



Agenda

Planning and Licensing Committee

Wednesday, 12 June 2019 at 7.00 pm

Brentwood Ursuline Convent High School, Queens Road, Brentwood
Essex CM14 4EX

Membership (Quorum – 4)

Cllrs Ms Sanders (Chair), McCheyne (Vice Chair), Chilvers, Fryd, Haigh, Jakobsson, Keeble, Kerslake, Morrissey, Mynott, McLaren and Tierney

Substitute Members

Barrett, Dr Barrett, Bridge, Nolan, Mrs Fulcher, Laplain and Tanner

Agenda

Item	Item	Wards(s) Affected	Page No
	Contents		
1.	Apologies for Absence		
2.	Minutes of the Previous Meeting		7 - 12
3.	Minutes of the Licensing Sub Committee Minutes of the Licensing Sub Committee on 22 nd March 2019, 5 th April 2019 and 1 st May 2019.	All Wards	13 - 22
4.	Planning & Licensing - Terms of Reference Report to follow.	All Wards	
5.	Uber in Brentwood	All Wards	23 - 60
6.	12 WORRIN ROAD, SHEFIELD, ESSEX, CM15 8DE Application No. 19/00134/FUL	Shenfield	61 - 74

Construction of a detached house and garage.

- | | | |
|------------|--|---------------------------|
| 7. | ESSEX POLICE & LA PLATA HOUSE, LONDON ROAD, BRENTWOOD, ESSEX CM14 4QJ Application No. 18/0790/REM
Application for approval of reserved matters for scale, layout, appearance of buildings, access, and landscaping details pursuant to condition 1 of outline permission 16/01805/out for (outline application for demolition of existing police station buildings, conversion of la plata house to residential use and development of upto 70 new residential dwellings (all matters reserved) for the conversion of la plata to 4 x duplex dwellings and construction of two residential blocks of flats between 3 and 4 and half storeys consisting of 22x 1 bed, 36x 2 bed and 8 x 3 bed flats, with associated landscaping, parking and access. | Brentwood West 75 - 96 |
| 8. | REGENT HOUSE, HUBERT ROAD, BRENTWOOD ESSEX Application No. 18/01601/OUT
Outline application within car park of existing residential block comprising 31 flats, including 11 affordable units and parking provided at a ratio of 0.9 spaces per dwelling (appearance and landscaping reserved matters). | Brentwood West 97 - 112 |
| 9. | BAYTREE CENTRE INCLUDING UNITS ALONG CHAPEL HIGH AND 40-42 HIGH STREET, BRENTWOOD, ESSEX Application No. 18/01745/FUL

Works to chapel ruins to include hard and soft landscaping, planting and tree pruning works, replacement of street furniture and pavement re-surfacing. Alterations to shopfronts facade across the centre including 40-42 high street. Change of use of from use class A1 to A3 at units 25-27 and units 23-24, and use class A1 to D2 at units SU12 and SU13 (both ground and first floors), 115sq.m of external restaurant/cafe space at chapel high, associated drainage and utilities works. | Brentwood South 113 - 132 |
| 10. | BARNSTON WAY GARAGE SITE, HUTTON, BRENTWOOD, ESSEX CM13 1YE Application No. 19/00565/BBC
Demolition of existing garages and construction of 1 x 2 bedroom dwelling and 2 x 3 bedroom dwellings. Widening of existing access road to 6m and refuse improvements at the rear of Whittington Road. | Hutton North 133 - 150 |
| 11. | Enforcement - Exempt Item | All Wards 151 - 152 |
| 12. | Urgent Business | |

A handwritten signature in black ink, appearing to read 'P. L. R. B.', with a large, sweeping underline stroke.

Chief Executive

Town Hall
Brentwood, Essex
04.06.2019

Information for Members

Substitutes

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.

Where substitution is permitted, substitutes for quasi judicial/regulatory committees must be drawn from Members who have received training in quasi- judicial/regulatory decision making. If a casual vacancy occurs on a quasi judicial/regulatory committee it will not be filled until the nominated member has been trained

Rights to Attend and Speak

Any Members may attend any Committee to which these 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.

Members requiring further information, or with specific questions, are asked to raise these with the appropriate officer at least two working days before the meeting.

Point of Order/ Personal explanation/ Point of Information

Point of Order

A member may raise a point of order at any time. The Mayor 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 Mayor on the point of order will be final.

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 Mayor on the admissibility of a personal explanation will be final.

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 Mayor. The Member must specify the nature of the information he/she wishes to provide and its importance to the current debate. If the Mayor 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 Mayor on the admissibility of a point of information or clarification will be final.

Information for Members of the Public

Access to Information and Meetings

You have the right to attend all meetings of the Council and Committees. You also have the right to see the agenda, which will be published no later than 5 working days before the meeting, and minutes once they are published.

Dates of the meetings are available at www.brentwood.gov.uk.

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

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

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

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

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

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

 **Private Session**

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

 **modern.gov app**

View upcoming public committee documents on your Apple or Android device with the free modern.gov app.

  **Access**

There is wheelchair access to the meeting venue from the Main Entrance. If you do wish to attend this meeting, please contact the clerk should you have specific accessibility needs. There is an induction loop in the meeting room.

 **Evacuation Procedures**

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

This page is intentionally left blank

Minutes

Planning and Licensing Committee Tuesday, 12th March, 2019

Attendance

Cllr Ms Sanders (Chair)	Cllr Nolan
Cllr McCheyne (Deputy Chair)	Cllr Mrs Pound
Cllr Chilvers	Cllr Reed
Cllr Keeble	Cllr Mrs Slade
Cllr Morrissey	Cllr Trump
Cllr Mynott	

Apologies

Cllr Haigh

Also Present

Cllr Foan – West Horndon Parish Council

Officers Present

Surinder Atkar	-	Planning Solicitor
Philip Drane	-	Director of Strategic Planning
Andrea Pearson	-	Senior Policy Planner
Jonathan Quilter	-	Strategic Planning Manager
Jean Sharp	-	Governance and Member Support Officer
Lorne Spicer	-	Business Development and PR Manager
Jill Warren	-	Senior Policy Planner

364. Apologies for Absence

Apologies were received from Cllr Haigh.

365. Minutes of the Previous Meeting

The minutes of the Planning and Licensing Committee meeting held on 19 February 2019 were agreed to be a true record.

366. Recreational disturbance Avoidance Mitigation: Supplementary Planning Document Consultation

Members were advised that the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (the “*Essex Coast RAMS SPD*”) aimed to deliver the mitigation necessary to avoid significant adverse effects from impacts of increased recreational pressure from new residential development; thus protecting the internationally important coastal habitats sites in accordance with the Conservation of Habitats and Species Regulations 2017.

Following evidence gathering and survey work, provided in the Essex Coast Recreational Avoidance and Mitigation Strategy Document (the “*Essex Coast RAMS Document*”) the extent of this recreational impact had been gauged to establish a Zone of Influence. It was proposed that new residential developments within the Zone of Influence were included in the Essex Coast RAMS SPD.

The Essex Coast RAMS Document identified a programme of strategic mitigation measures which were to be funded by developer contributions from residential development schemes, to be implemented by a Supplementary Planning Document (*Essex Coast RAMS SPD*), which required public consultation.

The report before Members sought approval to carry out a joint consultation with 12 other boroughs on the Essex Coast RAMS SPD. Having taken consultation responses into account, the final Essex Coast RAMS SPD would be brought back to committee for approval to adopt as planning policy.

Cllr Ms Sanders **MOVED** and Cllr McCheyne **SECONDED** the recommendations and following a discussion a vote was taken on a show of hands and it was

RESOLVED UNANIMOUSLY

- 1. That the Committee note the Essex Coast RAMS Document, including technical report and mitigation report (Appendix A);**
- 2. That the Committee approve the Essex Coast RAMS Supplementary Planning Document (SPD) for public consultation (Appendix B), with a proposed a tariff of £122.30 per new home in the RAMS Zone of Influence;**
- 3. To delegate authority to the Chair of the Planning and Licensing Committee, in consultation with the Chief Executive and Director of Strategic Planning, to finalise and approve the document, as set out in 2.**

above for public consultation, including to make non-material or minor amendments to the proposed RAMS SPD prior to consultation; and

4. To present the final version of the Essex Coast RAMS SPD to Planning and Licensing Committee, with amendments after consultation, for adoption by Brentwood Borough Council.

Reasons for recommendations

Brentwood Borough Council is duty bound to undergo an assessment of the impact of new development in their local plans on the internationally important wildlife sites. The proposed RAMS SPD (Appendix B) addresses this requirement.

The Essex Coast RAMS Document (Appendix A) aims to outline key issues and remaining concerns within the context of ongoing partnership and joint working.

367. Response to the Thurrock Local Plan Issues and Options Stage 2 Consultation

The report before Members sought approval on a formal response from Brentwood Borough Council to the Thurrock Issues & Options (Stage 2) Local Plan, January 2019 Document (Regulation 18).

The proposed response conveyed broad support of Thurrock Borough Council's aims in the preparation of their local plan and addressed concerns around the proposed option for development south of West Horndon. The Thurrock Local Plan was in the early stages of the plan-making process, focused on asking questions around spatial strategy and development options.

Cllr Foan, on behalf of West Horndon Parish Council, expressed concern at the effect the proposal to build a settlement of 10,000 homes on Green Belt land south of West Horndon would have on the village of West Horndon. He advised that the Parish Council had already had discussions with Thurrock Council regarding the proposals.

Cllr Ms Sanders **MOVED** and Cllr McCheyne **SECONDED** the recommendations and following a discussion a vote was taken on a show of hands and it was

RESOLVED UNANIMOUSLY

To approve the response to the Thurrock Local Plan Issues & Options (Stage 2) consultation, as set out in Appendix A to the report.

Reasons for recommendation

Thurrock Council are at the early stages of the plan-making process, Issues & Options (Stage 2) (Regulation 18). Housing delivery options are being explored to determine the preferred development strategy.

It is considered appropriate that Brentwood Borough Council express broad support for Thurrock Borough Council's efforts to prepare a local plan which seeks to meet its full objectively assessed housing needs and associated employment. However, of the three-housing delivery options concern should be raised regarding Option 3 (a new settlement in the Green Belt south of West Horndon), for reasons set out in Section 4 of the report (sub-section "Housing Delivery Options").

368. Response to the Southend Local Plan Issues and Options Consultation

The report before Members sought approval on a formal response from Brentwood Borough Council to the Southend New Local Plan Issues & Options consultation document (Regulation 18).

The proposed response conveyed broad support of Southend-on-Sea Borough Council's aims in preparing a new local plan. The Southend Plan was currently at the early stages of the plan-making process with little specific details provided on the strategic approach for the area.

Brentwood Borough Council had signed a Memorandum of Understanding for joint working with other South Essex local authorities, including Southend Borough Council. The Association of South Essex Local Authorities (ASELA) met regularly on a number of workstreams including strategic planning and cross-boundary issues.

Cllr Ms Sanders **MOVED** and Cllr McCheyne **SECONDED** the recommendation and following a discussion which highlighted concerns regarding the pressure additional traffic would cause on local roads, especially the A127, a vote was taken on a show of hands and it was

RESOLVED UNANIMOUSLY

To approve the response to the Southend New Local Plan Issues & Options consultation, as set out in Appendix A to the report.

Reasons for recommendation

Southend-on-Sea Borough Council are at the early stages of the plan-making process. No policies or site allocations have been proposed as part of this consultation and so the proposed response focuses on high-level strategic issues.

It is considered appropriate that Brentwood Borough Council expresses broad support for Southend-on-Sea Borough Council's efforts to develop a local plan in accordance with national policy and guidance, and the commitment to continued collaboration through the duty to cooperate on strategic planning matters that affect South Essex.

368. Urgent Business

There were no items of urgent business.

The meeting ended at 7.45pm

This page is intentionally left blank



Minutes

Licensing Sub-Committee Friday, 22nd March, 2019

Attendance

Cllr Morrissey
Cllr McCheyne

Cllr Trump

Officers Present

Paul Adams	-	Principal Licensing Officer
Surinder Atkar	-	Planning Solicitor
Dave Leonard	-	Licensing Officer
Jean Sharp	-	Governance and Member Support Officer

398. Appointment of Chair

Members **RESOLVED** that Cllr McCheyne should chair the meeting.

399. Administrative Function

Members were respectfully reminded that, in determining the matters listed below; they were exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matter would be determined on the facts before the Sub-Committee and the rules of natural justice would apply.

400. Application to Transfer a Premises Licence - The Raj, 21 Kings Road, Brentwood. CM14 4DJ

An application had been made to Brentwood Borough Council for the transfer of premises licence for The Raj, 21 Kings Road, Brentwood CM14 4DJ.

This premise was currently a restaurant specialising in Indian cuisine situated in Kings Road, Brentwood and it was currently licensed for the Sale by Retail of Alcohol & Late Night Refreshment.

On 12th February 2019 the Applicant Kalam Ullah submitted an online application with the intention to transfer the existing premises license to Kalam Ullah from Badsha Miah. On 13th February 2019 there was an application to vary the existing Designated Premises Supervisor, Badsha Miah, to Jetu Miah.

The Committee heard from Mr. Leonard of the Council's Licensing Department who explained the background to the application and stated to the Committee that the application was under the provisions of Section 42, Licensing Act 2003.

The Committee then heard from the Police representative, Mr. Jones, who stated that the relevant premises had been raided by the Immigration Services in November 2018 and 5 illegal workers were found to be working at the Restaurant. Serious immigration offences relating to unauthorised employment of illegal immigrants had been committed by the Restaurant owner. It was shortly after this that the transfer procedure had been commenced. It was the view of the Police that this was a cynical attempt to give the impression that because there had been a transfer that the new regime would be less likely to commit further offences.

Mr. Jones explained that Kalam Ullah was Badsha Miah's brother and that he believed the transfer was an attempt to avoid the consequences of the Immigration offences since Badsha Miah and Kalam Ullah were joint leaseholders of the premises and therefore had effective control of the business. In answer to questions from the Committee the Police confirmed that the Applicant had a clean record and did not have previous convictions.

The Committee then heard from Mr Dadds representing the Applicant who stated that despite the revocation of the premises license, the Committee should keep an open mind on the transfer application. He further stated that it was for the objecting authority to show that the licensing objectives might have been undermined and that an objection should only be raised in exceptional circumstances. The Applicant was innocent until proven guilty. The immigration offences were not to be attributed to him and the Applicant was of good character and had no licensing convictions - it was a slur on his character to suggest otherwise. All that had been adduced to link him with any wrong-doing was that he was joint leaseholder and that he worked as a chef on the premises. Effectively the Police were saying that a family member could never succeed on a transfer application. It was tantamount to suggesting that if a family member lost his/her driving license that no other member of the family could drive.

Mr. Dadds stated that the Applicant was employed on PAYE by his brother as a chef and had no control over the business. If the Applicant was implicated in any offence the Home Office would have lodged an objection and it had not. In addition the family owned a number of properties and the fact that the application to transfer came from an address that Badsha Miah lived at did not mean the Applicant too lived there as the Police seemed to be maintaining.

Mr. Dadds explained that the Applicant was on the lease only to reinforce the covenants on the lease. The business was run by Badsha Miah since 2004 and the Applicant had no involvement in it. The Police were making an assumption that the Applicant received profit from the business when there was no evidence to support this. The choice faced by the business in the light of revocation of the premises license was to transfer to his brother or to a stranger in the street. Obviously the brother was preferable. If the transfer application was successful the Applicant would offer a condition/undertaking on the premises license appeal that his brother would have no involvement in the business in the future.

The Committee then asked questions of Mr. Dadds. Cllr Trump questioned why the premises revocation was being appealed when it was accepted that illegal employment had taken place at the premises. Mr. Dadds responded that if the transfer application was granted Badsha Miah would drop off and the Applicant would take over strengthening any appeal. Cllr Morrissey questioned why a transfer to family and friends was necessitated at all. Mr. Dadds explained that when the premises license was revoked the goodwill value of a business declined so any third party purchasers would offer low purchase prices hence the need for family.

The parties then summarised their respective positions and the Committee retired to consider its decision.

The Committee considered carefully all the information that had been presented to it both in the report and verbally at this hearing

The Committee felt that there was a real nexus between the Applicant and his brother and that by allowing the transfer the licensing objectives would be engaged. There was reason to accept given the Police objections that the close association between both brothers was such that Badsha Miah would continue to run the business and that the transfer would not satisfy the Crime and disorder concerns. On a balance of probabilities it was felt that the Applicant would not have sufficient autonomy from his brother.

The Legal Adviser then announced the decision of the Committee that the application to transfer would be refused and that section 44 (5) (b) (i) Licensing Act 2003 applied.

The Applicant and his representative were reminded that they had a right to appeal against the decision to the Magistrates' Court.

401. Application to Vary the Designated Premises Supervisor - The Raj, 21 Kings Road, Brentwood. CM14 4DJ.

This application had been withdrawn.

Minutes

Licensing Sub-Committee Friday, 5 April 2019

Attendance

Cllr Keeble
Cllr Reed

Cllr Trump

Officers Present

Paul Adams	-	Principal Licensing Officer
Surinder Atkar	-	Planning Solicitor
Dave Leonard	-	Licensing Officer
Jean Sharp	-	Governance and Member Support Officer

402. Appointment of Chair

Members **RESOLVED** that Cllr Reed should chair the meeting.

403. Administrative Function

Members were respectfully reminded that, in determining the matters listed below; they were exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matter would be determined on the facts before the Sub-Committee and the rules of natural justice would apply.

404. Application to Transfer a Premises Licence – Jehan Curry Hut, 19 South Street, Brentwood. CM14 4BJ

An application had been made to Brentwood Borough Council for the transfer of the premises licence for **Jehan Curry Hut, 19 South Street, Brentwood CM144BJ** and was brought before the licensing sub-committee for determination following representations from a Responsible Authority (the Police) on the grounds of prevention of crime and disorder.

The sub-committee first heard from the licensing officer Dave Leonard who outlined his report.

This premise was currently a restaurant specialising in Indian cuisine operating in South Street, Brentwood and it was currently licensed for the Sale by Retail of Alcohol & Late Night Refreshment.

The applicant Mr. Abdul Latif was seeking to have the premises license transferred to him from Mare Blu Restaurant. Under the Licensing Act 2003 the Police could object to a transfer if satisfied that in the exceptional circumstances of the case that the granting of the application would undermine the crime prevention objective. Essex Police had submitted such an objection on 6th March 2019.

The sub-committee then heard from Gordon Rashford, Essex Police, as a Responsible Authority. He referred to the written detailed submissions of the Police contained in the bundle of documents produced to the Sub-Committee. He referred to the Applicant being a director of Indian Dining Chutney House until his resignation in November 2018 following a raid by Immigration Compliance & Enforcement (ICE) on premises run by the Company called Chutney Joe's in High Street, Brentwood. The Applicant as sole director of the company was the directing mind and sole director. The raid disclosed an illegal worker employed at the premises. This person admitted he had no right to work in the UK. The Applicant was present and identified himself as director and Head Chef. Mr. Latif resigned from the company 4 weeks after the raid. One Rofik Khan took over as director of the company. Mr. Rashford explained that the prevention of crime objective in the 2003 Act included the prevention of immigration crime in licensed premises.

Mr. Rashford referred to the utility bills produced in the name of Khan and stated if the Applicant was only a chef at the establishment why did he have access to the bills It was then explained that Mr. Rashford attended the premises recently and found alcohol for sale at the Bar with drinks menus freely available without the relevant licensing authority.

Members of the Sub-Committee then put their questions to the Police.

The Committee then heard from the Applicant's legal representative Ms. Orfanidou who stated that the Police evidence was speculative whereas the Applicant was hard-working but unfortunate. The Applicant was a weekend chef when approached by the Khans to become company director. His English was poor so did not know the implications when made director. The utility bills exhibited were in the name of Khan's. The Applicant did not deal with suppliers or recruitment. When ICE raided the premises the translator was Rafiqu Khan so translation of what the Applicant said was inaccurate. He was a scapegoat. On Mr. Rashford's attendance the bar tender was there to serve soft drinks; not alcohol and there was sign up saying no alcohol to be served.

The Sub-Committee then put its questions to the Applicant followed by the Police. Accompanied by the Legal Adviser and the Clerk the Sub-Committee retired to consider the matter.

In its deliberations the Sub-Committee was satisfied that the evidence on the

balance of probabilities showed that the prevention of crime and disorder objective would be undermined if the application was granted and decided the application would be **REFUSED** under section 44 (5) (b) (i) of the Licensing Act 2003.

Minutes

Licensing Sub-Committee Wednesday, 1st May, 2019

Attendance

Cllr Morrissey
Cllr Mrs Slade

Cllr Trump

Officers Present

Paul Adams	-	Principal Licensing Officer
Surinder Atkar	-	Planning Solicitor
Dave Leonard	-	Licensing Officer
Jean Sharp	-	Governance and Member Support Officer

405. Appointment of Chair

Members **RESOLVED** that Cllr Trump should chair the meeting.

406. Administrative Function

Members were respectfully reminded that, in determining the matters listed below; they were exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matter would be determined on the facts before the Sub-Committee and the rules of natural justice would apply.

407. Application for Transfer of Premises Licence - The Raj - 21 Kings Road, Brentwood. CM14 4DJ

An application had been made to Brentwood Borough Council for the transfer of premises licence for The Raj, 21 Kings Rd., Brentwood CM14 4DJ.

This premise is currently a restaurant specialising in Indian cuisine situated in Kings Road, Brentwood and it had been licensed for the Sale by Retail of Alcohol & Late Night Refreshment. The premises license had been revoked by the Committee previously.

The application was brought before the Licensing Sub-Committee for determination on 1st May 2019 following representations from two Responsible Authorities, the Police and the Home Office (Immigration

Enforcement). The latter submitted a written representation and did not attend the hearing.

The Sub-Committee first heard from the licensing officer Dave Leonard who outlined his report.

On 22nd March 2019 the Applicant Kalam Ullah submitted an online application with the intention to transfer the existing premises license to Kalam Ullah from Badsha Miah. There was also an application to vary the existing Designated Premises Supervisor who is Badsha Miah to Kalam Ullah. On 1st April 2019 Essex Police submitted an objection to the application on the grounds of prevention of crime and disorder. On 28th March 2019 the Home Office (Immigration Enforcement) objected to the application on crime prevention grounds including the prevention of illegal working and immigration crime.

Mr. Dadds who represented the Applicant made an application to re-constitute the Committee on the grounds that 2 of its members had ruled in a decision for transfer in reference to the premises previously and therefore could not present an appearance of impartiality. The Legal Advisor Surinder Atkar advised the Committee that unless there was evidence of bias by the Committee given the numbers of Members qualified to sit on Licensing Committee that it was appropriate to continue with the presently constituted Committee. The Committee retired to consider the application and then returned to rule that the preliminary application was declined and that the matter would proceed.

The Committee then heard from Mr. Leonard of the Council's Licensing Department who explained the background to the application and stated to the Committee that the application was under the provisions of section 42 Licensing Act 2003.

The Committee then heard from the Police. Mr. Jones for the Police stated that the relevant premises had been raided by the Immigration Services in 2014 and November 2018 and on the latter occasion 5 illegal workers were found to be working at the Restaurant. Serious immigration offences relating to unauthorised employment of illegal immigrants had been committed by the Restaurant owner. It was shortly after this that the first transfer application had been commenced and refused by the Committee on 22nd March 2019. The present application was identical to the one refused. It was the view of the Police that this was a cynical attempt to give the impression that because there had been a transfer that the new regime would be less likely to commit further offences.

Mr. Jones explained that Kalam Ullah was Badsha Miah's brother and that the transfer was an attempt to avoid the consequences of the Immigration offences since Badsha Miah and Kalam Ullah were joint leaseholders of the premises and therefore had effective control of the business. In answer to questions from the Committee, the Police confirmed that the Applicant had a clean record and did not have previous convictions. In answer to a specific question from Councillor Slade, Mr. Jones confirmed that the Applicant had been employed as a chef at the premises.

The Committee then heard from Mr Dadds representing the Applicant who stated that the Committee had to have an open mind to the application and exclude from its mind any the previous refused application. The previous refusal had been appealed. Also despite the revocation of the premises license that the Committee should keep an open mind on the transfer application. He further stated that it was for the objecting authority to show that the licensing objectives may have been undermined. An objection should only be raised in exceptional circumstances. The Applicant was innocent until proven guilty. The immigration offences were not to be attributed to him. The Applicant was of good character and had no licensing convictions. It was a slur on his character to suggest otherwise. All that had been adduced to link him with any wrongdoing was that he was joint leaseholder and that he worked as a chef on the premises. Effectively the Police were saying that a family member could never succeed on a transfer application. It should be remembered that active steps were being taken to remove Mr. Miah from the lease.

Mr. Dadds stated that the family owned a number of properties and the fact that the application to transfer came from an address that Badsha Miah lived at did not mean the Applicant too lived there as the Police seemed to be maintaining.

Mr. Dadds emphasised that the Applicant was on the lease only to reinforce the covenants on the lease. He had run the business for the past 3 months with no problems.

On the question of the Designated Premises Supervisor application the Police would have to show that the appointment would undermine the licensing objectives and they had not done so. The Applicant was of good character and should be treated on his merits.

The Committee then asked questions of Mr. Dadds. Mr Jones then summarised the Police case and Mr. Dadds followed with a summation of the Applicant's case.

The Committee then retired to consider its decision.

The Committee considered carefully all the information that had been presented to it both in the report and verbally at this hearing

The Committee felt that there was a real nexus between the Applicant and his brother and that by allowing the transfer the licensing objectives would be engaged. Both applications would therefore be refused. It had not been established to the Committee's satisfaction that Mr. Miah would be excluded entirely from the premises operations and that the transfer would not satisfy the prevention of crime and disorder concerns. The immigration offences that had taken place at the premises were a real concern and looking to the future it was not established that further offences would not take place. On a balance of probabilities it was felt that the Applicant would not have sufficient autonomy from his brother.

The Legal Adviser then announced the decision of the Committee that the application to transfer would be refused and that section 44 (5) (b) (i) Licensing Act 2003 applied.

12 June 2019

Planning and Licensing Committee

Uber in Brentwood

Report of: Paul Adams – Joint Licensing Manager

Wards Affected: All

This report is: Public

1. Executive Summary

- 1.1 Over the last 2-3 years there has been a steady proliferation of the number of Uber vehicles operating in the area as they spread outside of London utilising their TFL licence, which is having a significant impact on the level of business for the local licensing Hackney Carriage and Private Hire trade. This report seeks to inform the Licensing committee of the current legal position, the representations and concerns from the Brentwood Borough Taxi Drivers Association (BBTDA), the actions already taken by officers and national developments.

2. Recommendation(s)

That the Planning and Licensing Committee:

- 2.1 Consider the representation in the letter from the BBTDA.
- 2.2 Agree for a letter to be sent to Uber asking them to withdraw from Brentwood or apply for an Operators Licence with Brentwood Borough Council.

3. Introduction and Background

- 3.1 In the UK we have a two-tier system for Hackney Carriages (Taxis) and Private Hire Vehicles (mini cabs). A Hackney Carriage can, in the area that they are licensed, be hired immediately by hailing on the street or at a rank, this is called plying for hire, or public hire. A Hackney Carriage driver can also take a private hire booking for anywhere in the country directly without the need for an operator's licence.

- 3.2 A Private Hire Vehicle cannot ply for hire and may only be booked in advance through a licensed Operator. The law requires that the Private Hire Operator, the Private Hire Vehicle and the Private Hire Driver are all licensed by the same Authority, commonly known as the “triple lock licensing system”.
- 3.3 The law does allow for “Cross Boarder Hiring”, allowing an operator in one authority to take a booking in another authority’s area providing that they dispatch a vehicle and driver licensed by the authority that issued their operator’s licence.
- 3.4 An operator is defined as someone who in the course of a business makes provision for the invitation or acceptance of bookings for a private hire vehicle.
- 3.5 Uber are a globally operated Private Hire Company, who operate nationally across the UK taking bookings through their Mobile App. Uber hold an Operator’s licence with TFL and take bookings for TFL licensed vehicles that are driven by TFL licensed drivers, traditionally servicing London customers.
- 3.6 Customers book an Uber Private Hire Vehicle by requesting a vehicle through the App. At the time of booking, they are given an estimate of the cost for the journey, and how long it will take their vehicle to arrive. The customer can see where the nearest available vehicles are located on a map. Once the booking is accepted by Uber the customer is sent the details of the vehicle and driver collecting them.
- 3.7 Uber has a business model that is based around surge pricing. When there is low demand and lots of drivers the prices reduce to encourage customers to use their service. When there are lots of customers and few drivers the price increases, encouraging drivers to begin working or move to across to that area there is work waiting.

4 Issue, Options and Analysis of Options

The local picture

- 4.1 Over the last 2 years there has been a steady proliferation of Uber vehicles operating in the area as they spread outside of London. Uber is one of 4 large App based operators across the country, but for now are the only operator that has a significance presence in the Brentwood area.
- 4.2 In February 2018, Uber divided the country into 9 regions and imposed their own London and surrounding areas region that includes Brentwood, as well

as 4 other Essex authorities, Thurrock, Basildon, Harlow and Epping. This area is serviced by their TFL fleet.

- 4.3 This region was determined by the routes the vehicles take in and out of the TFL area and not by any geographical, political or administrative boundaries, and stretches out as far as places like Luton. The boundary is commonly referred to as Uber's "Geo-fence", that they have imposed on their App.
- 4.4 At this time Southend and Chelmsford saw the TFL Uber drivers withdraw from their areas, this was self-imposed and had no relevance to any pressure put on Uber by Southend or Chelmsford Council's. Currently these areas are serviced by Suffolk licensed vehicles of which there are very few, so it has the appearance that Uber has withdrawn from these areas.
- 4.5 It has been reported to us by the trade that the effect on the amount of business for our local drivers is a loss up to a 40% of business.

