

Development Control Committee



Forest Heath
District Council

Title:	Agenda												
Date:	Wednesday 5 August 2015												
Time:	6.00 pm												
Venue:	Council Chamber District Offices College Heath Road Mildenhall												
Full Members:	<p style="text-align: center;">Chairman Rona Burt Vice Chairman Chris Barker</p> <p><u>Conservative Members (11)</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">David Bimson</td> <td style="width: 33%;">Brian Harvey</td> </tr> <tr> <td>David Bowman</td> <td>James Lay</td> </tr> <tr> <td>Ruth Bowman</td> <td>Carol Lynch</td> </tr> <tr> <td>Louis Busuttill</td> <td>Louise Marston</td> </tr> <tr> <td>Stephen Edwards</td> <td></td> </tr> </table> <p><u>West Suffolk Independent Members (2)</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Andrew Appleby</td> <td style="width: 33%;">Simon Cole</td> </tr> </table> <p><u>UKIP Member (1)</u> Peter Ridgwell</p>	David Bimson	Brian Harvey	David Bowman	James Lay	Ruth Bowman	Carol Lynch	Louis Busuttill	Louise Marston	Stephen Edwards		Andrew Appleby	Simon Cole
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Stephen Edwards													
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<p>A SITE VISIT WILL BE HELD ON MONDAY 3 AUGUST 2015 AT THE FOLLOWING TIME:</p> <p>1. Planning Application DC/15/0856/FUL - Philips Farm, Wilde Street, Beck Row Demolition of existing bungalow. Construction of new two storey detached 5 bedroom dwelling and detached Cart Barn (Resubmission of DC/14/1313/FUL) Site visit to be held at 9.30am</p>													
Substitutes:	Named substitutes are not appointed												
Interests – Declaration and Restriction on Participation:	Members are reminded of their responsibility to declare any disclosable pecuniary interest not entered in the Authority's register or local non pecuniary interest which they have in any item of business on the agenda (subject to the exception for sensitive information) and to leave the meeting prior to discussion and voting on an item in which they have a disclosable pecuniary interest.												

Quorum:	Five Members
Committee administrator:	Helen Hardinge Committee Administrator & FHDC Scrutiny Support Tel: 01638 719363 Email: helen.hardinge@westsuffolk.gov.uk

DEVELOPMENT CONTROL COMMITTEE AGENDA NOTES

Notes

Subject to the provisions of the Local Government (Access to Information) Act 1985, all the files itemised in this Schedule, together with the consultation replies, documents and letters referred to (which form the background papers) are available for public inspection.

All applications and other matters have been considered having regard to the Human Rights Act 1998 and the rights which it guarantees.

Material Planning Considerations

1. **It must be noted that when considering planning applications (and related matters) only relevant planning considerations can be taken into account. Councillors and their Officers must adhere to this important principle which is set out in legislation and Central Government Guidance.**
2. **Material Planning Considerations include:**
 - Statutory provisions contained in Planning Acts and Statutory regulations and Planning Case Law
 - Central Government planning policy and advice as contained in Circulars and the National Planning Policy Framework (NPPF)
 - The following Planning Local Plan Documents

Forest Heath District Council	St Edmundsbury Borough Council
Forest Heath Local Plan 1995	St Edmundsbury Borough Local Plan 1998 and the Replacement St Edmundsbury Borough Local Plan 2016
The Forest Heath Core Strategy 2010, as amended by the High Court Order (2011)	St Edmundsbury Borough Council Core Strategy 2010
Emerging Policy documents	Emerging Policy documents
Joint Development Management Policies	Joint Development Management Policies
Core Strategy – Single Issue review	Vision 2031
Site Specific Allocations	

- Supplementary Planning Guidance/Documents eg. Affordable Housing SPD
 - Master Plans, Development Briefs
 - Site specific issues such as availability of infrastructure, density, car parking
 - Environmental; effects such as effect on light, noise overlooking, effect on street scene
 - The need to preserve or enhance the special character or appearance of designated Conservation Areas and protect Listed Buildings
 - Previous planning decisions, including appeal decisions
 - Desire to retain and promote certain uses e.g. stables in Newmarket.
3. The following are **not** Material Planning Considerations and such matters must not be taken into account when determining planning applications and related matters:
 - Moral and religious issues
 - Competition (unless in relation to adverse effects on a town centre as a whole)
 - Breach of private covenants or other private property / access rights

- Devaluation of property
 - Protection of a private view
 - Council interests such as land ownership or contractual issues
 - Identity or motives of an applicant or occupier
4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permission shall be determined in accordance with the Development Plan (see table above) unless material planning considerations indicate otherwise.
5. A key role of the planning system is to enable the provision of homes, buildings and jobs in a way that is consistent with the principles of sustainable development. It needs to be positive in promoting competition while being protective towards the environment and amenity. The policies that underpin the planning system both nationally and locally seek to balance these aims.

Documentation Received after the Distribution of Committee Papers

Any papers, including plans and photographs, received relating to items on this Development Control Committee agenda, but which are received after the agenda has been circulated will be subject to the following arrangements:

- (a) Officers will prepare a single Committee Update Report summarising all representations that have been received up to 5pm on the **Thursday** before each Committee meeting. This report will identify each application and what representations, if any, have been received in the same way as representations are reported within the Committee report;
- (b) the Update Report will be sent out to Members by first class post and electronically by noon on the **Friday** before the Committee meeting and will be placed on the website next to the Committee report.

Any late representations received after 5pm on the **Thursday** before the Committee meeting will not be distributed but will be reported orally by officers at the meeting.

Public Speaking

Members of the public have the right to speak at the Development Control Committee, subject to certain restrictions. Further information is available on the Councils' websites.

DEVELOPMENT CONTROL COMMITTEE DECISION MAKING PROTOCOL

The Development Control Committee usually sits once a month. The meeting is open to the general public and there are opportunities for members of the public to speak to the Committee prior to the debate.

Decision Making Protocol

This protocol sets out our normal practice for decision making on development control applications at Development Control Committee. It covers those circumstances where the officer recommendation for approval or refusal is to be deferred, altered or overturned. The protocol is based on the desirability of clarity and consistency in decision making and of minimising financial and reputational risk, and requires decisions to be based on material planning considerations and that conditions meet the tests of Circular 11/95: "The Use of Conditions in Planning Permissions." This protocol recognises and accepts that, on occasions, it may be advisable or necessary to defer determination of an application or for a recommendation to be amended and consequently for conditions or refusal reasons to be added, deleted or altered in any one of the circumstances below.

- Where an application is to be deferred, to facilitate further information or negotiation or at an applicant's request.
- Where a recommendation is to be altered as the result of consultation or negotiation:
 - The presenting Officer will clearly state the condition and its reason or the refusal reason to be added/deleted/altered, together with the material planning basis for that change.
 - In making any proposal to accept the Officer recommendation, a Member will clearly state whether the amended recommendation is proposed as stated, or whether the original recommendation in the agenda papers is proposed.
- Where a Member wishes to alter a recommendation:
 - In making a proposal, the Member will clearly state the condition and its reason or the refusal reason to be added/deleted/altered, together with the material planning basis for that change.
 - In the interest of clarity and accuracy and for the minutes, the presenting officer will restate the amendment before the final vote is taken.
 - Members can choose to
 - delegate the detailed wording and reason to the Head of Planning and Regulatory Services;
 - delegate the detailed wording and reason to the Head of Planning and Regulatory Services following consultation with the Chair and Vice Chair(s) of Development Control Committee.
- Where Development Control Committee wishes to overturn a recommendation and the decision is considered to be significant in terms of overall impact; harm

to the planning policy framework, having sought advice from the Head of Planning and Regulatory Services and the Head of Legal and Democratic Services (or Officers attending Committee on their behalf)

- A final decision on the application will be deferred to allow associated risks to be clarified and conditions/refusal reasons to be properly drafted.
- An additional officer report will be prepared and presented to the next Development Control Committee detailing the likely policy, financial and reputational etc risks resultant from overturning a recommendation, and also setting out the likely conditions (with reasons) or refusal reasons. This report should follow the Council's standard risk assessment practice and content.
- In making a decision to overturn a recommendation, Members will clearly state the material planning reason(s) why an alternative decision is being made, and which will be minuted for clarity.
- In all other cases, where Development Control Committee wishes to overturn a recommendation:
 - Members will clearly state the material planning reason(s) why an alternative decision is being made, and which will be minuted for clarity.
 - In making a proposal, the Member will clearly state the condition and its reason or the refusal reason to be added/deleted/alterred, together with the material planning basis for that change.
 - Members can choose to
 - delegate the detailed wording and reason to the Head of Planning and Regulatory Services
 - delegate the detailed wording and reason to the Head of Planning and Regulatory Services following consultation with the Chair and Vice Chair(s) of Development Control Committee
- Member Training
 - In order to ensure robust decision-making all members of Development Control Committee are required to attend annual Development Control training.

Notes

Planning Services (Development Control) maintains a catalogue of 'standard conditions' for use in determining applications and seeks to comply with Circular 11/95 "The Use of Conditions in Planning Permissions."

Members/Officers should have proper regard to probity considerations and relevant codes of conduct and best practice when considering and determining applications.

Agenda

Procedural Matters

Part 1 - Public

- 1. Apologies for Absence**
 - 2. Substitutes**
 - 3. Minutes** **1 - 10**

To confirm the minutes of the meeting held 1 July 2015 (copy attached).
 - 4. Planning Application DC/14/1711/FUL - Small Fen Farm, Small Fen Lane, Brandon** **11 - 50**

Report No: **DEV/FH/15/027**

Temporary occupation of building as dwelling for a period of up to five years
 - 5. Prior Approval Application DC/15/1402/PMBPA - Belle Vue, Newmarket Road, Barton Mills** **51 - 64**

Report No: **DEV/FH/15/028**

(i) Change of use of agricultural building to dwellinghouse (Class C3) to create 1 no. dwelling (ii) associated operational development
 - 6. Planning Application DC/15/0856/FUL - Philips Farm, Wilde Street, Beck Row** **65 - 76**

Report No: **DEV/FH/15/029**

Demolition of existing bungalow. Construction of new two storey detached 5 bedroom dwelling and detached Cart Barn (Resubmission of DC/14/1313/FUL)
 - 7. Reserved Matters Application DC/15/0324/RM - Land to the Rear of 12 High Street and to the North of Dumpling Bridge Lane, Lakenheath** **77 - 88**

Report No: **DEV/FH/15/030**

Submission of details under outline planning permission F/2010/0337/OUT - The means of appearance, landscaping, layout and scale for 13 residential units including 4 affordable units
-

8. Planning Application DC/15/0530/VAR - Tesco Retail Development, Dumpling Bridge Lane, Lakenheath 89 - 100

Report No: **DEV/FH/15/031**

Erection of Class A1 retail store, associated access, car parking, landscaping and boundary treatment. Refurbishment of Matthew's Nursery shop including change of use to A1, A2 or A3 and creation of hard landscaped area between shop and High Street (demolition of 12 High Street, glasshouses and associated structures). (Major Development) (Departure from the Development Plan) without compliance with conditions 2, 6 and 7 of F/2010/0338/FUL to enable commencement of works prior to discharging conditions

9. Overview and Update of Planning Enforcement Services 101 - 104

Report No: **DEV/FH/15/032**

Development Control Committee



Forest Heath
District Council

Minutes of a meeting of the **Development Control Committee** held on
Wednesday 1 July 2015 at **6.00 pm** at the **Council Chamber, District
Offices**, College Heath Road, Mildenhall IP28 7EY

Present: **Councillors**

Chairman Rona Burt

Vice Chairman Chris Barker

Andrew Appleby

David Bimson

David Bowman

Ruth Bowman

Louis Busuttil

Simon Cole

Stephen Edwards

Brian Harvey

Carol Lynch

Peter Ridgwell

57. Apologies for Absence

Apologies for absence were received from Councillors James Lay and Louise Marston.

58. Substitutes

There were no substitutes present at the meeting.

59. Minutes

The minutes of the meeting held on 3 June 2015 were unanimously accepted as an accurate record and were signed by the Chairman.

60. Planning Application DC/14/2162/FUL - Caravan Mobile Site, Elms Road, Red Lodge (Report No DEV/FH/15/024)

The Chairman agreed to bring this item forward on the agenda in order to accommodate the attendance of the representative from the Environment Agency and the Council's Environmental Health Officer.

Change of use of land to residential use for three gypsy families including 3 no. mobile home and 6 no. amenity buildings.

This application had been deferred from the Development Control Committee meeting on 3 June 2015 in order to allow additional information on the contamination risk to be provided prior to a decision being made. Officers had also arranged for Mr A Ireland to be attendance from the Environment

Agency in order to answer any Members' questions together with an Officer from the Council's Environmental Health department.

A Member site visit had been held prior to the June Committee meeting. Officers were continuing to recommend that the application be approved subject to conditions.

The Planning Officer advised that since publication of the agenda a further letter had been received from the applicants' representative which highlighted that the applicants and their families were currently living in cramped conditions at Willow Park travellers site in Beck Row and that their children already attended local schools.

Officers had also been made aware of a further letter of objection that had been sent to all Members by a local resident.

As part of the presentation the Officer drew attention to amended plans which showed the minor levels changes on the site, the relocation of the septic tank on the plot closest to the access track and the plot layouts.

In response to questions put to him by the Committee, Mr Ireland from the Environment Agency explained that evidence indicated that there would be minimal contamination from the site and that it could be managed with conditions. The Planning Officer added that the Council would liaise with the Environment Agency to ensure that the relevant conditions had been discharged prior to the work being commenced on site..

Councillor David Bowman proposed that the application be granted subject to all the conditions identified and this was seconded by Councillor Simon Cole and with the vote being unanimous, it was resolved that:

Planning permission be **GRANTED** subject to the following conditions:

1. Standard time limit
2. In accordance with submitted plans
3. Details of all facing and roofing materials to be agreed for the utility/day blocks and outbuildings
4. Occupation limited to those who satisfy the planning definition of a Gypsy or Traveller, as set out in PPTS
5. Details of vehicular access to be provided
6. Means to prevent discharge of water onto highway to be agreed
7. Light source shall not be visible from any highway
8. Parking and manoeuvring areas to be provided
9. Gates to be set back a minimum of 10m and shall only open into the site.
10. Details of visibility splays to be provided
11. Clear visibility to be provided and thereafter permanently retained
12. Scheme of foul water drainage
13. Scheme of surface water drainage
14. Full contamination assessment and remediation to be carried out and completed prior to any other works commencing (as per EA and Environmental Health recommendations)
15. Amenity buildings not to be used for residential occupation
16. Site levels to be agreed

61. **Outline Planning Application DC/14/1745/OUT (All Matters Reserved) - Land at Beck Lodge Farm, St Johns Street, Beck Row (Report No DEV/FH/15/021)**

Erection of up to 24 dwellings (including 12 affordable units) with relocated access drive, area of open space and associated storage and parking facilities.

This application was referred to the Development Control Committee due to its complex nature which raised District wide planning policy issues.

A Member site visit had been held prior to the meeting. The application was recommended for conditional approval subject to conditions and following completion of a Section 106 agreement.

The Principal Planning Officer – Major Projects explained that since publication of the agenda the results of a Botanical Survey had been provided by the applicant which indicated that the site contained no rare plant species.

In response to questions raised, the Officer confirmed that matters such as the precise percentage of affordable housing and density would be considered in detail during determination of the full application.

Councillor David Bowman proposed that the application be granted as per the Officer recommendation and this was seconded by Councillor Louis Busuttill and with the vote being unanimous, it was resolved that:

Outline planning permission be **GRANTED** subject to:

1. The completion of a S106 agreement to secure the following (subject to meeting the CIL reg 122 tests):
 - Affordable housing – 12 units.
 - Primary school contribution -£2,030/dwelling
 - Pre school contribution - £12 181
 - Libraries contribution - £5 184
 - Open space contribution – to be confirmed.
 - Transport contribution - £3 000.

In the event that there are any substantive changes to the S106 package, then this will go back to Members for consideration.

2. And the following conditions:
 1. Time.
 2. Compliance with approved plans.
 3. Archaeology – investigation and post investigation assessment.
 4. Contamination – further investigative work if found.
 5. Foul water disposal details.
 6. Surface water drainage details: SuDs management plan.
 7. Construction management plan.
 8. Details of boundary treatment.
 9. Samples of materials.
 10. Detailed scheme of hard and soft landscaping.
 11. Tree protection.

12. Details of tree works for retained trees.
13. Detailed Arboricultural Method Statement and Tree Protection Plan.
14. Recommendations of Ecological Appraisal and Reptile Survey to be implemented.
15. Provision of fire hydrants.
16. Waste minimisation and recycling strategy.

62. Planning Application DC/14/2219/FUL - Land at Fengate Drove, Brandon (Report No DEV/FH/15/022)

Construction of 64 no. dwellings with associated external works including new vehicular access (as amended).

This application was referred to the Development Control Committee because it was for a major development and objections had been received from Brandon Town Council.

The Principal Planning Officer – Major Projects asked Members to note that the application was a cross boundary application with part of the development falling under Breckland, but with the majority of the proposed dwellings being within Forest Heath.

Officers were recommending that the application be approved subject to conditions and the completion of a Section 106 agreement.

The Committee was also advised that planning permission had already been granted for the site for 63 dwellings in 2005 which achieved a Certificate of Lawfulness for commencement in 2011; accordingly the developer was at liberty to deliver that development irrespective as to whether the application currently before the Committee was granted.

The Officer, as part of his presentation, set out a brief comparison between the application currently for determination and that which had already been granted for the site. Officers were of the opinion that the new scheme had improved upon that which was granted previously.

Members were advised of the following updates since the agenda papers were published:

- Breckland Council's Planning Committee had met on 22 June 2015 to consider this application and it had been granted subject to conditions and the completion of a Section 106 agreement;
- A further letter of objection had been received from a resident of Thetford who was a member of a local cycling group. The individual raised concerns as to the cycle path within the development and requested that it be amended in certain areas. The Officer explained that all areas identified fell under Breckland (as opposed to Forest Heath) and Breckland Council had not taken these changes into consideration when granting the application;
- Comments had been received from Anglian Water who requested that a condition be added to ensure that no dwellings were constructed within 15 metres of the pumping station adjacent to the site. The Officer explained that this condition would be unnecessary as the application

before Members was detailed (a full application) and all of the properties were more than 15m away; and

- Lastly, an error was identified within Paragraph 24 of the report where it stated that the capital contribution of £13,824 would be spent at Lakenheath library – when this should have read Brandon library.

In response to queries raised by Members of the Committee, the Officer clarified that it was not uncommon for developments of this size to cross county/local authority boundaries. In such cases, for matters such as waste collection, the relevant authorities would liaise and come to a sensible agreement as to who would manage the collection from the development.

Councillor Peter Ridgwell made reference to the objections raised by Brandon Town Council, particularly their concerns regarding traffic safety. He asked if it would be possible to include a roundabout as part of the access to the site. The Officer explained that this could not be requested as the application had been accessed by the Highways Authority who were of the opinion that this was not necessary.

Councillor David Bimson made reference to Paragraph 5 of the report and the reference therein to the roofs in the development being constructed with dark grey concrete pantiles. He requested that Officers liaise with the applicant to agree the palette of the buildings, with the view to not having all the roofs as purely grey.

On the agreement of the Principal Planning Officer – Major Projects to undertake this negotiation, Councillor Bimson proposed that the application be granted as per the Officer recommendation and this was seconded by Councillor Brian Harvey, and with 11 voting for the motion and with one abstention, it was resolved that:

Planning permission be **GRANTED** subject to:

1. The completion of a Section 106 agreement to secure:
 - Policy compliant level and tenure split of affordable housing
 - Education contribution (Primary School - £194,896)
 - Pre-school contribution (£36,546)
 - Libraries Contribution – if subsequently deemed compliant with CIL Regulation 122 (36,546)
 - Provision of on-site Public Open Space together with (if appropriate) a commuted sum for future maintenance if transferred to the District Council (or the Town Council if appropriate) to manage and maintain.
 - Health contribution, if requested and justified.
 - SPA Enhancement measures deemed not appropriate as planning conditions (including the footpath enhancement contribution - £82,200).
 - Any additional obligations considered necessary by the Head of Planning and Regulatory Services.
2. And subject to conditions (to be agreed with Breckland Council), including:
 - Time limit (3 years for commencement)

- Materials (Officers to liaise with the developer to agree a suitable palette for the roofs)
- Strategy for enhancing water use efficiency, post occupation.
- Bin and cycle storage strategy
- Landscaping scheme (hard and soft)
- Ecology i) enhancements at the site
- Ecology ii) Implementation of the recommendations of the ecology report (on-site non-SPA measures)
- Ecology iii) Implementation of the recommended mitigation package of SPA measures from the applicants Habitats Regulations Assessment (note only those matters not secured by the S106 Agreement).
- Construction management plan
- As recommended by LHA's (Norfolk and Suffolk)
- Travel Plan measures.
- Contamination & remediation (further investigations and any remediation necessary and new contamination encountered during development)
- Noise mitigation measures to relevant dwellings and garden spaces.
- Fire Hydrants
- Waste minimisation and re-cycling strategy
- Details of the surface water drainage scheme.
- Any additional conditions considered necessary by the Head of Planning and Regulatory Services.
- Details of informal play equipment to be provided.
- Archaeological investigations and recording.

That, in the event of the Head of Planning and Growth recommending alternative (reduced, with the exception of the health and libraries contributions) Heads of Terms from those set out above, the planning application be returned to the Development Control Committee for further consideration.

That in the event the applicant declines to enter into a planning obligation to secure the Heads of Terms set out above for reasons considered unreasonable by the Head of Planning and Growth, planning permission be refused for the following reasons (as may be appropriate):

- i) Unsustainable form of development not mitigating its impact upon, education provision (primary and pre-school), open space, sport and recreation, transport, health and libraries (contrary to the Framework and Core Strategy policy CS13)
- ii) Non-compliance with affordable housing policy (contrary to Core Strategy policy CS9 and supporting SPD document).
- iii) Adverse impact upon the Special Protection Area, contrary to the Habitats Regulations, to Core Strategy Policy CS2 and to Joint Development Management Policies Document policy DM10, DM11 and DM12.

