



Planning and Development Control Committee

Agenda

Part One

Council Chamber - Town Hall

Tuesday, 3 March 2015 at 7.00 pm

Membership (Quorum – 3)

Councillors

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

Committee Co-ordinator: Claire Hayden (01277 312741)

Additional Information:

Substitutes

Where a Member cannot attend a meeting, he or she will contact the Committee Administrator by 5.00pm on the day before the meeting to let them know this and to confirm who will be coming in their place.

The names of substitutes shall be announced at the start of the meeting by the Chair and the substitution shall cease at the end of the meeting.

Substitutes for quasi judicial Committees must be drawn from members who have received training in quasi-judicial decision making. If a casual vacancy occurs on a quasi judicial Committee it will not be filled until the nominated member has been trained.

Rights to attend and speak

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

A Member who is not a member of the committee may speak at the meeting. 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.

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.

Point of Order/Personal explanation/Point of Information

8.3.14 Point of order

A member may raise a point of order at any time. The Chair will hear them immediately. A point of order may only relate to an alleged breach of these Procedure Rules or the law. The Member must indicate the rule or law and the way in which they consider it has been broken. The ruling of the Chair on the point of order will be final.

8.3.15 Personal explanation

A member may make a personal explanation at any time. A personal explanation must relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate, or outside of the meeting. The ruling of the Chair on the admissibility of a personal explanation will be final.

8.3.16 Point of Information or clarification

A point of information or clarification must relate to the matter being debated. If a Member wishes to raise a point of information, he/she must first seek the permission of the Chair. The Member must specify the nature of the information he/she wishes to provide and its importance to the current debate. If the Chair gives his/her permission, the Member will give the additional information succinctly. Points of Information or clarification should be used in exceptional circumstances and should not be used to interrupt other speakers or to make a further speech when he/she has already spoken during the debate. The ruling of the Chair on the admissibility of a point of information or clarification will be final.

Information for Members of the Public

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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

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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 I

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

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A handwritten signature in black ink, appearing to read 'J. Kealy', written in a cursive style.

Acting Chief Executive

Town Hall
Brentwood, Essex
23.02.2015

Minutes

Planning and Development Control Committee Tuesday, 3rd February, 2015

Attendance

Cllr Baker (Chair)	Cllr Mrs Henwood
Cllr Mynott (Mayor)	Cllr Mrs Hones
Cllr Carter	Cllr McCheyne
Cllr Cloke	Cllr Morrissey
Cllr Mrs Cohen	

Substitute Present

Cllr Lloyd (substituting for Mrs Squirrel)
Cllr Reed (substituting for Hossack)

Also Present

Cllr Foan	West Horndon Parish Council
Cllr Harman	Herongate and Ingrave Parish Council

Officers Present

Philip Cunliffe-Jones	Planning Solicitor
Gordon Glenday	Head of Planning & Development
Claire Hayden	Governance and Member Support Officer
Kathryn Mathews	Senior Planning Officer
Paulette McAllister	Design & Conservation Officer
Caroline McCaffrey	Development Management Team Leader
Hillary Gore	Highways Representative

427. Apologies for absence

Apologies for absences were received by Cllrs Mrs Squirrel, Cllr Lloyd substituted and Cllr Hossack, Cllr Reed substituted.

428. Minutes of the previous meeting

The minutes of the meeting held on 6th January 2015 were signed by the Chair as a correct record.

429. CONSTRUCTION OF 27 RESIDENTIAL RETIREMENT FLATS WITH COMMUNAL FACILITIES; SEPARATE STAFF, VISITOR AND COACH PARKING FOR INGRAVE JOHNSTONE CHURCH OF ENGLAND PRIMARY SCHOOL AND AN EXTENDED SCHOOL PLAYGROUND; CONSTRUCTION OF A NEW ACCESS TO SERVE BOTH DEVELOPMENTS; ASSOCIATED LANDSCAPING, AND A NEW GREENSWARD TO BRENTWOOD ROAD.

APPLICATION NO: 14/01024/FUL

Members were advised that the Chair disclosed a personal interest and therefore step down from his role on this application. Cllr Mynott become chair for duration of this item.

Cllr Mynott requested nominations for a Vice-chair for this item only. Cllr Mynott nominated Cllr Mrs Hones. A vote was taken on a show of hands and Cllr Mrs Hones was appointed Vice Chair for the duration of this item.

Ms O'Connor, was present and addressed the committee in objection to the application.

Mr Horton, was present and addressed the committee in support of the application.

Ms Skinner, the Agent was also present and addressed the committee in support of the application.

Cllr Harman from Herongate and Ingrave Parish Council spoke in objection to the application.

Members raised concerns about the increase in traffic on the A128 and to affects it would have on the safety of school children travelling to and from school. The poor design and the bulk of the development are not in keeping with the village, which is situated in Green Belt and that no affordable housing was proposed within the application. This would merge the villages together and lose the uniqueness of both the villages.

It was confirmed that the site on the LDP register for consideration.

The Committee were advised that a Deed dated 18th August 2014 purporting to be a Deed of Unilateral Obligation made pursuant to Section 106 Town and Country Planning Act 1990 did not comply with the provisions of the Act and could be given no weight. If Members were in favour of the application Heads of Terms for a different Section 106 Deed providing for Contributions to the Local Planning Authority and Essex County Council would be required and

planning permission would be subject to prior completion of such a revised document.

Highway issues requiring attention if the development were allowed required a detailed specification and funding by legal agreement.

A motion was **MOVED** by Cllr Lloyd and **SECONDED** by Cllr Morrissey that the application be refused.

For: Cllrs, Cloke, Mrs Hones, Lloyd, McCheyne, Morrissey, Mynott and Reed (7)

Against: (0)

Abstain: Cllrs, Mrs Cohen and Mrs Henwood (2)

RESOLVED that the planning permission is refused for the following reasons:

R1 U09257

The proposed development would be inappropriate development within the Green Belt and, as a result of the scale, size and height of the building and the other works proposed, would result in a reduction in the openness of the Green Belt, contrary to the NPPF (in particular section 9) as well as Policies GB1 and GB2 of the Brentwood Replacement Local Plan.

R2 U09287

The proposed development would be, as a result of the scale, size, design and height of the building and the other works proposed, along with the loss of existing trees (some of which are preserved) and other vegetation, would harm the character and appearance of this rural area (which also forms part of a Special Landscape Area and Thames Chase Community Forest) and would result in the loss of a valuable break in built development between the two villages of Herongate and Ingrave, contrary to the NPPF (in particular section 7) as well as Policies CP1, C5, C7, C8 and C11 of the Brentwood Replacement Local Plan.

R3 U09288

The occupiers of the proposed flats would largely be dependant on the private car to gain access to the majority of facilities and services and the car park proposed to serve the school would be in excess of the maximum parking requirement for primary schools, contrary to the NPPF (section 4) and Policies CP2 and CP3 of the Brentwood Replacement Local Plan.

R4 U09289

The proposed development makes no provision for affordable housing and so does not make an adequate contribution towards the Borough's housing needs, contrary to the NPPF (section 6) and Policy H9 of the Brentwood Replacement Local Plan.

R5 U09290

The proposed retirement flats would not be located in a suitable location as the occupiers of the proposed flats would not be in close proximity to adequate facilities and services to the detriment of the quality of life for the site's occupiers, contrary to the NPPF (section 6) and Policies CP1 (criterion ii) and H11 of the Brentwood Replacement Local Plan.

R6 U09258

The matters advanced by the applicant in support of the application would not clearly outweigh the harm the development would cause through inappropriateness, reduction in openness of the Green Belt within which the site is located, harm to the character and appearance of the area, lack of affordable housing and car dependency. Therefore, no circumstances exist to justify the grant of planning permission for the inappropriate development proposed.

(Cllr Baker declared a non pecuniary interest under the Councils Code of Conduct by virtue of his past relationship for with Ingrave Johnstone C of E Aided Primary School and Cllr Carter declared a non pecuniary interest under the Councils Code of Conduct by virtue of living opposite the application site. They both left the Chamber and did not participate in the discussion or vote).

**430. CAR PARK WILLIAM HUNTER WAY WILLIAM HUNTER WAY
BRENTWOOD ESSEX CM14 4SS**

**CHANGE OF USE OF PART OF THE WILLIAM HUNTER WAY CAR PARK
SITE TO CAR WASH AND THE RETENTION OF THE EXISTING FENCE,
CARWASH UMBRELLA AND PORTAKABIN (RETROSPECTIVE
PERMISSION)**

APPLICATION NO: 14/01326/FUL

This application was withdrawn. The Committee were informed that the cost of the interceptor of pollutants required by the Water Authority was considered prohibitive by the applicant for this proposed development.

431. 90 RAYLEIGH ROAD HUTTON ESSEX CM13 1BH

SINGLE STOREY REAR EXTENSION

APPLICATION NO: 14/01374/BBC

A motion was MOVED by Cllr Baker and SECONDED by Cllr Mynott that the application be approved.

For: Cllrs Baker, Carter, Cloke, Mrs Cohen, Mrs Henwood, Mrs Hones, Lloyd, McCheyne, Morrissey, Mynott and Reed (11)

Against: (0)

Abstain: (0)

RESOLVED UNANIMOUSLY that planning permission 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 DRA02A 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.

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 U09331

Notwithstanding the details on the drawings submitted the ground floor flank window on west elevation shall be:- a) glazed using obscured glass to a minimum of level 3 of the "Pilkington" scale of obscuration and b) non-opening below a height of 1.7m above the floor of the room in which the window is installed. The window shall be installed prior to the first occupation of the development permitted and shall remain so glazed and non-openable, in perpetuity. (Note the application of translucent film to clear glazed windows does not satisfy the requirements of this condition)

Reason: To safeguard the living conditions of neighbouring occupiers in accordance with Policy CP1 (ii) of the Brentwood Replacement Plan 2005.

432. Update from the Chair on Cottage Gardens, Beads Hall Lane, Pilgrims Hatch, Essex APPLICATION NO: 14/01069/FUL

The Chair updated the committee on the application which was deferred from the 6 January 2015. The Applicant's Agent had requested that this application be deferred until March.

The Chair mentioned that the Agent had been asked to obtain consultation comments on the proposed development from Social Services. Social Services comments and advice is not for airing or debate in public, so consideration may have to be given to debating part of the revised report in Part II

The Chair went on to say that he was wanting to see a revised procedure for Call In. He suggested that all Members would wish to have a full opportunity to consider this in draft.

The Chair explained that the report on modernising the Planning Service, including proposed changes to the Call In Protocol and Guidance was nearly ready. What was proposed is that a draft of the report and procedures be circulated to all Members at the end of the week, so that any Member may comment in the following fortnight before the next Committee's Agenda if they wish.

The Report would then be published in the usual way taking account of Member suggestions, then presented for debate at the March meeting of the Committee and all being well recommended to the full Council at the end of March for adoption.

There was no formal vote but Members indicated agreement.

433. Government Consultation on Starter Homes

The Government is consulting on a change to national planning policy to promote Starter Homes Exception sites. The report outlined the proposed changes and suggested a response to the twelve specific questions in the Consultation paper, with some context of Brentwood's housing needs

RESOLVED UNANIMOUSLY to:

- 1. That approval of a letter of response from the Acting Chief Executive be delegated to the Head of Planning in consultation with the Chair and Vice-Chair of the Committee taking account of views expressed.**

(Cllr Lloyd declared a non-pecuniary interest by virtue of his employment at a local Mortgage packaging company).

434. Urgent business

There was no items of Urgent Business.



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SITE PLAN ATTACHED

03. LAND ADJACENT TO GARAGES AT 49 SIR FRANCIS WAY BRENTWOOD ESSEX

CREATION OF A GRASSCRETE SURFACE FOR CAR PARKING SPACES ON GRASS VERGE, WITH THE INCLUSION OF TIMBER POSTS AND FLUSH CONCRETE KERBING.

