

Introduction and Background

We object to the wording of draft policy H4 ('Policy H4 (2018)') proposed by Uttlesford District Council ('UDC').

Draft Policy H4 (2018) is the third attempt by UDC to propose a new policy for replacement dwellings in the Countryside. We have objected to all three proposals on substantially the same grounds (as explained below), and at no stage has UDC responded to our reasoned objections with a reasoned explanation which addresses the concerns raised. We have been advised by leading counsel (Hereward Phillpot QC), that UDC's conduct amounts to Wednesbury unreasonableness.

In 2017 we objected to the draft H4 policy wording proposed by UDC at that time ('**Policy H4 (2017)**') because, in summary, it essentially applied to the whole Countryside, development restrictions linking position and size of proposed replacement dwelling to position and size of existing dwelling, which are only appropriate to areas within the Green Belt. In addition it was unnecessarily prescriptive, not positively prepared and not in accordance with the NPPF or NPPG. As such it was unsound and should be rejected.

We have substantively the same objections to the draft Policy H4 (2018).

Below is a table comparing draft Policy H4 (2017 wording) with draft Policy H4 (2018 wording). It shows that, whilst UDC has restructured some of the language following our 2017 objection, it still essentially says the same thing, namely that in all areas of the Countryside (not just the Greenbelt), a replacement dwelling should not be materially larger than the one it is replacing.

Policy H4 (2017)	Policy H4 (2018)
<p>"Policy H4 – House Extensions and Replacement Dwellings in the Countryside and the Green Belt</p> <p>Proposals to extend or replace existing dwellings within the area designated as Countryside will be permitted provided that the proposal:</p> <ul style="list-style-type: none"> • Would not result in a disproportionately large increase in the height or scale of the original dwelling, and • <u>Would not materially increase the impact of the dwelling on the appearance of the surrounding countryside or the openness of the Green Belt through excessive scale, bulk or visual intrusion.</u> <p>In addition to the above criteria a replacement dwelling will be permitted provided that the proposed dwelling is <u>on the footprint of the existing dwelling unless the applicant can demonstrate why the dwelling would be best located elsewhere on the plot.</u></p> <p>In determining what constitutes a 'disproportionately large increase', <u>account will be taken of the size of the existing dwelling, the extent to which it has previously been extended or could be extended</u> under permitted development rights, and the character of the area."</p>	<p><i>Policy H4</i> <i>House Extensions and Replacement Dwellings in the Countryside and the Green Belt</i></p> <p><i>House extensions and replacement dwellings beyond the Green Belt:</i></p> <ol style="list-style-type: none"> 1. <i>Proposals to extend or replace dwellings within the area designated as Countryside or Countryside Protection Zone will be permitted provided that the proposal <u>would not materially increase the impact of the dwelling on the appearance of the surrounding countryside or the open character of the Countryside Protection Zone by virtue of its siting, scale, height, character and design.</u></i> 2. <i>A replacement dwelling should be positioned <u>on or close to the footprint of the existing dwelling, unless design, landscape, highway safety, residential amenity or other environmental grounds indicate that a more appropriate location on the plot can be justified.</u> ...</i> <p><i>Both within the Green Belt and beyond it account will be <u>taken of the size of the existing dwelling, the extent to which it has previously been extended or could be extended</u> under permitted development rights, and the character of the area."</i></p>

The deletion of the words 'would not result in a disproportionately large increase in the height or scale of the original dwelling' which were included in Policy H4 (2017), does not alter the effect of Policy H4 (2018) which is still the same as Policy H4 (2017) as highlighted by the words underlined in the table.

Our reasoned objection to Policy H4 (2017) dated 29 August 2017 (attached as **Appendix 1**) concluded that the proposed policy was demonstrably unsound because:

(a) It was not consistent with national policy:

- **Paragraph 89 of the National Planning Policy Framework (2012)** ('NPPF') restricts size of extension or replacement dwelling by reference to that of the existing dwelling, only in Green Belt areas
- **Paragraphs 56 - 68 of the NPPF** and in particular:
 - i. Paragraph 58 which says that design policies should optimise the potential of a site to accommodate development, and respond to local character and identity while not preventing or discouraging appropriate innovation. This is reflected in paragraph 26 of the National Planning Policy Guidance ('NPPG') which recognises that under development of a site is no less unsustainable than over-development, and will not optimise the potential of a site to accommodate sustainable development
 - ii. Paragraph 59 which says that design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally.
 - iii. Paragraph 60 which says that while it is proper to seek to promote or reinforce local distinctiveness, planning policies should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles
 - iv. Paragraph 65 which says that planning permission should not be refused for buildings which promote high levels of sustainability because of concerns about incompatibility with an existing townscape, if those concerns have been mitigated by good design.

