

# Development Control Committee



**Forest Heath**  
District Council

<b>Title:</b>	<b>Agenda</b>									
<b>Date:</b>	<b>Wednesday 2 November 2016</b>									
<b>Time:</b>	<b>6.00 pm</b>									
<b>Venue:</b>	<b>Council Chamber District Offices</b> College Heath Road Mildenhall									
<b>Full Members:</b>	<p style="text-align: center;"><b>Chairman</b> Rona Burt</p> <p style="text-align: center;"><b>Vice Chairman</b> Chris Barker</p> <table style="width: 100%; border: none;"> <tr> <td style="vertical-align: top;"><u>Conservative Members (9)</u></td> <td style="vertical-align: top;">David Bowman Ruth Bowman Louis Busuttil Stephen Edwards</td> <td style="vertical-align: top;">Brian Harvey Carol Lynch Louise Marston</td> </tr> <tr> <td style="vertical-align: top;"><u>West Suffolk Independent Members (3)</u></td> <td style="vertical-align: top;">Andrew Appleby Simon Cole</td> <td style="vertical-align: top;">David Palmer</td> </tr> <tr> <td style="vertical-align: top;"><u>UKIP Members (2)</u></td> <td style="vertical-align: top;">Roger Dicker</td> <td style="vertical-align: top;">Peter Ridgwell</td> </tr> </table>	<u>Conservative Members (9)</u>	David Bowman Ruth Bowman Louis Busuttil Stephen Edwards	Brian Harvey Carol Lynch Louise Marston	<u>West Suffolk Independent Members (3)</u>	Andrew Appleby Simon Cole	David Palmer	<u>UKIP Members (2)</u>	Roger Dicker	Peter Ridgwell
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<u>West Suffolk Independent Members (3)</u>	Andrew Appleby Simon Cole	David Palmer								
<u>UKIP Members (2)</u>	Roger Dicker	Peter Ridgwell								
<b>** THERE ARE NO SITE VISITS REQUIRED FOR THIS AGENDA **</b>										
<b>Substitutes:</b>	Named substitutes are not appointed									
<b>Interests – Declaration and Restriction on Participation:</b>	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.									
<b>Quorum:</b>	Five Members									
<b>Committee administrator:</b>	<b>Helen Hardinge</b> Democratic Services Advisor <b>Tel:</b> 01638 719363 <b>Email:</b> <a href="mailto:helen.hardinge@westsuffolk.gov.uk">helen.hardinge@westsuffolk.gov.uk</a>									



**DEVELOPMENT CONTROL COMMITTEE:  
 AGENDA 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

<b>Forest Heath District Council</b>	<b>St Edmundsbury Borough Council</b>
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
Joint Development Management Policies 2015	Joint Development Management Policies 2015
	Vision 2031 (2014)
<b>Emerging Policy documents</b>	
Core Strategy – Single Issue review	
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 must 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.

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## **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/alterd, 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.

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# **Agenda**

## **Procedural Matters**

### **Part 1 – Public**

- 1. Apologies for Absence**
- 2. Substitutes**
- 3. Minutes** **1 - 6**

To confirm the minutes of the meeting held on 5 October 2016 (copy attached).
- 4. Planning Applications DC/16/1607/FUL & DC/16/1608/LB - Palace House, Rothschild Yard, Newmarket** **7 - 16**

Report No: **DEV/FH/16/034**

Change of use of vacant expansion space to Office use (B1)
- 5. Planning Application DC/16/1609/VAR - Palace House Stables, Palace Street, Newmarket** **17 - 26**

Report No: **DEV/FH/16/035**

Variation of Condition 7 of DC/14/0253/FUL - to allow use of amended plans for proposed bund location and cross sections for Change of existing open paddock space into specific ménage and paddock areas
- 6. Planning Application DC/16/1629/FUL - Proposed New Dwelling at Cupola Farm, Undley** **27 - 38**

Report No: **DEV/FH/16/036**

(i) 1no. detached dwelling and (ii) two bay cart lodge
- 7. Planning Enforcement Matters at Small Fen Farm, Small Fen Lane, Brandon** **39 - 72**

Report No: **DEV/FH/16/037**

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# Development Control Committee



Forest Heath  
District Council

**Minutes** of a meeting of the **Development Control Committee** held on **Wednesday 5 October 2016** 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

Ruth Bowman

Victor Lukaniuk

Louis Busuttil

Carol Lynch

Simon Cole

David Palmer

Roger Dicker

Peter Ridgwell

**In attendance:**

Lance Stanbury

## 171. **Apologies for Absence**

Apologies for absence were received from Councillors Andrew Appleby, David Bowman, Stephen Edwards, Brian Harvey and Louise Marston.

## 172. **Substitutes**

Councillor Victor Lukaniuk attended the meeting as substitute for Councillor Andrew Appleby.

## 173. **Minutes**

The minutes of the meeting held on 7 September 2016 were accepted as an accurate record and were signed by the Chairman, with 9 voting for the motion and with 1 abstention, subject to the insertion of the following **wording**:

Minute No. 169     Planning Application DC/16/0596/OUT – Land East of Newmarket Road and North of Elms Road, Red Lodge (Report No: DEV/FH/16/028)

“Comments were also made in regard to:

- The proximity of the building line to the dual carriageway;
- The location and level of open space to be provided; and
- The degree of planting/replanting to be carried out (**with Councillors David Bowman and Peter Ridgwell having made specific**

***reference to a young oak tree that they would wish to see replanted on the site, if possible).***

The Officer explained that all of which would be considered as part of the Reserved Matters application.

***Councillor Carol Lynch referred to the comments in response to the application from Red Lodge Parish Council (Paragraph 32), particularly those concerned with the lack of provision of housing for the elderly. She asked that Officers make a note of this in respect of Red Lodge and to consider in any future schemes for the village."***

**174. Planning Application DC/16/1175/FUL - Weston, Milburn Drove, Moulton (Report No: DEV/FH/16/031)**

The Chairman agreed to bring this item forward on the agenda.

(i) Change of use of existing garage to Hairdressing salon (Use class A1) (ii) Retention of extension to front of existing garage.

This application was referred to the Development Control Committee at the request of the Delegation Panel. It was deferred from consideration at the Committee's meeting on 7 September 2016 and a Member site visit was held prior to that meeting.

Whilst Moulton Parish Council supported the application a number of objections had been received from residents. Officers were recommending that the application be approved as set out in Paragraph 32 of Report No DEV/FH/16/031.

The Committee were advised that since publication of the agenda three further letters of objection had been received from residents citing concerns previously raised, and summarised in Paragraph 9 of the report, together with one further letter of support.

In response to questions from Councillor Ruth Bowman the Case Officer confirmed that: a) there were no windows on the boundary side of the garage/salon building and b) whilst the Parish Council had suggested removal of the front boundary wall, Suffolk County Council had not considered this work necessary to enable vehicles to exit in a forward gear.

Councillor Peter Ridgwell raised concern over the proximity of the animals that were within the application's grounds on the site visit. The Principal Planning Officer explained that these were domestic pets which belonged to the owner of the property and this was not a material planning consideration.

Some Members raised queries as to whether the hairdressing salon needed to have an extraction system in place in order to reduce the noise and smell from hairdryers and hair products. The Case Officer explained that as the salon would operate on such a small scale it would not be reasonable to require this.

In response to a number of questions the Principal Planning Officer explained that the proposed conditions had been discussed with the Council's Enforcement Officer who was of the opinion that all were enforceable.

Councillor Roger Dicker spoke as Ward Member for the application. He advised the Committee that Moulton Parish Council had been criticised by some of the objectors for the way in which they had dealt with the application. Councillor Dicker considered this criticism unfair and moved that the application be approved. This was duly seconded by Councillor Louis Busuttil.

With the vote being unanimous, it was resolved that

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

1. Standard Time limit
2. Accord with plans
3. Hours of operation – (09.00 – 19.00 Monday to Friday & 09.00 - 15.00 Saturdays with no working on Sundays or Bank Holidays).
4. No more than one stylist to be on site at anytime
5. No more than 4 clients on any working day (log to be kept and made available for inspection)
6. Operation of the business to be tied to the dwelling
7. Restrict to approved use only
8. Highways – Parking & Manoeuvring to be retained
9. Tarmac surfacing completed prior to use commencing

Speakers: Mr Tony Hargreaves (neighbour) spoke against the application.  
Mr Kevin Watts (agent) spoke in support of the application.

175. **Planning Application DC/16/1762/HH - Heathside, Kennett Road, Herringswell (Report No: DEV/FH/16/029)**

Single storey rear extension.

This application was referred to the Development Control Committee because the applicant was an elected Member.

No objections had been received from third parties and Officers were recommending that the application be approved as set out in Paragraph 20 of Report No DEV/FH/16/029.

It was moved by Councillor Carol Lynch, seconded by Councillor Simon Cole and with the vote being unanimous, it was resolved that

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

1. Time limit
2. Compliance with plans

176. **Planning Application DC/16/1436/FUL - Coopers Cottage, 42 Mill Road, Lakenheath (Report No: DEV/FH/16/030)**

2no. dwellings (following demolition of existing outbuilding/garage) with associated vehicular access.

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

A Member site visit was held prior to the meeting. Officers were recommending that the application be approved as set out in Paragraph 23 of Report No DEV/FH/16/030

The Senior Planning Officer provided the Committee with a brief outline of the planning history of the site. She explained that the concerns previously raised in response to applications had been addressed in the scheme before Members, hence the recommendation on balance was now one of approval. Lakenheath Parish Council, however, objected to the application.

The Officer advised the Committee that since publication of the agenda a further representation had been received from the Board of Governors at Lakenheath Community Primary School. The Governors objected to the application primarily due to safeguarding concerns in that the proposed development would directly overlook the school's playground and some classrooms which could not be entirely mitigated by the school (in respect of the outside area affected).

In response to this, the Officer explained that should the Committee approve the application she would propose an additional condition in respect of rear boundary treatment details. The applicant had submitted the plans with a 1.8m fence included, however, whilst on site it was noted that neighbours had an additional trellis which further heightened their fencing.

In response to questions raised by Members, the Case Officer confirmed that the windows on the top floor of the development could neither be made into roof lights or obscure glazed, as the angle of the roof would not allow it and the windows served habitable rooms.

Councillor Roger Dicker moved that the application be approved, as per the Officer recommendation, and with the additional condition re boundary treatment. This was duly seconded by Councillor Victor Lukaniuk and with 4 voting for the motion, 6 against and with 1 abstention the Chairman declared the motion lost.

Councillor Carol Lynch then spoke against the application for reasons of:

1. Concerns re safeguarding/overlooking of the neighbouring primary school;
2. The design not being in keeping with the surrounding area; and
3. The scheme constituting as overdevelopment for the site.

The Principal Planning Officer explained that the school would be able to mitigate the overlooking of the classrooms in question with the installation of blinds or similar, but it would not be possible to prevent the overlooking of

the playground. However, Officers had carried out research in respect of this particular issue and as similar concerns were raised by the primary school when the neighbouring properties were constructed, Officers would not be able to support a refusal on the grounds of overlooking.

Councillor Simon Cole then moved that the application be refused, contrary to the Officer recommendation, on the grounds of the scheme being out of keeping and overdevelopment of the site. This was duly seconded by Councillor Lynch.

The Case Officer confirmed that the two reasons for refusal were defensible and that the application would not be subject to a risk assessment and would not, therefore, need to be deferred to the next meeting of the Committee.

Upon being put to the vote, and with 6 voting for the motion, 4 against and with 1 abstention, it was resolved that

Planning permission be **REFUSED** for the following reasons:

1. The design not being in keeping with the surrounding area; and
2. The scheme constituting as overdevelopment for the site.

Speaker: Councillor Hermione Brown (Lakenheath Parish Council) spoke against the application.

Councillor Roger Dicker left the meeting at 7.07pm on conclusion of this item.

**177. Tree Preservation Order TPO 5, 2016 - Land South of Broom Road, Lakenheath (Report No: DEV/FH/16/032)**

The Committee were advised that a provisional Tree Preservation Order (TPO) was made on trees at land South of Broom Road, Lakenheath on 2 June 2016. The TPO was served to protect the mature trees which form an important landscape feature characteristic of the area and of the Breckland landscape character type.

The TPO was required to prevent the precipitous removal of trees on the potential adjacent development site and to protect retained trees into the future when, if the site was developed, they would increase in their public amenity value.

The statutory consultation period for the TPO expired on 4 July 2016 and one objection to the TPO had been received from an agent acting on behalf of the landowner.

Officers did not consider the objection to be justified, for the reasoning set out in Report No DEV/FH/16/032, and were recommending that the TPO be confirmed without modifications,

It was moved by Councillor Simon Cole, seconded by Councillor Carol Lynch and with the vote being unanimous, it was

**RESOLVED:**

That the report be noted and Tree Preservation Order TPO 5, 2016 Land South of Broom Road, Lakenheath be confirmed without modifications.

178. **Tree Preservation Order TPO 6, 2016 - Land West of Eriswell Road, Lakenheath (Report No: DEV/FH/16/033)**

The Committee were advised that a provisional Tree Preservation Order (TPO) was made on trees on land West of Eriswell Road, Lakenheath on 2 June 2016. The TPO was served to protect the mature trees which form an important landscape feature characteristic of the area and of the Breckland landscape character type and which also formed a gateway into Lakenheath.

The TPO was required to protect the trees when the site was developed and into the future.

The statutory consultation period for the TPO expired on 4 July 2016 and one objection to the TPO had been received from an agent acting on behalf of the landowner.

Officers did not consider the objection to be justified, for the reasoning set out in Report No DEV/FH/16/033, and were recommending that the TPO be confirmed **with** modifications (and not *without*, as incorrectly written in the synopsis of the report) as set out in the recommendation at Paragraph 23.

