

<b>Committee(s):</b> Planning Committee	<b>Date:</b> 14 March 2023
<b>Subject:</b> Planning Appeals Update (December 2022 to February 2023)	<b>Wards affected:</b> All
<b>Report of:</b> Phil Drane, Director of Place	<b>Public</b>
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**Summary**

This report provides Members with a summary of recent planning appeal decisions.

**Main Report**

**Introduction and Background**

1. This report provides a summary of recent planning appeal decisions in the borough received between December 2022 and February 2023. This is part of a regular series of updates brought to the Planning Committee for information. The most recent update was provided in January 2023 (Item 319).
  
2. The summaries below identify the main issues and comments made by inspectors, which can be useful when making decisions on current and future planning applications. It shows that different inspectors can reach different views on similar matters. Inspectors can sometimes have an inconsistent approach to the conditions they are willing to impose, or the weight they are willing to attach to material considerations in the context of other planning considerations.
  
3. A local planning authority record of success for defending appeals is the measure taken by the Department for Levelling up, Housing and Communities (DLUHC) to assess the quality of decision making. This is broken down into Majors (M) and Non-Majors (NM), with a maximum allowable ‘loss rate’ of ten percent of the total number of applications of that type determined. The measure relating to Major appeals is challenging due to the low number of such applications that smaller authorities tend to receive in contrast to the measure for Non-Majors. However, there is currently no basis for concern regarding either measure in Brentwood borough, though this is reviewed regularly.

4. The summary of appeal decisions below identifies the category in each case (i.e. Major or Non-Major). Where an application that led to the appeal was determined by committee, it is marked with a (C), and where it was refused contrary to recommendation this marked (C\*). The appeals reported in this report were mostly non-major developments determined under delegated powers, but also included two committee decisions (both in-line with officer recommendation).
5. The application documents and appeal decisions are available to view on the council's website at [www.brentwood.gov.uk/planning](http://www.brentwood.gov.uk/planning) and via Public Access.

## Appeal Decisions

6. The following appeal decisions have been received since the beginning of September 2022. Between September and February 2023 there has been 27 appeal decisions (three relating to the Warley Five Acre Farm site) issued by the Planning Inspectorate. 10 were allowed (i.e. lost), and 18 were dismissed. That means that during the four-month period, 35% of appeals were allowed against the council's decision to refuse planning permission, slightly above the 31% performance indicator target. This is being kept under review as part of quarterly and annual performance indicator monitoring. During the municipal year 2022/23, this is the fourth report on appeals performance, roughly quarterly. Reviewing these will show large fluctuations in the overall number of appeal decisions (this report showing a much larger number than in other periods), and how the balance between those dismissed or allowed fluctuate. Therefore, the most accurate indication of performance should be taken from the annual performance indicator reporting rates fluctuate across the year and so an annual figure provides more of a balanced picture.
7. Due to the high number of appeal decisions received the format of this report differs slightly to previous versions.

### Land between Hulletts Lane & Ongar Road, Pilgrims Hatch

<b>Application No:</b>	<b>21/01215/TEL (NM) (C)</b>
<b>Proposal:</b>	Telecommunications mast and cabinets
<b>Appeal start date:</b>	6 September 2022
<b>Appeal decision:</b>	Dismissed (3 February 2023)

8. This application was unanimously refused by the committee in accordance with the officer recommendation. The inspector seemed unconcerned about the effect on amenity of the 15 metre tall mast so close to a row of modest single storey/chalet dwellings, which is disappointing. However, the inspector was

particularly concerned by the prominence, height and appearance of the proposal and concluded it would be a visually dominant addition to the surrounding area. The cabinets were considered to be acceptable, a less obvious location had been suggested to and accepted by the application during the life of the application.

9. During the life of the application, and after its refusal, the case officer had tried to explore less harmful alternative sites, though the applicant had not actively engaged with that process. It is that failure to properly investigate alternatives that has weighed against the appeal in this case. It shows that where the planning authority is active in trying to explore alternatives with telecom companies, inspectors will give that weight and may not simply approve such development, as may have been expected, based on the technological benefits of modern telecommunications.
10. Since the appeal was dismissed the case officer has again been in contact with the agent to see if the applicant is willing to take part in future discussions.

**The Mesken Bar & Grill, 570 Rayleigh Road, Hutton (two applications)**

<b>Application No:</b>	<b>21/00705/FUL (NM)</b>
<b>Proposal:</b>	Refurbishment of rear beer garden to include erection of timber screen and six dining pods and waiters station linked by timber boardwalks
<b>Appeal start date:</b>	27 April 2022
<b>Appeal decision:</b>	Dismissed (8 February 2023)

11. The inspector considered that the main issues were whether it was inappropriate development in the green belt, its effect on the green belt and whether its harm would be outweighed by other matters. The inspector reached the view that it complied with none of the exceptions for development in the green belt and was therefore inappropriate development. He also considered that the proposal would not preserve the openness of the green belt. He noted the applicants claim about the economic situation in recent times. He was not persuaded that the proposal was similar to works possible under permitted development or the benefits claimed by the appellant for the protection of neighbours' amenity.

<b>Application No:</b>	<b>21/00786/FUL (NM)</b>
<b>Location:</b>	The Mesken Bar & Grill, 570 Rayleigh Road, Hutton

<b>Proposal:</b>	Single storey side extension, kitchen ventilation system and glazed screens added to rear veranda
<b>Appeal start date:</b>	27 April 2022
<b>Appeal decision:</b>	Dismissed (8 February 2023)

12. The inspector considered that the main issues were whether it was inappropriate development in the green belt, its effect on the green belt and the effect on the character appearance of the area, particularly about the effect of the kitchen extraction system. The inspector reached the view that it complied with none of the exceptions for development in the green belt and was therefore inappropriate development. He also considered that the proposal would not preserve the openness of the green belt. He described the new kitchen ventilation system, already in situ, as a prominent and industrial feature in many views and detracts from the character of the building and the area. He agreed with the council that the premises needs an extraction system but that the development had not be designed or located to have minimum impact and that the appellants suggestion to paint it a dark matt colour was not adequate mitigation. The extraction system was reported to be not very effective in dealing with cooking odours and the proposal was likely to increase use of the kitchen and therefore odour emissions to the detriment of residential amenity.

