

PLANNING COMMITTEE AGENDA

Tuesday, 7th November 2023 at 7.15pm

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

THIS MEETING IS OPEN TO THE PUBLIC

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Members of the Planning Committee are requested to attend this meeting to transact the business set out in the Agenda.

Councillor J Abbott

Councillor J Beavis

Councillor L Bowers-Flint

Councillor T Diamond

Councillor M Fincken

Councillor J Hayes

Councillor D Holland (Vice-Chairman)

Councillor A Hooks

Councillor A Munday

Councillor I Parker (Chairman)

Councillor F Ricci

Councillor P Schwier

Councillor G Spray

Substitutes: Councillor K Bowers, Councillor M Green, Councillor P Heath, Councillor L Jefferis, Councillor J Pell, Councillor G Prime, Councillor S Rajeev, Councillor W Taylor, Councillor M Thorogood, Councillor P Thorogood, Councillor J Wrench, Councillor B Wright, Vacancy.

Apologies: Members unable to attend the meeting are requested to forward their apologies for absence to the Governance and Members Team on 01376 552525 or email governance@braintree.gov.uk by 3pm on the day of the meeting.

Any Member who is unable to attend a meeting is able to appoint a Substitute. Written notice must be given to the Governance and Members Team no later than 24 hours before the start of the meeting.

D GASCOYNE
Chief Executive

INFORMATION FOR MEMBERS - DECLARATIONS OF MEMBERS' INTERESTS

Declarations of Disclosable Pecuniary Interests (DPI), Other Pecuniary Interests (OPI), or Non-Pecuniary Interests (NPI)

Any Member with a DPI, OPI or NPI must declare the nature of their interest in accordance with the Code of Conduct. Members must not participate in any discussion of the matter in which they have declared a DPI or OPI or participate in any vote, or further vote, taken on the matter at the meeting. In addition, the Member must withdraw from the Chamber where the meeting considering the business is being held unless the Member has received a dispensation from the Monitoring Officer.

Public Question Time - Registration and Speaking

The Agenda allows for a period of up to 30 minutes for Public Question Time. Members of the public may ask questions or make a statement to the Committee on matters listed on the Agenda for this meeting.

All questions or statements should be concise and should be able to be heard within the 3 minutes allotted to each speaker.

Anyone wishing to ask a question or make a statement is requested to register their interest by completing the Public Question Time registration [online form](#) by **midday on the second working day** before the day of the meeting.

For example, if the meeting is on a Tuesday, the registration deadline is midday on Friday, (where there is a Bank Holiday Monday you will need to register by midday on the previous Thursday). The Council reserves the right to decline any requests to register to speak if they are received after this time.

When registering for Public Question Time please indicate whether you wish to attend the meeting 'in person', or to participate remotely. People who choose to join the meeting remotely will be provided with the relevant link and joining instructions for the meeting.

Please note that completion of the on-line form does not guarantee you a place to speak during Public Question Time. You will receive email notification from the Governance Service confirming whether your request is successful.

Confirmed registered speakers will be invited to speak immediately prior to the relevant application/item. All registered speakers will have three minutes each to ask their question or to make a statement. The order in which registered speakers will be invited to speak is: members of the public, Parish Councillors/County Councillors/District Councillors/Applicant/Agent.

The Chairman of the Committee has discretion to extend the time allocated to registered speakers and to amend the order in which they may speak.

In the event that a registered speaker is unable to connect to the meeting, or if there are any technical issues, their question/statement may be read by a Council Officer.

Further information on Public Question Time is available on the [Council's website](#).

Health and Safety

Anyone attending a meeting of the Council is asked to make themselves aware of the nearest available fire exit. In the event of an alarm sounding, you must evacuate the building immediately and follow all instructions provided by staff. You will be directed to the nearest designated assembly point where you should stay until it is safe to return to the building.

Substitute Members

Only the named Substitutes on this Agenda may be appointed by a Member of the Committee to attend in their absence. The appointed Substitute becomes a full Member of the Committee with participation and voting rights.

Documents

Agendas, Reports and Minutes may be accessed via www.braintree.gov.uk

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https://www.braintree.gov.uk/info/200136/access_to_information/376/privacy_policy

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Webcast and Audio Recording

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Comments and Suggestions

We welcome comments to make our services as efficient and effective as possible. If you have any suggestions regarding the meeting you have attended you may send these to governance@braintree.gov.uk

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 17th October 2023 (copy to follow).

4 Public Question Time

Only Registered Speakers will be invited by the Chairman to speak during public question time.
Please see the agenda notes for guidance.

5 Planning Applications

To consider the following planning applications.

- | | | |
|-----------|--|------------------|
| 5a | App. No. 22 02499 FUL - Land rear of Harkilees Way, BRAINTREE | 6 - 29 |
| 5b | App. No. 23 00737 REM - Land North of Woodend Farm, Hatfield Road, WITHAM | 30 - 54 |
| 5c | App. No. 23 00738 OUT - Land rear of 231 Witham Road, BLACK NOTLEY | 55 - 86 |
| 6 | Tree Preservation Order 04 2023 - 1 Foundry Lane, EARLS COLNE | 87 - 100 |
| 7 | Tree Preservation Order 06 2023 - 3 The Mall, London Road, BRAINTREE | 101 - 128 |

8 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.

9 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.

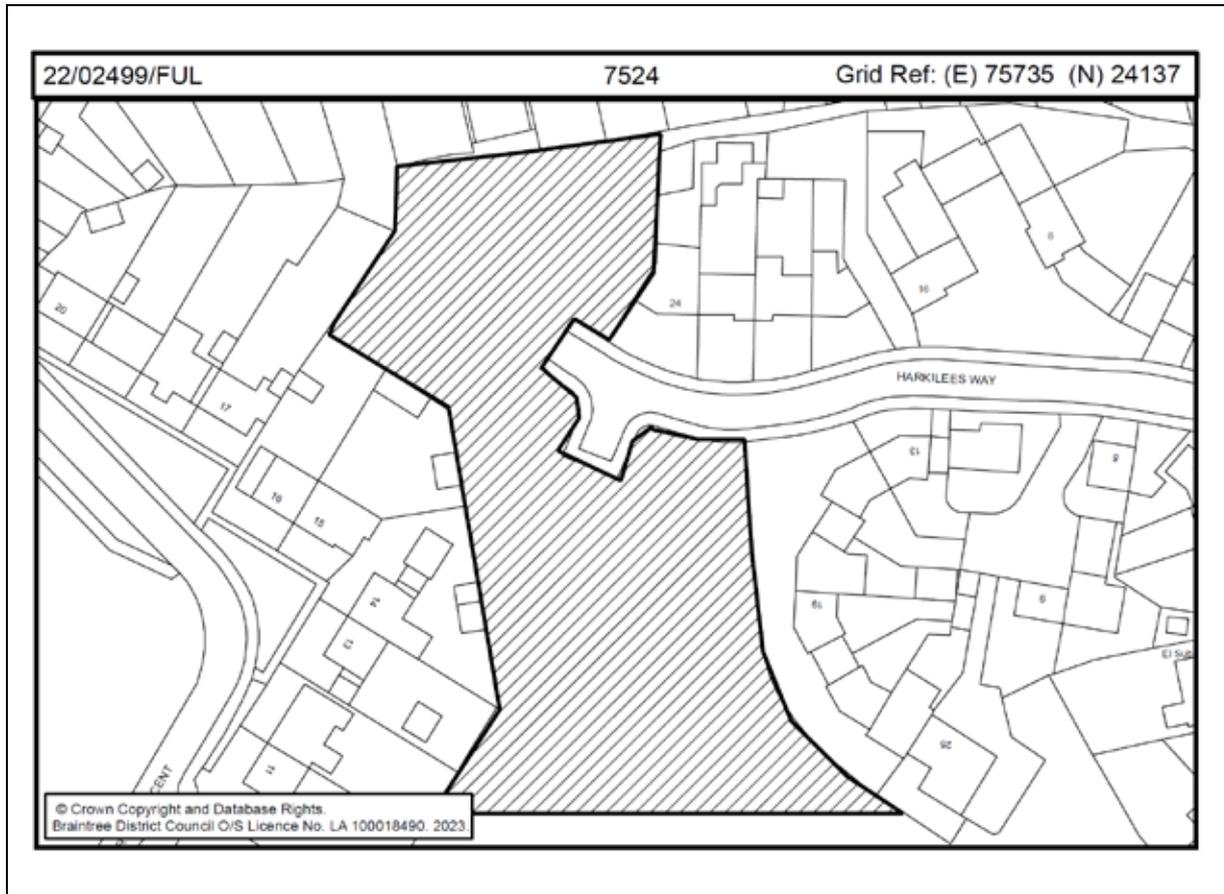
At the time of compiling this agenda there were none.

10 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.

Report to: Planning Committee	
Planning Committee Date: 7th November 2023	
For: Decision	
Key Decision: No	Decision Planner Ref No: N/A
Application No:	22/02499/FUL
Description:	Erection of 2 No. 2-bedroom bungalows, 6 No. two-storey 3-bedroom dwellings and 1 No. two-storey 4-bedroom dwelling, together with associated off-street car parking.
Location:	Land Rear Of Harkilees Way, Braintree
Applicant:	Mr Paul Bartholomew, LPB Homes Limited, 3 Driberg Way, Braintree, CM7 1NB
Agent:	Mr Robert Pomery, Pomery Planning Consultants Ltd, Pappus House, Tollgate West, Stanway, Colchester, CO3 8AQ
Date Valid:	28th October 2022
Recommendation:	It is RECOMMENDED that the following decision be made: § Application REFUSED for the reasons outlined within Appendix 1 of this Committee Report.
Options:	The Planning Committee can: a) Agree the Recommendation b) Vary the Recommendation c) Overturn the Recommendation d) Defer consideration of the Application for a specified reason(s)
Appendices:	Appendix 1: Reason(s) for Refusal Submitted Plan(s) / Document(s)
	Appendix 2: Policy Considerations
	Appendix 3: Site History
Case Officer:	Carol Wallis For more information about this Application please contact the above Officer on: 01376 551414 Extension: 2534, or by e-mail: carol.wallis@braintree.gov.uk

Application Site Location:



Purpose of the Report:	The Committee Report sets out the assessment and recommendation of the abovementioned application to the Council's Planning Committee. The report sets out all of the material planning considerations and the relevant national and local planning policies.
Financial Implications:	<p>The application was subject to the statutory application fee paid by the Applicant for the determination of the application.</p> <p>There are no direct financial implications arising out of the decision, notwithstanding any costs that the Council may be required to pay from any legal proceedings. Financial implications may arise should the decision be subject to a planning appeal or challenged via the High Court.</p>
Legal Implications:	<p>If Members are minded to overturn the recommendation, the Planning Committee must give reasons for the decision.</p> <p>Following the decision of the Planning Committee, a formal decision notice will be issued which will either set out the relevant Conditions & Reasons and any Informatives, or the Reasons for Refusal if applicable.</p> <p>All relevant policies are set out within the report, within Appendix 2.</p>
Other Implications:	The application has been subject to public consultation and consultation with relevant statutory and non-statutory consultees. All responses received in response to this consultation are set out within the body of this Committee Report.
Equality and Diversity Implications:	<p>Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:</p> <ul style="list-style-type: none"> a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act; b) Advance equality of opportunity between people who share a protected characteristic and those who do not; c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting

	<p>understanding.</p> <p>The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).</p> <p>The consideration of this application has not raised any equality issues.</p>
<p>Background Papers:</p>	<p>The following background papers are relevant to this application include:</p> <ul style="list-style-type: none"> § Planning Application submission: <ul style="list-style-type: none"> § Application Form § All Plans and Supporting Documentation § All Consultation Responses and Representations <p>The application submission can be viewed online via the Council's Public Access website: www.braintree.gov.uk/pa by entering the Application Number: 22/02499/FUL.</p> <ul style="list-style-type: none"> § Policy Documents: <ul style="list-style-type: none"> § National Planning Policy Framework (NPPF) § Braintree District Local Plan 2013-2033 § Neighbourhood Plan (if applicable) § Supplementary Planning Documents (SPD's) (if applicable) <p>The National Planning Policy Framework can be viewed on the GOV.UK website: www.gov.uk/.</p> <p>The other abovementioned policy documents can be viewed on the Council's website: www.braintree.gov.uk.</p>

1. EXECUTIVE SUMMARY

- 1.1 The application site is located at the cul-de-sac of Harkilees Way in Braintree. It is within the town development boundary with good access to services and facilities. The majority of the site falls within the allocated housing site, Reference BOS16H on the Adopted Proposals Maps accompanying the Adopted Local Plan. It is currently vacant and forms part of the wider green amenity space between the residences along Williams Drive and Wentworth Crescent.
- 1.2 The Applicant proposes to erect 9 dwellings within the site, including 2 bungalows and seven 2-storey dwellings. Each of the dwellings would be served with 2 parking spaces and 3 visitor parking spaces would also be provided. A parking court extended from Harkilees Way would serve the 4 dwellings proposed in the northern section, whilst a new shared access would branch off from the existing turning head to the south, serving Plots 5 to 9.
- 1.3 Revisions have been made to the proposed site layout following initial consultation, however, Officers maintained the view that the scheme represents an over-development with cramped design and layout. The development is also car dominant. There is very little building separation space between the proposed units, lack of adequate front gardens and defensible space, insufficient space for tree planting. Insufficient space would be provided for private amenity and the proposed shared access does not have the required width, buffer zone on both sides and turning space for emergency vehicles.
- 1.4 Whilst there is no objection to the principle of residential development, the development would result in detrimental harm to the character and appearance of the local area, fails to provide an acceptable amenity level to future occupants.
- 1.5 All the existing trees within the site are proposed to be retained, with T1 included within the central landscaped space outside Plot 5 and the other 4 trees to be retained within the private garden of Plot 2. However, this will likely result in these trees being removed to make way for additional space within the private garden areas. There is a lack of information to demonstrate that the proposed dwelling at Plot 5 would not encroach onto the Root Protection Areas of T1 within the site and T2 (outside site).
- 1.6 No financial contribution has been secured to mitigate the impact of the development on the Protected Essex coastline.
- 1.7 When considering the planning balance and having regard to the adverse impacts outlined above, Officers have concluded that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. Consequently, it is recommended to refuse the proposed development.

2. INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

2.1 This application is being reported to Planning Committee in accordance with Part A of the Council's Scheme of Delegation as the land is owned by Braintree District Council.

3. POLICY CONSIDERATIONS

§ See Appendix 2

4. SITE HISTORY

§ See Appendix 3

5. DESCRIPTION OF THE SITE AND SITE CONTEXT

5.1 The site is located at the cul-de-sac of Harkilees Way in Braintree. It is within the town development boundary. The majority of the site falls within the allocated housing site, reference BOS16H on the Adopted Proposals Map.

5.2 The site is approximately 0.36ha in size. It is currently vacant and forms part of the wider green amenity space between the residences along Williams Drive and Wentworth Crescent. It is largely laid to lawn with a mature tree in the western part near to the turning head and shrubs along the northern and part of western boundaries. The site slightly rises from Harkilees Way towards the south.

5.3 The local area is predominantly residential. There is a public footpath to the south linking Williams Drive to Wentworth Crescent and the site currently also used as a shortcut for local residents to connect to the informal recreation land to the south and the woodland to the further southwest.

6. PROPOSAL

6.1 The Applicant proposes to erect 9 market dwellings, these include two 2-bedroom bungalows, six 3-bedroom houses and one 4-bedroom house. 4 house types have been proposed. Plots 1 to 4 are located to the northern portion of the site, whilst Plots 5 to 9 will be located to the southern section. A small amenity green space is also proposed along the eastern boundary, separating the existing shared access to properties to the east.

6.2 The proposed dimensions and garden sizes are summarised in table 1 below.

Table 1. Proposed dimensions and garden sizes

	Type	Max. Width (m)	Max. Depth (m)	Ridge Height (m)	No. of Storey	No. of bed	Garden Area (m2)
Plot 1	Link-Detached	9.69	6.04	8.33	2	3	96
Plot 2	Link-Detached	11.21	8.52	8.30	2	4	118
Plot 3	Semi-Detached	9.69	6.04	8.33	2	3	96
Plot 4	Semi-Detached	9.69	6.04	8.33	2	3	96
Plot 5	Bungalow	12.35	10.39	5.75	1	2	71
Plot 6	Bungalow	12.35	10.39	5.75	1	2	71
Plot 7	Link-Detached	6.24	9.98	8.40	2	3	103
Plot 8	Link-Detached	6.24	9.98	8.40	2	3	103
Plot 9	Detached	6.24	9.98	8.40	2	3	103

7. SUMMARY OF CONSULTATION RESPONSES

7.1 Essex Fire and Rescue Services

7.1.1 Objection, query raised on the sufficient size of turning area and area to accommodate Essex Fire Appliances:

- Where any changes of levels are involved, as in the case of a kerb, they should be ramped, or have a kerb height not exceeding 90mm
- Minimum turning circle between kerbs 17.8 metres.
- The surface of the access road should be capable of sustaining a load of 18 tonnes for pumping appliances.

More detailed observations on access and facilities for the Fire Service will be considered at Building Regulation consultation stage.

7.2 Rambles Association

7.2.1 Following the revision, it is noted that the Braintree & Bocking footpath 143 is now clearly shown as unobstructed across the site as a result of moving the house of Plot 9 slightly west and moving the 2 visitor car parking spaces.

7.3 BDC Ecology

7.3.1 No objection, subject to condition on a Landscape and Ecology Management Plan.

7.4 BDC Environmental Health

7.4.1 No comments received at the time of writing.

7.5 BDC Waste Services

7.5.1 All waste receptacles need to be presented to within 20m of where the collection vehicle can safely stop on the adopted highway on collection day.

7.6 ECC Highways

7.6.1 No objection from highway and transportation perspective, subject to the proposal is carried out in accordance with Drawing No. 0970 0A- SC-01 Rev. D, and a condition to require provision of Residential Travel Information Packs.

7.6.2 All residential developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all-purpose access) will be subject to the Advance Payments Code, Highways Act 1980. The developer will be served with an appropriate notice within 6 weeks of building regulations approval being granted and prior to commencement of the development must provide guaranteed deposits, which will ensure the new street is constructed in accordance with a specification sufficient to ensure future maintenance as highway by the Highway Authority.

8. PARISH / TOWN COUNCIL

8.1 N/A

9. REPRESENTATIONS

9.1 Representations have been received from 9 addresses, all objecting to the proposed development. These are summarised below:

- The site is a long-standing green space well used by locals/ loss of green open space.
- Not in line with the Braintree Open Spaces Strategy.
- Important outdoor space for the wellbeing and quality of life for local residents, especially those living in flats.
- Over-development.
- Not affordable housing development.
- Overlooking/ loss of privacy of existing neighbouring properties.
- Overbearing.
- Loss of natural sunlight.
- Affecting outlook/view to the green and skylight space.
- Existing parking issues.
- Increase traffic flow.
- No consideration for existing residents parking.
- Insufficient visitor parking spaces, delivery vans and vehicular turning area.
- Danger for people using the field, especially families, children and those walking the dogs.

- Increase in noise, light, smell, pollution, and disturbance.
- Affecting protected trees/ loss of trees, foliage, and vegetation.
- Impacts on protected species, birds, and local wildlife.
- Affecting property values.
- Side/rear gates not shown on the shared boundaries, loss of direct access to the field.

10. PRINCIPLE OF DEVELOPMENT

10.1 National Planning Policy Framework (NPPF)

10.1.1 As set out in Paragraph 7 of the NPPF, the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 of the NPPF explains that achieving sustainable development means that the planning system has three overarching objectives: economic; social; and environmental; which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives).

10.1.2 Paragraph 9 of the NPPF outlines that planning decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area. In addition, paragraph 38 of the NPPF prescribes that local planning authorities should approach decisions on proposed development in a positive and creative way and that decision makers at every level should seek to approve applications for sustainable development where possible.

10.1.3 Paragraph 12 of the NPPF sets out that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making. In addition, paragraph 47 of the NPPF states that planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

10.1.4 The NPPF underlines the Government's objective of significantly boosting the supply of homes. In this regard, Paragraph 60 of the NPPF highlights the importance of ensuring that there is a sufficient amount and variety of land that can come forward where it is needed, that specific housing requirements are met, and that land with permission is developed without unnecessary delay. Paragraph 74 of the NPPF outlines that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against (in the case of Braintree District) our 'local housing need' plus the relevant buffer.

10.1.5 In this regard, and in considering the overall planning balance as to whether the proposed development subject to this application constitutes sustainable development, an important material consideration in this case is whether the Council can robustly demonstrate a 5 Year Housing Land

Supply. This will affect whether Paragraph 11 of the NPPF is engaged and consequently the weight that can be attributed to the Development Plan (see below).

10.2 5 Year Housing Land Supply

- 10.2.1 The Council has an up-to-date Local Plan which has an approved minimum housing target of 716 new homes per year in the District between 2013 and 2033.
- 10.2.2 To this annual supply the Council must add the backlog which it has not delivered at that level since the start of the Plan period. This figure is recalculated each year and as of April 2022 stands at 1,169 across the 5 Year Housing Land Supply.
- 10.2.3 The Council must also apply a buffer to the housing land supply based on the results of the Housing Delivery Test. In the latest results published on the 14th January 2022, the Council had delivered 125% of the homes required. This means that the Council is required to apply the lowest level of buffer at 5%.
- 10.2.4 Taking the above into account, the Council's latest 5 Year Housing Land Supply position for 2022-2027 shows a supply of 4.86 years. This position is marginal and with a number of strategic sites starting to deliver homes alongside other permissions, that situation is likely to change.
- 10.2.5 Nevertheless, as the Council cannot demonstrate the required 5 Year Housing Land Supply, the 'tilted balance' pursuant to Paragraph 11d) of the NPPF is engaged. It also means that the most important Development Plan policies relevant to the provision of housing are out-of-date. However, this does not mean that Development Plan policies should be completely disregarded. It is for the decision-maker to determine the weight to be attributed to the conflict with those policies.

10.3 The Development Plan

- 10.3.1 The Council's statutory Development Plan consists of the Braintree District Local Plan (2013 – 2033).
- 10.3.2 The site is situated within the town development boundary. The majority of the site falls within the allocated housing site, reference BOS16H on the Adopted Proposals Maps. Therefore, there is no objection to the principle of residential development.

11. SITE ASSESSMENT

11.1 Location and Access to Services and Facilities

- 11.1.1 The site is located within the northern part of the Braintree Town, within the town development boundary. There are various services and facilities

within walking distance. Apart from the green space to the south, a corner shop is available within 150m to the northwest at Queens Road and the Meadowside play park is less than 180m to the northwest. It is about 476m away from John Bunyan Primary school and nursery at Lancaster Way to the southwest. Braintree College is about 350m to the northeast. The Braintree town centre is about 830m to the south, providing all services and facilities to meet the day-to-day needs.

11.1.2 There are regular and frequent bus services along Coldnailhurst Avenue to and from Witham, Braintree Town Centre and Black Notley, and the bus stops are only 140m to the west of the site. The bus stops at Bradford Street to the further east also provide regular bus services to Braintree Town Centre, Halstead, Great Yeldham, and Sible Hedingham.

11.1.3 There are existing footpaths within the wider housing estate and informal public right of ways in the vicinity, future occupants will be able to walk and cycle to services and facilities in the town. Vehicular journeys are likely to be of short distances and can be utilised by the regular bus services.

11.2 Design, Appearance and Impact upon the Character and Appearance of the Area

11.2.1 Paragraph 126 the NPPF highlights that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable developments, creates better places in which to live and work and helps make development acceptable to communities. Paragraph 130 states that planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting.

11.2.2 In addition to this, Policy SP7 of the Adopted Local Plan sets out place shaping principles, including responding positively to local character and context to preserve and enhance of existing places and their environs.

11.2.3 Policy LPP52 of the Adopted Local Plan also seeks to secure the highest possible standards of design and layout in all new development and the protection and enhancement of the historic environment.

11.2.4 The Applicant has revised the scheme following initial consultation response. However, the revised site layout plan and the submitted Computer-Generated Images (CGIs) illustrate that parking is very dominant in the public realm. Plots 3 and 8 have nearly no front garden with parking spaces only about 2m from the front elevation. This is visually too dominant, anti-social and would not be able to be mitigated with any form of soft landscaping. This directly contradicts with the requirement of National Design Guide that car parking should not dominate the public realm and represents a poor place-making.

