

Development Control Committee



Forest Heath
District Council

Title:	Agenda												
Date:	Wednesday 2 September 2015												
Time:	6.00 pm												
Venue:	Council Chamber District Offices College Heath Road Mildenhall												
Full Members:	<p style="text-align: center;">Chairman Rona Burt</p> <p style="text-align: center;">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 Busuttil</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 Busuttil	Louise Marston	Stephen Edwards		Andrew Appleby	Simon Cole
David Bimson	Brian Harvey												
David Bowman	James Lay												
Ruth Bowman	Carol Lynch												
Louis Busuttil	Louise Marston												
Stephen Edwards													
Andrew Appleby	Simon Cole												
<p>A SITE VISIT WILL BE HELD ON <u>TUESDAY</u> 1 SEPTEMBER 2015 AT THE FOLLOWING TIME:</p> <p>1. Planning Application DC/15/0922/OUT – Land adjacent 1 St John’s Street, Beck Row Outline Planning Application (Means of Access to be considered) – Residential development of up to 60 dwellings with new vehicular access from St Johns Street Site visit to be held at 9.30 am</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 - 8**
To confirm the minutes of the meeting held on 5 August 2015 (copy attached).
- 4. Planning Application DC/14/1711/FUL - Small Fen Farm, Small Fen Lane, Brandon** **9 - 50**
Report No: **DEV/FH/15/033**

Temporary occupation of building as dwelling for a period of up to five years
- 5. Planning Application DC/15/0922/OUT - Land adjacent 1 St John's Street, Beck Row** **51 - 86**
Report No: **DEV/FH/15/034**

Outline Planning Application (Means of Access to be considered) – Residential development of up to 60 dwellings with new vehicular access from St. Johns Street
- 6. Planning Application DC/15/1515/TPO (Tree Preservation Order) - Rear of 33 Lamble Close, Beck Row** **87 - 94**
Report No: **DEV/FH/15/035**

TPO 048(1963)1 Tree Preservation Order: 1 no. Oak - Crown lift by 4m and remove ivy (197 on Order)

Development Control Committee



Forest Heath
District Council

Minutes of a meeting of the **Development Control Committee** held on **Wednesday 5 August 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	Brian Harvey
David Bimson	James Lay
David Bowman	Carol Lynch
Ruth Bowman	Louise Marston
Louis Busuttil	Peter Ridgwell
Stephen Edwards	David Palmer

66. **Apologies for Absence**

Apologies for absence were received from Councillor Simon Cole.

67. **Substitutes**

Councillor David Palmer attended the meeting as substitute for Councillor Simon Cole.

68. **Minutes**

The minutes of the meeting held on 1 July 2015 were accepted as an accurate record, with 13 voting for the motion and with 1 abstention, and were signed by the Chairman.

69. **Planning Application DC/14/1711/FUL - Small Fen Farm, Small Fen Lane, Brandon (Report No DEV/FH/15/027)**

The Chairman announced that this item had been withdrawn from the agenda.

70. **Prior Approval Application DC/15/1402/PMBPA - Belle Vue, Newmarket Road, Barton Mills (Report No DEV/FH/15/028)**

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.

This application was referred to the Development Control Committee due to the applicant being related to an elected Member. The application was recommended for approval as set out in Paragraph 51 of Report No DEV/FH/15/028.

In response to questions raised by Councillor Brian Harvey, the Planning Officer confirmed that the site was accessed via an established vehicular access off Church Lane and that no objections had been received from the Highway Authority. She confirmed that should the applicant wish to alter the access this would be subject to a further planning application.

Councillor Harvey also queried as to why Town/Parish Councils were not informed of Prior Approval Applications within the weekly notification issued by the Council. The Service Manager (Planning – Development) explained that it was not appropriate to debate this matter during consideration of a planning application at Committee and she would discuss it with the Member outside of the meeting.

Councillor Harvey then moved that the application be approved, as per the Officer recommendation, and this was duly seconded by Councillor Louis Busuttill and with the vote being unanimous, it was resolved that:

Prior approval be **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.

71. **Planning Application DC/15/0856/FUL - Philips Farm, Wilde Street, Beck Row (Report No DEV/FH/15/029)**

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).

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

A Member site visit had been held prior to the meeting. No objections had been received from the Parish Council or third parties, however, the application was recommended for refusal on the basis that the proposed replacement two-storey dwelling failed to respect the dwelling it sought to replace.

The Senior Planner confirmed that an alternative proposal for a 1 ½ storey dwelling had also been submitted and this had been approved following consideration by the Delegation Panel as it was considered more appropriate.

Following comments made by the Committee the Service Manager (Planning – Development) explained that should Members be minded to approve the application, contrary to the Officer recommendation, that conditions could be delegated to the Head of Planning and Growth, in consultation with the Chairman of the Development Control Committee.

Councillor David Bowman proposed that the application be approved, contrary to the Officer recommendation for refusal, and that appropriate conditions be delegated. This was duly seconded by Councillor James Lay and with the vote being unanimous, it was resolved that:

Planning permission be **GRANTED** subject to the inclusion of relevant conditions, as delegated to the Head of Planning and Growth, in consultation with the Chairman of the Development Control Committee.

Speaker: Ms Emma Eagle (applicant) spoke in support of the application.

72. **Reserved Matters Application DC/15/0324/RM - Land to the Rear of 12 High Street and to the North of Dumpling Bridge Lane, Lakenheath (Report No DEV/FH/15/030)**

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.

This application had been referred to the Development Control Committee because it was a major application which Lakenheath Parish Council objected to.

Officers were recommending that the application be approved as set out in Paragraph 25 of Report No DEV/FH/15/030.

Considerable discussion took place with regard to the relocation of the residential parking court to the rear of the properties. Both Councillor Ruth Bowman and Councillor Brian Harvey voiced concern that this would result in large numbers of vehicles being parked on the highway at the front of the properties which could cause access difficulties.

The Senior Planner explained that the scheme had been amended to relocate the parking to the rear in order to reduce the visual prominence of car parking on the site. The Service Manager (Planning – Development) explained that the Highways Authority had not raised objections, however, if this became an issue in the future then Traffic Regulation Orders could always be considered.

Councillor Stephen Edwards and Councillor David Bimson both made reference to the materials to be agreed as part of construction. Councillor Edwards requested that flint be included as this had been historically used in construction within Lakenheath village. Councillor Bimson also asked that the palette of the pantiles for the roofs be agreed in order to reflect the surrounding properties.

On the Senior Planner having agreed to liaise with the developer with regard to materials, Councillor David Bimson proposed that the application be approved as per the Officer recommendation and this was duly seconded by Councillor Carol Lynch and with 11 voting for the motion, 2 against and with 1 abstention, it was resolved that:

Planning permission be **GRANTED** 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)
 11. Materials (Officers to liaise with the developer to agree a suitable palette for the roofs and to include flint within the construction)
- All other relevant and necessary conditions are covered by the outline permission F/2010/0337/OUT.

Speaker: Ms Louise Ford (agent) spoke in support of the application.

73. Planning Application DC/15/0530/VAR - Tesco Retail Development, Dumpling Bridge Lane, Lakenheath (Report No DEV/FH/15/031)

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.

This application had been referred to the Development Control Committee because it was a major application which Lakenheath Parish Council objected to.

Officers were recommending that the application be approved as set out in Paragraph 23 of Report No DEV/FH/15/031.

The Senior Planner advised the Committee that when Conservation Area consent was granted for the demolition of the glasshouses and associated structures on the site, two conditions were imposed on the consent. As that consent had now lapsed and the demolition was now covered by the current variation application, it was therefore necessary to re-impose those two conditions and they would be added to the list within Paragraph 23.

Furthermore, it was also necessary to vary the Section 106 agreement that was agreed previously, in order to reflect the current variation application.

Councillor Louise Marston made reference to the current condition of the site and asked if planning consent could in anyway be conditioned to ensure that the site was tidied up as a matter of urgency. The Service Manager (Planning – Development) explained that it could not be conditioned as part of the application but she made reference to Paragraph 20 of the report which explained that enforcement action could be taken by the Council, if deemed necessary.

In response to queries made with regard to the access to the site the Service Manager (Planning - Development) reminded Members that the access had

been approved by the Committee at the outline stage of the application and was not up for debate or re-determination.

Councillor David Bowman proposed that the application be approved, as per the Officer recommendation and with the additional conditions as identified, this was duly seconded by Councillor Peter Ridgwell and with 12 voting for the motion, 1 against and with 1 abstention, it was resolved that:

Planning permission be **GRANTED** subject to the variation of the Section 106 agreement and 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
- 37.Prior to the demolition of the extension attached to the existing Matthews Nursery building, details of how the rear elevation will be made good shall be submitted to and agreed in writing with the Local Planning Authority. All making good shall then be carried out in accordance with the agreed details prior to the building being brought into use
- 38.There shall be no grubbing out of foundations or significant grounds works associated with the demolition of above-ground structures.

Speaker: Ms Louise Ford (agent) spoke in support of the application.

74. Overview and Update of Planning Enforcement Services (Report No DEV/FH/15/032)

The Principal Enforcement Officer presented this report which set out existing caseloads and provided an update on the enforcement work of the Council moving forward.

The Committee was advised that in future all Councillors would receive monthly case lists emailed to them for information.

The Officer also advised that he was in the process of developing a local enforcement plan and Members would receive a survey in the near future to complete in order to inform this piece of work.

The Committee welcomed the report and it was proposed, seconded and with the vote being unanimous, it was

RESOLVED:

That the caseload and performance update, together with the enforcement priorities and work programme, be noted.

The meeting concluded at 6.57 pm

Signed by:

Chairman

Forest Heath District Council

**DEVELOPMENT
CONTROL COMMITTEE**

2 SEPTEMBER 2015

DEV/FH/15/033

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 Officer: Dave Beighton **Recommendation:** Refuse

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.

Members will note that this matter had been placed on the agenda for the August 2015 DC Committee meeting but was withdrawn from that agenda by Officers in an effort to clarify the policy assessment in greater detail and also to properly explore some alleged factual inaccuracies.

The report has therefore been updated, amended and, where necessary, corrected.

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 on a technicality, of an Enforcement Notice 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 its terms. 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 is 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 Notices. However, the appeal against this 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. Eleven letters have been received (including two from the same author, and including two received since the publication of the August DC Committee report) which, between them, raise the following points –

- The site has been abused in many ways. *Officer Note – this is not a material planning consideration.*
- It seems that the applicant has his own law – there were no plans submitted for the change to residential. *Officer Note – this is not a material planning consideration.*
- There were no plans submitted for any business use on the site. *Officer Note – this is not relevant for the purposes of this proposal.*
- 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. *Officer Note – this is not a material planning consideration.*
- 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. *Officer note – this is noted and will be considered further, but this point is not material to the consideration of this proposal.*
- 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. *Officer note – this is noted and will be considered further, but this point is not material to the consideration of this proposal.*
- 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 after the enforcement notice had been served but before the appeal decision was made, and 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. *Officer Note – this is not a material planning consideration.*
- The first letter reiterates the objection to the proposal and re-states comments previously reported.

- The second letter points out an ostensible discrepancy in the August Committee report in relation to the date of the sale of Mrs. Ellen Usher's house in Streatham. The letter claims this sale was May 2013, not July 2013 as had been reported.

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).
- 26. The content of the National Planning Practice Guidance (NPPG) is also relevant.

Officer Comment:

- 27. 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

- 28. 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.

- 29. 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.

30. The applicant has queried the actual level of harm, suggesting that since this is 'in principle' it justifies a further retention of this building. However, this ignores two important facts. Firstly, that this in principle harm has already continued for some considerable time and if confidence in the planning system is to be restored then action is needed at some stage. Secondly, and importantly, it also ignores the conclusion of the appeal Inspector, supporting the original and continued views of Officers, that the building is also visually obtrusive and uncharacteristic within this context.
31. It can be considered therefore that the wider planning policy position remains largely similar in scope to the situation when the appeal was dismissed, including the conclusion that dwelling as built is obtrusive and uncharacteristic in this particular countryside setting. This remains the position and therefore remains a matter which weighs substantially against the proposal.
32. 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".*
33. 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 currently exist.
34. As stated above, this application proposes the retention of the 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"*.

35. 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.
36. 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.
37. 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.
38. Brandon is considered a Town and therefore growth and allocations are being considered as part of the emerging Plan. However, 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.
39. 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 consultation on both documents, commencing early August 2015.
40. 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.
41. At this stage therefore, and noting the uncertainty on both outcomes and timescales, the emerging Plans carry 'very limited' to 'no weight' in the decision making process as they are still at such an early stage in the preparation stages. That said, it is important to point out that of the four

possible housing distribution options set out within the Single Issue Review consultation document, none of these propose more than 55 dwellings in total within Brandon, and none of these propose development on or around Small Fen Farm.

42. In the consultation documents the area surrounding Small Fen Farm (B12b and B17) have been most recently identified as being 'deferred' by the Authority meaning that the Authority does not presently consider them to be deliverable, achievable or suitable for development at this time. This approach is supported by Natural England. The surrounding land 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. It is for these reasons that the four housing distribution scenarios set out within the ongoing Single Issue Review consultation document only propose a maximum of 55 additional homes for Brandon, and none within the immediate setting or context of Small Fen Farm. This fact must be highly material to the consideration of this present application and must significantly diminish the weight that can be attached to the emerging policy position in relation to the assessment of this present proposal.
43. While assessing this application a developer-led planning application relating to land to the north of Small Fen Farm but not specifically including Small Fen Farm has been submitted to this Council for some 1,659 homes, of which 1,270 are proposed within Forest Heath's area. If this major planning application was to receive planning permission from this authority or on appeal then it would have the effect of overcoming the planning policy concerns in relation to the isolated nature of Small Fen Farm as the site would in effect be subsumed within an expanded settlement boundary for Brandon
44. However 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. However, it should be noted that 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 these environmental constraints for the wider scheme, the area includes a Scheduled Ancient monument (SAM), a Listed Building, and areas of Flood Zone.
45. Accordingly, 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.

