

ITEM NUMBER: 5g

21/00090/RET	Use and extend the original walls, and use the original foundation slab, of the former garage and car port to create on the same site a two storey hipped roofed end of terrace dwelling; change of use from agriculture to front hardstanding and rear garden.	
Site Address:	Gable End 1 Threefields Sheethanger Lane Felden Hemel Hempstead Hertfordshire	
Applicant/Agent:	Mr & Mrs Craig Pitblado	Mr Roger Tym
Case Officer:		
Parish/Ward:	Hemel Hempstead (No Parish)	Bovingdon/ Flaunden/ Chipperfield
Referral to Committee:		

1. RECOMMENDATION

That planning permission be **GRANTED**.

2. SUMMARY

2.1 The creation of a new independent dwelling in the Green Belt is inappropriate development in the Green Belt. According to paragraph 143 of the NPPF inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

2.2 There are no other harms arising from this development. There is no impact on the residential amenities of neighbouring properties or the character of the Threefields terrace or the wider area. The proposal provides sufficient parking and rear garden space for the occupiers of the dwelling.

2.3 There exist a number of very special circumstances connected with this development. These include the very real practical difficulties of complying with the Enforcement Notice, recent development in surrounding sites, and the introduction of a more liberal permitted development regime, particularly in respect of upward extensions.

2.4 It is considered that these very special circumstances are important material considerations, could not be easily replicated across other sites, and, in their totality, clearly outweigh the harms to the Green Belt to allow this development to be granted.

3. SITE DESCRIPTION

3.1 The application site comprises a two storey end of terrace property located off Sheethanger Lane, within the Green Belt. The two-storey property has a gable end roof and is clad in dark-stained timber boarding. The property currently benefits from a block-paved parking area at the front and a large rear garden.

3.2 Gable End forms part of the 'Threefields' terrace, which comprises in total four dwellings. The original Threefields terrace formed part of the curtilage of the main Threefields house, which is situated to the south-east of the site.

3.3 To the north of the Threefields terrace is a telecommunications tower and a building formerly known as The Old Hen House (currently being developed), to the west an open field separating the site from the urban / residential area of Felden, to the south the grounds of Threefields house, and to the east a belt of trees and some pasture leading to the A41 dual-carriageway.

3.3 The site has been subject to ongoing planning enforcement action, seeking the demolition of the dwelling and the return of the front parking and rear garden areas to their original agricultural use.

4. PROPOSAL

4.1 This application seeks planning permission for the retention of an independent, separate four-bedroom dwelling on the site, together with frontage parking and a rear garden area.

4.2 It is proposed to use and extend the original walls, and use the original foundation slab, of the former garage and car port to create on the same site a two storey end of terrace dwelling. In relation to the currently existing (and unauthorised) dwelling on the site, it is proposed to change the roof of the building from a gable end to a hip and to colour the white door and window frames black.

4.3 At the front and rear of the site the proposal is to change the original use from agriculture to front hardstanding to provide off-street parking and a rear garden. In relation to the current unauthorised uses, this would see the introduction of further soft landscaping in the site frontage (but still providing three parking spaces) and a shortening of the rear garden to a depth of 12.5m, which would then be separated from the rest of the land in the applicants' ownership by a 1.2m high post and rail fence.

5. PLANNING HISTORY

See Appendix A for a detailed planning history of the site.

4/02473/17/FUL - Use and extend the original walls, and use the original foundation slab, of the former garage and car port to create on the same site a two storey dwelling; change of use from agriculture to front hardstanding and rear Garden'.

Refused - 19th January 2018

Appeal against this decision was withdrawn.

6. CONSTRAINTS

Special Control for Advertisements: Advert Spec Contr

CIL Zone: CIL2

CIL Zone: CIL3

Green Belt: Policy: CS5

Heathrow Safeguarding Zone: LHR Wind Turbine

Parish: Hemel Hempstead Non-Parish

RAF Halton and Chenies Zone: Green (15.2m)

Residential Area (Town/Village): Residential Area in Town Village (Hemel Hempstead)

Residential Character Area: HCA5

Parking Standards: New Zone 3

EA Source Protection Zone: 3

Town: Hemel Hempstead

Tree Preservation Order: 461, Details of Trees: A1 All trees of whatever species

7. REPRESENTATIONS

Consultation responses

7.1 These are reproduced in full at Appendix A.

Neighbour notification/site notice responses

7.2 These are reproduced in full at Appendix B.

8. PLANNING POLICIES

Main Documents:

National Planning Policy Framework (February 2019)
Dacorum Borough Core Strategy 2006-2031 (adopted September 2013)
Dacorum Borough Local Plan 1999-2011 (adopted April 2004)

Relevant Policies:

NP1 - Supporting Development
CS1 - Distribution of Development
CS5 - Green Belt
CS10 - Quality of Settlement Design
CS11 - Quality of Neighbourhood Design
CS12 - Quality of Site Design
CS29 - Sustainable Design and Construction

Supplementary Planning Guidance/Documents:

Car Parking Standards (2020)
Planning Obligations (2011)
Roads in Hertfordshire, Highway Design Guide 3rd Edition (2011)
Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice (2011)

9. CONSIDERATIONS

9.1 Main Issues

9.1.1 The main issues to consider are:

- The policy and principle justification for the proposal;
- The impact of the development on the Green Belt;
- The quality of design and impact on visual amenity;
- The impact on residential amenity; and
- The impact on highway safety and car parking.