It was moved by Councillor Carol Lynch, seconded by Councillor Simon Cole and with the vote being unanimous, it was

**RESOLVED:**

That the report be noted and Tree Preservation Order TPO 6, 2016 Land West of Eriswell Road, Lakenheath be confirmed with the following modification:  
Group of 4 Beech, 8 Silver Birch and 1 Lombardy Poplar.

The meeting concluded at 7.09 pm

**Signed by:**

**Chairman**

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## Forest Heath District Council

**DEVELOPMENT  
CONTROL COMMITTEE**

**2 NOVEMBER 2016**

**DEV/FH/16/034**

**Report of the Head of Planning and Growth**

**PLANNING APPLICATIONS DC/16/1607/FUL & DC/16/1608/LB - PALACE  
HOUSE, ROTHSCHILD YARD, NEWMARKET**

### **Synopsis:**

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

### **CONTACT OFFICER**

Gary Hancox  
Email: [gary.hancox@westsuffolk.gov.uk](mailto:gary.hancox@westsuffolk.gov.uk)  
Telephone: 01638 719258

# Committee Report

**Date** 16.08.2016 **Expiry Date:** 11.10.2016

**Registered:**

**Case Officer:** Gary Hancox **Recommendation:** Approve

**Parish:** Newmarket **Ward:** All Saints

**Proposal:** Planning Applications DC/16/1607/FUL & DC/16/1608/LB - Change of use of vacant expansion space to Office use (B1)

**Site:** Palace House, Rothschild Yard, Newmarket

**Applicant:** Forest Heath District Council

## **Background:**

**These applications are referred to the Development Control Committee as the applicant is Forest Heath District Council.**

**It is recommended that deemed consent (planning permission) be GRANTED and the listed building application be referred to the National Planning Casework Unit in accordance with the requirements of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 and that they be advised Forest Heath District Council is minded to Grant Listed Building Consent, subject to conditions.**

## **Proposal:**

1. Planning permission and Listed Building consent is sought for the change of use of unused space between two flats to form additional office space (B1). The area to be converted would be 75m<sup>2</sup>.

## **Application Supporting Material:**

2. Information submitted with the application as follows:
  - Design and access statement
  - First floor existing and proposed plans

## **Site Details:**

3. The site is part of the former Rothschild Yard Stables, part of Palace House, home of the new National Heritage Centre for Horse Racing,



located within the centre of Newmarket. The building is Grade II Listed and within a Conservation Area. A separate Listed Building application has been submitted to cover the minor internal alterations to the building, and this is considered below.

### **Planning History:**

4. F/2012/0256/FUL - Amendments to F/2010/0683/EOT: Change of use of four existing stables to be used display purposes; Change of use of existing first floor store area to function as office space; Re-positioning of roof lights to first floor one bed flat: Addition of biomass boiler and storage to existing approved hay barn; fenced paddocks; Refurbishment of existing multi use horse box and farriers to function as originally intended, extension to house public toilets and transformer; change of use of existing store building on southern boundary to function as lunch room and public/staff toilets; renewal of existing site access from All Saints Road (Departure from Development Plan) – Approved Nov 2012.

### **Consultations:**

Public Health and Housing: - No objection.

SCC Highways: - No objection.

Conservation Officer: - No objection.

### **Representations:**

5. Newmarket Town Council: No objection.

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

6. Joint Development Management Policies Document:

- Policy DM1 (Sustainable Development)
- Policy DM2 (Creating Places)
- Policy DM15 (Listed Buildings)
- Policy DM47 (Development Related to the Horse Racing Industry)

7. Forest Heath Core Strategy 2010

- Policy CS1 (Spatial Strategy)
- Policy CS3 (Landscape Character and the Historic Environment)
- Policy CS6 (Sustainable Economic and Tourism Development)

### **Other Planning Policy:**

8. National Planning Policy Framework (2012)

**Officer Comment:**

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

- Principle of Development
- Listed Building Impact

10. The development proposes to change the use of an internal unused area of a former stable block that at first floor has been recently converted to flats. The additional office will expand the current office space already provided in connection with the flats.

11. The proposal is a scheme that increases the usability of this space converting unused 'expansion space' to additional office space required to run the site, and will have minimal impact. The proposal compliments the development of the overall site as a horse racing heritage centre and museum. This has much support locally and the principle of development is in accordance with the above relevant policies of the development plan.

Listed Building Impact

12. In terms of physical works to the building, this is all contained internally, and is limited to a new stud wall, existing floor boards sanded and sealed, and a new door installed. The works are reversible and will not have a significant harmful impact on the historic fabric and appearance of the building. The proposal accords with Policy DM15 and the requirements of Section 66 of the Town and Country Planning (Listed Building and Conservation Areas) Act 1990 have been met.

**Conclusion:**

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

**Recommendations:**

Application DC/16/1607/FUL

It is recommended that **DEEMED CONSENT BE GRANTED**, subject to the following conditions;

1. 3 year time limit
2. Approved plans
3. Restriction to B1 office use only

Application DC/16/1608/LB

That the application be referred to the National Planning Casework Unit for determination under the provisions of The Planning (Listed Buildings and Conservation Areas) Regulations 1990, and that they be advised

Forest Heath District Council is Minded to **GRANT** Listed Building Consent, subject to the following conditions:

1. 3 year time limit
2. Approved plans

**Documents:**

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

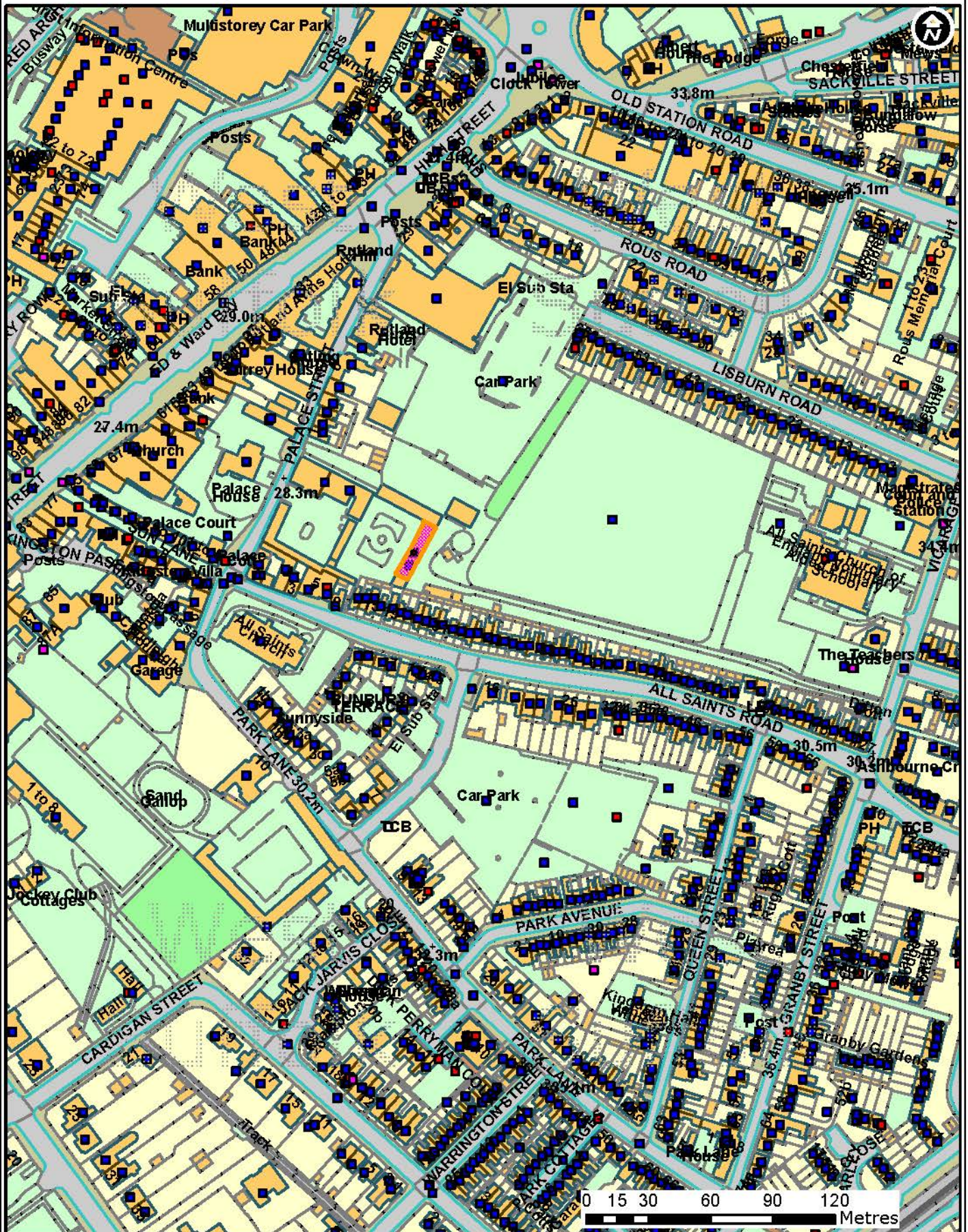
<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OAVPFTPDIK000>

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# DC/16/1607/FUL and DC/16/1608/LB

Palace House Stables, Newmarket



Forest Heath • St Edmundsbury

**West Suffolk**  
working together

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Scale: 1:2,500  
Date: 19/10/2016

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All drawings and specifications should be read in conjunction with the project health and safety plan, any possible conflicts should be presented to the Planning Coordinator.

All work to be carried out in accordance with current Building Regulations.

Contractors must verify all dimensions at the job before commencing any work or making shop drawings.

Written dimensions should be taken.

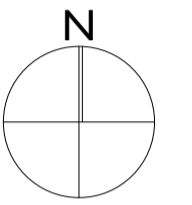
Do not scale off drawing.

Do not take digital dimensions from this drawing.

Any discrepancies to be reported to the Architect.

**NOTES**

- Drawing based on Ordnance Survey extract.
- Area of proposed works 72 sq meters
- Access to proposed works located within the area of site ownership



**REVISIONS**

Rev	Dr	Ch	Date
A	BH	RT	25.07.16
B	BH	RT	16.08.16

Redline amended in line with planning comments.

**DRAWING ORIGINATOR**

chartered architects  
interior designers  
space planners  
project managers  
landscape architects



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LS8 1PQ

**PROJECT**

National Heritage Centre for Horseracing and Sporting Art

**CLIENT**



**Forest Heath**  
District Council

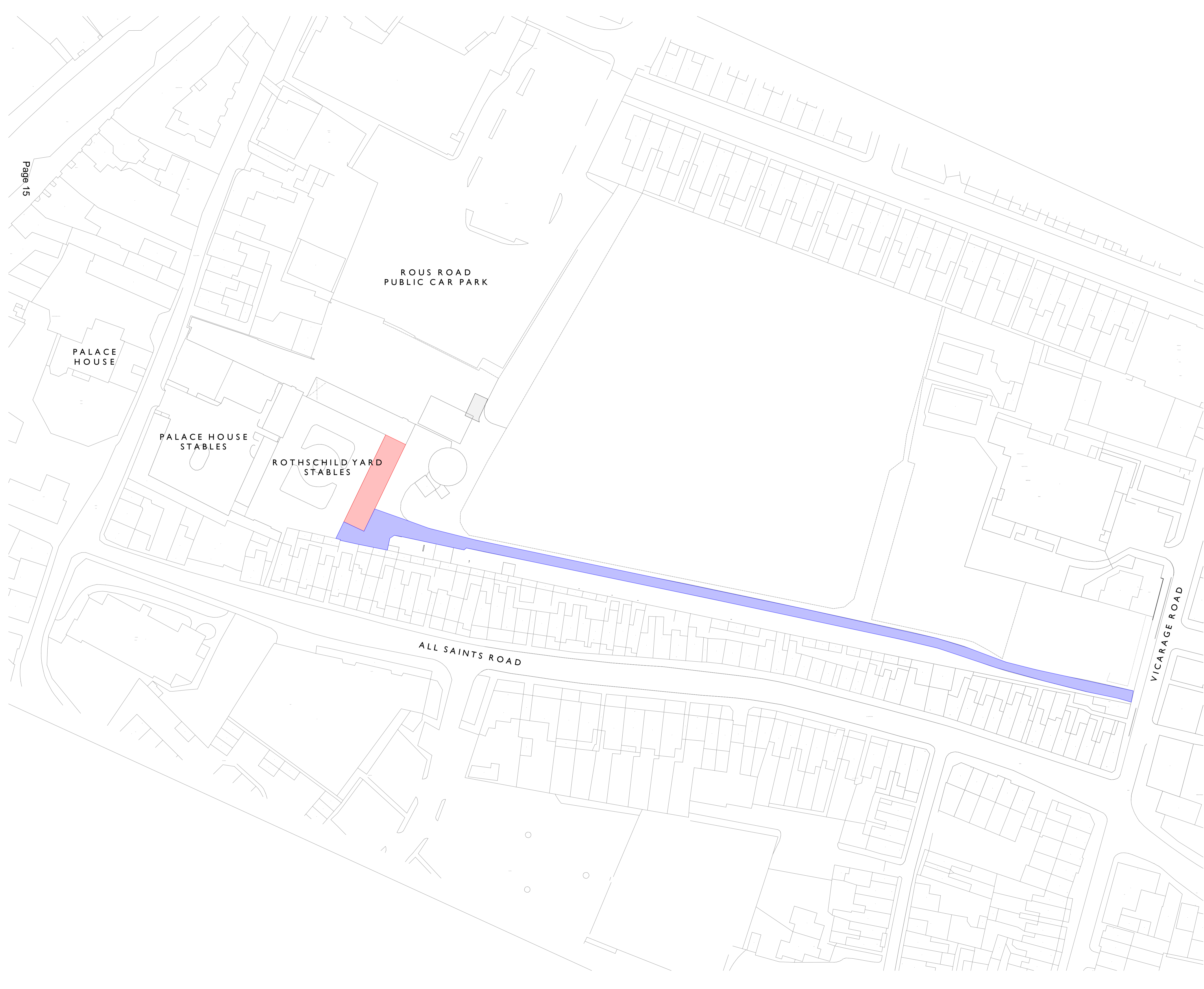
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ROR Office Site Location Plan

teamwork\GWP\BMServer\ROR\_Master

SCALE	1:500	AI	DRAWN BY	BH
DATE	July 2016	CHECKED	RT	
<b>DRAWING NUMBER</b>				
No	Rev			
240.1114.(SK).512.B				

<b>DRAWING STATUS</b>		
INFORMATION	TENDER	CONTRACT CONSTRUCTION



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## Forest Heath District Council

