

QUASHED
APPEAL DECISION 18/10/13

RE: Suttons Farm, Tomkyns Lane, Upminster

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(As amended by the Planning and Compensation Act 1991)

ENFORCEMENT NOTICE

- TO:
1. The Owner of the said land
 2. The Occupier of the said land
 3. Charlotte Naomi French, Suttons Farm, Tomkyns Lane Upminster, Essex RM141TP
 4. David Paul White Suttons Farm, Tomkyns Lane Upminster, Essex RM141TP
 5. Paul Anthony White Suttons Farm, Tomkyns Lane Upminster, Essex RM141TP
 6. Company Secretary, Barclays Bank PLC PO Box 187, Leeds LS11 1AN

ISSUED BY: London Borough of Havering

1. **THIS IS A FORMAL NOTICE** which is issued by the Council of the London Borough of Havering ("the Council") because it appears to the Council that there has been a breach of planning control, under Section 171A(1)(a) of the above Act, at the land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of the development plan and to other material planning considerations.

2. **THE LAND AFFECTED**

The dwelling and associated land at Suttons Farm, Tomkyns Lane, Upminster shown edged in bold black on the attached plan ("the Land").

3. **THE BREACH OF PLANNING CONTROL ALLEGED**

- (i) Without planning permission, the formation of three stepped levels to the front of the main house, including a hard surfacing patio area adjacent to the house and a level incorporating a sunken garden, in the area shaded blue on the attached plan.
- (ii) Without planning permission the erection of boundary walls, brick pillars entry gates and fencing standing at approximately 2.2 metres in height to the front of the property adjacent to the highway, between the points marked A and B on the attached plan (the boundary wall).

4. REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the above breach of planning control has occurred within the last four years. The stepped level, boundary walls, brick pillars entry gates and fencing to the front of the property in question were substantially completed less than four years ago and are adjacent to the highway. The site lies within the Metropolitan Green Belt.

This unauthorised development has an adverse effect on the street scene and the openness of the Green Belt and it is visually intrusive.

The Council do not consider that planning permission should be given, because planning conditions could not overcome the harm.

In making its decision to issue this Notice the Council considered that the unauthorised development is contrary to the following policies of the Havering Local Development Framework: policies CP14, CP17, DC45, DC51 and DC61 of the Core Strategy and Development Control Policies as well as the Councils' Residential Extensions Supplementary Planning Document (SPD) and Residential Design SPD. London Plan (2011) policies 7.4, 7.6, and 7.16 and the National Planning Policy Framework (NPPF), Section 7 Requiring good design, Section 9 Protecting Green Belt Land, Section 10 Meeting the challenge of climate change, flooding and coastal change.

5. WHAT YOU ARE REQUIRED TO DO

- (i) Reduce the height of the boundary walls, brick pillars, fencing and gates shown between points A and B on the attached plan to a maximum of 1 metre in height adjacent to the highway

Time for compliance: 3 months from the effective date of this notice.

- (ii) Restore that part of the Land shown shaded blue on the attached plan and upon which the patio and sunken garden were constructed to its previous condition by removing the patio, patio base and sunken garden construction.

Time for compliance: 3 months from the effective date of this notice.

- (iii) Remove from the Land all building materials rubble arising from compliance from the first requirement above.

Time for compliance: 3 months from the effective date of this notice.

6. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 25th April 2013, unless an appeal is made against it beforehand

Dated: 20th March 2013

Signed:



Authorised Officer

On behalf of London Borough of Havering
Town Hall
Main Road
Romford RM1 3BD

YOUR RIGHT OF APPEAL

You can appeal against this Enforcement Notice to the Secretary of State by the 25th April 2013. Further details are given in the attached explanatory note.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this Enforcement Notice, it will take effect on 25th April 2013 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the Notice.

FAILURE TO COMPLY WITH AN ENFORCEMENT NOTICE WHICH HAS TAKEN EFFECT CAN RESULT IN PROSECUTION AND/OR REMEDIAL ACTION BY THE COUNCIL.

