

Appeal against the planning refusal by Ribble Valley Borough Council for the partial demolition and partial conversion of an existing 5-bedroom property and a new build extension to form a 5-bedroom dwelling on the same site at Highfield, Painter Wood, Whalley Old Road, Billington, Lancs, BB7 9JD

Planning application ref:3/2024/1022

Appeal Statement

- The appeal is made under section 78 of the Town and Country Planning Act 1990(as amended) against a refusal to grant planning permission.
- The appeal is made by Jan Hardman against the decision of Ribble Valley Borough Council.
- The application is ref: 3/2024/1022.
- The development proposed is the partial demolition and partial conversion of an existing five-bedroom property and a new build extension to form a 5-bedroom dwelling on the same site.

The site and the proposed development

The proposed development relates to an existing, five-bedroom, detached dwelling within its defined curtilage on Whalley Old Road where it is sited at a higher level than the road and accessed by an existing drive.

The existing dwelling is located slightly behind a traditional designed terraced row of properties to its northwest and abutting Whalley Old Road and at approximately 25 metres between the respective elevations. To the southwest of the appeal site, and again sited along the road but with front amenity spaces facing it, are a number of detached properties with modern designs.

The dwelling as originally built had a pitched roof extension granted under planning ref: 3/2019/0039. It has been partly implemented with the extension frame built, but with the roof only partially constructed. This extension is a, three storey extension with a gable roof. Permission was then granted under application 3/2021/0833 to

raise the ridge of the extension by 500mm, install two windows to the east elevation of roof plane, and add a balcony to the rear elevation.

As a material operation has been made to the approval by construction work to the new gable, as is evident on the site, the approval is extant and is a material planning consideration in decision making terms.

Elevation plans submitted with the application show the height of the original dwelling, those of the extant approval, and that of the appeal proposal.

The existing property is not energy efficient and its construction using wood and brick support pillars is deteriorating, which is one reason why it has remained vacant for some time and why an application has now been made for its amendment and restoration.

The Main Issues

The appeal site is in the Green Belt.

Therefore, the main issues are (i) whether the proposed development is inappropriate development within the Green Belt; (ii) the effect of the development upon the character and appearance of the building and area, (iii) the impact upon the living conditions of the occupants of No's 30 and 32, Painter Wood by reason of outlook, and (iv) if the proposal is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to very special circumstances to justify development.

Whether inappropriate

Paragraph 153 of the National Planning Policy Framework 2025 (the Framework) states that inappropriate development is, by definition, harmful to the Green Belt, and should not be approved except in very special circumstances.

Paragraph 154 makes it clear that development in the Green Belt is inappropriate subject to exceptions which include the following: -

'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'.

(It is implicit that if such extensions or alterations are not disproportionate, then they would not adversely affect openness).

Paragraph 155 also permits as an exception, provided they preserve its openness and do not conflict with the purposes of including land within it, '*engineering operations*'.

The local planning authority (LPA), in its Decision Notice, makes it clear that its objection in Green Belt terms is to the engineering operations as distinct to the proposed changes to the dwelling. It states that *'the proposed development would result in inappropriate development within the Green Belt by way of engineering operations which would result in spatial harm to the openness of the Green Belt and encroachment into the countryside'*.

The Town and Country Planning Act (1990) (as amended) (the Act) does not define 'engineering operations' other than to state in paragraph 336 that '*engineering operations includes the formation or laying out of means of access to highways*'.

The courts have held that openness has both a visual as well as a spatial component. The visual and spatial elements and the impact upon openness will be a matter of judgement for the decision maker.

When handing down the Supreme Court decision of *R (Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council [2020] UKSC 3*, relating to quarry working, Lord Carnwath referred to his previous judgment in *Hopkins Homes Ltd v SSCLG [2017] UKSC 37; [2017] 1 WLR 1865*, where he found as follows: -

"The concept of "openness" in para 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: "to prevent urban sprawl by keeping land permanently open ...". Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land,

though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness.”

Therefore, it is not the case that the requirement of engineering operations to preserve the openness of the Green Belt prevents any such operations. The Supreme Court has highlighted that openness does not imply freedom from any form of development. Put another way, the requirement to preserve openness does not mean that it is not possible to have any development change at all in the Green Belt.

It also confirmed that '*matters relevant to openness in any particular case are a matter of planning judgement, not law*' (para 39), and that while visual impact can be relevant to openness it is not necessarily relevant in every case.