9.2 Principle of Development

9.2.1 Paragraph 143 of the NPPF states that, "*Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances*".

9.2.2 Paragraph 145 of the NPPF states, "*A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:*

- a) buildings for agriculture and forestry;*
- b) provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and does not conflict with the purposes of including land within it;*
- c) 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;*
- d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*

- e) *limited infilling in villages;*
- f) *limited affordable housing for community needs under policies set out in the development plan (including policies for rural exception sites); and*
- g) *limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development; or not cause substantial harm to the openness of the Green Belt, where the development would reUse previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority”.*

9.2.3 Paragraph 146 of the NPPF states, “*Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it*”. Para.146 then lists six forms of development of which (e) is the only one of relevance for this application:

“e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)”.

9.2.4 The key question is therefore whether the proposed development falls within the closed lists of development not considered to be inappropriate development in the Green Belt in paragraphs 145 and 146 of the NPPF. To answer this question, it is also necessary to consider the dwelling and the change of use of the front and rear areas separately.

Dwelling

9.2.5 The applicant’s Planning Statement makes the argument that the proposed development is not inappropriate development by virtue of paragraph 145(c), putting forward that the development does not result in disproportionate additions over and above the size of the original building.

9.2.6 In addition, whilst this is not an argument put forward by the application, it should be recognised that in the 2017 planning application the Council considered the site of the dwelling itself to be previously developed land, i.e. paragraph 145(g). The test here, however, is different, in that the question is whether the development would have a greater impact on the openness of the Green Belt than the existing development.

9.2.7 In order to make the comparisons required by paragraph 145 (c) and (g) it is necessary to discuss what is meant by ‘original building’ or ‘existing development’ for the purposes of this application.

9.2.8 The applicant’s Planning Statement states that, “*For the purposes of this application, the ‘original building’ will be assumed to be the garage and car port. However, were this not to be the case, and the ‘original building’ should be regarded as the walls and foundation*”. The applicant’s reasoning for this assertion is that the garage and car port existed previously and were part of a uninterrupted process in the redevelopment of the terrace to create the development we see today. In other words the sections of the garage and car port that were not demolished “*were at no time permanent structures – they were reduced to their present state and existed in their present state for a very short time prior to the commencement of the building works carried out in the reconstruction of Gable End*”.

9.2.9 The applicant, earlier in his Planning Statement, makes reference to the Enforcement Notice, but considers that this Notice is ‘*flawed*’, as “*it was imposed on the premise that*

- a) *Gable End was built on a cleared site in agricultural use;*
- b) *that there was no extant planning permission for it or any part of it.*
- c) *that there was no history of the site that could have indicated to the contrary”.*

9.2.10 During the appeals against the Enforcement Notices served on all the properties in the Threefields terrace, it was revealed that the middle three properties had not, in fact, been demolished and rebuilt, but had been extended upwards. These Enforcement Notices were therefore quashed, though the Council later served (and successfully defended on appeal) a further Enforcement Notice on these properties, requiring them to be lowered back to their original height. It remains wholly unexplained why the applicant during the same initial appeal (or at the following High Court challenge) failed to mention that Gable End also was not a brand new construction, but had retained most of the walls of the garage / car port, as well as the concrete slab base.

9.2.11 However, the fact remains that the Enforcement Notice was correctly served, was appealed (where there was exactly the opportunity to argue that the breach as alleged on the Notice had not occurred as a matter of fact), and remains in force and extant. Furthermore, even if the existence of the walls and the slab are taken into account, this does not make the Enforcement Notice 'flawed' because the Notice alleges the construction of a new dwelling. There can be no doubt that a new independent dwelling exists, where previously there was none.

9.2.12 As such, the situation as required by the Enforcement Notice represents the lawful position on the ground. The Notice requires the full demolition of Gable End, and therefore, this should be the starting point for any comparisons.

9.2.13 It is considered that the proposed development would plainly have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development since, once the enforcement notice is complied with, there will be no development on the land at all. Whilst, the proposal would sit alongside the other three dwellings at the point of compliance with the terms of their enforcement notice, it is still considered that by virtue of the additional built form and intensification of the use through a fourth dwelling, there would be a significant loss of openness. In respect of the previously developed land test, it is not considered that this would apply in this case, as it would not be possible to have a proportionate or disproportionate addition to a cleared site.

9.2.14 As such it is considered that, this would comprise inappropriate development in the Green Belt.

9.2.14 For the sake of completeness, two further comparisons, using the applicant's stated starting points, are assessed below. (Though it must be emphasised that the Council does not consider these to be the starting point for the reasons set out above).

9.2.15 Firstly, the applicant states that, as the original walls of the garage and the slab have remained in situ, then these should be considered the 'original' or 'existing' starting points. Effectively, this results in a comparison between the amount of structure left to the garage / car port at the end of the demolition phase of the redevelopment with the development now proposed. The original garage / car port was left as a single storey shell, with no physical windows and doors (just openings) and with some brick courses missing along sections of the structure. The proposed house is two storey in height with a hipped roof. Consequently, the proposed development would still amount to a development which can be considered both a disproportionate addition to the original dwelling, and one with a materially more significant impact on the openness of the Green Belt. Therefore, there is no change to the previous conclusion when making this comparison – the proposed dwelling constitutes inappropriate development in the Green Belt.

9.2.16 Secondly, the applicant goes further and states that the proposed dwelling should be compared to the garage and car port as this was the original built form. As stated earlier in this report the applicant is relying on paragraph 145(c) of the NPPF in that the new dwelling is not a disproportionate addition to the original garage and car port.

9.2.17 Photographs show that the site comprised a garage and a car port. No exact measurements of this structure can be found however the agent estimates the overall size and the plans submitted are reasonable to accept. The applicant's Planning Statement describes the difference as follows:

"The roof of Gable End is believed to be slightly more than one third higher than the roof of the garage and car port and its bulk of a similar ratio though the walls of Gable End are higher than the original walls by two brick levels".

