



# Planning and Development Committee

## Agenda

### Part One

Town Hall, Brentwood

Tuesday, 22 July 2014 to commence on the rising of a presentation from Crossrail to Members (beginning at 7:00pm)

*The presentation preceding the meeting is for all Councillors and will not be webcast. Only Members of the Council will be invited to put question at the conclusion of Crossrail's short presentation. Crossrail is publicly launching it's works proposals and programme for Shenfield and Brentwood on 23<sup>rd</sup> July.*

#### **Membership (Quorum – 4)**

##### **Councillors**

Cllrs Baker (Chair), Mynott (Vice-Chair), Carter, Cloke, Mrs Cohen, Mrs Henwood, Mrs Hones, Hossack, McCheyne, Morrissey and Mrs Squirrell

##### **Co-opted Members**

Parish Cllrs Mr Afteni (Mountnessing PC), Mrs Dicker (Doddinghurst PC), Mr Day (Ingatestone and Fryerning PC), Mr North (Kelvedon Hatch PC), Mr Watley (Blackmore, Hook End & Wyatts Green PC), Mr Enkel (Navestock PC), Mr Harman (Herongate & Ingrave PC) and Mr Foan (West Horndon PC).

##### **Committee Co-ordinator:**

Ms Claire Hayden (01277) 312741

**Additional Information:**

**Rights to attend and speak**

Any Member may attend any body to which these Procedure Rules apply.

A Member who is not a member of the committee may speak at the meeting if they have given prior notification by no later than one working day before the meeting to the Chair and advised them of the substance of their proposed contribution.

The member may speak at the Chair's discretion, it being the expectation that a member will be allowed to speak on a ward matter.

## **Information for Members of the Public**

### **Access to Information and Meetings**

You have the right to attend all meetings of the Council and its Boards and Committees. You also have the right to see the agenda, which will be published no later than 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at [www.brentwood.gov.uk](http://www.brentwood.gov.uk) or from Democratic Services (01277 312739).

### **Webcasts**

All of the Council's meetings are webcast, except where it is necessary for the items of business to be considered in private session (please see below).

If you are seated in the public area of the Council Chamber, it is likely that your image will be captured by the recording cameras and this will result in your image becoming part of the broadcast. This may infringe your Human Rights and if you wish to avoid this, you can sit in the upper public gallery of the Council Chamber.

### **Private Sessions**

Occasionally meetings will need to discuss some of its business in private. This can only happen on a limited range of issues, which are set by law. When a Board or Committee does so, you will be asked to leave the meeting.

### **Guidelines on filming, photography, recording and use of social media at council and committee meetings**

The council welcomes the filming, photography, recording and use of social media at council and committee meetings as a means of reporting on its proceedings because it helps to make the council more transparent and accountable to its local communities.

Where members of the public use a laptop, tablet device, smart phone or similar devices to make recordings these devices must be set to 'silent' mode to avoid interrupting proceedings of the council or committee.

If you wish to record the proceedings of a meeting and have any special requirements or are intending to bring in large equipment then please contact the Communications Team before the meeting.

The use of flash photography or additional lighting may be allowed provided it has been discussed prior to the meeting and agreement reached to ensure that it will not disrupt proceedings.

The Chair of the meeting may terminate or suspend filming, photography, recording and use of social media if any of these activities, in their opinion, are disrupting proceedings at the meeting.

### **Access**

There is wheelchair access to the Town Hall from the Main Entrance. There is an induction loop in the Council Chamber.

### **Evacuation Procedures**

Evacuate the building using the nearest available exit and congregate at the assembly point in the North Front Car Park.

## Material Planning Considerations

The following are among the most common issues which the Planning Committee can take into consideration in reaching a decision:-

- Planning policy such as adopted Brentwood Replacement Local Plan, Government guidance, case law, previous decisions of the Council;
- Design, appearance and layout;
- Impact on visual or residential amenity including potential loss of daylight or sunlight or overshadowing, loss of privacy, noise disturbance, smell or nuisance;
- Impact on trees, listed buildings or a conservation area;
- Highway safety and traffic;
- Health and safety;
- Crime and fear of crime;
- Economic impact – job creation, employment market and prosperity.

The following are among the most common issues that are **not** relevant planning issues and the Planning Committee cannot take these issues into account in reaching a decision:-

- Land ownership issues including private property rights, boundary or access disputes;
- Effects on property values;
- Restrictive covenants;
- Loss of a private view;
- Identity of the applicant, their personality or previous history, or a developer's motives;
- Competition;
- The possibility of a "better" site or "better" use;
- Anything covered by other legislation.



## Part 1

(During consideration of these items the meeting is likely to be open to the press and public)

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<b>Item No.</b>	<b>Application No</b>	<b>Location</b>	<b>Ward</b>	<b>Page No.</b>
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2	To approve as a correct record for the minutes of the Planning and Development Committee meeting held on 26 June 2014	N/A	N/A	9
<b>Reports of Acting Head of Planning</b>				
<b>Planning Applications</b>				
3	14/00244/FUL	1-5 Roman Triangle Roman Road Mountnessing Essex	Ingatestone, Fryerning and Mountnessing	13
4	14/00661/BBC	Warley Depot The Drive Warley Brentwood Essex	Warley	35
5	Brentwood Planning Enforcement Plan		All	45

6 Urgent Business

An item of business may only be considered where the Chair is of the opinion that, by reason of special circumstances, which shall be specified in the Minutes, the item should be considered as a matter of urgency.



Acting Chief Executive

Town Hall  
Brentwood, Essex  
14 July 2014





# Minutes

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## Planning and Development Control Committee 24 June 2014

### Membership/Attendance

- |                            |                    |
|----------------------------|--------------------|
| * Cllr Baker (Chair)       | * Cllr Mrs Hones   |
| * Cllr Mynott (Vice-Chair) | * Cllr Hossack     |
| * Cllr Carter              | Cllr McCheyne      |
| * Cllr Cloke               | * Cllr Morrissey   |
| * Cllr Mrs Cohen           | Cllr Mrs Squirrell |
| * Cllr Mrs Henwood         |                    |

\*present

### Substitute Present

Cllr Parker (for Cllr McCheyne)  
Cllr Quirk (for Cllr Squirrell)

### Also Present

Cllr Aspinell	Cllr Lloyd
Cllr Barrett	Cllr Newberry
Cllr Chilvers	Cllr Russell
Cllr Mrs Hubbard	Cllr Tee
Cllr Le-Surf	Cllr Foan (West Horndon Parish Council)

### Officers Present

Tony Pierce – Interim Head of Planning  
Roy Ormsby – Head of Street Scene  
Caroline McCaffrey – Development Management Team Leader  
Philip Cunliffe-Jones- Planning Solicitor  
Charlotte Allen – Senior Planning Officer  
Yee Cheung – Senior Planning Officer  
David Carter – Senior EHO (Team Leader)  
Leanna McPherson – Governance and Member Support Officer

## 15. Apologies for Absence

Apologies for absence were received from Cllrs McCheyne and Mrs Squirrell.

## **16. Minutes of Planning and Development Committee held on 13 May 2014**

The minutes of the meeting were approved and signed by the Chair as a correct record.

## **17. Planning Applications and Matters**

The Chair reminded those present of the procedure to be followed in order to allow the public, etc, to speak at the meeting, where requisite notice has been given,

Notwithstanding any comments made by the public, etc, Members were reminded that they had to base their decision on the material planning considerations appertaining to each application.

## **18. Variation in Order of the Agenda**

RESOLVED, following a request from the Chair, to move Item 6 (Warley Depot, The Drive Warley, Essex) forward for consideration.

## **19. Warley Depot, The Drive, Warley, Essex**

**Change of use part of existing depot store, building to a class 7 MOT Testing Station**

**Application No. 14/00435/BBC**

A Ward Member spoke on the item, raising her concerns over increased traffic in and around the site and the close proximity to the Scouts and the Royal British Legion Youth Band.

A motion was MOVED by Cllr Baker and SECONDED by Cllr Mynott to approve the application.

RESOLVED UNANIMOUSLY that planning permission be approved, subject to the conditions recommended.

FOR: Cllrs Baker, Carter, Cloke, Mrs Cohen, Mrs Henwood, Mrs Hones, Hossack, Morrissey, Mynott and Quirk (10)

AGAINST: (0)

ABSTAIN: (0)

(Cllr Parker declared a personal interest under the Councils Code of Conduct by virtue of working on the proposal with the Head of Service and therefore sat at the back of the Chamber taking no part in the discussion or vote on the item.)

**20. Development Land Adjacent 361 Roman Road Mountnessing Essex  
Construction of three detached dwellings including double garages  
Application No. 14/00187/FUL**

The Chair advised the Committee that the application had been withdrawn by the agent for the applicant.

**21. Little Bassets Pig Farm Magpie Lane Little Warley Essex CM13 3EA  
Demolition of former pig farm buildings, conversion of former pig farm building to residential and construction of two new bungalows  
Application No. 14/00480/FUL**

Mr Forde, the applicant's agent, addressed the Committee in support of the application.

A Ward Member spoke on the application, advising that the concerns he had raised the last time the application was before the Committee had now been addressed.

Members considered the application before them and noted the application was within the Green Belt, however it was considered that the proposed development would be a reduction in the size and scale of buildings currently on the site and therefore in this instance the detrimental effect to the Green Belt would be outweighed by the benefits of the development.

A motion was MOVED by Cllr Carter and SECONDED by Cllr Parker, to approve the application.

RESOLVED to approve the planning permission, subject to conditions being agreed in detail with the Chair, Vice-Chair and Ward Member.

FOR: Cllrs Baker, Carter, Cloke, Mrs Cohen, Mrs Henwood, Mrs Hones, Hossack, Parker and Quirk (9)

AGAINST: (0)

ABSTAIN: Cllrs Mynott and Morrissey. (2)

**22.5 Pennyfields Warley Essex CM14 5JP  
Change of use from residential to Housing for Multiple Occupancy (maximum of 8 Occupants)  
Application No. 14/00200/FUL**

Mr Mayo, an objector, was present and addressed the Committee setting out his concerns.

Ward Members spoke on the application and addressed their concerns in relation to car parking issues within the locality, lack of amenity space and living standards for potential residents.

Members who spoke on the application also raised concerns that the proposal would change the character of the road and there would be a detrimental impact on neighbouring properties.

During the debate, Mr Carter advised the Committee that the proposal failed to meet the amenity standards contained in the Essex Approved Code Of Practice Amenity Standards for HMO's.

A motion was MOVED by Cllr Carter and SECONDED by Cllr Baker that the application be refused as the applications would change the character of the road, there would be a detrimental impact on neighbouring properties and the proposal did not meet housing space standards for a house in multiple occupation.

RESOLVED UNANIMOUSLY to refuse the application, for the reasons outlined above.

FOR: Cllrs Baker, Carter, Cloke, Mrs Cohen, Mrs Henwood, Mrs Hones, Hossack, Morrissey, Mynott, Parker and Quirk (11)

AGAINST: (0)

ABSTAIN: (0)

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<b>SITE PLAN ATTACHED</b>
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**03. 1-5 ROMAN TRIANGLE ROMAN ROAD MOUNTNESSING ESSEX**

**VARIATION OF CONDITION 2 (TIME LIMIT) TO ALLOW PERMANENT RESIDENCY, DELETION OF CONDITION 3 (RESTORATION OF LAND TO AGRICULTURAL LAND) AND VARIATION OF CONDITION 9 (REVISED LAYOUT) OF PLANNING APPLICATION 11/00711/FUL (CHANGE OF USE OF LAND TO A CARAVAN SITE INVOLVING THE SITING OF 5 MOBILE HOMES, 5 TOURING CARAVANS AND CONSTRUCTION OF 5 DAY ROOMS/AMENITY BLOCKS, AN INTERNAL ACCESS ROAD, HARD STANDING FOR PARKING, AND FENCING/WALLS AND GATES TO THE EXTERNAL BOUNDARY AND TO DIVIDE THE SITE)**

**APPLICATION NO: 14/00244/FUL**

<b>WARD</b>	Ingatestone, Fryerning & Mountnessing	<b>8/13 WEEK DATE</b>	16.04.2014
<b>PARISH</b>	Mountnessing	<b>POLICIES</b>	GB1 GB2 PC4 CP1 T2 PC7 C8 NPPF NPPG
<b>CASE OFFICER</b>	Kathryn Mathews	01277 312616	
<b>Drawing no(s) relevant to this decision:</b>	AT3; AT4; AT5; DESIGN AND ACCESS STATEMENT; CONFIDENTIAL PERSONAL INFO ;		

**1. Proposals**

Planning permission was granted (application reference 11/00711/FUL) on 28 May 2012 for the 'Change of use of land to a caravan site involving the siting of 5 mobile homes, 5 touring caravans and construction of 5 day rooms/amenity blocks, an internal access road, hard standing for parking, and fencing/walls and gates to the external boundary and to divide the site'. This planning permission was for a temporary, 18 month period until 28 November 2013.

In summary, the current application seeks to vary conditions attached to the planning permission to allow permanent residency of the site (conditions 2 and 3 refer) and for a revision to the approved layout for the site (condition 9).

Condition 2 of planning permission reference 11/00711/FUL is as follows:-

2. The use hereby permitted shall be carried on only by Mr T and Mrs J A MacDonald, Mrs M Boyle, Tina Boyle, Delcie Boyle, Mr T and Mrs B MacDonald, Ms A Reilly, Tanya Reilly, Santana Reilly and Ms B Reilly and their children and shall be for a limited period being the period of 18 months from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter. Reason: Permission is only granted in this instance in light of the very special circumstances of the case.

The proposal is to remove the words 'and shall be for a limited period of 18 months from the date of this decision, or the period during which the premises are occupied by them, whichever is the sooner' from this condition.

Condition 3 of the same planning permission is as follows:-

3. When the premises cease to be occupied by Mr T and Mrs J A MacDonald, Mrs M Boyle, Tina Boyle, Delcie Boyle, Mr T and Mrs B MacDonald, Ms A Reilly, Tanya Reilly, Santana Reilly and Ms B Reilly and their children or at the end of 18 months, whichever shall occur first, the use hereby permitted shall cease, all materials and equipment brought on to the premises in connection with the use, including amenity blocks, shall be removed and the land restored to an agricultural condition, but any landscaping shall remain. Reason: Permission is only granted in this instance in light of the very special circumstances of the case.

The proposal is to remove this condition.

Condition 9 of the same planning permission is as follows:-

9. The development hereby permitted shall not be carried out except in complete accordance with the approved drawing(s) listed above and specifications. Reason: To ensure that the development is as permitted by the local planning authority and for the avoidance of doubt.

The applicants have submitted plans to increase the size of the day room/amenity blocks and revised the location of two of the blocks (Plots 1 and 3). The approved day rooms measure 8m in length x 3.2m in width and 4.2m in height with pitched roofs. The proposed day rooms for all five plots would measure 10.1m in length x 4.5m in width and 3.3m in height with pitched roofs.

