

UTTLESFORD LOCAL PLAN

OBJECTION TO DRAFT POLICY H4 – HOUSING EXTENSIONS AND REPLACEMENT DWELLINGS IN THE COUNTRYSIDE AND THE GREEN BELT

Introduction

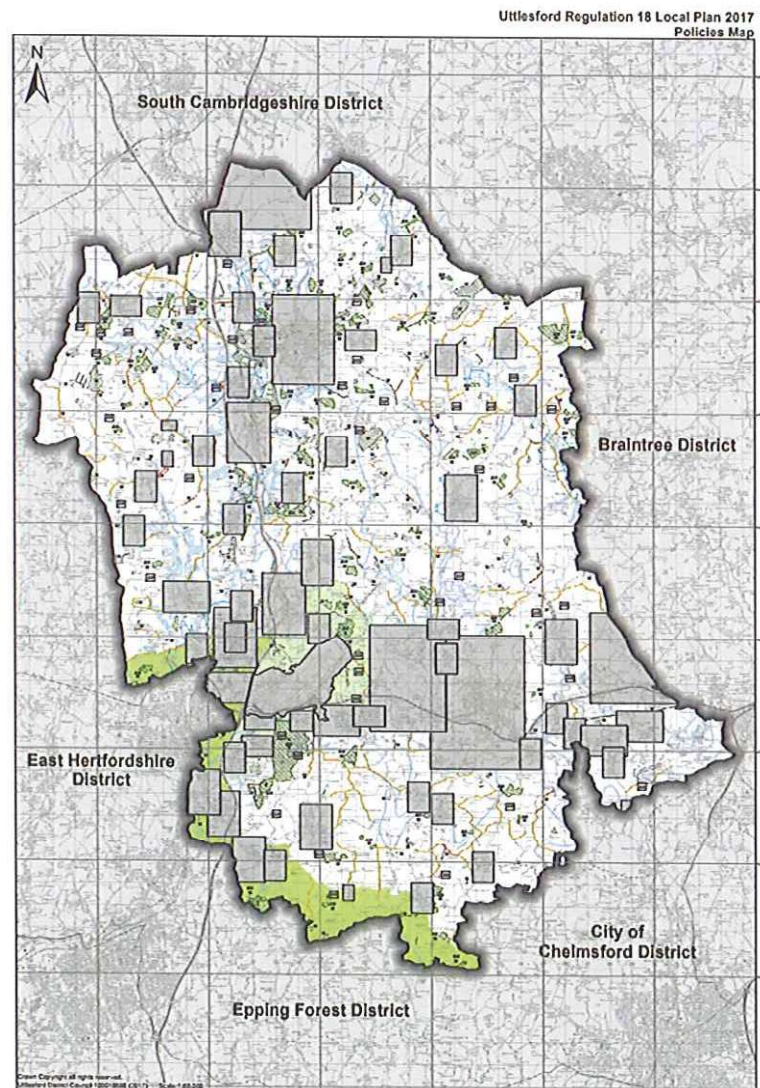
1. This written objection to draft **Policy H4 – Housing Extensions and Replacement Dwellings in the Countryside and the Greenbelt** has been prepared on behalf of Mr and Mrs Brittenden, who live in Bush End, a small rural hamlet within Uttlesford District Council’s administrative area. Bush End is located outside the Green Belt and the Countryside Protection Zone.
2. Mr and Mrs Brittenden wish to demolish their existing dwelling and ancillary buildings, and replace them with a new more efficient and sustainable dwelling in order to accommodate their family. They commissioned a leading architectural firm to draw up the designs for such a dwelling, and to prepare an application for planning permission. The design of the proposed replacement dwelling evolved through a rigorous process of assessment and design review by Design South East and consequent revision to address their comments, and to lead them to conclude that the design was of such a high quality that it passed the “exceptional quality” test in paragraph 55 of the NPPF. The proposed replacement dwelling is significantly larger than the existing dwelling on site.
3. On 28 April 2017 Uttlesford District Council (“UDC”) granted detailed planning permission for the proposed development (“the 2017 permission”), pursuant to a delegated decision. In explaining why it was appropriate to grant planning permission the delegated decision report stated, inter alia that:
 - The design is truly outstanding, helping to raise the standards of design more generally in rural areas. It reflects the highest standards in architecture, significantly enhances its immediate setting and is sensitive to the defining characteristics of the local area.
 - By reference to adopted Local Plan policies, the proposal represents an enhancement to its immediate and wider setting, in accordance with policies S7, GEN2, ENV9 and H7. Taking into account the comments of Historic England, it is concluded that there would be no adverse effect on the setting of nearby listed buildings, in accordance with Policy NV2.

- The NPPF states that great weight should be given to outstanding designs, but the proposed design achieves more than this by passing the 'exceptional quality' test.
4. A copy of the delegated decision report, the grant of planning permission and certain key application documents (Planning Statement, Design and Access Statement and approved plans) are included with this representation in CD format as **Appendix 1**. The Planning Application and Decision are also available to view at uttlesford.gov.uk (Application ref UTT/17/0546/FUL).
 5. It is Mr and Mrs Brittenden's intention to implement the 2017 permission, but prudently they recognise the possibility that in due course some change or changes may need to be made to the approved design, either before or during implementation. If that does turn out to be the case (as often happens), a further grant of planning permission will be necessary. They therefore have a clear and genuine interest in the terms of those draft policies in the emerging plan that would apply to the proposed development if a further grant of planning permission is needed.
 6. Draft Policy H4 would apply to any such application, and Mr and Mrs Brittenden are rightly concerned that as drafted it would represent a potential obstacle to any further grant of planning permission for the development that they wish to undertake. That is the case notwithstanding the obvious and substantial merits of that development, as reflected in the decision to grant the 2017 permission.
 7. The draft policy is demonstrably unsound. As drafted, it is not positively prepared, and is not 'justified' in that it does not represent the most appropriate policy when considered against the reasonable alternatives. Nor is it consistent with national policy.
 8. The essential difficulty with draft Policy H4 is that it is over-prescriptive, going further than is necessary to ensure that replacement dwellings are permitted only where they comprise sustainable development suitable for their context, and it would serve unduly to restrict well-designed and innovative development in circumstances where no harm would arise.
 9. This difficulty is reflected in, and compounded by, the fact that draft policy H4 applies to all areas of the 'Countryside', development restrictions which exceed those appropriate to Green Belt land only.