APPLICATION NO: 14/01494/BBC

WARD	Brentwood West	8/13 WEEK DATE	04.02.2016
PARISH		POLICIES	NPPF NPPG CP1 T5
CASE OFFICER	Mr Jonathan Binks		
Drawing no(s) relevant to this decision:	001 ; 002 ; BBC/SFW/01 - EXISTING ; BBC/SFW/02 - PROPOSED ;		

1. Proposals

Planning permission is sought for the creation of an approximate 90.1sq metre total grasscrete surface for the provision of un-marked parking spaces at Sir Francis Way, Warley. The proposal will partly replace an existing grasscrete surface (38.2sqm) and partly replace a grass verge. The proposal includes flush set concrete kerbing for vehicle access to the spaces and the provision of 9 additional timber posts (12 total). The posts would be set 1.2 metres apart and border the grasscrete spaces to the West and to the South.

The land is owned by Brentwood Borough Council and the application has been submitted by the Housing Services Department.

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. The 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 the 6th March 2014, the government published Planning Policy Guidance (NPPG) which, along with the NPPF, is a material consideration in the determination of planning application. The NPPGs have been taken into account, where relevant in the following assessment.

Policy CP1 of the local plan sets out the General Development Criteria which must be satisfied. New development should make a positive contribution to the quality of the environment. Good design and layout can help to achieve the government's objectives of making best use of previously developed land and improving the quality and attractiveness of both urban and rural areas. New development of whatever scale should not be viewed in isolation but should have regard to both the immediately neighbouring buildings and the townscape/landscape of the wider area. Proposals should not result in an unacceptable detrimental impact on the amenities of the adjacent occupiers or indeed of the occupiers of the proposed development. The Borough Council will expect a development brief to be prepared for proposals for development on major or sensitive sites.

The Essex County Council Parking Standards Design and Good Practice, September 2009 details parking standards and guidance for the county. This guidance will be a consideration for this application.

3. Relevant History

- : None

4. Neighbour Responses

25 representation letters were sent to neighbouring properties. No responses letters were received by the deadline or at the time of the writing of this report. Two images were provided showing the degradation of the grass verge due to vehicle activity.

5. Consultation Responses

- **Highway Authority:**
No objection, given the location and existing parking situation.

Informative

All work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to: SMO3 - Essex Highways, Childerditch Highways Depot, Hall Drive, Brentwood. CM13 3HD.

6. Summary of Issues

The Site and its Surroundings

Sir Francis Way provides access to a housing development consisting of a mixture of apartment blocks and three storey terraced housing. The development is within walking distance of Brentwood High Street and Brentwood Station with good rail and bus links into London and the surrounding area. Sir Francis Way extends off of Weald Road and is in close proximity to the busy junction with the A1023 and the B185.

The terraced housing at Sir Francis Way has provision for motor vehicles in the form of private driveways. For the occupiers of the apartments there are private garages and residential parking with access from Sir Francis Way. The proposed parking would provide overflow parking likely to be used by the residents of the surrounding dwellings.

The application site consists of a grass verge which is partially covered with a 38.2 sq metre grasscrete surface which provides 3 existing parking spaces. The surface has been poorly constructed and has degraded over time. There is a heavily coppiced tree within the site which would be removed as part of the proposal. There is no tree preservation order on the tree.

The grass verge is frequently used unofficially for parking which has contributed to the wearing away of the grass surface on the verge.

The site currently includes 3 timber posts to the North of the verge to prevent cars driving across the grassed area.

Design

The proposal consists of a total 90.1 sq metre grasscrete area (38.2sqm of which is existing) for the provision of un-marked parking spaces. The proposed area would facilitate up to 6 parking spaces at the recommended 2.9m x 5.5m parking bay size as stated by the Essex County Council good practice guidance.

The grasscrete consists of a cellular paving material. The specific materials to be used for the grasscrete surface have not been included in the application. The proposal includes the formation of 9 additional timber posts (13 total) which would surround the grasscreted area to the West and to the South and would protect the remaining grassed area from encroachment from vehicles.

The surface is suitable for car parking and allows grass to grow through and water to permeate into the ground. No specific details on the size of individual spaces were included in the proposal and the spaces would be unmarked; the grasscreted area would incorporate 6 spaces at the required 2.9 x 5.5 metres as stated by the Essex Parking Standards.

Access to the parking spaces would be provided through a flush set concrete kerbing which would replace the existing raised kerb on the eastern side of the spaces.

The proposal includes the removal of a tree. The tree has been heavily coppiced and there is no Tree Preservation Order on the tree. The arboriculturalist has stated the tree was badly damaged during a storm in 2013 and has no objection to its loss. It is considered the removal of the damaged tree and the prevention of damage to the verge through the implementation of the grasscrete would not be harmful to the visual amenity of the area.

Information on the orientation of the parking spaces was not provided in the application. Due to the size and scale of the allocated land for parking spaces the land would facilitate 6 spaces at 90 degrees and would not provide a sufficient 6.0 metre clearance beyond all the spaces for manoeuvrability at this orientation. The required clearance for spaces at a 70 degree angle is 4.5 metres; a clearance of 4.5 metres exists for all spaces at the site. While this situation is not ideal, it will rely on users of the parking area to be mindful of other road users, and given the location at the end of the cul-de-sac where there is no through traffic, the layout is overall considered acceptable.

Highway Issues

Sir Francis Way is a cul-de-sac with access provided from Weald Road. The nearby junction where the A1023 and the B185 meet experiences traffic congestion at peak times. Sir Francis Way consists of all residential units and it is considered the majority of traffic would be general commuting to and from the residential properties. Access to the proposed spaces is sufficient however the proposed spaces may not meet the required clearance depending on orientation. However, based on the comments from the Highway Authority the proposals would be considered to not give rise to any highway safety concerns.

Conclusions

The primary concern arising from the application is that not all of the proposed spaces would meet the required clearance distances by a significant amount. This would only become an issue if cars were parked at 90 degrees to the highway, and all the spaces were occupied in this instance certain vehicles may not be able to readily release from the spaces.

If the development were not to be approved, anecdotal evidence suggests that this part of the verge would continue to be used as an informal parking area and the damage to the surface would continue. The spaces would be unmarked and the occupiers would be free to park at different orientations. It is considered the verge will be used for parking regardless of the outcome.

The proposal would provide additional space for informal parking area that provides for overflow from the nearby residential flats and houses. The setting down of grasscrete would provide some projection of the grass area however a tree would need to be felled. It is recommended the proposal would have an some improvement on the visual amenity of the area, and permission is therefore recommended.

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.

Informative(s)

1 INF01

Reason for approval: The proposal would accord with the relevant policies of the development plan as set out below.

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 INF05

The following development plan policies contained in the Brentwood Replacement Local Plan 2005 are relevant to this decision: CP1 T5 the National Planning Policy Framework 2012 and NPPG 2014.

4 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.

5 U02269

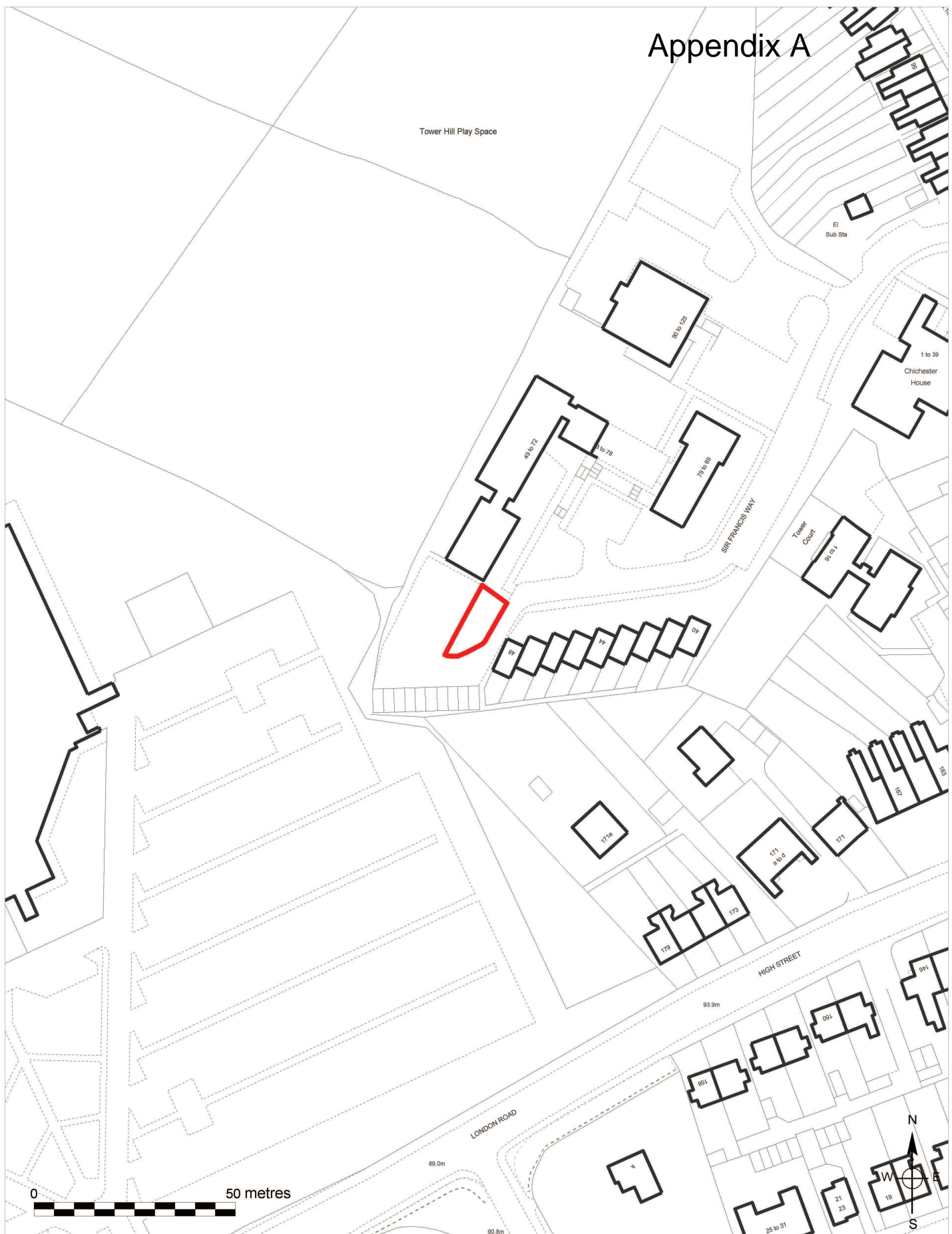
All work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to: SMO3 - Essex Highways, Childerditch Highways Depot, Hall Drive, Brentwood. CM13 3HD.

BACKGROUND DOCUMENTS

DECIDED:

Appendix A



Title: LAND ADJACENT TO GARAGES AT 49 SIR FRANCIS WAY, BRENTWOOD
14/01494/BBC

Scale 1:1250 at A4

Date 3rd March 2015

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



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3rd March 2015

Planning and Development Committee

Modern Planning Service

Report of: *Gordon Glenday, Head of Planning and Development*

Wards Affected: *All*

This report is: *Public*

1. Executive Summary

- 1.1 In this report are proposals for improved delivery of the Council's planning services for recommendation to full Council, where necessary
- 1.2 The proposals focus on the current system of delegation of decisions of planning applications and enforcement cases and sets out an alternative process as explained in the Appendices to this Report.