It is stated that the other details of the application, including fences, walls and gates, and the position of the access onto Roman Road remain unchanged from the approved scheme.

The majority of the development approved as part of the 2012 planning permission has been carried out on site. The main element which has not been constructed is four of the day rooms proposed.

The approved layout for the site shows five pitches each with a mobile home, touring caravan and amenity block with a mixture of block paving, tarmac, pea

shingle and concrete slabs used to create hard surfaced areas. There are areas of grass within Plots 1, 2 and 3.

The application is accompanied by a 'Design and Access and Planning Statement' along with details of the current occupiers of the site including information regarding the medical conditions of the site's occupiers and the hospitals/clinics they attend for treatment (Romford, Chelmsford, Harold Wood and Whitechapel). All the occupiers are stated to have a GP either in Ingatestone or Shenfield. The information provided shows that there are currently 12 adults who live at the site and 14-15 children (four of which attend Mountnessing Primary School) and that all of the occupiers are related to others on the site. All state that they would have nowhere to go if they vacated the site, and that they have been on Essex waiting list since 2003 and have not been offered any accommodation. It is also stated that the family's asthma has improved considerably since coming off the road-side.

The applicant has stated that they would be prepared to construct acoustic barrier along the boundary of the site with the A12 if necessary but only if a permanent planning permission is granted.

The applicant's agent makes reference to the requirement for 34 additional Gypsy and Traveller pitches to 2031 in the Brentwood Local Plan Preferred Options which was based on the need assessments agreed by the Regional Strategy Panel. The applicants' agents lists a number of reasons why this is an underestimate of need.

Reference is also made to the Gypsy and Traveller counts for Brentwood which record an increasing number of total caravans from January 2007 (34) to January 2013 (99) with a particularly high proportion on unauthorised sites or encampments (38.3% in January 2013 compared with a national average of 14.4%) with a further 38.6% with only temporary permission. The agent also suggests that there is a particular shortage of accommodation for Irish Travellers such as his clients. Reference is also made to the education and health deprivation of Gypsy and Travellers compared to national averages and that lack of security in accommodation is a major causal factor. It is also suggested that the need for the best interests of the children should be a 'primary consideration'.

Given the context and the specific circumstances of the site and applicants, the agent believes it would be unreasonable for the local planning authority to grant a third temporary planning permission. It is also suggested that a temporary planning permission is unlikely to be proportionate and justified against Article 8(2) of the European Convention on Human Rights and would be difficult to square with the Public Sector Equality Duty in the 2010 Equality Act.

## **2. Policy Context**

### National Policy

The National Planning Policy Framework (NPPF) came into effect on 27 March 2012 and is now a material consideration in planning decisions. The weight to be given to it will be a matter for the decision makers planning judgement in each particular case. This Framework replaces all the national planning guidance documents as stated in the NPPF, including Planning Policy Guidance Notes and Planning Policy Statements. Notwithstanding this, the NPPF granted a one year period of grace for existing adopted Local Plan policies which has now ended, but, the NPPF advises that following this 12 month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework, (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

On 6th March 2014, the government published Planning Policy Guidance (NPPG) which, along with the NPPF, is a material consideration in the determination of planning applications. The NPPG relating to 'Noise' is considered to be of particular relevance to the consideration of the current proposal.

### Local Plan Policy

GB1 (New development) refers to the need for very special circumstances to justify proposals which are inappropriate in the Green Belt.

GB2 (Development Criteria) refers to the need to proposals not to harm the openness of the Green Belt or conflict with the purposes of including land in the Green Belt. The Policy also requires account to be taken to public rights of way, existing landscape features and the location of any building in respect of the surrounding landscape and adjoining buildings.

CP1 (General Development Criteria) Requires development to satisfy a range of criteria covering the following considerations: Character and appearance of the area; Residential amenities; Access; Highway safety; Environmental protection; and the Natural and Historic Environment.

C8 (Ancient Landscapes and Special Landscape Areas) requires that, until a landscape character assessment is carried out, conservation or restoration of existing character within Special Landscape Areas should be given high priority

PC4 (Noise) aims to protect noise sensitive development from noise disturbance.

PC7 (Areas of Poor Air Quality) refers to identified air quality management areas in relation to residential or other sensitive uses

T2 ( New Development and Highway Considerations) refers to the need for proposals not to have an unacceptable detrimental impact on the transport system.



### 3. Relevant History

- 11/00711/FUL: Change of use of land to a caravan site involving the siting of 5 mobile homes, 5 touring caravans and construction of 5 day rooms/amenity blocks, an internal access road, hard standing for parking, and fencing/walls and gates to the external boundary and to divide the site. - Application Permitted
- 03/00399/FUL: Retention Of Fence, Hardsurfacing And Earth Bund Together With The Change Of Use Of The Land From Agriculture To Residential Use, The Stationing Of 5 No. Mobile Homes And 2 No. Touring Caravans And The Erection Of A Stable Block - Application Refused
- 05/00918/FUL: Retention Of Use Of Land For Residential Purposes Together With Stationing And Occupation Of 5 No. Replacement Mobile Homes And 5 No. Touring Caravans, Retention Of Earth Bund And Hardsurfacing And Erection Of 5 No. Utility Rooms And 2m High Walls, Fences And Gates - Non-determination

### 4. Neighbour Responses

A site notice was displayed at the site and 9 letters of notification were sent. No letters of representation have been received.

### 5. Consultation Responses

- **Parish Council:**

Mountnessing Parish Council maintains its position regarding this site. As it is on Green Belt land the Council believe that no development should be permitted and that all planning applicants should be treated equally. Consequently the Parish Council recommends that this application is not given planning permission.

- **Highway Authority:**

The Highway Authority would not wish to raise an objection to the above application, given the previous approvals, the existence of the development and the access, its use and the area available for parking within the site.

- **Legal**

In making its decision, the Committee must have regard to its public sector equality duty (PSED) under Section 149 of the Equalities Act 2010. Gypsy or Traveller status is a relevant protected characteristic under the Act.

The duty is to have due regard to the need to:

- *eliminate unlawful discrimination, harassment and other conduct prohibited by the Act;*

- *advance equality of opportunity between people who share a protected characteristic and those who do not. This may include minimising disadvantages suffered by persons who share a relevant characteristic that are connected to that characteristic, taking steps to meet the special needs of those with a protected characteristic, or encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic;*

*- foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.*

The duty must be considered as a relevant factor when considering its decision but does not impose a duty to achieve the outcomes in Section 149. The level of consideration required (i.e. paying due regard) will vary with the decision, and include such factors as the importance of the decision and the severity of the impact to meet its PSED, as well as the likelihood of discriminatory effect or the elimination of existing discrimination.

The PSED is only one factor that needs to be considered and may be balanced against other relevant factors including policy considerations. In appropriate cases such relevant countervailing factors may justify decisions which have an adverse impact on protected groups.

**Environmental Health & Enforcement Manager:**

The above proposed permanent residential mobile home site adjoins the A12 and will be subject to high levels of traffic noise and vibration. The planning inspectorate in the previous appeal agreed that it would be acceptable for the site to introduce an acoustic barrier capable of achieving NEC B. In light of these proposals, this Service does not object to the application subject to the following conditions:

1. An acoustic barrier shall be erected which is capable of mitigating noise at the facade of all residential premises to achieve the following levels:

The noise levels should not be greater than 63 dBLAeq (16h) for the day time period 07:00 to 23:00 and 57 dBLAeq (8hr) for the night time period 23:00 to 07:00.

An acoustic report proving the above levels have been met after the barrier has been completed shall be submitted to the Planning Authority for approval. Thereafter, the approved scheme shall be permanently retained and maintained as such except as may be agreed in writing by the local Planning Authority.

This service has had many complaints regarding smoke nuisance from bonfires on this site, usually during evenings and weekends. The previous appeal had a condition that there would be no commercial activity or commercial storage on site and this Service would strongly advise that a further condition is imposed which prohibits bonfires on this land. Not only for the amenities of neighbours, but also for the safety of road users on the A12 due to possible smoke drift over the motorway.

**6. Summary of Issues**

The application site is roughly triangular in shape and measures approximately 115m along its frontage with Roman Road (part of the B1002) and a maximum of 53m in depth. The application site is located within 5m of the A12 which runs along the site's south-eastern boundary. The site adjoins residential properties (77 and 81 Roman Road) to the south-west and there is a group of four bungalows on the western side of Roman Road to the north of the site. There is land indicated as

being within the ownership of the applicant which adjoins three sides of the application site.

#### Additional Planning History

ENF/BRW/97/2003 - enforcement notices were served in relation to the formation of an earth bund, the erection of fence and gates, the change of use of the land from agricultural use to use for residential purposes - appeals part allowed, part dismissed in that the time for compliance was extended from 28 days to 1 year. BRW/918/2005 - continued use of land for residential purposes together with stationing and occupation of 5 replacement mobile homes and 5 touring caravans, retention of earth bund and hardsurfacing and erection of 5 utility rooms and 2m high walls, fences and gates - appeal against non-determination allowed 25 April 2007 - planning permission was granted for a temporary period of 5 years. The Inspector considered that the unmet need for gypsy sites within the Borough and the lack of alternative sites should be accorded considerable weight in favour of the proposal for a temporary period following advice within Circular 01/2006 which states that where there is unmet need and no alternative provision, but there is a reasonable expectation that new sites are likely to become available to meet that need, consideration should be given to granting a temporary consent. At the time, it was anticipated that the Council Gypsy and Traveller Site Development Plan Document (GTS DPD) could be adopted by 2010.

The Inspector considered that the proposal affected openness and undermined two of the purposes of including land within the Green Belt (preventing neighbouring towns from merging into one another and to assist in safeguarding the countryside from encroachment). However, in the absence of any robust landscape character assessment to justify its designation, the Inspector did not consider that the Special Landscape Area designation should be afforded any greater status than countryside. She also considered that the development would become less prominent and harmful with adequate landscaping and changes in the layout and level of caravan stands on the site. She afforded considerable weight to the educational needs of the children in support of the appeal as their education would have suffered if they were evicted from the site without an alternative settled base. Access to medical services was also a material consideration that was afforded considerable weight.

The Inspector was satisfied that an acoustic barrier together with changing the orientation of the caravans, where necessary, could provide a residential living environment within noise exposure category B, but that acoustic fencing/bunding would have an impact on visual amenity.

The Inspector considered that sites should be allocated to meet the recognised need for gypsies and travellers through GTS DPD process and that, therefore, a permanent permission in the Green Belt should not be granted due to the identified harm but, in the light of the personal circumstances and the lack of alternative sites, a temporary personal planning permission would be appropriate. To allow sufficient time for the GTS DPD to be adopted and having regard to the need to improve the noise environment within the appeal site as well as provide landscaping, she

considered that the planning permission should be for a limited period of five years. This would allow landscaping to become established, the appellant time to look at alternative sites and give the Council time to allocate sites. At that time, air quality was not an issue as it was expected that it was to be recommended that the Air Quality Management Area was to be rescinded as air quality had improved.

## Main Issues

It is considered that the main issues which require consideration as part of the determination of this application are the impact of the proposal on the Green Belt and the character and appearance of the area (which is also a Special Landscape Area), highway safety issues, the impact of the proposal on the amenity of neighbours, and the quality of life for the occupiers of the site and, if the development is found to cause harm, whether or not there are other matters which outweigh the harm and justify planning permission being granted in this case.

## Policy Context

The National Planning Policy Framework & Brentwood Replacement Local Plan  
The National Planning Policy Framework (NPPF) came into effect on 27 March 2012 and is now a material consideration in planning decisions. The weight to be given to it will be a matter for the decision makers planning judgement in each particular case. This Framework replaces all the national planning guidance documents as stated in the NPPF, including Planning Policy Guidance Notes and Planning Policy Statements. Notwithstanding this, the NPPF granted a one year period of grace for existing adopted Local Plan policies which has now ended, but, the NPPF advises that following this 12 month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework, (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

On 6th March 2014, the government published Planning Policy Guidance (NPPG) which, along with the NPPF, is a material consideration in the determination of planning applications. The NPPG relating to 'Noise' is considered to be of particular relevance to the consideration of the current proposal.

## Previous National Policy in relation to Gypsy and Travellers

Circular 1/2006 was in force at the time the original planning permission for the site (reference 05/00918/FUL) was granted on appeal but this has since been replaced by 'Planning policy for traveller sites' in March 2012 which had been published at the time the most recent planning permission for the site (reference 11/00711/FUL) was granted. Circular 1/2006 placed a duty on Councils to allocate sufficient land for Gypsy and Traveller accommodation needs and set out a planning process for achieving this. This included Gypsy and Traveller Accommodation Assessments (GTAA) informing the overall level of need as part of the housing needs in the Regional Plan (RSS). The RSS was to identify the number of pitches required for each local planning authority. These numbers were then to be translated into specific site allocations in a DPD. The Housing Act 2004 also requires local housing

authorities to include Gypsy and Travellers in their accommodation assessments and take a strategic approach, including drawing up a strategy demonstrating how the accommodation needs of Gypsies and Travellers will be met, as part of their wider housing strategies. The Coalition government through the Localism Act 2011 abolished the RSS and the associated housing targets (including gypsy and traveller pitch targets) for the East of England. The government has stated that local councils are best placed to assess the needs of travellers and will be responsible for determining the right level of site provision, reflecting local need, and bringing forward land in DPDs.

#### Existing National Policy in relation to Gypsy and Travellers

Within 'Planning policy for traveller sites', the Government's stated overarching objective is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. When determining planning applications, the Government states that local planning authorities should consider the following issues when considering planning applications for traveller sites:

- a) the existing level of local provision and need for sites
- b) the availability (or lack) of alternative accommodation for the applicants
- c) other personal circumstances of the applicant
- d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
- e) that they should determine applications for sites from any travellers and not just those with local connections,

The guidance is that local planning authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing undue pressure on the local infrastructure.

Local planning authorities are advised that weight should be attached to the following matters:-

- (a) effective use of previously developed (Brownfield), untidy or derelict land;
- (b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness
- (c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children
- (d) not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community

This planning policy statement also states that from 12 months after the date the policy comes into effect i.e. from March 2013, if a local planning authority cannot demonstrate an up-to-date five year supply of deliverable sites, it should consider favourably applications for the grant of a temporary planning permission.

The National Planning Policy Framework was also published in March 2012 alongside the 'Planning policy for traveller sites' referred to above. The NPPF establishes a presumption in favour of sustainable development but reconfirms the local plan as the keystone of the planning system. The NPPF has a strong emphasis on pre-growth and economic recovery. As part of the National Planning Policy Framework, previous Planning Policy Statements and Guidance, including PPG2: Green Belts, were cancelled. However, protection of the Green Belt is still a key aim of the NPPF which is not overridden by the presumption in favour of sustainable development. The test for inappropriate development remains with planning permission only to be granted in very special circumstances although wider scope is given for infill development and partial or complete redevelopment of previously developed sites. In a Ministerial Statement July 2013, it was emphasised that unmet demand alone is unlikely to constitute very special circumstances justifying inappropriate development in the Green Belt.

