

Appeal Statement

Planning Appeal by Philip Gomes

Statement of Hayden Dicker BSc MSc MRTPI

Removal of condition 6 of planning permission 25/01850/FP

Fen Farm, Rabley Heath Road, Codicote, Welwyn, AL6 9UA

DLA Ref:26/193

LPA Ref: 26/00215/S73

April 2026

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1.0 INTRODUCTION

1.1.0 Background

1.1.1 On the 4th February 2026 a planning application was submitted to North Hertfordshire Council for the Removal of condition 6 of planning permission 25/01850/FP at Fen Farm, Rabley Heath, LPA Ref: 26/00215/S73.

1.1.2 The application was refused planning permission by the Council for the following reasons, given in a decision notice dated 2nd April 2026.

1. *The removal of Condition 6 would allow for the construction of outbuildings and extensions within the application site. This could result in inappropriate Development within the Green Belt that would adversely impact upon the openness of the Green Belt. It is therefore considered that Condition 6 is justified in order to allow the Local Planning Authority to assess possible future development within the Green Belt through the submission of a planning application. The application for the removal of Condition 6 from planning permission 25/01850/FP is considered to fail to comply with the provisions set out within Section 13 of the National Planning Policy Framework, and Policy SP5 of the North Hertfordshire Local Plan 2011-2031.*

1.2.0 Summary

1.2.1 Contrary to the above I will demonstrate in my Statement as follows:

It is not considered that the Council demonstrated when the planning permission was granted that there is 'clear justification' for the removal of permitted development required by paragraph 55 of the National Planning Policy Framework (NPPF). The conditions are therefore considered to be unnecessary and unreasonable and should therefore be removed from the planning permission.

2.0 SITE AND CONTEXT APPRAISAL

2.1.0 Location

2.1.1 The site, shown in Figure 1 below, is located to the south of Rabley Heath Road, to the west of the large village of Codicote.



Figure 1 - Site location

2.2.0 Application Site

2.2.1 The application site consists of a large two storey detached dwelling that was approved and constructed by virtue of approved application reference 10/00134/1. The site also consists of a large detached garage, a large detached stable block and barn, as well as number of other associated outbuildings and structures. The site also has an extant consent under reference 25/00044/FP for the conversion of existing stables into a dwelling following the demolition of outbuildings.

2.3.0 Context

2.3.1 The character of the area is predominantly characterised by residential dwellings within a broadly rural area. The site is bound on either side by residential dwellings, with an open field located to the north on the other side of Rabley Heath Road.

2.4.0 Planning Constraints

2.4.1 The only planning designation upon the site is that it is located with the Metropolitan Green Belt. The site is located within Flood Zone 1, is not within a Conservation Area, nor are there any Listed Buildings in close proximity to the site.

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
09/01267/1	Erection of one four bedroom dwelling with detached garage following demolition of existing dwelling	Approved
10/00134/1	Erection of one four bedroom dwelling with detached garage following demolition of existing dwelling (as variation to planning permission 09/01267/1 granted on 30 September 2009)	Approved
12/01033/1	Erection of a Barn for the storage of hay (as amended by drawings received 2/07/12).	Refused
25/00044/FP	Conversion of existing stables into dwelling following demolition of outbuildings	Approved
25/01850/FP	Erection of chalet bungalow following demolition of existing buildings	Approved

3.2.0 Other Relevant Sites

3.2.1 There have been a number of appeal decisions in recent years that are of particular relevance to this application. Seven recent appeals and their implications are summarised below, with the decision letters attached as appendices to this statement:

- 1) Appeal reference APP/A3655/W/20/3250617 at Wentworth House, Rough Road, Brookwood, Woking GU22 0RB was allowed on the 6th November 2020. The appeal related to Condition 5 attached to an approval for a replacement dwelling (Appendix 1). The Inspector concluded as follows:

“15. I acknowledge the Council’s desire to seek to control future development on what is a relatively large site in the Green Belt in a matter that reflects the Green Belt’s importance. It is however, also important to note that the deemed grant of planning permission under the terms of the GPDO does not explicitly exclude development within the Green Belt. Furthermore, there is no requirement in its terms to subject any proposed development to the test of inappropriate or openness. In the absence of any case specific evidence to suggest that the 2002 replacement dwelling would not have been supported without removal of some of the GPDO rights, the necessary justification required to remove those rights, did not and does not exist to make it acceptable in planning terms. Such an approach fails to comply with the current policy as set out in paragraph 53 of the Framework.