#### **Fallow Barn and The Cabin, Ashwells Road, Brentwood**

<b>Application No:</b>	<b>21/01823/PIP (NM)</b>
<b>Proposal:</b>	Demolition of existing buildings and erection of up to six dwellings
<b>Appeal start date:</b>	28 September 2022
<b>Appeal decision:</b>	Dismissed (8 February 2023)

13. The main issues identified related to green belt, the location's suitability for additional housing and the character of the area. The inspector concluded that the proposal complied with none of the exceptions for development in the green belt, would have a greater spatial and visual impact on the openness of the green belt and was inappropriate development.
14. On the second issue, the inspector concluded that the proposed dwellings would not be located within a socially or environmentally sustainable location and would not be in an appropriate location for new housing. The proposal would compromise the open and spacious nature of the locality, be highly visible in the

street scene and would have a significant impact on the character and appearance of the area.

### **Murcocks Farm, Back Lane, Fryerning**

<b>Application No:</b>	<b>21/00241/FUL (NM)</b>
<b>Proposal:</b>	Conversion of former agricultural building to create a private swimming school facility, alterations to the building and parking and access alterations
<b>Appeal start date:</b>	27 April 2022
<b>Appeal decision:</b>	Dismissed (3 February 2023)

15. The inspector considered the main issues to be relating to the green belt. While change of use of buildings can be an acceptable form of development in the green belt, the inspector considered that this scheme would fail the requirement of protecting openness. On that basis it was inappropriate development in the green belt. He saw no other objections to the proposal, noted the support from third parties. He considered that using UV filters to minimise chlorine use would merely be mitigating the effects of the development itself. He said “The demonstration of very special circumstances is an extremely high policy bar to cross” - often stated in officers reports - which he considered was not achieved by the proposal.

### **173 Woodman Road, Warley, Brentwood**

<b>Application No:</b>	<b>22/00356/HHA (NM)</b>
<b>Proposal:</b>	Dropped kerb to create access to new driveway in place of front garden
<b>Appeal start date:</b>	7 November 2022
<b>Appeal decision:</b>	Dismissed (26 January 2023)

16. The inspector considered the main issues related to the dropped kerb and parking to the frontage area of the application site would result in potential highway safety issues, due to the parking facilities being parallel to the road and the potential to overhang the public footpath in conflict within pedestrian users. The inspector acknowledges there is existing off-street parking access to the rear of the site, and although there are examples of dropped kerbs within both

Woodman Road and Uplands Road, this is not a sufficient justification for accepting a substandard parking space.

### **86 Ingrave Road, Brentwood**

<b>Application No:</b>	<b>22/00427/FUL (NM)</b>
<b>Proposal:</b>	Demolition of existing garage to construct a two storey side extension to create and new dwelling with private amenity and off street car parking, and construction of first floor rear extension to the host dwelling
<b>Appeal start date:</b>	10 October 2022
<b>Appeal decision:</b>	Dismissed (23 January 2023)

17. The inspector considered the main issues related to the proposal for a two-storey side extension to create a new dwelling as the effect of the development upon the character and appearance of the area and the impact of the development upon highway safety, in particular the provision of off street parking and access onto Ingrave Road. The inspector concluded that the Local Plan policies should be afforded great weight or substantial weight and that the limited benefits associated with the proposal and the modest contribution to the overall delivery of housing and that the harm to the character and appearance of the area and the highway safety would not be overcome by the addition of one dwelling.

### **La Valette, Hay Green Lane, Hook End**

<b>Application No:</b>	<b>22/00579/HHA (NM)</b>
<b>Development:</b>	Proposed first floor rear extension and part single storey part two storey side extension to include dormers and alteration to fenestration. Reduction of garage.
<b>Appeal start date:</b>	25 July 2022
<b>Appeal decision:</b>	Allowed (24 January 2023)

18. The main issues are the effects of the proposal on the character and appearance of the area; and the effect of the proposal on the living conditions of the occupiers of neighbouring properties.
19. The Inspector considered that although the proposal would substantially change the character and appearance of the property, given the variety of architectural

styles in this part of Hay Green Lane, the height of the dwelling would be similar to that of the existing chalet and the proposal would correspond and be in context with the adjacent dwellings, resulting in no harm to the street scene and no adverse impact upon the character and appearance of the area.

20. In relation to the living conditions of the neighbouring properties, the Inspector acknowledged that due to the scale of the proposal there would be some limited loss of light to the side windows of “White Gables”, it was not considered sufficient to justify a refusal of planning permission on that basis alone, considering the kitchen area also benefits from a rear facing window. Therefore, the appeal was allowed on these grounds, subject to conditions.

### **7 Appletree Close, Doddinghurst**

<b>Application No:</b>	<b>22/00294/FUL (NM)</b>
<b>Development:</b>	Construction of a detached bungalow to the side of the existing dwelling, and including the demolition of the conservatory on the host dwelling
<b>Appeal start date:</b>	28 September 2022
<b>Appeal decision:</b>	Allowed (13 January 2023)

21. The main issues are the effects of the proposal on: (i) the character and appearance of the site and its surroundings; and (ii) the living conditions of the occupiers of No 7, with particular regard to disturbance.
22. The inspector found that the access to the new dwelling being only through an alley way past No.7 would not be detrimental as those moving to and from the proposed bungalow would pass close to a bedroom at No 7, it is not uncommon for pedestrians to walk near the windows of residential properties, such as where dwellings front directly onto footways, for example. In contrast with such arrangements, the number of movements to and from the proposed bungalow are likely to be limited given that the land would be private. Additionally, the property would have two bedrooms and thus likely have a limited number of occupiers. Walking is not a noisy exercise and there is no reason to conclude that those moving to and from the bungalow would be purposefully disruptive or loiter beside No 7. And that the proposed development would be in line with the existing building line and the development would not harm the character or appearance of the site or its surroundings. In accords with Policy NE07 of the Brentwood Local Plan (LP), which states that development on garden land will only be permitted where sufficient space would be retained and the form, height and layout of the development would be appropriate to the surrounding pattern of

development and the character of an area and Policy BE14. Therefore, the appeal was allowed subject to conditions.

