

PLANNING COMMITTEE AGENDA

Tuesday, 22 May 2018 at 07:15 PM

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

THIS MEETING IS OPEN TO THE PUBLIC
(Please note this meeting will be webcast and audio recorded)
www.braintree.gov.uk

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

Membership:-

Councillor K Bowers	Councillor Lady Newton
Councillor Mrs L Bowers-Flint	Councillor Mrs I Parker
Councillor T Cunningham	Councillor F Ricci
Councillor P Horner	Councillor Mrs W Scattergood (Chairman)
Councillor H Johnson	Councillor P Schwier
Councillor S Kirby	Councillor Mrs G Spray
Councillor D Mann	

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.

A WRIGHT
Chief Executive

INFORMATION FOR MEMBERS - DECLARATIONS OF INTERESTS

Declarations of Disclosable Pecuniary Interest (DPI), Other Pecuniary Interest (OPI) or Non- Pecuniary Interest (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 on a Planning Application/Agenda Item

Anyone wishing to speak are requested to register by contacting the Governance and Members Team on 01376 552525 or email governance@braintree.gov.uk no later than 2 working days prior to the meeting. The Council reserves the right to decline any requests to register to speak if they are received after this time.

Registered speakers will be invited to speak immediately prior to the relevant application/item. Registered speakers wishing to address the Committee on non-Agenda items will be invited to speak at Public Question Time. All registered speakers will have 3 minutes each to make a statement.

The order in which registered speakers will be invited to speak is: members of the public, Parish Councils/County Councillors/District Councillors, Applicant/Agent.

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

Documents: There is limited availability of printed Agendas at the meeting. Agendas, Reports and Minutes can be accessed via www.braintree.gov.uk

WiFi: Public Wi-Fi (called BDC Visitor) is available in the Council Chamber; users are required to register when connecting.

Health and Safety: Anyone attending meetings are asked to make themselves aware of the nearest available fire exit. In the event of an alarm you must evacuate the building immediately and follow all instructions provided by staff. You will be directed to the nearest designated assembly point until it is safe to return to the building.

Mobile Phones: Please ensure that your mobile phone is switched to silent during the meeting in order to prevent disturbances.

Webcast and Audio Recording: Please note that this meeting will be webcast and audio recorded. You can view webcasts for up to 6 months after the meeting using this link: <http://braintree.public-i.tv/core/portal/home>

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 can 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 8th May 2018 (copy to follow).

4 Public Question Time
(See paragraph above)**5 Planning Applications**

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

Where it has been agreed that applications listed under Part B will be taken “en bloc” without debate, these applications may be dealt with before those applications listed under Part A.

PART A

Planning Applications:-

5a	Application No. 17 02064 REM - Land adjacent to Peacehaven, London Road, BLACK NOTLEY	5 - 15
5b	Application No. 17 02178 FUL - Land adjacent to Leyfield, Braintree Road, CRESSING	16 - 31
5c	Application No. 17 02197 FUL - Land adjoining and to the rear of 1 to 8 Leyfield, Braintree Road, CRESSING	32 - 46
5d	Application No. 17 02259 FUL - 41 Colchester Road, WHITE COLNE	47 - 60

PART B

Minor Planning Applications:-

5e	Application No. 17 01885 FUL - Stones Throw, Crocklands, GREENSTEAD GREEN	61 - 68
5f	Application No. 18 00347 ADV - Causeway House, Bocking End, BRAINTREE	69 - 75
6	Development Management Enforcement Plan	76 - 109
7	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.	
8	Exclusion of the Public and Press To agree the exclusion of the public and press for the consideration of any Items for the reasons set out in Part 1 of Schedule 12(A) of the Local Government Act 1972.	

At the time of compiling this Agenda there were none.

PRIVATE SESSION

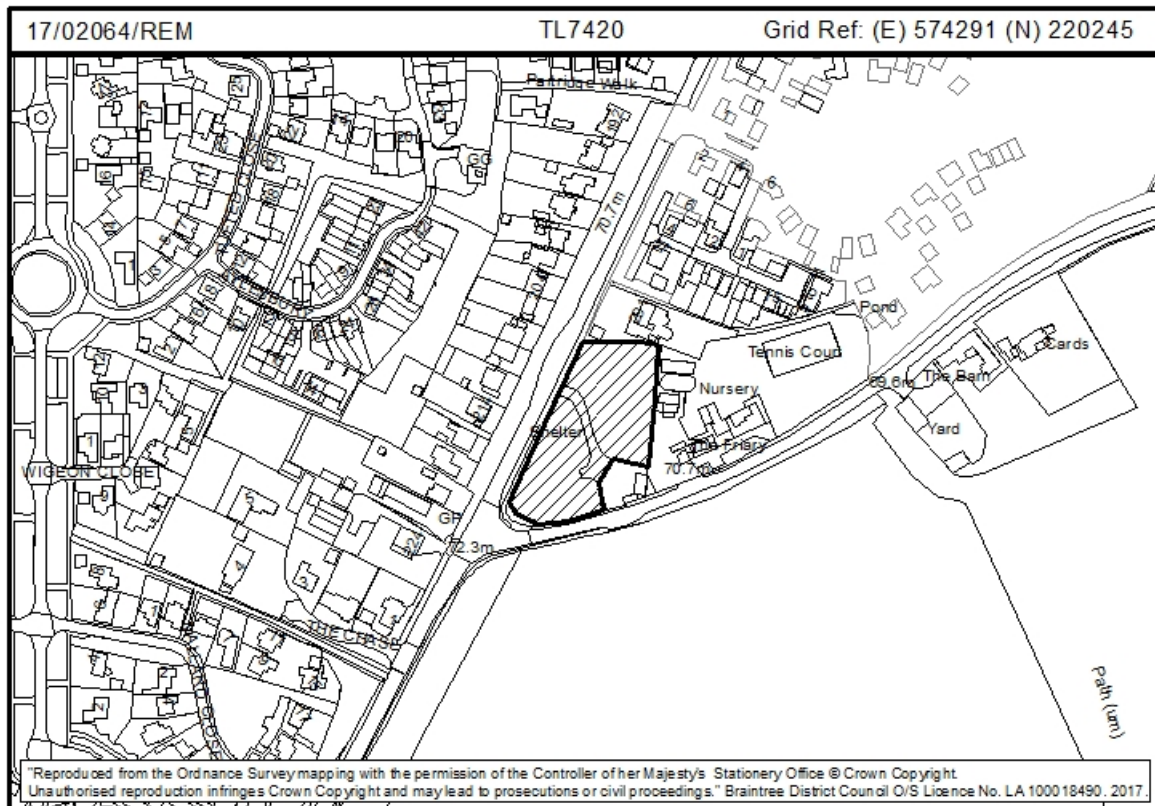
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9	Urgent Business - Private Session To consider any matter which, in the opinion of the Chairman, should be considered in private by reason of special circumstances (to be specified) as a matter of urgency.
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PART A

APPLICATION NO: 17/02064/REM
 DATE: 20.11.17
 VALID:
 APPLICANT: Mr B Tann
 C/o Agent
 AGENT: Plainview Planning Ltd
 Mr Andrew Ransome, Oliver House, Hall Street,
 Chelmsford, Essex, CM2 0HG
 DESCRIPTION: Application for approval of Reserved Matters for Access, Appearance, Landscaping, Layout, and Scale pursuant to outline planning permission 16/02055/OUT - Erection of 4no. dwellings
 LOCATION: Land Adjacent Peacehaven, London Road, Black Notley, Essex

For more information about this Application please contact:
 Mathew Wilde on:- 01376 551414 Ext. 2512
 or by e-mail to: mathew.wilde@braintree.gov.uk



SITE HISTORY

16/00005/REF	Erection of 8 no. market and affordable dwellings	Appeal Dismissed	14.06.16
89/2164/P	Display of pole mounted and gate mounted signs.	Granted	17.01.90
88/1362/P	Residential development (five dwellings).	Refused	12.08.88
90/1431/P	Erection of 2 no. dwellings.	Refused	19.10.90
95/720/P	Display of one double sided sign.	Appeal Dismissed	15.08.95
88/01362/P	Residential Development (Five Dwellings)	Refused	12.08.88
90/01431/PFBS	Erection Of Two No Dwellings	Refused	19.10.90
15/01124/OUT	Erection of 8 no. market and affordable dwellings	Refused then dismissed on appeal	04.11.15
16/02055/OUT	Outline planning application for 4 no. dwellings	Granted	15.02.17

POLICY CONSIDERATIONS

Currently the Council's development plan consists of the Braintree District Local Plan Review (2005) and the Core Strategy (2011).

The Council is currently working on a Draft Local Plan, which was approved by the Council unanimously for consultation on the 20th June 2016 and was the subject of public consultation between the 27th June and 19th August 2016. The Draft Local Plan, now referred to as the Publication Draft Local Plan, was approved by the Council on 5th June 2017 for consultation and for submission to the Secretary of State. The public consultation ran from 16th June to 28th July 2017. The Publication Draft Local Plan was submitted to the Secretary of State on the 9th October 2017. The Section 1 of the Draft Local Plan is currently the subject of an examination by an Inspector appointed by the Secretary of State for Housing, Communities and Local Government. The Part 2 Draft Local Plan examination will take place later this year.

In accordance with paragraph 216 of the NPPF, from the day of publication the Council can give weight to the emerging Draft Local Plan and the weight that can be given is related to:

“The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);

The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given) and;

The degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”.

Accordingly the Council can currently afford some weight to the emerging Publication Draft Local Plan 2017.

It should also be noted that the Council was previously working on a Site Allocation and Development Management Plan (the ADMP). This plan was subject to extensive public consultation in 2013 and 2014. The ADMP was not however submitted to the Planning Inspectorate, due to the decision to begin work on a new Local Plan, to take into account the most up to date Government guidance. However parts of the ADMP have been rolled forward into the Draft Local Plan. It is therefore considered that it would be consistent with the provisions in paragraph 216 of the NPPF, to afford more weight in decision making to the parts of the Draft Local Plan which have been rolled forward from the ADMP, due to the more advanced stage reached by those elements.

National Planning Guidance

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

Braintree District Local Plan Review 2005

RLP2	Town Development Boundaries and Village Envelopes
RLP10	Residential Density
RLP56	Vehicle Parking
RLP69	Sustainable Urban Drainage
RLP81	Trees, Woodland Grasslands and Hedgerows
RLP90	Layout and Design of Development

Braintree District Local Development Framework Core Strategy 2011

CS5	The Countryside
CS9	Built and Historic Environment

Braintree District Publication Draft Local Plan 2017

SP1	Presumption in Favour of Sustainable Development
SP3	Meeting Housing Needs
SP6	Place Shaping Principles
LPP37	Housing Type and Density
LPP50	Built and Historic Environment
LPP55	Layout and Design of Development

INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

This application is brought before the Planning Committee in accordance with the Council's Scheme of Delegation as the Parish Council have objected to one aspect of the application contrary to officer recommendation.

SITE DESCRIPTION

The site extends to approximately 0.4 ha and lies on the east side of London Road at its junction with Bakers Lane, outside of the Town Development Boundary and thus within the countryside.

The site is roughly rectangular in shape and has a frontage to both London Road and Bakers Lane. The site is generally laid to grass and open in character, albeit it wraps around a building within the applicants ownership which lies just beyond the southeast corner of the application site. This building is accessed from London Road via a driveway which traverses the site. The site is bound by hedging to London Road and Bakers Lane; however there is no planting within the site.

To the north the site abuts the residential property of Peacehaven, 291 London Road. Immediately opposite the site on the western side of London Road is a linear form of residential properties. To the east the site abuts the residential property of The Friary, which is a Grade II Listed Building.

PROPOSAL

Application 18/00214/OUT was approved for the erection of 4 dwellings at this site. This application seeks to agree matters in relation to Access, Appearance, Landscaping, Layout and Scale pursuant to the outline approval.

The four dwellings are proposed in a similar configuration to that of the indicative outline approval; the four houses would be detached and would front onto London Road in a linear form. Plots 1 and 4 would have their own detached double garage, while plots 2 and three would share a double garage. Each dwelling would be provided with two parking spaces and garden areas in accordance with or in excess of the standards. Plot 1 would be two storeys and comprise a mix of render and brick finish. It would be the largest of all the other dwellings. Plots 2 and 3 would primarily be 1 1/2 storey in scale with render and a brick plinth, while plot 4 would be two storeys with a mixture of render and brick. There have been a number of relatively minor changes to the original submitted plans and these will be explored further in the report. The main area of contention is in respect to the boundary hedge at the rear of the site; it is now proposed to be 1.8m high woven hurdle fence opposed to a 1.8m high close boarded fence.

The site would utilise the existing access from London Road for all properties by linking an internal spine road which would run parallel to London Road.

Access would also remain to the business (in the separate plot) at the rear. The existing dense hedgerow at the front of the site is to remain, and where gaps occur further planting is proposed. New trees would also be planted on the site's frontage.

CONSULTATIONS

Braintree District Council Environmental Health

No objection to the development of the site. Further contamination evidence to be provided at later date to discharge condition 8 of outline approval 18/00214/OUT.

Essex County Council Highways

No objection subject to conditions in relation to:

- Access retention and footways
- No occupation until parking provided
- No unbound material within 6 metres of highway boundary (*already included with outline application*)
- Travel information packs

Essex County Council Historic Buildings Consultant

No objection to the application overall – but objected to the initial proposed close boarded fence proposed with the boundary of Grade II* listed 'The Friary' and did not agree with the Parish Councils suggestion for a brick wall.

Braintree District Council Landscapes Officer

Initially raised some concerns with the species of planting proposed. The species of planting sought were subsequently amended and the Landscapes Officer had no objections to the latest proposed landscaping plan.

Black Notley Parish Council

Overall happy with the reserved matters except from requesting a brick wall between the application site and the adjoining neighbour to the north 'The Friary.' Following revised plans, the view of the Parish Council remained the same and objected to the proposed woven hurdle fencing stating it would be insecure and take too long to establish.

REPRESENTATIONS

5 responses have been received on the application from two neighbouring properties (The Friary, Bakers Lane and Peacehaven, London Road).

'Peacehaven' wrote in support of the application with the following summarised comments:

- High quality of development including landscaping which would provide better privacy

'The Friary' initially wrote in general comments to the application, but raised an objection comment to the revised plans. The summarised comments for all are set out below:

- Concerns in relation to rear brick wall boundary – woven hurdle fencing not acceptable
- No information in respect of lighting
- No woven hurdle on other new housing site nearby

REPORT

Principle of Development

The principle for developing this site for residential has been established through application 18/00214/OUT. This application therefore only considers matters reserved for consideration at the outline planning application stage, namely; access, appearance, scale, layout and landscaping. These particulars are explored below.

Heritage, Scale, Appearance and Layout

In paragraph 56, the NPPF highlights that good design is a key aspect of sustainable development. Paragraph 57 highlights that it is important to achieve high quality and inclusive design for all land and buildings. If a proposal fails to achieve good design, paragraph 64 stipulates that permission should be refused where the design fails to improve the character and quality of an area.

The NPPF states that new development should seek to improve “streetscapes and buildings to create attractive and comfortable places” by using design which reflects “local character and history, and reflect the identity of local surroundings and materials”, thereby resulting in a form of development which is “visually attractive as a result of good architecture and appropriate landscaping”. In addition to this, Policy RLP90 of the Braintree District Local Plan Review require designs to recognise and reflect local distinctiveness in terms of scale, density, height and massing of buildings, and be sensitive to the need to conserve local features of architectural and historic importance, and also to ensure development affecting the public realm shall be of a high standard of design and materials, and use appropriate landscaping. Policy LPP 55 of the emerging Braintree District Publication Draft Local Plan seeks to secure the highest possible standards of design and layout in all new development and the protection and enhancement of the historic environment.

The Council has adopted the Essex Design Guide as a Supplementary Planning Document. This indicates that dwellings with two bedrooms should be provided with a private rear garden of 50sq.m or more, and three bedrooms should be provided with 100sq.m or more. Policy RLP56 of the Braintree District Local Plan Review requires that sufficient vehicle parking should be provided for all new development in accordance with the Essex County Council Vehicle Parking Standards 2009. These Standards indicate that for 2-bed+ properties, a minimum of 2 parking spaces, measuring 5.5m x 2.9m, should be provided

The application proposes four detached dwellings in a linear configuration with detached garages at the rear; plot 1 would have its own double garage, plot 2 and 3 would share a double garage and plot 4 would have its own double garage. The proposed dwellings would be accessed from the existing entranceway to the site and served with an internal private road which would span along the frontages of the dwellings. The internal spine road would also provide access to the existing business at the rear of the site. Each of the dwellings would be provided with their own private amenity space, in excess of 100sq.m and two parking spaces either in tandem or adjacent to each other. Taking into account the above, it is considered the development proposed would be in keeping with other built development in the locality and provide an acceptable layout.

While the overall layout and positioning of houses is considered to be acceptable, Officers raised some concerns in respect of the proposed boundary treatments at the site. The rear plot boundary for plot 1 in particular has been a cause of contention with the Parish Council. Initially the rear boundary to plot 1 would have been a 1.8m close boarded fence which continued along to the offices at the rear of the site. The close boarded fence was deemed not to be acceptable in the context of the setting of the Grade II Listed Building behind the site. Numerous alternatives were considered; the Parish Council sought a brick wall along this boundary, however this was not considered appropriate by the Historic Buildings Consultant as a brick wall would be out of keeping with the Grade II Listed former farmhouse which historically had open boundaries to the agricultural land to the north. A 1.8m woven hurdle fence was suggested as an alternative boundary treatment which was considered to be acceptable by the Historic Buildings Consultant as it would provide a softer boundary treatment. Officers consider it would also provide adequate security on this boundary which separates the two properties which is lower risk rather than in close proximity to any pedestrian accessible areas. However, the woven hurdle fence was not considered acceptable by the Parish Council due to aesthetic and security concerns.

In terms of other boundary treatments, Officers considered that amendments were required to increase the security between the proposed dwellings and the business to the rear and other land adjacent to the highway. As such, shrubbery/close boarded fence at the rear of plots 2-4 was changed to a brick wall, while plot 4 introduced close boarded fencing behind the dense hedge adjacent to Bakers Lane. A close boarded fence was preferred to a brick wall in this case as it is a softer boundary treatment on the edge of the site by the

entrance to Bakers Lane which is a route out of Great Notley into Black Notley. It is now considered that with the aforementioned changes, the proposed boundary treatments for the development are acceptable.

While the 'scale' of the development was a matter reserved for later consideration, the storey heights of the dwellings were secured at Outline stage; 8m ridge for plots 1 + 4 and 7m ridge for plots 2-3. Upon initial submission of the current reserve matters application, the storey heights of the dwellings were larger than the previously agreed storey heights. Following concerns raised in this regard by Officers, the storey heights were reduced on all plots to comply with the restrictions placed at outline stage. As such, plot 1 and 4 would be two storey dwellings at a maximum of 8m ridge height while plot 2 and 3 would be 1 ½ storey with a lower ridge height of 7m. It is therefore considered that the storey height of the dwellings as proposed would now be acceptable.

In terms of massing and appearance, Plot 1 as the largest of the four proposed dwellings would comprise four double bedrooms. Its design is quite complex but of fairly traditional form, including a mix of brick and render with plain clay roof tiles. Plots 2 and 3 would comprise three bedrooms of a simpler form and design again with the predominance of render and some brick to add detailing and plain clay roof tiles. Finally, plot 4 would also comprise four bedrooms but would not be as large as plot 1. The design of plot 4 has been adjusted in response to concerns about the depth of the dwelling and is now considered acceptable. Officers did however raise concerns in respect of the massing of the garages proposed for all units. The massing for each garage was subsequently reduced down to 4m and had their detailed changed slightly to reduce their overall prominence. Taking into account all of the above, it is considered the scale and massing of the proposed dwellings and garages would be acceptable and the materials would not be out of place in the wider locality.

As such, taking into account all of the above, it is considered that the appearance, layout and scale of the proposed dwellings are acceptable.

Impact on Neighbour Amenity

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 RLP90 of the Braintree District Local Plan Review states that development shall not cause undue or unacceptable impacts on the amenities of nearby residential properties.

In this case, taking into account positioning, scale and massing of dwellings, it is considered neighbouring amenity would not be affected by virtue of overlooking, overshadowing or an overbearing impact. It is considered the proposal is acceptable in this regard.

Access

The proposal would utilise and upgrade the existing access from London Road. No new accesses would be created; the proposed dwellings and existing business at the rear of the site would be served by a new internal spine road. Essex Highways have considered the application and raised no objection subject to a number of conditions in respect to access widths and parking. It is considered the proposal is acceptable in this regard.

Landscaping

Policy CS8 of the Council's Core Strategy specifies that development must have regard to the character of the landscape and its sensitivity to change. Where development is permitted, it will need to enhance the locally distinctive character of the landscape in accordance with the Landscape Character Assessment.

The application proposes to retain where appropriate all existing boundary trees/hedges while also planting additional trees/hedges in gaps. The Landscape Officer generally had no objection to the application but requested more of a variation in the species of tree/hedge which would be planted at the site. The boundary treatment for plot 4 was also moved closer into the dwelling as set out in the above layout section in accordance with recommendations from the Landscape Officer. As such, taking into account all of the above, it is considered the proposal is acceptable in this regard.

CONCLUSION

The principle of developing the site for four dwellings has already been established through outline permission reference 16/02055/OUT. This application seeks to secure details of Access, Appearance, Landscaping, Layout and Scale pursuant to the outline approval. It is considered that the development would introduce a satisfactory linear layout with an appropriate scale and design for each proposed dwelling reflecting local context. Boundary treatments would also respond to the context and be appropriate to safeguard both security and heritage interests. The existing access would be retained and upgraded which would be acceptable while landscaping would be protected and enhanced. As such, taking into account all of the above, it is considered that the Reserved Matters pursuant to application 16/02055/OUT are acceptable.

RECOMMENDATION

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

APPROVED PLANS

Location Plan

Access Details

Plan Ref: SK_01

Proposed Site Plan

Plan Ref: 2776/10

Version: K

Proposed Plans

Plan Ref: 2776/11

Version: C

Proposed Plans

Plan Ref: 2776/12

Version: B

Proposed Plans

Plan Ref: 2776/13

Version: B

Proposed Plans

Plan Ref: 2776/14

Version: B

Garage Details

Plan Ref: 2776/15

Version: D

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

Reason

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

- 2 No occupation shall take place until the vehicular access as shown in principle on the submitted plans shall be provided with an access width at its junction with the highway of 6 metres and shall be retained at that width for 6 metres within the site. It shall be provided with an appropriate dropped kerb vehicular crossing of the footway.

Reason

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

- 3 The proposed development shall not be occupied until such time as the vehicle parking indicated on the submitted approved plans has been provided. The vehicle parking and associated turning areas shall be retained in this form at all times.

Reason

To ensure that on street parking of vehicles in the adjoining streets does not occur in the interests of highway safety and that appropriate parking is provided.