- 11.2.5 Officers are of the view that the proposal represents an over-development. Harkilees Way is a housing development that follows the Essex Design Guide. The existing street is designed with either hard spaces or much deeper green spaces. No.18 to 24 Harkilees Way, to the immediate east of Plot 4, all have a reasonable sized and much deeper front gardens.
- 11.2.6 As shown in the submitted drawings and Street Scene, there are inadequate, dysfunctionally small/shallow front gardens and lack of adequate defensible space, especially for Plots 1 to 4. The overall site layout is visually and socially poorly designed, providing a limited and ill-defined threshold between the public and private realms and fails to integrate with the neighbouring properties.
- 11.2.7 The submitted street scene also shows that there would be very little building separation between the proposed units. Most of the units are also linked by garage. Apart from the tiny landscaped space near the end of Harkilees Way, the 2 portions of the site would appear to have a continuous building bulk and created a very confined place in an urbanised context, which also acts as a stark contrast to the open space to the immediate south of the site.
- 11.2.8 The whole site layout, in particular the parking court, fails to provide enough space for meaningful landscape planting, and would not be able to accommodate trees of any significance. This highlights the crammed spaces between parked cars and homes.
- 11.2.9 The 3 parking spaces in the southern end, outside of Plot 9, are poorly accommodated into the layout, forming a poor termination of the townscape and have a poor relationship with the point of public access. The revised site layout has deleted the separated pedestrian connection from Harkilees Way to the public space to the south of the site. The small strip of footpath leading to the wider area is only about 1.2m which is too narrow and would not encourage usage.
- 11.2.10 As the separate pedestrian access has been deleted in the revision, the shared access would also be used by the public, therefore it should not be narrowed to less than 6m at any point. It is noted that the access width is slightly narrower outside Plot 6, and the front garden of Plot 7 would further narrow the shared access width to only 3.7m which is not acceptable and would result in a cramped development.
- 11.2.11 Plot 9 is also considered poorly designed. As a corner turning unit, the design of the property does not adequately address the public realm on both sides. There is also an overly tight and narrow garden space to the side elevation facing the public realm, tucked between a wall and the house. Although fenestration has been proposed on the southern elevation, this does not provide a pleasing composition nor good surveillance of the public realm.

- 11.2.12 The material plan was superseded by the revised layout, but the Applicant has not provided a revised version. Based on the submitted House Type drawings and CGIs, the proposed dwellings would be of red/brown brick walls with white/light grey render, and red/brown roof tiles would be used. The shared access and the parking court would be block paved. These materials are generally in line with the wider neighbourhood. Should approval be given, a condition on external finishes should be imposed to ensure that the development would be compatible to the existing character and appearance of the local area.
- 11.2.13 Policy LPP35 of the Adopted Local Plan requires development to provide a mix of house types and size that reflects the local need and housing mix should be in line with the identified local need as set out in the Strategic Housing Market Assessment (SHMA, 2015).
- 11.2.14 The SHMA identifies that the District would require 35.46% of market dwellings to be 1 to 2 bedrooms properties. The proposal mainly focuses on the provision of 3-bed or larger units (78%). There is no 1-bed units proposed. The weight to be afforded in the planning balance would be significantly reduced as it would not contribute to meet the District's identified need for smaller properties.
- 11.2.15 In view of the above, the proposed development would impose detrimental harm to the existing character and appearance of the local area, therefore the proposal would conflict with the NPPF, National Design Guide, Essex Design Guide (2005) as well as Policies SP7, LPP35 and LPP52 of the Adopted Local Plan.

11.3 Trees and Landscaping

- 11.3.1 There is currently no Tree Preservation Order covering the trees and shrubs on site. However, there are mature trees within the site and along the northern and western shared boundaries with existing residences.
- 11.3.2 Following discussions, the Applicant has revised the proposal and provided a tree survey. All 5 trees within the site are assessed as Category B trees with moderate quality and value. The Applicant is proposing to retain all the trees in the revised site layout.
- 11.3.3 However, except T1 to be retained outside of Plot 5 as part of informal amenity space, all other 4 trees would be included within the private garden of Plot 2 at the north-western corner. This would place unreasonable pressure for the future users for maintenance and upkeep and would likely lead to removal in exchange for more usable space in the garden.
- 11.3.4 There are 2 mature trees in close proximity to the dwelling at Plot 5, it is likely that the footprint would encroach into the Root Protection Areas of these trees. There is insufficient information on how existing trees will be impacted by the development.

- 11.3.5 The Council also requires brick walls to be provided for any private-public interface for security reasons.
- 11.3.6 As mentioned in the earlier section, there is insufficient tree planting in the public realm and residential curtilage boundary treatment. The submission did not provide detailed landscaping schedule for the amenity space. Officers do not consider that the revised layout would be able to provide a satisfactory landscaping and boundary treatment to mitigate the adverse impacts of the development.
- 11.4 Ecology and Biodiversity
- 11.4.1 There is no objection from the Council's Ecology Officer, subject to a condition on Landscape and Ecological Management Plan. This would ensure that appropriate landscaping would be implemented and maintained to provide the proposed community orchard and secure the bespoke biodiversity enhancements, if the application were to be approved.
- 11.5 Impact upon Residential Amenity
- 11.5.1 The Applicant has revised the scheme to demonstrate that there would not be direct back-to-back situations to those properties at Wentworth Crescent. Plots 5 and 6 are revised to be only single storey dwellings and oriented to avoid a direct back-to-back situation. The 2-storey dwellings proposed at Plots 7 to 9 are deliberately designed to be oriented at a tilted angle to avoid direct overlooking and would have more than 15m separation distance between the rear elevations and shared boundaries. This is in line with the requirement of Essex Design Guide (2005).
- 11.5.2 Plots 3 would have a much shorter distance to the properties facing Coldnailhurst Avenue, ranging from about 6.25m to 13.58m. This is not ideal, however, it is accepted that a small degree of overlooking into the rear garden space would not be avoidable in an urban area. Given the tilted orientation and that the existing properties have a garden depth of over 30m, it is unlikely that the proposed dwellings would intrude the privacy of the 3m private sitting out areas immediately outside the rear elevation of these properties.
- 11.5.3 As mentioned in earlier sections, the proposal fails to provide sufficient front gardens for personalisation and also lacks defensible areas to separate from the public realm. The lack of front gardens and defensible space would result in passers-by being able to overlook into the habitable rooms of the dwellings and adversely intrude the privacy of future residents.
- 11.5.4 Plots 1, 3, and 4 are 3-bed dwellings, however, the dwellings would only have a garden size of 96 square meters, which is below the Council's standard of 100sq.m. Together with the tokenistic front garden strip, there would not be a reasonable private space provided to future users, which is not considered to be acceptable.

- 11.5.5 Plot 5 would have an irregular shaped rear garden, with the majority under the shade of the large tree that belongs to the residence to the west. The outlook of the kitchen and living room is also severely restricted by the limited depth of the garden and the boundary fencing. Officers are of the view that the rear garden is poorly designed and would not have sufficient daylight, to the detriment of the amenity level of the future users.
- 11.5.6 Although it is not considered that the development would impose significant harm to the amenity of neighbouring properties, the proposal fails to provide an acceptable amenity level for future occupants.
- 11.5.7 Objectors have raised concerns on the shared boundaries and side/rear access into their garden. These are civil matters which would need to be resolved as part of a Party Wall Agreement and is not a material consideration.
- 11.5.8 Private views are not protected and is not a material consideration. Impact on property values is also not a material consideration.

11.6 Highway Considerations

- 11.6.1 The Essex Vehicle Parking Standards Design and Good Practise (2009) Supplementary Planning Guidance requires new residential dwelling houses of two or more bedrooms to benefit from a minimum of 2 car parking spaces. The standards specify that parking spaces shall measure at least 5.5 metres x 2.9 metres.
- 11.6.2 Each of the proposed dwellings will be served with 2 parking spaces, 3 visitor parking spaces are also proposed. Whilst the amount of parking spaces is generally in line with the requirements, there are no accessible parking bays for disabled persons.
- 11.6.3 The parking spaces for Plot 5 are also considered to be poorly located, with insufficient space to reverse in and out of the parking space, which would be likely to encroach onto the footpath.
- 11.6.4 The shared access serving Plots 5 to 9 does not have a minimum 6m width all the way to the end. The narrowed width in front of Plot 7 to only about 3.7m wide would not be sufficient to allow 2 vehicles to pass each other. There should also be 0.5m buffer zone on both side of this access to be cleared from any structure or planting.
- 11.6.5 The turning space right in front of Plot 8 is considered to be too close to a residential entrance point which is not acceptable.
- 11.6.6 The Applicant has not provided a tracking drawing to demonstrate that fire appliances and waste vehicles would be able to access and turn around at the end of this access.

- 11.6.7 Given the current informal access through the site to the wider public opens pace to the south, Officers considered that a pedestrian connection from Harkilees Way to the public space to the south should be provided as part of the site layout. However, there is currently no mechanism proposed to secure such provision. The little strip to the east of the visitor parking space outside Plot 9 is also considered to be too narrow for such connection. A unilateral undertaking would be required from the landowner.
- 11.6.8 It is noted that the Highway Authority has no objection, who have also confirmed that the site would not be adopted. As highlighted above, Officers have concerns in respect of several aspects of the proposal and have therefore sought some further advice from the Highway Authority on these matters. An update will be provided to Members at Committee.
- 11.7 Habitat Regulations Assessment (HRA / RAMS)
- 11.7.1 In terms of the wider ecological context, the application site sits within the Zone of Influence of one or more of the following:
- § Blackwater Estuary Special Protection Area and Ramsar site;
 - § Dengie Special Protection Area and Ramsar site;
 - § Essex Estuaries Special Area of Conservation.
- 11.7.2 It is therefore necessary for the Council to complete an Appropriate Assessment under the Habitat Regulations to establish whether mitigation measures can be secured to prevent the development causing a likely significant adverse effect upon the integrity of these sites.
- 11.7.3 An Appropriate Assessment (Habitat Regulation Assessment Record) has been completed in accordance with Natural England's standard guidance. Subject to the proposed mitigation measures set out in the Council's Habitat Regulations Assessment being secured these mitigation measures would rule out the proposed development causing an adverse effect on the integrity of the above European Designated Sites.
- 11.7.4 The proposed mitigation measures would consist of the securing of a financial contribution of £137.71 per dwelling erected towards offsite visitor management measures at the above protected sites.
- 11.7.5 The application was originally incorrectly registered for 7 proposed dwellings and the Applicant made the required payment under S111 of the Local Government Act 1972 as part of the validation process. However, it was subsequently noted that the description of development was incorrect, with 9 dwellings actually proposed. The financial contribution required for 9 dwellings has not been received and therefore there is an insufficient contribution to mitigate the impacts of the proposed development.

11.8 Flood Risk and Surface Water Drainage

11.8.1 The site is located within Flood Zone 1 with least risk of flooding. However, it has been identified as Critical Drainage Area within the county-wide Strategic Water Management Strategy. The Applicant has indicated that rainwater storage would be provided to the development. It is unclear whether the development would be able to achieve a betterment to a greenfield runoff rate. Given the lower ground level of the road, a condition would be required to demonstrate that there would be no runoff onto the highway. Together with the use of permeable surface for the shared driveway, it is considered that the development is in line with the requirement of Policy LPP75 of the Adopted Local Plan.

11.9 Sustainability and Resource Efficiency

11.9.1 As requested by Officers, the Applicant has provided a Sustainability Statement to demonstrate that all dwellings would be highly insulated to minimise air leakage. Low energy LED lighting will be used through the dwellings and external lighting would be minimised. The development would comply or exceed the latest Building Regulations on energy consumption and water efficiency target of 110 litres per person per day.

11.9.2 All dwellings would be provided with high-speed broadband connection. Dwellings with on-plot parking would be provided with at least 1 plug for Electric Vehicle (EV) charging. All parking spaces would be adaptable for EV fast charging. Dedicated area for waste recycling would be provided for each dwelling.

11.9.3 It is considered that the proposal is in line with the requirements of Policies LPP46, LPP71 and LPP72 of the Adopted Local Plan.

12. PLANNING BALANCE AND CONCLUSION

12.1 The presumption in favour of sustainable development sits at the heart of the NPPF. The Framework is clear in its instruction at Paragraph 11d, that for decision-taking this means where there are no relevant Development Plan policies, or the policies which are most important for determining the application are out-of-date (this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in Paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years), granting permission unless:

- i. The application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

- ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 12.2 As the Council cannot currently demonstrate a 5 Year Housing Land Supply, the 'titled balance' pursuant to Paragraph 11d) of the NPPF is engaged. As a consequence, the most important Development Plan policies relevant to the provision of housing are currently out-of-date due to a lack of 5 Year Housing Land Supply. However this does not mean that Development Plan policies should be completely disregarded. It is for the decision-maker to determine the weight to be attributed to the conflict with those policies. In this regard it is considered that Policy LPP1 of the Adopted Local Plan, which seeks to restrict development outside defined development boundaries to uses appropriate to the countryside, can only be afforded moderate weight. Similarly, it is considered that Policy SP3, which sets out the spatial strategy for North Essex, can only be afforded less than significant, but more than moderate weight.
- 12.3 In this case, it is not considered that pursuant to Paragraph 11d) (i) that the application of policies in the Framework provide a clear reason for refusing the proposed development.
- 12.4 As such, pursuant to Paragraph 11d) (ii) it is necessary to consider whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposed development, when assessed against the policies in this Framework taken as a whole. Such an assessment must take account of the economic, social and environmental impact of the proposed development and these matters must be considered in the overall planning balance.
- 12.5 As set out in Paragraph 8 of the NPPF, achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and needed to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):
- an economic objective (to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure);
 - a social objective (to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being); and
 - an environmental objective (to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources

prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy).

12.6 Summary of Adverse Impacts

- 12.6.1 The adverse impacts and the weight that should be given to these factors are set out below:

Conflict with the Development Plan

- 12.6.2 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. Paragraph 15 of the NPPF emphasises that the planning system should be “genuinely plan led”.

- 12.6.3 As set out within Paragraph 47 of the NPPF, planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise. In this case, the application site is located within a defined development boundary where the principle of development is acceptable. The proposal therefore accords with Policy LPP1 of the Adopted Local Plan and this weighs in favour of the proposal in the overall planning balance in accordance with the presumption in favour of sustainable development.

Harm to the Character and Appearance of the Area

- 12.6.4 The development represents an overdevelopment of the site with a poorly designed layout and public realm which will adversely affect the existing character and appearance of the local area. This harm is afforded significant weight.

Harm to Residential Amenity

- 12.6.5 The proposal fails to provide an adequate amenity level to future occupiers and such harm carries substantial weight.

HRA/RAMS

- 12.6.7 The proposal would increase the recreational pressure on the designated sites. The insufficient financial contribution would impose detrimental impacts on these protected sites. Given the scale and the different of payment, the harm is afforded less than moderate weight.

12.7 Summary of Public Benefits

- 12.7.1 The public benefits arising from the proposal and the weight that should be accorded to these factors are set out below:

Delivery of Market and Affordable Housing

- 12.7.2 The development would allow the provision of a net gain of 9 market dwellinghouses. However, no affordable housing is provided. The proposed housing mix is also not in line with the identified housing needs of the District for smaller properties. Given the scale of the development proposed, only less than moderate weight is attached to this benefit.

Location and Access to Services and Facilities

- 12.7.3 The site is located within the town development boundary with good access to services and facilities in the locality. Given the distances to facilities and the availability of sustainable transport options, it is considered that a large proportion of journeys could be conducted by walking, cycling or short trips utilising the regular bus services. This benefit is afforded substantial weight.

Economic and Social Benefits

- 12.7.4 The proposal would undoubtedly deliver economic benefits during the construction period and economic and social benefits following occupation of the development, in supporting local facilities. However, this is no more than any development and given the small scale of the development, this is afforded no more than moderate weight.

Biodiversity Net Gain

- 12.7.5 Although no biodiversity net gain has been included as part of the submission, an approval condition would be imposed to secure a 10% biodiversity net gain as required by the NPPF. Given the scale of the scheme, it would only be afforded limited weight.

12.8 Planning Balance

- 12.8.1 When considering the planning balance and having regard to the adverse impacts and benefits outlined above, Officers have concluded that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. Consequently, it is recommended that planning permission is refused for the proposed development.

13. RECOMMENDATION

- 13.1 It is RECOMMENDED that the following decision be made:
Application REFUSED for the reasons outlined within APPENDIX 1.

CHRISTOPHER PAGGI
PLANNING DEVELOPMENT MANAGER

APPENDIX 1:

REASON(S) FOR REFUSAL / SUBMITTED PLAN(S) / DOCUMENT(S)

Submitted Plan(s) / Document(s)

Plan Description	Plan Ref	Plan Version
Proposed Site Plan	970-A-SC-01	REV D
House Types	0970-A-SC-201	N/A
House Types	0970-A-SC-202	N/A
House Types	0970-A-SC-203	N/A
House Types	0970-A-SC-204	N/A
Street elevation	0970-A-SC-06	REV B
Other	0970-A-SC300	CGI IMAGES
Materials Details	970_A_SC_07	N/A
Location Plan	970_A_SC_10	N/A
Existing Site Plan	970_A_SC_11	N/A

Reason(s) for Refusal

Reason 1

The proposed development, by reason of its cramped design and car-dominated layout, represents an incongruous overdevelopment of the site to the detriment of the character and appearance of the local area and the living conditions of future occupiers. The proposal does not provide sufficient separation between the public and private space, with poorly sized front garden areas and insufficient private amenity space, contrary to the expectations and standards of the National Design Guide and the Essex Design Guide (2005). The proposal does not make space for nature with very little landscaping in the design, with most of the retained trees being wholly within private garden and likely to come under pressure for pruning and/or removal and maintenance due to the clustering. It is also unclear on the likely impacts of the proposed development on the retained trees within site and those in the vicinity. The layout, particularly for Plot 9, relates poorly to the public open space to the south of the site and the scheme in general fails to provide a satisfactory connectivity with that adjoining use. The proposal is therefore contrary to Policies SP1, SP7, LPP52 and LPP65 of the Adopted Braintree District Local Plan (2013 - 2033), the National Planning Policy Framework and the expectations of the National Design Guide.

Reason 2

The Applicant has failed to provide either an upfront S111 payment or enter into a suitable planning obligation to secure the required financial contribution to mitigate the impacts arising from the proposed development on the areas of Protected Essex coastline, the proposal therefore would result in detrimental impacts on the areas of Protected Essex coastline under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, and would be contrary to Policy LPP64 of the Adopted Braintree District Local Plan (2013 - 2033).

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying the areas of conflict with adopted Policy and National Planning Guidance and discussing these with the applicant either at the pre-application stage or during the life of the application. However, as is clear from the reason(s) for refusal, the issues are so fundamental to the proposal that it would not be possible to negotiate a satisfactory way forward in this particular case.

APPENDIX 2:

POLICY CONSIDERATIONS

National Planning Guidance

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

Braintree District Local Plan 2013 - 2033

SP1	Presumption in Favour of Sustainable Development
SP2	Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
SP3	Spatial Strategy for North Essex
SP4	Meeting Housing Needs
SP7	Place Shaping Principles
LPP1	Development Boundaries
LPP16	Housing Provision and Delivery
LPP35	Housing Mix, Density and Accessibility
LPP42	Sustainable Transport
LPP43	Parking Provision
LPP46	Broadband
LPP47	Built and Historic Environment
LPP48	An Inclusive Environment
LPP50	Provision of Open Space, Sport and Recreation
LPP52	Layout and Design of Development
LPP63	Natural Environment and Green Infrastructure
LPP64	Protected Sites
LPP65	Tree Protection
LPP66	Protection, Enhancement, Management and Monitoring of Biodiversity
LPP70	Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards
LPP71	Climate Change
LPP72	Resource Efficiency, Energy Generation and Energy Efficiency
LPP74	Flooding Risk and Surface Water Drainage
LPP75	Surface Water Management Plan
LPP76	Sustainable Urban Drainage Systems

Other Material Considerations

Essex County Council's Development Management Policies (2011)
Essex Design Guide (2005)
Parking Standards - Design and Good Practice (2009)

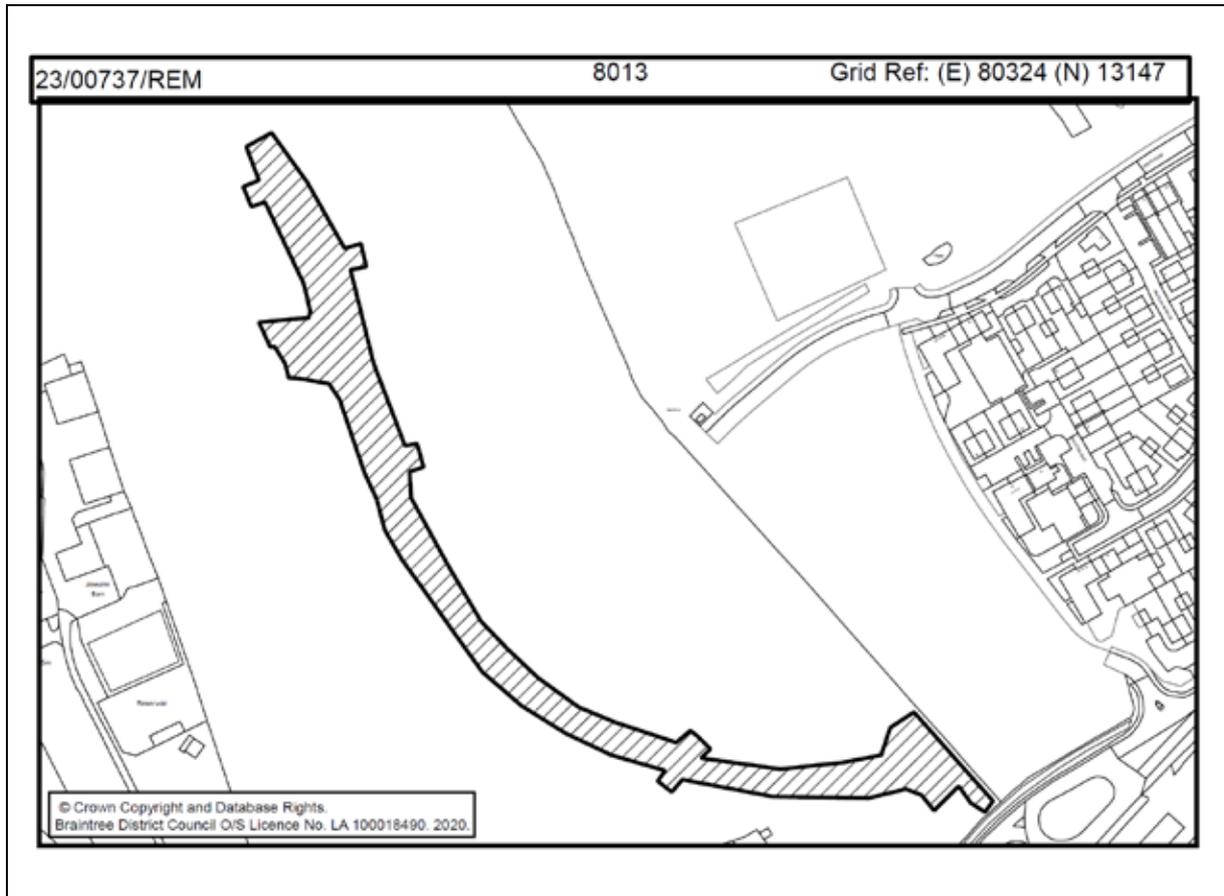
APPENDIX 3:

SITE HISTORY

Application No:	Description:	Decision:	Date:
89/01734/P	Erection Of 17 Dwellings (7 Bungalows & 10 Houses) And Ancillary Works	Deemed Permitted	02.11.89

Report to: Planning Committee	
Planning Committee Date: 7th November 2023	
For: Decision	
Key Decision: No	Decision Planner Ref No: N/A
Application No:	23/00737/REM
Description:	Application for the approval of Reserved Matters (Infrastructure) (Access, Appearance, Landscaping, Layout and Scale) for the installation of the Spine Road with associated footpaths, cycleways and bus turning head, linking into the approved access works at Hatfield Road to the south pursuant to outline application 19/01896/OUT approved on 21.07.2022 for up to 400 residential dwellings and day nursery with all associated access, servicing, parking, drainage infrastructure, landscaping, open space and utilities infrastructure.
Location:	Land North of Woodend Farm, Hatfield Road, Witham
Applicant:	Mr W Wood, C/O Agent
Agent:	Kevin Coleman, Phase 2 Planning, 270 Avenue West, Skyline 120, Great Notley, CM77 7AA
Date Valid:	17th March 2023
Recommendation:	It is RECOMMENDED that the following decision be made: § Application GRANTED subject to the Condition(s) & Reason(s) and Informative(s) outlined within Appendix 1 of this Committee Report.
Options:	The Planning Committee can: a) Agree the Recommendation b) Vary the Recommendation c) Overtturn the Recommendation d) Defer consideration of the Application for a specified reason(s)
Appendices:	Appendix 1: Approved Plan(s) & Document(s) Condition(s) & Reason(s) and Informative(s)
	Appendix 2: Policy Considerations
	Appendix 3: Site History
Case Officer:	Alison Rugg For more information about this Application please contact the above Officer on: 01376 551414 Extension: 2522, or by e-mail: alison.rugg@braintree.gov.uk

Application Site Location:



Purpose of the Report:	The Committee Report sets out the assessment and recommendation of the abovementioned application to the Council's Planning Committee. The report sets out all of the material planning considerations and the relevant national and local planning policies.
Financial Implications:	The application was subject to the statutory application fee paid by the applicant for the determination of the application.
Legal Implications:	<p>Any legal implications arising out of a Section 106 Agreement will be set out in more detail within the body of this Committee Report.</p> <p>If Members are minded to overturn the recommendation, the Planning Committee must give reasons for the decision.</p> <p>Following the decision of the Planning Committee, a formal decision notice will be issued which will either set out the relevant Conditions & Reasons and any Informatives, or the Reasons for Refusal if applicable.</p> <p>All relevant policies are set out within the report, within Appendix 2.</p>
Other Implications:	The application has been subject to public consultation and consultation with relevant statutory and non-statutory consultees. All responses received in response to this consultation are set out within the body of this Committee Report.
Equality and Diversity Implications:	<p>Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:</p> <ul style="list-style-type: none"> a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act; b) Advance equality of opportunity between people who share a protected characteristic and those who do not; c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding. <p>The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race,</p>

	<p>religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).</p> <p>The consideration of this application has not raised any equality issues.</p>
<p>Background Papers:</p>	<p>The following background papers are relevant to this application include:</p> <ul style="list-style-type: none"> § Planning Application submission: <ul style="list-style-type: none"> § Application Form § All Plans and Supporting Documentation § All Consultation Responses and Representations <p>The application submission can be viewed online via the Council's Public Access website: www.braintree.gov.uk/pa by entering the Application Number: 23/00737/REM.</p> <ul style="list-style-type: none"> § Policy Documents: <ul style="list-style-type: none"> § National Planning Policy Framework (NPPF) § Braintree District Local Plan 2013-2033 § Neighbourhood Plan (if applicable) § Supplementary Planning Documents (SPD's) (if applicable) <p>The National Planning Policy Framework can be viewed on the GOV.UK website: www.gov.uk/.</p> <p>The other abovementioned policy documents can be viewed on the Council's website: www.braintree.gov.uk.</p>

1. EXECUTIVE SUMMARY

- 1.1 The application is located within an area allocated as a Strategic Growth Location for residential redevelopment in the Adopted Local Plan. Outline planning permission was granted on 21st July 2022 for up to 400 residential dwellings and day nursery with all associated access, servicing, parking, drainage infrastructure, landscaping, open space and utilities infrastructure (Application Reference 19/01896/OUT).
- 1.2 The application seeks Reserved Matters approval for access, appearance, landscaping, layout, and scale for the installation of an internal Spine Road with associated footpaths, cycleways and bus turning head, linking into the approved access works at Hatfield Road to the south, to facilitate the construction of residential use on the site.
- 1.3 The layout, scale, access, and appearance are considered acceptable and in accordance with the approved Parameter Plans and Design Code. The proposal would contribute towards sustainable travel allowing for the creation of footways, cycleways, and a new bus route.
- 1.4 No existing trees are to be removed to facilitate the development. The landscaping and tree lined streets would create an attractive entrance into the site, as well as increasing biodiversity.
- 1.5 Given the nature of the development, there is not considered to be any detrimental impact on existing residential amenity. Any disturbance from construction can be mitigated by the conditions imposed on the outline consent and by the proposed recommended conditions.
- 1.6 There are no objections from the relevant statutory consultees, and Officers consider that the proposed layout, scale, access, appearance, and landscaping are acceptable. The application would act as a catalyst for the wider development of the Strategic Allocation to come forward, allowing for additional housing to be built in the District.

2. INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

2.1 This application is being reported to Planning Committee in accordance with Part A of the Council's Scheme of Delegation, as the application is deemed to be 'significant' by the Planning Development Manager.

3. POLICY CONSIDERATIONS

§ See Appendix 2

4. SITE HISTORY

§ See Appendix 3

5. DESCRIPTION OF THE SITE AND SITE CONTEXT

5.1 An Outline application was approved for the site on 21st July 2022 for Outline Planning Permission with all matters reserved. The permission was for up to 400 residential dwellings and a day nursery with all associated access, servicing, parking, drainage infrastructure, landscaping, open space, and utilities infrastructure.

5.2 The Outline application site lies to the north-west of Hatfield Road, on the south side of Witham and is approximately 18.9ha in area. It sits to the west of the site known as Lodge Farm, which is currently being developed by Redrow Homes, and to the north-east of the Maltings Lane Estate. The Site is bounded to the north-west by the London-Norwich railway line (operated by Abellio Greater Anglia), and to the south-east by the A12.

5.3 The Outline application site can be broadly split in to two distinct uses at present. The majority of the site is used for agricultural crop production, whilst the lower southern end of the site is fenced off from the agricultural land and was until recently used for commercial purposes.

5.4 The site comprises a single field unit with the peripheral field boundary marked predominantly by hedgerows, and in places hedgerow trees. A shelterbelt encloses the north of the once commercial area. The landscape beyond the site to the north, west, and south comprises field units interspersed with woodland blocks.

5.5 Immediately adjoining the site on its south-western boundary, but excluded from the site, is Wood End Farm itself. Witham Town Centre is located approximately 2km to the north-east of the site and provides a wide range of shops, services, and facilities, as well as having a mainline railway station. Hatfield Peverel Station is located approximately 2km to the south, on the same line as Witham.

5.6 This application forms a total of 0.89ha of the wider Outline consent and cuts through the centre of the site from south to north.

6. PROPOSAL

- 6.1 This Reserved Matters application constitutes the first application to be submitted following Outline approval for the Woodend Farm Strategic Growth Location.
- 6.2 The purpose of this Reserved Matters is to provide the details for the general arrangement of the main development Spine Road and small section of the secondary road north of the bus turning, which provides the link between the approved site access from Hatfield Road and the development parcels.
- 6.3 The road travels through the centre of the site in a north south direction and is approximately 420m in length and 18.25m in width. The road would be constructed to adoptable standards with a 6.75m width carriageway (Type D Feeder Road), with 3m wide grass verges on either side of the carriageway, and footways. The footway on the southern side of the carriageway would be 2m in width, with the footway on the northern side of the carriageway being a 3.5m shared footway/cycleway. The northern section of the road (approximately 80m), beyond the bus turning loop, then narrows to 5.5m in width.
- 6.4 The landscaping for the gateway into the site has been included as part of the application.
- 6.5 A bus stop is located on the western side of the road, approximately 240m from the Hatfield Road junction. A bus turning loop is located at the northern end of the road.
- 6.6 The application includes 6 junctions, 3 to the eastern residential parcels and 3 to the western residential parcels. All the junctions include tactile paving on the footway.
- 6.7 Speed tables and speed cushions are proposed along the length of the road. The road would be restricted to 20mph.
- 6.8 A total of 8 visitor car parking spaces are located along the road. These are defined as single and double spaces along the entire stretch of the road.

7. SUMMARY OF CONSULTATION RESPONSES

- 7.1 Two consultations were carried out, the second consultation was undertaken following the submission of revised plans and documents which sought to address a number of design and layout concerns raised by Officers and consultees.

7.2 Active Travel England

- 7.2.1 No comment.

7.3 Anglian Water

7.3.1 No comments confirmed.

7.4 Essex Fire and Rescue

7.4.1 Access for Fire Service purposes has been considered in accordance with the Essex Act 1987 - Section 13 and is acceptable provided that the arrangements are in accordance with the details contained in the Approved Document to Building Regulations B5.

7.4.2 It should be ensured that access for a pumping appliance is provided to within 45m of all points inside each dwelling house. ADB Vol 1, 13.1, and for the Day Nursery, to within 45m of every point of the footprint of the building or 15% of the perimeter (ADB Vol 2, 15.1.). More detailed observations on access and facilities for the Fire Service will be considered at Building Regulation consultation stage.

7.4.3 It is the responsibility of anyone carrying out building work to comply with the relevant requirements of the Building Regulations. Applicants can decide whether to apply to the Local Authority for Building Control or to appoint an Approved Inspector. Local Authority Building Control will consult with the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority (hereafter called "the Authority") in accordance with "Building Regulations and Fire Safety - Procedural Guidance". Approved Inspectors will consult with the Authority in accordance with Regulation 12 of the Building (Approved Inspectors etc.) Regulations 2010 (as amended).

7.4.4 The architect or Applicant is reminded that additional water supplies for firefighting may be necessary for this development. The architect or Applicant is urged to contact Water Section at Service Headquarters, 01376 576000.

7.4.5 There is clear evidence that the installation of Automatic Water Suppression Systems (AWSS) can be effective in the rapid suppression of fires. Essex County Fire & Rescue Service (ECFRS) therefore uses every occasion to urge building owners and developers to consider the installation of AWSS. ECFRS are ideally placed to promote a better understanding of how fire protection measures can reduce the risk to life, business continuity and limit the impact of fire on the environment and to the local economy. Even where not required under Building Regulations guidance, ECFRS would strongly recommend a risk-based approach to the inclusion of AWSS, which can substantially reduce the risk to life and of property loss. We also encourage developers to use them to allow design freedoms, where it can be demonstrated that there is an equivalent level of safety and that the functional requirements of the Regulations are met.

7.5 Essex Police

7.5.1 We would request particular reference be made to the section of the document relating to 'Traffic Management Considerations' and the enforcement of the 20mph in the new housing estate and emphasis on the developer to provide and be responsible for suitable road safety designing out methodology in the first instance. This ultimately allows the roads to be self-enforcing with street furniture, road design and signage and negating any enforcement expectations on Essex Police. Secondly that the prescribed routes for vulnerable road users are designed and maintained to ensure the safety of users, this sits with Vision Zero and the Safe Systems approach as well as the 'Greener travel' ethos.

7.6 National Highways

7.6.1 No objection.

7.7 Natural England

7.7.1 No comments.

7.8 Network Rail

7.8.1 No further comments to make since the Outline application.

7.9 Sport England

7.9.1 The proposed development does not fall within the statutory or non-statutory remit.

7.10 BDC Arboriculturalist

7.10.1 Landscape Services has been consulted on the above Infrastructure Reserved Matters application due to amendment of plans to now include existing trees within or on the red line boundary to the north east of the proposed entrance surveyed as G4.

7.10.2 G4 have been categorised as a low value, sporadic group of predominantly field maple that form the boundary. There are occasionally younger leylandii, beech and ash within the group, but field maple is the dominant species. The maximum height within the group is recorded to be 8m and the crown spread radius is 3.5m and the largest stem is 300mm.

7.10.3 Collectively G4 forms a boundary hedgerow which is important for habitat contribution and acts as a wildlife corridor improving connectivity and Landscape Services supports the retention of this group.

7.10.4 The group labelled G4 has been afforded C categorisation. There are no proposed removals required. The road and landscape design proposal does not encroach or impact upon the RPA's of group G4.

- 7.10.5 There is no increased pressure on the existing tree group or burden or maintenance as a result of the proposed entrance layout and retention of these trees.
- 7.10.6 The group has been provided an RPA zone that is synonymous with the average crown spread of the group, tree protective fencing details have been provided on the Tree Protection Plan drawing which appears to be adequate to offer appropriate protection. It is noted there is a slight change in soil levels near to the RPA of trees however this should have no negative impacts as the ground levels are being increased outside of the RPA with an upwards gradient towards the bank which its orientation matches the same path as the access road. The gradient increases from 40.76m to 40.77m to the perimeter of the proposed level changed which then increases from 40.77 to 42.00m towards the road, effectively creating a small bund.
- 7.10.7 Providing that the setting out of tree protective fencing is the first operation to be carried on site to ensure the protection of retained trees from the threats of construction activities including the movement of vehicles and machinery or storage of materials, there is no detrimental impact by the proposed design. If the above can be satisfied either through condition or advisory, Landscape Services has no objection to this application for approval of reserved matters for installation of the spine road linking to Hatfield Road.
- 7.11 BDC Ecology Consultant
- 7.11.1 We have reviewed the submitted documents for this application, including the Combined Hard and Soft Landscape General Arrangement Plan – P011 (Fabrik Landscape Architects Ltd, October 2022) and the Landscape Maintenance & Management Specification – 05 (Fabrik Landscape Architects Ltd, August 2023). In addition, we have re-assessed the submitted documents at outline stage (Application Reference 19/01896/OUT) including the Ecological Impact Assessment (Green Environmental Consultants Ltd, August 2019). It is indicated that we still support the planting specifications and schedules at an ecological perspective, as included within the Soft Landscape General Arrangement Plan – P011 (Fabrik Landscape Architects Ltd, October 2022).
- 7.11.2 We also generally support the Landscape Maintenance & Management Specification (Fabrik Landscape Architects Ltd, February 2023) for the soft landscaping proposed for this reserved matters stage. We also still consider that a detailed wildlife sensitive lighting design should be submitted for this application, in line with Condition 8 of the Outline Consent (Lighting). This should include the technical specifications, contour plans and Isolux drawings and should be informed by a suitably qualified ecologist to ensure that lighting will be directed away from any sensitive habitat which would be used by foraging and commuting bats and compliant BCT & ILP guidance.

- 7.11.3 We still encourage the developer to provide a Biodiversity Net Gain Design Stage Report using the DEFRA Biodiversity Metric 4.0 (or any successor), to demonstrate that biodiversity net gains will be achieved for this development, in line with Paragraphs 174[d] of the NPPF 2021. However, we acknowledge that the secondary legislation of the Environment Act 2021 has not come into force and therefore there is no legal requirement for this to be issued. If developer is minded to include this additional assessment then the Biodiversity Net Gain Design Stage Report, should follow the Biodiversity Net Gain Report & Audit Templates (CIEEM, 2021).
- 7.11.4 Furthermore, it is indicated that we still query whether any bespoke biodiversity enhancements will be incorporated throughout the development (e.g. bird boxes, bat boxes, invertebrate boxes, log piles), in line with Condition 9 of the outline consent (Biodiversity Enhancement Strategy).
- 7.12 BDC Waste Management
- 7.12.1 This application does not refer to the associated 400 residential dwellings this access road serves. As such I cannot provide comments on waste collections or waste storage, due to no associated plans for the dwellings themselves being attached to this application.
- 7.13 ECC Archaeology
- 7.13.1 An archaeological condition was applied to Application Reference 19/01896/OUT. A programme of archaeological evaluation has been completed which identified significant archaeological remains within the site. The location of the Spine Road will overlap with areas proposed for further archaeological investigation. No further recommendations are required for this application however a Mitigation Strategy will need to be submitted to discharge Condition 19b and no development can commence within the areas proposed for mitigation until the completion of the archaeological investigation.
- 7.14 ECC Highways Authority
- 7.14.1 No objection.
- 7.15 ECC Lead Local Flood Authority
- 7.15.1 No comments confirmed.
- 7.16 ECC Minerals and Waste
- 7.16.1 No comments confirmed.

8. PARISH / TOWN COUNCIL

8.1 Witham Town Council

8.1.1 No objection subject to grass verges being kept where possible, the trees on the site being actively nurtured for ten years and failing trees replaced on an annual basis. Also, that a full independent tree and hedge survey be undertaken to the satisfaction of both the Town Council and Witham Tree Group. Members felt that it would also be an opportune time to repeat the Town Council's concerns regarding the proposal to try and move the veteran elm tree in the middle of Hatfield Road.

9. REPRESENTATIONS

9.1 1 letter of representation was received and is summarised below:

- Object to the grant of any permission on this site until the hedgerows removed along Collar Way (Lodge Farm development) are replaced. Exposure to traffic noise, pollution, and risk of injury.

10. PRINCIPLE OF DEVELOPMENT

10.1 The site is identified as a Strategic Growth Allocation within Policy LPP22 of the Adopted Local Plan. The site has the benefit of Outline Planning Permission for up to 400 residential dwellings and a day nursery with all associated access, servicing, parking, drainage infrastructure, landscaping, open space and utilities infrastructure. A suite of Parameter Plans and a detailed Design Code formed part of the approved documents for the site. All matters other than the strategic access point into the site from Hatfield Road were reserved for future determination. This application represents the first Reserved Matters application to come forward for the site.

10.2 This infrastructure application seeks Reserved Matters approval for the construction of the Spine Road running from the approved strategic access, through the centre of the site, to the northern most parcel. The principle of a Spine Road running through the centre of the site was approved at the Outline stage by way of the approved Parameter Plans, and therefore the principle is established. As per Condition 2 attached to the Outline permission, the following matters are considered relevant to this application:

- Scale;
- Appearance;
- Landscaping;
- Layout; and
- Access

10.3 The principle of redevelopment of the site has been established however, the matters stated above will be assessed in detail for this application.

11. SITE ASSESSMENT

11.1 Layout, Appearance and Scale

- 11.1.1 Policy SP7 of the Adopted Local Plan states that all new development must meet high standards of urban and architectural design. Policy LPP52 of the Adopted Local Plan states that the Council will seek a high standard of layout and design in all developments in the District.
- 11.1.2 At the national level, the NPPF is also clear in its assertion at Paragraph 126 that: *'The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities'*.
- 11.1.3 There is therefore a strong policy basis for achieving a high degree of quality in terms of the appearance, layout, and scale of the development whilst ensuring that it complies with the outline planning permission and Design Code for the site.
- 11.1.4 In terms of layout and scale, the details submitted with the Outline application did include an Illustrative Masterplan, and a suite of approved Parameter Plans, the Transport and Movement Parameter Plan (F00146-FAB-00-XX-DR-Y-424 Rev P15) being of particular relevance to this application. The layout, appearance and scale of the Spine Road have been led by the documents approved at the Outline stage.
- 11.1.5 The Transport and Movement Parameter Plan indicates the location of the Spine Road continuing from the approved access off Hatfield Road and running through the centre of the site, north to south, with a bus turning loop to the north. The Spine Road is also indicated as the 'bus route' spanning as far as the bus turning loop. An indicative bus stop is shown on the Parameter Plan as being located within this bus turning loop, however this is no longer the case and the bus stop has been located on the western side of the road, adjacent to the central park area. This location offers a larger area of open space for people to congregate and is considered a safer location. The details submitted as part of this application are in general conformity with the approved Parameter Plans.
- 11.1.6 The Design Code attached to the Outline application set the design of the spine road, verges, footway, and cycleway. The Spine Road forms part of the strategic walking and cycling route for the site and extends from north to south and along the northern boundary of the site, connecting to the informal walkways around the eastern and western perimeters. The guiding design principles for the Spine Road was to prioritise the movement and safety of pedestrians and cyclists through the provision of safe and direct routes and filtered permeability making it easier to walk and cycle rather than drive.

- 11.1.7 The Spine Road is limited in speed to 20mph, with an abundance of raised tables and cushions. In terms of surface material, the main carriageway and footways will be constructed using tarmac. The vehicular road will be 6.75m in width to provide enough space for buses, however, in accordance with the Design Code, a 3m wide planted verge will be present on either side of the carriageway. Whilst the Design Code indicates that there will be future residential properties fronting the Spine Road with front gardens, there will be no driveways accessed from the main Spine Road. Access from the residential parcels will be via the junctions proposed.
- 11.1.8 The footway on the eastern side will consist of a 3.5m wide shared cycle/footway, with the western side, running alongside the central park, consisting of a 2m wide footway. A planted verge is absent adjacent to the central park. Visitor parking bays are located along the road at different points, at these points, no planted verge is present.
- 11.1.9 Street lights would be located on both sides of the Spine Road, the details of which have come forward by way of Condition 8 attached to the Outline consent. The location of the street lighting has been considered as part of this application, in terms of both adoptable standards and conflict with trees, both of which are considered acceptable.
- 11.1.10 The proposal, essentially being for engineering works, and specifically for the provision of the primary road network with associated footpaths and cycleways is functional as one would expect. The details submitted by way of this Reserved Matters application are in accordance with the approved Parameter Plans and details set within the Design Code. The road is built to adoptable standards and the intention is that it will be adopted by the Highway Authority subject to the appropriate consents. The Highway Authority has raised no objection to the application.

11.2 Landscaping and Ecology

- 11.2.1 The Outline application adopted a landscape-led approach. Important landscape and ecological features that contributed to the character of the site were to be retained. These existing features, in combination with new strategic planting including new trees, hedges, shrubs and grass, seek to create a comprehensive green infrastructure into which the built form will sit. The landscape-led approach enables the adoption of a strong sense of place and identity.
- 11.2.2 The Design Code approved 3 different character areas within the site. The Spine Road dissects 2 of these character areas, those being 'The Gateway' and 'The Greens'.
- 11.2.3 The Design Code set the principles of the landscaping design of the gateway and stated that it must provide a strong entrance and an attractive southern edge to the development with the scale, setting and treatment to reflect its status of the main gateway into the site. It also states that the gateway public realm and landscaping should apply a simple and neutral

palette of hard paving materials in order to provide a complimentary backdrop for tree planting at the entrance.

- 11.2.4 This application includes the 'Gateway Green' to the east of the entrance which seeks to create a formal arrival point including an area of green space and formal tree planting. The aim was not only to create an attractive entrance to the site, but to also set up the theme of green links throughout the development.
- 11.2.5 The Gateway Green would consist of mown lawn with shrubs, ornamental bulb planting, clipped beech hedgerow, 4 large size stock Robinia Pseudoacacia (False Acacia) trees, and 3 translocated Elm saplings from the Elm Tree which sits within the Highway at the front of the site. The tree species have been selected in accordance with the illustrative species identified and agreed within the approved Design Code. The bulb planting would continue to be provided in clusters along the pavement grass verges of the road at the entrance to the site.
- 11.2.6 A row of existing trees on the eastern boundary would also be incorporated into the planting. The tree belt consists of predominantly Field Maple, with the occasional Leylandii, Beech and Ash within the group.
- 11.2.7 In terms of landscaping to the Spine Road itself, the road would be tree lined in accordance with the requirements of Paragraph 131 of the NPPF. A total of 25 new trees have been positioned in the verge on both sides along the length of the Spine Road, apart from the stretch adjacent to Central Park in which the trees on the edge of the park will form the pavement edge landscaping.
- 11.2.8 The Design Code sets out the illustrative planting palette for the primary and secondary street trees, as well as the gateway and feature trees. The species of trees selected along the Spine Road feature London Plane, Field Maple, Hornbeam, Tulip Tree and Small Leaved Lime, forming a mixture of native and non native species, in accordance with Policy LPP52 of the Adopted Local Plan.
- 11.2.9 In terms of Ecology, the details have been assessed by the Council's Ecology Consultant. No objection has been raised and support is given to the proposed planting schedules and specifications from an ecological perspective. Comments were raised in relation to lighting details and a condition under the Outline consent requires such details to be submitted.
- 11.2.10 In terms of Biodiversity Net Gain, this application pre-dates the requirements, however, Condition 9 of the Outline consent requires a Biodiversity Enhancement Strategy to be submitted concurrent with each reserved matters applications for the site. This has been submitted (Application Reference 23/00640/DAC), assessed by Ecology consultants and approved by the Council in relation to Biodiversity enhancement for the areas of open space within the site. The Ecology consultant has recommended a further condition on this application for a Biodiversity

Enhancement Layout to be submitted in accordance with the approved Biodiversity Enhancement Strategy.

11.3 Arboricultural Impacts

- 11.3.1 Paragraph 131 of the NPPF states that existing trees should be retained wherever possible. Policy LPP65 of the Adopted Local Plan sets out that trees which make a significant positive contribution to the character and appearance of their surroundings will be retained unless there is a good arboricultural reason for their removal.
- 11.3.2 The Outline application imposed two conditions in relation to works to trees, those being Conditions 12 and 24. No existing trees are to be removed as part of this proposal. The Arboricultural Report approved as part of the Outline consent indicated a group of trees (Group G3) along the frontage of the site to be removed to facilitate the access into the development site. The principle of removal was approved as part of the Outline consent and the trees have been removed as they fall within Highway Land. However, 2 of the trees which were indicated as due for removal, fall within the red line for this Reserved Matters application. The Applicant has confirmed that they would be retained and they have been incorporated into the landscaping for the Gateway Green area.
- 11.3.3 An existing group of trees are located on the eastern boundary of the site indicated as trees to be retained (Group G4) within the Arboricultural Report approved at the Outline stage. The trees will be protected during development in accordance with the Arboricultural Impact Assessment accompanying this application, which has been assessed by the Councils Arboriculturalist and is considered to be sound. An Arboricultural Method Statement will come forward by way of Condition 24 attached to the Outline consent, prior to the commencement of development.

11.4 Highway Considerations

- 11.4.1 Paragraph 104 of the NPPF states that transport issues should be considered from the earliest stages of development proposals so that opportunities to promote walking, cycling and public transport use are identified and pursued. Policy LPP42 of the Adopted Local Plan states that priority should be given to cycle and pedestrian movements and access to public transport. Sustainable travel will be encouraged.
- 11.4.2 The illustrative location of the Spine Road was agreed at the Outline stage through the approved Parameter Plans, along with the street hierarchy and pedestrian and cycle movement. As previously stated, the Spine Road will make provision for a safe pedestrian and cycle network within the development. This would then continue outside of the development in accordance with the sustainable transport works agreed as part of the Section 106 Agreement attached to the Outline consent.