#### **Deer View, Ongar Road, Kelvedon Hatch**

<b>Application No:</b>	<b>21/01977/HHA (NM)</b>
<b>Development:</b>	Demolition of single storey rear extension, conservatory and chimney. Increase in ridge height to create first floor including first floor side extension. Single storey rear extension and front porch canopy. Alterations to fenestration and external materials
<b>Appeal start date:</b>	30 August 2022
<b>Appeal decision:</b>	Dismissed (25 January 2023)

23. The Inspector considered the main issue to be the impact of the development upon the living conditions of neighbouring residents. The proposal would result in the addition of a first floor element and whilst no design concerns were raised, the Inspector concluded that the formation of a first floor side extension and large roof in close proximity to the boundary would create an undesirable, overshadowing and overbearing effect. The positioning of a window serving a first floor bedroom within 20m of a nearby boundary was also considered to result in overlooking. On that basis, the appeal was dismissed.

#### **41 Warley Hill, Warley, Brentwood**

<b>Application No:</b>	<b>22/00011/HHA (NM)</b>
<b>Development</b>	Proposed extension to dropped kerb to gain entry to dwelling
<b>Appeal start date:</b>	11 July 2022
<b>Appeal decision:</b>	Dismissed (20 December 2022)

24. The inspector considered the main issues relating to the dropped kerb and subsequent parking arrangements would cause harm to highway safety and the potential for conflict between pedestrians and road users. The inspector also confirms that the frontage would be insufficient as the parking space would fail to comply with the 5-metre minimum depth required for a parking space and would overhang the pavement as a result which would cause harmful obstruction for pedestrians.



## 134 Hutton Road, Shenfield

<b>Application No:</b>	<b>21/01886/OUT (NM)</b>
<b>Development:</b>	Outline application for the demolition of existing dwelling and construction of 9 apartments (All matters reserved)
<b>Appeal start date:</b>	25 May 2022
<b>Appeal decision:</b>	Dismissed (22 December 2022)

25. The main issue is 1) the effect of the proposed development on the character and appearance of the area; 2) the effect of the development on the living conditions of the occupants of neighbouring properties; and 3) whether satisfactory accommodation standards are provided for future occupants.
26. The application is for outline consent with all matters reserved. All drawings submitted are therefore indicative of a development which could be sited on the application site. The Inspector noted that the likely scale of a replacement apartment building within this area to accommodate 9 apartments, with no minimum or maximum heights, would inevitably extend deeper into the site and upward which would be at odds with the existing site and prevailing character given the overall size of the plot.
27. In terms of living conditions of neighbours, the Inspector raised concern regarding the impact upon a nearby neighbour with a likely significant change to the scale and position of built form on the site resulting in a harmful sense of enclosure. Existing flats within Rockleigh Court (west-facing) were also likely to suffer from a loss of outlook to their detriment. Neighbouring properties would also likely experience a loss of privacy from new windows from upper floors. In addition, insufficient evidence was considered to be submitted to demonstrate appropriate levels of daylight and sunlight would be maintained.
28. In terms of the standard of accommodation, the Inspector concluded that matters of odour and noise could be dealt with at reserved matters stage and that adequate amenity space could be accommodated. However, they considered that adequate levels of outlook were unlikely to be achieved for future occupants without affecting the privacy of neighbours.
29. At the time of the appeal, the position of the council was that it could not meet the housing delivery test and therefore the Inspector considered the presumption in favour of sustainable development (para 11 d)ii) would apply in order to significantly boost the supply of homes. However, considerable weight was given to the harm identified and it was considered the benefit of new homes would not outweigh the harm and the appeal was dismissed.

### Rear of 118 High Street, Ingatestone

<b>Application No:</b>	<b>21/01821/FUL (NM)</b>
<b>Development:</b>	Construction of new dwelling house
<b>Appeal start date:</b>	29 June 2022
<b>Appeal decision:</b>	Allowed (17 January 2023)

30. The main issue is the effect of the proposal on the character and appearance of the area including heritage assets. The inspector found that the listed building adjacent to the site was significant, but the land and garage within the site form part of the setting to the listed building which date from the mid to late twentieth century and have little value themselves and thus make a limited contribution to the significance of the heritage asset.
31. The development would create a dwelling of modest proportions and include materials and style that is comparable and complementary to development in the immediate vicinity and other backland locations as identified in the heritage statement. The inspector concluded that the proposal would not appear cramped as sufficient space would be provided and a subordinate development to the listed building and therefore would not result in harm to the heritage assets or the character and appearance of the area.

### Thoby Priory, Thoby Lane, Mountnessing

<b>Application No:</b>	<b>20/01142/FUL (M)</b>
<b>Development:</b>	Construct covered work area, free standing shelving units enclosed with open fronted structure for car part storage, double height portacabin for office use, detached waiting room/welfare unit, 2 tensile covers and 2 x hybrid scaffold structures with double storey container sides, construct U shaped hardstanding for vehicle storage and dismantling, change of use from B8 Storage to Breakers yard (Sui Generis) (Retrospective)
<b>Appeal start date:</b>	15 February 2022
<b>Appeal decision:</b>	Dismissed (16 December 2022)

32. The main issues related to 1) the impact of the development upon the green belt; 2) the effect upon heritage assets (Thoby Priory schedule monument, the Grade

II listed building Thoby Priory Ruins, and archaeology); 3) the effect on the character and appearance of the location; 4) the effect upon the living conditions of nearby residents; 5) the effect on pollution and/or contamination risks; 6) whether adequate parking arrangements for employees is provided; and 7) if harm is identified is it outweighed by very special circumstances (VSC).

