

# Planning Committee AGENDA



THE PUBLIC MAY ATTEND THIS MEETING

Please note this meeting will be webcast and audio recorded.

**Date: Tuesday, 17 February 2015**

**Time: 19:15**

**Venue: Council Chamber , Braintree District Council, Causeway House,  
Bocking End, Braintree, Essex, CM7 9HB**

## **Membership:**

Councillor J E Abbott  
Councillor P R Barlow  
Councillor E Bishop  
Councillor R J Bolton  
Councillor L B Bowers-Flint  
Councillor C A Cadman  
Councillor T J W Foster  
Councillor P Horner

Councillor S C Kirby  
Councillor D Mann  
Councillor Lady Newton  
Councillor J O'Reilly-Cicconi  
Councillor R Ramage  
Councillor W D Scattergood  
(Chairman)  
Councillor G A Spray

**Members are requested to attend this meeting, to transact the following business:-**

## **PUBLIC SESSION**

### **1 Apologies for Absence**

### **2 Declarations of Interest**

To declare the existence and nature of any Disclosable Pecuniary Interest, other Pecuniary Interest or Non-Pecuniary Interest relating to Items on the Agenda having regard to the Code of Conduct for Members and having taken appropriate advice where necessary before the meeting.

### **3 Minutes of the Previous Meeting**

To approve as a correct record the Minutes of the meeting of the Planning Committee held on 3rd February 2015 (copy to follow).

### **4 Public Question Time**

(See paragraph below)

## **5 Planning Applications**

To consider the following planning applications and to agree whether the more minor application listed under Part B should be determined 'en bloc' without debate.

### **PART A**

Planning Applications:-

- |           |   |                |
|-----------|---|----------------|
| <b>5a</b> | <b>Application No. 14 00832 FUL - Hole Farm, London Road, KELVEDON</b>  | <b>4 - 25</b>  |
| <b>5b</b> | <b>Application No. 14 00833 LBC - Hole Farm, London Road, KELVEDON</b>  | <b>26 - 28</b> |
| <b>5c</b> | <b>Application No.14 00741 FUL - Gueth Cottage, Maldon Road, WITHAM</b> | <b>29 - 38</b> |

### **PART B**

Minor Planning Application:-

- |           |   |                |
|-----------|---|----------------|
| <b>5d</b> | <b>Application No. 15 00025 PLD - 22 Britten Crescent, WITHAM</b> | <b>39 - 42</b> |
|-----------|---|----------------|

## **6 Urgent Business - Public Session**

To consider any matter which, in the opinion of the Chairman should be considered in public by reason of special circumstances (to be specified) as a matter of urgency.

## **7 Exclusion of the Public and Press**

To agree the exclusion of the public and press for the consideration of any Items for the reasons set out in Part 1 of Schedule 12(A) of the Local Government Act 1972.

*At the time of compiling this Agenda there were none.*

## **PRIVATE SESSION**

## **8 Urgent Business - Private Session**

To consider any matter which, in the opinion of the Chairman, should be considered in private by reason of special circumstances (to be specified) as a matter of urgency.

E WISBEY  
Governance and Member Manager

**Contact Details**

If you require any further information please contact the Governance and Members Team on 01376 552525 or email [demse@braintree.gov.uk](mailto:demse@braintree.gov.uk)

**Public Question Time**

Immediately after the Minutes of the previous meeting have been approved there will be a period of up to 30 minutes when members of the public can speak.

Members of the public wishing to speak should contact the Governance and Members Team on 01376 552525 or email [demse@braintree.gov.uk](mailto:demse@braintree.gov.uk) at least 2 working days prior to the meeting.

Members of the public can remain to observe the whole of the public part of the meeting.

**Health and Safety**

Any persons attending meetings at Causeway House are requested to take a few moments to familiarise themselves with the nearest available fire exit, indicated by the fire evacuation signs. In the event of a continuous alarm sounding during the meeting, you must evacuate the building immediately and follow all instructions provided by a Council officer who will identify him/herself should the alarm sound. You will be assisted to the nearest designated assembly point until it is safe to return to the building.

**Mobile Phones**

Please ensure that your mobile phone is either switched to silent or switched off during the meeting.

**Comments**

Braintree District Council welcomes comments from members of the public in order to make its services as efficient and effective as possible. We would appreciate any suggestions regarding the usefulness of the paperwork for this meeting, or the conduct of the meeting you have attended.

Please let us have your comments setting out the following information

Meeting Attended..... Date of Meeting .....

Comment.....

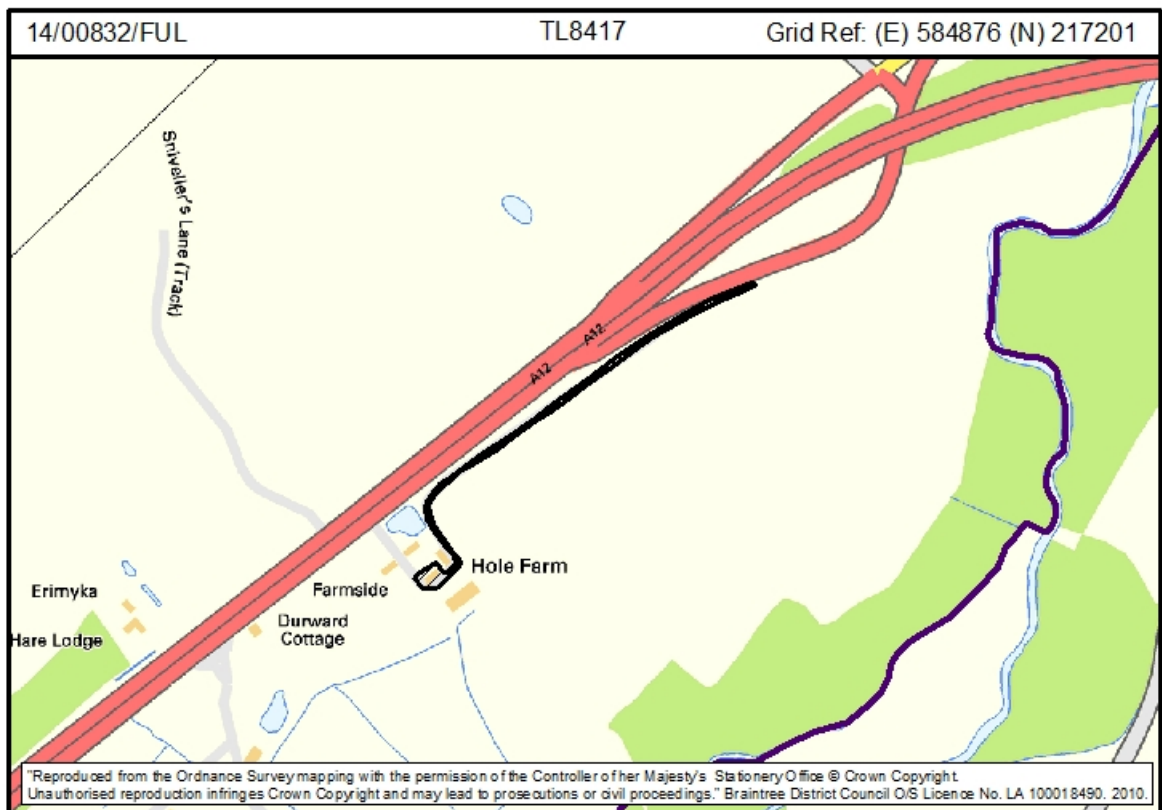
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Contact Details: .....

PART A

APPLICATION NO:	14/00832/FUL	DATE VALID:	02.09.14
APPLICANT:	Mr D Taylor Hole Farm, London Road, Kelvedon, Essex, CM8 3HB,		
AGENT:	Mrs L Gregory Acorus Rural Property Services, Old Market Office, 10 Risbygate Street, Bury St Edmunds, Suffolk, IP33 3AA		
DESCRIPTION:	Conversion of redundant agricultural building to a dwelling		
LOCATION:	Hole Farm, London Road, Kelvedon, Essex, CM8 3HB		

For more information about this Application please contact:  
 Mrs N Banks on:- 01376 551414 Ext. 2545  
 or by e-mail to: [natalie.banks@braintree.gov.uk](mailto:natalie.banks@braintree.gov.uk)



## SITE HISTORY

02/00936/LBC	Proposed replacement doors in outbuilding	Granted	01.10.02
13/00800/FUL	Change of use of buildings A and C to single dwellings and erection of single storey extension to building A for use as a kitchen	Refused	03.09.13
14/00833/LBC	Conversion of redundant agricultural building to a dwelling	Pending Decision	

## POLICY CONSIDERATIONS

### National Planning Guidance

National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)

### Braintree District Local Development Framework Core Strategy

CS5	The Countryside
CS8	Natural Environment and Biodiversity
CS9	Built and Historic Environment

### Braintree District Local Plan Review

RLP2	Town Development Boundaries and Village Envelopes
RLP38	Conversion of Rural Buildings
RLP90	Layout and Design of Development
RLP100	Alterations and Extensions and Changes of Use to Listed Buildings and their settings
RLP101	Listed Agricultural Buildings

### Emerging Policies in the Braintree District Site Allocations Development Plan

ADM1	Presumption in Favour of Sustainable Development
ADM50	Landscape Character
ADM60	Layout and Design of Development
ADM66	Alterations and Extensions and Changes of Use to Listed Buildings or Structures and their Settings
ADM66	Enabling Development

## INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

This application is brought before the Planning Committee due to an objection received from a local amenity society.