What are the key issues?

- 4.6 It has been regarded nationally amongst licensing authorities that Uber can operate as they do under the "cross border hiring" provisions, providing that the triple lock licensing system is in place.
- 4.7 Gerald Gouriet QC, who has acted for London Taxi Drivers Association (LDTA) and represented those against Uber in some of the recent cases, such as Reading Council v Ali (Uber), has towards the end of last year, given an opinion on Uber's operation outside the TFL boundary. His opinion provides that Uber, by the provision of drivers on the Uber App, are making the provision for the invitation or acceptance of bookings for a private hire vehicle, in a controlled district where they are not licensed.
- 4.8 This opinion is contrary to that previously accepted by other legal professionals that are well respected in the taxi licensing arena.
- 4.9 The Thurrock Licensed Taxi Drivers Association (TLTDA) have engaged Gerald Gouriet QC to provide them with an opinion which provided that Uber are operating unlawfully in Thurrock, and the TLTDA are calling for Thurrock Council to prosecute Uber so that they cease their activity in the borough. The Brentwood Borough Licensed Taxi Drivers Association (BBTDA) has obtained a copy of that opinion and have asked Brentwood Council to consider the same position here. A copy of this opinion is attached as Appendix A..

- 4.10 Ultimately this is still a matter of opinion, there is no direct legal authority as to whether this is lawful or not and will take the courts to make that decision.

The implications for Brentwood

- 4.11 TFL have some standards in their licensing policies for drivers that are lower than ours (ours not being unreasonably high), e.g. violence convictions such as ABH, we do not allow an applicant to have any such convictions within the last 10 years, TFL allow one violence offence in the last 10 years. Thurrock and Southend have cases where drivers revoked by them, have become licensed by TFL in the following weeks.
- 4.12 The TFL drivers do not have to undertake any knowledge test requirements that would include the Brentwood area.
- 4.13 We have no enforcement powers over the TFL vehicles or drivers that are working in our borough to ensure that they are compliant with the conditions of their licence and that their vehicle is in a safe and suitable condition.
- 4.14 TFL vehicles have no obvious indications that they are licensed, other than a small circular disc in the front and rear windscreens, which is difficult to see. Our vehicles all have large rear licence plates, door signage and a front window card licence, all can be easily seen and displaying the vehicle licence number in a large font.
- 4.15 The BBTDA has asked us to consider the opinion of Gerald Gouriet QC, which advises that Uber are operating outside the TFL boundary without an appropriate licence and have asked us to take action.
- 4.16 There is an unsubstantiated estimate by the local trade that TFL vehicles are undertaking 25% of all journeys undertaken in Brentwood.

The View of the BBTDA

- 4.17 Concerns of Uber's significant presence has been increasingly reported to the Council over the last 2-3 years, and has been a regular subject for discussion at the Taxi Trade Consultative Group (TTCG).
- 4.18 On the 25 March a letter on behalf of the BBTDA was received from Giles Bridge, Barrister and Licensing Consultant, which has set out the concerns of the BBTDA and has requested that the Council take number of actions, a copy of their letter is attached as Appendix B.

Brentwood Council's actions around Uber.

- 4.19 We have had several meetings with Ubers representatives over the last 2 years to discuss the issues that we are facing locally, and have looked at how we can manage complaints about their drivers, and how the differing standards between Essex Authorities and TFL causes conflicts in standards and an increased risk to Public Safety . Uber have set up national a system for Local Authorities to report and request information around complaints and incidents. We have an agreed a procedure for reporting complaints and issues, with an understanding of how they will respond. Where we have referred issues using this process so far, we have had timely and satisfactory responses to all enquiries.
- 4.20 In a meeting in January 2019 with Uber, we further explored the issues we have and requested that they remove the Borough of Brentwood from their Geo-fence, and if they were willing to apply for an operator's licence with us, and then to subsequently require their drivers working predominantly in this area to obtain driver and vehicle licence with Brentwood. Their response was that there are some considerations on changing their regions boundaries, but this is not a short-term change and is likely to take between a year and two to implement. This would also not guarantee that we would be removed from that region. They could apply for an Operators licence but at this point would not actively seek to licence any drivers or vehicles with us for operational reasons.
- 4.21 We have sought an independent legal opinion from Barrister, Josef Cannon, who disagrees with the opinion of Gerald Gouriet QC that Uber are operating lawfully in Brentwood, utilising the cross boarder hiring arrangements and that there is no action to be taken. A copy of his opinion is attached as Appendix C.
- 4.22 We are working closely with both Basildon and Thurrock Council who both have sought their own independent legal opinions. We have reached out to both Harlow and Epping Councils, who at this time are not reporting a significant impact of Uber in their areas. Uber remains a subject of discussion at the Essex Licensing Officers forum which meets at least three times per year.
- 4.23 As a group of three Essex authorities that have been greatly impacted by Uber we have also reached out to other local authorities such as York, Stevenage, Gravesham and Reading and who have similar issues and representation from their trade to identify if there is anything further that can be done.

- 4.24 Two joint operations have been undertaken with TFL's Taxi and Private Hire Compliance Team in Brentwood, undertaking checks on both Brentwood and TFL vehicles and drivers. More dates have been organised for this to continue.
- 4.25 A response on behalf of Brentwood Council has been sent for the consultation on the Statutory Guidance, which supported all the recommendations that it was making.
- 4.26 It is the intention with the support of Member's from this committee to write formally to Uber, requesting them to either remove the Borough of Brentwood from their London and Surrounding Areas region, or to apply for an Operator licence with Brentwood, and to subsequently licence all drivers and vehicles with Brentwood that are predominantly working in this area.
- 4.27 A number of reports will follow this year, revising and updating Brentwood Taxi Licensing Policies, ensuring that they remain current and maintain the high standards that Brentwood Council requires from its licence holders, including consultation with stakeholders.

National Picture

- 4.28 The Government established in September 2017 a Task and Finish Group (TFG) on Taxi and Private Hire Vehicle Licensing. The group's remit was to consider evidence relating to the adequacy of current taxi and private hire vehicle (PHV) licensing authority powers, as set out in legislation and guidance, and to make recommendations for actions to address any priority issues identified.
- 4.29 Government in February 2019 published its response to the TFG recommendations providing that "Government will when time allows bring forward legislation to introduce national minimum standards for taxi and PHV licensing, reinforcing the consistently high standards that the statutory guidance will bring to the sector. To ensure that drivers are under the same level of scrutiny when operating away from their licensing area we will legislate to enable enforcement and compliance checks to be conducted by any licensing officer against any vehicle regardless of where they have been licensed. Where drivers or vehicles fail to meet the national minimum standards, they will be able to take appropriate action to protect the public."

- 4.30 In particular the TFG Recommendation 11: Government should legislate that all taxi and PHV journeys should start and/or end within the area for which the driver, vehicle and operator (PHVs and taxis – see recommendation 6) are licensed. Appropriate measures should be in place to allow specialist services such as chauffeur and disability transport services to continue to operate cross border.
- 4.31 Operators should not be restricted from applying for and holding licences with multiple authorities, subject to them meeting both national standards and any additional requirements imposed by the relevant licensing authority.
- 4.32 The Government Response was: There are clearly a range of views within the sector and interested parties about how cross-border, or out-of-area, journeys by taxis and PHVs should be permitted or restricted. This can clearly be seen in the range of views expressed by individual members of the TFG in their comments in the annex to the report.
- 4.33 Currently, a PHV journey can take place anywhere in England provided that the driver, vehicle and operator are licensed by the same licensing authority. However, the licensing requirements in different areas (for example, the training required of drivers or the vehicle standards set) can vary considerably.
- 4.34 Such variations, combined with the freedom to carry out journeys anywhere, can incentivise drivers or operators to license away from the area where they actually intend to carry out work. This means that the ability of local licensing authorities to set and maintain taxi and PHV standards for their local areas is undermined.
- 4.35 We acknowledge the view that national minimum standards will go some way towards resolving that problem. The Suzy Lamplugh Trust noted in its comments on the TFG report that it did not support recommendation 11 because the introduction of national minimum standards would resolve the current practice of drivers choosing which licensing authority to obtain their licence from based on "less stringent" safety checks.

- 4.36 Even with national minimum standards in place, there will still be variations in licensing conditions (and therefore matters like licence costs and processing times), since the Government does not intend to remove the ability of licensing authorities to set their own local standards in matters not covered by the national minimum standards, or above and beyond those minimum standards. Local authorities are accountable for licensing in their areas and it is only right that they have the powers to properly shape and influence their local market.
- 4.37 Government therefore agrees with the principle of this recommendation, and will consider further (with a view to legislation) how it might best work in detail. In particular, Government will need to consider what size of area is appropriate. We will also consider what flexibilities or exemptions might be needed to reduce or avoid negative impacts on any particular business models, types of transport or passenger, and businesses or localities that are close to (perhaps multiple) licensing authority borders.
- 4.38 The London Assembly in March 2019 in the report, Raising the Bar - Taxi and private hire services in London, have in Recommendation 5 stated that, TfL should also review the criteria for 'fit and proper tests' for private hire operators, in line with Government findings.
- 4.39 Statutory Guidance - In February 2019 the Department of Transport began a consultation seeking views on proposed statutory guidance to taxi and private hire vehicle (PHV) licensing authorities on how to use their licensing powers to protect children and vulnerable adults. Brentwood Council has responded to this consultation which closed on 22 April 2019, to date there has been no further update on the results of the consultation or any proposed implementation date of the published guidance.

5 Reasons for Recommendation

- 5.1 The support of this committee is important in highlighting the impact Uber is having on the localism of Licensing in Brentwood.

6 Consultation

- 6.1 There has been no consultation in relation to the matters contained in this report due to the short implication time scale. Consultation on the fees will take place after review after the first year.

7 **References to Corporate Plan**

7.1 None

8 **Implications**

Financial Implications

Name/Title: Jacqueline Van Mellaerts, Financial Services Manager

Tel/Email: 01277 312829/jacqueline.vanmellaerts@brentwood.gov.uk

8.1 There are no direct financial implications of this report.

Legal Implications

Name & Title: Surinder Atkar, Planning Solicitor

Tel & Email: 01277 312687/surinder.atkar@brentwood.gov.uk

8.2 The legal aspect of this report is detailed and sound.

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

9. **Background Papers** (include their location and identify whether any are exempt or protected by copyright)

9.1 None

10. **Appendices to this report**

Appendix A – Opinion of Gerald Gouriet QC re Uber operating outside London.

Appendix B – Representation from BBTDA.

Appendix C – Legal opinion provided for Brentwood Council.

Report Author Contact Details:

Name: Paul Adams, Joint Licensing Manager

Telephone: 01277 312503

E-mail: paul.adams@brentwood.gov.uk

This page is intentionally left blank

RE: UBER BRITANNIA LIMITED

UNLICENSED PROVISION FOR THE INVITATION OF PHV BOOKINGS

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

THURROCK TAXI DRIVERS ASSOCIATION

OPINION

Introduction

1. I have been asked by the Thurrock Taxi Driver's Association to give my opinion as to whether the activities of Uber and its drivers in Thurrock are lawful.
2. The background to that request is a very familiar one: Uber do not hold a PHV operator's licence in Thurrock; but large numbers of Uber vehicles showing TfL badges (therefore, also not licenced in Thurrock) are fulfilling PHV bookings there.
3. The central question is whether Uber and/or the TfL drivers are making provision in Thurrock for the invitation of PHV bookings. It is an offence for a person to operate (that is, make provision for the invitation of bookings) in a controlled district in which he is not a licensed PHV operator: LGMPA section 46(1)(d).
4. It is of the utmost importance not to confuse 'making provision for the invitation of bookings' with 'using a private hire vehicle'. It is trite law that, provided an operator makes provision for the invitation and acceptance of bookings from within the controlled district that licensed him, he can use drivers and vehicles licensed by the same authority for journeys that may start and end anywhere in the Country, or in the well-known words of Latham LJ, journeys "which ultimately have no connection with the area in which they [the vehicles and drivers] are licensed."
5. What an operator is *not* entitled to do – and Latham LJ said so in strong language – is to make provision for the invitation or acceptance of bookings in a different controlled district from the one in which he is licensed. Making provision, etc., is a question of fact, to be determined looking at all the circumstances. For the reasons given below, and in particular the citations in paragraph 17, I have no hesitation in advising that it is highly likely (and may prove, on the facts, incontrovertibly to be so) that Uber are acting as unlicensed operators in Thurrock, contrary to section 46(1)(d) of the LGMPA 1976 – *because they are making provision in Thurrock for the invitation of PHV bookings. Not because the drivers and vehicles are fulfilling bookings remotely from the area of the licensing authority that licensed them.*

6. The following checklist may assist in keeping the different issues ('operating a vehicle' and 'using a vehicle to fulfil bookings') separate from one another:
 - a. 'Operate' is defined by the LGMPA 1976 as making provision for the invitation or acceptance of PHV bookings.
 - b. 'Operate' is not the same thing as using a vehicle to fulfil a booking: *Adur v Fry* [2001] LLR 706.
 - c. An operator may only operate in the area in which he is licensed.
 - d. It is well settled that an operator whose *provision* for the invitation and acceptance of bookings is made within the area in which he is licensed may *use vehicles and drivers* licensed in the same area as he (preserving the 'trinity of licences') to fulfil PHV bookings starting/finishing in places that have no connection with the area in which they or he are licensed: *Shanks v North Tyneside BC* [2001] LLR 706)
 - e. Provision for the invitation of bookings and the acceptance of bookings may be made in different places.
 - f. An operator who makes provision for the invitation of bookings in an area in which he is not licensed commits an offence. It does not save him:
 - i. That the 'trinity of licences' is preserved; or
 - ii. That he accepts the booking from within the area that licensed him.
7. A common mistake is to assume that because the 'trinity of licences' has been preserved in a given booking, then it automatically follows no offence can have been committed. The error is to fail to ask where the invitation of that booking took place, and whether any provision for that invitation was made outside the licensed area of the operator.

The statutory provisions & case law

8. The statutory provisions applying to PHV drivers and vehicles are materially different from the provisions applicable to PHV operators.

Vehicles

9. The owner of a vehicle may not use it as a private hire vehicle in a controlled district unless the vehicle is licensed under section 48 LGMPA 1976: section **46(1)(a)**.

Drivers

10. A private hire vehicle may not be driven in a controlled district otherwise than by someone licensed under section 51: section **46(1)(b)**. (It is also an offence for the owner of a vehicle to employ as a driver someone who is not so licensed: **46(1)(c)**).
11. No offence under sections 46(1)(a), (b) or (c) is committed, however, if a driver's licence and a vehicle licence issued in a different controlled district are in force: section **75(2)**.

12. The so-called “right to roam” of PHV drivers and vehicles derives from section 75(2). It means that licensed drivers and vehicles may lawfully undertake journeys “which ultimately have no connection with the area in which they are licensed” (per Latham LJ in *Shanks v North Tyneside BC* [2001] LLR 706).
13. The right is not unqualified: PHV drivers and vehicles may not solicit custom, and may only fulfil a booking accepted by an operator licensed by the same authority as licensed them: *Dittah v Birmingham City Council* [1993] RTR 356. Thus all three licences (operator’s, driver’s and vehicle) must be issued by the same authority.

Operators

14. Section 80(1) LGMPA 1976 provides:

“operate” means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle.
15. An operator may only make provision for the invitation or acceptance of PHV bookings in the controlled district in which he is licensed: LGMPA section **46(1)(d)**, applying section 80, subsections (1) & (2).
16. Section 75 of the LGMPA 1976 does not provide an exemption for operators (i.e. from section 46(1)(d)), equivalent to that which it provides for drivers and vehicles (i.e. from sections 46(a), (b) & (c)). Thus, whilst drivers and vehicles may lawfully undertake *journeys* “which ultimately have no connection with the area in which they are licensed”, lawful *provision for the invitation or acceptance of bookings* may only be made in the controlled district in which the operator is licensed: *Shanks*.
17. Whether or not provision has been made in breach of section 46(1)(d) is a question of fact. The following guidance emerges from the cases -
 - “It is simply a question of asking, in common sense terms, whether there has been provision made in the controlled district for invitation or acceptance of bookings”: *Kingston Upon Hull City Council v Wilson* (1995) WL 1082181, per Buxton J.
 - “There could well be provision for invitation of bookings in one place and for acceptance in another”: *East Staffordshire BC v Rendell* (1995) WL 1084118, per Simon Brown LJ.
 - “As the authorities clearly show, the [main] question is not where the act of accepting any particular booking or bookings take place, but where the provision is made”: *idem*
 - “The determining factor is not whether any individual booking was accepted, let alone where it was accepted, but whether the person accused has in the area in question made provision for the invitation or acceptance of bookings in general”: *Windsor and Maidenhead v Khan* [1994] RTR 87, per McCullough J.

Invitation of bookings

18. Uber customers make bookings using the Uber Rider App on a smartphone. The App is licensed by Uber BV. When customers activate the Uber Rider App, they are immediately presented with a map of their local area, showing the position of each nearby Uber vehicle that is currently available for hire. Each vehicle is continuously advertising its availability for hire and inviting potential customers in the vicinity to commence the process of booking.
19. *Rose v Welbeck* [1962] 1 WLR 1010 was a decision on the prosecution of a driver for plying for hire: but the court's analysis of the facts, and discussion of what amounted to an invitation to book, are relevant. There, a PHV vehicle was parked in a public street, bearing the inscription "Welbeck Motors, Minicabs" on both its sides, together with a telephone number. Winn J said: "At the very lowest, the evidence in the present case discloses behaviour and appearance on the part of this vehicle which amounts to an invitation: [my emphasis]

'Get in touch one way or another with my owner and see whether he is willing for you to take me as a vehicle which you are hiring.'"

Lord Parker CJ said: "The vehicle was saying:

'Not only do I ... recommend you to Welbeck Motors Ltd., where you can hire a minicab, but further I am one of those minicabs and I am for hire.'"

20. In terms of 'invitation to book' there is no meaningful distinction to be drawn between the invitation made by vehicles displayed on the Uber Rider App, and that made by the parked *Welbeck* vehicle: the former is merely a modern, internet-assisted manifestation of the latter.
21. By exhibiting (on the Rider App) their physical presence in Thurrock, and their availability for immediate hire, Uber drivers and vehicles self-evidently invite bookings for their services. Provision for that invitation is made by 'Uber'; and it is made in Thurrock, where Uber are unlicensed.

Uber's 'Regions'

22. On 14 February 2018 Uber announced its unilateral decision to divide the UK into nine 'regions', each of which spans several different licensing districts, with their own standards and local licensing requirements.
23. UBL has told drivers on the Uber platform that if they hold a vehicle/driver's licence from any licensing authority within one of Uber's so-called regions, they will have exclusive rights to work as Uber drivers anywhere within that region. Uber has placed Thurrock within its all-encompassing 'London Region' (which includes some 41 other local authority areas, each with its own local licensing standards and requirements).

Surge Pricing

24. An important consideration, though it is not determinative of my assessment of the legal position, will be whether Uber uses ‘surge pricing’ to encourage TfL Uber drivers to come to Thurrock and activate the Driver App there. As indicated above, the activation of the Driver App and the vehicle’s exhibition on the ‘Rider App’ are self-evidently an invitation to book a PHV.
25. ‘Surge pricing’ (also known as ‘dynamic pricing’) is a feature of the Uber model. It applies a multiple to its standard rates for journeys that commence in certain areas. These areas, and the applicable multiple, are broadcast to drivers via the Driver App. Drivers who commence journeys in areas where surge pricing is in force receive a multiple of whatever fare they would otherwise have received. Surge pricing therefore provides a strong incentive for drivers to travel to areas where ‘surge’ is in operation, in the expectation of receiving enhanced rewards for their work.
26. I have been shown screen shots of Uber’s use of surge pricing to encourage drivers elsewhere in the Country to work remotely from the area which licensed them. There is no reason to believe (though I would like it confirmed) that ‘surge pricing’ doesn’t play its part in Thurrock too.

Local Licensing Control

27. Uber’s conduct is in no way a ‘technical breach’ of the statutory provisions. It goes to the heart of the licensing regime and its purposes. The Courts have said that “*the hallmark of the licensing regulatory regime is localism*”¹, and that “*that the authorities responsible for granting licences should have the ability to exercise full control*” over “*all vehicles and drivers being operated ... within their area.*”²
28. The undermining of local licensing control is of nationwide concern. In its representation to TfL, on the opposed renewal of Uber’s London licence, the Mayoress of Watford wrote:

“Uber’s method of operation seems inconsistent with the principles of a locally determined licensing regime that allows for each authority area to decide what is best in the interests of public safety for residents and visitors...”
29. I understand there to be every bit as great concern in Thurrock about the lack of local licensing control over Uber drivers as there is in Watford – indeed as there is in licensing authorities throughout the Country.

¹ *Blue Line Taxis v Newcastle upon Tyne City Council* [2012] EWHC 2599 (Admin).

² *Shanks v North Tyneside Borough Council* [2001] EWHC 533 (Admin).

Conclusions

30. The licensing requirements of PHV drivers and their vehicles, and the exemptions therefrom, are different from those made of PHV operators. The gross oversimplification – “*cross-border hiring is lawful*” – is a misreading of the relevant case law (*Shanks* and *Adur*) and suggests a failure to recognise that distinction. There is no “loophole” in the law that allows Uber to operate (as defined by section 80(1) LGMPA) a private hire vehicle in an area in which neither Uber, the vehicle nor the driver are licensed.
31. Uber is not a licensed operator in Thurrock.
 - a. Uber supplies Uber drivers (who are not licensed in Thurrock) with the means (smartphone and App) by which the drivers advertise their presence in Thurrock, and their availability for immediate hire there.
 - b. In addition, it is possible (if not probable) that Uber actively encourages and incentivises Uber drivers by ‘surge pricing’ to advertise their presence in Thurrock.
 - c. Uber drivers, so supplied with the means, and so incentivised, come to Thurrock and invite potential passengers to make bookings with Uber, via the Uber App.
32. For the reasons given in paragraph 21 above, I think that activating the driver’s App amounts to an invitation to book an Uber PHV. There can be no other sensible conclusion than that Uber provides drivers on the Uber platform with the Driver’s App expressly for that purpose.
33. I have no doubt that the provision of TfL Uber drivers with the Driver’s APP in order that the drivers go to Thurrock (where neither the drivers nor Uber are licensed), and activate the App there, is making unlawful provision for the invitation of PHV bookings, contrary to section 46(1)(c) of the LGMPA 1976.

Gerald Gouriet QC

Francis Taylor Building
Inner Temple

Friday, 30 November 2018

Appendix B

Existential threat to the Brentwood Taxi Trade

This document is prepared with and on behalf of the Brentwood Borough Taxi Drivers Association (BBTDA).¹

1. The purpose of this document is to outline the desperate plight of the hackney carriage and private hire trade licensed by Brentwood Borough Council. There are currently 236 Hackney Carriages and 37 Private Hire Vehicles licensed in Brentwood with around 351 licensed drivers. The trade also employs around 40 staff who work directly within the industry that are local to Brentwood. Brentwood Council have set and expect high standards from the trade in the Borough, who provide an important service to the residents.
2. The hackney carriage trade and the private hire trade of Brentwood face an existential threat from non-Brentwood licensed private hire vehicles, who are licensed by Transport for London (TfL hereafter) where the licensing standards are less stringent.
3. This document sets out how that threat has taken shape over the last 3 years and the challenge that it poses to the trade itself as well as to Brentwood Council as the regulator. The trade seeks your support and assistance in ensuring that the hackney carriage and private hire trade within the borough can be maintained to the high standards that the council and residents expect. The trade believes that this can be done through a combination of joint working with other licensing authorities, including TfL, and by supporting reforms and changes which many councils have adopted including many of those in Essex.
4. We urge our local council to support their local taxi drivers. Brentwood Borough Council simply cannot afford to ignore the consequences that their decisions are having on the local taxi trade. In this document we make several recommendations that would increase the chances of preserving the future of the local taxi trade. It is apparent the Uber business model quite happily operates at a loss, to monopolise areas and quite literally put the local taxi trade out of business by dominating market share. Once the local trade has been decimated it is likely that the Uber price surging model will kick in.
5. There is a real contrast between the Brentwood taxi trade, which is local to the borough and the out of town drivers. Brentwood licensed operators pay business rates, corporation tax and VAT. Brentwood licensed drivers predominantly live within the Borough and therefore contribute to the local economy through council tax and spending their earnings locally. Brentwood licensed drivers are rigorously tested on their local knowledge of Brentwood and the surrounding area before being issued with a licence. Unlike the local taxi trade, the majority of out of town drivers work for Uber, the majority of these have no knowledge of Brentwood. Their operator, Uber, does not pay any corporation tax or as unbelievable as it is, does not pay any VAT as

¹The Association represents the Private Hire and Hackney Carriage drivers licensed by Brentwood Borough Council.

Uber invoices their drivers from Holland. The Uber business model therefore gives them a 20% advantage over local operators. The Good Law Project estimates that Uber in the UK have avoided paying £1,000,000,000 in VAT. This is money desperately need to fund schools, hospitals and other vital services.

6. Uber is a gig economy company recently valued at £91 billion, but which contributes nothing to the local economy.
7. In view of the above we request that the Council itself or through the Principal Licensing Officer contacts Uber and makes an urgent request to revise and redraw their Geo-Fence to reflect the TfL area boundary for bookings by London licensed drivers, which should not include Brentwood. We believe that this will have the effect of ensuring that the local licensed Brentwood drivers and vehicles can continue to provide the excellent service to the residents of the borough.

The size and nature of the threat

8. Over the last 3 years non-Brentwood licensed private hire vehicles have been looking for fares and work within the borough. Originally, this was on a relatively small scale but over the last 2 years has grown in scale. We now estimate that TfL licensed vehicles are covering approximately 25% of all journeys. This activity has been given the title, 'cross border hiring', as it involves an operator, vehicle and driver licensed by a different local authority working outside of the area where they are licensed. In Brentwood, the vast majority of these vehicles and drivers are licensed by TfL and work with the TfL licensed Uber private hire operator. Many of these vehicles have ranked up in or around the High Street and on many occasions have been waiting on hackney carriage ranks. Evidence of this has previously been submitted to Brentwood Council Licensing Department.
9. The arrival of the Uber drivers has therefore had a direct impact upon the income of Brentwood licensed drivers. The impact of this is to make many drivers question whether they can continue to work as hackney or private hire drivers.
10. TfL compliance officers visited Brentwood on Saturday 10th of March 2019. One of these officers was assisted by BBTDA member Paul Topley. In a 7-hour period the TfL compliance office recorded the registration numbers of 100 individual TfL licenced vehicles operating in the Brentwood and Shenfield areas. This compares to the total number of licensed vehicles in Brentwood of 273. This figure alone shows the effect that TfL licensed drivers are having upon the local trade. This is because the expansion of private hire licensed drivers and vehicles in the TfL area has been exponential over recent years. Those drivers and vehicles are moving away from the TfL area in search of work. The impact of 100 non-Brentwood licensed drivers working on a weekend in the borough massively affects the Brentwood licensed drivers.
11. The impact of the arrival of non-Brentwood licensed drivers within the borough is not just upon the drivers but also the wider public. The drivers and vehicles are licensed by TfL, they do not meet the standards set by Brentwood, particularly in relation to

local knowledge. Brentwood Council licensing officers have no powers to act in relation to the TfL drivers or vehicles.

12. Only TfL enforcement officers have powers in relation to TfL licensed drivers. TfL in other authorities have carried out enforcement activity outside of the TfL area to deal with issues that inevitably arise. Such enforcement action has taken place in Uttlesford, Crawley, Reading, Southend. In areas where the local licensing authority has raised the problems that have occurred with TfL. The result of this is that there are real concerns about: 1) ensuring that TfL licensed vehicles operating in Brentwood are doing so lawfully and abiding by the conditions of their licence, and 2) that if issues/complaints do arise whether or not they are being identified and actioned. The reason for this is that there is confusion within the public as to which local authority has responsibility for dealing with the issue. The TfL document 'Cross Border Hiring – proposals for change'² identified that this was an issue. Several councils within Essex have raised concerns with regard to Uber operating within their areas. The eventual response to this by Uber has been that they have now prevented TfL licensed vehicles operating in areas such as Southend. However, TfL licensed Uber drivers are not prevented from working in Brentwood.
13. We are pleased that recently there has been some activity in Brentwood by TfL compliance officers. This is a positive step, which we hope will continue and be put onto a more organised and regular basis. We also hope that such work will be coordinated with Brentwood Council licensing officers.

The effect of Uber operating in Brentwood is as follows:

- i) Public Safety the very viability of the trade in Brentwood is put at issue,
 - ii) Brentwood as the licensing authority has no control over a large number of vehicles which operate within the authority and are therefore unable to deal with complaints and issues that arise,
 - iii) there is an impact upon public safety and confidence in the hackney and private hire trade,
 - iv) the erosion of localism and a local trade based upon drivers who live and work in the borough and develop strong and positive relationships with their customers.
15. The purpose of any licensing function is Public Safety. We believe that the mass influx of TfL Licensed vehicles into Brentwood puts the safety of local residents at risk. TfL licensed vehicles can only be identified by a small tax disc size badge which is displayed on the rear windscreen of the vehicle. This badge is almost impossible to see especially in the dark. The licensing department in Brentwood are well aware that we

² <http://content.tfl.gov.uk/cross-border-hiring-proposals.pdf> this document was prepared as a submission to the government appointed Task and Finish Group of Taxi and Private Hire Vehicle licensing, see note 4.

have previously had local examples of vehicles masquerading as taxi/private vehicles in order to lure vulnerable people into their vehicles. This is the specific reason why every vehicle licensed by Brentwood Borough Council has a 10" by 7" plate on the rear of the vehicle which details the vehicle registration number, make and model and the expiry date of the licence. The licence conditions also dictate that a 22" wide Taxi Roof Sign must be displayed as well as door signs displaying the HCV number of the vehicle. The Principal Licencing Officer has personally mentioned how important the distinct identification of our vehicles is the safety of the public.