33. The inspector concluded that the development was inappropriate by definition within the green belt and therefore reliant upon VSC. The site is located within the scheduled monument and Historic England have commented upon its significance. Unfortunately, at the time of their visit, the arch forming 'Priory Ruin West Window' (illustrated on pages 9/10 of the Heritage Statement) had suffered significant collapse with only a tiny part of inner stonework and some clunch surround remaining. The council and Historic England are required to agree how this is to be resolved. However, a deteriorated state should not be taken into account when making a decision (para 196, NPPF). Overall, the harm identified to heritage assets is found to be "substantial".
34. The site had been found to be distinctly urbanised where the site was formerly a green site area and the erosion of the rural appearance has resulted in adverse impact on the green infrastructure of the area. The submission did not include a noise assessment and the use (breaking up cars) within buildings which not conducive to containing sound was found to impact neighbours living conditions.
35. The submission included no details of toilet facilities for the 56 full time staff proposed, nor was detail provided on potential contamination from the breaking up of vehicles. Impermeable materials and no obvious channelling solutions for surface water run-off led the Inspector to conclude there would be an adverse pollution/contamination risk.
36. The scheme did not include a transport plan or assessment and it was unclear how parking provision would be provided for the staff and visitors to the site would be provided in conflict with local and national policy. All considerations put forward in favour of the scheme were dismissed as they failed to clearly outweigh the substantial harm arising from all of the reasons for refusal. The appeal was dismissed.

### **Legh Cottage, Horsemanside, Navestock**

<b>Application No:</b>	<b>20/01182/S191 (NM)</b>
<b>Development:</b>	Application form for a Lawful Development Certificate for an existing use or operation or activity including those in breach of a planning condition for the use of a storage building and workshop for domestic purposes
<b>Appeal start date:</b>	29 July 2021

<b>Appeal decision:</b>	Allowed (9 January 2023)
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37. The certificate was submitted to establish the existing lawful use of the building at Legh Cottage. The council found that the structure had been in place since 2012 and had no evidence to the contrary, but the use during this period was unclear and the use of the building for domestic storage in excess of four years is not unambiguously substantiated, as such the proposed development was not considered to be lawful.
38. The inspector agreed that the building was outside the curtilage of the dwellinghouse, and within the area of the planning unit, but this did not have any relevance to the question being asked within the certificate of lawfulness and found that the council could not describe anything other than scepticism, rather than firm hard evidence to the contrary of the applicant's case. The inspector agreed the building has been in situ since 2012 and enjoys immunity from enforcement action for the period that has elapsed, therefore no material change of use has occurred and the concludes that the use was lawful on 19 August 2020.

#### **40 Bishops Hall Road, Pilgrims Hatch**

<b>Application No:</b>	<b>22/00929/FUL (NM)</b>
<b>Development:</b>	Demolition of existing side extension and garage and construction of three bedroom attached dwelling
<b>Appeal start date:</b>	15 November 2022
<b>Appeal decision:</b>	Dismissed, Costs Not Awarded to Appellant (10 February 2023)

39. The inspector considered the main issues related to the effect of the development upon the character and appearance of the area
40. The inspector stated that there is a sense of repetition and rhythm to the built form towards the end of Bishops Hall Road and the site contributes to these characteristics, along with the site being in a prominent location, the proposal would result in a loss of spaciousness and result in a disproportionate addition, unbalancing the pair of existing properties. The many schemes referred to by the appellant are significantly different and not directly comparable. The amount of housing proposed is limited and would not outweigh the harm to the character and appearance of the area. Accordingly, the appeal was dismissed.
41. In relation to the claim for costs, the Inspector did not consider the council's stance is discounting the approved schemes was unsubstantiated or

unreasonable, as the Council's statement had set out reasons why the approved schemes were not comparable to the proposal, along with the officer's report stating that the area is varied in character. The council did not misapply planning policy in refusing the application. The application for an award of costs was refused.

**Land At Wates Way, Brentwood (Lidl foodstore)**

<b>Application No:</b>	<b>20/01221/FUL (M) (C)</b>
<b>Development:</b>	Demolition of all buildings and structures and the construction of a Class E foodstore and Class C3 dwellinghouses (46 x 1 and 2 bed flats), together with access/egress from Ongar Road and Burland Road, car parking, landscaping, replacement substation, and associated engineering works
<b>Appeal start date:</b>	13 July 2022
<b>Appeal decision:</b>	Allowed, Costs Awarded to Appellant (1 February 2023)

**Background and Outcome:**

42. The application was refused by the committee on 23 December 2021 following the officer recommendation based on the objections and comments received from the Highway Authority (Essex County Council), and supported in part by the council's Environmental Health team. Members will recall that prior to the decision the council facilitated a series of mediation workshops during the summer of 2021 between the developer team and the Highway Authority to resolve areas of disagreement and/or find a compromise position to overcome objections which the Highway Authority had maintained throughout the pre-application and planning application process. Four reasons for refusal were cited by the council in their decision, in relation to 1) highway efficiency; 2) highway safety; 3) air quality; and 4) the viability of the access given the location of services. On appeal (submitted July 2022), the main issues identified by the inspector were a) the effect of the proposed development on highway efficiency, highway safety and air quality, and b) whether or not, given the location of utility services, the proposed access is viable. In the run up to the inquiry, the council informed the appellant and inspector that no evidence would be given in respect of air quality as it was considered this could be dealt with by planning obligations for mitigation.
  
43. The inspector allowed the appeal (February 2023). Significantly, before reaching his conclusions on the main issues, the inspector identified that while an overarching concern of the council was that the proposed new junction would not meet Design Manual for Roads and Bridges (DMRB) standards, its application could result in significant over-specification (for this type of road) and that

alternative documents such as Manual For Streets 2 may be used; MfS2 also states that the strict application of DMRB is rarely appropriate for highway design in built up areas, regardless of traffic volume; so that while its standards are the preferred use by the Highway Authority, it is not mandatory in such circumstances, and could lead to over-specification. As such, the inspector concluded that the fundamental issue is not which set of standards is used but whether the resulting design is safe and fit for purpose.