**DEVELOPMENT  
CONTROL COMMITTEE**

**2 NOVEMBER 2016**

**DEV/FH/16/035**

**Report of the Head of Planning and Growth**

**PLANNING APPLICATION DC/16/1609/VAR - PALACE HOUSE STABLES,  
PALACE STREET, NEWMARKET**

### **Synopsis:**

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

### **CONTACT OFFICER**

Gary Hancox  
Email: [gary.hancox@westsuffolk.gov.uk](mailto:gary.hancox@westsuffolk.gov.uk)  
Telephone: 01638 719258

# Committee Report

**Date** 10.08.2016 **Expiry Date:** 05.10.2016

**Registered:**

**Case Officer:** Gary Hancox **Recommendation:** Approve

**Parish:** Newmarket **Ward:** All Saints

**Proposal:** Variation of Condition 7 of DC/14/0253/FUL - to allow use of amended plans for proposed bund location and cross sections for Change of existing open paddock space into specific ménage and paddock areas

**Site:** Palace House Stables, Place Street, Newmarket

**Applicant:** Forest Heath District Council

## **Background:**

**This application is referred to the Development Control Committee because the applicant is Forest Heath District Council.**

## **Proposal:**

1. Retrospective planning permission is sought under Section 73a of the Town and Country Planning Act 1990 for the Variation of Condition 7 of DC/14/0253/FUL - to allow use of amended plans for proposed bund location and cross sections for change of existing open paddock space into specific ménage and paddock areas.

## **Application Supporting Material:**

2. Information submitted with the application as follows:
  - Application forms
  - Proposed bund location and cross-sections

## **Site Details:**

3. The site is located within the Newmarket Conservation Area. Palace House stables consists of two ranges of stables around two courtyards with an open paddock area to the rear. This area of paddocks is bordered by a car park and the stable yards to the West, residential properties to the North (Lisburn Road) and South (All Saints Road) and All Saints School lies to the East.

4. The older courtyard of stables lies adjacent to Palace Street and is known as Kings Yard. It consists of a range of grade II listed buildings built between 1857 and 1860 and contains the Trainers House. The eastern courtyard of stables was added in 1903 and is known as Rothschild Yard. There are some buildings beyond the yard including a muck pit and farriers workshop which along with the stable block and the central fountain are also all Grade II listed.
5. The proposed development is well removed from the complex of listed buildings so an application for listed building consent is not required in this instance.
6. Palace Street lies beyond the two stable blocks to the west and contains a mix of period properties which are considered to be the most archaeologically and architecturally significant within the town centre. Palace House is situated on the opposite side of Palace Street and is the only surviving part of Charles II royal palace. It is listed Grade II\*.

### **Planning History:**

7. The site has an extensive planning history. Recent and relevant planning applications relating to the Home of Horse Racing project and the paddocks area in particular are as follows;
8. DC/14/0253/FUL - Change existing open paddock space into specific ménage and paddock areas – Approved June 2014.
9. F/2013/0071/FU3 – Amendments to extant permission F/2010/0778/FU3 to include partial demolition of, new build extension/change of use from trainers house/stable yard to new museum and associated visitor experience. Miscellaneous updates to existing stables to create coach park and object store. Approved – 8th January 2014
10. F/2012/0256/FUL – Amendments to F/2010/0683/EOT for change of use of four existing stables to be used for display purposes; change of use of existing first floor store area to function as office space; Re-positioning of roof lights to first floor one bed flat; Addition of biomass boiler and storage to existing hay barn; fenced paddocks; refurbishment of multi use box and farriers buildings; extension to house transformer and public toilets; change of use of existing store building on southern boundary to function as lunch room and public/staff toilets; renewal of existing site access from All Saints Road. Approved – 24th June 2013
11. F/2010/0683/EOT – Extension of time limit for application F/2005/0521/FU3 for change of use from racehorse training establishment to racehorse rehabilitation/assessment centre; change of use of first floor store above stables to living accommodation, create new link roadway within the site and associated parking for cars/coaches, construction of new hay/store barn; ménage, horse walker and associated facilities. Approved – 14th December 2010

**Consultations:**

12. Highway Authority: No objection.
13. Conservation Officer: No objection.
14. Environment Agency: No comments.

**Representations:**

15. Town Council: No objections.
16. One letter of objection received from a neighbouring resident on Lisburn Road
- The bund as built exceeds the height as set out in the application details
  - Overlooking of properties from people standing in the raised viewing areas

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

17. Joint Development Management Policies Document:
- Policy DM1 – Sustainable development
  - Policy DM47 – Development relating to the horse racing industry
18. Forest Heath Core Strategy 2010
- Policy CS1 – Spatial strategy
  - Policy CS3 – Landscape character and the historic environment
  - Policy CS5 – Design quality and local distinctiveness
  - Policy CS6 – Sustainable economic and tourism development

**Other Planning Policy:**

19. National Planning Policy Framework (2012) core principles and paragraphs 56 – 68

**Officer Comment:**

20. The principle of development of Palace House Stables and Paddocks has been established through a number of previous approvals as set out above. Previous applications have allowed detailed consideration in terms of the application of policy and impacts on the listed buildings, conservation area, occupiers of neighbouring dwellings and occupiers and users of neighbouring sites.
21. The issues to be considered in the determination of the application are:
- Impact on the design and appearance of the permitted scheme
  - Impact on amenity

22. The original permission for the creation of a formal ménage and paddock area on this site included a raised and covered seated platform to provide a viewing area. This application seeks to vary this permission to allow for the retention of soil spoil from land excavation to create two supplementary bunds to the side and rear of the ménage. The bund to the rear of the site, closest to Lisburn Road, will be approx. 0.5 metres above the existing ground level height. The ménage floor level will be approx. 2 meters below the top of the bund. The raised bund to the side of the ménage will be approx. 1 meter above ground level.
23. The bund to the north of the ménage is approximately 18 metres to the rear boundaries of dwellings on Lisburn Road at its closest point (the NE corner). The distance between the bund and the rear facing elevations of dwellings on Lisburn Road at its closest point is approximately 25 metres.
24. The proposed bunds have less visual impact than the previous proposed seating stands, and even standing on top of the bunds will mean that the potential for any loss of privacy to the rear gardens and windows of properties in Lisburn Road will still be limited. The amended proposals are therefore considered acceptable.

#### **Conclusion:**

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

#### **Recommendation:**

26. It is recommended that planning permission be **APPROVED** subject to the following conditions:
1. Retained in accordance with approved drawings (variation of condition 7)
  2. Demolition and construction hours
  3. Biodiversity enhancements
  4. Restricted use of the ménage

#### **Documents:**

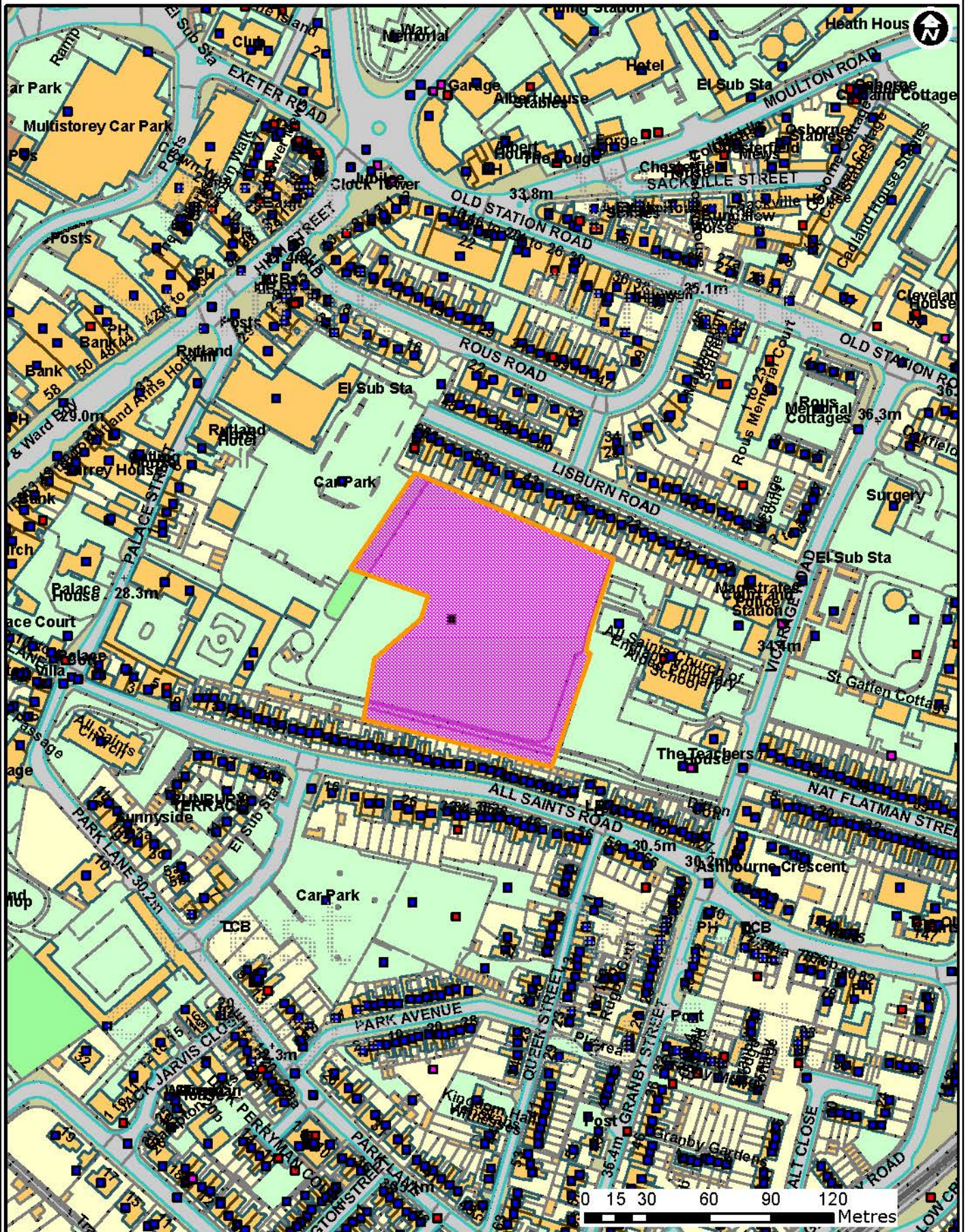
All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OAVPG4PDIK500>

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# DC/16/1609/VAR

Palace House Stables, Newmarket



Forest Heath • St Edmundsbury

**West Suffolk**  
working together

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Date: 19/10/2016

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All work to be carried out in accordance with current Building Regulations. Contractors must verify all dimensions at the job before commencing any work or making shop drawings.

Written dimensions should be taken.

Do not scale off drawing.  
Do not take digital dimensions from this drawing.  
Any discrepancies to be reported to the Architect.