EXPLANATORY NOTES

STATUTORY PROVISIONS

A summary of Sections 171A, 171B and 172 to 177 of the Town and Country Planning Act 1990 (as amended) is enclosed with this Notice.

YOUR RIGHT OF APPEAL

You can appeal against this Notice, but any appeal must be in writing and received, or posted (with the postage paid and properly addressed) in time to be received in the ordinary course of the post, by the Secretary of State before 25th April 2013.

If you intend to appeal against this Notice you should follow the instructions given on the information sheet from the Planning Inspectorate which accompanies this Notice.

GROUND OF APPEAL

The grounds of appeal are set out in Section 174 of the Town and Country Planning Act 1990 (as amended) you may appeal on one or more of the following grounds:-

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the Notice, planning permission ought to be granted, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the Enforcement Notice were not served as required by section 172;
- (f) that steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- (g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

Not all these grounds may be relevant to you.

PLANNING APPLICATION FEE

If you intend to appeal against the notice on ground (a) - that planning permission should be granted for the unauthorised development - then a fee of £344.00 is payable to the Council. If the fee is not paid then that ground of appeal will not be valid.

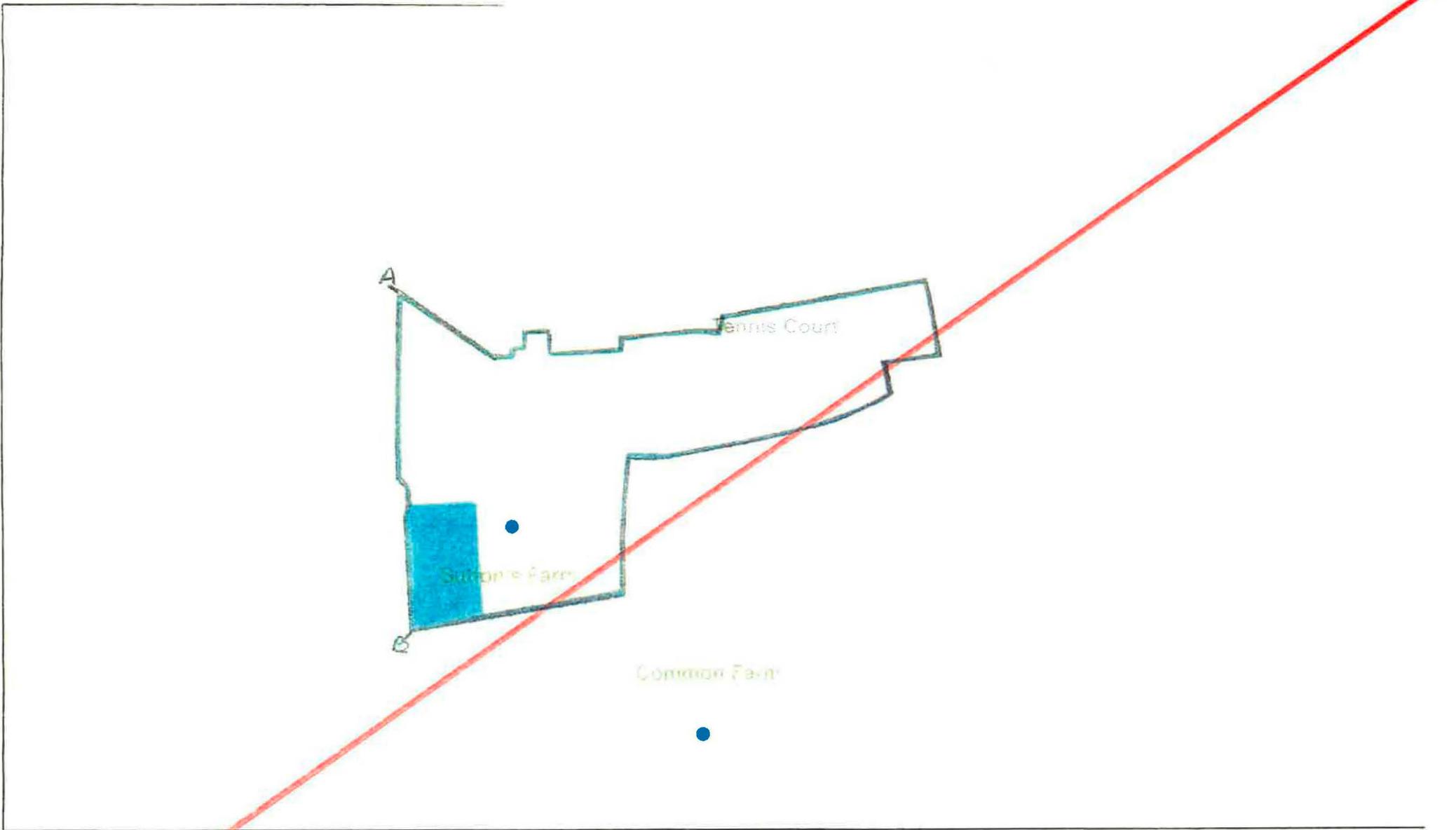
STATEMENT ON GROUNDS OF APPEAL

You must submit to the Secretary of State, either when giving notice of appeal or within 14 days from the date on which the Secretary of State sends him a notice so requiring him, a statement in writing specifying the grounds on which you are appealing against the enforcement notice and stating briefly the facts on which you propose to rely in support of each of those grounds.

RECIPIENTS OF THE ENFORCEMENT NOTICE

The names and addresses of all the persons on whom the Enforcement Notice has been served are:

1. The Owner of the said land
2. The Occupier of the said land
3. Charlotte Naomi French, Suttons Farm, Tomkyns Lane Upminster, Essex RM141TP
4. David Paul White Suttons Farm, Tomkyns Lane Upminster, Essex RM141TP