46. In responding to the August DC Committee report on this point the applicants' agent has circulated a letter to all members dated 2nd August 2015, and further comment is hereby offered in response.
47. The applicant's agent has questioned the robustness of the planning policy advice, noting the recent submission of a planning application for housing to the north of Small Fen Farm which is under consideration. The applicants' agent suggests that the reason for the Enforcement action may vanish if the planning permission for this housing development is granted. However, for the reasons mentioned in the earlier paragraphs of this report Officers remain of the opinion that little weight can be attached to this major planning application for housing in the context of this application for a temporary permission.
48. The agent's letter also indicates that the land around this site is a 'suggested allocation' in the emerging Site Allocations policy document. This is not the case. The site has been 'deferred' by the Authority in the Strategic Housing Land Availability Assessment. It should also be pointed out, as the Site Allocations consultation document makes clear, that the 'Land West of Brandon' site is only included in the Site Allocations document as a 'potential' option simply because the potential for allocation on sites with undetermined applications should be considered through the preparation of the site allocations document. None of this changes the facts of this wider site, and the very real and significant constraints that exist, and which have led the Authority to 'defer' this site in the SHLAA and to also only propose a maximum of 50-55 additional dwellings for Brandon over the coming plan period in the forthcoming Single Issue review consultation document. Put simply, there is no indication whatsoever of when, or even if, this wider site will ever come forward for development. Noting the already extensive delays in relation to this enforcement matter, it is important that decisions are taken, at some stage, on the merits of the case as they exist at that particular time.

Conclusion on Policy Matters

49. 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. In fact, in all of the four possible distribution options that the Authority are proposing for Brandon, none of these propose more than 55 additional dwellings for the settlement, and none within the context of this site. These factors are considered wholly material, and a wholly more reasonable indicator of likely outcomes than the fact that a speculative application is presently before us on this wider site.

50. Therefore it is reasonable to suggest that even if these fundamental issues could be overcome (which is not considered a likely prospect at this stage in time) then this will not be until the Core Strategy Single Issue Review and the Site Allocations document is adopted in 2017. For the record, and noting the context set out above, Officers do not consider that there is a likelihood even then, of the planning policy position being favourable to this present application by 2017 in any event. 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.
51. With so many issues outstanding in respect of the large developer-led planning application Officers do not consider the submission of this wider speculative application is sufficient reason for allowing a temporary permission for this otherwise unsuitable development
52. 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

53. 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.
54. Paragraph 015 (Use of Planning Conditions) of the National Planning Practice Guidance states that *"unless the permission otherwise provides, planning permission runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where granting planning permission for development that would not normally be permitted on the site could be justified on planning grounds because of who would benefit from the permission."* Paragraph 015 also states that *'a condition used to grant planning permission solely on grounds 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'*
55. 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'*.

56. The personal circumstances which are promoted by the applicant as supporting their case relates to the health of Mrs. Ellen Usher, who is the mother of the applicant Mr. Usher, and the mother-in-law of the applicant Mrs. Usher. The degree of individual impact and hardship is based on a letter from Mrs. Ellen Usher's GP, plus a medical report and further supplemental update letter from her consultant.
57. Careful consideration of the provisions of this paragraph must be given at this stage. The tests set out above indicate that '*exceptional occasions*' is the relevant test for granting planning permission for something that would otherwise not obtain planning permission, solely on the basis of who would benefit from this situation. The test of '*scarcely ever be justified*' also set out with paragraph 015 is used in the guidance within the context of a proposal for the retention of a permanent building. This proposal is not for the retention of a permanent building. Rather it is for its further temporary retention for a period of up to five years. This guidance is therefore limited in its relevance to this matter, albeit it is acknowledged that the principle that where individual hardship might be caused is certainly capable of being a material consideration. Nonetheless, given the other test set out within paragraph 015, that limits approval of otherwise unacceptable developments to '*rarely*' and on the basis of who would benefit from such to '*exceptional occasions*', it is considered, firstly that this is the relevant and most applicable policy test in this context and, secondly, that it sets the bar at a high level in order to achieve approval.
58. 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.
59. 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.*"
60. Officers accept that these personal circumstances can be considered capable of being a material consideration and in theory are of sufficient weight to satisfy the '*exceptional occasions*' test set out in paragraph 015 of the NPPG. Officers also note, and weight accordingly, the fact that the 'harm' is largely an in principle harm, as noted by the inspector. That said,

the appeal Inspector also concluded that the dwelling as built is visually obtrusive and uncharacteristic within this context and this is factor which increases the urgency for remedial action. For these reasons Officers consider that a very careful consideration of this point must be made.

61. 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 technicality, 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.
62. Mrs. Ellen Usher also retained a property elsewhere (Streatham, Cambs) until early 2013. This is before 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. Officers have no details of the address of this property and are unable to verify this one way or another but a number of recent local representations indicate that this sale took place in May 2013, thereby before the enforcement notice appeal was dismissed in June 2013. Subsequent comments received from the agent confirm that the sale of this bungalow did take place before the appeal was decided, albeit the precise date is not offered. The balance of evidence and the confirmation of the agent leads Officers to favour that the Streatham bungalow was sold before the enforcement notice was upheld at appeal. This sale took place within the context of ongoing enforcement action and Officers are of the conclusion that the timing of the sale of the Streatham property is a material factor that limits the weight to be attached, in the balance of considerations, to any further proposal to retain this building.
63. 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 is, in the words of the NPPG, only ever done in '*exceptional occasions*' is plainly a moot point. Certainly Officers are of the view that this is factor which must inevitably diminish the weight that must be attached to this argument.
64. Plainly however, and on the other side of the argument, demolition will inevitably result in potential hardship for the occupants of the property,

and this must also be given appropriate weight albeit this weight must be considered more modest in this context given the conclusions of the preceding paragraphs.

65. 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.
66. Noting this it is important not to diminish the independent medical opinions reached by the GP and consultant, which are readily and reasonably 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.
67. 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'*.
68. 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.
69. 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 be given a reasonable amount of weight in support of this application.

70. However, the starting point must be one of recognising that the 'exceptional occasions' test is a high one to meet in order to justify the approval of planning permission for a development that would not normally be permitted on the site, noting further the harm identified in visual terms and in principle by the appeal Inspector.
71. 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.
72. 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 early 2013 (it is suggested May but this is unconfirmed, albeit it is accepted as being before the appeal decision was issued in June). 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. It was also within the context when there can have been no doubt amongst all parties that there was at the very least some prospect 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 Fen Farm.
73. Members will have seen a letter from the agent dated 2nd August. An earlier letter, dated 31st July, containing similar content, was set to Officers. Clarification within this letter on the date of Ellen Usher's diagnosis is helpful, but does not add to or detract from the conclusions made, which must be made based on the circumstances as they exist at this stage.
74. Noting, in any event, the degree of weight that Officers conclude above must be attached to the medical evidence, and further noting the guidance within the NPPG that indicates that the 'exceptional occasions' test is a high one to meet, Officers consider that the circumstances of the sale of Mrs. Usher Senior's former property must be taken to be a material factor here.
75. 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.

76. The agent refers in his letter to Members (dated 2nd August 2015, and sent in response to the publication of the August DC Committee report) to this letter sent by Officers to Mr. Usher in June 2011 relating to this matter. The quote he provides is accurate but must be considered in context. The advice given in June 2011 was on the conditional basis of evidence being subsequently provided which proved that the building was not substantially different to that which it had replaced. No such evidence was provided, and this matter was tested robustly through the public inquiry appeal against the Enforcement Notice, with the Inspector agreeing with the Authority on this point and concluding that the dwelling built here was materially different to the former building it had replaced. Accordingly, notwithstanding Officers conclusion as of July 2012 that enforcement action could not be pursued, further material evidence subsequently came to light that caused a reassessment of this and this was pointed out to the owner. Therefore, with the exception of a short period between July and November 2012 when the owner might reasonably have anticipated that there would not be any formal enforcement action, all other decisions were taken within the context of potential action being brought against the unauthorised dwelling.
77. 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 unauthorised 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

78. Refusal of this application would mean that the Enforcement Notice upheld at appeal would remain outstanding. The continued failure to comply with the Enforcement Notice 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.
79. 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.

80. 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.
81. In these circumstances Officers consider that direct action remains the most appropriate solution.
82. If this planning permission is approved then Members should note that the existing Enforcement Notice will be superseded by such an approval. At such time as any temporary consent expires then the dwelling would again become 'unauthorised' (as opposed to 'illegal' which it is at present) albeit, if compliance with the terms of any removal condition attached to that consent was not complied with, reliance could not then be placed on the present Enforcement Notice and a new Notice would need to be served. Whilst in theory it might be possible to serve a Breach of Condition Notice in this circumstance the fines for non compliance are more modest than they are for failing to comply with an Enforcement Notice and, crucially, there is no provision for direct action to be taken in default where a Breach of Condition Notice is not complied with. Accordingly, a further Enforcement Notice would need to be served, against which there would be a right of appeal. Members are reminded that it is important not to let this fact influence their decision in relation to this application, which must be considered on its merits based on the facts presently before us.

Conclusion:

83. 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.
84. 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.

85. 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 discussed above and Officers consider that this sets the bar at a very high level.

86. 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 move her into the property in October 2011.

87. 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.

88. 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.

89. 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.

90. The recommendation is therefore one of refusal.

Recommendation:

91. 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:

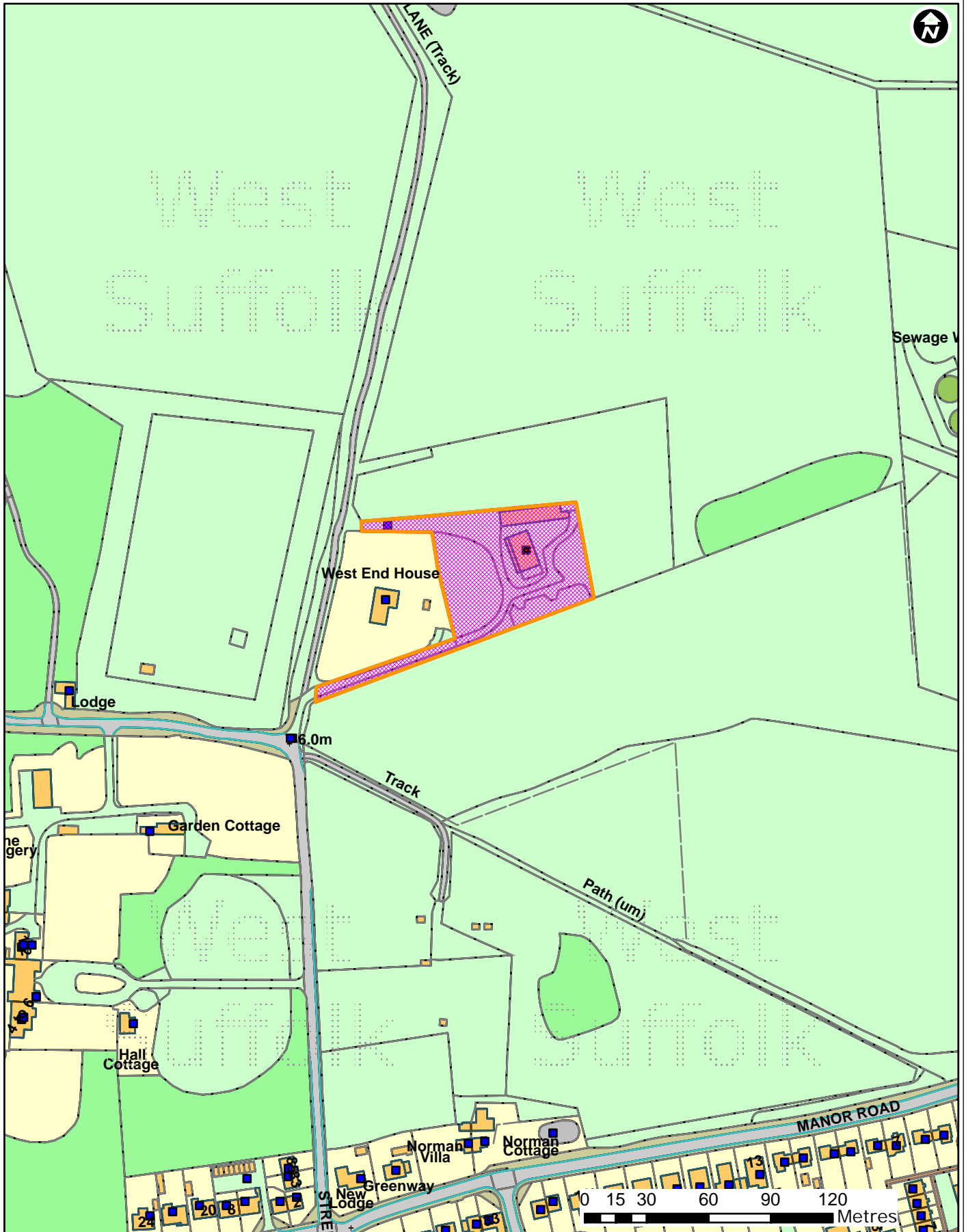
1. The dwelling proposed for retention remains an isolated dwelling contrary to the provisions of paragraph 55 of the NPPF and those of Policies DM5 and DM27 of the Joint Development Management Policies 2015. It is also the case that the building to be retained is significantly larger, higher and bulkier 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 however 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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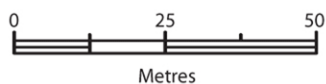
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The representation of a road, track or path is no evidence of a right of way.