## SITE DESCRIPTION

Hole Farm, comprises a rectangular-shaped parcel of land situated on sloping ground to the south of the A12, outside of the Village Envelope. It is accessed off a long private track to the east which turns south and enters the site to the west. There is a second access directly from the A12 to the west. The buildings within the site comprises a Grade II\* Listed farmhouse which is set within a walled garden with a large pond to the north-east. To the south of the house is a collection of former farm buildings. Two of the buildings are traditional brick and timber barns, set within a partially enclosed yard forming the original farm group. The building to the south has been used for domestic storage and the other was converted to provide residential accommodation. Two further buildings lie beyond this group and are of modern construction, one of which is used for stabling of horses and associated storage. To the east on the other side of the access is a large field used as a horse paddock. There is a dwelling known as 'Farmside' to the west of the site which is in separate ownership.

Agricultural activity ceased at the site some years ago and a mix of residential and commercial uses have occurred at different times. These uses have now ceased. Retrospective planning permission to convert one of the traditional barns and one of the modern outbuildings to single dwellings was refused and an enforcement notice in respect of the residential use of the two buildings was upheld on appeal (references 11/00311/COU3, see Appendix A). The residential use of the more modern building has now ceased in compliance with the enforcement notice. The other above-mentioned building is still in residential use pending the outcome of this application.

## PROPOSAL

This application is to convert the building to the south of the farmhouse to a single storey 3-bed dwelling. The building pre-dates 1948 and is therefore part of the listing protection of Hole Farm farmhouse. The proposal will involve the removal and replacement of an existing single storey extension. This will be used to house two of the bedrooms and a shower room. The existing steel windows will be retained and secondary glazed. The main entrance to the front of the building will have a new aluminium glazed screen set back to retain the original opening. The existing roof and wall materials will be retained and insulated. The existing access and car parking arrangements shared with the farm house will be utilised. There are no proposals to form a separate curtilage for the building.

This proposal is put forward to ensure that the barn is retained within this setting. The barn is redundant in terms of any agricultural or commercial use as illustrated by the Marketing Exercise undertaken between March and August 2013 and December to March 2014, which has generated no interest.

The application is accompanied by Bat and Nesting Bird Survey, Planning and Heritage Statement and Planning for Sustainable Design and Construction Checklist.

## CONSULTATIONS

English Heritage comments that the proposal should be dealt with in accordance with planning policy and the Council's own specialist conservation advice.

ECC Historic Buildings Consultant comments that the building benefits from having a number of openings that already exist and therefore, its conversion will not be reliant upon any significant number of new openings. It is also single storey, so there are no design issues relating to the horizontal subdivision. The appearance and external character will therefore largely be retained. No objection is therefore raised subject to appropriate conditions.

ECC Archaeology raises no objections subject to a building recording condition.

BDC Landscape and Tree Officer has no objection on the basis that the ecological survey has given due consideration to the presence of barn owls and bats within the redundant building. He recommends that a condition is attached, as recommended in the survey, for improving the value of the conversion for wildlife.

BDC Engineers are unaware of any surface water issues affecting this site.

## REPRESENTATIONS

Kelvedon Parish Council raises no objection to the proposal provided that it is stipulated that the building cannot be sold as a separate entity.

The Kelvedon and Feering Heritage Society objects to the proposal on the grounds that the site is outside of the Village Envelope.

## REPORT

Policy RLP2 of the Braintree District Local Plan Review and C5 of the Braintree District Local Development Framework Core Strategy seek to protect the countryside from new residential development in order to protect its character. However, Policy RLP101 of the Local Plan Review states that the conversion of a listed barn, or other listed former agricultural or rural buildings, to employment or community use will be permitted provided that:

- (a) The detailed scheme for conversion of the building to the new use would demonstrably secure the preservation of the building without harm to its historic fabric, character and appearance, and its contribution to the group value and/or to the landscape in general;

- (b) The proposed use would not generate traffic of a magnitude or type that might be likely to cause additional traffic hazards and/or damage to minor roads;
- (c) The criteria set out in policy RLP38 are met.

Conversion to residential use will only be acceptable where:

- (i) The applicant has made every reasonable attempt to secure suitable employment or community re-use, and the application is supported by a statement of the efforts which have been made; or
- (ii) Residential conversion is a subordinate part of the scheme for business re-use of that building or group of buildings;
- (iii) In either case, the design and traffic issues in criteria (a) and (b) above are fully satisfied.

Policy RLP100 of the Local Plan Review permits alterations, extensions and changes of use to listed buildings and their settings, provided that it does not harm the setting, character and structural stability and fabric of the building and does not result in the loss of or significant damage to the building's historic and architectural elements of special importance.

RLP38 of the Local Plan Review states that the conversion of rural buildings (including modern buildings) for business re-use will be permitted provided that:

- They are of permanent and substantial construction and capable of conversion without major extension or complete reconstruction;
- Their form, bulk and general design are in keeping with their surroundings;
- There would be no unacceptable impact on the landscape or protected species or historic environment;
- Safe and satisfactory vehicular access and egress can be provided together with adequate space within the curtilage to accommodate car parking to the Council's standards and lorry manoeuvring without detriment to the setting of the building residential amenity and the landscape within which it is located;
- The scale and frequency of traffic generated can be accommodated on the road system without adverse effects on the road system itself, residential amenity or the character of the countryside;
- There shall be no open storage of goods, containers, waste materials or finished products.

Conversion to residential use will only be acceptable where:

- i) The applicant has made every reasonable effort to secure suitable employment or community re-use and the application is supported by a statement of the efforts that have been made; or
- ii) Residential conversion is a subordinate part of a scheme for business re-use of the building; and



iii) In either case, the criteria set out above are met.

Policy CS8 of the LDF Core Strategy requires that development will have regard to the character of the landscape, its sensitivity to change and the natural environment. Policy CS9 of the LDF Core Strategy states that the Council will promote and secure the highest possible standards of design and layout in all new development and the protection and enhancement of the historic environment, in order, amongst other things, to respect and respond to the local context, where development affects the setting of historic buildings.

Government Guidance set out in the National Planning Policy Framework (NPPF) Part 12 states that local planning authorities should set out in their local plan a positive strategy for the conservation of the historic environment, which should include heritage assets that are most at risk through neglect, decay or other threats. In doing so it should be recognised that heritage assets are an irreplaceable resource therefore they should be conserved in a manner appropriate to their significance. It advises that in determining planning applications local planning authorities should take account of the desirability of sustaining and enhancing assets and putting them to a viable use consistent with their conservation.

Paragraph 55 of the NPPF sets out some circumstances where new isolated homes in the countryside may be acceptable, including:

“where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or

where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or ...”

Paragraph 132 of the NPPF goes on to say that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be.

This listed barn is part of an historic farm group, and as such it does not lend itself to a commercial or community use by virtue of its size, isolated location and proximity to existing domestic uses. The site has been marketed for non-residential uses and has generated no interest which gives weight to the proposal in that a residential conversion is the most likely means of ensuring the building’s longevity as part of this historic farm group. The conversion works will change the external appearance of the barn very little and is supported by the Historic Buildings Adviser. The Council’s Tree and Landscape officer also raises no objection to the proposal on the grounds that due consideration has been given to the presence of protected species. There is sufficient space within the site to provide adequate vehicle parking, which will be shared with the Farmhouse, and there are no proposals to

separate the barn from the rest of the site. The proposal is also unlikely to generate any significant highway movements. On balance, therefore, it is considered that the proposal can be supported.

The Parish Council has indicated that there would not be an objection to the conversion providing the new dwelling could not be sold separately from the main dwelling. This application is for an independent residential use of the building and it would be unreasonable to impose a condition which ties the converted barn to the main dwelling as it is not proposed to be annex accommodation and must be considered on its own merits. While it will be occupied by family members, as will be seen from the appended appeal decision, their occupation is as a separate residential unit.

### CONCLUSION

It is concluded that the proposal is acceptable in accordance with the NPPF and the above-mentioned policies.

### RECOMMENDATION

It is RECOMMENDED that the following decision be made:  
Application GRANTED subject to the following conditions and reasons and in accordance with approved plans:-

### APPROVED PLANS

Location Plan	Plan Ref: 1411-100
Planning Layout	Plan Ref: 1411-101
Proposed Plans	Plan Ref: 1411-102

- 1 The development hereby permitted shall be begun on or before the expiration of three years beginning with the date of this permission.

#### Reason

This Condition is imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

- 2 The development hereby permitted shall be carried out in accordance with the approved plans listed above.

#### Reason

For the avoidance of doubt and in the interests of proper planning.

- 3 The development shall not be commenced until samples of all new bricks and tiles are submitted to and agreed in writing by the local planning authority.

#### Reason

To ensure the use of appropriate materials having regard to the listed building on/adjoining this site.

- 4 The development shall not be commenced until details of the composite timber/aluminum screen and windows have been submitted to and agreed in writing by the local planning authority.

Reason

To ensure the use of appropriate materials having regard to the listed building on/adjoining this site.

- 5 Any external flues proposed shall be painted black and so maintained in perpetuity.

Reason

To ensure the use of appropriate materials having regard to the listed building on/adjoining this site.

- 6 No development or conversion of any kind shall take place until the applicant has secured the implementation of a programme of historic building recording in accordance with a written scheme of investigation which has been submitted to and approved by the local planning authority.

Reason

To enable full investigation and recording of this site of archaeological importance.

- 7 The development shall be carried out in accordance with the recommendations contained in the submitted Bat and Bird Nesting Survey prepared by Acorus Rural Property Services.

Reason

In order to assess whether there are protected species in the locality and to encourage future habitats.

**INFORMATION TO APPLICANT**

- 1 You are advised that a professional historic buildings specialist should undertake any recording work. An archaeological brief outlining the methods of investigation can be issued by Essex County Council and in this instance there will be a cost implication. Please contact Teresa O'Connor on 03330 136852 or email [teresa.oconnor@essex.gov.uk](mailto:teresa.oconnor@essex.gov.uk).
- 2 You are advised that the granting of planning permission does not absolve you from complying with the relevant law regarding protected species, including obtaining and complying with the terms and conditions of any licenses required by Part IV B of the Circular 06/2005 (Biodiversity and Geological Conservation - Statutory Obligations).
- 3 You are advised that as this building is curtilage listed, then planning permission is required for the erection of any new gate, fence, wall or other means of enclosure.