5. Paul Anthony White Suttons Farm, Tomkyns Lane Upminster, Essex RM141TP
6. Company Secretary, Barclays Bank PLC PO Box 187, Leeds LS11 1AN



<p>SUTTONS FARM, TOMKYNS LANE</p>	<p>Map Reference: TQ5689NE Date: 18/03/2013</p>	<p>Scale @ A4 1:1000</p> <p>Scale 0 8 16 24 32 40 m</p>
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Havering
 LONDON BOROUGH

London Borough of Havering
 Town Hall, Main Road
 Romford, RM1 3BD
 Tel: 01708 434343




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Appeal Decision

Site visit made on 24 September 2013

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 18 October 2013

Appeal Ref: APP/B5480/C/13/2196972 Suttons Farm, Tomkyns Lane, Upminster RM14 1TP

- e The appeal is made by Paul White under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: ENF/110/09/HW) issued by the Council of the London Borough of Havering on 20 March 2013.e
- e The breaches of planning control alleged in the notice are as follows: -
 - “(i) Without planning permission, the formation of three stepped levels to the front of the main house, including a hard surfacing patio area adjacent to the house and a level incorporating a sunken garden, in the area shaded blue on the attached plan.
 - (ii)e Without planning permission the erection of boundary walls, brick pillars entry gates [*sic*] and fencing standing at approximately 2.2 metres in height to the front of the property adjacent to the highway, between the points marked A and B on the attached plan (the boundary wall).”e
- e The requirements of the notice are as follows: -
 - “(i) Reduce the height of the boundary walls, brick pillars, fencing and gates shown between points A and B on the attached plan to a maximum of 1 metre in height adjacent to the highway”
 - “(ii) Restore that part of the Land shown shaded blue on the attached plan and upon which the patio and sunken garden were constructed to its previous condition by removing the patio, patio base and sunken garden construction.”
 - “(iii) Remove from the Land all building materials rubble arising from compliance from the first requirement above.”
- e The period for compliance with these requirements is three months.e
- e The appeal is proceeding on the grounds set out in section 174(2)(a) and (f).e