63. Planning Application DC/15/0803/HH - Southview Cottage, 28 Bury Road, Newmarket (Report No DEV/FH/15/023)

Councillor Andrew Appleby declared a pecuniary interest in this item, having considered it previously at Newmarket Town Council, and left the meeting during the discussion and voting thereon.

Two storey rear extension, first floor side extension, single bay cartlodge and boundary wall.

This application had been referred to the Development Control Committee following consideration by the Delegation Panel and because objections had been received from Newmarket Town Council.

A Member site visit had been held prior to the meeting. Officers were recommending that the application be approved as set out in Paragraph 17 of Report No DEV/FH/15/023.

The Principal Planning Officer clarified that since publication of the agenda the boundary wall element of the application had been withdrawn and the hedge would be retained. The construction of any future wall would be governed by permitted development rights.

Councillor David Bowman proposed that the application be approved as per the Officer recommendation and this was seconded by Councillor Simon Cole, and with the vote being unanimous, it was resolved that:

Planning permission be **GRANTED** subject to the following conditions:

1. Standard time limit
2. Accord with plans
3. Samples of bricks and slates (22AI)

Speakers: Ms Samantha Lawton (neighbour) spoke against the application.
Councillor Warwick Hirst (Newmarket Town Council) spoke against the application.

64. **Planning Application DC/15/0749/TPO (Tree Preservation Order) - Aspal Close Local Nature Reserve, St Johns Street, Beck Row (Report No DEV/FH/15/025)**

Works to 27 Oak (Quercus robur) trees.

This application had been referred to the Development Control Committee due to Forest Heath District Council being the applicant.

One objection had been received in respect of the application and this was detailed at Paragraph 9 of Report No DEV/FH/15/025.

Councillor David Bowman spoke in support of the works and moved that the application be approved as per the Officer recommendation, this was seconded by Councillor Simon Cole and with the vote being unanimous, it was resolved that:

The works proposed to the protected trees be **APPROVED** subject to the following conditions:

The works which are the subject of this consent shall be carried out within two years

The authorised works shall be carried out to the latest arboricultural standards and in line with the Pro Natura 'Ancient Pollard Management Plan' (2011)

65. Update Report on DC/14/0585/OUT - Meddler Stud, Bury Road, Kentford (Report No DEV/FH/15/026)

Prior to the presentation of this report the Solicitor clarified that this item was purely an update for noting and it did not re-open the debate on the application.

The Principal Planning Officer – Major Projects explained that Members had resolved to refuse this planning application, contrary to the Officer recommendation, at the Development Control Committee on 5 November 2014. An appeal was subsequently lodged on 5 June 2015 and the appellant has requested a Public Inquiry.

The Committee were advised that following the decision of the Council to refuse the planning application the landowners had terminated the equine tenancy on the site and the majority of the buildings (including all the stables) had been demolished and the land had been ploughed. The Council has, therefore, been invited by the appellant to decline to contest the appeal, based on the argument that the site was no longer in equine use.

Since publication of the agenda further external legal advice in respect of this matter had been received, on the basis of which the Council considered it appropriate to continue to contest the appeal.

A start date for the appeal was yet to have been provided by the Planning Inspectorate, for which it would be necessary for the Council to appoint a specialist planning consultant and equine expert.

The Committee was simply being asked to note this update in respect of the changes to the use of the land in question, the ongoing appeal and the appointment of specialists to represent the Council.

Councillor Carol Lynch requested that she be consulted with regard to the equine expert so that she could ensure that the person appointed had the relevant knowledge within the equine industry.

The Head of Planning and Growth agreed to liaise with Councillor Lynch on this matter. He also reiterated the sensitivity of this item and asked that any further questions or queries be directed to the Case Officer outside of the meeting.

The meeting concluded at 7.38 pm

Signed by:

Chairman



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Forest Heath District Council

**DEVELOPMENT
CONTROL COMMITTEE**

5 AUGUST 2015

DEV/FH/15/027

Report of the Head of Planning and Growth

**PLANNING APPLICATION DC/14/1711/FUL – SMALL FEN FARM, SMALL FEN
LANE, BRANDON**

Synopsis:

Application under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and associated matters.

Recommendation:

It is recommended that the Committee determine the attached application and associated matters.

CONTACT OFFICER

Case Officer: Dave Beighton
Tel. No: 01638 719470

Committee Report

Date 07 November **Expiry Date:** 02 January 2015
Registered: 2014

Case Dave Beighton **Recommendation:** Refuse
Officer:

Parish: Brandon **Ward:** Brandon West

Proposal: Planning Application - temporary occupation of building as dwelling for a period of up to five years.

Site: Small Fen Farm, Small Fen Lane, Brandon, Suffolk

Applicant: Mr. and Mrs. D. Usher

Background:

This application is referred to the Development Control Committee due to the significance of this matter and due to the very extensive and detailed enforcement related matters arising here.

The application is recommended for REFUSAL.

Proposal and Background:

1. This matter arises following a longstanding planning enforcement investigation into this site. This investigation related to the erection of a dwelling on a site in the rural area where no dwelling was previously in existence. This matter was first investigated by the Authority in 2010 as works took place to erect the new building. After some detailed investigations (including the service, and then subsequent withdrawal, of an Enforcement Notice on a technicality in late 2010 early 2011) a formal Enforcement Notice was served again in 2012 requiring the demolition of the dwelling. This Notice was appealed and a public inquiry was held in April 2013.
2. Members' attention is drawn to the appeal decision letter included at Working Paper 1 to this report, which offers useful context. It is recommended that Members familiarise themselves with this. The decision of the Inspector, following the public inquiry, was that the Enforcement Notice served by Forest Heath should be upheld and that the terms of the Notice, which are to demolish the unauthorised dwelling, should be maintained. The notice required demolition by 20th June 2014 but compliance with the terms of the Notice remain outstanding.

3. The Authority had been in the process of securing compliance with the outstanding terms of the Notice. This included procurement for 'direct action' whereby the Authority would appoint contractors to enter the site to effect compliance with the terms of the Enforcement Notice. In summary, this includes the demolition of the unauthorised dwelling and the removal of all resultant material from the site. This procurement process is ongoing at the time of writing.
4. However, as these steps were reaching an advanced stage this application was submitted to the Authority. Independent legal advice received at that stage was that this application should be registered and determined before proceeding further with any direct action. Planning permission is hereby sought for the retention of a presently unauthorised dwelling for a temporary period of up to five years. This application has therefore had the effect of holding the progression of any direct action in abeyance pending its determination.
5. The applicants are presenting an argument that they consider is material to the Authority's assessment here. In his June 2013 appeal decision the appeal Inspector recognised that there may be changes in circumstances that the Council should take into account at the end of the enforcement notice compliance period. The compliance period has expired and the applicant argues that circumstances have changed during this period in that the planning policy position has moved on materially since the time of the service of the Notice and since the time of the decision of the Inspector.
6. This argument relates in summary to the possible allocation of land entirely surrounding this appeal site for mixed use development as part of the planned expansion of Brandon. If such an allocation and development came to fruition it might reasonably call in to question whether or not this site would remain 'isolated' with reference to paragraph 55 of the NPPF. This matter is discussed in greater detail within the report.
7. The applicant is also presenting personal circumstances which they consider offer justification for a further delay in the requirement to demolish the dwelling, for a period of up to five year or until the death of Mrs. Ellen Usher. This includes confidentially provided details about the medical condition of Mrs. Ellen Usher who is the mother / mother in law of the applicants, and who resides with the applicants at the site. It is argued by the applicant that the main change in circumstance is that Mrs Ellen Usher's physical and mental health has deteriorated considerably such that moving her from her home would pose a significant risk to her health.
8. A statement has been submitted in support of the application together with independent medical reports which demonstrate this deterioration. This includes a letter from Mrs. Ellen Usher's GP dated June 2014, a medical report from her consultant dated September 2014, along with a supplemental medical report from the same consultant dated February 2015. These will be referred and alluded to in as much detail as allows in the main section of this report. However, specific and full details of the

letters and medical reports will not be presented before Members, noting the sensitive and confidential nature of the medical information.

Application Supporting Material:

9. Information submitted with the application as follows:

- Application forms
- Covering Letter
- Planning Statement

Site Details:

10. The site is located to the north and west of the settlement of Brandon, Suffolk, within the northern part of Forest Heath District, close to the boundary with Norfolk. The site is accessed from Brandon via Chalk Road, a metalled single carriageway road without footpaths or street lighting.

11. The site itself is accessed along an unmade track off Chalk Road and Small Fen Lane. As the crow flies the unauthorised dwelling is approximately 270 metres from the edge of the defined settlement boundary of Brandon and, when accessed along the track, Small Fen Lane and Chalk Road, it is approximately 350 metres. The surrounding countryside is generally flat, open and undeveloped, with sporadic natural vegetation. To the immediate west of the site is a two storey dwelling known as West End House. Chalk Road is a rural lane with scattered and incidental residential properties, and Small Fen Lane is an unmade rural track.

12. The site contains a single 1.5 storey building within the centre of the site. This is the unauthorised dwelling which was subject to the enforcement action. The failure to comply with the terms of the Enforcement Notice mean that the building is presently illegal. A smaller outbuilding located along the northern boundary is lawful due to the length of time that it has existed on site. Concerns were raised previously about the prospect of this outbuilding being used residentially and such a use was also alleged in the previously served Enforcement Notice. However, the appeal against this element of the Notice was allowed by the Inspectorate since there was no evidence in 2013 of there being any unauthorised use in this building. The previous appeal determined that this building was not being used residentially.

Planning History:

13. The site has no formal planning application history that is relevant to this matter presently before us.

14. The enforcement history is plainly of significant importance, and the decision letter of the Inspectorate in relation to this matter is included with this report.

Consultations:

15. County Highways: No objection subject to the imposition of conditions.
16. Suffolk County Council Public Rights of Way: No objection.
17. Natural England: The proposal will not have a significant effect upon Breckland SPA or SAC, nor upon the Breckland Forest, Breckland Farmland or Weeting Heath SSI's.
18. Environmental Health: Contaminated Land: No comment.
19. Planning Policy: The proposal would constitute an isolated dwelling in the Countryside, therefore contrary to the Forest Heath Local Plan and the NPPF. More detail on the policy related implications, including those arising from the emerging policy position, are included within the main body of the report.

Representations:

20. Brandon Town Council: Object on the following grounds – *'This property has already been built without planning permission in the countryside. Why has it not been knocked down by enforcement? This building has been erected for at least 3 years?'*
21. Correspondence was received from then Cllr. Bill Bishop. This states that *'I would very much like you to consider that this application is to ensure that Mrs. Usher can remain with her home and family and not have to be placed in some care home without constant contact with her loving family'*.
22. Nine letters have been received (including two from the same author) which, between them, raise the following points –
 - The site has been abused in many ways.
 - It seems that the applicant has his own law – there were no plans submitted for the change to residential.
 - There were no plans submitted for any business use on the site.
 - There is asbestos on the site and the owner has not paid Council Tax *Officer Note – Council tax has been claimed by the Authority, including being backdated accordingly.*
 - Occupation by an elderly relative cannot be used as an excuse to accept this.
 - The elderly resident previously lived elsewhere.
 - There are enough grounds for a refusal.
 - I supported FHDC at the Inquiry.
 - The Inspector gave a generous 12 months to demolish.
 - There are inaccuracies in the application forms.
 - Any number of the Inspector's comments support refusal.

- The emerging local plan is far from settled. The preferred sites have many restraints and it is not a foregone conclusion so at this time there is little or no change regarding the development plan.
- Have sympathy for the state of Mrs. Usher's health.
- If this is approved we will go through the same situation again and again until the development plan allows him to get approval.
- There is an Enforcement Notice against this property but the owner shows no regard for planning law.
- There are fences at the site that breach planning regulations.
- The site still resembles a scrap yard and is used for business purposes.
- The decision of the Inspector should be adhered to regardless of any excuses for temporary occupancy.
- The five year extension requested would seem to be being requested for the benefit of someone who was not even living at the property at the time of the enforcement appeal. *Officer Note – the agent has confirmed that Mrs. Usher Senior moved into the property in Autumn 2011. That is after the initial investigations into this matter had started. The agent has further confirmed that Mrs's Ellen Usher's own house was sold in July 2013, therefore after the enforcement notice had been served and the appeal decision made, but before the stated further deterioration in the health of Mrs. Usher senior in April 2014 following a fall.*
- Raise questions about the veracity of the medical evidence presented.
- There is no way to make the dwelling blend it – it will still be an eyesore. It remains an intrusive and uncharacteristic form of development in this setting.
- The notice should be upheld and medical matters disregarded.
- The harm caused by the development is real and continuing.
- Object – Mr. Usher has had more than his allotted time to comply. He has done nothing.
- This application is simply about delay in the mistaken belief that the surrounding area will be selected for development. The surrounding area is merely suggested as an option and there is serious opposition to this as well as constraints.
- Question the legality of this application given that it relates to personal circumstances.
- The development remains a blot on the landscape.
- The applicant's claims are an outrageous abuse of the system.

Policy: The following policies have been taken into account in the consideration of this application:

23. Forest Heath Core Strategy (2010):

- CS5 design quality and local distinctiveness

24. Joint Development Management Policy Document

- DM1 Presumption in favour of sustainable development
- DM5 Development in the Countryside
- DM2 Creating Places
- DM27 Housing in the Countryside

Other Planning Policy:

25. National Planning Policy Framework (2012)

Officer Comment:

26. The issues to be considered in the determination of the application are:
- Planning Policy Considerations and the 'Emerging' Plan
 - The Personal Circumstances of the Applicant.
 - Way Forward
 - Conclusions

Planning Policy Considerations and the 'Emerging' Plan

27. The conclusion of the appeal Inspector was clear. This is an unacceptable location for a proposed dwelling. The Inspector's decision was made within the context of the National Planning Policy Framework and Officers advise that the conclusion reached remains relevant. This is a very important starting point for considering this matter.

28. At that time, policies within the 1995 Local Plan (Policies 9.1 and 9.2) remained extant and consideration was made by the Inspector against the provision of such, as well as the provisions of paragraph 55 of the NPPF. Since that time the 2015 Development Management Policies have subsequently been adopted. Policy DM5 relates to development within the countryside and Policy DM27 relates to housing in the countryside. When assessed against both policies the provision of a new build residential dwelling in this location would not comply as a matter of principle. DM5 sets out the limited circumstances where development will be permitted within the countryside and does not include new build residential development. DM27 establishes that residential development may be permitted in 'clusters' of dwellings within the countryside. Small Fen Farm and any nearby dwellings are not part of a cluster for the purposes of DM27 and a dwelling in this location is still therefore unacceptable as a matter of principle, in line with the original conclusions of the Inspector in 2013.

29. It can be considered therefore that the wider planning policy position remains largely similar in scope to the situation when the appeal was dismissed. It should also be noted that the Inspector also considered that the dwelling as built was obtrusive and uncharacteristic in this particular countryside setting. This remains the position and therefore remains a matter which weighs substantially against the proposal.

30. However, in dismissing the appeal against the Enforcement Notice the appeal Inspector wrote:

"...natural justice requires that I take some account not just of the Appellant's family circumstances but also of the obvious financial loss he would suffer through demolition and the effective cessation of the residential use. In these somewhat exceptional circumstances, I shall therefore extend the compliance period to one year, leaving it for the Council to review the position (if the Appellant asks them to do so) then or

before in the light of any progress on the development plan or indeed of any other relevant changes in circumstances”.

31. In the intervening period there have been changes in the circumstances in relation to the development plan. It is therefore necessary to carefully assess these changes to understand how material they are to the conclusions drawn in June 2013 by the Inspector in the Enforcement Notice appeal. It should be noted however that the Inspector considered that 12 months would be sufficient to enable this review process to take place whereas over two years have now elapsed since that decision. This must be considered as being material at this stage to the assessment before us. It would not be reasonable to leave this matter open ended, noting the issues it raises and, at some stage, a decision must be taken on the facts as they exist at that particular time.
32. As stated above, this application proposes the retention of the single-storey dwelling for a temporary period of up to five years. The National Planning Practice Guidance at paragraph 014 (Use of Planning Conditions) states "*Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period*".
33. Noting the wider planning policy position here it is important therefore to objectively and fairly assess the present planning policy situation. At the same time it is important to understand the weight that must be attached to the emerging position, as well as to speculate reasonably on where the planning policy position might end up within a definable timeframe. That said, timescales and outcomes are indeterminate at this stage and it is also very important that matters are considered based on the merits of the circumstances at the time the decision is made.
34. The Core Strategy Single Issue Review (SIR) is part of the principal Local Plan document that provides the overall strategic vision for Forest Heath and, specifically, sets the strategic policy for residential growth to 2031. The Site Allocations Local Plan ultimately identifies appropriate and adequate sites to deliver the number, distribution and phasing (of delivery) of new homes as identified within the context of the emerging SIR document.
35. The adopted Core Strategy (2010) identifies a Settlement Hierarchy in Policy CS1. This policy requires that most development will take place in the Market Towns, followed by the Key Service Centres. In line with national and local planning policy, these settlements are considered to be the most sustainable locations for new development, since they provide a range of existing services, facilities, shops and employment opportunities, and serve as public transport hubs. Brandon is considered a Town and therefore growth and allocations are being considered as part of the emerging Plan.
36. Since the Inspector's decision in June 2013, the Authority has resolved to prepare the Core Strategy Single Issue Review and the Site Allocations

Plan in tandem. Since the Core Strategy SIR Issues and Options consultation in July 2012 and the Site Allocations Issues and Options consultation in 2006, the Authority is in the process of agreeing a further Issues and Options consultation for both documents in July 2015.

37. Responses to this consultation will help inform another 'Regulation 18' consultation document, which will set out the Authority's preferred strategy for the allocation of sites across the District, and which will take place in late 2015. Following this, a final draft of the Site Allocations document will be prepared, which the Authority will submit to the Secretary of State for an independent planning examination.
38. At this stage therefore, and noting the uncertainty on both outcomes and timescales, the emerging Plans carry 'limited' to 'no weight' in the decision making process as they are still at such an early stage in the preparation stages.
39. Within this context, regard must also be had to the specifics of the locality. Brandon is a market town, located to the north of the district. Further development or expansion of the town is significantly constrained by European environmental designations for Stone Curlew, Woodlark and Nightjar. The Special Protection Area and its 'buffer zones' are described in the Core Strategy and the effect is that only very limited settlement expansion in Brandon is possible without first demonstrating mitigation for the presence of the various protected species.
40. This application sits adjacent to a large area of land promoted by landowners who would like to see the site allocated in the Site Allocations Plan. The allocation and subsequent development of this site would have the effect of overcoming the concerns in relation to 'isolation' set out earlier in this report since Small Fen Farm would in effect become subsumed within an expanded settlement boundary for Brandon.
41. However, the site (B17) has been most recently identified as being 'deferred' by the Authority meaning that the Authority does not presently consider it to be deliverable, achievable or suitable at this time. This approach is supported by Natural England. The site sits within the SPA Buffer zone for Stone Curlew, Woodlark and Nightjar and no Habitat Regulations Assessment has been completed and agreed by Natural England to overcome this significant constraint.
42. While writing this report a planning application relating to the wider area has recently been submitted for some 1,650 homes, of which 1,270 lie within Forest Heath. This developer led major development is presently under consideration.
43. Policy CS2 states any development that lies within the 400m SPA component buffer must be able to demonstrate, through project level HRA, that the Woodlark and Nightjar interest features of the SPA will also not be adversely affected by the proposal. In addition to the environmental constraints for the wider scheme, the area includes a

Scheduled Ancient monument (SAM), a Listed Building, and areas of Flood Zone.

44. It is not possible to assess the submitted wider planning application in detail at this time, noting that it has only recently been submitted and that consultations remain outstanding, nor, in any event, would it be appropriate to do so through this report. Nonetheless, the present context in relation to this wider potential allocation indicate very, very significant constraints that cast very strong doubt on the acceptability of such a development. This position must also be considered in the context of the already two year delay given in relation this matter since the appeal decision, and also in light of the fact that the Inspector considered 12 months to be a sufficient time to allow further consideration.

Conclusion on Policy Matters

45. The Core Strategy Single Issue Review and Site Allocations are at the early stages of preparation and therefore carry 'limited' to 'no weight' in the decision making process. The documents will gain weight as they progress through the relevant stages but this is not expected until late 2016 when the Authority will have submitted its Local Plans to the Planning Inspectorate for an Examination in Public. Even at that stage there is still no certainty on either outcomes or timescales in relation to the allocation or not of the wider site, noting that, at present, the Authority are not satisfied as to its delivery in light of the significant constraints that exist and in light of the fact that the wider site is not therefore presently proposed for allocation. This factor is considered wholly material, and a more reasonable indicator of outcomes than the fact that a speculative application is presently before us on this wider site.

46. Therefore it is reasonable to suggest that even if these fundamental issues could be overcome then this will not be until the Core Strategy Single Issue Review and the Site Allocations document is adopted in 2017. Having already allowed two years since the date of the appeal decision to consider whether or not the planning policy position had changed materially it is not considered, noting the very real uncertainty still surrounding the potential for the allocation of the wider site, that any continuing delay and uncertainty is reasonable and that the present context points very firmly towards not allowing a further extension of time, which will only add to the uncertainty of the process as well as eroding faith in the planning process.

47. With so many, constraints, even with a planning application having been submitted, and on balance, the present planning position and the wider speculative application is not therefore considered to be a sufficient reason for allowing a temporary permission for this otherwise wholly unacceptable proposal.

48. It must also be noted within this context that when considered in isolation the retention of this unauthorised dwelling would not be considered favourably due to its isolated and therefore unsuitable and unsustainable location.