- 4 No development shall take place until details of the means of protecting all of the existing trees, shrubs and hedges to be retained on the site from damage during the carrying out of the development have been submitted to the local planning authority for approval. The approved means of protection shall be installed prior to the commencement of any building, engineering works or other activities on the site and shall remain in place until after the completion of the development to the complete satisfaction of the local planning authority.

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

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

Reason

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

INFORMATION TO APPLICANT

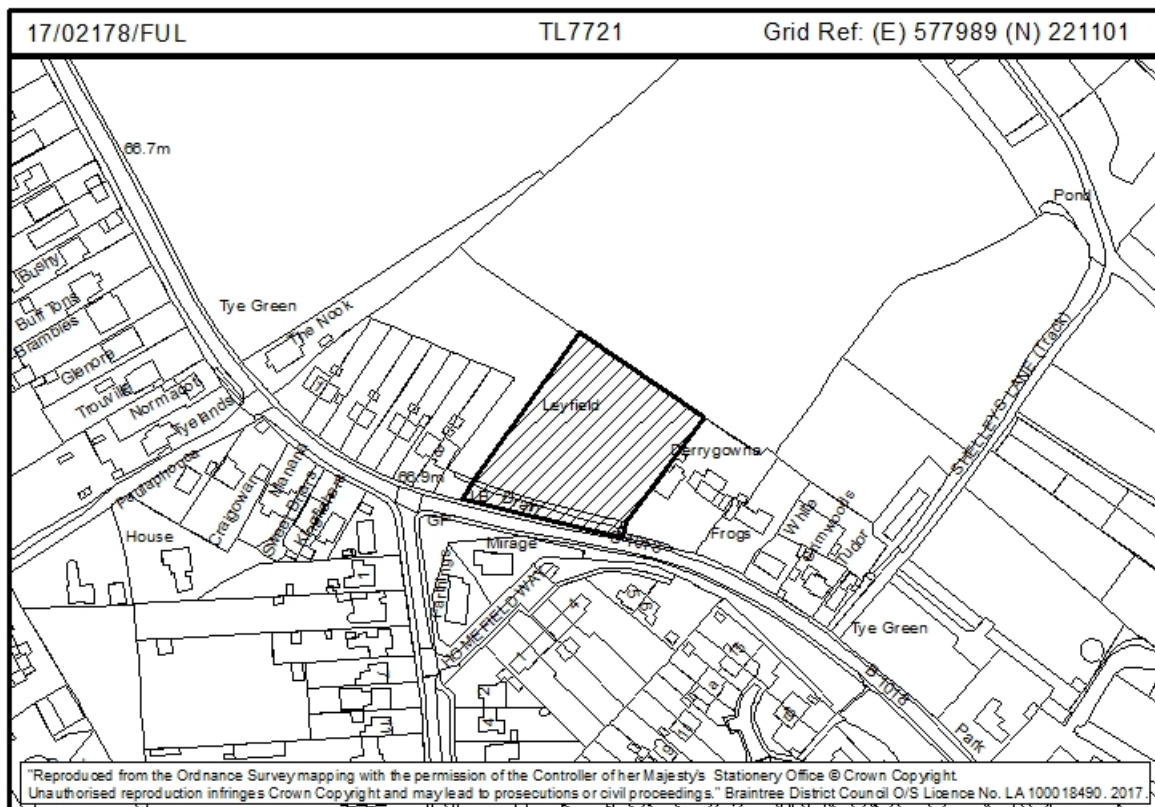
- 1 The applicant is reminded of the need to comply with all relevant conditions of the outline planning permission reference 16/02055/OUT.

TESSA LAMBERT
DEVELOPMENT MANAGER

PART A

APPLICATION NO: 17/02178/FUL DATE: 04.12.17
 VALID:
 APPLICANT: Stephanie Joslin
 20B Charteris Road, London, N4 3AB
 AGENT: JCN Design & Planning
 Michael Smith, 2 Exchange Court , London Road, Feering,
 Colchester, Essex, CO5 9FB
 DESCRIPTION: Erection of 6 no. dwellings and associated roads, car
 parking and landscaping.
 LOCATION: Land Adjacent To Leyfield, Braintree Road, Cressing,
 Essex

For more information about this Application please contact:
 Mathew Wilde on:- 01376 551414 Ext. 2512
 or by e-mail to: mathew.wilde@braintree.gov.uk



SITE HISTORY

90/00502/POBS 14/00069/SOL	Erection Of Four Houses	Refused	09.05.90
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POLICY CONSIDERATIONS

Currently the Council's development plan consists of the Braintree District Local Plan Review (2005) and the Core Strategy (2011).

The Council is currently working on a Draft Local Plan, which was approved by the Council unanimously for consultation on the 20th June 2016 and was the subject of public consultation between the 27th June and 19th August 2016. The Draft Local Plan, now referred to as the Publication Draft Local Plan, was approved by the Council on 5th June 2017 for consultation and for submission to the Secretary of State. The public consultation ran from 16th June to 28th July 2017. The Publication Draft Local Plan was submitted to the Secretary of State on the 9th October 2017. The Section 1 of the Draft Local Plan is currently the subject of an examination by an Inspector appointed by the Secretary of State for Housing, Communities and Local Government. The Part 2 Draft Local Plan examination will take place later this year.

In accordance with paragraph 216 of the NPPF, from the day of publication the Council can give weight to the emerging Draft Local Plan and the weight that can be given is related to:

“The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);

The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given) and;

The degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”.

Accordingly the Council can currently afford some weight to the emerging Publication Draft Local Plan 2017.

It should also be noted that the Council was previously working on a Site Allocation and Development Management Plan (the ADMP). This plan was subject to extensive public consultation in 2013 and 2014. The ADMP was not however submitted to the Planning Inspectorate, due to the decision to begin work on a new Local Plan, to take into account the most up to date Government guidance. However parts of the ADMP have been rolled forward into the Draft Local Plan. It is therefore considered that it would be consistent with the provisions in paragraph 216 of the NPPF, to afford more weight in decision making to the parts of the Draft Local Plan which have been rolled

forward from the ADMP, due to the more advanced stage reached by those elements.

National Planning Guidance

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

Braintree District Local Plan Review 2005

RLP2	Town Development Boundaries and Village Envelopes
RLP8	House Types
RLP9	Design and Layout of Housing and Mixed Use Areas
RLP10	Residential Density
RLP49	Pedestrian Networks
RLP50	Cycleways
RLP51	Cycle Parking
RLP52	Public Transport
RLP56	Vehicle Parking
RLP63	Air Quality
RLP64	Contaminated Land
RLP65	External Lighting
RLP67	Flood Risk in Undeveloped Areas
RLP69	Sustainable Urban Drainage
RLP70	Water Efficiency
RLP71	Water Supply, Sewerage & Drainage
RLP72	Water Quality
RLP74	Provision of Space for Recycling
RLP77	Energy Efficiency
RLP80	Landscape Features and Habitats
RLP81	Trees, Woodland Grasslands and Hedgerows
RLP84	Protected Species
RLP90	Layout and Design of Development
RLP92	Accessibility
RLP93	Public Realm

Braintree District Local Development Framework Core Strategy 2011

CS5	The Countryside
CS7	Promoting Accessibility for All
CS8	Natural Environment and Biodiversity
CS9	Built and Historic Environment
CS10	Provision for Open Space, Sport and Recreation

Braintree District Publication Draft Local Plan 2017

SP1	Presumption in Favour of Sustainable Development
SP3	Meeting Housing Needs
SP6	Place Shaping Principles
LPP37	Housing Type and Density

LPP44	Sustainable Transport
LPP45	Parking Provision
LPP50	Built and Historic Environment
LPP55	Layout and Design of Development
LPP63	Archaeological Evaluation, Excavation and Recording
LPP71	Landscape Character and Features
LPP73	Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards
LPP75	Energy Efficiency
LPP78	Flooding Risk and Surface Water Drainage
LPP81	External Lighting

INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

This application is brought before the Planning Committee in accordance with the Council's Scheme of Delegation as the application has been deemed to be of significant public interest.

SITE DESCRIPTION

The site comprises a large area of land located on the north-eastern side of Braintree Road which runs generally north-west to south-east. To the north-west of the site there are four pairs of semi-detached houses while to the south-east there is a small group of houses, some of which are Listed Grade II. The site extends in a north-easterly direction to open countryside. The opposite side of Colchester Road is built up with predominantly residential development but is relatively well screened directly opposite the site with mature vegetation. The site itself formerly contained numerous trees and hedges but it is evident these have been removed, other than those on the roadside boundary.

To gain access to the rear of the site one must utilise the unadopted grassed access adjacent to No.8 Leyfield. No direct access currently exists from Braintree Road.

PROPOSAL

The proposal in this case seeks to erect 6 dwellings and associated garages. Three dwellings (plots 1, 2 & 6) would have some road frontage with Braintree Road while the other three dwellings (plots 3, 4 & 5) would be at the rear of the site. All of the dwellings would have double garages apart from plot 1 & 3 which would have a single garage. The garages would be located in the centre of the side.

A new access is proposed to be created from Braintree Road through the hedge at the front of the site. The access would lead to an internal spine road which would serve 5 of the proposed dwellings (a private drive) and a second driveway would serve Plot 1 and follow a route parallel to Braintree Road.

CONSULTATIONS

Essex Place Services Historic Buildings Advisor

No objection to the proposal as the development would not alter the environment in which the Listed Buildings are experienced or harm their significance.

Essex County Council Highways

Initially raised concerns as no highway information was submitted in respect of access. Following this the applicant sent in some additional highways information showing a plan with visibility splays. Essex Highways considered this additional information and had the following comments:

“The proposed site access is situated on a 40mph section of road, therefore the visibility splays required are 120m x 2.4m x 120m and not as stated in the information provided. This is not shown as achievable from the info submitted.

The applicant may wish to undertake a speed survey to establish whether this could inform and potentially reduce the visibility requirement.”

Following discussions with the planning agent it was requested that the application be determined rather than providing any further information.

Braintree District Council Environmental Health Officer

Raised concerns with the application in respect of a lack of Phase 1 Contamination Survey submitted and lack of precise detail with the initial submitted noise assessment in respect of details of window/ventilation systems and mitigation to achieve acceptable external amenity levels.

The Environmental Health Officer considered that the noise information could be provided as a condition to any consent. However, the Environmental Health Officer objected to the application because of the lack of a preliminary contaminated land assessment.

Braintree District Council Landscape Services

Raised concerns with development in depth on the site. However, commented that if the development was approved, significant landscaping would be required at the rear.

Braintree District Council Ecology

A Preliminary Ecological Appraisal (PEA) was submitted at the site. The PEA sets out that further surveys are required in respect of Great Crested Newts, Reptiles and Notable mammals. The further survey work for GCN will

determine if a European Protected Species licence is required. No further surveys in respect of the above have been carried out.

Cressing Parish Council

Initially raised no objection to the application but sent in a follow-up response setting out the following summarised comments:

- No small supermarket further South on Braintree Road – only Jet Service station which is convenience store
- Limited key services in the village – not enough to cater for every day needs – Third Tier village on settlement hierarchy – development of 118 other dwellings already approved in village adding further strain on existing limited facilities
- Footpaths to station yet to be constructed
- Bus services are infrequent/non-existent at weekends
- Ensure tree H1 on plan is retained and as small amount as possible hedge removed to facilitate access

REPRESENTATIONS

Four objections were received from 6 Leyfield, 8 Leyfield, 3 Mill Lane and Derrgowna, Braintree Road stating the following summarised comments:

- Green belt area – previous hotspot for wildlife – although had recently been coppiced before submission of wildlife survey
- Removal of hedge to facilitate access would also cause harm
- Would be on dangerous road and access would be unsafe
 - Especially so close to Mill Road
- Development inappropriate in this location
- 6 four bed houses would not enhance local area
- Wish for clarity on boundary treatments

REPORT

Principle of Development

Site History & Context

The site has previous planning history of two refusals dating back to 1987 and 1990. The 1990 application (reference: 90/00502/POBS) sought 4 houses on the site. This was refused by Braintree District Council and dismissed at appeal. The inspector at the time considered three issues; impact on character and appearance of the area, safety of access and housing supply position. In this case, the most relatable points are to the character and appearance of the area, and the impact the development would have on this site. The Inspector's considerations are set out below:

“In view of the small number of houses spread out along the north-east side of Braintree Road and the substantial gaps of open land that separate them compared with the more intense built-up residential development on the opposite side of the road that extends southwards to form the village, I consider that the appeal site is not within the village. Even if the houses in the vicinity were regarded as an isolated group related to the village. In my view, the proposed development would be neither infilling (in the sense of filling a small gap in an otherwise built up frontage) because the site is not in a small gap: nor a suitable form of infill because, if this appeal succeeds, there would be a proliferation of similar proposals to build on the gaps on the north-east side of Braintree Road which would be difficult to resist...”

“...The proposed development with its four houses, garages and hard surfaced areas including the service road and cultivated gardens and lawns would transform the appearance of the large open space between two groups of dwellings to provide a residential environment. Although it would be possible to provide extensive landscaping at the front of the site, in my opinion, this would not be sufficient to screen the development from view of Braintree Road or other points in the surrounding area, nor prevent the built-up appearance of the proposal detracting from the character of the area. I have come to the view that the proposal would be a small, but unacceptable consolidation of sporadic development on the north-east side of Braintree Road which would harm the character and appearance of the area...”

It is understood that the site and its context have remained relatively unchanged since the 1990 appeal. While National and Local Policy have changed, it is considered the conclusions of the Inspector in terms of the impact on the character of the locality remain material. As noted above, in the inspectors view residential development of this site would consolidate and unduly build up the otherwise open frontage on the north-east side of Braintree Road to the detriment of the character of the area.

In addition to the immediate site history, planning permission (on appeal) has been granted for one dwelling at the rear of 1-8 Leyfield although this has yet to be built. This would however be tucked away from the road frontage and would have much less impact on the street scene compared to a development the subject of this application.

Policy Context

The National Planning Policy Framework (NPPF) states in (para 14) that the presumption in favour of sustainable development should be seen as a golden thread running through both plan making and decision taking. More specifically, paragraph 49 states that ‘housing applications should be considered in the context of the presumption in favour of sustainable development’.

Currently the Council's statutory development plan consists of the Braintree District Local Plan Review (2005) and the Core Strategy (2011).

The site is not identified as being within a development boundary in the current adopted Local Plan and as such is on land designated as 'countryside' where there is a presumption against new development. Policy RLP2 of the Braintree District Local Plan Review states that new development will be confined to the areas within Town Development Boundaries and Village Envelopes. Outside these areas countryside policies apply. Policy CS5 of the Braintree District Core Strategy states that development outside of defined boundaries will be strictly controlled to uses appropriate to the countryside in order to protect and enhance landscape character, biodiversity, geodiversity and the amenity value of the countryside. Policy CS8 of the Braintree District Core Strategy indicates that where development is to take place in the countryside it will need to enhance the locally distinctive character of the landscape in accordance with the Landscape Character Assessment. The policies set out above seek to protect the countryside and direct new residential development to sustainable locations.

The Spatial Strategy outlined in the Braintree District Core Strategy sets out that new development should preserve and enhance the character of the rural heartland of the Braintree District, its countryside and villages, by supporting development that is needed to make settlements and the rural economy more sustainable and protect and enhance the natural environment and; to concentrate the majority of new development and services in the main towns of Braintree, Witham and Halstead, at new Growth Locations at Braintree and Witham and in the Key Service Villages (Coggeshall, Earls Colne, Hatfield Peverel, Kelvedon, Sible Hedingham and Silver End).

5 Year Land Supply Position

Notwithstanding all of the above, the NPPF requires that Councils seek to boost significantly the supply of housing, and contains policy guidance to support this. Under paragraph 47 of the NPPF the Council is obliged to have plans which "... meets the full objectively assessed needs for market and affordable housing", together with an additional buffer of 5%. The Council is specifically required to produce and demonstrate its building trajectory to show how there can be the delivery of a five-year supply of housing. Members will be aware that the Council currently have a forecast supply prediction which indicates a shortfall in supply.

A key aspect of the argument has been whether to apply the "Sedgefield approach" or the "Liverpool approach" to the calculation of the shortfall. The difference between the two is that under the Sedgefield approach, Local Planning Authorities make provision for any undersupply from previous years over the next 5 years (i.e. front loading) whereas the Liverpool approach spreads provision for the undersupply over the full term of the Plan (i.e. reducing the level of supply needed in the first five years when compared to the Sedgefield approach). The conclusion reached by two Planning Inspectors (ref. appeal decision Land at West Street Coggeshall dated 12 July 2017, and

Land at Finchingfield Road Steeple Bumpstead dated 6th September 2017) is that although the District Council advanced the Liverpool approach, the Sedgefield approach should be applied to the calculation until there is greater certainty with the Local Plan. These appeal decisions are a material consideration in the determination of residential development proposals and it must therefore be acknowledged that whilst the District Council's forecast housing supply (as at 30 December 2017) is considered to be 5.15 years based on the Liverpool approach, it is 4.03 years based on the Sedgefield approach.

The NPPF provides specific guidance in relation to the determination of planning applications in such circumstances, stating at paragraph 49 that "Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites".

The impact of this is demonstrated at paragraph 14 which states that "At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan-making and decision-taking.

For decision-taking this means (Footnote: unless material considerations indicate otherwise):

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - 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; or
 - specific policies in this Framework indicate that development should be restricted (Footnote: for example, those policies relating to sites protected under the Birds and Habitat Directives and/or designated as Sites of Special Scientific Interest, land designated as Green Belt, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion).

The lack of a 5 year housing land supply is therefore a material consideration which must be a significant factor in the consideration of the planning balance as set out at paragraph 14 of the NPPF. The merits of the application are discussed below with the planning balance concluded at the end of the report.

Character, Design, Appearance and Layout

Furthermore, Paragraph 56 the NPPF highlights that good design is a key aspect of sustainable development. Paragraph 57 highlights that it is important to achieve high quality and inclusive design for all land and

buildings. If a proposal fails to achieve good design, paragraph 64 stipulates that permission should be refused where the design fails to improve the character and quality of an area.

The NPPF states that new development should seek to improve “streetscapes and buildings to create attractive and comfortable places” by using design which reflects “local character and history, and reflects the identity of local surroundings and materials”, thereby resulting in a form of development which is “visually attractive as a result of good architecture and appropriate landscaping”. In addition to this, Policy RLP90 of the Braintree District Local Plan Review require designs to recognise and reflect local distinctiveness in terms of scale, density, height and massing of buildings, and be sensitive to the need to conserve local features of architectural and historic importance, and also to ensure development affecting the public realm shall be of a high standard of design and materials, and use appropriate landscaping. Policy LPP 55 of the emerging Braintree District Publication Draft Local Plan seeks to secure the highest possible standards of design and layout in all new development and the protection and enhancement of the historic environment.

The Council has adopted the Essex Design Guide as a Supplementary Planning Document. This indicates that dwellings with two bedrooms should be provided with a private rear garden of 50sq.m or more, and three bedroom dwellings should be provided with 100sq.m or more. Furthermore, Policy RLP56 of the Braintree District Local Plan Review requires that sufficient vehicle parking should be provided for all new development in accordance with the Essex County Council Vehicle Parking Standards 2009.

The site comprises a small parcel of land to the north of Braintree Road between neighbouring properties No.8 Leyfield and Derrgowna. Development on the north side of Braintree Road is sporadic in nature with small clusters of linear development in part and distinct gaps between the clusters. These dwellings are relatively low key and have a rural character. This is very different to the character of development south of Braintree Road which is much more built-up. The village boundary for Cressing includes the development to the south of Braintree Road but excludes development to the north of Braintree Road. The planning inspector in the appeal for application 90/00502/POBS considered that due to the above site circumstances, the site did not form part of the village. Taking into account all of the above, it is considered that this assessment of the site context is still relevant; that the site does not form part of the village, and thus its development would be out of character with the area and represent an intrusion into the countryside.

The application in this case proposes to develop the site to accommodate 6 four bedroom dwellings. The dwellings would be split into two types; type A would consist of two dwellings (plots 1 and 3) in a standard rectangular format, while type B would consist of four dwellings (plots 2, 4, 5, 6) in an ‘L’ shaped format. The site comprises a frontage with Braintree Road of approx. 71m, and an overall depth of approx. 60m. To accommodate the 6 dwellings, the site would be required to be developed in depth. As such, plots 3, 4 and 5

are all located behind the plots along the road frontage including 1, 2 and 6. The garages are also proposed to be located behind plots 1, 2 and 6.

Taking into account the above, it is considered that not only would the site be out of the village, but the development itself by virtue of developing in depth would be alien and out of keeping with the sporadic linear pattern of development on the north side of Braintree Road. It is considered the development would therefore cause harm to the character and appearance of the area. It is acknowledged that planning permission was granted on appeal for a house at the rear of 1-8 Braintree Road. However, the two proposals are not comparable in terms of their scale, their prominence or their impact on the character of the locality.

In terms of the overall layout of the proposed dwellings, while garden amenity sizes and parking can all be accommodated in accordance with the above standards, it is considered that positioning dwellings as proposed would result in a confused arrangement of dwellings that pays little regard to the character of the existing development that it would sit alongside. In particular, the layout in the middle part and rear of the site would be dominated by garden fencing and tall gates to all parking areas with a functionless space in the middle that would do little to contribute to the amenity of the development. The dwellings at the rear of the site in particular do not have a positive relationship with the other areas of the development. Plot 3 in particular would have a poor outlook overlooking fencing and parking of other dwellings.

In summary, it is considered that the proposed development by virtue of its quantum, form, layout and design would be out of keeping with the pattern of development and have a detrimental impact upon the character and appearance of the area. Moreover, the conclusion reached by the Inspector (in relation to application 90/00502/POBS) about the fundamental damage caused to the character of the area is considered to have the same resonance today.

Impact on Neighbour Amenity

The NPPF requires a good standard of amenity for all existing and future occupiers of land and buildings. Policy RLP90 states that development shall not cause undue or unacceptable impacts on the amenities of nearby residential properties. Pages 70-73 of the Essex Design Guide also refer to set back-to-back and back-to-side distances to ensure that neighbouring amenity is protected as far as possible. This includes a 25m overall back-to-back separation, while a dwelling should be 15m from a common boundary with the rear property. At an angle of 30 degrees or more, these distances may be able to be reduced.

In this case, taking into account positioning, scale and massing of dwellings and garages, and positioning & separation of neighbouring properties, it is considered neighbouring amenity would not be detrimentally affected by virtue of overlooking, overshadowing or overbearing.

Highway Issues

The site does not benefit from any vehicular access from the road frontage. It instead comprises a hedge which spans the entirety of the site's boundary with the highway. As part of this application, it is proposed that over 11m of hedge would be removed to facilitate access, while the remainder of the hedge would remain (approx. 60m cumulatively).

Initially no information was submitted in respect of visibility that would be achievable from the proposed access. Following concerns raised by Officers and Essex Highways in this regard a revised site plan was submitted demonstrating that, with some trimming of the hedge at the front of the site that visibility splays were achievable at 2.4m by 45m in each direction.