Decision

- 1.e It is directed that the enforcement notice be corrected by inserting a comma between “pillars” and “entry” in sub-paragraph 3.(ii) and by replacing sub-paragraph 3.(i) by:e-
 - “(i) Without planning permission, the formation of a raised patio adjoining the front of the main house within the area shown shaded blue on the attached plan.”.
- 2.e The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5)e of the Town and Country Planning Act 1990 for development at Suttons Farm,e Tomkyns Lane, Upminster RM14 1TP consisting of (i) the formation of a raised patio adjoining the front of the main house and (ii) the erection of boundary

walls, brick pillars, entry gates and fencing at the front of the property exceeding one metre in height adjacent to the highway, subject to the following conditions: -

1. Within 3 months of the date of a failure to comply with any of the requirements in (i) to (iii) below and within 3 months of the dismissal of the appeal made pursuant to (ii) below or of it ceasing to be a valid appeal, the height of the boundary walls, brick pillars, fencing and gates shall be reduced to no more than one metre above ground level (as defined in Article 1(3) of the Town and Country Planning (General Permitted Development) Order 1995) and all resultant materials shall be removed from the land: -

(i) Within 1 month of the date of this decision, full details of the finished height, appearance and landscaping of the boundary walls, brick pillars, fencing and gates shall be submitted in writing to the local planning authority for their written approval. The details shall include a timetable for the implementation of all the details, indications of all existing and proposed planting on the frontage, details of the existing planting to be retained, a landscape management plan and a landscape maintenance schedule for a minimum period of 5 years.

(ii) Within 9 months of the date of this decision a valid appeal shall be made to the Secretary of State if the local planning authority have not given written approval to all the details submitted pursuant to (i) above or have failed to give notice of their decision within the prescribed period.

(iii) All matters comprised in the approved details shall be completed as approved and in accordance with the approved timetable and shall be retained as approved.

2. Any trees, hedging or plants comprised in the approved details of landscaping that within a period of 5 years from the date of planting, seeding or turfing, as the case may be, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season by others of a similar size and species, unless the local planning authority give written approval to any variation.

Reasons for the decision

The breach of planning control alleged in the notice

3. The allegation refers to the formation of a sunken garden. The information available to me indicates that work started on the creation of such a garden, but the project was never completed and the area in question was filled in before the notice was issued, and is now a lawn. I have therefore deleted the reference to a sunken garden in the allegation. I have also corrected a typographical error in the allegation.
4. The appellant has questioned whether the boundary walls, brick pillars, entry gates and fencing are adjacent to the highway. If they are not, the permitted development height limit applying to them would be 2m and Requirement (i) of the notice would be excessive in requiring their reduction to 1m. In addition,

they would be permitted development at the height they have been reduced to since the issue of the notice, which is less than 2m but more than 1m.

5. I understand that the highway boundary here is the edge of the carriageway and that the strip of land between the carriageway and the appellant's boundary is manorial waste, not highway land. This strip varies in width between about 2.3m and 2.8m and was entirely open until the appellant planted a hedge in it next to the boundary fencing after the notice was issued.
6. My understanding of the term "adjacent to a highway" is that the walls, brick pillars, entry gates and fencing referred to do not actually have to touch the edge of the highway and may be some distance back, provided they are close enough to have the perceived function of forming a boundary between the highway and the property. As a matter of fact and degree, having regard to the openness of the strip and the fact that it looks like highway verge, they are in my view close enough to have this perceived function, notwithstanding the distance they are set back from the actual highway.

Ground (a)

7. The main issues in deciding whether planning permission should be granted for the raised patio and the boundary walls, brick pillars, entry gates and fencing are: -
 - (i) whether they should be regarded as inappropriate development in the Green Belt;
 - (ii) their effect on the Green Belt and the appearance of the property and its surroundings; and
 - (iii) if they are inappropriate development in the Green Belt, whether the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances needed to justify granting planning permission.
8. Raised patios and boundary treatments are not specifically targeted by the Green Belt policies applying here. However, if works of this kind are not permitted development and are not within any of the specified exceptions, they are usually treated as inappropriate development, since the term "buildings" for planning purposes normally includes any structures or erections. The works are not permitted development in this instance, none of the exceptions apply and there are no other reasons to treat them differently. I therefore consider them to constitute inappropriate development in the Green Belt by definition.
9. The raised patio extends across the elevation of the house adjoining the lawn. At the most, it is only about 0.7m above ground level and its retaining wall has now been coloured to match the house. This is a large house in substantial grounds. A patio of this kind is a normal feature of such properties and, in my opinion, it has enhanced the appearance of the house and its garden without harming the rural character of the surrounding area or the openness of the Green Belt and the purposes of including land within it.
10. At the time when the notice was issued, the boundary walls, brick pillars, entry gates and fencing were up to 2.2m high. Because they were on a site that already contains an extensive range of large buildings to which they were