The Personal Circumstances of the Applicant

49. The applicants are also arguing, in addition to the planning policy related arguments set out above, and even assuming that the wider site surrounding the land is not adopted for redevelopment purposes, that it is appropriate for a temporary planning permission to be granted to allow Mrs. Ellen Usher to remain in her home until she passes away.
50. Paragraph 015 (Use of Planning Conditions) of the National Planning Practice Guidance states that *"a condition used to grant planning permission solely on the basis of an individual's personal circumstances will scarcely ever be justified in the case of permission for the erection of a permanent building, but might, for example, result from enforcement action which would otherwise cause individual hardship"*.
51. The applicants argue that this is precisely the situation in relation to this matter and that *'...in these circumstances there is a strong case for attaching weight to the exceptionally difficult personal circumstances faced by the Ushers. To refuse this application and proceed with the proposed direct action could have a profound and possibly life threatening effect on the health of Ellen Usher'*.
52. Demolition of this dwelling will plainly cause individual hardship to the owner. However, the owners, in the words of the appeal Inspector, are victims of their own misfortune in this regard and this must severely limit the weight to attach to this point. However, Mrs. Ellen Usher, who is the applicants' mother and mother in law, presently resides with them. She suffers from dementia, Chronic Obstructive Pulmonary Disorder (COPD) and chronic osteoporosis and these are claimed as personal circumstances which justify a retention of the dwelling for a further temporary period, either for a period of up to five years (from the date of submission), or until the death of Mrs. Ellen Usher, whichever is soonest.
53. The Inspector concluded in his decision that in policy terms the dwelling was harmful, he was also clear that the dwelling is in no way harmful to the living conditions of neighbouring residents and that this reduced the urgency for compliance. *"The harm caused by the dwelling in its present context is real and continuing. It is not however a harm which impacts seriously upon for example neighbouring residents' living conditions (save perhaps for an outside light which the appellant could address if still necessary). That lessens the urgency of it being remedied though not its degree."*
54. Officers accept that these personal circumstances can be considered capable of being a material consideration. Officers also note, and weight accordingly, the fact that the 'harm' is largely an in principle harm, as noted by the inspector. For these reasons Officers consider that a very careful consideration of this point must be made.
55. Mrs. Ellen Usher was moved permanently into the property in October 2011 (following occasional overnight stays commencing in August 2011). This was before the present Enforcement Notice was served but some time after Officer investigations had commenced in 2010. The owner was

aware of and involved in these investigations and whilst there had been some delay following the withdrawal of an earlier Notice on a technically, Officers had written to Mr. Usher in June 2011 explaining that investigations were ongoing with a view to the consideration of reserving an Enforcement Notice. It was clear at this point in time therefore that the enforcement action was not concluded and any decisions made were done so in this context.

56. Mrs. Ellen Usher also retained a property elsewhere until July 2013. This is after the date when the Enforcement Notice appeal was dismissed, but prior to what is suggested as being a further material decline in her health in 2014 following a fall.

57. That the owners sold a dwelling that might otherwise have been capable of occupation, at a time when they knew that the requirements of the Enforcement Notice required the complete demolition of their present dwelling, is a matter that cannot be ignored in the balance of considerations here. That they also elected to move Mrs. Ellen Usher into Small Fen Farm at a time when it was clear that the Authority had not concluded its enforcement investigations in relation to it is also material. To use the words of the appeal Inspector again, they are victims of their own misfortune. To what extent this circumstance justifies the retention of this dwelling therefore in a policy context where granting planning permission on the basis of personal circumstances will, in the words of the NPPG '*scarcely ever be justified*' is plainly a moot point. Certainly Officers are of the view that this is a factor which must inevitably diminish the weight that must be attached to this argument.

58. Plainly however, and on the other side of the argument, demolition will inevitably result in individual hardship, and this must also be given appropriate weight. However, this weight must be considered more modest in this context given the conclusions of the preceding paragraph.

59. However, before concluding on this matter it is important also to assess the very specific medical arguments presented, not least since it is presented on the basis that there has been a material decline in the health of Mrs. Ellen Usher in the time after she moved into Small Fen Farm and which might in principle be capable of being a weighty material planning consideration. It will thereafter be necessary to carefully weight and balance these arguments before reaching a conclusion.

60. The National Planning Policy Guidance does offer some support by indicating that a personal circumstance might be of weight if it would result from enforcement action (which is the case here) that would otherwise cause individual hardship (which is the case here, noting the medical opinions). The degree of individual hardship is based on a letter from Mrs. Ellen Usher's GP, plus a medical report and further supplemental update letter from her consultant.

61. Noting this it is important not to diminish the independent medical opinions reached by the GP and consultant, which are accepted on their own face. This GP opinion received indicates that Mrs. Ellen Usher needs

to be kept in a *'safe suitable environment and close to her family'*, which would not, in theory, change if the dwelling were demolished. This must be considered a further fact which diminishes the weight which can otherwise be attached to the personal circumstances.

62. The medical report prepared by Mrs. Ellen Usher's consultant in September 2014 (which supplements an initial GP assessment from June 2014, and is itself supplemented by a further consultant update report dated February 2015) makes general albeit professionally presented comments about Mrs. Ellen Usher's medical state, all of which officers accept, again at face value, to be fair and objectively, independently and professionally made. The crux here is the *'opinion and recommendation'* section and in particular the conclusions that *'the impact of stress is likely to increase the occurrence of these challenging behaviours'* and *'I believe that if Mrs. Usher was to be placed in a different environment or away from her family, she would be more at risk of falls'*.
63. This statement is very much the crux of this matter. The Authority needs to decide the degree of weight to attach to this, and to then balance it against the planning policy situation set out above. Judgement is also necessary as to the weight to attach to the most up to date opinion from February 2015 which largely confirms the position set out in the more detailed medical report of September 2014.
64. The test here is a balanced one, and needs some care, out of fairness and respect to the situation. There is no doubt that Mrs. Ellen Usher is suffering from a severe form of dementia, that has been identified and articulated by independent medical practitioners in their three written opinions with plainly no other motive in this matter than the health and wellbeing of their patient. Equally, the presented medical evidence indicates that any increased stress on Mrs. Ellen Usher, for example from being moved or separated from her family, would increase her risk. Objectively therefore we must recognise this as a *'personal circumstance'* and decide how much weight we can attach to it. It is the opinion of Officers, having carefully considered and reviewed the independent medical information presented, that these circumstances must given a reasonable amount of weight in support of this application.
65. However, this is a permanent building so the starting point must be one of recognising that this is a high test to meet in order to justify the particular personal circumstances being of sufficient weight, noting the harm identified in visual terms and in principle by the appeal Inspector.
66. Officers are also unable to ignore the fact that the personal circumstances remain, to a degree, a result of the actions of the owners. That is not to necessarily override any weight that must be attached to the personal circumstances but it must be taken as limiting it. The condition of Mrs. Ellen Usher was identified in 2011 and she spent some time thereafter in hospital. At this stage she retained a bungalow in Cambridgeshire but for personal reasons which Officers do not seek to dispute, she moved into Small Fen Farm to benefit from the support of her son and daughter in law. At this stage it is advised that a further family member continued to

reside in Mrs Usher Senior's property but this was still after Officers had advised Mr. and Mrs Usher in writing in June 2011 that investigations were ongoing in relation to the unauthorised dwelling.

67. Furthermore, a fact that Officers also cannot ignore, and which must be given material weight in balancing and considering this matter, is that Mrs. Ellen Usher's former home was sold in July 2013. This plainly indicates that the other family member who had resided there no longer needed it and that it was therefore capable of occupation. It was also plainly at a time when the health of Mrs. Ellen Usher was such that she needed and had become dependent upon the support of family members, noting that in the previous two years or so she had spent time in hospital as a result of her condition. Crucially, it was also AFTER the date when the appeal Inspector had ruled that the dwelling at Small Fen Farm was to be demolished. This can at best be described as unfortunate on behalf of the applicants not, at the very least, to retain ownership of this alternative property whilst matters were resolved in relation to Small Fem Farm.
68. Noting, in any event, the degree of weight that Officers conclude above must be attached to the medical evidence, and further noting the tests within the NPPG that indicates that personal circumstances will scarcely ever be justified, Officers consider that the circumstances of the sale of Mrs. Usher Senior's former property must be taken to be a material factor here.
69. Regardless of this fact, the conclusion of Officers remains that respect must be offered to the latest up to date medical condition of Mrs. Ellen Usher, noting the stated further decline in her health since 2014. However this weight itself must be further limited noting that there had been serious concerns about Mrs. Ellen Usher's health since at least 2011, and also noting that this was still when a number of alternative decisions about accommodation could have been made at that stage in light of the fact that, in June 2011, Officers advised that investigations were ongoing and, in June 2013, the appeal was dismissed and the Notice requiring demolition upheld.
70. Setting aside however any circumstances surrounding the sale of her property and the, to a degree, self inflicted nature of the present scenario, the conclusion of Officers remains that the balance here between the increased health risks to Mrs. Ellen Usher as a result of her being required to move from the property, balanced against the ongoing harm that is caused by the authorised development, and considered also in light of the length of time that has been allowed for these further considerations to take place, and for, potentially, alternative steps to be arranged and even taken, is that the balance falls in favour of refusal. This conclusion must also be read within the context of the planning policy conclusions reached above.

Way Forward

71. Refusal of this application would mean that the Enforcement Notice upheld at appeal would remain outstanding. The objective and manifest failure to comply represents a criminal offence. Officers have the option of a

prosecution in relation to this breach, with a fine of up to £20,000 being payable as well as imprisonment for up to six months. It is also possible that Proceeds of Crime legislation could be used if it is considered that the Usher's have benefitted financially from their crime.

72. In these circumstances however Officers are not satisfied that prosecution would serve the ultimate aim, which is compliance with the terms of the Notice through demolition, and would simply lead to a further delay in addition to the two years that have already elapsed since the appeal decision upheld the Enforcement Notice.

73. The Authority is able to undertake works in default where a Notice remains uncomplied with. This is referred to as 'direct action'. In such a scenario the Authority would appoint contractors to undertake works to effect compliance with the Notice. The costs of this would be charged to the owner, with a legal charge placed on the land if payment was not otherwise forthcoming.

74. In these circumstances Officers consider that this course of action remains the most appropriate.

Conclusion:

75. In conclusion, Officers consider that at the very best 'little' and at the very worst 'no' material weight can presently be placed on the wider planning policy position in relation to Brandon. Regardless of this weight, no comfort whatsoever can be given to the prospect of any development coming forward surrounding this site given the continuing and very real uncertainty and constraints that exist. It has been over two years since the appeal Inspector allowed a period of 12 months within which to consider a review of the policy circumstances. If anything there is more uncertainty now in relation to the possible expansion of Brandon than there was in 2013. This conclusion remains valid notwithstanding the present planning application on the wider land in the vicinity of this site.

76. In this circumstance Officers are very firmly of the view that any continuing delay and uncertainty would be wholly unreasonable, given the balance of considerations, given the opportunity offered for review, and given the conclusions of that review process. If certainty and reassurance is to be given by the planning system, and if it is to remain a credible and respected process, then the balanced position here suggests firmly that fair and reasonable opportunity has been offered and given, but that, when assessed objectively, the decision to proceed with enforcement action to secure compliance with the terms of the notice is the only one that can reasonably be reached.

77. The personal circumstances are recognised and respected. These are quite plainly capable of being a weighty material consideration, and the medical opinions presented are accepted. However, the weight that must be attached to this must be considered in light of the NPPG guidance that indicates that such factors will scarcely ever justify a permanent building. Officers consider that this sets the bar at a very high level.

78. The medical opinions of the GP and consultant, whilst setting out the unfortunate condition of Mrs. Ellen Usher, are not considered by Officers to be sufficiently weighty so as to overcome the obvious harm identified by the appeal Inspector. Setting aside that this balanced assessment falls in favour of refusal, Officers are also of the view that this weight must reasonably be further diminished by the circumstances and timing of the sale of Mrs Ellen Usher's property and by the circumstances of the decision to mover her into the property in October 2011.
79. However awkward and distressing any relocation would be for Mrs. Ellen Usher this distress is a situation of the applicant's own making, and whilst it is nonetheless still respected, Officers are simply unable to conclude that any distress caused would outweigh the manifest harm identified by the appeal Inspector, the need to bring this matter to as swift a resolution as possible, and the need to ensure that faith in the planning process is maintained.
80. Consideration has been given in assessing this matter to Article 1, Protocol 1 (Protection of Property), Article 6 (a right to a fair hearing within a reasonable time), Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination) in relation to the Human Rights of those persons presently occupying the property.
81. It is considered, in light of this assessment, that the refusal of planning permission is necessary to achieve compliance with planning control. It is further considered that such action would be lawful, fair, non-discriminatory, necessary, and in the general public interest to secure the objective of achieving compliance with planning control, including with national and local planning policies which seek to restrict most forms of new residential development within the countryside in order to ensure sustainable development and also to protect the countryside for its own sake from unacceptable development.
82. The recommendation is therefore one of refusal.

Recommendation:

83. It is recommended that members **NOTE** the view of Officers that direct action to secure compliance with this outstanding breach of planning control is considered appropriate, and also that planning permission be **REFUSED** for the following reason:
1. The dwelling proposed for retention remains an isolated dwelling contrary to the provisions of paragraph 55 of the NPPF and those of Policies DM5 and DM27 of the Joint Development Management Policies 2015. It is also the case that the building to be retained is significantly larger, higher and bulkier than the one it replaced and remains visible over a wide public area. In line with the conclusions of the previous appeal Inspector it is thus an obtrusive and uncharacteristic form of development in this setting contrary to the requirements of the NPPF in relation to good design and those of

Policy DM2.

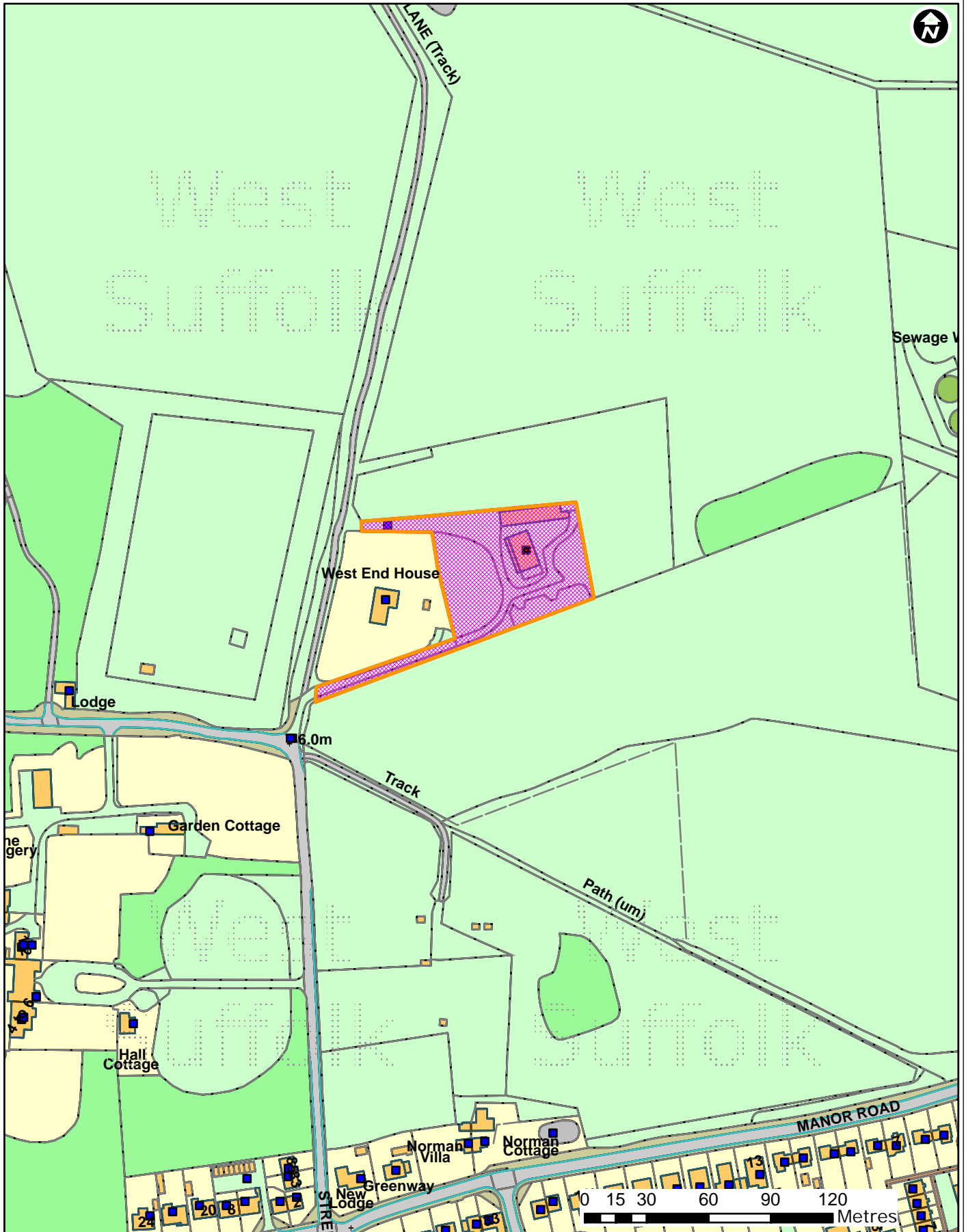
Very significant constraints exist in relation to the potential allocation of any sites within and around Brandon. There is presently no indication of when, or even if, these matters will or can be resolved. It is not therefore considered that any material weight can presently be attached to the emerging planning Policy position. In light of this fact, in light of the harm identified, and in light of the generous timeframe for review in relation to this matter that has already now been offered, firstly by the Planning Inspectorate in their appeal decision letter and secondly by the Local Planning Authority in the consideration of this application, it is not considered reasonable to allow a temporary approval for the further retention of this unauthorised dwelling.

In balancing and concluding on this matter it is recognised that weight can be attached to the personal circumstances of the applicant, and to the medical evidence confidentially submitted. The weight to be attached to this is limited however, and is not considered sufficient to meet the high test set out in paragraph 015 of the NPPG. The weight that must be attached to this personal circumstance is also further limited by the circumstances surrounding the sale of Mrs. Ellen Usher's own property. In this context it is not considered therefore that the personal circumstances presented in the case are sufficient to outweigh the obvious and continuing harm presented by this unauthorised dwelling.

All background documents including application forms, drawings and other supporting documentation relating to this application (with the exception of the medical documentation and associated correspondence which is retained confidentially for Officer consideration) can be viewed online:

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NBQCM4PDLO500>

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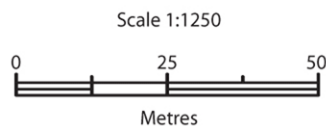


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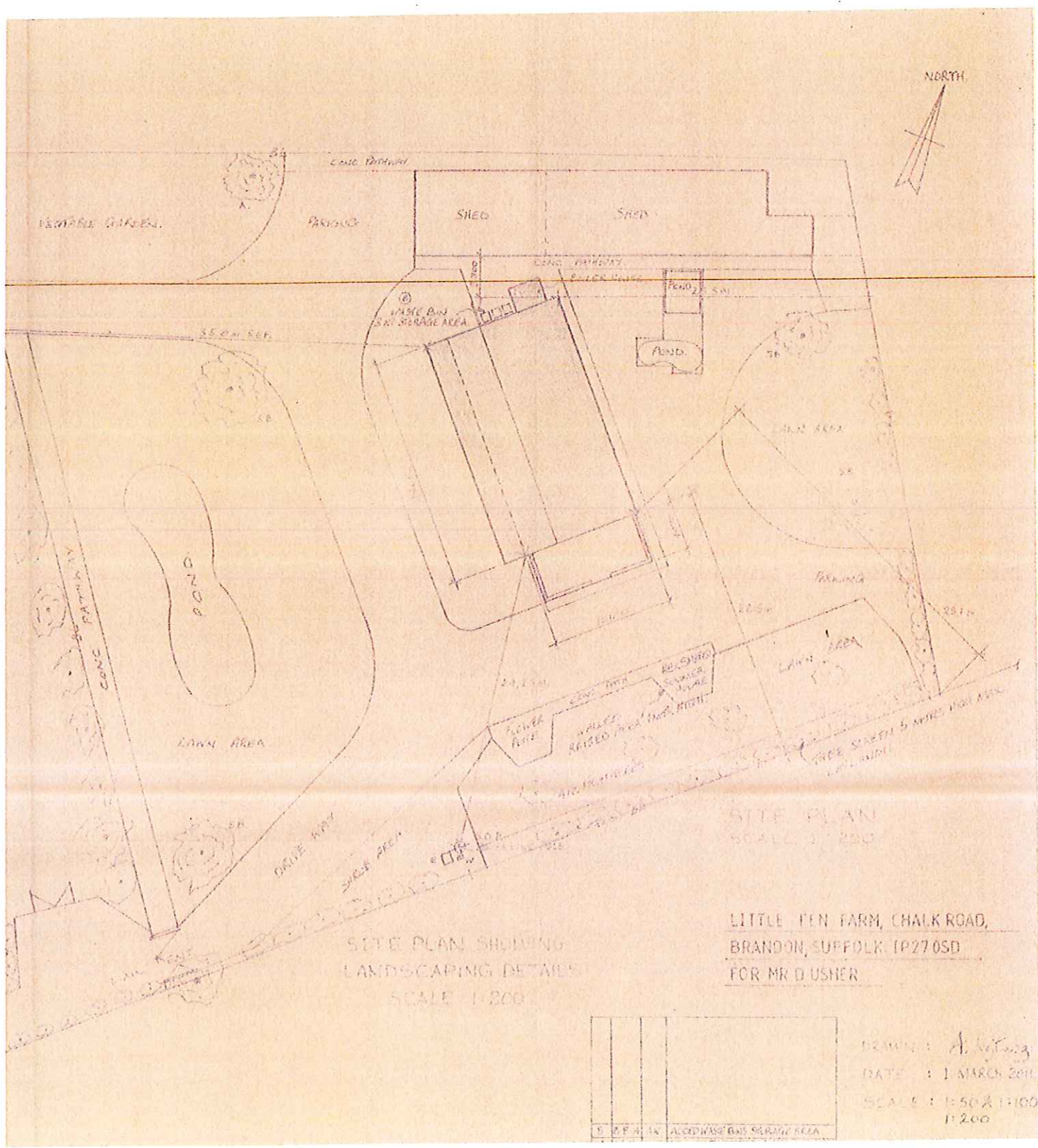
The representation of a road, track or path is no evidence of a right of way.

