



Appeal Decision

Hearing held on 23 February 2010
Site visit made on 23 February 2010

by Mr D Lavender MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
16 March 2010

Appeal Ref: APP/G2245/A/09/2114987 Four Winds, Farley Lane, Westerham, Kent TN16 1UB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is by Mr R Banister against the decision of Sevenoaks District Council.
- The application Ref SE/09/00672/FUL, dated 25 March 2009, was refused by notice dated 18 September 2009.
- The development proposed is erection of a replacement detached dwelling (amendment of planning permission SE/07/03532) to include basement double garage and new 2.5m boundary wall on eastern boundary.

Decision: I dismiss the appeal.

General background

1. The appeal property lies in a solidly rural part of Sevenoaks, between the village of Westerham (to the south east) and the M25 motorway (to the north) and is one of a loose assemblage of houses set in elevated woodland surroundings on Farley Common. It is embedded within the Metropolitan Green Belt (the broad extent of which is defined by Policy SP5 of the South East Plan) and the Kent Downs Area of Outstanding Natural Beauty (to which protection is lent by South East Plan policy C3 and Local Plan policy EN6).
2. The planning permission reference SE/07/03532 referred to in the application description was for a for five bedroom detached house with basement but no garage. This was to be sited about 9 metres from the eastern boundary of the site, which extends, in all, to nearly 0.4 ha. A basement garage had apparently originally been proposed on the east side of the property as part of the scheme, but was deleted at the Planning Officer's request before the application was permitted in February 2008.
3. When that development commenced, in late March or early April 2008, an emergency arose during excavation for the basement to the house when a large amount of ground fell in from the east side. Advice from a consulting engineer was urgently called upon, who recommended attending to the stability of the ground by battering back the sides of the excavation and searching for the underlying cause of the slippage through further trenching. However, during these works, more slumps of soil took place which, I was told, soon put the stability of the neighbouring property beyond the eastern boundary at risk. Sheet piling was accordingly quickly installed in an effort to stabilize the ground but it was not until soakaways close to the boundary and an old well in the neighbour's garden had been uncovered and identified as possible causes, and the piling (which by then had failed) had been re-driven, that building could continue. This, however, necessitated very much more substantial structural

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and engineering works than had originally been intended. It is unnecessary to rehearse the full details of these here, the relevant aspects being that:

- A large basement garage and storeroom has been formed to the east side of the site, from the much increased excavation;
 - The garage/storeroom has effectively been constructed as part of a single contiguous structure with the basement of the house itself;
 - The subterranean floor and walls of the both the garage/storeroom and the house have likewise been "tanked" to prevent water penetration from the surrounding ground;
 - The subterranean walls have also been reinforced, to which the stabilisation lent by garage roof is an integral component, to withstand the pressure from the surrounding ground;
 - A "french drain" has been constructed around the entire perimeter of the structure to relieve substantial continuing water pressure, now believed to emanate from a natural spring line;
 - The water collected from the french drain discharges to two 3,000 litre capacity sumps. These are underneath, and accessed through, a steeply sloping concrete surfaced access ramp that has been formed to access the garage from Farley Lane. The ramp has reinforced retaining walls to either side;
 - The sumps themselves are (and have to be) continuously pumped out, the water being collected as "grey water" for use in the house with the surplus being discharged to a new soakaway (which I was told had been constructed at the Building Inspector's request);
 - A hedge that formed the eastern boundary of the site partly collapsed into the emergency excavation and a further length of it has since been grubbed out. It has been replaced with a new stepped garden wall, typically about 2.5 metres high and, I estimate, about 50 metres in length. Because of the ground conditions, this has been constructed with a reinforced core and, at the time of my inspection, the whole of its eastern face and part of its western face had been clad with brick. It was designed in collaboration with the neighbour, who is supportive of its retention.
4. The Appellant says that the Council's Building Inspector has been kept informed throughout and has visited the site on a regular basis, although works have apparently progressed under the Building Notice procedure so no structural calculations or similar details have been produced. Whatever the case may be in that respect, the Council's Planning Officer did not see the works until August 2008 and it was not until 2 September 2008 that a letter was sent to the Appellant advising of an apparent breach of planning control and requesting the application now subject of this appeal. At that time, the dwelling had been constructed to first floor level, the roof not being erected until October 2008.
5. As matters currently stand, the shell of the dwelling and garage/storeroom are both now complete and the former is in the process of being fitted out

