting body of lorries, which would come and go; and even following the narrow volumetric approach urged by the appellant the Inspector was entitled to make the assessment that the two types of use and their impact on the Green Belt could not in the context of this site be "directly compared as proposed by the appellant" (para. 13). The Inspector was also entitled to take into account the difference in the visual intrusion on the openness of the Green Belt as he did in para. 14.

Conclusion

28. For the reasons given above, I would dismiss this appeal.

Lord Justice Floyd:

29. I agree.

Lady Justice Arden DBE:

30. I also agree.

APPENDIX 2

Neutral Citation Number: [2008] EWHC 3046 (Admin)

Case No: CO/3755/2007

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10th December 2008

Before :

SIR GEORGE NEWMAN
(sitting as a Deputy High Court Judge)

- -

Between :

SB HERBA FOODS LIMITED	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT and (2) SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL	**Defendants**

- -

- -

Matthew Horton QC (instructed by Marrons) for the Claimant
Sarah-Jane Davies (instructed by The Treasury Solicitor) for the First Defendant

Hearing date: 4th November 2008

- -

Judgment

Sir George Newman :

1. This is an appeal by SB Herba Foods Limited ("the claimant") pursuant to section 288 of the Town and Country Planning Act 1990. The claimant seeks to quash, for error of law, a decision of the first defendant made on her behalf by an Inspector.

2. By a decision dated 28th March 2007 the Inspector dismissed an appeal by the claimant against a decision of the second defendant refusing planning permission for the extension of an existing factory operated by the claimant.

The Essential Facts

3. The factory is a former grain silo on the edge of the village of Fulbourn in Cambridgeshire. In 1988 the claimant commenced the re-use of it for the purpose of milling foodstuffs. The factory is outside but extends up to the very edge of the Cambridge Green Belt. The proposed extension would be in the Green Belt. But, being within the curtilage of the existing factory, the extension site, in planning terms,

is categorised as previously developed land (sometimes described colloquially as brownfield land).

Planning Policy

4. By section 38(6) of the Planning and Compensation Act 2004 any decision whether to grant planning permission must be taken in accordance with the development plan unless material considerations indicate otherwise. For the purpose of section 38(6), the development plan comprises adopted regional, county and local policy. The fundamental basis upon which it is submitted the Inspector made an error of law is in his interpretation of paragraphs 3.1 and 3.2 of PPG2. This is not the first time that these paragraphs have fallen for interpretation by the Court and they have been the subject of consideration in the Court of Appeal most recently in *Wychavon District Council v Secretary of State for the Communities and Local Government and Others* [2008] EWCA Civ 692. It will be necessary later to return to the judgment of Carnwath LJ. Apart from PPG2, the Inspector considered other relevant planning policy documents, namely the Regional Planning Guidance (RPG) for East Anglia, the Cambridgeshire and Peterborough Structure Plan (SP) and the Local Plan (LP). In paragraphs 4 to 8 of the Decision Letter ("DL"), the Inspector summarised the effect of the RPG, SP and LP documents.

5. It is common ground that the Inspector carefully analysed the relevant planning policy documents and that he correctly focused on the relevant parts of those documents, save in connection with LP policy GB2, where he summarised the policy as prohibiting "inappropriate development in the Green Belt …" unless very special circumstances exist and incorrectly went on to state, that they should also have "no adverse effect on the rural character and openness of the Green Belt". It is accepted that, according to the true meaning of the final part of the wording of the policy, that restriction relates to "appropriate" development and not "inappropriate" development. To that extent, he misread the policy but it is not submitted that this error has any real bearing on the issue before the court.

6. The important paragraphs of PPG2 are as follows, in their material part:-

> "3.1 The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved, except in very special circumstances….
>
> 3.2 Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations…".

The Inspector's Findings

7. The Inspector identified three main issues in the appeal, namely:

> - "whether the proposal constitutes inappropriate development in the Cambridge Green Belt;
>
> - the effect of the proposal on openness and visual amenities of the Green Belt; and
>
> - if the proposal constitutes inappropriate development in the Green Belt, whether very special circumstances exist, which clearly outweigh the harm resulting from that inappropriateness and any other harm."

8. In a decision letter, which it is not disputed was carefully drawn up and well constructed, the Inspector took each of those issues in turn.

9. As to the first issue, he found that the proposed development would constitute "inappropriate development". Submission had been advanced to him by Mr Horton QC that the proposal to extend was to be regarded as the re-use of a building and, for that reason, it fell within the exception from the definition of inappropriate development. Although the issue of whether it amounted to re-use or not was canvassed in argument, it is not central to the matters which the Court has to decide. For myself, I am not in doubt that the Inspector reached the correct conclusion.