The representation of features as lines is no evidence of a property boundary.



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SITE PLAN SHOWING
LANDSCAPING DETAILS
SCALE 1:200

SITE PLAN
SCALE 1:200

LITTLE FEN FARM, CHALK ROAD,
BRANDON, SUFFOLK. IP27 0SD
FOR MR D USHER

DRAWN: A. K. [Signature]
DATE: 1 MARCH 2000
SCALE: 1:50 & 1:100
1:200

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Appeal Decisions

Inquiry held on 23, 24 & 25 April 2013

Site visit made on 25 April 2013

by R O Evans BA(Hons) Solicitor MRTPI

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

Decision date: 20 June 2013

Appeal Ref: APP/H3510/C/12/2190062 & 2190063

Small Fen Farm, Small Fen Lane, Brandon, Suffolk, IP27 0SD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr David Usher & Mrs A Usher against an enforcement notice issued by Forest Heath District Council on 30 November 2012.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a dwelling in the approximate position marked with a 'Y' on the attached plan at Small Fen Farm, Small Fen Lane, Brandon, Suffolk.
 - The requirements of the notice are: within six months from the date of this notice taking effect to demolish the dwelling in the approximate position marked with a 'Y' on the attached plan and remove all resultant materials from the site.
 - The period for compliance with the requirements is as above
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered under the first above reference number.
-

Appeal Ref: APP/H3510/C/12/2190065 & 2190066

Small Fen Farm, Small Fen Lane, Brandon, Suffolk, IP27 0SD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr David Usher & Mrs A Usher against an enforcement notice issued by Forest Heath District Council on 30 November 2011.
 - The breach of planning control as alleged in the notice is without planning permission, change of use of the building marked with an 'X' on the attached plan from agricultural use to a residential dwelling.
 - The requirements of the notice are to cease the use of the building as a dwelling house within 6 months of the date this notice takes effect.
 - The period for compliance with the requirements is as above.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), and (d) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered under the first above reference number.
-

Decisions

APP/H3510/C/12/2190062 & 2190063

1. The appeals are allowed on ground [g], and the enforcement notice is varied by substituting a period of 12 months as the period for compliance instead of 6 months. Subject to that variation, the appeals are otherwise dismissed and the

enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

APP/H3510/C/12/2190065 & 2190066

2. The appeals are allowed and the enforcement notice is quashed.

Preliminary Matters

3. The parties made applications for costs against each other at the inquiry. These are the subject of a separate Decision. Apart from written statements, the second Appellant took no part in the inquiry. For convenience therefore, I shall refer to Mr David Usher in the singular as 'the Appellant'. I shall also follow the use of X and Y to denote the buildings as in the enforcement notices. The Appellant confirmed at the start of the inquiry that appeals under grounds (c) and (e) were withdrawn in both cases, and that no appeal was to be pursued under grounds (f) and (g) in relation to building X.
4. It became clear during the course of the inquiry that the Appellant did not enjoy good relations with some of those giving evidence. Indeed, he accused one person of having silently mouthed certain words at him while giving his own evidence. I had not seen any such action, nor had either advocate, but I warned all present that I would require anyone behaving in that way to leave the inquiry. Further, at one point I began to feel I would need to hear more of the background to that aspect but on reflection, decided that it would not assist me in reaching my decisions. Any personal disputes there may have been were not matters on which I could in some way adjudicate and I considered, with a substantial amount of other evidence available, hearing about them would only serve to distract from the matters in hand. I therefore declined to hear any evidence of that kind.
5. **The appeal site** is a roughly rectangular but narrowing plot of land of some 0.4ha to the east of the unmade track known as Small Fen Lane. The principal access is to the south western corner via a driveway which also serves a dwelling now known as West End House. The latter lies between the site and the lane. There is no dispute that West End House and its curtilage previously formed part of a single holding with the appeal site, but were separated from it in 1981. Building X is a long single storey structure in the north eastern corner of the site, running alongside the northern boundary. Building Y stands roughly in the centre of the site, with principal elevations to east and west. Whatever its history, it has a pitched roof with a ridge height of some 6.4m and is in use as a dwelling. References to it in its original or present state should not be taken as indicative of it being the same building throughout.
6. At the time of my visit to the site, much of it was given over to the storage of building materials, kitchen and catering equipment, vehicles, trailers and lorry bodies and a variety of other items. I asked the parties at the outset whether they wished me to visit the site before closing the inquiry. Both were content that I need not do so. The Council can be assumed from their evidence to be aware of the condition of the site as a whole. Both these notices are concerned specifically and only with the 2 buildings however, not the use of the land beyond them (though the appeals may have implications for it if successful). I thus make no further comment on that aspect.

7. For all that it is said that this is not a case regarding the history of the site "into the dim and distant past"¹, considerable evidence was given of that past. Further, part of the Appellant's case is based on the works he carried out to building Y being merely of refurbishment not replacement and/or on establishing a lawful residential use of it. Rather than examining every aspect of the history in detail however, I shall consider the evidence as necessary to the determination of each ground of appeal as I come to it.
8. That said, some further points can be usefully recorded at this point. First, it is common ground that the original plot was acquired by a Polish gentleman, Mr J Mojsiejonek ("JM1"), and his wife Janet ("JM2") in about 1957². Outline and detailed planning permissions were granted in 1958 for "erection of bungalow in connection with poultry and egg farming" and similarly for a "bungalow on smallholding." One former local resident³ believed there to have been a condition limiting the permission to one dwelling but in the absence of any documentary records, I cannot be certain of this and attach no weight to it.
9. There is then a conflict in the evidence, to which I may have to return later, over the chronology of construction of the various buildings and the purposes for which building Y (in its original form) was used. As above, the plot was divided in 1981. JM1 retained ownership of the appeal site until 1995, when it was sold to a Mr J White. Again, the evidence is disputed as to the use he made of building Y (as it then was) and of the Appellant's alleged occupation of it from 1997/8. There is no dispute however that the Appellant became the owner, albeit under a different name, in 2003.

Both Appeals – Grounds (b) & (d)

10. As Circular 10/97 advises, the burden of proof under these 'legal' grounds of appeal lies with the Appellant, the relevant test of the evidence being on the balance of probability. An appellant's evidence does not need to be corroborated by independent evidence in order to be accepted. If there is no evidence to contradict or otherwise make an appellant's version of events less than probable, there will be no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous to meet the test of 'probability'.
11. As well as his own and his consultant's evidence, the Appellant's case was supported by documentary material, photographs and a number of statements, some in the form of statutory declarations. The Council similarly presented a range of documents but also called a number of local residents as witnesses, while others gave evidence on their own behalf.
12. **BUILDING Y.** The allegation under this notice is of operational development, namely the construction of a dwelling, not one of a change of use (as with building X) to a dwelling. There is no dispute that building Y in its present form and use is a dwelling. Whatever its lawful use before building works began, the first issue under this ground is thus whether, as a question of fact and degree, those works amounted to the construction of a new building or the refurbishment of an existing one. If simply the latter, then whatever the lawful use, the Appellant would be entitled to succeed against the notice as drawn (leaving aside for the present the question of its possible correction).

¹ Appellant's Opening

² Whether in joint or a single name is not material

³ Mrs J F Hale

13. The Appellant's evidence is that he lived in the building from 1997/8 to 2003, but that he did not begin any substantial works until he had bought the site. No plans exist of the building in its original form but both parties provided some aerial and other photographs. Though some of the dates given for the site views differ, that of the western elevation in 2003, including a tractor, van and car, was not disputed⁴. The photograph shows a verandah running the full length of the building. On a visual estimate only, but taking the vehicles and central doorway as visual clues, the eaves height of the verandah would be between 2-3m, but more likely closer to the former. The photograph also shows a now removed telegraph pole running through the verandah roof. The latter is pitched but narrow, meeting what appears to be an upstand or wall from the top of which the main roof then slopes away to the east.
14. The Appellant was able to provide an older but undated photograph said to be of JM1 standing outside the building before the verandah was erected. I accept that partly because it shows a telegraph pole in a position consistent with that in the 2003 view. Further, the wall is coloured green, as also shown in later views, though it is partly clad in corrugated plastic and I am unable to make out the finish. In passing, the part of the building that is visible in this view has an entirely utilitarian appearance with nothing to suggest a domestic purpose. It is not possible to see the roof form in the older view but if JM1 is taken as being 1.8m tall, the wall next to him would be roughly twice that. Similarly, if the doorway shown is taken as 2.5m high, the height of the wall would be about 4m. While acknowledging the dangers in making such estimates, the height of the wall appears also consistent with that of the 'upstand' in the later view. That equally is consistent with the verandah having been added later.
15. The southern end elevation is far from clearly shown in the 2003 photograph. As said in evidence however, it may have had a lean to greenhouse attached at that time or some other structure next to it. Something of the kind is visible in the clearest 'pre-works' aerial view, the Council's of 1999, as well as in the Appellant's of that year, if separated from it by a green strip. The eaves height on the eastern side of the building was estimated by the Appellant's agent at 1.7m but the 2003 view is obscured and does not show this elevation. There is nothing to confirm this however and I have other reservations about the accuracy of the sketch plan, below.
16. It is possible to make out a shadow, probably of the telegraph pole, in the Council's 1999 view and at the southern end, the narrow projection of the verandah roof. That end of the building, as opposed to the roof, is also shown at a width consistent with another older photograph, said to be from the 1970s, showing 3 ladies preparing vegetables outside the building. That it is building Y is clear from the view across to what is now West End House, as I was able to see on site. It is very clear also from the spacing of the windows that the present building is considerably wider, at least at this southern end. Both 1999 views show a line along the roof consistent either with another overhanging roof or change in ridge line on that side of the building, though with only a 2 dimensional image, it is impossible to be certain. Consistent with the older photograph however, there is clear space below it at the south eastern corner, the roof itself appearing to be staggered at this point.

⁴ DU Appx 16 & SoC Appx 14

17. The later aerial photographs, including the Appellant's, from 2004-2007, all show the building without a roof. It is not possible from them to gauge the height of the walls. All however show what by then (if not before) was an internal wall consistent with the line of the outer eastern wall visible at the south eastern corner in 1999 and in the earlier photograph. They also show an outer eastern wall consistent in line with the roof at that time but running the full length of the building and thus widening it, at least at the southern end. What has become a full width southern patio area is also visible, as is a significant extension, again at full width, into the gap between the building and building X that is seen in the 1999 view. There may once have been some link between the two but there is little real evidence of its nature, extent or purpose and none is visible in 1999.
18. The Appellant described the works he carried out as including the removal of the roof and replacement of parts of the walls, particularly to the rear (i.e. on the eastern side) where the "structure was timber which was rotting and did not provide adequate headroom." He estimated wall retention at 50% however and he installed a 'second skin' on the inside of them. The eaves height was raised and later, from 2009, the new roof was installed with tiles and insulation, windows were installed and the walls rendered. Flooring insulation, central heating and new wiring were also installed. He had not produced any plans as he regarded it as a renovation and had received advice from his father and uncle, both of them builders. In answering questions, he acknowledged the use of some new blockwork at the southern end of the building as well as the re-use and retention of other parts.
19. The Appellant's evidence on this aspect was supported by a number of declarations or statements⁵. Each however refers only in general terms to, for example, a "substantial part" of the original structure being retained, to there being a similar internal layout and to the similarity in the appearance of the building. Further, three of them refer to the roof being no higher, one to it being similar and one to it being "slightly" higher than the original building. None of the makers of these or other statements appeared as witnesses so the extent of their knowledge could not be explored. Their statements may have been made in good faith, but combined with their imprecision and in some cases, factual inaccuracies, I can attach only little weight to them.
20. Additional evidence was given on his own account by Mr M Usher, the Appellant's nephew. He had assisted his grandfather in the building works in 2004 "to dig and form foundations around the outside of the barns to form the outline of the new chalet building being conversion from the two open sided sheds in the centre of the plot." That included new foundations "around the outside of the barns to form a new foundation under the existing overhanging barn roofs" and other details suggesting a significantly more extensive operation than the Appellant's evidence. New foundations were installed in particular at the northern end and along the eastern side, and blockwork was taken down and re-used, not simply repointed. I bear in mind the now apparently difficult relationship between the Appellant and his nephew, but much of the latter's evidence is consistent with what is visible in the photographs described above. Further, the Council's site photographs from 2010 show extensive areas of apparently new blockwork, both internally and externally. Even the western wall appears mostly either newly built or relaid.

⁵ Statement of case Appx 13 & Proof Appx 6-9

21. Although I am not at this point determining the use of the building, even the Appellant concedes that before his period of ownership it was used for a variety of purposes. That is borne out by JM2's original statement of December 2012, as well as many others. Where non-residential, those uses were predominantly agricultural, consistent in particular with the partly timber construction and low eaves on the eastern side. I take JM2's descriptions of the 'main building' to be referring to building Y because she stated that she "viewed the new dwelling and in my opinion it does stand on the original site of the main building."
22. The Appellant's evidence taken as a whole was thus in some important respects vague and uncorroborated and in others contradicted, not least by what is visible in the photographs, his nephew's references to the former building being more consistent with them. Collectively indeed, the site and aerial photographs almost speak for themselves. The Appellant's agent, who only became involved in the case in December 2012, had not seen the main western elevation photograph before preparing the sketch plan mentioned above. He acknowledged that the ridge of the roof matched the 'upstand'. The verandah roof I find was thus narrower than shown on the plan and did not rise to a ridge, but to what I conclude was the original front wall. Further, even allowing for the risks inherent in making height estimates from visual clues in the photographs, there are enough of them for me to find that the front wall was only about 4m in height, not the 5.6m estimated in the sketch plan. The latter is simply not plausible on the photographic evidence.
23. I do not doubt that the present building is in a similar position to the original structure, with use made of the foundations where possible and some at least of the walls. It also echoes some design features, including the roof angles and verandah, and in some respects it may well follow the previous internal layout. It occupies a significantly larger footprint however, with extended foundations and new flooring, and even on the Appellant's evidence, a considerable amount of new building work was carried out. While I cannot put a proportion on 'old and new', the photographs show extensive areas of newly built or replaced walls, even if some were re-skinned internally. The eaves are higher, certainly at the back of the building and probably at the front, and everything above them has been replaced. The roof form is different and it is substantially higher, longer and possibly wider than before.
24. Even the Appellant, in his proof of evidence, stated that "At worst, what I have done is a replacement of the green house with a dwelling of very similar proportions, style and in the same place⁶." I have discussed the differences above, but even if the second part of that sentence were a correct assessment, a replacement would still be a new building. As a question of fact and degree, for the reasons given, I conclude that this was not simply a renovation or even a reconstruction substantially "as before" but amounted to the erection of an all but entirely new and materially larger building. The appeal on ground (b) therefore fails, in that as a question of fact, the operations carried out were of the construction of a dwelling, not merely a refurbishment of an existing building. Since the building was only substantially completed with the installation of the new roof and other features from 2009 onwards, it necessarily follows that the appeal on ground (d) also fails.
25. **BUILDING X.** The aerial photographs also show that building X has increased in size since 2003, all but doubling in width for most of its length. The

⁶ Para 23

Appellant's case, in brief summary, is that he lived in part of it while the works were being carried on in building Y, and was joined there by his wife and stepson in February 2010 before they moved into building Y in August 2011. On his own evidence, believing that building Y had a lawful residential use, it was not his intention to create a second dwelling, but rather that he made use of building X in similar fashion to say, someone using a mobile home temporarily while building or refurbishing a house. Neither building was registered for Council Tax (though the site is now so registered). Apart from making part of the building habitable, he only carried out other work to it in 2010 at the request of a Building Control Officer following a visit by Council officers.

26. The issue is not whether any preceding use was actually or lawfully for agriculture or some other non-residential purpose but whether there was a material change of the use of the building to that of a dwelling. The Council challenged the Appellant's evidence of his continuous occupation of the site. Their case was based on his part ownership and registration for Council Tax purposes at another property in Ash Close, Brandon. His evidence was of his initial occupation of that property in 1996 but that he began living in building Y in 1998 to assist the then owner. He met his wife in 1999 and they married in 2001, she then moving from Scotland but living initially for some years in the property in Ash Close. In answer to my questions, the Appellant told me he had spent probably 70% of his time at the site in the early years, rising to about 90% after he had bought it.
27. I heard and have read a considerable amount of evidence about the condition of the site over the years, whether anyone was or might have been living there and about the Appellant's circumstances. Even accepting his evidence of the time he spent there, only a small proportion of building X was occupied as temporary living accommodation, especially when the Appellant was there by himself. That part of the building may have been sufficiently if basically equipped to enable habitation but it was not separated in any functional way from the rest of the site, with common electricity and water supplies and common occupation. Neither in fact nor in intent was any new planning unit created, nor any separate residential curtilage, but rather the building was occupied as temporary accommodation for purposes ancillary to what the Appellant believed (if that is accepted) was the lawful residential use of building Y.
28. Whatever conclusions I might reach about the rest of the Appellant's evidence, there is no reason to doubt that he and his wife moved into building Y as both said they did. On the evidence before me therefore, if there had been a material change of use of building X to a dwelling, that use ceased some 15 months before this enforcement notice was issued. While there is no firm evidence of what use it was put to immediately afterwards, it clearly has been and continues to be used for storage, whether lawful or otherwise. If the Council's submission is correct that the "only dispute" under this ground is whether the breach was continuing at the time of service of the notice, I am satisfied on the balance of probability that it was not⁷. I do not need therefore to determine whether there had previously been a material change of use. For the record, as a question of fact and degree, and for the reasons outlined

⁷ For the sake of clarity, that is a different position to one where an unauthorised use ceases after service of a notice.

above, I consider that unlikely. The appeal on ground (b) therefore succeeds, the notice will be quashed and I do not need to consider the other grounds of appeal against this notice. For the sake of clarity, the quashing of this notice does not mean that a resumption of any residential occupation of the building or part of it would not require planning permission.

Building Y – Ground (a) and the Deemed Application

29. **Planning Policy.** It is common ground that the appeal site lies outside the 'development boundaries' of Brandon for the purposes of the District's 2010 Core Strategy ("the CS") and the saved policies of its 1995 Local Plan ("the FHLP"). Part at least of Policy CS1 in relation to housing provision at Brandon I understand to have been quashed by the High Court. It is further agreed between the parties that there is not a 5 year supply of housing land in the District. Policy CS5 requires all new development to be designed to a high quality and to reinforce local distinctiveness. It will not be acceptable if it fails to have regard to local context or fails to enhance the character, appearance or environmental quality of an area.
30. Saved Policy 9.1 of the FHLP sets out a series of criteria for any new development in the rural area outside defined settlements. These include that there be justification for the development to be in the rural area, particularly where it is not related to existing buildings; that it will facilitate economic activity (to provide employment); and that there will be no significant detrimental impact on the visual amenity of the landscape. Policy 9.2 is concerned with the layout and design of development in rural areas. New buildings should be related where possible to an existing building or group of them. Particular attention is to be paid to matters such as scale, siting and form to ensure an appropriate rural character and appearance. Designs that are predominantly urban or suburban will not normally be permitted.
31. Saved Policy 4.24 sets out criteria for replacement or extension of an existing dwelling in the countryside. Where a proposal involves substantial change however it will be treated as a new dwelling. I have already addressed that question under the ground (b) appeal, so that even if the original building Y was a dwelling, its replacement would on the face of it fall outside this policy. In addition, the first criterion is that the scale and appearance of the resultant building is not detrimental to the amenities of the countryside.
32. The National Planning Policy Framework ("the NPPF") was published in March 2012. it sets out the presumption in favour of sustainable development. Its core principles include that account should be taken of the different roles and character of different areas, among them the recognition of the intrinsic character and beauty of the countryside. Paragraph 49 is concerned with housing applications and the supply of housing. Saved Policies 9.1 and 9.2 of the FHLP are criteria based policies applicable to all forms of development, including housing. I do not therefore consider them "policies for the supply of housing" for this purpose, though that is not to say, especially given their age, that their application should not be examined against relevant passages elsewhere in the NPPF. The most obvious of such passages is at paragraph 55 concerning housing in rural areas. As well as wider objectives, the paragraph advises that isolated new homes in the countryside should be avoided unless there are special circumstances such as where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting.