TESSA LAMBERT - DEVELOPMENT MANAGER

## Appeal Decisions

Hearing held on 24 September 2013

Site visit made on the same date

**by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 7 October 2013**

**Appeals Ref: APP/Z1510/C/13/2195855, 2195857, 2195858, 2195859, 2195863 and 2195864**

**Hole Farm, London Road, Rivenhall End, Essex, CM8 3HB**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr and Mrs D Taylor, Jennifer Taylor, Peter Short, Claire and Robin Hyde-Chambers against an enforcement notice issued by Braintree District Council.
- The Council's reference is 11/00311/COU3.
- The notice was issued on 27 February 2013.
- The breach of planning control as alleged in the notice is a material change in the use of both buildings 'A' and 'C' for use as two single family dwelling houses.
- The requirements of the notice are to:
  - a) Cease the use of both buildings 'A' and 'C' as independent residential units.
  - b) Remove all domestic fittings and furniture, including and not restricted to:
    - i) Kitchen/Utility fittings and equipment
    - ii) All bathrooms - toilet, bath, shower fittings
    - iii) Fitted carpets
    - iv) Television aerials
    - v) External heating flue and extraction units.
  - c) Remove any fencing or other boundary treatment around buildings 'A' and 'C' which purport to provide the buildings with a separate amenity/curtilage area.
- The period for compliance with the requirements is six months.
- The appeal under reference 2195855 is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
- The appeals under references 2195857, 2195858, 2195859, 2195863 and 2195864 are proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the ground (a) appeals and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

**Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Decision.**

### Application for costs

1. At the Hearing an application for costs was made by the Appellants against the Council. This application is the subject of a separate Decision.

## **The Notice**

2. The notice gives the address of the appeal site as Kelvedon but the appeal form says it is Rivenhall End. Mr Taylor confirmed at the Hearing that the correct address is Rivenhall End. I will therefore correct the notice accordingly pursuant to s.176 of the 1990 Act.

## **The appeal site**

3. The appeal site, comprising the Hole Farm holding, was purchased by the Appellants as co-owners in 2009. The appeal site is a roughly square parcel of land with an area of some 1.6 hectares<sup>1</sup> comprising the farmhouse (the House), a number of outbuildings, garden areas and paddocks. The House is Grade II\* listed and is occupied by Mr and Mrs Taylor. It is a timber framed roughcast rendered building with a roof of handmade clay tiles that originates from the fifteenth century and was extended in the nineteenth century. The appeal site is located to the south of the A12 and is accessed from a track off a slip road. It is within an area of countryside to the west of Kelvedon and to the east of Rivenhall End.
4. Building A is occupied by Jennifer Taylor, Peter Short and their two young daughters. The building is a single storey building forming part of the enclosure to the farmyard to the south east of the House. The principal element is a traditional timber framed barn and there is also a modern masonry rebuild at a higher internal floor level. The building is clad in black weatherboarding and has a red/brown tiled, pitched roof. It has domestic fenestration typical of a dwelling.
5. Building C is occupied by Claire and Robin Hyde-Chambers and their baby. It has the appearance of a small bungalow on the south eastern edge of the group of buildings. It is clad in black weatherboarding and has a red/brown tiled roof.

## **The Appeals on ground (b)**

6. In appeals on ground (b) the Appellants have to show that the breach of planning control alleged in the notice has not occurred as a matter of fact. The appeals are made in respect of building 'A' only and the Appellants' case is that as this building has no kitchen it is not an independent single dwelling house and all meals are prepared in the House.
7. Building 'A' is occupied by Mr Short, Ms Taylor and their two small children and it comprises two bedrooms, a utility/shower room with a toilet and a large living area in which, among other things, there is a dining table with seven chairs. There are no cooking facilities but there is a very small fridge in which I saw some milk, cheese 'triangles' and what appeared to be a portion of cooked vegetables. Mr Short told me that he did not eat at the appeal site during the week and that his daughters had all their meals in the House. At weekends the family also cooked and had their meals in the House. There was no kettle because neither he nor Ms Taylor drank tea or coffee and despite the Council's evidence, there had never been a microwave or other such appliances in the building.

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<sup>1</sup> About 4.2 acres as advised by Mr Taylor



8. The breach of planning control alleged is 'use as a single family dwelling house' and advice is given in Circular 10/1997 about the interpretation of that term<sup>2</sup>. The Courts have held that, although there is no definition of what is a dwelling house, it is possible for the reasonable person to identify one when he sees it. Building 'A' has domestic style windows and doors, it has a flue from the wood burning stove and internally it is fully fitted and furnished as a dwelling. As a matter of fact and degree I find that in this respect building 'A' is a dwelling house.
9. However, the criteria for determining use as a single dwelling house include both the physical condition of the premises and the manner of its use. It has been held that a dwelling house is a building which ordinarily affords the facilities required for day to day private domestic existence<sup>3</sup>. There is no dispute that the building has been adapted for residential purposes and that it is lived in and slept in by Mr Short, Ms Taylor and their children, the question is whether the lack of facilities for cooking, and the family's use of the House for cooking and eating, means that building 'A' does not contain all the normal facilities associated with use as a dwelling house and that its use is therefore as 'a residential annex to the House'<sup>4</sup>.
10. The planning unit that is the subject of the notice comprises the House, all the other buildings and paddocks. The planning unit is owned by the Appellants as a co-operative venture. Although the Council suggested otherwise at the Hearing, in its statement it did not dispute that building 'A' is within the curtilage of the House<sup>5</sup>. A building in the curtilage may be put to any use which is incidental to the enjoyment of the dwelling house and provided the planning unit remains in single family occupation, the provision of additional bedroom accommodation constitutes an integral part of the planning unit as a single dwelling house (the House) and does not involve any material change of use<sup>6</sup>.
11. In this case however, the additional accommodation provided in building 'A' goes far beyond bedroom accommodation because it comprises significant other accommodation such as the shower/utility room and a well furnished and equipped living/dining room. In addition, although the planning unit is owned by a family in the sense that the six Appellants are mother and father, two daughters and their partners, the three buildings in residential use, that is, the House, building 'A' and building 'C', are occupied by a separate families, that is, respectively, Mr and Mrs Taylor; Mr Short, Ms Taylor and their two daughters; and Claire and Robin Hyde-Chambers and their baby. Taking all of these matters into account, I do not consider that building 'A' is a residential annex to the House.
12. With regard to the use of building 'A', I give no weight to the fact that the children spend most of the weekdays, including meals, with their grandparents in the House as this could be the case wherever they may live. And for similar reasons I give no weight to Mr Short's lack of need for cooking facilities during the week. At weekends it is not unusual for extended families to cook/eat

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<sup>2</sup> Paragraph 2.81 Enforcing planning control: legislative provisions and procedural requirements

<sup>3</sup> *Gravesham BC v SSE* [1983] JPL 307

<sup>4</sup> The Appellants' statement 'Analysis Building A'

<sup>5</sup> Paragraph 3.3 of the Council's statement

<sup>6</sup> Paragraph 3B-2068.13 of the Encyclopedia of Planning Law and Practice

together as may be the case here. Any lack of cooking facilities<sup>7</sup> does not, in my opinion, result in the building, given the circumstances, not being in use as a single dwelling.

13. I therefore find, as a matter of fact and degree, that the use of building 'A' is as a single family dwelling house and the appeals on ground (b) fail.

### **The appeal on ground (a) and the deemed planning application**

14. Taking into account the reasons for issuing the notice and the discussion at the Hearing, the main issue is whether the change of use of buildings 'A' and 'C' to single family dwelling houses is in accordance with national and local policy for both residential development in the countryside and heritage assets.

### **Planning policy**

15. The development plan for the area includes the Braintree District Local Plan Review and the Braintree Local Development Framework Core Strategy. The Policies cited on the notice are Local Plan Policy RLP2 which says that 'new development will be confined to the areas within Town Development Boundaries and Village Envelopes. Outside these areas countryside policies will apply'; Local Plan Policy RLP12 which says that 'new dwellings will not be permitted in the countryside, unless they are needed for agricultural workers'; Core Strategy Policy CS1 plans for housing provision and delivery to be located in towns and mixed use regeneration and growth sites; and Core Strategy Policy CS5 seeks to strictly control development outside town development boundaries and village envelopes to uses appropriate to the countryside.
16. The Appellants have referred to Core Strategy Policy CS9 which seeks to 'promote and secure the highest possible standards of design and layout in all new development and the protection and enhancement of the historic environment in order to ... promote the sympathetic re-use of buildings, particularly where they make a positive contribution to the special character of the local environment and can contribute to the delivery of sustainable development and regeneration'.
17. Also cited on the notice is paragraph 55 of the National Planning Policy Framework (the Framework) which advises that in order 'to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Isolated new homes in the countryside should be avoided unless there are special circumstances such as where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting'.
18. The Appellants refer to Part 12 of the Framework which provides guidance on conserving the historic environment and in particular paragraphs 128, 129 and 131 which, among other things, say that the significance of a heritage asset should be identified and assessed when determining applications.
19. The Local Plan was adopted in 2005 and the Core Strategy in 2011. The Framework advises that in such circumstances, due weight should be given to the relevant policies according to their degree of consistency with the Framework. Whilst there are some differences between the various policies

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<sup>7</sup> And I take into account the Council's comment that such a lack could be easily overcome by the provision of a microwave or similar equipment

and the Framework, it seems to me that, in the main, they are consistent in that the policies and the Framework seek to control residential development in the countryside subject to a number of specific exceptions, which I will consider below, and to protect heritage assets. I therefore give considerable weight to the development plan policies.

