

Committee Agenda



**Webcast
Meeting**



**Epping Forest
District Council**

Area Planning Subcommittee East Wednesday, 3rd March, 2010

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

Time: 7.30 pm

Democratic Services Officer Adrian Hendry - The Office of the Chief Executive
Email: ahendry@eppingforestdc.gov.uk Tel: 01992 564246

Members:

Councillors M Colling (Chairman), G Pritchard (Vice-Chairman), A Green, A Boyce, Mrs D Collins, Miss C Edwards, R Frankel, P Gode, Mrs A Grigg, Ms J Hedges, D Jacobs, Mrs M McEwen, R Morgan, J Philip, B Rolfe, D Stallan, C Whitbread, Mrs J H Whitehouse and J M Whitehouse

A BRIEFING FOR THE CHAIRMAN, VICE-CHAIRMAN AND APPOINTED SPOKESPERSONS WILL BE HELD AT 6.30 P.M. IN COMMITTEE ROOM 1 ON THE DAY OF THE SUB-COMMITTEE.

WEBCASTING NOTICE

Please note: this meeting may be filmed for live or subsequent broadcast via the Council's internet site - at the start of the meeting the Chairman will confirm if all or part of the meeting is being filmed.

You should be aware that the Council is a Data Controller under the Data Protection Act. Data collected during this webcast will be retained in accordance with the Council's published policy and copies made available to those that request it.

Therefore by entering the Chamber and using the lower public seating area, you are consenting to being filmed and to the possible use of those images and sound recordings for web casting and/or training purposes. If members of the public do not wish to have their image captured they should sit in the upper council chamber public gallery area

If you have any queries regarding this, please contact the Senior Democratic Services Officer on 01992 564249.

1. WEBCASTING INTRODUCTION

1. This meeting is to be webcast. Members are reminded of the need to activate their microphones before speaking.

2. The Chairman will read the following announcement:

“I would like to remind everyone present that this meeting will be broadcast live to the Internet and will be capable of repeated viewing and copies of the recording could be made available for those that request it.

If you are seated in the lower public seating area it is likely that the recording cameras will capture your image and this will result in the possibility that your image will become part of the broadcast.

This may infringe your human and data protection rights and if you wish to avoid this you should move to the upper public gallery”

2. ADVICE TO PUBLIC AND SPEAKERS AT COUNCIL PLANNING SUB-COMMITTEES (Pages 7 - 8)

General advice to people attending the meeting is attached.

3. APOLOGIES FOR ABSENCE

4. MINUTES (Pages 9 - 14)

To confirm the minutes of the Sub-Committee meeting of 10 February 2010.

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 (24) 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. DEVELOPMENT CONTROL (Pages 15 - 68)

(Director of Planning and Economic Development) To consider planning applications as set out in the attached schedule

Background Papers: (i) Applications for determination – applications listed on the schedule, letters of representation received regarding the applications which are summarised on the schedule. (ii) Enforcement of Planning Control – the reports of officers inspecting the properties listed on the schedule in respect of which

consideration is to be given to the enforcement of planning control.

8. CONFIRMATION OF TREE PRESERVATION ORDER - EPF/47/09 (Pages 69 - 70)

Land to the rear of 12,13 and 14 Shakletons, Ongar

RECOMMENDATION:

That Tree Preservation Order Epf/47/09 is not confirmed

Background:

Tree Preservation Order EPF/47/09 was made to protect 3 individual trees within the rear gardens of 12,13 and 14 Shakletons, Ongar.

This area is currently protected by a 'blanket' Essex County Council Tree Preservation Order made in 1967. These Essex Orders are currently being reviewed and the purpose of this new Order is to protect those trees still worthy of preservation that were previous covered by the Essex Order. It also includes some additional trees now considered worthy of preservation.

Objection to the Tree Preservation Order :

Two objections to the Order have been received :

A – 12 Shakletons in respect of T2 (sycamore) and T3 (ash)

B – 14 Shakletons in respect of T1 (sycamore)

Both letters of objection are on the basis that the trees have been incorrectly plotted and that they in fact stand within the dry moated area of Ongar Castle to the south. The objectors states that this part of the Castle grounds is well treed and it is unclear why these trees have been selected for inclusion in this Order.

