

committee agenda



District Development Control Committee Tuesday, 4th August, 2009

Place: Council Chamber, Civic Offices, High Street, Epping

Time: 7.30 pm

Democratic Services Officer: Simon Hill, The Office of the Chief Executive
Tel: 01992 564249 Email: shill@eppingforestdc.gov.uk

Members:

Councillors B Sandler (Chairman), M Colling (Vice-Chairman), K Chana, R Frankel, Mrs R Gadsby, A Green, Mrs A Haigh, J Hart, J Markham, G Mohindra, R Morgan, Mrs C Pond, P Turpin, J Wyatt and Mrs L Wagland

AT 6.30 PM PRIOR TO THE MEETING THERE WILL BE A PRESENTATION FOR ALL MEMBERS IN THE CHAMBER PROVIDING A DETAILED SUMMARY OF THE CURRENT AND FUTURE ROLE OF THE DISTRICT'S TOWN CENTRES BASED ON HOUSEHOLDER, VISITOR AND RETAIL SURVEYS THAT WILL INFORM NEW PLANNING POLICIES IN THE FORTHCOMING CORE STRATEGY

****NB – NOTE CHANGE OF TIME OF BRIEFING**
A BRIEFING WILL BE HELD FOR THE CHAIRMAN, VICE-CHAIRMAN AND GROUP SPOKESPERSONS OF THE-COMMITTEE, AT 6.00 P.M.
IN COMMITTEE ROOM 1 PRIOR TO THE MEETING**

1. ADVICE TO PUBLIC AND SPEAKERS AT COUNCIL PLANNING SUBCOMMITTEES (Pages 5 - 6)

General advice to people attending the meeting is attached together with a plan showing the location of the meeting.

2. MINUTES (Pages 7 - 18)

To confirm the minutes of the meeting of the Committee held on 9 June 2009 and the Extraordinary meeting of the Committee held on 6 July 2009 (attached)

3. APOLOGIES FOR ABSENCE

4. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

(Assistant to the Chief Executive) To report the appointment of any substitute members for the meeting.

5. DECLARATIONS OF INTEREST

(Assistant to the Chief Executive) To declare interests in any item on this agenda.

6. ANY OTHER BUSINESS

Section 100B(4)(b) of the Local Government Act 1972, together with paragraphs 6 and 25 of the Council Procedure Rules contained in the Constitution requires that the permission of the Chairman be obtained, after prior notice to the Chief Executive, before urgent business not specified in the agenda (including a supplementary agenda of which the statutory period of notice has been given) may be transacted.

In accordance with Operational Standing Order 6 (non-executive bodies), any item raised by a non-member shall require the support of a member of the Committee concerned and the Chairman of that Committee. Two weeks' notice of non-urgent items is required.

7. O2 MAST, HONEY LANE, WALTHAM ABBEY (Pages 19 - 24)

(Director of Planning and Economic Development) To consider the attached report.

8. PLANNING APPLICATION EPF/0508/09 - GREENLEAVER MOBILE HOME PARK, HOE LANE, ROYDON - CHANGE OF USE TO INCLUDE THE STATIONING IF CARAVANS FOR 5 FAMILY GYPSY PITCHES WITH UTILITY/DAY ROOM BUILDINGS AND HARD STANDING (Pages 25 - 34)

(Director of Planning and Economic Development) To consider the attached report.

9. ERECTION OF A DWELLINGHOUSE WITHOUT PLANNING PERMISSION AT RED COTTAGE, NEW FARM DRIVE, ABRIDGE (Pages 35 - 44)

(Director of Planning and Economic Development) To consider the attached report.

10. DIRECT ENFORCEMENT ACTION - CAR WASH AT 1 - 3 COOPERS HILL, ONGAR (Pages 45 - 48)

(Director of Planning and Economic Development) To consider the attached report.

11. PLANNING APPLICATION EPF/1064/09 - 40A HAINAULT ROAD, CHIGWELL - CHANGE OF USE FROM VACANT (FORMERLY AGRICULTURAL) TO CAR PARKING FOR USE IN ASSOCIATION WITH VICTORY HALL (Pages 49 - 50)

(Director of Planning and Economic Development) To consider the attached report.

12. EXCLUSION OF PUBLIC AND PRESS

Exclusion: To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the following paragraph(s) of Part 1 of Schedule 12A of the Act (as amended) or are confidential under Section 100(A)(2):

| Agenda Item No | Subject | Exempt Information Paragraph Number |
|-----------------------|----------------|--|
| Nil | Nil | Nil |

The Local Government (Access to Information) (Variation) Order 2006, which came into effect on 1 March 2006, requires the Council to consider whether maintaining the exemption listed above outweighs the potential public interest in disclosing the information. Any member who considers that this test should be applied to any currently exempted matter on this agenda should contact the proper officer at least 24 hours prior to the meeting.

Confidential Items Commencement: Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

Background Papers: Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report and does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

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Advice to Public and Speakers at Council Planning Subcommittees

Are the meetings open to the public?

Yes all our meetings are open for you to attend. Only in special circumstances are the public excluded.

When and where is the meeting?

Details of the location, date and time of the meeting are shown at the top of the front page of the agenda along with the details of the contact officer and members of the Subcommittee.

Can I speak?

If you wish to speak **you must register with Democratic Services by 4.00 p.m. on the day before the meeting.** Ring the number shown on the top of the front page of the agenda. Speaking to a Planning Officer will not register you to speak, you must register with Democratic Service. Speakers are not permitted on Planning Enforcement or legal issues.

Who can speak?

Three classes of speakers are allowed: One objector (maybe on behalf of a group), the local Parish or Town Council and the Applicant or his/her agent.

Sometimes members of the Council who have a prejudicial interest and would normally withdraw from the meeting might opt to exercise their right to address the meeting on an item and then withdraw.

Such members are required to speak from the public seating area and address the Sub-Committee before leaving.

What can I say?

You will be allowed to have your say about the application but you must bear in mind that you are limited to three minutes. At the discretion of the Chairman, speakers may clarify matters relating to their presentation and answer questions from Sub-Committee members.

If you are not present by the time your item is considered, the Subcommittee will determine the application in your absence.

Can I give the Councillors more information about my application or my objection?

Yes you can but it must not be presented at the meeting. If you wish to send further information to Councillors, their contact details can be obtained through Democratic Services or our website www.eppingforestdc.gov.uk. Any information sent to Councillors should be copied to the Planning Officer dealing with your application.

How are the applications considered?

The Subcommittee will consider applications in the agenda order. On each case they will listen to an outline of the application by the Planning Officer. They will then hear any speakers' presentations.

The order of speaking will be (1) Objector, (2) Parish/Town Council, then (3) Applicant or his/her agent. The Subcommittee will then debate the application and vote on either the recommendations of officers in the agenda or a proposal made by the Subcommittee. Should the Subcommittee propose to follow a course of action different to officer recommendation, they are required to give their reasons for doing so.

The Subcommittee cannot grant any application, which is contrary to Local or Structure Plan Policy. In this case the application would stand referred to the next meeting of the District Development Control Committee.

Further Information?

Can be obtained through Democratic Services or our leaflet 'Your Choice, Your Voice'

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: District Development Control **Date:** 9 June 2009
Committee

Place: Council Chamber, Civic Offices, **Time:** 7.30 - 9.30 pm
High Street, Epping

Members Present: B Sandler (Chairman), M Colling (Vice-Chairman), K Chana, R Frankel, Mrs R Gadsby, A Green, Mrs A Haigh, J Hart, J Markham, G Mohindra, R Morgan, Mrs C Pond, P Turpin, J Wyatt and Mrs L Wagland

Other

Councillors: J Knapman, Mrs M Sartin and C Whitbread

Apologies:

Officers Present: S G Hill (Senior Democratic Services Officer), N Richardson (Principal Planning Officer), R Rose (Senior Lawyer) and G J Woodhall (Democratic Services Officer)

1. WEBCASTING INTRODUCTION

The Assistant to the Chief Executive reminded everyone present that the meeting would be broadcast live to the Internet, and that the Council had adopted a protocol for the webcasting of its meetings.

2. MINUTES

Resolved:

That the minutes of the meeting held on 7 April 2009 be taken as read and signed by the Chairman as a correct record.

3. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

It was noted that there were no substitutes at this meeting.

4. DECLARATIONS OF INTEREST

Pursuant to the Councillors Code of Conduct, Councillors B Sandler, K Chana, G Mohindra and L Wagland declared personal interests in item 10 (Grange Farm, Chigwell) by virtue of being members of Chigwell Parish Council. The members remained in the meeting for the duration of the discussion and voting on that item.

Pursuant to the Councillors Code of Conduct, Councillor R Gadsby declared a prejudicial interest in item 10 (Grange Farm, Chigwell) and left the meeting for that item.

5. ANY OTHER BUSINESS

It was noted that there was one item of additional business (5 Moores Estate, Roydon) which had been circulated as a supplementary agenda item.

6. PLANNING APPLICATION EPF/2315/08 - 5 MOORES ESTATE, CHURCH LANE, ROYDON - FOUR ADDITIONAL GYPSY PITCHES FOR FAMILY MEMBERS RESIDENTIAL CARAVAN SITE (MAKING 5 IN TOTAL)

The Committee considered a supplementary agenda item which related to application which had been referred by Area Subcommittee West with no recommendation. The Subcommittee had felt that the matter should be discussed by the Committee on the basis that the proposal was of major importance and was affected by the current consultation process for the Gypsy and Traveller DPD.

The application sought use of land at 5 Moores estate for the stationing of four additional gypsy family pitches for family members bringing the total on the site to five.

The Committee received representations from an objector to the development and additionally their attention was drawn to letters of representation from 15 Little Brook Road, Solicitors on behalf of 3 Moores Estate, Church Lane, and a joint signed letter dated 01/06/09.

Members were concerned at the sites location within the green belt and whether the proposal met the test of very special circumstances envisaged by the local plan. Members were of the view that no special circumstances had been put forward by the applicant that were sufficient to outweigh harm to the green belt. Additionally, members considered that the narrow one track access road was inadequate for the proposed development. The Committee considered and voted upon a proposal to refuse permission on the basis of their concerns.

Resolved:

That planning application EPF/2315/08 be refused for the following reasons:

(1) The site is within the Metropolitan Green Belt. The proposed works represent inappropriate development and are therefore at odds with Government advice, as expressed in PPG2, policies GB2A and H10A of the adopted Local Plan and Alterations and the East of England Plan 2008. They state that within the Green Belt permission will not be given, except in very special circumstances for the construction of new buildings or for the change of use or extension to existing buildings except for the purposes of agriculture, mineral extraction or forestry, small scale facilities for outdoor participatory sport and recreation, cemeteries, or similar uses which are open in character. In the view of the Local Planning Authority the application does not comply with these policies and there are no very special circumstances sufficient to justify the grant of permission; and

(2) There is inadequate and sub-standard access to the site and the addition of 4 additional gypsy pitches therefore is unacceptable because the current access fails to provide safe and convenient access for pedestrians and vehicles, particularly emergency vehicles, and is therefore contrary to policy ST2 of the Adopted Local Plan and Alterations 2006.