11.4.3 Discussions between the Applicant and the Highways Authority have been ongoing in relation to the internal design of the road and bus stop location. The matter of the bus stop location was also considered in detail as part of a road safety audit that is being undertaken as part of the Section 38 approval process. Whilst the S38 approval process falls outside the scope of Planning, the Highways Authority have assessed the details put forward as part of this application and have no objection to the proposals.

11.4.4 It is considered that the development has been laid out in a manner that pays regard to the need to plan for sustainable access for all, with connections to future phases and services beyond.

11.5 Impact on Neighbouring Residential Amenities

11.5.1 A core principle of the National Planning Policy Framework is that development should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Policy LPP52 of the Adopted Local Plan states that development shall not cause undue or unacceptable impacts on the amenities of nearby residential properties.

11.5.2 The nearest residential properties are those of the existing Woodend Farm to the west, and Lodge Farm development to the east. Due to the nature of this application, there will be no impact on existing residential amenity by way of overlooking, overbearing, loss of light or overshadowing, however, there will inevitably be an impact during the construction process.

11.5.3 To mitigate these impacts, conditions were imposed as part of the Outline consent which includes a dust control management scheme, piling restrictions and hours of working in order to ensure that residential amenity is preserved. A further condition has been recommended for a Construction Management Plan to be submitted prior to the commencement of development to mitigate construction work. Subject to adherence thereto, it is considered that the proposal would not have a detrimental effect upon neighbouring residential amenity.

11.6 Heritage

11.6.1 The likely heritage impact was assessed at the Outline application stage. The site is not located within a Conservation Area and there are no heritage assets located on the site or within the vicinity. The Outline consent imposed conditions in relation to archaeology which requires further archaeological investigation to be undertaken. ECC Archaeology Officers have confirmed that no further conditions are considered necessary.

11.7 Flood Risk and Surface Water Drainage

11.7.1 The application site is located in Flood Zone 1 (low probability). Flood risk and drainage were considered in general terms at the Outline planning

stage and relevant conditions were attached to the Outline planning permission for the wider Woodend Farm site.

- 11.7.2 Essex County Council as the Lead Local Flood Authority, having been consulted on the Outline application, raised no objection to the application in flood risk terms.

12. CONCLUSION

- 12.1 The application is located within an area allocated as a Strategic Growth Location for residential redevelopment in the Adopted Local Plan. Outline planning permission was granted on 21st July 2022 for up to 400 residential dwellings and a day nursery with all associated access, servicing, parking, drainage infrastructure, landscaping, open space and utilities infrastructure.
- 12.2 The application seeks to construct an internal Spine Road with associated landscaping to facilitate the construction of residential use on the site which would accord with its allocated use in the Adopted Local Plan.
- 12.3 The layout, scale, access, and appearance of the road are considered acceptable and functional and are in accordance with the approved Outline Parameter Plans and Design Code. The proposal would contribute towards sustainable travel allowing for the creation of footways, cycleways, and a new bus route.
- 12.4 No existing trees are to be removed to facilitate the development. The landscaping and tree lined streets would create an attractive entrance into the site.
- 12.5 Given the nature of the development, there is not considered to be any detrimental impact on existing residential amenity. Any disturbance from construction can be mitigated by the imposed Outline and further recommended conditions.
- 12.6 There are no objections from the relevant statutory consultees, and Officers consider that the proposed layout, scale, access, appearance, and landscaping are acceptable. The application would therefore act as a catalyst for the wider development of the Strategic Allocation to come forward, allowing for additional housing to be built in the District.

13. RECOMMENDATION

- 13.1 It is RECOMMENDED that the following decision be made:
Application GRANTED in accordance with the Approved Plans and Documents, and subject to the Condition(s) & Reason(s), and Informative(s) outlined within APPENDIX 1.

CHRISTOPHER PAGGI
PLANNING DEVELOPMENT MANAGER

APPENDIX 1:

APPROVED PLAN(S) & DOCUMENT(S) / CONDITION(S) & REASON(S) AND INFORMATIVE(S)

Approved Plan(s) & Document(s)

Plan Description	Plan Ref	Plan Version
Landscape Masterplan	D3226-FAB-00-XX-DR-L-1001 P12	N/A
Landscape Masterplan	D3226-FAB-00-XX-DR-L-1002 P12	N/A
Landscape Masterplan	D3226-FAB-00-XX-DR-L-1003 P12	N/A
Landscape Masterplan	D3226-FAB-00-XX-DR-L-1000 P14	N/A
Landscape Masterplan	D3226-FAB-00-XX-DR-L-1004 P14	N/A
Refuse Information	65205612-SWE-ZZ-XX-DR-C-0060-P03	N/A
Highway Plan	65205612-SWE-ZZ-XX-D-C-0050-P05	N/A
Arboricultural Report Location Plan	HWA10908 FAB-00-XX-DR-L-1010 P02	N/A
Other	SHA 1507 Rev A	N/A

Condition(s) & Reason(s)

Condition 1

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

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

Condition 2

Prior to commencement of any development, engineering works or other activities within the application site the tree protection measures set out within the Arboricultural Impact Assessment produced by Hallwood Associates Arboricultural and Woodland Consultants dated 12th October 2023 shall be put in place and shall remain in place until after the completion of the development, to the 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. No machinery of any kind shall be used or operated within the extent of the spread of the existing trees, shrubs, hedges.

Reason: To ensure the protection and retention of existing/ remaining trees and hedges.

Condition 3

No development shall commence, including any works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include the following details:

- The provision of parking for operatives and contractors within the site;
- Safe access in / out of the site;
- Measures to manage the routing of construction traffic;
- The storage of plant and materials used in constructing the development;
- The storage of top soil;
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- Wheel washing and underbody washing facilities;
- Measures to control mud during construction;
- A scheme to control noise and vibration during the construction phase,
- A scheme for recycling/disposing of waste resulting from demolition and construction works;
- Details of how the approved plan will be implemented and adhered to, including contact details for individuals responsible for ensuring compliance;
- Contact details for Site Manager and details of publication of such details to local residents.

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

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

Condition 4

The scheme of landscaping indicated upon the approved plans, shall be carried out during the first available planting season after the commencement of the development. The Elm Tree saplings located within the Gateway Green, will be planted in accordance with the Method Statement (Ref: SHA 1507) dated May 2023.

Reason: To enhance the appearance of the development and in the interests of amenity and to ensure that the Elm Tree saplings are translocated appropriately and to ensure their protection and retention.

Condition 5

Prior to occupation, a Biodiversity Enhancement Layout for bespoke biodiversity enhancements listed in the approved Biodiversity Enhancement Strategy (EPR Ltd,

February 2023) shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Layout shall include the following:

- a) Detailed designs or product descriptions for bespoke biodiversity enhancements; and
- b) Locations, orientations and heights for bespoke biodiversity enhancements by appropriate maps and plans.

The enhancement measures shall be implemented in accordance with the approved details prior to occupation and all features shall be retained in that manner thereafter.

Reason: To enhance protected and Priority species and allow the LPA to discharge its duties under the NPPF 2023 and s40 of the NERC Act 2006 (as amended).

Informative(s)

Informative 1

Your attention is drawn to the need to comply with Condition 11 (Landscaping Scheme) of the Outline Consent (19/01896/OUT), particularly in relation to the submission of a watering maintenance regime for all new areas of planting.

Positive and Proactive Statement

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

APPENDIX 2:

POLICY CONSIDERATIONS

National Planning Guidance

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

Braintree District Local Plan 2013 - 2033

SP1	Presumption in Favour of Sustainable Development
SP7	Place Shaping Principles
LPP22	Strategic Growth Location - Wood End Farm, Witham
LPP42	Sustainable Transport
LPP43	Parking Provision
LPP48	An Inclusive Environment
LPP52	Layout and Design of Development
LPP59	Archaeological Evaluation, Excavation and Recording
LPP65	Tree Protection
LPP71	Climate Change
LPP74	Flooding Risk and Surface Water Drainage
LPP76	Sustainable Urban Drainage Systems
LPP77	External Lighting

APPENDIX 3:

SITE HISTORY

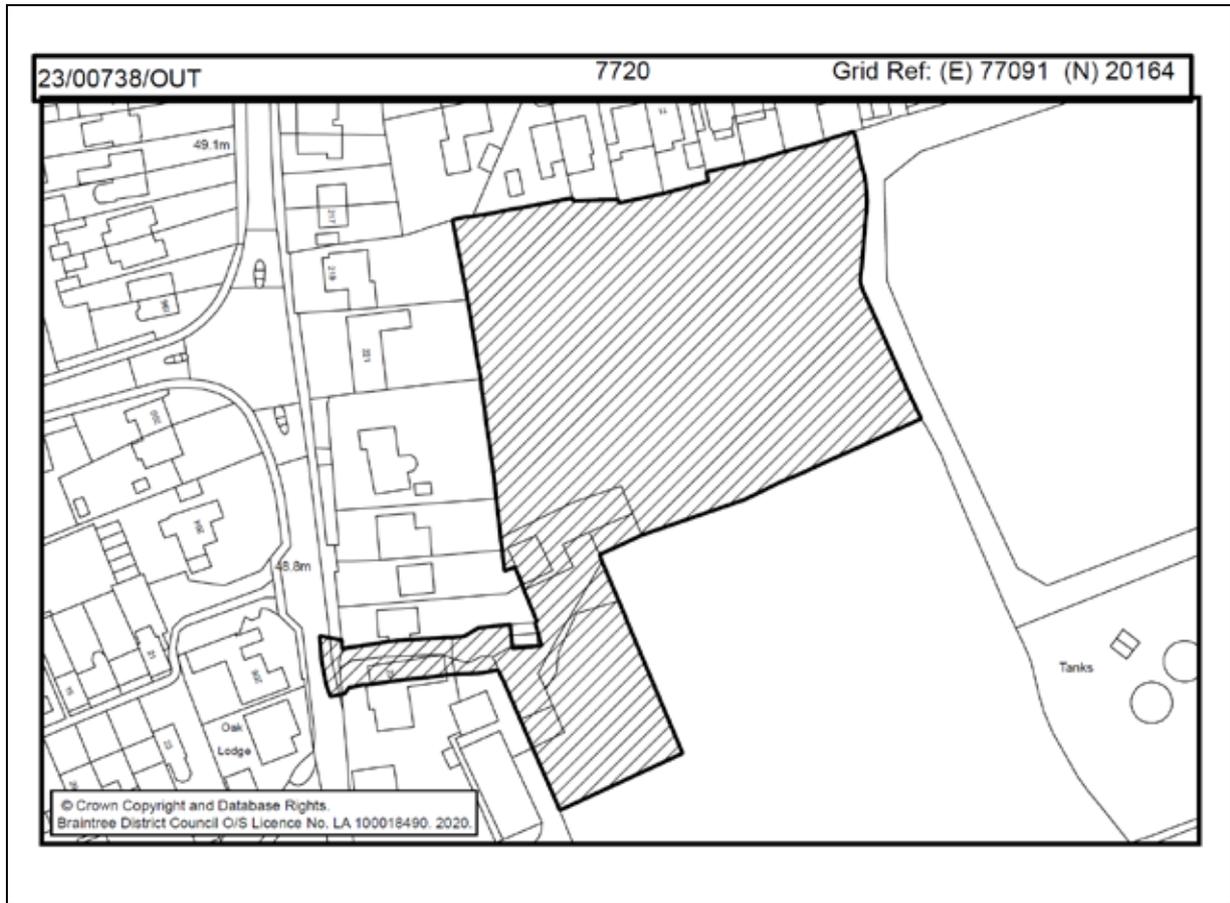
Application No:	Description:	Decision:	Date:
19/01896/OUT	Application for Outline Planning Permission with all matters reserved for up to 400 residential dwellings and day nursery with all associated access, servicing, parking, drainage infrastructure, landscaping, open space and utilities infrastructure.	Granted with S106 Agreement	21.07.22
22/01993/DAC	Application for approval of details reserved by condition 19 (a only) (Archaeological Trial Trenching) of approved application 19/01896/OUT	Granted	15.08.22
23/00350/DAC	Application for approval of details reserved by condition 34 (Feasibility Study) of approved application 19/01896/OUT	Granted	12.10.23
23/00559/DAC	Application for approval of details as reserved by condition 4 (Phasing Plan) of approved application 19/01896/OUT	Granted	08.06.23
23/00637/DAC	Application for approval of details as reserved by Condition 8 (Lighting Scheme) of approved application 19/01896/OUT for Spine Road Infrastructure only.	Pending Consideration	
23/00638/DAC	Application for approval of details as reserved by condition 13 (Refuse Scheme) of approved application 19/01896/OUT for Spine Road Infrastructure only.	Granted	29.06.23
23/00639/DAC	Application for approval of details as reserved by condition 11 (Landscaping Scheme) of approved	Pending Consideration	

	application 19/01896/OUT for Spine Road Infrastructure only.		
23/00640/DAC	Application for partial approval of details as reserved by condition 9 (Biodiversity Enhancement Strategy) of approved application 19/01896/OUT (Areas of Open Space only).	Granted	15.05.23
23/00641/DAC	Application for partial approval of details as reserved by Condition 10 (Landscape Ecological Mitigation Plan) of approved application 19/01896/OUT (Areas of Open Space only).	Granted	15.05.23
23/00753/DAC	Application for partial approval of details as reserved by Condition 11 (Landscaping) of approved application 19/01896/OUT (Main Central Park Area).	Pending Consideration	
23/00781/REM	Application for the approval of Reserved Matters (Access, Appearance, Landscaping, layout and scale) for the central open space (Main Central Park Area), pursuant to outline application 19/01896/OUT approved on 21.07.2022 for up to 400 residential dwellings and day nursery with all associated access, servicing, parking, drainage infrastructure, landscaping, open space and utilities infrastructure.	Pending Consideration	
23/01098/DAC	Application for partial approval of details as reserved by Conditions 21 (Offsite flooding) & 27 (Dust Control) of approved application 19/01896/OUT	Pending Consideration	
23/01108/DAC	Application for approval of	Granted	16.05.23

	details as reserved by condition 19 (Part B only) (Archaeology) of approved application 19/01896/OUT		
23/01486/DAC	Application for the approval of details as reserved by condition 12 (Arboricultural Impact Assessment Report) of approved application 19/01896/OUT Arboricultural Impact Assessment Report	Pending Consideration	

Report to: Planning Committee	
Planning Committee Date: 7th November 2023	
For: Decision	
Key Decision: No	Decision Planner Ref No: N/A
Application No:	23/00738/OUT
Description:	Outline planning application with all matters reserved, except access, for up to 13 residential units (Use Class C3), associated car parking, landscaping and ancillary works and infrastructure. Access to be directly off Witham Road.
Location:	Land Rear Of 231 Witham Road Black Notley
Applicant:	Mr Douglas Chapman, 231 Witham Road, Black Notley, Essex, CM77 8NQ
Agent:	Ms Claire Taylor, 56 Rowntree Way, Safforn Walden, CB11 4DL
Date Valid:	23rd March 2023
Recommendation:	It is RECOMMENDED that the following decision be made: § That had the local planning authority been in a position to determine the application, that it be REFUSED for the reasons outlined within Appendix 1 of this Committee Report.
Options:	The Planning Committee can: a) Agree the Recommendation b) Vary the Recommendation c) Overturn the Recommendation d) Defer consideration of the Application for a specified reason(s)
Appendices:	Appendix 1: Reason(s) for Refusal Submitted Plan(s) / Document(s)
	Appendix 2: Policy Considerations
	Appendix 3: Site History
Case Officer:	Melanie Corbishley For more information about this Application please contact the above Officer on: 01376 551414 Extension: 2527, or by e-mail: melanie.corbishley@braintree.gov.uk

Application Site Location:



Purpose of the Report:	The Committee Report sets out the assessment and recommendation of the abovementioned application to the Council's Planning Committee. The report sets out all of the material planning considerations and the relevant national and local planning policies.
Financial Implications:	<p>The application was subject to the statutory application fee paid by the Applicant for the determination of the application.</p> <p>There are no direct financial implications arising out of the decision, notwithstanding any costs that the Council may be required to pay from any legal proceedings. Financial implications may arise should the decision be subject to a planning appeal or challenged via the High Court.</p>
Legal Implications:	<p>If Members are minded to overturn the recommendation, the Planning Committee must give reasons for the decision.</p> <p>Following the decision of the Planning Committee, a formal decision notice will be issued which will either set out the relevant Conditions & Reasons and any Informatives, or the Reasons for Refusal if applicable.</p> <p>All relevant policies are set out within the report, within Appendix 2.</p>
Other Implications:	The application has been subject to public consultation and consultation with relevant statutory and non-statutory consultees. All responses received in response to this consultation are set out within the body of this Committee Report.
Equality and Diversity Implications:	<p>Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:</p> <ul style="list-style-type: none"> a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act; b) Advance equality of opportunity between people who share a protected characteristic and those who do not; c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting

	<p>understanding.</p> <p>The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).</p> <p>The consideration of this application has not raised any equality issues.</p>
<p>Background Papers:</p>	<p>The following background papers are relevant to this application include:</p> <ul style="list-style-type: none"> § Planning Application submission: <ul style="list-style-type: none"> § Application Form § All Plans and Supporting Documentation § All Consultation Responses and Representations <p>The application submission can be viewed online via the Council's Public Access website: www.braintree.gov.uk/pa by entering the Application Number: 23/00738/OUT.</p> <ul style="list-style-type: none"> § Policy Documents: <ul style="list-style-type: none"> § National Planning Policy Framework (NPPF) § Braintree District Local Plan (2013-2033) § Neighbourhood Plan (if applicable) § Supplementary Planning Documents (SPD's) (if applicable) <p>The National Planning Policy Framework can be viewed on the GOV.UK website: www.gov.uk/.</p> <p>The other abovementioned policy documents can be viewed on the Council's website: www.braintree.gov.uk.</p>

1. EXECUTIVE SUMMARY

- 1.1 The application site covers an area of approximately 0.86 hectares and is located on land east of Witham Road, Black Notley. It is located to the south of the village outside the designated settlement boundary of Black Notley Village.
- 1.2 The application is seeking outline planning permission for up to 13 dwellings with all matters reserved, apart from access. An appeal for non-determination has been lodged by the Applicant to the Planning Inspectorate and is currently in progress. Therefore, the Local Planning Authority can no longer determine this application but is required to set out what the decision would have been if a decision had been made.
- 1.3 In summary, the proposed development would be located outside of the village envelope of Black Notley and would give rise to harm to the character and appearance of the area, contrary to Policies LPP1 and LPP52 Adopted Local Plan.
- 1.4 The vehicular access would run directly between 229 and 231 Witham Road. Consequently, harm would be caused to the amenity of the occupiers of these two dwellings by virtue of the increased number of vehicle movements running past the dwellings and private gardens. In addition, the proposal fails to demonstrate that 13no. units could be accommodated on the site in a manner that would secure a good level of amenity for existing and future occupiers in terms of outlook and privacy and that the proposed landscape mitigation would be located in private gardens and cannot be secured in perpetuity, contrary to Policy LPP52 of the Adopted Local Plan and the NPPF.
- 1.5 Further harm would be caused by the lack of drainage information, contrary to Policy LPP76 of the Adopted Local Plan.
- 1.6 When considering the planning balance and having regard to the adverse impacts outlined above, Officers have concluded that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. Consequently, it is recommended that had the Local Planning Authority been in a position to determine the application, that planning permission would have been refused for the proposed development.

2. INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

2.1 This application is being reported to Planning Committee in accordance with Part A of the Council's Scheme of Delegation as the application is categorised as a Major planning application.

2.2 It should be noted that the Applicant has lodged an appeal for non-determination which was subsequently validated by the Planning Inspectorate. Therefore, the Local Planning Authority (LPA) can no longer determine this application but is required to set out what the decision would have been if a decision had been made.

3. POLICY CONSIDERATIONS

§ See Appendix 2

4. SITE HISTORY

§ See Appendix 3

5. DESCRIPTION OF THE SITE AND SITE CONTEXT

5.1 The application site covers an area of approximately 0.86 hectares and is located on land east of Witham Road, Black Notley. It is located to the south of the village outside the designated settlement boundary of Black Notley Village.

5.2 The land comprises an open parcel of agricultural land, with some areas of hardstanding and storage buildings, along with the outside storage of building materials. There are trees and hedges running along the east and south boundaries. Residential gardens abut the site boundaries to the north and west.

5.3 The site is accessed from Witham Road, between No.229 and No.231, at the west boundary.

6. PROPOSAL

6.1 This application seeks outline planning permission for up to 13 dwellings with all matters reserved, apart from access.

6.2 Applications for outline planning permission seek to establish whether the scale and nature of a proposed development would be acceptable to the Local Planning Authority, before a fully detailed proposal is put forward.

6.3 The application is also supported by the following documents:

- Planning Statement
- Transport Assessment

- Design and Access Statement
- Preliminary Ecological Appraisal
- Landscape Summary
- Biodiversity Checklist
- Site Location Plan
- Indicative Site Plan
- Indicative Block Plan
- Indicative House Types

7. SUMMARY OF CONSULTATION RESPONSES

7.1 Active Travel England

7.1.1 No comments received.

7.2 Anglian Water

7.2.1 We are unable to make an accurate assessment for the proposed development because no drainage strategy has been submitted with the application and therefore it is not clear where the Applicant is proposing to connect to Anglian Water network.

7.3 Essex Police

7.3.1 Braintree District Local Plan 2022 states: LPP52 (h) Designs and layouts shall promote a safe and secure environment, crime reduction and prevention, and shall encourage the related objective of enhancing personal safety with the maximum amount of natural surveillance of roads, paths and all other open areas and all open spaces incorporated into schemes LPP52 (j) The design and level of any lighting proposals will need to be in context with the local area, comply with national policy and avoid or minimise glare, spill and light pollution on local amenity, intrinsically dark landscapes and nature conservation LPP52 (m) The development proposed should not have a detrimental impact on the safety of highways or any other public right of way, and its users.

7.3.2 Whilst there are no apparent concerns with the layout to comment further, we would require the finer detail such as the proposed lighting, boundary treatments and physical security measures.

7.3.3 We would welcome the opportunity to consult on this development to assist the developer demonstrate their compliance with this policy by achieving a Secured by Design Homes award. An SBD award is only achieved by compliance with the requirements of the relevant Design Guide ensuring that risk commensurate security is built into each property and the development as a whole.

7.4 Essex Fire and Rescue

7.4.1 Access- Access for Fire Service purposes has been considered in accordance with the Essex Act 1987 - Section 13. Fire service access to the proposed development appears sufficient, meeting the requirements of Section B5 Approved Document "B" Fire Safety Volume 1. More detailed observations on access and facilities for the Fire Service will be considered at Building Regulation consultation stage.

7.4.2 Building Regulations- It is the responsibility of anyone carrying out building work to comply with the relevant requirements of the Building Regulations. Applicants can decide whether to apply to the Local Authority for Building Control or to appoint an Approved Inspector. Local Authority Building Control will consult with the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority (hereafter called "the Authority") in accordance with "Building Regulations and Fire Safety – Procedural Guidance". Approved Inspectors will consult with the Authority in accordance with Regulation 12 of the Building (Approved Inspectors etc) Regulations 2010 (as amended).

7.4.3 Water Supplies – The architect or Applicant is reminded that additional water supplies for firefighting may be necessary for this development. The architect or Applicant is urged to contact Water Section at Service Headquarters, 01376 576000.

7.4.4 Sprinkler Systems - "There is clear evidence that the installation of Automatic Water Suppression Systems (AWSS) can be effective in the rapid suppression of fires. Essex County Fire & Rescue Service (ECFRS) therefore uses every occasion to urge building owners and developers to consider the installation of AWSS. ECFRS are ideally placed to promote a better understanding of how fire protection measures can reduce the risk to life, business continuity and limit the impact of fire on the environment and to the local economy. Even where not required under Building Regulations guidance, ECFRS would strongly recommend a risk-based approach to the inclusion of AWSS, which can substantially reduce the risk to life and of property loss. We also encourage developers to use them to allow design freedoms, where it can be demonstrated that there is an equivalent level of safety and that the functional requirements of the Regulations are met."

7.5 NHS

7.5.1 Financial contribution of £6,300 in order to increase capacity for the benefit of patients of the primary care network operating in the area. This may be achieved through any combination of extension, reconfiguration or relocation of premises and/or clinical staff recruitment or training.