Undermining local licensing control: Erosion of localism: Licence Conditions

16. The Courts have said that *"the hallmark of the licensing regulatory regime is localism and that the authorities responsible for granting licences should have the authority to exercise full control over all vehicles and drivers and drivers being operated within its area"*³
17. In view of the above and the high standards demanded by Brentwood Borough Council when issuing licenses, we must question why these Uber vehicles have been allowed to become so prevalent throughout our borough.

Proposals for change

18. In response to the concerns that have been raised over a considerable period of time by: the trade, interest groups such as the Suzy Lamplugh Trust, trades unions and also licensing authorities; the government commissioned a report by a Task and Finish Group on Private Hire and Vehicle Licensing, 'Taxi and Private Hire Vehicle Licensing – steps towards a safer and more robust system'⁴. This group sets out a detailed set of reforms to the hackney and private hire trade. The TfL document referred to in paragraph 12 above was the submission by TfL to the Task and Finish Group. The Task and Finish Group reported back in autumn 2018 and made 34 recommendations to the government. The government responded to the proposals on the 12th of February 2019 with Government Response – Moving Britain Ahead⁵. On the same date the government also published a consultation document on Statutory Guidance to local authorities on the licensing of the hackney and private hire trade⁶.

³ Blue Line Taxis v Newcastle upon Tyne City Council [2012] EWHC 2599 (Admin)

⁴ To access the document please click on this hyperlink below.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/745516/taxi-and-phv-working-group-report.pdf

⁵ To access the document please click on this hyperlink below.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775983/taxi-task-and-finish-gov-reponse.pdf

⁶ To access the document please click on this hyperlink below.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778274/taxi-phv-licensing-protecting-users-condoc.pdf

19. The Brentwood trade ask that you consider the 4 reports and take the following actions:
 - i) respond to the consultation on the Statutory Guidance, which closes on the 22nd of April 2019,
 - ii) support the Brentwood trade in pushing for the adoption by central Government of the recommendations of the Task and Finish Group,
 - iii) continuing to work with other Essex local authorities, but to take that cooperation further and in effect adopt a joint licensing policy across the county,
 - iv) resolve to request that TfL carry out inspections and where appropriate enforcement action on TfL licensed vehicles operating in Brentwood,
 - v) support the Local Government Association and others in their efforts to reform the legislation on cross border hiring relating to private hire vehicles
 - vi) Make representations to Uber that they alter their geo-fencing so that London licensed drivers cannot collect passengers in Brentwood.
20. Below in Appendix 1 we set out the most important reforms and changes required, as we see them. We believe that they will ensure that the regulatory framework matches the reality of the trade now in the 21st century. In Appendix 2 we set out our initial views in response to the consultation on the Statutory Guidance.
21. We believe reforms and changes along the lines that we suggest will improve standards across the industry and, also protect the travelling public. We also believe that they will create a situation where Brentwood Council will, once again, be able to effectively regulate the hackney and private hire trade within the borough. We would welcome the opportunity to meet with you and discuss our proposals and what you can do to support us in our efforts.

Appendix 1

Reforms and changes as set out by the Task and Finish Group

We believe that the following reforms and changes ought to be adopted locally, within Essex and also nationally. We have not outlined all of the recommendations, we have highlighted those that we believe are most important to assuring the future of the trade within Brentwood. We accept that the government has not agreed to all of these suggestions, we would strongly urge that you consider supporting us in our efforts to get all the below adopted and implemented by government and local authorities.

The numbering refers to the numbering of the recommendations of the Task and Finish Group.

Recommendation 1

Notwithstanding the specific recommendations made below, taxi and PHV legislation should be urgently revised to provide a safe, clear and up to date structure that can effectively regulate the two-tier trade as it is now.

The current legislation does not fit the reality of the taxi trade, which is changing very rapidly, such that the Law Commission report and draft bill of 2014 is already out of date. We appreciate the legislative pressure created by Brexit, but nevertheless it is very important that the taxi industry is regulated by appropriate legislation which matches the reality of the market. That is not the situation now. Government should be urged to deal with this issue, at the same time, that it sets minimum national standards: see recommendation 2, which the government has committed to do.

Recommendation 2

Government should legislate for national minimum standards for taxi and PHV licensing - for drivers, vehicles and operators (see recommendation 6). The national minimum standards that relate to the personal safety of passengers must be set at a level to ensure a high minimum safety standard across every authority in England.

Government must convene a panel of regulators, passenger safety groups and operator representatives to determine the national minimum safety standards. Licensing authorities should, however, be able to set additional higher standards in safety and all other aspects depending on the requirements of the local areas if they wish to do so.

We believe that this is an essential change, which needs to be prioritised, especially given the previous issues which have arisen in relation to child sexual exploitation, by a few licensed drivers. We would ask that Brentwood Council volunteers to join the panel of regulators and also uses the Council's own best efforts to lobby government by itself and through its representative bodies such as the Local Government Association (LGA) to push this forward.

Recommendation 3

Government should urgently update its Best Practice Guidance. To achieve greater consistency in advance of national minimum standards, licensing authorities should only deviate from the recommendations in exceptional circumstances. In this event licensing authorities should publish the rationale for this decision.

Where aspects of licensing are not covered by guidance nor national minimum standards, or where there is a desire to go above and beyond the national minimum standard, licensing authorities should aspire to collaborate with adjoining areas to reduce variations in driver, vehicle and operator requirements. Such action is particularly, but not exclusively, important within city regions.

We would ask that Brentwood Council works with TfL and other Essex authorities to work out a joint approach to regulate drivers and vehicles who operate across borders. We would ask that Brentwood also respond to the consultation document on Statutory Guidance. Please see Appendix 2 for our suggested responses to the consultation. We would also ask that Brentwood Council continues to work with the other Essex local authorities with a view to implementing consistent standards for the regulation of the taxi trade across the whole county.

Recommendation 4

In the short-term, large urban areas, notably those that have metro mayors, should emulate the model of licensing which currently exists in London and be combined into one licensing area. In non-metropolitan areas collaboration and joint working between smaller authorities should become the norm.

Government having encouraged such joint working to build capacity and effectiveness, working with the Local Government Association, should review progress in non-metropolitan areas over the next three years.

Although Essex is not itself an urban area, it is adjacent to London and is therefore affected by TfL and the regulatory environment of London. So, we would ask that joint working within Essex continues and deepens. We would also ask that the relationship with TfL be expanded, so that joint regulatory and enforcement takes place. TfL have worked with other local authorities, such as Uttlesford and Southend, to deal with issues in those local authorities, we would therefore want to see similar joint work be conducted in Brentwood.

Recommendation 5

As the law stands, 'plying for hire' is difficult to prove and requires significant enforcement resources. Technological advancement has blurred the distinction between the two trades.

Government should introduce a statutory definition of both 'plying for hire' and 'pre-booked' in order to maintain the two-tier system. This definition should include reviewing

the use of technology and vehicle 'clustering' as well as ensuring taxis retain the sole right to be hailed on streets or at ranks.

Government should convene a panel of regulatory experts to explore and draft the definition.

Although the government has not accepted this recommendation, we think it is nevertheless important that the legislation is amended so that there is clarity about what does or does not amount to an offence. It is the issues of new technology and 'clustering' that are causing real problems in Brentwood. The recent High Court case of Reading Council v Ali [2019] EWHC 200, where the situation in Reading, which is very similar to that in Brentwood, shows that the law needs to be clarified and updated. We would ask that Brentwood lobbies for a review of the legislation on this as well.

Recommendation 8

Government should legislate to allow local licensing authorities, where a need is proven through a public interest test, to set a cap on the number of taxi and PHVs they license. This can help authorities to solve challenges around congestion, air quality and parking and ensure appropriate provision of taxi and private hire services for passengers, while maintaining drivers' working conditions.

We do not believe that there is the necessity for a cap on private hire vehicles in Brentwood, however we do believe that the necessity for such a cap has been shown in London. TfL has argued for one given the massive increase in the number of private hire drivers in London over recent years. The result has been that driver incomes have reduced, so that TfL licensed drivers have been pushed outside of London in seek of income. We therefore believe that Brentwood Council should lobby in favour of this change.

Recommendation 9

Licensing authorities should use their existing powers to make it a condition of licensing that drivers cooperate with requests from authorised compliance officers in other areas. Where a driver fails to comply with this requirement enforcement action should be taken as if the driver has failed to comply with the same request from an officer of the issuing authority.

We believe that Brentwood Council should approach TfL to adopt this measure, to enable Brentwood and other licensing officers to carry out their regulatory functions in Brentwood.

Recommendation 10

Legislation should be brought forward to enable licensing authorities to carry out enforcement and compliance checks and take appropriate action against any taxi or PHV

in their area that is in breach of national minimum standards (recommendation 2) or the requirement that all taxi and PHV journeys should start and/or end within the area that issued the relevant licences (recommendation 11).

We would ask that Brentwood authorises officers from across Essex and TfL and seeks the same powers from those other local authorities. This is a stop gap measure until legislation is brought forwards which enables all local authority officers to carry out enforcement and compliance checks to ensure that national minimum standards are maintained.

Recommendation 11

Government should legislate that all taxi and PHV journeys should start and/or end within the area for which the driver, vehicle and operator (PHV and taxi – see recommendation 6) are licensed. Appropriate measures should be in place to allow specialist services such as chauffeur and disability transport services to continue to operate cross border.

Operators should not be restricted from applying for and holding licences with multiple authorities, subject to them meeting both national standards and any additional requirements imposed by the relevant licensing authority.

We believe that this is the key recommendation to ensuring the future of the Brentwood trade. Such a measure would not prevent TfL vehicles from working in Brentwood, but it would reduce the negative impact that the existing clustering of TfL Uber drivers in Brentwood in an attempt to gain work. The government has not adopted this recommendation, though it is policy of the LGA. We would request that Brentwood uses its position, as an authority on the edge of London which is being affected cross border hiring, to make the case for reform of the law on this issue.

Recommendation 24

As a matter of urgency Government must establish a mandatory national database of all licensed taxi and PHV drivers, vehicles and operators, to support stronger enforcement.

The government has indicated its willingness to adopt this proposal and legislate accordingly. This proposal takes up the private members bill which was promoted by Daniel Zeichner MP, we would ask that Brentwood Council pushes for the adoption of this proposal together with a wider updating of taxi legislation.

Recommendation 34

Government should urgently review the evidence and case for restricting the number of hours that taxi and PHV drivers can drive, on the same safety grounds that restrict hours for bus and lorry drivers.

There are issues about the monitoring and enforcement of a restriction on the number of hours worked. There are repeated anecdotal concerns about the fact that TfL licensed drivers work very long hours, given the little that many of them earn. The fact that most private hire operators now use App based systems for the managing of bookings, means that there are means by which hours of work can be measured and monitored. We therefore believe that Brentwood Council should also ask that government carry out research on this issue with a view to adopting proposals in the future.

Appendix 2

Consultation on Statutory Guidance

Set out below are the trade's responses to the consultation document. We set out our views, which you may wish to consider when deciding on your own response to the consultation document. We welcome the new draft guidance as we believe that it sets out a clear means by which decisions can be made that will ensure consistency and improve and maintain the high standards that Brentwood Council expects from licensed drivers.

2.19 to 2.22 Administration

We welcome the suggestion that Councillors taking decisions receive training, we believe that this will ensure consistency of approach. Where urgent and serious cases need quick determination, we believe that the Director with responsibility for Licensing ought to conduct such reviews.

2.32 Disclosure and Barring Service

We agree that in addition to the enhanced DBS check that checks should also be made of Barring Lists on application or renewal.

2.38 DBS update service

We agree with the suggestion that all licensed drivers be required to sign up to the DBS update service, so that checks of DBS status can be made at regular intervals and also on an ad hoc basis where there is cause to do so.

2.41 Licensee self-reporting

We agree that there should be a requirement for a licensee to inform the local authority of an arrest and release, charge or conviction for any motoring offence, or offence involving dishonesty, indecency or violence. We would suggest that this duty ought to extend to accepting a police caution for such an offence as well.

2.47 Overseas convictions

We agree that persons who have spent significant time overseas should obtain a 'Certificate of Good Character' from the country where they have resided.

2.49 Convictions policy

We agree with the convictions policy as set out at Appendix A, which uses the excellent work done by the Institute of Licensing. It is important that the convictions policy is simple and easy for applicants to understand and that it focuses the mind of decision makers on the question of whether or not the applicant or licensed driver is fit and proper to hold a licence.

2.57-61 Other information

We agree that applicants for a drivers' licence must be required disclose if they have had a licence with another local authority and if such an application/licence has been refused or a licence revoked or suspended by an other local authority. The NR3 register is an important tool for use by local authorities and should be put on a statutory footing through legislation, so that all local authorities are required to access and contribute to it.

2.62-64 Multi Agency Safeguarding Hub (MASH)

We agree that multi agency working and sharing is key to safeguarding. The sharing of information with and receiving information from MASH is key to maintaining confidence in the licensing of drivers.

2.65-68 Complaints against licensees

We agree with the requirement that all licensed drivers be made responsible for displaying a notice outlining how a complaint about a driver can be made within the vehicle. A means must also be devised by which complaints are shared when received by one local authority about a driver licensed by another local authority. This is key as drivers are increasingly operating outside of their licensing authority.

2.79 Language proficiency

We agree with this and believe that a national standard should be set through this guidance.

2.81-83 Enforcement

We strongly agree that the sharing of information between local authorities is key, especially where drivers operate outside of their licensing authority, which is increasingly common. Joint authorisation of officers in neighbouring authorities is essential to maintaining standards when drivers operate outside of their licensing authority.

2.90-101 Private Hire Operators

We agree with the proposals, which are proportionate.

2.104-2.116

We agree with the principles laid down regarding CCTV in licensed vehicles and agree that a blanket requirement to install CCTV can only justified on strong grounds.

Appendix C

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976; 'OPERATING'; UBER.

ADVICE

1. I am asked to advise my client, Brentwood Borough Council, as to the legal implications of one facet of Uber drivers undertaking work within Brentwood's administrative area.
2. In brief Uber holds a Private Hire Vehicle operator's licence issued by Transport for London (TfL), but not by Brentwood; the cars concerned are also licensed by TfL (and not Brentwood) and the drivers, too, are licensed by TfL and not Brentwood.
3. As I understand it, certain of those drivers regularly come to Brentwood in their TfL-licensed vehicles. The Uber app is (obviously) available to people physically within Brentwood, and if they open the app whilst they are in Brentwood they will (in all likelihood) see the 'vehicle' icons displayed on the map, indicating that vehicles are available in the area. If they make a booking (by entering a proposed destination and accepting the fare indicated) then a vehicle will come to their location and pick them up and take them to that destination.
4. The 'vehicle' icons displayed are the result of drivers indicating, via their Uber driver app, that they are available to take bookings.
5. The key question for this advice is whether that amounts to 'operating' within the meaning of the Local Government (Miscellaneous Provisions) Act 1976 (LGMPA). I have seen a legal opinion by Gerald Gouriet QC (a specialist in the field) dated 30 November 2018, provided to the Thurrock Taxi Drivers Association, which concludes that such activity in Thurrock (which is materially identical in terms of the issues raised) amounts to unlawful 'operating' in Thurrock. That, concludes the opinion, would be a breach of s.46(1)(d) of the LGMPA.
6. I have also seen two legal opinions by Richard Barraclough QC provided to my client which in essence agree with the advice given by Mr Gouriet QC. As I read Mr Barraclough QC's initial advice, the substantive analysis of the position (such as it is) appears at paragraphs 8-12 and

adopts Mr Gouriet's reasoning. The remainder (from paragraph 16) appears to be no more than extensive citation of legislative provisions and authorities.

7. Mr Barraclough QC also provides a second opinion dated February 2019 which reflects on the decision of the Divisional Court in Reading BC v Ali [2019] EWHC 200 (Admin), which concerned whether the Uber 'model' amounted to unlawful 'plying for hire'; and on a recent consultation paper on taxi licensing reform (and the 2014 Law Commission report). His advice is unchanged by any of those reflections.
8. I do not agree with their analysis of the position and see no unlawfulness in what Uber presently does in Brentwood.

The legal background

9. The legal background is summarised relatively comprehensively in Mr Gouriet QC's advice.
10. In order lawfully to run a private hire vehicle enterprise, there must be three licences in force, and all must be issued by the same authority: an operator's licence, a vehicle licence, and a driver's licence. For any lawful journey (save where subcontracting occurs, which is not relevant to this issue) all three licences must be in place and must all be issued by the same authority - see Dittah v Birmingham CC [1993] RTR 356.
11. Private hire vehicles may not 'ply for hire', which is the exclusive right of hackney carriages, to whom a different licensing regime is directed: this was the issue in Reading v Ali. Plying for hire is not specifically defined but there is a body of caselaw which culminates in the case of Cogley v Sherwood [1959] 2 QB 311, in which Salmon J, concurring with the leading judgment of Lord Parker CJ, said:

"But for authority, I should have thought that a vehicle plies for hire if the person in control of the vehicle exhibits the vehicle and makes a present open offer to the public, an offer which can be accepted, for example, by the member of the public stepping into the vehicle."

12. If the 'holy trinity' of licences from the same authority is in place, however, there is nothing unlawful in a private hire vehicle being sent by an operator licensed in District 'A' to pick someone up in District B, take them to their destination in District C, even where that journey does not pass through or even near to District A – see Adur v Fry [1997] RTR 257. As the author of Button on Taxis (Fourth Edition) puts it at 12.21:

“It is clear that, provided the three licences required in relation to a private hire vehicle...have all been issued by the same authority, that is to say they ‘match’, then the private hire vehicle can undertake journeys anywhere in England and Wales. That is irrespective of the local authority area where the journey commences, areas through which the journey passes and, ultimately, the area where the journey ends.”

13. However, the 'operator' in such an example must have a licence from the local authority in which he physically 'operates'. He cannot do so from a neighbouring (or indeed any other) area. In East Staffs BC v Rendell (1995) Independent, 27 November QBD an operator licensed by Derbyshire Dales DC diverted his telephone to an office in the adjoining district, East Staffs, from where he answered calls and took bookings for private hire vehicles. His acquittal for operating in East Staffs without a licence issued by them was overturned on an appeal to the Divisional Court.

14. 'Operating' is defined by s.80 LGMPA as follows:

“In this Part of this Act, unless the subject or context otherwise requires ... “operate” means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle”

15. That form of words was said in Windsor & Maidenhead RBC v Khan [1994] RTR 87 and Adur v Fry (above) to be a 'restrictive' form of words, and in Brentwood DC v Gladen [2004] EWHC 2500 (Admin) to have a 'technical meaning'.

16. Khan concerned an operator licensed in Slough, with physical offices in Slough. However he advertised his private hire vehicle services (Top Cars) in two directories (Yellow Pages and Thompson's) which circulated in the neighbouring district of Windsor & Maidenhead. The allegation made was that he had 'made provision for the invitation or acceptance of bookings

for a private hire vehicle' in Windsor district, because the directories circulated there. The Divisional Court rejected this contention:

I reject the submission. The considerations to which I have already referred make clear that, in its definition of the word 'operate', Parliament was not referring to places which invitations might reach, but to places where provision is made for the invitation of bookings. Put an advertisement in a local newspaper in one part of England and it may be read in almost any other part of the country. The defendant made provision for the invitation of bookings at his office in Slough. What he did by advertising in the directories circulating in the area where he conducted his business, and in adjacent areas, was to inform the public that he had made such provision. His provision was nevertheless made in Slough, not in Maidenhead, nor in any of the other areas in which those directories circulate. That conclusion is not, in my judgment, affected by the fact that the directories circulated in a much wider area, or that the defendant named towns other than Slough, such as Maidenhead, in his advertisement. If Mr Harrison's submissions were right, it would mean that the defendant was operating not just A576 KLT, which is named in this summons, but every one of his private hire vehicles 24 hours a day, seven days a week in Maidenhead, even on days when none of his vehicles ever went anywhere near Maidenhead. That would be nonsensical.

17. It can thus be seen that advertising a private hire vehicle service is not 'making provision [etc]', and so not 'operating'. What matters is where provision is made, and in Khan it was in Slough, because that is where the office was. As Simon Brown LJ said in Rendell:

"Essentially all that [Khan] decided was that by advertising a private hire vehicle business outside the permitted district no offence was committed. All that the advertisement does is to inform the public as to where provision has been made — in that case, at a single office which was properly licensed in Slough."

18. In Murtagh v Bromsgrove DC [2001] LLR 514 the operator concerned (Rubery Rednal Cars) was licensed in Bromsgrove (and the office physically situated there). They placed dedicated telephones in supermarkets in Birmingham CC's area, from which potential customers could call their offices in Bromsgrove and request a vehicle. The alleged offences concerned bookings

made via those telephones, for which the trip was undertaken by Birmingham CC-licensed drivers in Birmingham CC-licensed vehicles. The Divisional Court upheld the convictions: provision had been made *in Bromsgrove* for the acceptance of bookings, and yet those bookings had been undertaken by Birmingham-licensed drivers and vehicles. Therefore the ‘holy trinity’ was not present.

19. What is more relevant in my view is that the placing of dedicated telephone lines in supermarkets outwith the Bromsgrove area, which were then used to call the office within Bromsgrove, did not seem to cause any difficulty with the suggestion that the firm was still ‘operating’ in Bromsgrove. No-one appeared to suggest that the placing of telephones in Birmingham meant that the firm was not operating in Bromsgrove (although as to whether it meant they were also operating in Birmingham did not need to be decided, and wasn’t).
20. It is also clear (as Mr Gouriet QC sets out in his Opinion) that using a vehicle to fulfil bookings is not, itself, operating and is conceptually distinct from it – see Adur v Fry. In Britain v ABC Cabs (Camberley) Ltd [1981] RTR 395 the picking up of a passenger in Rushmoor was not ‘operating’ where the booking had been taken by the firm at its offices in Camberley, across the border:

“I am satisfied that when the defendants’ vehicle picked up the passenger at Farnborough Station, the only material act which the defendants did in the borough of Rushmoor controlled district, they were not ‘making provision for the invitation or acceptance of bookings’ at all, whether for a private hire vehicle or for any other vehicle. In my judgment to conclude otherwise would be to strain the language of the definition far beyond breaking point. If they were making provision for the invitation or acceptance of bookings anywhere, they were doing that, it would seem to me, in their office at Camberley, which is not a controlled district.”

Analysis

21. Despite the relative multitude of cases concerning the business and operating model of Uber, there is no direct authority on the point here at hand, which is whether what Uber does with its app amounts to operating within the district in which a passenger looks at the app and requests

a vehicle. It is an obvious first point (although it adds nothing to the analysis) to observe that if it does amount to operating, then Uber are operating in very many places where they do not have an operator's licence (and so too, I daresay, are a number of other private hire vehicle enterprises).

22. The operating model used by Uber is relatively familiar now. Mr Barraclough QC quotes extensively from the judgment in Uber BV v Aslam and Ors [2018] EWCA Civ 2748. In short the potential customer opens the app, and will usually see outline 'car' images on a background map. They are there because certain Uber drivers have switched on their driver app to denote their potential availability.
23. The outline car images do not identify the type of vehicle or the driver, but indicate a general position for each such vehicle. The potential customer then types in her desired destination. The app gives her an indication of the likely fare and she is given the option to confirm. If she does so, then the 'request' is sent by Uber's servers (located somewhere other than Brentwood – as I understand it, in London) to any nearby Uber drivers who have their own 'driver' app on, and they have a short period of time in which to accept the request and take the job. If one does so, the potential customer is then alerted to the fact that a specific driver (she does not know and cannot usually tell which of the 'car' images this referred to) is on his/her way. Only on picking up the passenger does the driver learn of the destination.
24. Clearly, at the heart of this issue is the undeniable fact that the way we book taxis today is very different to how we did it when the legislation was written. That observation was really at the centre of why the findings of the Chief Magistrate were upheld in Reading v Ali (albeit in the context of 'plying for hire'). In my view those findings have a very real bearing on the question at hand in respect of 'operating', not least because (as recorded at paragraph 30 of the decision) it was said by counsel for Reading in that case that the displaying of the outline 'car' image(s) on the app screen was a modern-day example of plying for hire (i.e. 'soliciting custom in the sense of inviting the public to use the vehicle without a prior contract' – para 25). That suggestion was rejected.
25. In particular at para. 34 Flaux LJ said:

"It seems to me that depiction of the vehicle on the App does not involve any exhibition of that kind, but is for the assistance of the Uber customer using the App, who can see that there are vehicles in the vicinity of the type he or she wishes to hire. I agree with Mr Kolvin QC that the App is simply the use of modern technology to effect a similar transaction to those which have been carried out by PHV operators over the telephone for many years. If I ring a minicab firm and ask for a car to come to my house within five minutes and the operator says "I've got five cars round the corner from you. One of them will be with you in five minutes," there is nothing in that transaction which amounts to plying for hire. As a matter of principle, I do not consider that the position should be different because the use of internet technology avoids the need for the phone call."

26. Plainly this is in respect of plying for hire. However, one should then consider whether the very same activity, carried out physically in Brentwood, amounts to *'in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle'* in Brentwood. There is no question but that it is in the course of business. However, making the app available to members of the public in Brentwood (or anywhere) – and the related activity of the driver turning on the driver app - is in my view no more than the modern-day equivalent of advertising on a billboard or in a directory that you have cars available in that area, and providing the phone number by which to book one. The *'making of provision'* for the invitation or acceptance of bookings is not in Brentwood just because someone happens to take their mobile phone into Brentwood, open the app whilst there, and request a car.
27. This is, in my view, the answer to Mr Gouriet QC's reliance (at para. 19 of his Opinion) on the case of Rose v Welbeck [1962] 1 WLR 1010. That case – which is unusual on its facts – was cited to the court by Reading in Reading v Ali, and rejected as a basis for finding that the Uber app amounts to the sort of plying for hire that was found in that case. It was not sufficient to persuade either the Chief Magistrate, or indeed the Divisional Court, that the uber app amounted to plying for hire and for the same reasons I do not think it assists in showing that the Uber app amounts to *'operating'* in Brentwood.

28. In particular I think it fatally undermines the points made by Mr Gouriet QC at paragraphs 31(a) and (c), and 32. That those points were not sufficient to show ‘plying for hire’ in Reading v Ali suggests in my view that they would be insufficient to show ‘operating,’ either.
29. Nor, in my view, is there anything in the suggestion sometimes made in this context that Uber drivers are ‘encouraged’ to go to (e.g.) Brentwood in order to be available to pick up passengers. I do not understand Uber’s model to do that in any way and drivers retain complete autonomy as to where they go, and when. I agree with Mr Gouriet QC that the ‘surge pricing’ aspect of Uber’s model is not determinative of the legal position in relation to operating.
30. It is undeniably true to say (as Mr Barraclough QC does at para. 9 of his first Opinion) that the app is designed so as to invite customers to make bookings, but in my clear view that is also true of the advert in the Thompson’s Directory in Slough (Windsor v Khan). It simply does not follow that ‘thus’ Uber makes provision for the invitation and acceptance of bookings *in Brentwood*. It does not. Advertising a service is not ‘operating’.
31. Nor do I think there is anything meaningful added by Mr Gouriet QC’s paragraphs 27-29, about local licensing control. He may be right that the present legal environment means less local control of operators, but if he is right then the answer lies with Parliament. It does not bear on the proper interpretation of ‘operating’.
32. Further, I note that this argument was essentially advanced by Mr Gouriet QC in the Uber/TfL licensing appeal. TfL’s skeleton argument to the Magistrates’ Court is publicly available online¹ and it is clear that TfL does not think there is anything in the point: see paragraphs 22-23 and Appendix 1. Nor did the Chief Magistrate² - see paragraphs 37-39 of her judgment. There was no challenge to this aspect in the subsequent appeal to the Court of Appeal. The fact that TfL, a major regulator of private hire vehicles, does not consider that there is anything in the point underlines my own view of the position.
33. Finally, it seems to me that, given that booking private hire vehicles using apps (whether Uber, or Lyft, or any other) is likely to be ‘the future’, and is certainly already highly prevalent, if the

¹ <http://content.tfl.gov.uk/tfl-skeleton-argument.pdf>

² <http://content.tfl.gov.uk/uber-licensing-appeal-final-judgment.pdf>

analysis of Mr Gouriet QC (and Mr Barraclough QC) is right, then there is unlawful operating all over the country all the time, right now. Further, the (presently lively) debate about cross-border hiring (see, for example, the Law Commission Report of 2014) would be essentially meaningless because any operator wishing to use an app would be required only to allow that app to be available to customers in the area in which it had its offices; or to have offices in every area in which it wishes its app to be usable. Neither is at all realistic in my view.

Conclusion

34. In my view Uber is not 'operating' (within the meaning of s.80) in Brentwood. It is operating from London (where it is licensed to do so by TfL). The fact that people in Brentwood can use its app to hire vehicles licensed by TfL, driven by drivers licensed by TfL, means that such journeys are lawful.
35. Just as the display of the 'car' outline on the app (or, specifically, the act by a driver of turning on his driver app such that the 'car outline' appears) is not plying for hire, nor is it, in my view, making provision *in Brentwood* for the invitation or acceptance of bookings. That provision is made in London, where the Uber office is and where, as I understand it, their servers (which do the actual accepting of bookings) are. The app lets people in Brentwood know that such provision has been made, and they can avail themselves of it.
36. Please do not hesitate to get in touch if anything is unclear, or if there are matters arising.