Essex Highways considered the revised visibility plan and determined that visibility splays of 2.4m by 45m would be inadequate for a 40mph road which would require visibility splays of 120m x 2.4m x 120m. From the information submitted, the Highways Officer considered that the required visibility would not be achievable. A speed survey was therefore suggested to determine if a lower visibility requirement could be considered. No such speed survey was forthcoming with the application. As such, it is considered that no evidence has been provided to demonstrate that satisfactory highway safety could be reasonably achieved for the access of the site.

In terms of waste collection, the dwellings at the rear would be further than the 25m pull distance from the highway. However, there is sufficient space by the front entrance of the site to accommodate a refuse collection area for properties. As such, while not shown on the initially submitted plans, it is considered this detail could be secured via condition.

Landscape + Ecology

Policy CS8 of the Council's Core Strategy specifies that development must have regard to the character of the landscape and its sensitivity to change. Where development is permitted, it will need to enhance the locally distinctive character of the landscape in accordance with the Landscape Character Assessment.

The Council's Landscape Officer raised some concerns in respect of developing the site in depth and consequential impact on the field behind the site. However, the Landscape Officer did not object as details of landscaping could be secured via condition. It is considered that details of landscaping at the rear of the site would be particularly important to help mitigate the visual impact of the development. However, it is considered that additional landscaping would not be sufficient to overcome the harm set out in the character section above. This would also be consistent with the findings of the appeal decision referred to earlier in the report.

RLP84 of the Braintree District Local Plan Review states that planning permission will not be granted for development which would have an adverse impact on badgers, or species protected under various UK and European legislation, or on the objectives and proposals in National or County Biodiversity Action Plans as amended. Where development is proposed that may have an impact on these species, the District Council will require the applicant to carry out a full ecological assessment. This is echoed by Policy LPP68 of the emerging Braintree District Publication Draft Local Plan.

A Preliminary Ecology Appraisal (PEA) has been carried out on the site. The PEA states that further survey efforts are required in respect of Great Crested Newts (GCN), Reptiles and Notable mammals. The further survey work for GCN will determine if a European Protect Species licence is required. In the absence of the further surveys, the Local Planning Authority cannot adequately consider the impact of the development on protected species, and in this respect the application does not comply with Policy RLP84 of the Local Plan Review.

Air Quality and Noise

An Air Quality and Noise Assessment were submitted with the application due to the proximity of the development to Braintree Road. The Council's Environmental Health Officer considered the reports and initially requested further information. This information was provided. The Environmental Health Officer reviewed the information and stated that more information would be necessary, but considered the further details could be secured by condition. As such, taking all of the above into account, it is considered that air quality and noise would not be a detrimental issue in this case.

Contamination

Policy RLP 64 of the Braintree District Local Plan Review states that an applicant proposing development on or near a site where contamination may exist, should carry out a thorough investigation, so as to establish the nature and extent of the contamination.

Although it might be expected that applicants provide a preliminary assessment of the contamination risk at a site, there is no evidence to suggest that the matter could not be addressed by condition in this case.

Planning Balance

In the context of a shortfall in the 5 year housing land supply, paragraph 14 of the NPPF requires the LPA to assess whether there are specific policies of the NPPF (footnote 9) that indicate that development should be restricted. No such policies are considered to apply to the development the subject of this application. In such circumstances ;paragraph 14 of the NPPF requires the LPA apply the "tilted balance" by assessing whether any adverse impact of granting permission would be significantly and demonstrably outweigh the policies in the NPPF taken as a whole.

As set out in Paragraph 7 of the NPPF, sustainable development has three dimensions; an economic role (contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation), a social role (supporting strong, vibrant and healthy communities, by providing the supply of housing required, by creating a high quality built environment, with accessible local services), and an environmental role (contributing to protecting and enhancing the natural, built and historic environment, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change). These roles should not be considered in isolation because they are mutually dependent.

In terms of benefits, the proposal would provide a small economic benefit during construction and some limited social benefits once occupied. It would also contribute (albeit in a limited capacity) to housing supply with the addition of 6 dwellings.

Against these benefits, officers have identified the fundamental detriment that would be caused to the character of the locality, the shortcomings in the design of the development, the failure to demonstrate that safe access can be achieved and the absence of survey information relating to its potential impact upon protected species. In these circumstances the adverse impacts would significantly and demonstrably outweigh the benefits of the development and refusal is recommended.

RECOMMENDATION

It is RECOMMENDED that the following decision be made:
Application REFUSED for the following reasons:-

- 1 The site is located in the countryside, outside any defined village envelope as identified in the adopted Local Plan Review and adopted Core Strategy.

The proposal would introduce development of a layout and form that would be inward facing, paying little regard to its context and markedly at odds with sporadic linear pattern of development on the north side of Braintree Road, to the detriment of the character and appearance of the local area.

In addition the development fails to demonstrate that safe access can be achieved and, in the absence of survey information relating to its potential impacts upon protected species, fails to satisfy the Local Planning Authority that there are no unacceptable impacts or that impacts can be acceptably mitigated.

In such circumstances, the adverse impacts of the development are considered to significantly and demonstrably outweigh the modest

benefits arising from a small residential development close to an existing settlement and would fail to secure sustainable development contrary to the provisions of the National Planning Policy Framework, contrary to Policy RLP2 of the Braintree District Local Plan Review (2005) and Policy CS5 and CS9 of the Braintree District Core Strategy (2011) and Policies SP1, SP3, LPP50, LPP55 and LPP71 of the Braintree District Publication Draft Local Plan (2017).

- 2 It has not been demonstrated to the satisfaction of the Local Planning Authority or Essex Highways that the development can achieve adequate visibility such to provide safe ingress and egress from the site. The proposal would therefore be contrary to Policy DM1 of the Highway Authority's adopted Development Management Policies and Policy RLP90 (viii) of the Braintree District Local Plan Review which promotes safe and secure designs and layouts.
- 3 Policy RLP84 of the Local Plan Review states that planning permission will not be granted for development which would have an adverse impact on badgers, or species protected under various UK and European legislation.

Where development is proposed that may have an impact on these species the District Council will require the applicant to carry out a full ecological assessment. Where appropriate, the Planning Authority will impose conditions and/or planning obligations to:

- a) Facilitate the survival of individual members of the species
- b) Reduce disturbance to a minimum; and
- c) Provide supplementary habitats.

A Preliminary Ecology Appraisal (PEA) has been carried out on the site. The PEA states that further survey efforts are required in respect of Great Crested Newts (GCN), Reptiles and Notable mammals. The further survey work for GCN will determine if a European Protect Species licence is required. In the absence of the further surveys, the Local Planning Authority cannot adequately consider the impact of the development on protected species or satisfy itself that development will comply with Policy RLP84 of the Local Plan Review.

SUBMITTED PLANS

Topographical Survey	Plan Ref: 1469/01
Location Plan	Plan Ref: 1469/02
Site Plan	Plan Ref: 1469/P/01
Site Plan	Plan Ref: 1469/P/02

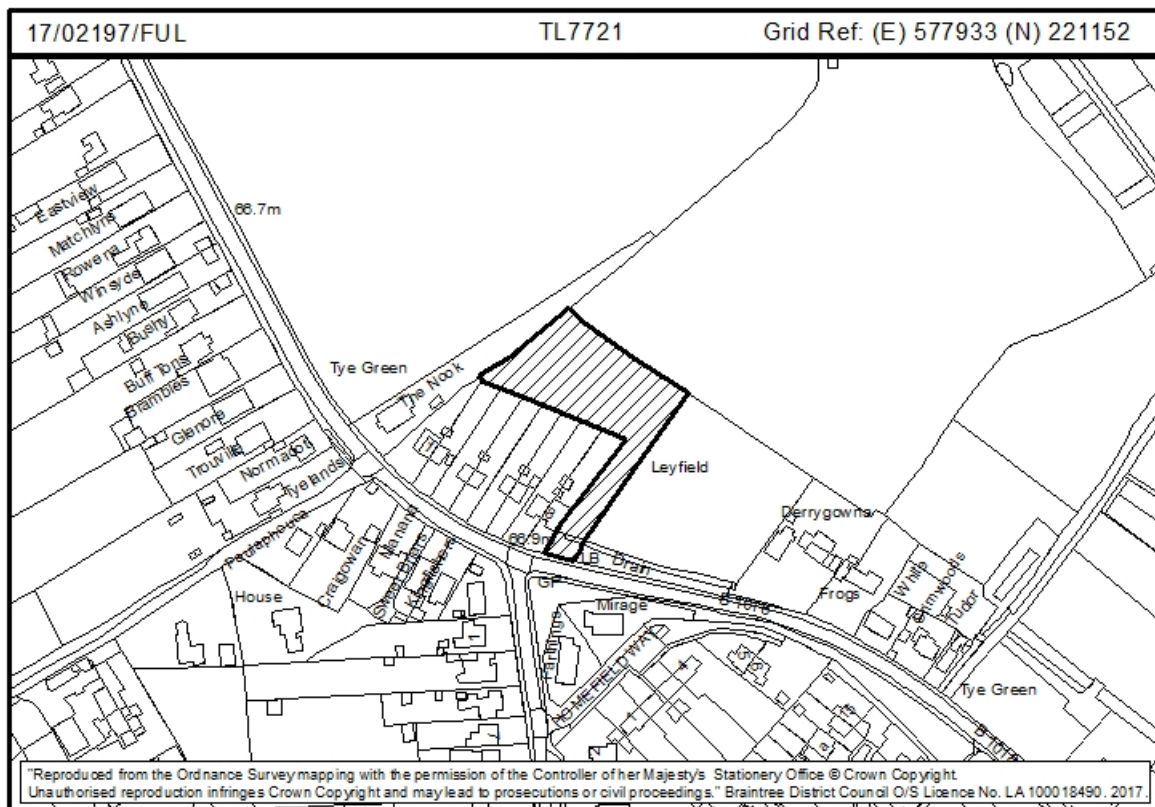
Street elevation	Plan Ref: 1469/P/03
Proposed Plans	Plan Ref: 1469/P/04
Proposed Plans	Plan Ref: 1469/P/05
Garage Details	Plan Ref: 1469/P/06
Garage Details	Plan Ref: 1469/P/07
Landscaping	Plan Ref: JCN/1444/17

TESSA LAMBERT
DEVELOPMENT MANAGER

PART A

APPLICATION 17/02197/FUL DATE 06.12.17
 NO: VALID:
 APPLICANT: Mr & Mrs Athanasiadis
 85 Panfield Lane, Braintree, Essex, CM7 5RP
 AGENT: Dino Athan Design Limited
 Mr Dino Athan, 1 Cuckoos Cottages, Wethersfield Road,
 Sible Hedingham, Halstead, Essex, CO9 3LD
 DESCRIPTION: Erection of 4 no. four bedroom detached 2-storey houses
 LOCATION: Land Adjoining And To The Rear Of 1 To 8, Leyfield,
 Braintree Road, Crossing, Essex

For more information about this Application please contact:
 Mathew Wilde on:- 01376 551414 Ext. 2512
 or by e-mail to: mathew.wilde@braintree.gov.uk



SITE HISTORY

17/00015/REF	Change of use of land from agricultural to residential and the erection of a barn style detached house	Appeal Allowed	18.07.17
16/01782/FUL	Change of use of land from agricultural to residential and the erection of a barn style detached house	Refused then allowed on appeal	16.12.16

POLICY CONSIDERATIONS

Currently the Council's development plan consists of the Braintree District Local Plan Review (2005) and the Core Strategy (2011).

The Council is currently working on a Draft Local Plan, which was approved by the Council unanimously for consultation on the 20th June 2016 and was the subject of public consultation between the 27th June and 19th August 2016. The Draft Local Plan, now referred to as the Publication Draft Local Plan, was approved by the Council on 5th June 2017 for consultation and for submission to the Secretary of State. The public consultation ran from 16th June to 28th July 2017. The Publication Draft Local Plan was submitted to the Secretary of State on the 9th October 2017. The Section 1 of the Draft Local Plan is currently the subject of an examination by an Inspector appointed by the Secretary of State for Housing, Communities and Local Government. The Part 2 Draft Local Plan examination will take place later this year.

In accordance with paragraph 216 of the NPPF, from the day of publication the Council can give weight to the emerging Draft Local Plan and the weight that can be given is related to:

“The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);

The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given) and;

The degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”.

Accordingly the Council can currently afford some weight to the emerging Publication Draft Local Plan 2017.

It should also be noted that the Council was previously working on a Site Allocation and Development Management Plan (the ADMP). This plan was subject to extensive public consultation in 2013 and 2014. The ADMP was not however submitted to the Planning Inspectorate, due to the decision to begin

work on a new Local Plan, to take into account the most up to date Government guidance. However parts of the ADMP have been rolled forward into the Draft Local Plan. It is therefore considered that it would be consistent with the provisions in paragraph 216 of the NPPF, to afford more weight in decision making to the parts of the Draft Local Plan which have been rolled forward from the ADMP, due to the more advanced stage reached by those elements.

National Planning Guidance

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

Braintree District Local Plan Review 2005

RLP2	Town Development Boundaries and Village Envelopes
RLP8	House Types
RLP9	Design and Layout of Housing and Mixed Use Areas
RLP10	Residential Density
RLP49	Pedestrian Networks
RLP50	Cycleways
RLP51	Cycle Parking
RLP52	Public Transport
RLP56	Vehicle Parking
RLP63	Air Quality
RLP64	Contaminated Land
RLP65	External Lighting
RLP67	Flood Risk in Undeveloped Areas
RLP69	Sustainable Urban Drainage
RLP70	Water Efficiency
RLP71	Water Supply, Sewerage & Drainage
RLP72	Water Quality
RLP74	Provision of Space for Recycling
RLP77	Energy Efficiency
RLP80	Landscape Features and Habitats
RLP81	Trees, Woodland Grasslands and Hedgerows
RLP84	Protected Species
RLP90	Layout and Design of Development
RLP92	Accessibility
RLP93	Public Realm

Braintree District Local Development Framework Core Strategy 2011

CS5	The Countryside
CS7	Promoting Accessibility for All
CS8	Natural Environment and Biodiversity
CS9	Built and Historic Environment
CS10	Provision for Open Space, Sport and Recreation

Braintree District Publication Draft Local Plan 2017

SP1	Presumption in Favour of Sustainable Development
SP3	Meeting Housing Needs
SP6	Place Shaping Principles
LPP37	Housing Type and Density
LPP44	Sustainable Transport
LPP45	Parking Provision
LPP50	Built and Historic Environment
LPP55	Layout and Design of Development
LPP63	Archaeological Evaluation, Excavation and Recording
LPP71	Landscape Character and Features
LPP73	Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards
LPP75	Energy Efficiency
LPP78	Flooding Risk and Surface Water Drainage
LPP81	External Lighting

INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

This application is brought before the Planning Committee in accordance with the Council's Scheme of Delegation as the application has been deemed to be of significant public interest.

SITE DESCRIPTION

The site comprises a parcel of land at the rear of Nos 1 – 8 Leyfield, a row of semi-detached dwellings fronting onto Braintree Road. There is a small wooded area to the east, beyond which are some sporadic dwellings. North of the site is open countryside. The site is outside of the Village Envelope, which runs along the other side of Braintree Road. Access to the site is taken from a grassed access way off Braintree Road, adjacent to No.8 Leyfield.

PROPOSAL

The proposal in this case is to erect four detached dwellings at the rear of Nos.1-8 Leyfield. Plots 1-2 would adjoin the boundary with the rear of Nos.1-8 Leyfield while plots 3 and 4 would back onto the open countryside at the rear. Each dwelling would be provided with a single garage and two parking spaces each. The access to the dwellings would remain as existing, but would be tarmacked to provide a 3.7m wide shared drive.

CONSULTATIONS

Essex County Council Highways

Object to the application:

- initially no access information provided

- When further information provided – the required visibility splays were not to the satisfaction of Essex Highways – maintain position of refusal

Braintree District Council Landscape Services

Raised some concerns in respect of the lack of landscaping between the houses and the wider countryside behind – stating that development at the site would begin eroding the current clear delineation between village and countryside, pushing the village out towards the fields. If approved recommends conditions in respect of Tree Protection Plan and Arboricultural Method Statement.

Braintree District Council Ecology

Objects to the application on the basis that no Preliminary Ecological Appraisal has been carried out at the site.

Braintree District Council Environmental Health

Provided no comments on this application. However, in the interests of consistency with the adjacent site, it is expected that a Preliminary Contamination Assessment be carried out at the site, especially now as more of the site is being developed than previously sought. No such contamination survey has been received.

Cressing Parish Council

Object to the application for the following summarised reasons:

- Loss of agricultural land
- Outside of village envelope
- Backland development with access issues
- Site allocated (Cress200) and was not taken forward – Cressing third tier village
- Alter character of area
- Refuse collection issues
- Increased traffic onto Braintree Road
- Additional noise
- Overlooking issues to neighbouring properties
- Detrimental effect on natural habitat
- Set precedent for future development

REPRESENTATIONS

Three objections have been received from 6 & 8 Leyfield and 3 Mill Lane setting out the following summarised objections:

- Change of use would be detrimental to meadow
- Increased traffic onto busy road
- Overlooking issues

- Minimal contribution to housing stock
- Development would not enhance natural habitat
- Detrimental impact upon street scene
- New junction proposed – traffic issues
- This proposal change previously approved scheme
- Inadequate size for refuse collection

REPORT

History

Before considering the merits of this planning application, reference must be made to a recent appeal decision relating to the site. The site was originally put forward through the call for sites process but was not taken forward. Irrespective of this, previous application 16/01782/FUL sought the erection of a single 'barn style' dwellinghouse, 1 ½ storey with grey timber cladding. It would be located directly at the rear of the access with a large section of the existing green space to remain as amenity space/orchard. Officers refused this application for the following reasons:

1...."The Council does not accept that the proposal would be sustainable development within the meaning of the NPPF, having regard to the following factors. In this case it is considered that the lack of local facilities and services to meet the needs of future occupiers of the proposed development resulting in a heavy reliance on the private car, and the failure of the proposed development in terms of its social sustainability in terms of making a meaningful contribution to accessible local services that reflect the future community's needs in support of its health, social and cultural well-being. Furthermore, the proposal will represent an unjustified intrusion into the countryside by introducing an intensified urbanisation to the locality that would result in harm to the character and appearance of the countryside. The proposal would therefore be contrary to the provisions of the NPPF and would be contrary to Policy RLP2 of the Braintree District Local Plan Review (2005) and Policy CS5 of the Braintree District Local Development Core Strategy (2011)."

2..."In this case, it is considered that the proposed dwelling would result in a built form that would not reflect the character of the existing development as a result of its size, scale, bulk, form, use of materials and positioning in relation to the existing development. Due to its backland position, the proposed dwelling would not function well and would fail to improve on the existing context. The detailing in respect of the solid to void ratio is also poor, particularly the front elevation, as a result of the variety of sizes and asymmetrical positioning of the openings. The resultant building would appear to be a mixture of traditional and modern form which would be incongruous and would not enhance the immediate setting or be sensitive to the defining characteristics of the area. Furthermore, the design of the proposed dwelling could not be described as truly outstanding or innovative. The proposal is therefore considered to be contrary to the

NPPF and Policy RLP90 of the Braintree District Local Plan Review (2005) and Policy CS9 of the Braintree District Core Strategy (2011)."

The reasons for refusal therefore related to the sites location and also the design/appearance of the dwelling. The refusal of planning permission was appealed to the Planning Inspectorate (APP/Z1510/W/17/3170257). The appeal was allowed with the Planning Inspector concluding the following:

"I have found that future occupants of the proposed dwelling would have satisfactory access to local shops and services, and that there would be no harm to the character and appearance of the surrounding area. There would also be modest economic benefits arising from the proposal during the construction phase and increased economic activity within the village in the longer term. As such the proposal would constitute sustainable development having regard to the policies in the Framework as a whole."

The inspector therefore disagreed with the Council that the site would be in an isolated location and that the proposed dwelling would have a detrimental impact upon the character of the area. The proposal in this case however would be materially different to the development allowed at appeal as it proposes four two storey dwellings. The merits of this application will be discussed further in the report below.

Principle of Development

The National Planning Policy Framework (NPPF) states in (para 14) that the presumption in favour of sustainable development should be seen as a golden thread running through both plan making and decision taking. More specifically, paragraph 49 states that 'housing applications should be considered in the context of the presumption in favour of sustainable development'.

Currently the Council's statutory development plan consists of the Braintree District Local Plan Review (2005) and the Core Strategy (2011).

The site is not identified as being within a development boundary in the current adopted Local Plan and as such is on land designated as 'countryside' where there is a presumption against new development. Instead, Policy RLP2 of the Braintree District Local Plan Review states that new development will be confined to the areas within Town Development Boundaries and Village Envelopes. Outside these areas countryside policies apply. Policy CS5 of the Braintree District Core Strategy states that development outside of defined boundaries will be strictly controlled to uses appropriate to the countryside in order to protect and enhance landscape character, biodiversity, geodiversity and the amenity value of the countryside. Policy CS8 of the Braintree District Core Strategy indicates that where development is to take place in the countryside it will need to enhance the locally distinctive character of the landscape in accordance with the Landscape Character Assessment. The policies set out above seek to protect

the countryside and direct new residential development to sustainable locations.

The Spatial Strategy outlined in the Braintree District Core Strategy sets out that new development should preserve and enhance the character of the rural heartland of the Braintree District, its countryside and villages, by supporting development that is needed to make settlements and the rural economy more sustainable and protect and enhance the natural environment and; to concentrate the majority of new development and services in the main towns of Braintree, Witham and Halstead, at new Growth Locations at Braintree and Witham and in the Key Service Villages (Coggeshall, Earls Colne, Hatfield Peverel, Kelvedon, Sible Hedingham and Silver End).

The NPPF requires that Councils seek to boost significantly the supply of housing, and contains policy guidance to support this. Under paragraph 47 of the NPPF the Council is obliged to have plans which "... meets the full objectively assessed needs for market and affordable housing", together with an additional buffer of 5%. The Council is specifically required to produce and demonstrate its building trajectory to show how there can be the delivery of a five-year supply of housing. Members will be aware that the Council currently have a forecast supply prediction which indicates a shortfall in supply.

A key aspect of the argument has been whether to apply the "Sedgefield approach" or the "Liverpool approach" to the calculation of the shortfall. The difference between the two is that under the Sedgefield approach, Local Planning Authorities make provision for any undersupply from previous years over the next 5 years (i.e. front loading) whereas the Liverpool approach spreads provision for the undersupply over the full term of the Plan (i.e. reducing the level of supply needed in the first five years when compared to the Sedgefield approach). The conclusion reached by two Planning Inspectors (ref. appeal decision Land at West Street Coggeshall dated 12 July 2017, and Land at Finchingfield Road Steeple Bumpstead dated 6th September 2017) is that although the District Council advanced the Liverpool approach, the Sedgefield approach should be applied to the calculation until there is greater certainty with the Local Plan. These appeal decisions are a material consideration in the determination of residential development proposals and it must therefore be acknowledged that whilst the District Council's forecast housing supply (as at 30 December 2017) is considered to be 5.15 years based on the Liverpool approach, it is 4.03 years based on the Sedgefield approach.