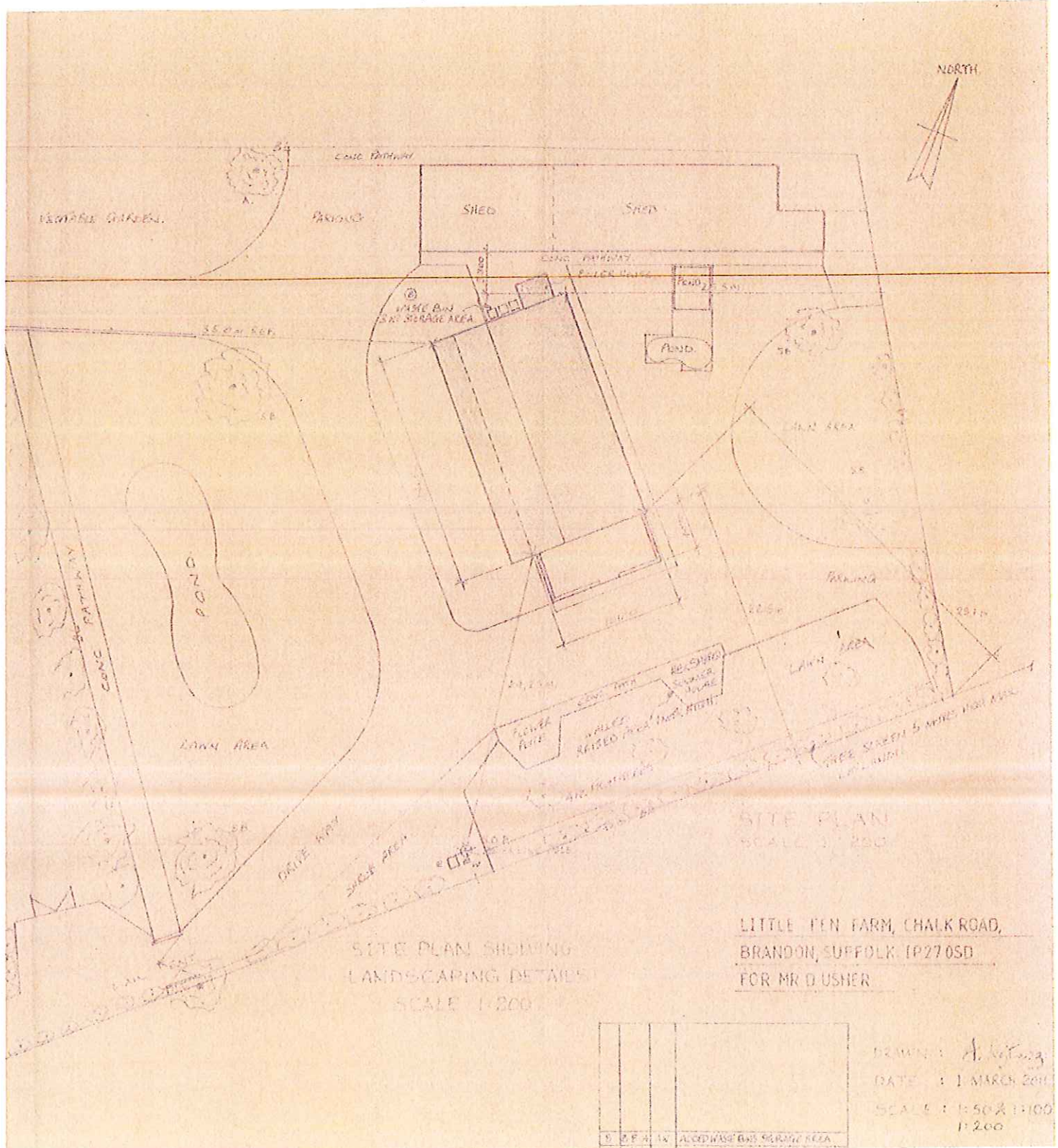
The representation of features as lines is no evidence of a property boundary.

Scale 1:1250



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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**

2 SEPTEMBER 2015

DEV/FH/15/034

Report of the Head of Planning and Growth

**PLANNING APPLICATION DC/15/0922/OUT – LAND ADJACENT 1 ST JOHN'S
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: Philippa Kelly
Tel. No: 01284 757382

Committee Report

App. No:	DC/15/0922/OUT	Committee Date:	05 August 2015
Date Registered:	20 May 2015	Expiry Date:	30 September 2015 (with agreement)
Case Officer:	Philippa Kelly	Recommendation:	APPROVE planning permission, subject to S106 agreement and planning conditions
Parish:	Beck Row	Ward:	Eriswell And The Rows
Proposal:	Outline Planning Application (Means of Access to be considered) – Residential development of up to 60 dwellings with new vehicular access from St. Johns Street.		
Site:	Land Adj. 1 St John’s Street, Beck Row.		
Applicant:	Mr R Palmer		

BACKGROUND:

This application is referred to Development Control Committee by Cllr Bowman, given the local community interest.

The application is recommended for conditional APPROVAL following completion of a Section 106 agreement.

APPLICATION DETAILS:

1. The application is in outline form, and seeks planning permission for the principle of residential development (up to 60 dwellings). Only the means of access forms a detail to be considered as part of the application proposals. Matters of layout, scale and landscaping are reserved for future detailed planning applications.
2. Whilst planning permission is sought only for the principle of the residential development and access to the site, the application supporting material includes

a proposed site layout plan. The site layout plan is for illustrative purposes only, although does give an indication of how up to 60 residential units could be accommodated on the site.

3. Based on a maximum of 60 dwellings and a total site area of approximately 2 hectares, the density of the proposed development will be approximately 30 dwellings per hectare.
4. The indicative site layout shows residential development fronting St John's Street, with dwellings set back from the road and served by private driveways. A proposed access road into the site from St John's Street would serve residential development arranged around two cul-de-sacs. An area of public open space is provided centrally within the development site.

AMENDMENTS:

5. During the course of the application, the indicative proposed layout plan was amended a number of times.

First amended layout plan - received 24 June 2015:

6. The purpose of the first amendment was to overcome concerns raised by officers, local residents and the Parish Council during the initial consultation process. Updated documents were received on 24 June 2015 and a re-consultation exercise carried out.
7. The amendments relate to the overall layout, with slight revisions to road layout and the positioning of plots. The main changes are summarised as follows:
 - North-east corner of the site re-configured to provide parking along the eastern boundary.
 - Plots 34 – 36 amended to bungalows.
 - Plots 4 and 5 shown as a pair off semi detached dwellings with parking to the rear.
 - Centre of the development reconfigured.
 - Plot 58 moved away from site boundary.
8. In addition, the description of the development was amended to include the words 'up to' in relation to the total number of dwellings proposed.

Second amended layout plan received 02 July 2015:

9. A second amended layout plan was received on 02 July 2015 in respect of consultation comments received on behalf of the Local Highway Authority. The second amendment relates only to the provision of a link through from the northern side of the site to Beverley Close. Only the Local Highway Authority was re-consulted in respect of this change.

Third amended layout plan received 20 July 2015:

10. A third amended layout plan was received on 20 July 2015. The amendment relates to the retention of two trees. Only the Council's Ecology, Tree and Landscape Officer was consulted in respect of this change.

APPLICATION SUPPORTING MATERIAL:

11. The application is accompanied by the following documents:
 - i. Application forms and drawings – including Location Plan and Indicative Proposed Layout Plan.
 - ii. Planning Statement/Design and Access Statement.
 - iii. Extended Phase 1 Habitat Survey, Reptile Survey and Botanical Survey.
 - iv. Flood Risk Assessment.
 - v. Phase 1 Geo-Environmental Desk Study.
 - vi. Transport Statement.
 - vii. Arboricultural Implications Assessment.
 - viii. Archaeological Evaluation Report.

SITE DETAILS:

12. The application site is located in the village of Beck Row, within the defined settlement boundary. Beck Row is designated as a Primary Village in the Core Strategy Policy CS1. At 2009 it had an existing population of approximately 3750.
13. The site lies to the north of St John's Street and covers an area of just over 2 hectares. It has previously been used for agricultural purposes in association with a farmhouse that until recently occupied the site at No. 1 St John's Street. A replacement four bedroom dwelling is currently under construction.
14. The site is currently maintained as rough grassland and is divided by temporary fencing with geese grazing the southern part of the site nearest St John's Street. A number of single storey agricultural buildings lie to the south-east.
15. The site is bounded by St John's Street along its southern side. Existing residential properties border the site to the north, east and west. Rear gardens of dwellings within Lambie Close back onto the site boundary to the east and north-east. Bungalows within Beverley Close front onto the site to the north-west and are set back from the site boundary by an access road which leads from Lambie Close. Rear gardens of dwellings along The Street back onto the site boundary to the west.
16. Whilst the site is generally flat, ground levels do vary across the site, with a general fall from the boundaries to the centre. There is also a slight fall from St John's Street towards the site. Levels within the site range from approximately 4.6m to 6.3 metres.
17. Along the eastern boundary of the site is an earth bank, with ground levels of the rear gardens of adjoining properties on Lambie Close approximately one metre lower than the levels of the site.

18. The site contains a number of trees along its boundaries. This includes a mature Sycamore in the south-west corner to the rear of No. 1 St John's Street, and which is covered by a Tree Preservation Order (TPO). Rows of Scots Pine within the north-west corner and northern boundary of the site, and an Ash tree along the eastern boundary are also covered by TPO's.
19. The Environment Agency flood risk maps indicate that the site is situated within Flood Zone 1 ('little or no risk of flooding').
20. The application site is allocated for residential development within the context of the retained Forest Heath Local Plan Policy 4.12. It is also identified as BR/01 in the Joint Council's Draft Strategic Housing Land Availability Assessment (SHLAA). This document identifies the site as being developable in terms of suitability, availability and achievability. The consultation period for the draft SHLAA ended on 21 May 2015. Responses have informed the 'Issues and Options' Sites Allocation document, which is currently on consultation.

PLANNING HISTORY:

21. There is no planning history relevant to the application site.

CONSULTATIONS:

22. Members of the public and statutory consultees were consulted in respect of the scheme as submitted. The following is a summary of statutory comments received in relation to the scheme as originally submitted and as amended.

Scheme submitted with the planning application (May 2015):

23. **West Suffolk Strategic Housing – No objection. Comments.** The Strategic Housing Team supports the planning application in principle, as it accords with Forest Heath's Core Strategy CS9 Policy which requires 30% affordable housing. The overall scheme provides a good mix of dwelling types and the affordable housing provision is based on discussions with the Strategic Housing Team addressing the housing needs of Beck Row and the tenure and mix required.
24. **West Suffolk Planning Policy – No objection. Comments.** It is considered that the proposal accords with paragraphs 2, 11 and 14 of the NPPF in addition to saved policy 4.12 of the Forest Heath Local Plan, (1995), and is therefore acceptable in policy terms, subject to the impact of the proposal on infrastructure provision within the settlement of Beck Row, (in isolation and cumulatively), being considered acceptable. A development brief approved by the LPA will also be required by condition and prior to the determination of a full planning application.
25. **West Suffolk Public Health and Housing - No objection.** Recommends planning conditions relating to construction methods and hours of construction work. Recommends the applicant undertakes an assessment of the likely noise impact from the aircraft from RAF Mildenhall on the proposed development.
26. **West Suffolk Environment Officer – No objection** subject to planning condition relating to contaminated land.

27. **Suffolk County Council Highways – No objection.** Recommends planning conditions.
28. **Suffolk County Council Travel Planner – No objection.** Recommends planning condition relating to the provision of a Sustainable Travel Information Pack (STIP).
29. **Suffolk County Council Planning Obligations – No objection. Comments.** Detailed advice received on a range of planning matters, including S106 developer contributions.
30. **Suffolk County Council Archaeological Services – No objection.** Recommends planning conditions relating to the implementation of an agreed programme of archaeological investigation.
31. **Suffolk County Council, Flood and Water Manager – No objection. Comments.** Prior to any approval there needs to be a suitable scheme implemented for the disposal of surface water. This is to prevent increased risk of flooding, both on and off site due to the increase in impermeable areas post development.
32. **Anglian Water- No objection.** Comments. Recommends planning condition relating to foul water drainage strategy.
33. **Environment Agency – No objection.** Comments.
34. **Natural England – No objection.** Comments. The proposal is not likely to have a significant effect on the interest features for which the Breckland SPA has been classified. Natural England therefore advises that your Authority is not required to undertake an Appropriate Assessment to assess the implications of this proposal on the sites conservation objectives.
35. **Lawson Planning Partnership on behalf of NHS England - Comments.** In this instance, NHS England has no comment to make on the proposed development.

Amended indicative layout plan received June 2015:
36. **West Suffolk Strategic Housing – No further comments to add.**
37. **West Suffolk Public Health and Housing – No further comments to make.**
38. **SCC Highways – Comments.** It appears that the amended plan has removed the proposed route into Beverley Close. It is felt that this is essential in order for this to be a sustainable development. Unless such a link is provided, the Highway Authority may recommend refusal.
39. **Environment Agency – No further comments to make.**
40. **Natural England – No further comments to make.**

41. **Suffolk Wildlife Trust - No objection.** Detailed comments provided. Requests that recommendations contained in ecological reports (including ecological enhancements) are implemented in full.