9.2.18 On a floor space comparison the proposed development would see the creation of a new first floor, thereby constituting a 50% increase in the size of the building. There is also a new second floor within the roof space. However, this should not be including in a floor area calculation as this is of insufficient headroom to be used for habitable purposes – this is demonstrated by the first floor continuing above the eaves level of the house.

9.2.19 On a volumetric analysis it is noted that the footprint of the dwelling remains the same, and the current proposal would see the re-instatement of the original hipped roof design. Therefore, the increase in volume to the building is a result of its upward extension.

9.2.20 As justification that such an increase should not be considered inappropriate development in the Green Belt, the applicant draws attention to two developments in very close proximity to the site.

9.2.21 Firstly, planning application 19/03007/FUL was granted for the 'Development of one new dwelling and demolition of existing building' at a site located next to the Threefields terrace to the north-east. The existing building in that case was primarily a very long sunken single storey structure, which increased in height by three metres for a small section at the northern end. By consolidated the built form centrally across two floors, it was able to achieve a new dwelling with a 55% decrease in footprint, a 21% decrease in floor area and volume. The new first floor element was no higher than the existing northern section, and overall the new dwelling was set considerably lower than the Threefields terrace, thereby having far less impact in its visual impact than the Threefields terrace. Nevertheless, it is noted that a 3m increase in height was accepted across the area where the new house was centrally located within the original built form.

9.2.22 Secondly, planning application 4/04104/15/FUL granted planning permission for a replacement to the main Threefields house, to the south of Gable End. This created a larger house than the previous one, though the potential of a permitted development fallback position was also taken into account. The new dwelling has a lower footprint than the original house, due to its more compact form, whilst its height increased by 0.7 metres.

9.2.23 The applicant has drawn these permissions to attention because, whilst accepting that planning applications must be considered on their original merits, it is also incumbent on Planning Authorities to be consistent in their decision making. However, as can be seen from the descriptions of these developments above, the new buildings resulted in reductions to their spread across the site, whilst any increase in height was either small, or contained within the maximum height of the original structure. There are also contextual differences (such as Threefields being historically the main house of this area, and the much lower land level of the development to the north) that make direct comparisons very difficult.

9.2.24 It is noted that the previous application to retain a dwelling at this site concluded that, even compared to the 'as was built' scenario, the proposal is still larger in size than what was there and as such was considered to result in a greater harm to the openness of the Green Belt. The recent planning permissions around the site does not change this analysis when considering Gable End. Furthermore, a doubling of the floor area (compared to the garage / car port) and an increase in height of at least one third across the entire width of the dwelling. These increases are considered to be significant in the context of the site and its surroundings, and represent a disproportionate addition over and above the size of the original building.

As such it is considered that the scheme comprises inappropriate development in the Green Belt and very special circumstances would be necessary to overcome the harm.

Change of Use of Land

9.2.26 The change of use of land from agriculture to garden and front parking area is considered as part of this application. It is noted from the proposals that a 12.5m deep rear garden is proposed, i.e. not the full extent of the land in the applicants' ownership, whilst additional planting is proposed within the site frontage.

9.2.27 At the time of the previous application in 2017 the NPPF did not include material changes of use of land in the list of development not considered to be inappropriate development in the Green Belt. The current version of the NPPF, however, has introduced this in paragraph 146 (e).

9.2.28 It is noted that a condition requiring the removal of Class E permitted development rights is to be conditioned. This would ensure that the Local Planning Authority maintains control over future built development within this area, ensuring a level of protection over its openness. As a rear garden it is not considered to have a significant impact on the openness of the Green Belt. Furthermore, whilst this proposal does represent an increase in residential area, this is not considered to conflict, in this instance, with any of the purposes of including land within the Green Belt. In particular, it is noted that this section of the countryside, i.e. the field that separates the Threefields terrace from Sheethanger Lane is already crossed by the fencing and access road associated with the telecommunications mast to the north-west of the site.

9.2.29 Similarly, the area at the site's frontage to be used as parking, whilst constituting an increase in residential area, would be seen in the context of the original access road and is contained by the belt of trees immediately to the east. The parking area has taken up an area of land that was too small to be put to any productive agricultural use and overall, has preserved the openness of the Green Belt.

9.2.30 Therefore, in respect of the change of use sought by this application, there is no objection in principle to this part of the proposals.

9.3 The impact of the development on the Green Belt

9.3.1 As noted above the construction of a new dwelling in this locality is considered to be inappropriate development, and is therefore harmful by definition. However, it is also considered that when assessed against the five purposes of the Green Belt in paragraph 134 of the NPPF, the proposed development does not cause any harm.

9.3.2 The proposed development would only have a slight impact when considering paragraph 134(c), i.e. "to assist in safeguarding the countryside from encroachment". However, it must be noted that a previous car port / garage existed on the site, that the rear garden area is to be halved through these proposals (and permitted development rights for extensions and outbuildings removed as part of any permission). Furthermore, the site is already separated from the field between the Threefields terrace and Sheethanger Lane by the access road to the telecommunications tower. Therefore, it is not considered that this application constitutes encroachment into the countryside.

9.4 Quality of Design / Impact on Visual Amenity

9.4.1 Policies CS11 and CS12 of the Dacorum Core Strategy state that development should, inter alia, respect the typical density intended in an area, preserve attractive streetscapes, protect or enhance significant views within character areas, and integrate with the streetscape character.

9.4.2 Policy CS12 further states that development should respect adjoining properties in terms of layout, site coverage, scale, height, bulk, materials and amenity space.