Josef Cannon

8 March 2019

Cornerstone Barristers
London WC1R 5JH

This page is intentionally left blank

SITE PLAN ATTACHED

12 WORRIN ROAD, SHEFIELD, ESSEX, CM15 8DE

CONSTRUCTION OF A DETACHED HOUSE AND GARAGE

APPLICATION NO: 19/00134/FUL

WARD Shenfield

PARISH

CASE OFFICER Mrs Nikki Dawney 01277312500

Drawing no(s) relevant to this decision:

Site plan; Block & Sections; Proposed Floor; Proposed Elevations; Arboricultural Impact Assessment; Tree Protection Plan;

The application has been referred by Cllr Jan Pound, Cllr James Tumbridge and Cllr Louise Rowlands due to the number of objections that have been raised by local residents.

1. Proposal

The proposed dwelling and garage would be located to the rear of 12 Worrin Road. The dwelling would have an irregular footprint with an approximate depth of 14m and an approximate height of 8.8m. The dwelling includes design elements such as crown and catslide roofs, dormer and Velux windows and would be constructed of brick, render and plain tile roofing. The overall design aesthetic is similar to that of an Arts and Crafts dwelling. The front elevation of the dwelling be oriented towards Worrin Road with Worrin Place to the rear.

The dwelling would be accessed from Worrin Road via a track which runs along the common boundary with no.8. A single storey pitched roof garage would be located to the north of the front elevation with a maximum ridge height of 5.6m which would accommodate x1 vehicle.

2. Policy Context

The starting point for determining an application is the development plan, in this instance, the Brentwood Replacement Local Plan (RLP) 2005. Applications must be

determined in accordance with the development plan unless material considerations indicate otherwise. Relevant material considerations for determining this application are the following RLP policies, the National Planning Policy Framework (NPPF) 2019 and National Planning Policy Guidance (NPPG) 2014.

Policy CP1 General Development Criteria

Policies C5 and C6 TPO's and Landscaping

Policy T5 Parking - General

Local Plan Appendix 1: Extracts from Essex Residential Design Guidance

Local Plan Appendix 2: Vehicle Parking Standards

Local Development Plan:

The emerging Local Development Plan went through Pre-Submission (Publication Draft) Stage (Regulation 19) consultation between 5 February and 19 March 2019. The responses to the consultation are currently being assessed. Following this, the LDP will be submitted to the Secretary of State for an Examination in Public in Q3 or Q4 of 2019. Provided the Inspector finds the plan to be sound, it is estimated that it could be adopted by the Council in early/mid 2020.

The Brentwood Replacement Local Plan 2005 remains the development plan and its policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the National Planning Policy Framework (NPPF). Due weight should be given to them, according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given).

As the emerging plan advances and objections become resolved, more weight can be applied to the policies within it. At this stage there are outstanding objections to be resolved, nevertheless, the Local Plan Pre-Submission (Publication Draft) provides a good indication of the direction of travel in terms of aspirations for growth in the Borough and where development is likely to come forward through draft housing and employment allocations.

3. Relevant History

- 11/00260/FUL - Proposed Two Storey Side Extension, Single Storey Rear Extension, Carport To Side, Driveway Additions, Gates To Front Of Site, Amendment To Fenestration Pattern. APPROVED.

- 14/06366/PREAPP – construction of x4 dwellings. In principle supported due to existing backland development subject to volume, design, residential amenity and access.
- 18/01363/FUL - Construction of 2 detached dwellings. REFUSED due to the volume resulting in an intrusive and dominant built form and the effect upon the TPO Trees on site.

4. **Neighbour Responses**

47 letters of objection have been received. Objections relate to backland development which is of character and an over development of the site, residential amenity, loss of trees.

5. **Consultation Responses**

- **Arboriculturalist**

A number of the trees within the site are covered by TPO 15/1997.

The application is supported by an up to date Arboricultural Impact Assessment which considers post-development pressures on the trees within the site as well as immediate impacts on roots etc. A total of 20 trees and 2 groups are proposed to be removed. These comprise low quality Category C trees and 2 Category U trees. One Category U tree is a walnut which is covered by the TPO but which has already collapsed. The trees to be removed are generally small specimens which have limited amenity value. The plan provides the shading arc for the retained trees which confirms that there will not be excessive shading of the new dwelling caused by the retained trees. The plan shows that the retained trees can be adequately protected during construction.

I have inspected the trees on site and agree with the conclusions contained within the report.

There are no objections to the proposed scheme on arboriculture grounds.

- **Highway Authority**

A site visit has been previously undertaken and the information that was submitted in association with the application has been fully considered by the Highway Authority.

Although the dimensions of the proposed garage do not meet the recommended dimensions as contained in the Parking Standards Design and Good Practice Supplementary Planning Document dated September 2009, the dwelling has space

for two vehicles to park and turn within the site. The host dwelling retains adequate room for off street parking for two vehicles.

The existing vehicle access to the south west of the site frontage will be utilised as a shared access for the dwellings. Subject to the conditions listed at the end of this report, vehicle passing manoeuvres can take place within the curtilage, therefore: From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to conditions.

6. Summary of Issues

Location

Worrin Road is located within the built up area of Shenfield and offers a linear pattern of development characterised by detached dwellings which vary in style and footprint. Although linear to the highway, the rear gardens to the north east of Worrin Road triangulate. No's.8 and 12 have the deepest rear gardens by a significant degree. Due to the topography of the area all gardens on the south have a substantial downward gradient which is most evident at no's 8 and 12. The land falls toward an existing backland development to the side and rear of dwellings forming Worrin Place.

Principle of development

Many objections to the scheme refer to the 'backland' nature of the development. The NPPF supports sustainable development within a 'built up' residential area such as this and due to the existing backland development forming the cul-de-sacs known as Worrin Close and Worrin Place to the rear of the site and given the proximity of the proposed development to it, a visual link is created here which would not be out of character with the pattern of built form in the area. However, Local Plan policies and guidance such as those outlined above with specific reference to design, impact to residential amenity and parking would need to be satisfied.

Design and siting

Local Plan policy CP1 point (i & iii) requires that all development would not have a detrimental impact on visual amenity and have a high standard of design.

Objections have been raised relating to the size and design of the proposed dwelling leading to an over development of the site which is out of keeping with the local character. Dwellings surrounding the site are detached, two storey dwellings with an eclectic aesthetic. The proposed dwelling would be similar in size, scale and footprint and offers a design ethos which incorporates many local design characteristics with a material palette to match. The proposed garage is similarly well designed and although below the size standard of a double garage would offer space for one vehicle and domestic storage which would negate the need for further outbuildings. As such, the proposed development would offer a high standard of design which responds well to the character and appearance of the area which conforms to planning policy CP1.

The proposed dwelling is located to the rear of 12 Worrin Road and due to the substantial downward gradient here, is significantly below the ridge of 12 Worrin Road and would not be viewed from this street scene. The dwelling would however, be partially viewed from Worrin Place to the rear. The proposed dwelling shares a similar land level to no.3 Worrin Place and although largely obscured by preserved trees which line the common boundary, would offer a visual connection in keeping with the linear built form of Worrin Place.

Residential amenity

In terms of residential amenity, CP1 point (ii) requires that all new development would not have an unacceptable detrimental impact on the general amenities of nearby occupiers or the occupiers of the proposed development by way of overlooking, lack of privacy, overbearing or general disturbance.

The proposed dwelling would be located approximately 40m from 12 Worrin Road, the single storey garage some 35m. Similar distances of separation exist from no.8 and no.14. These measurements conform to the suggested distance of separation of dwellings outlined in the Residential Design Guidance which is an appendix to the Local Plan. The proposed dwelling would be off set from the common boundary with 3 Worrin Close to the rear by approximately 10m. The dwelling would be offset from the common boundaries of no.14 by approximately 11m and no.8 by approximately 5m. These distances would protect the host and neighbouring dwellings from an overbearing form of development conforming to policy CP1 and Residential Guidance.

The distances outlined would also protect these dwellings from overlooking. In addition, the dwelling has been oriented so that minimal fenestration is located in the front elevation towards Worrin Road. A larger expanse of fenestration is located within the rear elevation towards the side elevation of 3 Worrin Place which has a blank flank wall and a good level of verdant screening. The side elevation towards no.14 also has limited fenestration and benefits from verdant screening. It is noted that the larger expanse of glazing at ground and first floor is located in the side elevation towards no.8 Worrin Road. However, the 5m distance of separation from the common boundary combined with the downward gradient of the site and the substantial Oak Tree, which is subject to a TPO and located directly between the proposed windows and the rear garden of no.8 would prevent overlooking and a lack of privacy compliant with policy CP1.

Overall, the distances of separation, configuration of fenestration and orientation of the proposed dwelling combined with the substantial downward gradient of the immediate area would protect the amenity of the surrounding dwellings in accordance with Local Plan policy CP1 (ii).

Landscaping

Planning policy CP 5 and CP6 relates to the retention and provision of landscaping and natural features in development and Tree Preservation Orders. The rear of 12 Worrin Road is lush and verdant in nature and many of the trees that align the common boundaries are subject to TPO's and which provide a distinctive character to the area as a whole. As such, the Council Arboriculturalist comments above are a key consideration when determining this application.

The Arboriculturalist concluded that many of the trees to be removed are generally small specimens which have limited amenity value. The plan shows that the retained trees can be adequately protected during construction and provides the shading arc which confirms that there will not be excessive shading of the new dwelling caused by the retained trees. As such the submission offers sufficiently up to date information which adequately demonstrates that the lush, verdant nature of the site which is distinctive to the character of the site and an important element of residential amenity would be retained and protected conforming to policy CP5 and CP6 of the Local Plan.

Amenity space

Local Plan Appendix 1: Extracts from Essex Residential Design Guidance requires this form of residential dwelling to provide 100m² of private residential amenity space. The current proposal offers 360m², and 500m² clearly exceeding this standard. The space is easily accessible, usable and would receive good levels of daylight throughout the year.

Access and Parking

The dwelling would be accessed from Worrin Road via an entrance adjacent to no's 8 and no.12. As such, the Council Highway Engineers comments above are a key consideration when determining this application.

The Highways Engineers have concluded that although the dimensions of the proposed garages do not meet the recommended dimensions as contained in the Parking Standards Design and Good Practice Supplementary Planning Document dated September 2009, each dwelling has space for two vehicles to park and turn within the site. The host dwelling retains adequate room for off street parking for two vehicles. The existing vehicle access to the south west of the site frontage will be utilised as a shared access for the dwellings. Subject to conditions listed below vehicle passing manoeuvres can take place on this the private access road and this does not form a basis of refusal.

In addition, objections have been raised due to the proximity of the road to an existing cedar tree. These objections are not supported by the Arboriculturalist who raises no concerns or objections to the closeness of the access to this particular tree. As such, the proposed development, subject to conditions complies with council policy T5 of the Local Plan.

Others Matters

Other matters such as the history of the site and land drainage have been raised by objectors during neighbour consultation and are addressed in turn below:

Land drainage

Due to the topography of the site it has been noted by objectors that this particular area, to the rear of no.8 and no.12 Worrin Road is subject to flooding during inclement weather. No details of water drainage have been supplied by the applicant, but this information can be requested via condition should the scheme be approved. An appropriate condition is listed at the end of this report.

Planning history

Planning history relating to the existing and any proposed built form on the site and surrounding area is a material consideration to any planning application. However, the personal circumstances of historic applications are not. Equally land ownership and potential joint agreements for development are not a material planning consideration. The current submission should be assessed on its own merit with direct attention being paid to the issues outlined in the points forming the bulk of this report.

7. Recommendation

That the application be APPROVED subject to the following conditions:

1 TIM01 Standard Time - Full

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

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

2 DRA01A Development in accordance with drawings

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

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

3 SIT02 Site levels - as illustrated

The relationship between the height of the building hereby permitted and adjacent buildings shall be as indicated on the approved drawing.

Reason: To safeguard the character and appearance of the area and the living conditions of nearby residents.

4 U29724

No development shall take place before a Drainage Impact Study, a surface water drainage scheme for the site (based on sustainable drainage principles SuDS) and

as assessment of the hydrological and hydro geographical context of the development, has been submitted to and approved in writing by the Local Planning Authority. The surface water scheme shall be implemented before the first occupation and/or use of the development and be constructed in accordance with the approved plans.

Reason: To ensure that current flooding to properties to the rear of the development is not exacerbated.

5 CON1 Construction Method Statement

No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- v. wheel washing facilities
- vi. measures to control the emission of dust and dirt during construction
- vii. a scheme for recycling/disposing of waste resulting from demolition and construction works
- viii. hours of working and hours during which deliveries may be taken at the site

Reason: In the interests of highway safety, visual and neighbour amenity.

6 U29725

The development shall not be occupied until details of the treatment of all boundaries including drawings of any gates, fences, close boarded fences to the rear, walls or other means of enclosure have been submitted to and approved in writing by the local planning authority. The approved boundary treatments shall be completed prior to the first occupation of the development and shall thereafter be permanently retained and maintained.

Reason: In the interests of safeguarding the character and appearance of the area and living conditions of adjacent occupiers.

7 RESL01 No PD for extensions (new dwellings)

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), the dwelling hereby permitted shall

not be extended or enlarged in any way without the prior grant of specific planning permission by the local planning authority.

Reasons

To safeguard the living conditions of the occupiers of neighbouring dwellings.

8 RESL06 No PD for outbuildings

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order) no development falling within Schedule 2, Part 1, Class E of that Order ('buildings etc incidental to the enjoyment of a dwellinghouse') shall be carried out without the prior grant of specific planning permission by the local planning authority.

Reasons: To safeguard the living conditions of the occupiers of neighbouring dwellings.

9 LAN02 Landscaping - full details not submitted

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

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

10

Notwithstanding the width of the entrance to the shared driveway as shown on the block plan, prior to first occupation of the proposed dwelling, the width of the proposed entrance directly at the back of the footpath shall be widened to 5 metres.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety.

11

At no point shall gates be provided at the shared vehicular access at the highway boundary. The access shall remain open and free for use thereafter.

Reason: To give vehicles using the access free and unhindered access to and from the highway in the interest of highway safety.

12

No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the carriageway.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety.

13

The Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to occupation and retained at all times.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity.

14

Prior to first occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack per dwelling, for sustainable transport, approved by Essex County Council (to include six one day travel vouchers for use with the relevant local public transport operator).

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport.

Informative(s)

1 INF02 Reason for approval (objections)

Reason for approval: The proposal would accord with the relevant policies of the development plan as set out below. The Council has had regard to the concerns expressed by residents but the matters raised are not sufficient to justify the refusal of permission.

2 U06240

The following development plan policies contained in the Brentwood Replacement Local Plan 2005 are relevant to this decision:

Policy CP1, C5, C6, T5 and Local Plan Appendix 1: Extracts from Essex Residential Design Guidance Local Plan Appendix 2: Vehicle Parking Standards National Planning Policy Framework (NPPF) 2019 and NPPG 2014.

3 INF21 Approved Without Amendment

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.

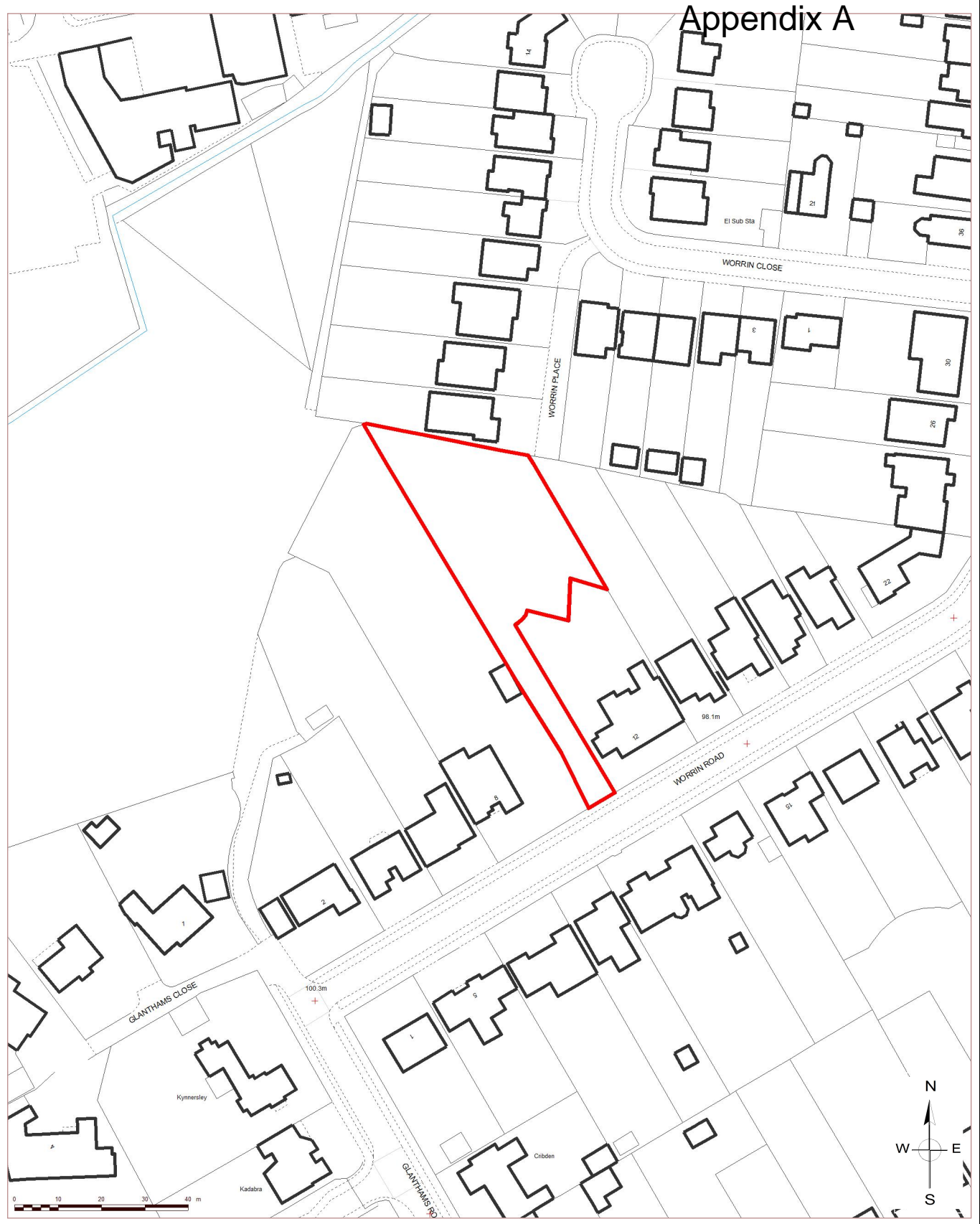
4 U06239

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, Unit 36, Childerditch Industrial Park, Childerditch Hall Drive, Brentwood, Essex, CM13 3HD

Appendix A – Site Map

Appendix A



Title : 12 Worrin Road, Shenfield, Brentwood, Essex

19/00134/FUL

Scale at A4 : 1:1250

Date : 12th June 2019

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



© Crown copyright and database rights 2018 Ordnance Survey 100018309

This page is intentionally left blank

SITE PLAN ATTACHED

ESSEX POLICE & LA PLATA HOUSE LONDON ROAD BRENTWOOD ESSEX CM14 4QJ

APPLICATION FOR APPROVAL OF RESERVED MATTERS FOR SCALE, LAYOUT, APPEARANCE OF BUILDINGS, ACCESS, AND LANDSCAPING DETAILS PURSUANT TO CONDITION 1 OF OUTLINE PERMISSION 16/01805/OUT FOR (OUTLINE APPLICATION FOR DEMOLITION OF EXISTING POLICE STATION BUILDINGS, CONVERSION OF LA PLATA HOUSE TO RESIDENTIAL USE AND DEVELOPMENT OF UPTO 70 NEW RESIDENTIAL DWELLINGS (ALL MATTERS RESERVED) FOR THE CONVERSION OF LA PLATA TO 4 X DUPLEX DWELLINGS AND CONSTRUCTION OF TWO RESIDENTIAL BLOCKS OF FLATS BETWEEN 3 AND 4 AND HALF STOREYS CONSISTING OF 22X 1 BED, 36X 2 BED AND 8 X 3 BED FLATS, WITH ASSOCIATED LANDSCAPING, PARKING AND ACCESS.

APPLICATION NO: 18/01790/REM

WARD	Brentwood West	8/13 WEEK DATE	19.02.2019
PARISH		POLICIES	
CASE OFFICER	Ms Tessa Outram	01277 312500	

**Drawing no(s)
relevant to this
decision:**

WH194_18_P_30.30 P2; Remediation Method StatementV1; Built Heritage StatementApril2019; Ground Investigation ReportV2; transport AssessmentApril2019; Environmental Noise Assessment ReviewMarch2019; WH194_18_P_30.20/P3; WH194_18_P_25.31/P1; WH194_18_P_25.30/P3; WH194_18_P_35.01P4; WH194_18_P_35.02P2; WH194_18_P_35.03P2; Arboricultural Impact Assessment Addendum; Topographical SJG2538 1/3; Topographical SJG2538 2/3; Topographical SJG2538 3/3; accommodation ScheduleB; Phase I Land Contamination Assessment; Environmental Noise Assessment; WH194_18_P_10.00P2; WH194_18_P_10.01P2; WH194_18_P_10.02P3; WH194_18_P_10.03P6; WH194_18_P_10.10P6; WH194_18_P_25.10P6; WH194_18_P_25.20P5; WH194_18_P_25.21P5; WH194_18_P_25.22P5; WH194_18_P_30.10P6; WH194_18_P_30.11P6; ST-18137 D30108; WH194_18_P_100.03P3; WH194_18_P_100.04P3; WH194_18_P_100.05P3;

The application is a major development of strategic importance to the Borough and therefore the application has been referred to members for a decision.

1. Proposals

This application seeks approval of details relating to the access, appearance, layout, scale and landscaping, reserved as part of the outline planning permission reference 16/01805/OUT for the demolition of an existing police station buildings, conversion of La Plata House to residential use and development of up to 70 new residential dwellings which was granted outline planning permission, subject to 18 conditions and a s106 agreement on 29th August 2018.

The proposal has been revised during the application process to include alterations to the design, appearance, layout, landscaping and access of the originally submitted scheme. The proposal consists of the demolition of four existing buildings/structures, the construction of two new residential blocks (Block A and Block B) forming 66 units and the conversion of La Plata House into 4 residential units with associated parking, cycle parking, refuse stores, landscaping, play space and pedestrian and vehicular accesses.

Block A fronts London Road, is between three and four stories in height and contains 13 residential units (5 x 2 bed and 8 x 3 bed), accessed by two internal cores and served by a refuse store to the east of the block. Block B is between four and four and a half storeys in height and is of an L-shaped layout containing 53 units (22 x 1 bed and 31 x 2 bed) with under croft parking, cycle and refuse stores. La Plata House is to be retained and converted into 4 residential duplexes.

Vehicular parking within the development would be provided through a mix of undercroft parking and communal parking areas as well as secure resident and visitor cycle parking.

2. Policy Context

The starting point for determining an application is the development plan, in this instance, the Brentwood Replacement Local Plan (RLP) 2005. Applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Relevant material considerations for determining this application are the following RLP policies, the National Planning Policy Framework (NPPF) 2019 and National Planning Policy Guidance (NPPG) 2014.

RLP Policy: CP1, T2, T5, H6, PC4, C5,

Local Development Plan:

The emerging Local Development Plan went through Pre-Submission (Publication Draft) Stage (Regulation 19) consultation between 5 February and 19 March 2019. The responses to the consultation are currently being assessed. Following this, the LDP will be submitted to the Secretary of State for an Examination in Public in Q3 or Q4 of 2019. Provided the Inspector finds the plan to be sound, it is estimated that it could be adopted by the Council in early/mid 2020.

The Brentwood Replacement Local Plan 2005 remains the development plan and its policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the National Planning Policy Framework (NPPF). Due weight should be given to them, according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given).

As the emerging plan advances and objections become resolved, more weight can be applied to the policies within it. At this stage there are outstanding objections to be resolved, nevertheless, the Local Plan Pre-Submission (Publication Draft) provides a good indication of the direction of travel in terms of aspirations for growth in the Borough and where development is likely to come forward through draft housing and employment allocations.

3. Relevant History

- 16/01805/OUT: Outline application for demolition of existing police station buildings, conversion of La Plata House to residential use and development of up to 70 new residential dwellings (All matters reserved) -Approved (Subject to Section 106 concerning developer contribution for education and affordable housing obligations).

4. Neighbour Responses

This application has been advertised by way of individual neighbour notification letters, press advert and public site notice which has been displayed nearby. Detailed below is a summary of the neighbour comments, if any received. The full version of each neighbour response can be viewed on the Council's website via Public Access at the following link: <http://publicaccess.brentwood.gov.uk/online-applications/>

Seven neighbour representation letters were received; 5 of which objected to the proposed development. 2 additional objection letters were received from the same

parties in response to the revised submission. The concerns arising from the objections letters included:

- Noise and anti-social behaviour from new access
- New access on Westbury Drive is unsafe and lead to accidents
- Increase on-street parking
- Development should provide new affordable houses not flats
- 4 storey block of flats is unsightly
- Development will impact value of property
- Overlooking from Block A and loss of privacy
- There should not be an access next to my property
- Design and height is not in keeping with Brentwood
- Impact on wellbeing to family
- Disregard for occupiers during construction/demolition

5. Consultation Responses

Detailed below is a summary of the consultation responses, if any received. The full version of each consultation response can be viewed on the Council's website via Public Access at the following link:

<http://publicaccess.brentwood.gov.uk/onlineapplications/>

- **Environmental Health & Enforcement Manager:** Housing and Environmental Health has no objection to this application. I have studied the Noise Impact Assessment and cannot fault the methodology used or the attenuation measures suggested regarding the fabric of the building.
- **Anglian Water Services Ltd:** No comments received.
- **County Archaeologist:** No comments received.
- **Schools & Education:** No comments received.
- **Basildon Fire Station:** From the information available it appears that Fire Service vehicular access may have to be extended into the routes currently identified as pedestrian ways to meet basic Building Regulation and Fire Service requirements as specified in Approved Document B Volume 2 section B5; therefore provided such requirements are met or other acceptable arrangements are offered then this Authority has no objection to the proposal. As the development involves flats more detailed observations on access and firefighting facilities for the Fire Service will be considered at Building Regulation consultation stage should the application be approved.
- **Operational Services Manager:** No comments received.

- **Thames Water Development Planning:** No comments received.
- **ECC SUDS:** Having reviewed the planning application and the associated documents which accompanied the planning application, we have identified that this application is not relating to drainage and therefore we shall have no further comments accordingly in relation to this application.
- **Open Space Strategy Coordinator:** No comments received.
- **Housing Services Manager:** No comments received.
- **Arboriculturalist:** There is no objection to the revised scheme on landscape grounds.
- **Design and Historic Buildings Officer:** Layout: There was previously objection from Urban Design in respect of the proposed Blocks; their siting, depth of Block A, overlapping of both forms as well as matters concerning defensible space, entrances and landscaping. From my assessment of the revised drawings, it is evident design development has been undertaken to resolve this key objection.

Scale and appearance: There has been design development since the original submission, including the architectural language being rationalised; this results in a more mixed roofscape, with part pitched roofs and setbacks. Block B (south range) is of notable scale but replaces a building of high volume with less articulation, I therefore find that the perception of bulk when experiencing the spaces within the development at pedestrian level is at an acceptable limit. There are no long protected views where this level of scale would result in harm to the Brentwood Town Centre Conservation Area and significant Church spires in the wider context of the site.

In terms of appearance and detail (see Design and Access Statement p. 28 onwards) the former random selection of brickwork has moved towards the East Anglian palette as recommended, but I would like to have further discussion on this point should this application be recommended for approval, red clay should be more dominant here. It is positive to see a level of detail intent for brickwork, reveals and balconies which was not sufficiently detailed in the original submission. There has been a hierarchy developed in material and detail language and this is accepted (See DAS p. 35 as an example).

La Plata House: Further to our discussions I will be submitting a recommendation to Historic England for the assessment of La Plata House in terms of a National Designation. I have previously advised the Council and the applicant, this building holds sufficient architectural interest and significance to be at the very least applied to the emerging Brentwood Local List, at present this building is

regarded as and has been assessed as a Non-Designated Heritage Asset (NPPF para. 197)

In terms of the current proposals for La Plata House, a revised Heritage Assessment has been submitted along with revised plans. Whilst the Heritage Assessment submitted correctly identifies a level of harm there is opportunity to find a Heritage Balance here given the remedial work and level of repair. However, at present the balance is weighing up as harmful and against the proposals, there may be detailed conditions and phasing which would allow time for further preapplication around La Plata, either way, more detail is required. I advised in my earlier letter that a full schedule of repairs should be submitted, including intent for thermal upgrading and acoustic measures prior to works being carried out. I would be pleased to discuss details for Conditions and review any additional information submitted prior to your recommendation.

- **Highway Authority:** Having considered the information submitted with the planning application, and given the principle of development has already been deemed acceptable as part of application no 16/01805/OUT, the Highway Authority has no objection to this proposal.

6. Summary of Issues

The principle of the development has been established by granting the outline planning permission (ref. 16/01805/OUT). This application relates to reserved matters relating to scale, layout, appearance, access and landscaping and as such the main considerations in the determination of this proposal are; design and impact on the character and appearance of the area, impact on the non-designated heritage asset (La Plata House), residential amenity, living conditions, landscaping and parking and highway considerations.