**NOTES**

- Drawing based on Ordnance Survey extract.
- Land ownership boundary.
- Menage Area Application Boundary. 11,415 sq meters



**REVISIONS**

Rev	Dr	Ch	Date
01	LD	RT	10.02.14
First Issue for Planning			

**DRAWING ORIGINATOR**

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space planners  
project managers  
landscape architects

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**PROJECT**

National Heritage Centre for Horseracing and Sporting Art

**CLIENT**



**DRAWING DESCRIPTION**

Menage Location Plan

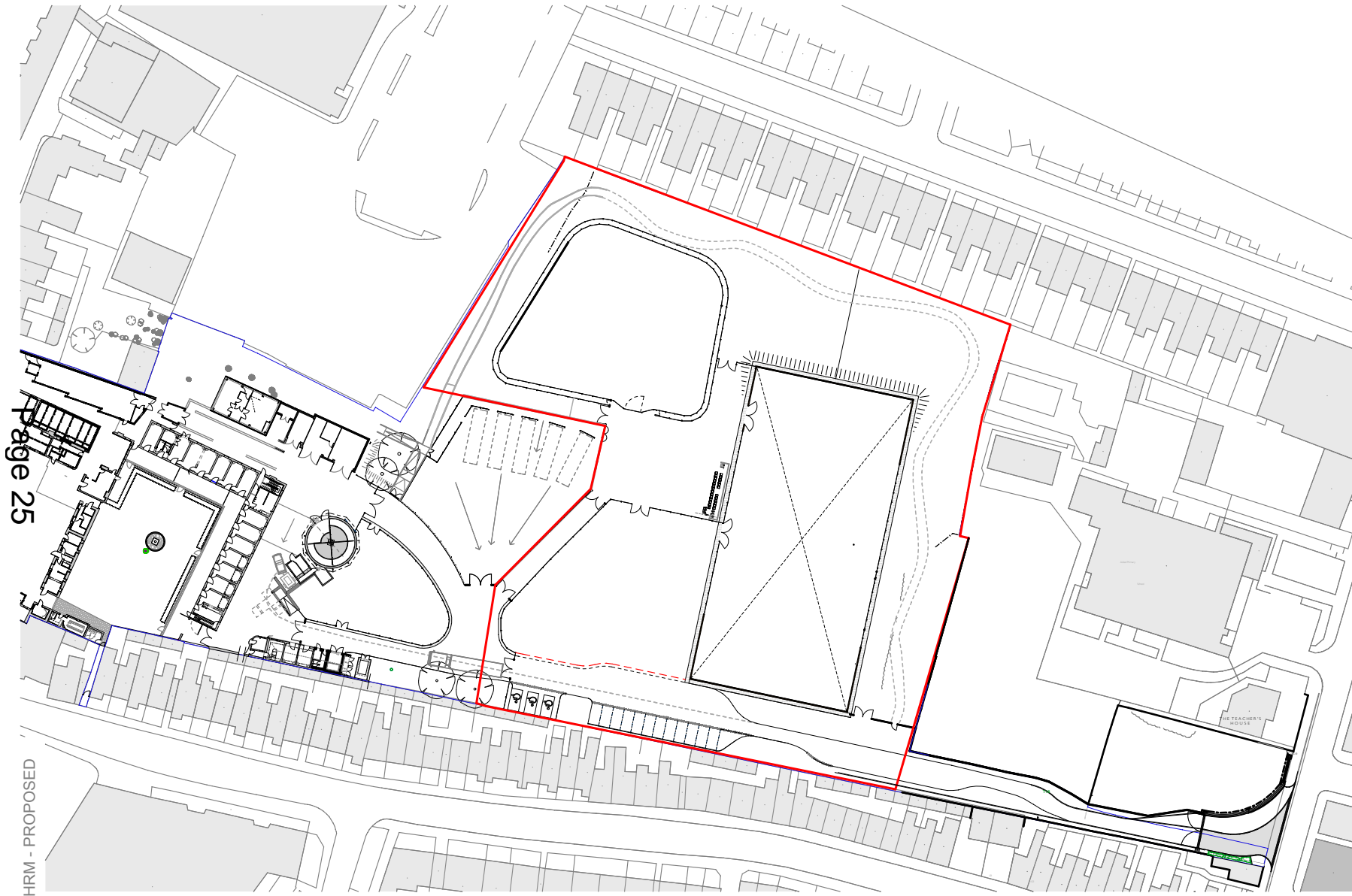
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DATE 10.02.14 CHECKED RT

DRAWING NUMBER

240.1114.(PA).201.01

**DRAWING STATUS**

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Page 25

ROR & NHRM - PROPOSED

Proposed Menage Site

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## Forest Heath District Council

**DEVELOPMENT  
CONTROL COMMITTEE**

**2 NOVEMBER 2016**

**DEV/FH/16/036**

Report of the Head of Planning and Growth

**PLANNING APPLICATION DC/16/1629/FUL - PROPOSED NEW DWELLING AT  
CUPOLA FARM, UNDLEY**

**Synopsis:**

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

**CONTACT OFFICER**

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Telephone: 01638 719792

# Committee Report

<b>Date</b>	11/08/2016	<b>Expiry Date:</b>	06/10/2016
<b>Registered:</b>		<b>Extension of time:</b>	07/11/2016
<b>Case Officer:</b>	Matthew Gee	<b>Recommendation:</b>	Refuse
<b>Parish:</b>	Beck Row	<b>Ward:</b>	Eriswell and the Rows
<b>Proposal:</b>	Planning Application DC/16/1629/FUL - (i) 1no. detached dwelling and (ii) two bay cart lodge		
<b>Site:</b>	Proposed New Dwelling at Cupola Farm, Undley		
<b>Applicant:</b>	Mr Jonathan Waters		

## **Background:**

**This application is referred to the Development Control Committee because the applicant is a relation to a Member of the Council.**

## **Proposal:**

1. Planning permission is sought for:
  - i. 1no. detached one and half storey dwelling. The dwelling is configured in an 'L' shape. The main body of the dwelling measures 17.9m wide, 7.8m deep, 3m to the eaves, and 7.2m in height. The rear element measures 6.2m wide, 5.2m deep, 3m to the eaves and 6.3m in height.
  - ii. Detached two bay cart lodge measuring 6.1m wide, 5.4m deep, 2.2 to the eaves and 4.7m in height.

## **Application Supporting Material:**

2. Information submitted with the application as follows:
  - Location Plan
  - Proposed Block Plan, Elevations, and Floorplan.
  - Proposed Cart Lodge Floorplan and Elevations.
  - Design, Access and Planning Statement

## **Site Details:**

3. The site is situated outside of a defined settlement boundary, and currently comprises of an arable farm and paddocks covering an area of 12.89 hectares, with associated two storey dwelling located at the entrance of the site. To the north of the dwelling are a set of outbuildings and the 'former farmhouse' (which is not occupied) for the holding.

### **Planning History:**

4. F/78/651 – Outline Application: Erection of agricultural dwelling – Approved with conditions
5. F/80/803 – Reserved Matters Application: Agricultural dwelling and access – Approved with conditions

### **Consultations:**

6. Public Health and Housing: No Comments
7. Environment Agency: No Objection
8. Highway Authority: Does not wish to restrict the grant of permission. The site is set back from the highway and accessed via a private road and has enough room for parking which meets SCC requirements.
9. Environmental Team: No Objection

### **Representations:**

10. Parish Council: No Comments received
11. Cupola Farm: Objects to the application on the grounds that application F/78/651 restricted the site to 1 no. dwelling, and a Section 52 agreement was signed removing residential rights from the 'derelict' farmhouse to the north of the proposal. In addition, they object as the farm already has a dwelling on the site used for the running of the farm and that there is no justification for another.

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

12. Joint Development Management Policies Document:
  - Policy DM1: Presumption in Favour of Sustainable Development.
  - Policy DM2: Creating Places – Development Principles and Local Distinctiveness
  - Policy DM5: Development in the Countryside
  - Policy DM7: Sustainable Design and Construction
  - Policy DM22: Residential Design
  - Policy DM26: Agricultural and Essential Workers Dwellings
  - Policy DM27: Housing in the Countryside
  - Policy DM46: Parking Standards
13. Forest Heath Core Strategy (2010):
  - Policy CS1: Spatial Strategy
  - Policy CS3: Landscape Character and the Historic Environment
  - Policy CS5: Design Quality and Local Distinctiveness
  - Policy CS10: Sustainable rural communities

## **Other Planning Policy:**

14. National Planning Policy Framework (2012)

### **Officer Comment:**

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

- Principle of Development
- Design, character and residential amenity
- Parking and highways
- Flood and drainage
- Contamination
- Biodiversity

### Principle of development

16. The proposed development site is located outside of any defined settlement boundary, and as such, for the purposes of this application it is development within the countryside. Proposals for dwellings located outside of a defined settlement boundary are required to adhere to policy DM5 of the Joint Development Management Policies Documents. This policy sets out a number of criteria that must be met in order for a dwelling in the countryside to be acceptable.

17. The applicant has advised that the proposed dwelling is for an agricultural worker to assist in the running of the farm. Policy DM5 states that proposals for '*a dwelling for a key worker essential to the operation of agriculture, forestry or a commercial equine-related business*' will be permitted, subject to it being in accordance with the requirements of Policy DM26.

18. Policy DM26 requires that New dwellings in the countryside, related to and located in the immediate vicinity of a rural enterprise, will only be permitted where:

- a) Evidence has been submitted to the satisfaction of the local planning authority that there is an existing agricultural, forestry or other commercial equine business-related functional need for a full time worker in that location;
- b) There are no suitable alternative dwellings available, or which could be made available, in the locality to serve the identified functional need;
- c) It can be demonstrated that the enterprise is, or will be in the case of new businesses, a viable business with secure future prospects;
- d) The size and nature of the proposed dwelling is commensurate with the needs of the enterprise concerned;
- e) The development is not intrusive in the countryside, is designed to have a satisfactory impact upon the character and appearance of the area, and is acceptable when considered against other planning requirements.

19. The information submitted with the application states that the proposed dwelling is required to improve 'the running of the farm land and yard'. Cupola Farm has an existing agricultural workers dwelling, located at the entrance of the site, and is currently occupied by the tenants of the Farm. No evidence has been supplied to the Council to demonstrate there is a 'function need' for the dwelling. The current tenants have objected to the application and stated that they believe no additional dwelling is required for the operation of the farm. As such it is considered that the proposal fails to comply with criteria 'a' of DM26.
20. The site also includes a number of outbuildings and an 'existing farm house' (which is unoccupied). The applicant has advised that the outbuildings are required to accompany the use of the land. The site includes the current dwelling which was granted permission under application F/78/651 and F/80/803. Permission for this dwelling was given on the basis that the former farmhouse was relinquished of its residential rights; this was conditioned as part of these applications and secured through a section 52 agreement.
21. Whilst the conversion of the existing outbuildings is unlikely to be suitable, no information has been received advising the unsuitability of the existing dwelling on the site. Given these points it is considered that the proposal fails to comply with criteria 'b' of Policy DM26.
22. No case has been made that demonstrates that the enterprise is a viable business with secure future prospects. As such the proposal fails to adhere to criteria 'c' of Policy DM26.
23. As previously stated there is a lack of information in regards to the need for such a dwelling. Given this lack of information it is not possible to assess whether the proposed dwelling is of a size and nature that is commensurate with the needs of the enterprise concerned. As such the proposal fails to adhere to criteria 'd' of Policy DM26.
24. Criteria 'e' will be assessed under the Design and Form section of this report.
25. Policy DM5 also considers other scenarios for new dwellings in the countryside. It states that proposals for dwellings located outside of a defined settlement boundary will be permitted if they consist of a "small scale residential development of a small undeveloped plot, in accordance with policy DM27".
26. The proposed site is located along a private farm lane, and is currently undeveloped farm land. It is not considered that the site is a small undeveloped plot that would accord with policy DM5. Policy DM27 also requires that:
  - a) The development is within a closely knit 'cluster' of 10 or more dwellings adjacent to or fronting an existing highway.
  - b) The scale of development consists of infilling a small undeveloped plot by one dwelling or a pair or semi-detached dwellings commensurate with the scale and character of the existing dwellings within an

otherwise continuous built up frontage.

The proposed dwelling will be located close to one other dwelling, as such it is not considered that the proposal is located within a close knit cluster. The proposal is not adjacent to or fronting an existing highway, and does not involve the filling in of a small undeveloped plot. Given these points it is considered that the proposal fails to adhere to criteria 'f' of Policy DM5 and the criteria of Policy DM27. It can only therefore be concluded that the proposal is not an appropriate or suitable new dwelling in the countryside.

27. Policy DM5 also allows the replacement of an existing dwelling on a one for one basis where it can be demonstrated that:

- i. The proposed replacement dwelling respects the scale, and floor area of the existing dwelling, and,
- ii. The curtilage of the development is only greater than the curtilage of the existing dwelling where it can be justified with reference to Policy DM25.

The applicant has not stated that the proposed dwelling is a replacement for the existing dwelling on the site. As previously stated the former farmhouse had its residential rights relinquished following the approval of replacement dwelling under application F/78/651. Given this point it is considered that the proposal fails to adhere to criteria 'g' of the policy.

28. As identified in the previous paragraphs a dwelling can be built in the countryside subject to adhering to the criteria set out within the relevant policies. However the lack of information included within this application means that it is not possible to for it to be argued that the dwelling is for the benefit of or need of this agricultural operation (in accordance with DM26), a replacement dwelling (in accordance with DM5) or a small scale new development (in accordance with DM27). Given the failure of the proposal to meet any of these policies, it is not considered that the principle of development is acceptable.

### Design, character and residential amenity

29. Policy DM2, DM22 and CS5, all seek to ensure that proposed dwellings respect the character and appearance of the surrounding area. The proposed dwelling is one and half stories, and 'L' shaped in configuration. The dwelling is of a simple design and uses materials that are sympathetic to the surrounding area. Given these points it is considered that the proposed scale and design comply with the relevant policies noted above. In addition, the curtilage of the dwelling is commensurate in size to nearby dwellings. It is therefore considered that the proposed design and form of the dwelling is acceptable and complies with the relevant policies.

30. Notwithstanding the above, it is noted that Policy DM26 requires that any proposed dwelling required for a key agricultural worker, be commensurate with the needs of the enterprise concerned. Given the lack of detail in relation to the need of the proposed dwelling, it is not possible to assess if the proposed dwelling is of a suitable scale. As such the proposal fails to adhere to criteria 'd' of Policy DM26.



31. Policy DM2 also seeks to ensure that proposed development does not result in any adverse impact on residential amenities of neighbouring residents. It is considered that there is sufficient distance between the proposed dwelling and the neighbouring dwelling that the proposal will not result in any adverse impact in terms of overlooking or loss of light.

#### Parking and highways

32. Policy DM2 seeks to ensure that proposed development does not have an adverse impact on the safety of Highway users. The Highways Authority have assessed the proposal and confirmed that it would not result in safety concerns.

33. Policy DM46 seeks to ensure that proposed new dwellings have an adequate provision of onsite parking in order to avoid possible parking issues and safety concerns. A four bedroom dwelling such as the one proposed requires 3 on site parking spaces. It is considered that there is sufficient parking area to accommodate the parking of 3 vehicles within the curtilage of the proposed dwelling. The proposals in this respect are considered acceptable.