In Euro Garages Ltd V SSCLG & Anor (2018) EWHC 1753 (Admin), the judge indicated at paragraph 42 that rather than treating any change as having a greater impact on openness of the Green Belt, the correct approach is to consider the impact or harm, if any, brought by the change. Whether or not any change will have an adverse impact, and so cause harm to openness, might depend on factors such as the scale of the development, its locational context and its spatial and /or visual implications.

So far as the appeal proposal is concerned, the LPA has clarified with the appellant as part of a subsequent meeting that its concerns regarding engineering operations refer in the main to the walls to the rear of the dwelling where a space is to be created to form a kitchen garden. The small area would have a finished floor area comparable with that of the dwelling and the land above would have the same levels as now. The intervening land would be terraced, utilising two no. walls, both just over 1 metres high.

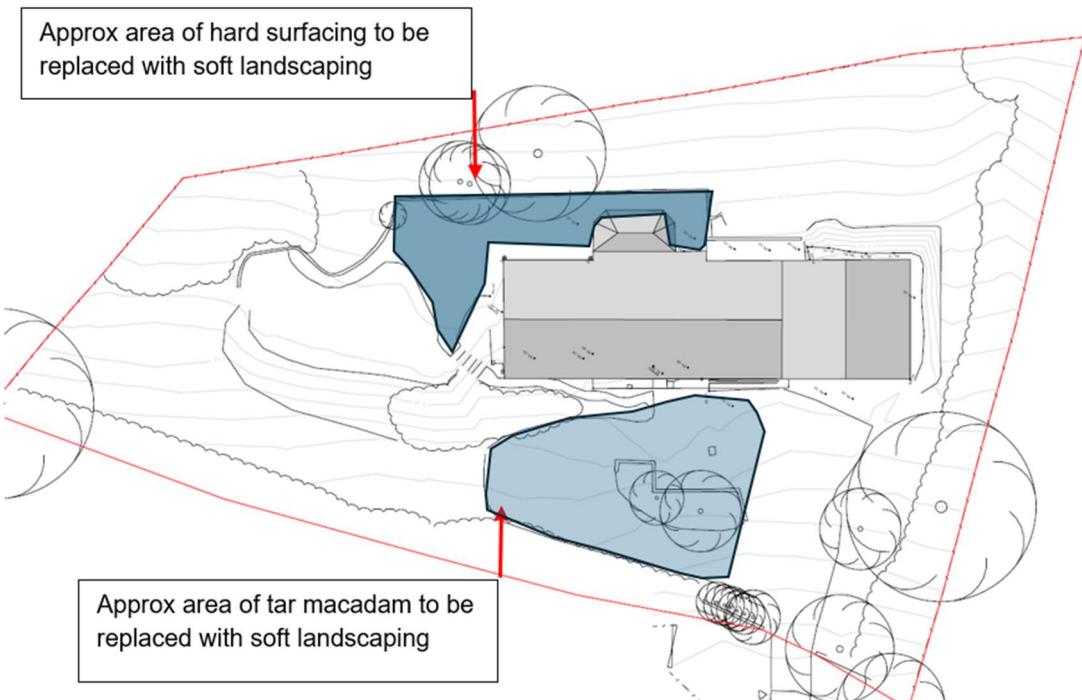
In visual terms, the extent of the engineering works would be de-minimis (or worse case, limited) and also would not be visible from the public domain. Moreover, because of these factors and as the land is already within the curtilage of the

dwelling, the limited engineering operation cannot reasonably be said to lead to urban sprawl. In the context of a previously developed urban site, the proposal would not lead to countryside encroachment. In fact, for the reasons outlined above there would be a net increase in the amount of soft landscaping associated with the proposals. Furthermore, It must also be implicit to the exception which permits extensions or alterations to dwellings in the Green Belt that associated engineering works are part of the exception as well.



Furthermore, the proposed development includes other engineering works which would enhance the visual qualities of the land and which the Samuel Smith case considered may be an aspect of planning judgement in applying the broad policy concept of openness (paragraph 22). Only approximately 43% of the tarmacadam associated with the existing access would be retained, to be replaced by soft landscaping. Parking would be provided by a continuation of the drive to the front door. Hard concrete paving to the side and rear of the existing house has already been removed, to be replaced by soft landscaping. Such changes help to enhance

the visual qualities of the land and represent planning improvements in relative terms.