#### Current Development Plan in relation to Gypsy and Travellers

In 2007 the Council started work on the preparation of a specific Local Development Plan Document (LPD) dealing with the accommodation needs of Gypsies and Travellers. This reached the Pre-Submission consultation stage in December 2009. 5 sites were identified to meet the Regional Plan (Policy H3) requirement for 15 additional residential pitches by 2011 which included five pitches at the current application site. The document did not cover post 2011 pitch requirements. At the Policy, Performance and Resources Board on 8 December 2010, Members resolved that work on a separate Gypsy and Traveller DPD should cease and that the issue would be incorporated within the Local Development Plan. CLG has advised that the government has no objection to this approach. However, progress on the preparation of the Local Development Plan is at an early stage, with adoption envisaged by 2015. Any final decisions on site criteria policy/site allocations are, therefore, not imminent.

The Council has published a 'Preferred Options for Consultation' document for the draft Local Plan 2015-2030. Draft Policy DM28 relates to Gypsy and Traveller Provision within the Borough as part of which it is intended to make provision within the Borough to meet the identified need for 44 permanent Gypsy and Traveller Pitches to 2030. The draft Policy sets out a number of criteria for sites to meet.

Roman Triangle is one of five sites the Council proposes to allocate to provide 5 of the 20 permanent gypsy and traveller pitches to be allocated across the Borough. The stated preferred approach aims to ensure that the target for pitch provision will be met throughout the plan period through allocations, maintaining a five year land supply and identifying a broad location for further provision. Whilst the draft Local Plan is at an early stage, draft Policy DM28 indicates the Council's intentions based on a strategic assessment of need for gypsy and traveller sites across the Borough.

On this basis, it is considered that this draft Policy could be afforded some weight in the determination of this current application.

### Temporary Planning Permissions

The Borough has a number of sites with temporary planning permissions. The majority of these were granted on appeal, but some by the Council (specifically Treetops, Curtis Mill Lane). A number of temporary planning permissions have also since been renewed for a further temporary period of between 18 months and two years (six pitches at Willow Park, Stock Lane, Ingatestone, four pitches at Orchard View, Horsemanside (established in 2007), two pitches which adds to the permanent single pitch established in 1993 at The Willows, Place Farm Lane, Doddinghurst (reference 10/00311/FUL), five pitches at the current application site (which expired on 28 November 2013) and three pitches at Hope Farm, Horsemanside, Navestock).

Other appeal decisions have gone against the Council - being granted permanent rather than temporary permission i.e. Clementines Farm, Murthering Lane (1 pitch) and Pondend, Clapgate Estate, Chivers Road (1 pitch). However, a more recent appeal against the refusal of planning permission for six traveller pitches at Plot 3 Oaktree Farm, Blackmore (reference 09/00263/FUL) was dismissed (but is still subject to legal challenge by the appellants), and appeals for gypsy and traveller sites at Hunters Green, Albyns Lane, Navestock and plots 1-4 Lizvale, Goatswood Lane, Navestock have been dismissed in September 2013. There is also an outstanding appeal decision relating to Cottage Garden, Beads Hall Lane, Pilgrims Hatch (reference 11/01083/FUL).

A permanent planning permission for a single Gypsy and Traveller pitch at Rye Etch, Mill Lane, Navestock (13/00272/FUL) was granted last year.

### Local level of need for Gypsy and Travellers

Policy H3 of the East of England Plan sets out a pitch requirement for Brentwood based on a formula due to the lack of a robust GTTA for Essex. This resulted in a requirement for Brentwood to provide a minimum of 15 pitches between 2006-2011 and a further 13 pitches by 2021, in addition to the identified 10 existing authorised pitches in the Borough at 2006 (i.e. a total of 38 pitches at 2021). Subsequent more accurate information shows that this was an underestimate of local need (see below).

In responding to earlier criticisms of the previous Essex GTAA a further study was undertaken following CLG guidance on best practice in 2009. This assessed the level of unmet need in the Borough to be greater than the pitch requirement in Policy H3 of the East of England Plan (i.e. a total of 63 pitches at 2021). However, this was not subject to rigorous testing through examination as was the previous GTAA which informed regional policy. It is therefore considered less robust and has not been used as a basis for calculating future provision within the draft Local Plan. Furthermore, the GTAA provide an assessment of local need by district but are not allocations and, unlike the RSS Policy H3, there is no consideration of an

appropriate spatial distribution to meet needs across the County. A new GTAA to cover Brentwood and all other Essex local planning authorities (except Basildon who are to produce their own GTAA) is the process of being prepared and is expected to be published shortly.

At January 2014 (the date of the last published count of Gypsy and Traveller caravans) there were a total of 101 caravans, 47 of which had temporary planning permission and 17 of which had permanent planning permission; the remainder were unauthorised sites without planning permission.

However, these numbers do not include any assessment of need due to overcrowding or concealed need on existing sites, Gypsies and Travellers living in bricks and mortar within the Borough who would prefer to live in a caravan, or the future need for pitches as existing family circumstances change. Equally there is no assessment of pitches becoming available due to mortality or migration out of the Borough.

#### Assessment of Current Proposal

#### Impact on the Green Belt and Character and Appearance

The application site is located within the Metropolitan Green Belt and forms part of a Special Landscape Area. The development constitutes inappropriate development within the Green Belt, reduces the Green Belt's openness and, whilst the site does benefit from some vegetative screening the development causes some harm to the character and appearance of this rural area which is also a Special Landscape Area, contrary to the NPPF (section 9 in particular) and Policies GB1, GB2, C8 and CP1 (criteria i and iii). As a result of the harm the development causes by reason of its inappropriateness and all other harm caused, very special circumstances would need to exist which clearly outweighed the harm caused to justify granting planning permission for the development proposed.

#### Gypsy and Travellers

In considering the current planning application the Council must have regard to the terms of the previous permissions and the reasoning behind the most recent temporary planning permission. The reason for the temporary period was as a permanent permission would not have been appropriate in the context of the changes to policy on site provision for gypsies and travellers in the Borough which were expected within the following two years i.e. by May 2014.

The reason for the previous temporary period granted on appeal was in light of the personal circumstances and the lack of alternative sites despite the harm to the Green Belt. The Inspector considered that a five year temporary planning permission would allow sufficient time for the GTS DPD to be adopted, the appellant to look at alternative sites, improve the noise environment within the site as well as provide landscaping.



As part of the previous applications at the site, the Council and the appeal Inspector accepted that the occupiers of the site were gypsies and travellers for planning purposes as defined in ODPM Circular 1/2006. The definition of 'gypsies and travellers' for the purposes of the current 'Planning policy for travellers sites' remains the same as that within Circular 1/2006. It is understood that the main occupiers of the site remain unchanged.

The proposal, the subject of this application, is very similar to that granted temporary planning permission but there have been material changes to the circumstances surrounding the site since May 2012 with the Council publishing its Local Plan Preferred Options in July 2013.

With reference to government guidance in 'Planning policy for traveller sites', the Council must take account of the 'need' for traveller accommodation - which would take into account the former regional targets as well as the county wide GTAA. As set out in draft Local Plan Policy DM28, there is still a clear need for additional, permanent gypsy and traveller sites within the Borough.

Most (if not all) of the appeal decisions refer to the guidance in Circular 1/2006, which indicates that a temporary permission may be given pending the adoption of Development Plan Document. In evidence the Council indicated that it was preparing a DPD and the Inspectors were therefore able to grant temporary planning permission in anticipation that by the time the sites were coming up for renewal the Council would have a policy framework in place. Whilst the Council has not adopted a replacement Local Plan, a draft document has been published and has been consulted on, and it is considered highly likely that Roman Triangle would become one of the allocated gypsy and traveller sites within the Borough. In this case, and given the planning history of the site, it is considered that there is sufficient justification for the permanent planning permission to be granted for Roman Triangle for five plots and that a further temporary planning permission is not necessary or justified, and would contribute to the Council being able to demonstrate an up-to-date five year supply of deliverable sites.

It is not considered that such a decision would prejudice the longer term, strategic provision of traveller sites within the Borough through the development plan adoption process.

With reference to the criteria within draft Local Plan Policy DM28, it is considered that very special circumstances exist which clearly outweigh the harm the development causes to the Green Belt (criterion a), the site has been established for a number of years and so is well related to existing communities and is reasonably accessible to local services and facilities such as shops, schools and healthcare as well as public transport (criteria b), the site is serviced by a suitable access road (criteria c), the location does not result in unacceptable living conditions for its occupants (subject to the imposition of a condition requiring the erection of a noise barrier - see below) (criteria d), the development causes some harm to the character and appearance of the area but which is clearly outweighed by very special circumstances (criteria e), and the impact on the environment as a

result of the location, design and landscaping of the site is minimal and could be mitigated further through the additional landscaping (criteria f).

There is evidence that the occupiers of the site have made some efforts to find alternative accommodation. Furthermore, the Council is not currently in a position to identify any available alternative sites and, as stated above, the Council intends to allocate Roman Triangle as a permanent gypsy and traveller site.

It is considered that there would be no greater effect on openness than another Green Belt location and there would not be an overconcentration of similar sites in this area as this is the only gypsy and traveller site in Mountnessing and is limited in size.

It is also considered that the revised locations of two of the previously approved amenity blocks would not cause any greater harm to the Green Belt or the character and appearance of the area and the increased size of the amenity blocks proposed would not cause materially greater harm in the context of the site as a whole.

As part of the last appeal, the Inspector considered that there was no significant landscaping to soften the impact of the development from the countryside and recommended that landscaping was required by condition along with changes to the layout and level of caravan stands on the site. The proposed layout and existing level of caravan stands have since been amended and are now considered to be acceptable. Additional landscaping could reasonably be required by condition if a permanent planning permission were to be granted.

#### Personal Circumstances

The existing planning permission is conditional (condition 2 and 3 of planning permission 11/00711/FUL) on the site only being occupied by 11 named persons and their resident dependants. The applicant's agent has made reference to the health problems experienced by some of the site's residents and states that four of the school age children attend the local primary school whilst nearly all the others are home tutored.

The occupiers of the current application site have been in occupation for many years and are well established with links to local health care and education etc. As part of the last appeal, the Inspector accorded considerable weight to the occupiers' access to medical services and recognised the harm to the education of the children if the occupiers were to be evicted without an alternative site on which to settle.

Granting a permanent planning permission would enable the uninterrupted education of the school age children at the site as well as the healthcare of the site's occupants, it is therefore considered that the personal circumstances of the current occupiers of the site should continue to be given considerable weight in the determination of the current application.

The application site is reasonably accessible to schools, shops, health services etc, there is satisfactory road access and there is no adverse environmental impact. However, the site does cause significant harm to the Green Belt by reason of its inappropriateness and loss of openness of the Green Belt and causes harm to the character and appearance of the area, which is within a Special Landscape Area.

### Impact on Neighbours

With respect to the impact of the development on the living conditions of the occupiers of neighbouring residents from potential disturbance from noisy business or commercial activities, or from external lighting, it is considered that these could be controlled to an acceptable level through the existing conditions along with a condition prohibiting bonfires and burning of waste as recommended by the Environmental Health Officer (to which the applicant has stated they have no objection).

### Noise Pollution

As part of the last appeal relating to the site, the Inspector, subject to noise attenuation measures, did not find noise pollution a reason for withholding planning permission and that the provisions of Policy PC5 of the Local Plan would be met. Based on the advice of the Environmental Health Officer, it is considered that the same conclusion would continue to apply. There have been no complaints received from the occupiers of the site regarding traffic noise.

### Air Quality

The site is located within an Air Quality Management Area but, based on the advice of the Environmental Health Officer, it is considered that air quality is not an issue as recent readings have been satisfactory and, therefore, that the requirements of Policy PC7 would be met.

### Highways

Based on the advice of the Highways Officer, it is considered that the proposed development would not cause harm to highway safety, in compliance with the NPPF (paragraph 17), Policy T2 and Policy CP1 (criteria iv and v).

### Third Party Objections

The matters raised by the local Parish Council are covered above.

### Conclusion

It is considered that the unmet local, regional and national need for additional traveller sites and the personal circumstances of the site's occupiers (including the 'best interests of the children') amount to very special circumstances which clearly outweigh the harm the development causes to the Green Belt and the character and appearance of the surrounding area. As a result, it is recommended below that

permanent planning permission is granted for the development proposed in line with the decision taken with respect to Rye Etch site referred to above but subject to conditions. Specifically, that condition 2 of planning permission reference 11/00711/FUL is amended as proposed and that amended details of the size and position of the amenity blocks are approved (condition 9). The applicant also seeks removal of condition 3 but, to retain the personal nature of the planning permission, it is recommended below that this condition is retained but amended to remove reference to a temporary period. It is also recommended below that the personal conditions are also updated to refer to all the adults currently occupying the site (i.e. those who were still dependants at the time of the last planning application in 2011). Conditions requiring the submission, approval and implementation of a landscaping scheme and an acoustic barrier for site are also recommended. Compliance with these conditions will require the submission of further details and further works being carried out at the site but Officers are satisfied that an acceptable landscaping scheme and noise barrier could be provided for the site and on land within the applicant's ownership.

## **7. Recommendation**

The Application be APPROVED subject to the following conditions:-

### **1 U07963**

This permission does not authorise use of the land as a caravan site by any persons other than gypsies and travellers, as defined in Communities and Local Government's 'Planning policy for traveller sites' (Annex 1).

Reason: Permission is granted only because of the gypsy/traveller status of the proposed occupiers.

### **2 U07967**

The use hereby permitted shall be carried on only by Mr T and Mrs J A MacDonald, Mrs M Boyle, Tina Boyle, Mr T and Mrs B MacDonald, Ms A Reilly, Tanya Reilly, Santana Reilly, Ms B Reilly, Shannon McDonald and Michael Reilly and their children.

Reason: Permission is only granted in this instance in light of the very special circumstances of the case.

### **3 U07968**

When the premises cease to be occupied by Mr T and Mrs J A MacDonald, Mrs M Boyle, Tina Boyle, Delcie Boyle, Mr T and Mrs B MacDonald, Ms A Reilly, Tanya Reilly, Santana Reilly, Ms B Reilly, Shannon McDonald and Michael Reilly and their children, the use hereby permitted shall cease, all materials and equipment brought on to the premises in connection with the use, including amenity blocks, walls, fences, gates and the acoustic barrier required by condition 9 below, shall be removed and the land restored to an agricultural condition, but any soft landscaping shall remain.

Reason: Permission is only granted in this instance in light of the very special circumstances of the case.

4 U07969

There shall be no more than 5 pitches on the site and on each of the 5 pitches hereby approved no more than two caravans shall be stationed at any time of which only 1 caravan shall be a static caravan.

Reason: In the interests of the character and visual amenities of the area which lies within the Metropolitan Green Belt.