#### **Highway Safety:**

44. In relation to the proposed signalled junction and offside collisions, traffic flow and modelling, the inspector considered the number of right turners from the east/ west junctions (North Road and the proposed Lidl store) would equate to a modest two per minute during peak period, and that swept path drawings demonstrated that there would be enough room within the junction for cars from the two arms to turn right, without impacting one another and that traffic speeds from both arms would be low. On that basis, the potential for collisions would be low and the risk acceptable. The inspector considered that the number of vehicles exiting the parking area of New North House on the northwest of the junction would be low and drivers would be able to see the junction signal head, and illegal parking along the footway south-west of the junction should not be a reason to prevent the proposed junction.
45. The inspector found that any overrun of the kerbs (because of cars stacking to turn right into the store) could be prevented by the positioning of poles, guard rails or bollards and that the swept path drawings for articulated lorries show a space to the left for a level of manoeuvring. Because of the right turn filter in operation when approaching from the south, waiting HGV delivery drivers routed from the north would be able to clearly see any vehicles still in the right turn lane. The potential for HGVs to collide with a bus parked in the stop to the north-west of the site is a possibility that already exists (none has occurred to date), and furthermore, the design of the junction would result in a widening of the carriageway. The inspector considered that some inconsistencies identified in the appellants drawings could be designed out at a later detail stage. Overall, he concluded that “whilst the council have brought forward their concerns regarding the safety aspects of the proposed junction, to my mind none of these, either individually or cumulatively can be described as likely to have an unacceptable impact on highway safety”.

#### **Highway Efficiency:**

46. This section focused on the impact of the of the proposal on the efficiency of the wider road network. The inspector agreed that the introduction of traffic signals at the Ongar Road/North Road junction will inevitably cause longer delays than at present and that the trip generation from a three-stage junction arrangement was the correct assessment. He found that given the location of the store, an existing commuter route, close to the town centre and the existing Sainsbury’s store, a larger proportion of trips would be secondary, i.e. linked to other stores

and passers-by. Based on a new trip generation of 30%, the inspector concluded that a 24-second delay per vehicle over the modelled area with average speeds of vehicles being decreased by less than 2 miles per hour to be the likely reasonable outcome compared to the existing scenario. This would result in a maximum increased journey time of about 149 seconds. He acknowledged that the area suffers from congestion with long queues in the peak times and that current modelling shows that on a Saturday at midday the junction would be very close to capacity. Nevertheless, he could not conclude that any of the values in his assessment would constitute a severe impact on highway efficiency.

47. A condition has been imposed requiring a scheme for the improvement of the Ongar Road/William Hunter Way to be submitted to and agreed by the council before the appeal scheme is brought into use, and the junction could be optimised by being vehicle activated. Both these factors would improve the traffic situation and the signalised junction while resulting in delays for vehicles would improve the safety of pedestrians.
48. **Air Quality:** This reason for refusal was disaggregated from a composite reason for refusal recommended by the Highway Authority, which was based on the policy wording and the factual location of the site adjacent to an Air Quality Management Area (AQMA), although it related to the impacts of the congestion forecasted by the Highway Authority. However, up to date data submitted by the appellant showed that the air quality levels within the AQMA have improved enough that de-designation of the AQMA can be considered, a view which the council's consultee did not disagree with. No detailed evidence was supplied by the council to demonstrate that any increased queuing and congestion would lead to a corresponding increase in emissions on the highway network within the AQMA whereas the appellant provided evidence to show that there has been no exceedance of the relevant standard for Nitrogen Dioxide since 2016 and that since that time, the levels have decreased significantly. The Council felt that the residual impacts would be adequately mitigated by the planning obligations required to make the scheme policy compliant. On the basis of the evidence before him, which included a planning obligation for the requested contributions, the inspector concluded that there would be no conflict with Policy NE08 of the Local Plan.
49. **Viability of Delivery:** After detailed evidence on this point, the inspector concluded that since there is no policy basis for refusing an application because it is considered (by the council) to be physically undeliverable, in this case the proposed junction, due to the presence of underground utilities, this was not a reason to refuse the development, as the matter could be adequately controlled by condition for approval of details before construction.
50. **Effect on neighbour amenity:** This had not formed a reason for refusal but was considered by the inspector due to concerns raised by local residents. The

inspector concluded that there would be no impact on neighbour amenity through loss of privacy or overshadowing; the parking provision is in line with adopted parking standards and he was content that the submitted noise report shows the impact on existing residents would be low with the mitigation provided.

**Planning Obligations:**

51. The provision of affordable housing (35%), a financial contribution of £17,250 toward increasing the capacity of surgeries, and £6,132 towards a Travel Plan monitoring fee secured through S106 were agreed between the parties and accepted by the inspector.
52. Several requested contributions were disputed by the appellant. These had not been requested at application stage but were requested as part of the appeal process, as they would now be required for an application determined under the new Local Plan (adopted March 2022). The inspector considered the dispute between parties on the method of apportioning funding towards Infrastructure Delivery Plan (IDP) requirements including: the council used the number of units proposed, the appellant the number of bed spaces/parking spaces, and a weighting system based on the distance of proposed developments within the Local Plan allocations from railway stations.
53. Brentwood Town Centre Public Realm Enhancement, such as pavement improvements, pedestrian and vehicle accessibility improvements and landscaping and streetlighting: the council's figure of £277,946, compared to the appellants £53,817. The Inspector agreed with the council's approach inter alia, the reduced number of parking spaces, the proximity and likelihood of residents to walk to the centre.
54. Brentwood and Shenfield Stations Public Realm Improvement: the council requested a sum of £215,870 based on the number of units, the appellant offered £110,231. In agreeing with the council, the Inspector concluded that residents living nearer the stations would be more likely to use the facilities and therefore should contribute a greater proportion of the costs.
55. The inspector considered that quiet cycle routes in Brentwood Urban Area (policy R15 (b)) to be specific to the appeal site and agreed with the Council's figure of £98,123 rather than the appellant's figure of £37,742.
56. Railway Station Cycle Infrastructure: the inspector again disagreed with the weighting system used by the appellants and agreed with the council's figure of £5,524 as opposed to the appellant's offering of £2,704.
57. A128 Ingrave Road/The Avenue/A128 Brentwood Road/Running Waters double mini roundabout mitigation: the contribution would be directed towards signalling the mini roundabouts and was contested in its entirety by the appellant. The inspector concluded that residents of the proposed development would more



than likely pass through the junction and agreed with the council's requirement for a contribution of £21,831.