(b) It was over prescriptive, going further than is necessary to ensure that extensions or replacement dwellings within the Countryside are permitted only where they comprise sustainable development suitable for their context:

- It applies to the whole Countryside, development restrictions which exceed those applied by paragraph 89 to Green Belt Areas only
- The need for a separate policy setting additional design criteria for replacement dwellings on sites outside the Green Belt has not been demonstrated

(c) It was not positively prepared:

Our reasoned objection to UTC's draft Policy H06 (the 2014 version of H4 which similarly sought to restrict the size or location of a replacement dwelling by reference to the existing dwelling) arrived at substantially the same conclusions.

Importantly, those arguments were heard in November 2014 by the Examiner (Mr Roy Foster) who accepted that there was no logical reason for limiting the size and scale of a replacement dwelling by reference to the existing dwelling (which could just as easily be significantly under-sized as over-sized), and who commented that limiting a replacement dwelling to the existing footprint is simply another way of limiting scale, and is also unduly prescriptive. He was also sympathetic to the argument that restrictions appropriate to the Green Belt should not be applied to the Countryside as a whole, and when this argument was made, he turned to UDC's representative and said the Brittendens must be right on this point, and asked UDC how they responded. UDC had no response, and so the Examiner asked the parties to attempt to agree alternative wording for the policy.

The subsequent email exchanges between us and UDC are attached hereto as **Appendix 2**. The email exchanges and the UDC's subsequent proposed Policy H4 (2017) show that, without any valid explanation, the UDC refused to alter its initial stance on the key wording despite the Examiner's comments.

We must now repeat the points, in what seems to us to be an unreasonable exercise in endurance.

Why Draft Policy H4 (2018) is Unsound

Draft Policy H4 (2018) still applies to the whole Countryside, development restrictions linking position and size of proposed replacement dwelling to position and size of existing dwelling, which are not appropriate to areas outside the Green Belt, and which exceed those applied by paragraph 89 of the NPPF to Green Belt areas only. The March 2018 draft revised NPPF preserves the para 89 (replacement buildings) wording which is now contained in paragraph 144. So there is no proposed change in national policy on this issue.

In particular:

(a) Policy H4 (2018 version) is not consistent with national policy: the NPPF contains no restrictions on size or location of replacement dwellings by reference to existing dwellings except in Green Belt areas where para 89 of the NPPF states:

"89. A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are: ...

- *The replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;..."*

However draft policy H4 (2018) applies this restriction to house extensions and replacement dwellings in all areas of the Countryside both within and beyond the Green Belt:

“Policy H4

House Extensions and Replacement Dwellings in the Countryside and the Green Belt

House extensions and replacement dwellings beyond the Green Belt:

1. Proposals to extend or replace dwellings within the area designated as Countryside or Countryside Protection Zone will be permitted provided that the proposal would not materially increase the impact of the dwelling on the appearance of the surrounding countryside ...

2. A replacement dwelling should be positioned on or close to the footprint of the existing dwelling...

Both within the Green Belt and beyond it account will be taken of the size of the existing dwelling, the extent to which it has previously been extended or could be extended under permitted development rights, and the character of the area.”

How is ‘...not materially increase the impact of the dwelling on the appearance of the surrounding countryside...’ to be judged ? It must surely be by comparison with the existing dwelling. However if the replacement dwelling is of an overall scale, density, massing, height and layout that is appropriate to the local context of the site and the character of the surrounding landscape, why should it then be contrary to the development plan because it differed in scale to a building which would no longer exist if the development went ahead ? It will meet the objectives of the policy, be consistent with the relevant policies of the NPPF and give rise to no harm at all to any relevant interest of acknowledged importance.

(b) It is over prescriptive, going further than is necessary to ensure that extensions or replacement dwellings in the Countryside are permitted only where they comprise sustainable development suitable for their context: Policy H4 will apply to the whole Countryside, development restrictions which:

- link position and size of proposed structure to position and size of existing structure, which exceed those applied by paragraph 89 to Green Belt areas only (where the only design restriction is ‘not materially larger than the one it replaces’).
- do not recognise that under-development of a site is no less unsustainable than over-development, and will not optimise the potential of a site to accommodate sustainable development. These principles are set out in para 58 of the NPPF (*“Planning policies and decisions should aim to ensure that developments...optimise the potential of a site to accommodate development...”*) and para 26 of the National Planning Policy Guidance (*‘the NPPG’*) which reflects the guidance in the NPPF, and with which the eventual policy on replacement dwellings must be consistent (*“Too little [building mass compared to open space] and neither land as a resource or monetary investment will be put to best use”*). The March 2018 draft revised

NPPF preserves the para 58 wording which is now contained in paragraph 126. So there is no proposed change in national policy on this issue.

Consequently, draft policy H4 (2018) would serve to restrict well-designed and innovative development in circumstances where no material planning harm would arise.

(c) It is not positively prepared:

Draft policy H4 (2018) misses the opportunity to adopt the positive approach to development encouraged by the NPPF. The Ministerial Foreword to the NPPF stresses that sustainable development is about change for the better, encouraging creative excellence and positive growth. “...planning must not simply be about scrutiny. Planning must be a creative exercise in finding ways to enhance and improve the places in which we live our lives.”