10. It does this through:

- Draft Policy SP10 which defines 'Countryside' as comprising (1) Metropolitan Green Belt (2) London Stansted Airport Countryside Protection Zone and (3) Countryside beyond both the Green Belt and the Countryside Protection Zone; and
- Draft policy H4 which serves to restrict the size of extensions or replacement dwellings by reference to that of the existing dwelling, within all areas of the Countryside.

11. The draft Policies Map (below) shows that Uttlesford District has extensive areas of Countryside (within the rural areas generally shown as white background on the Map), of which the Green Belt area is shaded lime green and the Countryside Protection Zone is shaded light green. The rest of the white background areas largely comprise Countryside beyond both the Green Belt and the Countryside Protection Zone.



Uttlesford Regulation 18 Local Plan 2017
Policies Key

Boundaries						
	District Boundary		Existing Employment Sites		Protected Open Space	
	Inset Map Boundary		Site of Special Scientific Interest (SSSI)		Poor Air Quality Zone	
Proposals				National Nature Reserve		Air Quality Management Zone
	Allocated Residential Sites		Local Wildlife Site		Source Protection Zone 1	
	Uttlesford Garden Community		Ancient Woodland		Source Protection Zone 2	
	Braintree Garden Community		Important Woodland		Source Protection Zone 3	
	Proposed Employment Sites		Special Verges		Conservation Area	
	Education Site		Ancient Monument		Stansted Airport Development	
	Community Education Site		Historic Parks & Gardens		Mineral Safeguarding Site	
	Allocated Green Space Sites		Protected Lanes		Landscaped Areas	
	Development Opportunity Areas		Town/Local Centre Boundary		Public Safety Zone 1:10,000 risk	
Policy Areas				Primary Shop Frontages		Public Safety Zone 1:100,000 risk
	Development Limits		Secondary Shop Frontages		Mobile Home Park	
	Countryside Protection Zone		Metropolitan Green Belt		Geological Sites	

12. A preliminary question arises as to whether draft Policy H4 is needed at all in relation sites beyond the Green Belt and Countryside Protection Zone, and whether its scope exceeds what is necessary. If an application is submitted for development involving a replacement dwelling, the following design policies would apply and need to be satisfied:

- Policy D1: High Quality Design. This policy sets design criteria that must be met by any new development in order to ensure that it contributes to the creation of high quality places through a design-led approach underpinned by good design principles and reflecting a thorough site appraisal.
- Policy 5: Design Review (if the site is important and or in a sensitive location). Where this policy applies the Council will refer schemes to the East of England Design Review Panel, and the final scheme as submitted should include a report on the design review process and how the scheme responded to this.

13. Assuming that the requirements of those policies (and in particular Policy H4) are satisfied, it is entirely unclear why it should then be necessary in the public interest to satisfy any additional design criteria simply because the proposed dwelling is replacing an existing one. Unless UDC is able to demonstrate a need for a specific policy separately regulating replacement dwellings outside the Green Belt and Countryside Protection Zone, draft Policy H4 should be confined in its application to sites within those areas. If it is judged that a separate policy applying outside of those areas is required, the design criteria its sets should be no more onerous than those which would apply to a completely new dwelling. If any

additional criteria are set, they must be clear, fully justified and not such as to lead to uncertainty in application.

14. Draft Policy H4 is demonstrably unsound, and requires substantial amendment because:

(a) it is not consistent with national policy: Paragraph 89 of the NPPF restricts size of extension or replacement dwelling by reference to that of the existing dwelling, only in Green Belt areas.

(b) it is 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. It would serve to restrict well-designed and innovative development in circumstances where no material planning harm would arise.

(c) it is not positively prepared: On 20 November 2014, at the Examination of the 2014 proposed Local Plan, the Brittenden's Objection to draft Policy HO6 – Replacement Dwellings in the Countryside (relevant documents attached as **Appendix 2**), was discussed by the Examiner with the Brittendens and the Council. The Examiner commented that limiting a replacement dwelling to the existing footprint is another way of limiting scale, and is unduly prescriptive. He asked the parties to attempt to agree alternative wording for the policy. The subsequent email exchanges between the Council and the Brittendens are attached as **appendix 3**. Mr and Mrs Brittenden are understandably aggrieved that having decided as individual householders to participate constructively in the earlier plan-preparation process (at considerable cost in terms of time, effort and expenditure on advice), and having clearly persuaded the then Examiner of the need for the policy to change, UDC has now prepared a revised draft policy that displays essentially the same flawed approach.

15. Draft Policy H4 is not 'justified' in that it does not represent the most appropriate policy when considered against the reasonable alternatives.

16. It is the Brittenden's primary submission that the need for a separate policy setting additional design criteria for replacement dwellings on sites outside the Green Belt and Countryside Protection Zone has not been demonstrated, and therefore Policy H4 is unsound. They take

no position as to whether a separate policy dealing with house extensions is required, because that does not directly affect them in the same way.

17. In the alternative, if it is demonstrated that the policy dealing with replacement dwellings should apply to sites outside the Green Belt and Countryside Protection Zone, a preferable alternative policy is proposed which would separate development controls into:
 - (a) those applicable to extensions or replacement dwellings within the Countryside beyond both the Green Belt or the Countryside Protection Zone. This would contain fewer and less prescriptive criteria which are aligned to the NPPF, NPPG and consistent with draft Policies SP10, C1, D; and
 - (b) those applicable to extensions or replacement dwellings within the Countryside within both the Green Belt and the Countryside Protection Zone. This would contain criteria aligned to para 89 of the NPPF.

National Planning Policy Context

The NPPF

18. The Ministerial foreword to the NPPF stresses that sustainable development is about change for the better, encouraging creative excellence and positive growth.
19. That is reflected in the guidance contained within the NPPF itself, which explains that pursuing sustainable development involves seeking positive improvements in the quality of the built environment, replacing poor design with better design, and widening the choice of high quality homes.
20. Of particular relevance to draft policy H4 are the second and fourth of the core land-use planning principles, namely that planning should:
 - a. not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives; and

- b. always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
21. The Government attaches great importance to the design of the built environment. This is reflected in the design policies at paragraphs 56 to 68 of the NPPF. Whilst those paragraphs must be read together as a whole, the following guidance is of particular relevance to the consideration of draft Policy H4:
- a. Design policies in Local Plans should be based on stated objectives for the future of the area and an understanding and evaluation of its defining characteristics.
 - b. Such 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.
 - c. 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.
 - d. 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.
 - e. 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.