2. Recommendations

- 2.1 **That all planning decisions to be delegated to the Head of Planning other than for those retained to the Committee, or referred to as set out in the revised delegation arrangements and call-in referral protocols.**
- 2.2 **The replacement of the weekly list production by email alert of validated applications and method of call-in of planning applications by Ward Members, Parish Councils or Chair /Vice Chair to Committee.**
- 2.3 **That enforcement issues (including injunctions/stop notices/prosecutions and listed building offences) be determined having regard to the Planning Enforcement Plan when adopted.**
- 2.4 **That revised planning protocols, delegation arrangements and other Constitutional changes to implement the above are recommended to the Council meeting on the 25th March 2015.**
- 2.5 **That the Head of Planning in consultation with the Chair of Planning and Development Committee be authorised to make any non material changes needed to the Appendices before publication.**

3. Introduction and Background

- 3.1 The planning system has changed considerably since the 1980's; the thrust of current government thinking is a 'positive and proactive' approach by local planning authorities when engaging with applicants and an emphasis on finding solutions to problems, encouraging the delivery of sustainable development. A modern planning service no longer seeks to restrict or 'control' development but to manage the process from the conception of a scheme at pre-application stage, to its delivery and compliance. Public participation entails a service to the public as well as applicants for permission, and use of technology is essential to achieve efficiency at moderate cost.
- 3.2 Planning decisions are currently delegated to officers only if they are reported first to members via the production of a published 'weekly list', a procedure which entails additional work and curtails available time. This system dates back to the early 1980's and is heavily process driven. In order for a decision to be issued within the government's target of 8 weeks (or 13 for a major application), an officer's recommendation must be ready for publication at least 10 days in advance of the target date and up to 21 days. This puts the Council at a self-imposed disadvantage in improving its performance, and out of reach of the top quartile of best performing authorities in the Country. A common complaint from users of the planning service is that they have not been given opportunity to address the issues raised in reasons for refusal during the planning assessment period; equally, the opportunity for promoting good design, wider community engagement or exploring benefits that a development may offer is missed.
- 3.3 The current scheme of delegation constrains officer time, incurs production costs and hinders a positive approach to problem solving. Conversely, the national planning system places great weight on good quality pre-application discussions and front loading of applications; local planning authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage (para 189 NPPF, 2012). Because of the inflexibility of the current delegation process, valuable officer resource is focused not on pre-application stage, but on producing a recommendation driven by disadvantageous target dates.
- 3.4 The current method for Member call-in relies on the publication of an officer's recommendation within a public document. At present only once a recommendation is published can a Member call-in the application to the Committee. This exposes Members to lobbying from objectors, applicants and agents and results in the call-in of applications which may be based on personal and subjective preferences rather than recognised national planning policy principles. This is wholly undesirable for Members of the Committee, who are required to keep an open mind on applications and be fair to both applicants and objectors. In any event,

Committee Members should refer such approaches to other Ward Members.

- 3.5 Ward Councillors who are Members of the Planning Committee may attend pre-application meetings and ask questions but express no views on proposals. Thereafter Ward Councillors who are members of the Committee should remain impartial on applications which may come before the Committee. Concerns from residents should be passed to the case officer and Committee Members should not come to a firm view on such applications.
- 3.6 The Council's adopted Statement of Community Involvement refers to call in by Parish Councillors and Ward Councillors but is not transparent about the process. In Wards where there are Parishes it is hoped that there will be liaison between Borough Councillors and Parish Councils on applications which raise concerns. The Protocol recommends separating the roles of Ward Councillors who are Members of the Committee and as such, may not call-in applications, and other Ward Members who may take a firm view on a particular application and if that Member considers there are planning grounds for call-in, complete a Pro Forma accordingly (Appendix D – example of completed pro forma).
- 3.7 As set out in the next section, Members who have an e-mail alert may then notify local residents of proposals, but should explain the governance issues for contacting Ward Councillors if residents have particular concerns. Members who have taken a firm view or championed a position for or against an application and completed a call-in pro forma which has been accepted, should not be a Member of the Committee deciding the application or substitute for a Member of the Committee for the determination of that application.
- 3.8 The Chair of the Committee is appointed by Council and has wide powers and responsibilities. Only the Chair can call-in applications from any Ward in the Borough, after discussion with the Head of Planning ;in his or her absence, the Vice-Chair can act. It is proposed that the Vice-Chair should also have power to refer applications from a Single Member Ward if the Member is a Member of the Planning Committee.
- 3.9 Public opinion by itself is not a material planning consideration. The reasons for debate at the Committee should be for planning reasons of policy, development plan interpretation or evidence based concerns.

4. Issue, Options and Analysis of Options

- 4.1 The issue is one of improving the planning service through the streamlining of processes and procedures and the provision of a fully reviewed and updated pre-application service.
- 4.2 In order for officer resource to be able to focus on problem solving it has been necessary to identify the options for delegation of planning decisions

in the most cost efficient way commensurate with good service to Members, applicants and public.

- 4.3 The option identified is to cease production of a weekly list and replace this with the daily email alert to Members of valid applications made within their Ward. The alert is sent out before the publication of applications on the public access system. Members will be able to note the validity of the application and communicate with residents but the opportunity for the call-in Pro Forma completion for referral to Committee should rest with Members not on the Planning Committee. The option recommended is to revise the period for call-in of an application from day of validation to 7 days following the close of neighbour consultation. Appendix A of this report outlines the process for Member email alert, Appendix B details the call-in process and Appendix D example of completed pro forma.
- 4.4 The extended call in period will allow Members to enter into discussion with officers and raise issues which have been raised by their constituents with officers, prior to any formal recommendation.
- 4.5 A formal request for call-in will be agreed with the Chairman of Planning (or Vice Chairman in absence) following a discussion with the case officer and or Team Leader or Head of Planning. In Wards where there are Parish Councils it is hoped there will be liaison if call-in is to be triggered.
- 4.6 The option relies on both Members and officers engaging in early dialogue and a proactive approach to problem resolution. The suggested option priorities Member notification of a new application and before it is publicised either on the Council's web site or via neighbour notification.

5. Reasons for Recommendation

- 5.1 The Council has a foundational basis for its Planning Service in historical constitutional arrangements, some of which date back to 1982. The need for review and update is urgent, therefore, as there is increasing risk of challenge from working with such out-dated procedures.
- 5.2 The removal of the weekly list will enable Members to get involved with applications at a much earlier stage in their process and work positively with officers as they make their technical assessments.

6. Consultation

- 6.1 Discussions with staff have been held in the preparation of this report.
- 6.2 As agreed at the Committee meeting on 3 February 2015, a draft of this report was sent to all Members of the Council on Monday 9 February 2015.

7. References to Corporate Plan

- 7.1 Proposals in this report support the Modern Council theme of the Corporate Plan in making efficiencies and savings, while improving service delivery to customers.
- 7.2 The planning service itself supports the Prosperous Borough theme by its promotion of quality development and growth.

8. Implications

Financial Implications

Name & Title: Jo-Anne Ireland, Director of Strategy and Corporate Services

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- 8.1 The removal of the weekly list will result in efficiency savings. This has been estimated on the reduction in officer time spent preparing the list: 25 working hours directly related to preparing the reports, checking, collation, re-checking and publication. Based on an officer cost of £20 per hour, the weekly cost comes to around £500 per week, equating to around £25,000 per annum. The cost of paper, postage would also need to be factored in.
- 8.2 There are no specific financial implications in this report, although a review of the pre-application service and fees and charges is presented, subject to approval of this report.

Legal Implications

Name & Title: Philip Cunliffe-Jones, Planning Lawyer

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- 8.3 Last year, the Openness of Local Government Bodies Regulations 2014 came into force. These require certain decisions made under delegated powers to be recorded and published on the web site when the effect of the decision is to grant a permission or licence, affect the rights of an individual, or award a contract or incur expenditure which, in either case, materially affects the Council's financial position. The written record required to be maintained for six years must contain:
- (i) The decision date
 - (ii) The decision itself;
 - (iii) The record of the decision itself;
 - (iv) Any alternative options (if any) considered and rejected, and
 - (v) Any declaration of conflict of interest by a member of the Council where express authorisation is being exercised.

For the great majority of the decisions made under the Planning statutory regime, items (i) – (iii) are already being done and do not have to be repeated, but items (iv) and (v) are still required to be added to the written

record and published on the website subject to exceptions if confidential or containing exempt information.

- 8.4 The Call-in referral is not considered to be a decision under the Openness Regulations being rather a request for an internal procedure. However, openness and transparency are essential to public confidence by applicants and residents or other affected parties, and a pro forma setting out policy or evidence-based issues for examination is considered good practice and desirable to avoid possible criticism of inconsistency.
- 8.5 The recording of decisions on Planning Enforcement will be affected by the Openness Regulations as mentioned in the Enforcement Plan which has been through public consultation.
- 8.6 The changes in delegation, if approved will need to be programmed for report to the Council meeting on 25 March 2015.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

- 8.7 No other implications are identified.

9. **Background Papers**

- 9.1 Appendices to this report

10. **Appendices to this report**

- Appendix A – Member Notification e-mail alert
- Appendix B – Referral to Committee by call in procedure
- Appendix C – Protocol/ Guidance Note
- Appendix D – Example of completed pro forma

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Modernising Planning Service Report

Appendix A – Member Notification and Open Dialogue processes

Description of technology support systems:

Uniform – Planning application processing system

Planning Portal – Website where electronic submission of planning applications can be made

Public Access – Website where planning applications can be viewed, tracked and comments can be made

e-mail alerts – this is an internal system to provide Members with information for consideration. This may be tailored to member requests and allow for briefing updates on proposed decisions. Any response is a matter for the Member concerned

Dialogue:

Protocol and Pro formas – These are constitutional requirements in the interest of good governance

Pre-application meetings – Ward Councillors may attend with officers but any discussion between officers and Councillors is after the developer has left. The meetings are confidential. The formal advice of the Council as Planning Authority can be disclosed as Environmental Information, in accordance with guidance of the Information Commissioner.

Parish Council meetings – Parish Councils are statutory consultees for their areas and may have such meetings with applicants for Planning Permission, or with objectors or the public at large as they think fit

Informal meetings – Members of the Planning and Development Control Committee declare under the adopted Local Code of Conduct contacts with objectors and applicants and must not be biased in favour or against an application. Ward Councillors who take a firm advance position on an application should not be part of the Committee determining the application. Informal meetings can be very positive in resolving issues and reducing costs and uncertainty. Good practice is for an officer to attend.

Site meetings – These are in advance of the Committee meeting to enable the Committee to be informed of the existing situation and site context of all applications.

Enforcement enquiries or complaints – Enquiries or complaints may be made in confidence.

Objectives:

The Council seeks to adopt best practice of transparency, fairness and efficiency. All elected Members have public responsibilities and as Ward Councillors take up planning concerns for enforcement, attend pre-application development meetings with officers and are able to call-in planning applications for determination by Committee. Positive dialogue may reduce costs and uncertainty. Members of Planning Committees are trained and are bound by codes of conduct which apply only to Planning matters and may need in some circumstances to distance themselves from dialogue on matters which may come before the Committee.

Brief Overview:

Planning applications are received on a daily basis and are either manually entered on to the Uniform system or if they are submitted via the Planning Portal they are automatically entered on to Uniform. Once a planning application is received and entered, a validation process is followed ensuring that all the information has been provided in order to validate the application, following National guidance. If further information is required, a letter is sent via e-mail to the applicant or their agent requesting the missing information in order to make the application valid.

Once a valid date is entered on to Uniform the application is now published on Public Access, the submitted documents should be viewable the same day if not the following working day.

Process:

1. At first you will need to register on Public Access, of which guidance notes and training will be provided. Once you are registered, a search of valid planning applications within your ward will be undertaken and saved. A search would need to be saved in order for you to receive daily e-mail alerts of any new valid planning applications within your saved search criteria.
2. Planning applications always have a valid date entered before neighbour notifications are undertaken and this would result in you being notified of a valid planning application before the local residents are notified.
3. If you would like to receive an e-mail alert of any valid applications within the Borough or on a particular site, this is also possible, by saving a further search.
4. At present the e-mail alerts are sent at 9pm daily.
5. The inputting of the valid date is mandatory when validating a planning application and therefore it is unlikely that you will not receive an alert of a valid planning application.

6. The same day, if not the following day, the planning application documents should be viewable on line.
7. You can also track the progress of any planning application. Tracking the progress will then provide you with e-mail alerts on status updates throughout the progress of the planning application i.e such report writing and decision outcome.

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Modernising Planning Service Report

Appendix B – Member Call in process

Description of systems:

Uniform – Planning application processing system

Planning Portal – Website where electronic submission of planning applications can be made

Public Access – Website where planning applications can be viewed, tracked and comments can be made

Brief Overview:

From receiving the e-mail alert notification through Public Access, as a Ward Member, you will be given a specific length of time to discuss your concerns with the allocated planning officer. Having identified an application that you wish to refer to committee, you must contact the planning officer to alert them to your interest, which will be recorded against the application on the Uniform system. A formal request for call-in will be agreed with the Chairman of Planning (or Vice Chairman in their absence) following completion of the proforma.