7.6 Natural England

7.6.1 Comments from Natural England will be reported verbally to the Committee during the meeting.

7.7 BDC Ecology

- 7.7.1 No objection subject to securing:
- a) a proportionate financial contribution towards visitor management measures for the Blackwater Estuary SPA/Ramsar Site and Essex Estuaries SAC.
 - b) ecological mitigation and enhancement measures

7.8 BDC Environmental Health

- 7.8.1 There is no contaminated land report submitted with this application.
- 7.8.2 As a sensitive use then the minimum of a desk top study is required prior to any decision being made to ensure that the site is suitable or use. The Environmental Health mapping system is showing tanks to the south east beyond the boundary of the site.
- 7.8.3 It is noted that the drainage is given as unknown. It would not be appropriate for there to be a private treatment system as all nearby properties connect to mains drainage so the capability to do this shall be confirmed along with confirmation to access a mains water supply for the development.
- 7.8.4 A number of conditions are requested regarding hours of construction, submission of a dust and mud control management scheme, no burning and piling and the submission of a preliminary contaminated land risk assessment.

7.9 BDC Housing, Research and Development

- 7.9.1 In accordance with Affordable Housing Policy LP31, 40% of the dwellings (equalling 5) are required to be provided as affordable housing. To address housing need, on-site provision of affordable housing is usually always our preferred approach. However, in this case our preferred approach would be to seek a commuted payment in lieu of affordable housing due to the scheme being relatively small, in a fairly remote location and unlikely to attract interest from registered providers of affordable housing.
- 7.9.2 Therefore, we recommend a commuted payment in lieu of affordable housing is secured by a s106 agreement. We consider an appropriate payment would be £523,250 (13 x 40% = 5.2 x £100,625). This calculation is based on typical subsidy per unit to enable a partner housing association to provide affordable homes elsewhere in the district.

7.10 BDC Landscape Services

- 7.10.1 No comments received from BDC Landscape Services, however the landscape summary submitted in support the application has been

reviewed by an external landscape expert and their comments are set out later in this report.

7.11 BDC Waste Services

- 7.11.1 The access road for this development will need to be adopted highway, or built to a standard equivalent to adopted highway, and maintained as such, in order to support the weight of the 32 tonne waste collection vehicles. The turning head at the end of the access road will need to be a type 3 turning head, in order to be large enough for the collection vehicles to turn.

7.12 ECC Archaeology

- 7.12.1 The proposed site lies within an area of high archaeological potential. Witham Road is a historic route, settlement along the road can be traced back to the medieval period. The Chapman and Andre map of 1777 depicts a house and buildings along the road in this area. Evidence for a Roman villa site has been revealed in the fields surrounding Black Notley Hall and Roman material has been recovered from along the River Brain to the north of the site. Earlier prehistoric pottery has also been recovered from the area and cropmark evidence indicates possible prehistoric ritual activity and agricultural activity in the vicinity.
- 7.12.2 There is high potential for further archaeological remains associated with the Roman and medieval settlement which will be impacted upon by the proposed development.
- 7.12.3 An archaeological trial trench investigation will be required to determine the impact of the development on archaeological remains in line with Paragraph 194 (NPPF, 2021).
- 7.12.4 A number of specifically worded conditions are requested.

7.13 ECC Highways

- 7.13.1 The documents accompanying the planning application have been duly considered. Given the scale of the proposed development and the area to be available for parking within the site, which complies with Braintree District Councils Adopted Parking Standards, the proposal is acceptable to the Highway Authority, subject to conditions regarding the submission of a construction traffic management plan, provision of visibility splays and residential travel information packs.

7.14 ECC Independent Living and Care

- 7.14.1 No comments received.

7.15 ECC Suds

7.15.1 As no drainage strategy or FRA has been submitted with the application, SuDS are unable to issue a response.

8. PARISH COUNCIL

8.1 Black Notley Parish Council

8.1.1 Black Notley Parish Council strongly object to this speculative application for 13 dwellings on a protected area, the Brain Valley, which lies outside the village development envelope and is unsuitable for development.

8.1.2 There is no school and limited facilities in the village as the Post Office has closed, therefore access to a car especially during school hours is essential for family living. The alternative being an unpleasant long hilly walk along a very busy road escorting very young children, or an expensive spasmodic bus service.

8.1.3 Views and habitats will be lost across the protected Brain Valley creating an urban edge to the village. The site access is situated at the far end of the village and the 30mph limit and there is a known speeding problem with traffic leaving the village heading for Witham and the A12 and to Chelmsford and Stansted M11 via Bakers Lane already a known rat run. The access itself will cause an unacceptable problem to the resident of 229 Witham Rd with traffic passing close to the house and entrance. There doesn't appear to be any amenity space in the direct vicinity meaning children need to cross a busy road.

8.1.4 This is a bungalows area and this proposal which is of 1.5 height chalet style houses will overlook and overbear and cause loss of privacy and amenity to the residents of Meadowside and a harsh vista across the Brain Valley.

8.1.5 The proposed site BLAN114 for 1750 houses with Doctors Surgery, Schools and Shops lies within the Parish of Black Notley and was forwarded in the Local District Plan and reviewed by the Inspector. There are several other more suitable sites being developed in the District eg at nearby Cressing and the Hunnable site at Bocking making it unnecessary to consider this plan. Social Housing is not a community gain at this location due to lack of facilities in Black Notley and the need for a car.

8.1.6 Should Braintree District Council consider this application further it should be noted from a previous application in the area that Black Notley Parish Council consider this as a bungalow area and any further properties be bungalows for existing residents of 2 years, no extensions allowed, so the accommodation remain suitable for down sizers and 1st time buyers.

8.1.7 Any 106 contribution should be towards open space development in the Parish of Black Notley.

9. REPRESENTATIONS

9.1 27 representations received making the following comments:

- Unsafe access onto Witham Road. There is restricted visibility. Pedestrians crossing the road nearby would have to consider this new access and more vehicles.
- Anxiety for local residents due to noise and loss of amenity.
- Disruption to local residents during building work.
- Loss of view.
- Loss of wildlife habitat.
- Tight form of development.
- Eyesore in the landscape when viewed from Cressing Train Station.
- Insufficient local infrastructure (doctors, schools and road network).
- Overlooking from new development.
- Development is outside of village envelope contrary to Policy SP3, SP7 and LPP1 of the Adopted Local Plan.
- The proposed houses would be out of keeping with existing dwellings in Meadow Way, which are retirement bungalows.
- Covenant on the land to stope development.
- Land is not allocated for development in the Adopted Local Plan.
- There are already lots of large housing development nearby.
- Concerns that this application could lead to further development.
- The application site is not sustainable and lies adjacent to a third tier village, Black Notley.
- Unacceptable impact on the Brain Valley which has a moderate to high sensitivity to change.
- Water runoff could adversely affect some houses in Meadow Way.
- Properties in Meadow Way could be vulnerable to burglaries.
- Concern regarding long term biodiversity and Biodiversity net gain for the site.
- Concern regarding the lack of Suds and carriageway drainage information.
- How would the development enable the Government achieve Net Zero by 2050?
- Development should not be built on Green Belt land.
- The application should be refused as was 20/02127/OUT.
- 13 new houses would not make a huge different to the housing supply shortage.

10. PRINCIPLE OF DEVELOPMENT

10.1 National Planning Policy Framework (NPPF)

10.1.1 As set out in Paragraph 7 of the NPPF, the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 of the NPPF explains that achieving sustainable development means that the planning system has three overarching objectives: economic; social;

and environmental; which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives).

- 10.1.2 Paragraph 9 of the NPPF outlines that planning decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area. In addition, paragraph 38 of the NPPF prescribes that local planning authorities should approach decisions on proposed development in a positive and creative way and that decision makers at every level should seek to approve applications for sustainable development where possible.
- 10.1.3 Paragraph 12 of the NPPF sets out that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making. In addition, paragraph 47 of the NPPF states that planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 10.1.4 The NPPF underlines the Government's objective of significantly boosting the supply of homes. In this regard, Paragraph 60 of the NPPF highlights the importance of ensuring that there is a sufficient amount and variety of land that can come forward where it is needed, that specific housing requirements are met, and that land with permission is developed without unnecessary delay. Paragraph 74 of the NPPF outlines that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against (in the case of Braintree District) our 'local housing need' plus the relevant buffer.
- 10.1.5 In this regard, and in considering the overall planning balance as to whether the proposed development subject to this application constitutes sustainable development, an important material consideration in this case is whether the Council can robustly demonstrate a 5 Year Housing Land Supply. This will affect whether Paragraph 11 of the NPPF is engaged and consequently the weight that can be attributed to the Development Plan (see below).

10.2 5 Year Housing Land Supply

- 10.2.1 The Council has an up-to-date Local Plan which has an approved minimum housing target of 716 new homes per year in the District between 2013 and 2033.
- 10.2.2 To this annual supply the Council must add the backlog which it has not delivered at that level since the start of the Plan period. This figure is recalculated each year and as of April 2022 stands at 1,169 across the 5 Year Housing Land Supply.

- 10.2.3 The Council must also apply a buffer to the housing land supply based on the results of the Housing Delivery Test. In the latest results published on the 14th January 2022, the Council had delivered 125% of the homes required. This means that the Council is required to apply the lowest level of buffer at 5%.
- 10.2.4 Taking the above into account, the Council's latest 5 Year Housing Land Supply position for 2022-2027 shows a supply of 4.86 years. This position is marginal and with a number of strategic sites starting to deliver homes alongside other permissions, that situation is likely to change.
- 10.2.5 Nevertheless, as the Council cannot demonstrate the required 5 Year Housing Land Supply, the 'tilted balance' pursuant to Paragraph 11d) of the NPPF is engaged. It also means that the most important Development Plan policies relevant to the provision of housing are out-of-date. However, this does not mean that Development Plan policies should be completely disregarded. It is for the decision-maker to determine the weight to be attributed to the conflict with those policies.

10.3 The Development Plan

- 10.3.1 The Council's statutory Development Plan consists of the Braintree District Local Plan 2013 – 2033.
- 10.3.2 The site is situated outside of the defined development boundary and has no specific allocation on the proposals map of the Adopted Local Plan. Policy LPP1 of the Adopted Local Plan states, '*development outside development boundaries will be confined to uses appropriate to the countryside whilst also protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils to protect the intrinsic character and beauty of the countryside*'.
- 10.3.3 As the site is situated outside of the defined development boundary the submitted proposal is considered as a departure from the Adopted Local Plan, and is contrary to Policy LPP1 of the Adopted Local Plan.

11. SITE ASSESSMENT

11.1 Location and Access to Services and Facilities

- 11.1.1 The Adopted Local Plan states in Paragraph 3.12, '*development boundaries provide a guide to where the Council believes new growth should be directed*'.
- 11.1.2 Paragraph 78 of the NPPF states 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. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services.

- 11.1.3 Policy SP3 of the Adopted Local Plan states that existing settlements will be the principal focus for additional growth across the North Essex Authorities area within the Local Plan period. Development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role both within each individual district and, where relevant, across the wider strategic area.
- 11.1.4 The site is located outside of the designated development boundary of Black Notley, however it is located within close proximity to the village, and forms part of the existing residential curtilage of 231 Witham Road. There is opportunity for walking, cycling and public transport links to a full range of services and facilities nearby and within nearby Braintree town.
- 11.1.5 Therefore, it is reasonable to conclude that the site is not isolated in terms of its functional connectivity to services and facilities, as was found by the Planning Inspector in the dismissal of the Brain Valley Avenue appeal. (APP/Z1510/W/21/3281232).
- 11.1.6 *42. Overall, I conclude that the development would be in a suitable location in respect of access to day-to-day services by sustainable travel modes. In this respect, I find no conflict with CS Policy CS 7 or Policy SP 3 of the North Essex Authorities Shared Strategic Section 1 Plan which seek to ensure that development is provided in accessible locations. Neither do I find conflict with Section 9 of the Framework which indicates that the planning system should actively manage patterns of growth in order to promote sustainable transport.*
- 11.1.7 *43. In respect of accessibility, I do not find direct conflict with CS Policy CS5 or BDLPR Policy RLP 2 as they seek to protect the countryside and I have dealt with this matter earlier in the decision.*

11.2 Landscape Impact

- 11.2.1 The NPPF states in Paragraph 174 that planning policies and decisions should contribute to and enhance the natural and local environment recognising the intrinsic character and a beauty of the countryside.
- 11.2.2 Policy LPP1 of the Adopted Local Plan states, '*development outside development boundaries will be confined to uses appropriate to the countryside whilst also protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils to protect the intrinsic character and beauty of the countryside*'.
- 11.2.3 Policy LPP67 of the Adopted Local Plan further states, '*the Local Planning Authority will take into account the different roles and character of the various landscape areas in the District and recognise the intrinsic character and beauty of the countryside in order to ensure that any development permitted is suitable for the local context*'.

- 11.2.4 The planning application is supported by a landscape summary. Officers engaged an Independent Landscape Consultant (ILC) to assess the document and their observations form part of the following paragraphs.
- 11.2.5 The application does not include a landscape and visual appraisal (LVA), but is accompanied by a 'landscape summary'. This document provides an overview of the site context and also identifies relevant landscape and visual receptors. The landscape summary offers a description of the site and its immediate surroundings. This is further contextualised by references to the national landscape character assessment (Area NCA86), the Braintree local landscape character assessment (Area A10), and the Braintree settlement fringe analysis (Area B8). The relevant extracts are included for each report.
- 11.2.6 In a section identifying landscape receptors, the summary report correctly highlights the character of the Brain River Valley as being a receptor, with some references made to elements of the site itself. Some important sensitivities are acknowledged, but the report offers no assessment of the potential change to landscape character or individual landscape elements. Potential visual receptors are all highlighted within the summary document. This is predominantly limited to existing residents backing on to the site and limited views from surrounding public rights of way (PRoW). Some aspects of predicted visual change are mentioned briefly, with no real assessment of visual effects offered. Seven photo viewpoints are provided within the landscape summary, illustrating visibility to the site from identified receptors.

Predicted Landscape Effects

- 11.2.7 The proposed scheme would present a substantial change to the character of the site itself, changing from an agricultural field to built residential development and some topographic change would be required to facilitate construction on the sloping landform. However, character change is likely to be restricted mainly to the site itself. A low to negligible change is predicted to the wider Brain Valley character area due to screening from existing vegetation, topography, and buildings.
- 11.2.8 Existing adjacent housing within Black Notley is located on lower slopes of the sensitive river valley, with a line of properties also already present on higher land along Witham Road. The proposed development therefore does not represent a major deviation from the built envelope of the village.

Predicted Visual Effects

- 11.2.9 The photo viewpoints included within the landscape summary provide an accurate reflection of views towards the site. There will be some visual change from Witham Road, where partial demolition of number 231 and the widened access will be visible. Public views to new dwellings will be limited from the west, with low level glimpses available between existing housing. A small group of properties with gardens backing on to the site along

Witham Road and Meadow Way are likely to have relatively short distance views and experience a high level of change.

- 11.2.10 Views from surrounding PRowS and The Notleys Golf Club will be restricted by existing vegetation. Proposed housing will be glimpsed above and between existing trees, but is likely to be read with the backdrop of existing development along Witham Road and Meadow Way. Therefore, a low level of visual change is predicted for PRow users and members of the golf club.

Proposed Mitigation

- 11.2.11 Although landscape is a reserved matter, the submitted application shows indicative locations for boundary planting. It is the ILC's opinion that new boundary trees and hedgerow planted as indicated on the layout plan will act to reduce landscape and visual effects. However, this proposed new planting would be located in private gardens where its future cannot be guaranteed by the Local Planning Authority and could be removed at any time by new occupiers. Therefore, Officers are of the view that the site is not able to accommodate the 13 dwellings proposed, in a form that would have the appropriate level of mitigation screening maintained within the communal/public areas of the site.
- 11.2.12 It is the ILC's opinion that change to landscape character will be predominantly restricted to the site itself. The site will experience a high level of change, moving from an agricultural field to residential development. A low to negligible change is predicted to the wider Brain Valley character area due to screening from existing vegetation, topography, and buildings. Visual change will be most apparent from a selection of existing properties along Witham Road and Meadow Way backing on to the site. A small group of residents will experience a high level of visual change. Public views from the west will be heavily screened by existing development.
- 11.2.13 There may be some glimpsed visibility to new development from the surrounding PRow network and for users of the adjacent golf club. Views are likely to be screened by existing vegetation, with glimpses possible above and between existing trees. It is important to note that new dwellings are likely to be viewed with the backdrop of existing housing along Witham Road and Meadow Way, leading to a low level of visual change predicted for PRow users and members of the golf club.
- 11.2.14 The ILC's report concludes by stating that in their opinion there are not sufficient landscape grounds for refusal of planning permission alone.

11.3 Design, Appearance and Impact upon the Character and Appearance of the Area

- 11.3.1 Paragraph 126 of the NPPF highlights that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the

planning and development process should achieve. Good design is a key aspect of sustainable developments, creates better places in which to live and work and helps make development acceptable to communities.

- 11.3.2 Paragraph 130 of NPPF states that planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting.
- 11.3.3 Policy SP7 of the Adopted Local Plan states that all new development must meet high standards of urban and architectural design and provides a number of place making principles.
- 11.3.4 Policy LPP35 of the Adopted Local Plan requires, *inter alia*, that the density and massing of residential development will be related to the character of the site and its immediate surroundings, as well as the wider locality, existing vegetation including trees on the site and the necessity for further landscaping.
- 11.3.5 In addition, Policy LPP52 of the Adopted Local Plan require designs to recognise and reflect local distinctiveness in terms of scale, layout, height and massing of buildings. It also seeks high architectural quality and a proportion, composition, scale and orientation that enhances, activates and appropriately defines the public realm and comprise details and materials that complement, but not necessarily replicate the local architectural character.
- 11.3.6 Policy LPP35 of the Adopted Local Plan requires onsite amenity space to be provided in accordance with the adopted guidance and requires that all new development should be in accordance with the national technical housing standards.
- 11.3.7 Policy LPP52 of the Adopted Local Plan seeks a high standard of accommodation and amenity for all prospective occupants.
- 11.3.8 This is an outline application where layout, scale, appearance, and landscaping are reserved matters and thus are not considered as part of this application. The Applicant's Agent has confirmed that the submitted house types, site, and block plans are illustrative.
- 11.3.9 The indicative layout plan includes a table of information that includes garden areas and depths, and it shows that 8 properties (Plots 1, 3, 4, 7, 10-13) would have gardens with a depth less than 15m. Whilst this layout is illustrative and could change by the time a reserved matters application is submitted, this is another reason why Officers are of the view that the site cannot accommodate the quantum of development proposed in an arrangement that would result in good design and level of amenity for existing and future occupiers.
- 11.3.10 Furthermore, whilst the layout plan is indicative, a significant amount of hard landscaping is also proposed to the front of the dwellings to

accommodate the required level of off-street car parking, which would result in an extremely car dominated streetscene and would give rise to a poor quality development.

11.3.11 On this issue, and notwithstanding the illustrative nature of the plans, Officers can only conclude that developing the site for the quantum of development proposed would have a harmful impact upon the character and appearance of the local area, conflicting with the Policies outlined above.

11.4 Ecology

11.4.1 Policy LPP66 of the Adopted Local Plan requires that development proposals shall provide for the protection of biodiversity and the mitigation or compensation of any adverse impacts. Additionally, enhancement of biodiversity should be included in all proposals, commensurate with the scale of the development.

11.4.2 The Council's Ecologist has reviewed the Preliminary Ecological Appraisal (Arbtech Consultancy Ltd, March 2023), submitted by the Applicant, relating to the likely impacts of development on designated sites, protected and Priority Species & Habitats.

11.4.3 The Council's Ecologist is satisfied that sufficient ecological information is available for determination. This provides certainty for the LPA of the likely impacts on designated sites, Protected and Priority Species & Habitats and, with appropriate mitigation measures secured, the development can be made acceptable. Therefore, the mitigation measures as detailed in the Preliminary Ecological Appraisal (Arbtech Consultancy Ltd, March 2023), must be secured and implemented in full. This is necessary to conserve protected and priority species and habitats, particularly bats, badgers, nesting birds, and hedgehogs that may commute and forage across the application site during the construction period.

11.4.4 The Council's Ecologist also recommends that a Wildlife Friendly Lighting Strategy, as indicated in the Preliminary Ecological Appraisal (Arbtech Consultancy Ltd, March 2023), is implemented for this application, which follows guidance from The Institute of Lighting Professionals & Bat Conservation Trust Guidance Note 08/18: Bats and artificial lighting in the UK.

11.4.5 The Council's Ecologist also recommend that the biodiversity enhancement measures, as outlined in the Preliminary Ecological Appraisal (Arbtech Consultancy Ltd, March 2023), should be delivered for this application, to secure net gains for biodiversity, as outlined under Paragraph 174d of the National Planning Policy Framework 2021. The proposed biodiversity enhancements should be secured as a condition of any consent via a Biodiversity Enhancement Layout and should specify the type, number, location, height, and orientation of the proposed enhancements.

11.5 Impact upon Neighbouring Residential Amenity

- 11.5.1 The NPPF requires a good standard of amenity for all existing and future occupants of land and buildings. Policy LPP52 of the Adopted Local Plan seeks to ensure that there is no unacceptable impact on the amenity of nearby properties including, privacy, overshadowing, loss of light and overbearing impact.
- 11.5.2 The proposed vehicular access that would serve the 13 new dwellings would be located directly in between two existing residential properties, No.229 and No.231 Witham Road.
- 11.5.3 Currently this side access serves just one residential property, No.231 Witham Road.
- 11.5.4 Officers consider that the increase in vehicle movements and the resulting noise and disturbance from the use of this new access, would be unacceptable to the amenity of the occupiers of both 229 and 231 Witham Road. Officers consider that the use of this vehicular access to serve 13 dwellings would be contrary to the NPPF and Policy LPP52 of the Adopted Local Plan.
- 11.5.5 Existing properties along Meadow Way and Witham Road are those which would be closest to the development. Whilst their outlook would change as a result of the development, private views are not protected.
- 11.5.6 However, the indicative layout plan shows that the three properties (Plots 3,4 and 5) that would lie to the east of the existing properties located in Witham Road would have gardens with a depth less than 15m. Whilst this layout is illustrative and could change by the time a reserved matters application is submitted, as set out earlier in this report, Officers are of the view that it has not been adequately demonstrated that the site cannot accommodate the quantum of development proposed in an arrangement that would result in maintaining an acceptable relationship with the existing properties to the west, in terms of outlook and privacy.

11.6 Highway Considerations

- 11.6.1 Paragraph 111 of the NPPF states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residential residual cumulative impacts on the road network would be severe.
- 11.6.2 Policy LPP43 of the Adopted Local Plan requires that development will be required to provide vehicular and cycle parking in accordance with the Essex Vehicle Parking Standards.
- 11.6.3 Policy LPP52 of the Adopted Local Plan requires that, '*The development proposed should not have a detrimental impact on the safety of highways or any other public right of way, and its users*'.

- 11.6.4 The application proposes that access is considered at the outline stage and it is proposed that the development would be served by a single access point off Witham Road.
- 11.6.5 The Highways Authority have considered the submitted access information and considered it to be acceptable for the scale of development proposed.
- 11.6.6 Having visited the site and experienced the volume of vehicular traffic, Officers acknowledge the Parish Council and local resident's concerns with regards to the proposed access off Witham Road. However Officers have considered the submitted plans and the comments made by the Highway Authority and would advise Members that without any evidence of a 'severe' highway impact in the terms of the NPPF and, notably, without support for this position from the Highway Authority, it would prove difficult to justify and challenging to defend at appeal.

11.7 Archaeology

- 11.7.1 The proposed site lies within an area of high archaeological potential. Witham Road is a historic route, settlement along the road can be traced back to the medieval period. The Chapman and Andre map of 1777 depicts a house and buildings along the road in this area. Evidence for a Roman villa site has been revealed in the fields surrounding Black Notley Hall and Roman material has been recovered from along the River Brain to the north of the site. Earlier prehistoric pottery has also been recovered from the area and cropmark evidence indicates possible prehistoric ritual activity and agricultural activity in the vicinity. There is high potential for further archaeological remains associated with the Roman and medieval settlement which will be impacted upon by the proposed development.
- 11.7.2 An archaeological trial trench investigation will be required to determine the impact of the development on archaeological remains in line with Paragraph 194 (NPPF, 2021).
- 11.7.3 Specifically worded conditions are requested requiring a programme of archaeological investigation to be submitted prior to the commencement of development that accords with a written scheme of investigation.

11.8 Drainage and Flood Risk

- 11.8.1 Policy LPP74 of the Adopted Local Plan states that, '*new development shall be located on Flood Zone 1 or areas with the lowest probability of flooding, taking climate change into account and will not increase flood risk elsewhere*'.
- 11.8.2 Policy LPP76 of the Adopted Local Plan states that all new development of 10 dwellings or more and major commercial development, car parks and hard standings will incorporate Sustainable Drainage Systems (SuDs) appropriate to the nature of the site. Such systems shall provide optimum

water runoff rates and volumes taking into account relevant local or national standards and the impact of the Water Framework Directive on flood risk issues, unless it can be clearly demonstrated that they are impracticable.