9.4.3 Gable End forms part of a terrace of four dwellings. These dwellings are all clad in dark-stained weatherboarding, which is more appropriate in this edge of countryside location. In addition, the proposed re-colouring of the door and window frames would help to soften the development and to reduce any prominence it may have.

9.4.4 The current proposal would see the introduction of a hipped roof dwelling. It is appreciated that this would result in a terrace with a gable end at one end and a hipped roof at this end. However, bearing in mind the overall width of the terrace, it is not considered that this would look so out of place as to warrant refusal. Furthermore, it must be noted that the original garage / car port, which became this separate dwelling during the redevelopment of the terrace, had a hipped roof. Therefore, this proposal would see the design of the terrace return to its original form.

9.5 Impact on Residential Amenity

9.5.1 Policy CS12 of the Dacorum Core Strategy states that development should, amongst other things, avoid visual intrusion, loss of sunlight and daylight, loss of privacy and disturbance to surrounding properties.

9.5.2 The building forms the end of a terrace, which has matching front and rear building lines across its length, and this was not changed as part of the unauthorised creation of Gable End as a separate dwelling. Therefore, whether comparing the proposed development against the previous garage and car port, or against the current unauthorised dwelling, there would be no impact on the residential amenities of adjoining or surrounding properties.

9.5.3 This proposal represents an upwards extension of 1.5 metres of the original garage/car port with no front or rear extension. (When compared against the currently existing built form the change from a gable end to a hipped roof would reduce the bulk and massing of the building). As such there would be no loss of sunlight or daylight for the adjoining neighbour, Meadow View. The privacy implications of this development on Meadow View are complicated by the fact that Meadow View itself has extended upwards without planning permission (as this was replicated across the whole terrace), but overall any views of Gable End across Meadow View would be the same for Meadow View across its neighbour, and therefore this is considered to be a standard terraced property arrangement and no harm is caused by virtue of overlooking.

9.6 Impact on Highway Safety and Parking

9.6.1 Policy CS12 of the Core Strategy states that on each site, development should provide sufficient parking.

9.6.2 Dacorum Parking Standards Supplementary Planning Document (2020) was formally adopted by the Council in November 2020. The starting principle is that all parking demand for residential development should be accommodated on site, with departure from the standards only being accepted in exceptional circumstances. In accordance with the Parking Standards SPD, dwellings in Accessibility Zone 2 and containing four bedrooms are to be assessed on an individual basis.

9.6.3 The proposed four-bed dwelling would be served by three off-street parking spaces. It is unlikely that a dwelling of this size will be occupied by one or two occupants; rather, it is reasonable to assume that it will be occupied by either a multi-generational family or a family with a number of

children, all of whom will could become drivers at the appropriate age. It is further noted that the site is not within walking distance of key transport links or health / education facilities. Therefore, it is considered that the parking provision takes these factors into account. In that respect it is considered that parking provision for three cars would be appropriate in this particular case.

9.6.4 It is acknowledged that the proposals do not need include an Electric Vehicle active charging point. However, due to the proximity of the parking spaces to the dwelling it is considered that passive Electric Vehicle charging would be possible. The Parking Standards SPD acknowledges in paragraph 8.22 that new development provides the best opportunity to provide active charging points. In this case the development is over 12 years old and therefore connections to passive charging is considered a more practical approach.

9.6.5 Overall, it is considered that this proposal broadly accords with Policy CS12 of the Dacorum Core Strategy and the Parking Standards SPD.

9.7 Other Material Planning Considerations

9.7.1 The Council's Trees & Woodlands department and Thames Water have both raised no objection to this development.

9.8 Response to Neighbour Comments

9.8.1 Three neighbour objections have been received. Two of these objected on the grounds that this is development in the Green Belt, for which planning permission had not been obtained prior to carrying out the works. These points have been considered in depth elsewhere in this report.

9.8.2 A third objection concerned the use of the occupiers of Gable End of Sheethanger Lane, a private road. However, whether Gable End is or isn't entitled to use Sheethanger Lane is a civil matter between the respective parties. It is noted that the occupiers of Gable End have used Sheethanger Lane since its (unlawful) construction and any future arrangements will need to be discussed between the owners / occupiers of Gable End and the Sheethanger Lane Road Fund.

9.9 Community Infrastructure Levy (CIL)

9.9.1 The site is situated within Charging Area 2 as defined by the Community Infrastructure Levy Charging Schedule, wherein a charge of £196.65 (subject to further indexation from 1st January 2021) per square metre applies to new dwellings. The applicant/agent is currently in discussions with the Council's CIL Officer in assessing whether this scheme is CIL liable.

10 COMPLICATIONS SURROUNDING THIS CASE

10.1 Since the Crown Court sentencing hearing, where Mr & Mrs Pitblado successfully overturned their prosecution at the Magistrates Court, Officers have also investigated the complications surrounding this case. These are:

- a) The difficulties of pursuing any legal action
- b) The difficulties of pursuing Direct Action.
- c) The impact of the recent change to permitted development rights.

10.2 Legal Action

10.2.1 It is clearly the case that several years of court hearings have not achieved compliance with the Enforcement Notice. Whilst the Pitblados were found guilty at the Magistrates Court, this was overturned at the Crown Court.

10.2.2 The Planning Department considered that there were strong grounds of appeal against the Crown Court judgement. However, ultimately, and after discussions with Counsel, no appeal was lodged for the following reasons:

- 1) There was an inevitable litigation risk associated with any appeal.
- 2) Even if an appeal against the Crown Court's decision was successful and the High Court sides with the Council, there was a risk that any re-hearing of the Case at the Crown Court by a different judge could reach the same decision, albeit for different reasons.
- 3) Even if the Council was ultimately able to secure a successful conviction for the offence of failing to comply with the Enforcement Notice, that would not of itself secure compliance with the Notice's requirements. If the Pitblados continue not to comply, even after two future hearings going against them, the Council would need to pursue yet more legal avenues or attempt Direct Action.