7. PLANNING APPLICATION EPF/0247/09 - LAND ADJACENT TO COPPERFIELD LODGE, HAINAULT ROAD, CHIGWELL - ERECTION OF NEW FIVE BEDROOM HOUSE WITH BASEMENT AND INTEGRAL GARAGE

The Committee considered an application which had been referred by the Area Plans Sub Committee South for the construction of a five bedroomed house on a green belt site in Hainault Road, Chigwell. The application site was adjacent to Victory Hall and the applicant proposed, as part of the scheme, that a portion of the site on the northwest perimeter be assigned to the District Council to provide additional parking for the Hall and nearby library. The area of parking proposed was, however, outside the red lined application site.

The report to the sub-committee had carried a recommendation from officers to refuse planning permission on green belt grounds which had not been upheld by majority at the Area Subcommittee meeting.

The debate at the sub-committee meeting had centred around whether the site fulfilled the purposes of being included within the green belt; whether there was a need for the provision of additional parking spaces for Victory Hall; and whether the provision of the additional car parking spaces was sufficient grounds to justify an otherwise inappropriate development within the green belt.

The Committee heard from an objector to the application and noted that the proposed house design had been subject to further design revision, making it smaller.

The Committee were concerned that the proposed parking area was outside the application site and, as such, could not be conditioned as part of the planning application. Members were advised that a Section 106 Agreement could be put in place to secure the provision of laid out parking spaces and the sites ownership transfer to the District Council before the implementation of the scheme. Members considered that the parking was needed at the location and that the proposed site of the house would fill a gap in the existing built frontage on Hainault Road and was supported by many local people. The Committee therefore considered a proposal to grant permission for the scheme subject to conditions suggested by officers and with a Section 106 Agreement to ensure the provision of the parking before commencement of the scheme. Members asked further that the application for the parking scheme come back to the Committee for consideration.

Resolved:

(1) That, subject to the completion of a Section 106 Agreement to secure the provision of car parking and transfer of the appropriate portion of the land to the District Council's ownership before implementation of the planning permission, EPF/0247/09 on land adjacent to Copperfield Lodge, Hainault Road, Chigwell be granted subject to the following conditions:

1. The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this notice.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

2. Details of the types and colours of the external finishes shall be submitted for approval by the Local Planning Authority in writing prior to the

commencement of the development, and the development shall be implemented in accordance with such approved details.

Reason:- To ensure a satisfactory appearance in the interests of visual amenity.

3. The development, including site clearance, must not commence until a scheme of landscaping and a statement of the methods of its implementation have been submitted to the Local Planning Authority and approved in writing. The approved scheme shall be implemented within the first planting season following the completion of the development hereby approved. The scheme must include details of the proposed planting including a plan, details of species, stock sizes and numbers/densities where appropriate, and include a timetable for its implementation. If any plant dies, becomes diseased or fails to thrive within a period of 5 years from the date of planting, or is removed, uprooted or destroyed, it must be replaced by another plant of the same kind and size and at the same place, unless the Local Planning Authority agrees to a variation beforehand, and in writing. The statement must include details of all the means by which successful establishment of the scheme will be ensured, including preparation of the planting area, planting methods, watering, weeding, mulching, use of stakes and ties, plant protection and aftercare. It must also include details of the supervision of the planting and liaison with the Local Planning Authority. The landscaping must be carried out in accordance with the agreed scheme and statement, unless the Local Planning Authority has given its prior written consent to any variation.

Reason:- To comply with the duties indicated in Section 197 of the Town and Country Planning Act 1990 so as to ensure that the details of the development of the landscaping are complementary, and to ensure a satisfactory appearance to the development.

4. All material excavated from the below ground works hereby approved shall be removed from the site unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to control any alteration to levels or spreading of material not indicated on the approved plans in the interests of amenity and the protection of natural features.

5. Prior to commencement of development, including demolition or site clearance works, a phased contaminated land investigation shall be undertaken to assess the presence of contaminants at the site in accordance with an agreed protocol as below. Should any contaminants be found in unacceptable concentrations, appropriate remediation works shall be carried out and a scheme for any necessary maintenance works adopted. Prior to carrying out a phase 1 preliminary investigation, a protocol for the investigation shall be agreed in writing with the Local Planning Authority and the completed phase 1 investigation shall be submitted to the Local Planning Authority upon completion for approval. Should a phase 2 main site investigation and risk assessment be necessary, a protocol for this investigation shall be submitted to and approved by the Local Planning Authority before commencing the study and the completed phase 2 investigation with remediation proposals shall be submitted to and approved by the Local Planning Authority prior to any remediation works being carried out. Following remediation, a completion report and any necessary

maintenance programme shall be submitted to the Local Planning Authority for approval prior to first occupation of the completed development.

Reason:- Since the site has been identified as being potentially contaminated and to protect human health, the environment, surface water, groundwater and the amenity of the area.

6. No demolition or preliminary ground works of any kind shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the local planning authority.

Reason: To protect any material of archaeological interest of the site, due to the location of the proposed development on the site of a Roman Road.

7. Prior to commencement of development, details of levels shall be submitted to and approved by the Local Planning Authority showing the levels of the site prior to development and the proposed levels of all ground floor slabs of buildings, roadways and accessways and landscaped areas. The development shall be carried out in accordance with those approved details.

Reason: To enable appropriate consideration to be given to the impact of the intended development upon adjacent properties.

8. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 as amended (or any other order revoking, further amending or re-enacting that order) no development generally permitted by virtue of Part 1, Classes A, B, E shall be undertaken without the prior written permission of the Local Planning Authority.

Reason:- The specific circumstances of this site warrant the Local Planning Authority having control over any further development.

9. Prior to the commencement of development details of screen walls, fences or such similar structures shall be agreed in writing by the Local Planning Authority, and shall be erected before the occupation of any of the dwellings hereby approved and maintained in the agreed positions.

Reason:- In the interests of visual amenity.

10. Prior to the commencement of the development details of the proposed surface materials for the access shall be submitted to and approved in writing by the Local Planning Authority. The agreed surface treatment shall be completed prior to the first occupation of the development.

Reason:- To ensure that a satisfactory surface treatment is provided in the interests of highway safety and visual amenity.

11. Prior to the first occupation of the development hereby permitted there shall be no obstruction within a parallel band visibility spay 2.4m wide as measured from the back edge of the carriageway across the entire site frontage. This area shall be retained free from any obstruction in perpetuity.

Reason: To provide adequate inter-visibility between users of the access and the existing public highway for the safety and convenience of users of the

highway and of the access in accordance with policy ST4 of the Adopted Local Plan and Alterations.

12. Any gates provided at the vehicular access shall only open inwards and shall be set back a minimum of 4.8 metres from the nearside edge of the carriageway.

Reason: To enable vehicles using the access to stand clear of the carriageway/footway whilst gates are being opened and closed in accordance with policy ST4 of the Adopted Local Plan and Alterations.

13. Prior to the first occupation of the development permitted the existing crossover shall be removed and the footpath resurfaced and the kerb reinstated for use as approved in writing by the local planning authority.

Reason: In the interests of highway safety in accordance with policy ST4 of the Adopted Local Plan and Alterations.

14. Wheel washing or other cleaning facilities for vehicles leaving the site during construction works shall be installed in accordance with details which shall be submitted to and agreed in writing by the Local Planning Authority and these facilities installed prior to the commencement of any building works on site, and shall be used to clean vehicles leaving the site.

Reason:- To avoid the deposit of material on the public highway in the interests of highway safety.

(2) That the planning application for car parking linked to this site be subject to a further report to the District Development Control Committee.

8. PLANNING APPLICATION VALIDATION CHECKLISTS

The Committee considered and approved officer proposals to implement validation checklists together with associated guidance. It was noted that the relevant portfolio holder would be required to publish a decision to formally adopt the checklists.

Resolved:

That the relevant Portfolio holder be recommended to:

- (1) Approve the amended Validation Checklists and Guidance Notes for adoption from 1 July 2009 and for publication in the local paper and on the Council's website; and
- (2) Keep the checklists and guidance notes under regular review with minor amendments, necessary to reflect statutory changes, changes in Government guidance or Council policy and guidance, being made as required without undertaking full consultation or member approval.

9. SECTION 106 AGREEMENT - GRANGE FARM, HIGH ROAD, CHIGWELL - REQUEST FOR VARIATIONS

The Committee considered a request from the developer of the core site at Grange Farm, Chigwell to vary the terms of the existing Section 106 Agreement on the site. The variations sought related to the amount and phasing of payments to be made under the existing agreement. The Committee requested that the decision on the

request be deferred to an extraordinary meeting to allow the Council's Director of Finance and ICT to provide advice to the Committee on the financial elements of the proposal.

Resolved:

That an extraordinary meeting of the Committee be convened to give further consideration to the requests for variation of the Section 106 Agreement relating to Grange Farm, Chigwell once further financial appraisal of the proposals was undertaken by the Director of Finance and ICT.

CHAIRMAN

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EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: District Development Control Committee **Date:** 6 July 2009

Place: Council Chamber, Civic Offices, High Street, Epping **Time:** 7.30 - 8.30 pm

Members Present: B Sandler (Chairman), M Colling (Vice-Chairman), K Chana, R Frankel, J Hart, G Mohindra, Mrs C Pond, P Turpin, J Wyatt, Mrs L Wagland and D Wixley

Other

Councillors: J Knapman and C Whitbread

Apologies: Mrs R Gadsby, J Markham and R Morgan

Officers Present: R Palmer (Director of Finance and ICT), R Rose (Senior Lawyer), N Richardson (Principal Planning Officer), S G Hill (Senior Democratic Services Officer) and G J Woodhall (Democratic Services Officer)

10. DECLARATIONS OF INTEREST

Pursuant to the Councillors Code of Conduct, Councillors B Sandler, K Chana, G Mohindra and L Wagland declared personal interests in item 5 (Grange Farm, Chigwell) by virtue of being members of Chigwell Parish Council. The members remained in the meeting for the duration of the discussion and voting on that item.

11. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

It was noted that Councillor D Wixley was substituting for Councillor Markham at this meeting.

12. ANY OTHER BUSINESS

There was no further business for consideration at the meeting.

13. SECTION 106 AGREEMENT - GRANGE FARM, HIGH ROAD, CHIGWELL - REQUEST FOR VARIATIONS

The Committee gave further consideration to proposals made to the Council by the developer of the Grange Farm Core site which had been deferred by the Committee at its last meeting on 9 June 2009 in order to allow for the provision of additional information and seek observations from the Director of Finance & ICT.

The Committee noted that since 2002 there had been outline planning permission to redevelop the core area of the former holiday and camping centre at the above site for residential development in this Green Belt location. On 20 December 2006 after protracted negotiations a S106 Agreement had been completed and a renewed planning permission EPF/2190/05 granted subject to a number of conditions.

Under the Agreement, the rehabilitation works and the sports field works were to be carried out by the Developer and the Sports Pavilion and Interpretation Centre are to be constructed by Grange Farm Centre Trust (GFCT) before it was then leased to Chigwell Parish Council to manage and maintain.