subordinate, they had very little further impact on the openness of the Green Belt or the purposes of including land within it. They did, however, have an unacceptable effect on the rural character of the lane, mainly because their height and stark appearance made them more intrusive than other residential boundary features in this area.

11. During the course of the appeal, the walls, pillars and gates have been reduced to a maximum height of about 1.95m and the fencing has been lowered so that it is generally about 1.8m high on the side facing the lane. A hedge has been planted that to a great extent screens the view of the fence from the lane. The appellant has, however, acknowledged that more needs to be done to temper the impact of the walls, pillars and gates, and I agree.
12. Policy DC45 of the Havering Development Control Policies deals with development in the Green Belt. It is based on Government policy set out in Planning Policy Guidance Note 2 *Green Belts* (PPG2), although, unlike PPG2, its terminology does not make provision for development to be approved in very special circumstances. However, on reading the reasoned justification for the policy I consider this to be implicit.
13. The policy is now out of date following the replacement of PPG2 by the National Planning Policy Framework. The Framework is a material consideration in this appeal. It indicates at paragraph 88 that, when considering the appeal on ground (a), I 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, is clearly outweighed by other considerations.
14. The other considerations in this instance are as follows: -
 - (1) The raised patio has enhanced the appearance of the house and its garden.
 - (2) The General Permitted Development Order grants an unconditional planning permission to erect boundary features in the same positions, provided they do not exceed 1m in height. That permission is recognised by Requirement (i) of the notice, which as a result is limited to lowering the existing boundary features to this height without requiring any improvements in their appearance.
 - (3) If the appeal is allowed on ground (a), planning conditions can be imposed that can control the finished height of the boundary features, require further steps to be taken to improve their appearance and require landscaping to be carried out and/or retained. (The appellant appears to have sufficient control over the land in which the hedge is planted.)
 - (4) Granting a planning permission with such conditions is preferable to Requirement (i) of the notice, insofar as the impact of the boundary features is concerned, notwithstanding the fact that their finished height is still likely to be more than 1m.
 - (5) The property is in an isolated location and boundary features above the permitted development height will present a more substantial barrier to unauthorised entry.

- (6) There are other residential boundary features in this area that are adjacent to the highway and higher than 1m.
- (7) The Framework indicates that decision-makers should look for solutions and should consider whether development could be made acceptable through the use of conditions. The conditions I have referred to will adequately protect the appearance of the property and its surroundings. They will result in the development complying with the other planning policies referred to by the Council to the extent called for in this instance.
15. For the reasons given above, I have identified very little harm to the openness of the Green Belt or to the purposes of including land within it. Although I found that the boundary features had at the outset an unacceptable effect on the rural character of the lane, a satisfactory means of improving their appearance has been identified. It is my view, after giving substantial weight to the harm to the Green Belt, that the other considerations I have assessed clearly outweigh the potential harm to the Green Belt by reason of inappropriateness, and any other harm, that arise in this instance. In my view, looking at the case as whole, very special circumstances exist which justify granting planning permission for the development.
16. The appeal has therefore succeeded on ground (a) and a conditional planning permission has been granted. The conditions I have imposed accord with the parties' suggestions in the event of the appeal being allowed. Their purpose is to maintain visual amenity.

Ground (f)

17. In view of the success of the appeal on ground (a), the notice has been quashed. Ground (f) no longer falls to be considered.

D.A.Hainsworth

INSPECTOR