**VENTERSDORP APPEAL**

**REPORT FOR INDEPENDENT INSPECTOR**

**BY THE HERITAGE FOUNDATION (HF)**

**REDACTED VERSION**

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**RESPONSES TO ISSUES POSTED ON LINE BY HF ON 23 AUGUST 2019**

**GIVEN ON BEHALF OF THE APPELLANT**

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**Reader’s note.**

*The appellant is referred to using differing denominations in this response as, Jesse, J and the Appellant. This has caused apparent inconsistencies when reading the text, particularly where quotations are included as part of giving a full response. For the sake of clarity, it is confirmed that all references are to the same person, the apparent inconsistency being a result of the unfolding history of this case, wherein denominations in use at various times have become a matter of medical record, to which no changes can be made subsequent to the creation of that record*.

**1.0 PARA 4.2**

**1.1** In respect of the contents in the above paragraph we respectfully request the Inspector refers to pages 34,35 and 36 of the Appellant’s Statement of Case, paragraphs 13.4 to 13.18. which, for convenience, are repeated in section **12.0** of this response.

**1.2** The statements made therein are also to do with decision making and legal requirements but make reference to these issues in connection with matters to which HF have given only minimal attention. They widen the legal considerations beyond those referred to in paragraph 4.2 of the HF Statement and enable the Inspector to consider and afford due weight to the very special circumstances which are present in this case. Paragraph 13.16 makes it clear that the very special circumstances are a material consideration and therefore a matter which, we respectfully suggest, should be taken into account in deciding this appeal.

**2.0 PARA 4.3**

**2.1** The Design Principles of the Scheme of Management clearly direct extensions to be sited to the rear where they would have a reduced impact, in preference to the front where, in principle, they are discouraged.

**2.2** Notwithstanding this principle HF, in the course of discussions with the appellants, suggested at a meeting on 11 January 2019, that the pool could be *“pulled forwards”,* thus reducing its impact to the rear.

**2.3** This proposal would have had a harmful effect on the link between the main house and the pool, causing a serious compromise to the appellant’s safety and security and was thus an untenable proposition from his point of view. However, it would also have been an impossible modification for HF to give their consent, as it would have brought the development to the front of the house, in the least desirable position in terms of the Design Principles, where it would have had a direct impact upon the character of the street scene.

**2.4** This was therefore not a feasible proposition from HF’s point of view either. It was however, an event which revealed an important lack of communication and understanding on HF’s behalf which could, had it not occurred, have led to a different outcome. Kay Taylor’s notes of the meeting refer as follows:-\_

* *“I further reinforced the design principle at the meeting with Claire on 11/1/19, this is when we discussed pulling the pool forwards into the garage space and I explained the reasons this was not possible and the need for the link as an integral safety feature. She assured us she would feed back this need to the committee in future considerations. See my notes below.*
* *“Claire advised the key issue is the site is already overdeveloped and therefore the decision is complicated, the ACM had felt there was an impact on the neighbours and their concerns were valid. She explained in principle we can have a pool and they wanted to be helpful she asked if the pool could shift forwards on the site”.*
* *“We explained the need for the garage to remain to provide equipment storage, guest accommodation as Jesse is not able to easily visit his extended family and the use of the upstairs space to store supplies.”*
* *“We reviewed the plans and explained the need for the link to maintain Jesse's security and safety. I explained the design principle and the need for the circulatory space and adaptations to meet Jesse's needs now and into the future”.*
* ***“Claire disclosed that the AMC had not appreciated the need for the link and had, therefore, thought the build could be shifted forwards. I expressed my concern that neither herself at any time or the AMC panel members had discussed this with us and if this had occurred the outcome of the AMC decision may have been different.”***

**2.5** Tess Whitehead addressed these matters in her letter dated 25th January 2019, she said

*“Altering the hydrotherapy pool scheme design would significantly compromise Jesse’s safety and impair his lifetime development, therefore I would not recommend any revisions are made to the pool area itself, nor to the linked atrium”.*

**3.0 PARA 5.**1

**3.1** It is usual for families having a child with special needs to seek larger than average properties when relocating, because the management and therapy needed in these circumstances are space-demanding requirements. Furthermore, acquiring adequate accommodation at the outset of contemplating such an important family investment on restricted budgets, limits the need for new extensions. It was therefore the existing configuration of the property offering adequate accommodation for the family’s special needs and its potential for an unusual facility to be added, without causing material harm to neighbouring properties, which made it the ideal choice for the appellant and his family.