#### Flood and drainage

34. The Environment Agency have raised no objection to the proposals and it is considered that suitable surface water drainage arrangements could be put in place. The site is within flood zone 1 which is low risk.

#### Contamination

35. The Environmental Team is satisfied that the risk from contaminated land is low. The team have advised that if contamination is encountered which has not previously been identified then it would be in the best interests of the developer to contact the Local Planning Authority as soon as possible, as they should be aware that the responsibility for the safe development and secure occupancy of the site rests with the developer.

#### Biodiversity

36. The proposal site is not located within any designated nature conservation sites or interests, and does not involve the loss of any hedgerow or foliage. As such it is considered that the proposal will not result in any risk to biodiversity and as such is acceptable.

#### **Conclusion:**

37. In conclusion, the lack of information submitted with the application means that the principle of such a dwelling within the countryside is not acceptable. Whilst the proposal is acceptable in relation to other aspects such as design and highways impact, it is not considered that this is

sufficient to outweigh the harm in principle of such a development. As such it is recommended that the proposal be refused.

**Recommendation:**

38. It is recommended that planning permission be **REFUSED** for the following reason:

1. The proposal does not provide sufficient justification to meet the criteria contained within policies DM5, DM26 and DM27 of the Joint Development Management Policies Documents. The applicant has not demonstrated that there is an overriding case for the development in this countryside location and there is no evidence that it is required to accommodate key personnel employed in agriculture, horticulture or forestry. Furthermore, even if such a need were shown to exist, the Local Planning Authority does not consider that such could be considered to be an 'essential' need given the existing accommodation on site. If approved, the Local Planning Authority considers the development would lead to an increase in the sporadic scatter of residential development in a location outside the confines of the housing settlement boundary and be of detriment to the character and appearance of the countryside. The proposals are therefore also contrary to policy DM2 of the Joint Development Management Policies Document and policy CS5 and CS10 of the Core Strategy and para. 55 of the National Planning Policy Framework.

**Documents:**

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

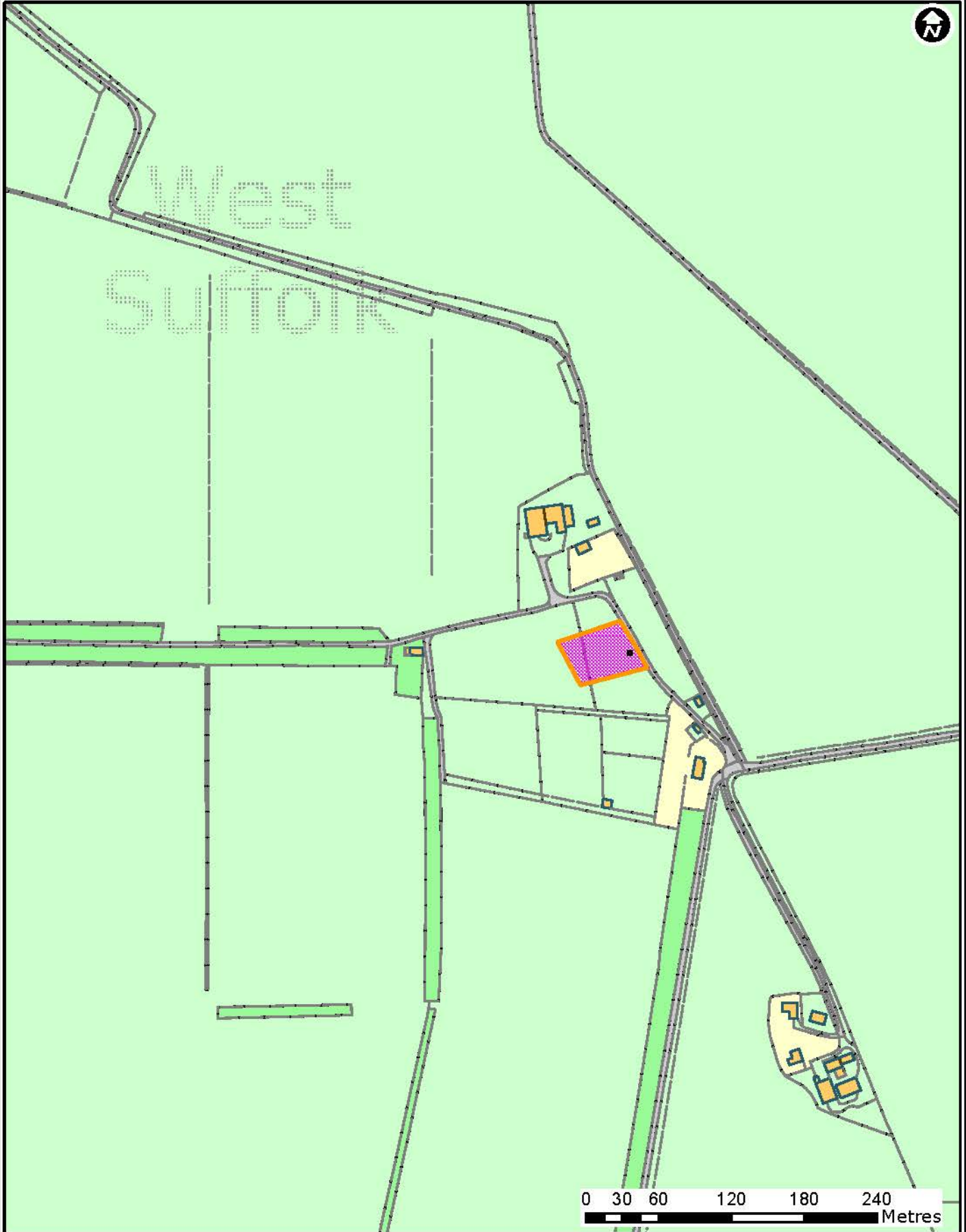
<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OAYY22PDILX00&documentOrdering.orderBy=date&documentOrdering.orderDirection=ascending>

**DC/16/1629/FUL**

Cupola Farm, Undley



West  
Suffolk



0 30 60 120 180 240  
Metres

Forest Heath • St Edmundsbury

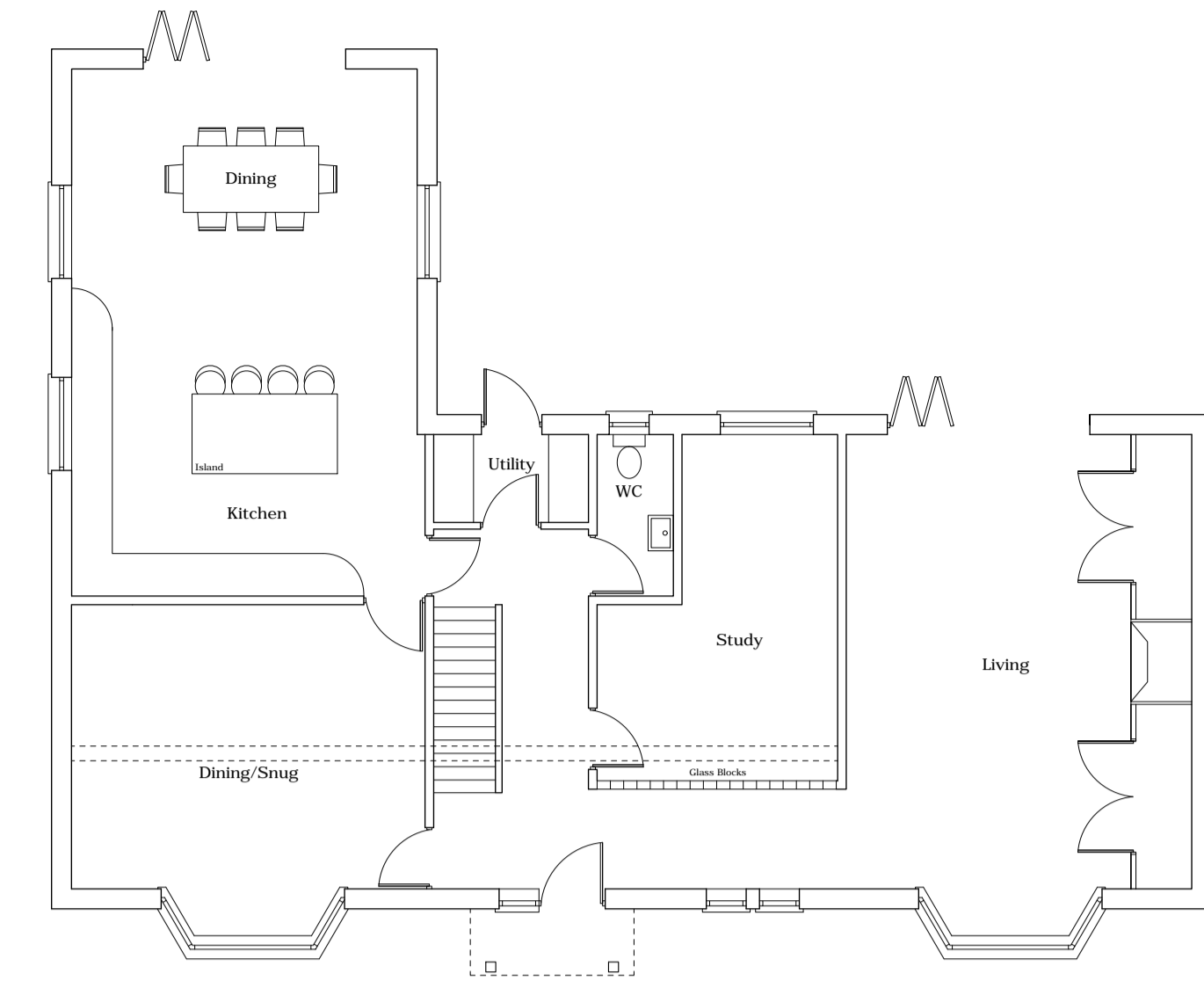
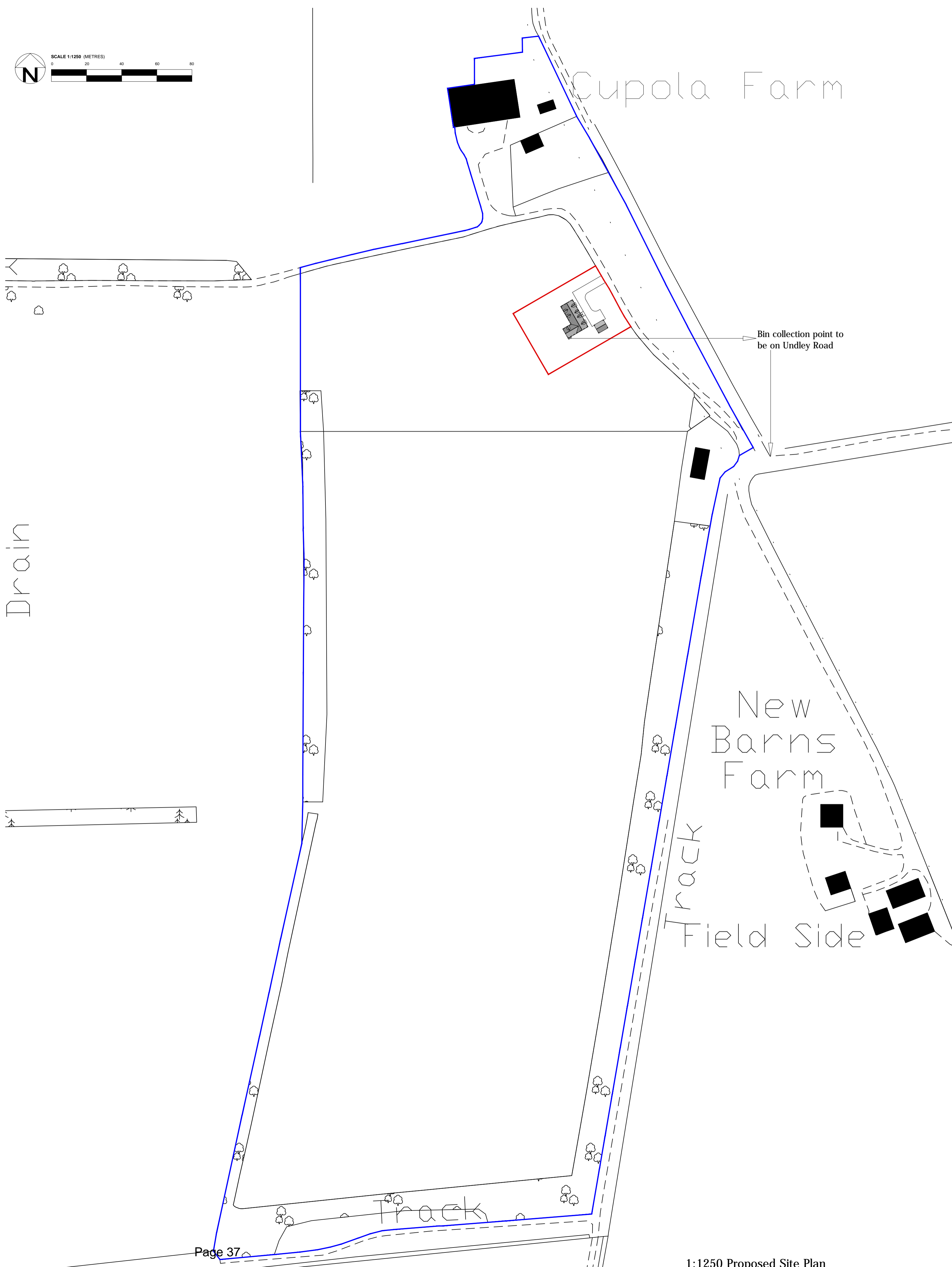
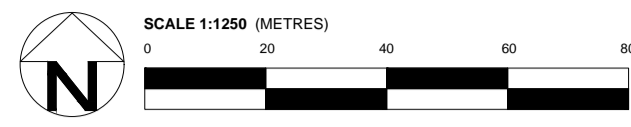
**West Suffolk**  
working together