20. The Council has referred to policies in its Site Allocations and Development Management Plan. However, this Plan has only extremely recently<sup>8</sup> been given approval for public consultation and I therefore give it very limited weight.

### **Reasoning**

21. Building 'A' is within the curtilage of the listed House and the principal part of it, that is the timber framed barn element, probably formed part of the nineteenth century farmyard. S.66 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 provides that 'in considering whether to grant planning permission for development which affects a listed building or its setting, [the decision maker], shall have special regard to the desirability of preserving the building or its setting'.
22. It is the Appellant's case that the repair and refurbishment of building 'A' for the residential use, which includes wooden cladding and painting, safeguards and maintains the historic farmyard setting. But the application I have to consider is the change of use of building 'A' and not building operations. It may well be that building 'A' may not have been repaired and refurbished if it had not been put to residential use, as is the case with building 'B' and the side 'extension' to building 'A' which appear to have not been repaired, but that is speculation and is not within the matters I have to determine.
23. As the building is within the curtilage of the House, any additional domestic paraphernalia, such as the children's table and chairs I saw outside building 'A', could be placed there in any event. The erection of the fence to provide a grassed garden space for building 'A' results in an artificial boundary around a domestic amenity area within the former farmyard and the flue from the wood burning stove is prominent and out of place in the context of the traditional building. However, overall I consider that the effect on the setting of the listed building arising from the change of use is limited and that it has a neutral effect so far as preservation and enhancement of the setting is concerned.
24. Building 'C' is some considerable distance from the House and from its curtilage and it is the Appellant's case that it forms part of the 'wider setting of the listed building'. I have not been told when building 'C' was built but the Appellant understands it was erected by a previous owner as accommodation for a relative. Although it is within the group of buildings that comprise the holding and it can be seen from what was once the farmyard, I consider that it is too far away and separate from the House and the curtilage buildings to form part of the setting of the listed building. The provisions of s.66 of the Listed Building Act 1990 therefore do not apply to it.
25. Even if I had come to a different conclusion with regard to building 'C' and s.66 of the Listed Building Act 1990 did apply, I consider that any effect would be

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<sup>8</sup> I was advised at the Hearing that the Council had approved the Plan (subject to amendments, the full details of which were not available) for public consultation at the Council Meeting the previous evening (23 September 2013)



similar to those with regard to building 'A' and therefore limited, resulting in a neutral effect on the setting of the listed building.

26. At the heart of the Framework is the presumption in favour of sustainable development and housing in rural areas is to be promoted where it will enhance or maintain the vitality of rural communities. The objectives of Local Plan policy are similar in this respect. Buildings 'A' and 'C' are within a group of former farm buildings but they are isolated both in terms of being outside any village or town boundary and being remote from other dwellings save for the House and the adjacent neighbour. They are thus the type of housing that should be avoided unless there are special circumstances, one of which is the re-use of buildings. The re-use of buildings is further qualified by the Framework to those which are redundant or disused and the re-use would lead to an enhancement to the immediate setting; and by Policy CS9 where the re-use would make a positive contribution to the special character of the local environment and can contribute to the delivery of sustainable development and regeneration. No evidence has been provided that the buildings were redundant or disused before the change of use occurred.
27. I have considered above the effect of the change of use on the setting of the House in respect of building 'A'. So far as building 'C' is concerned, again there have been little, if any external alterations to the building but the change of use has introduced some domestic items such as a TV aerial and flue and domestic paraphernalia and planting into an area of the site some distance from the domestic curtilage of the House which are out of keeping with the rural character and appearance of the appeal site. In respect of both buildings 'A' and 'C', I consider that the change of use does not lead to an enhancement of the immediate setting.
28. With regard to the effect on the wider character of the rural area, the Appellant contends that no harm has arisen to the character of the countryside from the change of use. The Council acknowledges that the change of use has a limited impact on the countryside and refers to the domestication of the countryside character<sup>9</sup>. Whether any harm arises or not to the general area was not a reason for issuing the notice, but from what I saw I find that the change of use has an extremely limited impact on the wider countryside resulting in no significant harm.
29. The Appellant did not provide any evidence in respect of sustainability save for in the most general of terms. I do, however, note that even if local services and railways stations are near-by in terms of miles, they are only accessible by private car or similar transport given the location of the site off a slip road to the A12. And, with this in mind I also note that Mr Short works in London and Mr & Mrs Hyde-Chambers' business is in Ipswich and their journeys to work are likely to involve travel by car, whether for the complete journey or to a railway station. In this respect I consider that the change of use does not provide sustainable development as required by Policy CS9.

### ***Other matters***

30. I have taken into account the particular circumstances of these appeals where six members of the extended family own the site and it currently provides housing for three separate families, two of which have small children and

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<sup>9</sup> Paragraph 4.20 and 4.21 of the Council's statement

where the third provides childcare. I have considered the possibility of imposing planning conditions restricting the use of buildings 'A' and 'C' as single family dwelling houses to the current occupiers but the advice in Circular 11/95<sup>10</sup> is that such conditions should be exceptional and should only be imposed where there are strong compassionate or personal grounds. I consider in this case that the circumstances are not so special so as to outweigh the aims and objectives of development plan and national policies.

**Conclusions on the appeal on ground (a) and the deemed planning application**

31. I have found that the change of use of building 'A' to a single family dwelling has a neutral effect on the setting of the listed building and that policies relating to heritage assets have no relevance to building 'C'. But for the reasons given above, I conclude that the change of use of buildings 'A' and 'C' to single family dwelling houses is not in accordance with national and local policy for residential development in the countryside and this outweighs my finding in respect of any other issue or any compliance with some elements of the relevant policies. The appeal on ground (a) fails and the deemed planning application is refused.

**The Appeals on ground (f)**

32. In appeals on ground (f) the Appellants have to show that the steps required by the notice exceed what is necessary to remedy the breach. These appeals are also made in respect of building 'A' only and the Appellants agreed at the Hearing that, if the appeals on ground (b) were unsuccessful and no planning permission was granted, the appeals on ground (f) were not sustainable.

33. The appeals on ground (f) therefore fail.

**The Appeals on ground (g)**

34. The Appellants seek twelve months in which to comply with the notice rather than six months because of the difficulty of obtaining 'starter' residential accommodation in the area and the families' circumstances. The Council is 'not vehemently opposed to a twelve month compliance period' if I consider the Appellants' circumstances 'to be extenuating'<sup>11</sup>.
35. As previously mentioned, Mr Short and Ms Taylor have two young children and Mr & Mrs Hyde-Chambers have a baby. Although no evidence has been provided, I am aware that suitable alternative housing may not be easily or quickly found and in those circumstances a period of twelve months appears to me to be reasonable.

36. The appeal on ground (g) succeeds.

**Conclusions**

37. For the reasons given above I conclude that a reasonable period for compliance would be twelve months and I am varying the enforcement notice accordingly. The appeal under ground (g) succeeds to that extent. However, I conclude that overall the appeal should not succeed and I shall uphold the enforcement

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<sup>10</sup> The use of conditions in planning permissions - paragraphs 92 and 93

<sup>11</sup> Paragraph 6.3 of the Council's statement

notice with a correction and a variation and refuse to grant planning permission on the deemed application.

### **Decision**

38. The appeal is allowed on ground (g), and it is directed that the enforcement notice is corrected by the deletion of the word 'Kelvedon' from those to whom the notice was sent and from the land to which the notice relates (paragraph 2) and the substitution therefor of the words 'Rivenhall End'; and it is also directed that the enforcement notice is varied by the substitution of twelve months as the period for compliance. Subject to this correction and variation the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Gloria McFarlane*  
Inspector

## **APPEARANCES**

### **FOR THE APPELLANT**

Mr D Taylor	Appellant
Mr P Short	Appellant
Mr J Dagg MRTPI	Barrister
Mr C Hollyman MRTA	Panning Consultant
Mr A Stones AA Dip TP Dip RIBA MRTPI IHBC	Heritage Expert

### **FOR THE LOCAL PLANNING AUTHORITY**

Mr S Hopkins	Solicitor
Mr A Davies MA (Town Planning)	Witham Area Planning Manager
Mr B Taplin	Enforcement Officer

## **PLAN SUBMITTED AT THE HEARING**

Plan 1 -	Plan of the appeal site, submitted by the Appellants
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## Costs Decision

Hearing held on 24 September 2013

Site visit made on the same date

**by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 7 October 2013**

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**Costs application in relation to Appeals Ref: APP/Z1510/C/13/2195855, 21955857, 2195858, 2195859, 2195863 and 2195864**

**Hole Farm, London Road, Rivenhall End, Essex, CM8 3HB**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr and Mrs D Taylor, Jennifer Taylor, Peter Short, Claire and Robin Hyde-Chambers for a full award of costs against Braintree District Council.
  - The hearing was in connection with an appeal against an enforcement notice alleging a material change in the use of both buildings 'A' and 'C' for use as two single family dwelling houses.
- 

### Decision

1. The application for an award of costs is refused.

### The submissions for the Appellants

2. The application is made for full costs on the basis that the appeals should not have been necessary and that the Council has acted unreasonably in serving the notice and unnecessary expense has been incurred in accordance with paragraph A12 of Circular 03/2009<sup>1</sup>. The Appellants concede that the application was not made promptly but the Council was able to reply to the application and this should not count against the Appellants.
3. The Council has misused its discretion. The National Planning Policy Framework is clear that enforcement action should be proportionate<sup>2</sup>. There was no good reason given the terms of paragraph 55 of the Framework, the statutory duty to have special regard to the desirability of preserving the setting of the listed building<sup>3</sup> and associated policy, and the lack of any evidence of harm to the character of the countryside why a retrospective application should not have been requested. There is no indication that the Council considered advice in Circular 10/97<sup>4</sup> or case law when deciding that building 'A' was a dwelling to which paragraphs B33 and B40 of the Circular are relevant.