Process:

1. From receiving the e-mail alert notification through Public Access, as a Ward Member, you will be given an extra 7 days from the Neighbour Consultation Expiry date to call in the planning application to Planning Committee.
2. The Neighbour Consultation Expiry date is viewable on Public Access and a further 7 days would be your expiry date from the initial neighbour consultation.
3. If neighbours are not notified and a site notice is displayed, then your extra 7 days will be from the Latest Site Notice Expiry date.
4. Having alerted your interest in an application with the planning officer, this will be recorded on the Uniform system (internal part only) for our records.
5. In some instances concerns could be addressed by negotiated improvement via amended plans. If any revised plans are submitted and you have raised concerns with the planning officer, you will be contacted to inform you of any revisions. If further neighbour consultations are undertaken due to revisions, your expiry date will not be extended.

6. If you decide to call in the planning application to the next available planning committee, you must have discussed your planning reasons with the planning officer and submitted the completed pro forma, sent to referrals@brentwood.gov.uk and also cc in the planning officer.
7. The referral mailbox will be checked daily. The decision to accept or reject the referral shall be made by the Chair or the Committee (or Vice Chair in their absence) after discussion with the Case Officer or Head of Planning and Development. You will be informed of the outcome of the referral request.
8. If no call in or concerns have not be raised to the planning officer, once your expiry date has passed, the application will be determined with delegation to the Head of Planning and Development.

Following implementation, production of the weekly informer list and planning decision list will cease, as these can also be obtained from Public Access.

Timeline of events:

Based on a standard 8 week application (56 days).

- | | |
|----------|--|
| Stage 1 | Application received |
| Stage 2 | Application validated, Member alert |
| Stage 3 | Neighbour consultation commences |
| Stage 4 | Neighbour consultation ceases |
| Stage 5 | Member call in date expires |
| Stage 6 | No pro forma call in received, decision can then be issued |
| Stage 6a | Pro form received and verified by Chair, case goes to next available committee |

Appendix C

PROTOCOL/GUIDANCE NOTE ON THE REFERRAL OF PLANNING APPLICATIONS TO COMMITTEE

- Only the Chair of the Planning and Development Control Committee can refer applications across the Borough, after discussion with the Head of Planning and Development. In the absence of the Chair, the Vice-Chairman may exercise this discretionary power. The Vice-Chairman may also act at the request of Single Ward Members who are also Members to the Committee.
- Ward Members not on the Committee (or not intending to participate in the decision) can refer applications to Committee after discussion with the Case Officer. A Member of a Parish Council, authorised by the Parish Council, may also refer applications within the Parish after discussion with the Case Officer. Referrals should be made using the Pro forma indicating the Policy context, relevant issues and any procedural concerns. Any disclosable interest should be declared. The decision to accept or reject the referral shall be made by the Chair of the Committee (or Vice-Chair in his absence) after discussion with the Case Officer or Head of Planning and Development.
- Referrals should not be made simply to allow an applicant or agent to address the Committee, or in the case of subsequent applications within two years of a previous refusal without material alterations.
- When a referral has been made and accepted as valid, the Member or Parish Council representative involved shall be advised of the date of the Committee meeting, may attend and, if so, shall be entitled to address the Committee but not vote.

GUIDANCE

Statutory provisions

Section 70(2) Town and Country Planning Act 1990 requires that the Local Planning Authority - the Committee or an officer acting under delegated powers - in dealing with an application shall have regard to provisions of the development plan, so far as material to the application, any local finance considerations so far as material to the application and to any other material considerations. This section must be read together with Section 38(6) Planning and Compulsory Purchase Act 2004. This provides that, if regard is to be had to the development plan for the purpose of any determination to be made under the planning acts the determination must be made in accordance with the provisions of the development plan unless material considerations indicate otherwise.

To be material considerations must be planning considerations. The requirement to have regard to "any other material considerations" means not only that all relevant matters are taken into account, but also the decision may be invalid is based upon a consideration which is not material.

Accordingly, at the time of decision it important that all material decisions must be known to take them into account. Responses to consultation, even if late, must be taken into account to the extent that they raise new material planning considerations. A distinction must be drawn between considerations which are potentially material but are not relevant in the case of the particular application: examples include ecological issues under the Habitats Directive which are evidence based

Examples of material considerations (explanatory wording to be added – is this list sufficiently complete?)

- Relevant Government Policy
- Existing Use
- Effect on neighbouring properties
- Presumption in favour of sustainable development
- Loss of visual amenity

- Design
- Heritage
- Highways
- Noise
- Previous decisions
- Fairness
- Permitted Development
- Human Rights
- Flooding
- Crime and Fear of Crime
- Financial Matters
- Trees
- Noise
- Personal Hardship
- Parking
- Precedent /Consistency

Pre- application meetings are confidential. Ward Councillors may attend and ask questions (whether Members of the Planning Committee or not) but must not express views on the proposal to the developer applicant. The Information Commissioner Guidance is that the formal advice of the Local Planning Authority after pre-application meetings is to be made available free of charge upon requests made under the Environmental Information Regulations.

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Appendix D

Cllr: CUR X		Date: 20/2/15
Ward: X		
(Please declare any disclosable interest under the Code if Applicable for contact with applicant or objectors)		
Application Number: 15/XXXXX/FUL	Address: X	Description: X
Policy context:	Criteria:	Ward Member's Concerns
Policy Considerations: Choose which are the most relevant policies to the determination of the application specifically criteria where relevant: Please indicate where the application in your view conflicts with policy and why	E.g : CP1 NPPF NPPG GB1 GB2	EFFECT ON SURROUNDING CHARACTER
Main issues arising from application, supporting documents and responses to consultations	Site context and impacts:	Ward Member's Concerns:
Relevant considerations e.g. : a) Design and Access statement b) Amenity issues c) Harm to interests of acknowledged importance d) Other impacts and mitigation e) Sustainability f) Other	E.g. Impact on visual or residential amenity Design and living standards Site specific mitigation Trees Sunlight/overshadowing Health and safety/crime fear Highway safety and traffic	DENSITY
Procedures	Consistency of decision making	Ward Member's Concerns
Relevant history Pre- app advice		SIGNIFICANT LOCAL CONCERN

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3rd March 2015

Planning and Development Committee

Planning and Building Control Fees and Charges Review

Report of: *Gordon Glenday, Head of Planning and Development*

Wards Affected: *All*

This report is: *Public*

1. Executive Summary

- 1.1 This report reviews the Council's Planning and Building Control non-statutory fees and charges. The current fees and charges have been benchmarked against the rates charged in other Essex councils and some East London Boroughs to gauge how Brentwood's rates compare with similar services elsewhere in the area.
- 1.2 The evidence suggests that Brentwood is currently undercharging for the planning and building control services it provides. It is therefore proposed to increase the planning and building control fees and charges to a more appropriate level given the level of service currently offered. It is also proposed to review the planning and building control fees annually to ensure they reflect the services provided and prevalent market conditions in the development industry. It is important for the Council to undertake an annual review of fees and charges moving forward as Council budgets continue to reduce and the need to increase income external sources such as fees and charges becomes increasingly important.
- 1.3 This report does not propose to increase the photocopying charges for Planning and Building Control.

2. Recommendations

- 2.1 That the Council's Planning and Building Control non-statutory fees and charges be amended to the rates outlined in paragraph 4.3 of this report, with effect from 1 April 2015.**
- 2.2 That all Planning and Building Control non-statutory fees and charges are reviewed annually and revised where appropriate, as agreed by Head of Planning and Development and the Chair of the Planning and Development Committee.**

2.3 That in relation to recovery of costs relating to the inspection and monitoring of Section 106 Agreements, standard clauses be introduced with the agreement of the Head of Planning and Chair of Planning and Development.

3. Introduction and Background

- 3.1 Local authorities charge for the planning and building control services they provide. Certain fees and charges such as planning application fees are set by central government and so cannot be changed at the local level. However, other fees and charges such as pre-planning application advice to developers is not a statutory function and so can be charged as it is up to the developer whether or not to utilise such services. Consequently, fees for these non-statutory services can be set by the Council. However, the rates set need to be reasonable and broadly reflect the cost of providing the service.
- 3.2 Brentwood's Planning and Building Control non-statutory fees and charges have not been reviewed or updated since May 2010. This report has considered the fees currently charged by the Council compared with some neighbouring Essex and London boroughs to give an idea of the varying rates charged in similar authorities. Rates across other councils vary depending upon the cost and level of service provided.
- 3.3 Given the Council's on-going budget challenges, there is increasing pressure on service areas to generate and increase income wherever possible to contribute to the funding of the Borough's services. The Planning and Development service therefore needs to maximise the opportunities to generate income from the non-statutory services it offers in order to provide a high quality of service to its customers.
- 3.4 Brentwood's high quality environment and proximity to London has always made it an attractive place to develop. With the development of Crossrail in the Borough, Brentwood is becoming an increasingly attractive place for the development industry looking to develop profitable schemes. The emerging Local Development Plan (LDP) and the need for Brentwood to build around 5500 new homes over the next 15 years also means that development opportunities in the Borough will increase over the coming years. The Council's Planning and Development Department therefore needs to be able to provide a high quality service to the development industry in order to ensure that new development is of the highest quality. To provide the level of service required in the current local government budgetary environment means that recovering costs through planning and building control fees is imperative. The rates proposed in paragraph 4.3 of this report seek to generate an appropriate fee income for 2015/16 to meet the costs of delivering an effective pre-planning application service without making the charges prohibitive for developers.

4. Proposed Planning and Building Control Fees and Charges

- 4.1 The Borough's current fees and charges are set out on the Council's website so that all developers know the rates in advance of preparing their planning applications. If the proposed changes to the Council's fees and charges are accepted, the new rates will need to be uploaded to the website so that developers are aware of the changes.

BRENTWOOD COUNCIL'S CURRENT PLANNING FEES

No Fee	<p>A single meeting with householders living within Brentwood Borough and/or their agents concerning the extension or alteration of their dwelling (but not the redevelopment or replacement of their dwelling).</p> <p>A single meeting with the operators of businesses within Brentwood Borough and/or their agents concerning the extension or alteration of their business premises, including the proposed display of advertisements relating to those premises (but not the redevelopment of their businesses premises)</p> <p>The owners or occupiers of listed buildings concerning structural alterations to their buildings that would require listed building consent.</p>
Band A - £50 including:	<p>Second or subsequent meetings with those entitled to a free first meeting (except in relation to Listed Building Consent issues where all meetings are free). Non-residents of Brentwood Borough in connection with extensions or alterations of dwellings within the Borough.</p>
Band B - £300 including:-	<p>Development comprising the extension or alteration of buildings, the construction of ten dwellings or fewer or non-residential development of less than 1000 sq m.</p> <p>The change of use of buildings resulting in equivalent accommodation or other development including the 'variation' of conditions or planning obligations</p>
Band C - £750 including:-	<p>Developments in excess of ten dwellings or 1000 sq m of non-residential development where one meeting is required.</p> <p>Change of use of equivalent accommodation</p>
Band D - £negotiable:-	<p>Larger or more complex Band B or C developments where a developer may wish to embark on a programme of meetings.</p>

- 4.2 Having benchmarked the Council's current rates against other comparative Boroughs, the evidence suggests that Brentwood does have the capacity and justification to increase its fees with immediate effect. If the proposed amendments to the Planning Service proposed in the March 2015 Planning Committee report "Modernising the Planning Service" are agreed and implemented, the rates charged for pre planning application advice needs to be annually reviewed to reflect the likely continuing improvements to the overall services provided.
- 4.3 In the meantime, it is proposed to increase the Planning Fees and Charges for the current Bands outlined in Table 1 to the levels outlined in Table 2. These rates include VAT.