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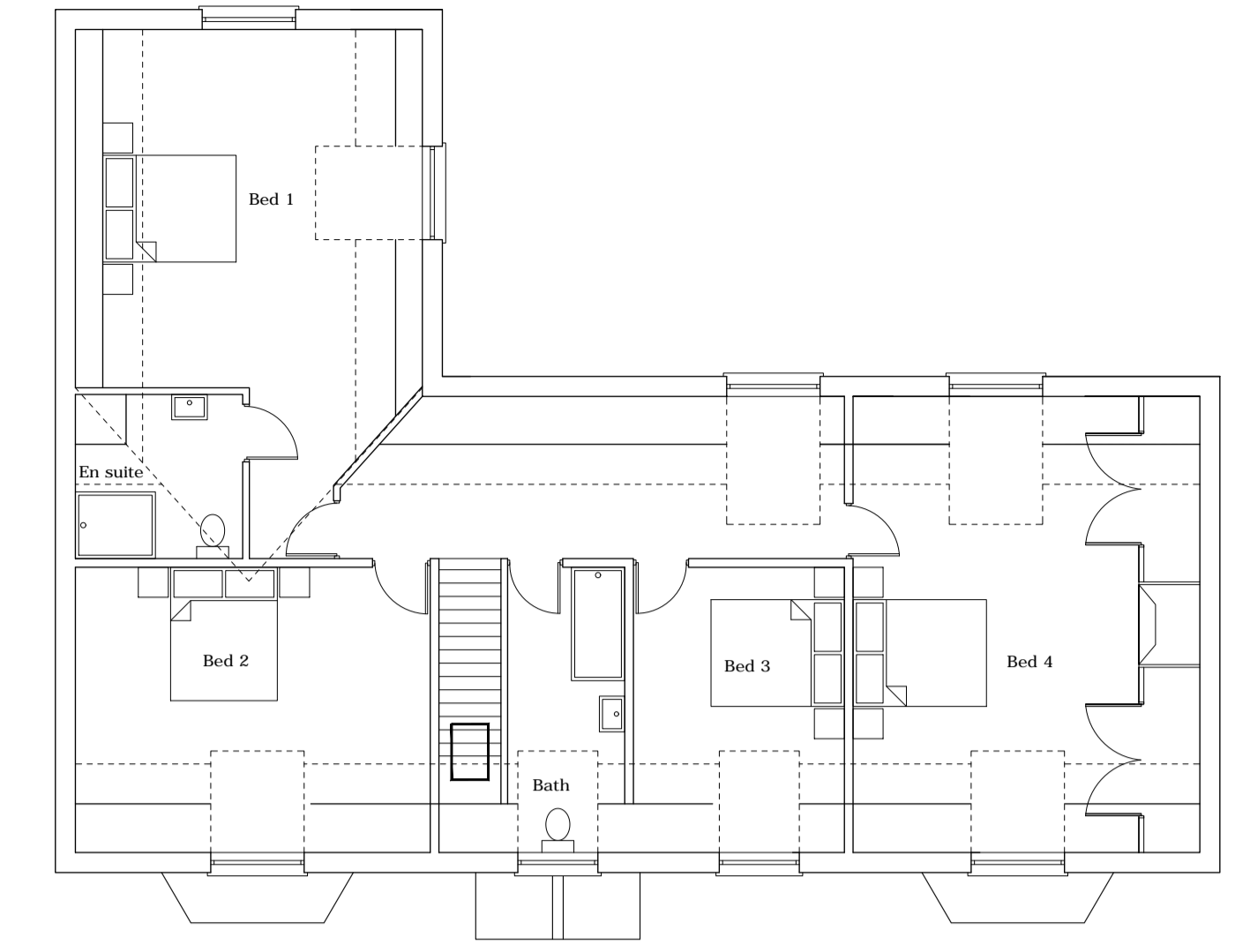
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**Date: 19/10/2016**

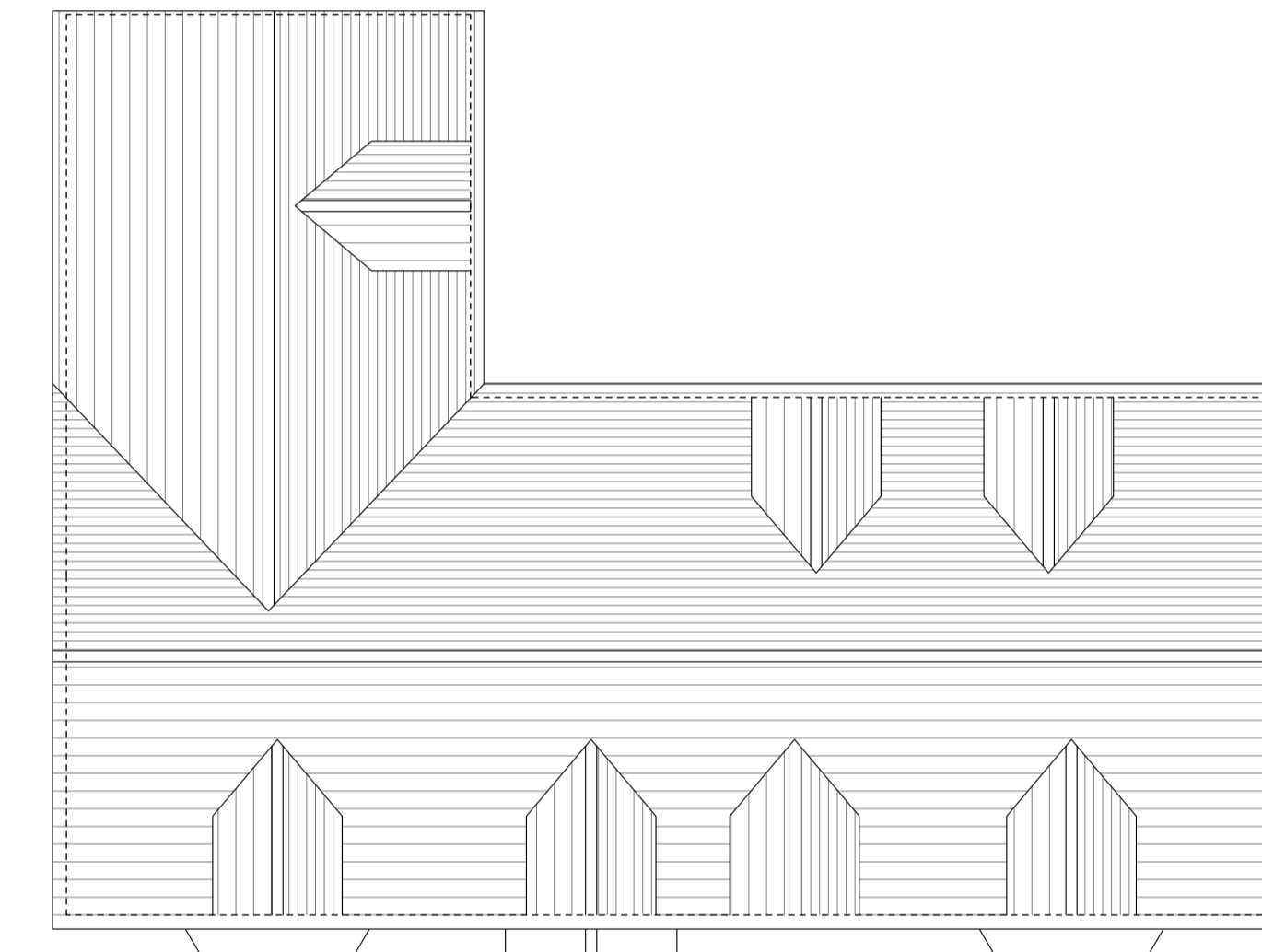
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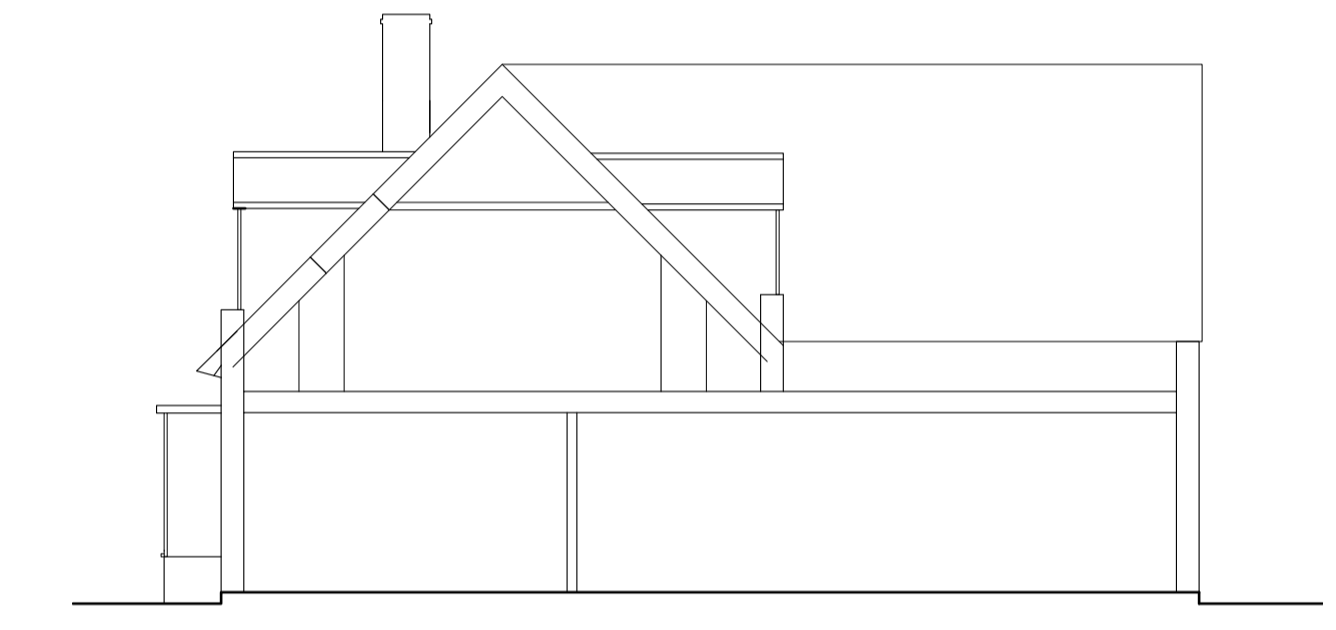
1:100 Ground Floor Plan



1:100 First Floor Plan



1:100 Roof Plan



1:100 Section



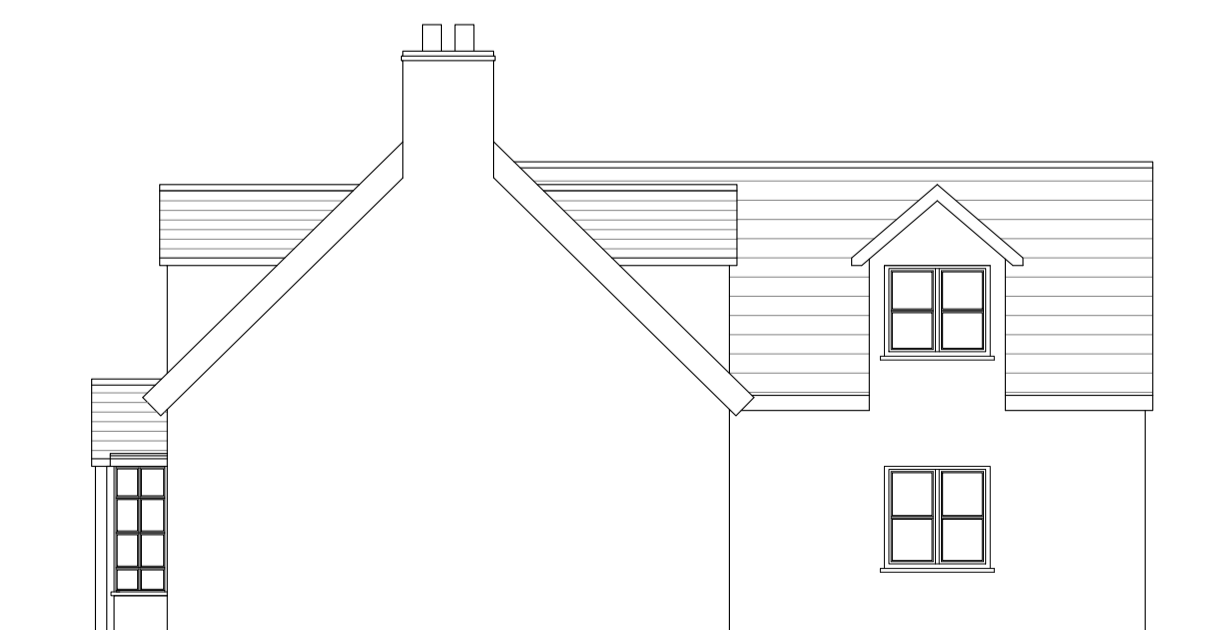
1:100 Front Elevation



1:100 Rear Elevation

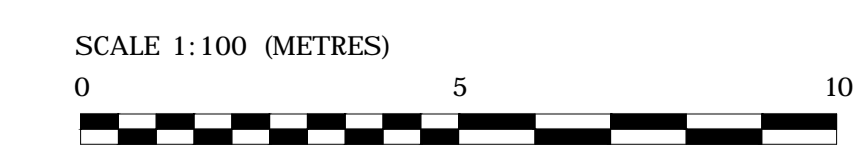


1:100 Side Elevation



1:100 Side Elevation

EXTERNAL MATERIALS  
 Pitched Roof- Pantiles red  
 Walls- TBS Farm house (red)  
 Windows- To be external white uPVC  
 Doors- To be external white uPVC  
 Rainwater Goods- to be black uPVC



Rev	Description	Date
A	General revisions to amend measurements south elevation window added as per floorplan ref: storage plan added	08/16

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 Rosewood Offices, Cumbria, CB7 5QH

Client : Mr J Waters  
 Job title : Cupola Farm, Undley  
 Dwg. : Proposed Site Plan, Plans & Elevations  
 Scale: 1:1250 & 1:100 Date: March 2016 Dwg no: TAB190-02



## Forest Heath District Council

**DEVELOPMENT  
CONTROL COMMITTEE**

**2 NOVEMBER 2016**

**DEV/FH/16/037**

Report of the Head of Planning and Growth

### **PLANNING ENFORCEMENT MATTERS AT SMALL FEN FARM, SMALL FEN LANE, BRANDON**

#### **Synopsis:**

Update report on ongoing enforcement related matters at the above property in light of recent developments.