Further amended layout plan received 02 July 2015:

42. **SCC Highways - No objection. Comments.** Following my previous response dated 01 July 2015, I have now received an amended plan and can recommend conditions.

Further amended layout plan received 20 July 2015:

43. **West Suffolk Ecology, Tree and Landscape Officer** – No objection in principle. Detailed comments provided. Recommends conditions.

REPRESENTATIONS:

44. **Beck Row Parish Council – Support.** The Parish Council supports the principle of development on this site, but feels that both the Planners and Developers should take notice of the concerns of local residents. The Parish Council welcomes the assurance from the developers to keep them fully informed before the Reserved Matters stage.

45. **Third party representations** have been received from residents of the following properties:

24, 46, 49 and 49 and 70 Lamble Close
3, 5 and 7A St John's Street

46. The following is a summary of the issues raised:

- Impact on residential amenity: Overlooking. Loss of outlook. Loss of light. Noise. Differences in ground levels.
- Visual Impact
- Highway Issues: Visibility, Increased traffic, Speeding, Parking, Road safety.
- Flood Risk: Soakaways placed close to existing gardens will be a flood risk given the levels differences. Will the drainage system cope?
- Need for suitable boundary treatment
- Type of properties proposed
- Other issues: Extensions of existing properties not shown on plans. Beck Row does not have the infrastructure to accommodate the housing. Lack of facilities in the village. Cramped development. Boundary line issues with No. 48 Lamble Close.

POLICIES:

DEVELOPMENT PLAN

47. The Development Plan for Forest Heath comprises the following:
- The Forest Heath Local Plan (1995) as 'saved' by the Secretary of State in September 2007 and as subsequently amended by the adoption of the Forest Heath Core Strategy in May 2010, and the Joint Development Management Policies in February 2015.
 - The Forest Heath Core Strategy adopted in May 2010, as amended following the High Court Order which quashed the majority of Policy CS7 and made consequential amendments to Policies CS1 and CS13.
 - The adopted policies of the Joint Development Management Policies Document (JDMP) Local Plan Document (February 2015).
48. The following Development Plan policies are applicable to the application proposal:

Forest Heath Local Plan (1995) Saved Policies

Inset Map No.6 - Beck Row Development Boundary
Policy 4.12 – New residential allocations (Beck Row)

Forest Heath Core Strategy 2010

Visions:

- **Vision 1** – Forest Heath
- **Vision 7** – Beck Row, Exning, Kentford, West Row

Spatial Objectives:

- **H1** – Housing provision
- **H2** – Housing mix and design standard
- **H3** – Suitable housing and facilities
- **C1** – Retention and enhancement of key community facilities
- **C2** – Provision and maintenance of open space, play and sports facilities and access to the countryside
- **ENV1** – Habitats and landscapes and improving biodiversity
- **ENV2** – Climate change and reduction of carbon emissions
- **ENV3** – Promotion of renewable energy and energy efficiency
- **ENV4** – Design and architectural quality respecting local distinctiveness
- **ENV5** – Designing out crime and anti-social behaviour
- **ENV6** – Reduction of waste to landfill
- **ENV7** – Achievement of sustainable communities by ensuring services and infrastructure are commensurate with new development
- **T1** – Location of new development where there are opportunities for sustainable travel

Policies

- **CS1:** Spatial Strategy
- **CS2:** Natural Environment
- **CS3:** Landscape Character and the Historic Environment
- **CS4:** Reduce Emissions, Mitigate and Adapt to Future Climate Change.
- **CS5:** Design Quality and Local Distinctiveness
- **CS6:** Sustainable Economic Development and Tourism
- **CS7:** Overall Housing Provision (sub-paragraph 1 only. Sub paragraphs 2,3, 4 and 5 were quashed by the Court Order)
- **CS9:** Affordable Housing Provision
- **CS10:** Sustainable Rural Communities
- **CS13:** Infrastructure and Developer Contributions

Joint Development Management Policies Document 2015

- **DM1** – Presumption in Favour of Sustainable Development.
- **DM2** – Creating Places – Development Principles and Local Distinctiveness.
- **DM3** – Masterplans.
- **DM4** – Development Briefs.
- **DM5** – Development in the Countryside.
- **DM6** – Flooding and Sustainable Drainage.
- **DM7** – Sustainable Design and Construction.
- **DM10** – Impact of Development on Sites of Biodiversity and Geodiversity Interest.
- **DM11** – Protected Species.
- **DM12** – Mitigation, Enhancement, Management and Monitoring of Biodiversity.
- **DM13** – Landscape Features.
- **DM14** – Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards.
- **DM17** – Conservation Areas.
- **DM20** – Archaeology.
- **DM22** – Residential Design.
- **DM41** – Community Facilities and Services.
- **DM42** – Open Space, Sport and Recreation Facilities.
- **DM44** – Rights of Way.
- **DM45** – Transport Assessments and Travel Plans.
- **DM46** – Parking Standards.

Other Planning Policy

Supplementary Planning Documents

49. The following Supplementary Planning Documents are relevant to this planning application:
- Joint Affordable Housing Supplementary Planning Document (October 2013)
 - Open Space, Sport and Recreation Supplementary Planning Document (October 2011)

Emerging Development Plan Policy

50. **Single Issues Review and Site Allocations Development Plan Document:** The Core Strategy Single Issue Review (SIR) Local Plan Document reached the Issues and Options stage in July 2012. An 8 week consultation was undertaken. The proposed submission draft document was approved for consultation in early 2014. The consultation was subsequently postponed to enable further SA and SEA work.
51. Members have subsequently resolved to prepare the Core Strategy SIR in tandem with the Site Specifics Allocations Document. A joint consultation commenced on 11 August 2015 and will run for 8 weeks. Adoption is anticipated by the end of 2017.
52. For the site document this is the very first stage in the plan process 'Issues and Options' and includes all potential sites, many of which will not be taken forward to the next stage.
53. At the present time, the Single Issue Review and the Site Specific Allocations Document carry limited weight in the decision making process, although the published evidence underlying the SIR still has weight.

National Planning Policy and Guidance

54. Planning law requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is a material consideration for planning decisions and is relevant to the consideration of this application.
55. Paragraph 14 of the NPPF identifies the principle objective of the Framework:
- 'At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For decision taking this means:*
- *Approving development proposals that accord with the development plan without delay; and*
 - *Where the development plan is absent, silent or relevant policies out-of-date, granting permission unless:*
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this framework taken as a whole;*
 - *Or specific policies in this framework indicate development should be restricted'.*
56. This presumption in favour of sustainable development is further reinforced by advice within the Framework relating to decision-taking. Paragraph 186 requires Local Planning Authorities to *'approach decision taking in a positive*

way to foster the delivery of sustainable development'. Paragraph 187 states that Local Planning Authorities 'should look for solutions rather than problems, and decision takers at every level should seek to approve applications for sustainable development where possible'.

57. The relevant parts of the NPPF are discussed below in the officer comment section of this report.
58. The Government published its National Planning Practice Guidance in March 2014 following a comprehensive exercise to view and consolidate all existing planning guidance into one accessible, web-based resource. The guidance assists with interpretation about various planning issues, and advises on best practice and planning process. Relevant parts of the NPPF are discussed below in the officer comment section of this report.
59. Paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework (the closer the policies in the plan to the policies in the Framework, the greater weight that may be given).
60. Paragraph 14 of the NPPF states that where the Development Plan is absent, silent or relevant policies are out of date, development proposals should be determined in accordance with the relevant test - that is whether *'any adverse impacts...would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole'*.

OFFICER COMMENT

61. The subsequent section of the report discusses whether the development proposed by this application can be considered acceptable in principle, in the light of extant national and local planning policies. It then goes on to analyse other relevant material planning considerations, (including site specific considerations) before concluding by balancing the benefit of the development proposals against the dis-benefits.

Principle of Development

National Policy Context

62. Paragraph 47 of the Frameworks states that to boost significantly the supply of housing, local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area (as far as is consistent with policy), including identifying key sites which are critical to the delivery of the housing strategy over the plan period.
63. In addition, the Framework requires authorities to identify and update annually a supply of specific deliverable sites, sufficient to provide five-years worth of housing against their housing requirements, with an additional buffer of 5% (or a 20% buffer if there is evidence of a persistent under delivery of new housing) to ensure choice and competition in the market for land.

64. The latest assessment of the District's five year supply of housing land was published in February 2015. This confirms that the Council is able to demonstrate a five-year supply of housing.
65. In terms of housing provision in the District, the saved settlement boundary plans are out of date, pre-dating the NPPF by some time. Most of the sites allocated within the 1995 Local Plan have either been built out or are considered undeliverable. On this basis, and in accordance with the advice offered in the NPPF, the saved settlement boundary plans are considered to carry limited weight.
66. In such circumstances, planning applications for new housing development fall to be considered against the provisions of the NPPF and any Development Plan policies which do not relate to the supply of housing. The Framework places a strong presumption in favour of sustainable development, and where Development Plans are out of date, advises in Paragraph 14 that planning permission should be granted unless *'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole...'*
67. The NPPF does not equate to a blanket approval for residential development in locations that would otherwise conflict with Local Plan policies. If the adverse impacts of the proposals significantly and demonstrably outweigh the benefits, then planning permission should still be refused. The fundamental planning principle is that each case must be considered on its own merits.

Development Plan Policy Context

68. Beck Row is designated as a Primary Village within the Forest Heath Core Strategy (Policy CS1). Under this policy, limited housing growth to meet housing needs is generally supported in principle.
69. The application site is allocated for residential development under saved Policy 4.12 of the 1995 Local Plan. The principle of the development of this site for residential purposes is therefore acceptable. This would suggest that the development proposals should be approved if there are no overriding material considerations which suggest that this should not be the case.
70. In terms of the potential environmental capacity of infrastructure in Beck Row, it has been held at planning appeal that the 2009 Infrastructure and Environmental Capacity Assessment ('IECA report') represents the best available evidence.
71. The IECA report considers the environmental capacity of settlements in the District, and recognises the need for a mechanism to provide social, physical and environmental infrastructure to support growth. The report also considers settlement infrastructure tipping points which are utilised to evaluate potential impacts on infrastructure.
72. The IECA report identifies a range of capacity in Beck Row of some 240-420 new dwellings in the plan period to 2031 (although this would be subject to significant infrastructure improvements in line with growth). This would suggest that there is environmental capacity to facilitate not only the quantum

of development that is proposed by this planning application, but also other major residential developments in Beck Row that the planning authority has already permitted, including up to 117 dwellings on land at Aspal Lane (planning reference DC/13/0123/OUT) and up to 24 dwellings on land at Beck Lodge Farm (planning reference DC/14/1745/OUT).

73. Officers acknowledge that the IECA report has been held at planning appeal to contain the most up-to-date information relating to infrastructure and capacity in the District. However, given that the IECA report was written approximately 5 years ago, officers are of the opinion that it can no longer be considered an accurate reflection of infrastructure provision within settlements. In the context of the subject planning application, officers have evaluated the IECA evidence against the advice contained in consultation responses received.

Summary

74. Notwithstanding that the Council now has a five year land supply in place, officers consider that Paragraph 215 of the NPPF (which states that the weight that can be given to a plan is dependent on the degree of consistency with the Framework) and Paragraph 14 of the NPPF are of relevance, in that:
- The provision of housing as set out in the saved local plan maps contained within the 1995 Forest Heath Local Plan are based on housing provision contained in the since abolished Suffolk Structure Plan. This pre dates the NPPF and is out of date. Little or no weight can therefore be attributed.
 - The Core Strategy is up to date in terms of its settlement strategy which focuses development in the market towns. The quashing of the majority of Policy CS7 and consequential amendments to Policies CS1 and CS13 means that it is silent on housing distribution within the District.
 - The new Local Plan will address these issues, but has not been published at its Issues and Options Stage. It is currently within its Issues and Options Regulations 18 stage. It is therefore absent.
75. Given that the Development Plan is '*absent; silent or relevant policies are out of date*' the Council's approach, based on Paragraph 14 of the NPPF, is therefore to determine whether the development proposal is sustainable development by reference to the relevant test in Paragraph 14 – that is, whether '*any adverse impacts.....would significantly and demonstrably outweigh the benefits, when assed against the policies in this Framework taken as a whole*'.
76. A key determining factor will be whether the proposed development can be deemed 'sustainable' in the context of the policies contained in the Framework (as a whole). Even if it is concluded that the proposals would not be 'unsustainable' following analysis, further consideration must be given to whether the benefits of development outweigh its dis-benefits, as required by the Framework.
77. A balancing exercise is carried out towards the end of this section of the report as part of concluding comments. An officer evaluation to assist with Members consideration of whether the development proposed by this planning application is 'sustainable development' is set out below on an issue by issue basis.

Sustainable Transport/Impact upon the Highway Network

78. National planning policy in relation to the transport planning of developments is set out in the Framework. Section 4, paragraphs 29 to 41 deal specifically with transport planning and the promotion of sustainable transport.
79. The Framework confirms that the transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. Paragraph 32 of the Framework requires all developments that generate significant amounts of movements to be supported by a Transport Statement or Transport Assessment. It goes on to advise that development should not be prevented or refused on transport grounds, unless the residual cumulative impacts of development are severe.
80. Paragraph 34 of the Framework states that planning decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable modes of transport can be maximised. However the Framework recognises that different policies and measures will be required in different communities, and opportunities to maximise sustainable transport solutions will vary from urban to rural areas.
81. Core Strategy Spatial Policy T1 aims to ensure that new development is located where there are the best opportunities for sustainable travel and the least dependency on car travel. This is reflected in Policies CS12 and CS13 which confirms the District Council will work with the partners (including developers) to secure necessary transport infrastructure and sustainable transport measures, and ensure that access and safety concerns are resolved in all developments.
82. In the specific context of Beck Row, the IECA report recognizes that the local transport network as a potential constraining factor to development.
83. The application site would be served by a new vehicular access from St John's Street, with an internal road continuing through the site leading to private roads, private driveways, and parking areas. St John's Street is subject to a 30mph speed limit, and connects to The Street (A1101) at a junction approximately 45metres to the south-west of the site.