The threshold for payment of the maintenance sums, Sports Pavilion and Interpretation Centre contributions, which were to be passed to GFCT and then to Chigwell Parish Council (CPC), as well as the contamination land assessments and affordable housing was that half was payable prior to implementation of the houses and the remainder prior to occupation of the 20th house. The Education and Transportation contributions were both required in their entirety prior to implementation.

Work has commenced on the clearing of the core area, ready to begin the residential development. The developer had written to the Director of Corporate Support Services seeking variations to the Agreement aimed at cost reductions because their funders were withholding funding of the development until the budget was reduced in view of the changed financial environment. They outline that over time, costs for open space and parkland works and roundabout access works had risen significantly over estimate and the economic downturn had resulted in the development being placed in jeopardy.

Following the last meeting, the developer had made further representations to the Council regarding payments to be made under the section 106 Agreement which instead of seeking not to pay elements of the Agreements sums, rather sought to the revised rephrasing of the payments to later in the development phase. Additionally, contributions to the sports pavilion, interpretation centre and community projects were proposed to be held by the developer and drawn down during the construction of the community facilities.

The Committee received representations from an objector, the GFCT and the developer.

It was the view of the Committee that there was a significant threat to the scheme, including the desired community elements, in the current economic environment. Additionally grant money promised to the scheme would also be lost if the scheme was further delayed or stopped. Officers had suggested proposals that protected the payments to the Council for the Sports Pavilion and Interpretation Centre Building Sum and the balance of the Community Project Sum as part of any deed of variation and members suggested that the deed be made personal to the current developer and contain dispute arbitration clauses. The Committee were of the view that, given the proposed protections the Council should enter into the variation envisaged and resolved accordingly.

Resolved:

(1) That, the variation of the Section 106 Agreement in respect of Planning Permission EPF/2190/05 for Grange Farm, Chigwell be agreed subject to:

(i) The Deed of Variation being made personal to Byrne Estates (Chigwell) Limited and to B.E.Chigwell Limited;

(ii) A further review of the scheduling of section 106 payments after the sale of the 10th housing unit together with suitable arbitration clauses within the Deed of Variation to be agreed between the parties;

(iii) Byrne Estates (Chigwell) Limited and to B.E.Chigwell Limited agreeing that prior to the occupation of the first unit, if construction on the Sports Pavilion and Interpretation Centre had not commenced that Byrne Estates (Chigwell) Limited would pay the Sports Pavilion and Interpretation Centre Building Sum and the balance of the Community Project Sum (£230,000.00) at that time and if the contributions had not been fully defrayed by the 29th housing unit (assuming construction had started) Byrne Estates (Chigwell) Limited would pay the balance to the Council.

Based upon the following revised schedule of variations:

| Section 106 Contribution item | Original Payment Date Under S106 | Agreed Payment Date | Revision to Or Cancellation |
|---|---|----------------------------|---|
| Access way Commuted Sum (For future maintenance) | 50% pre commencement 50% on 20 th Unit | | On the sale or occupation (whichever is sooner) of the 20 th housing unit |
| Signage | Appointed Date (12 months from date of approval of last reserved matter or 6mths from date of commencement) | | No Change |
| Affordable Housing Sum | 50% pre commencement 50% on 20 th Unit | | On the sale or occupation (whichever is sooner) of the 29 th housing unit |
| Community Project Sum | 50% pre commencement 50% on 20 th Unit | | Contribution to held by developer and to be drawn down by developer during construction of pavilion subject to £20,000 direct contribution requested by Chigwell Parish Council (subject to (1)(iii) above) |
| Transport Contribution Sum | Prior to commencement. Sum already paid to ECC | | Payment to be used for Education Contribution and balance for Transport. |
| Contaminated Land Sum | 50% pre commencement 50% on 20 th Unit | | No payment to the Council |
| Open Space Commuted Sum (For future maintenance) | 50% pre commencement 50% on 20 th Unit | | On the sale or occupation (whichever is sooner) of the 20 th housing unit |
| Plant Defect Sum (For future maintenance) | 50% pre commencement 50% on 20 th Unit | | On the sale or occupation (whichever is sooner) of the 20 th housing unit |
| Secondary Contribution (Education) | Prior to Commencement | | On the sale or occupation (whichever is sooner) of the |

| | | |
|---|-------------------------------|---|
| | | 29 th housing unit |
| Sports Pavilion and Interpretation Centre Building Sum | Prior to Commencement | Contribution to held by developer and drawn down by developer during construction of pavilion (subject to (1)(iii) above) |
| Sports Pavilion and Interpretation Centre Commuted Sum (For future maintenance) | 100% on 20 th Unit | No change |

(2) That the Service Director for Corporate Support Services be authorised to prepare and complete the necessary Deed of Variation in accordance with the committee's decision above, subject to such deed requiring the original terms regarding payments and timing of contributions to be reinstated if the 29th housing unit has not been completed by 30 June 2012.

CHAIRMAN

Report to District Development Control Committee

Date of meeting: 4 August 2009

Subject: O2 Mast, Honey Lane, Waltham Abbey

**Officer contact for further information: John Preston
Committee Secretary: S Hill Ext 4249**



**Epping Forest
District Council**

Recommendation(s):

That the Committee:

- (1) Resolve to NOT make a Discontinuance Order under S102 of the Town and Country Planning Act 1990 requiring the removal of the mobile phone mast at Honey Lane, Waltham Abbey; and**
- (2) Recommend to Cabinet that residents be compensated for the Council's failure to make a timely decision on an application for a determination as to whether prior approval for the mobile phone mast was required.**

Report Detail

Background:

1. On 20 June 2006 O2 submitted an application for a determination as to whether prior approval of the Council is required for the erection of a 12m high imitation telegraph pole antenna and equipment cabinet at ground level at the junction of Honey Lane and Stonyshotts in Waltham Abbey, Ref EPF/1242/06. The Council was obliged to issue a decision on the application within 56 days.
2. Such applications are unique in that failure to ensure the applicant receives the Council's decision within the 56 day timescale results in a deemed planning permission for the development being granted.
3. In this particular case, although the Council decided prior approval was required and refused to grant such approval (on the basis the mast would cause harm to the amenities of the locality), the decision letter was received by O2 1 day outside the 56 day limit for the Council to notify the applicant of its decision. Consequently, under the provisions of Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) [the GPDO] O2 gained deemed planning permission to erect the antenna and equipment cabinet.
4. In order to remedy the harm caused by the telecommunications mast the Council has sought to challenge the existence of a deemed planning permission in the light of Counsels' advice. The advice was that it appeared O2 had not complied with all the relevant criteria in the GPDO because requirements to get the prior written consent of owners or occupiers of the land set out in the Electronic Communications Code had not been complied with. On the basis of that advice, Cabinet resolved on 4 February 2008 that urgent measures be taken by the Director

of Planning and Economic Development to commence enforcement action to secure the removal of the telecommunication mast and defend any appeal.

5. Prior to proceeding to issue an enforcement notice, the Council made further enquiries of Essex County Council and O2. New information was given and then provided to Counsel in order to seek confirmation that the advice previously given still held.

6. The information provided by Essex County Council confirmed it had advised O2 directly prior to works being carried out on the land that it had no objection to the mast or the equipment cabinets. The County Council also confirmed that was the case in respect of an additional equipment cabinet erected about a year after the mast was erected.

7. The information provided by O2 drew attention to specific parts of the Electronic Communications Code that clarify no consents from the owner or occupiers of the land are required for works undertaken on the highway.

8. Following consideration, Counsels' advice regarding the lawfulness of the mobile phone mast changed. The advice in respect of that question is now that the mast has been erected lawfully and that the Council cannot serve an enforcement notice under S172 of the Town and Country Planning Act requiring its removal.

Counsel states "O2 have now shown that they did come within the provisions of the (Electronic Communications) Code and hence, having served a developers notice on Essex County Council on the 19th of June 2006, within Part 24 of Schedule 2 to General Permitted Development order do not require express planning consent to erect and maintain the mast and equipment. This means it is not open to Epping Forest District Council to issue an enforcement notice requiring the mast and equipment to be removed"

Counsel further advises "There is no doubt the council have acted carefully in considering all options and seeking to pursue the prospect of enforcement action for as long as it was possible to do so. The Council has also dealt with matters transparently as advised by the Ombudsman's Special Report of June 2007. However the choice is now between taking discontinuance action and paying compensation to O2 or responding to complaints to the local ombudsman which local residents have indicated they will make based on the council's failure to notify O2 that they objected to the proposal to erect the mast within the required 56 day period."

Discontinuance Action:

9. Under S102 of the Town and Country Planning Act 1990 a Local Planning Authority may, if having had regard to the Development Plan and any other material considerations concluded that it is expedient in the interests of the proper planning of their area (including the interests of amenity), issue an Order requiring the removal of any building or works. This power can be used against both lawful and unlawful development. Where an Order is made, any person who has suffered damage in consequence of the Order or who carries out works in compliance with the order would be entitled to seek to recover compensation for the loss from the Local Planning Authority.

10. As Counsel indicates, making a Discontinuance Order requiring the removal of the mobile phone mast will, if successful, result in the Council having to bear O2's costs of erecting the mast in the first place, removing the mast and loss of income. A

report produced for the Council by the Consultants following receipt of Counsel's final advice indicates that such costs are likely to be in the region of £150,000.

11. A Discontinuance Order has to be confirmed by the Secretary of State before it can take effect. The Secretary of State has broad powers to modify the order, including power to grant planning permission. Before proceeding to confirm the order the Secretary of State must provide an opportunity to be heard to any person on whom the Order has been served. It can be expected that O2 will seek to be heard to challenge the making of the Order. In those circumstances a Public Inquiry will be held. Regardless of the outcome the Council would incur its own costs in the region of £20,000 to deal with the public inquiry. In addition, if the Council was found to have behaved unreasonably in making the Order it may have an award of costs made against it in favour of the other party.

12. Notwithstanding the matter of the Council's potential costs in seeking to take discontinuance action consideration has been given to the planning merits of taking such action having regard to the likely outcome in the event it is successful. Independent communications consultants were employed by the Council to examine the evidence of need for a telecommunications mast in the locality. Following an examination of service coverage by all other masts in Waltham Abbey it was found there is a clear demonstrable need for a telecommunications mast in the locality.

13. The consultants' report also examined whether that need could be met at identified alternative sites and found none that were available or had a reasonable prospect of being made available could meet the need and be less harmful to amenity. An alternative site that was not considered by the consultants is land on the west side of the junction of Honey Lane and Stonyshotts, however that site was previously rejected by the Council under application Ref EPF/0584/06. In the circumstances it is clear there is no alternative available site for the mast that could meet the need and be less harmful to the amenities of the locality.

14. Therefore, having regard to the demonstrable need for a telecommunications mast in the locality and the lack of alternative sites to meet that need, it is also clear that in the event of discontinuance action being successful the most likely outcome is the existing mast would be replaced by another similar mast close to the site, possibly on the previously rejected site. Consequently discontinuance action would not result in any benefit in planning terms because it would not result in any material improvement in the amenities of the locality. Furthermore, in order to have achieved no planning benefit the Council would have had to pay its Inquiry costs and then also have to compensate O2.