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<sup>1</sup> Circular 03/2009 'Costs Awards in Appeals and Other Planning Proceedings'

<sup>2</sup> Paragraph 207

<sup>3</sup> S.66 of the Town and Country Planning (Listed Buildings and Conservations Areas) Act 1990 (the Listed Buildings Act)

<sup>4</sup> Enforcing planning control: legislative provisions and procedural requirements paragraph 2.81



4. The delegated report prior to enforcement action, the wording of the notice and the terms of the Council's statement disclose a misunderstanding of both law and policy. The importance of the s.66 duty is not properly appreciated, nor is national policy in respect of the conservation of heritage assets; given the original involvement of the Historic Buildings Advisor this is the more surprising. The near 'blanket' prohibition of new dwellings in the countryside outside settlement boundaries, stated in the 2005 Local Plan<sup>5</sup> and the Core Strategy<sup>6</sup>, is pursued notwithstanding (i) the clear terms of paragraph 55 of the Framework and (ii) the lack of landscape analysis demonstrating harm. The Council effectively accepts that there is little impact on the character of the countryside<sup>7</sup>.
5. The Appellants did not make a retrospective planning application because none was invited and when this was discussed with the Council they were advised there would be no point because of the blanket policies on new residential development in the countryside.

### **The response by the Council**

6. As a general principle Parties meet their own expenses<sup>8</sup> and the conditions required by paragraph A12 have not been met as the Appellants have not made their application in a timely fashion in that no notice was given on the application which was made at the Hearing and the Council has not acted unreasonably thus causing the Appellants to incur unnecessary or wasted expense. The Council resists the application for costs.
7. Paragraph 207 of the Framework advises Councils to act proportionately in enforcement matters. The Council became aware of the change of use and began investigations. A letter was written to the Appellants in February 2012 pointing out the issues and in a response in March 2012 the Appellants intimated that an application would be made. Limited correspondence then ensued but as no application was received the notice was issued in February 2013 because the Council was concerned to protect its position with regard to the four year rule. The Appellants had ample time to take advice about any application they could make<sup>9</sup> and, in the light of the information before the Council, it did not act unreasonably in issuing the notice.
8. The alleged breach of planning control is a change of use; it is clear that the Council did consider the physical alterations in that it considered they had no impact. The evidence of harm is addressed in paragraphs 4.20 and 4.21 of the Council's statement. It is certainly not a case of 'no evidence'.
9. The Council considered whether building 'A' was a single dwelling and came to its own conclusions which are different from the Appellants'. This is a matter of fact and degree and even if the Council is found to be wrong, it did not act unreasonably on this matter of judgement.
10. The Council's original inspection included the Historic Buildings Advisor and the view was taken that the alterations had no impact on the listed building. The

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<sup>5</sup> Policy RLP12

<sup>6</sup> Policy CS5

<sup>7</sup> Paragraph 4.21 of the Council's statement

<sup>8</sup> Paragraph A7 of the Circular

<sup>9</sup> For possibly either planning permission or a lawful development certificate

notice was addressed to the change of use whereas the Appellants focus on the s.66 duty with regard to the setting of the listed building.

11. The Council has to act proportionately and it is not always proportionate to carry out a full landscape analysis and it was considered that one was not necessary in this case. It was not unreasonable for the Council to come to this conclusion.

### **Reasoning**

12. The Circular advises that, irrespective of the outcome of the appeal, costs may only be awarded against a Party who has behaved unreasonably and thereby caused the Party applying for costs to incur unnecessary or wasted expense in the appeal process.
13. It was poor practice by the Appellants that they had given no intimation whatsoever that any application for costs was to be made until immediately before the Hearing to the Council and at the end of proceedings in the Town Hall to me and that no explanation was given why this was so. However, following an adjournment the Council provided a response and in the circumstances the application falls to be determined.
14. Paragraph 207 of the Framework advises that enforcement action is discretionary and Councils should act proportionately in responding to suspected breaches of planning control. Investigations began into this matter in February 2012, the Council appears to have been aware of when the Appellants purchased the property, that is, in 2009. As there appears to have been no change in circumstances despite the investigations and correspondence by February 2013 I consider that, in order to protect the position with regard to the four year rule, the Council did not act either disproportionately or unreasonably in issuing the notice and that there was no unreasonable behaviour within the terms of paragraph B40.
15. Although I have refused to grant planning permission on the deemed planning application and concluded that the ground (a) appeal should fail, I place no weight on whether any application should have been made to the Council or not because it is established that the views of an officer cannot bind the Council and I cannot speculate on what the outcome of any application to the Council may have been or how the Council may have exercised its duty under s.66 of the Listed Buildings Act in that event.
16. The reasons for issuing the notice cite Local Plan Policies RLP2 and RLP12, Core Strategy Policies CS1 and CS5 and the National Planning Policy Framework. It therefore appears to me that consideration was given to the Policies by the Council. In addition, I do not consider that the Policies amount to a 'blanket' prohibition on residential development in the countryside because 'strict control' is not a blanket prohibition and exceptions are specified, none of which I found applied in these appeals.
17. On the advice of the Historic Building Advisor the view was taken by the Council that the alterations had no impact on the listed building. The reasons for issuing the notice are confined to those relating to the change of use which I consider complies with the requirements of s.173 of the 1990 Act. There was, in my opinion no need for reasons relating to the effect on the setting of the listed building because the notice was not an operational development one.



18. These appeals are in respect of an enforcement notice and, until the fee was paid there was no deemed planning application or ground (a) appeal. It therefore seems to me that, in the context of these appeals, the Council did not have any duty under s.66 of the Listed Buildings Act because the consideration of whether to grant planning permission for the change of use is mine; it has never been a consideration for the Council.
19. However, when the appeals were made the Council became aware of the Appellants' case and the ground (a) appeal and deemed planning application. The questions of impact on the setting of the listed building and the character of the countryside were addressed in the Council's statement in response to the Appellants' grounds of appeal, even though these were not reasons for issuing the notice. Given the Council's stance I see nothing unreasonable in the non-provision of a landscape assessment.
20. Whether a building is a single dwelling or not is the subject of, among other things, case law and national guidance. It is a matter of fact and degree depending on the circumstances of each case. In these appeals the Appellants took a different view from the Council. In determining the appeals I came to the same view as the Council and the Appellants appeals on ground (b) failed. Even if I had come to a different conclusion, I consider it would not have been unreasonable for the Council to have had a different opinion from the Appellants in the circumstances of these appeals. The Council has not acted unreasonably within the terms of paragraph B33.

### **Conclusions**

21. I therefore find that unreasonable behaviour resulting in unnecessary and/or wasted expense, as described in Circular 03/2009, has not been demonstrated.

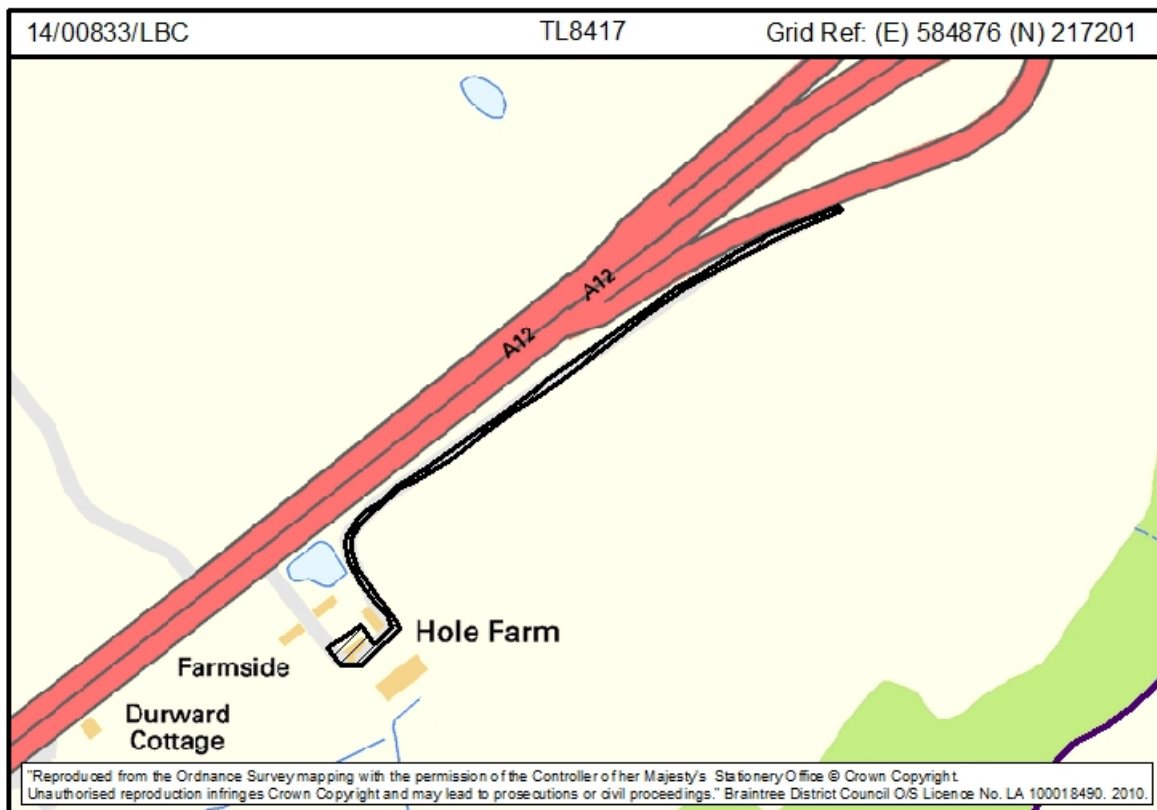
*Gloria McFarlane*

Inspector

PART A

APPLICATION NO: 14/00833/LBC  
 DATE: 02.09.14  
 VALID:  
 APPLICANT: Mr D Taylor  
 Hole Farm, London Road, Kelvedon, Essex, CM8 3HB,  
 AGENT: Mrs L Gregory  
 Acorus Rural Property Services, Old Market Office, 10  
 Risbygate Street, Bury St Edmunds, Suffolk, IP33 3AA  
 DESCRIPTION: Conversion of redundant agricultural building to a dwelling  
 LOCATION: Hole Farm, London Road, Kelvedon, Essex, CM8 3HB,