33. As above, saved Policy 4.2.4 of the FHL P on the face of it requires a building involving 'substantial change' to be treated as a new dwelling. That to my mind gives rise to some inconsistency within the plan, since a new dwelling would require some locational justification under Policy 9.1 where (it is assumed) a residential use already exists. Further, paragraph 55 of the NPPF refers specifically to the avoidance of "isolated *new homes*" (my emphasis) so that, again assuming a prior lawful residential use, greater attention should then be paid to the design and other criteria outlined above (and at NPPF paragraph 59) rather than the principle of the erection of a dwelling.
34. **As a preliminary issue** therefore I need to determine whether there was such a lawful use of the original building Y when the re-building works began, that being the point at which the need for planning permission arose. While there was no submission to this effect, to argue that the 7 or so years over which the works were completed should come into play where the building itself was not inhabited and indeed, for the most part, uninhabitable would not be tenable.
35. As indicated above, there is a conflict over the building chronology. JM2 in her declaration puts the erection of the original building Y in 1958/9. She says the family lived in that building until what became West End House was constructed in the early-mid 1970s. She is supported in that by Mr A Wojtasz. Her daughter also refers to it as her father's "former residence". She described it in greater detail in an earlier letter but made no mention anywhere of what is now West End House.
36. A number of written statements however do not support this account. The only person who gave significant evidence about it at the inquiry was a local resident who had lived on Manor Road to the south for over 50 years. Her evidence was that her father in law was also Polish and had been a bricklayer. He had built The Bungalow (as West End House was then known) in stages from 1958 and had helped with the original building Y only after that. She had known the site from childhood and in summary, believed there to have been only outbuildings on the present appeal site. She was a frank and forthright witness but part of her evidence relied on what she had been told by father in law.
37. I am seriously hampered on this point by the lack of contemporaneous documentary or other conclusive evidence. Given the grant of the 1958 planning permissions however, it would be more credible that the bungalow was built first or perhaps even simultaneously with building Y in its original form. That is not to say that the latter, or part of it, was not or could not have been used as living accommodation. There are several accounts of it being so, but only, on JM2's account, until the 1980s despite her earlier statement that she lived and worked on the farm until 1990. At least one caravan was also stationed on the land for residential purposes however. Further, as above, it is equally clear from JM2's earlier statement that building Y was put to a number of agricultural uses which at best, do not sit easily with its continuous use over an identifiable period as a dwelling. The probability rather is that the nature of its occupation and use, indeed of its form, changed over time.
38. Further doubts arise from the references made in some statements to Mr and Mrs Mojsiezonek having divorced at about the time of or following the division of the property. Whatever the personal circumstances of the family at that time, JM1 applied for planning permission for 2 residential caravans in 1982, which was refused. His letter of 15 February 1982 refers to the sale of "my

- bungalow” and to 2 caravans stationed on the land which he wished to retain for himself and his daughter. It makes no mention of any residential use of building Y, which would have been the obvious choice if it was or had been a dwelling.
39. Meetings took place between JM1 and Council officers in February and October 1983 with his daughter in attendance at least on the first of them. JM1 is then recorded as saying that he had “sold the dwelling that went with the land unit.” The question of a house on the land was raised, but again, no mention is recorded of any residential use of building Y. An officer recorded from the later meeting that “because no dwelling was on the remaining land” it had been necessary to make the application for the caravans. JM1 is also recorded as having asked whether anyone else would be likely to get (permission for) a dwelling if he disposed of the land. Neither he nor his daughter could be expected to have been expert in planning law but given his previous involvement in 5 recorded applications I find it unlikely at best that an existing residential use of the building would not have been put forward in 1982/3 if such a use had been carried on before that.
40. The evidence as to when JM1 left the site differed and was inconclusive. There is however no substantial evidence of any residential occupation of the appeal site between 1983 and the sale to Mr White in 1995, despite JM2’s earlier statement above. The Appellant believed Mr White to have lived in building Y but no-one else made a firm statement to that effect. Mr White’s son in law referred to ‘the dwelling’ but nowhere in his 2 statements did he say that Mr White lived there. If he had (lived there), he would have been less likely to suffer from the security problems Mr Walker mentioned. The son of the first purchaser of West End House expressed the (written) belief that no-one had lived at the appeal site throughout the period of his mother’s occupation (1981-1996), though clearly JM1 was still there till 1983 at least. Others described the very poor condition of the buildings at this time and some referred to or gave evidence of their belief that Mr White lived nearby but not at the site. I am unable to find, on the available evidence, that he did so.
41. On the balance of probability on these matters, and taking the evidence collectively:
- In the absence of conclusive independent or testable verbal evidence, I am unable to resolve the conflict over the construction of the 2 buildings, but even if the original building Y was built first, as question of fact, the bungalow (now West End House) became the family dwelling house from about 1970 or soon after that.
 - There is no reliable evidence of the original building Y being in use as a dwelling even in the 1970s. The contemporaneous evidence from 1982-83 leads me to conclude that it was not then in use as a dwelling nor was regarded as such by anyone concerned, even if at times it or part of it had been used as living accommodation. Before addressing the Appellant’s involvement, there is no reliable evidence of anyone living in the building after that.
42. That leaves the Appellant himself. Throughout the period 1 April 1997- 22 January 2009, he at least was registered as the Council Tax payer for 24 Ash Close, though according to a Council officer’s email, so was his wife. Both were also said to have claimed housing benefits from 1999-2001. It hardly needs saying that the actual records might have been useful on this aspect, in

addition to the officer's email. Be that as it may, there is nothing to contradict (both) the Appellants' evidence that they only met in 1999 and married in August 2001. As above, Mr Usher claimed to have spent some 70% of his time during this period at Small Fen Farm. As he told me however, he kept valuable possessions at Ash Close and his wife and stepson moved into that property because of the poor condition of the building and at that time, not least the "extra inhabitants (rodents)" his wife mentioned in her first statement. A number of people wrote in general terms of Mr Usher having lived at the site. Others wrote or spoke of the poor condition of the buildings, their belief of a lack of facilities, that no-one was living there and/or that the Appellant continued to live at Ash Close.

43. The earliest utility and telephone accounts the Appellant was able to produce were from 2008 and 2009. Even if there was an on-site water supply and cesspit, I was not advised of any attempt to obtain evidence from the electricity suppliers. Other than the Appellant's evidence and the untestable general accounts, there is nothing to confirm that there was an electricity supply connected nor that the building provided more than a basic shelter. The Appellant may have spent many nights there during this period but that alone does not amount to use of the building as a dwelling. In the face of conflicting and contradictory evidence, albeit mostly written and/or circumstantial, it was not in my judgment being used as a dwelling in the commonly accepted sense of that term, so much as a secondary base while the Appellant maintained his real or principal home at Ash Close. As a question of fact and degree therefore, his occupation of it had not resulted in the accrual of a lawful residential use by the time he purchased the land and began building works in 2003.
44. It follows that what has occurred is the erection not only of a new building but of a new dwelling, whatever the Appellant may have believed at the time. It did not involve the re-use of a redundant building but as above, the erection of a substantially bigger building in a location where no other rural justification has been put forward for a dwelling. On the face of it, the officer's assessment of the building expressed in his letter of 26 July 2012 is at odds with the view taken on the issue of this notice. The assessment then however was based on a pre-existing dwelling. It is not for me in any event to speak for the officer but to make my own assessment on the facts as I have found them and on the planning merits.
45. **The main issue** is thus the impact of the new dwelling on the character and appearance of the area, taking account of the policy context outlined above.
46. The lack of a 5 year housing supply within the District does not mean that every proposal for a new dwelling outside established settlement limits has to be granted. Each proposal still falls to be treated on its merits. This may not be an isolated site in the sense of being in the middle of Dartmoor but it lies outside the settlement boundaries where a general policy of restraint exists to protect the character and appearance of the countryside. The proximity of bus routes, shops and other services could be prayed in aid of any amount of land just beyond such policy boundaries. So could the argument that a particular plot is near or next to other sporadic or scattered residential development. By themselves, such arguments therefore carry little weight in relation to a new dwelling.

47. The site contained a series of former largely agricultural buildings which may have been disused but if still serviceable, might have been put to some use of more benefit to the rural economy than a residential one. As it is, the present building Y may be well constructed but the Appellant's activities can hardly be said to have led to an enhancement to the immediate setting where he has surrounded the site on 3 sides with a 2m high fence and the rest of it, putting it bluntly, looks more like a scrap yard than a residential curtilage.
48. The existence of that fence, and the fact that building Y is set a little below it on the southern side, make it unsurprising that the Council only received a complaint about the building when the roof began to be erected in 2009. The quality of the surrounding landscape may be agreed as modest but it remains essentially rural when seen from Manor Road to the south and as part of the rural setting of Brandon when seen from the north, if with other forms of scattered development that might be expected close to such a settlement. Screening by trees and other vegetation could be improved, perhaps eventually to become as effective as that of West End House, but this again could be said of any number of such sites.
49. I have already acknowledged that the building reflects some of the design features of its predecessor. Further, I do not regard it as suburban, a term which is hard to apply to an individual isolated site such as this. It at least implies an element of uniformity, be it Victorian terrace, inter-war mock Tudor or 1960s estate, where this is an individual if unremarkable design. I do not rely on photographs for a 'before and after' comparison because of the obvious risks of doing so without having all the technical details. Rather, it is clear as above that the present building is significantly larger, higher and bulkier than the one it replaced and is visible over a wide public area. As importantly if not more so, it is a dwelling, not an agricultural building. It is thus an obtrusive and uncharacteristic form of development in this setting. For those reasons, I find it in conflict with both the development policies and in particular paragraph 55 of the NPPF.
50. **Other Matters.** The Appellant made much of visits said to have been made to the site annually or even biennially by Council officers from 2003 onwards. While there was no submission that anything then said should or could prevent the present enforcement action, the Appellant's complaint was, in short, that officer(s) had been aware of the works being carried out but that they had been seen as refurbishment not only of a building but of a dwelling, yet no mention had been made before 2009 of any need for planning permission.
51. The Council's present system for recording of complaints and investigations was only introduced in 2003. I address matters relevant to the costs applications in that decision. If there was clear evidence of the Appellant being misled on the lawfulness of his position, to the extent that he could be said reasonably to have relied upon it, that might be a consideration material to my decision. Even before that however, the primary responsibility for ensuring the lawfulness of any works rests with the developer. Whatever the state of the buildings, and even if local house prices were then lower than national averages, the Appellant paid a price for the site which hardly reflected a lawful residential use. Whether that use was lawful could have been properly ascertained at the time of purchase, the fact that there was no registration for Council Tax purposes at least being a clue that it might not be.

52. As to the alleged visits, some may indeed have been made as confirmed in other written statements. The principal (former) officer concerned was not called or sought to be called as a witness by either party. His email to the Council of 13 July 2012 confirmed only visiting the site "on at least occasion" between 1986 and 1998 when employed by the RSPCA. He recalled there being a number of animals on the site, indicating that the visit was some time before the Appellant's involvement with it. The officer was "aware of the site being occupied" but that is too vague a statement to attach any weight at all to it. He made no reference to any later visits when employed by the Council, though a number are recorded from March 2009 onwards.
53. While it may well be that some conversations took place, I am not able to make any firm findings, on the evidence available, of any misleading statements being made. It is equally possible, before 2009, that a visitor may have had a very different impression of the intended outcome of the works being undertaken than what actually resulted from them. While the Appellant might - and I put it no higher than that - have grounds for a complaint, the evidence is far from sufficient for it in some way to absolve him of his responsibilities as land owner and developer. Even if his belief in the lawfulness of what he embarked upon was entirely genuine, on which I make no finding, he could and should have made certain of his position beforehand. However regrettable, he is to that extent the author of his own misfortune.
54. I have taken account of all other matters raised, but can find no material considerations to indicate that a decision other than in accordance with the development plan would be justified. The appeal on ground (a) therefore fails and permission will be refused.

Building Y - Ground (f)

55. The refusal of planning permission is not based solely on the size of the building. A requirement simply to reduce its size would not therefore address its residential purpose. Further, as above, this is a new building not simply an enlargement of a pre-existing one. The requirement to demolish it is thus not excessive to remedy either the breach of planning control or the harm to amenity. It is not for me to prescribe what the Appellant may lawfully do, if anything, once the notice has been complied with. The Council equally have their own powers of variation of the notice under section 173A if appropriate.

Building Y – Ground (g)

56. That last comment applies equally to the time given for compliance. In the present case, a period of 6 months might be considered sufficient, even allowing for the fact the Appellant has made the site his family home. In considering this ground however, he was entitled to await the outcome of the appeal before taking steps to remedy the matter or find alternative accommodation. More importantly, both the site and land around it were intended to be allocated for housing and/or employment land under the Council's previous, but now quashed development plan proposals. While there may be no immediate expectation of similar proposals coming forward, the Appellant might be justifiably aggrieved if something of the kind were to be pursued soon after the building had been demolished.
57. The harm caused by the dwelling in its present context is real and continuing. It is not however a harm which impacts seriously upon, for example,

neighbouring residents' living conditions (save perhaps for an outside light which the Appellant could easily address if still necessary). That lessens the urgency of it being remedied though not its degree. Despite my comments at paragraph 53 above, natural justice requires that I take some account not just of the Appellant's family circumstances but also of the obvious financial loss he would suffer through demolition and the effective cessation of the residential use. In these somewhat exceptional circumstances, I shall therefore extend the compliance period to one year, leaving it for the Council to review the position (if the Appellant asks them to do so) then or before in the light of any progress with the development plan or indeed of any other relevant changes in circumstances. That does not give the Appellant the certainty he seeks but is as far as the matter can be taken at present.

R O Evans

Inspector

APPEARANCES

FOR THE APPELLANTS:

Mr T S Newcombe	Solicitor, Birketts LLP
He called:	
Mr D Usher	The Appellant
Mr R High BA MA MRTPI	Planning Consultant, High Associates

FOR THE LOCAL PLANNING AUTHORITY:

Ms C Parry	of Counsel, instructed by solicitor to the Council
She called:	
Mr D Beighton BA(Hons) DipTP MRTPI	Principal Planning Officer
Mr C Snare	Local resident
Mrs K Bartman	Local resident
Mr R J Ashley	Local resident

INTERESTED PERSONS:

Councillor W J Bishop	Brandon East Ward Councillor
Mr E Hunns	Local resident
Mr M Usher	Appellant's nephew
Mrs G Ormrod	Local resident

DOCUMENTS PRESENTED AT THE INQUIRY

- 1 Statement of Common Ground
- 2 Council's complaint records ENF/2009/0056

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Forest Heath District Council

**DEVELOPMENT
CONTROL COMMITTEE**

5 AUGUST 2015

DEV/FH/15/028

Report of the Head of Planning and Growth

**PRIOR APPROVAL APPLICATION DC/15/1402/PMBPA – BELLE VUE,
NEWMARKET ROAD, BARTON MILLS**

Synopsis:

Application under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and associated matters.

Recommendation:

It is recommended that the Committee determine the attached application and associated matters.

CONTACT OFFICER

Case Officer: Kerri Cooper
Telephone: 01284 757341

Committee Report

Date 9 July 2015 **Expiry Date:** 3 September 2015
Registered:

Case Officer: Kerri Cooper **Recommendation:** Approve

Parish: Barton Mills **Ward:** Manor

Proposal: Prior Approval Application DC/15/1402/PMBPA under Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015- (i) Change of use of agricultural building to dwellinghouse (Class C3) to create 1 no. dwelling (ii) associated operational development

Site: Belle Vue, Newmarket Road, Barton Mills

Applicant: Mr Jonathan Waters

Background:

This application is referred to the Development Control Committee as the applicant is related to an elected Member.

Proposal:

1. It is proposed to change the use of an existing agricultural barn to a dwelling house with associated alterations.
2. The application is a revised scheme to DC/15/0997/PMBPA. This application was withdrawn due to insufficient information and an additional agricultural building being included, which had been substantially demolished and therefore not capable of being converted to annex/dwelling. This element could not be considered under a Prior Approval Application.

Application Supporting Material:

3. Information submitted with the application as follows:
 - Design and Access Statement received 9th July 2015.
 - Site Location Plan, Proposed Site Plan, Existing Elevations, Existing Floor Plans, Existing Roof Plan, Proposed Elevations, Proposed Floor Plans and Proposed Roof Plan received 9th and 21st July 2015.

Site Details:

4. The application site comprises a timber weatherboarding and flint agricultural building situated within the countryside of Barton Mills. Residential properties are located to the front and side of the application site.

Planning History:

5. DC/15/0997/PMBPA - Prior Approval Application under Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 - (i) Change of use of agricultural buildings to dwellinghouse and Annex (Class C3) to create no. 2 dwellings (ii) associated operational development – Withdrawn 26th June 2015.

Consultations:

6. Highway Authority: No objection, subject to conditions.
7. Environmental Health – Land Contamination: No objection, subject to informative.

Representations:

8. No representations received at the time of writing the report. A verbal update will be given at Development Control Committee on Wednesday 5th August 2015.

Policy:

9. The relevant regulations require the local planning authority to have regard to the National Planning Policy Framework (NPPF) when determining applications for prior approval as if they were planning applications, where relevant to the subject matter of the prior approval.
10. Updated guidance has been included within the National Planning Policy Guidance (NPPG) March 2015 and this is material to the consideration and determination of this application.

Officer Comment:

Legislative Background

11. As of 6th April 2014 development consisting of a change of use of an agricultural building and any land within its curtilage to a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order is permitted development under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) Order 2015.
12. Developers are required to apply to the Local Planning Authority for a determination as to whether their prior approval will be required as to:
 - Transport and highways impacts of the development;

- Noise impacts of the development;
 - Contamination risks on the site;
 - Flooding risks on the site; and
 - Whether the location or siting of the building makes it otherwise impractical or undesirable for the change of use.
13. Developers are also required to apply to the Local Planning Authority for a determination as to whether the prior approval of the authority will be required as to the design or external appearance of the building.
14. As part of their assessment the Local Planning Authority is required to determine whether the proposed development complies with any conditions, limitations or restrictions specified within the relevant regulations as being applicable to the development in question.
15. The Government revised the guidance supporting these regulations in 5th March 2015. The revised guidance states as follows:
16. The permitted development right does not apply a test in relation to sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. Instead, the local planning authority can consider whether the location and siting of the building would make it impractical or undesirable to change use to a house.
17. Impractical or undesirable are not defined in the regulations, and the local planning authority should apply a reasonable ordinary dictionary meaning in making any judgement. Impractical reflects that the location and siting would "not be sensible or realistic", and undesirable reflects that it would be "harmful or objectionable".
18. When considering whether it is appropriate for the change of use to take place in a particular location, a local planning authority should start from the premise that the permitted development rights grant planning permission, subject to the prior approval requirements. The fact that an agricultural building is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval.
19. There may, however, be circumstances where the impact cannot be mitigated. Therefore, when looking at location, local planning authorities may, for example, consider that because an agricultural building is located on the top of a hill with no road access, power source or other services its conversion is impractical. Additionally the location of the building whose use is proposed to change to residential may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals.
20. When a local authority considers location and siting it should not therefore be applying tests from the National Planning Policy Framework except to the extent these are relevant to the subject matter of the prior approval.

So, for example, factors such as whether the property is for a rural worker, or whether the design is of exceptional quality or innovative, are unlikely to be relevant.

Assessment Against the Limitations of Class Q

21. There are a number of criteria which have to be applied under the regulations in order for the development to benefit from the permitted development legislation and these are considered in turn below.
22. The supporting design and access statement received 9th July 2015 states that the agricultural building is a storage barn. There have been no applications relating to the application building and it currently remains in use for storage of hay and other agricultural items. On the basis of the information available and provided it is considered that the building was last used for agricultural purposes.
23. The floor space of the building subject to the proposed change of use is 124.3m² and therefore below the threshold set out within Class Q.
24. The proposal would not result in the development of more than three dwellings within the agricultural unit.
25. The application form states that the site is not occupied under an agricultural tenancy.
26. The planning history of the site indicates that no agricultural development has been carried out on the agricultural unit under Part 6 Class A (a) or Class B (a) since 20th March 2013.
27. The proposed floor plans received 9th July 2015 accompanying the application and the application form states that the building is to be converted to form a three bedroom dwelling. The building operations necessary to convert it to a dwelling will not be significant. In addition, it is stated that the conversion will not extend the mass or the silhouette of the barn. It is not therefore anticipated that the development would result in an increase in the external dimensions of the building.
28. There has been one application submitted for prior approval under Class Q within the agricultural unit. This application was withdrawn due to insufficient information and an additional agricultural building being included, which had been substantially demolished and therefore not capable of being converted to annex/dwelling. This element could not be considered under a Prior Approval Application.
29. It is anticipated that the building operations necessary for conversion would be limited to the installation of replacement of windows, doors, roofs and exterior walls and water, drainage, electricity gas and other services in accordance with Class Q.
30. The site is not on article 2(3) land (this includes conservation areas, areas of outstanding natural beauty, some areas specified under the Wildlife and

Countryside Act, the Broads, National parks and World Heritage Sites); in addition it does not form part of a site of special scientific interest; a safety hazard area or a military explosives storage area; does not comprise or contain a scheduled monument and the building is not a listed building.

31. Having regard to the above it is considered that the proposal is permitted development under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) Order 2015.

Transport and Highway Impact

32. The site is accessed via an established vehicular access off Church Lane. No objections have been received from the County Highway Authority regarding the proposed change of use, subject to conditions. The conditions recommended are both reasonable and appropriate to impose on the permission.

Contamination Risk

33. The application provides information regarding land contamination and a full Phase 1 Contaminated Land Assessment carried out by Geosphere Environmental Limited. The desktop study comprises a detailed search of available historical and current records and maps to identify potential onsite and off-site sources, pathways and receptors of contamination, with the site walkover survey to confirm the information gathered for the desktop study and to reveal any features such as structures, tanks or pipe work which may suggest possible sources of contamination. The preliminary risk assessment has been carried out using the information from the desktop study and site walkover to identify possible pollutant linkages and a conceptual model of the site has been developed.
34. This is in accordance with the National Planning Policy Framework (NPPF) which states that to prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner (paragraph 120).
35. The information submitted with the application does not indicate the likelihood of the presence of any contamination. Therefore, by adopting a precautionary approach, an informative is recommended.

Flooding Risk

36. The site is not located in an area at risk of flooding and there are not therefore any adverse issues in this respect.

Noise Impact

37. Given the relationship between the building and the nearby residential properties, the noise impacts associated with the proposal are not considered to be significant as to cause harm.

Design and External Appearance of the Building

38. The application building has an attractive rural appearance.
39. The regulations require the Authority to assess, as part of the Prior Notification procedure, whether prior approval will be required for the design and external appearance of the building, and that the provisions of Part W of the regulations shall apply. There is no specific guidance in relation to the assessment of this point, so under normal practice, when assessing the design and external appearance of any proposal, discretion is available for the Authority to refuse such prior approval if sound planning reasons exist. However it must be borne in mind that the replacement of the walls, roof, windows, doors (plus the provision of new windows and doors), where it is reasonably necessary to allow the conversion, are permitted development in accordance with these regulations and control cannot be exercised. This factor is considered to severely limit the extent to which any concern can be articulated in relation to design and external appearance, to the extent that it largely makes such an assessment redundant. This of course assumes that it is accepted that the extent of physical adaptation to the building is reasonably necessary to effect the conversion.
40. In this regard the proposed changes, whilst having a considerable impact upon the appearance of the dwelling, would only involve the insertion of the windows and doors, and provision of external cladding, as is permitted by the regulations, and at a level accepted by Officers as being 'reasonably necessary'. Within this context it can be concluded that they physical changes are acceptable.