15. However, since there is a demonstrable need for a telecommunications mast in the locality and a lack of alternative sites to meet that need it is very uncertain that the Council could successfully defend the making of a Discontinuance Order at inquiry. If the Council loses its case it would incur its Inquiry costs and possibly have to pay O2's Inquiry costs with the outcome being the existing mast would remain.

16. Whatever the outcome, the owners of neighbouring properties would receive no compensation and would have to continue to live with a mast in the locality.

Compensation for local Residents:

17. The alternative course of action is to compensate the owners of neighbouring properties who objected to the mast when the original application was before the Council. A Consultant has been employed by the Council to advise on matters relating to the mast including the basis on which residents could claim compensation.

18. The Consultants advise that any claim by residents to the Ombudsman for compensation would be on the basis of:

- loss of value to property caused by the mast, and
- harm to the amenities of the occupants of the property.

19. The Consultants also advise that any loss in value is unlikely to be in excess of 5% of property value and there are good grounds for resisting such a claim for compensation on the basis of loss of property value. This is because even if the Council had issued its decision in time, it is most likely that planning permission for the mast would have been granted on appeal so the mast would have been erected anyway. In any event, the affected owners/residents may have a redress available directly against O2 under the Electronic Communications Code, however, they would need to take their own legal advice on that point.

20. Members are advised that the occupants of 10 neighbouring houses objected to the mast when consulted on the application by the Council. Land Registry searches show one of the properties was sold in March 2008, about a year after the mast was erected, and the price stated to have been paid was £247,000. Another property changed hands in September 2006, approximately 6 months prior to the erection of the mast, but the register of title does not include details of how much was paid. No other properties changed hands shortly before the mobile phone mast was erected or between the date it was erected and when property prices generally started to fall due to market conditions.

21. The results of the searches do not provide sufficient information on which to base any assessment of the likely value of any claim that any residents might make. Nevertheless, having regard to the Consultants report, the total lost value that might be claimed by all the residents who had objected to the application as part of a claim to the Ombudsman against the Council for maladministration (up to 5% of property value) could be as much as £120,000. However, as also pointed out by the Consultants, the likely success of such a claim is open to question.

22. Further research reveals the Local Government Ombudsman has considered this type of complaint by local residents across the country on a number of occasions. In those cases the Ombudsman's recommendation has been the Council concerned should pay compensation to those who objected to the application at the time it was being considered in recognition of their disappointment that the mast in question had to remain. The sum recommended by the Ombudsman has varied from £250-£300 and, as far as officers are aware, there have been no recommendations for any consideration to be given by the Council concerned to property devaluation.

23. These residents have already been paid £250 each as a goodwill gesture by the Council. However, it was emphasised to them that this offer was solely in recognition of the disappointment and frustration caused by the Council's failure to meet the 56 day deadline and would not prejudice any other claim they might wish to make for compensation for property devaluation should the mast have to remain.

24. After the mast was erected around 100 additional residents have either signed a petition or submitted individual letters complaining about the Council's failure to meet the 56 day deadline and/or calling for the removal of the mast. However, none of these people raised any objection to O2s' proposal to erect the mast during the public consultation process on the application. Those who did not raise any comments at the time the proposal to erect the mast was advertised by the Council would not be entitled to any compensation in the event of them making a claim to the Ombudsman.

Conclusion

25. In all the circumstances, the opinion of Officers is that a Discontinuance Order should not be made and that the best outcome for those 10 residents who did submit an objection to the application is for the Council to make a final reasonable offer of compensation.

26. Officers do not consider a reasonable case can be made for compensating, on the basis of a loss of 5% of property value, any of those objectors who was the owner of a neighbouring property at the time the mast was erected. That is because there is no substantive evidence demonstrating an actual loss of value of any property near the mast and, even if there was, it is very likely that planning permission would have been granted for it on appeal. Consequently, the mast would have erected in any event and any impact on property value would still have taken place.

27. Rather, the appropriate course of action is to offer them a further sum (£250 would be appropriate) for their disappointment that the mast has to remain and to advise those owners they would have to pursue any further claim privately against O2.

28. This view is reached on the basis that the mistake by the Council is one that has been made by many other local authorities in recent years. The Local Government Ombudsman has therefore already considered this type of complaint by local residents across the country on a number of occasions. The Ombudsman's recommendation has been that the Council concerned should pay compensation to those who objected to the application at the time in recognition of their disappointment that the mast in question had to remain. The sum recommended by the Ombudsman has varied from £250-£300 but, as far as officers are aware, there have been no recommendations for any consideration to be given by the Council concerned to property devaluation. Given that the Council has already paid £250 to each of the 10 affected property owners/residents, any additional payment of a further nominal sum to the remaining residents would therefore be very likely to be regarded by the Ombudsman as a more than reasonable settlement.

29. Accordingly, it is recommended that the Committee resolve to not make a Discontinuance Order and to recommend to Cabinet that residents be compensated for the Council's failure to make a timely decision on an application for a determination as to whether prior approval for the mobile phone mast was required, on the basis described in the conclusion of this report.

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Report to District Development Control Committee

Date of meeting: 4 August 2009

Subject: Planning application EPF/0508/09 – Greenleaver Mobile Home Park, Hoe Lane, Roydon – Change of use to include the stationing of caravans for 5 family Gypsy pitches with utility/day room buildings and hard standing ancillary to that use (to bring total number of pitches to 15)



**Epping Forest
District Council**

**Officer contact for further information: J Shingler Ext 4106
Committee Secretary: S Hill Ext 4249**

Recommendation(s):

That Planning Application EPF/0508/09 be granted subject to the following conditions:

- (1) The development hereby permitted must be begun not later than the expiration of 3 years beginning with the date of this notice.**
- (2) The additional pitches hereby approved shall be occupied only by family members of the named occupants of the 10 pitches already approved at the site and by no other persons. The named occupants of the 10 pitches previously approved are;**
 - 1. Joe Jones, Rosie Jones (his wife) and Dorothy Gaskin (Mother of Rosie Jones)**
 - 2. Billy Jones (Brother of Joe Jones)**
 - 3. Joe Mitchell (son of Joe Jones) and his wife Charmaine Mitchell**
 - 4. Sean Jones (Son of Joe Jones) and his wife and Lisa Jones**
 - 5. Sean Lee (son-in-law of Joe Jones) and his wife Julie Lee**
 - 6. Tony Marshall and Lila Marshall**
 - 7. John Buckland and his wife Maria Buckland (daughter of Joe Mitchell Senior).**
 - 8. Joe Mitchell Jnr (son of Joe Mitchell Senior) and Tracey Mitchell, his wife**
 - 9. Thomas Lee and his wife Charmaine Lee (daughter of Joe Mitchell Senior)**
 - 10. James Russell and his wife Lila Russell (daughter of Tony Marshall)**
- (3) Prior to any additional caravans being brought on site, details of means of disposal of sewage from the site shall be submitted to and agreed in writing by the Local Planning Authority and the agreed scheme shall be implemented accordingly.**
- (4) The site shall be used for residential purposes only. No commercial Industrial or retail activity shall take place on the site, including the storage of goods, materials or other items (other than household/domestic effects relating to the specific pitch on which they are stored).**
- (5) There shall be no more than 1 static caravan and 1 touring caravan stationed on each pitch at any one time (a total of 5 static caravans and 5**

tourers on the site as a whole). No more than 2 vehicles shall be parked on each pitch at any one time.

(6) Details of foul and surface water disposal shall be submitted to and approved by the Local Planning Authority before any work commences and the development shall be implemented in accordance with such agreed details.

(7) A flood risk assessment shall be submitted to and approved by the Local Planning Authority prior to commencement of development. The assessment shall include calculations of increased run-off and associated volume of storm detention using Windes or other similar programme. The approved measures shall be undertaken prior to the first occupation of the building hereby approved and shall be adequately maintained in accordance with a management plan to be submitted concurrently with the assessment.

(8) The roadway and turning area shown on the approved plans shall be completed prior to any caravans or mobile homes being stationed on the site.

(9) The development, including site clearance, must not commence until a scheme of landscaping and a statement of the methods of its implementation have been submitted to the Local Planning Authority and approved in writing. The approved scheme shall be implemented within the first planting season following the completion of the development hereby approved.

(10) There shall be no stationing, parking, or storage of vehicles over 1.5 tonnes or the maintenance or repair of vehicles on the entire site.

Report Detail

1. This application is brought before committee as the proposal is of major importance and is affected by the current consultation process for the Gypsy and Traveller DPD.

Planning Issues

Description of Development:

2. Change of use of land to form an extension to existing mobile home park to allow for 5 family gypsy pitches. Each pitch to site 1 mobile home and 1 touring caravan together with an ancillary utility/day room building and hardstanding. The proposal is to bring the total number of pitches on the site up to 15. The new plots would be accessed and serviced from the existing access driveway off Hoe Lane and the proposal includes a turning head and additional tree planting.

Description of Site:

3. The red lined application site is a roughly rectangular area of land measuring approximately 86m x 37m, currently used as a paddock, located immediately to the south east of the existing hardened area of Greenleaver Mobile Home Park which is located on the eastern side of Hoe Lane. The existing site has 6 plots and at the

time of the Officer's site visit the hardstanding for the 4 additional plots approved last year was being laid. The site is accessed via a private access off Hoe Lane which crosses the Nazeing Brook. The site and the larger area of land within the applicants ownership is well screened from the road and from adjacent residential properties by substantial hedgerows and lies between an established business park and horticultural development.

Relevant History:

4. The Greenleaver site has the following planning history:

5. In 1991 an Enforcement Notice was issued regarding the stationing of a mobile home on the land. An appeal against the notice was upheld and planning permission for the stationing of 6 mobile homes for named persons was granted in September 1992.

An application for the erection of a stable block and refurbishment of a barn was refused in June 1994.

6. An application for use of the site as a transit caravan site for 15 pitches was refused in January 1999.

7. An application for the erection of a toilet block, including showers and a recreation room was refused in January 1999.

8. The site was extended without planning permission and Enforcement Notices were issued in October 2001 in respect of change of use of use of the land and breach of various conditions as imposed by the appeal inspector when allowing the 6 units on the land in 1992.

9. Planning permission was granted in October 2003 for the 6 pitches that now exist on the land, each with one mobile home, one touring caravan and ancillary sheds, parking and access. This permission was personal to named gypsies and their dependants (under the age of majority) and included Mr Tony Marshall the current applicant.

10. In February of 2008 permission was granted for 4 additional pitches at the site for use by named family members, all related to the owner of the site. These works are currently underway.

Policies Applied:

11. Epping Forest District Local Plan and Alterations

GB2A Development in the Green Belt.
H10A Gypsy caravan sites
RP5 Development likely to cause a nuisance.
DBE9 Amenity issues
ST1, ST2 Location and accessibility of development
ST4 Road safety.
CP2 quality of environment
HC6 Development affecting conservation areas.
LL1, LL2 impact on landscape.