Design, Appearance and Scale

Significant design development has been undertaken since the original submission, to include: a reconfiguration of massing incorporating a mixed roofscape with integral balconies and roof terraces, a reduction in width and height of the residential blocks and revised elevational treatment and material palette. The revised scheme consists of two residential blocks and the retention of La Plata House.

Block A fronts London Road and is three stories in height at the eastern end of the site and steps up to 4 storeys towards the main entrance as a result of the decreasing land levels. There is an improved architectural rhythm to the elevation which reflects the width of the paired dwellings along London Road and a varied roofscape to include strong gable pitches; in keeping with the Essex vernacular has been incorporated. The appearance in the street scene is appropriate with the surrounding context and the

height and scale of Block A would not appear overbearing or of a scale and mass that would appear unduly prominent when viewed from London Road.

Block B is 4^{1/2} storeys with the lower ground floor built into the ground level incorporating an undercroft parking area. The scale reduces to four storeys to the west and north towards the smaller Block A building and La Plata House. Whilst Block B is of a significant scale, the highest element of the building is positioned within the centre of the site, a considerable distance from the boundaries and surrounding development. Furthermore, the building replaces the former Police Station Building which is of a large volume and bulk with less articulation of massing, compared to the new building form and is situated closer to the eastern boundary. Therefore, a large scale building in this improved position would not be unacceptable at pedestrian level when viewed from London Rd or Westbury Drive. The Design Officer has commented, there are no long protected views where the level of scale of Block B would result in harm to the Brentwood Town Centre Conservation Area or any significant Church spires in the wider context of the site.

In terms of appearance, the design language has been developed significantly to incorporate features such as balconies, brickwork, reveals, entrances and landscaping into the design of the development which has resulted in a comprehensive and well considered scheme. The brickwork consists of an East Anglian material palette which is appropriate; the Design Officer has commented red clay should be more dominant however this can be addressed by conditions.

The proposal includes the retention of La Plata House which is two storeys in height. The distance between La Plata House and the neighbouring properties to the south is considerable and no additional development is proposed to the east, south or west of the building. The external appearance of La Plata would remain unchanged apart from minor alterations to windows and doors.

Overall, the scale, height and appearance of the development is considered to be acceptable and would not result in detrimental harm to the character and appearance of the surrounding area in accordance with policy CP1 (i) and (iii) of the local plan and the design principles of the NPPF.

Layout

Block A now conveys a linear plan form on the main route of the London Road providing an enhance street frontage with a more appropriate setback to allow greater landscaping to its frontage and a better relationship with the adjacent dwellings on London Road. Block B has moved further back into the plot and the western wing has been reduced to improve the relationship with La Plata House and enhance views of La Plata House from the entrance of the site to promote better placemaking.

The layout retains a large area of communal open space around La Plata House and within the courtyard area between Block A and B, with some external parking spaces

along the central access road of the site. The remainder of parking is located under Block B, as such the presence of vehicles will not dominate the site. The layout is informed by considered architectural detailing and landscaping which defines clear way-finding within the site and to building entrances.

The layout of unit results in a housing mix that contains an appropriate amount of 1-2 bed units, in accordance with policy H6 of the local plan and includes an acceptable proportion of affordable housing units. The revised layout also includes no single aspect north facing units and 56% of units will be dual aspect, which will greatly enhance the living accommodation to be provided.

The Design Officer considers the revised layout of the site to be acceptable and the Highway Authority have raised no objection to the layout proposed.

Impact on La Plata House

Since granting the outline permission La Plata House has been recommended to Historic England for Listing as it is a building of historic significance and merit. However, it is currently considered by the Council as a non-designated heritage asset with a degree of protection. The proposal seeks to retain La Plata House which is very positive feature of the scheme. A heritage assessment has been submitted and a sensitive approach by the developer has been undertaken for the conversion of the building to 4 residential units. The Design and Historic Building Officer has commented that the heritage assessment submitted is correct in identifying areas of harm and positive remedial work and repair that will be made; therefore a level of harm could be justified in the heritage balance. However, the drawings submitted at present lack detail and do not fully reflect the recommendations of the applicants own Heritage assessment to support the loss of some historic fabric.

La Plata House at present is not a listed building or locally listed and therefore is not subject to the same protection as a designated heritage asset. Paragraph 197 of the NPPF considers that any harm or loss to a non designated heritage asset should be a balanced judgment assessed against the harm caused and the significance of the building. In this instance, the principle of the conversion is accepted, and it is considered the issues raised by the Design and Historic Buildings Officer could be overcome by additional detailing via condition to ensure any harm to La Plata House is appropriately mitigated. Overall it is considered the layout of the units could be designed in a way that would not amount to a level of unnecessary harm upon the Non-Designated Heritage Asset. Subject to such a condition, no objection is raised in this regard.

Impact on Neighbouring Occupiers

The site is adjacent to residential dwellings along the eastern boundary of the site and The Beeches care home to the west. The revised scheme has sort to mitigate any overlooking brought about by the layout and position of blocks A and B to the residential

properties and gardens to the east. This has primarily included the repositioning and redesigning of balconies and window placement.

The revised layout of Block B would not result in any material overlooking to No.18 Westbury Road; the balcony placement of units would direct views away from the flank of the dwelling and private amenity area of its rear garden. Views towards the rear end of the garden would amount to distances of 35 metres which is sufficient as to not amount to material overlooking or a loss of privacy. Furthermore additional screening by the trees proposed along the eastern boundary would further mitigate any perceived overlooking from any bedroom windows and balconies of units. The units along the eastern elevation of Block B facing the block of 4 flats No.25-31 Westbury Road retains distances in excess of 25 metres from the windows and balconies. The existing first floor flank windows of the flats facing the development are largely obscure glazed or and the ground floor flank windows would be screened by the boundary treatments proposed. Given this and the sufficient distance between the development and the flats it is considered the development would not lead to a degree of overlooking that would be unacceptable.

The scale and height of Block B is significantly larger than the two storey residential dwellings on Westbury Drive; however the position of Block B is a sufficient distance from the Westbury Road properties to amount to an overbearing impact, loss of light or outlook.

Block A is positioned at a lower ground level than the adjacent residential building No.158 and therefore will not be greater in height and a distance of between 7 and 8.5m will be retained between the two buildings. It is not considered Block A would therefore amount to an overbearing impact or loss of outlook that would be detrimental to the living conditions of the occupiers. Furthermore, the position of Block A in relation to the sun path would not result in any material overshadowing or loss of light to No.158. In terms of overlooking; no flank windows or balconies are proposed along the eastern flank wall of Block A or to the rear of the block within the units adjacent to No.158 High St. The projecting balconies to the front of the block would overlook the street scene and public realm and therefore not amount to any degree of material overlooking to No.158 or other High St properties.

The 4 units within La Plata House would not amount to any material harm to the amenity of the existing adjoining residents in La Plata Grove or The Beeches care home and would be no worse than the existing situation.

In terms of noise and disturbance, the pedestrian access onto Westbury Drive would result in increased footfall and may lead to some additional noise. However, it is not anticipated the level of noise from pedestrians would be unacceptable for a residential street. No objections have been raised by Environmental Health or considered unacceptable in the noise impact assessment submitted. Furthermore, the access would be naturally surveillance by both the existing dwellings on Westbury Drive and the number of apartments within Block B facing east and is therefore not anticipated to

amount to issues of anti-social behaviour that would cause significant disturbance to existing residents. The service access to Block A would only be utilised by refuse services when required and will therefore not amount to significant noise or disturbance to the adjacent occupier of 158 London Road.

Overall it is considered the proposal would not result in material harm to the living conditions of the neighbouring occupiers in accordance with policy CP1 (ii) of the local plan and the provisions of the NPPF.

Living Conditions of Future Occupiers

In terms of dominance and an overbearing impact, it is evident that the proposed residential blocks have been carefully sited to ensure that the new units do not result in any significant or material dominance or an overbearing impact to each other or amount to a material loss of light, outlook or overshadowing. The units within Block A that are most adversely affected in terms of overshadowing are all dual aspect which will mitigate any harm in this regard.

In terms of overlooking, the development has been designed to minimise overlooking as much as possible. In a large residential development of this nature a degree of overlooking is to be expected and the distances between dwellings do not always meet the guidance in the local plan. However, in this instance, the window and balcony placement between block A and B has been carefully considered and would not amount to any significant inter overlooking between units. Overall it is considered that the layout proposed would not result in material overlooking or loss of privacy to the new dwellings, subject to a condition for details of a privacy screen to the balconies/terraces of a small number of the units.

In terms of amenity provision, all units will be provided with a private balcony or roof terrace with a minimum size of 5sq.m which is considered to be acceptable within that recommended in the appendices of the Local Plan. The drawings indicate the 4 units within La Plata House would have a 'private garden' however given the comments of the Design and Historic Buildings Officer a demarcated terrace area will be more appropriate which can be detailed via condition. La Plata House is surrounded by a large area of communal open space and there are further outside amenity spaces for residents within the remainder of the development. In addition an area of play space for these larger family units is available within the site. As such, it is considered that the shortfall of private amenity space for the duplexes would be overcome by the alternate outside amenity spaces available to the future residents.

Seven of the units are marginally below the minimum size requirements of the technical housing standards (nationally described standards). However the shortage is minimal (max 0.4sq.m), as such all units are considered to be of an adequate size and layout that could provide a good standard of living accommodation. Adequate cycle and refuse stores are provided to all units.

In summary, subject to conditions the design and layout of the development is acceptable and will provide adequate living conditions for any future occupiers of the development.

Landscaping

A landscape strategy and a scheme of planting has been submitted with this reserved matters application. Arboricultural reports and surveys have also been undertaken and submitted. The revised proposal sees the footprint and position of Block A made longer/narrower and set further back from London Road which will result in the loss of 2 category B trees at the site entrance. The Council's arboriculturalist has commented that whilst these trees make some contribution to the streetscape, the current health of the trees significantly reduces their amenity value and therefore recommends their retention is not outweighed by the benefits of a better designed building and new planting that will include a new category B tree at the entrance of Block B. The revised positioning of Block A also increases the gap between the Block A building facade and the canopy of the category A Oak tree from 2.5metres to 7.5 metres, which will significantly increase the degree to which the tree can coexist with its new surroundings and the set back of Block A from London Road will allow more space for new planting beside the road which will enhance the setting.

Nearly all the existing boundary vegetation will be retained along with a large belt of vegetation towards to the south around La Plata House. Approximately 40 new trees are proposed as part of the development along the eastern boundary with Westbury Drive, to the London Road frontage and within the communal areas of Block A and Block B which will soften the appearance of the residential buildings and enhance the streetscape. Further shrubbery planting is proposed throughout the site and a native mix hedge is proposed around most of the site boundary which will enhance biodiversity, soften the appearance of the development and provide additional screening. The Council's Arboriculturalist has raised no objection to the landscaping scheme or schedule of planting; the landscaping proposed is therefore considered to be acceptable and no objection is raised on this basis.

Access, Parking and Highway Considerations

It has already been established at outline stage that overall the proposal has an acceptable vehicular access point and sufficient level of car parking. The proposed scheme will utilise the existing access point of the site to include a single vehicular access point from London Road, a pedestrian and cycle access onto the corner of Westbury Drive and a service access pathway from London Road to the Bin Store of Block A. The highway authority has raised no objection to the accesses or level of parking proposed.

Resident objection however has been raised to the pedestrian access onto Westbury Drive. The pedestrian access would utilise an existing gated access way which was relatively unused by the police. In planning terms a pedestrian access point here will

significantly improve permeability through the site. The access will provide a good pedestrian and cycle link towards Brentwood railway station, offering enhancing connectivity to public transport links and provide viable transportation alternatives and reduce car usage. This is an important link given the established reduced parking provision for this site and in the interest of promoting sustainable transportation; in accordance with Paragraph 102 of the NPPF which seeks to ensure opportunities are taken to promote walking, cycling and public transport use.

In terms of safety, whilst the section of Westbury Drive that the access enters onto is not adopted highway land, informal advice of the highway authority has been sought in regard to visibility and safety of highway users. Furthermore, alternative locations of an access further south along Westbury Drive have been explored and assessed during the application process.

Following review, it is considered that the proposed position offers the most suitable and safe position by which to incorporate the pedestrian access. The exit point, located on the outside of a bend in the road provides the best vantage point for visibility, allowing for safe access across the highway. Moving the access further south would mean more pedestrians walking around the blind corner, obscured from the view of vehicles emerging from no 18. The applicant has commented that the access would be controlled by a secure entry gate and would only be utilised by residents of the development. This would not only provide security, but would also act as a device to slow pedestrian / cycle egress towards the highway, meaning that residents would by nature exit carefully and at slow speed. The developer is also willing to engage with Essex Police who own this section of the highway to improve the kerb and footway. In summary the pedestrian and cycle access in its proposed location is considered acceptable and the most suitable place in terms of safety and efficiency; any harm brought about to residents could be mitigated via condition and would not be a reason to refuse the development.

The access which is situated between Block A and number 158 High St is not anticipated to amount to significant disturbance to the occupiers. The access here has been designed in such a way that it will not provide a pedestrian cut through to London Road and will improve servicing to the site.

In terms of parking, Brentwood Borough Council's adopted parking standards state that 'for main urban areas' a reduction to the vehicle parking standard may be considered, particularly for residential development. The outline permission established that a reduced parking standard had been applied and the site has good access to frequent and extensive public transport, as well as the town centre's facilities and car parks.

The proposal will provide 59 car parking spaces and 177 cycle parking spaces. A transport assessment has been submitted and a tracking exercise has been undertaken to demonstrate all spaces within the undercroft parking layout are of an appropriate size and useable as to not amount to increased issues of on-street parking. The scheme also over provides in terms of cycle parking which goes some way to make up for the

shortfall in vehicles spaces. The highway authority has raised no objection to the level of parking and parking layout proposed, the site is considered to be a sustainable location and the amount of parking is acceptable for the development.

A number of conditions relating to highway and parking considerations have been attached to the outline permission 16/01805/OUT to include a construction method statement, provision of car parking spaces, size of parking spaces, cycle parking, improvements to the existing bus stops and residential travel information packs; as a result of this the Highway Authority have not recommended any new conditions. However, it is considered further detailing of the pedestrian access onto Westbury Drive is required to ensure a suitable access way and secure gated entry system is established prior to its use to ensure that any noise or disturbance to residents is satisfactorily mitigated and adequate and safe footways are provided.

Overall the access of the development and parking provision is considered to be acceptable in accordance with policy T2 and T5 of the local plan and the adopted parking standards.

Other Matters

The principle of the development has already been accepted (ref. 16/01805/OUT) that this site can accommodate 70 dwellings and is of an appropriate density. The level of affordable housing proposed has also already been agreed and is subject to a S106 agreement. Likewise, flood risk, drainage, archaeology and ecology issues have already been considered and are subject to conditions.

Phase I and II contamination reports and a remediation method statement have been submitted; the Councils Environmental Health Department have no raised no objections on contamination grounds. Therefore no objections are raised provided the development is carried out in accordance with the recommendations of the submitted contamination documents.

It is considered a majority of the neighbour objections have been discussed in the report above. Planning should serve the public interest and therefore matters concerning property values and personal matters would therefore not amount to material planning considerations that would have any bearing on the determination of this application.

It was established as part of the outline application that 35% of the units would be affordable housing. This application details 13 units will be affordable rent and 12 units will be affordable home ownership. However, this matter is subject to agreement which will be considered by the outline condition and the s106 agreement and is therefore outside of the scope of this application for reserved matters.

Conclusion

The details submitted with this application in relation to the reserved matters; layout, scale, appearance, access and landscaping of outline planning permission ref. 16/01805/OUT are acceptable and as such this application is recommended for approval, subject to conditions.

7. **Recommendation**

The Application be APPROVED subject to the following conditions:-

1 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.

2 Architectural Details

No development above ground level shall be undertaken until additional drawings showing details of the proposed windows, doors, eaves, cills, vents and balconies of Block A and B to be used by section and elevation at scales between 1:20 and 1:1 as appropriate have been submitted to and approved in writing by the local planning authority. The development shall be carried out in strict accordance with the approved details.

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

3 Sample Panels

No development above ground level shall take place until sample panels of the proposed brickwork has been erected on site and subsequently been approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

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

4 Materials - Samples

Notwithstanding the details shown in the approved documents; no development above ground level shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

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

5 Surface Materials

Notwithstanding the details shown in the approved documents; no development above ground level shall take place until details of the surfacing materials of the shared access and parking areas shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

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

6 BOU01 Boundary treatment to be agreed (general)

The development shall not be occupied until details of the treatment of all boundaries including drawings of any gates, fences, walls or other means of enclosure have been submitted to and approved in writing by the local planning authority. The approved boundary treatments shall be completed prior to the first occupation of the development and shall thereafter be permanently retained and maintained.

Reason: In the interests of safeguarding the character and appearance of the area and living conditions of adjacent occupiers.

7 Landscaping Additional Details

The site shall be landscaped in accordance with the landscaping scheme indicated on the submitted drawings and specifications hereby approved. No development above ground shall be commenced until additional details of the location, number, species and size of all new trees, shrubs and hedgerows to be planted or transplanted and details of hard landscaped elements to include the stepped and wall planters has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall thereafter be completed during the first planting season after the date on which any part of the development is commenced or in accordance with a programme showing the extent of works associated with Blocks A and B and La Plata House, that has been agreed in writing by the local planning authority. Any newly planted tree, shrub or hedgerow, or any existing tree, shrub or hedgerow to be retained, that dies, or is uprooted, severely damaged or seriously diseased within five years of the completion of the development, shall be replaced within the next planting season with another of the same species and of a similar size, unless the local planning authority gives prior written consent to any variation.

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

8 Play Space Equipment

Prior to the occupation of the development details of the timber play space equipment hereby approved shall be submitted to and approved in writing by the local planning authority. The approved play equipment shall be completed prior to

the first occupation of the development and shall thereafter be permanently retained and maintained.

Reason: In the interests of safeguarding the character and appearance of the area and living conditions of adjacent occupiers.

9 Provision for refuse - details provided

None of the accommodation hereby permitted shall be occupied until the facilities to be provided for the storage of refuse for the relevant building have been provided in accordance with the details shown on the approved drawings. Thereafter the accommodation shall not be occupied unless those facilities are retained.

Reason: To ensure that adequate provision is made in order to safeguard the character and appearance of the area.

10 No PD to La Plata House

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), the four duplex units in La Plata House hereby permitted shall not be extended or enlarged in any way without the prior grant of specific planning permission by the local planning authority.

Reason: To safeguard the living conditions of the occupiers of neighbouring dwellings and in the interest of preserving the historic character of the non designated heritage asset

11 Privacy Screens

Privacy screens between units 7 and 12, 59 and 60 and 35,36 and 37 shall be provided prior to the occupation of the units in accordance with details which shall have had the prior written approval of the local planning authority. The privacy screens shall be retained as approved in perpetuity.

Reason: In the interests of the mutual privacy of the occupiers of the proposed flats.

12 Westbury Drive Pedestrian Access

The pedestrian access on Westbury Drive shall not be utilised until details of the proposed access have been submitted to and approved in writing by the local planning authority. Details shall include but not be limited to: areas of hardstanding, landscaping, footways, kerbs, boundary treatments, gates and lighting. The access shall be secure and constructed in accordance with the approved details in perpetuity and shall only be accessible by residents of the development hereby approved.

Reason: In order to provide a pedestrian route through the site in the interests of sustainable transport methods and in the interests of neighbour amenity and highway safety.

13 La Plata House - Garden Details

No works to La Plata House shall commence until details of the external private terrace area at the rear of the building has been submitted to and approved in writing by the local planning authority. The approved details shall be completed prior to the first occupation of the development and shall thereafter be permanently retained and maintained.

Reason: In the interests of safeguarding the character and appearance of the area, the setting of the heritage asset and the living conditions of occupiers of the proposed units.

14 La Plata House Additional Details

Notwithstanding drawings WH194_18_p_25.30, WH194_18_P_25.31, WH194_18_P_30.20; no works to La Plata House shall commence until detailed plans and specifications showing the internal layout of the units and all new partitioning, windows, doors, verges and cills to be used in the works hereby granted consent and drawn at a scale of 1:20 or 1:1 as appropriate have been submitted to and approved by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details.

Reason: To preserve the architectural and historic interest of the heritage asset and in the interests of visual amenity.

15 Watching Brief La Plata House

No works to La Plata House shall commence until a programme of works and construction specification for La Plata House has been submitted to and approved by the local planning authority, in order that the methodology and timing of the works approved by this permission are agreed, to allow for a watching brief involving the Design and Historic Buildings Officer from the local planning authority to be undertaken throughout the period of works; if required.

Reason: To preserve the architectural and historic interest of the heritage asset and in the interests of visual amenity.

16 Internal Materials - La Plata House

A schedule of all new, internal surface materials including walls, ceilings and floors and a schedule of all internal joinery indicating the proposed finish and decoration to be used shall be submitted to and approved by the local planning authority in writing prior to the commencement of any works to La Plata House.

Reason: To preserve the architectural and historic interest of the heritage asset.

17 No removal of fabric - La Plata House

Except where in accordance with the details approved under conditions 14,16 and 21; no part of the fabric of the building of La Plata House, shall be removed without the prior written approval of the local planning authority.

Reason: To preserve the architectural and historic interest of the heritage asset and in the interests of visual amenity.

18 Full Schedule of Repair – La Plata House

No works to La Plata House shall commence until a full schedule of repair including marked up plans and elevations showing the retention/re-use of door/doorcases, fire surrounds, decorative plaster work, paneling and so forth, has been submitted to and approved in writing by the Local Planning Authority.

Reason: To preserve the architectural and historic interest of the heritage asset.

19 Partitions – La Plata House

All new partitions shall be carefully scribed around the existing ornamental mouldings; unless approved in writing by the local planning authority.

Reason: To preserve the architectural and historic interest of the heritage asset.

20 Services and Fixings – La Plata House

No works to La Plata House shall commence until, the position, type and method of installation of all new and relocated services and related fixtures (for the avoidance of doubt this includes communications and information technology servicing), shall be specified and agreed in writing with the Local Planning Authority wherever these installations are to be visible, or where ducts or other methods of concealment are proposed. No new plumbing, pipes, soil-stacks, flues, vents or ductwork shall be fixed on the external faces of the building other than those shown on the drawings hereby approved. No new grilles, security alarms, lighting, security or other cameras or other fixtures shall be mounted on the external faces of the building other than those shown on the drawings hereby approved. Any variation shall be submitted to and agreed in writing by the local planning authority.

Reason: To preserve the architectural and historic interest of the heritage asset and in the interests of visual amenity.

21 Thermal Upgrading and Acoustic Proofing

No works to La Plata House shall commence until details of all thermal upgrading and acoustic proofing has been submitted to and agreed in writing by the Local Planning Authority.

Reason: To preserve the architectural and historic interest of the heritage asset and the living conditions of occupiers of the proposed units.

22 External Lighting

Prior to the occupation of the development details of external lighting shall be submitted to and approved in writing by the local planning authority. The approved lighting shall be completed prior to the first occupation of the development and shall thereafter be permanently retained and maintained.

Reason: In the interests of visual amenity and safeguarding the living conditions of existing and future occupiers.

23 Contamination

The development shall not be carried out except in complete accordance with the approved contamination documents listed above. Notwithstanding the above, should contamination be found that was not previously identified or not considered in the remediation scheme hereby agreed, that contamination shall be made safe and reported immediately to the Local Planning Authority. The site shall be re-assessed in accordance with the above and a separate remediation scheme shall be submitted to and agreed in writing with the Local Planning Authority. Such agreed measures shall be implemented and completed prior to the first occupation of any parts of the development.

Reason: To ensure that any potential contamination and any risks arising are properly assessed and that the development incorporates any necessary remediation and subsequent management measures to satisfactorily deal with contamination.

Informative(s)

1 INF01 Reason for approval (no objections)

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

2 INF04 Amendments to approved scheme

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 Policies

The following development plan policies contained in the Brentwood Replacement Local Plan 2005 are relevant to this decision: CP1, T2, T5, H6, PC4, C5, National Planning Policy Framework (NPPF) 2019 and NPPG 2014.

4 INF22 Approved Following Revisions

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

5 Highway Works

All housing developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all-purpose access) will be subject to The Advance Payments Code, Highways Act, 1980. The Developer will be served with an appropriate Notice within 6 weeks of building regulations approval being granted and prior to the commencement of any development must provide guaranteed deposits which will ensure that the new street is constructed in accordance with acceptable specification sufficient to ensure future maintenance as a public highway. Owing to the design of the site layout, it is unlikely that the access road would be adopted by the Highway Authority.

Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway.

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, Unit 36, Childerditch Industrial Park, Childerditch Hall Drive, Brentwood CM13 3HD.

Appendix A – Site Map

Appendix A



Title : Essex Police & La Plata House, London Road, Brentwood, Essex

18/01790/REM

Scale at A4 : 1:1250

Date : 12th June 2019

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



© Crown copyright and database rights 2018 Ordnance Survey 100018309

This page is intentionally left blank

SITE PLAN ATTACHED

REGENT HOUSE HUBERT ROAD BRENTWOOD ESSEX

OUTLINE APPLICATION WITHIN CAR PARK OF EXISTING RESIDENTIAL BLOCK COMPRISING 31 FLATS, INCLUDING 11 AFFORDABLE UNITS AND PARKING PROVIDED AT A RATIO OF 0.9 SPACES PER DWELLING (APPEARANCE AND LANDSCAPING RESERVED MATTERS)

APPLICATION NO: 18/01601/OUT

WARD	Brentwood West	8/13 WEEK DATE	03.01.2019
PARISH		POLICIES	
CASE OFFICER	Mr Mike Ovenden	01277 312500	
Drawing no(s) relevant to this decision:	1192-099 /1; 1192-100 ; 1192-101 ; 1192-102 ; 1192-200 ; 1192-201 ; 1192-202 ; 1192-203 ; 1192-300 ; 1192-400 ; 1192-401 ; 1192-402 ; 1192-001 /2; Site and Location Plan ;		

This application has been referred to committee at the request of Councillor Chilvers for the following reasons:

- over-development of the site
- will be overbearing on the existing block 1, level of daylight and privacy
- too many properties on the site
- loss of amenity space
- too close to existing properties
- 11 units of social housing would change the nature of the apartments that were sold with a promise of "Opulence, Privacy & Exclusivity".
- Increase in traffic and traffic movements throughout the day
- concern over the conservation of trees

1. Proposals

This is an outline application for the erection of a building comprising 31 flats, including 11 affordable units within a six storey building, adjacent to a 9 storey former office building converted to residential use under permitted development rules. The land on which the building would be built forms part of the tarmacked car park associated with the former offices.

The application provides details of access, layout and scale leaving appearance and landscaping as reserved matters to be agreed later if this application is granted planning permission.

2. Policy Context

National Planning Policy Framework (NPPF) 2019

National Planning Practice Guidance (NPPG)

Policy CP1 General Development Criteria

Policy CP2 New Development and Sustainable Transport Choices

Policy H6 Small Unit Accommodation

Policy H9 Affordable Housing on Larger Sites

Policy H14 Housing Density

Policy E1 Areas Allocated for General Employment

Policy T2 New Development and Highway Considerations

Policy T5 Parking – General

Policy PC4 Noise

Local Development Plan:

The emerging Local Development Plan went through Pre-Submission (Publication Draft) Stage (Regulation 19) consultation between 5 February and 19 March 2019. The responses to the consultation are currently being assessed. Following this, the LDP will be submitted to the Secretary of State for an Examination in Public in Q3 or Q4 of 2019. Provided the Inspector finds the plan to be sound, it is estimated that it could be adopted by the Council in early/mid 2020.

The Brentwood Replacement Local Plan 2005 remains the development plan and its policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the National Planning Policy Framework (NPPF). Due weight should be given to them, according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given).

As the emerging plan advances and objections become resolved, more weight can be applied to the policies within it. At this stage there are outstanding objections to be resolved, nevertheless, the Local Plan Pre-Submission (Publication Draft) provides a good indication of the direction of travel in terms of aspirations for growth in the Borough and where development is likely to come forward through draft housing and employment allocations.

3. Relevant History

- 16/00290/PNCOU: Prior Approval Notification Class O - Change of use of Offices Class B1(a) to form 136 apartments (Class C3) -Prior Approval is required/Given

- 16/00587/PNCOU: Prior Approval Notification Class O - Change of use from office space (B1(a)) to 126 residential flats (C3 use class). -Prior Approval is required/Given
- 16/00607/PNCOU: Prior Approval Notification Class O - Change of use from office space (B1(a)) to 98 residential flats (C3 use class). -Prior Approval is required/Given
- 16/00644/PNCOU: Prior Approval Notification Class O - Change of use from office space (B1(a)) to 98 residential flats (C3 use class). -Application Refused
- 16/01298/PNCOU: Prior Approval Notification Class O - Change of use from office space (B1(a)) to 120 residential flats (C3 use class). -Prior Approval is required/Given
- 17/01486/FUL: Removal of existing cladding and replacing with new render and the replacement of existing windows for new on the upper floors -Application Permitted
- 18/00197/FUL: Variation of cond 3 of application 16/00290/PNCOU (Prior Approval Notification Class O - Change of use of Offices Class B1(a) to form 136 apartments (Class C3)) to allow for an alternative cycle layout. -Application Permitted
- 16/00290/NON/1: Non material amendment for a revised layout to application 16/00290/PNCOU (Prior Approval Notification Class O - Change of use of Offices Class B1(a) to form 136 apartments (Class C3). -Application Permitted
- 18/01210/PNCOU: Prior Approval Notification Class O - Change of use of offices (Class B1A) to a dwellinghouse (Class C3) to convert part of the ground floor of the office building to form one 2 bed apartment. -Prior Approval is Not Required

4. Neighbour Responses

Where applications are subject to public consultation those comments are summarised below. The full version of each neighbour response can be viewed on the Council's website via Public Access at the following link:

<http://publicaccess.brentwood.gov.uk/online-applications/>

- Effect on light in existing properties/overshadowing
- Conservation of trees
- Loss of parking/inadequate parking
- Overlooking of Regent House and La Plata Grove
- Traffic issues local and further afield/ congestion/HGV traffic to Hubert Road commercial units
- Noise/disturbance during construction and occupation
- Possible damage to vehicles during construction
- Comments about timing of application
- Not made aware of application when purchasing flat / not being provided with spaces allocated/paid for
- Devalue my property/loss of view/view of trees/loss of vista
- Would cause more harm than benefit
- Not needed as existing flats remain unsold
- Concern about use of playground by teenagers and others

- Should include upgrade to public footpath to station
- Adding affordable housing is not welcome

5. Consultation Responses

- **Arboriculturalist** – none received
- **Housing Services Manager**– Comments made with respect to S106 requirements.
- **Highway Authority-**

The documents accompanying the application have been duly considered and a site visit carried out. It is noted that Hubert Road is a private road and does not form part of the highway. The proposed development is not expected to generate a significant number of peak hour trips. Given that it also benefits from being situated in a sustainable location close to the town centre's facilities that include frequent and extensive public transport services, a relaxation of the car parking standard is able to be justified.