The proposed site plan shows a series of 3 no. oblong shaped ornamental pools to the left of the front elevation, each of only a few centimetres deep and with paths leading to and from them. The paths are to be mown grass and not with a hard surface.

For the above reasons, the proposed engineering operations would preserve the openness of the Green Belt and its purposes. As such it would comply with the Ribble Valley Core Strategy 2014 (CS) which aims to prevent inappropriate encroachment in the Green belt and with the terms of section 13 of the Framework.

Character and appearance

In its Decision Notice, the LPA considers that '*the proposed development by way of its size, siting and materials of construction would be unsympathetic to the character of the surrounding area and would result in an overly prominent addition, which when*

viewed in the context of the adjacent terrace of dwellings would be harmful to the character and appearance of the street scene'.

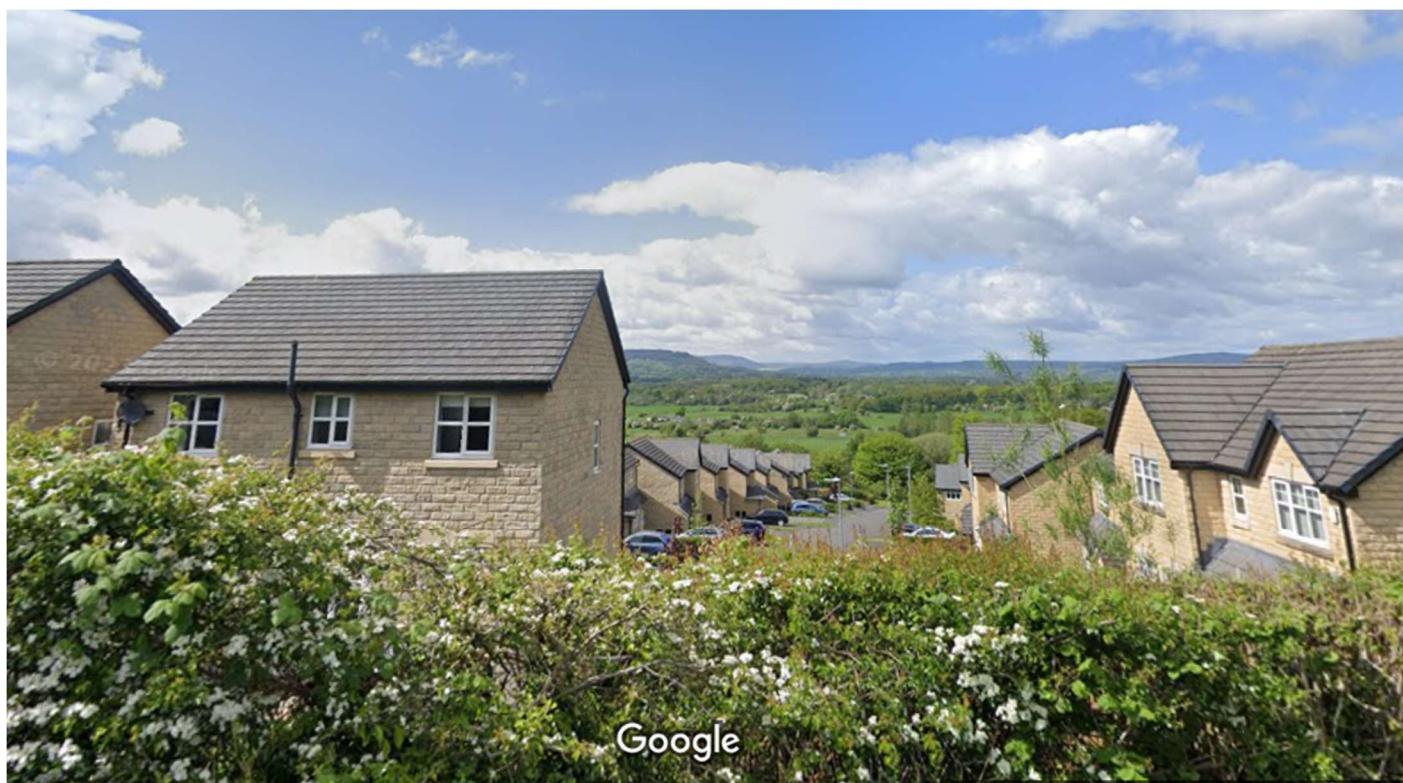
The character and appearance of the area is defined by residential development with a mix of ages and dwelling designs. The appeal property continues a line of newer dwellings which have modern designs. It is different to the traditional terrace to the northwest of the appeal site but is seen as being separate from it. There is a modern housing area directly opposite the site with its own design characteristics:-