16. *I therefore conclude that the required justification for the removal of the permitted development rights does not exist and therefore the condition is unreasonable and unnecessary. It therefore fails the tests as set out in Paragraph 55 of the Framework."*

2) Appeal reference APP/W0530/W/21/3272766 at Church View, Newmarket Road, Stow-Cum-Quy, CB25 9AQ was allowed on 9th December 2021. The appeal related to Condition 7 attached to an approval for external alterations and conversion of offices to dwelling and part change of use of paddock land to garden land (Appendix 2). The Inspector concluded that:

"8. The GPDO sets out certain types of development that, amongst other things, dwelling houses can undertake without the need to apply for planning permission. This is not altogether unrestricted, as for example some types of permitted development may be excluded for properties within a conservation area, or within a National Park. Critically, the GPDO places no restrictions on permitted development rights in Green Belts. I find it reasonable to conclude that had it been the intention of Government to limit permitted development rights in the Green Belt, it would have done so. It therefore follows that the permitted development rights for a dwelling in the Green Belt does not harm openness and is not disproportionate in the first instance.

10. *In my view, the Framework and GPDO start with the presumption that a new dwelling in the Green Belt should be allowed to enjoy its permitted development rights. It is then for the decision maker to assess and explain why an individual class or classes within the relevant parts of the GPDO would harm openness in a specific case, necessary to justify the need for a restrictive condition. The Council's blanket ban approach on fear of what might happen is not an adequate assessment of the harm, is inconsistent with national policy and guidance, and accordingly is not a sufficient reason to remove permitted development rights.*

11. *Having regard to the character of the appeal site and the immediate surrounding area, I am not persuaded that this property even if extended as per its permitted development rights would harm or erode openness of the Green Belt. Furthermore, I am satisfied that the GPDO provides for sufficient safeguards to prevent over-development of a site. These include not allowing development from exceeding 50% of the total area of the curtilage (excluding the ground area of original dwelling house), and from extending beyond a wall forming the principal elevation of the original dwelling house."*

3) Appeal reference APP/M1595/W/21/3288105 at River View, Kirkham Road, Horndon on the Hill, SS17 8QE was allowed on 9th December 2022. The appeal related to Condition 10

attached to an approval for one dwelling and detached garage (Appendix 3). The inspector concluded that:

“3. The appeal property is a replacement dwelling following the grant of permission in 1994. It is within the Green Belt. The National Planning Policy Framework indicates that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. The Council has provided no explanation as to why it is reasonable and necessary to remove all permitted development rights for the enlargement, improvement or other alteration of the dwellinghouse.

4. Permitted development is not restricted in the Green Belt as it is for some designated areas. There is therefore no overarching justification for retaining the condition. Policy PMD6 of the Core Strategy and Policies for Development Management makes no mention of removing permitted development rights for replacement dwellings in the Green Belt. Furthermore, no detail has been given about the planning history of the site that might have formed the basis of the original condition. The reason given for it is generic. As River View has a large plot and is well separated from neighbouring houses, there are no site specific reasons to prevent permitted development rights from being exercised.

5. The Planning Practice Guidance (PPG) on Use of Planning Conditions warns that conditions restricting the future use of permitted development rights may not pass the tests of reasonableness or necessity. This is one such case and there is no reason to keep the condition. This would not exempt the appellant or any future owner or occupier from applying for planning permission if that were necessary. Allowing the appeal would simply put River View on the same footing as other houses in the vicinity.”