The NPPF provides specific guidance in relation to the determination of planning applications in such circumstances, stating at paragraph 49 that "Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites".

The impact of this is demonstrated at paragraph 14 which states that "At the heart of the National Planning Policy Framework is a presumption in favour of

sustainable development which should be seen as a golden thread running through both plan-making and decision-taking.

For decision-taking this means (Footnote: unless material considerations indicate otherwise):

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - 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; or
 - specific policies in this Framework indicate that development should be restricted (Footnote: for example, those policies relating to sites protected under the Birds and Habitat Directives and/or designated as Sites of Special Scientific Interest, land designated as Green Belt, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion).

The lack of a 5 year housing land supply is therefore a material consideration which must be a significant factor in the consideration of the planning balance as set out at paragraph 14 of the NPPF. The merits of the application are discussed below with the planning balance concluded at the end of the report.

Character, Design, Appearance and Layout

Paragraph 56 the NPPF highlights that good design is a key aspect of sustainable development. Paragraph 57 highlights that it is important to achieve high quality and inclusive design for all land and buildings. If a proposal fails to achieve good design, paragraph 64 stipulates that permission should be refused where the design fails to improve the character and quality of an area.

The NPPF states that new development should seek to improve “streetscapes and buildings to create attractive and comfortable places” by using design which reflects “local character and history, and reflect the identity of local surroundings and materials”, thereby resulting in a form of development which is “visually attractive as a result of good architecture and appropriate landscaping”. In addition to this, Policy RLP90 of the Braintree District Local Plan Review require designs to recognise and reflects local distinctiveness in terms of scale, density, height and massing of buildings, and be sensitive to the need to conserve local features of architectural and historic importance, and also to ensure development affecting the public realm shall be of a high standard of design and materials, and use appropriate landscaping. Policy LPP 55 of the emerging Braintree District Publication Draft Local Plan seeks to secure the highest possible standards of design and layout in all new development and the protection and enhancement of the historic environment.

The Council has adopted the Essex Design Guide as a Supplementary Planning Document. This indicates that dwellings with two bedrooms should be provided with a private rear garden of 50sq.m or more, and three bedroom dwellings should be provided with 100sq.m or more. Furthermore, Policy RLP56 of the Braintree District Local Plan Review requires that sufficient vehicle parking should be provided for all new development in accordance with the Essex County Council Vehicle Parking Standards 2009.

When considering application 16/01782/FUL for the erection of a single dwelling, the Planning Inspector considered numerous factors in weighing up the overall planning balance including the character of the building, soft landscaping and whether the development would constitute inappropriate backland development.

The Inspector concluded that the height of the building would not compete with other properties nearby, that the materials proposed would not be out of character with area and that the dwelling would not be prominent in the streetscape due to the backland position. The Inspector also commented in respect of the proposed wildflower meadow that would be retained at the site, as well as proposed boundary planting, suggesting that because of the meadow's retention, the proposed dwelling would blend into its surroundings and provide an appropriate transition to the open countryside. Finally, the inspector concluded that because the site did not extend beyond the existing domestic garden footprint of 'The Nook' (to the North West of the site) that the proposed dwelling would not encroach into open countryside or undermine the rural setting of the village.

While the principle of backland development for one dwelling has been established on this site by virtue of the appeal decision, development on the north side of Braintree Road is sporadic in nature with small clusters of linear development in part and distinct gaps between the clusters. These dwellings are relatively low key and have a rural character. The site in this case is distinctive for its rural character and clearly separate from the core built form that is Cressing/Tye Green village.

It is considered the proposal in this case is materially different to that allowed application at appeal. This is because the proposal now relates to the erection of 4, four bed detached brick built houses with garages and parking spaces. The proposed development would therefore increase the overall amount of development by a considerable margin when compared to the 1, one and a half storey dwelling that was allowed on appeal. It is considered the proposed dwellings would have no regard to the character of the village and appear as large, complicated masses that have a strongly suburban character. The proposed dwellings would consequently compete with the existing linear development on Braintree Road and erode the transition of the site towards the open countryside beyond. No landscaping is proposed on the rear boundary to soften the impact of the development on the countryside at the rear which would only exacerbate the impact of the dwellings as proposed. Irrespective of any proposed landscaping on the rear boundary, it is

considered that the development would materially change and be detrimental to the character and appearance of the area.

The proposal would also result in the loss of the entirety of the meadow area which was considered to be of importance by the Planning Inspector on the previously allowed application (16/01782/FUL) and instead would be replaced by parking, hardstanding and gardens. It is considered therefore that the proposal would introduce a significant intensification of development of a distinctly suburban character on what is a sensitive backland site.

In terms of the proposed layout, the proposed dwellings would be crammed together in the centre of the site effectively turning the back of houses to the main boundaries. The parking courts for each dwelling in particular would result in a dominance of car parking in the street and not provide adequate manoeuvrability for vehicles as there would not be 6m of carriageway to enable reversing in and out of a parking space. More specifically to the individual house types, house type A would have a contrived rear elevation in an attempt to avoid overlooking on neighbouring gardens. The resulting design provides a large expanse of ground and upper floor roofs visible from the existing gardens and houses and, overall, the development fails to create its own sense of place or pay significant regard to the character of existing development and its relationship with the countryside beyond it.

Impact on Neighbour Amenity

The NPPF requires a good standard of amenity for all existing and future occupiers of land and buildings. Policy RLP90 states that development shall not cause undue or unacceptable impacts on the amenities of nearby residential properties. Pages 70-73 of the Essex Design Guide also refer to set back-to-back and back-to-side distances to ensure that neighbouring amenity is protected as far as possible. This includes a 25m overall back-to-back separation, while a dwelling should be 15m from a common boundary with the rear property. At an angle of 30 degrees or more, these distances may be able to be reduced.

Plots 1 and 2 would be relatively close to these rear boundaries measuring 2.8m and 5.2m respectively at the shortest point. However, Nos.1-8 Leyfield have long rear gardens, in excess of 32m at the shortest point to the rear site boundary. As such, due to the overall separation distance, it is considered neighbouring amenity would not be detrimentally affected by virtue of overshadowing or overbearing.

In terms of overlooking, the rear elevation of plots 1 and 2 has been designed to only include a small obscurely glazed ensuite window at first floor. Taking this into account, it is considered that neighbouring amenity would also not be detrimentally affected by virtue of overlooking. However, as discussed in the design section, the requirement to design the elevation in this way highlights the contrived nature of the design of the elevation.

Highway Issues

The existing access at the site comprises hardstanding at the very edge by the highway. The remainder of the land at the rear of the access which leads to the rear of the site is grass. The proposal in this case would utilise the existing access from Braintree Road but would introduce a shared surface driveway leading to the rear of the site. The width of the shared surface would vary but would be approx. 4.3m at its narrowest point in accordance with the access plan submitted (upon request of Essex Highways). This would require the removal of all shrubbery right up to the neighbouring boundary that currently exists at the site. At the start of the vehicle egress, the access width would be over 5m for a total length of more than 8m.

Essex Highways initially determined that there was not sufficient information to demonstrate that safe access could be achieved for the site. Subsequently an access plan was submitted by the applicant. The required visibility for a 40mph road would be 120m in both directions with a 2.4m step-back from the highway edge (including footpath). However, the access plan in this case seemingly does not indicate the centre point of the visibility 2.4m back from the highway. In addition, the access plan indicates that to achieve the 120m in both directions, the splay in a northern direction would go over land outside the applicant's control. As such, Essex Highways considered that the site was unable to attain safe access to be utilised by four dwellings and thus recommended that the application be refused on highway safety grounds.

In terms of waste collection, the dwellings at the rear would be further than the 25m pull distance from the highway (some 70+m). No evidence has been provided that there would be sufficient space to provide a bin store/ refuse collection area close to the highway without compromising highway safety.

Landscape + Ecology

Policy CS8 of the Council's Core Strategy specifies that development must have regard to the character of the landscape and its sensitivity to change. Where development is permitted, it will need to enhance the locally distinctive character of the landscape in accordance with the Landscape Character Assessment.

Limited landscape information has been submitted with the application. The Council's Landscape Officer raised some concerns with respect to the lack of landscaping on the rear boundary of plots 3-4 to the wider countryside beyond the site. The Council's Landscape Officer considered that any proposal would need to include a strong landscape buffer at the site. It is considered this view is consistent with comments set out in the character section in the report. The Landscape Officer would require an Arboricultural Method Statement and a Tree Protection Plan if the application were to be approved.

RLP84 of the Braintree District Local Plan Review states that planning permission will not be granted for development, which would have an adverse

impact on badgers, or species protected under various UK and European legislation, or on the objectives and proposals in National or County Biodiversity Action Plans as amended. Where development is proposed that may have an impact on these species, the District Council will require the applicant to carry out a full ecological assessment. This is echoed by Policy LPP68 of the emerging Braintree District Publication Draft Local Plan.

No Preliminary Ecological Appraisal (PEA) has been carried out at the site. The Council's Ecologist reports that although it is a small site, it has ecological potential for nesting birds (including ground nesting), reptiles and could be used for foraging/commuting by other species e.g. badgers and bats. The information provided by a PEA is required at the outset to establish whether further surveys are necessary to determine if a European Protect Species licence would be required to do any works. In the absence of this information, the Local Planning Authority is unable to establish whether or not the development will have an impact on protected species and in this respect the development would not comply with Policy RLP84.

Contamination

Policy RLP 64 of the Braintree District Local Plan Review states that an applicant proposing development on or near a site where contamination may exist, should carry out a thorough investigation, so as to establish the nature and extent of the contamination.

Although it might be expected that applicants provide a preliminary assessment of the contamination risk at a site, there is no evidence to suggest that the matter could not be addressed by condition in this case.

Planning Balance

In the context of a shortfall in the 5 year housing land supply, paragraph 14 of the NPPF requires the LPA to assess whether there are specific policies of the NPPF (footnote 9) that indicate that development should be restricted. No such policies are considered to apply to the development the subject of this application. In such circumstances paragraph 14 of the NPPF requires the LPA apply the "tilted balance" by assessing whether any adverse impact of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

As set out in Paragraph 7 of the NPPF, sustainable development has three dimensions; an economic role (contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation), a social role (supporting strong, vibrant and healthy communities, by providing the supply of housing required, by creating a high quality built environment, with accessible local services), and an environmental role (contributing to protecting and enhancing the natural, built and historic environment, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change).

These roles should not be considered in isolation, because they are mutually dependent.

In terms of benefits, the proposal would provide a small economic benefit during construction and possibly some limited social benefits once occupied. It would also contribute (albeit in a limited capacity) to housing supply with the addition of 4 dwellings.

Against these benefits, Officers have identified the poor design quality of the development and its detrimental impact upon the character of the local area, the failure to demonstrate that safe access can be achieved and the absence of any information which would establish whether the development would have an impact upon protected species. These adverse impacts are considered to significantly and demonstrably outweigh the benefits of the development and refusal is recommended.

RECOMMENDATION

It is **RECOMMENDED** that the following decision be made:
Application **REFUSED** for the following reasons:-

- 1 The site is located in the countryside, outside any defined village envelope as identified in the adopted Local Plan Review and adopted Core Strategy.

The proposals would introduce a development that would be distinctly suburban in character, at odds with the linear, sporadic character of existing development on the north side of Braintree Road and eroding the transition between existing development and the open countryside beyond it.

In addition, the development fails to demonstrate that safe access can be achieved to the site and provides no information to enable an assessment of its impacts upon protected species.

In such circumstances, the adverse impacts of the development are considered to significantly and demonstrably outweigh the modest benefit arising for a development of 4 dwellings close to an existing settlement and would fail to secure sustainable development contrary to the provisions of the National Planning Policy Framework, contrary to Policy RLP2 of the Braintree District Local Plan Review (2005) and Policy CS5 and CS9 of the Braintree District Core Strategy (2011) and Policies SP1, SP3, LPP50, LPP55 and LPP71 of the Braintree District Publication Draft Local Plan (2017).

- 2 It has not been demonstrated to the satisfaction of the Local Planning Authority or Essex Highways that the development can achieve adequate visibility such to provide safe ingress and egress from the site. The proposal would therefore be contrary to Policy DM1 of the Highway Authority's adopted Development Management Policies and

Policy RLP90 (viii) of the Braintree District Local Plan Review which promotes safe and secure designs and layouts.

- 3 Policy RLP84 of the Local Plan Review states that planning permission will not be granted for development which would have an adverse impact on badgers, or species protected under various UK and European legislation.

Where development is proposed that may have an impact on these species the District Council will require the applicant to carry out a full ecological assessment. Where appropriate, the Planning Authority will impose conditions and/or planning obligations to:

- a) Facilitate the survival of individual members of the species
- b) Reduce disturbance to a minimum; and
- c) Provide supplementary habitats.

A Preliminary Ecological Appraisal has not been submitted with the application. In the absence of this information the Local Planning Authority cannot establish whether or not the development will have an impact on protected species and in this respect the proposals would fail to comply with Policy RLP84 of the Local Plan Review.

SUBMITTED PLANS

Street elevation	Plan Ref: 178-LEYFIELD-PL01
Proposed Plans	Plan Ref: 178-LEYFIELD-PL02
Location Plan	Plan Ref: 178-LEYFIELD-PL03

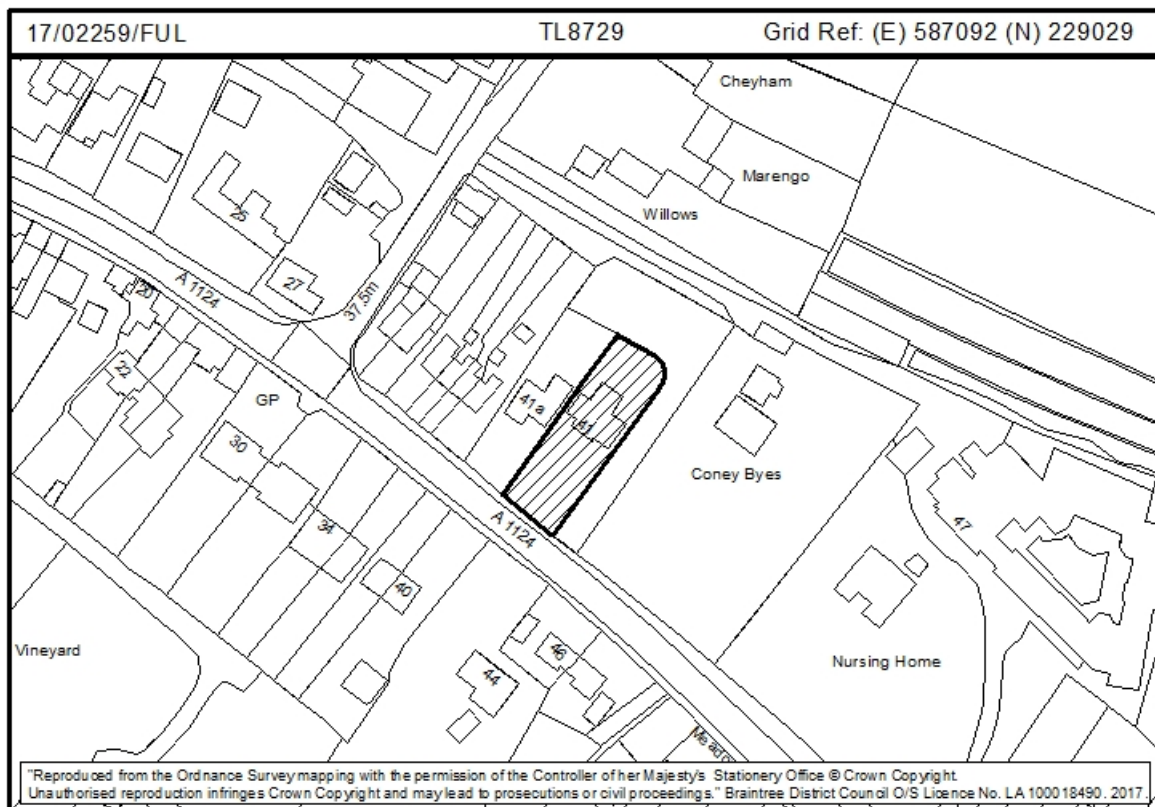
TESSA LAMBERT
DEVELOPMENT MANAGER

AGENDA ITEM NUMBER 5d

PART A

APPLICATION 17/02259/FUL DATE 20.12.17
NO: VALID:
APPLICANT: Shalamar Children Limited
Mr Sam Connor, Suite 3, 2nd Floor , Stanhope House,
High Street, Stanford-Le-Hope, Essex, SS170HA
AGENT: Phase 2 Planning Ltd
Mr Lindsay Trevillian, 250 Avenue West, Skyline 120, Great
Notley, Essex, CM77 7AA
DESCRIPTION: Change of use of existing dwelling house (C3 use) and its
associated plot to a residential children's home (C2 Use)
LOCATION: 41 Colchester Road, White Colne, Essex

For more information about this Application please contact:
Mathew Wilde on:- 01376 551414 Ext. 2512
or by e-mail to: mathew.wilde@braintree.gov.uk



SITE HISTORY

08/00067/REF	Demolition of house and garage and erection of five detached houses with associated parking and amenity areas. Formation of private drive and new vehicular access onto Colchester Road	Appeal Dismissed	27.03.09
08/00082/REF	Demolition of house and garage and erection of four detached houses with associated parking and amenity areas. Formation of private drive and new vehicular access onto Colchester Road	Appeal Dismissed	27.03.09
10/00012/REF	Demolition of house and garage and erection of two storey terrace of five houses with associated parking and amenity area. form private drive, and new vehicular access onto Colchester Road	Appeal Dismissed	08.07.10
17/00029/REF	Erection of detached bungalow to rear of no. 41, lay out parking and amenity areas, construct private drive with new vehicular access onto Colchester Road, form retaining walls, and alter parking and amenity areas to existing dwellings	Appeal Dismissed	17.08.17
78/00568/P	Dismantle existing garage and erect double garage	Granted	
07/02303/FUL	Demolition of house and garage and erection of five detached houses with associated parking and amenity areas. Formation of private drive and new vehicular access onto Colchester Road	Refused	28.12.07
08/00727/FUL	Demolition of house and garage and erection of five detached houses with	Refused then dismissed	09.06.08

	associated parking and amenity areas. Formation of private drive and new vehicular access onto Colchester Road	on appeal	
08/01687/OUT	Demolition of house and garage and erection of four detached houses with associated parking and amenity areas. Formation of private drive and new vehicular access onto Colchester Road	Refused then dismissed on appeal	29.10.08
09/01288/OUT	Demolition of house and garage and erection of two storey terrace of five houses with associated parking and amenity area. form private drive, and new vehicular access onto Colchester Road	Refused then dismissed on appeal	17.11.09
10/00537/OUT	Erection of two storey rear extension and first floor side extension to existing dwelling and alterations including reduction in building width, rationalise existing parking area and erection of two storey dwellinghouse with parking and amenity areas and formation of new vehicular access	Granted with S106 Agreement	17.06.10
13/00724/REM	Application for approval of reserved matters following outline approval - 10/00537/OUT (Landscaping) - Erection of two storey rear extension and first floor side extension to existing dwelling and alterations including reduction in building width, rationalise existing parking area and erection of two storey dwellinghouse with parking and amenity areas and formation of new vehicular access	Granted	09.08.13

14/00104/DAC	Application for approval of details reserved by condition no. 3, 4, 7, 8, 10 and 13 of approved application 10/00537/OUT	Granted	04.07.14
14/00047/NMA	Application for a non-material amendment following grant of planning permission 10/00537/OUT and 13/00724/REM - Alter approved levels details - TRANSFERRED TO NEW MMA APP	Application Returned	
14/01478/FUL	Application for a variation of condition no. 3 of approved application 10/00537/OUT - Amendments to levels	Granted	13.01.15
16/00879/VAR	Application for variation of condition nos. 3 and 7 of approved application 10/00537/OUT (Erection of two storey rear extension and first floor side extension to existing dwelling and alterations including reduction in building width, rationalise existing parking area and erection of two storey dwellinghouse with parking and amenity areas and formation of new vehicular access) - Levels and turning facilities	Granted	29.09.16
16/00899/OUT	Erection of detached bungalow to rear of no. 41, lay out parking and amenity areas, construct private drive with new vehicular access onto Colchester Road, form retaining walls, and alter parking and amenity areas to existing dwellings	Refused then dismissed on appeal	11.10.16
18/00587/PLD	Application for a proposed lawful development certificate - Change of use of existing dwelling house (C3 use) and its associated plot to a residential children's home (C3 Use).	Application Refused	

There are to be no internal or external works or alterations to the building as a result of the change of use.

POLICY CONSIDERATIONS

Currently the Council's development plan consists of the Braintree District Local Plan Review (2005) and the Core Strategy (2011).

The Council is currently working on a Draft Local Plan, which was approved by the Council unanimously for consultation on the 20th June 2016 and was the subject of public consultation between the 27th June and 19th August 2016. The Draft Local Plan, now referred to as the Publication Draft Local Plan, was approved by the Council on 5th June 2017 for consultation and for submission to the Secretary of State. The public consultation ran from 16th June to 28th July 2017. The Publication Draft Local Plan was submitted to the Secretary of State on the 9th October 2017. The Section 1 of the Draft Local Plan is currently the subject of an examination by an Inspector appointed by the Secretary of State for Housing, Communities and Local Government. The Part 2 Draft Local Plan examination will take place later this year.

In accordance with paragraph 216 of the NPPF, from the day of publication the Council can give weight to the emerging Draft Local Plan and the weight that can be given is related to:

“The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);

The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given) and;

The degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”.

Accordingly the Council can currently afford some weight to the emerging Publication Draft Local Plan 2017.

It should also be noted that the Council was previously working on a Site Allocation and Development Management Plan (the ADMP). This plan was subject to extensive public consultation in 2013 and 2014. The ADMP was not however submitted to the Planning Inspectorate, due to the decision to begin work on a new Local Plan, to take into account the most up to date Government guidance. However parts of the ADMP have been rolled forward into the Draft Local Plan. It is therefore considered that it would be consistent with the provisions in paragraph 216 of the NPPF, to afford more weight in decision making to the parts of the Draft Local Plan which have been rolled

forward from the ADMP, due to the more advanced stage reached by those elements.

National Planning Guidance

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

Braintree District Local Plan Review 2005

RLP2	Town Development Boundaries and Village Envelopes
RLP20	Residential Institutions in Towns and Villages
RLP56	Vehicle Parking
RLP90	Layout and Design of Development

Braintree District Local Development Framework Core Strategy 2011

CS9	Built and Historic Environment
CS7	Promoting Accessibility for All

Braintree District Publication Draft Local Plan 2017

SP1	Presumption in Favour of Sustainable Development
SP6	Place Shaping Principles
LPP1	Development Boundaries
LPP35	Specialist Housing
LPP44	Sustainable Transport
LPP45	Parking Provision
LPP50	Built and Historic Environment
LPP51	An Inclusive Environment
LPP55	Layout and Design of Development

INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

This application is brought before the Planning Committee in accordance with the Council's Scheme of Delegation as the application has been called in by a Ward Member.