10.2.3 Pursuing the above legal routes would cost the Council a considerable amount of money and there is no guarantee that this would be recovered bearing in mind the financial situation the Pitblados are arguing they are in, and the fact that the loss of their house would mean they would lose their main asset.

10.2.4 Fundamentally, the key point is that a future prosecution, even if successful, does not in itself guarantee compliance.

10.2.5 Furthermore, the Judge made clear his opinion during the Crown Court sentencing hearing. The Judge stated that, *"The court has now been seized of these matters for some considerable period of time and both parties have expended much time and costs in dealing with these criminal proceedings"*.

10.2.6 The Judge also stated that:

"The court really does not want to see anything like this in relation to these parties coming back to court again and I make that very clear. There can be no doubt about the views of the court in relation to this matter. We have reached an end".

10.2.7 As such, the Judge emphasises the Court's opinion that this matter should not be brought before the Court again. Whilst this does not preclude the Council from doing so, and in particular from taking any other formal action, these comments must be given very careful consideration.

10.2.8 The Council has the option of applying to the Court for an Injunction, whereby the Court would order the Pitblados to comply with the Enforcement Notice. Such an Injunction would carry significant weight because a failure to comply with a Court Order would be in contempt of court and could potentially lead to a custodial sentence.

10.2.9 However, bearing in mind the Crown Court judgement, where it was found that the Pitblados did not have the financial means to demolish Gable End, any application for an Injunction might be dismissed for the same reasons.

10.2.10 It should also be noted that there is the opportunity for the Pitblados and their legal representatives to challenge any legal route the Council decides upon. Clearly, they have a right to defend themselves in further court hearings, but more than that, they themselves could seek injunctions to prevent a particular step the Council wishes to take.

10.2.11 As such there is a very real possibility that legal action would be protracted, very costly, very resource intensive on the Council's planning enforcement and legal teams, and with an uncertain outcome.

10.3 Direct Action

10.3.1 Officers have investigated the possibility of the Council taking Direct Action to secure compliance with the requirements of the Enforcement Notice. These were reported to Members in the previous Part II report and can be viewed in Appendix D to this report. The complications surrounding Direct Action can be divided into five main areas – party wall considerations, financial cost, Covid-19, health and safety, and changes to the locality in terms of recent planning permissions.

10.3.2 The Party Wall Act is a significant complicating factor surrounding this case. Gable End is an end of terrace property and as the Enforcement Notice requires the demolition of this property it will have an impact on the adjoining property, Meadow View, which would become the new end of terrace dwelling. Until the party wall situation is resolved the demolition of Gable End cannot take place.

10.3.3 The Council's Structural Engineer, at the time of the Crown Court Hearing, had discussions with the Pitblado's Structural Engineer. It is very clear that they differed markedly in the amount of structural work required and therefore the impact this would have on the occupiers of Meadow View. Whilst Officers consider the list of works outlined in Appendix D would be sufficient, the existence of an opposing expert view raises the possibility of a legal challenge should the Council push ahead with Direct Action.

10.3.4 Furthermore, the Enforcement Notice does not, confer on the Council, any legal right to enter onto and carry out works to the adjoining property in order to meet the requirements of the Enforcement Notice itself, i.e. through Direct Action. Therefore, regardless of whether the Pitblados decide to comply themselves, or the Council take Direct Action to secure compliance, it will be necessary for the Pitblados to serve a Party Wall Notice on their neighbours. However, we have seen nothing to suggest that such agreement will be forthcoming (and the enforcement history in relation to Meadow View and the previous Crown Court case would seem to point against such voluntary co-operation).

10.3.5 Even if the party wall complications could be overcome, Members also need to be aware of the financial implications of taking Direct Action. The Council has sought a quote from three separate companies. Two of these were not prepared to undertake these works, but one forwarded the matter to another company who has provided a quote. Therefore, the Council has two quotes, both of which exclude VAT:

- i) Enforcement Services: £89,480
- ii) High Court Enforcement: £80,645.75 (with a contingency of £12,097.01)

10.3.6 A further financial consideration in respect of the demolition of Gable End must be the potential for any damage to be caused to the adjoining property Meadow View and any compensation required to be paid. Any contractor would be expected to carry out the specified works with due care and diligence and would have liability to correct damage in that limited context. As such it may be necessary, for example, for the Council to enter into an escrow agreement and for an agreed sum to be placed with a third party for the duration of the works.

10.3.7 As such it is very likely that the Council would need to find close to, or even above, a six-figure sum in order to carry out compliance with the Enforcement Notice itself. It is the view of Officers that it is also very likely the Council would not be able to recover the vast majority of this money as the value of salvaging of materials would be very small and due to the financial situation of the Pitblados, which led to their successful appeal in the Crown Court. Mr Pitblado has previously indicated that any formal action would result in them declaring bankruptcy.

10.3.8 It is also necessary for the Council to follow its procurement procedures. The Council are required to tender all contracts with a spend above £75,000. There are a number of tender exceptions; however it is the view of Andrew Linden (Team Leader - Commissioning, Procurement & Compliance) that this particular matter does not fall into any of those categories, though he does state that it is possible to request for an exemption via Cabinet or a Portfolio Holder Decision Sheet (subject to Legal and Monitoring Officer prior approval). Nevertheless, Members should be aware that a full tender process may be required, which could take 4-6 months to complete.