Location or Siting

41. In addition to the consideration of the above, it is also necessary to assess whether the location or siting of the building makes it otherwise impractical or undesirable for the change of use to take place.
42. The site is within the rural area where new isolated dwellings would not ordinarily be supported in accordance with para. 55 of the NPPF. The Framework sets out a presumption in favour of sustainable development, but it also advises Local Planning Authorities to avoid allowing new isolated homes in the countryside unless there are special circumstances. These include where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting.
43. The Government has amended the on-line Planning Practice Guidance to address, in particular, the issue as to whether the 'sustainability' of the proposed development is intended to be a material consideration in

assessing this type of proposal. The revised ministerial guidance makes it clear that the permitted development right does not apply a test in relation to sustainability of location. This is deliberate, as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. Instead, the local planning authority can consider whether the location and siting of the building would make it impractical or undesirable to change use to a dwelling.

44. Therefore, as clarified above, a test of locational sustainability is not within the scope of the Authority's discretion in relation to this matter, as now clarified in the March 2015 guidance.
45. However, the criteria to be considered by the Authority when determining an application for prior approval of proposed development under Class Q is whether the location or siting of the building makes it impractical or undesirable for the building to change from agricultural use to use as a residential use. The location of the building and its generally isolated nature cannot be taken into account unless the location and siting would "not be sensible or realistic", or otherwise "undesirable" reflecting that it would be "harmful or objectionable".
46. The revised practice guidance then goes on to explain what is meant by "impractical or undesirable" for the change to residential use. Impractical or undesirable are not defined in the Order, and Authorities should apply a reasonable ordinary dictionary meaning in making any judgement. "Impractical" reflects that the location and siting would "not be sensible or realistic", and "undesirable" reflects that it would be "harmful or objectionable".
47. The agricultural character of its surroundings means that consideration of whether the proposal would be "harmful or objectionable" is the crux of the assessment before us. If it is concluded that the proposal will lead to a development which is not 'insensible or unrealistic', then it can be considered, in principle, to be NPPF compliant. If it is considered that it would be "harmful or objectionable" for any reason then it would be possible to conclude that the scheme is not NPPF compliant and prior approval could be refused. As set out above, it is expected that the ordinary dictionary definition of these terms should be applied. In this regard Officers consider that whilst an 'in principle' objection based on sustainability grounds cannot be brought, it would seem logical to conclude that where a proposal is considered to be 'harmful' or 'objectionable' for any sound planning reason (for example, amenity impact arising from overlooking, or impact upon nearby protected trees, or based on the inappropriate siting of a dwelling within the middle of a field, for example) then it might be reasonable to subsequently conclude that the location or siting would be impractical or undesirable.
48. In carefully considering and balancing these points Officers are of the opinion that the fact that the building is located in relatively close proximity to existing residential property, but with a sufficient degree of separation means that locationally, it can be concluded as not being

harmful or objectionable to the level of residential amenity which could reasonably be expected for any future or existing occupants. Furthermore, Officers are also of the opinion that there are no other reasons, when assessing whether the location or siting of the building makes it otherwise impractical or undesirable for the change of use to take place, which would otherwise preclude development. This judgement must be made in light of the permissive intent within the permitted development regulations.

49. The buildings are considered to be of sufficient distance away from nearby dwellings and uses so as not to result in any overshadowing or overlooking or being overbearing in appearance. It is not therefore considered that the location or siting of the building makes it impractical or undesirable for the proposed change of use to a dwelling.

Conclusion:

50. In conclusion, the principle and detail of the development is considered to be acceptable and in compliance with relevant guidance in the National Planning Practice Guidance and the National Planning Policy Framework.

Recommendation:

51. It is recommended that prior approval is **GRANTED** subject to the following conditions:

1. No other part of the development hereby permitted shall be commenced until the existing vehicular access has been improved, laid out and completed in all respects in accordance with DM02; and with an entrance width of 3 metres. Thereafter the access shall be retained in the specified form.
2. Prior to the development hereby permitted being first occupied, the improved access onto the highway shall be properly surfaced with a bound material for a minimum distance of 5 metres from the edge of the metalled carriageway, in accordance with details previously submitted to and approved in writing by the local planning authority.
3. Before the development is commenced details of the areas to be provided for storage of Refuse/Recycling bins shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter for no other purpose.
4. Before the development is commenced details shall be submitted to and approved in writing by the Local Planning Authority showing the means to prevent the discharge of surface water from the development onto the highway. The approved scheme shall be carried out in its entirety before the access is first used and shall be retained thereafter in its approved form.
5. Gates shall be set back a minimum distance of 5 metres from the edge of the carriageway and shall open only into the site and not over any area of the highway.
6. Before the development is commenced details of the areas to be provided for the loading, unloading, manoeuvring and parking of

vehicles including secure cycle storage shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter and used for no other purpose.

7. Before the access is first used clear visibility at a height of 0.6 metres above the carriageway level shall be provided and thereafter permanently maintained in that area between the nearside edge of the metalled carriageway and a line 90 metres from the nearside edge of the metalled carriageway at the centre line of the access point (X dimension) to the east, and a distance of to the west, to the junction with Newmarket Road metres in along the edge of the metalled carriageway from the centre of the access (Y dimension). Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.

Informative: If during development, contamination is encountered which has not previously been identified then it would be in the best interest of the developer to contact the Local Planning Authority as soon as possible, as they should be aware that the responsibility for the safe development and secure occupancy of the site rests with the developer. Failure to do so may result in the Local Authority taking appropriate action under its obligations of Part 2A of the Environmental Protection Act 1990.

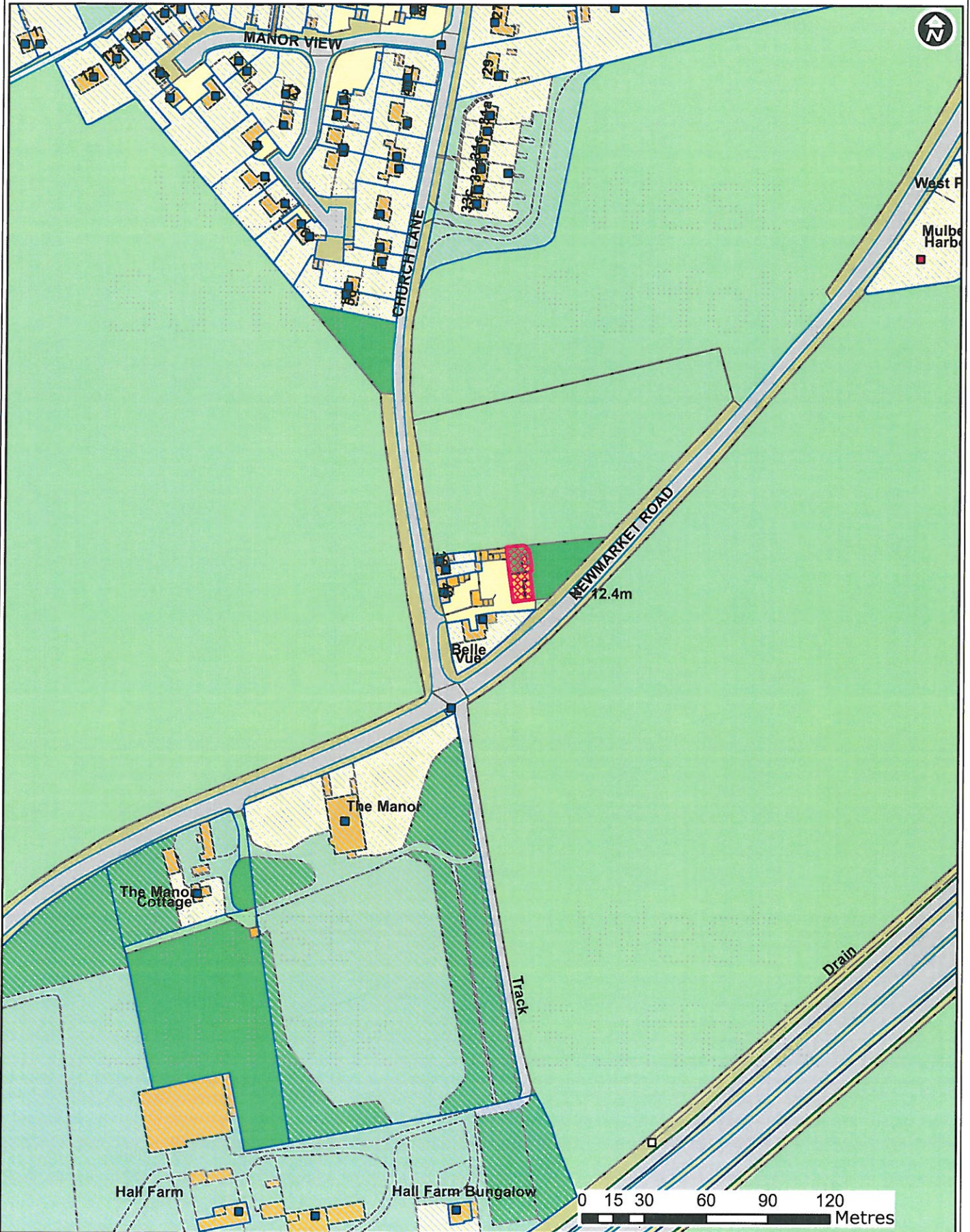
Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NR9L8GPD05L00>

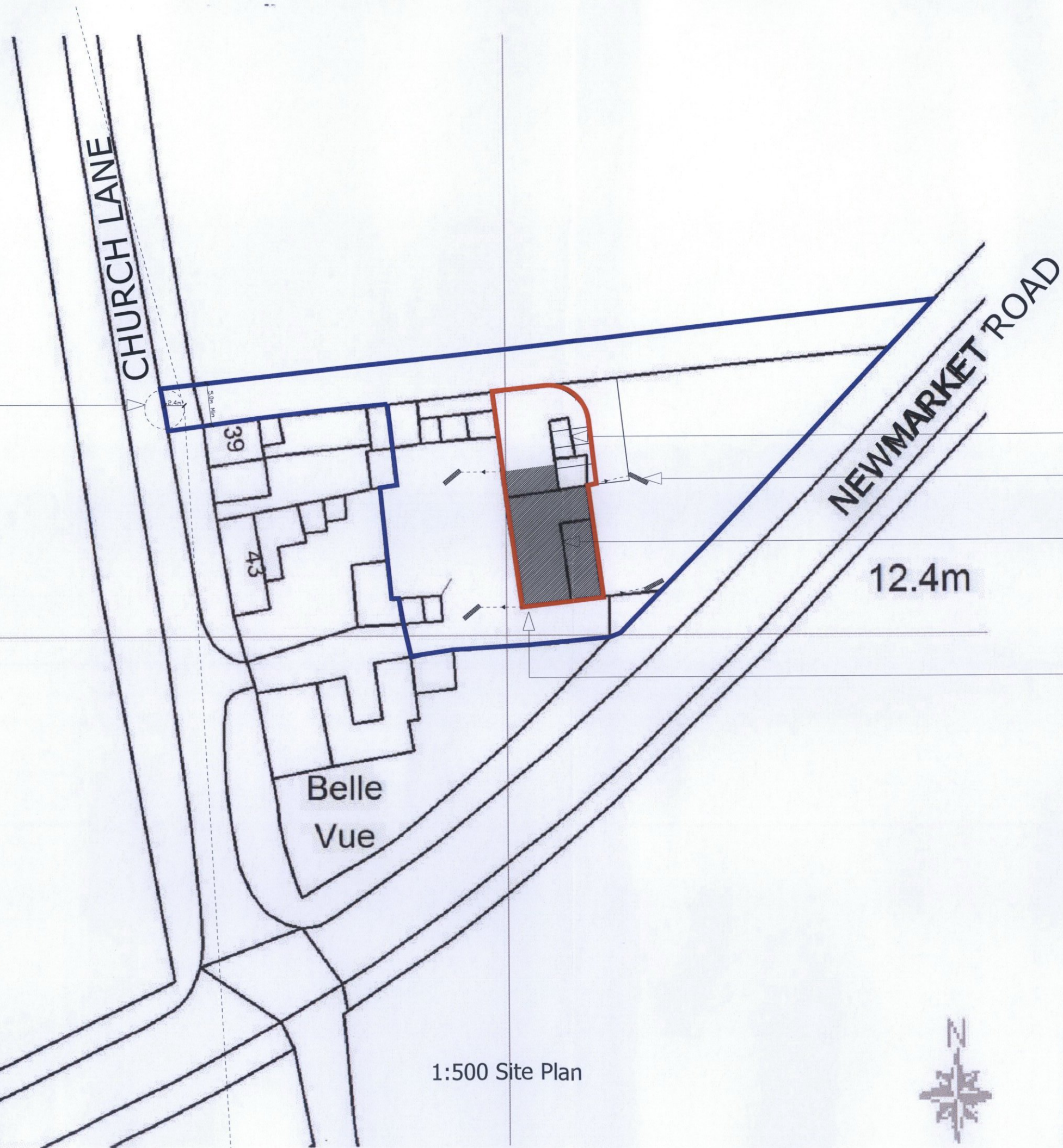
DC.15.1402.PMBPA

Location Plan



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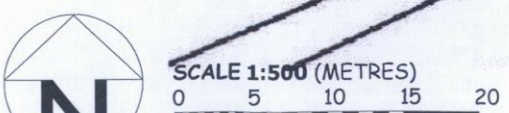
Clear visibility head height will be provided at all times with the edges being no higher than 0.6m high.
 To ensure visibility for 90m in each direction (each direction of Church Lane is a 30mph speed zone)
 New access 5.0m wide with turning
 Give way lines at access point to county highways approved layout and standards
 Install new drop kerbs to County Highways Standards



- 3No. Parking spaces within curtilage
- New Polystorm lite (PSM2) creates
- Proposed barn conversion (family home)
- Proposed bin store

RECEIVED
10 JUL 2015

1:500 Site Plan



Rev	Description	Date
	TAB Architecture tel (01638) 482862 info@tabarchitecture.co.uk	
	Russet Drive, Suffolk, IP28 8GA	
	Rosewood Offices, Cambs, CB7 5QH	
Client	: Mr J. Waters	
Job title	: Bell View Barn, Barton Mills	
Drg	: Proposed Site Location Plan	

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Forest Heath District Council

**DEVELOPMENT
CONTROL COMMITTEE**

5 AUGUST 2015

DEV/FH/15/029

Report of the Head of Planning and Growth

**PLANNING APPLICATION DC/15/0856/FUL – PHILLIPS FARM, WILDE
STREET, BECK ROW**

Synopsis:

Application under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and associated matters.

Recommendation:

It is recommended that the Committee determine the attached application and associated matters.

CONTACT OFFICER

Case Officer: Sarah Drane
Telephone: 01638 719432

Committee Report

Date 08.05.15 **Expiry Date:** 03.07.15

Registered:

Case Sarah Drane **Recommendation:** Refuse

Officer:

Parish: Beck Row **Ward:** Eriswell and The Rows

Proposal: Planning Application DC/15/0856/FUL - Demolition of existing bungalow. Construction of new two storey detached 5 bedroom dwelling and detached Cart Barn (Resubmission of DC/14/1313/FUL)

Site: Phillips Farm, Wilde Street, Beck Row

Applicant: Mrs Emma Eagle

Background:

This application is referred to the Development Control Committee following consideration by the Delegation Panel.

The Parish Council have raised no objections, but the application is recommended for refusal.

Proposal:

1. Planning permission is sought for a two-storey 5 bedroom house to replace an existing small bungalow. The house has a two storey footprint of 12.6m x 7m, with small single storey additions to the front and side. The gross internal floor area is 174.6 sq m. The height to the ridge is approx. 8.3m. The elevations also show solar panels on the rear facing roof slope and bat boxes on the rear and side elevations.
2. The application also includes the construction of an outbuilding to accommodate office, store, 2 parking spaces and a kennel. This building has a footprint of 14.2m x 5.5m and a ridge height of 3.8m, constructed of black stained weatherboarding under pantile or plain tile roof. Access into the site would remain as existing. Landscaping proposals are also indicated.
3. An amended red line plan has been provided reducing the size of the application site so that it only defines the curtilage to the replacement dwelling.

Application Supporting Material:

4. Information submitted with both applications as follows:
 - Design and Access Statement
 - Initial Assessment Bat, Barn Owl and Breeding Bird Survey
 - Bat survey report (greenlight Environmental Consultancy)
 - Land contamination questionnaire
 - EnviroSearch
 - Location plan
 - Existing plans
 - Proposed plans

Site Details:

5. The single storey dwelling is accessed from an unmade track from Wilde Street, along Breach Drove. The existing L-shaped bungalow is 3.2m to the ridge, 2.5m to the eaves, 12.6m long and 10.5m at its widest point and is situated in the south-west corner of this substantial site. A replacement barn (9m(l) x 7m(w) x 3.68m(h)) with green steel cladding and a green roof has recently been approved and constructed to the east of the dwelling. There are other structures in the vicinity of the barn, including an existing shed, a caravan/mobile home and a pig sty.
6. The dwelling is situated in an isolated location in the countryside. Dwellings nearest to the application site are Stanley Farm approx. 50m to the south and The Pines approx. 65m to the south east, both are accessed from the same unmade track. Dwellings to the rear of the proposed development (110m south-west) consist of a one-and-a-half storey dwelling (Upton Park Manor) and a bungalow 200m to the east on Wilde Street.

Planning History:

7. **F/93/563:** Demolition of existing dwelling and replacement with single storey dwelling. Approved

F/99/022: Renewal of permission to demolish existing dwelling and erect replacement single storey dwelling. Approved

F/2004/0157/FUL: Demolition of existing dwelling and erection of a replacement single storey dwelling. Withdrawn

F/2011/0340/HOU: Erection of barn (demolition of existing barn). Approved

DC/14/1313/FUL: Planning Application - Demolition of existing bungalow. Construction of new two storey detached 5 bedroom dwelling and detached Cart Barn. Withdrawn

DC/15/0904/FUL: Planning Application - Demolition of existing bungalow. Construction of new 1 ½ storey detached 5 bedroom dwelling

and detached Cart Barn - Approved

Consultations:

8. Public Health And Housing: No objection, subject to conditions

Environmental Health: No objection

Mildenhall Internal Drainage Board: provide comments – discharge of surface water overflow into the drain will require consent

Suffolk Wildlife Trust: further surveys required

Environment Agency: No objection

SCC Highways: No objection

Ecology Tree And Landscape Officer: No objection subject to a condition to secure a bat mitigation strategy

Representations:

9. Parish Council: support

10. Ward Member: Cllr Bowman requested the application be considered by the Development Control Committee.

Policy: The following policies of the Forest Heath Development Plan have been taken into account in the consideration of this application:

11. Forest Heath Core Strategy (2010):

- CS1 Spatial Strategy
- CS3 Landscape Character and the historic environment
- CS5 Design quality and local distinctiveness
- CS10 Sustainable Rural Communities

12. Joint Development Management Policies Document (2015):

- DM1 Presumption in favour of sustainable development
- DM2 Creating Places – Development principles and local distinctiveness
- DM5 Development in the Countryside
- DM11 Protected Species
- DM12 Mitigation, Enhancement, Management and Monitoring of Biodiversity
- DM22 Residential Design

Other Planning Policy:

13. National Planning Policy Framework (2012):

- Core principles
- Section 6: Delivering a wide choice of high quality homes
- Section 7: Requiring good design
- Section 11: Conserving and enhancing the natural environment

Officer Comment:

14. The issues to be considered in the determination of the application are:

- Principle of Development
- Impact on Countryside
- Impact on Protected Species

Principle of Development

15. The dwelling proposed to be replaced is a single storey dwelling with a footprint of approx. 92sqm, 3.2m to the ridge and 2.5m to the eaves. The two storey dwelling measures 8.3m in height (5.15m to the eaves). A substantial outbuilding, 14.2m long by 5.5m deep and 3.8m to the ridge, to accommodate an office, store, 2 parking spaces and a kennel is also proposed. The site layout includes some proposed new planting to the south and west to screen the property.

16. Policy DM5 seeks to prevent replacement dwellings which are disproportionate in size and scale to the original dwelling; that are excessive in scale and massing and thereby more physically and visually intrusive than the existing smaller dwelling. A replacement dwelling, when clearly disproportionate to the original, would be tantamount in its impact to new development in the countryside. Even where a site is well screened there is a wider concern to maintain the intrinsic rural character and qualities of the countryside. The principle of a replacement dwelling on the site is acceptable, subject to the scale and floor area respecting that of the existing dwelling. This has been demonstrated through the grant of planning permission for a replacement 1 ½ storey dwelling (see planning history above).

Impact on Countryside

17. The site lies in the open countryside north of the village of Beck Row, about 1km when measured in a straight line or 1.3km measured along the road, beyond the development boundary. The site is located at the end of a shared, unmade track (known as Breach Drove) from Wilde Street within substantial land to the north. The site is mainly screened from public views but can be glimpsed from Wilde Street.

18. The proposed two-storey replacement dwelling would be more than double the floor area and scale of the existing dwelling and therefore fails to respect the scale of the dwelling it seeks to replace. It is considered that this is contrary to policy DM5 which only permits replacement dwellings on a one for one basis where it can be demonstrated that the proposed replacement dwelling respects the scale and floor area of the existing dwelling, and in accordance with other DM policies.

19. At pre-application stage before the submission of the previously withdrawn application DC/14/1313/FUL, the agent was advised of the officer's policy concerns in writing and during a subsequent meeting with the applicant further discussions were held. Officers confirmed that a replacement dwelling was acceptable in principle and suggested to reduce the scale of the proposed replacement dwelling to better respect the

existing dwelling; a less bulky chalet style building would allow for the required additional living space but would be less visually intrusive and more appropriate given the scale of the existing bungalow. This would also be more in keeping with the character and appearance of the locality. An application was then submitted on this basis. This alternative proposal for a 1 ½ storey dwelling would have a slightly larger footprint than the dwelling it seeks to replace and with living accommodation within the roof space. Considering permitted development rights and the potential for the existing bungalow to be appropriately extended this was considered acceptable and in accordance with policy DM5. The application was considered by the Delegation Panel and approved.