Specifically,

A The objection at 12 Shakletons is made on the grounds that :

i) T2 and T3 have been incorrectly plotted and stand outside his property.

ii) T3 is in poor health

B The objection at 14 Shakletons is made on the grounds that ;

i) T1 is on the boundary of the rear garden and there is concern for safety.

Director of Planning and Economic Development Comments

These three trees were surveyed by external Consultants as part of the Essex Tree Preservation Order review. Whilst the general approach to undertaking this review has been to access rear gardens to clarify the locations and health of the trees, this has not always been possible. In this instance, no detailed inspection of the trees took place. They were viewed from the front of the properties and recommended for protection because they are visible from Shakletons. Their exact positions were not obtained and the Consultants assumed they were in the rear gardens of these properties. In fact, the objections are correct the trees are within the Castle.

Ongar Castle grounds (to the rear of these properties) fall within a Conservation Area, as such, all trees are afforded protection and notification of work to any trees within the area would need to be given to ourselves prior to any work being undertaken. At

that time, we could make a new Tree Preservation Order, if it was felt necessary.

The concerns that the owners of the properties have with regard to these trees can be dealt with as notifications to work to trees within a Conservation Area.

Conclusions

The objection is accepted and it is therefore recommended that the Order is not confirmed.

9. DELEGATED DECISIONS

(Director of Planning and Economic Development) Schedules of planning applications determined by the Head of Planning and Economic Development under delegated powers since the last meeting of a Plans Subcommittee may be inspected in the Members Room or at the Planning and Economic Development Information Desk at the Civic Offices, Epping.

10. 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 Subcommittee 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: Area Planning Subcommittee East **Date:** 10 February 2010

Place: Council Chamber, Civic Offices, High Street, Epping **Time:** 7.30 - 8.15 pm

Members Present: M Colling (Chairman), G Pritchard (Vice-Chairman), A Boyce, Mrs D Collins, R Frankel, P Gode, Mrs A Grigg, D Jacobs, Mrs M McEwen, R Morgan, J Philip, B Rolfe, D Stallan, C Whitbread, Mrs J H Whitehouse and J M Whitehouse

Other Councillors:

Apologies: A Green, Miss C Edwards and Ms J Hedges

Officers Present: J Shingler (Principal Planning Officer), G J Woodhall (Democratic Services Officer) and R Perrin (Democratic Services Assistant)

89. WEBCASTING INTRODUCTION

The Chairman made a short address to remind all present that the meeting would be broadcast on the Internet, and that the Council had adopted a protocol for the webcasting of its meetings. The Sub-Committee noted the Council's Protocol for Webcasting of Council and Other Meetings.

90. WELCOME AND INTRODUCTION

The Chairman welcomed members of the public to the meeting and outlined the procedures and arrangements adopted by the Council to enable persons to address the Sub-Committee, in relation to the determination of applications for planning permission. The Sub-Committee noted the advice provided for the public and speakers in attendance at Council Planning Sub-Committee meetings.

91. MINUTES

RESOLVED:

That the minutes of the meeting held on 20 January 2010 be taken as read and signed by the Chairman as a correct record.

92. DECLARATIONS OF INTEREST

(a) Pursuant to the Council's Code of Member Conduct, Councillor Mrs M McEwen declared a personal interest in the following item of the agenda by virtue of the applicant being a Parish Councillor in her ward. The Councillor had determined that her interest was not prejudicial and would remain in the meeting for the consideration of the application and voting thereon:

- EPF/2412/09 – Parsonage House, The Parsonage, Berners Roding, Ongar.

(b) Pursuant to the Council's Code of Member Conduct, Councillor P Gode declared a personal interest in the following item of the agenda by virtue of being a member of Ongar Town Council. The Councillor had determined that her interest was not prejudicial and would remain in the meeting for the consideration of the application and voting thereon:

- EPF/2506/09 – Land at Station Approach, High Street, Ongar.