PROPOSED PLANNING FEES AND CHARGES

No Fee	<p>A single meeting with householders living within Brentwood Borough and/or their agents concerning the extension or alteration of their dwelling (but not the redevelopment or replacement of their dwelling).</p> <p>A single meeting with the operators of businesses within Brentwood Borough and/or their agents concerning the extension or alteration of their business premises, including the proposed display of advertisements relating to those premises (but not the redevelopment of their businesses premises)</p> <p>Pre-application advice on works to protect trees and legal advice and support on Section 106 obligations can be provided at a cost to developers if the service is requested</p>
Band A - £100 including:	<p>Second or subsequent meetings with those entitled to a free first meeting.</p> <p>Non-residents of Brentwood Borough in connection with extensions or alterations of dwellings within the Borough.</p> <p>The owners or occupiers of listed buildings concerning structural alterations to their buildings that would require listed building consent</p>
Band B - £500 including:-	<p>Development comprising the extension or alteration of buildings, the construction of ten dwellings or fewer or non-residential development of less than 1000 sq m.</p> <p>The change of use of buildings resulting in equivalent accommodation or other development including the 'variation' of conditions or planning obligations</p>
Band C - £1500 including:-	<p>Developments in excess of ten dwellings or 1000 sq m of non-residential development where one meeting is required.</p> <p>Change of use of equivalent accommodation</p>

Band D - £negotiable:-	Larger or more complex Band B or C developments where a developer may wish to embark on a programme of meetings.
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- 4.4 In addition to the proposed fee changes outlined in Table 1, it is also proposed to increase Building Control fees by 5% to reflect the increased costs of providing this service since these rates were last set in 2012.
- 4.5 A final area where Brentwood’s planning fees need to be brought in line with many other boroughs relates to Section 106 monitoring fee charges. In order to manage and monitor all Section 106 agreements and spending, many local authorities charge a S106 administration fee. A common rate is a 5% charge on top of the total S106 contribution paid towards the costs of the development. It is important to note, however, that such a fee must be ring-fenced to the administration of the S106 fee and so cannot be spent on other planning or council services.
- 4.6 However, the High Court has just recently upheld a decision by an Inspector which held that such a charge was not justifiable. It is too early to say what the full implications of this decision on councils currently charging a percentage rate for S106 Monitoring fees will be. Importantly though, in the light of this very recent case law, it would not be advisable for the Council to introduce a flat rate S106 monitoring charge at present. Instead, it needs to consider standard clauses providing for cost recovery of specific fees for essential inspection and monitoring developments where inspection is necessary. Officers will therefore look at the options available with a view to introducing appropriate charges relating to this as soon as is practicable. Once agreed by the Head of Planning and the Chair of Planning and Development, these new fees will be instigated on subsequent s106 Agreements.

5. Reasons for Recommendation

- 5.1 Brentwood Council’s Planning Fees and Charges have not been reviewed since 2010 and so do not reflect the current costs of providing non-statutory planning services to developers. Neither do they consider the increasing budget constraints facing the public sector meaning that there is now a prerogative upon all Council services to generate income wherever possible to contribute to the provision of high quality services to residents and businesses.
- 5.2 The proposed review of the Planning Fees and Charges outlined in Section 4 of this report will better position Brentwood’s Planning and Building Control services to meet the increasing needs for high quality, cost effective services. Given the interest shown by the development in developing in Brentwood over the coming years, alongside the opening of Crossrail services into London in 2018/19, it makes sense to ensure that the Council’s fees and charges reflect this. The rates proposed are relatively high compared with neighbouring Essex council rates but are still modest in comparison with London boroughs.

Given Brentwood's proximity to London's job markets and services and the fact that it more closely reflects the Capital's land values, it is reasonable to relate Brentwood's Planning and Building Control fees and charges to the levels in London.

- 5.3 However, it is important to acknowledge that any increased fee income resulting from the proposed increase in fees and charges is justified on the basis that the planning and building control services are delivered to a high standard. Such a high quality service requires appropriate funding to deliver the services that the higher fee paying developers will expect. The Council must provide value for money for the services it charges. It is therefore proposed that all planning and building control non – statutory fee income is ring-fenced to the Planning and Development service area in order to justify the charges and reassure developers that the service they are paying for will be delivered.
- 5.4 It is difficult to estimate the impact of the proposed changes to the Council's fee income for Planning and Building Control services as this very much depends upon the development industry's willingness to sign up to the proposed arrangements. However, as the proposed fee increases are mainly for medium and larger developments, and these developers are already used to paying similar rates to those proposed in Section 4, the industry is unlikely to resist the proposals provided that the service they receive provides value for money. On this basis, and assuming rates of development are similar to that in previous years, the Council could reasonably expect to generate an additional £50 000 in 2015/16 from its new Planning and Building Control fees and charges.

6. Consultation

- 6.1 Discussions with staff have been held in the preparation of this report. Benchmarking against the fees and charges of other similar local authorities has also been undertaken.

7. References to Corporate Plan

- 7.1 Proposals in this report support the Modern Council theme of the Corporate Plan in making efficiencies and savings, while improving service delivery to customers.
- 7.2 The planning service itself supports the Prosperous Borough theme by its promotion of quality development and growth.

8. Implications

Financial Implications

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- 8.1 If the proposed Planning and Building Control fees and charges are approved and introduced for 1 April 2015, the Council's fee income for planning services will could increase by £50 000 in 2015/16 based on previous levels of planning and building control service charges. If this income level were to be achieved for 2015/16, it would make a significant contribution towards the Council's budget deficit. It must be stressed, however, that this income cannot be guaranteed and is reliant on the development industry coming forward with development proposals and agreeing to pay the non statutory fees and charges proposed.

Legal Implications

Name & Title: Philip Cunliffe-Jones, Planning Lawyer

Tel & Email: 01277 312703/ philip.cunliffe-jones@brentwood.gov.uk

The Local Government Act 1999 provides that the Council is under a general duty to "make arrangements to secure continuous improvement in the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness" Statutory Guidance, revised in September 2011, emphasises that authorities should engage service users and the wider community in consultation on options for the future and reshaping of the service.

Charges for discretionary services such as pre-application advice and planning performance agreements are allowed by the Local Government Act 2003.

- 8.2 **Other Implications** (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.
- 8.3 No other implications are identified.

9. Background Papers

- 9.1 Research of other Essex and East London Boroughs' fees and charges rates

10. Appendices to this report

- 10.1 None

Report Author Contact Details:

Name: Gordon Glenday, Head of Planning and Development
Telephone: 01277 312512
E-mail: gordon.glenday@brentwood.gov.uk

3rd March 2015

Planning and Development Committee

Enforcement Plan Adoption Report

Report of: *Gordon Glenday, Head of Planning and Development*

Wards Affected: *All*

This report is: *Public*

1. Executive Summary

- 1.1 This report sets out responses to the consultation Draft Enforcement Plan, including internal consultations, and provides an update on a Government fund for Legal injunctions where bidding Local Authorities must have an adopted enforcement plan for three months prior to bidding.
- 1.2 There are resource management issues to be addressed. A scoring chart for assessing harm and expediency for taking action is now recommended for inclusion in the Enforcement Plan. New procedures are required for recording decisions taken and better use should be made of technology support. A complete review of protected trees is needed, revoking in a systematic phased programme of existing protection orders and replacing immediately revoked orders by fewer but up to date Tree Preservation Orders.
- 1.3 The report recommends that subject to the Committee's decision on the proposals set out in this report, the Enforcement Plan be recommended to the Council for adoption as amended, with additional recommendations as to delegation, reporting, technology, tree protection and performance reviews.

2. Recommendation(s)

- 2.1 That subject to the Committee's decisions on the issues set out at paragraph 4.8 – 4.12 the Planning Enforcement Plan as amended be recommended to Full Council for adoption on 26th March with effect from 1st April 2015;**
- 2.2 That the eligibility criteria (Appendix A of the report) for the Planning Enforcement fund for authorities which have adopted an enforcement plan and wish to bid for funding assistance for a Court injunction be noted;**

- 2.3 That the Full Council be recommended to delegate to the Head of Planning and Development and in his absence the Team Leaders of Development Management and Planning Policy all planning enforcement decisions subject to the plan, including all types of stop notices, all types of injunctions and prosecutions, in consultation with the Chair or Vice-Chair and taking such other advice as may be practicable and appropriate and with a record made in accordance with Appendix B;**
- 2.4 That the use of technology, including the adoption of Middleware be progressed for pre-applications, local requirements and enforcement complaints;**
- 2.5 That a review of Enforcement Plan operation be considered annually by the Committee.**

3. Introduction and Background

- 3.1 The National Planning Policy Framework (NPPF) (2012) refers to planning enforcement in paragraph 207 and references the desirability of an enforcement plan. Although such a plan is not a Development Plan Document, it would provide a statement of the Council's objectives and priorities regarding planning enforcement.
- 3.2 National Guidance emphasises that 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.
- 3.3 The Department for Communities and Local Government (DCLG) has introduced a new time-limited Planning Enforcement Fund for all local planning authorities in England. The scheme provides a grant contribution to local planning authorities for securing a Court injunction to prevent actual or apprehended breaches of planning control.
- 3.4 To qualify for consideration, an authority is required to confirm it has adopted the enforcement best practice recommended in paragraph 207 of the National Planning Policy Framework and published its plan to manage enforcement of breaches proactively. An authority's enforcement plan must have been published at least three months prior to applying for grant

and the authority is required to confirm adherence to the recommendations of the National Planning Policy Framework of how the authority:

- Monitors the implementation of planning permissions;
- Investigates alleged breaches of planning control; and
- Takes enforcement action whenever it is expedient to do so.

3.5 The Eligibility Criteria are set out at Appendix A to this report.

3.6 When the draft Enforcement plan was reported to the Committee in July 2014, the Openness of Local Government Bodies Regulations were in draft. These have now been made a Statutory Instrument no 2095 of 2014. In order to meet the requirements of these regulations, a record form is proposed to be completed. Included at Appendix B is an example to show how the suggested new record system would work.

3.7 In the presentation to the Committee in July 2014, the need to make the best use of IT was mentioned. The Council has Middleware to enable Enforcement Complaints submitted by the website to be uploaded onto the Enforcement Uniform system, but this has not been brought into use.

4. Issue, Options and Analysis of Options

4.1 External responses to the consultation document raised the following issues

4.1.1 The tenor and tone of the plan is quite threatening;

4.1.2 HRA legislation gives people a right to a private life and intrusion can't be based on expediency – after all an unlawful alteration isn't going anywhere;

4.1.3 The plan should embrace the concept of a shared heritage and be a supportive measure to help householders comply with the legislation;

4.1.4 Mounthessing Parish Council is supportive of the proposals set out in the above Plan. It is in agreement with its objectives and priorities and the proposed standards are acceptable. Parish Councillors are aware that the Borough is subject to financial constraints but would urge that the necessary resources are devoted to achieve the aims of the Plan.

4.2 The tenor and tone of the plan is intended to be a transparent policy of service standards - more a promise than a threat. Planning enforcement is about achieving compliance with procedures and legal requirements.

4.3 Enforcement is discretionary where it is expedient in planning terms to take action. The word "expedient" is not defined in the Act, but implies a balance of policy and other factors against perceived or potential harm. Human rights of occupiers must be taken into account where relevant.