The NPPG

22. The NPPG on Design provides much in the way of helpful guidance, with which the eventual policy on replacement dwellings must be consistent.

23. It explains that achieving good design is about creating buildings that work for everyone, look good, last well, and will adapt to the needs of future generations. Good design puts land, water, drainage, energy, community, economic and other such resources to the best possible use over the long term.
24. Paragraph 4 explains that great weight should be given to outstanding or innovative designs which help to raise the standard of design more generally in the area. It also reinforces the clear guidance in the NPPF that planning permission should not be refused for buildings that promote high levels of sustainability because of concerns about incompatibility with an existing townscape, if those concerns have been mitigated by good design.
25. The NPPG reflects the guidance in the NPPF on the promotion of local character, and the importance of not using this to prevent or discourage appropriate innovation.
26. In addition, however, the NPPG adds the important point that local distinctiveness is not solely about the built environment – it also reflects, amongst other things, its potential for change.
27. Specific guidance on the consideration of scale is provided at paragraph 26. It is explained that decisions on building size and mass, and the scale of open spaces around and between them, will influence the character, functioning and efficiency of an area. Importantly, it recognises that under-development of a site is no less unsustainable than over-development:

“Too little [building mass compared to open space] and neither land as a resource or monetary investment will be put to best use”.

28. It also identifies the matters which may be affected by the size of individual buildings and their elements: overshadowing and overlooking of others; local character; skylines; and vistas and views. The scale of building elements should be both attractive and functional when viewed and used from neighbouring streets, gardens and parks.
29. In the light of that guidance, policies which seek to restrict the scale of extensions and replacement dwellings in ways which are not justified by reference to those matters should be regarded as unnecessarily prescriptive.

Draft Policy H4

The Draft Policy

30. Draft policy H4 is headed 'House Extensions and Replacement Dwellings in the Countryside and the Green Belt'. As presently drafted, a proposal to extend or replace an existing dwelling anywhere in the Countryside (regardless of whether it is within the Green Belt or not), would only be in accordance with draft policy H4 if it satisfied each of its criteria:

- the proposal would not result in a disproportionately large increase in the height or scale of the original dwelling; and
- the proposal 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.
- In addition to the above criteria a replacement dwelling will be permitted provided that the proposed dwelling is on the footprint of the existing dwelling unless the applicant can demonstrate why the dwelling would be best located elsewhere on the plot.
- In determining what constitutes 'disproportionately large increase', 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.

31. Taking each criterion in turn:

a. *"The proposal would not result in a disproportionately large increase in the height or scale of the original dwelling".*

- a. The essential flaw in this criterion is that it starts from the implicit assumption that the existing dwelling will always (or at least generally) be of an appropriate height or scale in the context of the site and surroundings, and is thus an appropriate yardstick against which to measure the appropriateness of the height or scale of its replacement.

There is no logical basis for making that assumption, and no evidence that it is justified either in this district or more generally.

- b. The addition of an explanation of what will be taken into account in judging what constitutes a 'disproportionately large increase' does not address that essential flaw, and indeed in some respects it compounds it.
 - i. *The size of the existing dwelling.* Given that what is being assessed pursuant to this criterion is whether the proposal is disproportionately large by reference to the existing dwelling, this element of the explanation does not take matters any further.
 - ii. *The extent to which it has previously been extended or could be extended under PD rights.* There is no explanation as to why this is relevant or even whether this will tend to support a larger replacement dwelling or make it less likely that a larger replacement would be appropriate. Logically it should not be used as an indication either way, because what ultimately matters is whether the replacement dwelling is appropriate in size and scale having regard to the site and surroundings. If it is, the fact that the building it replaces has or has not been extended in the past does not and could not alter that conclusion.
 - iii. *The character of the area.* Whilst the issue of whether the size of the replacement dwelling is appropriate to the character of the area is an appropriate and sensible criterion, it has no necessary connection with the size of the *original* dwelling. Thus a criterion which provided that the height and scale of a replacement dwelling must be appropriate to and compatible with the character of the surrounding area would in itself be unobjectionable, but for the reasons set out above the issue should not be confused by linking it to a comparison with the size of the original dwelling.
- b. *"The proposal 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".*
 - i. This criterion creates uncertainty and unnecessary prescription by seeking to bundle together a Green Belt criterion ("not materially

increase the impact ... on the openness of the Green Belt”) with a poorly drafted and unclear general countryside criterion (“not materially increase the impact on the appearance of the surrounding countryside”). It is not at all clear what is meant by an increase in the impact “on the appearance of the surrounding countryside”. Would this be breached simply by reason of increased visibility of the dwelling from the surrounding countryside, regardless of whether this caused harm?

- ii. The reference at the end of the criterion to impact “through excessive scale, bulk or visual intrusion” simply brings one back to the question of what is “excessive” and how is it to be measured?
 - iii. It underlines the recurring issue that insofar as this part of the draft policy is meant to do no more than reflect the requirements of draft Policy D1 that relate to scale and height, it is unnecessary. Insofar as it seeks to go further and be more prescriptive simply because the new dwelling will replace an existing one it is entirely unjustified – and logically unjustifiable.
 - iv. Furthermore, in addition to the need to satisfy the requirements of draft policy D1, the protection of countryside character is already adequately addressed by draft policies SP10 (Protection of the Countryside), C1 (Protection of Landscape Character) and the other relevant policies in section D (Design), which would also fall to be applied by the local authority when considering proposals for replacement dwellings (see further below).
- c. *“In addition to the above criteria a replacement dwelling will be permitted provided that the proposed dwelling is on the footprint of the existing dwelling unless the applicant can demonstrate why the dwelling would be best located elsewhere on the plot”.*
- i. The starting point identified in this criterion (i.e. that the replacement dwelling should normally be located on the footprint of the existing dwelling) makes two assumptions about what would be appropriate, neither of which is justified or in accordance with national policy.

1. It assumes that the replacement dwelling will not be materially larger than the existing. The caveat regarding locating the dwelling “elsewhere on the plot” necessarily presupposes that the reason the proposed footprint does not follow the existing is because the dwelling is in a different location, and not because it is larger. For the reasons set out above, it is inappropriate for the policy to include either an explicit or implicit assumption that replacement dwellings should normally be of the same size and scale as those they replace.