10.3.9 A financial spend of the amount required must be considered in the context of the uncertainty surrounding this case, in terms of how the Pitblados would respond to a request to serve a Party Wall Notice on Meadow View, the extent of structural works required, how Meadow View will react, whether the Pitblados or Meadow View would commence their own legal action.

10.3.10 It must also be considered in the context of both a 'cost-benefit' analysis and an 'alternative deployment' analysis. Whilst it is clear that the construction of a new dwelling in the Green Belt is contrary to local and national planning policies, there was a previous garage in the position of the current dwelling. In addition, this matter has raised no public interest. The questions for Members therefore are firstly, whether the successful end result is worth the significant financial and officer time inputs required, and secondly, whether such significant financial and officer time inputs would be better deployed in the public interest on dealing with other matters.

10.3.11 There are also Covid-19 and Health & Safety complications surrounding this matter. Whilst these can be overcome and are more minor compared to the Party Wall and financial considerations, they do add to the difficulty in securing compliance through Direct Action.

10.4 Change to Permitted Development Rights

10.4.1 It is important to consider whether the introduction of Statutory Instruments 2020 No.755 and 2020 No.756, (changes to permitted development rights that allow, for instance, upward extensions) has changed the surrounding context of the site to such a material degree that the Council should no longer pursue compliance with the current Enforcement Notice.

10.4.2 In response to this point it is acknowledged that Gable End is subject to an extant Enforcement Notice and therefore the lawful position at this site is a cleared site. The new permitted development rights within Statutory Instruments 2020 No.755 therefore do not strictly apply. Nevertheless, the following analysis of these new permitted development rules in the context of Gable End has been undertaken.

10.4.3 The new Class AA (within Statutory Instruments 2020 No.755) allows:

Permitted development

AA. The enlargement of a dwellinghouse consisting of the construction of—

- (a) up to two additional storeys, where the existing dwellinghouse consists of two or more storeys; or
- (b) one additional storey, where the existing dwellinghouse consists of one storey,

immediately above the topmost storey of the dwellinghouse, together with any engineering operations reasonably necessary for the purpose of that construction.

10.4.4 It is clear that these permitted development rights apply to 'dwellinghouses'. It has been accepted by all parties that Gable End, is a dwellinghouse, where previously there was none. However, the garage that has become a dwellinghouse was formerly part of the dwellinghouse (now known as Meadow View). Criterion (i) only allows this upward extension on top of the principal part of the dwelling house. 'Principal part' is defined in the Order as:

“principal part”, in relation to a dwellinghouse, means the main part of the dwellinghouse excluding any front, side or rear extension of a lower height, whether this forms part of the original dwellinghouse or is a subsequent addition;

10.4.5 It could be argued that the garage was not the 'principal part' of the dwellinghouse and therefore no upward extensions would be permitted above this part of the house. Alternatively, it could be argued that the definition of 'principal part' simply excludes front, side or rear extensions of a lower height, and therefore the garage, being of the same height, would be permitted to be raised as part of the principal part of the house. There are also questions about whether the conditions within AA.2(3) mean that such PD rights fall away if the notification processes have not been met.

10.4.6 The new Class CA (within Statutory Instruments 2020 No.755) allows the construction of a new dwelling on top of an existing terraced property, though this requires a formal prior approval process that clearly would not have been followed in the case here.

10.4.7 The new Class ZA (within Statutory Instruments 2020 No.756) allows the “Demolition of buildings and construction of new dwellinghouses in their place”. However, this only applies to buildings that are blocks of flats, of offices within B1(a), R&D within B1(b), or light industrial within B1(c). Class ZA is not, therefore, applicable to terraced houses (or indeed any housing).

10.4.8 In conclusion, it is considered that Gable End cannot rely on Class AA and Class CA PD rights retrospectively, and more fundamentally could not benefit from these permitted development rights as a dwelling has been created where there was previously none.

10.4.9 Nevertheless, there is no doubt that the introduction of these permitted development rights result in further complications when considering what action to take in respect of Gable End for the following three reasons.

10.4.10 Firstly, an identical terrace in the Green Belt could potentially make use of the new permitted development rules and construct an upward extension across its width.

10.4.11 Secondly, whilst permitted development rights cannot be applied retrospectively, it is nevertheless a material consideration when deciding on whether further formal enforcement action would be pursued. This is relevant, in this case, to the middle three properties, which it is very likely, could have extended up to their current heights, if the new permitted development rights had been in

force at that time. If the Council attaches great weight to this change in circumstance, then that would also affect the way we would need to deal with Gable End.

10.4.12 Thirdly, the overall point is that Central Government have introduced a range of upward extensions permitted development rights and have therefore given a strong steer that such development should not concern Development Management (subject to any conditions or prior approval steps required). They are indicative of the Government's intention to make it generally easier for people to extend their home.

11. GREEN BELT CONCLUSION

11.1 As stated above the creation of a new independent dwelling in the Green Belt is inappropriate development in the Green Belt. According to paragraph 143 of the NPPF inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

11.2 Paragraph 144 states that LPAs should ensure that substantial weight is given to any harm to the Green Belt, and that, "*Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations*". As explained in earlier sections of this report there are no other harms arising from this development.

11.3 The applicant's Planning Statement does not specifically refer to very special circumstances, having argued that these are not necessary being not inappropriate development. Nevertheless, the arguments put forward in that Planning Statement provide some very compelling circumstances that require careful consideration. These are:

- 1) The Enforcement Notice, it has been established, is not based on fact. In other words Gable End is not a completely new construction, but has been built upon the concrete slab and brick walls that were left from the original garage / car port.
- 2) There are significant and serious practical implications that prevent compliance with the Enforcement Notice in respect of the impact of compliance on the adjoining property Meadow View.
- 3) The original garage and car port had an established residential use.
- 4) The site is located in an immediate area where there has been a considerable amount of recent development in the Green Belt, including the construction of new / replacement dwellings. The context of this development has therefore changed demonstrably since the Enforcement Notice was served.
- 5) Dacorum Borough Council is acutely short of housing of all kinds.