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internally prior to decorating. In addition to the foregoing works, the now submitted plans indicate that the front of the garage would be fitted with a door, and brick piers supporting solid gates would be erected at the entrance from Farley Lane. I was also informed that the retaining walls to either side of the access ramp would be clad with sandstone. The boundary wall would be clad for the remainder of its western face with brick, prior to the entire wall being capped with a tile crease and soldier course.

6. Although the description of the application includes reference to the replacement dwelling permitted under reference SE/07/03532, and must be considered as such (rather than as an extension to an existing dwelling), the proposal before me is effectively a hybrid scheme principally intended to deal with the additional development that has already taken place relative to what had been permitted, and to secure permission for the further works that have not been permitted and still remain to be carried out. As such, it is in part an application submitted in accordance with the provisions of Section 73A of the Town and Country Planning Act 1990 (as amended), for permission for development carried out without planning permission before the date of the application (namely, the various building and engineering works so far undertaken in the form of the construction of the garage/storeroom, together with the entrance ramp and retaining walls and the section of boundary wall). It is also in part an application for new development (namely, the erection of the garage doors, gate piers and gates and the finishing of the retaining walls to the access ramp and of the boundary wall).
7. That is not to say that there are no other changes to the scheme as permitted deriving from the substantial engineering and ground works that have been carried out, or otherwise. Rather, I simply record that no such changes have been specifically drawn to my attention by the Council and that without there being before me any approvals or rejections of subsequent details (such as those required by the SE/07/03532 planning conditions) it is not possible for me to make an authoritative judgment on the subject. I have therefore considered only the supplementary works directly attributable to the construction of the garage/storeroom and boundary wall, as agreed at the Hearing. The garage/storeroom and the boundary wall are also in effect two distinct developments and I will therefore consider each in turn as suggested to me on behalf of the appellant (albeit in the context of potential for a "split" decision), this being an approach not objected to by the Council.

Main issues

8. It was put to me by the local Ward Councillor that this is a case that involves real people and real flooding, that local people do not perceive any harm to the local environment arising from the development, and that the appeal should be determined on the basis of common sense rather than on the basis of law acting in a vacuum. That approach is, in fact, the substance of Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended), which requires that applications and appeals be determined in accordance with the development plan unless material considerations indicate otherwise, it being the latter clause which, among other things, provides for "common sense" to play its part in any such decision. This does not, however, depart from the fact that a balancing exercise between policy requirements and other considerations has to take place.

9. Within the Metropolitan Green Belt, as here, this balance is of particular importance, because the Green Belts have been an important arm of national planning policy through successive changes in Government over a long period of time. While the Green Belts continue to enjoy widespread public support, the development constraints imposed by them have periodically been challenged through the Courts and the resulting judgements have established a rigorous and disciplined approach to decision making, the framework for which derives from Planning Policy Guidance Note 2 "*Green Belts*" (PPG2). For a decision to be seen to be both robust and fair it is necessary to adhere to that disciplined approach, the final stage of which is to weigh alleged harm against the very special circumstances that might attach to any particular case. It is for this reason that both the Hearing and my ensuing reasoning are structured by the following four main issues:
- (a). Whether the proposal represents inappropriate Green Belt development for the purposes of PPG2 and development plan policy.
 - (b). The effect of the development on the openness of the Green Belt and the purposes of including land in it.
 - (c). The effect of the development on the character and appearance of the area and the visual amenities of the Green Belt.
 - (d). If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Consideration of the main issues:

Issue (a): Green Belt inappropriateness

(i) The garage/storeroom:

10. Paragraph 3.4 of PPG2 advises that the construction of new buildings inside a Green Belt is inappropriate unless it is for a limited range of specified purposes. These include the limited extension, alteration or replacement of existing dwellings. Further explanation is provided by paragraph 3.6 which says that the replacement of existing dwellings need not be inappropriate, providing the new dwelling is not materially larger than the dwelling it replaces, adding that development plans should make clear the approach that local planning authorities will take. The relevant development plan policy in this case is Local Plan policy H13. Clause 4) of this policy requires that the gross floor area of the replacement dwelling does not exceed the gross floor area of the original dwelling by more than 50%. Clause 5) requires that the dwelling is well-designed, sympathetic to the character of the area and sited and designed so as to minimise visual intrusion into the landscape. I do not regard these (or the other) criteria as being alternatives, because clause 5) by itself would provide for replacement dwellings of any size, whether or not materially larger than the original, which would be in direct conflict with PPG2. Rather, I take the policy criteria as having been formulated to guide the assessment of all aspects of proposals for replacement dwellings, so all have to be satisfied in order to demonstrate policy compliance. Among these, clause 4) is the one

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that responds most directly to PPG2 paragraph 3.6 in terms of establishing what is “not inappropriate” development.

11. There is no dispute that the replacement dwelling, as permitted, was 123% larger than the original dwelling that occupied the site and that, as now constructed with the basement garage/storeroom, it is 188% larger than the original. In either case the 50% criterion in clause 4) of policy H13 is vastly exceeded and it follows that both amount to inappropriate Green Belt development, the latter substantially more so than the former. Nor is there any exemption given by the fact that the garage is a supplementary addition to the now existing dwelling. Any such suggestion is dispelled by three facts. Firstly, the garage/storeroom and house have effectively been built as a single structure; secondly, the permission granted by Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) for domestic extensions was withdrawn by condition when permission for the replacement dwelling was granted, and thirdly because the size comparison required by policy H13 is with the original dwelling on the site not the permitted replacement. Argument that the garage is underground does not influence clause 4) of policy H13 or PPG2 considerations of “inappropriateness” because these relate only to size. The judgement in *R (oao Heath and Hampstead Society) v Camden LBC [2007] JPL 1527* further confirms that increases in size below ground level count towards consideration of whether a replacement dwelling is “materially larger” than the original. There is therefore no question in my mind that, for the purposes of PPG2 and Local Plan policy H13, the garage/storeroom represents inappropriate Green Belt development (as, indeed, does the replacement dwelling itself).

(ii) The boundary wall, access ramp and retaining walls to the ramp:

12. I consider these three elements together in issue (a) because in themselves they do not represent “enlargement” of the original dwelling in the sense that any additional floorspace is created by them. Nonetheless, to the extent that their construction has involved building operations and that they may thus be regarded as buildings, they do not fall within any of the categories of development that are “not inappropriate” listed in paragraph 3.4 of PPG2. It follows that they are, by definition, inappropriate. Even if that was held to be incorrect because they represent “engineering and other operations” they would only be “not inappropriate” if the criteria in paragraph 3.12 are met. Those criteria relate to the second main issue, so I return to them there.

Issue (b): Effect on Green Belt openness and purposes

(i) The garage/storeroom:

13. Paragraph 1.4 of PPG2 asserts that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the most important attribute of Green Belts is their openness. Openness is not defined in PPG2 but I take it to mean the absence of visible development. This is an approach which, it would, seem, has also been adopted by the Council when granting permission for the replacement dwelling itself, because the basement then proposed would have been entirely concealed beneath the dwelling’s superstructure. As the Officer report to the Council’s Planning Committee intimates, the harm deriving from the replacement dwelling being

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"inappropriate" development because of the enlargement provided by the basement was outweighed by the consideration that the basement had no demonstrable effect on openness or Green Belt purposes and, when its floorspace was excluded, the above ground increase in floorspace did not exceed the policy H13 50% criterion for replacement dwellings. This is the "flexible approach" that was commended as an exemplar in the appeal at Little Hatch, to which my attention was drawn. In that case, as here, construction difficulties were encountered which led to provision of a lightwell. That rendered part of the basement visible and in turn led to the enforcement notice and planning application subject of that appeal. However, while the Inspector concluded that the appearance of the lightwell did not constitute inappropriate development that impinged on the openness of the Green Belt, the total area of the basement was just 57 sq m, the overall enlargement of the replacement relative to the original dwelling amounted to "a mere increase of less than 5%" and the lightwell was entirely below the general level of the surrounding garden land and not more widely visible.

