

Appendix 4: Materially Larger Judgement - Replacement of existing dwellings

1. Paragraph 88 of the NPPF states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. For present purposes, this can be taken as referring also to Metropolitan Open Land. Whilst the construction of new buildings will normally be considered inappropriate, exceptions are made (para 89) for:
 - *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*
2. The approach to the application of “materially larger” was explained by the Court of Appeal in *R (oao Heath & Hampstead Society) v Camden LBC* 2008 3 AER 80. At para.34 Lord Justice Carnwath said:

“ The words “materially larger” in paragraph 3.6 should not be read in isolation. There are two important aspects of the context. The first is that paragraph 3.6 is concerned with the definition of “appropriate development”, as contrasted with inappropriate development, which is “by definition harmful to the Green Belt” This first stage of the analysis is concerned principally with categorisation rather than individual assessment.”

In the following paragraph the judge makes clear that the test is directed towards relative size not visual impact. He continued at para.36:

“That leads to the second aspect of the context, which is that of paragraph 3.6 itself. It is part of the test for a category which covers “limited extension, alteration or replacement ...”. “Limit” to my mind implies a limitation of size. An extension must be proportionate to the size of “the **original** building”. The emphasis given to the word “original” shows how tightly this is intended to be drawn, in order presumably to avoid a gradual accretion of extensions, each arguably proportionate. It would be impossible in my view to argue that “proportionate” in this context is unrelated to relative size. For example, an expansion three times the size of the original, however beautifully and unobtrusively designed, could not, in my view, be regarded as “proportionate” in the ordinary sense of that word.

37 The words “replacement” and “not materially larger” must be read together and in the same context. So read, I do not think that the meaning of the word “material”, notwithstanding its use in planning law more generally, can bear the weight that the

authority sought to give it. Size, as Sullivan J said, is the primary test. The general intention is that the new building should be similar in scale to that which it replaces. The *Surrey Homes* case 2000 EWHC 633 (Admin) illustrates why some qualification to the word “larger” is needed. A small increase may be significant or insignificant, depending on such matters as design, massing and disposition on the site. The qualification provides the necessary flexibility to allow planning judgement and commonsense to play a part, and it is not a precise formula. However that flexibility does not justify stretching the word “materially” to produce a different much broader test. As has been seen, where the authors of PPG 2 intend a broader test, the intention is clearly expressed.”

3. The effect of this judgement was explained by Langstaff J in *Feather v Cheshire East BC* 2010 EWHC 1420. At para.30 and following the judge said:

“30 ... Here I conclude that all necessarily depends in an assessment of “materially larger” upon the particular facts and circumstances of a case. It can be said usually whether one building is or is not larger than another; though reference may need to be had to particular measurements in respect of which it is said to be larger than the other. Whether it is “materially larger” has to be answered in accordance with the guidance given by the Court of Appeal; that is primarily a question of size. But it is not exhaustively a question of size

31 The expression “materially” invites a consideration of size in context; what is the relevant context? The relevant context necessarily has to be the object of and policies relating to establishing a green belt. ...(with reference to the *Surrey Homes* case) in the context of affecting the openness which green belt policy emphasises the tower might be said to have much greater impact than the bungalow.

32 It is equally not difficult to see that some buildings may have a much larger floorspace as newly built than those that they replaced, without altering in any way the external dimensions and footprint of the original building. For instance where a large barn is converted or rebuilt; where a high ceilinged building is replaced by one with more floors and therefore more floorspace but with no change to exterior dimensions. Similarly it is not difficult to see how if one replaced a bungalow with a two storey building on a narrower footprint, the planning considerations relevant to a determination of material largeness would not depend at all on floorspace or footprint but in that case on the height and depth of the building.