5 U07970

No business or commercial activities shall take place on the land, including the storage of materials.

Reason: To prevent the introduction of a commercial use into this area and in the interests of the visual amenity of the Green Belt and the amenity of the occupiers of properties nearby.

6 U07971

No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

Reason: To prevent the introduction of a commercial use into this area and in the interests of the visual amenity of the Green Belt and the amenity of the occupiers of properties nearby.

7 U07972

No additional external lighting shall be installed on the site without the written prior approval of the local planning authority.

Reason: In the interests of the character and visual amenities of the area.

8 U07973

Notwithstanding the existing fencing and other means of enclosure on the site, no additional fencing or means of enclosure shall be installed on the site without the prior written approval of the local planning authority.

Reason: In the interests of the character and visual amenities of the area.

9 U07974

Within one month of the date of this planning permission, details of the location, height and construction of an acoustic barrier to be erected along the boundary of the site with the A12 shall be submitted to and approved in writing by the local planning authority. The acoustic barrier shall be capable of mitigating noise at the facade of all residential premises to achieve the following levels:

The noise levels should not be greater than 63 dBLAeq (16h) for the day time period 07:00 to 23:00 and 57 dBLAeq (8hr) for the night time period 23:00 to 07:00.

The acoustic barrier shall be erected in accordance with the approved details within 3 months of the approval of the barrier details.

Within 1 month of the barrier being completed, an acoustic report proving the above levels have been met shall be submitted to and approved in writing by the local planning authority. Thereafter, the approved scheme shall be permanently retained and maintained as such except as may be agreed in writing by the Local Planning Authority.

Reason: In the interests of the health and wellbeing of the occupiers of the site.

10U07975

Within one month of the date of this planning permission, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the local planning authority. The submitted scheme shall indicate the existing trees shrubs and hedgerows to be retained, the location, species and size of all new trees, shrubs and hedgerows to be planted or transplanted, those areas to be grassed and/or paved. The landscaping scheme shall include details of all surfacing materials and existing and proposed ground levels. The landscaping scheme shall be completed during the first planting season after the date the landscaping scheme is approved by the local planning authority. Any newly planted tree, shrub or hedgerow or any existing tree, shrub or hedgerow to be retained, that dies, or is uprooted, severely damaged or seriously diseased, within five years of the completion of the development, shall be replaced within the next planting season with another of the same species and of a similar size, unless the local planning authority gives prior written consent to any variation.

Reason: In order to safeguard and enhance the character and appearance of the area.

11U07977

Construction of the amenity blocks hereby permitted shall not commence until samples of the materials to be used in the construction of the external surfaces of the buildings have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason: In order to safeguard the character and appearance of the area.

12U07976

There shall be no bonfires or burning of waste within the land edged red or blue at any time.

Reason: In the interests of the amenity of the occupiers of neighbouring property and highway safety.

13DRA02A Development in accordance with drawings

Unless formally permitted by the local planning authority the development hereby permitted shall not be carried out except in complete accordance with the approved drawing(s) listed above and specifications.

Reason: To ensure that the development is as permitted by the local planning authority and for the avoidance of doubt.

Informative(s)

1 INF05

The following development plan policies contained in the Brentwood Replacement Local Plan 2005 are relevant to this decision: GB1, GB2, CP1, C8, T2, PC4, PC7 the National Planning Policy Framework 2012 and NPPG 2014.

2 INF04

The permitted development must be carried out in accordance with the approved drawings and specification. If you wish to amend your proposal you will need formal permission from the Council. The method of obtaining permission depends on the nature of the amendment and you are advised to refer to the Council's web site or take professional advice before making your application.

3 INF21

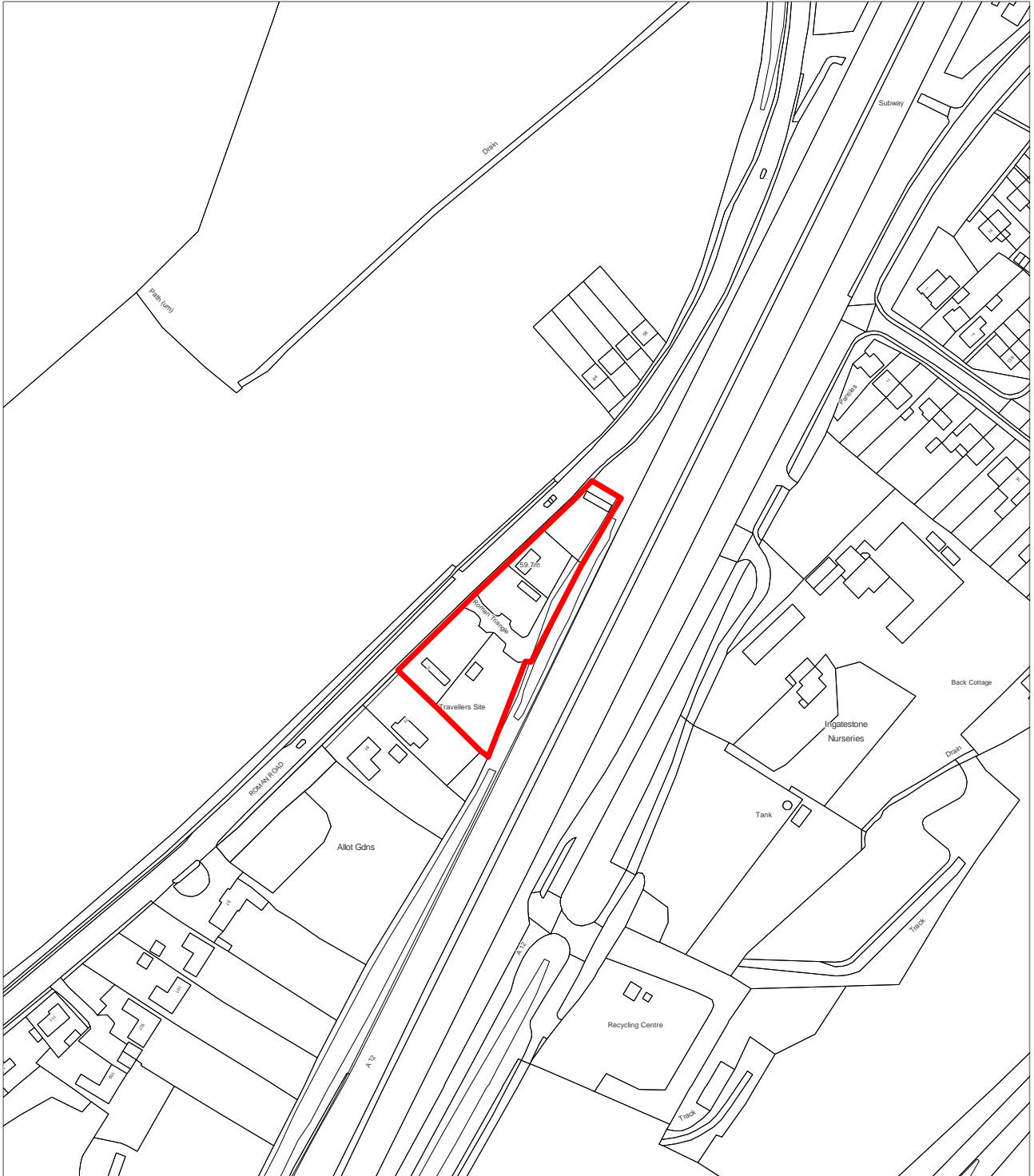
The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

*BACKGROUND DOCUMENTS*

**DECIDED:**







**Title: 1-5 Roman Triangle, Roman Road, Mountnessing**

**14/00244/FUL**

**Scale: 1:2500**

**Date: 22nd July 2014**

Brentwood Borough Council  
Town Hall, Ingrave Road  
Brentwood, CM15 8AY  
Tel: (01277) 312500



**Brentwood**  
Borough Council

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**SITE PLAN ATTACHED**

**04. WARLEY DEPOT THE DRIVE WARLEY ESSEX**

**EXTENSION OF FRONT OF EXISTING STORE BUILDING AND CHANGE OF USE OF PART OF EXISTING DEPOT STORE, BUILDING TO A CLASS 7 MOT TESTING STATION**

**APPLICATION NO: 14/00661/BBC**

<b>WARD</b>	Warley	<b>8/13 WEEK DATE</b>	08.08.2014
<b>PARISH</b>		<b>POLICIES</b>	CP1 E4 E5 E8 NPPF NPPG
<b>CASE OFFICER</b>	Yee Cheung		01277 312620
<b>Drawing no(s) relevant to this decision:</b>	BBC/MOT/01 REV B; BC/MOT/04 REV A; BBC/MOT/05 REV B;		

**1. Proposals**

Planning permission is sought for the following:-

- Change of use of a part of the depot and store building to a Class 7 MOT Testing Station. The gross floor area of the application site, edged in red, on plan no. BBC/MOT/01/Rev B is approximately 569.7 square metres. The floor area of the storage building to be changed into Class 7 MOT Testing Station will be 89.5 square metres;
- Within this Testing Station, there will be a MOT Testing Bay, a waiting room/viewing area, two W.Cs (for public and staff) an office and a small store room. Internal equipment associated with the test centre, to be installed within the building such as Roller Break Tester, rail mounted headlamps, platform to lift vehicles up for inspection;
- For a length of approximately 6.6 metres of the storage building, the ridge of the storage building will be raised by 1.9 metres to 7.1 metres and an extension is proposed to the front of the store building measuring 1.8 metres deep, 6.4 metres wide and 4.8 metres to ridge level;

- All new cladding to areas affected by the proposed development will be finished in matching powder coating profile metal cladding in dark green and grey colour;
- The two existing up and over doors will be replaced by one, up and over door measuring 5.6 metres wide and 3.5 metres in height;
- A customer entrance door is proposed on the south elevation to allow public access to the waiting/viewing room and a W.C. Access to the office, W.C and store room would be via the test bay. There is an existing emergency exit to the north of the storage building. This exit will be utilised for the test centre. A new emergency exit is proposed for the remainder storage building;
- Four MOT parking bays have been allocated immediately to the west of the storage building for customers. These parking bays will measure 3.5 metres wide x 6 metres deep; and
- Additional security palisade fence at 2.4 metres in height to be erected on the boundary around the MOT compound to the east and south of the application to provide security to the site and testing station.

## **2. Policy Context**

The National Planning Policy Framework (NPPF) came into effect on 27 March 2012 and is now a material consideration in planning decisions. The weight to be given to it will be a matter for the decision makers planning judgement in each particular case. This Framework replaces all the national planning guidance documents as stated in the NPPF, including Planning Policy Guidance Notes and Planning Policy Statements. Notwithstanding this, the NPPF granted a one year period of grace for existing adopted Local Plan policies which has now ended, but the NPPF advises that following this 12 month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework, (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

The core planning principles of the Framework states that 'planning should proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth'. Further, it advises that planning should encourage the effective use of land by reusing land that has been previously developed (Brownfield land), provided that it is not of high environmental value.

The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.

Paragraph 22 of the Framework advocates that 'planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities'.

Notwithstanding the above, the NPPF should be read in conjunction with The National Planning Policy Guidance (NPPG) came into effect on 6 March 2014. This guidance is also a material consideration in all planning decisions.

### Brentwood Replacement Local Plan

CP1 (General Development Criteria) requires development to satisfy a range of criteria covering the following considerations: Character and appearance of the area; Residential amenities; Access; Highway safety; Environmental protection; and the Natural and Historic Environment.

E4 (Employment land Supply) states that some 1 hectares of existing employment land remains undeveloped to the east of the Council's Highway Depot, The Drive, and north of the Marillac hospital. The site is located within the urban area of Brentwood means that it is accessible by a variety of transport modes, and with potential for improvements.

E5 (Land Adjacent the Council Depot, Warley) states that some 1 hectares of land adjacent to the Council Highways Depot, Warley is allocated for employment purposes, subject to criteria set out in Policy E8 of the adopted local plan.

E8 (Employment Development Criteria) advises that any development proposals for employment purposes shall (i) be of a scale and nature appropriate to the locality (ii) accessible by public transport, walking and cycling (iii) road access will avoid using narrow residential streets and country lanes and avoid significant traffic movement within rural areas; and (iv) appropriate landscaping and screening shall be provided.

### **3. Relevant History**

- 14/00435/BBC: Change of use of part of existing depot store, building to a class 7 MOT Testing Station. - Application Permitted

### **4. Neighbour Responses**

Six neighbour notification letters were sent out and two site notices were displayed within and at the entrance of the site. No letters of representation received at the time of writing this report.

## 5. Consultation Responses

- **Environmental Health & Enforcement Manager:**

No comments received at the time of writing this report.

- **Highway Authority:**

The Highway Authority would not wish to raise an objection to the above application, given the location, the existence and use of the site, the scale and nature of the development, the area to be available for parking and Brentwood Borough Council's adopted parking standards.

- **Planning Policy:**

The site is Council owned and there is a commitment in the Corporate Plan to redevelop the site that it may be for a residential scheme. If it's just for change of use then the only comment we would have is that it is identified in the Corporate Plan 2013-2016 as an asset for development and it is proposed to be allocated for housing in the Draft Local Development Plan, 2015-2030 Preferred Options (July 2013), see site ref 081. This will need to be taken account of in whatever decision is made re change of use.

- **Head Of Street Scene:**

No comments received at the time of writing this report.

## 6. Summary of Issues

### Background

This planning application is being considered by the Planning Committee as the site is Council owned land. The applicant is the Waste, Fleet and Housing Supervisor who is a member of staff employed by Brentwood Borough Council.

A further report will be prepared by the Head of Street Scene and referred to the Environment Committee for elected Members to review the project.

The application is a revision of a previous application 14/00435/BBC for a change of use of part of the depot to a Class 7 MOT Testing Centre that was approved by the Planning Committee on 24th June 2014. This current scheme proposes the change of use of the same area plus in addition an extension to the building to accommodate the size of vehicles.

### Site

The application relates to the Council's depot, an established site which is located to the east of The Drive. This site comprise of buildings used for storage, garage, vehicle workshops, an open storage area for wastes, bins and household appliances and an area to steam clean/pressure wash Council owned vehicles. The application site is largely screened from public view by an established trees and

hedges on the northern and eastern boundary and a large garage building and vehicle workshop owned by the Council

The depot is occupied by the Royal British Legion Band Club to the north and Eagle Hall (Scouts Group) to the west.

To the north of the Council Depot is Warley County Primary School and sports ground. To the east of the depot is Barrack Wood and immediately to the south is Fords Garage and Fords Car Park. Directly opposite the site is a block of flats known as 'Mayflower House'.

The application site, is an area of approximately 598 square metres, measuring approximately 23 metres in width and 26 metres in depth and is laid with a concrete hardstanding. This area includes a change of use to a section of an existing large storage building attached to the north side of the Council's office. This modest section of the storage building measures approximately 9.8 metres wide and 10.2 metres in depth which will form the MOT Testing Station.

There is an existing security palisade fence of approximately 2.4 metres in height to the depot boundary.