- 4.4 So far as heritage issues are concerned, letters were sent to owners of all Listed Buildings in the Borough drawing attention to the consultation on the draft enforcement plan and legislative changes. The concept of shared heritage has been developed in two European Conventions of the Council of Europe. The Florence Convention of October 2000 is aimed at promoting high quality landscapes for future generations, and has been in force in the UK since 2007. The Faro Convention promotes a broad definition of cultural heritage but is not in force in the UK.
- 4.5 Householders do have support. These are permitted development rights and a free single advice service for pre-application. It is accepted that more could be done in respect of new householder applications. Householders should ensure that the professionals who are engaged fulfil the application requirements. Where there are complaints about unauthorised development, it is always helpful if there has been prior discussion with a Planning Officer. The Middleware technology also serves to clarify pre-application discussions and could include local requirements and standards.
- 4.6 The response of Mountnessing Parish Council is a welcome endorsement of the aims and standards of the enforcement plan. However, the issue of managing resources involves corporate priorities which may change from time to time. In order to provide greater transparency regarding the issue of expediency, a scoring chart for assessing harm, and a threshold of expediency for taking action is now proposed. If corporate priorities change the resource available may be adjusted as a higher or lower score.
- 4.7 Internal Responses to the Consultation include the following:
- 4.7.1 The Enforcement Toolkit should be aligned with National Guidance on ensuring effective enforcement and, where appropriate, the Good Practice Guide of 1997;
- 4.7.2 Where no formal action is taken, National Guidance recommends that a record is kept of the decision. The enforcement file may be re-opened at any time. Where there is a technical breach and no formal action, the landowner may be advised that a search of the property's planning history will disclose a breach of control;
- 4.7.3 The Good Practice Guide recommends that any delay should be prevented by ensuring that a properly delegated person is always available to take urgent action/decisions when needed. This should be put in place;

- 4.7.4 Where Planning Enforcement breaches are found to involve Council owned land, any enforcement investigation will be terminated and the matter referred to the relevant asset manager to remedy. Land ownership remedies are generally speedier and more efficient than planning enforcement measures. Covenants imposed on land sold by the Council, where there is an overlap with breaches of planning control, should also be dealt with by the relevant asset manager.
- 4.7.5 A useful additional way of enforcing planning control (or indeed any part of it e.g in respect of demolition of buildings in a Conservation Area) is a confiscation order under Pt 2 of the Proceeds of Crime Act 2002 (referred to in the cases as POCA). For these provisions to apply there must have been a successful prosecution of the offence (s.6(2)) and the prosecution must have asked for the order or the Court believes it is appropriate to make it (s.6(3)). The order will not be made unless the defendant has benefited from the conduct (s.76). This should be added to the Toolkit. The confiscation order is in addition to any other penalty (e.g. fine) which may have been imposed.
- 4.7.6 National Guidance included the right to recover costs and expenses in the event of default action. Administrative costs of undertaking default works may be added as a percentage to the contractor's costs. The toolkit should refer to this and a practice note on enforced sale procedures is proposed.
- 4.8 The Toolkit and delegation arrangements should include notes on prosecutions, the power to issue a letter giving a time-limited assurance not to prosecute, and acceptance of undertakings to resolve breaches to an acceptable standard.
- 4.9 If the Committee agree, the internal responses may be incorporated in this final Enforcement Plan recommended for adoption.
- 4.10 The scoring chart at Appendix C is recommended for incorporation into the Plan.
- 4.11 The decision Record form at Appendix B is recommended.
- 4.12 The effectiveness of planning enforcement will be enhanced by improved use of technology. This should be progressed and kept under review. It is recommended that the Enforcement Plan be adopted and reviewed annually.
- 5. References to Corporate Plan**
- 5.1 Proposals in this report support the Modern Council theme of the Corporate Plan in making efficiencies and savings, while improving service delivery to customers.

5.2 The planning service itself supports the Prosperous Borough theme by its promotion of quality development.

6. Implications

Financial Implications

Name & Title: Jo-Anne Ireland, Director of Strategy and Corporate Services

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

6.1 No specific financial issues arising from this report.

Legal Implications

Name & Title: Philip Cunliffe-Jones, Planning Lawyer

Tel & Email: 01277 312703/ philip.cunliffe-jones@brentwood.gov.uk

6.2 Legal implications have been incorporated into the internal responses.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

6.3 No other implications are identified.

7. Background Papers

7.1 Appendices to this report

- Appendix A – Eligibility Criteria for bidding for support for injunctions
- Appendix B – Openness Regulations 2014 decision record form
- Appendix C – Scoring chart for harm

7.2 The Draft Enforcement Plan may be found under the Planning and Development Control Committee agenda for 22nd July 2014.

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Planning Enforcement Fund – Eligibility Criteria

The Department for Communities and Local Government (DCLG) has introduced a new time-limited Planning Enforcement Fund for all local planning authorities in England. The scheme provides a grant contribution to local planning authorities for securing a Court injunction to prevent actual or apprehended breaches of planning control.

The scheme will run for the financial years: 2014/15 and 2015/16 commencing 10 January 2015 and ending 31st March 2016. Ivy Legal Ltd administers the scheme on behalf of DCLG.

What is available?

1. You are limited to one application per site.
2. The maximum amount of grant you may apply for is £10,000 (or 50% of your estimated legal costs, whichever is the lesser) towards the cost of securing a Court Injunction in the High Court or County Court. Your costs estimate should set out details of anticipate legal costs likely to be incurred in preparation of issuing legal proceedings and attending Court. Non-legal specialist officer time must not be included. The local planning authority is responsible for any legal costs incurred in excess of £10,000 or in excess of any lesser sum applied for and granted.
3. Funding is not available:
 - o If Court proceedings have commenced; or
 - o Where an appellant appeals against an enforcement notice issued by the local planning authority, within 28 days of receiving the notice, to the Secretary of State for Communities and Local Government.

Eligibility Criteria

4. The fund is solely for the use by local planning authorities, in England, towards the cost of securing a Court injunction (High or County Court), under Section 187B of the Town and Country Planning Act 1990, against actual or apprehended breaches of planning control to be restrained. Funding is only available where other enforcement options have been, or would be, ineffective, or where there have been persistent breaches of planning control over a long period.
5. In order to be considered for an award of a grant, each application for funding should address the following criteria in approximately 1,000 words in total (with a final word count):-
 - o Confirmation the commencement of injunction proceedings is authorised; the source of that authority (e.g. planning committee/named delegated officer) and the date obtained;

- Confirmation your authority has taken legal advice on the proposed injunction (internal or external) from whom and on what date;
 - Demonstrate why the action is in the general interest;
 - Explain the degree and flagrancy of the breach of planning control;
 - Set out the enforcement history for the site e.g. what other measures have failed over a long period of time;
 - Explain any urgency needed to remedy the breach;
 - Set out the planning history of the site;
 - Provide details of previous planning decisions in relation to the site;
 - Set out consideration of the Public Sector Equality Duty (section 149 of the Equality Act 2010) and Human Rights Act 1998;
 - Demonstrate that an injunction is a proportionate remedy in the circumstances of the individual case.
 - Amount of funding requested, including a breakdown of estimated legal spend on legal costs in 2014-15 and 2015-16 (grant is only available for spend in these financial years). Non-legal specialist officer time must not be included in your estimate.
6. By applying for funding, you are agreeing to provide anonymous case worked examples to DCLG if requested. They may be disseminated to local planning authorities to assist the sharing of best practice during the funding period.

Supporting Information

7. To qualify for consideration, your authority is required to confirm it has adopted the enforcement best practice recommended in paragraph 207 of the National Planning Policy Framework and published its plan to manage enforcement of breaches proactively. Your authority's enforcement plan must have been published at least three months prior to applying for grant and you are required to confirm adherence to the recommendations of the National Planning Policy Framework of how your authority:
- Monitors the implementation of planning permissions;
 - Investigates alleged breaches of planning control; and
 - Take enforcement action whenever it is expedient to do so.
8. To support the application for funding your authority will be required to provide an active web link for your published local enforcement plan together with written confirmation that you are adhering to the objectives of the plan in a positive, proactive and proportionate way and have been doing so for at least the previous three months.

Assessment of Applications

9. Ivy Legal Limited will assess the applications for funding against the eligibility criteria in: January, April, July and October. Applications for grant must be received no later than the last working day of the relevant application month. Applications for grant and the required supporting information must be sent electronically to: applications@planningenforcementfund.co.uk The last date for

applying for grant is Monday, 11th January 2016.

10. Ivy Legal has a dedicated email account for answering questions: info@planningenforcementfund.co.uk together with a frequently asked question section: www.planningenforcementfund.co.uk
11. If successful, you will receive payment from the Department for Communities and Local Government in the quarter after receipt via Section 31 grant (Local Government Act 2003) in the relevant financial year e.g. application submitted April payment July, apply July payment October. Where possible, applications received in January and February will be paid in March. Last payment of grants will be in March 2016.

The Department for Communities and Local Government intends to process all successful applications received in January and February 2015 and pay the grant before 31st March 15. Only the 2014/15 element of grant will be paid in the current financial year with the balance in 2015/16 .
12. You may apply for support up to a maximum of four times during the period the fund is available. This is limited to one application in 2014/15 and three applications in 2015/16. Financial years run from 1 April to 31 March the following year.
13. There is no guarantee your application under this scheme will be successful and there is no right of appeal.

After the court proceedings

14. By applying you are confirming that any costs recovered, following court proceedings supported through this fund, will be recycled into enforcement action for your local authority's use. Where costs are awarded against the local planning authority you will be responsible for meeting them.

Last updated January 2015

PLANNING ENFORCEMENT DECISIONS BY AN OFFICER

Site: 31 Queens Road Brentwood CM14 4HE	Decision by: Caroline McCaffrey Development Manager Team Leader
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Ward: Brentwood South	Parish Council (if appropriate)
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My decision is: Issue and serve an Enforcement Notice in respect of all the breaches of planning control identified in the investigation.

When the Notice has been served, a copy shall be include in the statutory register under Section 188 Town and Country Planning Act 1990

The reasons for my decision are set out in the attached delegated report, after investigation of the evidence, site inspection, and having regard to the adopted Enforcement Plan

Details of any alternative options considered and rejected when making the decision, and consultation with Members and/or Parish Council : Delay and under-enforcement considered and rejected

SIGNATURE OF DECISION MAKER:

Signed:	Date:
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Contact Officer: Richard Bates Enforcement Officer

DETAILS OF ANY CONFLICT OF INTERESTS OR DISPENSATIONS GIVEN:

The Openness of Local Government Bodies Regulations 2014 require the following to be declared:

- a record of any conflict of interest declared by any member who is consulted by the officer which relates to the decision
- in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service

Details of any Conflict of Interest:

Date decision published to website:
--

Implementation date:

Delegated Report for approval

<u>Reference</u>	<u>Address</u>	<u>Ward</u>	<u>Parish</u>	<u>Page</u>
15/00018/NINA1	31 Queens Road Brentwood Essex CM14 4HE	Brentwood South		

31 Queens Road Brentwood Essex CM14 4HE
15/00018/NINA1

WARD Brentwood South
PARISH

1. Breach

High. The planning conditions on landscaping have been breached. The land shown as a landscaping area has been severed from the rest of the plot providing wholly insufficient amenity space for residents. Two yew trees retained under the approved landscaping plan have been felled and the private amenity garden has had a fence erected. This represents a material change of use of the original site. In addition, the approved garages have not been constructed in accordance with approved planning permission for which there have been complaints from adjoining neighbours

2. Investigation

Planning Permission was granted on the 11th October 2010 for the conversion of the existing property and a rear extension to create 6 x 2-bedroomed flats and rear garage parking of 6 garages including demolition of the previous double garage at the rear and formation of private amenity space comprising 263 square metres, in addition to a terraced area of 40 square metres.

The site area shown on the drawings was stated on the application form to comprise 890 square metres (0.089 hectare).

A scheme of hard and soft landscaping for the site was approved on the 7th October 2013 (drawing 010/QR/CP/S/02) showing two yew trees retained at the boundary of the site with 7 Rose Valley.

A site visit in December 2014 followed complaints that the development was not being built in accordance with approved plans.

The plot had been subdivided by a fence, severing over 327 square metres of amenity space from the development, creating a separate planning unit in breach of the approved landscaping condition and constituting a material change of use of the site.

Car ports were being constructed rather than brick built garages.

The two yew trees which were to be retained at the boundary of the site with 7 Rose Valley had been removed.

A letter was sent to the owner advising that the consideration of possible enforcement action against the unauthorised breaches of planning control would be delayed for a period of 21 days and requested a fresh application to regularise the situation and to show what is currently being built and how it differs from the approved planning permission, and also what is proposed to be built, and in particular the changes to the overall size of the site area, communal garden and garages/car port area.

Investigation meanwhile showed that the owner sold the majority of the site on the 24th February 2014 to a developer and retained private amenity space of 327 sq metres in its ownership.

The Transfer included a covenant on the part of the purchaser to erect and maintain along the severed plot boundary a six foot high close-boarded wooden fence and thereafter to maintain the same.

On the 13th May 2014 the owner of the retained part of the amenity garden completed the purchase of 7 Rose Valley.