SITE DESCRIPTION

The site is located on Colchester Road in White Colne. It comprises a four bedroom dwelling and is adjacent to a recently erected new dwelling to the west. The existing dwelling is set back approx. 20m from Colchester Road beyond an area of hardstanding at the front with landscaping and a rear area of garden amenity. The topography of the site slopes upwards from Colchester Road. Behind the site there is an area of undeveloped land.

PROPOSAL

The application in this case proposes to change the use of the existing dwellinghouse (C3) and its associated plot to a residential children's home. No external alterations are proposed and very little internal alteration as part of the change of use.

The company proposing to manage the care home are regulated by Ofsted and provide care for children who have had troubled pasts. It is proposed that four children would live at the property would range between 4 years old and 17 years old. The children would be supervised by staff 24 hours a day in two shifts of two staff (one team would start 10:30am and the other would start at 18:30PM). A general manager would occupy the site 8am-4pm during a normal working week.

CONSULTATIONS

Braintree District Council Environmental Health Officer

No objection.

Essex County Council Highways

No objection as existing area for parking is considered sufficient to provide parking in accordance with the current parking standards for Use Class C2.

White Colne Parish Council

Did not object or support but asked that Officers take into account concerns in relation to:

- Noise, external lighting, lack of fencing and containing development

REPRESENTATIONS

24 letters of objection have been received from:

- Ten Per Cent Corner & Willows, Bures Road,
- Coney Byes, 1, 8, 9, 16, 31, 33, 36, 39, 46 (*2), 50, 56, 58, 60, 61, 70, 75, 85, 101 Colchester Road
- 4, 18 Colne Park Road

These residents set out the following summarised concerns:

- Property unsuitable for this type of development
 - Not much for children to do in village
- Demand in White Colne/Earls Colne already met – 180 beds on other sites – high demand on services already
 - Backs onto existing care home
- No parking – staff change over an issue
 - Hardstanding that does exist would not be secure for residents

- Not adequate manoeuvrability
 - No dropped curb
 - Health providers, social services etc will all need to visit the site
- Adjacent to busy main road – parking on street cause traffic problems
- Not close access to services and facilities or public transport
 - Local schools full up
 - No cycle provision
 - Lack of street lighting
- Site not managed adequately – amenity space not adequate
 - Lack of suitable boundary treatment
 - Land at rear security issue
- Where would carers sleep
- Noise disturbance for residents
- Adjacent house could also become this accommodation

REPORT

History

The site has been subject to numerous previous planning applications for residential development. The most relevant application is 10/00537/OUT which granted extensions to the existing dwelling (subject of this application) and also the erection of a new dwelling to the west of the existing dwelling. Further to this, a planning application was dismissed at appeal for the erection of a single dwelling at the rear of the site (application 16/00699/OUT). This appeal decision is currently in the process of being re-examined as it was successfully challenged on a point of law.

Finally, a Lawful Development Certificate was submitted post submission of the planning application to determine whether the proposal to convert the house into a children's home actually constituted a change of use. Officers considered this and determined that planning permission would be required. The Lawful Development Certificate has therefore been refused.

Principle of Development

The National Planning Policy Framework (NPPF) states in (para 14) that the presumption in favour of sustainable development should be seen as a golden thread running through both plan making and decision taking.

This application relates to a change of use from a dwelling house (C3 use) to a residential institution (C2 use). The proposal does not involve any external alterations, therefore consideration only relates to the proposed change of use of the existing building.

The existing property lies within the village envelope for White Colne as per adopted Policy RLP2 and emerging Policy LPP1. Due to the property being within the village envelope, the proposal for specialist housing is acceptable in principle providing that it meets the criteria of adopted policy RLP20:

- The quality of design is in keeping with surrounding properties and landscape in terms of scale, form, layout and materials;
- There is sufficient amenity open space;
- Boundary treatments provide privacy and a high standard of visual amenity both for residents and neighbouring properties;
- Provision is made for the storage and recharging of wheelchairs and invalid carriages;
- There are shops, health facilities and regular public transport services, in close proximity to the site;
- Parking is provided in accordance with the Council's standards.

Emerging Policy LLP35 of the emerging Draft Local Plan also reiterates the above criteria.

As such, to determine whether the principle of development is acceptable in this case, it is appropriate to consider the proposal against the above criteria under the headings below.

Design, Layout, Amenity, Boundary Treatments & Accessibility

Paragraph 56 the NPPF highlights that good design is a key aspect of sustainable development. Paragraph 57 highlights that it is important to achieve high quality and inclusive design for all land and buildings. If a proposal fails to achieve good design, paragraph 64 stipulates that permission should be refused where the design fails to improve the character and quality of an area.

The NPPF states that new development should seek to improve “streetscapes and buildings to create attractive and comfortable places” by using design which reflects “local character and history, and reflects the identity of local surroundings and materials”, thereby resulting in a form of development which is “visually attractive as a result of good architecture and appropriate landscaping”. In addition to this, Policy RLP90 of the Braintree District Local Plan Review require designs to recognise and reflect local distinctiveness in terms of scale, density, height and massing of buildings, and be sensitive to the need to conserve local features of architectural and historic importance, and also to ensure development affecting the public realm shall be of a high standard of design and materials, and use appropriate landscaping. Policy LPP 55 of the emerging Braintree District Publication Draft Local Plan seeks to secure the highest possible standards of design and layout in all new development and the protection and enhancement of the historic environment.

In this case, the development does not propose any external alterations to the building. As such, the dwelling would retain its domestic appearance which is not considered to cause detriment to the character of the area.

The site in this case benefits from a small enclosed rear garden which would provide a private outside space for future occupiers and is secured by 1.8m close boarded fencing. Whilst the rear garden is not extensive in terms of size, the site would only accommodate a maximum of four children. Due to the

small scale of the use proposed, there are many similarities with the occupation of the dwelling by a large family. As such, while not extensive, due to the above it is considered the private rear amenity space would be suitable for future occupiers of the care home in this case.

The front of the site by comparison is open and would not provide private space for future residents of the care home. However, taking into account the above, it is considered unnecessary to require the front area of the site to also be private. Moreover, any additional fencing to enclose the area at the front would detract from the openness at the site to the detriment of the character of the area.

As the proposal relates to a children's home, the requirement for storage and recharging of wheelchairs and invalid carriages is not a necessity. If the building was to change to different occupiers such as the elderly, these features would likely require inclusion. As such, taking into account all of the above, it is considered that the design, layout, amenity, boundary treatments & accessibility of the site would be acceptable in this case.

General concerns have also been raised by neighbouring properties in relation to the site management and the caring of children. While the Local Planning Authority cannot speculate on any possible future management deficiencies, it should be noted that before the care home could function, the management company need approval from Ofsted. If the property and its proposed management strategy was not deemed to be suitable, they would refuse to issue a licence and thus development of the children's home could not go ahead (irrespective of the grant of planning permission). It is understood Ofsted will monitor the care of the property throughout the year.

Parking & Access

Policy RLP56 of the Local Plan Review states that off-road vehicle parking should be provided in accordance with the Council's adopted vehicle parking standards. The Council adopted its current parking standards in September 2009.

In accordance with the parking standards, a C2 use needs to provide 1 space per equivalent full time member of staff. Due to staff patterns (1 manager + 4 staff on 2 shifts), there could be five vehicles on site at any one time due to staff change overs. However, the usual amount of cars would likely be three at any one time, and possibly a space for a visiting social worker etc.

The site comprises a large area of hardstanding at the front. It is reported the hardstanding could accommodate 6 vehicles. The hardstanding would measure approx. 121sq.m, which in theory could accommodate over ten parking spaces at 4.8m by 2.4m. In reality, it is reasonable to consider that 5 vehicles could use the site with a moderate degree of manoeuvrability depending on position of cars. The curb to access the hardstanding is not dropped but is relatively low level and it is clear that the paved area is being used for vehicle parking currently. Given that the change of use could result in

an increase in parking demand, it is reasonable to require detail of how the parking could be accommodated so that vehicles could leave the site in a forward gear.

Taking into account all of the above, Essex Highways did not raise an objection to the application in respect of parking. Similarly, while a number of concerns have been raised about the site's proximity to Colchester Road in relation to safety and traffic, this was deemed not to be a detrimental issue in this case by Essex Highways. It is therefore considered the proposal is acceptable in relation to parking and access.

Site Location & Accessibility

White Colne is classed as a Third Tier village in the draft New Local Plan, with limited access to services and facilities. However, the larger settlement of Earls Colne is within close proximity and is classed as a Key Service Village in the emerging Publication Draft Local Plan. Earls Colne also has a primary school but the nearest secondary schools are in Halstead or Colchester. There are no health facilities within White Colne but there is a general practise doctor's surgery in Earls Colne. Concerns have however been raised that the health services in Earls Colne are at capacity.

Colchester Road is a main road that forms a link between the Main Town of Halstead and Colchester, serving both Earls Colne and White Colne. There are therefore bus services that are available which could be utilised by future occupiers of the proposed development. Bus services are regular in this location and provide the opportunity for residents to travel to larger centres by sustainable means of transport. However, while the bus service would provide some connectivity, due to the site's location and limited facilities in White Colne, most journeys to services would likely be required to utilise the private car. Moreover, although the site is connected to Earls Colne by a footpath, it is unlikely to be a reasonable walking distance to serve all the daily needs of the care home.

Officers consider that the use of a private car should be expected to some degree, especially within a District such as Braintree which beyond the three main towns, is predominantly a collection of villages in a rural setting. The need to use a car to access services and facilities does not necessarily suggest that a village does not provide the opportunity for its residents to take sustainable means of transport. However, Officers acknowledge that the site is not within the most sustainable location for development of this nature.

Consideration however must also be given to the scale of development proposed comparatively to the current use of the building as a dwellinghouse. The care home facility in this case would be small, providing for a maximum of four children. By comparison, families can live with 4+ children in similar circumstances with minimal issues and likely similar demands for services and facilities. While undoubtedly there would be an intensification of the current use of the building from C3-C2, it is considered the overall intensification would be limited in terms of demand for services &

facilities such as doctors etc. As such, when considered objectively, on balance, it is considered that the proposed C2 use would be unlikely to cause any substantial harm beyond its current C3 use as a dwelling.

Impact on Neighbour Amenity

The NPPF requires a good standard of amenity for all existing and future occupiers of land and buildings. Policy RLP90 states that development shall not cause undue or unacceptable impacts on the amenities of nearby residential properties.

Concerns have been raised in respect of possible noise from the care home. However, the care home in this case would be contained within an existing building with no further extensions. In addition, taking into account the small scale of intensification as discussed above, the Councils Environmental Health Officer had no objections to the application. As such, it is considered that neighbouring amenity would not be detrimentally affected by virtue of noise, overlooking, overshadowing or overbearing.

Other Issues

Concerns have been raised in respect of other similar developments which may come forward in the area. However, the Local Planning Authority cannot speculate on what may or may not come forward in future. Any future change of use of similar circumstances would require planning permission and would be determined on their own merits.

Concerns have also been raised in respect of external lighting. Taking into account that the building is existing, the small scale of operation, and that it is located adjacent to other development, it is considered that imposing a condition in respect of lighting would be unreasonable as this is unlikely to be any different to a normal family dwelling. It is considered the proposal is acceptable in this regard.

CONCLUSION

It is considered that the proposed change of use from Class C3 to C2 would be compliant with most of the criteria set out in Adopted Policy RLP20 and emerging Policy LPP35; the development would not alter the character of the house, would provide sufficient amenity space and means of enclosure and provide a suitable level of parking provision. Neighbouring amenity has also been determined not to be detrimentally affected by the proposal. In terms of the site's location/accessibility, although White Colne has limited services and facilities within the village, it is considered the site has reasonable access to the larger nearby settlement of Earls Colne. On balance, due to the proposed care home being of a small scale, it is concluded that the proposed C2 use would be acceptable subject to a condition to limit the maximum number of children.

RECOMMENDATION

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

APPROVED PLANS

Location Plan
Floor Plan

- 1 The development hereby permitted shall begin not later than three years from the date of this decision.

Reason

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

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

Reason

To ensure that the development is in character with the surrounding area and does not prejudice the appearance of the locality.

- 3 The children's home hereby approved shall accommodate no more than four children between the ages of 4 and 17 years old at any one time.

Reason

To determine the scope of this permission and to ensure that the Local Planning Authority can control any intensification of the use in the interests of safeguarding the amenity of neighbouring premises.

- 4 The premises shall be used as a children's care home for children aged between 4 and 17 years old only and for no other purpose, whether or not that purpose falls within Use Class C3 of Part C of the Schedule to the Town and Country (Use Classes) Order 1987 or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that order.

Reason

To determine the scope of this permission and to ensure that the Local Planning Authority retain control over other uses that could affect the amenity of the area.

- 5 Prior to the first use of the premises for the purposes hereby approved, details of the arrangements for the parking and turning of vehicles shall have been submitted to and approved in writing by the Local Planning Authority. Such details shall indicate how vehicles can manoeuvre within the site so as to enter and leave the highway in forward gear. The ability to achieve such parking and turning space shall thereafter be maintained, in accordance with the approved details.

Reason

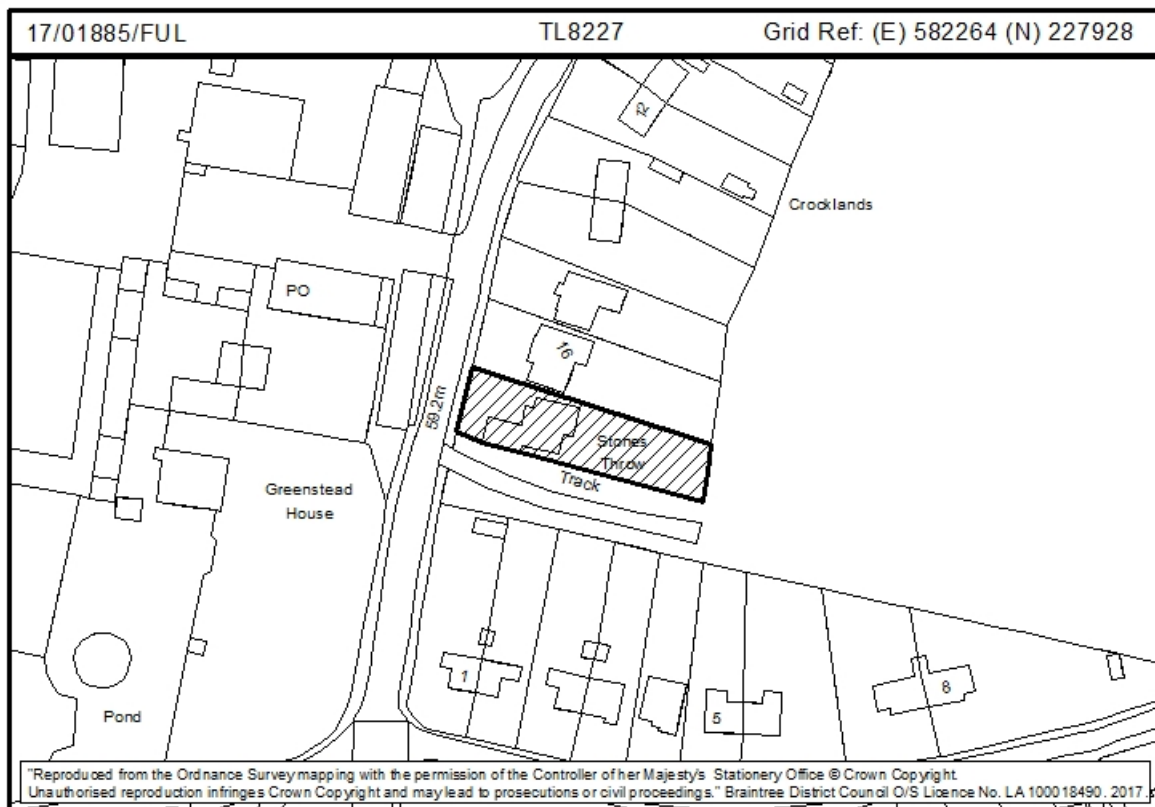
To ensure that vehicles can enter and leave the highway in a safe and controlled manner in the interests of highway safety.

TESSA LAMBERT
DEVELOPMENT MANAGER

PART B

APPLICATION 17/01885/FUL DATE 12.03.18
 NO: VALID:
 APPLICANT: Mr Scott Vaughan-Baker
 Stones Throw, Crocklands, Greenstead Green, Essex, CO9 1QY
 DESCRIPTION: Replacement of existing flat roof porch with traditional pitch roof using slates to match existing. Erection of a lean to, oak framed flat roof car port, over existing drive.
 LOCATION: Stones Throw, Crocklands, Greenstead Green, Essex, CO9 1QY

For more information about this Application please contact:
 Daniel White on:- 01376 551414 Ext. 2518
 or by e-mail to: daniel.white@braintree.gov.uk



SITE HISTORY

12/01412/FUL	Erection of single storey rear extension and first floor front extension over garage	Withdrawn	11.12.12
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POLICY CONSIDERATIONS

Currently the Council's development plan consists of the Braintree District Local Plan Review (2005) and the Core Strategy (2011).

The Council is currently working on a Draft Local Plan, which was approved by the Council unanimously for consultation on the 20th June 2016 and was the subject of public consultation between the 27th June and 19th August 2016. The Draft Local Plan, now referred to as the Publication Draft Local Plan, was approved by the Council on 5th June 2017 for consultation and for submission to the Secretary of State. The public consultation ran from 16th June to 28th July 2017. The Publication Draft Local Plan was submitted to the Secretary of State on the 9th October 2017. The Section 1 of the Draft Local Plan is currently the subject of an examination by an Inspector appointed by the Secretary of State for Housing, Communities and Local Government. The Part 2 Draft Local Plan examination will take place later this year.

In accordance with paragraph 216 of the NPPF, from the day of publication the Council can give weight to the emerging Draft Local Plan and the weight that can be given is related to:

“The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);

The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given) and;

The degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”.

Accordingly the Council can currently afford some weight to the emerging Publication Draft Local Plan 2017.

It should also be noted that the Council was previously working on a Site Allocation and Development Management Plan (the ADMP). This plan was subject to extensive public consultation in 2013 and 2014. The ADMP was not however submitted to the Planning Inspectorate, due to the decision to begin work on a new Local Plan, to take into account the most up to date Government guidance. However parts of the ADMP have been rolled forward into the Draft Local Plan. It is therefore considered that it would be consistent with the provisions in paragraph 216 of the NPPF, to afford more weight in decision making to the parts of the Draft Local Plan which have been rolled

forward from the ADMP, due to the more advanced stage reached by those elements.

National Planning Guidance

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

Braintree District Local Plan Review 2005

RLP3	Development within Town Development Boundaries and Village Envelopes
RLP17	Extensions and Alterations to Dwellings in Towns and Villages
RLP56	Vehicle Parking
RLP90	Layout and Design of Development

Braintree District Local Development Framework Core Strategy 2011

CS9	Built and Historic Environment
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Braintree District Publication Draft Local Plan 2017

SP1	Presumption in Favour of Sustainable Development
LPP38	Residential Alterations, Extensions and Outbuildings
LPP45	Parking Provision
LPP55	Layout and Design of Development

Other Material Considerations

Site Allocations and Development Management Plan
Essex Design Guide

- Page 81 – 109 – Design

Essex Parking Standards/Urban Space Supplement

INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

This application is brought before the Planning Committee as the Parish Council object to the application, contrary to Officer recommendation.

SITE DESCRIPTION

Stones Throw is a large detached dwelling situated on the eastern side of Crocklands, Greenstead Green. The site is situated within the Greenstead Green Village Envelope as defined in the current Braintree District Local Plan Review. Stones Throw has a large driveway, with an attached single garage which extends forward of the building line by approximately 8.2m, which in 2010 was converted into a playroom. Adjacent to the site is Greensteadhall Farm, which includes a Grade II listed Barn. The barn is completely obscured from view from Stones Throw by a large agricultural building.

PROPOSAL

The proposal is for the replacement of an existing flat roof porch with a traditional pitched roof using slates to match the existing dwelling, together with the erection of a lean to, oak framed flat roof car port over the existing drive. The existing porch is situated on the front elevation of the property and currently has a flat roof. The proposal would change the flat roof to a pitched roof which would take the ridge height of the porch up to just below the existing first floor windows. The proposed roof would also span the length of the existing porch and would join into the existing converted garage.

The oak framed flat roof car port would be situated immediately next to the converted garage in the southern corner of the front garden. The oak framed flat roof car port would be 5.2m in length by 5.2m in width and be constructed from oak posts with the roof finished in felt.

CONSULTATIONS

Historic Buildings Consultant

'Stones Throw' lies opposite the Greensteadhall Farm - a traditional farm group which includes the Grade II listed Barn 40m north of Greensteadhall Farmhouse. The farm group as a whole is intrinsic to the setting of the listed barn.

'Stones Throw' itself is a relatively modern 20th Century building, typical of this part of rural Essex. There is no objection to the proposed pitched roof porch, however, I recommend that the proposed oak framed flat roofed car port is refused. This is out of keeping with the existing 'Stones Throw' (in fact it is difficult to imagine any circumstances where it would be in-keeping) and, more importantly, comes forward of the building line almost to the road itself, removing the last vestige of front garden and setting an unwelcome precedent for other similar nearby properties. The proposed car port would damage the rural character of this part of Greenstead Green, and would consequently have a negative impact upon the setting of Greensteadhall Farm, including its Grade II listed Barn.

I would encourage the owners to retain as much of their traditional garden as possible, including, if additional parking space is considered essential, surfacing in a manner that retains the appearance of a grass garden and planting as far as practically possible.

The comments made by the Historic Buildings Consultant are noted, however it is considered that the site is far enough away from the Grade II listed Barn (Greensteadhall Farm) to impact upon the setting of the heritage asset. The Case Officer also notes the points raised regarding the oak framed car port and front garden which will be elaborated upon in the section below.

Greenstead Green and Halstead Rural Parish Council

No objection to the replacement of the existing flat roof porch with a traditional pitch roof using slates to match existing. Object to the car port as they feel it is too far forward of the building line.

REPRESENTATIONS

No representations from members of the public were received.

REPORT

Principle of Development

In accordance with Local Plan Policy RLP2, new development will be confined to the areas within town development boundaries and village envelopes. Local Plan Policy RLP3 would also apply to the proposal and ensures that within village envelopes and town development boundaries residential development will only be permitted where it satisfies amenity, design, environmental and highway criteria and where it can take place without material detriment to the existing character of the settlement.

In accordance with Policy RLP17, the principle of an extension to an existing dwelling within town development / village envelope boundaries is acceptable. This is subject to the siting, design and materials of the extension being compatible with the original dwelling. The extension should not over develop the plot; have an unacceptable impact on the amenities of adjoining residential properties; or materially impact on the identity of the street scene, scale and character of the area.