58. Brentwood Cycle action plan route 25: the council sought a contribution to a length of cycleway just under 0.5km. This required a bespoke calculation as this is not currently part of the IDP but is part of the Brentwood Cycle Action Plan. The inspector considered that the council's figure £450,000 was based on a series of approximations and unjustified assumptions; although he took issue with the principle of the appellant's weighting system, he nonetheless considered its figure of £7,548 to be more reasonable.

59. The total contribution amounts to £626,842.

**Conclusions:**

60. In summing up, the inspector concluded that the residential led mixed use development and as allocated under policy R15 of the Local Plan would not conflict with the Local Plan or the framework in respect of either highway safety, highway efficiency or air quality. The presumption in favour of sustainable development applies and for that reason the appeal was allowed, subject to conditions and planning obligations. Conditions were discussed and agreed between the parties.

61. The appellant also made a partial claim for costs against the council on the basis that the council has not provided any evidence in relation to the air quality reason for refusal. The Council accept that no empirical data was submitted to defend the appeal. However, the council communicated to the appellant at an early stage, firstly via the initial Statement of Case, and then at the Case Management Conference, as well as in various items of correspondence, that no evidence would be provided because the Council considered that planning obligations would overcome this reason for refusal.

62. It is disappointing that the inspector did not support this approach, and allowed costs up until 25 October 2023, even though the Statement of Case had been submitted in August.

63. A further partial award of costs was made in relation to the viability reason for refusal. The inspector found that the reason for refusal was entirely unreasonable from the offset and a pre-commencement condition was sufficient to deal with this matter.

64. Having considered the decisions, officers will be reviewing their approach to reasons for refusal recommended by any external statutory consultee that include or link to district matters, to ensure that the responses of both consultees are co-ordinated before a recommendation is formed. The use of pre-commencement conditions to deal with outstanding technical matters will also be

reviewed with a view to creating a list of example conditions for officers to refer to.

65. Furthermore, in future appeals the council will review reasons for refusal as early as possible in the process (seeking legal advice where necessary) and, should the council decide not to pursue certain reasons for refusal, it will communicate these the appellant in the clearest and simplest possible terms at the earliest possible opportunity.
66. The Highway Authority may also be reviewing its processes in terms of how development proposals are assessed and commented upon in light of this decision.

### **17-19 Byron Road, Hutton**

<b>Application No:</b>	<b>22/00230/FUL (NM)</b>
<b>Development:</b>	Demolition of existing dwellings and construction of 2no 4-bed dwellings
<b>Appeal start date:</b>	27 September 2022
<b>Appeal decision:</b>	Dismissed (16 February 2023)

67. The inspector considered the main issues to be: 1) the effect of the proposal on the character and appearance of the area; 2) the acceptability of living conditions for future occupiers; and 3) the impact of the development on the living conditions of neighbouring properties.
68. The inspector noted that residential properties within this area comprised a mix of two-storey semi-detached and detached buildings alongside bungalows and chalet bungalows. However, the site sat within a row of bungalows of a predominantly similar style and design which provide uniformity and a clearly defined building line. The proposed buildings were close to each other and emphasised their unequal scale and their overall heights would result in an unduly prominent and visually intrusive design.
69. In terms of future occupants living conditions, the Inspector was concerned that the use of Velux rooflights would significantly limit outlook with constrained views above head height. This would result in an oppressive outlook for future occupiers and poor levels of daylight. In terms of the impacts of the development upon neighbours, the inspector was also concerned that the overall scale would give rise to an overbearing form of development with tall eaves and a significant depth. The appeal was dismissed.

## Five Acre Farm, Warley Street, Great Warley

<b>Application No:</b>	<b>19/00103/UNOPDE</b>
<b>Development:</b>	Appeal against the making of a material change of use of the land to a mixed use of agricultural use and residential use (by the stationing or storage of both static and touring caravans on the land which facilitates the unauthorised residential use) and also storage use (by the parking and storage of motorised or mechanically propelled vehicles on the land, and the storage of metal containers, wooden sheds/day/utility rooms on the land and operational development on the land i.e. the carrying out of engineering or other operations on the land including but not limited to the importation, depositing and levelling of sundry hardcore materials and hardstanding surface materials i.e. road planings and crushed concrete, which has resulted in a raising of the land level. Also, the erection of wooden fencing and fence posts, and wooden border materials, i.e. railway sleepers (which facilitates the sub-division of each separate residential plot) on the land
<b>Appeal start date:</b>	9 December 2020
<b>Appeal decision:</b>	Dismissed, Enforcement Notices Upheld and Costs Refused (7 February 2023)

70. The inspector considered four separate matters at this Public Inquiry appeal:

- a) Appeal from the traveller occupants against an Enforcement Notice
- b) Appeal from the absent Land Registry owner against an Enforcement Notice
- c) Appeal against the refusal of planning permission
- d) An application for costs made by Brentwood Borough Council

71. In his determination of each of the above matters the inspector:

- a) Dismissed the appeal and upheld the Enforcement Notice (varying the compliance period from 6 months to 12 months)
- b) Dismissed the appeal and upheld the Enforcement Notice (varying the compliance period from 6 months to 12 months)
- c) Dismissed the appeal as inappropriate development in the green belt, which causes significant harm to its openness and to the countryside. Notwithstanding the personal circumstances of the occupants and their

Article 8 Human Rights for the right to a home and a settled family life, the inspector found that, on balance, the harm caused is too great.