Therefore, from a highway and transportation perspective, the impact of the proposal is acceptable to the Highway Authority subject to the following requirements;

1. Prior to occupation of the development and as shown indicatively on Drawing no 180100-003 Revision A, the proposed site egress shall be constructed at right angles to the existing carriageway on Hubert Road and shall be provided with an appropriate dropped kerb vehicular crossing of the verge.

Reason: To ensure that vehicles can enter and leave Hubert Road in a controlled manner in the interest of highway safety.

2. Prior to occupation of the development and as shown indicatively on Drawing no 180100-003 Revision A, the proposed site egress at its centre line shall be provided with a visibility splay with dimensions of 2.4 metres by 34 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the site egress is first used by vehicular traffic and retained free of any obstruction at all times.

Reason: To provide adequate inter-visibility between vehicles using the site egress and existing users of Hubert Road in the interest of safety.

3. The existing site egress shall be suitably and permanently closed incorporating the reinstatement to full height of the kerbing immediately the proposed new site egress is brought into first beneficial use.

Reason: To ensure the removal of and to preclude the creation of unnecessary points of traffic conflict on Hubert Road in the interests of safety.

4. Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to occupation and retained at all times.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity.

5. Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport for each dwelling as approved by Essex County Council.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport.

Informatives

Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway.

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, Essex CM13 3HD.

- **Environmental Health & Enforcement Manager** – none received
- **Basildon Fire Station-**

Access

Access for Fire Service purposes has been considered in accordance with the Essex Act 1987 - Section 13 and the Building Regulations 2010.

The proposal itself does not affect fire service access to existing premises in the vicinity. From the information available it appears that fire service vehicular access will require compensatory measures to address the requirements of the Building Regulations 2010. Such measures may take the form of the provision of an internal dry rising main. The main will consist of externally mounted inlet box and outlet valves at each floor level within the protected staircase / firefighting shaft. The inlet box will be located no further than 18 metres from the nearest pumping appliance set down point and be clearly visible from the appliance (Section B5 Approved Document Fire Safety Volume 2 refers); as such, provided the criteria specified above or other acceptable arrangement is implemented then this Authority has no objection to the proposal.

As the development involves flats more detailed observations on access and fire fighting facilities for the Fire Service will be considered at Building Regulation consultation stage.

Building Regulations

It is the responsibility of anyone carrying out building work to comply with the relevant requirements of the Building Regulations. Applicants can decide whether to apply to the Local Authority for Building Control or to appoint an Approved Inspector.

Local Authority Building Control will consult with the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority (hereafter called "the Authority") in accordance with "Building Regulations and Fire Safety - Procedural Guidance".

Approved Inspectors will consult with the Authority in accordance with Section 13 of the Building (Approved Inspectors etc.) Regulations 2010 (as amended).
ECFRS/70179/V5 Any Personal Data Entered On This Form May Be Held On
Computer Files

SL-30 2

Water Supplies

The architect or applicant is reminded that additional water supplies for firefighting may be necessary for this development. The architect or applicant is urged to contact the Water Technical Officer at Service Headquarters, telephone 01376-576344.

Sprinkler Systems

There is clear evidence that the installation of Automatic Water Suppression Systems (AWSS) can be effective in the rapid suppression of fires. Essex County Fire & Rescue Service (ECFRS) therefore uses every occasion to urge building owners and developers to consider the installation of AWSS. ECFRS are ideally placed to promote a better understanding of how fire protection measures can reduce the risk to life, business continuity and limit the impact of fire on the environment and to the local economy.

Even where not required under Building Regulations guidance, ECFRS would strongly recommend a risk based approach to the inclusion of AWSS, which can substantially reduce the risk to life and of property loss. We also encourage developers to use them to allow design freedoms, where it can be demonstrated that there is an equivalent level of safety and that the functional requirements of the Regulations are met."

- **Design Officer -**

The submission follows preapplication discussions, the advice from this is broadly followed in the proposals. This submission for 31 units is not objected to by Urban Design in principle, scale is accepted given the context.

Design development is required and this will no doubt be undertaken prior to any application for the reserved matters of appearance, for example the ground floor (pedestrian level) is bland, the overrun of the lift on the roof and balustrading around the perimeter at roof level in particular is not supported, it would be better to raise the parapet at roof level and use an safety system for maintenance and repairs not apply an incongruous railing around what is proposed to be quite a simple architectural form.

As I advised at preapplication, landscape is important and we discussed a green square and sense of entry to the building, I note however Landscaping is also a reserved matter.

- **Planning Policy – none received**

6. Assessment

The starting point for determining a planning application is the development plan, in this case the Brentwood Replacement Local Plan 2005. Planning legislation states that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Relevant material considerations for

determining this application are the National Planning Policy Framework 2019 (NPPF) and National Planning Practice Guidance (NPPG). Although individual policies in the Local Plan should not be read in isolation, the plan contains policies of particular relevance to this proposal which are listed in section 2 above.

Loss Areas Allocated for General Employment

The site is part of an area identified in the local plan for retention of employment uses under Policy E1. However Regent House has been subject to the prior notification/permitted development change of use of office to residential. The permitted development procedure does not have regard to such local allocations. Following the implementation of the permitted development conversion of Regent House to residential, it and its curtilage are no longer in employment use and the redevelopment of the application site for further non employment use is acceptable in principle.

Design

Currently there is one building on the overall site, Regent House, a former officer block of 9 storeys high. This sits close to Hubbert Road. The rest of the site is an open tarmacked car park dating from its period as offices. Hubert Road drops downhill and to the south are commercial units at a lower level. To the east is a wooded area of tall mature trees, with an informal path running through it.

The proposed building is shown parallel to Regent House in excess of 30 metres between them at their nearest. There is also a change in levels so that the proposed ground floor would be a storey lower than the northern part of Regent House.

Regent House is visible in longer views from the south and east of Brentwood. The proposal would have some visibility in longer views commensurate with its lower height and partial screening by Regent House from some locations and would form a backdrop to it from other views. On this site a building of height is acceptable in principle. Other than the elevation facing Regent House, the units would be provided with balconies.

Appearance is a reserved matter so details would have to come forward as part of a reserved matters application prior to commencement. The Design officer has not objected in principle and scale is accepted given the context.

The application shows the position of the building, its basic form, a detailed ground floor plan showing car and cycle parking, lift, stairs etc and more generic information on the units on floors above. The mix would be:

- 10 x 1 bed units
- 19 x 2 bed units
- 3 x 3 bed units

The size of the units comply with the technical housing standards – nationally described space standards (THSS). The space standards have not been adopted by the Council and therefore they do not carry the weight of development plan policies or

supplementary local guidance. Nevertheless the standards give an indication of what the Government considers is a good standard of accommodation and are used for development management decisions in the borough.

Amenity

The proposed new building would be in excess of 30 metres from Regent House, at its closest (at the two ends), with central units being approximately 35 metres away. The Council does not have minimum distance requirements for flat blocks, though this degree of separation is considered to be acceptable. The design and access statement and floorplans indicate that only some of the units would face the existing building. Condition 4 is recommended to require measures to avoid material overlooking.

To the east and south there is a gap of approaching 55 metres between the building and the curtilages of the properties at La Plata, with a tree belt in between. The indicative generic tree shapes on the drawings do not accurately reflect their form and under underestimate their height. Having had regard to distances, alignment of the building and the tree belt, overlooking of those properties is unlikely to be material. Though overlooking of commercial units is more likely due to proximity, it does not generally raise the same concerns as overlooking residential properties. In addition there is a significant change in levels further down Hubert Road and those buildings are low so views would be mostly over rather than in to the commercial buildings. It is noted that some distant view of adjacent land is already possible from the existing, taller building.

However notwithstanding the above, a planning condition can be imposed requiring detail of floor layouts (including bedroom bathrooms etc) and windows together with measures to mitigate overlooking of residential property, with the reserved matters application.

With regard to daylight reaching the south-east facing windows of Regent House applying a 25 degree angle guide indicates that the proposal would not materially affect daylight in rooms facing the proposed development. This is illustrated by the applicant in the design and access statement (P8). With regard to sunlight, the lower units in Regent House would be likely to be affected during the morning, though less so to the upper units and unaffected later in the day.

The proposed building would in turn receive some degree of shadowing later in the day from Regent House and lower windows on the north east facing windows would have some reduction of daylight but neither to an unacceptable extent.

Some of the representations have raised concerns about disturbance from a proposed small play area to the south of the existing block due to its proximity. Due to its size it is likely to operate as a LAP (Local Area for Play) for informal play which by nature are acceptable parts of residential developments. Furthermore, the proposed siting is in clear public view and as there is likely to be a management company responsible for maintenance, any issues could be addressed by the company/owner.

Parking and highways

The standards indicate that one bed dwellings should have 1 parking space and 2 bed dwellings have 2 spaces. However, the adopted parking standards indicate that for main urban areas a reduction to the vehicle parking standard may be acceptable, particularly for residential development. The proposal would result in 153 parking spaces on the overall site, of which 28 spaces would relate to the application building, i.e. at a ratio of 0.9 spaces per dwelling, within the car park and on the ground floor below the residential accommodation, a similar ratio to the parking provided for the flats in the converted Regent House.

Main urban areas are defined as those having frequent and extensive public transport and cycling and walking links, accessing education, healthcare, food shopping and employment. This site is located close to regular public transport services and on that basis the highway authority raises no objection to this level of parking provision and given that advice the planning authority raises no objection on this issue.

A representation requests the upgrade of the existing footpath through the woodland over third party land as an alternative route to the station. While this may be a benefit it has not been identified by the highways authority as being necessary to make the proposal acceptable and is not appropriate to require this upgrade to be carried out.

With regard to highways issues, the highways authority has considered the proposal following a site visit. It advises that the proposed development is not expected to generate a significant number of peak hour trips. While Hubert Road is a private road and does not form part of the highway no objections area raised subject to conditions. The highways authority raises no objection subject to five conditions to be imposed in the event of permission being granted.

Affordable housing

The proposal would provide 11 of the 31 flats as affordable units. This is a policy compliant 35%. The affordable units would be on the first and second floors. These are indicated to be a mix of social rent and intermediate and 6 x 1 bed and 5 x 2 bed units. The mechanism for agreeing and delivering affordable house will be a S106 planning agreement.

A comment made in representations that affordable housing is not welcome is noted, but the borough has a significant need for affordable housing and the provision of affordable housing for rent and shared ownership in this scheme to a policy compliant level is welcomed.

Noise

With regard to noise the Environmental Health team has not commented. However, in assessing noise it is noted that one of the few issues for consideration under permitted development changes of use of office to residential use (Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Schedule 2, Part 3, Class O) is the impacts of noise from commercial premises on the intended occupiers of the development. This was judged to be acceptable when considering that

change of use and a similar judgement would be justified with regard to the impact of noise of the amenity of the occupiers of the new building.

With regard to noise concerns raised in representations, construction is potentially disturbing and can be controlled by submission and following a construction management plan which can be required by condition. There is no evidence that once occupied that the proposed development would give rise to particular noise issues in excess of that commensurate with other developments of similar size. The suggestion in representations of possible damage to vehicles during construction would be a matter the developer would need to take care of during construction. An advisory note is proposed to encourage the developer to follow the principles of the Considerate Constructors Scheme.

Housing land supply

The Council cannot demonstrate a five year housing land supply against its local housing need. As the Council cannot demonstrate a sufficient supply of housing land its planning policies relating to housing supply cannot be considered to be up to date. The comment that as other dwellings remain unsold the proposed dwellings are not needed is not supported in national assessments for need for new dwellings in the borough.

In the absence of up to date development plan housing supply policies, national planning policy states that the balance (in the decision making process) is tilted in favour of sustainable development and planning permission should be granted except where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NNPF taken as a whole. This proposal for an additional 31 dwellings would make a significant contribution towards achieving the required level of provision. The proposal is considered to be acceptable even before considering the titled balance, though it adds weight to the recommendation.

Landscape

Landscaping is a reserved matter so details will have to come forward as part of a reserved matters application prior to commencement. There is no proposal to remove trees as queried in representations.

Other comments raised in representations

Many representations comments about the timing of the application when the adjacent conversion was only partly occupied; that they did not know about the proposal when purchasing flat; not being provided with allocated/paid for parking spaces. None of these are planning issues. The application has been publicised in excess of normal requirements and the longer than standard period of determination has provided an opportunity for representations to be made. The issues of potential effect on property value and loss of view are also not planning issues.

In summary, the proposal is considered to be acceptable in planning terms and is recommended for approval.

7. Recommendation

The Application be APPROVED subject to completion of a Section 106 Agreement to secure the provision of affordable housing and to the following conditions:

1 U29331 Submission of Reserved Matters

Approval of the details of the appearance of the building(s) and the landscaping of the site that are reserved for later approval (hereinafter called the reserved matters) shall be obtained in writing from the Local Planning Authority before the development is commenced and the development shall be carried out as approved.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2 TIM03 Standard Time Outline - 3 years

Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

3 TIM04 Standard Time Outline - Time Limit

The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from date of approval of the last reserved matters to be approved.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

4 U29334 Measures to avoid material overlooking

The reserved matters application relating to appearance shall be accompanied by details of the windows to the proposed building including details of the rooms they relate to together with mitigation measures to avoid material overlooking of residential properties in the locality. Furthermore this shall be accompanied by details of screens to balconies and roof gardens and how material overlooking would be avoided from those elements of the building. The development shall be carried out in accordance with the approved details.

Reason: To avoid material overlooking of residential properties.

5 U29335 Protection of trees

The reserved matters application relating to landscaping shall be accompanied by details of measures to protect the adjacent trees belt from damage from the development.

Reason; In order to protect the amenities of the site and the area in which the site is situated.

6 U29336 Construction Method Statement

A Construction Method Statement shall be submitted at the time of the reserved matters application for written approval of the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. measures to control the emission of dust and dirt during construction
- ii. hours of working and hours during which deliveries may be taken at the site

Reason: In the interests of neighbour amenity.

7 U29337 Geometry of access

Prior to occupation of the development and as shown indicatively on Drawing no 180100-003 Revision A, the proposed site egress shall be constructed at right angles to the existing carriageway on Hubert Road and shall be provided with an appropriate dropped kerb vehicular crossing of the verge.

Reason: To ensure that vehicles can enter and leave Hubert Road in a controlled manner in the interest of highway safety.

8 U29338 Visibility splay

Prior to occupation of the development and as shown indicatively on Drawing no 180100-003 Revision A, the proposed site egress at its centre line shall be provided with a visibility splay with dimensions of 2.4 metres by 34 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the site egress is first used by vehicular traffic and retained free of any obstruction at all times.

Reason: To provide adequate inter-visibility between vehicles using the site egress and existing users of Hubert Road in the interest of safety.

9 U29339 Existing access closed

The existing site egress shall be suitably and permanently closed incorporating the reinstatement to full height of the kerbing immediately the proposed new site egress is brought into first beneficial use.

Reason: To ensure the removal of and to preclude the creation of unnecessary points of traffic conflict on Hubert Road in the interests of safety.

10 U29340 Cycle parking

Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to occupation and retained at all times.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity.

11 U29341 Travel packs

Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport for each dwelling as approved by Essex County Council.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport

Informative(s)

1 INF02

Reason for approval: The proposal would accord with the relevant policies of the development plan as set out below. The Council has had regard to the concerns expressed by residents but the matters raised are not sufficient to justify the refusal of permission.

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, CP2, H6, H9, H14, E1, T2, T5, PC4, National Planning Policy Framework (NPPF) 2019 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 U06183

The developer is recommended to follow the principles of the Considerate Constructors Scheme.

6 U06184

Fire service informatives

Access

Access for Fire Service purposes has been considered in accordance with the Essex Act 1987 - Section 13 and the Building Regulations 2010.

The proposal itself does not affect fire service access to existing premises in the vicinity.

From the information available it appears that fire service vehicular access will require compensatory measures to address the requirements of the Building Regulations 2010. Such measures may take the form of the provision of an internal dry rising main. The main will consist of externally mounted inlet box and outlet valves at each floor level within the protected staircase / firefighting shaft. The inlet box will be located no further than 18 metres from the nearest pumping appliance

set down point and be clearly visible from the appliance (Section B5 Approved Document Fire Safety Volume 2 refers); as such, provided the criteria specified above or other acceptable arrangement is implemented then this Authority has no objection to the proposal.

As the development involves flats more detailed observations on access and fire fighting facilities for the Fire Service will be considered at Building Regulation consultation stage.

Building Regulations

It is the responsibility of anyone carrying out building work to comply with the relevant requirements of the Building Regulations. Applicants can decide whether to apply to the Local Authority for Building Control or to appoint an Approved Inspector.

Local Authority Building Control will consult with the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority (hereafter called "the Authority") in accordance with "Building Regulations and Fire Safety - Procedural Guidance".

Approved Inspectors will consult with the Authority in accordance with Section 13 of the Building (Approved Inspectors etc.) Regulations 2010 (as amended).

ECFRS/70179/V5 Any Personal Data Entered On This Form May Be Held On Computer Files

SL-30 2

Water Supplies

The architect or applicant is reminded that additional water supplies for firefighting may be necessary for this development. The architect or applicant is urged to contact the Water Technical Officer at Service Headquarters, telephone 01376-576344.

Sprinkler Systems

There is clear evidence that the installation of Automatic Water Suppression Systems (AWSS) can be effective in the rapid suppression of fires. Essex County Fire & Rescue Service (ECFRS) therefore uses every occasion to urge building owners and developers to consider the installation of AWSS. ECFRS are ideally placed to promote a better understanding of how fire protection measures can reduce the risk to life, business continuity and limit the impact of fire on the environment and to the local economy.

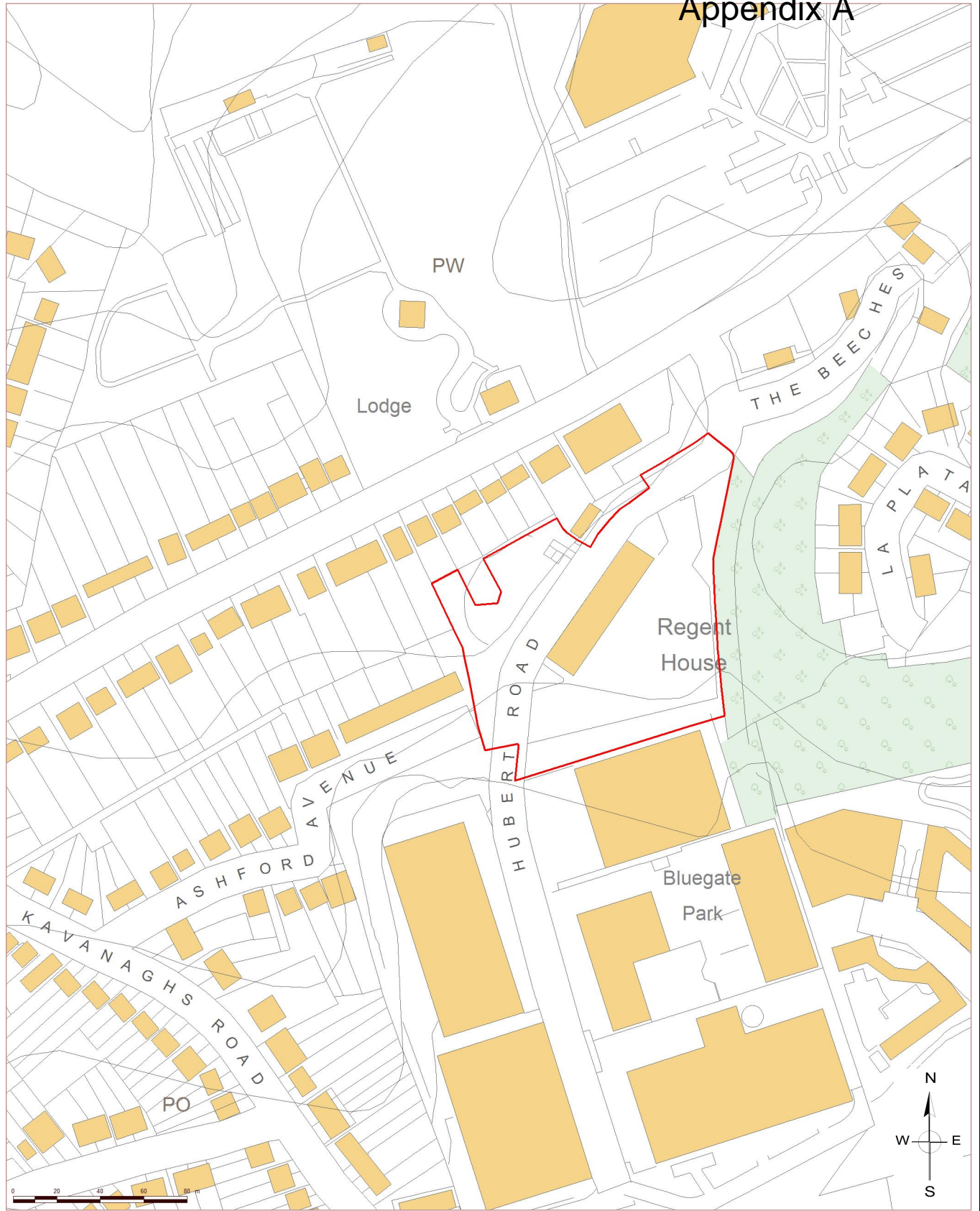
Even where not required under Building Regulations guidance, ECFRS would strongly recommend a risk based approach to the inclusion of AWSS, which can substantially reduce the risk to life and of property loss. We also encourage developers to use them to allow design freedoms, where it can be demonstrated that there is an equivalent level of safety and that the functional requirements of the Regulations are met.

7 INF16

This planning permission is the subject of a planning obligation made under Section 106 of the Town and Country Planning Act and the developer must ensure that the provisions of that obligation are fully implemented.

Appendix A – Site Map

Appendix A



Title : Regent House, Hubert Road, Brentwood, Essex

18/01601/OUT

Scale at A4 : 1:2500

Date : 12th June 2019

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



© Crown copyright and database rights 2018 Ordnance Survey 100018309

This page is intentionally left blank

SITE PLAN ATTACHED

BAYTREE CENTRE INCLUDING UNITS ALONG CHAPEL HIGH AND 40-42 HIGH STREET BRENTWOOD ESSEX

WORKS TO CHAPEL RUINS TO INCLUDE HARD AND SOFT LANDSCAPING, PLANTING AND TREE PRUNING WORKS, REPLACEMENT OF STREET FURNITURE AND PAVEMENT RE-SURFACING. ALTERATIONS TO SHOPFRONTS FACADE ACROSS THE CENTRE INCLUDING 40-42 HIGH STREET. CHANGE OF USE OF FROM USE CLASS A1 TO A3 AT UNITS 25-27 AND UNITS 23-24, AND USE CLASS A1 TO D2 AT UNITS SU12 AND SU13 (BOTH GROUND AND FIRST FLOORS), 115SQ.M OF EXTERNAL RESTAURANT/CAFE SPACE AT CHAPEL HIGH, ASSOCIATED DRAINAGE AND UTILITIES WORKS.

APPLICATION NO: 18/01745/FUL

WARD	Brentwood South	8/13 WEEK DATE	07.01.2019
PARISH		POLICIES :	NPPF, NPPG CP1 C14 C16 TC7
CASE OFFICER	Caroline McCaffrey		01277 312500

DRAWING NUMBERS RELEVANT TO THIS DECISION	Drawing Number	Revision
Site Location Plan	A11403 F0001	P3
Site Plan	A11403 F0002	P2
Site Location Plan Blueline Boundary	A11403 F0003	P1
Ownership & Application Boundary Plan (Ground Floor)	A11403 F0050	P2
Ground Floor Plan Chapel High Proposed	A11402 D0100	P3
No. 42 (New Look) Flank wall Comparative Elevations Existing and Proposed	A11403 D0201	P2
Proposed West and East Elevations Ruins of Chapel of St Thomas a Becket	A11403 D0203	P2
Proposed South and North Elevations Ruins of chapel of St Thomas a Becket	A11403 D0204	P2
Chapel High Detailed Elevations Proposed	A11403 D0250	P2
Existing and Proposed sectional Elevations – Chapel High	A11403 D0300	P2

Existing and Proposed Sectional Elevations – Ruins of Chapel of St Thomas a Becket	A11403 D0301	P2
Ground Floor Baytree Centre Unit Plan Proposed uses	A11403 D1100	P4
First Floor Baytree Centre Unit Plan Proposed Uses	A11403 D1101	P4
Chapel Ruins Detailed Plan Proposed	A11403 D2100	P3
Ground Floor Plan Chapel High Existing	A11403 F0100	P1
Existing West and East Elevations Ruins of Chapel of St Thomas a Becket	A11403 F0203	P1
Existing South and North Elevations Ruins of Chapel of St Thomas a Becket	A11403 F0204	P1
Ground Floor Baytree Centre Unit Plan Existing Uses	A11403 F1100	P3
First Floor Baytree Centre Unit Plan Existing uses	A11403 F1100	P2
Chapel Ruins Detailed Plan Existing	A11403 F2100	P1
Possible Supply & Extract Ventilation Systems Elevations and sections	17160-MSK- 006	P
Existing Elevation Chapel High Service yard	A11403 F0205	P1
St Thomas a Becket Chapel Conservation Management Plan		June 2019

1. Proposals

Planning permission is sought for works to the surrounding chapel ruins to include re-surfacing of the pavement, removal of enclosures around the Scheduled Ancient Monument (SAM), replacement street furniture (benches and new display board); works to trees and the addition of a sculptural 'living' wall. As part of the refurbishments, repairs and maintenance work would be undertaken to the SAM which comprises the ruins of the Tower of the Chapel of St Thomas A Becket although all the original fabric of the ruins will be preserved. The alter is proposed to be retained as existing.

The application also seeks permission for the amalgamation and change of use of smaller units from Class A1 retail to Class A3 restaurant/café along with the use of external space; replacement shopfront windows and new signage at façade level changes to the layout and use of Units SU12 and SU13 to provide for a Use Class D2 (Assembly and Leisure);. No extensions are proposed as part of the application.

The application is accompanied by a Design and Access Statement, Planning Statement, Heritage Statement, Flood Risk Assessment and Drainage Strategy,

Arboricultural Assessment; Ventilation and Extraction plan and a Conservation and Management Plan.

2. **Policy Context**

National Policies: NPPF 2019
NPPG 2014 (as amended)

Brentwood Replacement Local Plan 2005:

CP1 – General Development

TC7 – Non retail uses

C14 – Development affecting Conservation Areas

C16 – Development within the vicinity of a listed building

Local Development Plan:

The emerging Local Development Plan went through Pre-Submission (Publication Draft) Stage (Regulation 19) consultation between 5 February and 19 March 2019. The responses to the consultation are currently being assessed. Following this, the LDP will be submitted to the Secretary of State for an Examination in Public in Q3 or Q4 of 2019. Provided the Inspector finds the plan to be sound, it is estimated that it could be adopted by the Council in early/mid 2020.

The Brentwood Replacement Local Plan 2005 remains the development plan and its policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the National Planning Policy Framework (NPPF). Due weight should be given to them, according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given).

As the emerging plan advances and objections become resolved, more weight can be applied to the policies within it. At this stage there are outstanding objections to be resolved, nevertheless, the Local Plan Pre-Submission (Publication Draft) provides a good indication of the direction of travel in terms of aspirations for growth in the Borough and where development is likely to come forward through draft housing and employment allocations.

3. **Relevant History**

- : - None relevant to this proposal.

4. **Neighbour Responses**

Where applications are subject to public consultation those comments are summarised below. The full version of each neighbour response can be viewed on the Council's website via Public Access at the following link:

<http://publicaccess.brentwood.gov.uk/online-applications>

- Proposed to fell T3 is unnecessary and undesirable
- Proposals to cover ground around chapel ruins with hard surface would result in a monotonous covering in the context of the High Street and shopping centre already dominated by stone paving.
- Loss of soft surfaces would have adverse consequences for biodiversity and drainage
- Loss of walls / screening separating the Chapel Ruins from north end of Baytree Centre would undermine the dignity and function of a sacred space
- Noise and disruption should be kept to a minimum during construction
- Careful consideration should be given to opening hours of any open air activity
- Activities in units SU12 / SU13 should be kept to a minimum (as residential units sit above)
- Ability for increased traffic and parking to be absorbed by proposed changes
- Deliveries to west service area in South Street are subject to restricted hours
- No need for further food outlets unless it's a supermarket

5. Consultation Responses

- **Historic England:**

Historic England wishes to comment on this application insofar as it affects the remains of the chapel of St Thomas a Becket (a scheduled monument), its setting and the setting of the Conservation Area. The proposed works to repair, enhance and reveal the significance of the chapel ruins are an important element of this scheme to refurbish the Baytree Centre, which will also see the better integration of Chapel High in the streetscape of the Brentwood's historic core. We welcome measures for the future conservation and enhancement of the scheduled monument have the potential to make a positive contribution to sustainability of the designated heritage assets the relationship between the Baytree Centre and the High Street.