For more information about this Application please contact:  
 Mrs N Banks on:- 01376 551414 Ext. 2545  
 or by e-mail to: [natalie.banks@braintree.gov.uk](mailto:natalie.banks@braintree.gov.uk)



## SITE HISTORY

02/00936/LBC	Proposed replacement doors in outbuilding	Granted	01.10.02
13/00800/FUL	Change of use of buildings A and C to single dwellings and erection of single storey extension to building A for use as a kitchen	Refused	03.09.13
14/00832/FUL	Conversion of redundant agricultural building to a dwelling	Pending Decision	

## POLICY CONSIDERATIONS

### National Planning Guidance

National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)

### Braintree District Local Development Framework Core Strategy

CS9            Built and Historic Environment

### Braintree District Local Plan Review

RLP100       Alterations and Extensions and Changes of Use to Listed Buildings and their settings  
RLP101       Listed Agricultural Buildings

### Emerging Policies in the Braintree District Site Allocations Development Plan

ADM1        Presumption in Favour of Sustainable Development  
ADM50       Landscape Character  
ADM60       Layout and Design of Development  
ADM66       Alterations and Extensions and Changes of Use to Listed Buildings or Structures and their Settings  
ADM66       Enabling Development

## INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

This application is brought before the Planning Committee due to an objection received from a local amenity society. Listed Building Consent is required because the proposal involves works to a Grade II\* Listed building.

## SITE DESCRIPTION

See previous report.

## PROPOSAL

See previous report.

## CONSULTATIONS

See previous report.

## REPRESENTATIONS

See previous report.

## REPORT

See previous report.

## CONCLUSION

It is concluded that the proposal is acceptable in accordance with the NPPF and the above-mentioned policies.

## RECOMMENDATION

It is RECOMMENDED that the following decision be made:  
Application GRANTED subject to the following conditions and reasons and in accordance with approved plans:-

## APPROVED PLANS

Location Plan	Plan Ref: 1411-100
Proposed Plans	Plan Ref: 1411-101
Proposed Elevations	Plan Ref: 1411-102

- 1 The works hereby permitted shall be begun on or before the expiration of three years beginning with the date of this consent.

### Reason

This Condition is imposed pursuant to Section 18 of the Planning (Listed Building & Conservation Areas) Act 1990.

- 2 The works hereby permitted shall be carried out in accordance with the approved plans listed above.

### Reason

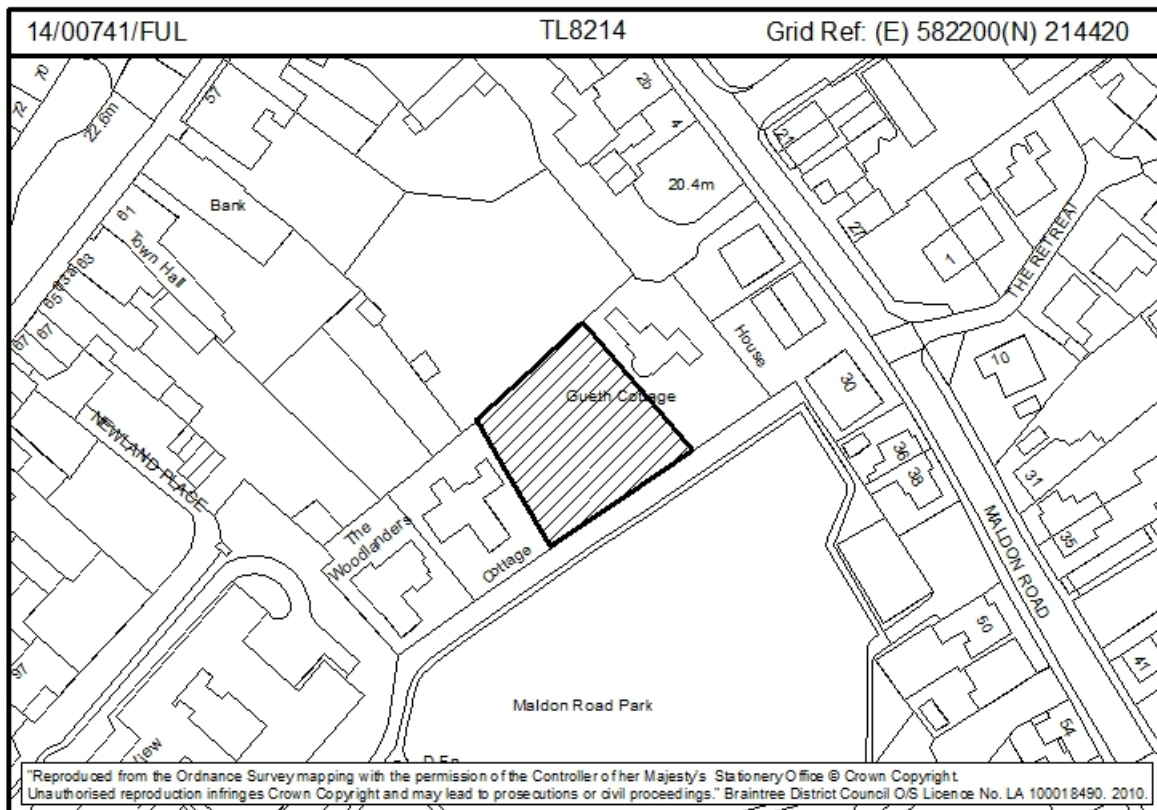
To ensure that the work does not affect the character or setting of the listed building on/adjoining the site.

TESSA LAMBERT  
DEVELOPMENT MANAGER

PART A

APPLICATION NO: 14/00741/FUL DATE: 01.07.14  
 VALID:  
 APPLICANT: PS Construction  
 Mr P Smith, C/o Agent  
 AGENT: AJM Planning  
 Mr Andrew MacDougall, 4 Cranmore Court, Avenue Road,  
 St Albans, Hertfordshire, AL1 3QS  
 DESCRIPTION: Erection of two new dwellings with associated parking,  
 landscaping and amenity space, together with retention of  
 existing dwelling.  
 LOCATION: Gueth Cottage, Maldon Road, Witham, Essex, CM8 2AB

For more information about this Application please contact:  
 Mrs N Banks on:- 01376 551414 Ext. 2545  
 or by e-mail to: natalie.banks@braintree.gov.uk



## SITE HISTORY

None.

## POLICY CONSIDERATIONS

### National Planning Guidance

National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)

### Braintree District Local Development Framework Core Strategy

CS9            Built and Historic Environment

### Braintree District Local Plan Review

RLP2	Town Development Boundaries and Village Envelopes
RLP3	Development within Town Development Boundaries and Village Envelopes
RLP9	Design and Layout of Housing and Mixed Use Areas
RLP10	Residential Density
RLP56	Vehicle Parking
RLP70	Water Efficiency
RLP74	Provision of Space for Recycling
RLP80	Landscape Features and Habitats
RLP81	Trees, Woodland Grasslands and Hedgerows
RLP90	Layout and Design of Development
RLP95	Preservation and Enhancement of Conservation Areas

### Emerging Policies in the Braintree District Site Allocations Development Plan

ADM1	Presumption in Favour of Sustainable Development
ADM2	Development within Development Boundaries
ADM8	Housing and Density
ADM47	Parking Provision
ADM60	Layout and Design of Development
ADM69	Archaeological Evaluation, Excavation and Recording

### Supplementary Planning Guidance

The Essex Design Guide 2005 and Urban Places Supplement  
ECC Parking Standards – Design and Good Practice, September 2009

## INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

This application is brought before the Planning Committee due to objections received from the Town Council and neighbouring residents.

## SITE DESCRIPTION

Gueth Cottage is a detached 20<sup>th</sup> century 2-storey dwellinghouse sited within the Witham Town Development Boundary and Conservation Area. It is positioned to the rear of two commercial buildings on Maldon Road. It is set within large plot to the north east of the Recreation Ground. There are two bungalows to the south-west, known as Mulberry Cottage and The Woodlanders. Access is gained to Gueth Cottage and the bungalows between Crispin House and No. 30 Maldon Road. The site is generally level, however it drops by about 0.75m in the north-west portion. There are two protected trees along the southern boundary.

## PROPOSAL

This proposal is for the erection of two 1.5 storey dwelling houses in the south-west portion of the site between Gueth Cottage and Mulberry Cottage. Revised plans have been submitted following initial concerns regarding the protected Cedar tree within the site and to address concerns expressed by the Historic Buildings Adviser. The dwellings would be orientated to face the Recreation Ground, with the front building line approximately level with the existing house and the 2 adjacent bungalows. Whilst Gueth Cottage is not listed, it is an attractive building, making a positive contribution to the Conservation Area. The design approach to the scheme seeks to acknowledge this by creating a step in height between Gueth Cottage and the adjacent bungalows to ensure that the new dwellings appear subservient to the Cottage whilst not over-whelming the bungalows. The proposed design and materials are also reflective of the architectural details of Gueth Cottage. The dwellings will feature projecting gables, external chimney stacks, small roof dormers and decorative brick detailing at eaves height and around the openings. The dwellings will measure approximately 6.5m in height, which is 1.1m below the height of Gueth Cottage and 1.5m higher than Mulberry Cottage. The set-back of the dwellings has resulted in them having a proportionately larger front garden in comparison to the rear, however, this is considered necessary to ensure that the root protection areas of the trees are safeguarded. The rear amenity space proposed for the new dwellings is in excess of the minimum 100sqm recommended in the Essex Design Guide and is commensurate with Gueth Cottage. Sufficient vehicle parking space will be provided for all three houses in accordance with ECC Vehicle Parking Standards.