Modern development in a line with the appeal property and to the south



Modern housing development opposite the appeal site



Therefore, there is no overall design which unifies the character and appearance of the area. In this context, coupled with the fact that the appeal property already exists, the proposals would assimilate well with the surrounding area. Moreover, the LPA has approved recent changes to the dwelling on the land (Approval ref: 3/2021/0833) and in so doing raised no objections in terms of the impact upon character and appearance. The appeal proposals are not so significant as to make any material or harmful changes in relative terms.

Unlike the houses around it the appeal property can really only be glimpsed from the driveway leading to it.

The LPA considers that the size and siting of the proposed development would be unsympathetic to the character of the surrounding area and would result in an overly prominent addition when viewed in the context of the adjacent terrace of dwellings.

The LPA, in its officer report, notes that '*the roof height of the main part of the replacement dwelling would also be higher than the existing property but approximately 0.51m lower than the approved ridge height granted under 3/2021/0833, although as the dwelling would now have a flat roof, this would result in an eaves height increase*'.

However, the LPA, in its officer report, when approving an application to increase the height of part of the existing dwelling (ref 3/2021/0833), concluded as follows: -

'There are no specific definitions within the NPPF framework or RVBC Core strategy in relation to what constitutes 'disproportionate' and 'inappropriate encroachment'. However, the generally accepted approach is for an assessment on the increased footprint and volume that the development would create.

Analysis shows that the proposed rear balcony area would amount to a footprint increase of less than 10% on the original property with the relative cubic volume increase being significantly lower than the proposed increase in footprint. Accordingly, it is not considered that the proposed works would be a disproportionate addition to the existing dwelling that would in any way constrain the existing openness of the surrounding Green Belt area'.

In its officer report relating to the current appeal proposal, the LPA concludes that this would include an approximate 2% increase to the existing dwelling by volume (including the three- storey extension partially constructed, but which is to be demolished under the appeal proposals). It would add only 38m³ to the existing dwelling's 1921.89m³., without considering the demolition of the three-storey extension.

The officer report concludes that much of the proposed design is acceptable. It notes that '*the outdoor kitchen area and water features located to the east of the dwelling would not be highly visible from the public realm and the retaining walls and the landscaped gardens would be screened behind existing vegetation and the existing dwelling. When the Planning Officer visited the site, it was noted that the new gabion wall is mostly screened from view from the Public Right of Way which runs along the front of the site and this could be conditioned to be retained and maintained to screen the development as it is located within the applicants ownership'*

Its concern would appear to be mainly the proposed increase in the eaves height by approximately 2 metres. However, there would be a commensurate reduction in the overall height of the dwelling by the replacement of a pitched roof by a flat roof. The submitted plans for the proposed front, north facing elevation compares the overall height to the existing dwelling and to what has previously been approved, to show the overall reduction in height which would follow: -



The highest blue line above the proposed north facing elevation shows the approved height at the pitched gable at 95.16.AOD, while the middle blue line at 94.46 AOD shows the consented roof level approved under application 3/2021/0833, The lowest line shows the proposed height of the building to be at 93.95AOD.

As the overall height of the building would be reduced, it cannot on any reasonable or objective basis be said that the proposed alterations would materially and adversely affect the siting and scale of the building when seen either from the

terraced properties, the public footpath running behind them, or as is asserted, from vehicles on the A59 in the middle distance, far removed from the site. The impact of the increased eaves height, especially when seen from No's 24-32 Painter Wood, would be barely distinguishable (see photos later).

The LPA, in its officer report and under 'other matters', concedes the point when it states that '*the application submits a fall-back position that the existing extensions could be completed as it is partially implemented. This is considered to be given significant weight and as such, it is not considered that the proposed dwelling would be materially larger than the extant permission*'. Its concern is said to be with the associated engineering operations, a matter which we have addressed earlier in our appeal statement.

Therefore, the proposed development cannot reasonably be said, by its size and siting, to be an overly prominent addition which would be unsympathetic to the character of the surrounding area. In fact, it would be a well designed proposal which would assimilate well into the surrounding landscape.