Summary of Representations:

12. 13 neighbouring properties were notified and a site notice was erected, the following representations were received;

PARISH COUNCIL – Object. 10 The site is in the MGB and the development is contrary to Policy GB2A with no special circumstances. 1) Greenleaver mobile home park is very close to the conservation area and access to it can only be achieved by passing through the area. 3) Hoe lane is narrow with over-hanging trees. Passage of large mobile homes has caused damage in the past to those trees, and given the increase in industrial traffic those problems have increased. 4) the entrance to the site is on a sharp bend with poor visibility. 5) The site is actually at the point where the stream from Upper Nazeing meets Nazeing Brook. As such there is a serious risk of flooding and actually adding more hard surfacing increases could cause problems downstream. 6) Nazeing Primary School has presently 18 children from Gypsy and Traveller families. That represents 7% of the total roll of 225. The equivalent average percentage across Essex is under 0.5%. That represents a challenge to resource because of the turbulence caused from the frequent movement. In addition, there are 21 children with the status of English as an Additional language. 7) The application has been made in advance of any decisions resulting from the recent Consultation on Options by EFDC. In that consultation there is reference to the concentration of gypsies in Nazeing and Roydon. In paragraph 5.4 there is focus on the fact that in these villages there are 11 of the 18 gypsy and traveller sites in the District comprising 81% of the pitches. Since then Mamelons in Waltham Road has been expanded by another four pitches which has been the subject of enforcement now abandoned. At the Parish Meeting the applicant stated that the reason for the application was to accommodate members of his family but this was not specifically detailed in the supporting documentation. This was of course, the purpose of the expansion from 6 to 10 pitches in early 2008. Furthermore, this is a different purpose from the statement made by him in the public meeting about the consultation. Then he appeared to be suggesting that Greenleaver could be used as an alternative to the rejected site next to Allmains in Bumbles green and be available to gypsies generally. The Parish Council would like these objections to be given proper consideration and relayed in full to Members of the Planning Committee.

TAYNESS, HOE LANE – Object. First 6 pitches then an additional 4 have already been granted for named family members. The current application is for 5 more for gipsy non family members. The proposal will harm the Green Belt and worsen the already dire traffic problem in Hoe Lane. Nazeing already has more than its fair share of caravan sites.

GREENLEAVES, HOE LANE – Object. Attempt to pre-empt the consultation on options exercise. Consent was granted on appeal to the Jones family in the 1990's, Mr Marshall only appeared later and is not one of the names listed by the Inspector. His right to reside there has never been pursued by the Council. Previous permissions have been for named family members, now the expansion is to open the site to anyone who calls himself a gypsy to stay there, which defeats the object of a family site. This is just an attempt to get in first. The site is Green Belt and adjacent to the Conservation Area and sits at the junction of Nazeing Brook and its tributary. It is liable to flooding. Hoe Lane is narrow and access is on a sharp bend with restricted viewing. Taking large caravans in out is risky. Concerned that the primary school will be even more disrupted, as already disproportionate number of gypsy children and there is a perception amongst some parents that the school will not

devote sufficient resource to their children. So they may take them to Broxbourne for education.

Issues and Considerations:

13. Policy H10A of the Local Plan Alterations states: "In determining applications for Gypsy Caravan sites within the Green Belt the Council will have regard to (i) whether there are any very special circumstances which would justify an exception to the Green Belt policies of restraint, and (ii) The impact on the openness of the Green Belt and the character and appearance of the Countryside". In addition, the impact of the development in highway terms, the effect on residential amenity, visual amenity, sustainability, and flood risk also need to be taken into account.

Green Belt

14. The site lies within the Metropolitan Green Belt and the proposal is inappropriate development, by definition, harmful to the Green Belt and permission should only be given therefore, if there are considerations that outweigh this harm.

Greenleaver is an already established and lawful Gypsy site and the proposed development is to provide additional pitches for Gypsies (described by the applicant as family members) although in this instance no specific named occupants have been put forward.

15. There is a recognised need for additional Gypsy pitches in the District, as detailed in the Consultation and Options Document, Development Plan Provision for Gypsies and Travellers in Epping Forest District. Within that document the Greenleaver site is identified as an existing authorised site and Question 11 of the document asks whether the expansion of the site by a further 5 pitches is acceptable. The responses received have not yet been fully analysed and clearly the site has not been allocated in a local development plan for such a use. At this stage therefore the application must be considered in the light of current adopted policies, but the fact that there is an identified need for additional sites to be found within the District and that at present the Council has not identified sites that could accommodate this need is an important material consideration that adds considerable weight to the application.

16. The site is of adequate size to accommodate the proposed 5 additional plots and their siting and spacing can be controlled under the Caravan Site Licence. The suggested layout as shown on the submitted plans appears appropriate and similar to the existing development.

17. Although the proposal will result in increased hard surfacing, small built day room facilities and an intensification of use, the site is well screened by existing hedgerows and will not be visually prominent in the Green Belt.

Highway Issues

18. The access to the site off Hoe Lane is close to a bend in the road and has limited sight lines. Hoe Lane is narrow and very bendy, with no footways along most of its length and has a significant amount of large vehicles negotiating it. The addition of 5 further plots to the established site will result in additional traffic movements and additional turning movements into and out of the site, including towed caravans on occasion. However, the increase in traffic will be relatively small in comparison with the current level of vehicular movements in Hoe Lane and it is not considered that the development will be unduly harmful to the free flow of traffic or to highway safety. The Highway Authority has raised no objections to the proposal, stating that it is not

contrary to the County Councils Highway and Transportation Development Control Policies or ST4 and ST6 of the Local Plan.

Visual amenity

19. The site area is part of a much larger field that is presently used as a paddock and is all within the ownership of the applicant. The proposed development will not be prominent from the road, from which only the entrance is visible and the existing mobile homes cannot be seen. A public footpath runs to the north of the existing development and the new proposal will not have an adverse impact on it. The site is not within the conservation area, although the existing entrance way is. No alterations are proposed to the entrance.

20. The larger site, within the applicants ownership is surrounded by established hedgerows and there are Preserved trees along the western boundary between the site and the nearest residential property (Sparrows Walk).

21. The proposed layout of the new site is logical and utilises and extends the existing access track, reducing the need for additional road and hard surfacing. Additional tree and hedge planting is proposed to further minimise the visual impact of the proposal.

22. Whilst the introduction of mobile homes and associated paraphernalia into an area of countryside is never ideal visually, this site appears particularly well hidden, between an established business park and horticultural nurseries and its visual impact will be minimal. It is not within the Conservation Area.

23. The existing site appears well maintained and tidy and there is no sign of any business activity taking place.

Sustainability

24. The core policies of the Local Plan Alterations seek to ensure that new development is directed to urban areas with good access to facilities and public transport, to reduce reliance on the private car. This site is not ideally located, in that access is from a narrow and winding road with no pavement which will not encourage people to access it on foot, however the site is not an isolated rural site, it lies less than 1.5km from the shops in Nazeing and the primary school, and less than 1km from a bus route. As such it is not considered that there are strong sustainability grounds for refusal.

Other Issues

Ownership and occupation of the site.

25. A neighbour has raised concern that the original applicant, Mr J Jones has not occupied the site, it is not clear whether this is the case, however Mr Tony Marshall, the current applicant is now the owner and is one of the named occupants of the 6 plots approved in 2003. We have no evidence that anyone other than those authorised to do so are currently residing at the site.

26. Concern has been raised that this application does not put forward named occupants and in this respect is speculative, unlike the previous consents. No specific personal circumstances are being argued and the application must be determined on its merits with regard to its suitability as a site for any Gypsy or

Traveller. This clearly presents lesser very special circumstances than have been demonstrated in the previous permissions on the site, whereby the named occupants demonstrated local family links to the site, and a clear and personal need for a site, but it does not mean that the application should be dismissed out of hand. The specifics of the site and the identified need for additional sites in the District must also be taken into account. The applicant has specified that the occupants will be family members and it is suggested therefore that as with the recently approved addition to the Mamelons Farm site in Bumbles Green a condition restricting occupation to family members would be appropriate.

27. The application is not for a transit camp, which would potentially lead to more significant movements of caravans, but would provide settled facilities for those members of the community that wish for a home base from which to travel whilst providing for stable schooling for their children.

Flooding.

28. Concern has been raised that the site is liable to flood. The site is not within an Environment Agency Flood zone, although it is, like much of the district within an Epping Forest District Council flood risk assessment zone, wherein details are required to ensure that development will not result in any increased risk of flooding on site or elsewhere. Land Drainage has therefore been consulted and has advised that a condition requiring a Flood Risk Assessment is required. Land drainage consent is also required and details of means of disposal of foul and surface water drainage can be required by condition.

Gypsy and Traveller Consultation Document

29. Concern has been raised that this application has come while the council is in the process of carrying out consultation on suggested sites for Gypsies and Travellers in the District. The concern is that to allow this development would be to pre-empt the results of the consultation exercise. However the Planning Authority, can not simply choose not to determine an application, it must be determined on its merits and in the light of current adopted policies and other material considerations. The unmet demand for Gypsy sites in the District is a material consideration. The consultation document is not a policy document and at this stage in the process carries very little weight. Until such time as a Development Plan for Gypsies and Traveller is in place each application of this kind must be treated on its own merits.

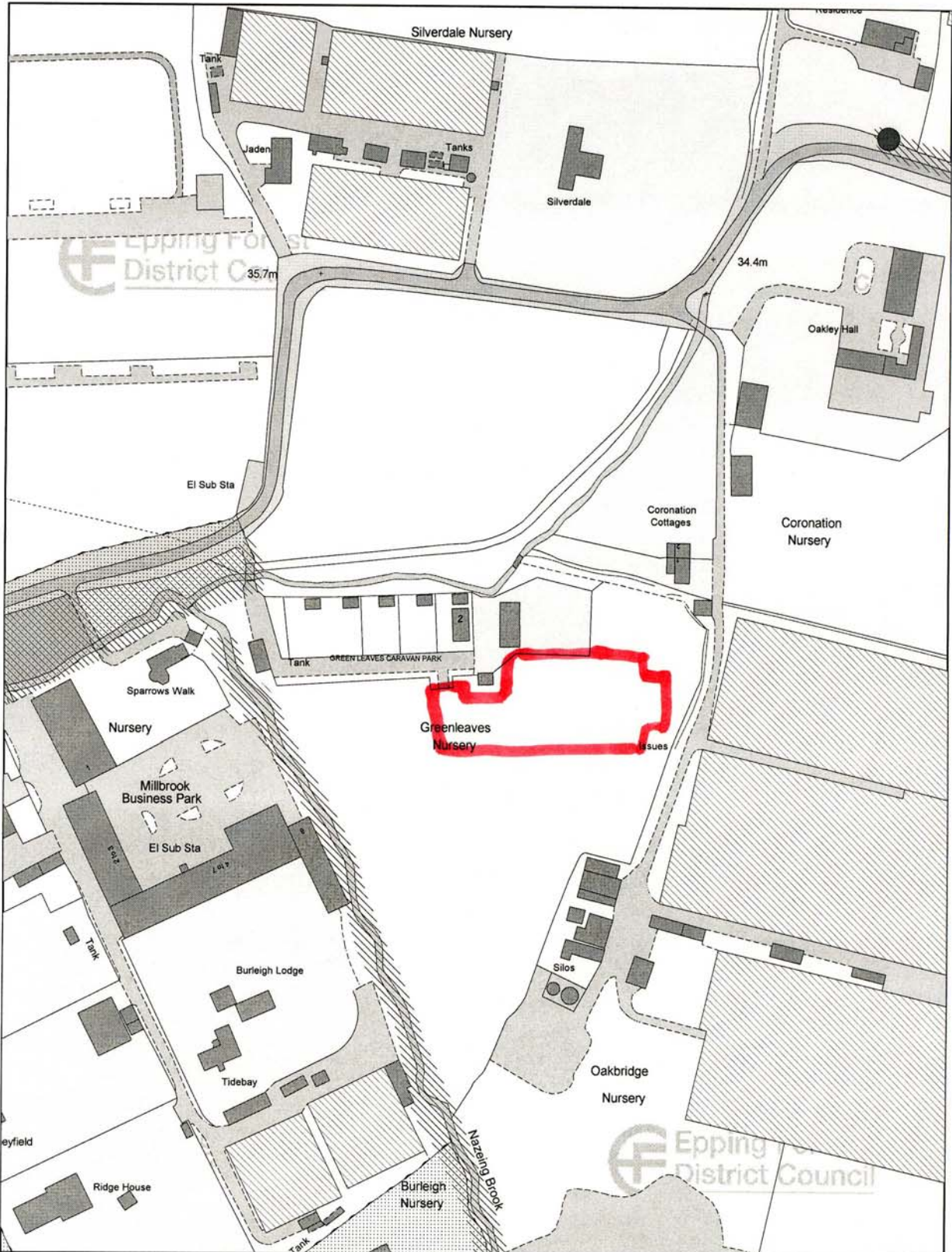
Conclusion.