Access Arrangements

84. The application would provide a new access into the site from St John's Street. Existing visibility along this side of St John's Street is good. A visibility splay would be provided in both directions in accordance with the advice of the County Engineer. Relevant conditions can be recommended to secure this, should approval be forthcoming

Pedestrian and cycle linkages

85. The indicative layout provides a pedestrian and cycle route connection from the north of the site, linking it to the existing footpath network in Lambie Close. This would provide links to nearby amenities such as the primary school and community centre. The provision of a shared use footway can be secured by planning condition.

86. The frontage of the site along St John's Street does not have a footway along its northern side. The application proposes to provide a new footway on St John's Street which would link the existing footways on the northern side of St John's Street. In accordance with the advice offered by the County Highways Engineer, this can be secured by way of planning condition.
87. The development of this site offers potential for additional cycle and pedestrian linkages with Lamble Close through existing open space which appears to be in Council ownership, to Aspal Park Nature Reserve to the east. This is not shown on the submitted indicative layout plan, and it is not considered reasonable to request that the applicant amends the indicative layout to incorporate such a link, given that this is an outline planning application. However, officers consider that there is scope to explore the provision of such linkage at the detailed reserved matters planning stage. A relevant informative can be included on the planning decision notice, should planning permission be forthcoming.

Parking

88. Parking within the site would be provided in accordance with the standards provided within the Suffolk Guidance for Parking (2014). The submitted Planning, Design and Access Statement confirms that there would be sufficient space within the curtilage for each dwelling for safe and secure cycle storage. This can be secured by way of planning condition should approval be forthcoming.

Traffic Generation

89. The likely traffic volumes generated by the development are set out in the Transport Statement. This indicates that the development would generate 35 two-way trips in the morning peak hour, and 38 two way trips in the afternoon peak hour. Officers consider that the additional traffic movements that would be likely as a result of this development could be accommodated by the existing highway network,
90. In accordance with the advice of the County Travel Planner, a planning condition can secure the provision of a Sustainable Travel Information Packs, in the interests of encouraging sustainable travel.

Public Transport

91. The site is situated some distance from existing bus stops on St John's Street. A contribution has been sought by Suffolk County Council to secure new bus stops with Equality Act compliant kerbs. This issue is discussed in further detail in the S106 Planning Obligation section.

Other Issues

92. Third party representations have raised the issue of the safety of the junction of St John's Street and the A1101. The applicant has provided accident data for this location. There have been four recorded accidents recorded at this junction since 2005. These comprise of three collisions categorized as 'slight' in

severity, and one categorized as 'serious'. This does not suggest that there are significant road safety issues at the junction, or in the immediate vicinity of the site.

Summary

93. The Framework directs that applications should only be refused on transport grounds if the residential cumulative impacts of the development are severe. Officers are satisfied that the proposed development can be accommodated in highways terms, and will bring about local transport improvements which can be secured through the Section 106 process. In reaching this decision, it is material that the County Highways Engineer has raised no objection to the proposals.

Flood Risk, Drainage and Pollution

94. Policies for flood risk set out in the Framework aim to steer new development to areas with the lowest probability of flooding. The Framework policies also seek to ensure that new development does not increase the risk of flooding elsewhere.
95. The Framework also offers advice in respect of pollution and land instability, and states that planning decisions should ensure that new development is appropriate for its location. It also confirms that, where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.
96. Core Strategy Policy CS4 states the Council will support development proposals that avoid areas of current and future flood risk and which do not increase the risk of flooding elsewhere. The policy confirms sites for new development will be allocated in locations with the lowest risk of flooding (Environment Agency Zone 1 flood category) and will seek the implementation of Sustainable Urban Drainage Schemes (SUDS) into all new development proposals, where technically feasible.

Flood Risk/Sustainable Drainage Systems (SuDS)

97. The application site lies within Flood Zone 1 on the Environment Agency Flood Risk maps, representing an area at low risk of flooding and suitable for all forms of development.
98. The application documentation includes a Flood Risk Assessment (FRA). The FRA considers the impact of the development on third parties, particularly with regard to surface water run off. It concludes that by using sustainable drainage systems as the method of surface water disposal, it is anticipated that all water will be dealt with at source, and there would be no run off from the site.
99. The indicative layout plan is for illustrative purposes only, and the design of the final layout would need to ensure that adequate space is provided to accommodate the necessary infiltration systems within the site.
100. Suffolk County Council, in consultation correspondence, has advised that there needs to be a suitable scheme implemented for the disposal of water, and has

requested that such details are submitted prior to the determination of the application. The application is in outline form, with all matters except access reserved for future applications. Officers consider that it would not be reasonable to require such a level of detail when the final layout is not known. On this basis, it is therefore considered appropriate to require additional details relating to surface water discharge by way of planning condition, should approval be forthcoming.

Foul Drainage

101. The application site is located in an area which is served by the public foul sewer. Foul drainage from the development is in the catchment of Mildenhall Water Recycling Centre. Anglian Water, in consultation correspondence, has confirmed that there is available capacity to treat the flows from the proposed site.

Contamination

102. The information submitted with the application does not indicate a high likelihood of contamination. In accordance with the advice offered by the Council's Environment Officer, a condition in respect of the reporting of unexpected contamination can be secured should planning approval be forthcoming.

Summary

103. The Environment Agency, Anglian Water Services, Suffolk County Council and the Council's Environmental Health team have not objected to or raised concerns about the application proposals in respect of flood risk, drainage and pollution. All have recommended the imposition of reasonable conditions upon any potential planning permission to secure appropriate mitigation. On this basis, the proposals are considered acceptable with regard to flood risk, surface water/foul drainage, potable water supply, SuDS and ground contamination.

Impact upon Landscape

104. The Framework confirms the planning system should *inter alia* protect and enhance 'valued landscapes' and promotes development of previously used land, other than continuing the protection of formal Greenbelt designations (of which there are none in the District) and recognising the hierarchy of graded agricultural land. National policy stops short of seeking to protect the 'countryside' from new development in a general sense.
105. Core Strategy Policies CS2 and CS3 seek to protect, conserve and (where possible) enhance the quality, character and local distinctiveness of the landscape, and refer to the Forest Heath Landscape Character Assessment to inform detailed assessment of individual proposals.
106. The application site is undeveloped land within the built up area of Beck Row. The site is visible from public viewpoints along St Johns Street, Lamble Close and Beverley Close. The site contains a number of important trees.

107. The residential development of this parcel of land is not considered to be out of context, given existing residential development which surrounds the site. It is acknowledged that the landscape character will change irreversibly in the long term as a result of the development proposals. The extent of the visual impact of the proposed development on the landscape is considered acceptable given the context.
108. The principle of development along St John's Street is already established, and it would not be reasonable to refuse the application on these grounds alone. It is an expectation that the impact of the development on the street-scene will be evaluated as part of subsequent detailed planning applications.

Summary

109. Officers have considered the submitted documentation, and visited the application site and surrounding area. Whilst the proposals would irreversibly change the character of the immediate locality, the wider impact of the development proposals upon landscape quality and character are considered to be acceptable.

Impact upon the Natural Environment

110. The Framework confirms the planning system should contribute to and enhance the natural environment by inter alia minimising impacts on biodiversity and providing net gains where possible. The Framework states that protection of designated sites should be commensurate with the status of the site, recognising the hierarchy of international, national and local designations. The presumption in favour of sustainable development set out at Paragraph 14 of the Framework does not apply where development requires appropriate assessment under the Birds or Habitats Directives.
111. Spatial Objective ENV1 of the Core Strategy aims to conserve and enhance the habitats and landscapes of international, national and local importance and improve the rich biodiversity of the District. This objective forms the basis of Core Strategy Policy CS2 which sets out in greater detail how this objective will be implemented. Saved Local Plan Policy 4.15 sets out criteria against which proposals for new housing development are considered. One of the criteria requires that such proposals are not detrimental to significant nature conservation interests.
112. The application site is located in close proximity to Breckland Forest Site of Special Scientific Interest (SSSI). The Breckland Forest SSSI forms part of the Breckland Special Protection Area (SPA).
113. There are no designated sites within the application site. However, Aspal Close Local Nature Reserve (LNR) is situated to the north and east of the proposed development, and is also a County Wildlife Site (CWS).

Habitats Regulations Assessment

114. The local planning authority, as the competent authority, is responsible for the Habitats Regulation Assessment (HRA) as required by The Conservation of Habitats and Species Regulations 2010 (as amended). Natural England, in

consultation correspondence, has advised that the proposed development is not likely to have significant effects on the interest features for which Breckland SPA has been designated, and an Appropriate Assessment is not required.

115. The HRA screening process was undertaken by the Council's Ecology, Tree and Landscape Officer, as part of the consultation response. This confirms that the proposal will not have a likely significant effect on any European site, and can therefore be screened out from any requirement for further assessment.

Ecology

116. The Council's Ecology, Tree and Landscape Officer has confirmed that the proposals are unlikely to have direct or indirect effects on Aspal Close Local Nature Reserve.
117. An extended Phase 1 Habitat Survey was submitted to support the planning application. The Habitat Survey provides an overview of the likelihood of protected species occurring on the site. This recommends additional reptile and botanical surveys to inform the development.
118. A Reptile Survey was undertaken in April 2015. This found no reptiles on the site. In accordance with the specialist consultation advice received, the recommendations for reptile enhancement can be implemented by way of planning condition, should approval be forthcoming.
119. A Botanical Survey was requested by officers during the course of the application. This was undertaken in July 2015 and a Botanical Survey Report was submitted on 23 July 2015. The survey identifies some remnant Breckland habitat to the north of the application site, and the presence of a number of plant species listed on the Suffolk Rare Plants Register.
120. The botanical report recommends that the soil from the northern part of the site could be relocated into the landscaping areas and a management regime imposed to encourage establishment of grassland, including the rare plant species. This procedure is in accordance with Joint Development Management Policies, which require the protection of species and habitats and encourage implementation of the mitigation hierarchy. It is also an approach which is encouraged by Suffolk Wildlife Trust in their consultation response of 05.08.15.
121. In accordance with the advice offered by the Suffolk Wildlife Trust and the Council's Ecology, Tree and Landscape Officer, planning conditions can be secured which require that an additional survey of the site is undertaken to identify the extent of the botanically diverse grassland and the species present; the layout for the site (at reserved matters stage) includes for the retention of this grassland on site; and a long term management plan for the site is submitted and its implementation facilitated.
122. The Habitat Survey identifies a number of trees on the site to be suitable for roosting bats. During the course of the application, the indicative site plan was amended to show the retention of these trees. Their retention can be secured by way of planning conditions.

123. The recommendations contained in the Habitat Survey, Reptile Survey and Botanical Survey can all be secured by way of planning condition. In accordance with consultation advice received, conditions can also be recommended to ensure protected species are safeguarded.

Trees

124. The application site contains a number of trees, several of which are subject to Tree Preservation Orders (TPO's). The majority of trees are located around the boundary, with relatively few trees within the central area. The exception is a large mature protected sycamore, which is situated in an open position within the site.
125. A collection of protected mature Scots pine trees form an attractive landscape feature along the northern and western boundaries of the site. The retention of these trees as part of the development is highly desirable for both amenity and diversity reasons.
126. A Tree Survey report and an Arboricultural Impact Assessment (AIA) were submitted as part of the application documentation. The indicative site layout plan has been amended during the course of the application and confirms the retention of two trees (T14 and T15) which were indicated as to be removed. The AIA will need to be updated once the final site layout is confirmed: this can be secured by planning condition, should approval be forthcoming.
127. Subject to the above conditions, and planning conditions to ensure appropriate replacement tree planting as part of a landscaping scheme, the impact of the development proposals on arboricultural issues is considered acceptable.

Summary

128. Subject to the implementation in full of recommended mitigation and enhancement measures (which can be secured through relevant planning conditions), the proposed development is considered to satisfactorily address ecological issues.
129. On the basis of the above evaluation, officers are of the opinion that the development proposals would not have an unacceptable impact on the nature conservation value of the application site, or impact on Aspal Close Nature Reserve.

Impact upon the Historic Environment

130. The Framework recognises that heritage assets are an irreplaceable resource which should be conserved in a manner appropriate to their significance. When considering the impact of proposed development upon the significance of a designated heritage asset, great weight should be given to the asset's conservation. The term 'heritage asset' used in the Framework includes designated assets such as Listed Buildings, Scheduled Ancient Monuments, Registered Parks and Gardens and Conservation Areas, and also various undesignated assets including archaeological sites and unlisted buildings which are of local interest.

131. The Framework advises that local planning authority's should require an applicant to describe the significance of any heritage assets affected, the level of detail being proportionate to the importance of the asset and sufficient to understand the potential impact upon their significance. Core Strategy Spatial Objective aims to protect and enhance the Historic Environment. This objective is implemented through Policy CS3.