(c) Pursuant to the Council's Code of Member Conduct, Councillor D Stallan declared a personal interest in the following item of the agenda by virtue of being the Housing Portfolio Holder. The Councillor had determined that his interest was prejudicial and would leave the meeting for the consideration of the application and voting thereon:

- EPF/2506/09 – Land at Station Approach, High Street, Ongar.

(d) Pursuant to the Council's Code of Member Conduct, Councillor G Pritchard declared a personal interest in the following item of the agenda by virtue of his occupation. The Councillor had determined that his interest was prejudicial and would leave the meeting for the consideration of the application and voting thereon:

- EPF/2506/09 – Land at Station Approach, High Street, Ongar.

93. ANY OTHER BUSINESS

The Sub-Committee considered the supplementary agenda paper on the confirmation of a tree preservation order under any other business.

94. CONFIRMATION OF TPO EPF/42/09 33 SEVERNS FIELD, EPPING, ESSEX

The Planning Officer reported that a Tree Preservation Order 42/09 became effective on 11 August 2009 protecting 2 Horse Chestnut and 1 Sycamore in the garden of 33 Severns Field, Epping. It had been made on a basis that the Council was aware of an allegation of subsidence caused by one or all of the trees adjacent to the property. A written representation had been received objecting on the basis that the reasons for making the order had not been explained and that the trees were not worthy of protection.

The Director of Planning and Economic Development responded to the objections as follows;

1. The trees protected by this order formed a highly visible and established public amenity bordering the Epping Conservation Area. The TEMPO system for interpreting the value of the trees had been used as a professional aid and provided a sufficient scoring to justify the TPO.

2. The trees had been visited by the Council's Landscape Officer and Arboriculturist to review the damage and the owner's insurance company had attributed the damage in particular to some non-TPO'd conifers and one of the Horse Chestnuts. The insurance company was still engaged in monitoring buildings movement and consequently not in a position to submit the information required.

The Committee had been made aware that even after confirmation of the TPO, an application could be made to exempt any of the trees. Hence these trees are worthy of a Tree Preservation Order.

RESOLVED:

That Tree Preservation Order EPF/42/03 be confirmed without modification.

95. DEVELOPMENT CONTROL

RESOLVED:

That the planning applications numbered 1 – 2 be determined as set out in the schedule attached to these minutes.

96. DELEGATED DECISIONS

The Sub-Committee noted that schedules of planning applications determined by the Head of Planning and Economic Development under delegated authority since the last meeting had been circulated and could be inspected at the Civic Offices.

CHAIRMAN

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Report Item No: 1

APPLICATION No:	EPF/2412/09
SITE ADDRESS:	Parsonage House The Parsonage Berners Roding Ongar CM5 0SZ
PARISH:	The Rodings - Abbess, Beauchamp and Berners
WARD:	High Ongar, Willingale and the Rodings
DESCRIPTION OF PROPOSAL:	Erection of detached four bay garage/cart lodge building and store.
RECOMOMENDED DECISION:	Grant Permission (with conditions)

The Members decided to grant this application because they considered that the development would have minimal impact on the openness of the Green Belt and would improve the setting of the Listed Building.

CONDITIONS

- 1 The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this notice.
- 2 Materials to be used for the external finishes of the proposed extension, shall match those of the existing building.
- 3 Notwithstanding the provisions of the Town & Country Planning General Permitted Development Order 1995 (or of any equivalent provision in any Statutory Instrument revoking or re-enacting that Order), the building hereby approved shall be retained so that it is capable of allowing the parking of cars together with any ancillary storage in connection with the residential use of the site, and shall at no time be converted into a room or used for any other purpose.

Report Item No: 2

APPLICATION No:	EPF/2506/09
SITE ADDRESS:	Land at Station Approach High Street Ongar Essex CM5 9BN
PARISH:	Ongar
WARD:	Chipping Ongar, Greensted and Marden Ash
DESCRIPTION OF PROPOSAL:	Reserved matters application for 50 units comprising 36 two and two & half storey houses and flats and a three storey residential block for mother and baby unit providing 14 flats and associated facilities. (Amendment to reserved matters permission EPF/0122/09)
RECOMMENDED DECISION:	Refuse Permission

REASONS FOR REFUSAL

- 1 The orientation and position of Block 31-34 and its close proximity to Block 19-24 results in excessive bulk and massing when viewed from the north, such that the design of this element of the scheme will have an adverse impact on the character and visual amenity of the area, contrary to policies CP2, CP3, CP7 and DBE1 of the Adopted Local Plan and Alterations.