20. The proposed cartlodge, would be a substantial outbuilding but its impact is lessened due to the hipped roof with low eaves. It is of a traditional appearance for an outbuilding and whilst the footprint is sizeable, the accommodation it provides is not unreasonable to serve a small holding of this size. There are therefore no concerns with this element of the proposal within the application.

Impact on Protected Species

21. The Ecology, Tree and Landscape Officer has reviewed the submitted survey information. The Greenlight report dated 15th May stated a low level of bat activity on the site and there was no evidence to show bats were using the existing bungalow. Bat boxes are proposed on the replacement dwelling and a condition could secure an appropriate bat mitigation strategy.

Conclusion:

22. In conclusion, planning permission has already been granted for a more appropriate one and a half storey dwelling. This application for a two storey dwelling cannot be supported for the reasons detailed in the report above and as set out in the recommendation below.

Recommendation:

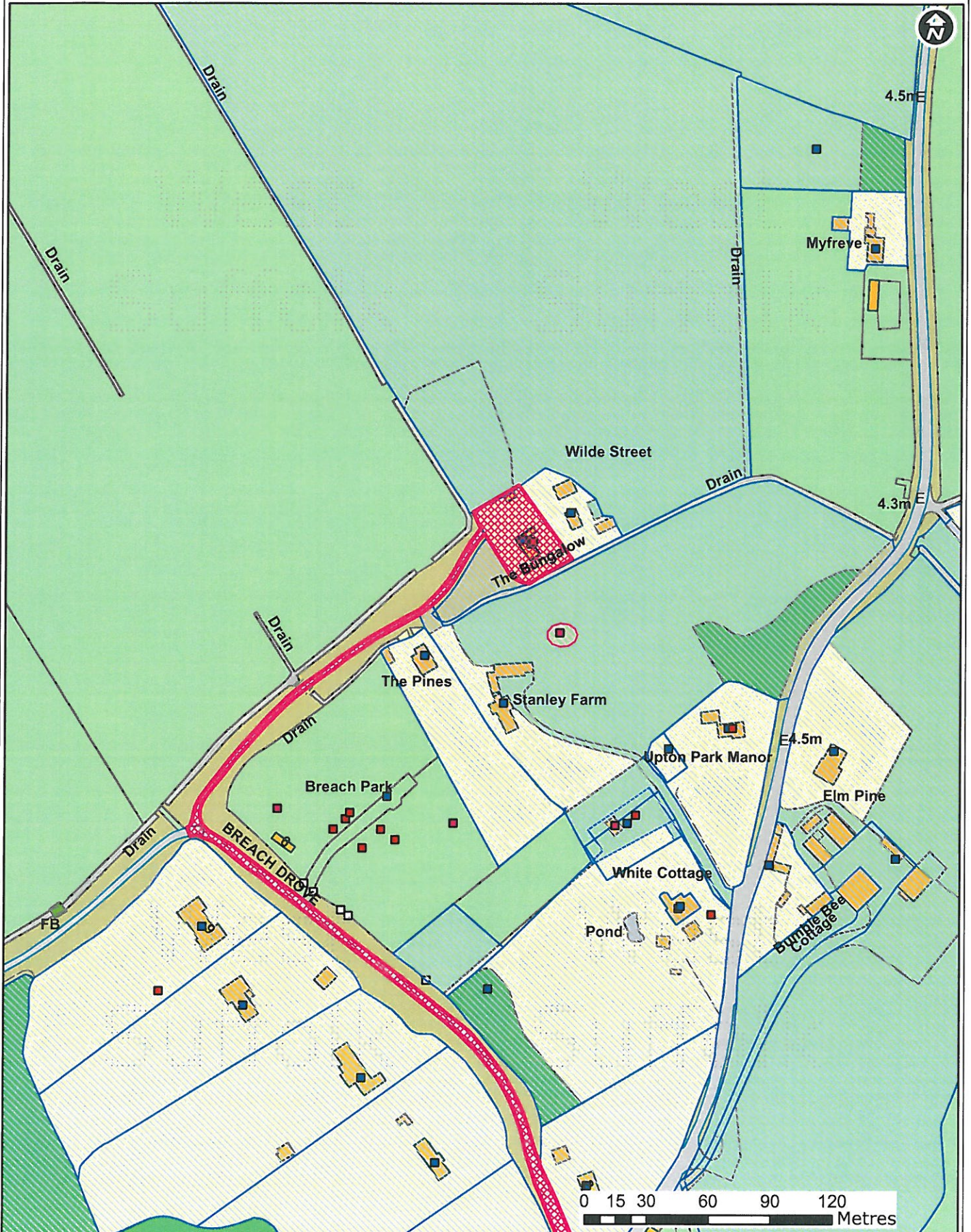
23. It is recommended that planning permission be **REFUSED** for the following reason:
1. The site is situated in a relatively isolated location in the countryside outside of any designated housing settlement boundaries. The proposed two-storey replacement dwelling would be more than double the floor area and scale of the existing dwelling and therefore fails to respect the scale of the dwelling it seeks to replace. The proposal is therefore contrary to policy DM5 of the adopted Joint Development Management Policies Document.

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NNGF2XPDHW100>

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Proposed Site Plan 1-200@A2

DCNicholls architectural design services E-mail: daniel@dcn-design.com Website: dcn-design.com			
TITLE Proposed Site Plan	DWG NO. 245-PA-02	DATE. 23-6-15	SCALE 1-200@A2
ADDRESS Phillips Farm. Breach Drove. Wilde Street. Beck Row			

Forest Heath District Council

**DEVELOPMENT
CONTROL COMMITTEE**

5 AUGUST 2015

DEV/FH/15/030

Report of the Head of Planning and Growth

**RESERVED MATTERS APPLICATION DC/15/0324/RM – LAND TO THE REAR OF
12 HIGH STREET AND TO THE NORTH OF DUMPLING BRIDGE LANE,
LAKENHEATH**

Synopsis:

Application under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and associated matters.

Recommendation:

It is recommended that the Committee determine the attached application and associated matters.

CONTACT OFFICER

Case Officer: Sarah Drane
Telephone: 01638 719432

Committee Report

Date 17.2.2015 **Expiry Date:** 19.5.2015
Registered: (extended to 10.8.15)

Case Officer: Sarah Drane **Recommendation:** Approve

Parish: Lakenheath **Ward:** Lakenheath

Proposal: Reserved Matters Application DC/15/0324/RM - Submission of details under outline planning permission F/2010/0337/OUT - The means of appearance, landscaping, layout and scale for 13 residential units including 4 affordable units

Site: Land to the Rear of 12 High Street and to the North of Dumpling Bridge Lane, Lakenheath

Applicant: Tesco Stores Ltd

Background:

This application is referred to the Development Control Committee because it is a major application and the Parish Council object. The application is recommended for approval.

Proposal:

1. Planning permission is sought for reserved matters details (appearance, landscaping, layout and scale) of a residential development of 13 dwellings (including 4 affordable) following the approval of outline permission on the site in February 2012. The outline permission only approved the access to the site.
2. The submitted details show 3 two bed dwellings, 2 three bed dwellings and 4 four bed dwellings. The affordable housing include 3 two bed dwellings and 1 one bed dwelling. The 4 bed dwellings have parking for 3 cars, all other dwellings have parking for 2 cars (except the 1 bed unit which has 1 space). Four visitor parking spaces are also shown. All plots have a carport (except the 1 bed unit), cycle and bin store provision.
3. The application has been amended since submission to change the layout and design of the dwellings. Concerns had been raised about the close proximity of protected/retained trees on the site to some of the plots, the design – particularly of plots 1-6 and the visual prominence of car parking.

4. Plot 1 now provides a better visual feature at the site entrance. Plots 2-7 now provide a better proportioned and designed terrace with parking court to the rear and plot 9 has been repositioned further away from the trees to the south. Plots 10-13 remain unchanged.

Application Supporting Material:

5. Information submitted with the application as follows:
 - Site location plan
 - Proposed plans
 - Landscape masterplan
 - Affordable Housing Statement
 - Conservation Area Impact Assessment
 - Updated phase 1 contamination assessment
 - Tree Schedule, survey and tree protection plan

Site Details:

6. The site is situated close to the village centre, abutting the northern side of Dumpling Bridge Lane. To the west is the cut off channel with open countryside beyond. Residential development surrounds the site to the north and east. To the south of the site is the existing Matthews Nursery site where the Tesco store is proposed.
7. There is an existing bungalow on the site which is empty as well as some associated outbuildings. There is an existing vehicular access which serves the bungalow off High Street.
8. There are 4 trees protected by a tree preservation order either within or close to the edge of the site. On the western side within the site is a large Willow tree. To the south just outside the site there are 2 Ash trees. To the east of the site within the garden of 2 Dumpling Bridge Lane there is a Tree of Heaven, all of which are to be retained.
9. The Conservation Area boundary runs along the northern side of Dumpling Bridge Lane. The southern boundary of the site runs along the southern edge of Dumpling Bridge Lane, so there is small part of the site that is within the Conservation Area.

Planning History:

10. **F/2010/0337/OUT** - Outline Application:- Erection of 13 residential units including 4 affordable units and associated servicing and access (Demolition of existing dwelling and associated outbuildings) (Major Development) - approved

Consultations:

11. Highway Authority: No objection subject to conditions

SCC Archaeological Service: No objection subject to conditions

Historic England: Request the application be determined in accordance with local and national planning policy

EA: No objection subject to conditions

Environmental Health: No objection subject to conditions

Conservation Officer: No objection

Anglian Water: No comment

Representations:

12. Parish Council: Object, raising the following concerns:

- Houses should only be built after the retail store is provided.
- Concern that the retail site will revert to residential use.
- The layout has been amended and the gardens shortened to rearrange the parking facilities.
- The buildings in question are still of poor visual quality. A basic box approach has been taken.
- The density and layout of the proposed dwellings is out of character and certainly does not reinforce local distinctiveness of the area (contrary to CS3, CS5 and DM22).
- They should be asked to provide a more sympathetic building with local references as it borders the conservation area and comes off a historic High Street.
- They should not sit so close to the pavement bearing in mind that ultimately this will be a major route to the new retail store for both foot and vehicular access.
- Use of flint should be encouraged - not been included in this design.
- A good quality gault brick, which is also prevalent in close proximity, would be more appropriate for this development rather than the Marshalls Priory red multi wirecut smooth or similar proposed.
- The developer should especially consider a more varied roof form. In its current proposal it will detract from the Conservation area it abuts and the historic area of Dumpling Bridge.
- More appropriate still would be pantiles also prevalent in the older part of the village rather than the eternity Rivendale slate black / blue now proposed.
- The new building layout is still too close to the new road leading to the retail element which could eventually create a lack of privacy to the occupiers. If the houses were set further back, ie half way down the plots this would solve the problem of being too close to the road and front gardens used for parking. This would mean the communal car park would be unnecessary. According to Lakenheath's PCSO, this would prevent potential neighbourhood disputes and crimes or damage from vehicles.
- The current proposal would lead to unacceptable levels of noise and disturbance and would therefore be detrimental to the amenity of neighbouring occupiers.

- Setting the homes further back will also safeguard the character of the area and to help assimilate the development into its surroundings.
- The Planning Sub-Committee still do not believe that the rear car park will be sufficiently used, cars will park on the pavement outside the dwellings causing a nuisance and danger to residents and the wider public.
- No mention of low and zero carbon energy generation against suggestion of DM8 or Improving Energy efficiency and reducing Carbon Dioxide emissions suggested by DM7. This would reduce energy and water use and associated carbon emissions.
- It should also include adapting the new development to the effects of climate change. In addition to reduce resource consumption and promote the use of sustainable, locally sourced materials.
- An assurance should be obtained from the developer to consider installation of solar energy or ground source heating to ensure a 'Greener Estate' in accordance with the provision of CS3.
- When does the mix of affordable homes with those privately owned work. Affordable homes should be kept together in one part of the development only.
- In accordance with DM45, before any building is allowed on this site, the roundabout on the original plans should be installed as traffic is increasing all the time and this entrance is close to a bend in the High Street.

Policy:

The following policies of the Joint Development Management Policies Document 2015 and the Forest Heath Core Strategy 2010 have been taken into account in the consideration of this application:

13.Saved Forest Heath Local Plan 1995 policy:

- 4.10 – Residential Allocation

14.Joint Development Management Policies Document:

- DM2 – Creating Places
- DM7 – Sustainable design and construction
- DM17 – Conservation Areas
- DM22 – Residential Design
- DM46 – Parking Standards

15.Forest Heath Core Strategy 2010

- CS1 – Spatial Strategy
- CS3 – Landscape Character and the Historic Environment
- CS5 – Design Quality and Local Distinctiveness
- CS9 – Affordable Housing Provision

Other Planning Policy:

16. National Planning Policy Framework (2012):

- core principles
- Section 6 – Delivering a wide choice of quality homes
- Section 7 – Requiring good design

- Section 12 – Conserving and enhancing the historic environment

Officer Comment:

17. The issues to be considered in the determination of the application are:

- Principle of Development
- Impact on the Conservation Area
- Design, layout and scale
- Highways considerations

Principle of Development

18. This site is allocated for residential development within the saved Local Plan 1995 (policy 4.10). The site falls within the settlement boundary of Lakenheath and is surrounded by existing residential development. The principle of residential development on the site is established through the grant of outline planning permission. This application can therefore only consider matters of detail. It is these that will be assessed in detail below.

Impact on the Conservation Area

19. The majority of the site is located outside but adjacent to the Conservation Area. The Conservation Officer concludes that the proposals, due to the location, are unlikely to have a significant impact on the Conservation Area.

Design, layout and scale

20. The layout of the site is not dissimilar to the indicative layout shown at the outline stage. The layout proposed relates well to adjoining residential properties and does not present any overlooking issues. The amended layout shows parking to the rear of plots 2-6 and 8. This provides a significantly enhanced street scene which is no longer dominated by parking. Whilst this does reduce the rear garden sizes, most of these properties still have rear gardens of at least 10m in depth (with the exception of plot 7 which is wider and ranges in depth from 5.5m – 9m which is still considered acceptable for a 3 bed dwelling). The parking area shown is also not hard up to the boundaries, so an appropriate landscaping scheme can mitigate any potential impact of general noise / disturbance likely to be associated with such an area.

21. The layout of plot 9 now results in a larger garden no longer dominated by the trees to the south of the site. The amended design of some of the plots, particularly the terrace provides a much improved street scene; better proportioned houses with varied roof heights, of a scale which is in keeping with what surrounds the site. Materials are to be agreed as a condition of the outline permission which will ensure the development relates appropriately to what surrounds the site.

Highways Considerations

22. The access to the site is a matter which was approved at the outline stage. The Highways Authority has raised no objections to the amended site layout and an acceptable level of car parking is provided for each plot as well as 4 visitor parking spaces. The concerns of the Parish Council are noted but this application cannot consider the merits of a roundabout at

the junction as this is not what is proposed. The junction arrangement was approved at the outline stage and was considered at the time by the Highways Authority to be the most appropriate way of controlling traffic in and out of the site. This is not a matter which can be considered under this reserved matters application.

Other matters

23. The affordable housing which forms part of this scheme delivers the 30% required under Core Strategy policy CS9. This was secured by a s106 at the outline stage, so no further agreements are necessary.

Conclusion:

24. In conclusion, whilst the concerns of the Parish Council have been carefully considered, the issues raised are not matters which could change the recommendation to refusal. The principle of development is established and it is only the matters of detail which can now be considered. It is Officer's opinion that the principle and detail of the development is considered to be acceptable and in compliance with relevant development plan policies and the National Planning Policy Framework.

Recommendation:

25. It is recommended that planning permission be **APPROVED** subject to the following conditions:
1. Time limit
 2. Compliance with approved plans
 3. Access completed (AL1)
 4. Provision of bin storage as shown
 5. Means to prevent discharge of surface water (D2)
 6. Details of estate roads (ER1)
 7. Construction of roads to at least base course level (ER2)
 8. New junction created prior to any other work (ER3)
 9. Parking and turning provided as shown (P1)
 10. Visibility (V3)

All other relevant and necessary conditions are covered by the outline permission F/2010/0337/OUT.

Documents:

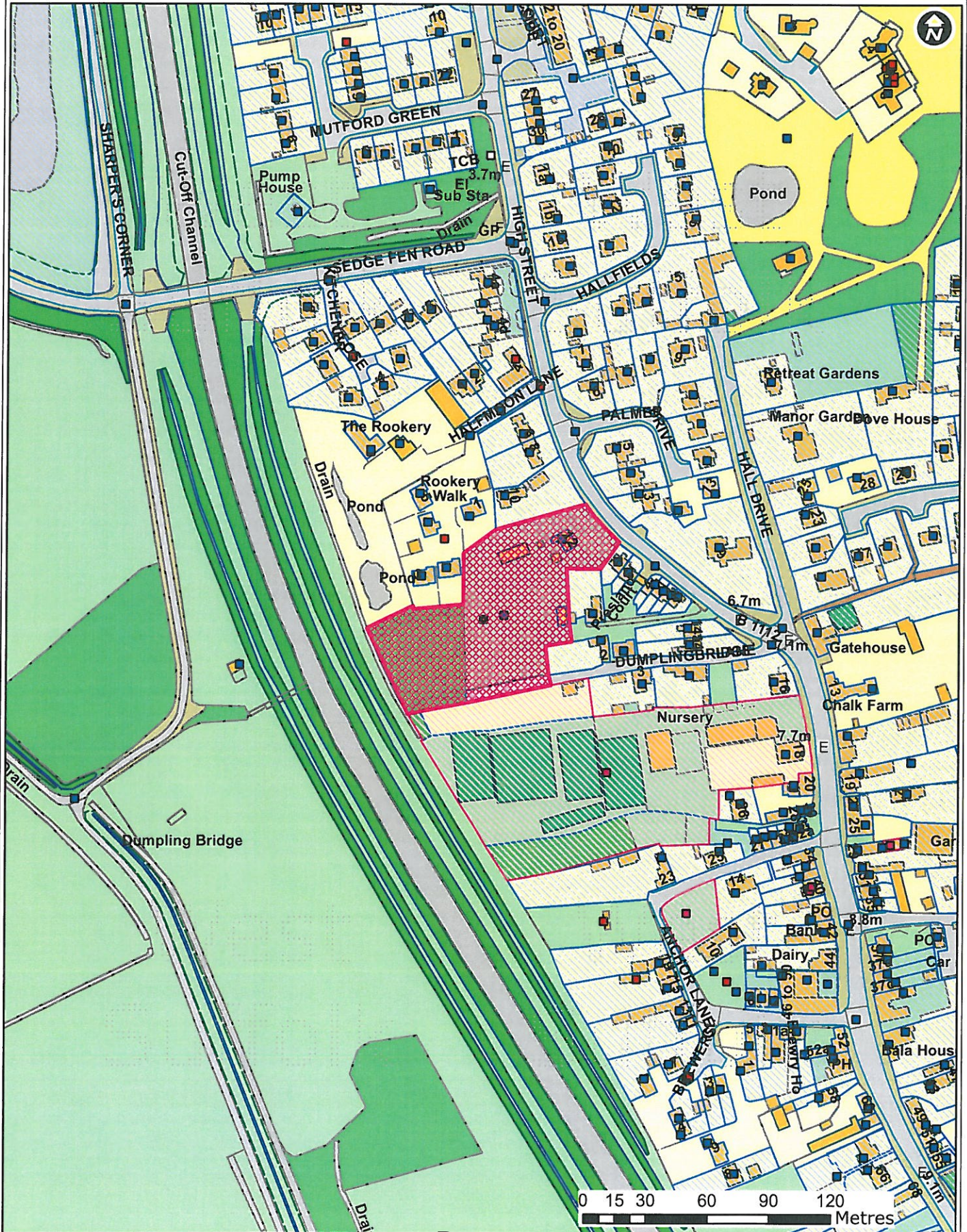
All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NJWWBWPDG OH00>

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DC.15.0324.RM

Location Plan



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EXISTING SEWER & EASEMENT
CORRIDOR RETAINED AS
PROVIDED BY ENGINEER

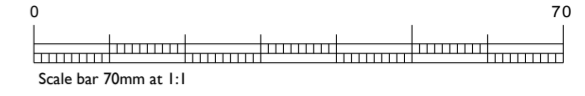
ROAD LAYOUT, JUNCTIONS &
TURNING HEAD AS PROVIDED BY
HIGHWAY ENGINEER

EXISTING TREE
REMOVED

SITE ACCESS PROVIDED BY
HIGHWAY ENGINEER

NOTES

This drawing to be read in accordance with the specification/Bills of
Quantities and related drawings.
No Dimensions to be scaled from this drawing. All stated dimensions
to be verified on site and the Architect notified of any discrepancies.



GENERAL NOTES

- LAYOUT SUBJECT TO ENGINEERS LEVEL STRATEGY TO ACHIEVE FINISHED FLOOR & ROAD LEVELS
- LAYOUT SUBJECT TO ADVICE & DETAIL FROM LANDSCAPE ARCHITECT RELATING TO EXISTING & PROPOSED LANDSCAPING
- LAYOUT SUBJECT TO HIGHWAY ENGINEERS ADVICE, TRACKING & JUNCTION DESIGN

KEY:

- CYCLE STORE FOR TWO BICYCLES
- BIN STORE (SUBJECT TO CONFIRMATION FROM LPA & DESIGN TEAM)
- PROPOSED TREES
- EXISTING TREES WITH ROOT PROTECTION AREAS

ACCOMMODATION SCHEDULE

PRIVATE HOUSETYPES

- HT A - 1 no. 2 BED w/ 2 CAR SPACES
- HT C - 1 no. 3 BED w/ 2 CAR SPACES (Inc. CAR PORT)
- HT E - 4 no. 4 BED w/ 3 CAR SPACES (Inc. CAR PORT)
- HT F - 3 no. 3 BED w/ 2 CAR SPACES (Inc. CAR PORT TO PLOTS 7 & 9)

AFFORDABLE HOUSETYPES

- HT B - 3 no. 2 BED w/ 2 CAR SPACES
- HT D - 1 no. 1 BED w/ 1 CAR SPACE

REV.	DATE	NOTE	ACD	IN
A	23.06.15	UPDATED TO SUIT LOCAL PLANNING AND HIGHWAY AUTHORITIES ADVICE & REQUIREMENTS	ACD	

Project

**MATTHEWS NURSERY
DUMPLING BRIDGE LANE
LAKENHEATH**

Title

**PROPOSED RESIDENTIAL
SITE PLAN**

Scale
1:500 @A2

Date
JAN 15

Drawn
ACD

Checked
GMW

Drawing Number
7366_P002

Revision
A

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SAUNDERS



EXISTING TREES RETAINED & BUILDINGS
SITED OUTSIDE RELEVANT RPA ZONES AS
PROVIDED BY LANDSCAPE ARCHITECTS

ACCESS TO PROPOSED FOOD STORE
SITE RETAINED AS PER CURRENT
PLANNING APPROVED LAYOUT

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Forest Heath District Council

**DEVELOPMENT
CONTROL COMMITTEE**

5 AUGUST 2015

DEV/FH/15/031

Report of the Head of Planning and Growth

**PLANNING APPLICATION DC/15/0530/VAR – TESCO RETAIL DEVELOPMENT,
DUMPLING BRIDGE LANE, LAKENHEATH**

Synopsis:

Application under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and associated matters.