11.4 It is appreciated that these arguments were also made in the 2017 application and were not considered at that time to constitute very special circumstances. However, as described in the previous section the significant difficulties that Gable End has in complying the Enforcement Notice, or the challenges facing the Council in securing compliance, are now much more apparent.

11.5 Furthermore, since the 2017 refusal the surrounding context of the site has altered significantly due to the planning permissions granted at the main Threefields house and for the two-storey dwelling at the site immediately to the north of the Threefields terrace.

11.6 It is also important to note that the Council is not at present able to demonstrate a 5 year supply of deliverable housing sites as required by the NPPF and as a consequence must consider the

proposal against the Framework's presumption in favour of sustainable development (paragraph 11) The Council is obligated, under paragraph 11, to grant planning permission unless the policies in the Framework provide a clear reason for refusal or the adverse impact of doing so would out-weigh the benefits when assessed under the framework. This requires a balancing exercise of the economic, social and environmental impacts of development. Whilst, it is accepted that the tilted balance would not apply in this Green Belt location and that the addition of one further dwelling is very minimal in respect of the Council's overall housing numbers, the Council's current position in respect of deliverable housing sites is different compared to 2017.

11.7 In addition to the arguments that were raised previously and which can now be given greater weight, there are additional very special circumstances that come into play for this application. These are the Magistrate and Crown Court prosecution proceedings and the introduction of a more flexible permitted development regime – both of which postdate the 2017 application (and which have been detailed in the section above).

11.8 The Crown Court judgement largely found in the Pitblados' favour (save for the relatively minor matter of failing to restore the garden to agricultural land). The main reason for this related to the Pitblado's financial situation. The Crown Court judge took into account the costs involved in Gable End complying in full with the Enforcement Notice (demolishing the house, works to secure Meadow View, potential temporary accommodation costs for the occupiers of Meadow View, site security, need for a temporary fund to pay Meadow View in the event something goes wrong, outstanding mortgage payments) and concluding that the Pitblado's financial situation was such that they had done all that could be realistically expected of them to comply with the Enforcement Notice.

11.9 Fundamentally, it is considered that there is no realistic chance of securing compliance in the short to medium term. This planning application is preferable in that it secures a reduction in the bulk and massing of the roof, a significant reduction in the area to be used as residential garden, additional soft landscaping within the site frontage, and controls over future development through the removal of permitted development rights, none of which would be achieved through the continuation of a lengthy and expensive legal battle.

11.11 There is no doubt that further legal proceedings, which themselves have an uncertain outcome, would take up considerable Planning Officer and Legal Department time and resources. It is important to assess whether this legal route remains expedient bearing in mind the impact on the public purse and the other factors considered in this section. It should also be added that the Pitblados, regardless of how one considers their role in this breach of planning, are a family with children. There would be continued stress and uncertainty hanging over this family for a considerable period of time, if this matter could not be resolved through a negotiated solution.

11.12 Overall, it is considered that these very special circumstances are important material considerations, could not be easily replicated across other sites, and, in their totality, clearly outweigh the harms to the Green Belt to allow this development to be granted.

12. RECOMMENDATION

12.1 That planning permission/listed building consent be **GRANTED** subject to conditions.

Condition(s) and Reason(s):

1. **The current gable end roof to Gable End shall be hipped in accordance with Drawing 9407-L-00-03 Rev.C within eighteen months of the date of this decision.**

REASON: In the interest of the openness of the Green Belt in accordance with Policy CS5 of the Dacorum Borough Core Strategy and also in the context of the extant Enforcement Notice at the site.

2. **All exterior window frames shall be painted black within six months of the date of this decision. The windows, whether the existing windows or any future windows, shall thereafter permanently retain this black colour.**

REASON: In the interest of the openness of the Green Belt in accordance with Policy CS5 of the Dacorum Borough Core Strategy and also in the context of the extant Enforcement Notice at the site.

3. **Within three months of the date of this decision the new 1.2 metre high post and rail fencing, shown on approved Drawing 9407-L-00-04 Rev.C (Block Plan) shall be erected; and thereafter a fence of the same height, design and location shall be permanently retained.**

REASON: In the interest of the openness of the Green Belt in accordance with Policy CS5 of the Dacorum Borough Core Strategy and also in the context of the extant Enforcement Notice at the site.

4. **The area shown to the west of the new fencing, shown on approved Drawing 9407-L-00-04 Rev.C (Block Plan), shall not be used for any residential purposes, including any residential uses ancillary to the property known as Gable End, Threefields, Sheethanger Lane.**

REASON: In the interest of the openness of the Green Belt in accordance with Policy CS5 of the Dacorum Borough Core Strategy and also in the context of the extant Enforcement Notice at the site.

5. **The alterations to the site frontage hard landscaping, and the planting of the soft landscaping, shown on approved Drawing 9407-L-00-04 Rev.C (Block Plan), must be carried out within twelve months of the date of this decision.**

The areas immediately to the north, east and south of the three parking spaces shown on Drawing 9407-L-00-04 Rev.C (Block Plan) shall thereafter remain soft landscaped and shall not be used for the purposes of the parking of vehicles.

Any tree or shrub which forms part of the approved landscaping scheme which within a period of 5 years from planting fails to become established, becomes seriously damaged or diseased, dies or for any reason is removed shall be replaced in the next planting season by a tree or shrub of a species, size and maturity.