AREA PLANS SUB-COMMITTEE 'EAST'

Date 3 March 2010

INDEX OF PLANNING APPLICATIONS/ENFORCEMENT CASES

ITEM	REFERENCE	SITE LOCATION	OFFICER RECOMMENDATION	PAGE
1	EPF/0138/10	32 Kendal Avenue, Epping	REFUSE	17
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3	EPF/2490/09	40 Landview Gardens, Onger	GRANT	31
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Report Item No: 1

APPLICATION No:	EPF/0138/10
SITE ADDRESS:	32 Kendal Avenue Epping Essex CM16 4PR
PARISH:	Epping
WARD:	Epping Hemnall
APPLICANT:	Mr Roy Scruton
DESCRIPTION OF PROPOSAL:	TPO/EPF/45/91 G7 T1 Wellingtonia - Fell
RECOMMENDED DECISION:	Refuse Permission

REASON FOR REFUSAL

- 1 Insufficient details have been provided to allow a proper examination of the likely impact of the tree on the garage foundations, which is required as part of the application to justify the proposal. Insufficient justification is contrary to policy LL09 of the Council's Adopted Local Plan and Alterations..

This application is before committee since all applications to fell preserved trees are outside the scope of delegated powers.

Description of Proposal:

T1.Wellingtonia. Fell.

Description of Site:

The tree stands approximately 18 metres tall in the applicant's front garden, close to the flank wall of the applicant's single storey garage and beside the neighbour's side elevation at 34 Kendal Avenue. The house frontage is dominated by a block paved parking area and steep drive.

This cul-de-sac development, within Kendal Avenue, is made up of seven post-war residential dwellings, which have been positioned around the existing collection of mature trees.

This tree is part of a visually prominent group of Pines and 'Wellingtonia' Redwoods, originally planted within an historically valuable parkland private estate, probably in the 19th century. The top of the subject tree has been lost in recent years but still holds the highest status within this group of eight highly prominent trees within the cul-de-sac.

Relevant History:

Application TRE/EPF/037/93 granted permission to crown lift the tree by 15% to give 3 metres clearance from the roof and 10% crown thin with the intention of maintaining a cycle of pruning into the future to ease problems of ground movement.

Application TRE/EPF/75/93 to fell the tree was refused and the tree was certified under Article 5 or the Tree Preservation Order as being of outstanding amenity and irreplaceable contribution to the amenity of the area. The effect of the certification is to take away a landowners right to compensation for any financial loss that results from any decision on that particular application.

Policies Applied:

Epping Forest District Local Plan and Alterations:

LL9 Felling of preserved trees

SUMMARY OF REPRESENTATIONS:

3 neighbours were notified and no responses were received

This report was prepared prior to closure of statutory consultation period. Any further representations received will be recorded orally at Committee.

EPPING TOWN COUNCIL: Committee supports this application. The proximity of this magnificent specimen tree to housing creates unacceptable loss of amenity and damage to dwellings. It is most unfortunate that the planning system failed to take account of this problem when the houses were granted planning permission. However, it is that decision which created the problem which appears to only have one reasonable solution in the removal of the tree.

Issues and Considerations:

1. The main reasons to fell the tree put forward by the applicant are the following:

- Root damage to applicant's driveway, waterpipe and garage wall. Further root damage to neighbour's patio and sewer drainpipe.
- Nuisance from bird liming and damage to car paintwork.
- Branch damage to neighbour's aerial and potential damage to roof tiles

Consideration of applicant reasons:

Root damage

There is photographic evidence of roots causing serious distortion to the drive and tree roots are visible in a pit where roots are deemed to have been instrumental in a burst water pipe. No photographic or technical evidence has been submitted in respect of the damage occurring to the garage wall or the neighbour's patio and sewer drain pipe.

The various root problems described above are not inconsiderable but equally not insurmountable. Extensive surface root pruning and relaying of drive, patio and water pipe are potential practical solutions.