## CONSULTATIONS

ECC Highways raise no objections.

ECC Archaeology raises no objection to the proposal subject to a condition  
ECC Historic Buildings Adviser raises no objection but has requested some amendments to the plans.

BDC Landscapes Officer has raised concerns regarding the aesthetic impact on the mature Cedar tree in the context of views across the public park. If planning permission is granted, it should be subject to a condition requiring a tree protection plan.



BDC Environmental Health raises no objections subject to conditions to be imposed during the construction phase.

BDC Engineers are unaware of any surface water issues affecting the site.

## REPRESENTATIONS

The Town Council has objected to the proposal on the basis that the designs of the proposed properties are too similar. The occupier of The Woodlanders does not object to the proposal but has raised concerns regarding the impact of the development on the shared drive to ensure that access will not be blocked and any damage caused as a result of the development should be put right at the expense of the developer. The Witham and Countryside Society comments that the site is of significant visual importance as it overlooks the town park. Any new development should therefore be single storey and care taken to protect the trees on the site. The occupiers of Crispin House object to the proposal on the grounds of the impact of additional traffic during and after construction, noise levels during construction and possible danger to pedestrians.

## REPORT

The site is within the Witham Town Development Boundary and is within a conservation area. Whilst it is noted that the NPPF encourages a positive approach towards new development, Part 7 places considerable emphasis on the need for good design. It advises that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions and to provide a good standard of amenity for all. Part 12 emphasises the desirability of new development making a positive contribution to local character and distinctiveness.

Policy RLP3 of the Braintree District Local Plan Review requires that residential development is only acceptable if it satisfies amenity, design, environmental and highway criteria and where it can take place without material detriment to the existing character of the settlement. Development should be in harmony with the scale, design and intensity of the existing surrounding development and respect neighbouring amenities. Policy CS9 of the LDF Core Strategy and Policy RLP90 seek a high standard of layout and design in all built development, large or small. Planning permission will only be granted where the scale, density, height and massing of buildings reflects or enhances local distinctiveness and where there is no undue or unacceptable impact on existing amenity. Policy RLP9 requires that the design and layout of new developments shall create a visually satisfactory environment and be in character with the site and relate to its surroundings. Policy RLP10 states, amongst other things, that the density and massing of residential development will relate to the characteristics of the site and the layout and density of surrounding development. Policy RLP95 states that the Council will preserve and encourage the enhancement of the character and appearance of designated conservation areas. Policy RLP80 of the Local Plan Review requires that proposals for new development will be required to



provide an assessment of their impact on wildlife and distinctive landscape features. Policy RLP81 of the Local Plan Review states that the Local Planning Authority will encourage landowners to retain and maintain existing trees.

Policy RLP56 states that off-road vehicle parking should be provided in accordance with the Council's adopted vehicle parking standards 2009. For dwellings with two bedrooms or more a minimum of two parking spaces should be provided. Visitor parking should be provided on the basis of 0.25 spaces per dwelling. Each parking space should measure 5.5 metres in depth by 2.9 metres in width.

Recommendations set out in the Essex Design Guide state that dwellings with two bedrooms should benefit from 50sqm private garden space and dwellings with three bedrooms or more should benefit from 100sqm private garden space.

There is no objection in principle to the new development in this sustainable location, subject to the above policy criteria. In terms of achieving standards to achieve a good level of amenity for existing residents and that of the proposed residents, it is considered that the proposal satisfies the relevant policy criteria and adopted standards set out above. The Historic Buildings Adviser raises no objection to the development subject to some minor changes to the design which have been undertaken by the applicant. A Tree Protection Plan has also been submitted and a condition is suggested to ensure that this is mandatory as requested by the Tree and Landscape Officer. The existing access from the highway will be utilised, and ECC Highways have raised no concerns. The layout and design of this development has been informed by several discussions with BDC and ECC officers. The resultant scheme is well designed, respecting the context and setting of the existing development in terms of the height and scale of the buildings, the variety of design details and the pallet of materials. As such it will respect the surrounding development and is therefore acceptable in terms of its design and layout.

The concerns expressed regarding the access both during and post construction are noted, and whilst these issues are not material planning considerations in the determination of this application, conditions are suggested during the construction phase, together with an informative.

## CONCLUSION

The proposal complies with the aims of the National Planning Policy Framework and the Council's adopted policies. The design of the scheme has been informed by discussions with the Historic Buildings/Conservation Adviser. It is therefore concluded that the development is acceptable and approval is recommended, subject to the conditions set out below.

## RECOMMENDATIONS

It is RECOMMENDED that the following decision be made:

Application GRANTED subject to the following conditions and reasons and in accordance with approved plans:-

## APPROVED PLANS

Location Plan	Plan Ref: A107	Version: a
General Plans & Elevations	Plan Ref: 534-DWG-001	Version: 2
General Plans & Elevations	Plan Ref: 534-DWG-002	Version: 2
Location Plan	Plan Ref: 534-DWG-003	Version: 2
Site Plan	Plan Ref: 534-DWG-004	Version: 2
Photograph	Plan Ref: 534-DWG-005	Version: 2
Planning Layout	Plan Ref: 534-DWG-006	Version: 01
Street elevation	Plan Ref: 534-DWG-007	Version: 01
Landscaping	Plan Ref: 534-DWG-008	Version: 01

- 1 The development hereby permitted shall be begun on or before the expiration of three years beginning with the date of this permission.

### Reason

This Condition is imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

- 2 The development hereby permitted shall be carried out in accordance with the approved plans listed above.

### Reason

For the avoidance of doubt and in the interests of proper planning.

- 3 Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 (or any Order amending, revoking and re-enacting that Order) no enlargement of the dwelling-house / provision of any building within the curtilage of the dwelling-house, as permitted by Class A, B, C, D, and E of Part 1 of Schedule 2 of that Order shall be carried out without first obtaining planning permission from the local planning authority.

### Reason

In order that the local planning authority may exercise control over any proposed future extensions / outbuildings in the interests of residential and/or visual amenity.

- 4 Development shall not be commenced until samples of the materials to be used on the external finishes have been submitted to and approved in writing by the local planning authority.

Reason

To ensure the use of appropriate materials having regard to the importance of this scheme in the Conservation Area and to ensure that the choice of materials will harmonise with the character of the surrounding development.

- 5 No demolition/ conversion or preliminary groundworks of any kind shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation to be submitted to, and approved in writing by the local planning authority in consultation with the Heritage Conservation Branch of Essex County Council.

Reason

The site may be of archaeological interest.

- 6 Development shall not be commenced until details of the means of protecting all of the existing trees, shrubs and hedges on the site from damage during the carrying out of the development have been submitted to the local planning authority for approval. The approved means of protection shall be installed prior to the commencement of any building, engineering works or other activities on the site and shall remain in place until after the completion of the development to the complete satisfaction of the local planning authority.

No materials, goods or articles of any description shall be stacked, stored or placed at any time within the limits of the spread of any of the existing trees, shrubs or hedges.

No works involving alterations in ground levels, or the digging of trenches, or excavations of any kind, (including the laying or installation of drains, pipes, cables or other services) shall be carried out within the extent of the spread of any existing trees, shrubs and hedges unless the express consent in writing of the local planning authority has previously been obtained. No machinery of any kind shall be used or operated within the extent of the spread of the existing trees, shrubs, hedges.

The Local Planning Authority shall be notified in writing at least 5 working days prior to the commencement of development on site.

Reason

To ensure existing trees, shrubs and hedges are retained as they are considered essential to enhance the character of the development.

- 7 Development shall not be commenced until details of all gates / fences / walls or other means of enclosure have been submitted to and approved in writing by the local planning authority. The details shall include position, design, height and materials of the screen walls/fences. The gates / fences / walls as approved shall be provided prior to the

occupation of the buildings hereby approved and shall be permanently maintained as such.

Reason

In order to secure the satisfactory development of the site and in the interests of visual amenity.

- 8 The driveways shall be constructed using permeable block paving on a porous base and maintained as such.

Reason

To reduce the risk of flooding.

- 9 Development shall not be commenced until a scheme(s) including an implementation timetable for the following has been submitted to and approved in writing by the Local Planning Authority:-

- (a) water efficiency, resource efficiency, energy efficiency and recycling measures, during construction
- (b) measures to secure water conservation, recycling of rain water, sustainable drainage and other devices to ensure the more efficient use of water within the completed development
- (c) measures for the long term energy efficiency of the building(s), and renewable energy resources
- (d) details of the location and design of refuse bin and recycling materials storage areas (for internal and external separation) and collection points
- (e) details of any proposed external lighting to the site.

The development shall be constructed in accordance with the approved details and thereafter so maintained.

Reason

In the interest of promoting sustainable forms of development.

- 10 No site clearance, demolition or construction work shall take place on the site, including starting of machinery and delivery of materials, outside the following times:-

Monday to Friday 0800 hours - 1800 hours

Saturday 0800 hours - 1300 hours

Sundays, Bank Holidays and Public Holidays - no work

Reason

To protect the amenities of the occupiers of nearby residential properties and the surrounding area.