Access to the depot is via The Drive which is located between No. 53 The Drive, to the north and Fords Garage to the south. The access is owned by the Council and also provides access to the Royal British Legion Band Club and to Eagle Hall. Vehicles that enter the site currently operate in a one way system.

#### Assessment of Proposal

The main issues to consider when determining this application are change of use; design of development; the effect on access, parking and highway safety and any other planning considerations.

#### Change of Use

Planning permission is sought by the Council for the change of use of part of the existing Council's depot storage building to a Class 7 MOT Station. The contents currently stored within this small section of the building (council files and materials for street signs) will be relocated to another part of the storage building which is currently partly empty.

Having taken into account the depot's location, the existing use of the site and the scale and nature of development within the site, the applicant considers that to effectively use this site would be to change the use of a small section of the building into a MOT Testing Station for Class 7 Vehicles. Class 7 Vehicles includes cars, motor caravan, ambulances, taxis, private hire vehicles, good vehicles (over 3,000 and up to 3,500kg in weight).

The testing station will be run by the Council and will be open to the general public to bring their vehicles into the site for annual testing. This will be combined with a licensing inspection for HCV (Hackney Carriage Vehicles) and Private Hire Vehicles (PHV) (Taxis) that operate in Brentwood.

This scheme would be funded through Capital Expenditure (Council's money used for projects in the Borough) and the income generated from this proposed use will be ploughed back into the workshop and the general day-to-day running of the depot. In effect, the proposal would fulfil the Council's objectives regarding to sustainability, improving environmental performance and reducing costs to the Borough.

It is considered that the change of use of part of the existing depot would meet the core principles of the Framework which is to encourage the effective use of land by re-using land that has been previously development (brownfield site), provided that it is not of high environmental value. Further the proposal would meet Policies CP1 (i) (iii) and E8 of the adopted local plan.

#### Design of Development

At present the storage building measures 5.2 metres to ridge level. It is proposed that for a length of approximately 6.6 metres of the building will be raised by 1.9 metres with the new ridge height to be 7.1 metres to accommodate the activities within the MOT Testing Bay. The remaining 3.4 metres of the MOT Testing Station will be the existing height at 5.2 metres which forms the waiting/viewing room, office, toilets and a small storage space.

A front extension is proposed to the store building. This extension will measure approximately 1.8 metres deep, 6.4 metres wide and 4.8 metres to ridge level. In terms of the height of the proposal, the development at 7.1 metres would not be out of keeping or incongruous amongst all the existing buildings that currently surrounds the application site. The external materials to be used in the proposed development will match the existing storage building and therefore would be appropriate and sympathetic. As such, the proposal would be in accordance with Policy CP1 (i) and (iii) of the adopted local plan.

#### Residential Amenity

The nearest neighbouring residential properties to this site are No. 51, No. 51A and No. 53 The Drive. These properties lie to the north of the access to the site. Due to the use and nature of the site as the Council's Depot, it is not considered that the proposed use within the site would have a significant impact upon the amenity of the occupiers of these properties by reason of noise, general disturbance and vehicular movement. The proposal would therefore be in accordance with Policy CP1 (ii) (iv) and T2 of the adopted local plan.



## Access, Parking and Highway

Having considered the details, the location, the existence and use of the site, the scale and nature of the development, the area to be available for parking, the Highway Authority has raised no objection to the proposal.

## Other Planning Consideration

The Council is fully aware that there is a commitment in the Corporate Plan 2013-2016 in the medium-term to relocate the Council's depot and release the land for potential development of the site. If and when this happens, it is envisaged that this MOT Testing Station will be relocated to the new site.

The Environmental Health Department has been consulted and has raised no objection to the proposal.

## Conclusion

Having taken into account the above, the proposal for the change of use of the site would meet the Development Plan Policies; the National Planning Policy Framework; and the National Planning Practice Guidance. The proposal would also meet the Council's aims and objectives as contained within the Corporate Plan 2013-2016.

## **7. Recommendation**

The Application be APPROVED subject to the following conditions:-

### 1 TIM01 Standard Time - Full

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

### 2 DRA01A Development in accordance with drawings

The development hereby permitted shall not be carried out except in complete accordance with the approved drawing(s) listed above and specifications.

Reason: To ensure that the development is as permitted by the local planning authority and for the avoidance of doubt.

### 3 MAT03 Materials to match

The materials to be used in the construction of the external surfaces of the building hereby permitted shall match those used in the existing building.

Reason: In order to safeguard the character and appearance of the area.

4 U08059

The use hereby permitted shall only be undertaken between 08:00 hours and 17:00 hours on weekdays and between 08:00 hours and 17:00 hours on Saturdays and not at any time on Sundays and Public Holidays.

Reason: in order to ensure the appropriate use of the site

Informative(s)

1 INF04

The permitted development must be carried out in accordance with the approved drawings and specification. If you wish to amend your proposal you will need formal permission from the Council. The method of obtaining permission depends on the nature of the amendment and you are advised to refer to the Council's web site or take professional advice before making your application.

2 U01940

The following development plan policies contained in the Brentwood Replacement Local Plan 2005 are relevant to this decision CP1, E4, E5, E8 and T2; the National Planning Policy Framework 2012 and the National Planning Practice Guidance 2014.

3 INF21

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

*BACKGROUND DOCUMENTS*

**DECIDED:**



**Title: Warley Depot, The Drive, Warley**

**14/00661/BBC**

**Scale: 14/00661/BBC**

**Date: 22nd July 2014**

Brentwood Borough Council  
Town Hall, Ingrave Road  
Brentwood, CM15 8AY  
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**22<sup>nd</sup> July 2014**

**Agenda Item: 5**

**Planning Committee**

**Brentwood Planning Enforcement Plan**

**Report of:** *Tony Pierce, Interim Head of Planning*

**Wards Affected:** *All*

**This report is:** *Public*

## **1. Executive Summary**

- 1.1. Attached for members' consideration and approval for consultation is the draft Brentwood Planning Enforcement Plan along with revised High Hedges and Tree Enforcement Procedures. The draft Plan, to be amended after consideration of by members' Parish Councils' and public responses, will be presented to Council for approval and publication at a future meeting of this Committee. This will allow any interested parties to engage in setting objectives and suggesting priorities for enforcement action, as well as providing greater clarity and certainty to the investigation and development processes.
- 1.2. Planning Enforcement is essential to protect the quality of life of people who live and work and visit the area. It is also essential to support confidence in the integrity of the Planning system. It can be technically complex, but the draft plan links to Government Guidance and it is hoped that this assists in clarifying issues and priorities. The draft Plan includes proposed standards for openness, proportionality and consistency of procedures particularly relating to identification of unauthorised development; priorities for investigating and reporting on potential planning breaches, options for decision, and completion of an investigation.
- 1.3. The appendices of the draft Plan set out the Enforcement Toolkit, the procedure notes for Tree Preservation Order enforcement and high hedges. There is also further detailed legal information on untidy land notices and hedgerows.

## **2. Recommendations**

- 2.1 Approve the draft Brentwood Planning Enforcement Plan for public consultation, as shown in Appendix 1.**
- 2.2 Agree that the draft Brentwood Planning Enforcement Plan as amended as a result of consultation responses to be considered for approval and publication at a future meeting of Planning Committee.**

## **3. Introduction and Background**

- 3.1 The National Planning Policy Framework (NPPF) (2012) refers to planning enforcement in paragraph 207 and references the need for an enforcement plan. Although such a plan is not a Development Plan Document, it does provide a statement of the Council's objectives and priorities regarding planning enforcement. Consultation on the document will provide opportunity for those interested to make comment and engage with the process. This could prove valuable in raising issues unforeseen by officers, increasing the profile of planning enforcement and giving the Plan the status of a consulted and Council approved document, when referred to in decisions and enforcement appeals.
- 3.2 There are statutory changes in train at the time of the preparation of this report which affect Planning Enforcement. The Infrastructure Bill currently in the House of Lords provides for Deemed discharge of conditions if applications are made for discharge and not determined in time and the developer fulfils conditions to be prescribed by a Development Order. Also, regulations made under the Local Audit and Accountability Act 2014 require delegated decisions by officers which affect the rights of an individual (as Planning Enforcement decisions do) to produce and publish as soon as practicable after the decision a written record of the decision. The draft regulations make clear that no confidential information is to be published. These regulations come into effect on the 1 August 2014.
- 3.3 The standards proposed in the Draft Enforcement Plan include consistency of process, proportionality and openness of approach. The Government's 'Planning Practice Guidance' (PPG) published online earlier this year is

important to refer to in the evaluation of priorities. The draft Plan has links to Government guidance. It is hoped that the emphasis on online forms and links to Guidance represents best practice in pro-active enforcement. Consultation will allow the public and Parish Councils to give feed back and suggest improvements before Members consider a proposed final version.

- 3.4 Member and public expectations of the ability for planning enforcement and legal action to remedy breaches of planning control are often high, but sometimes unrealistic when compared to the resources and skills the Council can call upon. The Council must allocate its resources carefully and in proportion to the seriousness of any breach, taking fully into account legal and financial considerations. An on-line form followed by e-mail report and response is promoted in the Draft Plan as a means of assisting the standards proposed with the best use of resources.

#### **4. Issue, Options and Analysis of Options**

- 4.1 The PPG reinforces the importance of preparing and adopting a local enforcement plan.
- 4.2 The draft Enforcement Plan includes the natural and historic environment as well as traditional development control issues.
- 4.3 The Council's resources are finite so it is necessary to target available resources to achieve defined goals, to maximum effect. This means considering the wider public interest and harm of any planning breach, and engaging with those who are responsible and best placed to remedy the problem.
- 4.4 The use of online report form is critical to efficiency and consistency however it currently lacks the technical integration to communicate directly with planning systems.
- 4.5 Public engagement particularly through Members and Parish Councils is vital for positive achievement of the standards set out in the Plan. The legal and policy context is changing quickly and a period of three months consultation allows time for reflection as well as engagement. It is intended to hold a briefing on the Plan for all Council members, parish council members and interested parties in September 2014.

## **5. Reasons for Recommendation**

- 5.1 National guidance urges proactive and efficient planning enforcement. There are no national performance indicators but the Council's draft Enforcement Plan is intended to promote a standard of service that achieves openness, proportionality, consistency, helpfulness and clarity of procedures.
- 5.2 The NPPF suggest that the Enforcement Plan should show how the local planning authorities will enforce planning conditions. The draft Enforcement Plan suggests a sample approach of planning applications and/or developments.
- 5.3 The consultation responses will assist in assessing this recommendation and provide guidance as to how a representative sample could be chosen and how the enforcement plan procedures may assist.
- 5.4 The draft Enforcement Plan places an increased reliance on the Council's website, the on-line report form and links to government guidance. The national online guidance of the PPG provides a detailed information source. As the PPG states effective enforcement is important to:
- Tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
  - Maintain the integrity of the decision-making process;
  - Help ensure that public acceptance of the decision-making process is maintained.

## **6. Consultation**

- 6.1 Public Consultation on the draft Brentwood Planning Enforcement Plan will be held for 12 weeks. The consultation will be advertised on the Council's website and letters will be sent out to all the Parish Councils. The consultation on the Brentwood Planning Enforcement Plan will provide Councillors, local residents and Parish Councils the opportunity to provide their comments for consideration and review by the Council. A draft version of the Enforcement Pan is set out in Appendix 1. Amendments will be made to the draft Brentwood Planning Enforcement Plan following the consultation and the amended draft Planning Enforcement Plan will be submitted to a future meeting of the Planning Committee for Members to approve for publication.



## **7. References to Corporate Plan**

- 7.1 The draft Plan contributes to a more prosperous borough, by virtue of a better defined and proportionate use of staff resources and wider community understanding and engagement in the enforcement process.
- 7.2 There are implications for delivery of legal support to planning enforcement.

## **8. Implications**

### **Financial Implications**

**Name & Title:** Jo-Anne Ireland, Acting Chief Executive

**Tel & Email** 01277 312712 / jo-anne.ireland@brentwood.gov.uk

- 8.1 There are no specific budgetary implications arising from this report. However, the more clarity and wider community understanding of the powers and constraints in planning enforcement should assist in a more efficient and targeted use of resources.
- 8.2 Officers have reported an increase in recent months of enquiries from prospective property purchasers, or their legal agents, related to the archived enforcement register. This increase in customer demand has impacted on available planning enforcement staff resources. These pressures will be monitored, but may need to be managed through charging for response to the enquiries and will be assessed as part of the next review of service charges.

### **Legal Implications**

**Name & Title:** Philip Cunliffe-Jones, Planning Lawyer

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- 8.3 There is no statutory duty on local planning authorities to take action against a breach of planning control. Authorities are expected to consider the extent of harm which does or might result from the breach and to be generally consistent in decision making.
- 8.4 The European Convention on Human Rights is more engaged in enforcement than other areas of planning, as it involves existing buildings and uses, and the right to occupy property. Where enforcement decisions or decisions not to take enforcement action have an impact on persons to whom a duty is owed under the Public Sector Equality Duty under Section 149

Equalities Act 2010 the Council must have due regard to that duty in discharging its functions.

- 8.5 **Health and safety implications:** There are no health and safety implications.
- 8.6 **Equality and diversity implications:** Documents will be subject to an Equality Impact Assessment where relevant.
- 8.7 **Risk management implications:** Failure to adopt a Planning Enforcement Plan, when public expectations are increasing and higher land values provide incentive for owners to commit breaches of planning regulations, puts the reputation of the Council, as local planning authority, at risk from any inconsistent decisions.

#### **Other Implications**

None

#### **9. Background Papers**

National Planning Policy Framework (March, 2012)  
Planning Practice Guidance (April, 2014)

#### **10. Appendices to this report**

Appendix 1 - Brentwood Planning Enforcement Plan (2014)

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## Appendix 1

# DRAFT Brentwood Planning Enforcement Plan

This Plan sets out how Brentwood will manage enforcement proactively in a way appropriate to the area of the Borough

July 2014

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## Executive Summary

- The national 'Planning Practice Guidance' (PPG) published in March this year states that the preparation and adoption of a local enforcement plan is important because it:
  - Allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
  - Sets out the priorities for enforcement action, and which will inform decisions about when to take enforcement action;
  - Provides greater transparency and accountability about how the local authority will decide if it is expedient to exercise its discretionary powers;
  - Provides greater certainty for all parties engaged in the development process
- This draft plan is intended to meet these criteria. Consultation with the public and interested parties is invited, particularly Members and Parish Council on defining objectives and priorities. The draft plan sets out the objectives of the Planning Enforcement Service and the system and principles for the exercise of the relevant statutory powers. The context in the draft plan includes the natural and historic environment. References to "the Act" mean the Town and Country Planning Act 1990, as amended. Other legislation specifically referred to relates to the Equalities Act 2010, Listed Buildings and Hedgerows and High Hedges.
- Brentwood Borough Council is the responsible Local Planning Authority for the enforcement of planning control within the Borough, apart from matters which are within the jurisdiction of the Essex County Council or the Essex and Southend Waste Authority. The County Council as the Highway Authority is responsible for trees, verges and hedges within highway control.
- There are a range of powers to be exercised in the public interest where a breach of planning control is under consideration. The planning system exists to protect the environment and ensure that development takes place in accordance with national regulatory requirements and is planned and managed to achieve social, economic and environmental objectives. This Plan seeks to promote procedures which will manage enforcement issues in an appropriate way for the Borough.
- Effective enforcement relies to a large degree on efficient and timely communication. Possible breaches of planning control; unauthorised works/activities/advertisements on land, buildings, trees or hedgerows are brought to notice by members of the public, Parish Councils, Council Officers in different departments and well as by Planning and Enforcement Officers. An efficient system needs the Council's website to be a helpful source of reference and advice with a robust reporting system which is transparent about the decisions taken. Links to Government Guidance need to be

referenced. When the Plan is adopted the on-line form for reporting planning issues and enforcement complaints needs to be integrated to communicate with the Planning case management system.