The legal representative of the developer states that there was a misunderstanding at the time of the sale of 31 Queens Road and the effect of the Planning Permission and its conditions were not appreciated.

The developer is now intending to purchase part of the amenity land retained by the Vendor and submit a Planning application.

3. Analysis of Planning Considerations and options

As a matter of fact and degree the subdivision of the approved development site is considered a material change of use in this case. The amenity space available for residents of the flats is inadequate, yew trees protected by the approved landscaping plan have been felled

While the new owner is stating an intention to purchase part of the amenity land retained, the breach of control involves the whole of both areas of land subdivided from the original planning unit .

The fence severing the two plots is in breach of the landscaping condition and should be removed, with the landscaping shown on the approved drawing being completed.

The development of the car ports instead of garages has attracted complaints from adjoining residents. The legal adviser to the new owner suggests that a planning application can resolve the breaches with the purchase of some of the severed land.

The Council's planning legal adviser considers that under enforcement is not expedient. To the extent of any under enforcement against existing breaches of planning control, planning permission would then be deemed to be granted by virtue of Section 173(11) of the Act. In the absence of a specific and acceptable scheme for approval, delay in taking enforcement action whether for land negotiations or for a retrospective planning application merely delays effective enforcement. The letter sent to the original owner, who has retained much of the garden has not been acknowledged other than by the new owner of the flats and severely reduced amenity space.

The Legal Adviser supports the issuing of an enforcement notice to remedy the breaches of planning control and is satisfied with the evidence and investigation.

3. Recommendation

That the Head of Planning authorise an enforcement notice to remedy the breaches of planning control. That notices are issued and served and copies filed on the statutory register of enforcement notices.

GUIDANCE:

The Openness of Local Government Bodies Regulations 2014

The Openness of Local Government Bodies Regulations 2014 require a written record to be made of any decision that has been delegated to an officer under a specific express authorisation, or under a general authorisation where the effect of the decision is to:

- grant a permission or licence;
- affect the rights of an individual; or
- award a contract or incur expenditure which, in either case, materially affects the Council's financial position.

This form must be used to record all such decisions, except when established processes would be duplicated in terms of recording decisions relating to the grant of a permission or licence (such as those currently used by Planning and Licensing).

The written record of the decision, together with any background papers, must be made available for inspection by members of the public as soon as reasonably practicable after the decision has been made:

- at all reasonable hours at the Civic Offices;
- on the Council's website,
- by such other means that the Council considers appropriate.

The written record of the decision must be retained and made available for public inspection for at least 6 years. Any background papers referred to by the decision-maker should be retained and made available for public inspection for at least 4 years. The relevant retention period will begin with the date on which the decision, to which the written record and any background papers relates, was made.

Nothing in the Regulations is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence, or, information that, in the opinion of the Monitoring Officer can be defined as exempt, as set out in Local Government Act 1972 as amended by the Access to Information Act 1985 and regulations.

The decision should be followed as soon as practicable by the action taken so that the record posted on the web site does not generate additional work.

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Appendix C

Enforcement Inquiries: Analysis: Setting a Harm Threshold for taking further action

Points Allocation	Scoring	Score
Status of breach	Worsening (1) Ongoing but Stable (0)	
Highway Safety Issue?	Yes (2) No (0)	
Other safety issue?	Yes (1) No (0)	
Complainant	Immediate neighbour. Staff (2) BB Councillor (1) Parish Council (1) Anonymous/ Malicious (0) Other (1)	
Age of Breach	Within 3 months of immunity (2) Less than 1 month old (1) More than 1 month old (0)	
Is the harm	Widespread / Public (2) Local (Private) (1) None (0)	
Irreversible harm?	Yes (1) No (0)	
Breach of a condition?	Yes (1) No (0)	
Operational development in Green Belt	Yes (1) No (0)	
Development affecting contaminated land	Yes (1) No (0)	
Affecting setting of Conservation Area	Yes (1) No (0)	
Harming a listed building or its setting	Yes (1) No (0)	
Part of a special initiative (specify)	Yes (1) No (0)	
Otherwise sensitive site (specify)	Yes (1) No (0)	
Undesirable Precedent (specify)	Yes (1) No (0)	
Total Points (Harm Score)		

Where the Harm Score is or below, the case will not be investigated further. The developer will be informed of the breach/ likely breach and invited to remedy or regularise it. Complainants will be notified that the development causes insufficient harm to warrant further action.

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07. Cottage Garden, Beads Hall Lane, Brentwood - 14/01069/FUL

Introduction

As set out in Minute 363 of the January meeting of the Committee, the issues raised for Call-in to the Committee included an examination of the status of the site as Previously developed land and also very special circumstances for specialist needs housing with a legal agreement to secure site improvements and long term occupation restrictions without sale or disposal.

The previous report to the Committee is attached and the recommendation is unchanged. However, an examination has been undertaken of the site and its status as previously developed land. The assessment is set out below.

There is an additional report in private session regarding the issues regarding specialist housing needs which are exempt from consideration in public. The draft legal agreement is included in the Part II report item.

Since the Committee in January the Agent has indicated that if the principle for a permanent dwelling is accepted, the height and design can be altered by negotiation.

Previously Developed Land/Brownfield Land - Assessment

“Inappropriate development”

Paragraph 89 of the National Planning Policy Framework sets out categories of development that may not be “Inappropriate” in Green Belts. This is a fundamental issue when considering any development within the Green Belt. The final bullet point of that paragraph refers to the development of “previously developed sites (brownfield land)”. These terms are not defined but “previously developed land” (PDL) is defined in Annex 2 of the Framework and it is considered that whilst the terminology is different this is a good starting point for the interpretation of that bullet point.

It should be noted that the inclusion of a site within the definition of PDL is not sufficient for a proposal to be not “inappropriate development”. The bullet point goes on to indicate that to be not “inappropriate development” the proposal must not have a greater impact on openness and the purposes of including land in the Green Belt than the existing development. It should also be noted that the reference point is the existing development not any previous development.

PDL includes land that “is or was occupied” by a permanent structure. Certain types of land are excluded, including land in built-up areas such as private residential gardens. Land that was previously-developed but where the remains of the permanent structure have blended into the landscape in the process of time is also excluded.

Cottage Garden was previously occupied by a dwelling house. It is considered that the plot is outside the urban area and therefore it would not be excluded from PDL by virtue of being a private residential garden. The house was demolished many years ago but parts of the structure remain. The most obvious of these is the chimney stack which now stands in the grounds of the mobile home. The occupier of the site indicates that a low brick wall and footings of the house also remain; the brick wall having been incorporated into a planter.

The planter appears to be purpose-built with a wide space between the walls to accommodate soil. The walls on each side of the planter are built in matching bricks and similar bricks have been used to construct other small structures on the site. The bricks are different from the chimney. There is no evidence to indicate that the walls of the planter formed part of the walls of the house and on the balance of probabilities it is considered that they did not.

In determining whether the land is PDL it is necessary to consider whether the remains of the structure have blended into the landscape. The "landscape" of the site comprises the access way, hard standings, a concrete base beneath and around the mobile home with grassed areas at the front and rear of the site. All of this is enclosed by close-boarded fences. Beyond the site the wider landscape comprises open fields and woodland. To the front the site is bounded by a hedgerow and trees and there are further hedges outside the fences.

It is considered that the walls within the planter were not part of the building; however the following assessment of the footings, walls and the chimney is on the basis that they were.

The footings are at ground level, from within the site they blend into the hardstanding and rough grass areas. They cannot be perceived from outside the site.

The walls are now part of a planter that divides the grass area at the front of the site from the hard standings beyond. Any function that the walls may have had as part of a dwelling has ceased and they have blended into the site as garden features. From outside the site the planter (which is about 0.5m high) can be seen through the site entrance; however it appears to be a garden feature.

The chimney is the most obvious element of the remains of the building. It is now part of the grounds around the mobile home and is used to support a floodlight. The remains of old or disused buildings are often found within the landscape; these can range from largely intact but derelict buildings to small remnants of an original building. The extent to which they may have blended into the landscape will depend on their size, their condition and the nature of the landscape. For example a structure that has been over grown with ivy may be considered to have blended in whereas if the ivy was removed it may not. The chimney can be seen from outside the site but it is considered that within the wider landscape it is an inconspicuous structure that no longer performs its original function. It is considered that in the absence of the house of which it was originally a part it has now blended into the landscape.

Conclusion

It is concluded that all of the remains of the dwelling as indicated by the applicant have blended into the landscape and that the site is not previously developed land as defined by the Framework.

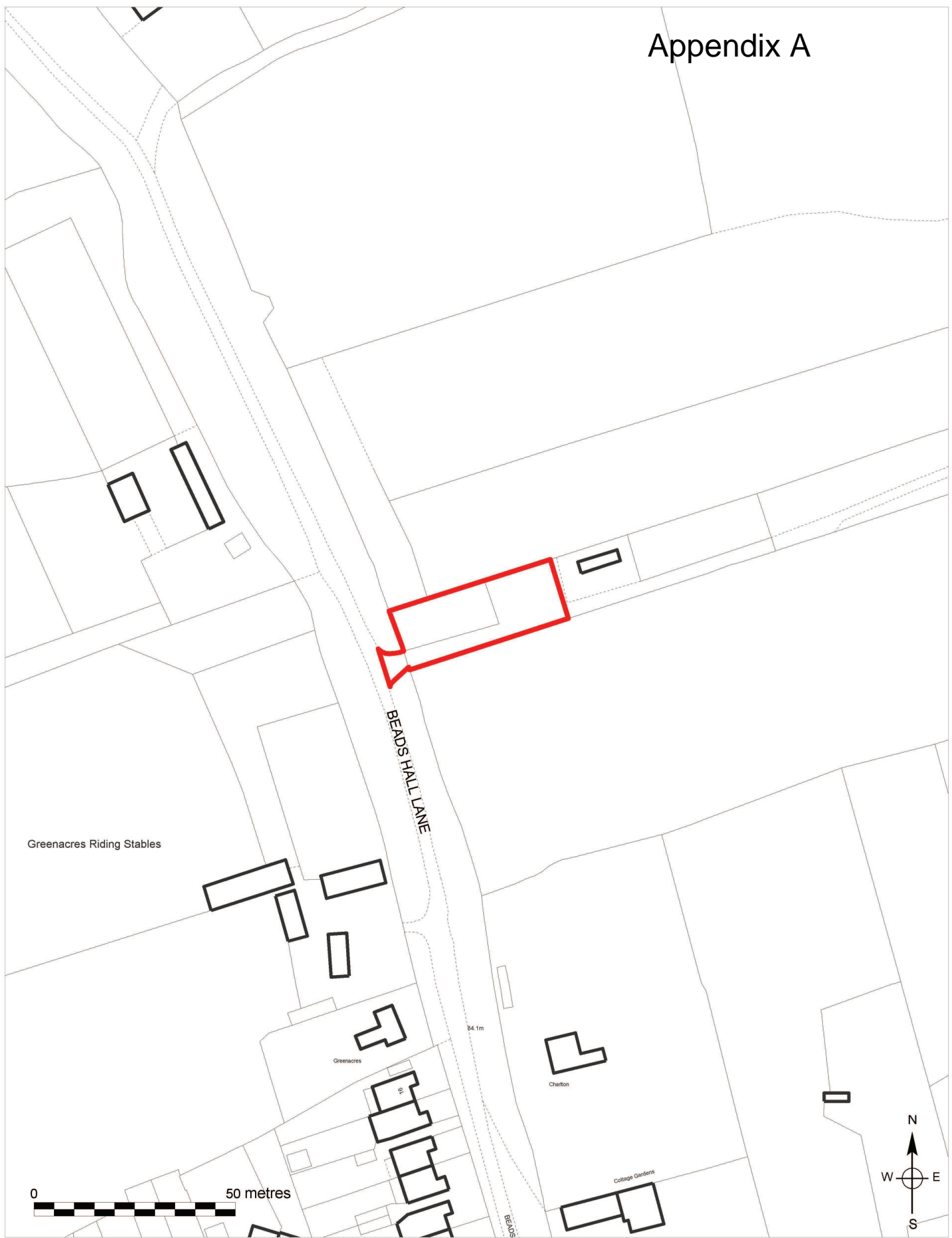
There are no “rules” to determine whether structures have blended into the landscape and this is a matter of judgment; therefore others may have different views. In recognition of this the original report also addressed the proposal on the basis that the land was PDL. Paragraph 89 of the Framework indicates that when redeveloping previously developed sites proposals should not have a greater impact on the openness of the Green Belt than the existing development. There can be no doubt that the proposed dwelling would have a significantly greater impact on the openness of the Green Belt than the chimney, planter and footings. Therefore if the site was considered to be PDL the proposal would not fall within the categories of development that may not be inappropriate development. It would therefore be inappropriate development in the Green Belt.