14. The circumstances in this case are very different. The basement garage/storeroom is a further enlargement, not part of the original permission, it is alongside the replacement dwelling rather than underneath it, thereby much enlarging the spread of the floorplate, and it is very substantial in size (extending to some 150 sq m which, as I remarked at the Hearing, is in itself equivalent to the floorspace of a fairly sizeable dwelling). Moreover, the opening into it and the associated construction of the access ramp, turning area and retaining walls, whether with or without the proposed gate piers and gates, would (in comparison with the lightwell) result in it having a much more visible upstanding presence. In all of these respects it cannot be said that the openness of the Green Belt has been or would be maintained or that the Green Belt purpose of safeguarding the countryside from the incremental encroachment of development has not been, or would not further be, compromised. Returning briefly to the first main issue, it also follows from these conclusions that any engineering or other operations involved in the construction of the access ramp and the retaining walls to the ramp amount to inappropriate Green Belt development.

(ii) The boundary wall:

15. The boundary wall is, itself, a tall and upstanding structure, which is visually impermeable from either side along its not inconsiderable length. Although erected as a garden boundary, domestic gardens are an integral part of the Green Belt and not excluded from the relevant policy provisions. From what I could see of the remaining sections of the original garden boundary hedge, the now existing wall is both significantly higher and more dense than what existed before. In my estimation, there can be no question that the presence of the wall fails to maintain the openness of the Green Belt and, again returning to the first main issue, must also therefore be regarded as inappropriate Green Belt development.

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Issue (c): Effect on the character and appearance of the area and the visual amenities of the Green Belt.

(i) The garage/storeroom:

16. The countryside hereabouts is part of the generally rising land that slopes with increasing steepness upwards from Westerham towards the crest of the Downs in the vicinity of Biggin Hill. The Common itself has an attractive woodland character, the thin scattering of houses on and around it being largely concealed among the trees, though which a network of well-used paths meander from public parking places. The informal and, in places, undefined relationship between gardens and woodland is a particularly notable feature which imparts a strong sense of rurality to the area and creates a distinctive environment of some quality which, I have no doubt, is a much appreciated local amenity. The appeal property is the central one of three large detached houses standing on the south side of the end of a short and narrow spur off Farley Lane as it crosses the central part of the Common. The spur itself has a pea gravel surface and grass verges bordered with hedges to either side, giving a pleasantly arcadian appearance. The neighbouring property to the east has recently been modernised and extended and has brick piers to its front entrance drive, but otherwise the individual properties (including the few opposite) all at present have entrances simply punched through the hedges and no entrance gates.
17. As built, the appeal property is the most eminent of the three, standing slightly closer to the lane, and at a slightly more elevated level relative to its neighbours. It would seem from the approved plans that the original intention had been to retain a former drive and turning area to the east side of the house, and (following deletion of the originally proposed basement garage) to construct a patio area and pergola further to the rear, enclosed behind a 2 metre high garden wall projecting sideways from the flank of the house. In the proposed scheme, the drive and turning area have become the now existing access ramp to the basement garage, and the patio, pergola and garden wall would be constructed on and around the garage roof at about the same ground level as originally envisaged. The resulting appearance from the front would, nonetheless, be significantly changed. In particular, the combined height of the basement garage entrance and the proposed garden wall above it would be some 5 metres, and the retaining walls to either side of the access ramp would (according to the submitted image sketches) slope upwards from just above the level of the Lane to this same height on either side. In contrast with the surface of the Lane, the concrete surface to the access ramp detracts from rurality. Cladding the retaining wall cheeks with sandstone (in comparison with there being no retaining walls at all) would, I consider, have much the same effect. Even without the proposed garden wall in place, I could see that the section of frontage between the permitted replacement dwelling and the eastern site boundary had, in consequence of the works carried out by the time of my site inspection, been transformed to a scene of almost solid urbanity. It seems to me that the works that are yet intended to be carried out would increase rather than diminish this significant and entirely adverse visual impact.
18. It was put to me that the proposed installation of entrance gates would completely screen these works from view. I disagree for three reasons.