Core Strategy Policy CS9 seeks to secure a good standard of design and layout in all new development. Policy RLP90 of the Local Plan Review seeks to ensure that the Council seeks a good standard of layout and design in all developments large and small. The layout, height, mass and overall elevational design of buildings shall be in harmony with the character and appearance of the surrounding area including their form and scale.

Policy RLP56 would also apply to the proposal and ensures that development will be required to provide off-street vehicle parking in accordance with the Council's Adopted Parking Standards.

The proposal is considered acceptable in principle. The above mentioned policies and all other material considerations are addressed below.

Design, Appearance and Layout

For clarity the case officer has split the two elements of the proposal into the following sections below.

The proposal is for the replacement of an existing flat roof porch with a traditional pitched roof using slates to match the existing dwelling

It is considered that the proposal of the replacement for the existing flat roof porch with a traditional pitch roof using slates to match the existing would be an acceptable alteration. The proposal would be of a good standard of design and would harmonise well with the roof of the converted garage through the use of slate. The proposal would not materially alter the character and appearance of the street scene although it would be visible and would be in harmony with the character and appearance of the surrounding area in terms of its form and scale.

The erection of a lean to, oak framed flat roof car port over the existing drive

It is considered that the erection of a lean to oak framed flat roof car port over the existing drive would be an acceptable addition to the site. The car port is relatively simple in form, but is considered well designed, with four oak posts and a flat felt roof.

It is acknowledged that the car port would alter the appearance of site as it would be visible; however it is considered that it would not cause detrimental harm to the character or appearance of the street scene. It is considered that the layout, height, mass and overall elevational design of the car port would be in harmony with the character and appearance of the surrounding area including its form and scale.

It is noted that the oak framed car port would come forward of the building line and would be situated in the corner of the front garden of Stones Throw, however the existing extension already comes forward of the building line and the applicants park their cars in this location. It is considered that the car port would appear as a lightweight, semi- permanent addition to the front of the site due to its exposed oak frame, which would not be detrimental to the character of the site or the street scene, and would not impact upon the setting of the nearby Grade II listed barn.

It is noted that the Historic Buildings Consultant had some concerns with the oak framed car port impacting upon the setting of the adjacent Greensteadhall Farmhouse. As previously stated in this report, Greensteadhall Farm is adjacent to the site and over 40m away from Stones Throw, with the Grade II listed barn being largely obscured by a large agricultural building. It is therefore considered that as the proposed oak framed car port cannot be seen from Grade II listed barn, that it would not have an adverse impact on the setting of the designated heritage asset.

The Historic Buildings Consultant also makes comments with regards to the proposal being forward of the building line, and the proposal setting an unwelcome precedent for other neighbouring properties. It is acknowledged that the proposal would be forward of the building line, however the existing converted garage already extends beyond the building line and it is

considered that the addition of the oak framed car port would not harm the appearance of the street scene, and therefore would not be objectionable.

It is therefore considered that the proposal of the replacement of existing flat roof porch with a traditional pitch roof using slates to match, together with the erection of a lean to oak framed flat roof car port over the existing drive would be acceptable and accords with Local Plan Policies RLP2, RLP3, RLP17, RLP56 and RLP90, together with Core Strategy Policy CS9 and the NPPF and is recommended for approval.

Impact on Neighbour Amenities

Policy RLP90 from the Braintree Local Plan Review ensures, inter alia, that development doesn't have an unacceptable impact on the amenity of any nearby residential properties.

It is considered that the new roof to the porch would not give rise to overlooking, overshadowing or a loss of privacy due to the distance between Stones Throw and the neighbouring property (16 Crocklands). The car port is sited in the southern corner of the front garden, approximately 20m away from 16 Crocklands, with large well established landscaping largely obscuring the front garden of Stones Throw.

The car port would be situated approximately 40m away from 1 Burtons Green Road with the car port being slightly visible at the very end of their garden.

The proposed development is not considered to give rise to a detrimental impact upon residential amenity.

Highway Issues

It is considered that the proposal would not have an impact on the highway or the level of parking for the site. It is considered that the level of existing parking on the site is sufficient for the size of the property and the addition of the car port would not impact upon the level of parking.

CONCLUSION

It is considered that the proposal to replace the existing flat roof porch with a traditional pitch roof, together with the erection of a lean to oak framed flat roof car port over the existing drive would be acceptable and in accordance with the aforementioned policies, and is therefore recommended for approval.

RECOMMENDATION

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

APPROVED PLANS

Location Plan

Block Plan

Proposed Plans

Plan Ref: WPS/GG/1

- 1 The development hereby permitted shall begin not later than three years from the date of this decision.

Reason

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

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

Reason

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

- 3 The external materials and finishes shall be as indicated on the approved plans and/or schedule.

Reason

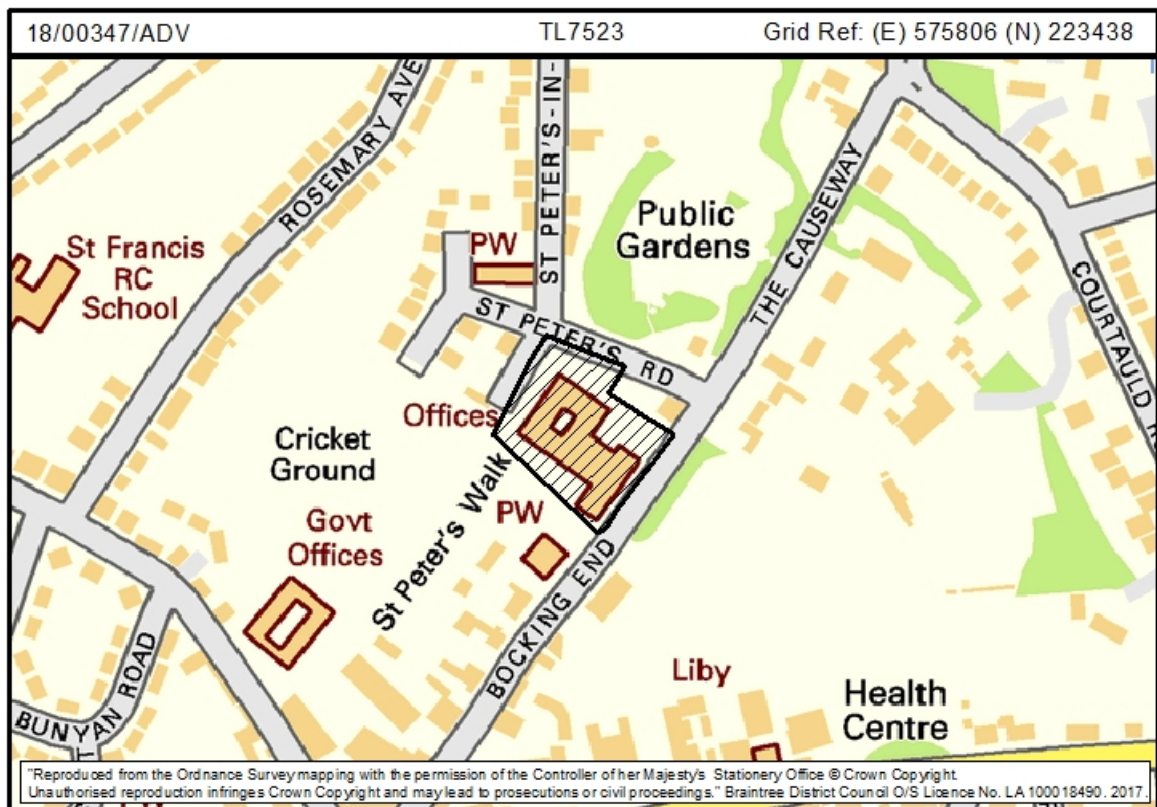
To ensure that the development does not prejudice the appearance of the locality.

TESSA LAMBERT
DEVELOPMENT MANAGER

PART B

APPLICATION NO: 18/00347/ADV DATE: 16.02.18
 VALID:
 APPLICANT: Braintree District Council
 Mr Paul Pooran, Causeway House, Bocking End, Braintree,
 Essex, CM7 9HB
 DESCRIPTION: Application for consent to display an advertisement - 2 no.
 building signs within the property and 2 no. list of tenants on
 each side of the door fixed to wall
 LOCATION: Causeway House, Bocking End, Braintree, Essex, CM7
 9HB

For more information about this Application please contact:
 Mrs H Reeve on:- 01376 551414 Ext. 2503
 or by e-mail to: helen.reeve@braintree.gov.uk



SITE HISTORY

88/00618/P	Construction Of Pedestrian Ramp		27.09.88
90/00667/E	Proposed Development		01.01.90
75/00311/P	Re-development for office purposes up to 10,000 sq. ft	Granted	05.06.75
11/01458/FUL	Installation of 106 solar photovoltaic panels onto 2 roofs	Granted	21.12.11
12/00003/FUL	Rebuild part of the front boundary wall damaged by the growth of a large chestnut tree which is part of the landscape of the site.	Granted	09.02.12

POLICY CONSIDERATIONS

Currently the Council's development plan consists of the Braintree District Local Plan Review (2005) and the Core Strategy (2011).

The Council is currently working on a Draft Local Plan, which was approved by the Council unanimously for consultation on the 20th June 2016 and was the subject of public consultation between the 27th June and 19th August 2016. The Draft Local Plan, now referred to as the Publication Draft Local Plan, was approved by the Council on 5th June 2017 for consultation and for submission to the Secretary of State. The public consultation ran from 16th June to 28th July 2017. The Publication Draft Local Plan was submitted to the Secretary of State on the 9th October 2017. The Section 1 of the Draft Local Plan is currently the subject of an examination by an Inspector appointed by the Secretary of State for Housing, Communities and Local Government. The Part 2 Draft Local Plan examination will take place later this year.

In accordance with paragraph 216 of the NPPF, from the day of publication the Council can give weight to the emerging Draft Local Plan and the weight that can be given is related to:

“The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);

The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given) and;

The degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”.

Accordingly the Council can currently afford some weight to the emerging Publication Draft Local Plan 2017.

It should also be noted that the Council was previously working on a Site Allocation and Development Management Plan (the ADMP). This plan was subject to extensive public consultation in 2013 and 2014. The ADMP was not however submitted to the Planning Inspectorate, due to the decision to begin work on a new Local Plan, to take into account the most up to date Government guidance. However parts of the ADMP have been rolled forward into the Draft Local Plan. It is therefore considered that it would be consistent with the provisions in paragraph 216 of the NPPF, to afford more weight in decision making to the parts of the Draft Local Plan which have been rolled forward from the ADMP, due to the more advanced stage reached by those elements.

National Planning Guidance

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

Braintree District Local Plan Review 2005

RLP95	Preservation and Enhancement of Conservation Areas
RLP107	Outdoor Advertisements
RLP108	Fascias and Signs in Conservation Areas

Braintree District Local Development Framework Core Strategy 2011

CS9	Built and Historic Environment
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Braintree District Publication Draft Local Plan 2017

SP1	Presumption in Favour of Sustainable Development
SP6	Place Shaping Principles
LPP56	Conservation Areas
LPP58	Shop Fronts, Fascias and Signs in Conservation Areas

INTRODUCTION/REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

In accordance with the Scheme of Delegation, the applicant is an officer at Braintree District Council and the proposals relate to Causeway House.

SITE DESCRIPTION

The site lies directly to the north of Braintree town centre, within the development boundary and the conservation area. The site itself comprises 'Causeway House', a large red 3 storey brick office building with car parking, occupied by Braintree District Council. The building has in recent years provided accommodation to tenants outside the employment of Braintree District Council.

Nearby uses include mainly office and residential and the immediate adjacent building, 29 Bocking End is a Grade II Listed Building.

PROPOSAL

This application seeks advertisement consent to place a number of adverts on and around Causeway House, as follows:-

- 2 no. 'totem' signs either side of front steps, to replace existing (referred as Sign 1)
- 1 no. new fascia sign to replace existing, over main front entrance door (referred on drawings as Sign 2)
- 2 no. 'Directory of Occupants' signs on brickwork either side of main doors (referred as sign 3)
- 2 no. 'dog parking' signs on brickwork either side of main doors (referred as sign 4)
- 2 no. opening hours signs – frosted onto glass either side of main doors (referred as sign 5)

Note:- revised drawings have been received to correct discrepancies noted with numbering and referencing.

CONSULTATIONS

Essex County Council Historic Buildings Adviser

The Essex County Council Historic Buildings Adviser has been notified, given the location of Causeway House within the Conservation Area.

The proposed style of the signs, with silver aluminium letters onto black frames is appropriate in the context of the building and conservation area.

No strong objection has been raised to the proposals, however there is a comment raised over the duplication of signs 4, 5 and 6. Generally it is preferable to keep signs to a minimum to avoid visual 'clutter' and there would be an encouragement to reduce the number of signs where it is practicable to do so.

Essex County Council Highways Team

No objection to the proposals

REPRESENTATIONS

A site notice has been displayed on the front notice board. No residential neighbours have been notified – this proposal relates to signage only, mainly affixed to the building or replacement of existing. No representations have been received.

REPORT

Principle of Development - Visual Amenity and Public Safety

The Town and Country Planning (Control of Advertisement) Regulations 2007 outline that applications for advertising consent shall be considered in relation to their impact on visual amenity and public safety only.

The Advertising Regulations 2007 outline that factors relevant to visual amenity “include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest” and the harmony of the proposal with that context.

The National Planning Policy Framework states that ‘poorly placed advertisements can have a negative impact on the appearance of the built and natural environment’. It goes on to state that ‘Only those advertisements which will clearly have an appreciable impact on a building or on their surroundings should be subject to the local planning authority’s detailed assessment. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts’ (Paragraph 67).

In this regard policies RLP107 and RLP 108 of the Local Plan Review outlines that the Council shall take all matters relating to visual amenity into account in the determination of applications for advertising consent.

It is considered that the proposed adverts meet the relevant criteria under the Advert Regulations – they are relevant to the building on which they would be sited and largely replace existing signage, which already form part of the established street scene.

No strong objection has been raised by the Historic Buildings Adviser in relation to visual amenity and the conservation area. In terms of the overall design and materials, the signs are considered to be acceptable in context of the building and the conservation area. The comments relating to the replication of signs nos. 4, 5 and 6 have been noted and queried with the applicant with a response as follows:-

There are 3 approaches to the front door – 2 ramps on each side of the porch and a set of stairs to the front of the porch. The proposed signs would be positioned on each side of the doorway. The signs allow visitors coming from either side of the building to see a list of occupants before they approach the doorway.

There are 2 dog park signs because there are two dog parks, on either side of the door just in case there are 2 visitors with dogs and to keep the dogs separate. The signs indicate exactly where the dog parks are located.

It is considered there is sufficient justification for the signage. The proposed signage is considered acceptable in terms of visual amenity and does not give rise to a detrimental impact on the street scene or the conservation area.

In terms of highway safety, the County Highways team raise no objection to the proposals. The new signs are affixed to the main building with signage closest to the highway merely replacing existing. There would be little alteration to that currently existing and there is no illumination to the signage proposed. The scheme is considered to be acceptable in relation to highway safety.

CONCLUSION

It is considered that the proposed new and replacement signage meets the necessary criteria to be considered acceptable and complies with the relevant policies listed above.

RECOMMENDATION

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

APPROVED PLANS

Signage Details	Plan Ref: sign 1 - totem sign
Signage Details	Plan Ref: sign 2 - Fascia
Signage Details	Plan Ref: signs 3 & 4 - Directory _ Dog Parking
Signage Details	Plan Ref: sign 5 - Entrance Glazing
Proposed Elevations	Plan Ref: Proposed signage in place
Location Plan	

- 1 The consent hereby granted shall expire at the end of a period of 5 years from the date hereof.

Reason

This condition is imposed pursuant to the Town & Country Planning (Control of Advertisements) (England) Regulations 2007 and in the interests of visual amenity.

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

Reason

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

INFORMATION TO APPLICANT

- 1 Your attention is drawn to the Town and Country Planning (Control of Advertisements) Regulations 1992 and the need to comply with the following:-
- (i) Any advertisements displayed, and any site used for the display of advertisements, should be maintained in a clean and tidy condition to the reasonable satisfaction of the local planning authority.
 - (ii) Any structure or hoarding erected or used principally for the purpose of displaying advertisements should be maintained in a safe condition.
 - (iii) Where an advertisement is required under these Regulations to be removed, the removal shall be carried out to the reasonable satisfaction of the local planning authority.
 - (iv) No advertisement should be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.
 - (v) No advertisement should be sited or displayed so as to obscure, or hinder the ready interpretation of any road traffic sign, railway signal or aid to navigation by water or air, or so as otherwise to render hazardous the use of any highway, railway, or aerodrome (civil or military).

TESSA LAMBERT
DEVELOPMENT MANAGER

DEVELOPMENT MANAGEMENT ENFORCEMENT PLAN		Agenda No: 6
Report prepared by: Darren Tuff - Planning Enforcement Team Leader		
Background Papers: <ul style="list-style-type: none"> National Planning Policy Framework (NPPF) 		Public Report: Yes
Options: To approve or not approve the Development Management Enforcement Plan as a guidance document for customers and officers.		Key Decision: No
Executive Summary: The Government's National Planning Policy Framework (NPPF) recommends that all planning authorities produce a Local Enforcement Plan to assist with managing enforcement in a way that is appropriate for their area. The draft Development Management Enforcement Plan (the Plan) aims to provide a structured approach to planning enforcement investigations in the geographical area administered by Braintree District Council. The Plan has been prepared with both customers and officers in mind and it is intended to act as a best practice guide as well as an informative guide to customers who wish to use the service. The key points which the Plan sets out are: <ul style="list-style-type: none"> How to report breaches of planning control How the Council will investigate reported breaches What constitutes a breach of planning control What does not constitute a breach of planning control How the Council prioritises enforcement cases The legal powers which are at the Council's disposal and how they can be used How the Council reaches decisions on whether or not to take enforcement action The Plan was considered by the Council's Corporate Directors on 16 January 2018 and approved as a formal guidance document. A draft version of the document was open for comment and consultation with Councillors and Town and Parish Councils over February/March 2018. This report provides a summary of the responses to the consultation as an Appendix at the end of the report. If approved, the document will be published on the Council's website along with additional information around planning legislation and working practices.		

Decision:
To approve the Development Management Enforcement Plan as a guidance document.
Purpose of Decision:
To provide validation to the document.

Corporate Implications	
Financial:	None at this stage
Legal:	To comply with Government legislation and guidance on planning enforcement investigations.
Equalities/Diversity	Council policies should take account of equalities and diversity.
Safeguarding	None
Customer Impact:	The Plan explains the Council's approach to planning enforcement as well as managing the expectations for customers wishing to use the service.
Environment and Climate Change:	The document identifies the importance of prioritising investigations based on their impact within the amenity.
Consultation/Community Engagement:	A draft version of the document was made available for comment to Councillors and Parish & Town Councils.
Risks:	N/A.
Officer Contact:	Darren Tuff
Designation:	Planning Enforcement Team Leader
Ext. No.	2528
E-mail:	dartu@braintree.gov.uk

1. Background and Introduction

- 1.1 The Council's Planning Enforcement Team has prepared a draft Development Management Enforcement Plan which is intended to provide a structured approach to the investigation of alleged planning breaches across the District. The Plan has been prepared following the guidance of the National Planning Policy Framework (NPPF) in 2012 and will assist users of the service as well as officers and managers.
- 1.2 Over the past 18 months or so the Planning Enforcement Team have been dealing with planning enforcement in a more efficient and robust way. Once the provided information is assessed it can often be established that the breach is only minor or not a breach at all. These cases are closed down as there would be no legal basis to launch an investigation. However, where harmful unauthorised activity is found which is not rectified voluntarily legal notices are served as quickly as possible rather than enter into protracted negotiations.

2. Context

- 2.1** The aim of the planning enforcement function is to discourage unauthorised development and, where planning breaches are evidenced, to take proportionate action to remedy any harm to amenity or the built or natural environment. The aims within the document mirror current Government policy for planning enforcement which is set out in the NPPF.
- 2.2** The NPPF states, in part, that: *‘Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so’.*
- 2.3** The Plan explains that the purpose of the Council's Planning Enforcement service is to investigate alleged breaches of planning control and, where justified, consider appropriate remedial action. It also details the reason why not all requests for an investigation result in action, even where there is a breach of planning control.
- 2.4** The document also includes a useful flow chart in the appendices where a streamlined process can be easily followed.

3. Planning Enforcement Principles and Objectives

- 3.1** The policies and legislative framework contained within the Plan are intended to provide an outline for decision making, assist with the targeting of resources, provide consistency and help all interested sections of the community to have a greater understanding of Council decisions on planning enforcement matters.
- 3.2** The Plan is based on the following key principles:
- Enforcement action is a discretionary power and will only be taken where it is expedient to remedy harm and when it is in the public interest.
 - Enquiries will be prioritised for investigation, dependent on their gravity, impact upon local amenity and the material planning considerations involved.
 - Enquirers will be informed during key stages of an investigation and of eventual outcomes.
 - Enforcement action will be proportionate to the breach and will generally be held in abeyance whilst valid appeals or planning applications are determined.
 - All legitimate enquiries regarding alleged breaches of planning control will be assessed and an investigation launched where it is appropriate.

In seeking to follow these principles some key objectives have been established and these include; upholding planning law and local planning policy to ensure that the credibility of the planning system is not undermined; ensuring that the

undesirable effects of unauthorised development are remedied; seeking an effective resolution to harmful breaches of planning control and striking a measured and appropriate balance between protecting amenity and other interests of acknowledged importance, whilst permitting acceptable development to take place.

The Plan also seeks to introduce some fundamental changes to the way the enforcement team has previously operated. These include moving away from the historical practice of residents making a 'complaint'. The Council has a complaints procedure which is a very different process and this terminology for an enforcement investigation has caused confusion. Instead, the term 'enquiry' will now feature when a question is raised about planning matters. Following receipt of an enquiry, an initial desk based assessment will take place to ascertain the validity of the information supplied and establish whether an investigation is necessary. A revised enquiry form can be found on the Council's website where it can easily be completed and submitted online. Such enquiries can also be made by letter, or by posting a form, but the web-based access is the route people will be encouraged to use. The priorities have been changed, moving away from 'who' makes the enquiry to the 'significance of the harm' being caused by the breach.

Overall, the enforcement team aims to increase the pace in its decision making process and provide an update to all interested parties once a decision is reached. Although it is rare that all interested parties agree with the outcome of an investigation it is preferable to manage their expectations as soon as possible.

4. Best Practice and Practical Guidance

- 4.1** For the first time, in order to be open and fair to all parties using the planning enforcement service, the Plan includes a section on how investigations of alleged planning breaches are conducted. This doubles up as a guidance document to officers operating both outside and within the team.
- 4.2** In addition and with fairness in mind, there is also a section aimed at persons who are the subject of an enforcement investigation. It advises them what they can expect, the legal rights held by enforcement officers and where independent advice can be sought.

5. Consultation

- 5.1** There were four written responses to the draft Plan which were largely positive and supportive in tone; they are shown in full in Appendix 1. One further comment was received after the deadline, but it was largely specific to experiences around previous cases. For completeness it has been included. Where appropriate the Plan has been amended to reflect the comments made.