- The draft Plan set out standards and proposed priorities restating and updating the principles of good practice enforcement advocated by the Government in 1998.
- Planning enforcement seeks to achieve compliance with planning control, affording contravenors where appropriate an opportunity to remedy any breach before the Council pursues using its statutory powers. The exercise of this statutory discretion in a consistent proportionate response to planning harm or anticipated harm is aimed at securing public confidence in the planning system overall as advocated in the National Planning Policy Framework (NPPF). Through this draft Enforcement Plan, the Council seeks to promote a clear understanding of the role and function of Planning Enforcement, the exercise of discretion having regard to planning considerations, appropriate to the local context. In serious or intractable cases resort to the full range of legal powers may be required. It is hoped that the consultation responses on this draft Enforcement Plan endorse the proposed standards as consistent good practice and helpful to residents and business alike and contribute to settling priorities and practice details.

# 1 Introduction

## Functions of the Planning Enforcement Service

- 1.1 Effective enforcement of planning and associated legislation is necessary to protect the amenity and environment of the Borough of Brentwood. Investigation powers are entrusted to Local Planning Authorities (LPA) by Parliament to enable the LPA to protect the amenity and community safety of Borough residents from the adverse effects of undesirable developments and neglect of open land.
- 1.2 The primary role of enforcement is to investigate alleged breaches of planning control (including unauthorised development and non-compliance with conditions of a valid planning permission) and bring about remedial action where appropriate.
- 1.3 In the majority of cases, an alleged breach of planning control does not, by itself, constitute a criminal offence. Those cases which do constitute a criminal offence include unauthorised works to a listed building, breach of a Stop Notice, unauthorised works to protected trees and the display of unauthorised advertisements. Where a statutory notice is issued which requires steps to be taken (and appeal procedures are exhausted or time-barred) it is a criminal offence not to take those required steps.
- 1.4 Planning Permissions usually have conditions which are necessary to make the development acceptable in planning terms, for example incorporating approved plans or requiring specific works. If conditions are not complied with and not enforced, they become immune from enforcement after a period of years. At the time of preparing this Plan, the Infrastructure Bill proposes to insert into the Act a new Section 74A, whereby conditions requiring consent from the Council may be deemed discharged if an application has been made and the conditions in a Development Order made by the Secretary of State have been complied with.
- 1.5 The whole of Brentwood lies within the Metropolitan Green Belt, and large parts of the Borough's countryside are considered to be areas of landscape value and important in terms of nature conservation. Liaison with the County Council and Parish Council is important in bringing possible breaches of planning to notice.

## Purpose of the Plan

- 1.6 The draft Enforcement Plan indicates a priority ranking for response to the areas of investigation within the Planning Enforcement Service. It is a principle of Planning Enforcement, that action should be proportionate and consider human rights or equalities issues where these are engaged. The Enforcement Plan will be a material consideration in evaluating future breaches. Where an enforcement investigation is closed after concluding that a planning application can resolve the complaint a time table needs to



be set and advice given on the scope of any conditions. Where an enforcement notice is in force the Council may exercise its statutory discretion under Section 70C to decline to determine applications which would, if granted, allow development for which an enforcement notice is in force.

1.7 The draft Enforcement Plan outlines the administrative system for recording and progressing investigations and reporting arrangements. This is subject to confirmation after the end of the consultation period, and will be affected by Regulations laid before Parliament under Section 43 of the Local Audit and Accountability Act 2014. These Regulations (The Openness of Local Government Bodies Regulations) 2014 require decisions made by officers which affect the rights of individuals to be recorded and published as soon as practicable after the decision. The record must contain:

- (a) The title of the decision making officer
- (b) The date the decision was taken
- (c) A record of the decision taken along with reasons for the decision,
- (d) details of alternative options considered and rejected
- (e) the name of any member of a relevant local government body who has declared a conflict of interest in relation to the decision

Such decisions are to be published on the website and the papers retained for inspection by the public for a period of at least 6 years. The record does not authorise the publication of confidential or exempt information. When the Plan is adopted after consultation the administrative arrangements will be clear, but some adjustments to the weekly report system may be required..

1.8 A local planning authority may issue an enforcement notice only if it appears there has been a breach of planning control and that it is expedient to do so having regard to the provisions of the development plan and to any other material considerations. This does not prevent a case by case assessment. Planning considerations must be the basis for the decision, and the investigating officer must judge and report on the impact of the unauthorised development the options available and time for compliance. The effect on business, and any relevant Public Sector Equalities duty are also relevant in recommending whether to enforce or take no action.

1.9 The draft Enforcement Plan includes appendices on trees, untidy land issues (Section 215 of the Act) and High Hedge complaints. These refer to more detailed guidance notes for which links are published on the Council's website. The context of the Borough explains the natural and historic environment. The Enforcement Plan when adopted is intended to guide the Planning Enforcement Service to address local concerns and local priorities.

## 2 Context

### Brentwood Borough Replacement Local Plan

- 2.1 The Brentwood Borough Replacement Local Plan (adopted 2005) is the Borough's current development plan. The plan provides a comprehensive statement of land use policies and proposals for the Borough. These Policies have been developed to protect and enhance the quality of both the built and natural environment and to provide for growth in the Borough. All decisions about the expediency of taking enforcement action will have regard to the planning policies adopted in the Brentwood Borough Replacement Local Plan.
- 2.2 The Council is required to produce a new Local Plan for the Borough which once adopted will supercede the current Replacement Local Plan and this process is underway.

### Historic Environment

- 2.3 The NPPF requires Local Planning Authorities to set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. In doing so we are asked to recognise that heritage assets are an irreplaceable resource, and conserve them in a manner appropriate to their significance.
- 2.4 Brentwood has 12 Scheduled Ancient Monuments, 13 Conservation areas, 1160 records of historic environmental assets. These include 512 Listed Buildings in the Borough, consisting of:
- 12 Grade 1 Buildings of national importance, including for instance Ingatestone Hall, the Priory Church of St Laurence, Blackmore which dates from the 12<sup>th</sup> century and has one of the finest 15<sup>th</sup> century timber bell towers in England and the Church of St. Mary the Virgin Great Warley, which is unique in possessing the only art nouveau-style interior anywhere in the world.
  - 27 Grade II\* Buildings of particular importance and more than special interest, including for instance The Old House and the White Hart Inn (Sugarhut) Brentwood, and the Windmills at Mountnessing and Mill Green
  - 473 Grade II Buildings which have statutory protection and warrant every effort being made to preserve them
- 2.5 The Planning Service maintains the statutory List of Buildings of Special Architectural or Historic Interest. The English Heritage website has a searchable database of the National Heritage List which includes detailed Listed Building descriptions.

- 2.6 The draft Enforcement Plan recommends priority be given to Listed building enforcement with injunctions and prosecutions where harm is caused or apprehended, but also consider the positive changes introduced by the Enterprise and Regulatory Reform Act 2013 which took effect earlier in 2014. This is in line with English Heritage recommendation the highest priority should be given to enforcement of heritage protection, while drawing a distinction between “Heritage Crime” where enforcement should be pursued in the public interest, and less serious breaches of the controls which can be managed under the new powers.
- 2.7 The changes now in force are:
- (i) Heritage Partnership Agreements which may grant listed building consents over a period up to 25 years
  - (ii) There is now provision for national and local Listed Building Consent Orders which grant consent for specified works
  - (iii) Certificates of Lawful Proposed Works to Listed Buildings
  - (iv) Better Definition of List description or Exclusion of Curtilage protection
  - (v) Certificates of Immunity from listing may now be granted without a planning application having been made
  - (vi) Abolishing Conservation Area Consent and addressing demolition within conservation areas by planning controls
- 2.8 In addition to consulting on the draft Enforcement Plan, it is proposed that details of these changes are sent to owners of all the listed buildings in the Borough.

## Natural Environment

- 2.9 Within Brentwood there are 3 SSSI's, 3 historic parks, 76 natural and semi natural sites, 1 local nature reserve, 147 sites identified as landscape wildlife importance in addition to 11 parks and 4 country parks. The quality of the environment depends heavily on trees, in both the urban and rural locations with particular issues in Conservation Areas. There are statutory responsibilities for making tree preservation orders (TPO) in section 198 of the Act, where it appears that it is expedient in the interests of amenity to do so. The Town and Country Planning (Tree Preservation) (England) Regulations 2012 allow immediate protection of trees under TPO's subject to the orders being served as required and confirmation within 6 months.
- 2.10 All trees in the open countryside are protected by the Forestry Act 1967 administered by the Forestry Commission. The protection of trees is secured, not only by a special duty on local planning authorities under the Act, to ensure when granting planning permission they make adequate provision for preserving trees by imposing conditions but also by a general

prohibition against lopping, topping or felling any tree in a Conservation Area (with some limited prescribed exceptions) but in the latter case it is a defence to prosecution to show that prior notification was given to the local planning authority. There is also a replanting duty. It is a criminal offence to destroy a protected tree with a liability on conviction to a fine of £25,000 in the magistrates court or unlimited fine in the crown court.

- 2.11 The Act provides an automatic duty (with a dispensing power exercisable by the by LPA) for the replacement of trees in two cases
- i) Where their removal is in contravention of tree preservation regulations – in addition to criminal liability; and
  - ii) Where their removal is authorised only on the grounds that the trees were either dead or dangerous.

If there is a failure to replant the Council are empowered within 4 years of the failure to comply with the duty to serve a notice requiring the planting of a tree or trees of such size and species as maybe specified. There is a right of appeal on the basis that the replanting is not required in the interest of amenity, or will be contrary to the practice of good forestry or that the place designated for replanting is unsuitable for the purpose, it is a criminal offence to failure to comply with a tree replacement order.

(The draft Enforcement Plan includes procedures on tree preservation enforcement, high hedges and hedgerows set out in the appendices.)

## The National Planning Policy Framework

- 2.12 Enforcement is referred to in paragraph 207 of the National Planning Policy Framework (NPPF) 2012. The discretionary and proportionate nature of enforcement is stressed and it is suggested that local planning authorities should 'consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so'.

## Government 'Planning Practice Guidance'

- 2.13 The government 'Planning Practice Guidance' (PPG) states that the preparation and adoption of a local enforcement plan is important because it:
- Allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
  - Sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;

- Provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
- Provides greater certainty for all parties engaged in the development process.

The PPG after citing paragraph 207 and referring to the European Convention on Human Rights goes on to state:

*There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action and those who are affected by a breach of planning control*

Accordingly, National Guidance recognises the need for balance where human rights or equalities issues may be engaged (whether those of the person breaching planning) or persons affected, and whether the decision is to take action or to take no action.

2.14 The PPG states:

- *Effective enforcement is important to tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;*
- *maintain the integrity of the decision-making process;*
- *help ensure that public acceptance of the decision-making process is maintained*

## Legal Context

2.15 The Council has the responsibility for taking whatever enforcement action is necessary within its area as the Local Planning Authority. A private citizen cannot initiate planning enforcement action. The Council has powers to investigate and take action to remedy breaches within the Town and Country Planning Act 1990 (as amended), The Planning (Listed Building and Conservation Areas) Act 1990, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, the Localism Act 2011 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

2.16 Enforcement provisions of the Localism Act 2011 extensively addresses tactics previously adopted by some developers that were seen as abuses, such as twin tracking an appeal against an enforcement notice and an application for retrospective approval. It also covers time limits on concealed breaches as well as penalties and increased powers in relation to fly-posting and graffiti.

- 2.17 The Council will consider the use of powers under the Proceeds of Crime Act 2002 to appropriate all assets gained by owners and occupiers through the non-compliance of an enforcement notice.
- 2.18 Planning enforcement action should be sensitive to the intent and context of the owner and the development. A householder making a genuine mistake out of ignorance will be treated proportionately, compared to a clear breach of a planning decision.

## 3 Service Standards

- 3.1 Brentwood Borough Council's existing practices have sought to achieve the principles of good enforcement practice.

### Openness

- 3.2 We aim to provide information and advice in plain language on the rules and adhere to government guidance. We aim to publish on the website supporting technical detail and links to government guidance. We will keep as much as possible in the public domain whilst protecting confidentiality of those who are reporting concerns and possible breaches of the regulations or planning conditions.

### Proportionality

- 3.3 We will deal with each case on a priority basis following initial investigation to establish the facts and refer to records and relevant policies. Depending on the seriousness of the situation, we will always seek to afford a contravener the opportunity of remedying the breach of planning control without formal action. In considering whether formal action is expedient in planning terms, we will have regard to negotiations, any undertakings given, the history and whether time limits are approaching which would confer immunity on unlawful development.

### Consistency

- 3.4 We seek to manage enforcement cases with maximum efficiency and standards procedures, making the best use of technology and electronic communication. There are standard documents in the toolkit with government guidance updated from time to time for these various procedures. Where discretion is applied against standards, we will adhere to the national and local plan policies to achieve as far as possible a fair and equitable outcome.

### Helpfulness

- 3.5 We aim to be polite but firm with the person/people that are alleged to be in breach of planning or environment controls. We will meet when requested, both before and during enforcement actions, to try and achieve a satisfactory outcome and will keep complainants and Members informed.

### Procedures

- 1) Advice following an investigation will be put clearly and simply in writing. All letters/electronic mail and notices to unauthorised developers will explain

the breach, the requirements of the authority to put the matter right including time scales and remind the developer of the powers of the authority has to take formal action. Letters will also give contact names and telephone numbers to ensure developers are given as much information as is possible to help and advise.

- 2) The rights of appeal of the developer against any formal notice will be clearly explained.
- 3) Before any formal action enforcement action is undertaken, an opportunity will be offered to comply with planning control or apply for retrospective consent.
- 4) Any threat of formal action will be followed up swiftly if there is inadequate evidence of steps being taken to resolve the problems.