2. It assumes that the replacement dwelling will also be essentially the same shape as the existing dwelling. There is no explanation as to why this is assumed to be an appropriate design response in all (or even most) cases, whatever the age, shape or design quality of the existing dwelling, and the extent to which it continues to provide suitable and efficient accommodation to meet contemporary needs in an efficient and sustainable fashion.

ii. This criterion serves to achieve no separate public interest objective to those which would be covered by the simplified and less prescriptive alternative policy set out below. If a replacement dwelling results in an improved contribution to the character and appearance of the surrounding area, is in scale and character with properties in the local area, and is not harmful to the landscape by reason of its size, scale, setting or design, what proper planning objective would be served by making it contrary to development plan policy simply because it does not follow the footprint of the existing dwelling?

iii. In the premises, this criterion is unjustified, unduly prescriptive and contrary to national planning policy.

32. These criteria are more restrictive than those contained in paragraph 89 of the NPPF applicable to Green Belt land. In particular the expectation that any replacement dwelling

will be on the footprint of the existing dwelling, is more prescriptive than paragraph 89 which provides:

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

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

33. These criteria are applied by the draft policy to all areas of Countryside including those extensive areas of Countryside which are beyond both the Green Belt and the Countryside Protection Zone.
34. So, for example, a replacement dwelling within the Countryside beyond both the Green Belt and the Countryside Protection Zone which would result in a visual improvement to the site and surrounding area, and is not harmful to the landscape by reason of its size, scale, setting or design, would nevertheless seem to be in breach of the policy if it happened to be materially larger than the one it is replacing. That would be the case, even if the smaller scale of the existing dwelling was out of keeping with the surrounding area and a materially larger replacement would be a better fit with (and even enhance) existing local character and local distinctiveness.
35. In circumstances such as those, where it would plainly be inappropriate (indeed wholly unreasonable) to refuse planning permission on grounds of scale, an applicant for planning permission would nevertheless have to rely on ‘other material considerations’ to seek to justify the proposed replacement dwelling as a departure from the development plan. That is not an appropriate way in which to plan to achieve sustainable development, and demonstrates the over-prescriptive and inflexible nature of the current draft Policy.

The relationship between draft Policy H4 and other related draft policies

36. In considering the degree to which draft Policy H4 seeks to prescribe the appropriate scale of extensions and replacement dwellings in the Countryside, it is also important to consider the effect of related policies which would apply to any proposed development, in addition to draft Policy H4. This is relevant when considering the extent to which draft Policy H4 needs to reproduce (let alone go beyond) the general design criteria found in the related policies.

Draft Policy SP10 – Protection of the Countryside

37. Draft Policy SP10 requires no more than that:

“Proposals for development need to take into account the landscape’s key characteristics, features and sensitivities to change in accordance with Policy C1”

Draft Policy C1 – Protection of Landscape Character

38. On the issue of overall scale, draft Policy C1 requires no more than that:

- *“No material harm is caused to the historic settlement pattern, especially scale and density, and that it uses materials and colours that complement the landscape setting and landscape character. Such development should be well integrated with the surrounding landscape;”*

Draft Policy D1 – High Quality Design

39. On the issue of overall scale, draft Policy D1 requires no more than that:

“Proposals for new development should seek to optimise the capacity of the site by responding appropriately to the scale, character and grain of the existing built form. Proposals should also demonstrate how they respond to the landscape, local and longer-views, the environment and historic assets.”

It is very hard to see why any greater degree of prescription is justified in the case of extensions and replacement dwellings within the Countryside which are outside the Green Belt and/or the Countryside Protection Zone. At most, the relevant criterion should follow the same approach as draft policies SP10, C1 and D1. The most appropriate and clearest approach must be to avoid unnecessary duplication in the policies, and thereby reduce the scope for uncertainty as to what is required and the approach that will be taken to determining the acceptability of the design of proposed dwellings.

40. In considering the degree to which draft Policy H4 seeks to prescribe the appropriate scale of replacement dwellings in the Countryside which are outside the Green Belt and/or the Countryside Protection Zone, it is also relevant to consider the degree of prescription applied to development proposals within other designated rural areas.

Draft Policy EN2 – Design of Development within Conservation Areas

41. Draft Policy EN2 requires no more than that:

- *There is no detrimental visual impact...*
- *It does not damage key views...*

On the matter of scale, draft Policy H4 exceeds draft Policy EN2 in its degree of prescription. A greater degree of prescription for replacement dwellings in the Countryside which are outside the Green Belt and/or the Countryside Protection Zone, than for development in Conservation Areas, is clearly not justified.

Alternative proposed policy

42. As set out above, Mr and Mrs Brittenden's primary position is that there is no need for a separate policy to address replacement dwellings in the countryside beyond the Green Belt and Countryside Protection Zone. Provided that such proposed dwellings satisfy the requirements of the other applicable policies identified above, they should be judged acceptable. Indeed it is impossible to conceive of circumstances in which a proposed dwelling that did satisfy all of those requirements should nevertheless be held to be unacceptable simply by reference to the scale of the building it would replace.

43. In the alternative, if some separate policy for such replacement dwellings is demonstrated to be justified, the objections to the current form of draft Policy H4 could all be overcome by adopting an alternative in the terms set out below:

"Policy H4

- (a) House Extensions and Replacement Dwellings in areas of the Countryside beyond both the Green Belt and the Countryside Protection Zone.

Proposals to extend or replace existing dwellings within areas of the Countryside which are beyond both the Green Belt and the Countryside Protection Zone will be permitted provided that the scale, form, massing and height of the proposed extension or replacement dwelling is appropriate to the local context of the site and to the character of the surrounding landscape.

If the proposed replacement dwelling is not on the footprint of the original, the existing house will be required to be demolished within a month of the first occupation of the new house. In order to make sure that the new dwelling remains of a size appropriate to the local context of the site and to the character of the surrounding landscape, permitted development rights may be removed.

- (b) House Extensions and Replacement Dwellings in areas of the Countryside within both the Green Belt and the Countryside Protection Zone.