#### **CONTACT OFFICER**

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# Committee Report

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

## **Background:**

**This matter is reported to the Development Control Committee in accordance with a resolution made by the Committee in September 2015 in refusing planning permission for DC/14/1711/FUL.**

**In refusing that application in accordance with the Officer recommendation the Committee offered a 12 month grace period during which no further enforcement action would be taken as well as requesting that a written update be brought back before the Committee in due course.**

**In light of the fact that the 12 month period has now expired, and in light of the fact that there have been recent developments in relation to this matter, this report is hereby presented.**

**There is no recommendation associated with this report.**

## **Background and Officer Comment:**

1. 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.
2. 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.
3. 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 northern 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.



4. This matter relates to 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 2009 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.
5. Members' attention is drawn to the original 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 20<sup>th</sup> June 2014 but compliance with the terms of the Notice remain outstanding.
6. The Authority had been in the process of securing compliance with the outstanding terms of the Notice. This included procurement for 'direct action' whereby the Authority would appoint contractors to enter the site to effect compliance with its terms. In summary, this includes the demolition of the unauthorised dwelling and the removal of all resultant material from the site.
7. However, as these steps were reaching an advanced stage the application under DC/14/1711/FUL was submitted to the Authority. Planning permission was sought through that application for the retention of the presently illegal dwelling for a temporary period of up to five years. That application therefore had the effect of holding the progression of any direct action in abeyance pending its determination.
8. The applicants presented an argument that they considered material to the Authority's assessment. 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 argued that circumstances had 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.
9. That argument related 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.
10. In submitting DC/14/1711/FUL the applicant also presented personal circumstances which they considered offered 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 included 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 was argued by the applicant that the main change in circumstance was that Mrs Ellen Usher's physical and mental health had deteriorated considerably, such that moving her from her home would pose a significant risk to her health.

11. In determining DC/14/17/11/FUL the Committee agreed with the Officer recommendation and the matter was refused on 5<sup>th</sup> September 2015 for the following reason –

*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.*

12. In reaching the decision the Committee wanted to respect the applicant's right to challenge this refusal through the appeals process. Accordingly, the following 'informative' was also included on the Decision Notice.

*The Local Planning Authority hereby confirms, in accordance with the resolution of the Development Control Committee on Wednesday 2nd September 2015, a moratorium for a period of 12 months from the date*

*of this decision in relation to any 'direct action' to otherwise resolve this breach of planning control. This moratorium assumes that a timely appeal will be lodged in due course in relation to this refusal. If such an appeal is not lodged then the Authority reserves the right to proceed with direct action within this 12 month time frame. It is also hereby stated that the Authority does not anticipate the use of direct action at any stage while any appeal against this refusal is still with the Planning Inspectorate for determination.*

13. This position afforded comfort to the applicant, noting the sensitivity of the personal circumstances, that action would not take place, assuming they exercised their right of appeal against the refusal.
14. This right was exercised and a 'hearing' was held by the Planning Inspectorate on 21<sup>st</sup> June 2016. This hearing afforded the appellant their opportunity to present their case before the Inspector and to argue why, in light of the wider emerging planning policy situation, and in light of the personal circumstances argument, they considered that the appeal should be allowed and planning permission granted. It was clear through this process that, should the appeal be dismissed, then compliance with the terms of the Enforcement Notice would be expected.
15. The Planning Inspectorate issued their decision on 18<sup>th</sup> August 2016. This is attached to this report as Working Paper 2. The Inspectorate dismissed the appeal, upholding the decision of the Council to refuse planning permission. In reaching this decision Members will note that the Planning Inspectorate had full regard to the provisions of, and implications arising from, the 1998 Human Rights Act and the 2010 Equality Act. The most pertinent conclusion of the Inspector is set out below. (Note - EU in this passage refers to Ellen Usher, the mother and mother in law of the appellants).

*Notwithstanding the mental impact from fear of being forced from her home, and the risk to physical and mental health from an unfamiliar environment, I have not been presented with a compelling reason as to why EU could not relocate to alternative accommodation subject to continuing to be looked after in the close care of her immediate family.*

*After very careful consideration, and though finely balanced, for the aforementioned reasons I conclude that the correct balance between the public interest and the private interests in the form of the difficult personal circumstances of EU lies in favour of not allowing temporary permission and dismissing the appeal.*

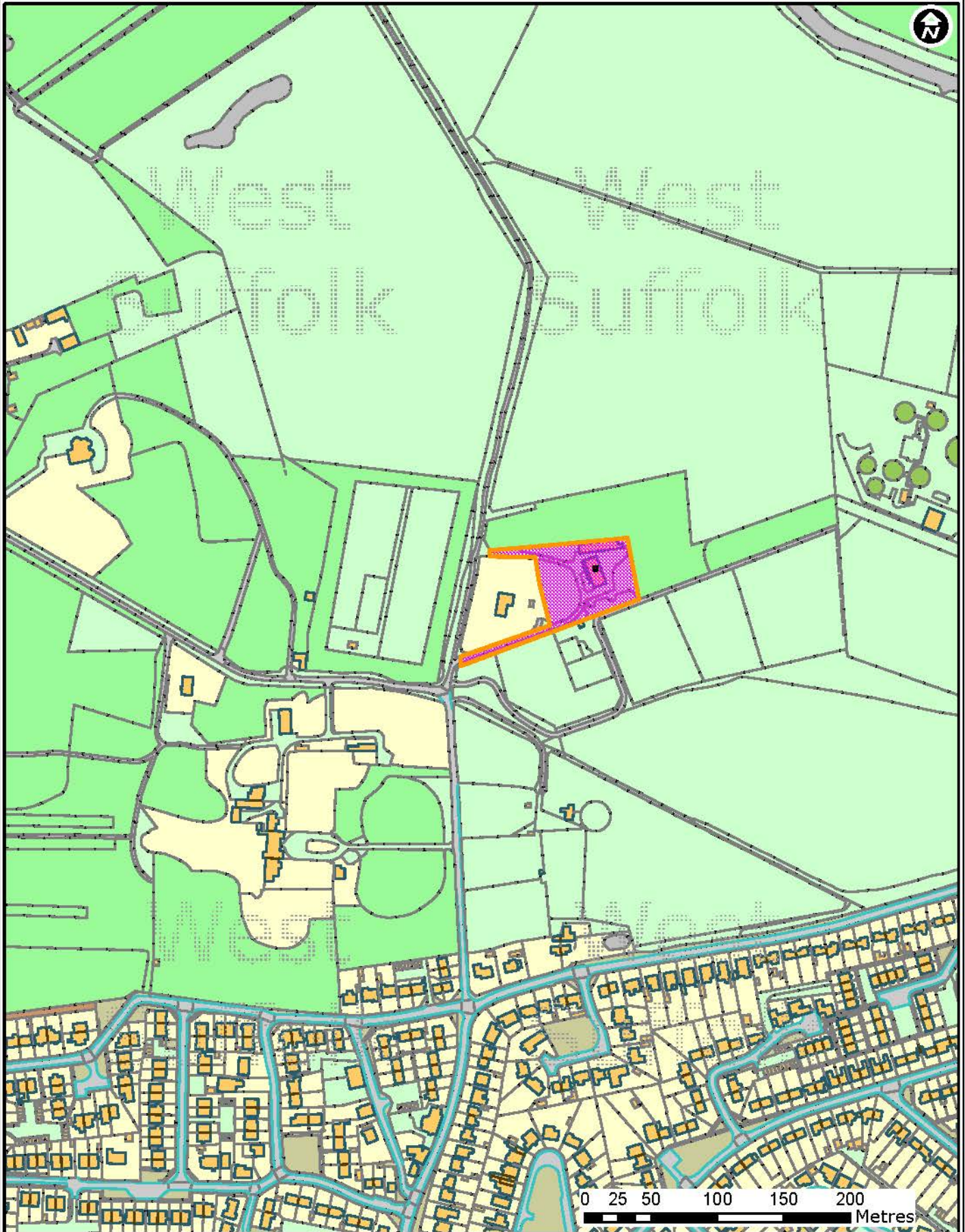
16. The 12 month 'moratorium' against enforcement action has passed. Opportunity (in fact extended opportunity) has been given to the owners to argue their case. These arguments, whilst being respected and considered with care, have failed, and the decisions of the Council have been upheld in every case by the Planning Inspectorate. Members will also note that the Planning Inspectorate agreed with the view of Officers that this longstanding and very serious breach of planning control should be treated as 'intentional unauthorised development', noting the self inflicted

nature of matters.

17. Opportunity has been given to the owners to present their case as to why this illegal dwelling should remain. Arguments presented in this regard have been dismissed by the Council and this refusal has been supported in full by the Planning Inspectorate. The ongoing breach of planning control is significant, and has been going on for a considerable period of time. The appeal Inspector has again re-affirmed the position of the earlier Inspector, that the illegal dwelling is visually obtrusive and isolated in this context. Furthermore, the Inspector agreed with the Council that it is important that this matter is resolved in order to ensure faith in the planning process.
18. Officers have written to the agent representing the owners and have specified clearly the steps that they expect to see happen, and over what timescales, in order to secure compliance with the terms of the outstanding Enforcement Notice. It is hoped that the owners will comply finally with the terms of the Notice, and a final deadline of the end of January 2017 has been specified. A failure to meet any of these requirements or timeframes will lead to the Authority considering instigating a prosecution for failure to comply along with the taking of Direct Action to ensure compliance, with a charge placed on the property to enable monies to be recovered.
19. Discussions are continuing with the site owner in relation to other planning matters arising in relation to this site, including the potential for other possible breaches of planning control. Officers are satisfied that these issues can be considered and treated distinct from the failure to comply with the provisions of the outstanding Enforcement Notice and that one does not fetter the other. There is nothing therefore in any wider enforcement investigation or other planning matter in relation to this site that should preclude seeking compliance in full with the terms of the Notice in as reasonable a timeframe as possible.

**DC/14/1711/FUL**

Small Fen Farm, Small Fen Lane, Brandon



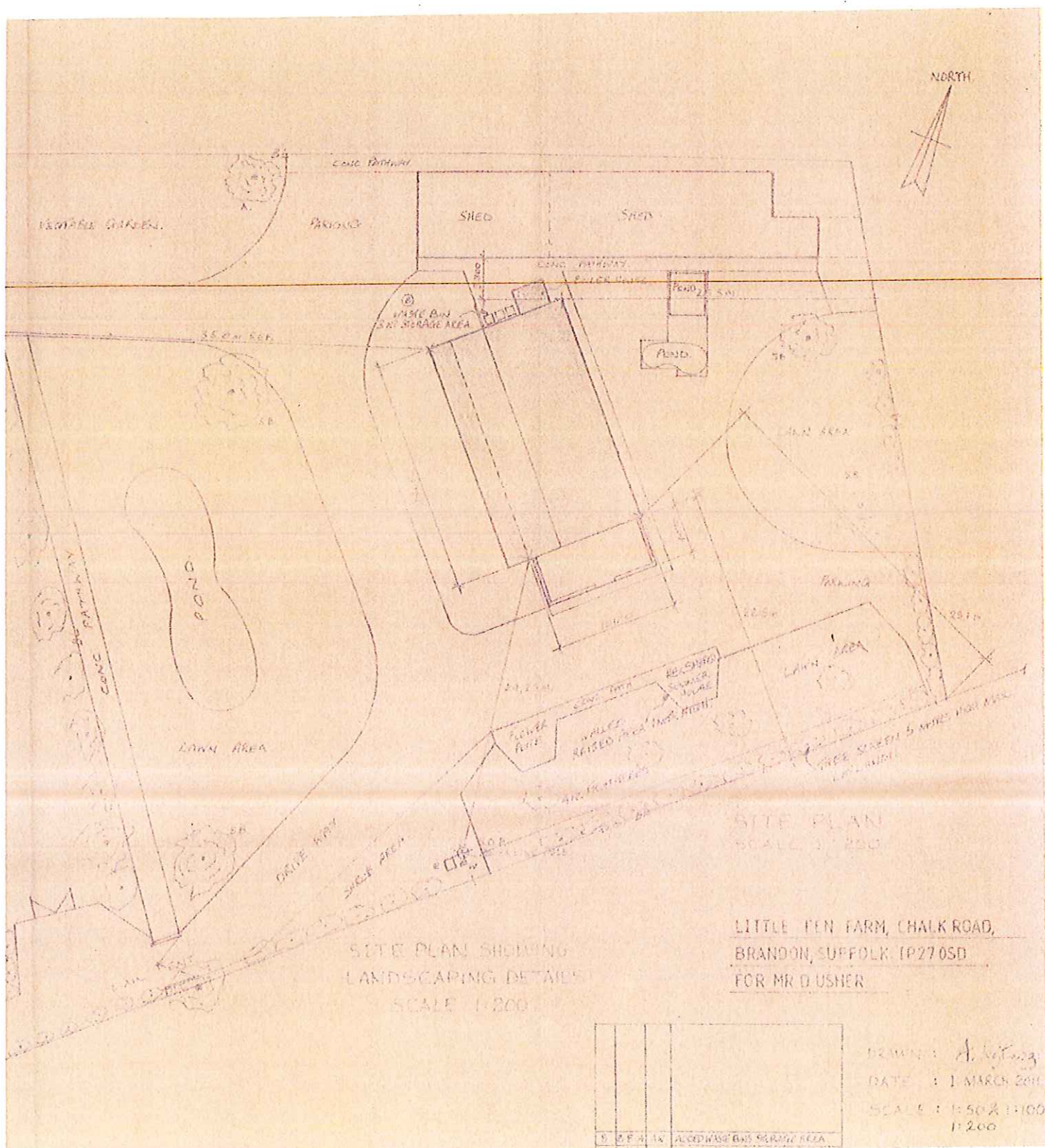
Forest Heath • St Edmundsbury

**West Suffolk**  
working together

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**Date: 19/10/2016**

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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: 11 MARCH 2011  
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**

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### **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.
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### **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"<sup>1</sup>, 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 1957<sup>2</sup>. 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 resident<sup>3</sup> 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).