- 11 No piling shall be undertaken on the site in connection with the construction of the development until a system of piling and resultant noise and vibration levels has been submitted to and agreed in writing by the Local Planning Authority and shall be adhered to throughout the construction process.

Reason

To protect the amenities of the occupiers of nearby residential properties and the surrounding area.

- 12 No burning of refuse, waste materials or vegetation shall be undertaken in connection with the site clearance or construction of the development.

Reason

To protect the amenities of the occupiers of nearby residential properties and the surrounding area.

INFORMATION TO APPLICANT

- 1 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 any works. An application for the necessary works should be made to [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or SMO1 - Essex Highways, Colchester Highways Depot, 910 The Crescent, Colchester C04 9QQ.
- 2 In seeking to discharge the external lighting scheme as part of condition 9, you are advised that the details submitted should seek to minimise light spillage and pollution, cause no unacceptable harm to natural ecosystems, maximise energy efficiency and cause no significant loss of privacy or amenity to nearby residential properties and no danger to pedestrians or road users. Light units should be flat to ground and timer / sensor controls should also be included as appropriate. The applicant is invited to consult with the local planning authority prior to the formal submission of details.
- 3 In respect of Condition 9 you are advised that the details should include provision for the storage of three standard sized wheeled bins for each new dwelling with a collection point no further than 25 metres from the public highway.
- 4 Your attention is drawn to Condition 3 of this planning permission which removes permitted development rights for certain alterations/extensions/development. You are requested to inform prospective purchasers of these restrictions and/or incorporate them in covenants relating to the properties.
- 5 Your attention is drawn to the need to discharge conditions before

development starts where it is a requirement of the condition/s. Development will be treated as having been commenced when any material change of use or material operation has taken place, pursuant to Section 56 of the Town and Country Planning Act 1990. A material operation means any work of construction in the course of the erection of a building, including: the digging of a trench which is to contain the foundations, or part of the foundations of a building; the laying of any underground main or pipe to a trench, the foundations, or part of the foundations of a building; any operation in the course of laying out or constructing a road or any part of a road; and any work of demolition of a building. If development begins before the discharge of such conditions then those conditions cannot be discharged and a breach of planning control will have occurred, which may result in enforcement action being taken.

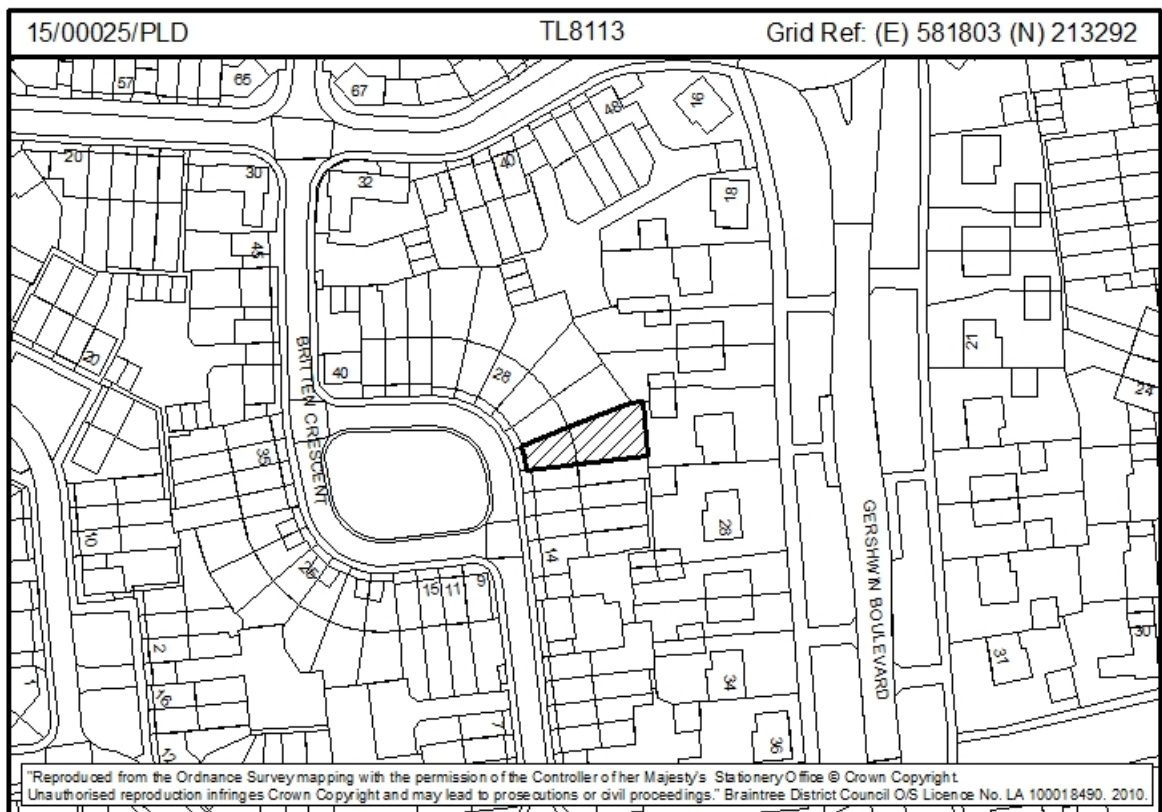
- 6 Please note that in accordance with Government Legislation a formal application must be made to the Local Planning Authority when submitting details in connection with the approval of details reserved by a condition. Furthermore, a fee of £28 for householder applications and £97 for all other types of application will be required for each written request. Application forms can be downloaded from the Council's web site [www.braintree.gov.uk](http://www.braintree.gov.uk)
- 7 Permission is not given for the encroachment of this development onto land outside the applicant's ownership or control, including rights of access or works to the shared driveway. If such works are required it will be necessary to obtain the landowners consent before such works commence.
- 8 You are advised that trees on the site are the subject of a Tree Preservation Order. No tree, the subject of a Tree Preservation Order may be lopped, topped, felled or uprooted without permission under the Order. It is an offence to carry out any works to a preserved tree without such consent having previously been obtained from the local planning authority.

TESSA LAMBERT  
DEVELOPMENT MANAGER

PART B

APPLICATION 15/00025/PLD DATE 12.01.15  
 NO: VALID:  
 APPLICANT: Mr J And Mrs F Bradley  
 22 Britten Crescent, Witham, Essex, CM8 1QE,  
 DESCRIPTION: Application for a proposed lawful development certificate -  
 Internal alterations to include building a new wall to rear of  
 the garage door and creation of a new opening between the  
 study and garage to enable the use of the garage as a play  
 room. The garage door will be retained.  
 LOCATION: 22 Britten Crescent, Witham, Essex, CM8 1QE

For more information about this Application please contact:  
 Mr Sam Trafford on:- 01376 551414 Ext. 2520  
 or by e-mail to: [sam.trafford@braintree.gov.uk](mailto:sam.trafford@braintree.gov.uk)





## SITE HISTORY

01/02130/REM	Erection of 61 no. residential units	Granted	16.05.02
01/02131/REM	Erection of 61 no. residential units	Granted	14.05.02

## POLICY CONSIDERATIONS

### National Planning Guidance

National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)

Policy documents are irrelevant to the determination of this application. There are only three considerations relevant to this application. The first is whether the proposal constitutes 'Development' as defined by Section 55 of the Town and Country Planning Act of 1990. If it is considered that the proposal does constitute development, the assessment must carry on to whether the proposal constitutes 'Permitted Development' as defined by Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order of 1995. The third is whether the right to make alterations of this form have been removed by way of a planning condition implemented at any point in this site's planning history.

## REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

This application is being presented to the planning committee because one of the applicants is a member of staff at Braintree District Council.

## SITE DESCRIPTION

The application site is a two and a half storey terraced residential dwelling-house, located on Britten Crescent. It has an open car port enclosed with metal gates, with a garage behind enclosed by a garage door.

## PROPOSAL

The application seeks a Lawful Development Certificate for internal alterations. The internal alterations would include the insertion of a wall behind the existing garage door, and the insertion of a new opening between the existing garage and the room labelled as a 'Study/Bedroom 4' on the submitted 'Proposed Plan'.

## CONSULTATIONS

No consultation is carried out for an application for a Lawful Development Certificate for a proposed form of development and there is no statutory requirement to advertise such applications.



## REPORT

The site and its surrounding built development was granted planning permission in 2002, under planning application number 01/02131/REM. One of the conditions of the planning permission stated the following:

“Notwithstanding the provisions of Part 1 Schedule 11 Class A of the Town and Country Planning (General Permitted Development) Order 1995, there shall be no alterations to the external appearances of the garages or car ports without the prior written consent of the local planning authority.”

It is not considered that the proposal subject of this application for a lawful development certificate would result in the external appearance of the garage or car port being changed or altered in any way. The proposed wall will be inserted behind the existing garage door. The assessment therefore proceeds to whether the proposal constitutes development.

Section 55 of the Town and Country Planning Act of 1990 defines development as the following.

“Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

“The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

- (a) the carrying out for the maintenance, improvement or other alteration of any building of works which—
  - (i) affect only the interior of the building, or
  - (ii) do not materially affect the external appearance of the building”.

## CONCLUSION

Based on the above development, it is not considered that the application constitutes development. Therefore, it is considered that planning permission is not required in any form, and it is recommended that this application for a Proposed Lawful Development Certificate is granted.

## RECOMMENDATION

It is RECOMMENDED that the following decision be made:

The Braintree District Council as local planning authority gives notice of its decision to **GRANT** a Certificate of Lawfulness for the Proposed Use or Development for the followings reason(s):-

## APPROVED PLANS

Location Plan

Proposed Plans

Existing Plans

1. The proposed internal alteration does not constitute 'development' as defined by Section 55 of the Town and Country Planning Act of 1990, and therefore planning permission is not required.

TESSA LAMBERT

DEVELOPMENT MANAGER