30. In conclusion it is considered that in this instance the arguments for and against the development are quite finely balanced. The site is well located, relatively close to shops and services, and has only minimal impact on the character and amenity of the countryside, being located between an established industrial estate and horticultural site and well screened from public view. It is an already established Gypsy site that has operated well for several years. There is an unmet requirement to provide for Gypsies and Travellers in the District that needs to be addressed and this site provides an opportunity to potentially reduce the number of sites that will need to be found in the future.

31. However the site is within the Green Belt and the proposal is not appropriate development in the Green Belt and is therefore, by definition harmful. The judgement therefore needs to be made, as to whether there are very special circumstances in this case sufficient to outweigh the harm that would result from the development. On other sites, such as Mamelons, it has been considered that a temporary 3 year

consent may be appropriate, to help meet the identified need for sites until such time as the Gypsy and Travellers Development Plan provision has been finalised. In this instance the proposal includes significant works, including hardstanding, roadway and turning area and provision of day room buildings and it is not considered that a temporary consent would be appropriate due to the costs involved in this provision.

32. On balance, it is considered that due to the location of the site, the minimal impact on visual amenity and the established nature of the existing facility, the addition of 5 further plots as shown on the submitted plan would have minimal impact on the character and amenity of the area and on the open nature of the Green Belt. Subject therefore to conditions to restrict occupation to family members of the named individuals who already have permission to occupy the site (to ensure that it is occupied only by Gypsies and Travellers) and to prevent the use of the site for any business purpose, the development is considered to be in accordance with the adopted policies of the Local Plan and Local Plan Alterations and is recommended for approval.



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Report to District Development Control Committee

Date of meeting: 4 August 2009



**Epping Forest
District Council**

**Subject: Erection of a dwellinghouse without planning permission at
 Red Cottage, New Farm Drive, Abridge, RM4 1BU**

**Officer contact for further information: Stephan Solon (01992 564103)
Committee Secretary: Simon Hill (01992 564249)**

Recommendation:

That the Committee decide whether to issue an enforcement notice under s.172 of the Town and Country Planning Act 1990 (as amended) requiring the removal of a dwellinghouse.

Report:

1. This matter was the subject of a report to the meeting of Area Plans Sub-Committee East on 1 July 2009. The Sub-Committee voted in equal numbers for and against the recommendation of Officers to issue an enforcement notice. The Chairman declined to cast his vote and the Sub-Committee therefore referred the matter to the District Development Control Committee for decision. The original Officer report is appended to this report.
2. Members are reminded that in the event of an enforcement notice being issued, the owner of the land would have a right of appeal against it to the Secretary of State and, in the event of that appeal being dismissed, a further right of appeal against the Secretary of States decision to the High Court.

Appended report:

Report to Area Plans Sub-Committee East

Date of meeting: 1 July 2009



**Epping Forest
District Council**

**Subject: Erection of a dwellinghouse without planning permission at
Red Cottage, New Farm Drive, Abridge, RM4 1BU**

Responsible Officer: S Solon, Principal Planning Officer (01992 56 4103)

Committee Secretary: M Jenkins (01992 56 4607)

Recommendation:

1. That, having regard to the provisions of the development plan and to all other material considerations an enforcement notice be issued by the Director of Corporate Support Services under section 172 of the Town and Country Planning Act 1990.
2. That the notice require the following within 12 months of it taking effect:
 - 1) The removal of the dwellinghouse erected on the land from 1 metre below immediately adjacent ground level up, and
 - 2) The infilling of the remaining part of the basement with inert material, and
 - 3) The making good of the remaining excavation by infilling it with top soil to a level matching that of the immediately adjacent land and seeding it with grass, and
 - 4) The removal from the land of all debris and material remaining on the land at finished ground level and above as a consequence of compliance with requirements 1 – 3.
3. That authority for the issue of the enforcement notice also include authority to vary or withdraw any such notice and to issue further notices if it becomes necessary to do this in order to remedy the breach of planning control referred to in this report.
4. That in the event the enforcement notice is not complied with, the Director of Corporate Support Services, subject to being satisfied as to the evidence and the expediency of such action be authorised to commence criminal and/or civil proceedings to remedy the breach of the enforcement notice.

Report Detail:

1. SUMMARY

- 1.1 A part single, part two storey 8 bedroom detached house with basement has been built without planning permission on land within the Metropolitan Green Belt.
- 1.2 The house replaces a small single storey house. Although planning permission was granted in 2004 for a replacement dwelling with amendments to this approval granted in August 2005,

the building constructed is considerably larger and of significantly different design to the approved houses. It therefore does not benefit from those consents.

- 1.3 A retrospective planning application to retain the two storey part of the house (on the basis of it being an alteration to the house approved in 2005) together with a separate retrospective planning application for the retention of the single storey part (described as a conservatory) were both refused under delegated powers on 18 May 2009. The applications were refused on the basis that the development causes unjustifiable harm to the green belt.
- 1.4 Although the owner split the house in 2 for the purposes of seeking retrospective planning permission, it is a matter of fact that the house as a whole was built within the last 4 years without planning permission. Since the house as a whole does not have planning permission, it is necessary to consider it as a whole when considering the expediency of taking enforcement action against it.
- 1.5 The house built is inappropriate development in the green belt and therefore is by definition harmful to it. This is more than a matter of principle in this case since the house causes clear harm to its openness, has an undesirable urbanising effect on its wider setting and consequently is also harmful to the rural environment. Moreover, no very special circumstances exist that outweigh the harm caused by the new house. Accordingly, the retention of the house is contrary to policies CP2, GB2A, GB7A, GB15A and DBE4 of the Epping Forest District Local Plan and Alterations.
- 1.6 Any steps short of requiring the demolition of the house would not remedy the harm caused by house therefore such a requirement is necessary and proportionate.
- 1.7 A requirement to partially demolish the house and thereby give planning permission for the remaining part would amount to granting planning permission for a house without any conditions limiting permitted development rights to extend the house. In that scenario, it would be possible for the house to then be extended to its full permitted development allowance following compliance with the requirements of the notice. That would defeat the purpose of taking enforcement action.
- 1.8 However, if Members do prefer to consider the option of only securing the demolition of the single storey rear projection that can be done in the context of considering a planning application to retain the two storey element of the house. If consent were given it could include appropriate conditions to prevent further harm being caused. In that event, it is recommended the owner be given an appropriate time scale to submit a valid planning application which would be presented to Members for decision. For the reasons set out in this report, Officers would recommend such a proposal be refused planning permission but the final decision would rest with Members. If Members decide they would like to consider such a proposal in the context of a planning application, they would not be making any decision on its merits and therefore would not be fettering their discretion to make a decision on such an application.
- 1.9 If Members do decide to give the owner a further opportunity to make a planning application within a specific timescale, in order to protect the Councils' position and to encourage the timely submission of an application Members could authorise the taking of enforcement action as recommended in the event that no application is submitted. Members would be notified of the intention to take enforcement action through the Members Bulletin. Alternatively, Members could simply refuse to authorise enforcement action, in which case if no application is submitted in the timescale given, Members would be asked to give authority for taking enforcement action by way of the presentation of a report to this Sub-Committee for consideration.

2 BACKGROUND INFORMATION

2.1 Notification of Members

2.1.1 Members were notified of the intended action in the weekly list dated 26 May 2009. Such action is normally delegated to officers however Cllr Rolfe requested this matter be reported to the Sub Committee for decision.

2.2 Description of Property to which the Enforcement Notice Will Apply

2.2.1 Land on the west side of New Farm Drive where it is a private way serving North Lodge, Red Cottage and North Barn. The registered title identifies the way as forming a private drive to Bishops Hall. The title also includes 1 hectare of land to the south and west of the site that is lawfully used as a kennels and cattery and a further 5.6 hectares of land beyond the site on the east side of the way that is used for agriculture.

2.2.2 The ground level of the site varies, increasing in height slightly gradually from north to south. Levels increase more steeply from the boundary with New Farm Drive due to made up ground levels on the site. North Lodge, a large detached house with garden is located at lower level immediately to the north of the site, beyond which is an open field. Beyond the kennels and cattery to the south and west of the site are open fields.

2.2.3 The land was previously a landfill site that, according to Council records, contained household waste, munitions and hazardous industrial waste. Any development therefore needs to deal with potential for harmful landfill gas to impact on it.

2.3 Listed Building

2.3.1 Not listed.

2.4 Conservation Area

2.4.1 Not in a Conservation Area.

2.5 Green Belt

2.5.1 Within the Metropolitan Green Belt.

2.6 Preserved Trees

2.6.1 There are no preserved trees on the property.

2.7 Relevant Planning and Enforcement History

12.10.93 Application EPF/0854/93 to retain a conservatory – Approved.

02.06.89 Application EPF/0577/89 for replacement bungalow refused and subsequent appeal dismissed on grounds of harm to green belt.

22.01.01 Application EPF/1981/00 for use of land as extension to domestic curtilage of chalet. – Approved subject to condition removing permitted development rights for the erection of outbuildings.