6. Conclusion

In preparing the Development Management Enforcement Plan the intention has been to provide an advisory and informative document drawing on past experiences, case law, planning practice guidance and the legal framework. Particular attention has been paid to streamlining processes from an early stage

and introducing some changes, including a revised priority procedure. It is recognised that if the Plan is to be of value and relevance over the next few years then it will need to be revisited and updated to include legislative changes and new experiences. Whilst relevant changes can be made as and when necessary, a full review should take place after a five year period.

7. Recommendation

To approve the Development Management Enforcement Plan as a planning guidance document for customers and officers.

Appendix 1 Consultation Responses to Development Management Enforcement Plan

Respondent	Comment	Action/response
1. Cllr G Spray	Cllr Spray considers it to be excellent document. She notes that it is a complex subject which has been clearly set out and explained and thanked the team for pulling it together.	Comment recorded with thanks.
2. Cllr I Parker	Cllr Parker identified some minor grammatical and presentation errors within the document and asked for further information to be included on the GPDO. She asked that the reference to Human Rights be left out unless it was necessary and also if the document could be reduced in size. The response also included reference to a particular case and the length of time it was taking to resolve. She liked the flowchart in the appendices.	The errors were corrected as stated. GPDO, known as permitted development, is covered in section 4 of the document. It also features in greater detail on the website where this document will be displayed. As a Local Authority we are required to act lawfully, Human Rights Legislation impacts on our entitlement to investigate alleged planning breaches unless we have sufficient grounds to suspect a breach is occurring, therefore it is necessary to include it.
3. Rivenhall Parish Council	The Parish Clerk commented on the lack of Planning Enforcement Officers to satisfactorily undertake the enforcement action required within the district.	The Planning Enforcement Team have recorded a considerable increase in the number of investigations over recent years. It is a busy team with a heavy workload, with officers typically handling caseloads of 75 or more. A recent

		service review has resulted in the team gaining a small amount of admin support.
4. Helions Bumstead Parish Council	The Parish Clerk thought that the document was confusing because it is aimed at officers and complainants and written accordingly. It was felt that the flow chart should be at the front of the document.	These points have been noted. It is intended that the document acts as guidance to officers, staff, enquirers and those who are the subject of investigations and action. It has been drafted accordingly.
5. Rayne Parish Council	A response was received some weeks after the deadline. The response said that the document explains the working practice in detail, but their experience within Rayne is that the enforcement team does not follow through on the procedures being defined. Largely, the response mentions individual experiences and that a number of residents have flouted the rules without consequence. The response includes that the intent of the plan is good, but it should be re-drafted to reflect the needs of residents and demonstrate how the processes being proposed can be made practicable, workable and effective.	These points have been noted. The document has been produced to provide guidance to everyone involved with the service. It is there to support an existing and effective team and streamline some out of date processes. Each investigation is judged on its own merits and, whilst it is regrettable, it is often the situation that an involved party is left unhappy with the outcome. The rationale around decision making is recorded and can be shared with interested parties upon request.

Development Management Enforcement Plan

CONTENTS

- 1.0 Introduction
- 2.0 Approach – principles and objectives
- 3.0 Resources
- 4.0 Breaches of planning control
- 5.0 How to report a potential breach of planning control
- 6.0 How the team prioritise investigations into alleged breaches of planning control
- 7.0 How the team investigate alleged breaches of planning control
- 8.0 Monitoring conditions and agreements
- 9.0 Information, reporting and publicity
- 10.0 What happens if you are subject of an enforcement case?
- 11.0 Appendix 1: Schedule of principal enforcement tools and powers
- 12.0 Appendix 2 : Simplified Planning Enforcement Process Chart

1.0 INTRODUCTION

Legislative and National Policy Context

1.1 The aim of the planning enforcement function is to discourage unauthorised development and where planning breaches are evidenced, to take proportionate action to remedy any harm to amenity, or the built or natural environment. These aims mirror current Government policy for planning enforcement, which is set out in the National Planning Policy Framework and, in part, states:

Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

1.2 The planning enforcement function works within a legislative framework. However, there is also policy, guidance and case law which, through their collective interpretation, further shape how the team operate our enforcement activities and make decisions. These include, but are not exclusive of the following:

- Legislative requirements (e.g. Town and Country Planning Act 1990; Planning (Listed Buildings and Conservation Areas) Act 1990; Planning and Compensation Act 1991; Police and Criminal Evidence Act 1984; Human Rights Act 1998; Regulation of Investigative Powers Act 2000 and Criminal Proceedings and Investigations Act 1996).
- National Planning Policy Framework and other government guidance material in any planning (enforcement) decisions.
- The Braintree District Development Plan
- The Government's 'Enforcement Concordat'

1.3 The purpose of the Council's Planning Enforcement service is to investigate alleged breaches of planning control and consider appropriate remedial action to safeguard and protect the stakeholders and environment of Braintree District in support of the extant planning policies of the Council.

This document makes clear what those undertaking unauthorised development and those objecting to it should expect from us and explains how the team will prioritise and undertake investigations. In summary, the Council will place a structured priority on compliance with planning law and the enforcement team will remain impartial throughout any investigation. However, the Council also recognise that many breaches of planning control, although unlawful, do not constitute a criminal offence and so discretion will be exercised where appropriate. The Council will take enforcement action only if it is considered to be reasonable, necessary and expedient to do so. Each breach will be considered individually based on its own circumstances and context.

1.4 In considering any enforcement action, the decisive issue will be whether the breach of planning control would unacceptably affect public amenity, or be contrary to the policies of the Local Plan and National Planning Policy therefore meriting such action in the public interest.

1.5 An investigation cannot be launched unless the team have reasonable grounds to suspect that a breach of planning control has taken, or is taking, place.

1.6 Enforcement action should not be taken simply because there has been a breach of planning control. In accordance with Government guidance, the team will not take action in respect of a 'trivial' or 'technical' breach of planning control which causes no or little harm. Where there is harm the team will take action to remedy that harm through negotiation and when necessary, formal action. Where formal action is taken the team will justify and record the reasons for doing so. Likewise, where the team do not intend to take action we will record our rationale as to why it is not considered justified and expedient.

1.7 This document is available on the Council's web site at www.braintree.gov.uk/planningenforcement

It can be obtained by contacting the Planning Enforcement Team Leader on 01376 552525, extension 2528 or you can e-mail planning.enforcement@braintree.gov.uk to request a copy. Alternatively, please write to Planning Enforcement, Braintree District Council, Bocking End, Braintree, Essex CM7 9HB

The Governments Enforcement Concordant can be viewed by following this link: <http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file10150.pdf>

2.0 APPROACH – PRINCIPLES AND OBJECTIVES

Principles

2.1 This Plan is based on the following key principles for enforcement:

- All legitimate enquiries regarding alleged breaches of planning control will be assessed and an investigation launched where appropriate;
- Enquiries will be prioritised for investigation, dependent on their gravity, impact upon local amenity and the material planning considerations involved;
- Enquirers' identities will be kept confidential where practical, unless agreements have been obtained allowing personal information to be disclosed or subsequent court action warrants their evidence being made public or the Police request the identity in connection with a criminal investigation e.g. offences under the Harassment Act 1997.
- Enquirers will be informed during key stages of an investigation and of eventual outcomes. There is not an appeal process for enquirers who do not agree with the decision made.
- Enforcement action is discretionary and will only be taken where it is expedient to remedy harm and when it is in the public interest; and
- Enforcement action will be proportionate to the breach and will generally be held in abeyance whilst valid planning applications or appeals are determined.

Objectives

2.2 The Council establishes the following objectives for implementing this Plan:

- To uphold planning law and local planning policy and to ensure that the credibility of the planning system is not undermined;
- To ensure that the undesirable effects of unauthorised development are remedied;
- To ensure the timely and proportionate investigation of justified enquiries;
- To seek an effective resolution to harmful breaches of planning control;
- To strike a measured and appropriate balance between protecting amenity and other interests of acknowledged importance and enabling acceptable development to take place, in accordance with the principles of the National Planning Policy Framework; and
- To carry out all enforcement duties in accordance with the principles of the Enforcement Concordat (see 1.7), particularly with respect to openness, helpfulness and proportionality.

3.0 RESOURCES

3.1 The Planning Enforcement team forms part of the Council's Development Management Team. The Planning Enforcement team currently investigates between 400-450 cases annually across the district. This number is likely to increase as the drive to meet the housing need set by the Government continues. The Council employs 1.87 full time equivalent Planning Enforcement Officers who report to a Planning Enforcement Team Leader. The Team Leader reports directly to the Development Manager.

3.2 Due to the complex nature of enforcement and the potential legal implications it may have, cases can often take many months to fully investigate and resolve. It is therefore important that there is a system for prioritising investigations. The team aims to have no more than 150 cases under investigation at any one time. This means that, on occasions, the investigation of some alleged planning breaches may be need to be programmed to reflect the peaks and troughs in the resources available within the team. This decision will be made in accordance with the priority system set out in Section 6.0 below.

3.3 There is no dedicated 'out of hours service' to investigate planning breaches that are alleged to be taking place and require investigation outside of normal working hours. Notwithstanding the above, officers will make best efforts to be flexible, according to the requirements of an investigation. The Planning Enforcement team will also seek support from other Council teams to assist where appropriate.

3.5 The Council is committed to ensuring that its officers are able to carry out their work safely and without fear and intimidation. Where appropriate, the Council will use legal action and any other means available to prevent or respond to abuse, harassment or assault on its officers. Officers reserve the right to conclude any communication where persons are discourteous or use threatening, abusive or insulting words or language.

4.0 BREACHES OF PLANNING CONTROL

4.1 The Planning Enforcement team will investigate and where justified, necessary and expedient, enforce against any breaches of planning legislation.

4.2 However, before discussing what a breach of planning legislation is, it is helpful to understand **what is not a breach**. The following are examples of activities which are not breaches:

- Operating a business from home where the residential use remains the

primary use and there is not significant and adverse impact upon the amenity of neighbouring residents. For example:

1. A tradesperson who parks their work vehicle on their driveway at home or other business vehicles on the public highway
2. The use of a room in a house by an occupier to carry out a business with no employees or extensive deliveries to the property in relation to that business.
3. Certain cases will be investigated to assess, if as a matter of fact and degree, the activity appears to have changed the character or use of the dwelling to a mixed use.

- Parking of a caravan within the curtilage of a residential property, provided it is not used as a completely separate residence.
- Obstruction of a highway or public right of way, or parking of commercial vehicles on the highway in residential areas or on grass verges. Such activity may however breach Highways Legislation for which Essex County Highways are responsible.
- Boundary disputes (these are a civil matter).
- Adverts which have deemed consent in accordance with the Town and Country Planning (Control of Advertisement) Regulations 2007 (as amended).
- Breaches of restrictions imposed by deeds and covenants (these are a civil matter).
- Development, such as small house extensions, which are 'permitted development', as defined in the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).
- Hobbies or activities within the curtilage of a dwelling are likely to be incidental to the enjoyment of the dwelling and therefore would not require planning permission. For example, a householder repairing the family car at their property would not require planning permission, but a householder advertising and running a car repair business from home would usually require planning permission.
- Clearing land of undergrowth, bushes and trees provided they are not protected trees and are not within a conservation area or protected by a planning condition.
- Outdoor lighting or CCTV fixed to existing buildings (other than a listed building)

- Works conducted by external services to the power, water, gas and communication networks.

Breaches of Planning Legislation

4.3 Building Works, Change of Use or failure to comply with Planning Conditions.

Local Planning Authorities are primarily concerned with ‘development’, which is defined in the Town & Country Planning Act as follows:

Development, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

For the purposes of this Act “building operations” includes—

(a)demolition of buildings;

(b)rebuilding;

(c)structural alterations of or additions to buildings; and

(d)other operations normally undertaken by a person carrying on business as a builder.

‘Development’ is **not**:

- works which affect only the interior of the building;
- works which do not materially affect the external appearance of the building.

If there is no ‘development’ there is no breach of planning control and no further action is available to the Local Planning Authority under its planning powers. *(Please note the section below which relates specifically to works affecting listed buildings)*

4.4 Development Requiring Planning Permission

There are two main types:

- Deemed permission permitted under the GPDO, known as “Permitted Development”. Some permissions under the GPDO are subject to limitations and conditions. Provided the development falls within the terms of the GPDO, planning permission is not required from the Local Planning Authority and there is no further action that the enforcement team can take.

- Express permission (full or outline) granted following the submission of a planning application to the Local Planning Authority. Conditions can be expressly imposed by the Local Planning Authority or Planning Inspectorate on Appeal.

4.5 In summary, a breach of planning control may result from:

- Carrying out work either without planning permission or in a way that is different to that which has been granted planning permission.
- Carrying out work without compliance with planning conditions attached to a planning permission, or not in accordance with the limitations and conditions set out in the GPDO.
- Changing the use of land or property without planning permission or without compliance with the limitations and conditions set out in the GPDO or Town and Country Planning (Use Classes) Order 2015

Carrying out Unauthorised Development is not a criminal offence.

4.6 Listed Buildings

Works to a listed building that are not considered like for like repairs will require listed building consent. Where works have been carried out without consent a criminal offence may have been committed. Subject to the extent and nature of the works, consideration will be given to whether to commence criminal proceedings and/or serve a Listed Building Enforcement Notice. Professional advice should be sought prior to carrying out any works to a listed building.

4.7 Advertisements

The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 allows the display of some classes of advertisements and signs without the need to get consent from the Local Planning Authority. Where an advertisement is being displayed without the appropriate consents it constitutes a criminal offence. Where the advertisement causes serious harm to 'amenity' or 'public safety' the team will ask for it to be removed within a specified period. If the advertisement continues to be displayed after this time formal prosecution proceedings will be considered.

4.8 Works to trees subject to Tree Preservation Orders or within a Conservation Area

The Council has the statutory power to make Tree Preservation Orders (TPO) to protect individual or groups of trees. Similar protection applies to trees within Conservation Areas. It is a criminal offence to cut down, top, lop, uproot, wilfully destroy or damage a protected tree in a manner likely to destroy it, without the

Council's consent. If work is undertaken without consent the team will assess the nature of the works and whether it is in the public interest to prosecute. Advice should be sought from the Council's Landscapes Team as to whether a tree is protected or within a conservation area.

4.9 Unsightly land or buildings

The condition of certain buildings or land can cause harm to the visual amenity of an area and the team sometimes receive enquiries relating to such matters. Where the condition of land or buildings is causing significant harm to public amenity, consideration will be given to serving a notice under the Section 215 of the Town and Country Planning 1990. Such a notice it will specify measures to improve the appearance of the land or buildings. If those measures are not taken within a specified time an offence has been committed.

5.0 HOW TO REPORT A POTENTIAL BREACH OF PLANNING CONTROL

5.1 Anyone who reasonably believes that a breach of planning control has occurred can raise an enquiry with the Planning Enforcement Team.

5.2 Reports of a potential breach can be made by the following means:

- By completing the online enquiry form on the Council's website: www.braintree.gov.uk/planningenforcement
- By writing to the Planning Enforcement Team Causeway House Braintree Essex CM7 9HB
- By emailing a completed enquiry form to planning.enforcement@braintree.gov.uk

5.3 The following information will be required:

- The full address or location of the site where the breach is taking place.
- The nature of the alleged breach and the harm being caused.
- Times, dates and any relevant information.
- The name (if known) and status (owner/tenant/occupier/contractor/worker) of the person(s) involved.
- The date when activities first began and if they are on-going.

- If the enquiry relates to a change of use, the previous use of the
- Whether you have any legal interest in the land or property
- How the alleged breach is affecting you
- Your full name, postal address and contact details, including telephone number **must** be included with your enquiry and where possible an email address. Where an email address is provided the team will generally use this to update you at key stages.

5.4 Malicious complaints and anonymous allegations:

- To avoid the potential misuse of powers, where it is considered that an enquiry is not motivated by planning concerns it will not be investigated.
- Anonymous enquiries are not normally investigated, however if the matter raised constitutes a criminal offence, such as works to protected trees or listed buildings the Team Leader may direct that an investigation is conducted. The team must have reasonable grounds to suspect that an offence is being, or has been, committed in order to pursue a line of enquiry.
- Repeated enquiries which have previously been investigated and resolved will not be entertained. Unless, there has been a significant change to the circumstances since the finalisation of the previous investigation.

5.5 The Council will seek to maintain the confidentiality of persons reporting breaches at all times. The Council will not usually reveal the identity of the enquirer to the perpetrator of an alleged breach. The Council may be asked to reveal the identity under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or legitimately by the Police. However, any decision made to reveal this information under the above legislation would need to show that the public interest in disclosure outweighed the risk in withholding the information. If formal legal action is taken, the identity of a person reporting the breach may be required to be disclosed during court proceedings. It should be noted that in the majority of cases the land owner will be able to figure out who is responsible for making the enquiry, this will not be routinely confirmed.

5.6 The substance and dates pertaining to the enquiry are not confidential. In some cases it may be necessary to rely on evidence from enquirers in order to take action and it will need to be considered whether you are willing to actively assist the Council by collecting evidence and potentially acting as a witness at an appeal or in Court. The investigating officer will explain what may be required in these cases. Once a breach of control is suspected, you may be invited to make a note of your observations and keep a log of any relevant activities.

5.7 If you also raise your concerns with your local District Councillor or your Town or Parish Council please advise them of any contact you may have had with the Planning Enforcement team, including the Council's reference number.

5.8 The Town and Parish Councils are not the responsible authority for taking planning enforcement action, the responsibility lies with the Local Planning Authority. Your local District Councillor or Town or Parish Councillor may be willing to pass on your concerns to the Enforcement Team, but it is by no means certain that they will do so unless you specifically agree this with them.

5.9 If an enquiry is received from a District Councillor or Town or Parish Council on your behalf the team will respond to them. If they provide us with your contact details the team will update you. Ultimately, it will be your responsibility to ensure that your concerns are made known to the Council's Planning Enforcement team.

5.10 The priority the team give to an investigation does not change because the team receive it from a District Councillor or a Town/Parish Council (it is the scale of harm which determines the priority (*see below*)).

6.0 HOW THE TEAM PRIORITISE INVESTIGATIONS INTO ALLEGED BREACHES OF PLANNING CONTROL

6.1 The Council receive around 400-450 enquiries of alleged breaches of planning control per calendar year. Cases reported may or may not require a site inspection and may be referred to other departments or agencies as appropriate. Due to the often lengthy and complex nature of planning investigations and staff resources available, priority will be given to those cases where the greatest harm is being caused.

6.2 When enquiries are first received each case will be assigned a priority dependent upon the nature of the alleged breach. This initial assessment will be dependent upon the information provided at the time and the harm that is identified, such as possible harm to the environment or public and/or planning significance. It is therefore very important that you tell us what impact the development is having on you or the environment.

6.3 All cases will be kept under review which could result in the priority assigned to the investigation changing, for example after an initial site visit has been carried out and the officer has had the opportunity of assessing the alleged breach.

6.4 Allegations relating to potential breaches of planning control will be investigated and will be categorised as follows:

High Priority Alleged breaches causing irreparable harm to the natural or built environment, or public safety. For example:

- Unauthorised demolition, partial demolition or significant alteration of a

building, which it is essential to retain (e.g. a listed building or building within a Conservation Area) or any other development that has the potential to cause irreversible demonstrable harm;

- Breaches of conditions attached to a Listed Building Consent;
- Unauthorised works to protected trees covered by a Tree Preservation Order or in a Conservation Area.

Medium Priority Alleged breaches which cause clear and continuous harm or danger to the public, the built or natural environment or where there is a risk of material harm to the environment and/or harm to residential amenity. For example:

- Unauthorised development or breaches of a condition which results in serious demonstrable harm to the amenity of an area;
- Where works, or uses, have the potential to cause material long term damage to the environment.

Low Priority Breaches of planning control causing limited, or no material harm to the environment, or the amenity of residents. For example:

- Unauthorised uses or development, which would be likely to receive planning permission;
- The display of unauthorised advertisements where there are no highway safety implications; or
- Cases involving a technical breach of planning control, or where it is likely that development falls under 'permitted development'.

7.0 HOW THE TEAM INVESTIGATE ALLEGED BREACHES OF PLANNING CONTROL

7.1 Where an officer has a conflict of interest regarding any particular enquiry, the matter will be assigned to another officer to investigate.

7.2 Where an enquiry is made using the online facility you will receive an immediate electronic acknowledgment. Where a letter is received, it will be acknowledged as soon as practicable, the inclusion of a telephone number or email address will greatly assist.

7.3 When an enquiry is received, the team will endeavour to commence the investigation or seek to make contact with the person responsible for the activities within the following timescales:

- High Priority cases – usually within 1 working day,
- Medium Priority cases – usually within 5 working days.
- Low Priority cases – usually within 20 working days.

7.4 The team will investigate by looking at records and visiting the site. The team may also need to seek further information from the enquirer or the person carrying

out the unauthorised activity.

7.5 Firstly, the team have to establish whether a breach of planning control has occurred as defined in the legislation and detailed in Paragraph 4.3 above. If there is no 'development' or no 'condition' being breached then there is no breach of planning control and no further action can be taken under the planning legislation, the team will therefore close the file. Enquirers will be updated accordingly.

7.6 In order to establish that there has been a breach of planning control, the following are things which need to be considered:

- Is the development 'permitted development'.
- Is the development time-barred from enforcement (see 7.22)
- Has permission already been given (most planning permissions can be taken up at any time within 3 years from the date permission was granted and once partially put into action, there is no time limit on final completion).
- Where planning permission has not been granted, are the activities generally acceptable in planning terms
- What is the most appropriate action to take where the activities or development are undesirable but only a minor/technical breach in planning terms.

7.7 A similar process will be followed in respect of alleged breaches of planning control relating to advertisements, works to listed buildings and works to protected trees.

7.8 If there is a breach of planning control, the planning service will consider what action to take. In deciding whether to take enforcement action, the Council will have regard to the Local Plan and to any other material considerations, including national policies as expressed through the National Planning Policy Framework and associated guidance. The scale of impact of the breach will also be a factor in determining whether enforcement action is expedient.

Planning 'Expediency' and 'Harm'

7.9 Even when it is technically possible to take enforcement action, the Council is required first to decide whether such formal action would be 'expedient'. Enforcement action is a discretionary power and the relevant planning circumstances of each case must be considered in the first instance.

7.10 The 'expediency' test is therefore whether the unauthorised activities are causing harm having regard to the policies and other material planning considerations. In considering whether it is expedient to take enforcement action the decisive issue will be whether the breach of planning control unacceptably affects public amenity, the natural environment, existing land uses and buildings which merit protection in the public interest or the natural environment. Any action taken will also

be proportionate to the breach of planning control to which it relates. This approach to enforcement reflects that set out in the National Planning Policy Framework and associated guidance.

7.11 Formal action will only be taken where there is material harm in planning terms. Harm takes many different forms. It includes the impact on visual or residential amenity, on highway safety, on the amenity of the public in general, the occupiers and users of surrounding land and buildings or the environment in general. Harm may occur through damage to the area's historic buildings and environment, for example, unauthorised work to listed buildings, or if the conditions attached to the consent are not complied with. Harm can also occur where the development undermines the policies of our Local Plan, or could set a precedent which, if repeated, would undermine the policies of the Local Plan.