Proposals to extend or replace existing dwellings within areas of the Countryside which are within both the Green Belt and the Countryside Protection Zone will be permitted provided that:

- The extension or alteration of a building does not result in disproportionate additions over and above the size of the original building;
- The replacement building is in the same use and not materially larger than the one it replaces. "

Conclusion

44. Draft Policy H4 as currently drafted is demonstrably unsound, and should be revised as suggested above.

HEREWARD PHILLPOT QC

**Francis Taylor Buildings
Inner Temple
London EC4Y 7BY
29 August 2017**

Appendix 1.

CD containing key Planning Application documents (Design and Access Statement, Planning Statement, Drawings, Delegated Officer Report Recommendation, Permission)

Appendix 2.

Objection to draft Policy HO6 of the 2014 Proposed Plan

UTTLESFORD LOCAL PLAN

OBJECTION TO DRAFT POLICY HO6 - REPLACEMENT DWELLINGS IN THE COUNTRYSIDE

Introduction

1. This written objection to **draft Policy HO6 - Replacement Dwellings in the Countryside** has been prepared on behalf of Mr and Mrs Brittenden, who live in Bush End, a small rural hamlet within Uttlesford District Council's administrative area.
2. Mr and Mrs Brittenden are working with a leading architectural firm to prepare an application for planning permission for an efficient and sustainable replacement for their existing dwelling, in the context of the equivalent existing policy (H7 - Replacement Dwellings) in the extant Uttlesford Local Plan, the National Planning Policy Framework (NPPF) and the National Planning Policy Guidance (NPPG). They therefore have a direct and legitimate interest in the emerging draft replacement policy.
3. Draft Policy HO6 is demonstrably unsound, and requires substantial amendment. As drafted, it is not positively prepared, and it is not 'justified' in that it does not represent the most appropriate policy when considered against the reasonable alternatives. Nor is it consistent with national policy.
4. The essential difficulty with the draft policy is that it is over-prescriptive, going further than is necessary to ensure that replacement dwellings are permitted only where they comprise sustainable development suitable for their context, and it would serve to restrict well-designed and innovative development in circumstances where no material planning harm would arise.
5. A preferable alternative policy is proposed which would be simpler, with fewer and less prescriptive criteria, and would ensure that any replacement dwellings would be sustainable, in keeping with their surroundings and of a high design quality.

National planning policy context

The NPPF

6. The Ministerial foreword to the NPPF stresses that sustainable development is about change for the better, encouraging creative excellence and positive growth.

7. That is reflected in the guidance contained within the NPPF itself, which explains that pursuing sustainable development involves seeking positive improvements in the quality of the built environment, replacing poor design with better design, and widening the choice of high quality homes¹.
8. Of particular relevance to draft Policy HO6 are the second and fourth of the core land-use planning principles, namely that planning should:
 - a. not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives²; and
 - b. always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings³.
9. The Government attaches great importance to the design of the built environment⁴. This is reflected in the design policies at paragraphs 56 to 68 of the NPPF. Whilst those paragraphs must be read together as a whole, the following guidance is of particular relevance to the consideration of draft Policy HO6:
 - a. Design policies in Local Plans should be based on stated objectives for the future of the area and an understanding and evaluation of its defining characteristics⁵.
 - b. Such policies should optimise the potential of a site to accommodate development, and respond to local character and identity while not preventing or discouraging appropriate innovation⁶.
 - c. 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 generally⁷.

¹ Paragraph 9

² Paragraph 17, 2nd bullet point

³ Paragraph 7, 4th bullet point

⁴ Paragraph 56

⁵ Paragraph 58

⁶ Paragraph 58

⁷ Paragraph 59

- d. Whilst it is proper to seek to promote or reinforce local distinctiveness, planning policies should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles⁸.
- e. 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 design⁹.

The NPPG

- 10. The NPPG on Design provides much in the way of helpful guidance, with which the eventual policy on replacement dwellings must be consistent.
- 11. It explains that achieving good design is about creating buildings that work for everyone, look good, last well, and will adapt to the needs of future generations. Good design puts land, water, drainage, energy, community, economic and other such resources to the best possible use over the long term¹⁰.
- 12. Paragraph 4 explains that great weight should be given to outstanding or innovative designs which help to raise the standard of design more generally in the area. It also reinforces the clear guidance in the NPPF that planning permission should not be refused for buildings that promote high levels of sustainability because of concerns about incompatibility with an existing townscape, if those concerns have been mitigated by good design.
- 13. The NPPG reflects the guidance in the NPPF on the promotion of local character, and the importance of not using this to prevent or discourage appropriate innovation¹¹.
- 14. In addition, however, the NPPG adds the important point that local distinctiveness is not solely about the built environment - it also reflects, amongst other things, its potential for change¹².
- 15. Specific guidance on the consideration of scale is provided at paragraph 26. It is explained that decisions on building size and mass, and the scale of open spaces around and between them, will influence the character, functioning and efficiency of an area. Importantly, it

⁸ Paragraph 60

⁹ Paragraph 65

¹⁰ Paragraph 1

¹¹ Paragraph 7

¹² Paragraph 20

recognizes that under-development of a site is no less unsustainable than over-development:

"Too little [building mass compared with open space] and neither land as a resource or monetary investment will be put to best use".

16. It also identifies the matters which may be affected by the size of individual buildings and their elements: overshadowing and overlooking of others; local character; skylines; and vistas and views. The scale of building elements should be both attractive and functional when viewed and used from neighbouring streets, gardens and parks.
17. In the light of that guidance, policies which seek to restrict the scale of replacement dwellings in ways which are not justified by reference to those matters should be regarded as unnecessarily prescriptive.

Draft policy HO6

The overall approach

18. As presently drafted, a proposal to replace an existing dwelling would only be in accordance with draft policy HO6 if it satisfied each one of its five criteria.
19. No flexibility has been incorporated in the policy or supporting text so as to cater for circumstances where some but not all of the criteria are met. So, for example, a replacement dwelling which would result in a visual improvement to the site and surrounding area¹³, and is not harmful to the landscape by reason of its size, scale, setting or design, would nevertheless be in breach of the policy if it happened to be materially larger than the one it is replacing¹⁴. That would be the case, even if the smaller scale of the existing dwelling was out of keeping with the surrounding area and a materially larger replacement would be a better fit with existing local character and local distinctiveness.
20. In circumstances such as those, where it would plainly be inappropriate (indeed wholly unreasonable) to refuse planning permission on grounds of scale, an applicant for planning permission would nevertheless have to rely on 'other material considerations' to seek to justify the proposed replacement dwelling as a departure from the development plan. That is not an appropriate way in which to plan to achieve sustainable development, and

¹³ Criterion b.