05.07.04 Application EPF/0973/04 for replacement dwelling – Refused on grounds of harm to green belt.

- 10.11.04 Application EPF/1618/04 for replacement dwelling (2 bedroom) – Approved subject to condition removing permitted development rights for the erection of extensions.
- 02.03.05 Application EPF/2298/04 for demolition of existing building and erection of replacement dwelling – Refused on grounds of harm to green belt.
- 17.08.05 Application EPF/0747/05 for amendment to planning permission EPF/1618/04 to insert additional dormer windows to front and side elevations and provide 1 additional bedroom - Approved subject to condition removing permitted development rights for the erection of extensions.
- 16.07.08 Complaint received that “conservatory” built without permission. Subsequent inspection confirms larger rear addition to recently constructed house had been erected (investigation ENF/0433/08).
- 28.08.08 Site visit made to measure the house as initial visit highlighted discrepancies from the plans approved under planning permissions EPF/0747/05 and EPF/1618/04. From measurements taken of the dwelling it was 2 metres longer and wider. Retrospective planning application requested.
- 18.05.09 Application EPF/0531/09 for amendments to replacement dwelling approved under planning permission EPF/0747/05 – Refused on grounds of harm to green belt.
- 18.05.09 Application EPF/0533/09 for rear conservatory – Refused on grounds of harm to green belt.
- 11.05.09 Complaint received alleging extension of curtilage and erection of outbuildings (investigations ENF/0293/09 & ENF/0294/09).
- 02.06.09 Site visit by enforcement officers investigating outbuildings on the site. Established substantial outbuildings/stables erected without permission. Retrospective planning application requested (investigation ENF/0294/09).

2.8 Lawful Use

2.8.1 A single dwellinghouse.

2.9 Description of Unauthorised Development

- 2.9.1 Without planning permission, the erection of a dwellinghouse. It comprises a part single, part two storey 8 bedroom detached house with basement.
- 2.9.2 The new house is of traditional design with an L shaped foot print. It is part two storey and part single storey. The first floor of the two storey element is included within a deep roof that includes dormer windows to all elevations. The two storey element includes a basement that closely approximates the ground floor footprint. Due to variations in site levels and due to a variation in roof height the height of the two storey element above ground level varies between 7.5m at the rear to 8.5m at the front.
- 2.9.3 The two storey element has a width of 14.5m across the front elevation and a total depth of 17.5m. The single storey element has a depth of 12.5m a width of 6.2m and height of 5m. A 3m by 3.5m and 4m high link structure connects it to the two storey part of the house. The total depth of the house is 33m.
- 2.9.4 The total approximate volume of the house based on external dimensions is 1900 cubic metres. The volume of the basement is approximately 600m³ and the volume of the single

storey element (excluding the link structure) is 300m³. The approximate volume of the two storey element above ground level is 1000m³.

- 2.9.5 Although planning permissions have previously been granted for the erection of a two storey detached house to replace a pre-existing house, Ref EPF/1618/04 & EPF/0747/05, the house now built is materially different to those approved because it is considerably larger and has a significantly different design.
- 2.9.6 Planning permission EPF/1618/04 is for a 2 bedroom house and permission EPF/0747/05 is for a 3 bedroom house. Approved drawings relating to both permissions show a house of traditional design with an L shaped foot print with the first floor within a deep roof. There is no basement and no single storey rear projection. The height of the approved houses is shown as 6.5m above ground level. The width across the front elevation is shown as 14m and the total depth as 15m. The total approximate volume of the approved houses is 670 cubic metres.
- 2.9.7 The house actually built therefore at least 1m higher and up to 2m higher than those approved. Its width is similar, deviating by 0.5m, while its length is much greater, deviating by 18m (an increase of 120%). The total volume of the new house is approximately 1230m³ larger than those approved, amounting to an increase of 185%.
- 2.9.8 Having regard to the considerable deviation in size and to the deviation in design of the existing house from the approved houses, it is absolutely clear the existing house in no way benefits from the previous planning permissions to erect a replacement house.

2.10 Evidence of When the Breach Occurred

- 2.10.1 Building Control records show that work commenced on the site on the 25th July 2006. Accordingly, the house is less than 4 years old and consequently is not time immune from enforcement action.

3. REASONS FOR ISSUING THE ENFORCEMENT NOTICE

3.1 Relevant Planning Policy

Local Plan and Alterations:

| | |
|-------|---|
| CP2 | Protection the Quality of the Rural and Built Environment |
| GB2A | Development in the Green Belt |
| GB7A | Conspicuous development |
| GB15A | Replacement dwellings in the Green Belt |
| DBE1 | Design of new buildings |
| DBE4 | New buildings in the Green Belt |
| DBE9 | Impact on Amenity |
| ST4 | Road Safety |
| ST6 | Vehicle Parking |
| I4 | Enforcement Procedures |

3.2 Assessment of the Development

- 3.2.1 The main issues raised by the erection of the house are:

- Whether it is appropriate development in the green belt.

- If it is inappropriate development, whether any very special circumstances exist that outweighs the harm caused by reason of inappropriateness and for any other reason.
 - Impact on the openness of the green belt.
- 3.2.2 Planning policy for the Green Belt as set out in PPG2 and the Epping Forest District Local Plan and Alterations makes it clear the erection of new buildings in the green belt is inappropriate development that is, by definition, harmful to it. However, green belt policy does allow for the erection of replacement houses provided they are of a similar scale and would not have a greater impact on the openness of the Green Belt than the house replaced. In such cases therefore, the erection of a new building would not be inappropriate.
- 3.2.3 Policy GB15A is the main policy of the Local Plan against which such development is assessed. It sets out a number of criteria that it should meet, the two most important being the new house should not be materially greater in volume than that replaced and it should not have a greater impact on the openness of the green belt than the house replaced.
- 3.2.4 In this case, the house replaced was an extended single storey house with a rectangular footprint having a width of 13m, depth of 7.5m and maximum height of 4m. It had a total volume of 315 cubic metres.
- 3.2.5 A comparison of those dimensions with those of the existing house, as described in section 2.9 of this report at paragraphs 2.9.2 to 2.9.4, reveals that while the width is 1.5m greater, the depth is 25.5m greater, a 170% increase. Its height is an average of 4m greater, a 100% increase.
- 3.2.6 With regard to the critical comparison of volume, the new house is approximately 500% larger. Even when the comparison is restricted solely to the difference between the house replaced and the above ground part two storey element of the existing house, that part of the new house has a volume over 200% larger than that of the house replaced.
- 3.2.7 Having regard to the considerable increase in height and depth when compared to the house replaced, the new house is clearly more prominent and has a far greater impact on the openness of the green belt. As such it is an excessively conspicuous development.
- 3.2.8 Given the very great increase in built volume and the considerably greater impact on the openness of the green belt of the new house when compared to the house replaces, it clearly fails to comply with Local Plan and Alterations policies GB15A and GB7A. It therefore also fails to comply with the requirements of policy GB2A. Accordingly, the development is demonstrably in clear conflict with all relevant policies within the development plan that relate to development in the green belt. As such the new house is inappropriate development in the green belt.
- 3.2.9 Inappropriate development may be allowed in the green belt where there are very special circumstances that outweigh any harm caused by it. Such circumstances by definition should not be readily capable of being repeated in any other location in the green belt.
- 3.2.10 In this case, the only material consideration that could possibly amount to a very special circumstance is existence of planning permissions for the erection of a two storey house given in 2004 and 2005, however, in practice it is very unlikely that planning permission EPF/1618/04 could be taken up since it expires on 10 November 2009. Planning permission EPF/0747/05 will be capable of being taken up until 17 August 2010. To assess how much weight should be given to planning permission EPF/0747/05, it is necessary to compare the house approve under that consent with that built. This is described in section 2.9 of this report at paragraphs 2.9.5 to 2.9.7. That exercise reveals the total volume of the new house is 185% greater than that approved. It also reveals its depth is 120% greater and its height is approximately 20% greater.
- 3.2.11 This comparison can be refined further by comparing only the above ground part of the two storey element of the existing house with the house under approved planning permission

EPF/0747/05. That exercise reveals its depth is 2.5m greater, an increase of 17%, and that its volume is approximately 330m³ greater, an increase of 50%.

- 3.2.12 Having compared the existing house with that approved it is clear that even the above ground part of the two storey element is considerably larger than the approved house. In the circumstances, no matter the basis on which the existing house is compared with the house approved under planning permission EPF/0747/05, it is considerably larger. Consequently, there is no merit in any argument that the extant planning permission for a replacement house can amount to a very special circumstance in this case.
- 3.2.13 Since the house built is inappropriate development in the green belt it is by definition harmful to it. This is more than a matter of principle in this case since the house causes clear harm to its openness, has an undesirable urbanising effect on its wider setting and consequently is also harmful to the rural environment. Moreover, no very special circumstances exist that outweigh the harm caused by the new house. Accordingly, the retention of the house is contrary to local Plan and Alterations policies CP2, GB2A, GB7A, GB15A and DBE4.

3.3 Procedural Matters

- 3.3.1 Turning to the requirements of any possible enforcement action to remedy the harm caused by the new house, consideration has been given to requiring it be modified to accord with the house approved under planning permission EPF/0747/05. However, the opinion of the Councils' Building Control Manager is that it would be extremely difficult to modify this building at a reasonable cost due to its method of construction. Any such requirement would therefore amount to a requirement to demolish the house and then go on to build a different house. In the event of an appeal against the issue of an enforcement notice, which is likely in this case, a requirement to in effect construct a new house would undoubtedly be found to go beyond what is reasonably required to remedy the harm caused by the development. The Secretary of State may then also find that varying the requirements of the notice to omit the requirement to build a new house would be such a significant change it went beyond the scope of his powers to vary an enforcement notice. In that case it would only leave Secretary of State the option of allowing the appeal on the basis that the requirements of the notice are excessive and consequently quashing the notice. While that would not go so far as to give the house planning permission, it would leave the Council in the position of having to start its enforcement action afresh. It may also leave it open to a costs claim.
- 3.3.2 The option of requiring a partial demolition of the house, the single storey rear projection, has in effect been considered at paragraph 3.2.11 of this report. That would still leave a house on site that is disproportionately larger than the house it replaced. The resulting house would also be considerably larger than either of the houses previously approved and be unacceptable for the reasons summarised in paragraph 3.2.13. Furthermore, such a requirement would amount to granting planning permission for a house without any conditions limiting permitted development rights to extend the house. In that scenario, it would be possible for the house to then be extended to its full permitted development allowance, defeating the purpose of the enforcement action.
- 3.3.3 If, notwithstanding the recommendation of this report, Members prefer to consider the option of only securing the demolition of the single storey rear projection that is best done in the context of considering a planning application to retain the two storey element of the house. If consent were given it could include appropriate conditions to prevent further harm being caused and deal with other matters such as mitigation of the impact of any landfill gas. In that event, it is recommended the owner be given an appropriate time scale to submit a valid planning application which would be presented to Members for decision. For the reasons set out in this report, Officers would recommend such a proposal be refused planning permission but the final decision would rest with Members. If Members decide they would like to consider such a proposal in the context of a planning application, they would not be making any decision on its merits and therefore would not be fettering their discretion to make a decision on such an application.

- 3.3.4 If Members do decide to give the owner a further opportunity to make a planning application within a specific timescale, in order to protect the Councils' position and to encourage the timely submission of an application Members could authorise the taking of enforcement action as recommended in the event that no application is submitted. Members would be notified of the intention to take enforcement action through the Members Bulletin. Alternatively, Members could simply refuse to authorise enforcement action, in which case if no application is submitted in the timescale given, Members would be asked to give authority for taking enforcement action by way of the presentation of a report to this Sub-Committee for consideration.