- 11.8.3 Based on the submitted location plan (site red line) the site lies entirely in Flood Zone 1 (lowest risk of flooding). The submission of a flood risk assessment for the development is not required as the site is less than 1ha in Flood Zone 1.
- 11.8.4 The Lead Local Flood Authority (LLFA) were consulted on the application as it relates to more than 10 dwellings, however they have not been able to make comments as the application is not accompanied by any drainage documentation. In the absence of this drainage information, Officers are not satisfied that the proposals comply with Policy LPP76 and therefore a putative reason for refusal is recommended to safeguard the Council's position should the application submit an appeal.
- 11.9 Habitat Regulations Assessment (HRA / RAMS)
- 11.9.1 In terms of the wider ecological context, the application site sits within the Zone of Influence of one or more of the following:
- § Blackwater Estuary Special Protection Area and Ramsar site;
 - § Dengie Special Protection Area and Ramsar site;
 - § Essex Estuaries Special Area of Conservation.
- 11.9.2 It is therefore necessary for the Council to complete an Appropriate Assessment under the Habitat Regulations to establish whether mitigation measures can be secured to prevent the development causing a likely significant adverse effect upon the integrity of these sites.
- 11.9.3 An Appropriate Assessment (Habitat Regulation Assessment Record) has been completed in accordance with Natural England's standard guidance. Subject to the proposed mitigation measures set out in the Council's Habitat Regulations Assessment being secured these mitigation measures would rule out the proposed development causing an adverse effect on the integrity of the above European Designated Sites.
- 11.9.4 The proposed mitigation measures would consist of the securing of a financial contribution of £156.76 per dwelling erected towards offsite visitor management measures at the above protected sites.
- 11.9.5 This financial contribution would normally be secured by way of a Section 106 Legal Agreement.

12. PLANNING OBLIGATIONS

- 12.1 Paragraph 56 of the NPPF sets out that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and

reasonably related in scale and kind to the development. This is in accordance with Regulation 122 of the Community Infrastructure Levy (CIL) Regulation. The following identifies those matters that the District Council would seek to secure through a planning obligation, if it were proposing to grant it permission.

- 12.2 Policy LPP78 of the Adopted Local Plan states that permission will only be granted if it can be demonstrated that there is sufficient appropriate infrastructure capacity to support the development or that such capacity will be delivered by the proposal. It must further be demonstrated that such capacity as is required will prove sustainable over time both in physical and financial terms.
- 12.3 Where a development proposal requires additional infrastructure capacity, to be deemed acceptable, mitigation measures must be agreed with the Council and the appropriate infrastructure provider. Such measures may include (not exclusively);
- Financial contributions towards new or expanded facilities and the maintenance thereof
 - On-site construction of new provision
 - Off-site capacity improvement works and/or
 - The provision of land
- 12.4 Developers and land owners must work positively with the Council, neighbouring authorities and other infrastructure providers throughout the planning process to ensure that the cumulative impact of development is considered and then mitigated, at the appropriate time, in line with their published policies and guidance.
- 12.5 The following are identified those matters that the District Council would seek to secure through a planning obligation, if it were preparing to grant 73 permission and the Applicant has agreed to enter into a Section 106 legal agreement in respect of these matters:

Affordable Housing

- 12.6 In accordance with Affordable Housing Policy LP31, 40% of the dwellings (equalling 5) are required to be provided as affordable housing. In this case the Council's Housing Enabling Officer has confirmed their preferred approach would be to seek a commuted payment in lieu of affordable housing due to the scheme being relatively small, in a fairly remote location and unlikely to attract interest from registered providers of affordable housing.
- 12.7 Therefore, it is recommended a commuted payment in lieu of affordable housing is secured by a s106 agreement. We consider an appropriate payment would be £523,250 (13 x 40% = 5.2 x £100,625).

NHS

- 12.8 Financial contribution of £6,300 in order to increase capacity for the benefit of patients of the primary care network operating in the area. This may be achieved through any combination of extension, reconfiguration or relocation of premises and/or clinical staff recruitment or training.

Open Space

- 12.9 Policy LPP50 of the Adopted Local Plan states that all developments will be expected to provide new open spaces in line with the requirements set out in the Open Spaces SPD. The Councils Open Space SPD sets out details on how standards will be applied.
- 12.10 A development of this size would be expected to make provision onsite for informal and amenity open space. A financial contribution would be sought for outdoor sport and allotments. There is also a requirement to secure the ongoing maintenance of any open space provided on site.

Refuse Vehicle Access

- 12.11 To ensure that both the private and adopted roads are built to the standards commensurate with that required by the Local Highway Authority and that access for the Council to pass and repass over these roads can be permitted at all times.

HRA

- 12.12 The site lies within the Zone of Influence (ZOI) for the Blackwater Estuary SPA/Ramsar site. A financial contribution towards offsite visitor management measures for the Blackwater Estuary SPA & Ramsar site, (£156.76 per dwelling) for delivery prior to occupation would be required.
- 12.13 Subject to the above matters being incorporated into a Section 106 legal agreement to ensure their provision, the development would be made acceptable in these respects. No such agreement is in place at the present time and therefore the development fails to satisfactorily mitigate the impacts of the development on local infrastructure and is contrary to Policies LPP31, LPP50 and LPP78 of the Adopted Local Plan.

13. PLANNING BALANCE AND CONCLUSION

- 13.1.1 The presumption in favour of sustainable development sits at the heart of the NPPF. The Framework is clear in its instruction at Paragraph 11d, that for decision-taking this means where there are no relevant Development Plan policies, or the policies which are most important for determining the application are out-of-date (this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in Paragraph 73); or where the Housing

Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years), granting permission unless:

- i. The application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

- 13.1.2 As the Council cannot currently demonstrate a 5 Year Housing Land Supply, the 'titled balance' pursuant to Paragraph 11d) of the NPPF is engaged. As a consequence, the most important Development Plan policies relevant to the provision of housing are currently out-of-date due to a lack of 5 Year Housing Land Supply. However this does not mean that Development Plan policies should be completely disregarded. It is for the decision-maker to determine the weight to be attributed to the conflict with those policies. In this regard it is considered that Policy LPP1 of the Adopted Local Plan, which seeks to restrict development outside defined development boundaries to uses appropriate to the countryside, can only be afforded moderate weight. Similarly, it is considered that Policy SP3, which sets out the spatial strategy for North Essex, can only be afforded less than significant, but more than moderate weight.
- 13.1.3 In this case, it is not considered that pursuant to Paragraph 11d) (i) that the application of policies in the Framework provide a clear reason for refusing the proposed development.
- 13.1.4 As such, pursuant to Paragraph 11d) (ii) it is necessary to consider whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposed development, when assessed against the policies in this Framework taken as a whole. Such an assessment must take account of the economic, social and environmental impact of the proposed development and these matters must be considered in the overall planning balance.
- 13.1.5 As set out in Paragraph 8 of the NPPF, achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and needed to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):
- an economic objective (to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure);
 - a social objective (to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to

- meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being); and
- an environmental objective (to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy).

13.2 Summary of Adverse Impacts

- 13.2.1 The adverse impacts and the weight that should be given to these factors are set out below:

Conflict with the Development Plan

- 13.2.2 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. Paragraph 15 of the NPPF emphasises that the planning system should be “genuinely plan led”.
- 13.2.3 The proposed development would conflict with Policy LPP1 of the Adopted Local Plan as it proposes development outside of defined development boundaries and within the countryside, harmful to the character and appearance of the local area. However, while the proposal is contrary to Policy LPP1 of the Adopted Local Plan, as the Council is currently unable to demonstrate a 5 Year Housing Land Supply, only moderate weight can be afforded to this conflict.

Drainage

- 13.2.4 Policy LPP76 of the Adopted Local Plan states that all new development of 10 dwellings or more and major commercial development, car parks and hard standings will incorporate Sustainable Drainage Systems (SuDs) appropriate to the nature of the site. The application has not been supported by any drainage information. In the absence of this drainage information, there is conflict with Policy LPP76, and significant weight is attributed to this harm.

Harm to Neighbouring Residential Amenity

- 13.2.5 The NPPF requires a good standard of amenity for all existing and future occupants of land and buildings. Policy LPP52 of the Adopted Local Plan seeks to ensure that there is no unacceptable impact on the amenity of nearby properties including, privacy, overshadowing, loss of light and overbearing impact. The proposed development would give rise to an unacceptable level of vehicle movements directly adjacent to No.229 and 231 Witham Road, harmful to their amenity and contrary to Policy LPP52.

This harm weighs against the proposals and significant weight is attributed to this harm.

Design and Layout and Impact upon Character of the Area

- 13.2.6 The proposal fails to demonstrate that 13no. units can be accommodated on the site failing to secure a good level of amenity for existing and future occupiers contrary to Policy LPP52 of the Adopted Local Plan. Furthermore, the lack of adequate measures for landscape mitigation around the boundaries to the site would give rise to harm to the character and appearance of the area given the location of the site in this edge of settlement location. Moreover, the proposed screening mitigation which is indicated on the indicative plans would be located in private rear gardens which cannot be secured in perpetuity and could be removed at any time. These conflicts are afforded significant weight.

13.3 Summary of Public Benefits

- 13.3.1 The public benefits arising from the proposal and the weight that should be given to these factors are set out below:

Delivery of Market and Affordable Housing

- 13.3.2 The development would facilitate the provision of up to 13no. new dwellings, and as set out above a financial contribution would be secured towards the provision of off-site affordable housing provision. These benefits are only afforded moderate weight, given the scale of the development proposed and the Council's current 5 year housing land position.

Economic and Social Benefits

- 13.3.3 The proposal would deliver economic benefits during the construction period and economic and social benefits following occupation of the development, in supporting local facilities. However, given the scale of development proposed in this case, this is afforded no more than moderate weight.

13.4 Summary of Neutral Impacts

Section 106 Obligations

- 13.4.1 Should it have been entered into the proposals would have secured a number of Section 106, obligations including the aforementioned open space and an NHS contribution.
- 13.4.2 The Section 106 benefits are afforded limited weight, as the obligations are mitigating the impacts of the development in accordance with planning policy.

13.5 Conclusion

- 13.5.1 Taking into account the above, while the proposal complies with some Development Plan policies which weigh in favour of the proposal, it is considered that the proposal conflicts with the Development Plan as a whole. As set out within Paragraph 47 of the NPPF, planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise. In this case, as indicated above, an important material consideration in this case is that as the Council cannot currently demonstrate a 5 Year Housing Land Supply, the 'titled balance' pursuant to Paragraph 11d) of the NPPF is engaged. As a consequence, the most important Development Plan policies relevant to the provision of housing are currently out-of-date due to a lack of 5 Year Housing Land Supply. In this regard, Policy LPP1 of the Adopted Local Plan, which seeks to restrict development outside defined development boundaries to uses appropriate to the countryside, can only be afforded moderate weight. Notwithstanding this, Officers consider that there are no material considerations, including the Council's 5 Year Housing Land Supply position, that indicate that a decision should be made other than in accordance with the Development Plan. The Planning Balance is concluded below.

13.6 Planning Balance

- 13.6.1 When considering the planning balance and having regard to the adverse impacts and benefits outlined above, Officers have concluded that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. Consequently, it is recommended that planning permission would have been refused for the proposed development had it been in a position to determine the application.

14. RECOMMENDATION

- 14.1 It is RECOMMENDED that the following decision be made:
Had the local planning authority been in a position to determine the application that planning permission would have been REFUSED for the reasons outlined within APPENDIX 1.

CHRISTOPHER PAGGI
PLANNING DEVELOPMENT MANAGER

APPENDIX 1:

REASON(S) FOR REFUSAL / SUBMITTED PLAN(S) / DOCUMENT(S)

Submitted Plan(s) / Document(s)

Plan Description	Plan Ref	Plan Version
Proposed Site Plan	SL21.10.428.01	F
House Types	SL01.10.428.02	C
Block Plan	SL21.10.428.03	D
Location Plan	SL21.10.428.00	A

Reason(s) for Refusal

Reason 1

The proposed development is located outside of any settlement boundary. In such locations, only proposals that are compatible with and appropriate to the countryside will be permitted. The proposal is not one of those forms of development and therefore represents an encroachment into the countryside and an unacceptable form of urbanisation to the detriment of the character and appearance of the area. Furthermore, the lack of adequate measures for landscape mitigation around the boundaries to the site would exacerbate this harm given the location of the site in this edge of settlement location. The proposal is therefore contrary to the National Planning Policy Framework, and Policies SP1, SP3, SP7, LPP1 and LPP52 of the Adopted Braintree District Local Plan (2013-2033).

Reason 2

The access road for the proposed development, which would be located in between 229 and 231 Witham Road, would result in an unacceptable level of vehicular movements which would have a harmful impact upon the living conditions of the occupants of these properties in terms of noise and general disturbance and would be harmful to their general residential amenity. The proposal would therefore be contrary to the National Planning Policy Framework, and Policy LPP52 of the Adopted Braintree District Local Plan (2013-2033).

Reason 3

The proposal fails to demonstrate that 13no. units can be accommodated on the site in a satisfactory manner to ensure the development would be sympathetic to local character, including the landscape setting, and would fail to secure a good level of amenity for existing and future occupiers in terms of outlook and privacy. The scheme is therefore contrary to the National Planning Policy Framework, Policy LPP52 of the Adopted Braintree District Local Plan (2013-2033), and the Essex Design Guide.

Reason 4

The application was not accompanied by any supporting drainage information. In the absence of this drainage information, the proposal is contrary to Policy LPP76 of the Adopted Braintree District Local Plan (2013-2033) which requires that all new

development of 10 dwellings or more and major commercial development, car parks and hard standings will incorporate Sustainable Drainage Systems (SuDs) appropriate to the nature of the site.

Reason 5

The proposed development would trigger the requirement for:

- A commuted sum of £523,250 in lieu of on-site provision of affordable housing;
- Financial contribution towards increasing capacity for the benefit of patients of the primary care network operating in the area. This may be achieved through any combination of extension, reconfiguration or relocation of premises and/or clinical staff recruitment or training;
- The provision, maintenance and delivery of on-site amenity space;
- Financial contribution towards outdoor sports and allotments;
- Financial contribution towards off-site management measures for the Blackwater Estuary SPA and Ramsar site;
- Refuse Vehicle Access.

These requirements would need to be secured through a S106 planning obligation.

At the time of issuing this decision no agreement or unilateral undertaking had been prepared or completed. As such the proposal is contrary to Policy LPP78 of the Adopted Braintree District Local Plan (2013-2033), and the Open Space Supplementary Planning Document (SPD).

APPENDIX 2:

POLICY CONSIDERATIONS

National Planning Guidance

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

Braintree District Local Plan 2013 - 2033

SP1	Presumption in Favour of Sustainable Development
SP2	Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
SP3	Spatial Strategy for North Essex
SP4	Meeting Housing Needs
SP6	Infrastructure & Connectivity
SP7	Place Shaping Principles
LPP1	Development Boundaries
LPP31	Affordable Housing
LPP35	Housing Mix, Density and Accessibility
LPP42	Sustainable Transport
LPP43	Parking Provision
LPP46	Broadband
LPP47	Built and Historic Environment
LPP50	Provision of Open Space, Sport and Recreation
LPP52	Layout and Design of Development
LPP59	Archaeological Evaluation, Excavation and Recording
LPP63	Natural Environment and Green Infrastructure
LPP64	Protected Sites
LPP66	Protection, Enhancement, Management and Monitoring of Biodiversity
LPP67	Landscape Character and Features
LPP74	Flooding Risk and Surface Water Drainage
LPP75	Surface Water Management Plan
LPP76	Sustainable Urban Drainage Systems
LPP78	Infrastructure Delivery and Impact Mitigation

APPENDIX 3:

SITE HISTORY

Application No:	Description:	Decision:	Date:
17/00040/HOUSE	Erection of two storey side extension, single storey rear extension and erection of cart lodge	Appeal Allowed	29.09.17
15/00560/FUL	Provision of a new vehicle crossover	Withdrawn	25.06.15
16/01527/FUL	Erection of two storey side extension, single storey rear extension and detached cart lodge	Granted	03.11.16
16/01691/FUL	Retrospective application for new wall on frontage	Withdrawn	16.12.16
17/00023/FUL	Erection of two storey side extension, single storey rear extension and erection of cart lodge	Refused then allowed on appeal	28.03.17
17/01815/DAC	Application for approval of details reserved by condition no. 3 of approval 17/00023/FUL	Granted	20.10.17
21/03261/FUL	Erection of 1 x 5 bedroom two-storey detached dwellinghouse	Refused	14.03.22
22/00839/FUL	Erection of 1 x 3 bedroom two-storey detached dwellinghouse	Granted	10.06.22
23/01911/FUL	Demolition of The Piggeries and construction of 2 no. 3 bedroomed 2 storey semi-detached dwellings with parking & associated works .		

Report to: Planning Committee	
Planning Committee Date: 7th November 2023	
For: Decision	
Key Decision: No	Decision Planner Ref No: N/A
Application No:	04/2023/TPO
Description:	To consider an Objection to Tree Preservation Order 04/2023
Location:	1 Foundry Lane, Earls Colne, Essex, CO6 2SB
Landowners:	Trevor Beadle, 1 Foundry Lane, Earls Colne CO6 2SB
Date Served:	22/05/2023
Recommendation:	It is RECOMMENDED that the following decision be made: § To confirm the provisional Tree Preservation Order (TPO) in the interests of amenity.
Options:	The Planning Committee can: a) Agree the Recommendation b) Vary the Recommendation c) Overtturn the Recommendation d) Defer consideration of the Application for a specified reason(s)
Appendices:	A summary of the Appendices is included at the end of this Committee Report.
Case Officer:	Ana Patriarca, Tree and Landscaping Officer For more information about this Application please contact the above Officer on: 01376 551414, or by e-mail: ana.patriarca@braintree.gov.uk

Purpose of the Report:	This report considers objection(s) to the making of a Tree Preservation Order (TPO).
Financial Implications:	The cost of making the Tree Preservation Order (TPO) has been met from existing budgets.
Legal Implications:	<p>The Council is required to follow the legislative framework in place for making a Tree Preservation Order (TPO). The proposals set out within this report are in line with that legislative framework.</p> <p>If Members are minded to overturn the recommendation, the Planning Committee must give reasons for the decision.</p> <p>If the Recommendation to confirm the provisional Tree Preservation Order (TPO) is agreed by the Planning Committee, the TPO will be subsequently confirmed by the Local Planning Authority (LPA).</p> <p>All relevant policies are set out within the report, within Appendix 2.</p>
Other Implications:	<p><u>Consultation</u> The application has been subject to public consultation and consultation with relevant statutory and non-statutory consultees. All responses received in response to this consultation are set out within the body of this Committee Report.</p> <p><u>Climate Change</u> If the Order is not confirmed there is a risk that the visual amenity of the area will be diminished, and the tree(s) contribution of carbon sequestration will be lost.</p> <p><u>Risk</u> Compensation rights could arise if the Council subsequently refuses an application for tree work and the tree or part of it then fails or causes damage.</p>
Equality and Diversity Implications:	<p>Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:</p> <p>a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act;</p>

	<p>b) Advance equality of opportunity between people who share a protected characteristic and those who do not;</p> <p>c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.</p> <p>The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).</p> <p>The consideration of this application has not raised any equality issues.</p>
<p>Background Papers:</p>	<p>The following background papers are relevant to this application include:</p> <ul style="list-style-type: none"> § Copy of Tree Preservation Order (TPO including site location plan) § Copy of TEMPO Assessment § Photos § Representations Received <p>(See Appendix for copies of the above)</p> <ul style="list-style-type: none"> § Part VIII of the Town and Country Planning Act 1990 (as amended) § The Town and Country Planning (Tree Preservation) (England) Regulations 2012 § Section 192 of the Planning Act 2008 § Part 6 of the Localism Act 2011 <p>§ Policy Documents:</p> <ul style="list-style-type: none"> § National Planning Policy Framework (NPPF) § National Planning Policy Guidance (NPPG) § Braintree District Local Plan 2013 - 2033 § Braintree District Council Tree Strategy <p>The National Planning Policy Framework can be viewed on the GOV.UK website: www.gov.uk/.</p> <p>The other abovementioned policy documents can be viewed on the Council's website: www.braintree.gov.uk.</p>

1. Purpose of the Report

1.1 This report considers the objections raised by Mr Trevor Beadle to the making of Tree Preservation Order 04/2023.

2. Recommendations

2.1 That Tree Preservation Order No. 04/2023 at 1 Foundry Lane, Earls Colne, Essex, CO6 2SB is confirmed, to ensure that the visual amenity is retained by securing the protection of this tree.

3. Background

3.1 A Section 211 notice (Application Reference 22/00555/TPOCON) for the felling of a mature Pine was submitted by the owner of 1 Foundry Lane, Earls Colne on 2nd March 2022 and validated on 11th March 2022.

3.2 This notification prompted a site visit by David Watson, Tree and Landscape Officer for Landscape Services (David Watson has since then left the Council's employment). The tree was viewed from publicly accessible areas. A TEMPO assessment was carried out (Appendix 2) and the scores corroborated this tree was worthy of a Tree Preservation Order. It was considered this tree had high amenity value and contributed significantly to local landscape and should be retained.

3.3 A provisional Tree Preservation Order (01/2022/TPO) was subsequently served on 19th April 2022, which lapsed on the 19th October 2022.

3.4 This provisional Tree Preservation Order has now been re-served under the reference number 04/2023 (Appendix 1).

3.5 A copy of the provisional order was sent to the owner and neighbours. A letter of objection was received on 2nd June 2023 from Mr Trevor Beadle, of 1 Foundry Lane, Earls Colne (Appendix 4).

4. Representations

4.1 After the provisional TPO was served, objections were received from Mr Trevor Beadle of 1 Foundry Lane, Earls Colne, reiterating his reasons for wanting to fell the tree.

4.2 Mr Beadle states the main problem is the Pine is a Woodland Tree, not native. The tree was allegedly planted by TJ Mann the Timber Merchants before the 1940s and its presence is causing an increasing amount of work and stress and affecting their health.

4.3 Mr Beadle states layers of Pine needles drop on his garden for most of the year, clogging his fish pond.

- 4.4 Mr Beadle states the pine cones and bird faeces are causing issues on the pavement and passing people, with regular complaints from the public. Mr Beadle believes he should not be responsible for street cleansing, and due to the local Council's refusal to allow the tree to be felled, he has decided to no longer sweep the bird mess.
- 4.5 Mr Beadle mentions a visit carried out by a former staff member (David Watson) in the context of the previous Section 211 Notice Tree Works. David Watson, during the visit, established the tree was healthy, while Mr Beadle reiterated his belief that the Pine should be located in a woodland.
- 4.6 Mr Beadle highlights the fact that the branches need to be regularly trimmed as the telephone wire within the vicinity of the tree.
5. Assessment
- 5.1 Tree Preservation Order 06/2023 includes 1 mature Black Pine which had already been covered by the lapsed Tree Preservation Order 01/2022.
- 5.2 The tree is located on the rear garden of 1 Foundry Lane, near the west boundary of the property. The property is within Earls Colne Conservation Area.
- 5.3 The Pine is very visible from publicly accessible areas along the High Street, Massingham Drive and Foundry Lane, and also visible from the adjacent properties (Appendix 3).
- 5.4 The tree is a mature Pine with estimated age of over 70 years. The Pine is very prominent, with a balanced form typical of the species and it appears to be in good condition. It is considered this tree has great amenity value and contributes to the local landscape as it is a focal point and part of the skyline due to its height and form.
- 5.5 A Section 211 Notice, Tree Works Application Reference 22/00555/TPOCON was submitted by the owner. In the context of this application the owner cited the presence of Honey Fungus in the garden as a reason for pre-emptively felling this Pine tree. However, it is worth noting that Black Pines are generally resistant to Honey Fungus, and the Tree and Landscape Officer at the time, David Watson, was able to confirm that the tree was in fact healthy.
- 5.6 On 6th April 2022 a TEMPO assessment was carried out (Appendix 2) and the scores corroborated the tree was worthy of a Tree Preservation Order. It was considered the tree contributed significantly to the sense of place, biodiversity and local character and that its felling was unwarranted and unacceptable.
- 5.7 A Tree Preservation Order (TPO) is a mechanism that protects specific trees or a particular woodland from deliberate damage or destruction, as stated by the Town and Country Planning Act 2012 Regulations. TPOs can

be placed on any tree with high amenity or high conservation value, independently of its species. Most protected trees in landscaped areas are non-natives and many woodlands also enjoy the TPO protection status.