- d) The inspector refused the appellants application for an award of costs in deciding that the council's actions did not lead to unnecessary expense and therefore an award of costs is not justified.

72. Following the decision to dismiss the appeal and the timeframes for compliance, the council will need to define next steps.

#### **54 Tower Cottages, Ongar Road, Pilgrims Hatch (two applications)**

<b>Application No:</b>	<b>21/01835/LBC (NM)</b>
<b>Development:</b>	Single storey rear extension and alterations to the fenestration
<b>Appeal start date:</b>	8 September 2022
<b>Appeal decision:</b>	Dismissed (8 February 2023)

<b>Application No:</b>	<b>21/01814/HHA (NM)</b>
<b>Development:</b>	Single storey rear extension and alterations to the fenestration
<b>Appeal start date:</b>	8 September 2022
<b>Appeal decision:</b>	Dismissed (8 February 2023)

73. Applications 21/01835/LBC and 21/01814/HHA are linked. Both appeals are summarised here.
74. The inspector considered the main issues to be: 1) whether the proposal would be inappropriate development within the green belt; 2) the effect on the openness of the green belt; 3) whether the proposal would preserve a Grade II listed building; and 4) whether the harm by reason of inappropriateness and all other harm is outweighed by very special circumstances.
75. The inspector concluded that significant increases in volume from previous alterations combined with proposed extensions, which despite being single storey, would cumulatively have a significant increase of footprint and volume in comparison to the original building. Consequently, the Inspector concluded the proposal was inappropriate development. The overall scale and volume were also considered to have a harmful effect upon green belt openness.

76. In terms of heritage considerations, the inspector the extension proposed would obscure the remaining visible parts of the gable end of the historic core of the building eroding the legibility of the 17<sup>th</sup> and 19<sup>th</sup> century phases of the building. Therefore, despite no removal of the fabric from these phases, the scale and form would cause cumulative harm to the legibility of the historic rear elevation/gable end and fail to preserve its special interest. The harm arising was found to be ‘less than substantial’. No public benefits arising from the scheme were identified and therefore no material considerations would outweigh all harm identified. The appeal was dismissed.

### 3 The Cobbles, Brentwood

<b>Application No:</b>	<b>21/01709/FUL (NM)</b>
<b>Development:</b>	Two storey side extension to create an additional dwelling
<b>Appeal start date:</b>	11 July 2022
<b>Appeal decision:</b>	Dismissed (13 February 2023)

77. The main issue is the effect of the proposal on the character and appearance of the area. The appeal follows two previous appeals for similar developments for a new dwelling to the open land adjacent to 3 The Cobbles. The inspector agreed that the dwelling would follow the architectural features within the street scene and that the appearance of the development would be acceptable, but the proposal would extend into and would significantly reduce the size of the host property’s side garden which positively contributes to the suburban character and existing amenity space.
78. The inspector concluded that the development of the proposed dwelling would inevitably remove the verdant, spatial gap between the host and adjacent properties and have a significant impact on the openness of the street scene and be detrimental to the character and appearance of the area.

### 5 School Lane, Ingrave

<b>Application No:</b>	<b>21/00485/FUL (NM)</b>
<b>Development:</b>	Demolition of existing buildings at existing yard and construction of 2 x detached bungalows and 1 x detached 3-bedroom dwelling
<b>Appeal start date:</b>	30 June 2022

<b>Appeal decision:</b>	Allowed (15 February 2023)
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- 79. The main issue is the effect of the development on the character and appearance of the area with particular regard to the heritage assets (two Grade II listed buildings, Nos. 6 and 7 School Lane).
- 80. The Inspector concluded that the overall design and positioning of the proposed buildings would not give rise to an impact upon the setting of the heritage assets. The proposed designs were considered to be acceptable with an existing patchwork of architectural styles. Existing cottages were considered to remain the dominant features in views on the lane and those proposed would be small elements in views. The scheme was not considered to result in a diminution of the rural backdrop with scope for there to be an increased visibility of the landscape beyond. The Inspector concluded that in respect of impacts upon setting of heritage assets, the scheme would have a neutral or positive impact and would accord with local and national policies. The appeal was allowed subject to conditions.

**Brentwood Vineyard Church, Ashwells Road, Pilgrims Hatch**

<b>Application No:</b>	21/00842/FUL (NM)
<b>Development:</b>	Change of use from a Place of Worship including social activities, teaching and training to Place of Worship including social activities teaching and training and café open to the public
<b>Appeal start date:</b>	24 May 2022
<b>Appeal decision:</b>	Allowed (7 February 2023)

- 81. Planning permission was approved for the change of use from a Place of Worship including social activities, teaching and training to Place of Worship including social activities teaching and training and café open to the public, with the following condition attached:

‘The use of the cafe area open to the public as detailed on dwg 22 Rev B is restricted to the preparation of hot and cold drinks and food, and the serving of hot and cold drinks and food for consumption on the premises. With the exception of heating up of food, no cooking shall take place on the premises.

Reason: to establish the scope of this permission to allow the local planning authority to manage any increase in intensity of use, in the interests of amenity and the green belt.’

82. The condition was attached in order to manage the café and any future intensification would require planning permission to install extraction facilities and to assess any impact upon the surrounding area and parking facilities. The inspector found that the condition does not currently prevent the appellant seeking planning permission to allow the cooking of food on the premises, and did not consider that the part of condition 3 restricting this was necessary. The condition was found to not meet the tests set out in paragraph 56 of the Framework and should be removed. However, the inspector found the first part of the condition restricting the use of the café is necessary to ensure the use is consistent with the original application and therefore this part should be re-imposed.
83. The inspector imposed an additional condition requiring the submission of details relating to extraction equipment and ductwork to be submitted to the Council for approval prior to the commencement of the use as a café open to the public. This is because such equipment would be likely be necessary for a commercial kitchen where cooking takes place on the premises and would alter the external appearance of the building, which was not detailed in the original application.