The LPA, in its reason for refusal, also considers that '*the proposed development by way of its materials of construction would be unsympathetic to the character of the surrounding area*'.

Its concern, as stated in its officer report, is that '*the ground floor element of bronze cladding which is used to disguise the garage doors is considered to be extensive. This cladding extends beyond the flank wall of the property which would result in a long façade of bronze cladding which is not in keeping with the materials used within the village*'.

The proposed bronze roof does not extend beyond the flank wall of the dwelling. What appears as an extension is, in fact, a garden door giving access to the side and rear of the property. With respect to the LPA, it is considered that the plans have been misinterpreted.

The use of bronze (which fades to a colour comparable to slate) would introduce a high-quality product suitable to the alterations to the building. In any event, it would not be significantly visible from the public domain (and hardly noticeable at all from

the A59, as asserted by the LPA). We would not wish to downgrade the quality of the building by using an inferior material. However, if this were to be the only matter of concern, it could be controlled by condition (i.e., details of a material to be submitted to the LPA for its approval).

So far as other proposed materials are concerned, the officer report concludes that '*given the presence of existing large areas of glazing, there is no objection to this, or to the use of light-coloured brickwork which is a feature of properties within the area*'.

The LPA is concerned that the alterations to the dwelling, including the use of bronze, would be more visible if an existing tree at the entrance to the appeal property, but in separate ownership, was ever to be cut down. However, that is a hypothetical situation with no evidence of any threat to the tree. In any event, the LPA has powers to protect the tree if it so wishes and to require its replacement should this be necessary. Moreover, the appellant would be content to accept a landscaping condition relating to the appeal site should any additional tree planting be necessary and fully justified.

Therefore, for all of the above reasons the proposed development would accord with Policy DMG1 of the CS which requires development to be of a high standard which is sympathetic to existing land uses.

Living conditions

The LPA in its Decision Notice considers that '*the proposed development would result in an adverse overbearing impact to the occupiers of the terrace of dwellings to the north of the site at no. 30 and 32 Painter Wood due to its size and siting, harming their amenity*'.

The LPA in its officer report considers that '*whilst the height of the building would not be dissimilar to the existing property which also has large windows, the front wall of the property, including the large, glazed windows would be extended forwards by approximately 4 metres. Whilst there would be screening by way of existing vegetation between the properties and a distance of approximately 10 metres, it is considered that due to the land level changes and the projection of the property forward, beyond the existing building line and the large, glazed windows be*

overbearing to the occupiers. Whilst the extant permission granted under planning ref: 3/2021/0833 would be slightly taller than the proposed scheme, the previous scheme retained the pitched roof which meant that the eaves were at a lower height. The eaves would now be raised by approximately 2 metres which is considered to be overbearing from the rear of the terrace of dwellings below’.

However, there is a distance of approximately 25 metres between the rear elevation to the terrace and the proposed front elevation of the appeal property and any views of the latter from the terrace are seen obliquely. Many LPAs consider that a distance of 21 metres between windows directly facing each other is sufficient in order to provide privacy, light and to provide appropriate outlook so as to avoid any overbearing impact – sometimes with a slightly larger distance where there are differences in levels. But in this case, there is a separation distance between elevations of some 25 metres.

Perhaps more importantly, there is an existing mature, thick, intervening hedgerow which where even in winter the appeal property is not seen and the reduction in the overall height of the latter ensures that this would not change to any significant degree, if at all.

Photos of the hedgerow, seen from the terraced row:

April 2025



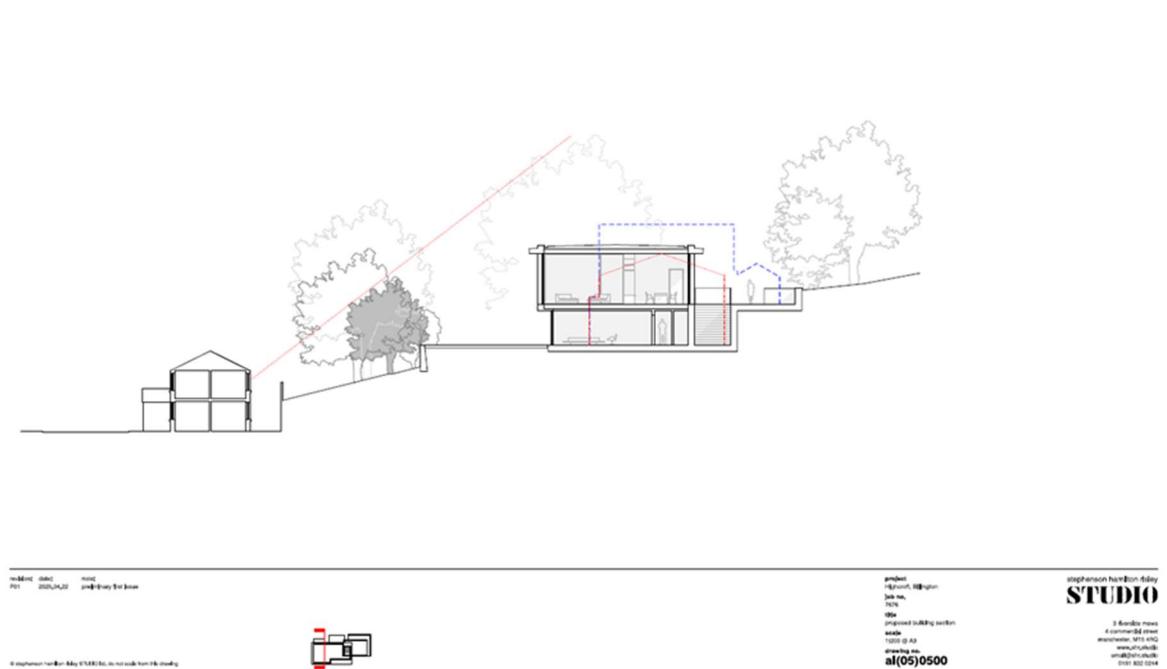
November 2024: _



The appellant would be happy to accept a condition which requires the permanent retention of the hedge and at an overall height of 6.4 metres, including its replacement if it dies or becomes diseased. Moreover, the appellant would be content to accept a general landscaping condition for the site as a whole and this could include additional planting should that be necessary and justified.

The officer report acknowledges that the existing hedgerow is to be retained.

The following scaled drawing illustrates that the proposed amended dwelling would not be seen from either the ground floor or first floor windows of the terraced properties: -



From the point of view of the occupiers of Nos. 30 and 32 Painter Wood, there would be little or no change in terms of outlook, and therefore in this regard the proposed development would accord with Policy DMG1 of the CS which requires , amongst other things, that development does not adversely affect the amenities of the surrounding area.

Other Considerations

The LPA accepts that the extant permission is a fall-back position, and which is a material planning consideration. There is a greater than theoretical prospect of the permission being fully implemented if this planning application is refused. The appellant requires additional floorspace and a newly designed property and so would have to revert back to the planning permission if this appeal were to be dismissed. The proposal constitutes an overall improvement in planning terms.

The LPA, in its reasons for refusal, is concerned with openness and with the impact upon the living conditions of the occupiers of the terrace. It seems unreasonable to resist the lesser impact of the appeal proposal. In such circumstances, the fall-back position represents very special circumstances of very significant weight. I emphasise, however, that I do not consider that it is necessary in this case for very special circumstances to be demonstrated as the proposal is not inappropriate development in the Green Belt. Indeed, the appeal proposal would have less of an impact both in terms of the impact upon openness and the effect upon the amenities of the occupants of the adjoining terrace.

Conclusion

The engineering operations, by their limited extent and location hidden from the public domain are not inappropriate in the Green Belt and, in any event, the appearance of the Green Belt is enhanced by works which replace hard landscaping with softer, greener alternatives.

The scale of the proposed dwelling, with an increased volume of only 2%, would not materially change the overall height over what exists or can be constructed by way of the earlier consent. The proposed development is not significantly more visible from the public domain than the existing dwelling.

Distances from No's 30 and 32 Painter Wood, at some 25 metres between windows, is such as to prevent any overbearing impact, especially when the presence of an intervening thick evergreen hedge prevents the dwelling (as existing and as proposed) from being seen. This could be retained by condition.

Therefore, for the above reasons, we consider that the proposed development creates no adverse planning impacts, The Inspector is therefore asked to allow the appeal.

Steven Hartley BA(Hons), Dist.TP (Manc), DMS, MRTPI, MRICS

HPDA Ltd

April 2025