As we have advised during pre-application discussions, the works within the scheduled area would require scheduled monument consent from the Secretary of State, advised by Historic England. The principles for the works have been discussed with us. We are keen that the proposals to improve streetscape give primacy to the conservation and enhancement of the chapel's standing structure and buried archaeological remains, so that its significance can be better revealed and enjoyed through works which will repair, protect, interpret and display in line with the aims and objectives of chapter 16 of the NPPF. Whilst we are content with the principles, we still have some concerns regarding the proposed materials and some aspects of the detailing, such as the form of the floating altar and suggest that these

should be subject to a condition requiring agreement of materials and details of new hard and soft landscaping within the scheduled monument of between ourselves and your council's conservation adviser, prior to a scheduled monument consent application being made. We also, advise that your council consider what measures would be required to ensure that future resources would be made available to ensure the management and upkeep of the church ruins and its environs would be sustained.

Recommendation

Historic England has no objection to the application on heritage grounds, but has reservations regarding some materials and matters of detail. We recommend that these could be addressed by condition.

Further comments following revised plans:

- **Historic Buildings and Conservation Officer:**

Significance:

The site is located within the Brentwood Town Centre Conservation Area; development proposed will affect the Scheduled Monument of The Chapel of St Thomas a Becket (List Entry Number:1017452) "The monument includes the standing and buried remains of the Chapel of St Thomas a Becket, located on the south side of Brentwood High Street, some 100m to the east of Crown Street.'(extract from Historic England 2018). Please refer to advice from the Inspector of Ancient Monuments at Historic England given this designation and the subsequent necessary requirement for permission from the Secretary of State in this regard.

Development also affects the Grade II listed building of RUINS OF OLD CHAPEL OF ST THOMAS A BECKET (list entry number 1197221) and the setting of the Grade II listed building of 44 High Street (List Entry number 1025027).

The site is located within the geographic scope of the Brentwood Town Centre Design Plan, within this study the need to enhance desire lines through the Conservation Area to improve pedestrian permeability on the north/south axis as well as take a cohesive approach to new development in the Town Centre as a whole is set out. There is also reference made to the Chapel Ruins and the need to improve public realm in this core area and the hinterland of the High Street.

Discussion:

The proposed development site holds a prominent position within the core of the Brentwood Town Centre Conservation Area; it is a highly significant location within the Town and the National designation set out in the opening paragraph of this letter conveys such given the scheduling and the break in the historic high street which offers a relief of built form to accommodate the Chapel.

At preapplication I raised no in principle objections to works which improve the setting of this key area, we discussed public realm improvements and the retail frontages etc. within the context. In terms of the proposals for setting and landscaping at preapplication, I did concur with the Ancient Monuments Inspector

from Historic England that the East Anglian palette for materiality should be studied and adopted within any future proposals, this is important to the setting of the Ruins, the Grade II listed building of Pepperell House and also to the character and appearance of the Conservation area. I also raised concern for the lack of any long-term maintenance plan for the Chapel Ruins and the listed structures per se.

Having assessed the current proposals within this application I welcome the investment to improve the Conservation Area but I note there is no conservation management plan/proposals for the long-term maintenance/works to The Ruins, this should be addressed as the annotation on the proposed plan states 'All original fabric of the Ruins Preserved' but there is no commentary as to how this is to take place, what works etc, the annotation goes on to state 'New Portland Stone skirt to Chapel Walls', I have not been consulted on any Listed Building Consent application in this regard.

In terms of the retail frontages and the proposed cleaning of the concrete and bronze pallet for materiality I raise no objection although a low stall raiser on the frontages are advised (this could be conditioned). The activation of the corner unit (New Look) and the heritage board on the return elevation is welcomed although further information on the heritage board and the living wall are required, the arboricultural officer should be able to advise further on how successful a living wall would be given the proposed siting of this feature as well as the proposals for tree works.

There appears to be banner signage located at high level on this return elevation at present associated with a sports lounge which I would like clarity on, is this within the ownership of the applicant? (refer to DRW: D0201 P1) if it is then it should be removed if not permitted under advertising consent.

Summary

I support the proposals in principle subject to Condition for detail and materiality; however, prior to a final recommendation and detailed advice for Conditions I would be grateful for clarity on the matters as set out above, namely:

Are there works here which require listed building consent given the proposed stone skirt on the Ruins? is there a methodology for the repairs to the Ruins and a conservation management plan? Information on the banner above the New Look flank wall would also be of assistance.

(officer comment: listed building consents is not required – this is dealt with under separate consent; methodology has been submitted, this will be dealt with via SAM consent; information banner has now been removed).

- **Environmental Health & Enforcement Manager:**

No comments received.

- **Arboriculturalist:**

The proposed scheme seeks to undertake a package of measures to enhance the public realm between the High Street and Baytree Centre. A key aspect to this is the proposed landscape scheme centred on the chapel ruins and pedestrian areas through Chapel High. These seek to improve the physical and visual connectivity from the High Street.

The most prominent existing landscape features are two large trees, a London Plane fronting the High Street and a large multi-stemmed bay to the rear of the ruins. It is proposed that both of these trees will be retained although they are to be reduced to clear adjacent building and subject to crown lifting to 4m to open up views through to the Baytree Centre. The proposed reductions are required as the existing canopies are nearly touching the adjacent buildings.

A third tree, a small multi-stemmed bay has suffered from poor quality pruning in the past and has limited amenity value. It is agreed that this tree should be removed and a replacement provided.

A general arboricultural method statement has been provided which is considered acceptable. A final document taking on board any changes resulting from amendments to the final design should be submitted as a condition. I would wish to agree the works to the two retained trees prior to commencement.

The chapel ruins are currently enclosed by low walls and contain some amenity grass and shrub beds. Few people use this area and the overall quality of the planting is low. The proposed scheme would result in the existing planting being removed. This is considered acceptable as the existing planting beds are outdated and do not make a positive contribution to this town centre location. New planting will be limited with new seating and comprise contemporary planters. The enhanced paving will improve access to all through the site. Use of different materials will help define the original walls without limiting access. The plans show a section of green wall being included which should help provide an attractive feature which softens the large expanse of blank wall in this location. It is considered that the proposed scheme is acceptable in principle. There is little information provided with regard to materials and ongoing maintenance. The detail of these can be finalised through condition.

- **ECC SUDS:**

Having reviewed the planning application and the associated documents which accompanied the planning application, we have identified that this is not a major application and therefore we shall have no further comments accordingly in relation to this application. However please consider conditions/informatives if relevant for the development; These include, surface water drainage details to be submitted and approved.

- **Highway Authority:**

A site visit has been carried out and the documents accompanying the application have been duly considered. The proposals do not implicate the highway apart from a confined area to the west of the Chapel ruins. Therefore, from a highway and transportation perspective, the impact of the proposal is acceptable to the Highway Authority subject to a Construction Management Plan to be submitted and approved to provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and underbody washing facilities

- **Assets Manager:**

Essentially we have no objection to the application however, the attached deed which will need to be rescinded. The deed gave the Council the maintenance responsibility in exchange keeping the site open for the public.

The application seems to transfer those maintenance responsibility inclusive of the ruin, to the applicant which is good for the Council provided the site stays open to the public. So the applicant needs to be advised that this deed needs to be removed.

I am currently reading through the Design Access Statement and para 3.1.1 existing uses states

“The freehold (long leasehold in part) of The Baytree Centre is owned funds managed by Columbia Threadneedle Investments. The boundary of ownership is illustrated in solid red line on the Location Site Plan overleaf.”

However the plan over leaf includes 44 High Street which is in the ownership of the Council. It also includes the remaining part of New Road from the High Street which I doubt is in their ownership but is still highway maintainable at public expense.

Para 6.1.1 There was a major enhancement project that I believe the Council undertook in 1997 providing new surfaces railings, alter, repairs to the walls and information boards, updating what TP bennet architects did in 1972, (plan attached) following which the Baytree centre carried out their works in 2006.

Essentially the works appear to flatten the existing site and remove a lot of the existing historic detail that has been preserved with the proposal reducing the current identity and presence purely to enhance the commercial nature of the Baytree centre.

Para 6.2.2 the concept of a feature board on the flank boundary wall is interesting as the reader would be reading information pertaining to the vista behind them!

Para 5.7 of the heritage statement suggests that Pepperell House is “*currently underused*” is not understood as it is tenanted by Brentwood Community transport.

There is a deed packet for the ruins which probably relates to the Council improvement project in 1997 which I am trying to locate as it contains an agreement entitled “Right use land adjoining T a B”

Officer comment: regarding ownership, correct certificates has been served on the Council ; the works and maintenance of the ruins will be a matter for the applicant to undertake on commencement of the development.

- **County Archaeologist:**

18/01745/FUL | Works to Chapel ruins to include hard and soft landscaping, planting and tree pruning works, replacement of street furniture and pavement re-surfacing. Alterations to shopfronts facade across the centre including 40-42 High Street. Change of use of from Use Class A1 to A3 at units 25-27 and units 23-24, and Use Class A1 to D2 at units Su12 and Su13 (both ground and first floors), 115sq.m of external restaurant/cafe space at Chapel High, associated drainage and utilities works. | Baytree Centre Including Units Along Chapel High And 40-42 High Street Brentwood Essex

The Historic Environment advisor of Essex County Council has been consulted on the above planning application.

The Essex Historic Environment Record shows that the proposed work lies within the historic settlement of Brentwood (EHER 525) and directly impacts on the Chapel of St Thomas a Becket which is a Scheduled Monument (1017452). The Heritage Statement submitted by the applicant recognises the national significance of the site and states that there has been extensive consultation with Historic England. Any future work around the Scheduled Monument will require Scheduled Monument Consent so it is essential that there is continuing consultation with Historic England. In addition, the area lies to the rear of the medieval High Street and there will be extensive archaeological deposits outside of the Scheduled area. This evidence may be damaged or destroyed by the groundworks associated with the development.

In view of this the following recommendation is made in line with the National Planning Policy Framework

Recommendation: Full condition

"No groundworks of any kind shall take place until the applicant has secured the implementation of a programme of archaeological monitoring in accordance with a written scheme of investigation which has been submitted by the applicant, and approved by the planning authority."

A professional team of archaeologists should undertake the archaeological work. The District Council should inform the applicant of the archaeological recommendation and its financial implications. A brief outlining the level of investigation will be issued from this office on request and in this instance there will be a cost implication for the developer.

6. Assessment

The starting point for determining a planning application is the development plan, in this case the Brentwood Replacement Local Plan 2005. Planning legislation states that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Relevant material considerations for determining this application are the National Planning Policy Framework 2019 (NPPF) and National Planning Policy Guidance (NPPG). Although individual policies in the Local Plan should not be read in isolation, the plan contains policies of particular relevance to this proposal which are listed in section 2 above.

Heritage Issues

The proposed works to the central courtyard containing the Chapel of St Thomas A Becket have been the subject of a series of pre-application discussions primarily centred around the proposed use of materials and the method of repair and maintenance of the ruins. As the site contains a Scheduled Ancient Monument those details will require a separate application for SAM consent to be progressed to the Secretary of State with approval from Historic England. This part of the site is outside the ownership of the applicant and in consultation with the Diocese of St Thomas of Canterbury it has been agreed that an application to the Diocese for Chelmsford for Faculty Jurisdiction will be progressed to ensure all the relevant consents for the proposed works are in place.

Design:

Both the Council's Heritage Officer and Historic England have had opportunity to review the proposed materials and schedule of repairs and maintenance to the monument and surrounding courtyard. Revisions submitted during the course of the application include:

- the internal chapel ruins floor area has been updated with a revised floor finish of red brick set in a herringbone pattern;
- the colour of the steel tree guards has been amended to black;
- proposed Portland stone apron at the ruins has been removed
- existing break in the outline of the southern wall of the chapel ruins has been reinstated
- existing consecrated stone alter will be retained with red brick base over-clad in Portland stone

- BT cabinet box to be retained in its current location.

Other materials proposed include new Scoutmoor Yorkstone paving to surround the chapel walls and the full extent of Chapel High and the area adjacent to Pepperrell House. The flint pebble dwarf walls are proposed to be resurfaced with new facing ragstone, and Portland stone capping.

The refurbished dwarf walls around the monument will include new openings to the north and south wall to enable pedestrian flow through; the existing benches are to be removed and new seating in the form of hardwood benches to be positioned on top of dwarf walls.

A new seating area within the central courtyard is proposed to be paved with Scoutmoor Yorkstone replacing the existing concrete tiles.

Although the application also suggests a palette of materials including Limestone, those details will need to be agreed and a condition to be attached to any permission is recommended.

Existing floor lighting is to be retained and refurbished. The existing alter is proposed to be retained and refurbished.

Landscaping:

Works to the existing Plane and Bay trees will reduce canopies and new corten steel tree guards with recessed lights are to be introduced around the base. It is proposed to remove the existing diseased bay tree and introduce a new tree in its place. Subject to conditions the Council's arboriculturist agrees with this approach.

Other works:

A new information board is proposed along the return wall of 38-42 High Street comprising the introduction of an information panel that provides details on the Chapel ruins; a new 'green wall' treatment is also proposed on this flank.

Alterations to the shop fronts with hanging signs are proposed along the west flank (The Chapel High Façade) including a bronze metallic finish with 200mm concrete stall riser; deep cleaning of concrete façade and replacement of the first floor window assembly with a bronze metallic finish. The fascia and signage are proposed to provide for a consistent colour and font suit which the applicant states will build uniform as part of a larger branding exercise across the Baytree Centre. Notwithstanding the information provided, a condition requiring details to be agreed to include stall risers is considered more appropriate here, given the proximity to the Conservation Area, and as highlighted to the applicant at pre-application stage.

Based on the comments from the Conservation / Historic Buildings officer the changes and refurbishment of the Chapel High Façade are considered acceptable. The landscape officer confirms that the works to the trees are acceptable subject to conditions.

Change of Use:

The proposal seeks a change of use of 6 units, from A1 (retail) to A3 (restaurant) at units 25 – 27 and units 23 – 24, on the pedestrian approach from the High Street, and from A1 to D2 (Assembly and leisure) at units SU12/13 towards the south end of the centre.

The Baytree Centre is within the Prime Shopping Area, where Local Plan policy TC7 applies and which states that further non-retail uses will be resisted because the Baytree Centre provides an important shopping provision in the Town centre. The plan also indicates that in strategic terms, the most appropriate location for further retail improvements within the town centre, be it food or non-food, would be on the south side of the High Street and that the priority should be for the development of the Baytree Centre.

The applicant's planning statement acknowledges that the proposal is not supported by Policy TC7 but consider that little weight should be attached to as it conflicts with the NPPF and the development is 10 years old. However, while the development plan dates from 2005 and therefore is capable of being judged out of date, for example due to subsequent changes in national policies, the revised NPPF published February 2019 retains support for this type of policy in paragraph 85(b) advising that planning policies should:

“define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations as part of a positive strategy for the future of each centre”

On that basis Policy TC7 is considered to be generally consistent with current national policy and up to date, although it does not provide a 'range' of uses that it considers to be acceptable, within the Baytree Centre. This being the case, it is necessary to consider whether there are any circumstances that would justify a departure from that policy that would allow permission to be granted.

The applicant's planning statement goes on to acknowledge that the Centre is at the heart of the town centre and plays a key role in meeting Brentwood's current retail needs. While it benefits from a range of unit sizes and layouts which are capable of subdivision or amalgamation to provide a flexible provision of floorspace arrangements, it does not currently cater for the full range of day-to-day retail needs and lacks other uses that would be expected of a shopping centre in this location. The applicant also highlights that over time, a variety of planning applications have resulted in changes to signs, shopfronts, cafes, and change of use from A3 to A1 and D1 as well as from A1 to a radio broadcasting station.

The Centre suffers from a high level of vacancy – over 30% according to the applicants submission - including the previous supermarket (unit S12) with the units subject to the application having been vacant for a number of years, despite efforts to market, limited interest has been shown. The Centre does not currently cater for the full range of day-to-day retail needs and lacks other uses that would be expected of a shopping centre in this location.

Units SU12 and SU13 are wholly contained within the envelope of the centre and offer no active street frontage. D2 uses include leisure and assembly and have the potential to attract the general public into the Centre for example, creche or soft play type activities would provide a complementary use to the primary shopping area. It is considered such a use would not give rise to unacceptable noise or disturbance to surrounding residents, subject to condition.

The Chapel High units 25/27 and 23/24 have also been vacant for over 4 years. It is considered that the option of an A3 (restaurant) use would provide flexibility in marketing the units and with the option of outdoor seating could revitalise and attract additional footfall to the benefit of surrounding retail units. The applicant points to recent change and extensions to permitted development rights from A1 to A3 use, and contends that this demonstrates Government seeks to seek flexibility for high streets to help diversify the uses and assist with long term viability.

Even with the introduction of the additional A3 use, the Baytree Centre would still be predominantly in A1 use; the Centre currently has no other A3 use and the change of use would equate to approximately 510sqm out of a total of 8401sqm Class A1-A3 units.

It is considered that the proposed changes of use could provide a choice to future tenants and an opportunity to bring back footfall to the area and introduce a evening economy and benefit other units within the Centre. Given the length of vacancy of the units, it is considered that the proposed changes of use would be acceptable.

Other Matters:

Highways: Subject to a condition requiring a Construction Management Statement, no objections are raised. A representation submitted concerned with additional car movements arising out of the development is noted, however, it is considered that the change of use is of a scope that would not result in any unacceptable traffic impact.

Drainage: The site is within Flood Zone 1 and a Flood Risk Assessment has been submitted with the application. Except for local repairs and incorporating an attenuation tank in the courtyard to accommodate a 20% betterment in the discharge from the upgraded courtyard, there is no proposal to alter the existing drainage network.

Delivery Hours: The service yard to west adjacent to Crown Street would be closest to residential properties and for this reason it is considered that an appropriately worded condition restricting deliveries be added.

Ventilation and extraction: Details of the proposed kitchen ventilation and extraction units are detailed on plan 17160-MSK-006 Rev P. These are proposed to be located along the service yard to the west. Further details are proposed with an accompanying statement – restaurant ventilation provision. No comments have been received by the Environmental Health Service at the time of the report writing. The end tenant will therefore need to submit details prior to the occupation and use of any unit approved for A3 use and a condition requiring details of ventilation and noise from extraction / A/C units is suggested.

Conclusion :

The proposed work to the monument is supported by the parish church of St Thomas of Canterbury who in a letter to the Council confirm that part of the application concerns an area of land that is part of the Parish of Brentwood and consists of consecrated land. As such, the applicant intends to submit a unilateral undertaking to enable works to land outside their control to be undertaken, on the basis of which, suggested condition 5 will fall away.

In terms of the change of use of the units away from non-retail, an exception to applying policy TC7 can be acceptable if the Council considers that the change would assist in an enhancement to the vitality of the Baytree Centre by way of attracting additional footfall and provide facilities that would complement the existing uses.

Subject to conditions requiring further details to be agreed, the works around the SAM are acceptable.

The comments of the Council's asset team are noted and the applicant has indicated that they are seeking advice on how the current deed to which they refer could be rescinded, but in any event that is not a matter for the local planning authority.

Based on the above, it is recommended that permission be granted subject to conditions.

7. Recommendation

APPROVAL subject to the submission of a Unilateral Undertaking S106

Subject to conditions:

1 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 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 New Materials

Notwithstanding the submitted drawings, details and samples of all new materials within the St Thomas A Becket Chapel ruins and surrounding area as indicated on drawing no A11403 D2100 rev P3, including the dimensions of the agreed herringbone brickwork within the chapel ruins shall be submitted to and approved in writing by the local planning authority prior to the commencement of development.

Reason: in the interest of the setting and appearance of the Scheduled Ancient Monument, Grade II listed buildings and the character and appearance of the Brentwood Town Centre Conservation Area.

4 Conservation Management Plan

No development shall take place until such time as a Conservation Management Plan for the St Thomas a Becket Chapel ruins has been submitted to and approved in writing by the local planning authority in conjunction with Historic England. The report shall include full details of a scheme to include the methodology of repairs; proposed works, responsibilities and maintenance of the Scheduled Ancient Monument. The works as agreed shall be carried out strictly in accordance with the approved scheme.

Reason: In the interests of the appearance and integrity of the Scheduled Ancient Monument and nearby Grade II listed buildings.

5 Hours of Use - deliveries

No deliveries shall take place outside the following hours: 08:00 - 18:00; Mondays - Fridays, 08:00 – 18:00 Saturdays and there shall be no deliveries on Sundays and public holidays.

Reason: To safeguard the living conditions of nearby residents

6 Hours of Use (7 day opening)

The premises granted permission for change of use shall not be open for customers outside the following hours: Monday – Fridays 09:00 – Midnight, and Saturdays and Sundays 10:00 – 23:00.

Reason: To safeguard the living conditions of nearby residents.

7 Extraction units

Notwithstanding the details as submitted prior to first use of the premises granted permission for A3 use, full details of the means of ventilation and extraction, and dispersal of cooking smells and fumes, including details of odour control measures, noise levels and its appearance and finish, have been submitted to and approved in writing by the local planning authority. The approved scheme shall be installed before the use hereby permitted commences and permanently retained thereafter.

Reason: To safeguard the amenity of adjoining properties and the protect the general environment.

8 Construction Management

Given the location of the development in the centre of Brentwood, a Construction Management Plan shall be submitted to and approved in writing by the local planning authority. The approved

Plan shall be adhered to throughout the construction period. The Plan shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and underbody washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy

9 Drainage

The Sustainable Urban Drainage system shall be implemented in accordance with the details set out within the Flood Risk Assessment document

Reason: In order to ensure adequate provision is made for surface water drainage.

10 Landscaping

Prior to the commencement of the development hereby permitted a scheme of soft landscaping shall be submitted to and approved in writing by the local planning authority. The submitted scheme shall indicate the existing trees and shrubs to be retained and provided, including the 'green wall', and a plan for its management and maintenance. Any newly planted tree or green wall that dies, or is uprooted, severely damaged or seriously diseased, within five years of the completion of the development, shall be replaced within the next planting season with another of the same species and of a similar size, unless the local planning authority gives prior written consent to any variation.

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

11 Replacement Tree

Prior to the removal of the tree hereby granted consent details of a replacement tree, including its species, size and position shall be submitted to and agreed in writing by the local planning authority. Unless otherwise agreed in writing by the local planning authority the replacement tree shall be planted during the first planting season following removal of this tree. If within five years the replacement tree dies, is removed or becomes severely damaged or seriously diseased, it shall be replaced within the next planting season after its death, removal or the recognition of the damage or disease.

Reason: In the interests of the visual amenities of the locality.

12 Agree works to trees

Details of the proposed works to the retained trees shall be submitted to and agreed in writing by the local planning authority prior to any such work commencing.

Reason: To enable the Council's Arboriculturalist opportunity to agree an appropriate schedule of work, in the interest of the visual amenity of the area.

13 Site levels

Details of existing and proposed site levels of works to the external areas shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development hereby permitted. Construction shall be in strict accordance with the approved details.

Reason: To safeguard the character and appearance of the area.

14 Shopfronts

Prior to the commencement of works the details of the new shopfronts shall be submitted to and agreed in writing by the local planning authority.

Reason: In the interests of the visual amenity of the area, given its proximity to the Brentwood Town Centre Conservation Area.

Informative(s)

The following development plan policies contained in the Brentwood Replacement Local Plan 2005 are relevant to this decision: CP1, C14 C16 TC7 and National Planning Policy Framework (NPPF) 2019 and NPPG 2014.

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.

If this planning permission is the subject of a planning obligation made under Section 106 of the Town and Country Planning Act and the developer must ensure that the provisions of that obligation are fully implemented.

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Appendix A – Site Map

Appendix A



Title : Baytree Centre including Units long Chapel High And 40-42 High Street, Brentwood

18/01745/FUL

Scale at A4 : 1:1250

Date : 12th June 2019

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



© Crown copyright and database rights 2018 Ordnance Survey 100018309

This page is intentionally left blank

SITE PLAN ATTACHED

BARNSTON WAY GARAGE SITE HUTTON BRENTWOOD ESSEX CM13 1YE

DEMOLITION OF EXISTING GARAGES AND CONSTRUCTION OF 1 X 2 BEDROOM DWELLING AND 2 X 3 BEDROOM DWELLINGS. WIDENING OF EXISTING ACCESS ROAD TO 6M AND REFUSE IMPROVEMENTS AT THE REAR OF WHITTINGTON ROAD.

APPLICATION NO: 19/00565/BBC

WARD	Hutton North	8/13 WEEK DATE	29.05.2019
PARISH		POLICIES	
CASE OFFICER	Mrs Carole Vint	01277 312500	
Drawing no(s) relevant to this decision:	Design & Access Statement ; Trees Survey; P101 /C; P102 /C; P200 /C; P201 /C; P202 /C; E001 ; P001 ; P100 /B;		

The application is being presented to the planning committee as Brentwood Borough Council is the applicant.

1. Proposals

This application relates to the demolition of existing garages (10 in total) and the construction of a two storey terrace of 3 no. townhouse dwellings (1 x two bedroom and 2 x three bedroom) at Barnston Way Garage Site. The access road would be widened to safely accommodate the cars entering and exiting the site and provide an improved access to the public open space. A purpose built refuse store would be re-positioned from its current informal location underneath the window of the adjacent ground floor block of flats to a location set back from the new widened access.

2. Policy Context

National Planning Policy Framework (NPPF) 2019
National Planning Practice Guidance (NPPG)
Policy CP1 General Development Criteria
Policy H6 Small Unit Accommodation
Policy T2 New Development and Highway Considerations
Policy T5 Parking – General
Policy LT2 Development of Existing Urban Open Spaces

Local Development Plan:

The emerging Local Development Plan went through Pre-Submission (Publication Draft) Stage (Regulation 19) consultation between 5 February and 19 March 2019. The responses to the consultation are currently being assessed. Following this, the LDP will be submitted to the Secretary of State for an Examination in Public in Q3 or Q4 of 2019. Provided the Inspector finds the plan to be sound, it is estimated that it could be adopted by the Council in early/mid 2020.

The Brentwood Replacement Local Plan 2005 remains the development plan and its policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the National Planning Policy Framework (NPPF). Due weight should be given to them, according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given).

As the emerging plan advances and objections become resolved, more weight can be applied to the policies within it. At this stage there are outstanding objections to be resolved, nevertheless, the Local Plan Pre-Submission (Publication Draft) provides a good indication of the direction of travel in terms of aspirations for growth in the Borough and where development is likely to come forward through draft housing and employment allocations.

3. Relevant History

None relevant

4. Neighbour Responses

One letter has been received from a neighbouring dwelling. The concerns arising from the letter include:

- Concerns regarding potential overlooking;
- Potential loss of value to properties in Colet Road;

5. Consultation Responses

• Open Space Strategy Coordinator:

From reviewing the planning application, it would seem that the development will encroach onto the existing open space at the rear of the Hutton Poplars Estate. This open space is a relatively large field sufficient to accommodate two football pitches with surrounding space and therefore the relatively small loss is not of a concern.

It is felt that the loss is mitigated by the overall benefits the proposed development will have on the wider environment and community bringing a somewhat unused

and secluded garage site into use and allowing a more visually appealing back drop to the existing open space.

The development would result in the loss of the existing access gate and boundary fencing between the open space and development site and so a condition within the permission will be required to ensure that the gate and fencing is replaced with a suitable alternative to be agreed by Officers.

At this stage there is no initial objection from an open space's perspective.

- **Housing Services Manager:**

Discussion

The Brentwood Replacement Local Plan (Aug 2005) does not indicate a tenure or preferred bedroom size mix; centering it on negotiations based on housing need. Housing Need within the Borough is identifiable via the Objectively Assessed Need (OAN) as per the Strategic Housing Market Assessment (SHMA) Part 2.

Affordable Provision

3 total units are included for approval, of which 3 are to be affordable. At 100% the provision exceeds required quantum of affordable housing provision.

The proposed tenure mix is in line with the SHMA Part 2 and will provide much needed social housing properties for families within the Borough.

Location

The location and layout as suggested in the application is deemed to be suitable, noting the small scale of the site within existing communities.

Management

No management issues of affordable housing are envisaged, as the properties will be owned and managed by Brentwood Borough Council in line with existing stock.

Summary

The suggested provision of affordable housing does meet evidenced housing need within the Borough and is a progressive provision of social housing.

I would recommend that the scheme shows a well-balanced provision of affordable housing, in line with identified housing need within the Borough.

Recommendation

The provision of affordable housing as per the application is supported by Brentwood Borough Council Housing Services.

- **Environmental Health & Enforcement Manager:**

I have no objection to the proposed development. If permission is to be granted, I would suggest the following issues are addressed by way of conditions.

Contaminated land

As a previous developed site there is the possibility of oil and other fluids having been split on the site from its use as garages.

I would suggest that the full suite of contaminated land conditions is applied to the approval.

Demolition and Construction

The developer should submit a Construction Environmental Management Plan. The garages have asbestos cement roofs. The CEMP should address the safe removal and disposal of any contaminated waste. The standard hours of work would be appropriate for the development.