4) Appeal reference APP/N0410/W/19/3238059 at Rosebrook, Ashmead Lane, Denham, Buckinghamshire UB9 5BB was allowed on 8th January 2020. The appeal related to Condition 5 attached to an approval for two storey rear extension, extension to front dormer and alterations to fenestration (Appendix 4). The inspector concluded that:

“6. The Council is concerned permitted development rights would allow further enlargement of Rosebrook that may lead to a loss of openness of the Green Belt. Such a concern relates to the effect of development allowed under permitted development rights rather than to the extensions subject of this appeal. The development approved by the Council is acceptable when assessed against national and local Green Belt planning policies and there is no policy that supports the removal of permitted development rights in these circumstances. Consequently, the condition is not reasonable or necessary to make the appeal scheme acceptable and so it fails to meet all the tests set out at paragraph 55 of the Framework. Also, as no compelling justification for the condition is provided, it is contrary to paragraph 53 of the Framework which is against the restriction of permitted development rights without clear reason.

7. The Council refer to an Inspector's appeal decision¹ that allows an extension subject to a condition removing permitted development rights. However, in that case, the proposal was inappropriate development in the Green Belt and the appellant was willing to forego permitted development rights in order to justify a departure from Green Belt policy. The circumstances are different to this appeal where the extensions are not inappropriate development in the Green Belt and so the other appeal does not affect my view on the main issue."

5) Appeal reference APP/N0410/W/23/3324265 at Longbridge Nurseries, Cherry Tree Lane, Iver Heath, Iver, Buckinghamshire SLO 0EE was allowed on 11 March 2024. The appeal related to Condition 6 attached to an approval for a detached bungalow (Appendix 5). The inspector concluded that:

"7. The permitted development rights which have been removed would, in the main, allow extensions to the original property and alterations to the site. In my view, any extensions or alterations carried out under permitted development rights are likely to be relatively minor. There is no substantive evidence before me to indicate that in exercising permitted development rights, further extensions would result in disproportionate additions over and above the size of the original building, which would subsequently lead to a loss of openness within the Green Belt. The original appeal decision does not set out a reason or justification for the condition, and pre-dates the Framework.

8. In any event, the Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 (as amended) places no restrictions on permitted development rights in Green Belts. As such, the same permitted development rights typically apply to dwellings within the Green Belt as those which are not. Paragraphs 152-154 of the Framework, relating to the Green Belt, are only applicable to development that requires planning permission, as is the need to demonstrate very special circumstances.

9. The Council sets out that any additional built form could reduce openness and would therefore result in a development which would be inappropriate. However, there is no substantive evidence before me to indicate that this would be the case. In any event, I am not of the view that minor extensions to the dwelling would have such an effect on the openness of the Green Belt or its purposes to justify the removal of permitted development rights.

10. For the reasons given above, I conclude that the removal of condition 6 would not harm the openness of the Green Belt and there is no clear justification for the removal of permitted development rights. Accordingly, the relevant tests in the Framework and the PPG have not been met in this case and the condition is not reasonable or necessary."

- 6) Appeal reference APP/B1930/D/24/3350286 at The Farmhouse, Round House Farm, Roestock Lane, Colney Heath, St Albans, AL4 0PP was allowed on 12 February 2025. The appeal related to a single storey side extension and two storey rear extension (Appendix 6), after trading in approved PD extensions as the fallback position. The inspector commented as follows in respect of the Council's suggestion to remove permitted development right for extensions and outbuildings:

"15.....The Council also suggests a condition withdrawing permitted development rights for extensions and outbuildings. The reason given is in the interests of visual amenity and the openness of the Green Belt. However, limits on permitted development rights exist in order to protect visual amenity and the Government has not considered the general withdrawal of permitted development rights in the Green Belt to be necessary. The Council has not provided any specific justification for the withdrawal of permitted development rights in this case. I therefore consider that to do so would be contrary to the tests of reasonableness and necessity. I shall not therefore impose the suggested condition."

- 7) Appeal references APP/P1940/W/24/3346997 & 3349084 on land at rear of 47 Church Lane, Sarratt, Hertfordshire was allowed on 28 January 2025. The appeals related to residential development and is included at appendix 7. The Inspector commented as follows in respect of the Council's suggestion to remove permitted development rights.

"39. The Council has also suggested a condition that removes certain permitted development rights as set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Paragraph 54 of the Framework indicates that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The PPG also states that conditions restricting the future use of permitted development rights may not pass the test of reasonableness.