## Minimising Occasions that Breaches of Planning Control Occur

- 3.6 Breaches of planning control comprise the carrying out of development without the granting of planning permission, or deemed permission by government order, or without compliance with approved plans or any conditions attached to a planning permission. While carrying out development without planning consent is not a criminal offence, failure to comply with an enforcement notice is a criminal offence.
- 3.7 Unauthorised works to listed buildings, trees covered by Tree Preservation Orders (TPO), trees within a Conservation Area, advertisements and fly-posting also come within the scope of planning control, but unlike those identified above, constitute a criminal offence. There is more detailed information on tree enforcement protection in Appendix 3 and information regarding untidy land notices in Appendix 4.
- 3.8 Development Management Officers already monitor the implementation of planning permissions by focusing upon achieving quality development in accordance with policy. The Council regards planning enforcement action as a last resort, following advice and guidance. It strives to promote its pre-application advice service, which should result in better quality and more lawful development.



## 4 Identifying Unauthorised Development

- 4.1 To report an alleged breach of planning control, completing the online form is the quickest and easiest way. The online form can be found at: <http://forms.brentwood.gov.uk/default.aspx/RenderForm/?F.Name=H8GCZSSZ64c&HideToolbar=1> .
- 4.2 It is strongly encouraged that the online form is used in the first instance as this is the most efficient use of resources available. Complaints made by letter, phone or email are logged onto the web form. The complaint will be recorded and acknowledged, so long as the minimum required information of address and location is provided. Complaints made based on sound planning issues will be investigated, while non-planning related matters will be referred onto relevant regulatory authorities.
- 4.3 Anonymous complaints about a third party will not usually be investigated. The identity of persons reporting suspected breaches will be treated as confidential by officers and members of the Council. If a member of the public wishes to remain anonymous then they must go through either their local Ward Member or Parish Council to submit the online form on their behalf.
- 4.4 The planning history of a site is always investigated to establish any planning permissions or permitted development.
- 4.5 An assessment is then made into the nature and degree of harm of any breach in relation to relevant planning policy, legal context and the need for remedial action. Following this assessment, the Council will consider how to proceed with the investigation.
- 4.6 The Council does not investigate highway matters, boundary wall or other land disputes and activities incidental to residential use of a dwelling, including stationing of a caravan or trailer within its grounds as these issues do not constitute planning matters. Any potential breaches of other legislation will be passed on to the appropriate investigative authority.
- 4.7 Planning enforcement operates to protect the public interest. It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be based on sound planning grounds and be proportionate to the harm caused by the breach. Local opposition to or support for an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons. Other issues that cannot be taken into account include loss of value to property, competition with other businesses, land ownership and boundary disputes or breaches of covenant.
- 4.8 The Council will only take formal enforcement action when expedient to do so. Formal enforcement action will not be instigated solely to regularise trivial breaches of planning control, where there is no harm to public amenity; the breach is of a technical nature, or can be readily remedied by

negotiation. Such breaches include temporary structures, flyposting, untidy sites, changes in surfaces, unobtrusive and minor changes of use or extensions. In taking formal enforcement action, the Council will be prepared to use all the enforcement powers available, but the action taken will be commensurate with the seriousness of the breach. More information about the planning enforcement powers available to the local planning authority are set out in Appendix 1 Enforcement Toolkit.

## 5 Enforcement Priorities

- 5.1 Planning Enforcement Officers receive a high number of complaints regarding allegations of breaches of planning control every year. It would be impossible to investigate and pursue all of these allegations with equal priority. Resources are limited, and it is essential to use them to maximum effect. Therefore, each case is prioritised according to the seriousness of the alleged breach and the degree of harm being caused. The aim is that the Council response is fair and proportionate to both the context and the nature of the breach.

**Table 1: Enforcement Priorities**

Priority	Considerations	Action/ investigation
<b>High</b>	<ul style="list-style-type: none"> <li>• Unauthorised incursion on a Green Belt site</li> <li>• Unauthorised works or anticipated works to a listed building</li> <li>• Irreversible harm to amenity of a Conservation Area</li> <li>• Unauthorised works to trees covered by a Tree Preservation Order or in a conservation area</li> <li>• Unauthorised EIA development</li> </ul>	<p>Within 24 hours or such later time limit as is practicable: Taking photographs which are authenticated for use in evidence and advising alleged contravener of the Council's concerns.</p> <p>Consider legal action Stop Notice or prosecution subject to evidence.</p>
<b>Medium</b>	<ul style="list-style-type: none"> <li>• Development prior to compliance with and discharging of conditions on a planning approval (subject to new legislation)</li> <li>• Breach which results in serious demonstrable harm to amenity of neighbourhood</li> <li>• Unauthorised development in a designated area</li> <li>• Source of significant public complaint</li> <li>• Unauthorised advertisements that have a detrimental impact on highway safety</li> </ul>	<p>5 working days as a general target subject to contacts being establish. Engaging with the contravener, serving PCN, making internal enquiries including consulting records.</p> <p>Target 2-8 days for tree enforcement.</p>
<b>Low</b>	<ul style="list-style-type: none"> <li>• Unauthorised development which is not the source of significant public complaint</li> <li>• Erection of unauthorised</li> </ul>	<p>15 working days PCN/Engaging with contravener on proposals to remedy</p>

	advertisements	breach of Control
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- 5.2 All communication will be in plain language. All decisions and use of investigatory powers will be recorded. The Council will look for and consider any alternative solution to formal action if it achieves a satisfactory conclusion to a reported breach of planning control.

**Table 2: Target times for initial response to complainant and the owner or occupier of the site**

Priority	Response targets from notification
High	3 working days
Medium	10 working days
Low	20 working days

- 5.3 Many cases may require repeat site visits, negotiation, serving of notices on owners and more formal action before the breach is resolved. When these occur, Enforcement Officers will endeavour to keep original complainants informed on a regular basis and indicate arrangements for this in the initial response letter. Complainants will also be provided with the details of the officer assigned to deal with their complaint should they require further updates or have new information pertinent to the investigation.

## Site Visits

- 5.4 Planning and Listed Building legislation gives authorised Officers extensive rights to enter land and buildings, at any reasonable hour, to carry out investigations and other duties. Because of the nature of enforcement work it is often not prudent or possible to give advance notice of an intended visit. Only where considered necessary and appropriate will 24 hours notice will be given if access is required to a dwellinghouse.
- 5.5 On site visits Investigating Officers will have regard to the Human Rights Act 1998 (HRA), the Regulation of Investigatory Powers Act 2000 (RIPA) and the Police and Criminal Evidence Act 1984 (PACE) and any Act/s that amend or revoke this legislation or become relevant. An investigating officer may, where she/he considers an offence has occurred, interview an alleged contravener 'under caution' (PACE) where appropriate. If access is denied the Council may consider seeking warrant entry. Refusal of entry (to an officer exercising their right of entry in accordance with their powers) will be regarded as wilful obstruction and the person may be prosecuted.

- 5.6 After the first site visit (and also during the investigation process) the Investigating Officer will consider whether it is necessary to re-consider the prioritisation of the complaint.
- 5.7 The Council will not tolerate any of its staff being threatened with or subjected to physical or verbal abuse in the course of the performance of their official duties and will take appropriate legal action where necessary.

## 6 Response Procedures

- 6.1 The officer will write to the owner and occupier of the site, when appropriate, and the complainants to advise on one of the following:

No further action (with properly recorded reasons), as:

- There is no breach, or
- It would not be expedient to pursue the case.

Further investigation required:

- This often involves the serving of a Planning Contravention Notice

Negotiate a solution:

- This depends on context and the intent of the owner.

Retrospective application for planning permission:

- The Council will identify if the unauthorised development meets the requirements of the relevant planning policy(ies). If the development appears acceptable the owner of the property will be requested to submit a planning application in order to rectify the breach.

Formal enforcement action, as a last resort:

- If planning permission is unlikely to be forthcoming and an application is not being sought, letters and notices will be served to set out the reasons for this by identifying the harm, the policy context and other material planning considerations.
- Where it is considered that **serious harm** would result and the unauthorised development could NOT be made acceptable by the granting of planning permission, the owner will be advised that the breach of planning control should cease within 28 days. The owner will receive an explanation in writing why this course of action is justified by identifying the harm, the policy context and other material planning considerations.
- Action will only be taken in accordance with the authority delegated to the Head of Planning and in accordance with the Council's approved priorities.

How we decide if an investigation is 'complete'

- 6.2 We consider our investigations to be "complete" when one of the following points has been reached:

- The investigation identifies that no breach in planning control has occurred.

- An alleged breach of planning has been identified but then resolved by negotiation.
- A planning application or other form of application has been submitted and approved following the investigation.
- A breach in planning control has been identified and action approved
- A breach in planning control has been identified. Authority to take formal enforcement action and/or issue a notice has been given and the notice served or other formal proceedings have commenced .

## Improving Planning Enforcement

- 6.3 The Council will monitor the length of time taken from the receipt of information regarding a suspected breach of planning control to the conclusion of the case with specific reference to the timescales shown previously in this document. This is carried out in order to ensure the timely progression of all complaints received.
- 6.4 The Council employs Planning Enforcement Officers who investigate, initiate enforcement action and provide advice. These officers maintain close contact with the Building Control, Environmental Health, Council Tax and Licensing departments within the Council and with Police and Legal Advisers.

## Compliance Checking

- 6.5 In order to maintain public confidence in the planning process, national planning practice guidance asks local planning authorities to consider a pro-active approach to enforcement. The Council will therefore identify a sample of planning applications and/or developments and check for compliance.
- 6.6 The outcome of the compliance check will be reported to the applicant, agent or landowner. Any non-compliance will be addressed through usual enforcement practice.

## Appendix 1: Planning Enforcement Toolkit

The main options for enforcement action are:

### Planning Contravention Notice

This can often be the first formal step in formally resolving a breach of planning control. It is the main method for gathering further information regarding suspected breaches of planning control. The intention of a Planning Control Notice is also to send a clear warning that further formal action is being considered once the facts of the case have been established.

### Section 330 of the Town and Country Planning Act 1990

This power is also used to obtain information but usually in cases where the Council has sufficient details about the activities being carried out but requires further information concerning ownership. It involves serving a formal notice on occupiers and/or persons with other interests in the premises or land. For both of these cases it is an offence to fail to comply with the requirements of the notice within the period set for its return or to make false or misleading statements in reply. Conviction currently carries a maximum fine not exceeding £1,000.

### Breach of Condition Notice:

This notice can be used where conditions imposed on a planning permission have not been complied with.

### Enforcement Notice:

This is the usual method of remedying unauthorised development and there is a right of appeal against the notice. The recipient must take the specified steps set out in the notice within a set time period. Failure to comply with the notice is a criminal offence.

### Planning Enforcement Order

Where there has been deliberate concealment of a breach of planning control, the LPA may apply to the Magistrates' Court for a planning enforcement order (PEO). Where a PEO is granted, the LPA will have 1 year and 22 days to serve an enforcement notice, beginning on the day that the order is granted, irrespective of how long ago the breach first occurred. The 4 year and 10 year periods for immunity will not apply in cases of concealed breach. An application for a PEO must be made within 6 months of the LPA becoming aware of the breach sufficient to justify enforcement action being taken. A Magistrates' Court may only make a PEO if it is satisfied that the breach has been deliberately concealed. There is no definition of what deliberate concealment means in practice.



## Section 215 Notice:

This notice can be used in relation to untidy land or buildings when the condition of the land or buildings adversely affects the amenity of an area.

## Stop Notice:

This notice can be used in conjunction with an enforcement notice where the breach of planning control is causing irreparable and immediate significant harm. A Stop Notice should only be served in exceptional circumstances, when the effects of the unauthorised activity are seriously detrimental to the amenities of adjoining occupiers or the surrounding area. Furthermore, if the related Enforcement Notice is quashed on appeal, the Council may be liable to pay compensation for any financial loss resulting from the issuing of the Stop Notice.

## Temporary Stop Notice:

These take effect immediately from the moment they are issued, and last for up to 28 days. A temporary Stop Notice would only be issued where it is appropriate that the activity or development should cease immediately to safeguard the amenity of the area.

## Listed Building and Conservation Area Enforcement Notice:

A Listed Building Enforcement notice can be served against unauthorised works that damage the character of a listed building. There is time limit in which such an enforcement notice can be served. A Conservation Area Enforcement Notice can be served against unauthorised demolition in a Conservation Area.

## Listed Building and Conservation Area Prosecution:

A person who is found to carry out unauthorised works that affect the character of the listed building or demolition in a Conservation Area can be prosecuted, and imprisoned for a term not exceeding 6 months, or fined up to £20,000.

## Court Injunction:

This may be done in the most serious cases where irreparable harm is being done and where other actions have failed. There are significant costs involved in bringing such an action and it can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court order.

## Unauthorised Advertisements

It is an offence for any person to display an advertisement in contravention of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The Council will consider whether or not to prosecute in either the interests of amenity or public safety. In situations where an advertisement is displayed with deemed consent, the Council can still require its removal by issuing a Discontinuance Notice. Such a notice, against which there is a right of appeal, can only be issued to remedy a substantial injury to local amenity or if there is a danger to members of the public.

In addition, the Council can serve a Removal Notice. Once served, the Council can, at its discretion, take direct action to remove authorised advertisements and recover the costs from the landowner.

## Direct Action or “Default” Action:

This may be done in the most serious cases where irreparable harm is being done and where other actions have failed. There are significant costs involved in bringing such an action and it can only be justified in extreme case. Powers are available (in Planning legislation) to enter land and take steps required by enforcement or similar notices (e.g. Listed Building enforcement notices, Untidy Land/Section 215 Notices, Illegal advertisements with extended powers under the Localism Act, High Hedge enforcement and Section 106 Agreements.) The expenses reasonably incurred may be recovered from the person who is the owner of the land.

Other than advertisements and Untidy Land notices, direct action is seen as a draconian power and normally a course of last resort. The Council’s decision may be challenged by Judicial Review. There may be violence or threats of a breach of the peace and the action must be well planned, organised and implemented with the utmost care. The recovery of costs in the cases of works in default is also not without difficulty. The legal recovery of civil costs can be protracted and disproportionately expensive to the recovery.

The Good Practice Guide for Enforcing Planning Control (1997) lists the following practical matters to be considered when planning default action:

- Exactly what must be done (including any necessary operational development on the land) in order to carry out the required steps in the enforcement notice
- What is the best time of day to carry out the operation and how long is it likely to take
- Who is best equipped to carry out the operation – Council staff or a private contractor
- Whether any special powers of entry are needed
- Whether other local authority services (e.g. Social Services) need to be involved
- If chattels (e.g. caravans, cars, working equipment) are to be removed from the land, where can they be stored securely until the owner can retrieve them
- If a breach of the peace or any more serious disturbance is anticipated, it may be advisable to seek an injunction as a precaution and to encourage any necessary police presence

With regard to High Hedge enforcement after a Remedial Notice has taken effect if there is a first conviction and the owner of the land does not comply with an order of the court to take steps within a reasonable period fixed by a court order the land owner may be liable on summary conviction to a daily penalty. While there is a default power for the Council to carry out works to a High Hedge enforcement by prosecution and Court order is considered better practice.