**4.0 PARA 5.3**

**4.1** It is noted that HF say “*The biggest issue with respect to the proposals for this particular property is the extent of the previous works carried out between 2008 and 2010”.*

**4.2** This is a new approach from HF, with no reference being made in their report to the formerly-expressed prime concern of overdevelopment as their substantive reason for refusal. Nowhere in their report we are commenting on now, is any reference made to that phenomenon, so we wonder why they have considered it necessary to defer from doing so at this particular time.

**4.3** The period referred to pre-dates the present ownership of Ventersdorp by the appellant’s family. During that time it must have been the case that all extensions to the property had the benefit of planning permission and consent from the Heritage Foundation. Accordingly there can be no issue about the effect the property, as it was at the end of that period, had upon the heritage asset, it was clearly an acceptable situation, notwithstanding its numerous extensions, or HF consent would not have been granted. That being the case the issue, so far as this appeal is concerned, must now remain solely around any material effect the pool building itself might have upon the heritage asset, given that the dining room and its associated circulation is embedded within the footprint of the existing buildings and largely impossible to be seen from the public realm.

**4.4** The issue of whether or not the pool building causes harm (allegedly by being overdevelopment of the site), has been thoroughly examined in the appellant’s statement of case, which concludes that there is no overdevelopment of the site and that no material harm, to any interest of acknowledged importance, including the heritage asset, was found to exist.

**4.5** The drawing at Appendix B is very familiar, it was produced by the Architects, not by HF in the making of an analysis of alleged overdevelopment, because there is no evidence that no such analysis has been undertaken. Even taking this drawing in isolation of other wider factors which define overdevelopment, the proposals comply with the guiding principles that there is sufficient garden space, (the entire development occupies only 27% of the plot, an amount clearly commensurate with other properties in the immediate vicinity of the appeal site, as referred to in Table 1 on page 22 of the Appellant’s Statement of case.), no overlooking of adjoining properties, no blocking of natural light and no generation of noise ( as referred to in paragraphs 12.14 to 12.18 of the Appellant’s Statement of Case.)

**4.6** Even the photomontage on page 29 of the SoC, an image prepared with a high degree of accuracy, very clearly shows the spaciousness of the garden after the development has been carried out. The appellant’s advisors consider this is irrefutable evidence that the site is not overdeveloped.

**4.7** HF refer to there being a *“potential understandable precedent being set.*

There is, in fact, no precedent at all. The Independent Inspector’s Process at Stage Four states the following:- “Reference should be made to the Design Principles in making any decision, although if the Inspector in making his/her decision feels that the proposal will not cause material harm, is at liberty to determine an application contrary to these Principles, where he or she believes that there are special circumstances relevant to this particular property and proposal. Should this be the case, part of the decision letter should include a justification for this course of action”.

In this case there are special circumstances and an Inspector empowered to use them should that be appropriate. It is part of the protocol of the Independent Inspector’s process, to apply in this case and in all others to follow, should that be necessary.

**5.0** **PARA 5.6**

**5.1** It is difficult to imagine that HF would spend their time assisting with the design of what they considered to be an acceptable roof form for the pool building without referring to alleged harmful effects of the remaining parts. It would appear that, in this case, their advice was incomplete, leaving the applicant believing that the proposal, including its modified roof, would be acceptable. This was unfortunate and misleading.

**5.2** The Architects have responded to design criticisms cited in this paragraph by saying, *“ It is the HF proposal of the parapet and flat roof to the pool and link and attachment to the garage that makes the proposal a continuous block. It was because of HF design advice that the outcome turned out to be unacceptable to themselves”.*

**5.3** The foregoing statements respond to detail issues in the interest of correcting the record and giving examples of the difficulties referred to in the Appellant’s Statement of Case on page 12, para 6.17, wherein it refers to the hitherto irresolvable differences of opinion and responsibilities between the two parties, protection of a heritage asset on the one hand and the giving of life chances to a severely disabled young man on the other.