7.12 The planning system operates in the public interest, rather than the private interest of individuals, so there are certain issues that the team cannot take into account. For example:

- loss of value to property;
- competition with other businesses;
- rights to a view;
- trespass; or
- breaches of covenants.

7.13 In deciding whether or not to pursue enforcement action the planning service will also make an assessment of the evidence available to support such action and any claim that the development is immune from enforcement.

7.14 The main issue will be whether, if left un-addressed, the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. This may involve Human Rights considerations on the part of the landowner, resident and/or operator. Any action taken will be confined to what is necessary and proportionate in the circumstances of the case.

7.15 Article 8 and Article 1 of the first protocol to the Convention on Human Rights state that a person is entitled to the right to respect for private and family life, and the peaceful enjoyment of his/her property. However, these rights are qualified in that they must be set against the general interest and the protection of the rights and freedom of others. In accordance with the Human Rights Act 1998, if there is any question of enforcement action interfering with these rights the Council will consider in each case whether the wider impact of the breach overrides the owner's right to the peaceful enjoyment of their property.

7.16 Circumstances may also arise where there are conflicting priorities between the amenity and environmental aspects of a breach of planning control. In reaching a decision on expediency the Council will balance the harm being caused against the likely success of any formal action, the availability of resources, and other cases that might be causing a greater level of harm, but whose progress might be delayed as a result. Due regard will be given to the conflicting priorities when making decisions on whether or not it is expedient to take enforcement action.

7.17 In summary, the Council will only take enforcement action when it is considered expedient, justified and necessary to do so, even if there is a clear breach of planning control:

- Enforcement action **will not** be taken if the breach of planning control does not unacceptably affect public amenity, materially compromise planning policy or the existing use of land and buildings meriting protection is not in the public interest.
- Enforcement action **will not** be instigated solely to overcome a trivial or technical breach of planning control, which causes no significant harm to amenity in the locality of the site, or materially conflict with planning policy.

In these circumstances the team will close the case file and notify the relevant parties involved in the investigation. The team will also, without prejudice to the outcome, advise the owner/operator that they can make an application to seek regularisation and gain authorisation. The person making the enquiry has no right of appeal against a decision which has been reached, however comments and objections will be recorded and held on file.

Staged Approach to Enforcement

7.18 The team will give those responsible for a breach of planning control the opportunity to undertake required actions, or attempt to reach a negotiated solution that suits all parties. Where it proves necessary to resolve a significant breach of planning control, and in accordance with the Council's scheme of delegation, officers will consider whether it is appropriate to issue a statutory notice, prosecute and/or carry out works in default. The choice of action in each case will be:

- No further action - no breach has occurred.
- No further action – the breach is immune from any planning enforcement action, the work or use is "lawful" (see Paragraphs 7.22 - 7.27 below).
- No further action - not expedient to take action. It is a trivial or technical breach or there is no significant harm to amenity or the environment.
- Regularisation - cessation of use/works, retrospective application, discharge of conditions.
- Advice – Where a breach is of a minor or trivial nature advice will be given advising the person responsible of this fact.

- Warning – A formal written warning may be issued highlighting the breach and advising of what action is required to remedy the situation.
- Formal action - enforcement or other formal notice, simple caution, prosecution, injunction, works in default.

7.19 Where a breach of planning control has been identified, unless circumstances require immediate action, a staged and considered approach to formal enforcement action will always be adopted:

Step 1

- Give advice e.g. informal email, letter or verbal communication.
- Caution the offender where it relates to a criminal investigation
- Seek to negotiate, allowing an opportunity for cessation of works/use or reinstatement of land.
- Encourage a retrospective planning application or to seek pre-application advice to ascertain if an application is likely to be given support at officer level.

Step 2

- Formal letters, written warnings.
- Recorded interview under the codes of the Police & Criminal Evidence Act
- Issue a formal notice to obtain more information.
- Request a regularising application

Step 3

- Where a breach of planning control has been identified and no action has been taken to address the breach it will be necessary to consider formal action in the form of an Enforcement Notice and Stop, or Temporary Stop Notice. Where formal action is taken then every effort will be made to explain to the recipients what is required of them, the consequences of non-compliance and the available rights of appeal.
- Where an enforcement notice has not been complied with this will include consideration of prosecution proceedings or direct action.
- Submit a case file for prosecution through the Courts.

In High Priority cases, Steps 1 and 2 may be omitted.

Retrospective Planning Applications

7.20 An investigation will first establish whether a planning permission or consent is required and whether it is likely that a permission or consent would be granted. Planning legislation allows for retrospective applications to be made and unauthorised developments can be regularised through a retrospective application. Where necessary the Local Planning Authority can impose conditions to make the development acceptable.

7.21 Where it is assessed that planning permission may be granted for the development, the person responsible could be asked to submit a retrospective planning application.

- Where a breach has taken place and a retrospective planning application submitted it will usually be treated in the same manner as any other planning application.
- For matters requiring immediate attention a planning application should not hold up any urgent action.
- The Council can decline to determine an application where an enforcement notice has been served, as long as the notice is served before the application is received.

Immunity and Lawful Development

7.22 There may also be cases where it will be too late for the Planning Authority to take any further action. A breach of planning control becomes immune from enforcement action if no action has been taken within certain time limits set out in the Town and Country Planning Act, namely:

- Four years from the substantial completion of operational development and from the change of use of any building to a single dwelling-house, including use as flats (subject to the use as a dwelling house not being considered to constitute concealment)
- Ten years for all other breaches (i.e. change of use or breach of a planning condition).

In essence if operational development i.e. building works took place more than 4 years ago or a change of use of land or buildings took place more than 10 years ago, then such development would become 'lawful' and immune from any planning enforcement. The planning merits do not fall to be considered in such cases.

7.23 The reasons for the time limits are that if a building has been in situ for more than 4 years without giving cause for concern, or a use continued for 10 years, then it is unlikely that such development has caused any harm.

7.24 In cases where the development may be immune from planning enforcement action the team may suggest, but cannot require, an application for a Lawful Development Certificate for an existing use, operation or activity, including those in breach of a planning condition. With such an application, the onus is on the applicant to demonstrate through the submission of evidence such as sworn statements, photographs, receipts etc. that the development is lawful. The test is 'on the balance of probability'. The planning merits of the case do not fall to be considered.

Formal Enforcement Action

7.25 Whilst the team will endeavour to overcome any harm caused by unauthorised development, by negotiation wherever possible, the enforcement system rapidly loses credibility if unacceptable developments are perpetuated by prolonged or protracted enforcement discussions. A time limit for concluding negotiations will therefore normally be set by the investigating officer, commensurate with the priority accorded to the case.

7.26 Where an informal approach fails, negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds or to compel it to stop (bearing in mind the statutory time limits for taking enforcement action). The team will not allow prolonged negotiation to delay essential enforcement action and will use the powers available where it is expedient to do so.

7.27 In considering formal enforcement action, the team will have regard to the particular circumstances of each case and the degree of harm or potential harm resulting from the breach of planning control and will use enforcement powers commensurate with the seriousness of the breach.

7.28 Having decided to pursue formal enforcement action, the following powers are available, although not all of these will be appropriate in every case:

- To serve statutory notices (including: Planning Contravention Notices; Enforcement Notices; Listed Building Enforcement Notices; Stop Notices; Temporary Stop Notices; Breach of Condition Notices; Untidy Sites Notices; Hedgerow Retention/Replacement Notices, High Hedges Remedial Notices);
- To issue Simple Cautions;
- To prosecute (including prosecution for: non-compliance with a statutory notice; unauthorised display of an advertisement; unauthorised works to a listed building; non-compliance with a requirement to replace a protected tree or for unauthorised work to a protected tree);
- To take direct action; or
- To apply for an Injunction.

Further details of the available enforcement remedies are shown in Appendix 1.

7.29. The Council has delegated authority for the service of Enforcement Notices to the Development Manager. Accordingly, enforcement action does not require the endorsement of the Planning Committee, however, on occasions this may be sought.

Appeals against Enforcement Notices

7.30 Appeals may be lodged against enforcement notices to the Secretary of

State. When appeals are lodged, each case will be reassessed having regard to the grounds of appeal and any subsequent change in circumstances.

7.31 In defending enforcement action on appeal and in the courts, it will be necessary to show that the relevant procedures have been followed and that national policy on planning and enforcement has been taken into account. It will however, be expected that on the planning merits that led to the enforcement action, cases will be defended by the Council at appeal.

8.0 MONITORING CONDITIONS AND AGREEMENTS

Planning Conditions

8.1 Non-compliance with conditions will be referred to the Planning Enforcement team if developers or owners are not responding to approaches made by the Planning Officer, or the breach occurs following the completion of the development and it has been subsequently brought to our attention.

Legal Agreements

8.2 Where planning obligations, known as Section 106 agreements, are not being met, legal action will be taken if negotiations or identified dispute procedures do not result in agreement. The Council's legal team may enforce any non-compliance matters.

9.0 INFORMATION, REPORTING AND PUBLICITY

Keeping enquirers informed

9.1 Planning issues can create frustration and it is in everybody's interest for matters to be resolved as quickly as possible. A timescale target for resolving cases is not appropriate but the team will endeavour to provide updates to enquirers at key stages of the process and once a final determination has been made.

9.2 In many cases due to protracted negotiations, inability to access property or make contact with the owner, there is nothing to report. It may seem in such cases, that no action is being undertaken, but this is not the case.

9.3 At key stages of our investigation the team may update the person(s) who have drawn the matter to our attention. The team will provide an update at the conclusion of our investigation, this will often be the only means of update made.

Recording Alleged Breaches of Planning Control

9.4 The Planning Enforcement team keeps up to date records of all investigations undertaken, to inform and justify any future action, and to compile evidence as necessary e.g. for prosecutions.

9.5 All enquiries and allegations received, subject to the anonymity clarification, will be recorded onto the Council's Enforcement databases. The database will be updated as necessary during the course of an investigation. When a breach has occurred this will be recorded on the relevant database and the information retained.

Repeated Enquiries

9.6 Where an alleged breach has been investigated and concluded, any enquiry relating to the same site, which is not materially different to the previous allegation or does not raise any new issues, will not be investigated. In addition, regular unfounded enquiries from the same source may be considered vexatious and will not be investigated.

Enforcement Register

9.7 Every local planning authority must keep an Enforcement Register. Details of Enforcement Notices, Stop Notices and Breach of Condition Notices issued are entered into the register. Folders are available whereby the past 5 years can be viewed during office hours at the Council Offices Causeway House Braintree Essex CM7 9HB. Older documents can be viewed by appointment only.

9.8. Where an enforcement case has been raised some detail can be viewed on the Council's Website, if a notice has been issued against a property in the past 10 years it will be available to the public to view. The public access facility can be searched using this link www.braintree.gov.uk/publicaccess

Communication with the Media

9.9 Good publicity is important in deterring others from committing serious planning breaches, and reassuring members of the public of the Council's commitment to enforcing against serious breaches in planning regulations. Where appropriate, the team will work with the media to publicise the Planning Enforcement team's work and positive outcomes. This could include details of impending court cases and their outcome.

Comments and Complaints

9.10 The Council is committed to providing an effective and efficient planning enforcement service. However, anyone not satisfied with the service should first discuss any concerns with the Planning Enforcement Team Leader.

9.11 If still dissatisfied, the Council has a formal complaints procedure, details of which can be found on the Council's website at www.braintree.gov.uk

Monitoring and Review

9.13 All outstanding cases will be reviewed at regular intervals with the objective of determining whether it is expedient to continue with the investigation or action. The factors to be taken into account when such decisions are taken will include:

- The extent of harm caused to local amenity or acknowledged planning interests;
- The impact on Local Plan and Policies;
- The existence of other remedial powers; and
- The threat to the integrity of the development control system.

9.14 This Plan and its standards will be reviewed every 5 years.

10.0 WHAT HAPPENS IF YOU ARE THE SUBJECT OF AN ENFORCEMENT CASE

10.1 The team recognise that in many cases a breach of planning control is not intentional and can be the result of a misunderstanding or a person being unaware of the planning requirements. Therefore, if you receive a letter from us or a visit from an enforcement officer, the team encourage you to respond positively and provide the information which the team need to resolve the matter. Don't delay. It is in the interests of all parties if an identified breach can be addressed at an early stage.

10.2 The Local Planning Authority will assess and investigate legitimate enquiries alleging a breach of planning control, even if they prove to be unfounded. If you are contacted about an alleged breach you are entitled to know what the allegation is and to have the opportunity to discuss your position. However, the team do not disclose the identity of the complainant to you. It may be that the matter can be resolved quickly if there is no breach. In other cases a resolution may be negotiated, however this does not mean that you can delay any response or action. The team expect you to respond within the timescales communicated to you and will pursue prosecutions for failure to respond to formal notices.

10.3 The team will not allow long drawn out negotiations to divert the service from taking appropriate action. In many cases, particularly where the works are likely to be acceptable, the team may invite you to submit a retrospective planning application without prejudice to any decision the Council may take. In cases where planning permission has been obtained and the deviation from the approved plans is very minor, you may be entitled to apply to revise the approved plan.

10.4 You should be aware that development which requires, but does not have planning permission, is unauthorised. If you subsequently wish to sell a property which has been subject to a formal notice, you may find the sale is delayed or lost as a result once potential purchasers carry out land searches.

10.5 The Planning Enforcement team will advise the Council's Land Charges team of those sites where formal notices have been served, decisions have been made and where potential enforcement action remains outstanding.

10.6 You should be aware that Planning Enforcement Officers have legal rights of entry to land and property in order to investigate alleged breaches of planning control or compliance with enforcement notices. The enforcement officers will make themselves known to the landowner/developer when they enter a site. It is not always appropriate or possible to give advance warning of a site visit. In some cases a letter or email will be sent to alert you to an alleged breach of planning control as soon as the team are made aware of it and asking you to contact the officer dealing with the case.

10.7 An enforcement officer's visit may be unaccompanied; you do not have to be present. If it is necessary to enter your house, (as opposed to the garden) you are entitled to 24 hours' notice. If you actively prevent an enforcement officer from entering onto your land the team may obtain a warrant to enter the site. Once the team have secured a warrant, any obstruction to access the site will be considered a criminal offence.

10.8 The Council will use the information obtained to make an assessment and decide what further action needs to be taken. Allowing the enforcement officer to make a site visit and take photographs will help to reduce delays and any potential inconvenience.

10.9 You may be served with a Planning Contravention Notice or a Requisition for Information Notice, both of which require information concerning the alleged development. These notices are used to establish the facts of what has occurred and the details of those with an interest in the land, so that the team may determine whether a breach has taken place and who is responsible.

10.10 If there is a breach, the team will contact you to explain what the breach is and what needs to be done to resolve it. The team will follow the approach detailed in Section 7.

10.11 Planning Enforcement Officers will be happy to explain the different notices, and to help you understand the implications. However, Planning Enforcement Officers will not act as your advisor and cannot make decisions on your behalf. You should consider whether you wish to get your own independent professional advice, you can also seek advice via 'Planning Aid', which is a voluntary service offering free independent, professional advice: www.rtpi.org.uk/planning-aid/.

APPENDIX 1

SCHEDULE OF PRINCIPAL ENFORCEMENT TOOLS AND POWERS

Planning Contravention Notice (PCN)

The power to issue a PCN lies in Section 171C of the Town and Country Planning Act 1990, as amended. This seeks to establish what is happening on a site and who is responsible. It is intended to act as an information gathering tool. The notice requires details and information on an alleged breach of planning control to be submitted to the Local Planning Authority to clarify whether a breach has occurred. Failure to respond within 21 days, or submission of false or misleading information may result in prosecution and a potential fine.

Breach of Condition Notice (BCN)

The power to issue a BCN lies in Section 187A of the Town and Country Planning Act 1990, as amended. This requires the owner or occupier to comply with any outstanding requirements of a condition imposed on the grant of planning permission. A BCN cannot be used in respect of listed buildings, conservation area control and protected trees. The compliance period is a minimum of 28 days from date of service of the notice. There is no right of appeal against a notice. Failure to comply with a BCN is an offence liable to prosecution and a fine of up to £1,000.

Enforcement Notice

The power to issue an enforcement notice lies in Section 172 of the Town and Country Planning Act 1990, as amended. The Local Planning Authority may issue a notice where it considers there has been a breach of planning control and it is expedient to do so i.e. the development is likely to be unacceptable in policy terms, or could not be made acceptable by the imposition of appropriate planning conditions. An Enforcement Notice requires rectification of the breach within a specified timescale and must specify:

- the land to which the notice relates;
- the reasons why it is expedient to take such action;
- the breach of planning control complained of;
- the steps required to remedy the breach;
- the date on which the notice comes into effect; and
- the period for compliance.

There is a right of appeal. An appeal may be made to the Secretary of State before the notice is due to come into effect, usually not less than 28 days after the date of issue. An appeal will suspend the notice until the appeal is determined.

Failure to comply with an Enforcement Notice within the time specified is a criminal offence liable to prosecution, either in the Magistrates' Court where conviction can result in a fine of up to £20,000, or in the Crown Court where conviction can lead to an unlimited fine or even imprisonment.

Listed Building Enforcement Notices are similar to Enforcement Notices, but used where works have been carried out to a listed building, either without the benefit of listed building consent or in contravention of a condition of such consent.

Stop Notice

The power to issue a stop notice lies in Section 183 of the Town and Country Planning Act 1990, as amended. A Stop Notice may be issued to support an Enforcement Notice. It has the effect of requiring a breach of planning control to cease. A Stop Notice is only used where the breach of planning control is causing severe, serious and irreversible harm. The notice usually takes effect after a period of 3 days and prohibits continuation of any, or all of the activities specified in the Enforcement Notice. It cannot be used to prohibit the use of any building as a dwelling house nor require the cessation of any activity which has been carried out for a period of more than four years prior to the service of the notice. Compensation may be payable by the Local Planning Authority if the Enforcement Notice to which the Stop Notice relates is quashed on appeal. Failure to comply with a Stop Notice is an offence liable to prosecution, either in the Magistrates' Court where conviction can result in a fine of up to £20,000, or in the Crown Court where conviction can lead to an unlimited fine or even imprisonment.

Temporary Stop Notice

The power to issue a Temporary Stop Notice lies in Section 171E – 171H of the Town and Country Planning Act 1990, as amended. It does not have to be accompanied by an Enforcement Notice. A Temporary Stop Notice can require the immediate cessation of a breach of planning control for a period of up to 28 days. During this 28 day period an Enforcement and Stop Notice can be served. There is no right of appeal. Failure to comply is an offence subject to prosecution, either in the Magistrates' Court where conviction can result in a fine of up to £20,000, or in the Crown Court where conviction can lead to an unlimited fine or even imprisonment.

Injunction

The power to seek an injunction is conferred by Section 187B of the Town and Country Planning Act 1990, as amended. Where the Local Planning Authority considers that a serious actual or intended breach of planning control is likely to take place it may seek an injunction in the County or High Court. It is not necessary to have considered or exercised any other enforcement power prior to seeking an injunction. The granting of an injunction is at the Court's discretion. The Injunction is generally sought where an operator continues to ignore an Enforcement or Stop Notice, or where there are irreversible consequences i.e. the threatened demolition

of a listed building. Failure to comply with an Injunction constitutes a contempt of court and may lead to imprisonment.

Direct Action

The power for a local planning authority to take direct action to address noncompliance with an Enforcement Notice lies in Section 178 of the Town and Country Planning Act 1990, as amended. If any steps which are required by an enforcement notice to be taken (other than the discontinuance of a use of land), have not been taken within the compliance period, the Local Planning Authority may enter the land and take those steps; and recover from the person who is the owner of the land any expenses reasonably incurred by them in doing so.

Section 215 Notice

Under Section 215 of the Town and Country Planning Act 1990, as amended, a Local Planning Authority can serve a '215 Notice'. This can require land to be cleared and tidied up when its condition adversely affects the amenity of the area. The notice must specify clearly and precisely what needs to be done to remedy the condition of the land and state a period of time within which the works shall be completed. Appeals are made to the Magistrates' Court. Failure to comply is an offence subject to prosecution and a fine of up to £1,000 or daily penalties if the nuisance persists. The Local Planning Authority may resort to direct action and seek to recover the costs of remedial works from the land owner. This may be done by registering a charge on the land at HM Land Registry, so that costs are recovered when the property is sold.

Unauthorised Advertisements

Advertisements which are displayed in breach of the Town and Country Planning (Control of Advertisements) Regulations 2007 constitute an offence and render those responsible and the owner of the land liable to immediate prosecution and a potential fine.

Where an advertisement is displayed with deemed consent under the Regulations, the Local Planning Authority can require its removal by issuing a Discontinuance Notice. Such a notice can only be issued to remedy a substantial injury to an amenity in the locality or a danger to members of the public. This requirement is more stringent than the normal power to control advertisements.

Simple Cautions

A Simple Caution may be offered as an alternative to prosecution when there is an admission. A Simple Caution may be offered if the offence is:

- the first; of a minor or technical nature, or;
- not sufficiently serious to proceed to court;
- admitted by the offender

Community Protection Notice

A Community Protection Notice (CPN) under Section 43 Anti-Social Behaviour, Crime & Policing Act 2014 is intended to prevent unreasonable behaviour that is having a negative impact on the local community's quality of life. It may be considered as an alternative to a Section 215 Notice. A written warning must be issued before a CPN can be used. There is a right of appeal to a Magistrates Court within 21 days of issue. Failure to comply with the requirements of a CPN can result in a fine or the issue of a Penalty Notice.

Prosecution

Decisions to prosecute will be made in conjunction with the Council's legal advisors who will advise on the quality and adequacy of evidence and other legal issues that might be raised. The team can commence court proceedings where a formal notice has been breached. In some instances the team can also commence legal proceedings for unauthorised works without the need to have first served an enforcement notice, for example: unauthorised works to a listed building, damage to a protected tree or an unauthorised advertisement, this is because these are criminal offences.

In deciding whether to prosecute, the Code for Crown Prosecutors will be applied. The Code is a public document issued by the Director of Public Prosecutions which sets out general principles to follow when deciding whether or not to prosecute.

The team will apply two tests in cases where a prosecution appears likely, in consultation with our legal advisors:

The **evidential test**: is there admissible and reliable evidence that the offence has been committed, and that there is a reasonable prospect of conviction?

The **public interest test**: is a prosecution in the public interest?

As a general rule, prosecutions will not be instituted without due warning being given to the persons suspected of committing the offence.

Rights of Entry

Enforcement officers are able to exercise powers of entry contained within sections 196A, 196B and 196C of the Town and Country Planning Act 1990, as amended by the Planning Compensation Act 1991 in order to investigate breaches of planning control. Consideration is always given to article 8 of Human Rights Act 1990 (The right to respect for private and family life) prior to exercising any powers of entry.

Appendix 2 Planning Enforcement - Streamlined Process Chart