- **Highway Authority:**

The documents accompanying the application have been duly considered and a site visit carried out. It is noted that this section of Barnston Way does not form part of the public highway, but it is a public right of way. Given that the application includes plans to widen the current access road and maintains access to the public right of way, from a highway and transportation perspective, the impact of the proposal is acceptable to the Highway Authority subject to the following requirements;

1. No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for:
 - i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. wheel and underbody washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety.

2. The widened access road onto Whittington Road shall be provided as shown in principle in the Proposed Block Plan drawing No. P001. The road shall be hard-surfaced for its full length.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety.

3. Cycle parking for the dwellings without a garage shall be provided in accordance with the EPOA Parking Standards. The approved facilities shall be secure, convenient, covered and provided prior to occupation and retained at all times.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity.

4. Prior to first occupation of the proposed development, the Developer shall be responsible for the provision, implementation and distribution of a Residential Travel Information Pack for sustainable transport, as approved by Essex County Council, and to include six one day travel vouchers for use with the relevant local public transport operator. These packs (including tickets) are to be provided by the Developer to each dwelling free of charge.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport.

Informative

The Public Right of Way network is protected by the Highways Act 1980. Any unauthorised interference with any route noted on the Definitive Map of PROW is considered to be a breach of this legislation. The public's rights and ease of passage over public footpath no 122, Brentwood parish (as shown as a purple dotted line in the drawing below), shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way.

Please note that the Highway Authority shall only maintain the surface of Barnston Way to that commensurate to its use as a footpath.

The grant of planning permission does not automatically allow development to commence. In the event of works affecting the highway, none shall be permitted to commence until such time as they have been fully agreed with this Authority. In the interests of highway user safety this may involve the applicant requesting a temporary closure of the definitive route using powers included in the aforementioned Act. All costs associated with this shall be borne by the applicant and any damage caused to the route shall be rectified by the applicant within the timescale of the closure.

Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway.

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, Essex CM13 3HD.

- **Operational Services Manager:**

From the plans I can see no issue in relation to waste collections from these 3 proposed properties.

- **Basildon Fire Station:**

The submission has been considered and the following observations are made:

Access

Access for Fire Service purposes has been considered in accordance with the Essex Act 1987 - Section 13 and the Building Regulations 2010.

The proposal itself does not affect fire service access to existing premises in the vicinity.

Although fire service vehicular access to the proposed dwellings would be achievable meeting the hose distance criteria as specified in Approved Document 'B' Volume 1 Sec B5; there will be inadequate turning facilities for a fire appliance and therefore the proposal would not be acceptable. However, where the requirements of the Approved Document cannot be met the extended distances implied will allow for relaxation of the criteria specified provided the house are fitted throughout with a sprinkler system conforming to the requirements of BS 9251:2014 or BS EN 12845. (BS 9991: 2015 refers).

Water Supplies

Should the application be successful the architect or applicant is reminded that additional water supplies for firefighting may be necessary for this development and they are therefore urged to contact the Water Technical Officer at Service Headquarters, telephone 01376-576344 at the earliest opportunity.

- **Arboriculturalist:**

There are no trees within the site that would be affected by the proposed development. There is a line of trees within the adjacent park however these are set back sufficiently to ensure that they would not be adversely affected by the development. The only trees that will require some management are a line of Leyland Cypress in third party ownership growing as a hedge along the access to the site. They are currently overhanging the access. It is considered that facing these back to the property boundary would enhance the appearance of the access. It is possible over time that the small trees and shrubs growing on the rear boundaries of properties in Colet Road may require facing back to the boundary to prevent encroachment over the small rear garden spaces.

Plans within the DAS indicate new planting will be provided within the development. The detail of the scheme can be dealt with by condition.

There is no objection to the scheme on landscape grounds.

6. Summary of Issues

The main issues which require consideration as part of the determination of this application are;

- The impact of the proposal on the character and appearance of the area;
- Impact on the amenity of the occupiers of neighbouring properties;
- Impact on the quality of life for the occupiers of the altered and proposed unit;
- Parking and Highway considerations;

Concerns were raised with the applicant regarding potential overlooking that may occur from the first floor side bedroom window to Plot C, this window has been re-designed to have a directional casement standing seam enclosure to mitigate any potential harm.

Principle of Development

The proposal is for the demolition of the existing garages (10 in total) and the construction of three two storey dwellings (1 x two bedroom and 2 x three bedroom) set in a terrace, alongside improved pedestrian access to the adjacent open space and refuse improvements to the rear of Whittington Road. The site is within a residential area as defined in the Brentwood Replacement Local Plan. As such, the principle of developing this site for residential purposes is acceptable subject to other considerations, such as design, residential amenity considerations and highway/parking matters.

Design, Character and Appearance

The application site is a disused garage site in Barnston Way accessed off Whittington Road, Hutton. A Public Footpath, No. 122 runs through the site and a substantial public open space is adjacent to the west. The application site includes an 8 metre wide strip of the adjacent public open space, to allow for access to the dwellings and continued access to a privately owned garage to a dwelling in Colet Road, north of the application site. To the north, north east and south east are two storey dwellings in Colet Road and Whittington Road and a three storey block of flats to the south west of the site.

The site is currently occupied by 10 derelict unused pre-cast concrete garages, with asbestos cement roofing sheets and the site is predominately concreted over. The design and access statement submitted with the application refers to the garages being in a poor condition and concerns reported to the Council regarding fly tipping and anti-social behaviour. It is considered that the loss of the garages is outweighed by the overall benefits of the proposed development, resulting in a positive impact on the wider environment and community, bringing a somewhat unused and secluded garage site into use and allowing a more visually appealing back drop to the existing adjacent public open space.

The proposed dwellings comprise of a terrace of three dwellings with a gable pitched roof and a flat roof link side addition. The height of the ridge of the gable is 7.5 metres with the flat roof additions measuring 5.6 metres. The dwellings would have a total width of 22.4 metres and a maximum depth of 10.2 metres. The dwellings would be positioned 3 metres from the rear boundary of the dwellings in Colet Road. Each dwelling would have their own individual private amenity space of approximately 25 square metres at the rear, a front garden with bin store area and off street parking, and a private terrace of approximately 9 square metres at first floor facing the adjacent public open space. Details of the boundary treatments are to be provided, along with landscaping, however the drawings indicate that fencing would be used at the rear with a hit and miss brick wall along the front boundary with some landscaping in the front garden areas.

Two of the dwellings proposed would be classed as specialist housing, having full ground floor living accommodation. All three of the dwellings would be for affordable rent and owned and managed by Brentwood Borough Council in line with existing housing stock, meeting demonstrated housing need within the Borough.

The proposed dwellings would be built using timber weather board to the first floor elements with brick for the ground floor walls and the flat roof additions. Plain clay roof and ridge tiles would also complement the development within its surroundings, along with aluminium windows and powder coated rainwater goods. Samples of the materials are to be agreed in writing prior to commencement. The site is not particularly visible from the street scene and given the surrounding dwellings are two storey and three storey in height, it is considered that the proposed dwellings would not have an unacceptable detrimental impact on the character and appearance of the surrounding area and would comply with Chapter 12 of the NPPF (2019) in relation to design and Policy CP1 (i) and (iii) of the Brentwood Replacement Local Plan.

Living quality of life for the occupiers of the proposed units

The proposed dwellings would be set back from the rear boundary of the rear gardens of dwellings in Colet Road by approximately 3 metres, the resulting residential amenity space of approximately 34 square metres (rear amenity space and private raised terrace area), would not meet the minimum requirement of 75 square metres as set out in Appendix 1: Extracts from the Essex Design Guide for Residential and Mixed Use Areas. However, given the location of the dwellings in relation to the public open space immediately adjacent to the site, the amount of private amenity space provided is considered acceptable in this regard.

The floor plan indicates that all rooms will be served by adequate windows providing light, ventilation and outlook and meet the national space standards in terms of habitable floor space.

Permitted development rights would be removed for outbuildings and extensions including roof additions in order to prevent the reduction of the garden space without the need of planning permission.

Impact on Neighbour Amenity

In terms of overlooking and lack of privacy, the proposed dwellings would be set back from the boundary of rear gardens in Colet Road by approximately 3 metres. Although this distance would not allow for an eye to eye distance from rear to rear of 35 metres, this distance can be reduced where privacy has been achieved by design. The windows in the rear at first floor level are all high level windows, positioned above a height of 1.7 metres from the finished floor level and have limited openings. Those in the gables serve bedrooms, with the others in the flat roof additions serving bathrooms which would be obscured glazed, for privacy of the users. These high level window openings would avoid potential overlooking. Concerns were raised in regards to the opening to bedroom one in Plot C, this window has since been re-designed to have a directional casement standing seam enclosure to mitigate any potential overlooking. Given the urban location and the design of the first floor windows, it is considered to not have an impact on the neighbouring amenity.

In relation to overbearing effect, the dwellings have been designed with vaulted ceilings to limit the overall external height to 7.5 metres. The dwellings present a gable end with gaps to each side to reduce their impact on the properties to the north. Furthermore the gardens in Colet Road at approximately 22 metres, the dwellings would have some effect on the enjoyment of the gardens of occupiers of the dwellings to the north of the site. However given the urban location and design of the dwellings, it is considered that the effect would be limited and acceptable.

It is therefore considered that the proposal would not have an unacceptable detrimental impact on the general amenities of nearby occupiers, by way overlooking, overbearing effect or lack of privacy and would comply with Policy CP1 (ii).

Parking and Highway Considerations

The drawings indicate that each dwelling unit would have two parking spaces, with Plot C having one integral garage. The number of parking spaces provided meets the Essex Parking Standards in terms of size and layout. Parking would be provided in front of each dwelling, with a parking area to the south east providing the further two spaces required for Plots A and B, no objection is raised on this matter and the proposal is considered compliant with Policies T2, T5 and CP1 (iv) of the Local Plan and NPPF.

Cycle parking for the dwellings without a garage will be provided in accordance with the Essex Parking Standards.

The access to the site would be improved and widened. This access is also well used by pedestrians for access to the public open space and as a route to Shenfield Train Station. The improvements will also maintain the existing public footpath No. 122 that passes through the site.

Other matters

The application site encroaches onto the adjacent public open space with the reconfiguration of the access to the new dwellings and to the existing garage of a resident in Colet Road. Although Policy LT2 states permission will not be granted for development of public open space, this encroachment is considered acceptable as the public open space is relatively large and is sufficient to accommodate two football pitches with surrounding space.

Conclusion

The proposal would make a modest contribution to housing land supply in the Borough but it is acceptable in planning terms in its own right without having to rely on this issue to justify permission.

The application is recommended for approval subject to conditions.

7. Recommendation

The Application be APPROVED subject to the following conditions:-

1 TIM01 Standard Time - Full

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

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

2 DRA01A Development in accordance with drawings

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

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

3 MAT02 Samples (details not acceptable)

Notwithstanding the details indicated in the application, no development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in

writing by the local planning authority. Development shall be carried out in accordance with the approved details.

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

4 U30421

The first floor window(s) on the north facing elevation serving bathrooms shall be:-
a) glazed using obscured glass to a minimum of level 3 of the "Pilkington" scale of obscuration. The windows shall be installed prior to the first occupation of the building or use of the room of which the window(s) is installed. Those windows shall remain so glazed. (Note the application of translucent film to clear glazed windows does not satisfy the requirements of this condition)

Reason: In order to prevent an unacceptable degree of overlooking of nearby residential properties.

5 U30442

No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- v. wheel washing facilities
- vi. measures to control the emission of dust and dirt during construction
- vii. a scheme for recycling/disposing of waste resulting from demolition and construction works, including removal of the garage roofing material.
- viii. hours of working and hours during which deliveries may be taken at the site

Reason: In the interests of highway safety, visual and neighbour amenity.

6 LAN04 Landscaping - Small Developments

No development shall take place until a landscaping scheme showing details of new trees, shrubs and hedges and a programme for their planting, and any existing trees/hedges to be retained and the measures to be taken for their protection, has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall be carried out as approved. Any newly planted tree, shrub or hedgerow, or any existing tree, shrub or hedgerow to be retained, that dies, or is uprooted, severely damaged or seriously diseased within five years of the completion of the development, shall be replaced within the next planting season

with another of the same species and of a similar size, unless the local planning authority gives prior written consent to any variation.

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

7 U30423

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), the dwelling hereby permitted shall not be extended or enlarged in any way without the prior grant of specific planning permission by the local planning authority.

Reasons

To safeguard the living conditions of the occupiers of neighbouring dwellings.

8 U30424

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order) no development falling within Schedule 2, Part 1, Class E of that Order ('buildings etc incidental to the enjoyment of a dwellinghouse') shall be carried out without the prior grant of specific planning permission by the local planning authority.

Reasons: To avoid overdevelopment of this small site.

9 RESL05 No PD for dormers/roof

Aside from those indicated on the approved drawings, and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order) no dormer windows, or rooflights shall be constructed and no change shall be made to the shape of the roof without the prior grant of specific planning permission by the local planning authority.

Reason: To safeguard the living conditions of the occupiers of neighbouring dwellings.

10 SIT01 Site levels - to be submitted

Details of existing and proposed site levels and the finished floor levels of the proposed buildings shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development hereby permitted. Construction shall be in strict accordance with the approved details.

Reason: To safeguard the character and appearance of the area and the living conditions of nearby residents.

11 BOU01 Boundary treatment to be agreed (gen)

The development shall not be occupied until details of the treatment of all boundaries including drawings of any gates, fences, walls or other means of enclosure have been submitted to and approved in writing by the local planning authority. The approved boundary treatments shall be completed prior to the first occupation of the development and shall thereafter be permanently retained and maintained.

Reason: In the interests of safeguarding the character and appearance of the area and living conditions of adjacent occupiers.

12 U30425

No development shall commence until a remediation scheme to bring the site to a suitable condition for residential development has been submitted to and approved in writing by the Local Planning Authority. The agreed remediation scheme will be implemented prior to the commencement of any part of this planning permission (unless otherwise agreed in writing by the local planning authority). Formulation and implementation of the remediation scheme shall be undertaken by competent persons and in accordance with the Essex Contaminated Land Consortium's Land Affected by Contamination: Technical Guidance for Applicants and Developers. Such agreed measures shall be implemented and completed prior to the commencement of any development of the site.

o Should contamination be found that was not previously identified during any stage of the application hereby approved or not considered in the remediation scheme that contamination shall be made safe and reported immediately to the local planning authority. The site shall be re-assessed and a separate remediation scheme shall be submitted for approval by the Local Planning Authority. Such agreed measures shall be implemented and completed prior to the commencement of any development of the site.

o The developer shall notify the Local Planning Authority in writing of impending completion of the remediation works within one month of the completion of the said works. Within four weeks of completion of such works a validation report undertaken by competent persons in accordance with the Essex Contaminated Land Consortium's Land Affected by Contamination: Technical Guidance for Applicants and Developers related to the agreed remediation measures shall be submitted to the Local Planning Authority for approval. There shall be no residential occupation of the site until the Local Planning Authority has approved the validation report in writing. Furthermore, prior to occupation of any property hereby permitted, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in the conditions above.

Reason: To protect the safety of future occupiers of the dwellings given the long history of vehicle related uses on the site.

13U30427

Prior to the occupation of the development, details for the provision of cycle parking for the dwellings without a garage shall be provided in accordance with the EPOA Parking Standards. The approved facilities shall be secure, convenient, covered and be retained at all times.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity.

14 U30443

Details of the replaced gate and fencing to the public open space shall be submitted to and approved in writing by the local planning authority.

Reason: To ensure the safety of users of the public open space is maintained.

15 U30444

The widened access road onto Whittington Road shall be provided as shown in principle in the Proposed Block Plan drawing No. P001. The road shall be hard-surfaced for its full length.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety.

16 U30428

Prior to first occupation of the proposed development, the Developer shall be responsible for the provision, implementation and distribution of a Residential Travel Information Pack for sustainable transport, as approved by Essex County Council, and to include six one day travel vouchers for use with the relevant local public transport operator. These packs (including tickets) are to be provided by the Developer to each dwelling free of charge.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport.

Informative(s)

1 INF04

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

2 INF05

The following development plan policies contained in the Brentwood Replacement Local Plan 2005 are relevant to this decision: CP1, H6, T2, T5, LT2, National Planning Policy Framework (NPPF) 2019 and NPPG 2014.

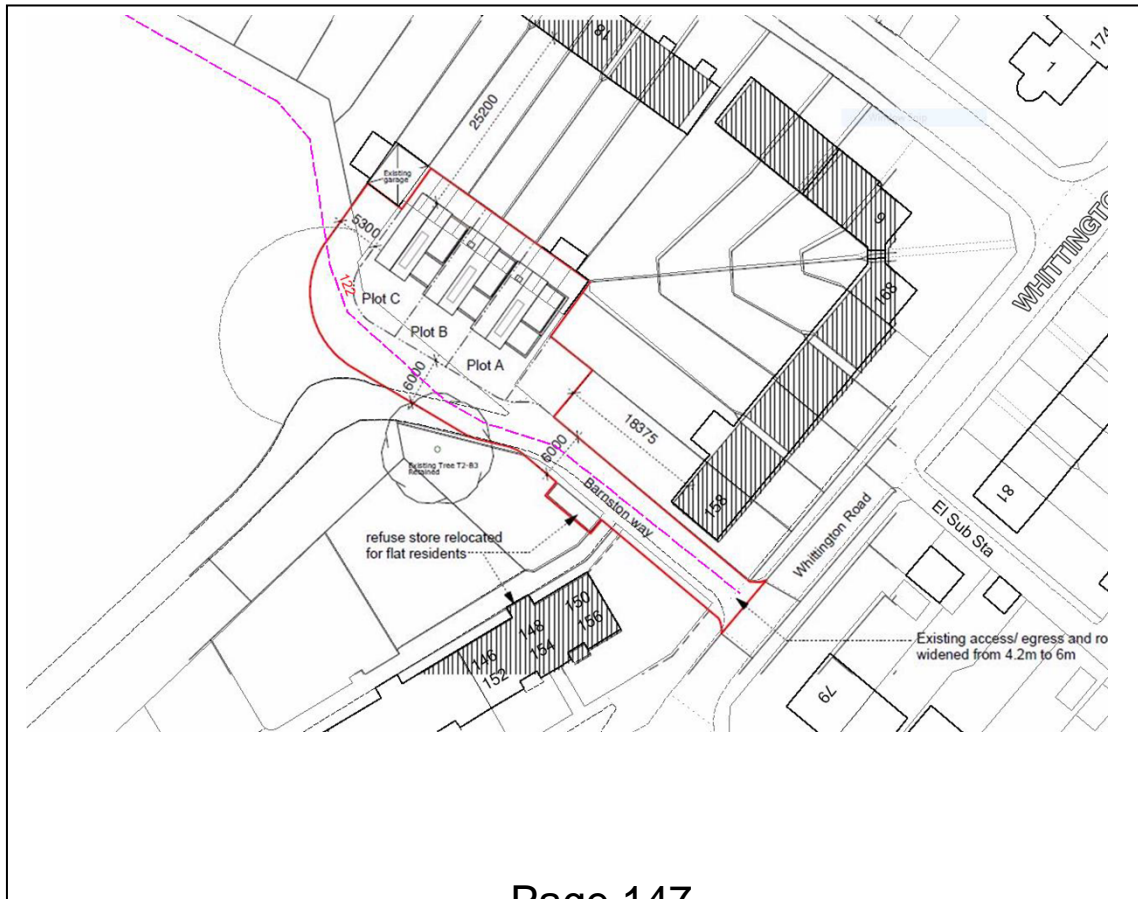
3 INF22

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

4 U06308

Highway informatives:

The Public Right of Way network is protected by the Highways Act 1980. Any unauthorised interference with any route noted on the Definitive Map of PROW is considered to be a breach of this legislation. The public's rights and ease of passage over public footpath no 122, Brentwood parish (as shown as a purple dotted line in the drawing below), shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way.



Please note that the Highway Authority shall only maintain the surface of Barnston Way to that commensurate to its use as a footpath.

The grant of planning permission does not automatically allow development to commence. In the event of works affecting the highway, none shall be permitted to commence until such time as they have been fully agreed with this Authority. In the interests of highway user safety this may involve the applicant requesting a temporary closure of the definitive route using powers included in the aforementioned Act. All costs associated with this shall be borne by the applicant and any damage caused to the route shall be rectified by the applicant within the timescale of the closure.

Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway.

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, Essex CM13 3HD.

5 INF29

The developer is reminded of the provisions of the Party Wall etc Act 1996 which may require notification of the proposed works to affected neighbours. Detailed information regarding the provisions of 'The Act' should be obtained from an appropriately qualified professional with knowledge of party wall matters. Further information may be viewed at <https://www.gov.uk/party-wall-etc-act-1996-guidance>

6 U06310

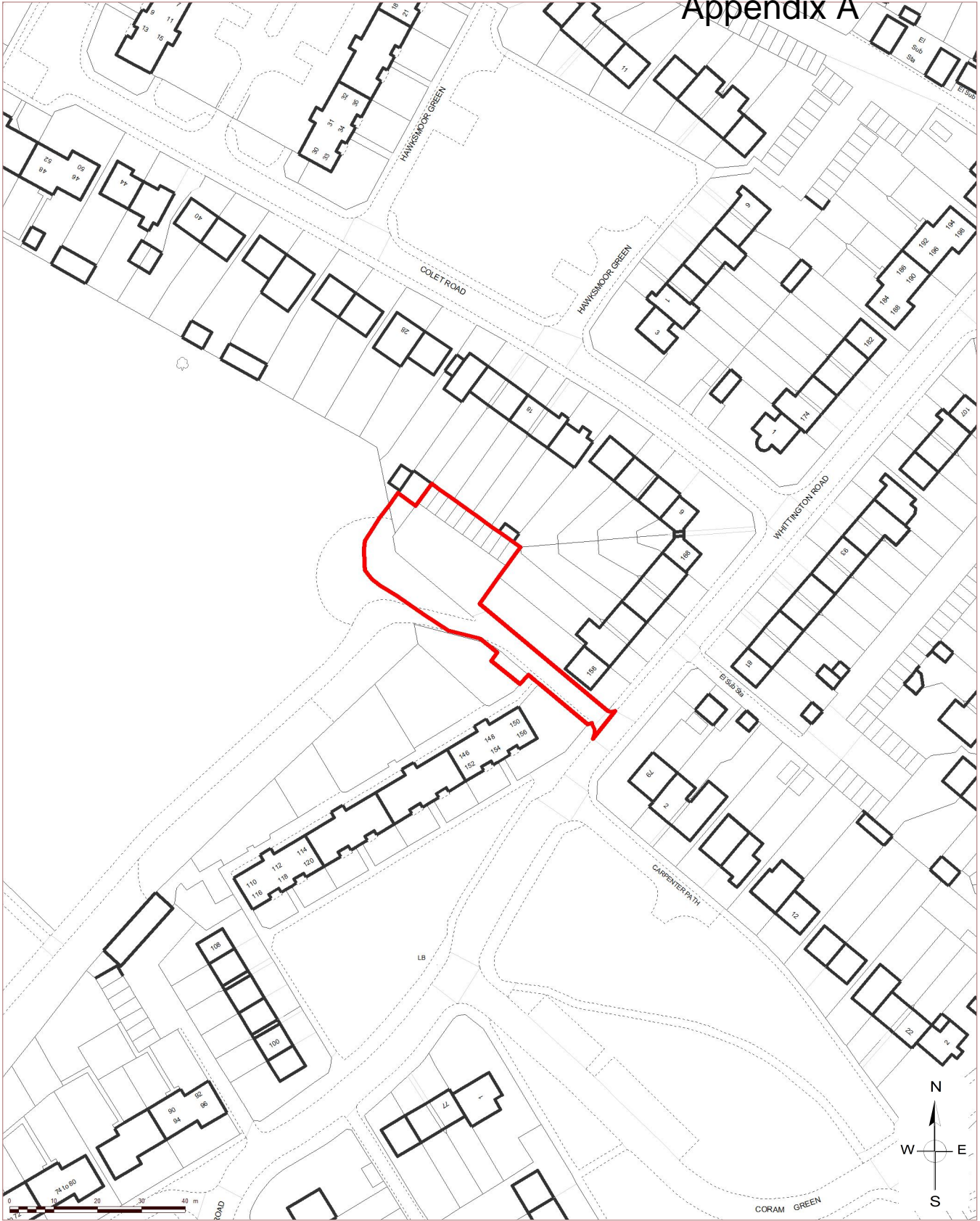
Following advice from the Fire Service, due to the inadequate turning facilities for a fire appliance, however the guidance allows for relaxation of the criteria, providing that the houses are fitted throughout with a sprinkler system conforming to the requirements of BS 9251:2014 or BS EN 12845. (BS 9991: 2015 refers).

7 U06311

The architect or applicant is reminded that additional water supplies for firefighting may be necessary for this development and they are therefore urged to contact the Water Technical Officer at Service Headquarters, telephone 01376-576344 at the earliest opportunity.

Appendix A – Site Map

Appendix A



Title : Barnston Way Garage Site, Hutton, Brentwood, Essex

19/00565/BBC

Scale at A4 : 1:1250

Date : 12th June 2019

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



© Crown copyright and database rights 2018 Ordnance Survey 100018309

This page is intentionally left blank

ITEM 11

Report and Appendices contain exempt information and is therefore not publicly available.

This page is intentionally left blank

Members Interests

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

- **What are pecuniary interests?**

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

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

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

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

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

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

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

- **Other Pecuniary Interests**

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

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

- **Non-Pecuniary Interests**

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

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

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

Planning and Licensing Committee

Planning

- (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.
 - (a) To guide the Council in setting its policy objectives and priorities.
 - (b) To carry out the duties and powers of the Council under current legislation;
 - (c) To develop, implement and monitor the relevant strategies and policies relating to the Terms of Reference of the committee.

- (d) To secure satisfactory standards of service provision and improvement, including monitoring of contracts, Service Level Agreements and partnership arrangements;
- (e) To consider and approve relevant service plans;
- (f) To comply with the standing orders and financial regulations of the Council;
- (g) To operate within the budget allocated to the committee by the Council.
- (h) To determine fees and charges relevant to the committee;

To review and monitor the operational impact of policies and to recommend proposals for new initiatives and policy developments including new legislation or central government guidance

- (d) Powers and duties of the local planning authority in relation to the planning of sustainable development; local development schemes; local development plan and monitoring reports and neighbourhood planning

Licensing

- (a) Except in relation to the statement of Licensing Policy, to discharge all functions conferred upon the council as licensing authority under the Licensing Act 2003.
- (b) Except in relation to the statement of Licensing Policy, to discharge all functions conferred upon the council as licensing authority under the Gambling Act 2005.
- (c) To determine all fees and charges relevant to matters disposed by the Planning and Licensing Committee.
- (d) To exercise all other functions relating to licensing and registration including:-

- i. Trading Requirements
 - ii. All functions relating to hackney carriage drivers and vehicles and private hire drivers vehicles and operators
 - iii. Animal Welfare and Security
 - iv. Skin Piercing, Acupuncture, Electrolysis and Tattooing
 - v. Sex establishments (including Sex Entertainment Venues (SEV))
 - vi. Pavement Permits
 - vii. Charitable Collections
 - viii. Camping, Caravan Sites and Mobile Homes
 - ix. Scrap Metal
 - x. Game Dealers
- (e) Any other matters relating to licensing as may be referred to the committee for consideration.
- (f) To hear and determine licensing applications and appeals where objections and /or representations have been received in relation to any of the above functions.
- (g) To manage and monitor the budgets in respect of licensing and vehicle licensing.

Licensing Sub-Committees

To hear and determine applications that do not sit within the scope of delegation to officers, usually where representations have been received either by a third party against grant of a license, or from the applicant against intended refusal or revocation of a license/registration.

The Planning and Licensing Committee has delegated all functions other than relevant policies and fees setting to officers, with the exception of those other matters as indicated below, which are heard by licensing sub-committee unless otherwise indicated:

Licensing Act 2003 and Gambling Act 2005

- (a) Determination of any application type where a representation has been received in accordance with the legislation.
- (b) Determination of applications for review or expedited review.

Hackney Carriage vehicles and drivers (including enforcement of ranks) and Private Hire vehicles, drivers and operators, with the exception of:

- (a) Suspension or revocation of drivers' licenses (save for initial suspension under provision of Local Government (Miscellaneous Provisions) Act 1976 S61 (2B) if it appears that the interests of public safety require the suspension to have immediate effect).
- (b) Where representation has been submitted by the applicant/license holder against refusal of any application.
- (c) Where representation has been received from an applicant to vary a licensing or pre-licensing condition.

Scrap Metal Dealing

- (a) Determination of applications where representations have been received against refusal in accordance with legislative requirements; and
- (b) Consideration of revocation of a license where representations have been received in accordance with legislative requirements

Street Collections and House to House Collections

- (a) Appeals against refusal to grant or renew a license.

Licensing of sex establishments

- (a) Determination of all applications, revocations and appeals.

Street Trading

- (a) Determination of applications where representation(s) has been received.
- (b) Determination of applications that fall outside of current policy.
- (c) Determination of matters relating to revocation of a license.

Acupuncture, Tattooing, Skin and Ear Piercing and Electrolysis

- (a) Appeals against refusal to grant or renew a registration.
- (b) Revocation of a registration.

Animal Welfare and Security, except for the following:

- (a) Appeals against refusal to grant or renew a license.
- (b) Revocation of a license.

Exercise of Powers under Caravan Sites and Control of Development Act 1960, except for:

- (a) Refusal and revocation of licenses, (other than urgent refusals which are delegated to officers)

Mobile Homes

- (a) Appeals against revocation of a license and/or conditions attached to the grant of a license.