**6.0 PARA 4.2**

**6.1** It is appropriate at this stage to take a view wider than those expressed hitherto and in para 4.2 of the HF report in its reference to *“overriding legal obligations”.* We respectfully refer HF to the declared vision of its own *“Letchworth Strategic Plan”* referred to on page 14 of the Appellant’s Statement of Case. We repeat the quotation made at para 7.10 where the Strategic Plan says “*We are committed to find ways to support communities to give children in Letchworth the best possible start to their lives. Empowering our children as early as possible will build their confidence and help develop happier and more fulfilled adults.”*

**6.2** The Appellant’s response to that would surely be, *“…why can’t I too have the best possible start to my life, be empowered and become a happier and more fulfilled adult, why can’t my strategic goal be supported?”*

**6.3** Answering this question cannot be avoided. HF have made their position clear, they are the guardians of the Heritage Asset. However, on the other hand the Appellant and his advisors have demonstrated that none of the impacts alleged by HF regarding this development will come to pass, simply because, for the larger part, they will not be seen and can therefore be of no effect.

**6.4** For any impact to be present it must be perceivable. Perception of an impact can be by way of its visibility as the most common method. The assessment carried out in the area local to the appeal site demonstrates that the development is generally well hidden from view, a fact which can readily be confirmed when visiting the site. In rare instances where it is not, mitigation measures, sensitive to the heritage environment, ensure the mitigation of any harm, indeed the measures in themselves would remove any residual harm and would complement the local area’s landscape. These circumstances are in accordance with the Design Principles of the Scheme of Management, wherein, with reference to detached dwellings, they require it to be demonstrated, where large extensions are proposed, that there must be negligible effect on neighbouring property and no detriment to the character of the dwelling or its setting. The Appellant’s Statement of Case has demonstrated that this is the case.

**7.0 PARA 5.7**

**7.1** The appellant’s medical team has examined copies of the reports by Dr Epps and can find no reference to a further reduction of the pool by 600mm, however, Dr Epps is clear in her updated report (page 9), where she says the pool size cannot be reduced :-

*“Based on the above explanations, a 3 x 5 metres pool would be too small for Jessie to gain the exercise benefits described above, to swim and propel and to undertake the techniques I recommend. This size pool is more appropriate for exercising “on the spot” and as he likes to “charge around” in the pool he needs the space to do so safely. It is therefore my recommendation a 3 x 6 metre pool is needed to meet Jesse’s needs now and for the rest of his life.”*

**7.2** Tess Whitehead also addressed this in her letter dated 25th January 2019, she says:-

*“therefore additional circulation space over and above that of a typical 13-year-old is essential for his safe freedom of movement within his home environment.”*

*“Altering the hydrotherapy pool scheme design would significantly compromise Jesse’s safety and impair his lifetime development, therefore I would not recommend any revisions are made to the pool area itself, nor to the linked atrium”.*

**7.3** Further representations were made by medical specialists to the Committee on 17 December 2018, again reiterating that further amendments of designs to the home and the pool, would compromise the appellant’s safety and support needs.

**7.4** Following these and other discussion, a general feeling of unease grew amongst the professional teams supporting the appellant and his family that HF were not giving due regard to his needs. It was the team’s unanimous view that the only focus was upon protection of the heritage asset, it being apparent that no regard to the appellant’s rights as a disabled person were expressed, acknowledged, nor given any weight.

**8.0 PARA 5.8**

**8.1** Jesse attends class swimming at school, not hydrotherapy. This is an error in interpretation by HF.

**8.2** Dr Epps is clear in her report regarding the level of access required, page 8 refers:-

*“I would advocate Jesse have access to a purpose built, fully accessible (changing rooms and pool area) heated hydrotherapy pool facility, ideally three times a week in line with WHO recommendations for health and wellbeing (appendix 2)”.*

**8.3** Tess Whitehead has also commented on need at page 2 of her letter dated 25th January 2019

*“Owing to Jesse’s complex disability needs, he is unable to access community swimming facilities and I believe Dr Epps has fully justified the therapeutic benefits of having such amenities at home.”*

**8.4** Kay Taylor was asked about access to local facilities during the *c*ommittee’s site visit on 7th March 2019, her notes explained there was no access locally to a suitable facility, they say:- *“This was based on research completed prior and discussions with Keech, Luke’s place and Lonsdale School all of which advised they either had no or very limited availability which could not meet the recommendations made by Dr Epps”*.