## Appendix 2: High Hedges Procedure

The Anti-social Behaviour Act 2003 gives the owner or occupier of domestic property a right to complain to the local authority if the height of a high hedge adversely affects the reasonable enjoyment of his property. The owner of the property that is unoccupied can also complain, on the basis that a prospective occupier would be affected. The right to complain does not extend to the effects of the roots of a high hedge.

If the authority finds the complaint justified, it issues a remedial notice, stating what immediate action should be taken and what further preventative action is required. There is a right of appeal. It is an offence not to take action required by a remedial notice.

After a remedial notice has been taken effect, the hedge owner is required to comply. There should be no need for further enforcement unless the hedge is allowed to grow significantly. Works may not be undertaken if there are birds nesting during the nesting season.

Unlike the policy relating to hedgerows on non-residential property, there is no special protection for ancient hedges.

A “high hedge” for this purpose is one formed wholly or predominately of a line of at least two evergreen or semi-evergreen trees or shrubs. The hedge must measure more than two metres above ground level. There is an exception that may cause difficult arguments: a hedge is not regarded as forming a barrier to light or access if gaps significantly affect its overall effect as a barrier at heights over two metres (Anti-social Behaviour Act, section 66). There is no statutory definition of evergreen or semi-evergreen. A dictionary definition of evergreen is, “having green leaves all the year through; opposite to deciduous” (Shorter Oxford Dictionary). “Semi-evergreen” has been defined, “Normally evergreen but losing some or all of its leaves in a cold winter or cold area” (Hillier’s Manual of Trees and Shrubs, 5th ed., 1981, David & Charles Publishers plc).

The High Hedges Procedure, complaint form and useful links to legal and national guidance is available to view on the Council’s website  
<http://www.brentwood.gov.uk/index.php?cid=2060>

# Appendix 3: Tree Protection Enforcement

## Good Planning

Trees are an important constituent of the Borough Townscape/Landscape. It is, therefore, imperative that protection be afforded to them early in the planning process by ensuring consideration be given to establishing and maintaining protection areas around trees which will be robust and permanent.

## Tree Protection

Trees situated outside of the property boundary are protected by the laws regarding trespass and criminal damage.

Trees may be protected by legislation enshrined in the Town and Country Planning Acts 1990 -2012, by being subject to a tree preservation order (TPO) or being situated within a conservation area (CA). Trees may also be protected by the Forestry Act 1967, enforcement of which is vested in the Forestry Commission.

In certain circumstances trees may be protected by conditions attached to a planning permission.

## Compliance

Where a permission is granted for tree works to protected trees, it is desirable for a condition to be attached requiring notice of the intended operations to enable full or part supervision by an Arboriculture or Operational Services Officer. This to ensure understanding of, and compliance with, the terms of reference and conditions attached to any permission. Many contractors have a differing interpretation of the expected standards of work, such as B.S. 3998, and the resulting tree works may be of inferior quality. This in turn will lead to a reduction in the value of the trees itself and of the protected tree stock of the borough. Compliance should be the starting point of any enforcement policy.

## Specific Tree Protection

a) Where trees are protected by a TPO, the Council's consent is normally required prior to undertaking any works to the tree and this will require the submission of a formal application. Any consent may be subject to conditions, and there is a right of appeal to the Secretary of State against the refusal of consent or the granting of consent subject to conditions.

b) Where trees are protected by inclusion in a conservation area six weeks notice must normally be served on the Local Planning Authority of any proposal to carry out works on the tree. During the six week period, the Authority is required to consider the need to make a Tree Preservation Order to prevent the works being carried out. If the Authority takes no action within six weeks the works may go ahead as notified.

c) Trees retained under planning conditions may typically require that new trees be planted and maintained, or that existing trees be retained as part of development, usually for a minimum of five years. An application can however be made to the Local Planning Authority to vary or remove a condition (such as to allow the removal of a tree).

If planning conditions are not complied with, the Local Planning Authority is empowered to serve an enforcement notice or breach of condition notice to secure compliance. There is a right of appeal to the Secretary of State against an enforcement notice.

d) Offences under 1 and 2 above: There are two offences, which apply equally to trees protected by Tree Preservation Orders and those within Conservation Areas.

Firstly, anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in a way that is likely to destroy it, is liable if convicted in the Magistrates Court, to a fine of up to £20,000. If the person is committed for trial in the Crown Court, they are liable if convicted to an unlimited fine. The courts have held that it is not necessary for a tree to be obliterated for it to be “destroyed” for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity.

Secondly, anyone who carries out works on a tree that are not likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £2,500. Any proceedings for offences in this category must be brought within six months of the date the offence was committed.

e) Proving the offence: In order to bring a successful prosecution, the Authority must be able to prove that:

- 1) The defendant has carried out, or caused, or permitted works on the tree
- 2) The tree was protected
- 3) The tree works were carried out without the Authority’s consent
- 4) The works were not exempt works

If it is claimed that works are exempt from the usual requirements of the legislation, it is for the defendant to prove, on the balance of probabilities, that the exemption applies.

f) Investigation of contraventions: Incidents involving alleged contraventions of the tree protection legislation often come to light as a result of complaints received by the Council. Cases also come to light in other ways, such as during the monitoring of works on development sites or routine visits to adjacent properties.

When a contravention is suspected the Council will carry out an initial investigation, consisting of a check to establish whether the tree is protected and whether any consent has been granted. In most cases the Council’s Arboriculture Officer will also make a site visit.

Potential suspects will be identified and contacted as soon as possible in the process (this may be at the time of the initial site visit). They will be asked to give their observations on the incident and any relevant background information.

If on receipt of this information it appears that the person in question may have committed an offence and that answers to questions may be required as evidence, he or she will normally be invited to the Council's offices to undertake a tape-recorded interview under caution. This will be conducted under the provisions of the Police and Criminal Evidence (PACE) Act 1984 and the relevant Code of Practice will be adhered to.

In some cases it may however be necessary to caution a suspect during a site visit. In which case this will be issued in accordance with the code of practice issued under the Police and Criminal Evidence Act 1984 and the suspect will be advised that he or she is not under arrest, is free to leave at any time and is entitled to legal representation.

The identity of any complainant will be kept confidential and not disclosed to the alleged perpetrator as far as practicable and in accordance with both the Data Protection Act 1998 and Freedom of Information Act 2000. It will however be made clear to the complainant that if the case comes to court it is most likely that they will be required as a witness and in that case they would not normally be entitled to confidentiality. Complainants will be kept informed of the course of the investigation and its outcome.

Complainants and any other witnesses will be contacted as appropriate and may be requested to provide written statements to be used as evidence in court. Witnesses will be informed that they may be required to appear in court to give evidence and be cross-examined as necessary. Suspects will be given adequate and fair opportunity to give their side of events during the course of investigations.

g) Time scale: Initial investigation as outlined above will be undertaken as soon as practicable and in line with the following guidelines, based on the available information:

**Table 1: Tree Protection Enforcement Timescales**

<b>Response Level</b>	<b>Response Criteria</b>	<b>Response Time</b>
<b>1</b>	Ongoing works likely to have a significant impact on public amenity	Within 2 working days
<b>2</b>	Completed works likely to have a Significant impact on public amenity And ongoing works of lower amenity impact	Within 8 working days
<b>3</b>	Other works including longstanding issues	Within 20 working days

h) Possible actions by authority: The Council has a range of possible courses of action available to deal with the cases of unauthorised works on protected trees. These include the following:

- 1) Initiate a prosecution (which may be for destroying the tree or for lesser works to it).
- 2) Administer a simple caution. This is a formal process whereby the perpetrator signs a statement admitting the offence and submitting to the caution. It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to

prosecute at a later stage for another similar offence. Administering a simple caution is only an option if the suspect admits the offence.

- 3) Require the planting of a replacement tree for each tree destroyed, under section 206 of the Town and Country Planning Act 1990.
- 4) Serve a replanting direction under section 207 of the same act. This is a formal procedure to secure replacement planting, which can be invoked if the landowner does not otherwise comply with a duty to carry out replacement planting.
- 5) Informal action, such as written correspondence requesting remedial works and warning of the potential for legal action and fines if a further contravention occurs.

Decisions as to what action to take will be taken in the public interest, ignorance of the law is not a credible excuse, however all relevant issues will be taken into account, with each case being dealt with individually.

Prosecutions will be considered against the tests of evidential value and public interest, these will be dealt with by the councils legal advisors.

Cautions may be used in accordance with guidance from the legal section.

i) Replanting: In incidents where the tree has been destroyed, a replacement tree will be replanted. This replacement would normally be planted in the planting season following the incident. In cases where this does not happen a tree replacement notice [TRN] may be considered. A TRN may also be considered when the automatic legal duty to replant on the death or removal of a protected tree. Any replacement tree is subject to the same protection as the original tree that was lost.



## Appendix 4: Untidy Land Notices Section 215

- 6.7 From a community point of view, tidy gardens and land mean an area looks well cared for making people feel safe in that neighbourhood. If untidy sites are left, they become worse and the area starts to feel neglected and unsafe. Untidy sites are rarely dangerous to public health but they will be an eyesore, which means it is detrimental to the local amenity.
- 6.8 Under section 215 of the Town and County Planning Act 1990, the local planning authority may serve a notice requiring the land to be cleaned up. The power is exercisable if it appears that 'the amenity of a part of [the local planning authority's] area, or adjoining area, is adversely affected by the condition of land in their area' (section 215(1)). The notice 'shall require such steps for remedying the condition of the land as maybe specified in the notice to be taken within such period.
- 6.9 There is a right to appeal to the Magistrate's Court on any of the following grounds:
- (i) that the condition of the land to which the notice relates does not adversely affect the amenity of any part of the area of the local planning authority who served the notice, or of any adjoining area;
  - (ii) that the condition of the land to which the notice relates is attributable to, and such as results in the ordinary course of events from, the carrying on of operations or a use of land which is not in contravention of Part III [the requirement to have planning permission];
  - (iii) that the requirements of the notice exceed what is necessary for preventing the condition of the land from adversely affecting the amenity of any part of the area of the local planning authority who served the notice, or of any adjoining area;
  - (iv) that the period specified in the notice as the period within which any steps required by the notice are to be taken falls short of what should reasonable be allowed.
- 6.10 If the notice is not complied with, the local planning authority is empowered to enter the land, carry out the works and recover the cost from the owner in a similar manner to carrying our works under an enforcement notice. The Council may also prosecute for non-compliance.
- 6.11 To find out more about the Best Practice Guidance, please visit the Council's website [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/11491/319798.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11491/319798.pdf)



## Appendix 5: Hedgerows

- 6.12 The Environment Act 1995 empowered the Secretary of State to make regulations to protect important hedgerows. The Hedgerows Regulations 1997 require consent from the local planning authority for the removal of important hedgerows over 20 metres in length (or, if shorter, meeting other hedgerows at each end) growing in, or adjacent to, any common land, designated nature reserve or site of special scientific interest, or land used for agriculture, forestry or the breeding or keeping of horses, ponies or donkeys, unless they are within or mark the boundary of the curtilage of a dwelling house. Important hedgerows are those over 30 years old which meet criteria covering archaeology and history and wildlife and landscape.
- 6.13 The Brentwood Replacement Local Plan (2005) recognises the many natural features of conservation interest, including hedgerows, which should be appropriately managed and, wherever possible, enhanced. Policy C5 Retention and Provision of Landscaping and Natural Features in Development it says “*in proposals for development, existing trees, hedges, woods, ponds, watercourses and other natural features should be retained*”
- 6.14 An important hedgerow may only be removed (subject to exceptions) if the owner has served a hedgerow removal notice on the local Planning authority and either consent has been given or a period of 42 days has passed within the authority serving a hedgerow retention notice. Where a hedgerow retention notice has been given stating that work relating to a hedgerow may not be carried out and that notice has not been withdrawn, removal of the hedgerow consisting of or including any such work is prohibited.
- 6.15 One of the exceptions to needing to give notice is if the removal is required ‘for making a new opening in substitution for an existing opening which gives access to land.’ This exception is subject to the requirement in regulation 6 (2) that:
- ‘Where the removal of a hedgerow to which these Regulations apply is permitted by these Regulations only by paragraph (1)(a), the person removing it shall fill the existing opening by planting a hedge within 8 months of the making of the new opening.’*
- 6.16 If a hedgerow has been removed in breach of regulation 5, the local planning authority may serve a hedgerow replacement notice on the owner of the land (or if removed by a utility operator, on that operator) requiring another hedgerow to be planted. The notice shall state the species and position of the shrubs, or trees and shrubs to be planted and the period within which the planting is to be carried out. There is a right of appeal against the notice. The authority may carry out works in the default and recover the cost from the owner as under the tree preservation order regime.

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## **Members Interests**

Members of the Council must declare any pecuniary or non-pecuniary interests and the nature of the interest at the beginning of an agenda item and that, on declaring a pecuniary interest, they are required to leave the Chamber.

- **What are pecuniary interests?**

A person's pecuniary interests are their business interests (for example their employment trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and asset including land and property).

- **Do I have any disclosable pecuniary interests?**

You have a disclosable pecuniary interest if you, your spouse or civil partner, or a person you are living with as a spouse or civil partner have a disclosable pecuniary interest set out in the Council's Members' Code of Conduct.

- **What does having a disclosable pecuniary interest stop me doing?**

If you are present at a meeting of your council or authority, of its executive or any committee of the executive, or any committee, sub-committee, joint committee, or joint sub-committee of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not :

- participate in any discussion of the business at the meeting, of if you become aware of your disclosable pecuniary interest during the meeting participate further in any discussion of the business or,
- participate in any vote or further vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

- **Other Pecuniary Interests**

Other Pecuniary Interests are also set out in the Members' Code of Conduct and apply only to you as a Member.

If you have an Other Pecuniary Interest in an item of business on the agenda then you must disclose that interest and withdraw from the room while that business is being considered

- **Non-Pecuniary Interests**

Non –pecuniary interests are set out in the Council's Code of Conduct and apply to you as a Member and also to relevant persons where the decision might reasonably be regarded as affecting their wellbeing.

A 'relevant person' is your spouse or civil partner, or a person you are living with as a spouse or civil partner

If you have a non-pecuniary interest in any business of the Authority and you are present at a meeting of the Authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your Register of Interests or for which you have made a pending notification.

**Planning and Development Committee  
Terms of Reference**

- (a) Town and Country Planning Act 1990 and any related legislation including:-
  - (i) determination of planning applications
  - (ii) enforcement of planning control
  - (iii) waste land notices, purchase notices, etc.
  
- (b) Listed Buildings and Conservation Areas Act 1990
  - (i) determination of applications for Listed Buildings and Conservation Area consent.
  - (ii) enforcement of Listed Building and Conservation Area legislation.
  
- (c) To consider and determine the Council's comments where appropriate on major development outside the Borough when consulted by other Local Planning Authorities.
  
- (d) To determine fees and charges relevant to the Committee