Reason: In the interest of the openness of the Green Belt in accordance with Policy CS5 of the Dacorum Borough Core Strategy and also in the context of the extant Enforcement Notice at the site.

6. **Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending or re-enacting that Order with or without modification) no development falling within the following classes of the Order shall be carried out without the prior written approval of the Local Planning Authority:**

**Schedule 2, Part 1, Classes A, AA, B, C, D, E and F
Schedule 2, Part 2, Classes A and C**

Reason: To enable the Local Planning Authority to retain control over the development in the interests of the openness and visual amenity of the Green Belt, in accordance with Policy CS5 of the Dacorum Borough Core Strategy (2013).

7. The development hereby permitted shall be carried out in accordance with the following approved plans/documents:

9407-L-00-LP Rev. B (Location Plan)

9407-L-00-04 Rev.C (Block Plan)

9407-L-00-03 Rev.C (Proposed Structure: Floor Plans and Elevations)

Reason: For the avoidance of doubt and in the interests of proper planning.

APPENDIX A: CONSULTEE RESPONSES

Consultee	Comments
Trees & Woodlands	According to the information submitted the applicant advises no trees will be detrimentally impacted by the development. I have examined the information and can confirm no trees are affected and subsequently have no objections to the application being approved in full.
Thames Water	<p>Waste Comments</p> <p>Thames Water recognises this catchment is subject to high infiltration flows during certain groundwater conditions. The scale of the proposed development doesn't materially affect the sewer network and as such we have no objection. In the longer term Thames Water, along with other partners, are working on a strategy to reduce groundwater entering the sewer network.</p> <p>Thames Water recognises this catchment is subject to high infiltration flows during certain groundwater conditions. The developer should liaise with the LLFA to agree an appropriate sustainable surface water strategy following the sequential approach before considering connection to the public sewer network. The scale of the proposed development doesn't materially affect the sewer network and as such we have no objection. In the longer term Thames Water, along with other partners, are working on a strategy to reduce groundwater entering the sewer network.</p> <p>With regard to SURFACE WATER drainage, Thames Water would advise that if the developer follows the sequential approach to the disposal of surface water we would have no objection. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required. Should you require further information please refer to our website.</p>

	<p>https://developers.thameswater.co.uk/Developing-a-large-site/Apply-and-pay-for-services/Wastewater-services</p> <p>Thames Water would advise that with regard to WASTE WATER NETWORK and SEWAGE TREATMENT WORKS infrastructure capacity, we would not have any objection to the above planning application, based on the information provided.</p> <p>Water Comments With regard to water supply, this comes within the area covered by the Affinity Water Company. For your information the address to write to is - Affinity Water Company The Hub, Tamblin Way, Hatfield, Herts, AL10 9EZ - Tel - 0845 782 3333.</p>
Hertfordshire Highways (HCC)	no objection

APPENDIX B: NEIGHBOUR RESPONSES

Number of Neighbour Comments

Neighbour Consultations	Contributors	Neutral	Objections	Support
8	3	0	3	0

Neighbour Responses

Address	Comments
Widgeons Sheethanger Lane Felden Hemel Hempstead Hertfordshire HP3 0BQ	<p>In the Planning Statement the applicant states that the proposed development is on Sheethanger Lane. This statement is incorrect and misleading. First, the property is located on the Lane giving access to Three Fields which is not part of Sheethanger Lane. Second, Sheethanger Lane is a private road and is not a highway. It is certainly not a highway permitting public vehicular use. Only those residents who, under their property titles, have express grants of private rights of way over it, as well as their lawful visitors and authorised licencees, may drive vehicles over it. Third insofar as is concerned what is now the proposed development any right of way over Sheethanger Lane (which is not admitted) will be derived from the title to Threefields. Any such right will exist, if at all, for the benefit for what may have originally been intended, namely a single building with agricultural user only appurtenant to and limited to use incidental to the ownership of Threefields as the dominant tenement. It does not extend to the conversion of the original building for residential user.</p> <p>XXX for and on behalf of Sheethanger Lane Road Fund</p>
Pans Place Sheethanger Lane	The application relates to a development in a green belt area which was completed by a developer who knew he did not have planning

<p>Felden Hemel Hempstead Hertfordshire HP3 0BG</p>	<p>permission and made no effort to obtain it before building.</p> <p>The assertion that Councils need to provide housing should not give builders or developers the right to develop land knowingly in breach of planning requirements, with the expectation that it will be given retrospectively.</p> <p>The original building on this site was essentially a single storey, with open garages. The unlawful development has now turned this area into a 2 storey development of terraced housing, which is considerably different and changes the appearance of the area.</p> <p>The application is more or less the same as application number 4/02473/17 /FUL which was refused on appeal to the High Court.</p> <p>The development of green belt should be avoided unless there are very special reasons. Seeking retrospective planning permission, is not a special reason.</p>
<p>Bramley Orchard Sheethanger Lane Felden Hemel Hempstead Hertfordshire HP3 0BQ</p>	<p>This application attempts to remedy retrospectively serious breaches of planning, which resulted in enforcement orders and planning refusals over many years. These breaches are:-</p> <p>(1) By namely building/extending a dwelling where an existing open garage existed, without obtaining planning approval for such activity.</p> <p>(2) Using adjacent agricultural land as amenity land namely a garden and front hardstanding without planning approval.</p> <p>I have been aware of these planning issues going back to 2010 which also include building a wall and gate enclosing this and the other adjacent cottages.</p> <p>I object to these attempts to avert prior enforcement orders and do not recommend that the council considers approving such planning requests, especially affecting Green belt.</p>