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Firstly, the ramp and retaining walls would remain partly visible to either side through the mainly deciduous hedge remaining along the rest of the frontage. Even if supplemented with additional planting, this hedge would not, in my estimation, provide full and effective screening especially during the winter months. There would be nothing, in any case, to prevent trimming or grubbing out of the hedge in later years. Secondly, as the Council contends, there can also be no guarantee that the gates would be permanently, or even usually, kept closed. Thirdly, the gates, even with the gate piers set back behind the hedge (unlike those at the neighbouring property to the east), would still be incongruous with the rural appearance of the lane, albeit less so than the development they are intended to mask. It was further suggested that cars parked in a subterranean garage would be less harmful to visual amenity than cars parked (as permitted) in the open on a drive at ground level. However, while cars are inherently transient in their appearance, the development subject of this appeal would be a permanent visual presence and, despite the suggestion of conditions to control on-site parking, enforcement of the use of the garage would, I consider be impractical and, from the Council's point of view, uneconomic. In sum, the natural landscape quality of the AONB would not be conserved by the proposed development, and the character and appearance of the Lane would be permanently spoilt, as would the visual amenities of this part of the Green Belt.

(ii) The boundary wall

19. To the extent that it has already been faced, the boundary wall is clad in bricks that match the exterior of the house itself and, by way of ornamentation, it also includes a raised diaper pattern. Whatever the merits of both bricks and design, the Council says that it has produced supplementary planning guidance in the form of a Village Design Statement for Westerham and Crockham Hill which advocates the greater use of hedges as boundaries between properties in future developments. The Council further asserts that permitted development rights for means of enclosure (including the construction of garden walls up to 2 m in height where not adjacent to a highway) were withdrawn by condition 4 of the permission for the replacement dwelling. The Appellant claims to have been unaware of the former and not to have appreciated the latter, also suggesting imprecision in the formulation of the condition and pointing to the existence of other high walls in the area. Whatever the case may be in those respects, it seems to me that a wall of the height and length now existing does not represent permitted development and (whether or not finished as proposed, and supplemented with garden shrubbery) detracts from the informal visual relationship that currently prevails between private gardens and natural woodlands hereabouts. It also reinforces rather than reduces the urbanising impact of the development subject of this appeal as a whole. This bears particularly harmfully on the AONB, the natural landscape quality of which would not be conserved by its retention or completion.

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Issue (d): Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

(i) *The garage/storeroom:*

20. Paragraph 3.1 of PPG2 affirms that inappropriate development should not be permitted except in very special circumstances. It adds that inappropriate development is, by definition, harmful to the Green Belt and that the Secretary of State will attach substantial weight to harm to the Green Belt when considering any planning application or appeal concerning such development. Moreover, as paragraph 21 of Planning Policy Statement 7 "*Sustainable Development in Rural Areas*" avers, AONBs have been confirmed by the Government as having the highest status of protection in relationship to landscape and scenic beauty, alongside the National Parks. The conservation of the natural beauty of the landscape and countryside is therefore to be given great weight in development control decisions in these areas. It is apparent from my findings on each of issues (a) to (c) that the development would cause significant harm to both the Green Belt and the AONB. Set against these important national policy considerations are the emergency circumstances under which the development was undertaken and the structural and financial implications of removing the works as they now stand.
21. In the light of all that I have heard and seen in this case, I do not doubt that the excavation of the ground to the east of the permitted replacement dwelling was carried out in response to a genuine emergency and not as a deliberate attempt to flout Green Belt planning control. Nonetheless, the Appellant had plainly been made aware that an almost identical basement garage would be problematic before planning permission for the replacement dwelling was granted, and I am far from convinced that the construction of a such a large reinforced concrete subterranean box was the only way in which ground stability and water flows, when unexpectedly encountered, could have been handled relative to the construction of the basement of the main house alone. The access ramp, in particular, may have been required as a temporary measure while lorry loads of subsoil were being removed from the excavation, but that does not justify the concrete surface or retaining walls to it that have also been built, whether before or after the present application was submitted. Nor is the presence of the ramp or the form and extent of the retaining walls necessary for access to the sumps, which it might also be possible to alter, or re-position.
22. Moreover, the full effect of the harm to the local environment (which, as I saw at my site inspection, extends also to the levelling of the major part of the site, whether by tipping the arisings from excavation or scraping the top soil into a large heap) is not just visual but also potentially physical. Even if sufficiently engineered to enable construction to take place, there can be little doubt that the excavation, tanking and drainage works that have now been carried out have much altered the natural hydrology of the site. Planning Policy Guidance Notes 14 "*Development on Unstable Land*" and 25 "*Development and Flood Risk*" both contain important cautionary advice about the implications of not handling such matters sustainably and with appropriate care, whether at pre-or post-planning stages. By unilaterally constructing (even in an emergency)