10. As to the effect of the proposed development on the openness and visual amenities of the Green Belt, he drew attention to the fact that the original mill building is very large and prominent and that the extension would be small in comparison to the existing building. He concluded that, by virtue of the proposal for the erection of a building on land which is at present not built upon, it would "as a matter of fact … reduce the openness of the Green Belt", although "the extent to which that reduction in openness is material depends on what would actually be visible". He concluded that the extension "would not have a material impact on the wider landscape and would not be prominent in longer views". When viewed from close advantage points to the north and south, "the appeal site appears as part of the attractive, open, rural character of the Green Belt setting of Fulbourn, rather than part of the village's built environment". There was in evidence before him the proposal that there should be a planting programme which would be carried out by the claimant and he concluded: "… in the medium to long term, the harm caused by the proposal to the openness and visual amenities to the Green Belt would be limited". The proposed planting would also, in association with the extension, "improve the screening of the earlier extension". He concluded that "the visual impact of the proposal would not be sufficient in itself to justify dismissal of the appeal". He accepted that the "unusual characteristics of the original … building make it ideally suited to the appellant's milling process". He accepted that "the appellant currently needs more storage space and … that need is likely to continue". Further he concluded "The current pressure on space is hindering efficiency and making it more difficult, though not impossible, to ensure compliance with Health and Safety requirements…". Further, that "the only options available to the appellant are to extend the existing buildings or secure storage space off-site" and he concluded that since off-site storage space was available, if the

appeal failed, storage space off-site would be used. He drew attention to the disadvantages of off-site storage in terms of economic and efficient operation of [the business] and concluded that "… it would be better to extend the building than to use off-site storage…".

11. The use of off-site storage would inevitably give rise to more heavy goods vehicle movements, a consequent increase in CO_2 emissions and an increase in the amount of packaging waste. He recognised that minimising the effects of these matters was the subject of national, regional and local planning policy in relation to the first two, and an important environmental aim in the case of the third.

12. I have deliberately set out his conclusions in relation to all these considerations without referring to the reasoning process which he applied to each consideration. It is his reasoning which is specifically under challenge, it being said that he erred in the test he applied in the process of determining the character and weight which could be given to these various considerations.

The Cases

13. The Inspector directed himself when considering the effect of paragraphs 3.1 and 3.2 of PPG2 according to his understanding of the decision of Sullivan J. in *R (Chelmsford Borough Council) v First Secretary of State and Draper* [2003] EWHC Admin 2978. As I have indicated above, the Court of Appeal has recently considered the proper approach to paragraphs 3.1 and 3.2 in the *Wychavon* case. I take Carnwath LJ to have stated at paragraphs 21 to 26:

    (1) that the words "very special" in paragraph 3.2 are not to be treated as the converse of "commonplace". Rarity may contribute to the special quality of a particular factor, but what is required is a qualitative judgment as to the weight to be afforded to a particular factor for planning purposes (see paragraph 21);

    (2) that contrary to the approach of Sullivan J. in *Chelmsford*, the two elements of paragraph 3.2 – the existence of very special circumstances and the need clearly to outweigh the harm to the Green Belt – should not be rigidly divided. The factors which make a case very special may be the same as, or at least overlap with, those which justify holding the Green Belt considerations are clearly outweighed. The Court of Appeal preferred the formulation taken from an earlier decision of Sullivan J. in *Doncaster MBC v SSETR* [2002] JPL 1509 para 70 where the judge had stated:

> "Given that inappropriate development is by definition harmful, the proper approach was whether the harm by reason of inappropriateness and the *further* harm, albeit limited, caused to the openness and purpose of the Green Belt was *clearly* outweighed by the benefit to the appellant's family and particularly to the children so as to amount to *very* special circumstances justifying an exception to Green Belt policy".

Carnwath LJ approved of this formulation because it treated "… the two questions as linked" but started ".. from the premise that inappropriate development is by definition harmful" to the purposes of the Green Belt.

The Inspector's Approach

14. It can be seen from paragraph 3 of the DL (third bullet point) that the Inspector formulated the issue to which paragraphs 3.1 and 3.2 of PPG2 gave rise as, "whether very special circumstances exist". It is true this was the ultimate issue, because development could only be "approved … in very special circumstances". But the critical question on the path to the correct determination of the ultimate question was whether "other considerations" clearly outweighed the harm by reason of "inappropriateness and any other harm". The correct approach outlined by Sullivan J in *Doncaster MBC v SSETR* [2002] JPL 1509, approved by Carnwath LJ in *Wychavon,* should have been adopted (see paragraph 13 above). It must be noted that the judgment in *Wychavon* was delivered after this DL.

15. It was submitted, with justification, that the Inspector's initial formulation in paragraph 3 of the DL was not developed by him in the subsequent detail of the DL so as to demonstrate that he had the critical question sufficiently in mind. In paragraph 20 of the DL he stated that he understood the *Chelmsford Borough Council* to indicate that he:

> "must consider whether a particular circumstance or combination of circumstances is very special. Ultimately then, I have to view all of the circumstances of this case in the round, but I will first consider the individual matters advanced by the appellant as constituting or contributing to very special circumstances".