In Chapter 7 (Requiring good design) the NPPF says that planning policies and decisions should:

- aim to ensure that developments respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation (para 58)
- avoid unnecessary prescription or detail (para 59)
- not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles (para 60)
- not allow concerns about incompatibility with an existing townscape to result in a refusal if the proposal promotes high levels of sustainability and the concerns are otherwise mitigated by good design (para 65)

Therefore while the character of the open Countryside should be protected, the policy should not seek to regulate the character or design of replacement dwellings. Attempts to do so are unsound.

As noted above, Draft policy H4 (2018) also appears to completely ignore paragraph 14 of our 2017 objection which sets out the 2014 comments of the Examiner in response to draft Policy H06 (the 2014 version of H4 which similarly sought to restrict the size or location of a replacement dwelling by reference to the existing dwelling).

We are aggrieved that having decided to participate in the plan preparation process in 2014 and 2017, the UDC has now prepared a third revision of this policy that still displays essentially the same flawed approach as the 2014 and 2017 versions of this policy.

We are driven to conclude that the UDC is attempting to prevent a replacement dwelling from being materially larger than the dwelling it replaces in all areas of the Countryside for no logical or planning based reason; it is attempting to stifle innovation and good design but has endeavoured to disguise the nonsensical nature of such a criterion through restructuring the language (and/or being vague) in order to give the appearance of alignment rather than addressing the substantive concerns.

We have leading Counsel's opinion that this is not an appropriate or sound way to draft a development plan policy in light of paragraph 154 of the NPPF which makes it plain that "only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan", and the Council's suggested criterion is incapable of satisfying that requirement.

Therefore, draft Policy H4 (2018) is unsound, and should be rejected.

(d) It is not 'justified' in that it does not represent the most appropriate policy when considered against the reasonable alternatives:

Assuming that the requirements of draft policies C1-4 (Countryside) and D 1-10 (Design and Construction) are satisfied, it is entirely unclear why it should be necessary in the public interest to satisfy any additional criteria simply because the proposed dwelling is replacing an existing one. The need for a separate policy setting additional design criteria for replacement dwellings on sites outside the Green Belt has not been demonstrated, and therefore Policy H4 is unsound.

In the alternative, if it is demonstrated that the policy dealing with replacement dwellings should apply to sites outside the Green Belt, a preferable alternative policy is proposed which would separate development controls into:

- (a) Those applicable to extensions or replacement dwellings within the Countryside beyond the Green Belt. This would contain fewer and less prescriptive criteria which are aligned to the NPPF, NPPG and consistent with draft Policies C1-4 (Countryside) and D 1-10 (Design and Construction); and
- (b) Those applicable to extensions or replacement dwellings within the Green Belt. This would contain criteria aligned to para 89 of the NPPF

Alternative Proposed Policy Wording:

"Policy H4

House Extensions and Replacement Dwellings in the Countryside and the Green Belt.

House extensions and replacement dwellings beyond the Green Belt:

- 1. Proposals to extend or replace dwellings within the area designated as Countryside or Countryside Protection Zone will be permitted provided that the proposal ~~would not materially increase the impact of the dwelling on~~ is appropriate to the local context of the site, the appearance of the surrounding countryside or the open character of the Countryside Protection Zone by virtue of its ~~siting,~~ scale and height. ~~character and design.~~**

2. A replacement dwelling should be positioned on or close to the footprint of the existing dwelling, unless design, landscape, highway safety, residential amenity or other environmental grounds indicate that a more appropriate location on the plot can be justified.

House extension and replacement dwellings within the Green Belt:

- 2. House extensions will be permitted which would not result in disproportionate additions to the original dwelling or harm the purposes of the Green Belt; and**

Replacement dwellings will be permitted provided that the proposal does not harm the purposes of the Green Belt, is not materially larger than the dwelling being replaced, and is otherwise appropriate to the local context of the site and the appearance of the surrounding countryside by virtue of its ~~siting~~, scale and height. ~~character and design.~~ “

4. Replacement dwellings should be positioned on or close to the footprint of the existing dwelling and will only be permitted if they are not materially larger than the one it replaces.

Both within the Green Belt and beyond it account will be taken of the size of the existing dwelling, the extent to which it has previously been extended or could be extended under permitted development rights, and the character of the area.”

Conclusion

We believe that UDC’s position on the wording of Policy H4 (2018) is untenable because it is a position that no reasonable decision maker could properly adopt, and UDC has provided no rational basis on which the Examiner could endorse its approach.

We believe that the need for a separate policy to deal with replacement dwellings in the Countryside beyond the Green Belt has not been demonstrated. The other policies that would be engaged by an application for planning permission for a replacement dwelling would be adequate to ensure proper control over its design, relationship to site and surroundings, and other matters of legitimate public interest.

If a separate policy is found to be justified, UDC has not identified any proper public interest objective that would be left inadequately protected by the alternative form of words that we have proposed.

**Jeremy and Fiona Brittenden
9 August 2018**

Appendix 1: Objection prepared on our behalf by Counsel Hereward Phillpot QC on 29 August 2017

Appendix 2: 2014 Email exchanges between the Brittendens and Uttlesford District Council