#### **Master Johns Farm, Thoby Lane, Mountnessing**

<b>Application No:</b>	<b>21/00549/FUL (NM)</b>
<b>Development:</b>	Variation of Condition 2 to previous approved application 20/01135/FUL, to include the retention of a single storey outbuilding of timber construction and installation of roof lights for storage purposes
<b>Appeal start date:</b>	10 November 2022
<b>Appeal decision:</b>	Allowed (14 February 2023)

84. The main consideration was whether the development is inappropriate development within the green belt; its effect on openness; and if considered to be inappropriate whether there were very special circumstances to clearly outweigh all harm identified.
85. The Inspector concluded that the exception listed under para 149 c was applicable e.g., the extension or alteration of a building provided that it does not result in disproportionate additions over and the size of the original building. It was found to be a very small addition and therefore triggered the exception above. Subject to conditions, the appeal was allowed.

### Little Oakhurst, 78 Coxtie Green Road, Pilgrims Hatch, South Weald

<b>Application No:</b>	<b>21/01789/HHA (NM)</b>
<b>Development:</b>	Demolition of existing outbuilding and construction of new garden room
<b>Appeal start date:</b>	5 April 2022
<b>Appeal decision:</b>	Dismissed (24 February 2023)

86. This development had taken place before the application was submitted and was therefore retrospective. Furthermore, since the original refusal, though after the appeal had been submitted, a follow up application had been approved (in July 2022) addressing the issues of the application to which this appeal relates.
87. The Inspector considered the issues were: 1) whether it is inappropriate development in the green belt; 2) the effect on the openness of the green belt; 3) the effect on the setting of the green belt; and 4) assessment of very special circumstances. The inspector considered the development to be inappropriate but that the removal of existing structures which were offered for removal would have a small improvement in openness. The harm to the setting of the listed building could be addressed by planting to achieve a neutral effect on it. The main issue identified by the Inspector as very special circumstances was that the later permission had provided a fallback position allowing the development to be retained even if he dismissed the appeal. The later permission and the fallback position it created amounted to very special circumstances justifying permission.

### Frieze Cottage, Coxtie Green Road, South Weald

<b>Application No:</b>	<b>22/00285/HHA</b>
<b>Development:</b>	Proposed single storey rear extension to include x1 roof lantern
<b>Appeal start date:</b>	5 October 2022
<b>Appeal decision:</b>	Dismissed (3 March 2023)

88. The main consideration was whether the development is inappropriate development within the green belt; its effect on openness; and if considered to be inappropriate whether there were very special circumstances to clearly outweigh all harm identified.



89. The Inspector agreed with the Council in relation to the assessment of the previous additions having been carried out post 1948, also concurring with the heritage assessment submitted with the application. As such, in combination with the previous additions, the Inspector considered the proposal to result in a disproportionate addition over the original building and would be inappropriate development. Whilst the proposal is single storey, the Inspector agreed that the proposal would result in a small impact upon openness. The limited size of the extension, the economic benefits during construction and the benefits of the extension for the occupiers, do not amount to very special circumstances and attracted limited weight. The appeal was dismissed.

### **Warren House, Ashwells Road, Pilgrims Hatch**

<b>Application No:</b>	<b>22/00708/HHA</b>
<b>Development:</b>	Demolition of existing conservatory and construction of a single storey rear extension.
<b>Appeal start date:</b>	5 October 2022
<b>Appeal decision:</b>	Dismissed (3 March 2023)

90. The main consideration was whether the development is inappropriate development within the green belt; its effect on openness; and if considered to be inappropriate whether there were very special circumstances to clearly outweigh all harm identified.
91. The Inspector agreed with the council the proposals would be a disproportionate addition to the original building, whilst the proposal would have limited impact on the spatial openness the inspector considered the visual harm could not be overcome. The inspector considered there would be small benefits with regard to very special circumstances with small temporary economic benefits during construction and benefits in respect of energy and resource efficiency however the Inspector considered the existing accommodation adequate size to accommodate the current occupiers therefore these matters attracted limited weight. The appeal was dismissed.

### **Consultation**

92. Individual applications include statutory consultation periods.

### **References to Corporate Strategy**

93. The Council's Planning Development Management team perform statutory planning functions as the local planning authority. The team assists in achieving objectives across the Corporate Strategy, including economic growth,

environmental protection, community development and delivering effective and efficient services. The planning appeals system is part of the decision-making process.

## **Implications**

### **Financial Implications**

**Tim Willis, Interim Director – Resources (S151 Officer)**

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94. There are no direct financial implication arising from this report. The cost of defending appeals is covered by the Development Management budget. Lost appeals can result in additional financial implications if costs are awarded, for instance. This is projected and considered when setting the budget.

### **Legal Implications**

**Andrew Hunkin, Interim Director – People & Governance (Monitoring Officer)**

**Tel & Email: 01277 312500/andrew.hunkin@brentwood.rochford.gov.uk**

95. There are no legal implications arising from this report.

### **Economic Implications**

**Phil Drane, Director – Place**

**Tel/Email: 01277 312500/phil.drane@brentwood.rochford.gov.uk**

96. There are no direct economic implications arising from the report. Individual development schemes subject to the appeals process may deliver local economic benefits.

### **Equality and Diversity Implications**

**Kim Anderson, Corporate Manager (Communities, Leisure and Health)**

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97. There are no equality and diversity implications arising from this report.

## **Background papers**

- Item 319, Planning Committee, 17 January 2023, Planning Appeals Update (September – December 2022)
- Item 164, Planning Committee, 29 September 2022, Planning Appeals Update (June – August 2022)
- Item 60, Planning Committee, 28 June 2022, Planning Appeals Update (February – May 2022)

## Appendices to report

- None