In cases of alleged subsidence or direct root action it is a requirement set out in the council's application form to supply full technical details to provide proof of causal links between the damage and the roots. Without this it is impossible to place weight on these allegations.

Debris nuisance

Much photographic evidence has been submitted to show the large amounts of bird liming and its extent across the front drive. No clear evidence has been provided to show the extent of the damage to car paintwork.

The quantity of birdlife is clearly high and this commonly encountered problem is more extreme than normal. However, ways of reducing this are available; including some crown spread pruning reduction work. Even extreme levels of liming are seldom, if ever, reason enough to allow a tree of this importance to be removed.

Branch damage to structures

The assertion that damage has occurred to the neighbour's aerial is not shown and the potential for the tree to damage roof tiles is not actual damage.

Despite lack of evidence, it is reasonable to anticipate that the tree may cause problems to the roof of the neighbouring property due to its close proximity.

However, an appropriate solution to these issues would be that of branch pruning rather complete tree removal.

Planning considerations:

Life expectancy and safety issues

The tree has undergone foliage reduction surgery some 16 or more years ago. Trees of this species are immensely long lived. Life expectancy is likely to exceed 100 years.

There are no obvious physical defects visible, despite the history of a lost crown top, which has produced a rather flattened top. The risk of failure is considered low. There are therefore no safety issues to consider.

Suitability in its location

Wellingtonia trees ideally enjoy a considerably greater amount of space to be allowed to grow to their natural size, and here in this constrained location cause the particular issues of debris and driveway distortion. The tree originally stood in parkland but now dominates the dwellings immediately next to it. Suitability of location has become compromised within the last few decades.

Potential for compensation by replacement.

While a replacement planting could be conditioned, no realistic choice of tree would compensate, even in the long term for a tree of this stature.

Discussion

There are numerous issues, listed by the applicant and these are likely to involve long term management. But these commonly encountered problems must be placed in the context of the outstanding importance of this fine tree, which itself is part of a wider mature group of conifers, planted as monumental ornaments to provide local landscape character to this part of Kendal Avenue.

The Council seeks to take a balanced and appropriate view but in this case the visual importance of the tree, within the conifer group, to public amenity should take precedence, and that at least some relief can be achieved by root and branch pruning.

Conclusion:

While recognising the many arguments the applicant has submitted, the removal of this tree would constitute an unacceptable loss of public amenity and is inconsistent with policy LL09. A recommendation to refuse permission is therefore made. The option to continue to prune the tree would not excessively diminish its importance or threaten its long term health and would provide a more appropriate balance between the visual value to the community against the difficulties to the owner and his immediate neighbour.