- 5.8 The Council does not support the excessive pruning or removal of a protected tree to prevent or reduce bird droppings. Healthy and attractive trees are an asset to the environment and bird fouling is not sufficient justification for the tree to be removed. The removal of bird droppings from private property is the sole responsibility of the landowner.
- 5.9 The Council does not support the excessive pruning or removal of a protected tree to mitigate or reduce the nuisance of falling leaves/needles, seeds or fruits from either the homeowners or third-party land. Although they can be an inconvenience, falling leaves & debris are not regarded as a 'nuisance' in law.
- 5.10 It is normally up to the landowner whether they own a tree or not to undertake their own routine 'property maintenance' if for example, they need to clear paths, lawns, driveways, or gutters. These tasks are part of a natural cycle to be expected when living in proximity to trees and are not considered to be sufficient reason for removal of a protected tree.
- 5.11 The designation of a Tree Preservation Order does not exclude maintenance works to the tree with prior consent. Although it is understood that this Order adds an extra layer of work to the regular tree maintenance operations, it is considered that the public benefit of protecting this Pine outweighs the inconvenience. The potential loss of this tree would have an irreparable negative impact on the local landscape.

6. Conclusion

- 6.1 While the objections received are noted, in this case and following further assessment, it is concluded that the tree is worthy of protection.

7. Options

- 7.1 The options are:
- 1) To confirm the provisional Tree Preservation Order in the interests of amenity.
 - 2) Not to confirm the provisional Tree Preservation Order and allow the owner(s) to prune/fell the tree(s) as they see fit.

8. RECOMMENDATION

- 8.1 It is RECOMMENDED that the following decision be made:
To confirm the provisional Tree Preservation Order in the interests of amenity.

CHRISTOPHER PAGGI
PLANNING DEVELOPMENT MANAGER

APPENDIX:

Contents:

- Appendix 1: Copy of 04/2023/TPO
- Appendix 2: Copy of TEMPO assessments
- Appendix 3: Photos
- Appendix 4: Representations Received

APPENDIX 1:

Copy of 04/2023/TPO

**THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND)
REGULATIONS 2012**

**Town and Country Planning Act 1990
TPO 04/2023/TPO**

The Braintree District Council, in exercise of the powers conferred on them by sections 198 of the Town and Country Planning Act 1990 make the following Order:- 1 Foundry Lane, Earls Colne, Essex, CO6 2SB

Citation

1. This Order may be cited as TPO 04/2023/TPO

Interpretation

2. (1) In this Order "the authority" means the Braintree District Council.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012

Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsections (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners), and subject to the exceptions in regulation 14, no person shall—
- (a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
 - (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provisions for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this *22nd* day of *May* 2023

"The Common Seal of BRAINTREE DISTRICT COUNCIL was hereunto affixed in the presence of:

Authorised Signatory 



SCHEDULE

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

REF. ON MAP	DESCRIPTION	SITUATION
T1	Pine	Boundary of rear garden, adjacent to footpath

Trees specified by reference to an area
(within a dotted black line on the map)

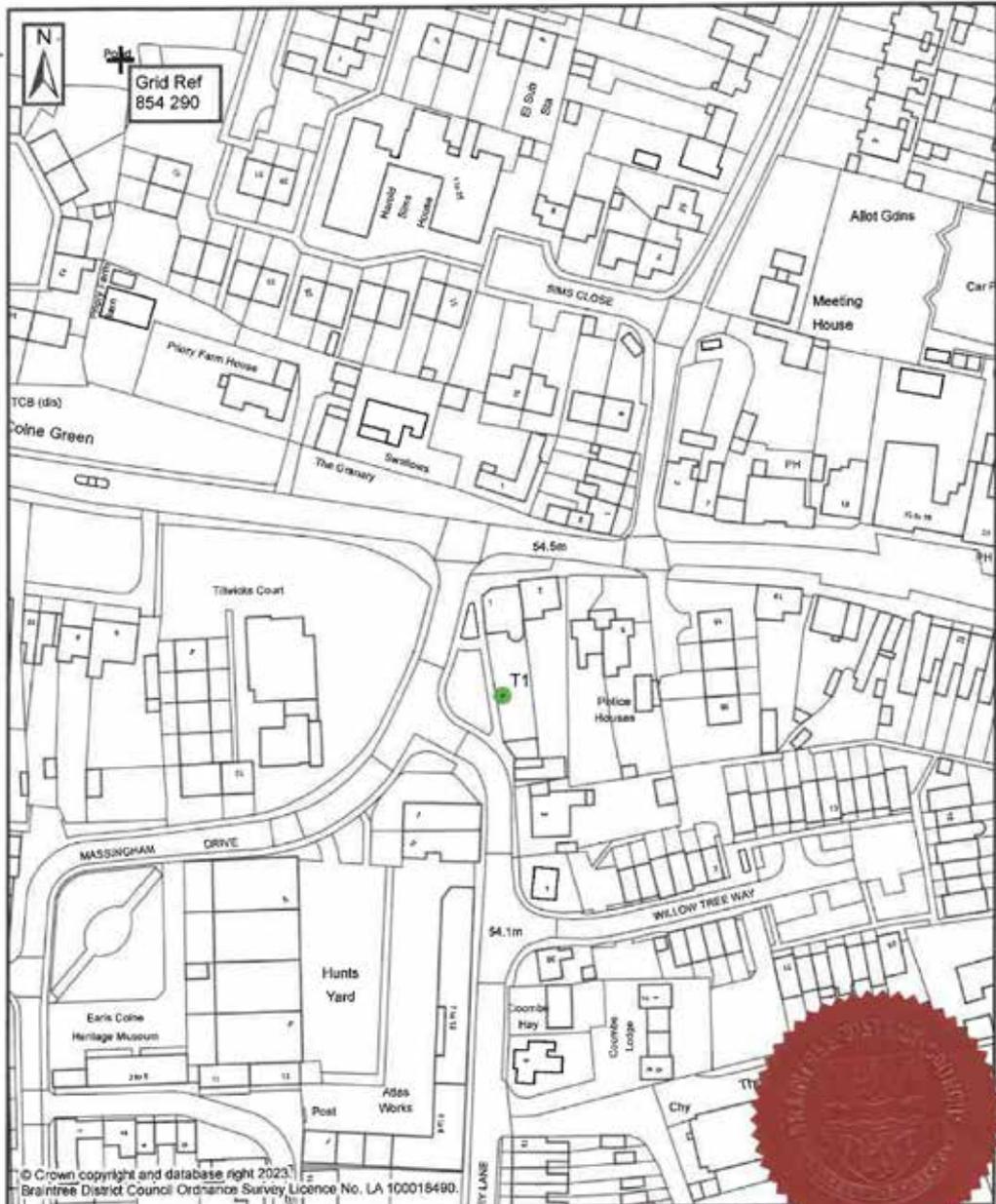
REF. ON MAP	DESCRIPTION	SITUATION
	NONE	

Groups of trees
(within a broken black line on the map)

REF. ON MAP	DESCRIPTION	SITUATION
	NONE	

Woodlands
(within a continuous black line on the map)

REF. ON MAP	DESCRIPTION	SITUATION
	NONE	



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Braintree District Council Ordnance Survey Licence No. LA 100016460.

Planning Department

This is the map referred to in the
Ordinance Survey Licence No. LA 100016460

Date: APRIL 2023	TREE PRESERVATION ORDER 04/2023; Order No. 04/2023 1 FOUNDRY LANE EARLS COLNE CO6 2SB
Ref: 114-4-959	
Drawn: DF	
Scale: 1:1250 TL 8529	

Braintree
District Council

APPENDIX 2:

Copy of TEMPO assessments:

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 6/04/22	Surveyor: David Watson
Tree details	
TPO Ref (if applicable):	Tree/Group No: T1 Species: Pine, Black
Owner (if known)	Location: 1 Foundry Lane, Earls Colne – boundary of rear garden, adjacent footpath.

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO; where trees in good or fair condition have poor form, deduct 1 point

5) Good	Highly suitable	Score & Notes 5
3) Fair	Suitable	
1) Poor	Unlikely to be suitable	
0) Dead /dying/ dangerous*	Unsuitable	
* Relates to existing context and is intended to apply to severe irreparable defects only		

b) Retention span (in years) & suitability for TPO

5) 100+	Highly suitable	Score & Notes 4
4) 40-100	Very suitable	
2) 20-40	Suitable	
1) 10-20	Just suitable	
0) <10*	Unsuitable	
*Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality		

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

5) Very large trees with some visibility, or prominent large trees	Highly suitable	Score & Notes 5
4) Large trees, or medium trees clearly visible to the public	Suitable	
3) Medium trees, or large trees with limited view only	Suitable	
2) Young, small, or medium/large trees visible only with difficulty	Barely suitable	
1) Trees not visible to the public, regardless of size	Probably unsuitable	

d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

5) Principal components of arboricultural features, or veteran trees	Score & Notes 1
4) Tree groups, or members of groups important for their cohesion	
3) Trees with identifiable historic, commemorative or habitat importance	
2) Trees of particularly good form, especially if rare or unusual	
1) Trees with none of the above additional redeeming features (inc. those of indifferent form)	

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

5) Immediate threat to tree	Score & Notes 5
3) Foreseeable threat to tree	
2) Perceived threat to tree	
1) Precautionary only	

Part 3: Decision guide

Any 0	Do not apply TPO	Add Scores for Total: 20	Decision: Definitely merits TPO
1-6	TPO indefensible		
7-11	Does not merit TPO		
12-15	TPO defensible		
16+	Definitely merits TPO		

APPENDIX 3:

Photos



Left: Pine T1 – Aspect of the tree from Foundry Lane facing north.

Below: Pine T1 – Aspect of the tree from Massingham Drive facing east.





Pine T1 – Aspect of the tree from Massingham Drive facing east.



Pine T1 – Aspect of the tree from the High Street facing south.

APPENDIX 4:

Representations Received

- 2 JUN 2023

Tree preservation Order (042023/TPO)

Dear Ana,

With reference to the Preservation order Certificate that we received today, and having spoken to your colleague, we will reiterate our reasons to remove our tree. The main problem being it is a Woodland Tree, not native and planted by TJ Mann the Timber Merchants way before we were born in the 1940s. We are now in our mid 70s with severe back problems and the inordinate amount of work involving the tree are now getting worse causing us undue stress. The problems are as follows;

(a) Layers of Pine needles for most of the year, clogging the Fish Pond that's full of fish. Pine Cones, and Bird faeces over the pavement outside and sometime actually on passing people! People have complained regularly.

(b) Why should we be responsible for the the Birds excreta falling on public land, when Braintree District Council have forbidden us to take the tree down in our own garden. In fact we will no longer sweep the Bird excreta we will leave it on the Pavement for all to see.

(c) The 'Blinkered Gentleman' from BDC that swept into our garden unannounced, (except for a knock on our door,) did not see the amounts' of Pine Needles that completely covered the Lawn as we had swept them each day! Nor did he care to listen to any of our concerns, just stated the tree was a (Quote) "Perfectly Healthy Tree". We stated "Yes in a Woodland area!"

(d) The branches of the tree have regularly need trimming as they in time hang over the Telegraph wire. At least we did not "Bang in a Copper nail" as many local people have told us to do, we have "Played by the rules, "and it appears only have support from family and friends who can see our dilemma.

Finally, we welcome The Parish Council to come and see the garden when the lawn and pavements are covered in Pigeon Faeces, Pine needles, and Cones rather than just stating "The tree is a good focal point for the village!"

Thank you,

Anne and Trevor Beadle

Report to: Planning Committee	
Planning Committee Date: 7th November 2023	
For: Decision	
Key Decision: No	Decision Planner Ref No: N/A
Application No:	06/2023/TPO
Description:	To consider an Objection to Tree Preservation Order 06/2023
Location:	3 The Mall, London Road, Braintree CM77 8FL
Landowners:	David Fugeman, 3 The Mall, London Road, Braintree CM77 8FL
Date Served:	22/05/2023
Recommendation:	It is RECOMMENDED that the following decision be made: § To confirm the provisional Tree Preservation Order (TPO) in the interests of amenity.
Options:	The Planning Committee can: a) Agree the Recommendation b) Vary the Recommendation c) Overturn the Recommendation d) Defer consideration of the Application for a specified reason(s)
Appendices:	A summary of the Appendices is included at the end of this Committee Report.
Case Officer:	Ana Patriarca, Tree and Landscape Officer For more information about this Application please contact the above Officer on: 01376 551414, or by e-mail: ana.patriarca@braintree.gov.uk

Purpose of the Report:	This report considers objection(s) to the making of a Tree Preservation Order (TPO).
Financial Implications:	The cost of making the Tree Preservation Order (TPO) has been met from existing budgets.
Legal Implications:	<p>The Council is required to follow the legislative framework in place for making a Tree Preservation Order (TPO). The proposals set out within this report are in line with that legislative framework.</p> <p>If Members are minded to overturn the recommendation, the Planning Committee must give reasons for the decision.</p> <p>If the Recommendation to confirm the provisional Tree Preservation Order (TPO) is agreed by the Planning Committee, the TPO will be subsequently confirmed by the Local Planning Authority (LPA).</p> <p>All relevant policies are set out within the report, within Appendix 2.</p>
Other Implications:	<p><u>Consultation</u> The application has been subject to public consultation and consultation with relevant statutory and non-statutory consultees. All responses received in response to this consultation are set out within the body of this Committee Report.</p> <p><u>Climate Change</u> If the Order is not confirmed there is a risk that the visual amenity of the area will be diminished, and the tree(s) contribution of carbon sequestration will be lost.</p> <p><u>Risk</u> Compensation rights could arise if the Council subsequently refuses an application for tree work and the tree or part of it then fails or causes damage.</p>
Equality and Diversity Implications:	<p>Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:</p> <p>a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act;</p>

	<p>b) Advance equality of opportunity between people who share a protected characteristic and those who do not;</p> <p>c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.</p> <p>The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).</p> <p>The consideration of this application has not raised any equality issues.</p>
<p>Background Papers:</p>	<p>The following background papers are relevant to this application include:</p> <ul style="list-style-type: none"> § Copy of Tree Preservation Order (TPO including site location plan) § Extract of Tree Survey & Arboricultural Impact Assessment, prepared by Underhill Tree Consultancy: Tree Removal Plan and Tree Protection Plan (not to scale) § Photos § Representations Received <p>(See Appendix for copies of the above)</p> <ul style="list-style-type: none"> § Part VIII of the Town and Country Planning Act 1990 (as amended) § The Town and Country Planning (Tree Preservation) (England) Regulations 2012 § Section 192 of the Planning Act 2008 § Part 6 of the Localism Act 2011 § Policy Documents: <ul style="list-style-type: none"> § National Planning Policy Framework (NPPF) § National Planning Policy Guidance (NPPG) § Braintree District Local Plan 2013 - 2033 § Braintree District Council Tree Strategy <p>The National Planning Policy Framework can be viewed on the GOV.UK website: www.gov.uk/.</p>

	The other abovementioned policy documents can be viewed on the Council's website: www.braintree.gov.uk .
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1. PURPOSE OF THE REPORT

- 1.1 This report considers the objections raised by: Mr David Fugeman of 3 The Mall, London Road, Braintree; by Mr James Firth of Frazer Halls Associates, in the capacity of agent of JVIL (London Road) Ltd: Underhill Tree Consultancy; and Mr Warne of 173 London Road, Braintree, CM77 8PT; to the making of Tree Preservation Order 06/2023.

2. RECOMMENDATIONS

- 2.1 That Tree Preservation Order No. 06/2023 at 3 The Mall, London Road, Braintree CM77 8FL, is confirmed, to ensure that the visual amenity is retained by securing the protection of this group of trees.

3. BACKGROUND

- 3.1 An application for an Outline Application for up to 9no. residential units was submitted by Mr James Firth of Frazer Halls Associates on 8th March 2023 and registered under Application Reference 23/00165/OUT.
- 3.2 A Tree Survey & Arboricultural Impact Assessment prepared by Underhill Tree Consultancy was submitted in the context of the abovementioned application. The report provides an assessment of the existing trees, which includes 52 isolated trees and one group. The assessment identifies the following tree categories and values: one tree is Category A (high) value, 21 trees of Category B (moderate) value, 26 trees and 1 group of Category C (low) value, and 3 trees of Category U (unsuitable for retention) value. The same report proposes the removal of 12 trees to allow development. One of these is a B category tree, 10 are C category, and 1 of U category. (Appendix 2).
- 3.3 Upon reviewing of the documents during the assessment of the Planning Application it was considered expedient to make a Tree Preservation Order to protect the existing trees that contribute significantly to the local landscape and have high amenity value. The TPO was made in the form of an Area, with the intention of later varying it to include individual trees.
- 3.4 This provisional Tree Preservation Order was served on the 22nd May 2023 under Reference Number 06/2023. A copy of the provisional order was sent to the owner and neighbours (Appendix 1).
- 3.5 A meeting on site with Mr Fugeman, Mr Firth and Mr Underhill took place on 5th June 2023 where their objections to the Tree Preservation were discussed.
- 3.6 Letters of objection were received on 13th June 2023 from Mr Fugeman of 3 The Mall, London Road, Braintree CM77 8FL, and on 15th June 2023 from Mr Firth of Frazer Halls Associates, Mr Underhill of Underhill Tree Consultancy, and Mr Warne of 173 London Road, Braintree, CM77 8PT. (Appendix 4).

3.7 A meeting with Mr Warne of 173 London Road, Braintree, CM77 8PT, took place on 14th July 2023, where his objections to the Tree Preservation order were discussed.

3.8 The matter has now been brought to the Planning Committee for a decision due to the unresolved nature of the objections.

4. REPRESENTATIONS

4.1 Representation from Mr Fugeman

4.1.1 The letter from Mr Fugeman of 3 The Mall, London Road, Braintree was received on 13th June 2023 and contains the following objections.

4.1.2 No historic value: The landowner argues that none of the oak trees on his property have historic value, as they are not category A trees and are of no real substance. He believes that the TPO is unnecessary for these trees, especially considering their location in a private setting.

4.1.3 No value to the local community: The landowner claims that since his rear garden is not accessible or visible to the general public, the oak trees cannot be adding any value to the local community. He suggests that the TPO is not justified in this case.

4.1.4 Tree house and liability: The landowner states that there is currently a tree house fixed to four of the oak trees. If the TPO remains, he would need to apply for planning permission to undertake repairs or remove the tree house. He also argues that if any of the trees were damaged, he would be liable. Additionally, he finds it ridiculous that if the TPO stands, he cannot have anyone use the tree house in case a tree is damaged in some way.

4.1.5 Misuse of TPO: The landowner suggests that the TPO was placed on the trees to prevent or stifle a planning application, which he claims was already in progress before the TPO was issued. He believes that the TPO is being misused in this situation, as it was not suggested or deemed necessary during the pre-planning application discussions with Braintree Planning.

4.1.6 Mr Fugeman also queries the fact that only the trees on his land are being protected by this Tree Preservation Order, while other trees of perceived similar value in adjacent properties are not.

4.2 Representation from Mr Firth

4.2.1 The letter from Mr Firth of Frazer Halls Associates, in the capacity of agents JVIL (London Road) Ltd, which was received on 15th June 2023 and contains the following objections.

- 4.2.2 Procedural flaws: Mr Firth argues that the process followed in serving the tree preservation order is procedurally flawed. They specifically refer to Regulation 5 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, which requires that notice be served on the persons interested in the land affected by the order. Since the Planning Agent's client has an interest in the land, they claim that the Local Planning Authority (LPA) should have served them with a notification of the proposed TPO. They further assert that the LPA is well aware of their client's interest in the land, as there is currently a live planning application on the site.
- 4.2.3 Reasons for making the order: Mr Firth also states that they have obtained a copy of a letter dated 22nd May 2023 from the landowner, which includes a statement of the reasons for making the order. According to the letter, the area in question is a densely wooded area mainly including some established veteran boundary Oaks of historical value, and the group provides good amenity to the surrounding area.
- 4.2.4 Representations on the order: Mr Firth states the site in question is a private garden with no public access, and the trees are not visible from public viewpoints.
- 4.2.5 Mr Firth highlights that according to the wording in the Government Planning Practice Guidance (PPG), the removal of each or any of the trees would have a significant negative impact on the local environment and its enjoyment by the public, and it given the presence of other trees and the lack of visibility from public areas, it has not been shown that the removal of trees would have a negative impact on the local environment and its enjoyment by the public.
- 4.2.6 Mr Firth argues that removal of individual trees could be achieved without an overall impact on the local environment as a whole and that it is disproportionate and not justified to apply a tree preservation order across all trees in this case.
- 4.2.7 Mr Firth states that no information has been provided on the structure and consistent methodology taken for assessing the amenity value of the trees.
- 4.2.8 Mr Firth argues that issuing a TPO at this stage would preempt the proper consideration of the current planning application (Application Reference 23/00651/OUT) and prevent the merits of individual trees from being considered as part of the process and suggests there should be a discussion with the Local Planning Authority (LPA) regarding appropriate amendments to the order, which may resolve their objections to the TPO.
- 4.3 Representation from Mr Underhill
- 4.3.1 The letter from Mr Underhill of Underhill Tree Consultancy, which was received on 15th June 2023 and contains the following objections.

- 4.3.2 Timing of the TPO: Mr Underhill argues that the timing of the TPO, after 18 months of consultation with the local authority and the deadline for the planning application has passed, seems to be a deliberate attempt to prevent and frustrate the planning application.
- 4.3.3 Scope of the TPO: Mr Underhill questions why the TPO only covers trees within or touching the redline of the application, while the Council's reasons for making the TPO state that the area is a densely wooded area mainly including some established veteran boundary oaks of historical value, providing good amenity to the surrounding area. The consultant suggests that the wooded areas to the north and south of the site should also be included in the TPO if they meet the Council's criteria.
- 4.3.4 Retention of established veteran boundary oaks: Mr Underhill assures that all the established veteran boundary oaks of historical value will be retained.
- 4.3.5 Visibility and visual impact: Mr Underhill argues that the trees proposed for removal are effectively screened by the established veteran boundary oaks and their loss would be barely noticeable from outside the site, not detracting from visual amenity.
- 4.3.6 Public access and visibility: Mr Underhill acknowledges that the only accessible area from which the trees can be viewed is to the east of the site, from privately owned farmland, where there is no permissible public access. This supports his argument that public visibility alone should not be sufficient to warrant a TPO.
- 4.3.7 Government's guidance on TPOs and trees in Conservation Areas: Mr Underhill refers to the Government's guidance, which states that when assessing whether trees should be protected, the following criteria should be taken into account: visibility, size and form, future potential as an amenity, rarity, cultural or historic value, contribution to and relationship with the landscape, and contribution to the character or appearance of a Conservation Area. The consultant argues that the trees proposed for removal do not meet most of these criteria, leaving only their contribution to and relationship with the landscape, which the boundary trees already fulfil.
- 4.3.8 Climate change and other factors: Mr Underhill notes the Council's declaration of a climate emergency but argues that trees are only one aspect of this and only one consideration in planning applications for development. He suggests that while other factors such as climate change can be considered, they alone would not warrant making a TPO.
- 4.4 Representation from Mr Warne
- 4.4.1 The letter from Mr Warne of 173 London Road, Braintree, was received on 15th June 2023 and contains the following objections.

- 4.4.2 Mr Warne claims that none of the tree appears to be of value, apart from the tree within his garden, on 173 London Road, Braintree.
- 4.4.3 Mr Warne claims he has been considering the removal of his tree and the TPO adds another layer of complexity to a situation that has already become hard to manage.
- 4.4.4 Mr Warne argues that none of the trees can be seen by the general public and therefore are not providing them with amenity value.
- 4.4.5 Mr Warne claims these trees have no historical value that he is aware of.
- 4.4.6 Mr Warne queries the fact that only the trees on his land are being protected by this Tree Preservation Order, while other trees of perceived similar value in adjacent properties are not and believes this is an improper use of a TPO being used to frustrate Application Reference 23/00651/OUT.

5. Assessment

- 5.1 This Tree Preservation Order includes 1 Area covering all the existing trees within the rear garden of 3 The Mall, London Road and a few other trees on adjacent properties, namely one Oak on the rear garden of 173 London Road, Braintree (Appendix 1).
- 5.2 Notwithstanding the objections received, which were duly noted, this report addresses the reasoning behind the making of this Tree Preservation Order (TPO). Officers reiterate that the making of the order is expedient in the interest of amenity and public enjoyment, taking into account the relevant factors and considerations.
- 5.3 The east side London Road is a distinctive area of Braintree. It is marked by a ribbon development of good-sized houses of mixed styles and ages, mostly post-WWII, which have large areas of garden to the rear of the property. Several of those gardens have small, wooded areas, including mature or veteran trees, predominantly Oaks. Some of these areas are already protected by TPOs (e.g. TPO 03/2003, at 157 & 159 London Road, Braintree).
- 5.4 A Tree Survey & Arboricultural Impact Assessment prepared by Underhill Tree Consultancy, was submitted in the context an application for an Outline Application for up to 9no. residential units (Application Reference 23/00651/OUT). The report includes 52 isolated trees and one group. The site is dominated by moderate to large mature Oaks which form the boundaries to the site as well as a group of trees to the south-east corner of the site. The same report proposes the removal of 12 trees to allow development (Appendix 2).
- 5.5 A Tree Preservation Order (TPO) is a mechanism that protects specific trees or a particular woodland from deliberate damage or destruction, as stated by the Town and Country Planning Act 2012 Regulations. Based on

the Tree and Landscape Officer's local knowledge of the type and value of trees found on properties along London Road, it was considered expedient to make a Tree Preservation Order (TPO) to safeguard the existing trees for the benefit of amenity and public enjoyment. This decision was the result of a thorough review of the report and proposals put forward.