Archaeology

132. The proposed development is located within an area of archaeological interest. An Archaeological Evaluation Report was submitted as part of the application documentation. This detected a number of archaeological features. As a result, there is high potential for encountering further heritage assets of archaeological interest in this area.
133. In accordance with the advice offered by the County Archaeological Officer, a condition can be secured to ensure a scheme of archaeological investigation. This would accord with Core Strategy Policy CS3 and the advice offered in the Framework with regard to the conservation of heritage assets of archaeological interest.

Summary

134. Officers have considered the application proposals in the context of the impact on the historic environment. Subject to the recommendation of appropriate archaeological conditions as described above, the proposal would not cause significant harm to the historic environment.

Design of the Built Environment

135. The Framework states the Government attaches great importance to the design of the built environment and confirms good design is a key aspect of sustainable development and is indivisible from good planning. The Framework goes on to reinforce these statements by confirming that planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
136. Core Strategy Spatial Objective H2 aims to provide a sufficient and appropriate mix of housing that is designed to a high standard. Design aspirations are also included in Spatial Objectives ENV4 (high standard of design) and ENV5 (community safety and crime reduction through design. The Objectives are supported by Policies CS5 and CS13 which require high quality designs which reinforce local distinctiveness and take account of the need for stronger and safer communities. Policy CS5 confirms design that does not demonstrate it has had regard to local context and fails to enhance character will not be acceptable.
137. The application site is situated within the centre of the village of Beck Row. Officers consider that the residential development of this parcel of land would not be out of context, given that it is adjoined by existing residential development on all sides.

138. To ensure that the future residential development of this site is of a high quality design which respects its surroundings, a planning condition is recommended which requires a development brief to be agreed prior to the submission of any reserved matters application.
139. Whilst matters of appearance, landscaping, layout and scale are to be reserved for future detailed applications, the accompanying documentation includes an indicative site layout drawing. The scheme is in outline form only, and the submitted layout is indicative only. Whilst third party comments have been received relating to the type of buildings on the site, this is a matter of detail which can be addressed at the detailed planning stage.

Summary

140. Subject to planning conditions as described above, the proposals are considered to comply with relevant Development Plan policies in respect of design and layout.

Impact upon Local Infrastructure (Utilities)

141. The 'economic' dimension of the definition of sustainable development set out in the Framework confirms the planning system should inter alia identify and co-ordinate development requirements, including infrastructure. Furthermore, one of the core planning principles set out in the document states that planning should 'proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs'.
142. Core Strategy Policy CS13 sets out infrastructure requirements and developer contributions. The policy opens with the following statement:
- 'The release of land for development will be dependent on there being sufficient capacity in the existing local infrastructure to meet the additional requirements arising from new development'.*
143. Policy CS13 lists the main areas as health and social care facilities, educational requirements, strategic transport improvements, waste water treatment capacity, energy supply (electricity), access and safety, open space, sport and recreation. The policy confirms arrangements for the provision or improvement of infrastructure will be secured by planning obligation or (where appropriate) conditions attached to planning permission to ensure infrastructure is provided at the appropriate time). It concludes that all development will be accompanied by appropriate infrastructure to meet site specific requirements and create sustainable communities.
144. Matters relating to highways, education, health and open space infrastructure are addressed later in this report when potential planning obligations are discussed. This particular section assesses the impact of the proposals upon utilities infrastructure.

Waste Water Treatment

145. The Flood Risk Assessment (FRA) which accompanies the planning application advises that foul flows from the development will be connected to the Anglian Water public sewer network. Anglian Water has confirmed that there is capacity within Mildenhall Water Recycling Centre to cater for flows from the development.

Summary

146. On the basis of the available evidence, the development proposal is considered acceptable with regard to impact on infrastructure (utilities).

Impact upon Residential Amenity

147. The protection of residential amenity is a key component of good design. The Framework states (as part of its design policies) that good planning should contribute positively to making places better for people. The Framework also states that planning decisions should aim inter alia to avoid noise from giving rise to significant adverse effects on health and quality of life as a result of new development.
148. The application site is surrounded by existing residential properties. The indicative layout plan has shown that a residential development of up to 60 dwellings can be accommodated on the site. It is an expectation that a full assessment of the potential impacts of the scheme on residential amenity will be carried out at the detailed planning stage, when parameters such as building scale and layout are formalised. Officers consider that sufficient safeguards exist within the Development Plan and the NPPF to protect the interest of occupiers of existing residential properties.

Noise

149. The Council's Public Health and Housing Officer has advised in consultation correspondence that a Construction Method Statement be submitted which includes details of noise management responsibility and measures. This can be secured by way of planning condition. Conditions can also be secured relating to hours of site preparation and construction.
150. The application site is situated in close proximity to RAF Mildenhall. The Council's Public Health and Housing Officer has recommended that the applicant undertake an assessment of the likely noise impact from the aircraft on the proposed development when the aircraft is in use. Further clarification on this matter has been sought, and the Council's Public Health and Housing Officer has confirmed that the noise impact assessment can take the form of a planning condition, should approval be forthcoming.

Ground Levels

151. There are differences in ground levels between the application site and abutting gardens of properties in Lamble Close – specifically along the eastern side of the site. Officers have visited the site and residential properties to fully appreciate the differences in levels.

152. The relationship of the new development with existing properties has raised concern locally, given the differences in levels between the site and existing properties. It is an expectation that further work would be carried out at the detailed design stage in relation to the levels of the site, to inform the future layout and detailed design of the development.
153. Given the differences in site levels, officers consider it appropriate for a planning condition to be secured which requires details of ground level and finished floor levels of buildings on the site.

Overlooking

154. Third party representations have raised concern regarding the potential overlooking of existing properties. This is an outline planning application and as such details of plot layout and design are not known at this stage. It is an expectation that this issue would be considered in full at the detailed planning application stage.

Boundary Treatment

155. Given the relationship of the application site to existing gardens, it is considered important that appropriate boundary treatment is provided and maintained. This will be a matter for the detailed planning application stage. Relevant conditions have been recommended.

Summary

156. On the basis of the above evaluation, officers are satisfied that the residential amenity of the occupants of existing dwellings will not be compromised by what is proposed.

Sustainable Construction and Operation

157. Section 19 (1A) of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to include in their Local Plans 'policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change'.
158. The NPPF confirms planning has a key role in helping shape and secure radical reductions in greenhouse gas emissions whilst supporting the delivery of renewable and low carbon energy. The Government places this central to the economic, social and environmental dimensions of sustainable development. The document expands on this role with the following advice:
159. In determining planning applications, local planning authorities should expect new development to:
- Comply with adopted Local Plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and

- Take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption

160. The importance the Government places on addressing climate change is reflected in the Core Strategy Visions (Vision 1) and Spatial Objectives (ENV2 and ENV3). Core Strategy Policies CS4 and CS5 set out the requirement for sustainable construction methods, and a range of expectations of new sites.
161. Waste arising from the construction process will be managed in accordance with a Site Waste Management Plan. This can be secured by way of planning condition.
162. On the basis of the above evaluation, officers are satisfied that the proposal is generally acceptable in terms of sustainable construction and operation.
163. Waste – A waste minimisation and recycling strategy should be secured by planning condition.
164. Sustainable Drainage Systems (SUDs) –SuDS should be incorporated into the development, in the interests of reducing flood risk, improving water quality and biodiversity/amenity benefits.

Cumulative Impacts

165. Members will be aware that there have been a number of major planning applications for residential development in Beck Row in the last 18 months. A residential development scheme for up to 117 units on land at Aspal Lane was approved earlier this year. At the July 2015 meeting of Development Control Committee, Members resolved to approve up to 24 units on land at Beck Lodge Farm (subject to completion of Section 106 agreement). In total, these schemes will provide 201 residential units.
166. The evidence base behind the Development Plan documents will assess potential cumulative impacts of any formal site allocations. No such assessments have been carried out with regard to the potential cumulative impacts of 'developer led' planning applications.
167. This sub-section of the officer assessment considers potential cumulative impacts upon village infrastructure of the current planning application, and the previously approved schemes at Aspal Lane and Beck Lodge Farm (planning reference DC/13/0123/OUT and DC/14/1745/OUT respectively).

Primary Education

168. The current planning application would generate approximately 14 children of primary school age, once all dwellings have been built and occupied. The planning applications which have previously been approved would provide up to an additional 141 dwellings, which would generate additional children of primary school age.
169. It is understood that the existing catchment primary school (Beck Row Primary School) has reached capacity. By the time the construction of these developments is underway (if all are granted and commence early), the school

will have filled its pupil place capacity, and there will be no surplus places available

170. Suffolk County Council, in consultation correspondence, has raised no objection to the development proposals. The County Council has advised that, in view of there being no surplus spaces available at Beck Row Primary School, a financial contribution will be sought to provide additional facilities.
171. The third party comments raising concern regarding primary school education provision are noted. The application proposals would provide funding to mitigate the impacts of the development on primary school provision, in accordance with the consultation advice offered on behalf of Suffolk County Council. Accordingly, the applicants have done all they can do (and that they have been asked to do), to mitigate the impact of their developments upon primary school provision.

Highways

172. Third party comments have raised concern regarding the highway impacts of the development proposals upon Beck Row. The Local Highway Authority has raised no objection to any of the individual planning applications (subject to the imposition of planning conditions as referred to in the relevant section above).
173. The third party concerns are not supported by evidence, or a considered analysis of the nature of the possible impacts. In this context, Members are reminded that the Framework advises that new development should only be prevented or refused on transport grounds, if the residual cumulative impacts of development are severe.
174. Officers are satisfied that the application proposals would mitigate the impacts of the development on the highways network, by way of both planning conditions and developer contributions, which can be secured through the Section 106 process. Accordingly, the applications will mitigate the impact of the development upon the highways network.

Healthcare

175. NHS healthcare services in the Beck Row area is organised by the West Suffolk Clinical Commissioning Group (CCG). The IECA report identified that Beck Row could support a 2 GP surgery.
176. In terms of existing GP facilities in the Beck Row area, it is understood that Beck Row is currently served by two GP practices in Mildenhall. Furthermore, Market Cross Surgery has capacity to serve the increased population arising from the development scheme. This would imply that there is capacity in existing GP provision to accommodate not only the residents arising from the proposed development, but the cumulative number of residents arising from other residential development schemes in Beck Row.

Open Space

177. All of the development schemes incorporate provision for open space – both in terms of on-site provision, and contributions in respect of off-site provision

(secured through the Section 106 process). In this regard, the proposals are considered in accordance with Council's Supplementary Planning Document in respect of Open Space.

Landscape

178. Given the locations of the three housing development schemes around Beck Row, no cumulative landscape impacts are anticipated.

Utilities

179. Anglian Water Services did not object raise objection to the development proposals, and has confirmed that there is adequate capacity within the system to accommodate the increased flows arising from the development proposal. Officers are satisfied that the development proposals would not have adverse cumulative impacts upon the sewerage systems serving Beck Row.
180. There is no evidence to suggest that there would be significant cumulative impacts upon water and energy (electricity) supplies to the village, given the respective capacities identified in the IECA report.

Summary

181. On the basis of the above evaluation, officers are satisfied that the cumulative infrastructure impacts of the proposed residential development (in terms of utilities, landscape, open space, healthcare, transport and education) would be acceptable. There is no evidence to demonstrate that the development proposal should be refused on these grounds.

Section 106 Planning Obligation Issues

182. Planning obligations secured must be in accordance with the Community Infrastructure Levy Regulations 2010, which came into force on 06 April 2010. In particular, Regulation 122 states that a planning obligation may only constitute a reason for approval if it is:

- (a) Necessary to make the development acceptable in planning terms;
- (b) Directly related to the development; and
- (c) Fairly and reasonably related in scale and kind to the development.

183. These are the three principal tests set out in Paragraph 204 of the Framework and are of relevance in guiding the negotiation of planning obligations sought prior to the coming into force of the CIL Regulations. In assessing potential S106 contributions, officers have also been mindful of Core Strategy Policy CS13 and the Suffolk County Council guidance in respect of Section 106 matters, 'A Developers Guide to Infrastructure Contributions in Suffolk'.

Affordable Housing

184. The application proposes 18 of the dwellings as 'affordable', which represents 30% of the total number of units for the site. The Council's Housing Officer, in consultation advice, as confirmed support for the scheme and the provision of affordable housing on the site. In terms of housing tenure, the adopted SPD

seeks a tenure split of 70% rented and 30% intermediate in Forest Heath, based on current housing needs evidence. The precise detail of the affordable housing scheme, including tenure mix and their transfer to a registered provider can be secured through the S106 planning obligation.

Education

185. Education provision in Suffolk is currently in the process of a major restructuring: middle schools are being phased out and their functions are transferring to primary and secondary schools. The local catchment schools are Beck Row Primary School and Mildenhall College Academy. There are currently forecast to be surplus places available at the catchment secondary school serving the proposed development, and no secondary school contributions are sought.
186. Beck Row Primary School will not have any surplus places available, and Suffolk County Council is seeking full capital contributions for the additional primary school children forecast to arise to spend on enhancing local provision.
187. In terms of pre-school provision, it is understood that there are two early education providers in Beck Row (Beck Row Pre School and Busy Bees Montessori), offering 270 places. With the level of housing growth coming forward in Beck Row, a developer contribution is sought to mitigate local impacts. Contributions sought will be invested at a local level to enhance service provision.

Libraries

188. Beck Row is not currently served by a library. Suffolk County Council has identified a need to enhance service provision at the local library, and has requested a capital contribution. The County Council is yet to confirm how and where the contribution they have requested would be used, in order to meet the tests set out in Regulation 122 of the CIL Regulations.
189. The recommendation at the end of this report makes provision to secure this contribution from the development should it subsequently be justified to do so.