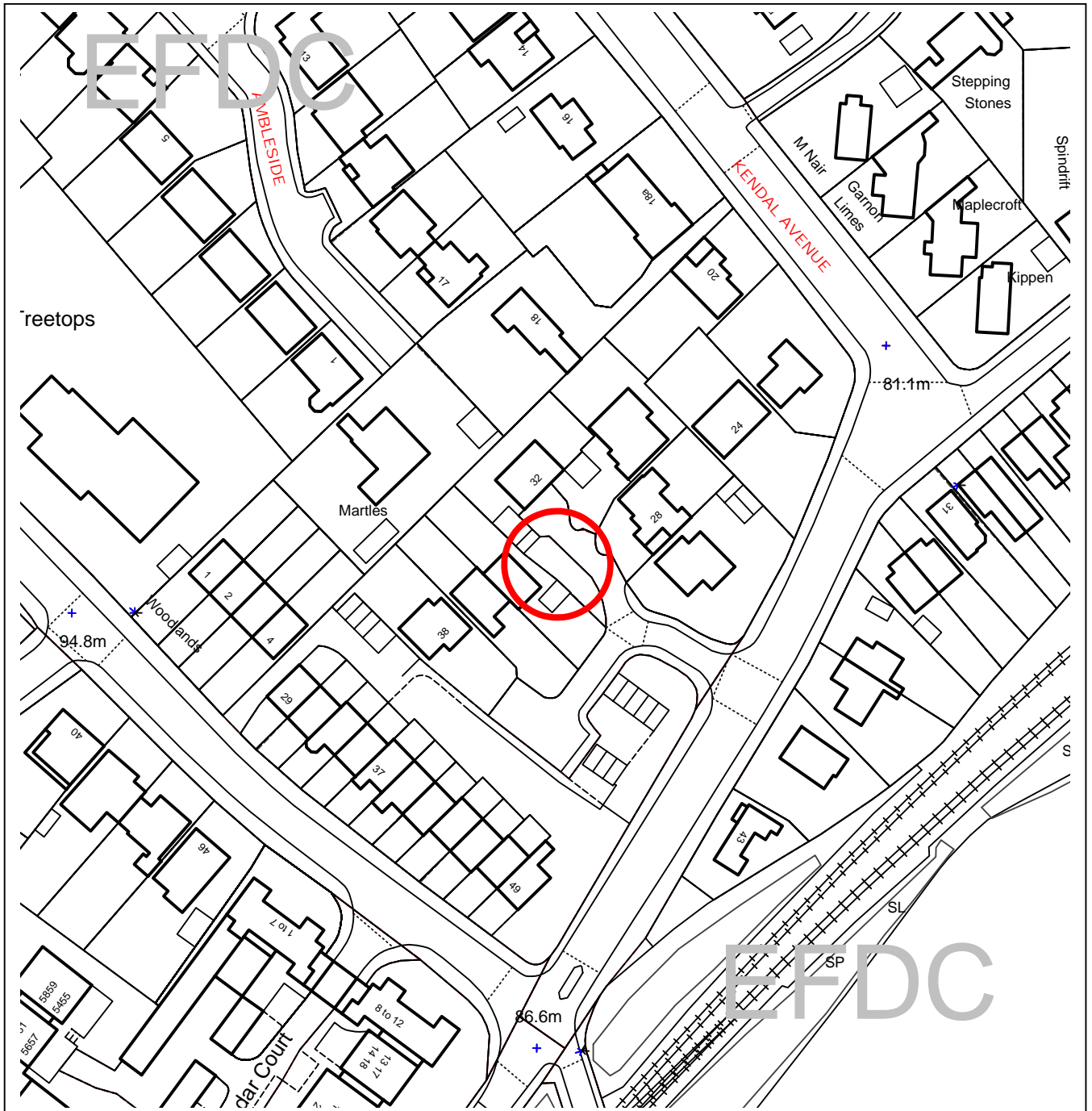
In the event of Members agreeing to allow the felling of the tree it is recommended that any consent be conditional upon suitable replacement being agreed prior to felling and on prior notice of the felling being given, to ensure that replanting can be secured.

This tree was certified in response to a previous application to fell it (1993). In the event that it is decided to refuse to approve the current application to fell the tree, it is recommended that in respect of this application, the tree also be certified under Article 5 of the Tree Preservation Order. Certification of the tree under Article 5 is appropriate for reasons of its outstanding amenity value as a dominant landscape feature, within a planting of large ornamental conifer trees. It is key in strongly identifying the character of this area of Epping. Its visual importance is enhanced by virtue of its location, functioning as a softening buffer and frame to a residential development close to a busy pedestrian commuter route to Epping train station.



Epping Forest District Council

Area Planning Sub-Committee East



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Agenda Item Number:	1
Application Number:	EPF/0138/10
Site Name:	32 Kendal Avenue, Epping CM16 4PR
Scale of Plot:	1/1250

Report Item No: 2

APPLICATION No:	EPF/2355/09
SITE ADDRESS:	Former London Underground Sub Station Site Crossing Road Epping Essex
PARISH:	Epping
WARD:	Epping Hemnall
APPLICANT:	Mr Mark Hanks
DESCRIPTION OF PROPOSAL:	Demolition of former substation building and the erection of seven dwellings with access, parking and landscaping.
RECOMMENDED DECISION:	Grant Permission (Subject to S106)

CONDITIONS

- 1 The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this notice.
- 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.
- 3 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 LPA and the completed phase 1 investigation shall be submitted to the LPA 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 LPA before commencing the study and the completed phase 2 investigation with remediation proposals shall be submitted to and approved by the LPA prior to any remediation works being carried out.