- 5.6 It is a standard procedure to carry out a TEMPO assessment on any tree before making a new TPO. However, in this case, several constraints prevented this assessment from being carried out. As a result, an Area TPO was created, which provides a broader level of protection for a group of trees rather than individual trees as it covers all trees in a defined area *at the time the order was made*.
- 5.7 However, it was established that this TPO would be revisited, and an individual TEMPO assessment would be carried out on each tree, prior to the variation and confirmation of the TPO. This approach ensures that the necessary information is gathered to accurately map the boundaries and identify the number and species of the trees to be included in the TPO.
- 5.8 The Act does not define amenity, however further guidance is provided in the Government Planning Practice Guidance (PPG): "TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public".
- 5.9 Moreover the same document states trees should normally be visible from a public place, such as a road or footpath and the *"benefit may be present or future; trees may be worthy of preservation for their intrinsic beauty or for their contribution to the landscape or because they serve to screen an eyesore or future development; the value of trees may be enhanced by their scarcity; and the value of a group of trees or woodland may be collective only."*
- 5.10 The trees protected by Tree Preservation Order (TPO) 06/2023 are visible from publicly accessible areas. They are part of the skyline due to their height and form and provide a gentle background and frame the houses along London Road. The canopies of the Oaks, which grow on the boundaries of the long rear gardens, create a soft transition between the existing development along London Road and the agricultural fields beyond. These trees can also be viewed from adjacent properties. It is therefore considered these trees have significant amenity value as they provide an important contribution to the to the sense of place and local character. It is also accepted that their loss would create a different aspect for the residents of London Road and the perception of the edge of settlement (Appendix 3)
- 5.11 To the east of The Mall, there is a Strategic Site included in the Adopted Local Plan. In the near future, these trees are expected to be part of the vegetation screening between developments. They will provide much-needed separation between built areas, providing screening to mitigate the

visual effects on receptors, enhancing the landscape and promoting biodiversity connection.

- 5.12 If planning consent is obtained and it includes permission, either explicitly or implicitly, to fell or carry out works on a tree, it would be impractical to issue a TPO for that tree. This is because planning consent takes precedence over a TPO, rendering it ineffective in such cases.
- 5.13 The presence of significant trees in the proximity of a development is likely to cause anxiety among prospective residents and potentially lead to demands for the removal or reduction of these trees. Such actions can significantly impact the form, structure, health, and expected lifespan of the trees, ultimately resulting in a loss of amenity. By implementing TPOs, a certain level of control is established over future maintenance operations concerning the protected trees. This, in turn, increases the likelihood of their long-term physical retention, ensuring the preservation of their benefits.
- 5.14 The 'persons interested in the land affected by the Order', in the context of a TPO, are every owner and occupier of the land on which the protected trees stand and every other person the authority knows is entitled to carry out certain works to any of those trees or in relation to the affected land. The authority may decide, but is not obliged, to notify other people, groups, authorities and organisations (such as parish councils and the Forestry Commission).
- 5.15 The designation of a Tree Preservation Order does not exclude maintenance works to the trees with prior consent. Although it is understood that this Order adds an extra layer of work to the regular tree maintenance operations, it is considered that the public benefit of protecting this group of trees outweighs the inconvenience. The potential loss of this group would have an irreparable negative impact on the local landscape.
- 5.16 During the on-site meeting held on 5th June 2023 with Mr Fugeman, Mr Firth and Mr Underhill, the removal of certain trees from the TPO was discussed. Specifically, Category U trees, two willows (T50 and T51) and a few Oaks exhibiting a significantly one-sided shape or heavy lean (e.g. T8, T12, T15) were identified for potential extraction. Officers were in agreement with this.
- 5.17 To the abovementioned list should be added any trees failing accrue a sufficient score on the individual TEMPO assessment should be excluded from the final TPO, which would be adjusted accordingly prior to its confirmation.

6. Conclusion

- 6.1 While the objections received are noted, in this case and following further assessment, it is concluded that the trees are worthy of protection.

7. Options

7.1 The options are:

- 1) To vary and confirm the provisional Tree Preservation Order in the interests of amenity.
- 2) Not to confirm the provisional Tree Preservation Order and allow the owner(s) to prune/fell the tree(s) as they see fit.

8. RECOMMENDATION

8.1 It is RECOMMENDED that the following decision be made:
To vary and confirm the provisional Tree Preservation Order in the interests of amenity.

CHRISTOPHER PAGGI
PLANNING DEVELOPMENT MANAGER

APPENDIX:

Contents:

Appendix 1: Copy of 06/2023/TPO

Appendix 2: Extract of Tree Survey & Arboricultural Impact Assessment, prepared
by Underhill Tree Consultancy

Appendix 3: Photos

Appendix 4: Representations Received

APPENDIX 1:

Copy of 06/2023/TPO

**THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND)
REGULATIONS 2012**

**Town and Country Planning Act 1990
TPO 06/2023/TPO**

The Braintree District Council, in exercise of the powers conferred on them by sections 198 of the Town and Country Planning Act 1990 make the following Order:- 3 The Mall, London Road, Braintree, Essex, CM77 8FL

Citation

1. This Order may be cited as TPO 06/2023/TPO

Interpretation

2. (1) In this Order "the authority" means the Braintree District Council.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012

Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsections (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners), and subject to the exceptions in regulation 14, no person shall—
 - (a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
 - (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provisions for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 22nd day of May 2023

*The Common Seal of BRAINTREE DISTRICT COUNCIL was hereunto affixed in the presence of:

Authorised Signatory



SCHEDULE

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

REF. ON MAP	DESCRIPTION	SITUATION
	NONE	

Trees specified by reference to an area
(within a dotted black line on the map)

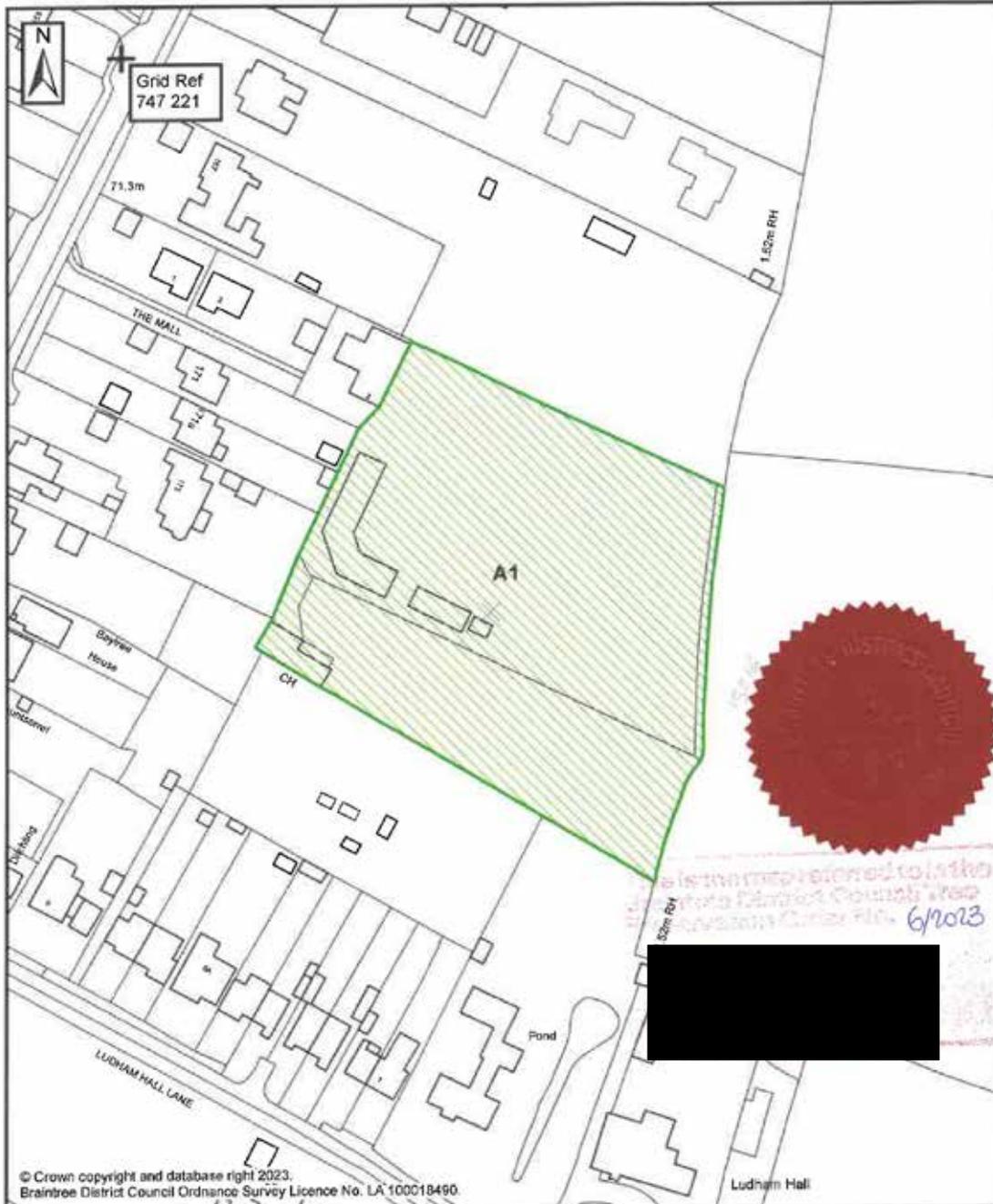
REF. ON MAP	DESCRIPTION	SITUATION
A1	Oak	Rear of 3 The Mall, mostly along south and east boundaries.

Groups of trees
(within a broken black line on the map)

REF. ON MAP	DESCRIPTION	SITUATION
	NONE	

Woodlands
(within a continuous black line on the map)

REF. ON MAP	DESCRIPTION	SITUATION
	NONE	



Planning Department

Date: APRIL 2023
 Ref: 116-4-961
 Drawn: DF
 Scale: 1:1250
 TL 7422

TREE PRESERVATION ORDER 06/2023
LAMD REAR OF 3 THE MALL
LONDON ROAD
BRAINTREE



APPENDIX 2:

Extract of Tree Survey & Arboricultural Impact Assessment, prepared by Underhill Tree Consultancy: Tree Removal Plan and Tree Protection Plan (not to scale).



APPENDIX 3:

Photos



Aspect of the trees along the east boundary of 3 The Mall, viewed from London Road facing east. Above showing winter, below showing summer.





Aspect of the Oaks from the rear garden of 3 The Mall facing north.



Aspect of the Willows to from the rear garden of 3 The mall facing west.

APPENDIX 4:

Representations Received

Letter from Mr Fugeman of 3 The Mall, London Road, Braintree

David Fugeman

The Willows
3 The Mall
Braintree, Essex
CM77 8FL

Braintree District Council
Sustainable Development
Causeway House
Braintree
CM7 9HD

Emailed to ana.patriarca@braintree.gov.uk and posted recorded delivery

Your Ref: 06/2023/TPO
TPO 3 The Mall

13th June 2023

Dear Sir or Madam,

I am writing to FORMALLY OBJECT to the proposed blanket Tree Preservation Order, that has been effectively placed on all the oak trees in my garden.

I object for the following reasons;

- As the land & title owner I do not want any tree on my property to have a TPO let alone all of the oak trees. None of the oaks are category A trees, most of them are in fact category C trees, I cannot see how any of them have historic value when they are of no real substance and are in a private setting.
- The trees are in my rear garden, which is a private setting, which is not accessible or visible in any way to the general public, therefore the trees cannot be adding any value to the local community.
- Currently we have a tree house fixed to 4 of the oak trees, should TPO remain, this would mean I would need to apply for planning permission to undertake repairs &/or remove the tree house, if any of the trees was damaged I would be liable. Furthermore & ridiculously, if the TPO stands, I cannot have anyone use the tree house in case a tree is damaged in some way.
- The TPO seems to have been slapped on the trees to prevent or stifle a planning application the decision for which was overdue before receipt of the letter advising of the TPO. I should also point out the planning application came at the of an 18 month & exhaustive pre-planning application discussions with Braintree Planning which clearly involved working round the trees, it is my understanding that at no point did anyone within Braintree Planning suggest the need or desirability to place a TPO on any tree let alone a blanket attempt to cover all the oak trees. TPO is not designed to be used in this way therefore it is being misused.

Letter from Mr Firth, of Frazer Halls Associates



Our Ref: JF/SPE

Number: [REDACTED]

Email: [REDACTED]

Date: 15 June 2023

Development Manager
Sustainable Development
Braintree District Council
Causeway House
Braintree
Essex
CM7 9 HB

Dear Sir / Madam

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND) REGULATIONS 2012
BRAINTREE DISTRICT COUNCIL - TREE PRESERVATION ORDER NO 06/2023/TPO
3 THE MALL, LONDON ROAD, BRAINTREE, ESSEX, CM77 8FL

I write with regards to the above provision Tree Preservation Order on behalf of my client JVIL (London Road) Ltd. My client has formal interest in the land holding an option on part of the land and having submitted a live planning application on part of the site under reference 23/00651/OUT. There has also been previous pre-application engagement with Braintree District Council regarding the site.

I would request that you please acknowledge receipt of these representations and treat them as objections to the making of a Tree Preservation Order on the site.

In accordance with Regulation 6 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 this representation applies to all of the proposed trees impacted by the TPO. Reasons for the objection are given below and in the attached appended letter from Underhill Tree Consultancy.

Procedural Matters

Regulation 5 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 requires that as soon as practicable after making an order notice shall be served on the persons interested in the land affected by the order. As set out above my client has an interest in the land, of which the LPA are well aware given there is currently a live planning application on the site. Despite this no notification has been received of the proposed TPO.

The process followed is therefore procedurally and legally flawed in this respect.

Regulation 5 (2)(a) also requires that this includes a statement of the reasons for making the order, having obtained a copy of the letter dated 22nd May 2023 from the landowner this states:

"This is a densely wooded area mainly including some established veteran boundary Oaks of Historical Value. The group provides good amenity to the surrounding area"

Frazer Halls Associates LLP, A3 East Gore Farm, Saimons Lane, Coggeshall, Essex CO6 1RZ

Frazer Halls Associates LLP, Company no. 00439075, Registered Office: 30 Guildhall Street, Bury St Edmunds, Suffolk IP33 1GB
Designated Members: F Halls, PJ Foster, JW McLarty, JO Worboys, JM Firth



Representations on the proposed order

This letter is accompanied at appendix 1 by a letter from Underhill Tree Consultancy. This provides representations from my clients professional arboricultural consultant Graham Underhill MICFor, CEnv, FArborA, DipArb (RFS), Director and Chartered Arboriculturist, Underhill Tree Consultancy.

Section 198 of the Town and Country Planning Act 1990 sets out the power of local planning authorities to make tree preservation orders. Section 198(1) sets out that this applies where it is "expedient in the interests of amenity".

The act does not define amenity however further guidance is provided in the Government Planning Practice Guidance (PPG).

This clarifies that:

'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.

Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

Paragraph: 007 Reference ID: 36-007-20140306

Revision date: 06 03 2014

In order to confirm a TPO at the Mall it is therefore necessary to show the removal of each or any of the trees would have a **significant negative impact** on the local environment **and** its enjoyment by the public. (emphasis added).

It is also necessary to show that the protection would bring a reasonable degree of **public benefit** in the present or future (emphasis added).

In the case of 3 the Mall, the site is a private garden and has no public access. There is no visibility of the trees from public viewpoints. The trees themselves are part of the wider area of trees along the rear of London Road. It has not been shown and appears not to have been considered as to why the removal would have a negative impact on the local environment and its enjoyment by the public.

The wording in the PPG makes clear it is necessary to show this would be a significant impact. This has not been shown to be the case given the presence of other trees and the lack of visibility. It should also be considered that the removal of individual trees could be achieved without overall impact on the local environment as a whole. It is therefore disproportionate and not justified to apply an order across all trees.

The PPG also states that to make an order it should be shown this significant negative impact would extend to the enjoyment of the area by the public, it is not enough merely that there would be impact on the environment alone. In this case this is a private garden and not an area with public access or with views from public viewpoints. This criteria has also not been met.

The PPG also goes on to state:

“...authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria:

Visibility

The extent to which the trees or woodlands can be seen by the public will inform the authority’s assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.

Individual, collective and wider impact

Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:

- *size and form;*
- *future potential as an amenity;*
- *rarity, cultural or historic value;*
- *contribution to, and relationship with, the landscape; and*
- *contribution to the character or appearance of a conservation area.*

Other factors

Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order.

Paragraph: 008 Reference ID: 36-008-20140306

Revision date: 06 03 2014

No information has been provided or appears to be available from Braintree District Council on the structure and consistent methodology taken for assessing the amenity value of the trees. All that is provided in the letter dated 22nd May 2023 is two short sentences by way of reasoning. This part of the PPG also appears not to have been followed by the Local Planning Authority.

As made clear above visibility is a key criteria in the assessment. There appears to be no assessment of the visibility of the trees, and they are of course located behind existing development along London Road and not therefore within public view nor can they be viewed from public footpaths. The site is not accessible to the public.

No assessment of the individual, collective or wider impact of the trees appears to have been undertaken by the LPA. The trees are not rare forming part of a wider area to the rear of the properties on London Road and do not form part of the main landscape edge or boundary with the fields to the east. There appears to be no assessment of individual trees and if indeed some removal could be undertaken whilst avoiding wider harm.

The PPG is also clear that individual factors alone will not warranty making an order.

In order to make a TPO there is therefore a high bar given the need to demonstrate significant negative impacts on the local environment and its enjoyment by the public. This has not been demonstrated and does not appear to have been properly considered.



Objection and way forward

In light of the above this representation submitted on behalf of JVIL (London Road) Ltd along with the supporting statement from Underhill Tree Consultancy therefore objects to the proposed TPO.

The Council will be aware there has been a long process of pre-application engagement followed by a planning application regarding a potential residential development on some of the land impacted by the TPO. This application has been brought forward through pre-application work with officers and proposes to retain and enhance a significant area of the proposed TPO trees, where it is proposed landscape and biodiversity enhancement could be carried out.

The issue of a TPO at this stage additional pre-empts the proper consideration of the current planning application on the site (23/00651/OUT). This planning application has been submitted following pre-application work and includes relevant arboricultural reports. To make a permanent TPO at this stage would fail to allow the current application to follow due process and allow the merits of individual trees to be considered as part of that process.

We would therefore urge that the making of any permanent TPO should not occur until the current planning process has followed its proper course.

My client considers there is significant merit in a discussion with the LPA regarding appropriate amendments to the order, which may be able to resolve our current objections to the TPO.

The current process adopted by the LPA has not followed statutory requirements in terms of notification of those with an interest in the land, nor has it properly considered the amenity value of the trees in line with statutory requirements and as set out in Government guidelines.

The current TPO process is therefore legally flawed and we would encourage further engagement on these issues to reach resolution prior to confirmation of any TPO to avoid further challenge.

Yours faithfully,



James Firth BA (Hons) MSc MRTPI
Partner

Enc. Letter from Graham Underhill MICFor, CEnv, FArborA, DipArb (RFS), Director and Chartered Arboriculturist, Underhill Tree Consultancy.

Cc David Williams, JVIL (London Road) Ltd

Letter from Mr Underhill, of Underhill Tree Consultancy.



28 Millfields
Danbury, CM3 4LE

Ana Patriarca/Christopher Paggi
Sustainable Development
Causeway House
Braintree
Essex
CM7 9HB

Your Ref: 06/2023/TPO

12 June 2023

Dear Ana/Christopher,

06/2023/TPO – Formal Objection

I am writing on behalf of my client, JVIL, to object to the proposed Tree Preservation Order on 3 The Mall, London Road, Braintree.

JVIL currently have a planning application submitted (23/00651/OUT). It is this planning application which has led to the issue of these trees being considered.

Discussions with the council, including two Pre-App Meetings, have been on-going for around 18 months. There have been several iterations of the design and my early involvement as arboricultural consultant meant that tree constraints were considered from the beginning. This entailed categorising trees by their quality and value and identifying those to be retained. On heavily treed sites, some tree loss is often inevitable but, on this site, this has been kept to the minimum and restricted to trees of low or moderate quality and those where the impact of the loss would be negligible when viewed from outside the site.

Where trees to be retained have the potential to be impacted by the development by works close to them, this has been carefully considered and the design and construction of structures and hard surfacing in these areas will be such that the impact on tree roots and soil will be minimal.

The proposal includes new tree planting to the front of the new houses. These trees will be fully visible to anyone accessing the site. Currently, all trees are within private rear gardens and not accessible to the public.

The specifics of the objection are:

- The timing of the TPO. After 18 months of consultation with the local authority, including two Pre-App Meetings, the timing of the TPO, after the deadline for the planning application has passed, seems to be to prevent and frustrate the planning application.
- The TPO only covers trees within, or touching, the redline of the application. If, as stated in the council's reasons for making the TPO, 'this is a densely wooded area mainly including some established veteran boundary oaks of historical value. The group provides good amenity to the surrounding area', why have the wooded areas to the north and south of the site not been included?

Director: Graham Underhill Underhill Tree Consultancy Ltd is registered in England & Wales No. 9492370
Registered Office: First Floor, 11 Chaddlers Way, South Woodham Ferrers, Essex, CM3 5TD

- All of the 'established veteran boundary oaks of historical value', are to be retained.
 - The trees proposed for removal are effectively screened by the 'established veteran boundary oaks of historical value', and their loss would be barely noticeable from outside the site and would not detract from visual amenity.
 - The only accessible area the trees can be viewed from is to the east of the site, from privately owned farmland. I understand there is no permissible public access.
 - The fact that the council has declared a climate emergency has been mentioned as a reason to protect the trees. Whilst I have the utmost understanding for this, trees are only one aspect to this, and are only one consideration in planning applications for development. The Government's own *Guidance on Tree Preservation Orders and trees in conservation areas*, states the following criteria are to be taken into account when assessing whether trees should be protected:
 - *Visibility – the extent to which the trees or woodland can be seen by the public. The trees should normally be visible from a public place, such as a road, footpath, or accessible by the public. Public visibility alone will not be sufficient to warrant an Order.*
 - *Size and form;*
 - *future potential as an amenity;*
 - *rarity, cultural or historic value;*
 - *contribution to, and relationship with, the landscape; and*
 - *contribution to the character or appearance of a conservation area.*
- Other factors**
- Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order.*
- From the above, it is clear that other factors such as climate change can be considered but would not alone warrant making an Order. Therefore, given the trees proposed for removal will be barely visible by the public, are not rare or have cultural or historic value, and are not within a conservation area, this leaves only their contribution to, and relationship with, the landscape. The boundary trees undoubtedly fall within this designation. The much younger trees within the site, including those proposed for removal, do not.

Due to the reasons given, the objection is to the whole TPO. However, should it be approved, we would expect it to be modified to ensure only those trees of significance and on the boundary, are protected.

Yours sincerely



Graham Underhill MICEr, CEnv, FArborA, DipArb (RFS)
Director and Chartered Arboriculturist



Letter from Mr Warne, of 173 London Road, Braintree

15 JUN 2023

*Ponyacre
173 London Road
Braintree
Essex CM77 8PT*



15th June 2023

Ms A Patriarca/Christopher
BRAINTREE DISTRICT COUNCIL
Causeway House
Bocking End
Braintree
Essex CM7 9HB

Dear Ana/Christopher

REF: 06/2023/TPO
173 LONDON ROAD, BRAINTREE, ESSEX CM77 8PT

I am writing to object to the proposed Tree Preservation Order that has been placed at the rear of the Mall London Road and my garden 173 London Road.

I would like to object to the TPO in its entirety as I do not believe it is being used in a proper manner.

I object for the following reasons:-

None of the trees appear to be of any substance, apart from the tree within my garden.

The tree within my garden needs maintaining and as I am now 97 years old I have been considering its removal. The TPO adds another layer of complexity to a situation that has already become hard to manage.

As all the trees are within a private garden at the rear of a private property which is at the end of a private road I am surprised to hear they warrant a TPO. None of these trees can be seen by the general public and therefore are not providing them with any amenity value.

I am not aware of any historical value provided by the trees in question.

If the trees are being protected for their amenity value and because of a climate emergency, why have the more densely populated gardens been protected to the north and south of this area..??

...cont/d

- 2 -

Improper use of a TPO which has now dragged my tree into it is clearly being used to frustrate Application 23/00651/OUT.

Yours faithfully



Edward Warne