**8.5** Kay Taylor continues by saying:- “*In my letter I explained this further and included the reasoning for Jesse being unable to access local leisure pools as well as dedicated hydrotherapy provisions, as follows:-*

*Jesse's access to leisure and hydrotherapy opportunities are significantly limited due to the environment needed. I have previously looked at alternatives to hydrotherapy provision at home and found that all local provisions have no availability; this includes Lonsdale School pool, Keech Hospice and Luke's Place. Even if access were possible, in my experience with other clients, the provision would be irregular, usually no more than once every eight weeks and would not afford the access and therefore the therapeutic, communication, sensory modulation and opportunity for social interaction and inclusion, as recommended by Dr Epps*.

*I have considered access to a local leisure centre, most local leisure pools are heated to between 27 and 30 degrees Celsius. A hydrotherapy pool would generally be 33/34 degrees Celsius, as temperature lower than this can cause increased muscle tightness and spasm. The therapeutic benefits of hydrotherapy are at a temperature of 33 degrees Celsius and above. The above is supported by Dr Epps on page eight of her report”.*

**9.0 Paras 5.11 and 5.12**

**9.1** It was felt that the suggestion in para 5.12 was not possible to achieve, the reasons for this having been discussed with members of the professional team and Claire Pudney on 11 January 2019. Kay Taylor’s response to this point is given in para 2.4 above.

**10.0 PARA** **5.13**

**10.1** The Architect comments as follows:-“*There was no design advice on the car port that would have made it acceptable, HF did not wish to see a structure to the front of the property. The car port is there specifically to give shelter to J when transferring to and from the family vehicle”.*

**10.2** Issues regarding the carport are also referred to in paras 11.9 to 11.14 in the Appellant’s Statement of Case emphasising the importance of this facility for J’s protection in adverse weather conditions. Tess Whitehead refers to J’s medical needs in this regard on page 4 of her report, it says:-

*“I could not see evidence of a secured entrance in/out of the driveway on the plans and confirmed with Mr Penn that these have not been previously recommended. The property leads out directly into the roadside and while this is not a main road, Jesse’s cognitive abilities means he lacks any sense of danger and safety awareness, therefore he is at high risk should he wander off. Mr Udu explained that they already keep the front door locked to manage the situation, however I recommend the inclusion of the following: a wireless door alarm sensor, electric gates at both entry points of the drive, securing of the property boundary and the construction of a carport and covered linkway to the entrance to the property; the latter being necessary to afford some protection to Jesse from inclement weather conditions when he is being transferred to and from his special transport”.*

**11.0 GENERALLY**

**11.1** The above comments are given specifically in response to issues raised in HF’s submission to the Inspector. For confirmation, the proposals plans submitted with the appeal remain the proposed scheme which would be implemented should the Inspector decide to uphold this appeal. In that regard and given that design requirements for the car port have not been made clear, then the Architects would be willing to liaise with HF to agree a suitable design in response to a condition which the Inspector might wish to add to a decision made in support of the appeal.

**12.0 CONCLUSION**

**12.1** It is important to conclude by repeating extracts from the Appellant’s Statement of Case regarding very special circumstances as a reminder of their significance as a material consideration, paragraph references are those used in the SoC:-

*13.4 It is acknowledged that this appeal is not against the refusal of planning permission; it is an appeal against the refusal of consent to proposed alterations. For that reason, the provisions of the Scheme of Management and of clause 6 are considered in detail in this section. However, it is respectfully suggested that the planning law concept of “very special circumstances” is of relevance to this appeal, as explained immediately below.*

*13.5 The appeal site is not of course in the Green Belt, but the following paragraphs make reference to it because Green Belt Planning decisions gave rise to the concept of “very special circumstances” in the first instance. This concept has subsequently become applicable across a wider spectrum of the planning system*