16. In my judgment, the *Chelmsford Borough Council* case led him into error. He was entitled to look at the circumstances individually and cumulatively and ultimately to consider whether they amounted to "very special circumstances", but before coming to a conclusion he was obliged to give adequate consideration, either individually or cumulatively, and to determine whether or not they "clearly outweigh" the green belt harm. He had to exercise a judgment and assess the quality of the factors according to planning principles and considerations. In paragraph 21 of *Wychavon* Carnwath LJ, having identified the error in treating "very special " as the converse of "commonplace", went on to state:

> "The word "special" in the guidance connotes not a quantitative test, but a qualitative judgment as to the weight to be given to the particular factor for planning purposes. Thus, for example, respect for the home is in one sense a "commonplace", in that it reflects an aspiration shared by most of humanity. But it is at the same time sufficiently "special" for it to be given protection as a fundamental right under the European Convention."

17. The Inspector carefully went through the factors constituting other considerations (see paragraphs 20-37). He concluded that the appellant ".. currently needs more storage space and unless customers' requirements change again, that need is likely to

continue" (paragraph 22). He concluded that ".. in terms of the economic and efficient operation of his business, it would be better to extend the building than to use off-site storage and that this would make compliance with health and safety requirements easier" (paragraph 23).

18. He did then weigh those conclusions against the harm and at paragraph 26 stated:

> "Whilst I am satisfied that the proposed extension makes perfectly good business sense, I am not persuaded that the business need is so compelling that it would outweigh the overall harm identified. Furthermore, I am not convinced that the need for additional storage space represents a particularly unusual, let alone very special circumstance. For the appellant, Mr Phillips ventured to suggest that, at any given time, some 5 to 10% of businesses are seeking more space. I am not aware that there is a sound statistical basis for that estimate, but I accept that Mr Phillips can draw on considerable experience as a planning consultant. Nevertheless, I take the view that, to fall within that proportion of businesses, would not be very special. I also note the Council's submission that it would be more relevant to consider the proportion of businesses in need of more space at some time in their existence. On that basis, it seems to me that such a need is likely to be quite common. I acknowledge that many other businesses will have much greater flexibility to relocate their entire operations than the appellant has. However, the appellant does not have to relocate. The evidence indicates that in business terms, the use of off-site storage is a perfectly feasible, albeit second best option".

19. It is clear that the Inspector gave less weight to the need for storage because he regarded it as a commonplace consideration. He was wrong to do so. I shall return to what should flow from this error later.

Off-site storage

20. The Inspector concluded that there was "harm" which would arise from increased HGV movements using off-site storage. He weighed this harm against the green belt harm, but held that it did not outweigh the green belt harm. He then added:

> "Furthermore, whilst these environmental considerations are important, they are likely to arise in many cases where businesses in the Green Belt require additional storage space. In my view, these circumstances cannot be described as unusual, let alone very special." (paragraph 29).

The Brownfield Factor

21. The Inspector stated:

> "I note that the proposal would make use of previously developed land and it would assist in further securing the use of an existing building with significant embodied energy and resources, thus making best use of those resources. However, these factors would surely apply in all cases where an extension is proposed to a building, within its existing curtilage. Such circumstances can hardly be very special." (paragraph 30)

Screening

22. It can be noted that in paragraph 31 of the DL the Inspector carried out a weighing exercise without reference to the test of it being "commonplace" or "unusual" and addressed the arguments by reference to the "limited additional harm in terms of loss to openness" by weighing it against the harm for inappropriateness (see paragraphs 35 and 36).

23. The Inspector concluded, in two short paragraphs, as follows:

> "On examining each of the circumstances relied upon by the appellant, I have found that none of them is very special and none of them clearly outweighs the harm identified. I also consider that the combination of factors referred to would not be particularly unusual and could apply to many businesses that wished to extend their existing premises to meet a need for additional storage space." (paragraph 36)

And (paragraph 37)

> "I fully understand the appellant's desire to pursue this scheme; it is consistent with sound business planning. Nevertheless, on the last main issue, I conclude that the circumstances of the case and the benefits of the proposal, either individually or collectively, are not very special and do not clearly outweigh the harm by reason of inappropriateness and the limited harm to the openness and visual amenity of the Cambridge Green Belt…".

Conclusion

24. This was a careful and well constructed DL. As such, it is possible to see that, in some respects, the necessary exercise was discharged. But, as I see it, the question whether the misdirection both in the formulation of the critical issue as well as the subsequent weighing process which was to a large part, by reference to whether the factors were "commonplace" or "unusual", so seriously flaws the decision as to require it to be quashed and remitted to another Inspector. I have concluded that it is impossible to disentangle the Inspector's conclusions on the weight to be attached to the "other considerations" from his predominant focus on looking for the character of each being a "very special circumstance". More so I find it impossible to disentangle the extent to which his conclusions on weight were influenced by his erroneous test of looking for the "unusual" or the uncommonplace factor.

25. Further, Carnwath LJ stated the exercise involved a "qualitative judgment as to the weight to be given to the particular factor for planning purposes". That seems to me, in a case such as this, to be for an Inspector, not for the court.

26. The DL must be quashed and, unless counsel wish to submit otherwise, my present view is that the matter should be remitted to another Inspector.