40. In this case, the retention of permitted development rights at the site could give rise to further built form within the Green Belt. Nevertheless, the extent of such development would be limited by the criteria set out in the GPDO and would be constrained by, and limited to, the appeal site. Furthermore, there is no compelling evidence that suggests that exercising permitted development rights would have an unacceptable effect on the openness of the Green Belt or its purposes. Overall, there is no clear justification for the removal of permitted development rights and, accordingly, I have not imposed the suggested condition."

4.0 **POLICY CONTEXT**

4.1.0 **National Policy / Guidance**

4.1.1 The National Planning Policy Framework (NPPF) 2024, sets out the Government's planning policies for England. The following sections are considered directly relevant:

Chapter 4 – decision-making

4.1.2 The National Planning Policy Guidance provides information on removal of permitted development rights in the Use of Planning Conditions section at Paragraph: 017 Reference ID: 21a-017-20190723.

5.0 DESCRIPTION OF DEVELOPMENT

- 5.1.0 This application seeks the removal of conditions 6 from planning permission 25/01850/FP. This would effectively reinstate permitted development rights for extensions to the dwellings and outbuildings within the curtilage, subject to the restrictions and limitations of the legislation.

6.0 PLANNING CONSIDERATIONS

Given the nature of the proposal and the LPA's reasons for refusal, I consider the appeal raises the following issue:

6.1.0 Issue No 1: Would the removal of condition 6 result in inappropriate Development within the Green Belt that would adversely impact upon the openness of the Green Belt?

6.1.1 The reason the Council included condition 6 as part of the original permission was *"Given the nature of this development, the Local Planning Authority considers that development which would normally be "permitted development" should be retained within planning control in the interests of the character and amenities of the area and to comply with Policy D1 and/or Policy D3 of the North Hertfordshire Local Plan 2011 to 2031"*. In the Officers Report (OR) for this appeal application, the Council accepted that *"It is agreed that extensions are unlikely to result in unacceptable impacts upon neighbouring amenities... It is also agreed that the development would benefit from a degree of screening as existing and as proposed."* This therefore demonstrates that the Council themselves have agreed that the reinstating of Permitted Development (PD) rights would not conflict with the reason they provided for including this condition in their decision notice.

6.1.2 Regardless of this, although the OR did not cite impact on the Green Belt for its reason for adding the condition, the OR for the original application did also state that *"Given the rural, green belt location, together with the relatively constrained nature of the site, I consider it is prudent to restrict the permitted development rights for the new dwelling"*.

6.1.3 The OR stated, *"The maintenance of permitted development rights in this location would allow for the local authority to consider large additions to the dwelling against Green Belt policy....Cumulatively, the enlargements over the original building, both approved and prospectively under PD could substantially harm the openness of the Green Belt"*. However, Schedule 2, Part 1 of the GPDO sets out the Permitted Development Rights (PDRs) to extend dwellings. These rights apply generally to all dwellinghouses apart from Article 2(3) land, which includes Conservation Areas, Areas of Outstanding Natural Beauty, National Parks and World Heritage Sites. Green Belt land is not included in this list. Had the Government wanted to withdraw or restrict PDRs for householder and minor developments in the Green Belt they would have done so. The fact that the Government did not include Green Belt land is strong evidence that it does not cause harm by default.

6.1.4 As set out above, the requirement of the NPPF and the PPG is that planning conditions should not be used to restrict permitted development rights unless there is clear justification to do so which is also specific to the site. As such, the starting point for the

decision-maker is that permitted development rights should remain in place, even in the Green Belt. This point has been accepted on numerous occasions by Appeal Inspectors in recent years as demonstrated in the Appendices submitted with this appeal. A summary of these are as follows:

- Appendix 1 - *"In the absence of any case specific evidence to suggest that the 2002 replacement dwelling would not have been supported without removal of some of the GPDO rights, the necessary justification required to remove those rights, did not and does not exist to make it acceptable in planning terms.... I therefore conclude that the required justification for the removal of the permitted development rights does not exist and therefore the condition is unreasonable and unnecessary."*
- Appendix 2 - *"It therefore follows that the permitted development rights for a dwelling in the Green Belt does not harm openness and is not disproportionate in the first instance... In my view, the Framework and GPDO start with the presumption that a new dwelling in the Green Belt should be allowed to enjoy its permitted development rights...The Council's blanket ban approach on fear of what might happen is not an adequate assessment of the harm, is inconsistent with national policy and guidance, and accordingly is not a sufficient reason to remove permitted development rights...Furthermore, I am satisfied that the GPDO provides for sufficient safeguards to prevent over-development of a site. These include not allowing development from exceeding 50% of the total area of the curtilage (excluding the ground area of original dwelling house), and from extending beyond a wall forming the principal elevation of the original dwelling house."*
- Appendix 3 - *"Permitted development is not restricted in the Green Belt as it is for some designated areas. There is therefore no overarching justification for retaining the condition....The Planning Practice Guidance (PPG) on Use of Planning Conditions warns that conditions restricting the future use of permitted development rights may not pass the tests of reasonableness or necessity. This is one such case and there is no reason to keep the condition."*
- Appendix 4 - *"The development approved by the Council is acceptable when assessed against national and local Green Belt planning policies and there is no policy that supports the removal of permitted development rights in these circumstances. Consequently, the condition is not reasonable or necessary to make the appeal scheme acceptable and so it fails to meet all the tests set out at paragraph 55 of the Framework. Also, as no compelling justification for the condition is provided, it is contrary to paragraph 53 of the Framework which is against the restriction of permitted development rights without clear reason."*
- Appendix 5 - *"The Council sets out that any additional built form could reduce openness and would therefore result in a development which would be inappropriate. However, there is no substantive evidence before me to indicate that this would be the case. In any event, I am not of the view that minor extensions to the dwelling would have such an effect on the openness of the Green Belt or its purposes to justify the removal of permitted development rights...For the reasons given above, I conclude that the removal of condition 6 would not*

harm the openness of the Green Belt and there is no clear justification for the removal of permitted development rights. Accordingly, the relevant tests in the Framework and the PPG have not been met in this case and the condition is not reasonable or necessary. "

- *Appendix 6 – "However, limits on permitted development rights exist in order to protect visual amenity and the Government has not considered the general withdrawal of permitted development rights in the Green Belt to be necessary. The Council has not provided any specific justification for the withdrawal of permitted development rights in this case. I therefore consider that to do so would be contrary to the tests of reasonableness and necessity. I shall not therefore impose the suggested condition."*
- *Appendix 7 - "There is no compelling evidence that suggests that exercising permitted development rights would have an unacceptable effect on the openness of the Green Belt or its purposes. Overall, there is no clear justification for the removal of permitted development rights and, accordingly, I have not imposed the suggested condition."*

7.0 CONCLUSIONS

7.1.0 In conclusion it is considered that the proposals are fully in accordance with local and national policies in respect of the issues it raises and that the appeal can safely be allowed. In particular:

- It is not considered that the Council demonstrated when the planning permission was granted that there is 'clear justification' for the removal of permitted development required by paragraph 55 of the National Planning Policy Framework (NPPF). The conditions are therefore considered to be unnecessary and unreasonable and should therefore be removed from the planning permission

8.0 APPENDICES

DLA1	APP/A3655/W/20/3250617 at Wentworth House, Rough Road, Brookwood, Woking GU22 0RB
DLA2	APP/W0530/W/21/3272766 at Church View, Newmarket Road, Stow-Cum-Quy, CB25 9AQ
DLA3	APP/M1595/W/21/3288105 at River View, Kirkham Road, Horndon on the Hill, SS17 8QE
DLA4	APP/N0410/W/19/3238059 at Rosebrook, Ashmead Lane, Denham, Buckinghamshire UB9 5BB
DLA5	APP/N0410/W/23/3324265 at Longbridge Nurseries, Cherry Tree Lane, Iver Heath, Iver, Buckinghamshire SL0 0EE
DLA6	APP/B1930/D/24/3350286 at The Farmhouse, Round House Farm, Roestock Lane, Colney Heath, St Albans, AL4 0PP
DLA7	APP/P1940/W/24/3346997 & 3349084 on land rear of 47 Church Lane, Sarratt, Hertfordshire WD3 6HN

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