Healthcare

190. A consultation response has been received from Lawson Planning Partnership on behalf of NHS England. This advises that NHS England has no comment to make on the proposed development. Clarification was sought on this matter. It is understood that Market Cross Surgery in Mildenhall is the nearest GP surgery to the application site, and has existing capacity to accommodate the proposed development. On this basis no contributions are sought in respect of healthcare provision.

Transport

191. A contribution of £3000 to create new bus stops with Equality Act compliant kerbs has been sought by Suffolk County Council as Highway Authority.

Public Open Space

192. In accordance with the Council's Supplementary Planning Document in respect of open space, on site and off site provision of open space can also be secured by way of S106 agreement.

Summary

193. The provisions as described above ensure that the effects of the development proposal on local infrastructure within Beck Row, in terms of affordable housing, education, libraries and public open space, would be acceptable.
194. The proposal would comply with Core Strategy Policy CS13 by which the provision or payment is sought for services, facilities and other improvements directly related to development. Officers are satisfied that the proposed planning obligations meet the three tests of planning obligations set out in the Framework, and are therefore entirely justified.
195. The requests for developer contributions as described above will ensure improvements to existing infrastructure within Beck Row and the local area, to accommodate the growth of the village and meet the needs of the community, in accordance with Core Strategy Policy CS13. Officers are satisfied that they meet the three tests of planning obligations set out in Paragraph 204 of the Framework, and are therefore entirely justified. The planning agent has confirmed the 'in principle' acceptability of entering into a S106 planning obligation to secure these benefits. It is understood that this is currently in draft form.

Other Issues

196. Third party representations have raised concern regarding the boundary of the application site. The planning agent was asked to look at this issue and has confirmed that the red line on the application site location plan is based on the Land Registry plan for the site. It is understood that the indicative site layout is also drawn on the Land Registry plan, and on this basis, officers are satisfied that the site boundaries shown are correct.

CONCLUSIONS AND PLANNING BALANCE

197. The development proposal has been considered against the objectives of the Framework and the government's agenda for growth. Against this background, national planning policy advice states that planning permission should be granted, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. There are no specific policies in the Framework which indicate that this development should be restricted. National policy should therefore be accorded great weight in the consideration of this planning application, especially the presumption in favour of sustainable development, which this proposal is considered to represent.
198. The application site is allocated for residential development within saved Policy 4.12 of the 1995 Local Plan. The development proposals have a number of positive attributes which lend support to the scheme.

199. In terms of the economic role of sustainable development, the development would generate direct and indirect economic benefits. New housing provides a range of economic benefits, and has significant and positive effects on economic output – for example in terms of capital investment, construction work and occupational expenditure.
200. With regard to the social role of sustainability, the development would provide a level of much needed market and affordable housing to meeting the needs of present and future generations.
201. In the context of the environmental role of sustainable development, the landscape would be irreversibly changed as a result of the development proposals – although this would have only limited impact on the immediate environment. Good design and the retention of existing trees would assist in the mitigation of this impact. Furthermore, the site does not benefit from any specific ecological, landscape or heritage designation. On this basis, the effect on the character of the settlement is considered acceptable.
202. There are not considered to be any planning matters that would significantly and demonstrably outweigh the benefits of the scheme. Officers consider that the benefits of this development would outweigh the dis-benefits of the scheme, and point towards the grant of planning permission.
203. Having regard to the Framework and all other material planning considerations, with the S106 package as set out below (which is necessary for the development to be acceptable in planning terms), the proposal is considered to comply with the NPPF and Development Plan policy. The recommendation is one of approval.

RECOMMENDATION

204. That planning permission is **GRANTED** subject to:
- (1) **The completion of a S106 agreement to secure the following (subject to meeting the CIL Reg 122 tests):**
- Policy compliant level and tenure split of affordable housing.
 - Education contribution.
 - Pre-school contribution.
 - Libraries contribution (if deemed compliant with CIL Regulation 122)
 - Provision of on-site and off site open space.
 - Transport contribution.

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

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 Regulatory Services, planning permission be refused for the following reasons (as may be appropriate):

1. Unsustainable form of development not mitigating its impact on education provision, open space sport and recreation, transport (contrary to the Framework and Core Strategy Policy CS13).

2. Non compliance with affordable housing policy (contrary to Core Strategy policy CS9 and supporting SPD document).

(2) **And the following conditions/informatives:**

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 method statement.
8. Working hours.
9. Ground levels details.
10. Details of boundary treatment.
11. Samples of materials.
12. Detailed scheme of hard and soft landscaping.
13. Tree protection.
14. Details of tree works for retained trees.
15. Detailed Arboricultural Method Statement and Tree Protection Plan.
16. Open space management plan.
17. Details of lighting.
18. Recommendations of Ecological Appraisal to be implemented.
19. Recommendations of Botanical Survey to be implemented.
20. In situ retention of plant species.
21. Recommendations of Reptile Survey to be implemented.
22. Development in accordance with agreed design code/development brief.
23. Provision of fire hydrants.
24. Waste minimisation and recycling strategy.
25. Highways – including provision of Sustainable Travel Information Packs.

Informative: connectivity with Lamble Close

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=summary&keyVal=NNVDYKPD11Q00>

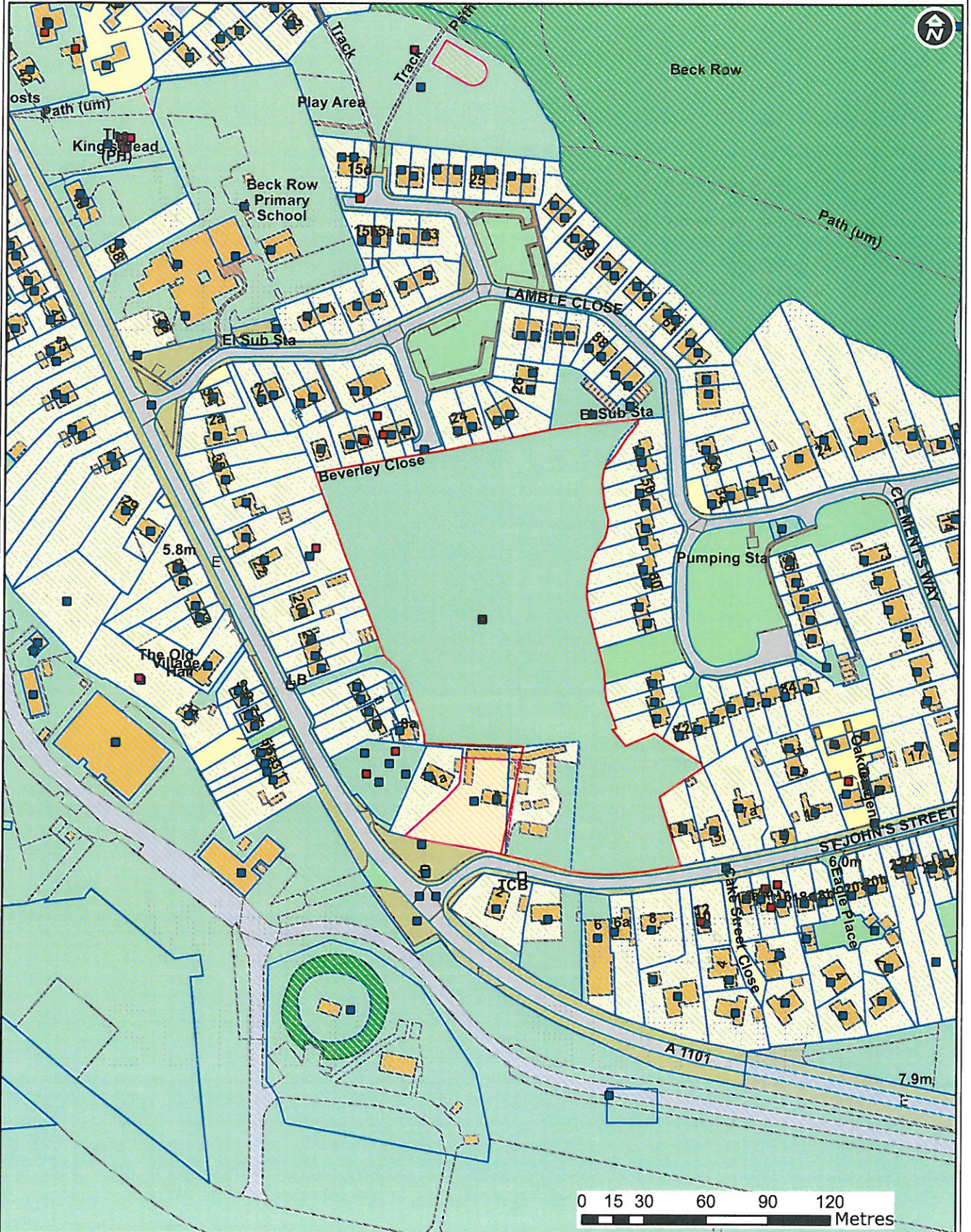
Alternatively, hard copies are also available to view at Planning, Planning and Regulatory Services, Forest Heath District Council, District Offices, College Heath Road, Mildenhall, Suffolk IP28 7EY

Case Officer: Philippa Kelly
Tel. No: 01284 757382

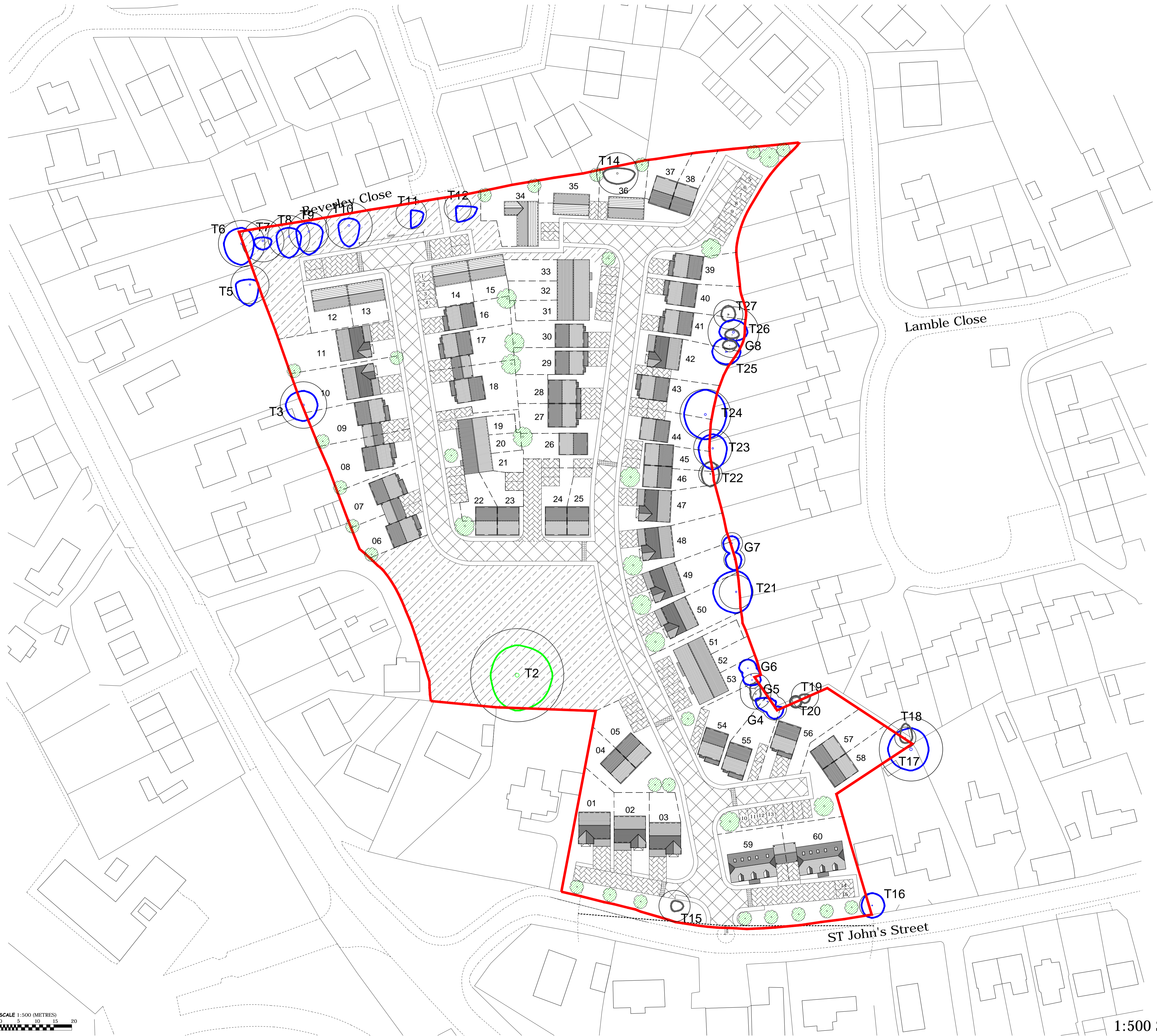
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Location Plan



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Key

- = Block paviour (private road/driveways)
- = Tarmac Rd (to adoptable rd standard)
- = Site provision 3285m2 approx.
- = 1.8m boundary (fence/wall)
- = New Trees
- = Existing trees and Hedge
- = Granite Setts/Speed humps

House Legend

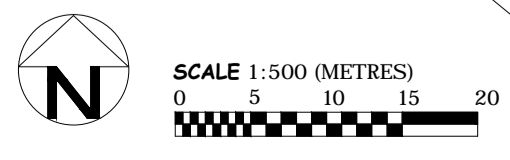
- = 1 Bed Bungalow 45.3m2
- = 2 Bed Bungalow 79.5m2
- = 2 Bed Terrace houses 65.2m2
- = 2 Bed House 73.0m2
- = 2 Bed Semi Detached 73.0m2
- = 3 Bed Chalet 140.4m2
- = 3 bed Terrace houses 84.2m2
- = 3 Bed Detached house 71.4m2
- = 4 Bed Detached house 111.2m2
- = Garages/Carport (double)
- = Garage/carport (single)

Affordable

- 6No. 1 bed
- 8no. 2 bed
- 3No. 3 bed
- 1no. 4 bed

Total

60No.