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<sup>1</sup> Appellant's Opening

<sup>2</sup> Whether in joint or a single name is not material

<sup>3</sup> 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 disputed<sup>4</sup>. 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.

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<sup>4</sup> 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 statements<sup>5</sup>. 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.

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<sup>5</sup> 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 place<sup>6</sup>." 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

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<sup>6</sup> 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 not<sup>7</sup>. 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

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<sup>7</sup> 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 FHLP 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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## Appeal Decision

Hearing held on 21 June 2016

Site visit made on 21 June 2016

**by Roy Merrett BSc(Hons) DipTP MRTPI**

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

**Decision date: 18 August 2016**

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**Appeal Ref: APP/H3510/W/16/3144192**

**Small Fen Farm, Small Fen Lane, Chalk Road, Brandon, Suffolk IP27 0SD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr & Mrs D Usher against the decision of Forest Heath District Council.
  - The application Ref DC/14/1711/FUL, dated 11 September 2014, was refused by notice dated 3 September 2015.
  - The development proposed is temporary permission to occupy the building for a period of up to 5 years (subject to an occupancy condition).
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. At the Hearing I explained that the appellants had submitted various letters containing sensitive and confidential information relating to the health of Mrs. Ellen Usher. The information had been seen by the Council. Whilst the issues arising had been summarised in various documents submitted by the main parties it would be normal for all information in relation to the appeal to be placed in the public domain to avoid the risk of any parties being prejudiced. However noting the request for information to remain confidential, I asked third parties whether they were content for me to deal with this confidential information and come to my own judgement. One of the third parties, Mrs. Ormrod queried whether the confidential information had been prepared by a company. I confirmed this was not the case, and that the submissions were the expert opinions of medical health care professionals. No objection was raised to me dealing with the confidential information as I had suggested.
3. The submissions in question are dated 9 June 2014, 11 June 2014 and 9 September 2014.
4. A letter was submitted at the Hearing and circulated to all parties for consideration. This letter was from a family relative of the appellants and related to the personal circumstances of Mrs. Ellen Usher.
5. From here on in and ease of reference I have referred to the appellant, Mrs Ann Usher as 'AU' and Mrs Ellen Usher as 'EU'.

## **Main Issues**

6. The main issues are i) the effect of the dwelling on the character and appearance of the surrounding area, ii) the significance of emerging policy in relation to the appeal site and iii) the significance of the appellants' personal circumstances.

## **Reasons**

### *Character and Appearance*

7. The setting of the appeal site is one of open grassed fields and paddocks with mature woodland beyond. The appeal site itself is located close to but to the north of the settlement boundary and away from the main and continuous built up area of Brandon. It is enclosed by tall timber boundary fencing with the dwelling limited to single storey height. However the building elevations and in particular the mass of the expansive and steeply sloping pitched roof are prominent in views from Manor Road to the south and from public rights of way to the north and south.
8. I agree with the Inspector who dealt with the previous enforcement appeals at this site<sup>1</sup> that this is not the most remote of locations. Furthermore I acknowledge the presence of various other structures in the locality including the adjacent dwelling at West End House, electricity poles and cables, and various paraphernalia associated with aspects of rural enterprise. Notwithstanding this the building is bulkier and more visible in comparison to these structures and appears as a prominent imposition in the landscape, obtrusive and uncharacteristic within its generally open surroundings. From the bridleway to the north-west of the site, I noted that the scale, functional appearance and sharp outline of the dwelling appear at odds with the ornate tower of Brandon Church in the background. The dwelling appears incompatible with its surrounding environment and gives the sense of being visually isolated. It is therefore harmful to the character and appearance of the surrounding area.
9. For the above reasons the proposal would be in conflict with Policies DM2, DM5 and DM27 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document 2015 (DMPD) and with the National Planning Policy Framework (the Framework) which seek to strictly control development in the countryside, avoid the development of isolated dwellings unless there are special circumstances, promote good design and protect local character and distinctiveness.
10. During the site visit the appellants' agent made the point that seen from Manor Road the dwelling could be regarded as a typical equestrian-type building. Whether or not this is the case would not justify the harm I have identified. In any event, its use as a dwelling must be considered in the context of the policies concerning new dwellings in the countryside and from the main parties' statements there is common ground that the proposal would conflict with Policies DM5 and DM27 of the DMPD in this regard.

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<sup>1</sup> Appeal Refs: APP/H3510/C/12/2190062 & 2190063 and APP/H3510/C/12/2190065 & 2190066.

### *Emerging Policy*

11. The Council confirmed at the Hearing that it is about to consult on preferred options in relation to its emerging Site Allocations Local Plan. Whilst there is some growth planned for Brandon, this is very limited in scale and involves sites that are relatively far removed from the appeal site location. The Council confirmed that a more extensive housing allocation had previously been considered to the north of Brandon within the area surrounding the appeal site. However, this has now fallen away due to the existence of environmental constraints which are expected to be very difficult to overcome.
12. The appellants, whilst acknowledging this position referred to a major planning application coinciding with this area which is currently in abeyance pending a solution to the aforementioned environmental constraints. In their view, development within the surrounding area would significantly alter the landscape context in favour of the proposal. In addition the fact that the Council had not simply refused the application suggested, in their view, that a solution was achievable. In the Council's view, however, the steps required to provide the necessary mitigation to deal satisfactorily with the environmental constraints were unlikely to be achieved in the near future.
13. In the absence of any evidence to the contrary and from the information before me, I conclude it is unlikely that this area to the north of the village will be brought forward for development in the near future. Accordingly I attach very little weight to the emerging policy position in terms of supporting the proposal.

### *Personal Circumstances*

14. The appellants' case is largely based on the personal circumstances of EU, their mother and mother-in-law respectively who is 82 years of age and lives at the dwelling and is cared for by them.
15. From the representations made by AU at the Hearing and from the expert medical opinion I have seen, the physical and mental health of EU is in an advanced state of decline which has resulted in her being regarded as highly vulnerable. In essence, if removed from the home care environment with which she is familiar, EU is said to be more at risk of disorientation and falls. Furthermore in the company of strangers she is likely to become very distressed and prone to violent and aggressive behaviour which may result in harm to herself and others.
16. The Council, with sensitivity, did express concern that the medical evidence provided was not recent and that this should detract from the weight afforded to it. In response to this AU explained that the process of preparing EU for medical examination was very traumatic for her, and as such the family had been reluctant to expose EU to such procedures.
17. From the information before me I am unable to ascertain EU's precise state of health currently. However, whilst I consider the Council's concern has some merit, I have not been provided with a compelling reason to doubt the prognosis given by EU's medical consultant in September 2014 regarding maximum life expectancy (5 years); emotional instability and difficult to manage behaviours.

18. In terms of potential alternative accommodation, I have no information that would lead me to dispute that EU had no desire to return to her former bungalow following the death of her husband, and therefore the apparent motivation for the appellants' decision to sell that property. As to the timing of sale, confirmed during the Hearing to have taken place in May 2013, I can understand why this has been queried by the Council coming before the previous enforcement appeal outcome was known and therefore removing a potential alternative accommodation option in the event of the appeal being dismissed, as indeed it eventually was. However notwithstanding EU's resistance to return to that property, it seems to me to be equally arguable, in principle at least, that with the sale of the bungalow a replacement could have been purchased. The disposal of that property does not therefore in my view, strengthen the appellants' case to remain at Small Fen Farm which in any event they are not seeking to argue. Nor does it add weight to the Council's case for not granting planning permission in that the appellants have voluntarily denied themselves the possibility of alternative premises to relocate to.
19. Pulling the above strands together I have no reason to doubt the opinion expressed by AU at the Hearing that the most suitable and preferable accommodation arrangements for EU going forward would be in the presence and close care of her immediate family. This of course leaves the question as to whether the accommodation should be at Small Fen Farm or elsewhere.
20. It has been set out in evidence how following the sharp deterioration of EU's health in April 2014, she finds that dealing with the smallest changes of routine including walking between and within rooms extremely distressing. Again I have no reason to doubt this and it would therefore appear that a move to alternative accommodation would result in distress and risk of physical injury arising amongst other things from a disruption to this routine. Notwithstanding this it appears from the evidence and information before me that these potential health risks would be significantly mitigated through care and supervision from family members being undertaken at an alternative property much in line with current arrangements. Whilst I do not underestimate how difficult and challenging it might be to put such change into practice, neither have I been presented with any compelling evidence to suggest that it would be an impossible task.

#### *The Planning Balance and Human Rights*

21. In accordance with the previous Inspector I have found that the proposal would harm the character and appearance of the area. Furthermore I have no reason to dispute his finding that this harm could have reasonably been avoided. The Council has drawn my attention to the Written Ministerial Statement dating from 31 August 2015 which introduced a planning policy to make intentional unauthorised development a material consideration to be weighed in the determination of planning applications and appeals. In the Council's view this adds weight to the case for not granting planning permission. Whilst the appellant states that the temporary nature of the proposal significantly mitigates the effect of this policy, I nevertheless consider that the policy carries some weight in the consideration of this appeal.
22. I have taken into account the view of the previous Inspector that the harm caused by the development was not of the type that was in urgent need of

remedy to protect the living conditions of local residents but nevertheless was real and continuing. However, that decision was taken three years ago and two years have now passed since the requirements of the Enforcement Notice to demolish the dwelling should have been complied with. Despite the Inspector allowing a more generous timescale, than originally sought by the Council to comply with the Notice I am very mindful that the longer the period of non-compliance is seen to 'drift on', the more that public confidence in the planning system will become undermined. In addition, there appears to be greater certainty now than when the previous enforcement appeal decision was made that the potential major housing land allocation as part of the Council's emerging development plan, which could have mitigated the appeal proposal, will not come forward in the near future if at all. These considerations justify very significant weight being given to the removal of the dwelling sooner rather than later.

23. The Government's Planning Practice Guidance (PPG) sets out that an individual's personal circumstances will scarcely ever be justified in the case of permission for the erection of a permanent building. This adds some weight to the case for dismissing the appeal but is tempered by the circumstances in this case which involve a temporary building.
24. To dismiss the appeal would result in EU losing her home or at best losing her home sooner than might be expected in the event of her outliving her life expectancy and any temporary planning permission for the dwelling expiring in the meantime. Either way this would amount to an interference with EU's home to the extent that rights under Article 1: The Peaceful Enjoyment of Property and Article 8: The Right to Respect for Private and Family Life and for the Home of the Human Rights Act 1998 (HRA) would be engaged.
25. However these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things the economic well being of the country which has been held to include the protection of the environment and upholding planning policies. Furthermore Article 1 provides that no one shall be deprived of his possessions except, subject to conditions, in the public interest.
26. In exercising my function on behalf of a public authority I am also aware of my duties under the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. It does not follow from the PSED that the appeal should succeed. However in consciously thinking about the aims of the PSED I have had due regard to the age and disability of EU. In the overall balance this together with the HRA considerations are factors that weigh significantly in favour of granting temporary planning permission.
27. Notwithstanding the mental impact from fear of being forced from her home, and the risk to physical and mental health from an unfamiliar environment, I have not been presented with a compelling reason as to why EU could not relocate to alternative accommodation subject to continuing to be looked after in the close care of her immediate family.
28. After very careful consideration, and though finely balanced, for the aforementioned reasons I conclude that the correct balance between the public interest and the private interests in the form of the difficult personal

circumstances of EU lies in favour of not allowing temporary permission and dismissing the appeal.

**Conclusion**

29. For the aforementioned reasons, and having considered all other points raised the appeal should be dismissed.

*Roy Merrett*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Richard High	Agent, High Associates
Ann Usher	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

David Beighton BA (Hons) Dip TP MRTPI	Principal Planning Officer, Forest Heath District Council
Anne-Marie Howell BA MA MRTPI	Principal Policy Officer, Forest Heath District Council
Jo Hooley	Solicitor, Forest Heath District Council

### INTERESTED PERSONS:

Eric Hunns	Local resident
Georgina Ormrod	Local resident
Robert Ashley	Local resident

## **DOCUMENTS PRESENTED AT THE HEARING**

- 1 Signed and dated Statement of Common Ground
- 2 Letter from third party, Mr. K Usher, dated 17 June 2016.

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