¹⁴ Criterion d

demonstrates the over-prescriptive and inflexible nature of the current draft. If (contrary to this objection) it is decided to retain the existing proposed criteria, the policy would need to be re-drafted so as to make it clear that it is not necessary to satisfy each criterion in every case.

21. Of course, a far preferable approach, and the one that is reflected in the alternative draft policy below, would be to simplify the criteria and limit them to those which are justified and would not impose unduly prescriptive requirements.

The draft criteria

22. The legitimate public interest objectives to which draft Policy HO6 is directed could be appropriately and comprehensively addressed by the retention of suitably modified versions of existing draft criteria b. and e., and the addition of a further criterion that the replacement dwelling should promote high levels of sustainability. Such an approach would accord with the national guidance summarised above, in that it would promote and secure good and highly sustainable design, and the protection and enhancement of local distinctiveness. Moreover, it would achieve this in a way that was not unduly prescriptive, and did not discourage or prevent appropriate innovation.
23. The other three criteria are not justified, and run contrary to national policy.

Criterion a: the existing property does not make a positive contribution to the local character of the area

24. Criterion a. is rendered unnecessary by criterion b. If the replacement dwelling is of a sufficiently high standard of design that it would result in an *improvement* to the site and the surrounding area, then the fact that the existing property makes a positive contribution cannot in itself be a legitimate objection to its replacement.
25. Draft Policy HO6 is not concerned with buildings that are located in conservation areas, or have otherwise been singled out for particular policy protection because of their architectural or historic interest. In effect, however, criterion a. is no different from the prohibition in draft Policy HE1 - Design of Development within Conservation Areas:

"Development involving the demolition of a structure which positively contributes to the character and appearance of the area will not be permitted".

There is no justification for providing an equivalent level of protection to all buildings in the countryside which make a positive contribution to local character, no matter what the qualities of the proposed replacement. To do so would act as an unwarranted brake on sustainable development which would make a positive improvement in the quality of the built environment, preventing or discouraging appropriate innovation. It is thus contrary to national planning policy.

26. Any planning harm arising from a proposal to remove a dwelling which makes a positive contribution to local character would necessarily be outweighed by the planning benefits associated with its replacement by one that would make a greater positive contribution.
27. The wording of criterion b. could usefully be revised to make it clearer that it is dealing with improvements to character and/or appearance of the site and the surrounding area, and this is proposed in the alternative form of the draft policy set out below. In any event, there can be no doubt that the addition of criterion a. is unjustified, unduly prescriptive and restrictive of good innovative high quality design. In short, if the replacement dwelling is an improvement over the existing position, why should the policy presume that planning permission ought to be refused?

Criterion c: the proposed dwelling follows the footprint of the existing dwelling unless the applicant can demonstrate why the dwelling would be best located elsewhere on the plot

28. Criterion c. as drafted makes two assumptions about what would be appropriate in a replacement dwelling, neither of which is justified or in accordance with national planning policy.
 - a. It assumes that the replacement dwelling will not be materially larger than the existing. The caveat regarding locating the dwelling 'elsewhere on the plot' necessarily presupposes that the reason the proposed footprint does not follow the existing is because the dwelling is in a different location, and not because it is larger. In this respect criterion c. only makes any sense if criterion d. is retained. For the reasons set out below, that would be entirely inappropriate and contrary to national planning policy.
 - b. It assumes that the replacement dwelling will also be essentially the same shape as the existing dwelling. There is no explanation as to why this is assumed to be an appropriate design response in all (or even most) cases, whatever the age, shape or

design quality of the existing dwelling, and the extent to which it continues to provide suitable and efficient accommodation to meet contemporary needs in an efficient and sustainable fashion.

29. As with criterion a., criterion c. serves to achieve no separate public interest objective to those which would be covered by the simplified and less prescriptive alternative policy set out below. If a replacement dwelling results in an improved contribution to the character and appearance of the surrounding area, is in scale and character with properties in the local area, and is not harmful to the landscape by reason of its size, scale, setting or design, what planning objective would be served by making it contrary to the development plan simply because it does not '*follow the footprint*' of the existing dwelling?
30. In the premises, criterion c. is unjustified, unduly prescriptive and contrary to national planning policy.

Criterion d.: the proposed dwelling is not materially larger than the one it is replacing

31. The same essential question arises with criterion d.: if a replacement dwelling results in an improved contribution to the character and appearance of the surrounding area, and is of a scale, form, massing and height which is appropriate to the local context of the site and to the character of the surrounding landscape, what planning objective would be served by making it contrary to the development plan simply because it is '*materially larger*' than the one it is replacing?
32. As with criterion c., this criterion is based on an important but unspoken assumption, namely that the scale of the existing dwelling will always (or at least generally) be in keeping with the scale of all other relevant properties in the local area. There is no possible justification for such an assumption, which introduces a wholly unnecessary degree of inflexibility and prescription to the policy.
33. Further and in any event, even if an existing dwelling is in keeping with the scale and character of *some* properties in the local area, the same could equally be true of a materially larger dwelling. Many rural areas will feature a variety of building sizes, and indeed it is unlikely that buildings in rural areas will exhibit the regularity of scale that might be found in some urban areas. Thus more than one scale of building might very well be capable of reflecting what is found in properties in the local area. As a consequence, a criterion which seeks to determine the acceptability of scale simply by asking whether what is proposed is

materially larger than what exists is inappropriate and contrary to national planning policy because it is unduly prescriptive and restrictive of positive change, and unjustified.

34. In the premises, criterion c. is unjustified, unduly prescriptive and contrary to national planning policy.

The relationship between draft Policy HO6 and other related draft policies

35. In considering the degree to which draft policy HO6 seeks to prescribe the appropriate scale of replacement dwellings, it is also important to consider the effect of related policies.

Draft Policy DES1 - Design

36. Draft Policy DES 1 would apply to any proposed replacement dwelling, in addition to draft Policy HO6. This is relevant when considering the extent to which draft Policy HO6 needs to reproduce (let alone go beyond) the general design criteria found in draft Policy DES1.
37. On the issue of overall scale, draft Policy DES 1 requires no more than that the density, scale, form, massing and height of a development:

"must be appropriate to the local context of the site, and to the character of the surrounding streetscape/landscape".