1:500 Site Location Plan

C	T14 & T15 to be kept as existing plot 36 rotated to suit	09/07/15
B	Pathway to Beverley Close reinstated	02/07/15
A	Layout Revised	19/06/15
Rev	Description	Date
TAB Architecture tel (01638) 482862 info@tabarchitecture.co.uk Russet Drive, Suffolk, IP28 8GA Rosewood Offices, Cambs, CB7 5QH		
Client	RPV	
Job title	St John Street, Beck Row	
Drg	Indicative Proposed Site Location Plan	
Scale	1:500	Date: Feb 2015
Drawn by	TAB135-03C	

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Forest Heath District Council

**DEVELOPMENT
CONTROL COMMITTEE**

2 SEPTEMBER 2015

DEV/FH/15/035

Report of the Head of Planning and Growth

**PLANNING APPLICATION DC/15/1515/TPO – REAR OF 33 LAMBLE CLOSE,
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: Matthew Gee
Tel. No: 01638 719792

Committee Report

Date**Registered:** 28/07/2015**Expiry Date:**

22/09/2015

Case**Officer:**

Matthew Gee

Recommendation:

Approve with Conditions

Parish:

Beck Row

Ward:

Eriswell and the Rows

Proposal:

TPO 048(1963)1 - Tree Preservation Order- 1no. Oak - Crown lift by 4m (197 on Order), the removal of ivy does not require consent.

Site:

Rear Of 33 Lamble Close, Beck Row, Suffolk, IP28 8AF

Applicant:

Mr Matt Vernon, Forest Heath District Council

Background:

This application is referred to the Development Control Committee because it has been submitted by Forest Heath District Council.

The application is recommended for APPROVAL.

Proposal:

1. Permission is sought for works to 1no. Oak tree involving a crown lift by 4m. The works are required because the tree is overhanging an adjacent garden and impeding access to and use of the garden.
2. The works form part of a 50 year management plan produced for each ancient tree on the site based on specialised veteran tree management practices. Works are primarily for stabilising the trees at risk of limb failure and promoting positive responses in vitality.

Application Supporting Material:

3. Information submitted with the application as follows:
 - TPO Plan
 - Arboricultural Works List

Site Details:

4. Aspal Close Local Nature Reserve is a Site of Special Scientific Interest, located on the western edge of the Breckland area. The site was purchased in 1982 by the District Council as a public open space and is well used locally. Historical records for the site date back some 800 years. The site covers approximately 19 hectares and is a wood pasture with 183 oak pollards.
5. The tree for which this application relates is located immediately adjacent to the

rear boundary of 33 Lamble Close. The tree has a number of branches overhanging the rear garden of 33 Lamble Close and it is covered in ivy. The tree is visible from a public footpath that runs adjacent to the tree.

Planning History:

6. F/2011/0666/TPO - Tree 289 - reduce upper crown by 2m, Tree 299 - reduce eastern pollard and southern part of crown by 2m and northern part by 1.5m, Tree 301 - reduce extended lateral limb over path by 4m and westerly upright limb by 1.5m. Remove minor trees or shrubs and pollard various young Oaks around dominant specimens in zones 1-6 - Approved by committee with conditions.
7. F/2012/0712/TPO - Veteran Oak Trees: Tree 323 - Reduce upper crown by 1.5m. Tree 234 - Reduce southerly limb by 15%. Reduce crown of Oak tree to NW of tree 241 by 30%. Tree 106 - Reduce limb growing into tree 773 by 3m. Tree 141 - Reduce crown to south and east by 2m. Tree 210 - Reduce upper crown by 2m. Tree 213 - Reduce whole upper crown by 2.5m and same for horizontal limbs. Remove Oak tree to NE of tree 242. Tree 289 - Reduce upper crown by 2m - Approved by committee with conditions.
8. DC/15/0749/TPO - TPO/1963/048 - Tree Preservation Order - Works to 27 Oak (*Quercus robur*) trees as attached schedule of works and map. All works form part a 50 year management plan produced for each ancient tree on the site based on specialised veteran tree management practices. Works are primarily for stabilising the trees at risk of limb failure and promoting positive responses in vitality. - Approved by committee with conditions.

Consultations:

9. None consulted.

Representations:

10. Parish Council: Awaited at time of preparation of the report. To be updated verbally at the meeting.
11. Tree Officer: The proposed works are good arboricultural maintenance where a tree is effecting the enjoyment of an adjacent property.

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

12. Forest Heath Core Strategy (2010):
 - Policy CS3 Landscape Character and the Historic Environment

Other Planning Policy:

13. National Planning Policy Framework (2012)

Officer Comment:

14. The site in question has a wide range of magnificent trees, many of which could be more than 500 years old. The majority of the ancient oaks have previously been subject to sensitive pollarding which has allowed the trunk to grow while removing weight from the upper limbs, leading to a long life-span based on a reduced risk of failure in the trunk.
15. The proposed works to the oak are considered to be appropriate and would resolve the issues that have been identified concerning the tree overhanging the garden of the neighbouring property. The works are proposed in order to raise the crown over the dwelling and allow access and use of the rear garden.

Conclusion:

16. In conclusion, the principle and detail of the proposed works is considered to be acceptable and in compliance with relevant development plan policies.

Recommendation:

17. It is recommended that the works proposed to the protected trees be **APPROVED** subject to the following conditions:
1. The works which are the subject of this consent shall be carried out within two years.
 2. The authorised works shall be carried out to the latest arboricultural standards and in line with the Pro Natura 'Ancient Pollard Management Plan' (2011).

Documents:

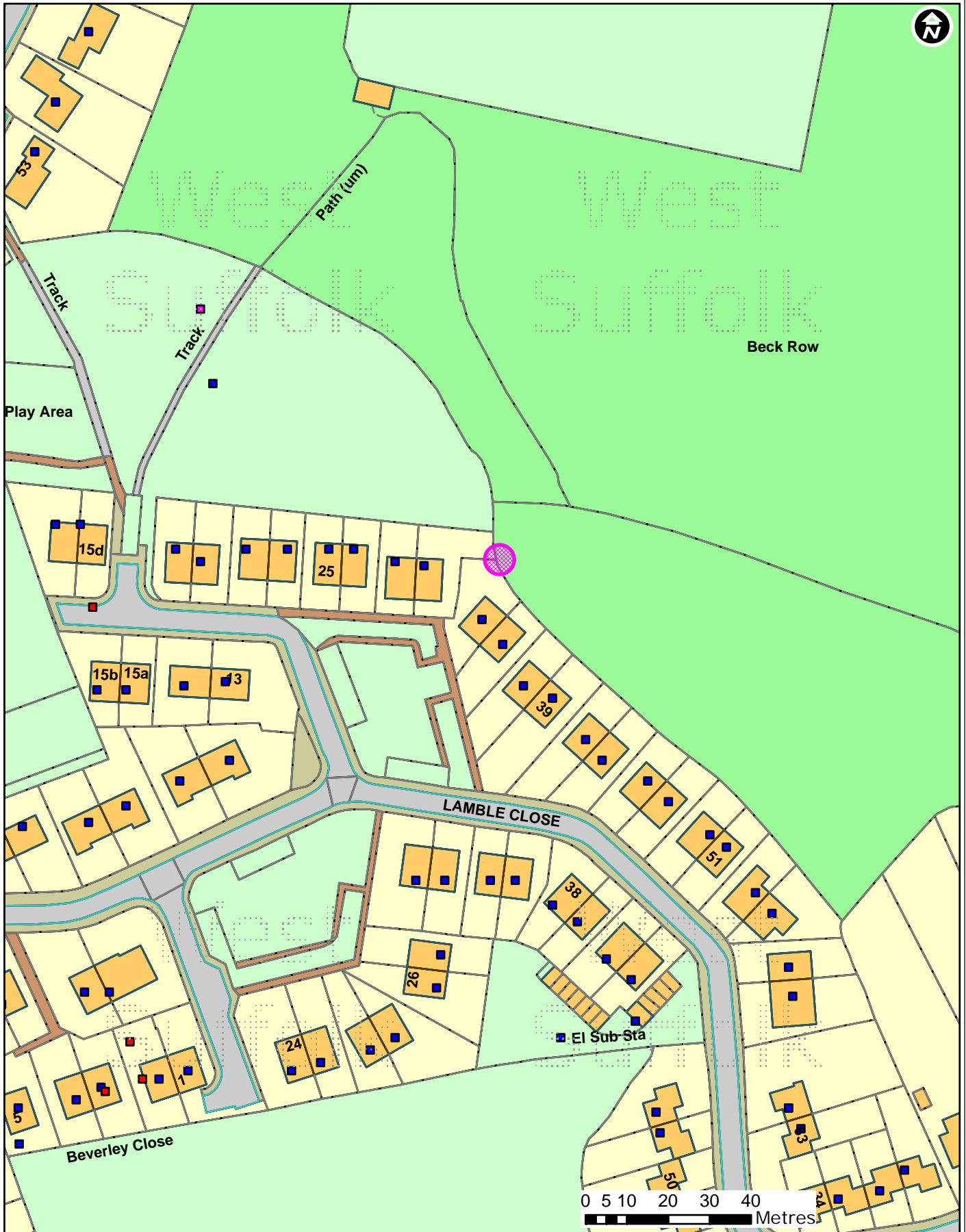
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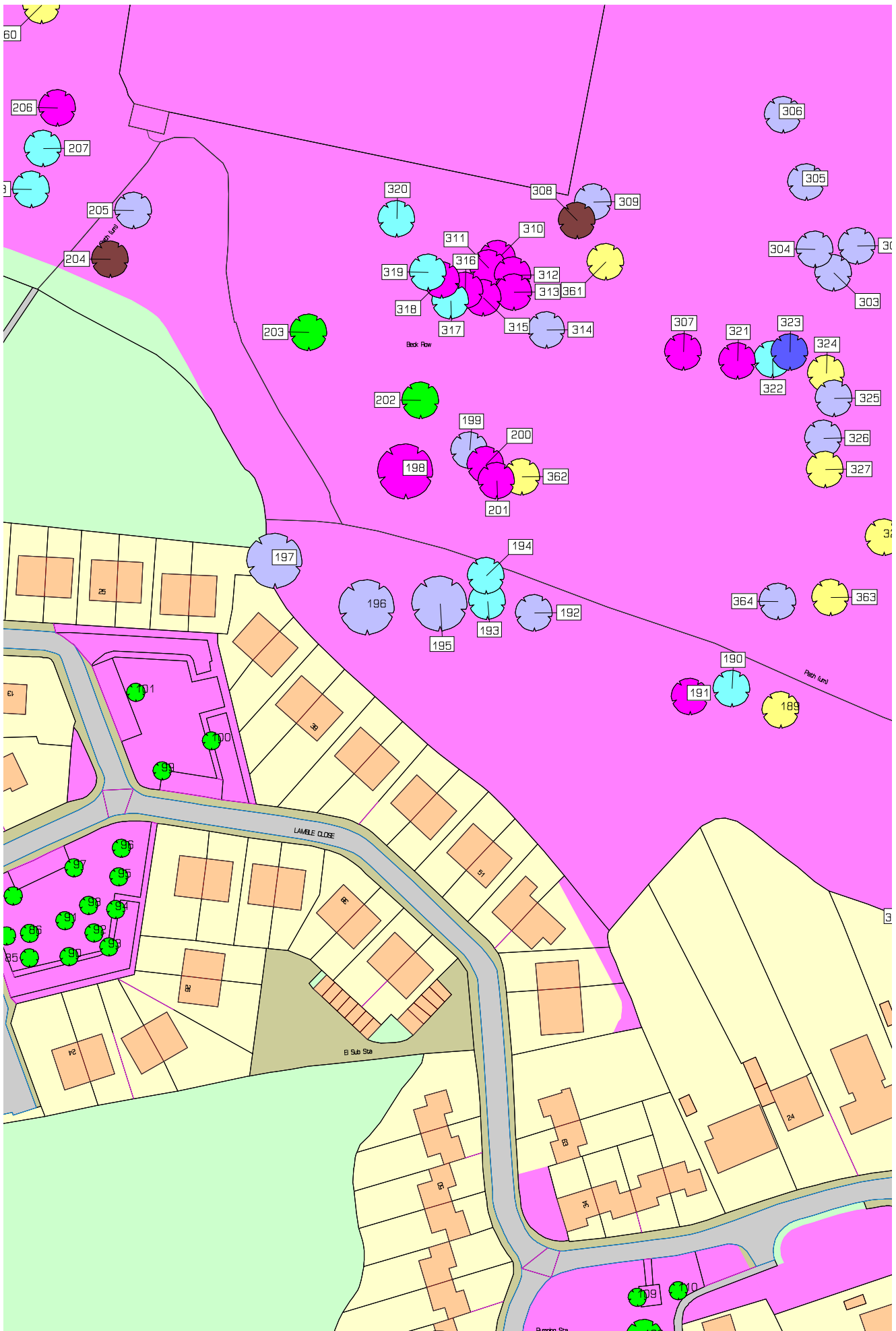
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DC/15/1515/TPO

Rear of 33 Lamble Close, Beck Row



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