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such a substantial scheme of groundworks via the Building Notice procedure, without involving the relevant drainage authorities (including the Environment Agency), it seems to me that there can be no warranty that stability and drainage problems will not recur or simply transfer elsewhere, possibly with serious consequences.

23. There can be no question that the works carried out have involved the Applicant in substantial unexpected cost (albeit, like the excavation cost, much of this would have had to have been faced in any event if the originally proposed garage had been permitted). The cost of now removing or altering the works would also represent a considerable financial burden. However, both in effect are the costs of short-term expedience, and fall to be weighed against the financially impossible to quantify, but far more enduring, harm to interests of acknowledged national importance. In weighing the balance between the two, it would be wrong, in my view, to permit the retention of permanent development solely on the basis that the solidity of its construction did not justify the cost of removing it. I do not suggest that others would purposively risk a similar level of expenditure, but such an approach might well encourage wider disregard for the consequences of progressing alterations to permitted schemes without prior planning clearance. In this particular case, given the Council's flexible stance towards works that are entirely subterranean, and in the absence of unanimity between the structural engineers on either side, I am also not convinced that altering the development in ways that might sufficiently ameliorate its harm in policy and visual impact terms would be excessively costly, even if in doing so the basement became no longer suited to use as a garage/storeroom.
24. I thus come to the conclusion that the arguments advanced in favour of retaining and completing the garage/storeroom in the manner proposed do not amount to the very special circumstances necessary to outweigh the general presumption against inappropriate development in the Green Belt. Nor do they warrant a decision other than in accordance with SE Plan policy C3 and Local Plan policies H13, EN6 and EN1. Nor do they justify the visual harm to the character and appearance of the area, the damage to the natural landscape qualities of the AONB, and the harm to the purposes and visual amenities of the Green Belt that I have identified.

(ii) The boundary wall

25. The considerations pertaining to the boundary wall are similar. I note that it does not reach so far back along the boundary that it would interfere with the root system or canopy of a beech tree protected by Tree Preservation Order. The Council has also indicated that it would have no objection to a wall that was contained in length between the flank of the replacement dwelling and that of the property neighbouring to the east. I make no comment on that, not least because the application before me is to retain and complete the wall in its entirety. My reasoning on the first three issues indicates how I have come to the view that this would be harmful in policy and environmental terms. Although it is argued that the reinforced construction of the wall derived from the ground conditions prevailing as a result of the garage/storeroom excavation, those conditions do not militate against the provision of a boundary hedge, which I consider would be the most appropriate form of boundary in this part of the AONB.

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26. As with the garage/storeroom, I thus come to the conclusions that the arguments advanced in favour of retaining and completing the wall in the manner proposed do not amount to the very special circumstances necessary to outweigh the general presumption against inappropriate development in the Green Belt. Nor do they warrant a decision other than in accordance with SE Plan policy C3 and Local Plan policies EN6 and EN1. Nor do they justify the visual harm to the character and appearance of the area, the damage to the natural landscape qualities of the AONB and the harm to the purposes and visual amenities of the Green Belt that I have identified.

27. I find nothing in any other matter discussed at the Hearing or referred to in the representations to persuade me to any other view. Both parts of the appeal must therefore fail.

D Lavender

Development Control Committee: 10 March 2011

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APPENDIX B