*13.6 Government Policy, expressed in the National Planning Policy Framework (NPPF) 2019 at para 143, is relevant, it defines inappropriate development in the Green Belt by saying, “Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”.*

*13.7 Para 144 says, “When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”.*

*13.8 The case of Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government (Court of Appeal 24 October 2014), established that the expression “any other harm” does not just mean any other harm to the green belt but takes in non-green belt factors as well. It is suggested that J’s disability and care needs can be regarded as analogous to “very special circumstances”, the other harm can be regarded as the harm that will be caused to J’s welfare if consent is not given, and that J’s disability and the harm to him if consent is not granted can therefore be regarded as material considerations.*

*13.9 In this case primary regard must be had to the Scheme of Management and a central question is whether HF has unreasonably withheld consent within the meaning of clause 6, taking account of the HF Design Principles.*

*13.10 That matter leads on to the question of whether and to what extent HF were obliged when considering whether or not to grant consent, to take account of the impact of the refusal of consent upon J. Were HF indeed entitled, as they appear to have done, to have considered only the issue of whether in their view, the proposed alterations contravened the Design Principles, regardless of what the consequences might be to J of their refusal of consent?*

*13.11 It is respectfully suggested that the impact upon J of the refusal of consent must be a material consideration in this appeal and this factor should have been considered by HF in making their decision. This is so because there is nothing in the Scheme of Management or in any other relevant documents, which either expressly or impliedly limited HF to consider only the Design Principles when deciding whether or not to grant consent. It is a central point in this appeal that the Design Principles have been adhered to but, even if that point is not accepted, there is nothing in the Scheme of Management or in any other relevant document which implies that if the Design Principles are in any way departed from, then the decision must be to refuse.*

*13.12 To be clear, it is not suggested that HF should have disregarded the Design Principles, that would plainly have been wrong. But it was equally wrong for HF to have failed to take into account the consequences of refusal upon J. The decision taken by HF required factors to be considered and weighed in the balance: on the one hand any detriment to the neighbourhood if consent was given (it is submitted that this will be negligible or non-existent) and, on the other hand the detriment to J if consent was refused.*

*13.13 The correctness of the above is, it is suggested, made clear in the 3rd paragraph of HF’s own document entitled “Independent Inspector Process”*

*“Applications for consent are submitted to the Heritage Advisory Service (HAS) who will issue a decision based on the guidance given in the Design Principles and whether there are any special site-specific circumstances which may lead to those principles not being complied with”*

*13.14 Also in the paragraph which says that when considering this appeal, the Inspector “must have regard to the provisions of the Scheme of Management… (and)*

*“Reference should be made to the Design Principles in making any decision, although if the Inspector in making his/her decision feels that the proposal will not cause material harm, [he/she] is at liberty to determine an application contrary to these Principles, where he or she believes that there [are] special circumstances relevant to this particular property and proposal. Should this be the case, part of the decision letter should include a justification for this course of action”*

*13.15 Reports of medical and therapy specialists all agree on the nature and severity of J’s multiple disabilities. Reference may be made to all of them as their findings are wholly consistent. The Inspector is respectfully referred to Kay Taylor’s report in Appendix A, where J’s medical condition is clearly defined.*

*13.16 The consequences of the unfortunate conditions Kay Taylor describes are very relevant. They constitute very special circumstances and are a material consideration in deciding whether consent should be granted.*

*13.17 The consequences of J’s disability are fundamental, because they determine the size, shape, location and nature of the alterations required to provide adequate special needs accommodation for J, his family and carers. They and their specialists all need appropriate accommodation and space to undertake their work effectively and safely. This is not a requirement for a short period of time, or only during his younger years, it is essential for his lifetime which, as we have seen, is expected to be of normal longevity.*

*13.18 For these reasons it is the appellant’s opinion that HF have unreasonably withheld consent by failing to take account of the very special circumstances as a material consideration in this case. The very special circumstances are J’s medical conditions and care needs and the severe detriment that he (and his family) will suffer if consent is withheld*

*Ref PD/595 Rev 4 September 2019*

*END OF RESPONSE*

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