Appendices to this report.

Appendix A:	Site Map
Appendix B:	Original report to the committee on 6.1.2015
Appendix C:	Personal circumstances and Legal Agreement (EXEMPT)

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Appendix A



Title: PROPOSED NEW DWELLING, COTTAGE GARDEN, BEADS HALL LANE
14/01069/FUL

Scale 1:1250 at A4

Date 3rd March 2015

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



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SITE PLAN ATTACHED

**05. PROPOSED NEW DWELLING COTTAGE GARDEN BEADS HALL LANE
PILGRIMS HATCH ESSEX CM15 9QP**

**CONSTRUCTION OF DETACHED TWO-STOREY DWELLING AND DOUBLE
GARAGE TO REPLACE STATIC CARAVAN.**

APPLICATION NO: 14/01069/FUL

WARD	Pilgrims Hatch	8/13 WEEK DATE	24.11.2014
PARISH		POLICIES	NPPF NPPG CP1 GB1 GB2
CASE OFFICER	Caroline McCaffrey	01277 312603	
Drawing no(s) relevant to this decision:	081 REV PO1; 010 REV PO1; 080 REV PO1;		

This application was referred by Cllr Aspinell from Weekly Report No 1667 for consideration by the Committee. The reason(s) are as follows:

1. The foundations, including the chimney of the former cottage are clearly visible and so cannot be described as having blended into the landscape.
2. The former cottage also had a number of outbuildings such as greenhouses which sets a precedent for development on the site.
3. There is no street scene comparison as the proposed building is set well back from the main highway.

Update since publication of Weekly List 1667

The Highway Authority have no objections.

1. Proposals

The main body of the application site is a rectangular area of land on the east side of Beads Hall Lane. The site is mainly laid to grass and the only building on the land is the remains of part of the chimney of a former dwelling that was demolished many years ago. The applicant's land extends to the east of the application site and is partly-occupied by a static residential caravan on a concrete base.

It is proposed that the static caravan on land outside the application site would be removed to be replaced by a two-storey house on the application site. The house is proposed to be built on a roughly "L" shaped plan with a two-storey wing running parallel to the road at the front of the dwelling. A single-storey projection would extend back from the front wing at the rear of the house. It is indicated that the house would provide 2/3 bedrooms at first floor level with a fully accessible bedroom on the ground floor, together with an open plan room extending into the single-storey projection accommodating the living, kitchen and dining areas. In addition a pitched roof double garage is proposed behind the house.

2. Policy Context

National Planning Policy Framework (March 2012) Part 9 - Protecting the Green Belt, paragraphs 89 and 90 are relevant
National Planning Policy Guidance (2014)

Local Policies:

CP1 - requires new development to be keeping with locality and not detract from the character and appearance of the area

GB1 - Development that is inappropriate in the Green Belt will only be allowed in very special circumstances

GB2 - New development should harm the openness of the Green Belt.

3. Relevant History

- 05/01100/FUL: Retention Of Residential Use Of Land And Associated Hardstanding Together With The Siting Of Mobile Home -Application Permitted
- 09/00414/FUL: Permanent Retention Of Residential Use Of Land And Associated Hardstanding Together With The Siting Of Mobile Home, Erection Of Day Room And Erection Of Stables. -Application Permitted
- 11/01083/FUL: Continuation of use of site for mobile home and hardstanding for a temporary period of 2 years -Application Refused

4. Neighbour Responses

None.

5. Consultation Responses

- **Highway Authority:**

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

6. Summary of Issues

Green Belt

The site lies within Green Belt countryside and the proposal must therefore be considered against the local and national policies that apply in the Green Belt. The National Policy for Green Belts appears in Part 9 "Protecting Green Belt Land" of the National Planning Policy Framework. The Framework indicates that openness is one of the essential characteristics of Green Belts and paragraph 80 sets out the five purposes of the Green Belt.

The Framework indicates that within Green Belts inappropriate development is harmful and should not be approved except in very special circumstances. With a few exceptions the construction of new buildings in the Green Belt is inappropriate development. Paragraph 89 the Framework indicates that the replacement of a building may not be inappropriate provided that the replacement building is not materially larger than the existing building. It also indicates that the redevelopment of previously developed sites may not be inappropriate provided that the new development would not have a greater impact on openness and the purposes of including land in the Green Belt than the existing development. The Framework definition of previously developed land excludes land where the remains of the permanent structure have blended into the landscape in the process of time.

Although adopted some years before the Framework the aims of the general Green Belt Policies (GB1 and GB2) within the Brentwood Replacement Local Plan (RLP) are consistent with those of the Framework and therefore they still carry weight. The RLP has no policies that would enable the development of a dwelling in the Green Belt unless it was essentially required for agriculture.

Whilst there was previously a dwelling on this site it was demolished many years ago. The only building on the site is the chimney of that house and the proposed new dwelling would clearly be materially larger than that structure. Although the chimney remains the house has disappeared and it is considered that the structure has blended into the landscape. For that reason this is not considered to be previously developed land (PDL). If it was PDL the proposed dwelling would have a significantly greater effect on openness than the existing building and a new house here would represent an encroachment of development into the Green Belt in conflict with one of the purposes of the Green Belt. In either eventuality and for the reasons set out above the proposal would not fall into the categories of development that may not be inappropriate as indicated in paragraph 89 of the Framework. It would therefore be inappropriate development.

As indicated above the proposed dwelling would have a greater effect on openness than the remains of the previous dwelling. The proposal would result in the removal of the caravan; however that is not a permanent structure and its presence on the land is unlawful, being in breach of conditions of the 2009 planning permission. Even if the caravan were taken into account the dwelling and its garage would be significantly more prominent and bulkier and would materially detract from openness.

Green Belt - other matters

The Planning Statement submitted on behalf of the applicant makes a number of references to the Framework but no reference is made to paragraphs 89 and 90 which are fundamental to the consideration of development proposals in the Green Belt. Nevertheless Part 6.2 of the Planning Statement is headed "Very special circumstances" and, in the context of the Framework, this suggests that the applicant accepts that the proposal is inappropriate development. It is necessary to examine other matters advanced in support of the proposal to determine whether they amount to "very special circumstances" that would overcome the harm to the green belt identified above.

In support of the application the applicant indicates that he has lived at the site since 2001 and that until about 3 years ago he lived in a substantial mobile home that was destroyed by fire. He indicates that the site is well-screened by mature trees and within 30m to the south the lane is fronted by residential properties. He draws attention to the facilities in the area.

Attention is drawn to the previous personal permissions which were granted in recognition of the applicant's gypsy status and the circumstances of his daughter's health. The applicant indicates that his daughter's disabilities mean that she is wheelchair bound and requires constant care and attention which is partly provided by an independent carer. He indicates that the static caravan does not provide sufficient or suitable accommodation for his daughter and her carer and that the purpose-designed open plan dwelling would enable his daughter to stay with him during her adult years.

Comment on other matters

In granting temporary permissions for the caravan/mobile home the overwhelming justification for the development in the Green Belt was the absence of sufficient identified sites for gypsies/travellers. Unlike those proposals for caravans/mobile homes this proposal would not create accommodation that would assist in the reduction of any shortfall in sites for travellers. The Council cannot currently identify sufficient land for housing that would satisfy the requirements of the Framework; however a recent (6 October 2014) revision to the on-line Planning Practice Guidance (Paragraph: 034 Reference ID: 3-034-20141006) made it clear that when taking decisions in respect of proposals in the Green Belt an unmet need for housing (including for traveller sites) is unlikely to outweigh the harm to the Green Belt such as

to constitute very special circumstances justifying inappropriate development within the Green Belt.

The applicant indicates that at present his daughter does not reside with him because of difficulties in accessing the caravan. The proposed dwelling has been specifically designed to enable wheelchair access and to provide accommodation for a carer which would enable the applicant's daughter to visit and stay with him. The particular circumstances of the applicant are noted and in the past they were accommodated by imposing conditions on the permissions for the mobile home. However Planning Practice Guidance indicates that, in the case of permission for the erection of a permanent building, a condition used to grant planning permission solely on grounds of an individual's personal circumstances will scarcely ever be justified. Therefore unlike a mobile home it would not be reasonable to impose a personal permission on a new dwelling that would require a significant financial investment. In reality therefore the proposal would result in a new house in the Green Belt with no limitations on occupancy.

Conclusions on Green Belt

The applicant raises a number of matters concerning the design and materials of the proposal and its location in relation to services. However all dwellings are expected to be well designed and locationally sustainable and these matters do not weigh heavily in the Green Belt balance.

The proposal would be inappropriate development that would materially detract from openness. The development of a dwellinghouse here would represent an encroachment of development into the countryside thereby conflicting with one of the purposes of the Green Belt. It would therefore conflict with RLP Policies GB1 and GB2 and the objectives of the Framework as regards development in the Green Belt. The applicant's reasons for submitting the application are noted; however personal circumstances will not normally outweigh other planning considerations and it is considered that there is no reason why they should do so here. Taking all of the matters raised by the applicant into account it is concluded that they do not clearly outweigh the harm to the Green Belt. Therefore very special circumstances to justify inappropriate development in the Green Belt do not exist.

Other harm

The application site is within an open field in the countryside beyond the settlement boundary. Whilst trees and hedges provide a degree of screening a dwelling here would be clearly in view from Beads Hall Lane and the proposal would represent an encroachment of built development beyond the built-up area. It is considered that the proposal would materially detract from the character and appearance of the countryside and would conflict with RLP Policy CP1. This partly-wooded countryside is characteristic of the undeveloped part of the Borough and is valued by those who live in both the urban and more rural areas. The erosion of the character

of these areas by built development conflicts with one of the objectives of the Framework which indicates that the intrinsic character of the countryside should be recognised and that valued landscapes should be protected and enhanced.

Conclusion

The proposal would be inappropriate development in the Green Belt which would detract from openness and from the character and appearance of the countryside. The other matters raised by the applicant in support of the proposal do not clearly outweigh the Green Belt harm and do not outweigh the other harm that has been identified. Very special circumstances do not exist and the application should be refused permission.

7. Recommendation

The Application be REFUSED for the following reasons:-

R1 U08949

The proposal would be inappropriate development in the Green Belt as defined by the National Planning Policy Framework (The Framework). It would detract from the openness of the Green Belt and would represent an encroachment of development into the Green Belt countryside. The proposal would therefore conflict with Brentwood Replacement Local Plan Policies GB1 and GB2 the objectives of which are fully consistent with the objectives of the Framework as regards development in Green Belts. The Framework indicates that within Green Belts inappropriate development is harmful and should not be approved except in very special circumstances. The Framework goes on to indicate that "very special circumstances" will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The considerations set out by the applicant do not clearly outweigh the harm to the Green Belt arising from this proposal and it follows that the "very special circumstances" needed to justify the approval of inappropriate development in the Green Belt have not been demonstrated.

R2 U08950

The proposal would detract from the character and appearance of the countryside in conflict with Policy CP1(i) of the Brentwood Replacement Local Plan and one of the core planning principles set out in the Framework which indicates that the intrinsic character and beauty of the countryside should be recognized.

Informative(s)

1 INF05

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

2 INF20

The drawing numbers listed above are relevant to this decision

3 INF25

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The Local Planning Authority is willing to meet with the Applicant to discuss the best course of action and is also willing to provide pre-application advice in respect of any future application for a revised development.

BACKGROUND DOCUMENTS

DECIDED:

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Appendix C

Appendix contains exempt information and is therefore not publicly available.

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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, or 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.

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**Planning and Development Control 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

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