33 The dictum of Carnwath LJ at the end of para.36 made the point that if an extension were three times the size of the original – and I note that that would mean a building four times the size of the original, being the original plus the extension – it could not be regarded as proportionate. When looking at the replacement building, the test is not what is “proportionate”, though material largeness is to be read in the same spirit. But that is very different as it seems to me from the situation here. It seems to me that in this particular case a very important fact and issue to which the local planning authority will wish to have regard in attributing whatever weight it thinks appropriate to the size of the basement is the fact that, as part of the dwelling, that basement is intended to be entirely below ground level.

34. I could not, in short, have said that it would necessarily and obviously have been perverse for the local authority in this case to have concluded, if it did so having regard to all proper considerations, that the replacement building was not materially larger than the existing. Providing it did not lose sight of the overall size and floorspace of the basement, the authority would be entitled, in my view, to come to the conclusion that the building above ground was such, and the basement such, that overall, the building, in the contexts to which I have referred, was not materially larger.”

The increase in floorspace in that case including the basement would have been 230% (see para.18 of the judgement).

4. The conclusion in *Feather* was similar to that by Sir Thyne Forbes in *Hobson v SSCLG* 2009 EWHC 981, also decided after and in the light of the Court of Appeal judgement in *Heath and Hampstead Society*. In that case the inspector had allowed an appeal for the replacement of a chalet bungalow by a two storey five bedroom house with attached double garage in the green belt. The new building would have floorspace 33% greater than the existing and would be 1.5 m higher. The inspector concluded

“11 Whilst the proposed house would be taller than the existing building, it would generally reflect the height of other two storey houses within the road and so would not in my view appear to be unusual or distinctive in this regard. As indicated, it would also occupy essentially the same overall footprint as the existing house and garage but the use of the integral garaging and the slight realignment ... would actually allow better separation between the proposed building and its side boundaries. Overall the level of built frontage would decrease, allowing space and views to the side of the property.

12 This would improve the openness characteristics of the plot, although I accept that this would be counterbalanced to some degree by the increased ridge height of the roof. Overall the proposal might therefore be judged to have a neutral effect upon openness considerations in this Green Belt location.”

5. The decision was upheld by the judge who said:

“33 I agree with Mr Forsdick that on a fair reading of the decision letter the Inspector’s conclusion with regard to the “materially larger” issue is therefore a planning judgement reached after consideration of the issue in a manner entirely consistent with that stated in *Heath and Hampstead* to be the correct approach to paragraph 3.6 of PPG 2. I accept Mr Forsdick’s submission that in respect of that particular issue it is clear that the inspector directed himself primarily by reference to the objective facts as to size (i.e. volume, height, and footprint and floor space). ... Considered overall I accept that the Inspector was entitled to regard the increases in size in the present case as relatively marginal (as he apparently did) and that therefore he was also entitled to have some regard to matters such as “bulk, height, mass and prominence” (as he did) when reaching his overall planning judgement....”

6. A 2008 appeal decision is of relevance. Inspector J M Jagger concluded (APP/W1525/A/08/2070467; West Hanningfield) that a proposed replacement dwelling which would have a gross floorspace 100% larger than the dwelling it would replace (largely because the replacement dwelling would incorporate a basement whereas the existing one did not) was not inappropriate in the Green Belt. He said, *“It is difficult to see how the addition of a basement for which there would be no visible evidence could result in any apparent material harm or alter the impact of the dwelling in any significant way”*. This decision was not challenged in the courts.
7. To summarise the above, the general intention is that the replacement dwelling should be similar in scale to that which it replaces. Size is the primary test, but not the only one. The addition of ‘materially’ allows for the exercise of judgement and commonsense. Such judgement must focus upon the purpose of the Green Belt/MOL: i.e. to maintain openness. When considering how to deal with a basement, the fact that it is below ground (and thus may have no effect on openness) will be a matter to be taken into account in the exercise of the judgement.
8. The proposed basement at Athlone House has no external manifestation and so we contend that it should be disregarded in exercising a judgement on whether the proposed dwelling is materially larger.