Recommendation:

It is recommended that the Committee determine the attached application and associated matters.

CONTACT OFFICER

Case Officer: Sarah Drane
Telephone: 01638 719432

Committee Report

Date	11.3.2015	Expiry Date:	10.06.2015
Registered:			(extended to 10.8.2015)
Case Officer:	Sarah Drane	Recommendation:	Approve
Parish:	Lakenheath	Ward:	Lakenheath

Proposal: Planning Application DC/15/0530/VAR - Erection of Class A1 retail store, associated access, car parking, landscaping and boundary treatment. Refurbishment of Matthew's Nursery shop including change of use to A1, A2 or A3 and creation of hard landscaped area between shop and High Street (demolition of 12 High Street, glasshouses and associated structures). (Major Development) (Departure from the Development Plan) without compliance with conditions 2, 6 and 7 of F/2010/0338/FUL to enable commencement of works prior to discharging conditions

Site: Tesco Retail Development, Dumpling Bridge Lane, Lakenheath

Applicant: Tesco Stores Ltd

Background:

This application is referred to the Development Control Committee because as it is a major application and the Parish Council object. The application is recommended for approval.

Proposal:

1. Planning permission is sought to vary conditions 6 (submission of hard landscaping details) and 7 (implementation of hard and soft landscaping) of permission F/2010/0338/FUL to enable the planning permission to be implemented to keep the permission live.
2. Condition 6 is currently worded to require the submission of hard landscaping details within 2 months of commencement of development. The request is to vary this condition and require these details prior to the commencement of the construction of the store building.
3. Condition 7 is currently worded to require the approved soft landscaping details to be implemented during the first planting season following approval of the details. The request is to vary this condition and require implementation of the approved soft landscaping during the first planting

season following commencement of construction of the store.

Application Supporting Material:

4. Information submitted with the application as follows:
 - Supporting letter

Site Details:

5. The site is situated within the settlement boundary of Lakenheath which is classified as a key service centre under Core Strategy Policy CS1. The majority of the site (excluding the access) is within the Conservation Area (the boundary of which is defined by Dumpling Bridge Lane). There are two TPO trees (both Ash trees) on the site on Dumpling Bridge Lane, both of which are shown to be retained.
6. The cut off channel runs along the western boundary of the site, but the entire site falls within flood zone 1. There is a gradual slope down from east to west. To the south of the site are dwellings accessed off Anchor Lane. To the east are residential and commercial properties on High Street. To the east of the site on the opposite side of the High Street is Chalk Farm which is a Grade II listed building. The dwellings on the southern side of Dumpling Bridge Lane are noted as Buildings of Local Importance in the adopted Conservation Area appraisal.
7. Land adjacent to the north is where the residential development is proposed (approved under F/2010/0337/OUT) and the reserved matters application (DC/15/0324/RM) is currently under consideration. To the rear of the Matthews Nursery building are a number of derelict greenhouses and storage buildings, all of which are to be demolished. The rear extension to the Matthews Nursery building is also proposed to be removed and the existing building made good, with the option of uses within classes A1, A2 or A3.

Planning History:

8. **F/2010/0338/FUL** - Erection of Class A1 retail store, associated access, car parking, landscaping and boundary treatment. Refurbishment of Matthew's Nursery shop including change of use to A1, A2 or A3 and creation of hard landscaped area between shop and High Street (demolition of 12 High Street, glasshouses and associated structures). (Major Development) (Departure from the Development Plan) - approved

F/2010/0340/CAC - Demolition of glasshouses and associated structures - approved

Consultations:

9. Highway Authority: No objection

EA: No comment

Environmental Health: No objection

Historic England: Request the application be determined in accordance with Local and National Policy

Representations:

10. Parish Council: Object, raising the following concerns:

- For sale signs are up for the commercial and residential parts of the site – Tesco clearly have no plans to build in Lakenheath.
- Changing the timings for delivery of hard and soft landscaping of the site will mean anyone who purchases the site will have the benefit of an extant permission without the need for doing any further development.
- The site will remain an eyesore – resulting in a similar situation in relation to Lakenheath Hall.
- Whilst conditions are in place there is hope that the site will be tidied and the village will get a badly needed store.

11. Two objections have also been received from local residents raising the same concerns as the parish council.

Policy:

The following policies of the Joint Development Management Policies Document and the Forest Heath Core Strategy 2010 have been taken into account in the consideration of this application:

12. Joint Development Management Policies Document 2015:

- DM2 – Creating places
- DM7 – Sustainable design and construction
- DM17 – Conservation Areas
- DM35 – Proposals for main town centre uses
- DM37 – Public realm improvements

13. Forest Heath Core Strategy 2010

- CS1 – Spatial Strategy
- CS3 – Landscape Character and the Historic Environment
- CS5 – Design Quality and Local Distinctiveness
- CS11 – Retail and Town Centre Strategy
- CS13 – Infrastructure and Developer Contributions

Other Planning Policy:

14. National Planning Policy Framework (2012)

- core principles

- Section 1 – Building a strong competitive economy
- Section 2 – Ensuring the vitality of town centres
- Section 7 – Requiring good design
- Section 12 – Conserving and enhancing the historic environment

Officer Comment:

15. The issues to be considered in the determination of the application are:

- Principle of Development
- Appropriateness of varying the conditions
- Other matters

Principle of Development

16. The principle of development is well established and granted under F/2010/0338/FUL, approved by Members at committee on 22nd December 2010. Planning permission was issued on 23rd February 2012 following the signing of the S106 agreement. In order to keep this permission alive, development had to be commenced before 23rd February 2015. A number of pre-commencement conditions were attached to the permission and a series of Discharge of condition applications were submitted and approved to deal with these. A small area of the main access to the site off High Street was installed on 16.2.2015, so works have lawfully commenced in time, in accordance with the 2010 permission.

Appropriateness of varying the conditions

17. Condition 6 is currently worded to require the submission of hard landscaping details within 2 months of commencement of development. The request is to vary this condition and require these details prior to the commencement of the construction of the store building. No hard landscaping details were required to implement the permission, so the request to require these details prior to the construction of the store building is considered acceptable.

18. Condition 7 is currently worded to require the approved soft landscaping details to be implemented during the first planting season following approval of the details. The request is to vary this condition and require implementation of the approved soft landscaping during the first planting season following commencement of construction of the store. The landscaping details have been agreed under a discharge of condition application, but it will not be possible to implement them during the first planting season following approval. The request to vary this condition requiring implementation in the first planting season following commencement of construction of the store building is considered acceptable.

19. By implementing the permission and allowing the variation of these conditions, it will hopefully enable the site to be sold more easily as any purchaser would not need to go through the planning process again (unless they wanted to design an alternative scheme) as an extant permission is in place. There are clearly economic benefits in enabling this to happen.

Other matters:

20. The Parish Council's concerns are noted. The visual state of the site can be monitored and if necessary Enforcement action can be taken (serving of a s215 notice – untidy land). The other concerns raised would not justify reasons to refuse this variation of condition application.
21. As this is a variation of the original planning permission and the approval of this variation effectively gives a new planning permission for the site, it is necessary to re-impose relevant conditions from the original permission – as set out in the recommendation below.

Conclusion:

22. In conclusion, the principle and detail of the variation is considered to be acceptable and in compliance with relevant development plan policies and the National Planning Policy Framework.

Recommendation:

23. It is recommended that planning permission be **APPROVED** subject to the following conditions:
1. Time limit
 2. Compliance with approved plans
 3. Details of materials as agreed (under DCON(1)/10/0338)
 4. Details of existing, proposed and finished floor levels across the site as agreed (under DCON(1)/10/0338)
 5. Details of hard landscaping to be submitted and agreed
 6. Soft landscaping, including schedule of all plants to be planted and retained, as agreed (under DCON(1)/10/0338)
 7. Details of boundary treatment as agreed (under DCON(1)/10/0338)
 8. Tree retention and protection during construction as set out in Townscape Assessment
 9. Archaeological investigation & recording
 10. Details of fire hydrant provision to be agreed
 11. Comparison goods not to exceed 127sq m of floor space
 12. Restrict opening hours to 06.00-23.00 Mondays to Saturdays and 09.00-17.00 Sundays (subject to comments from Environmental Services)
 13. Restrict delivery times; 07.00 – 20.30 Mon – Fri, 08.00 – 19.30 Saturdays and 09.00 – 14.00 on Sundays and bank holidays (subject to comments from Environmental Services)
 14. Restrict loading and unloading times; 07.00 – 20.30 Mon – Fri, 08.00 – 19.30 Saturdays and 09.00 – 14.00 on Sundays and bank holidays
 15. Restrict movement of wheeled cages outside the store; 07.00 – 22.00 Mon – Fri, 08.00 – 21.00 Saturdays and 09.00 – 16.00 on Sundays and bank holidays
 16. Details of acoustic fencing to be submitted and agreed
 17. Restrict construction times to 8am – 6pm Mon – Fri and 9am-1.30pm on Saturdays only

18. Hours of use of the new occupier of the existing Matthews Nursery Building (A1, 2 or 3) to be agreed in writing
19. Construction management plan as agreed, and implemented, to control/mitigate against dust and noise during the construction process. (under DCON(1)/10/0338)
20. AL4 – access laid out and completed
21. V3 – visibility splays provided
22. GTP1 – travel plan to be agreed
23. P1 – parking and manoeuvring provided
24. Scheme for surface water drainage as agreed (under DCON(3)/10/0338)
25. Contamination investigation and remediation as agreed (under DCON(4)/10/0338)
26. Verification report demonstrating completion of works set out in remediation strategy
27. Contamination found during development and remediation
28. Piling or other penetrative methods for foundations not permitted unless agreed
29. Scheme of pollution control to the water environment including foul water drainage as agreed (under DCON(3)/10/0338)
30. Landscape management plan as agreed (under DCON(1)/10/0338)
31. The development shall secure a minimum of 10% of its energy from decentralised and renewable or low carbon sources, as agreed (under DCON(5)/10/0338)
32. Details of all external lighting, including within the car parks, to be submitted and agreed prior to first use of the store.
33. Details of the method to be used to prevent trolleys being taken out of the car park shall be submitted to, and agreed in writing
34. Details of the number, design and location of refuse storage bins and trolley parking bays to be provided within the car park shall be submitted to and agreed in writing
35. Details of the refuse storage provision to be made within the service yard shall be submitted to and agreed in writing cycle provision to be provided and retained as shown
36. No barriers or gates preventing vehicular access to the car park to be installed at any time

Documents:

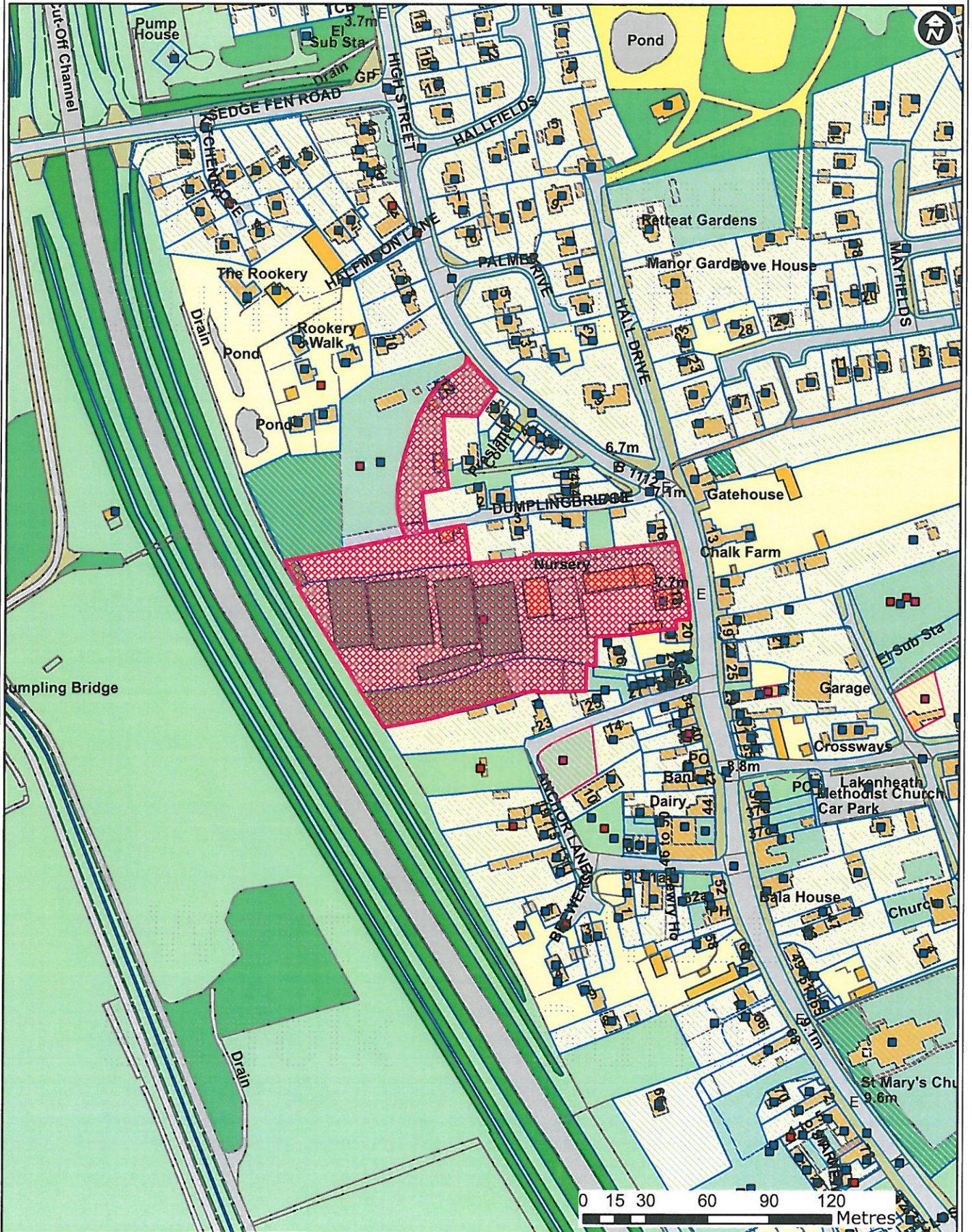
All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NL1GIAPDH3P00>

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DC.15.0530.VAR

Location Plan



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NOTES

This drawing to be read in accordance with the specification/Bills of Quantities and related drawings.

No Dimensions to be scaled from this drawing. All stated dimensions to be verified on site and the Architect notified of any discrepancies.

Scale bar 100mm at 1:1



LOCATION PLAN (SCALE 1:2500)

NOTES

- Landscaping is indicative only and to be agreed by Landscape Architect. Refer to latest Landscape Architects drawings for accurate detailed Landscape scheme
- Highways arrangement shown on our drawings is indicative only. Latest highways design and detailed highways design is subject to agreement between Highways Authority and Highways Consultant
- Existing levels have been taken from Ordnance Survey and Topographical Survey information by others
- Proposed levels to be confirmed by Structural and Civil Engineer and to be agreed with client. Proposed levels subject to change following any remediation work carried out to the site after our drawings have been issued in which instance we advise a revised Topographical Survey is carried out.

KEY:

- PROPOSED TREE'S
- EXISTING TREE
- TPO ZONE
- PROPOSED BANKING
- EXISTING SEWER LINE

REV.	DATE	NOTE	IN
F	23.07.10	ADJACENT PARKING SHOWN (NO.27 TO 33), HIGH STREET CUSTOMER RAMP GRADIENT AMENDED	JKS
E	28.05.10	ADDITIONAL CAR PARK LANDSCAPE PROPOSED	JKS
D	22.04.10	RESIDENTIAL LAYOUT REVISED	JKS
C	11.02.10	LAYOUT REVISED TO AVOID THE EXISTING FOUL SEWER	JKS
B	28.01.10	RESIDENTIAL LAYOUT REVISED	JKS
A	16.12.09	TPO TREE REMOVED AND BOUNDARY ADJUSTED TO DUMPLINGBRIDGE LANE PROPERTIES, PARKING ADJUSTED TO SUIT.	TM

Project

**MATTHEWS NURSERY
DUMPLING BRIDGE LANE
LAKENHEATH**

Title

**PROPOSED TESCO STORE
SITE PLAN**

Scale 1:500 @A1 Date OCT '09

Drawn JKS Checked -

Drawing Number 6516 - P02 Revision F

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Development Control Committee



Forest Heath
District Council

Title of Report:	Overview and Update of Planning Enforcement Services
Report No:	DEV/FH/15/032
Report to and date/s:	Development Control Committee – 5 August 2015
Portfolio holder:	Councillor James Waters Portfolio Holder for Planning and Growth Tel: Email: james.waters@forest-heath.gov.uk
Lead officer:	Andrew Smith Principal Enforcement Officer Tel: 01638 719734 Email: andrew.m.smith@westsuffolk.gov.uk
Purpose of report:	To note existing caseloads and receive an update on enforcement work moving forward
Recommendation:	It is recommended that Members note the following: (1) Caseload and Performance update; and (2) Enforcement Priorities and Work Programme
Key Decision:	<i>Is this a Key Decision and, if so, under which definition?</i> Yes, it is a Key Decision - <input type="checkbox"/> No, it is not a Key Decision - <input checked="" type="checkbox"/>
Consultation:	<ul style="list-style-type: none"> None required for this report
Alternative option(s):	<ul style="list-style-type: none"> N/A
Implications:	
Are there any financial implications? If yes, please give details	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Are there any staffing implications? If yes, please give details	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

Are there any ICT implications? If yes, please give details		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Are there any legal and/or policy implications? If yes, please give details		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Are there any equality implications? If yes, please give details		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Risk/opportunity assessment:		<i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>	
Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
Report for noting only		Report for noting only	
Ward(s) affected:		All Wards	
Background papers: <i>(all background papers are to be published on the website and a link included)</i>		None	
Documents attached:		None	

1. Key issues and reasons for recommendation(s)

1.1 Background

1.1.1 The purpose of this report is to give Members an update on Planning Enforcement including caseloads, performance, and how the function will develop in the future. Members may be aware that up until March 2015 enforcement was outsourced to LSR Solicitors, and has been since the summer of 2014 as a result of staffing issues.

1.1.2 Since that time an Enforcement Team has been recruited, which now consists of 3 Enforcement Officers and one Officer providing administrative support. The team is also supported by one Principal Planner from the Development Management Team. During March 2015, the enforcement caseload was returned in-house. That caseload, along with a longer standing backlog of more historic cases is now being worked through in conjunction with any new cases as they are raised. 4 cases have been retained by LSR for continuity purposes due to their complexity.

1.2 Caseload and Performance

1.2.1 The following statistics for Forest Heath give an indication of the workflow generated and closed.

- During the 13 months ending 30/06/15, 153 new cases were opened (West Suffolk total 363).
- In the same period 153 cases were investigated and closed (West Suffolk total 353).
- As of 02/07/15 there were 92 Forest Heath cases outstanding (West Suffolk total 318).
- In the 13 months ending 30/06/2015, 21 notices have been served.

1.2.2 There are currently 2 appeals outstanding with the Planning Inspectorate pending determination. (4 across West Suffolk) There are approximately 10 cases in West Suffolk where formal action is being considered as notices have not been complied with.

2. Enforcement Priorities and work programme.

2.1 Local Enforcement Plan

2.1.1 On publication of the National Planning Policy Framework (NPPF), the key enforcement guidance PPG18 was deleted. The NPPF does however give Local Planning Authorities (LPAs) the opportunity to produce a Local Enforcement Plan (LEP). This is a chance to make a statement as to what work we will do, how we will do it, and to begin to consider enforcement as a proactive, rather than a reactive service. Weight can be given to those matters that we will prioritise. The government is promoting this approach by opening up additional funding to those Authorities who have a LEP in place.

- 2.1.2 In relation to the Local Enforcement Plan, the Enforcement Team has been working with Corporate Officers with a view to consulting Members and Parish/Town Councils on what matters they consider locally important and what to prioritise, so that what is produced is representative of the communities in West Suffolk. The consultation should take place over the next few weeks and a plan put in place shortly after.
- 2.2 Compliance of outstanding notices.
 - 2.2.1 As indicated above, there are 10 ongoing cases where compliance with notices is outstanding. In these instances there are two options available to the Council. Firstly prosecution and secondly works in default-ie the Council entering the land and carrying out remedial works themselves. This is known as Direct Action.
 - 2.2.2 Prosecution has been the general route Councils have historically chosen, however this is costly and the Courts cannot order the remedial work to be done. Whilst Direct Action is also expensive, costs can be pursued and it does get the job done. Similarly it presents a good deterrent effect.
 - 2.2.3 Apart from cost, the procurement process has always been a sticking point in taking this course of action. To address this, works are currently underway to establish a Procurement Framework so that in due course, taking Direct Action will be less onerous and a quicker process to pursue. It is planned to have a process in place by the end of the year.