4. HUMAN RIGHTS CONSIDERATIONS

- 4.1 The issue of an enforcement notice in this case would amount to interference with the rights of the owner/occupier of the land given under Article 8 and the First Article of the First Protocol of the European Convention of Human Rights. The Article 8 rights affected are his right to respect for private family life and his home. The First Article of the First Protocol states persons are entitled to the peaceful enjoyment of their possessions. These rights are qualified rights and in both the case of Article 8 and the First Article of the First Protocol interference with rights by a public authority are permitted in accordance with the law as necessary for the protection of the rights and freedoms of others and the general interest. Accordingly, there is a fair balance to be struck between individual's rights, the public interests protected by the planning system and those of other persons.
- 4.2 In this case it is considered that since the unauthorised house causes clear harm to the green belt and rural environment the balance falls against the rights of the owner/occupier of the property. The Council has already refused retrospective planning applications for the development and the owner still has time to submit an appeal against those decisions. The owner would also have a right of appeal against the issue an enforcement notice. The requirement of the notice to remove the dwelling is considered to be the minimum necessary step to remedy the harm caused by it as identified in this report and therefore it is considered to be proportionate.

5. CONCLUSION

- 5.1 That it is considered expedient to take enforcement action for the above reasons.

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Report to District Development Control Committee



**Epping Forest
District Council**

**Report reference: ENF/0337/07
Date of meeting: 4 August 2009**

Subject: Direct Enforcement Action - Car wash at 1 – 3 Coopers Hill, Ongar

**Officer contact for further information: David Thompson (01992 564108)
Stephan Solon (01992 564103)**

Committee Secretary: Simon Hill (01992 564249)

Recommendation:

- (1) That the Director of Planning and Economic Development be authorised to take direct action under Section 178 of the Town & Country Planning Act 1990 on one or more occasions to secure compliance with the requirements of the Enforcement Notice on the Car Wash at 1-3 Coopers Hill, Ongar issued 11 December 2007, subject to Cabinet approval to incur associated expenditure; and**
- (2) That a report be made to the Cabinet accordingly.**

Background:

1. On 9 November 2007 a planning application proposing the continuance of use of the land for car valeting and as a hand car wash together with the retention of a canopy was refused, Ref EPF/1860/07. The decision to refuse planning permission was on the basis that the proposal would intensify the use of a sub-standard existing access onto a classified highway that would be harmful to highway safety.
2. An Enforcement Notice was issued on the 11 December 2007 requiring the cessation of the use of the land as a hand car washing centre and the removal of the canopy and all equipment and movable structures brought onto the land in connection with the use ('the Notice'). The period given for compliance with the requirements of the Notice was 2 months from the date the Notice became effective. The authority to issue the Notice included authority for the Head of Legal Administration and Estates Services (now the Director of Corporate Support Services) to commence criminal and/or civil proceedings to remedy a breach of the Notice.
3. Subsequent appeals against the Notice and the decision to refuse planning permission were dismissed on 13 May 2008 when the Notice became effective. The compliance date was therefore 13 July 2008.
4. Prior to the appeal decision, on the 23 January 2008 a further planning application proposing the erection of car washing and valeting equipment, new island for directing traffic and full width lowered kerb to site frontage was refused, Ref EPF/1831/08. The decision to refuse planning permission was on the same basis as the decision on application EPF/1860/08. No appeal was made against that decision.
5. The requirements of the Notice were not complied with by the compliance date so the Council prosecuted the owner and occupier of the land for failing to comply. On 26 January 2009 at Harlow Magistrates Court the tenant of the car wash Mr Artur Hasani pleaded not

guilty to the offence of failing to comply with the Notice. The Magistrates found him guilty and fined him £300 and ordered him to pay £200 towards the prosecution costs. The freehold owner of the property Mr James Mason also pleaded not guilty but the Magistrates found him not guilty on the basis that they were satisfied he had done everything he could be reasonably expected to do to secure compliance with the Notice.

6. The owner and occupier were reminded of the need to comply with the requirements of the Notice but they have failed to comply with it. Consequently Officers are considering prosecuting the owner and operator of the car wash again but are mindful the previous prosecution has not achieved compliance with the Notice. As the occupier remains the same a second prosecution may result in a higher fine than previously. In respect of the owner he may not be able to convince the Magistrates a second time that he has done everything possible.

Report:

7. The Council has the power, under Section 178 of the Town and Country Planning Act 1990, to enter the land and take steps to secure compliance with the requirements of the Notice. Any expenditure could be recovered as a simple debt and additionally be secured as a charge against the land which would be recovered on the completion of any future transfer or sale of the land.. In this case, since the requirements of the Notice have not been complied with despite prosecution and the issue of further written requests to comply, Officers have taken steps to explore the option of taking direct action to secure compliance with the Notice.

8. There are practical and legal issues associated with what specific steps a Council can take in exercising its power under Section 178 to secure a cessation of a use. It is very unlikely any steps could be taken to physically stop people washing cars by hand on the land or preventing customers bringing cars on the land to be washed. However, measures such as removing taps are likely to be possible. These would be explored more fully as part of preparing a report setting out estimated costs of the action for presentation to Cabinet if this Committee agrees to give conditional authority to take direct action as detailed in the recommendation of this report. That exercise would involve consulting with Legal Services on the specific steps proposed.

9. There are no such issues in respect of the steps the Council could take to secure compliance with the requirements to remove a canopy erected on the land and remove all equipment and movable structures brought onto the land in connection with the use. In respect of those requirements it is clear that the Council would have to carry out demolition works to remove the canopy and it would have to take away equipment such as vacuum cleaners, buckets, hose pipes, water pipes above ground, water storage containers and equipment stores.

10. Materials removed from the site while taking steps required by the enforcement notice must be held for at least 3 days and if the owner claims them within that period they must be returned (Reg 14 of the Town and Country Planning Regulations 1992) However, if they are not claimed, then the Council can sell the materials and retain any proceeds up to the amount of expenditure incurred by the Council in taking the steps to comply with the Notice. If a debt remains to the Council after the materials have been disposed of, the Council can place a charge upon the land so that monies from any future sale may be offset against the costs incurred and recover as a simple debt.

11. Alternatives courses of action open to the Council are a further prosecution (which in fact is being considered as an additional action) and seeking an Injunction from the High Court against the owner of the land and operator of the use. Clearly prosecution in the Magistrates' Court has not worked to cease the use to date,. A successful prosecution against the Owner may secure compliance with the requirements of the notice, but that is uncertain.

12. The process of seeking and enforcing an injunction can be costly and time consuming, although costs are likely to be recoverable in this case. The High Court may grant the Council an injunction requiring named persons to comply with the requirements of the Notice. However, if the persons an Injunction is directed against fail to comply with its terms then the Council could seek to have them committed for contempt of court.

Human Rights Considerations

13. Taking Direct Action could be considered an infringement of The First Article of the First Protocol of the European Convention of Human Rights. The First Article of the First Protocol states persons are entitled to the peaceful enjoyment of their possessions. That right is a qualified right and interference with it by a public authority is permitted in accordance with the law as necessary for the protection of the rights and freedoms of others and the general interest. Accordingly, there is a fair balance to be struck between individual's rights, the public interests protected by the planning system and those of other persons.

14. In this case it is considered that since the use of the land causes clear harm to the interests of highway safety the balance falls against the rights of the owner and occupier of the land. The Council has attempted on a number of occasions to gain the cooperation of the owner and occupier to remedy the harm caused and has successfully prosecuted for failure to comply with the Enforcement Notice but the use is continuing. It is therefore necessary to take alternative action including direct action to secure compliance with the requirements of the Notice. In the circumstances taking direct action to remedy the harm caused by the continuation of the unlawful use is considered to be proportionate.

15. The owner and occupiers Article 6 right to a fair trial has in this case already been provided by the appeal process.

Conclusion:

16. Following the refusal of planning permission and dismissal of appeals it has been established that the continuance of the use of the land as a hand car wash and the retention of a canopy required for the use is not acceptable in planning terms. Since the Council's actions to date have not been successful in bringing the unauthorised use to an end, if the Council does not seek to uphold the terms of the Notice by taking further alternative action to secure compliance this would result in the continuation of harm to highway safety. Moreover, if the Council does not take such action to uphold the Notice it could lead to the owners of other land and operators of similar unlawful uses disregarding the Councils planning control function in the future. Although the Council could prosecute the owner and operator in the Magistrates' Court again it is at best a course of action that is used in conjunction with other action.

17. The options for alternative action are to either take direct action under Section 178 of the Town & Country Planning Act 1990 or to seek an Injunction from the High Court against the owner of the land and operator of the use. In this case taking direct action is likely to achieve compliance with the requirements of the enforcement notice faster than could be achieved if the Council sought and then had to take steps to enforce an Injunction. However, given the nature of the use it could resume with little cost to the land owner and operator therefore any direct action would most probably have to be repeated a number of times in quick succession to secure permanent compliance with the Notice. Nevertheless, the costs of taking direct action in this case are likely to be relatively modest when compared to those of seeking and enforcing an Injunction, although the Council should be able to recover its costs whichever of the alternative courses of action were taken (subject to the status of the proposed defendants).

18. If direct action is unsuccessful it would still be open to the Council to seek an Injunction at a later date. Authority already exists to pursue that option as part of the original authority.

19. It is therefore recommended that authority be given to the Director of Planning and Economic Development to take direct action under Section 178 of the Town & Country Planning Act 1990 on one or more occasions to secure compliance with the requirements of the Notice, subject to Cabinet approval to incur associated expenditure.

Report to District Development Control Committee

Date of meeting: 4 August 2009



**Epping Forest
District Council**

Subject: Planning Application EPF/1064/09 – 40a Hainault Road, Chigwell - Change of use from vacant (formerly agricultural) to car parking for use in association with Victory Hall.

**Officer contact for further information: K Smith
Committee Secretary: S Hill Ext 4249**

Recommendation:

That the Committee considers options for the determination of a planning application for the change of use of the land for car parking in association with Victory Hall and the submitted layout of 17 car parking spaces and either:

(a) Delegates authority to the Director of Planning and Economic Development to determine the planning application following the expiration of the consultation period (which expires on 7th August 2009);

or

(b) Refers the planning application to the meeting of Area Plans-South on 26 August 2009 for determination.

Report Detail

1. Members will recall that at the meeting on 9 June 2009 it was resolved to grant planning permission for the erection of a new dwelling on the adjacent site, subject to the completion of a Section 106 legal agreement securing the creation of additional car parking for use in association with Victory Hall and the transfer of the land to Epping Forest District Council. An application seeking the planning permission required to enable that change of use has now been received.

2. At the meeting on 9 June 2009, Members requested that the proposal for the car parking be presented to them for consideration. The developer's ability to fulfil the obligations of the legal agreement for the development of the adjacent site is reliant upon this application.

3. To avoid delay in the determining the application, members have the following options:

(a) It delegates the matter to the Service Head to determine;

(b) Refers the application to the appropriate Area Plans Subcommittee (in this instance South); or

(c) Considers the full application at its next meeting on 6 October 2009.

4. The latter option is not recommended to members as it is thought to be unreasonable to delay the decision until the next meeting of the District Development Control Committee in October 2009, considering that the planning application for the new dwelling was submitted in February 2009.