It is very hard to see why any greater degree of prescription is justified in the case of replacement dwellings. At most, the relevant criterion should follow the same approach.

38. Given that DES1 would apply in any event, there is perhaps no need for a separate criterion within draft Policy HO6 covering the same matters. Whilst an appropriate criterion has been included in the alternative policy set out below for the avoidance of doubt, this could be omitted and addressed by means of a cross-reference in the supporting text to the need also to satisfy the requirements of Policy DES1.

Draft Policy HO4 - Residential Extensions

39. In considering whether the prescriptive approach to scale in the current draft Policy HO6 is justified, it is relevant to consider what would be considered acceptable in policy terms if the owner of an existing dwelling sought to extend rather than replace it.
40. There is (of course) no policy presumption against making an existing dwelling materially larger through extensions. The scale of the extension simply has to "respect" the scale of

the existing dwelling, avoid over-development of the site, avoid certain harmful effects on neighbouring properties, and avoid a detrimental impact on the overall character of the street scene. Providing that those potential harms are avoided (which will depend on the size, nature and location of the site, and the scale and character of properties in the local area), there is no other restriction on the scale of extension that could potentially be consistent with the draft policy.

41. That is as it should be, because any greater level of prescription would be unjustified. However, it begs the obvious question of why the same end result - in terms of scale - should be treated as unacceptable in policy terms simply because it is reached by means of a well-designed replacement rather than an extension. There is no legitimate public interest served by treating the two differently, and no justification in national policy or otherwise for doing so.

Alternative proposed policy

42. The objections to the current form of draft Policy HO6 could all be overcome by adopting an alternative in the terms set out below:

"Policy HO6 - Replacement dwellings in the Countryside

The replacement of existing dwellings will be permitted providing the following criteria are met:

- a. the replacement will result in an improvement to the character and appearance of the site and surrounding area;**
- b. the scale, form, massing and height of the replacement is appropriate to the local context of the site and to the character of the surrounding landscape; and**
- c. the design of the replacement promotes high levels of sustainability.**

If the proposed new dwelling is not on the footprint of the original, the existing house will be required to be demolished within a month of the first occupation of the new house. In order to make sure that the new dwelling remains of a size that is appropriate to the local context of the site and to the character of the surrounding landscape, permitted development rights may be removed."

Conclusions

43. Draft Policy HO6 as currently drafted is demonstrably unsound, and should be revised as suggested above.

Francis Taylor Building
Inner Temple
London EC4Y 7BY

HEREWARD PHILLPOT

16 May 2014

Appendix 3.

November 2014 email exchanges between Uttlesford District Council and the Brittendens

Subject: Uttlesford Local Plan - Potential changes to Policy H06

Dear Mr and Mrs Brittenden

Further to the discussion today the Inspector requested that we discuss this issue with you.

Our Hearing Statement suggests the following change to the policy:

11.25 In certain circumstances the provision of replacement dwellings in the countryside will be acceptable. **Replacement dwellings need to respect the footprint and size of the existing dwelling so not as to introduce an unacceptably large dwelling where once a small subservient dwelling stood.** ~~These are set out in the policy below together with the criteria that will need to be complied with and the requirements that will be placed upon the grant of any planning permission.~~

Policy HO6 - Replacement dwellings in the Countryside

The replacement of existing dwellings will be permitted providing the following criteria are met:

- ~~a) the existing property does not make a positive contribution to the local character of the area;~~
- ~~b) the replacement will result in a visual improvement to the site and the surrounding area;~~
- c) the proposed dwelling follows the footprint of the existing dwelling unless the applicant can demonstrate why the dwelling would be best located elsewhere on the plot;
- d) the proposed dwelling is not materially larger than the one it is replacing; and
- e) the replacement dwelling is not harmful to the landscape by reason of its size, scale, setting or design.

If the proposed new dwelling is not on the footprint of the original, the existing house will be required to be demolished within a month of the first occupation of the new house. In order to make sure that the new

dwelling remains of a proportionate size to that which it replaces, permitted development rights may be removed.

Further to the discussion today I would suggest the following change:

11.25 In certain circumstances the provision of replacement dwellings in the countryside will be acceptable **providing that the replacement dwelling has an acceptable impact on the local area.** ~~These are set out in the policy below together with the criteria that will need to be complied with and the requirements that will be placed upon the grant of any planning permission.~~

Policy HO6 - Replacement dwellings in the Countryside

The replacement of existing dwellings will be permitted providing the following criteria are met:

- ~~a) the existing property does not make a positive contribution to the local character of the area;~~
- ~~b) the replacement will result in a visual improvement to the site and the surrounding area;~~
- c) the proposed dwelling **is on** the footprint of the existing dwelling unless the applicant can demonstrate why the dwelling would be best located elsewhere on the plot;
- ~~d) the proposed dwelling is not materially larger than the one it is replacing; and~~
- e) **the scale, form, massing and height of the proposed dwelling is appropriate to the local context of the site, the existing dwelling, and the character of the surrounding landscape.**

If the proposed new dwelling is not on the footprint of the original, the existing house will be required to be demolished within a month of the first occupation of the new house. In order to make sure that the new dwelling remains of a proportionate size to that which it replaces, permitted development rights may be removed.

I would appreciate your comments.

Andrew Taylor MRTPI

Cc: Louise St John Howe

Subject: RE: Uttlesford Local Plan - Potential changes to Policy H06 (Replacement Dwellings in the Countryside)

Dear Mr Taylor,

Thank you for your swift e-mail response yesterday.

Unfortunately your proposed changes do not address the substance of our objection and so do not take us forward. You proposed similar (if not the same) wording during the hearing yesterday and we did not accept this at the time (and cannot accept it now), as it goes to the heart of the problem (and our objection) which is that it is illogical, unduly restrictive and unsound to limit footprint, scale and design (etc.) of a replacement dwelling by reference to the footprint, scale and design (etc.) of the existing dwelling.

As mentioned yesterday, the Council's proposed criteria assume that all existing dwellings are at their optimum size and shape, and have the optimum relationship with the surrounding area. There is no logical or evidential foundation for that assumption.