Following remediation, a completion report and any necessary maintenance programme shall be submitted to the LPA for approval prior to first occupation of the completed development.

- 4 A scheme for protecting the proposed new dwellings from noise as outlined in the submitted noise survey shall be submitted to and agreed in writing by the Local Planning Authority. All works shall be completed in accordance with the approved scheme and shall be completed before any of the proposed residential properties are occupied.
- 5 Prior to any demolition, a scheme for dealing with dust suppression shall be submitted to and approved by the Local Planning Authority. The agreed scheme should be implemented and maintained during the construction of the development.
- 6 Notwithstanding the details submitted, further details of refuse storage and collection facilities, including the design details of any structures shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development and such details as approved shall be implemented prior to occupation of the proposal.
- 7 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, shall be erected before the occupation of any of the dwellings hereby approved and maintained in the agreed positions.
- 8 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.
- 9 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.
- 10 No tree, shrub, or hedge which are shown as being retained on the approved plans shall be cut down, uprooted, wilfully damaged or destroyed, cut back in any way or removed other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. All tree works approved shall be carried out in accordance with British Standard Recommendations for Tree Work (B.S.3998: 1989).

If any tree shown to be retained in accordance with the approved plans and particulars is removed, uprooted or destroyed, or dies, or becomes severely damaged or diseased within 3 years of the completion of the development, another tree, shrub, or hedge shall be planted at the same place, and that tree, shrub, or hedge shall be of such size, specification, and species, and should be planted at such time as may be specified in writing by the Local Planning Authority.

If within a period of five years from the date of planting any replacement tree is removed, uprooted or destroyed, or dies or becomes seriously damaged or defective another tree of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

- 11 The development, including site clearance, must not commence until a tree protection plan, to include all the relevant details of tree protection has been submitted to the Local Planning Authority and approved in writing.
- The statement must include a plan showing the area to be protected and fencing in accordance with the relevant British Standard (Trees in Relation to Construction-Recommendations; BS.5837:2005). It must also specify any other means needed to ensure that all of the trees to be retained will not be harmed during the development, including by damage to their root system, directly or indirectly.
- The statement must explain how the protection will be implemented, including responsibility for site supervision, control and liaison with the LPA.
- The trees must be protected in accordance with the agreed statement throughout the period of development, unless the Local Planning Authority has given its prior written consent to any variation.
- 12 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.
- 13 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.
- 14 Before any preparatory, demolition or construction works commence on site a mitigation strategy for the site shall be carried out and submitted to the Local Planning Authority, with a working methodology for site clearance and construction work to minimise impact to any protected species. Development shall be undertaken only in accordance with the agreed methodology and strategy.
- 15 No bonfires shall be permitted on site throughout the construction phase of the development.

- 16 All construction/demolition works and ancillary operations (which includes deliveries and other commercial vehicles to and from the site) which are audible at the boundary of noise sensitive premises, shall only take place on site between the hours of 0730 to 1830 Monday to Friday and 0800 to 1300 hours on Saturdays, and at no time during Sundays and Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.
- 17 All construction and service vehicles along with any construction materials shall be parked and stored within the site and at no time parked or stored on the public highway during the construction period.
- 18 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, Class A shall be undertaken without the prior written permission of the Local Planning Authority.

This application is before this Committee since it is an application for residential development of 5 dwellings or more and is recommended for approval (Pursuant to Section P4, Schedule A (d) of the Council's Delegated Functions).

Description of Proposal:

Demolition of former substation and the erection of seven dwellings with access, parking and landscaping. The housing type is to be 3 no. three bedroom and 4 no. four bedroom two storey properties with two detached, two semi-detached and three in a terrace row. The properties are sited in a line north to south with vehicle access from Crossing Road extending up through the site adjacent to the Underground Line. 2 off street parking spaces will be provided for each dwelling with 4 of the dwellings including integral garages, and 1 detached single storey garage. The rear gardens of the properties will back onto the existing properties in Charles Street.