The Inspector pointed out that limiting the replacement to the existing footprint is another way of limiting scale, and is unduly prescriptive. It also stifles innovation and has no logical basis (etc.).

We believe it is wrong (and defensive) to assume that every replacement home will result in a "ghastly Mansion style home". There are many styles, and innovation and good design should be encouraged, particularly where replacing small sub-standard dwellings (which the Council recognise exist) and/or seeking to improve the places where people live.

It concerns us also that the Council's proposals for H06 will result in a similar level of control for replacement homes in the countryside generally as the NPPF says is appropriate to replacements in the Green Belt, and that if the proposed Policy H06 were adopted in the form proposed by the Council, this would also result in a higher level of control than would exist under the existing Policy H7. In both cases, this is illogical and unsound given that the direction of travel under the NPPF is the other way.

At the hearing yesterday afternoon, the Inspector said he has sympathy for the points we have raised, and asked us both to work together with a view to reaching agreement on the wording of Policy H06 so as to ensure that it is sound.

Our suggested changes

Set out below are our suggested changes to your wording. We feel it is clearer if the introduction is consistent with the wording of the policy.

We believe this wording respects the NPPF and NPPG requirements, addresses your key concerns and is sound.

11.25 In certain circumstances the provision of replacement dwellings in the countryside will be acceptable ~~providing that the replacement dwelling has an acceptable impact on the local area is appropriate to the local context of the site and the character of the surrounding landscape. These are set out in the policy below together with the criteria that will need to be complied with and the requirements that will be placed upon the grant of any planning permission.~~

Policy H06 - Replacement dwellings in the Countryside

The replacement of existing dwellings will be permitted providing the following criteria are met:

- ~~a) the existing property does not make a positive contribution to the local character of the area;~~
- ~~b) the replacement will result in a visual improvement to the site and the surrounding area;~~
- ~~c) the proposed dwelling is on the footprint of the existing dwelling unless the applicant can demonstrate why the dwelling would be best located elsewhere on the plot;~~
- ~~d) the proposed dwelling is not materially larger than the one it is replacing; and~~
- e) scale, form, massing and height of the proposed replacement dwelling is appropriate to the local context of the site, the existing dwelling, and to the character of the surrounding landscape.**

If the proposed new dwelling is not on the footprint of the original, the existing house will be required to be demolished within a month of the first occupation of the new house. In order to make sure that the new dwelling remains of a ~~proportionate size to that which it replaces~~ **is appropriate to the local context of the site and to the character of the surrounding landscape**, permitted development rights may be removed.

Conclusion

If this is not acceptable, and we are to move forward, it would be helpful if the Council could grapple with the issues we have raised and provide us with a fully reasoned response to our concerns so that we can better understand the Council's thinking as to why what we have proposed is wrong. We have fully articulated our concerns (on a fully reasoned basis) in our objection, hearing statement and at the hearing (and also summarised some of these above).

We are available to deal with this issue, and hope we can close it out swiftly, or refer it back to the Inspector with our respective positions on the issues.

Yours sincerely

Fiona Brittenden

Cc: Louise St John Howe

Subject: RE: Uttlesford Local Plan - Potential changes to Policy H06 (Replacement Dwellings In the Countryside)

Dear Mrs Brittenden

Further to your email, I have proposed some further suggested changes to the policy taking into account your suggestions. The full reasoning for the policy and our stance has already been set out in our Hearing Statements so there is no need to repeat that here.

I appreciate that we may not be able to agree on a final suggested wording.

11.25 In certain circumstances the provision of replacement dwellings in the countryside will be acceptable **providing that the replacement dwelling is appropriate to the local context of the site and the character of the surrounding area.** ~~These are set out in the policy below together with the criteria that will need to be complied with and the requirements that will be placed upon the grant of any planning permission.~~

Policy H06 - Replacement dwellings in the Countryside

The replacement of existing dwellings will be permitted providing the following criteria are met:

- ~~a) the existing property does not make a positive contribution to the local character of the area;~~
- ~~b) the replacement will result in a visual improvement to the site and the surrounding area;~~
- c) the proposed dwelling **is on** the footprint of the existing dwelling unless the applicant can demonstrate why the dwelling would be best located elsewhere on the plot;
- ~~d) the proposed dwelling is not materially larger than the one it is replacing; and~~
- e) **the scale, form, massing and height of the proposed dwelling is appropriate to the local context of the site, the existing dwelling, and the character of the surrounding landscape.**

If the proposed new dwelling is not on the footprint of the original, the existing house will be required to be demolished within a month of the first occupation of the new house. In order to make sure that the new dwelling **is appropriate to the local context of the site and to the character of the surrounding landscape,** ~~remains of a proportionate size to that which it replaces,~~ permitted development rights may be removed.

Andrew Taylor MRTPI

Assistant Director Planning and Building Control

Uttlesford District Council
Council Offices
London Road
Saffron Walden
Essex
CB11 4ER
T 01799 510601

[Redacted]
To: Andrew Taylor

Cc: Louise St John Howe

Subject: RE: Uttlesford Local Plan - Potential changes to Policy H06 (Replacement Dwellings in the Countryside)

Dear Mr Taylor,

Thank you for your swift reply. Unfortunately it seems clear that we will not be able to reach agreement, as the revised policy you have suggested does not overcome the fundamental problem we have identified as to the reference to the existing dwelling.

We assume that the issue will now have to be determined by the Examiner. In your reply you indicate that you are content that the Council's position is adequately set out in its hearing statement. So far as we are aware, the only statement from the Council that specifically responds to what we have said is in document EX104. Could you please confirm that this is correct?

You have made clear that you do not wish to add to what has already been said on behalf of the Council, and so we would now propose to submit this exchange of correspondence to the Examiner, together with our explanation of why we are maintaining our objection, so that he can make his decision. Please confirm you are content with this approach.

Yours sincerely
Fiona Brittenden

[Redacted]
Cc: Louise St John Howe

Subject: RE: Uttlesford Local Plan - Potential changes to Policy H06 (Replacement Dwellings in the Countryside)

Dear Mrs Brittenden

I am not prepared to adjust our position further. Our approach is clearly set out in all the submission documents.

Andrew Taylor MRTPI
Assistant Director Planning and Building Control

Uttlesford District Council
Council Offices
London Road
Saffron Walden
Essex
CB11 4ER
T 01799 510601
F 01799 510550
E ataylor@uttlesford.gov.uk