Description of Site:

The site is a deep, elongated piece of land approximately 0.2 ha in size. It is located at the northern edge of Crossing Road a cul-de-sac off Allnuts Road, there is an existing access into the site from Crossing Road with is currently gated. To the east of the site are the back gardens of the residential properties on Charles Street, and to the south the residential dwellings in Crossing Road. The site lies within the built up residential area of Epping.

The site adjoins the Underground Line, which runs at an angle to the west of the site. A disused sub-station which is approximately 2-storey in height, brick built with a flat roof is currently on the site. It is this building which is to be demolished.

A footpath runs along the western edge of the site leading to a pedestrian bridge over the Underground line to access Sunnyside Road. The site is quite overgrown and therefore relatively green, and there are several protected trees on the site to the east boundary and the north-west corner.

The application site has had two previous applications approved as outlined below – neither of which have been implemented and have now expired.

The site is not within the Metropolitan Green Belt or a Conservation Area.

Relevant History:

EPF/2014/01 – Demolition of sub-station buildings and erection of eight, two storey residential dwellings – Approved

EPF/0460/03 – Conversion and alterations to existing sub-station to form 18 flats and erection of 4 dwellings with parking – Refused (Appeal dismissed)

EPF/2383/04 - Partial demolition and conversion of former sub-station to form 13 flats, erection of 4 new dwellings and new basement car park and associated landscaping. (Revised application) – Approved

Policies Applied:

East of England Plan

H1 – Housing Provision 2001 – 2021

H2 – Affordable Housing

ENV3 – Biodiversity and Earth Heritage

ENV7 – Quality in the Built Environment

Epping Forest District Local Plan and Alterations

CP2 – Protecting the quality of the Rural and Built Environment

CP3 – New Development

CP4 – Energy Conservation

CP6 – Achieving Sustainable Urban Development Patterns

CP7 – Urban Form and Quality

NC4 – Protection of Established Habitat

RP4 – Contaminated Land

H2A – Previously Developed Land

H3A – Housing Density

H6A – Site Thresholds for Affordable Housing

H9A – Lifetime Homes

DBE1 – Design of new buildings

DBE2 – Effect on Neighbouring Properties

DBE3 – Design in Urban Areas

DBE5 – Design and Layout of new development

DBE6 – Car parking in new development

DBE8 – Private Amenity Space

DBE9 - Amenity

LL10 – Adequacy of Provision for Landscape Retention

LL11 – Landscaping Schemes

ST4 – Road Safety

ST6 – Vehicle Parking

SUMMARY OF REPRESENTATIONS:

EPPING TOWN COUNCIL: No objection

NEIGHBOURS: 38 properties were consulted, 2 site notices erected and the following responses were received.

81 CHARLES STREET – Objection – loss of privacy, current state of land and construction noise

17 CROSSING ROAD – Comments regarding flood risk, waste water, construction times, contamination and parking

69 CHARLES STREET – Comment – more practical plan, although demolition anxieties and damage to trees remains

Issues and Considerations:

The principle of residential development on this site is considered to be established following the 2001 and 2004 approvals. This development does not fall within the categories for affordable housing or for Lifetime Homes as it does not exceed the 15/10 home threshold for these policies therefore it is considered that the main issues that arise with this application are the following:

- Scale, massing, design, layout and form of development
- Impact on neighbouring amenity
- Highways and transportation matters
- Protection of Protected Trees
- Landscaping and Ecology

Scale, massing, design, layout and form of development

The development is for two storey, brick/render and tiled houses, a consistent design across all seven properties. The houses are considered sufficiently in keeping in character and scale with the surrounding area which is predominantly terraced brick houses. The detached and semi-detached houses are to the north of the property with the terraced to the south, creating a pleasing transition between the terraced properties on Crossing Road and this development.

The layout is relatively structured due to the linear constraints of the site and this has been followed with the linear development of the proposal. The proposal reflects the guidance contained within the Essex Design Guide with parking to the side/rear or contained within garages.

The design of the properties follows the same cohesive theme with gable and porch features a consistent feature. There have been subtle changes to the roof, porch and facing material designs of the different properties and this adds interest and diversity to the streetscene, creating individual properties. Submission of material samples can be conditioned to ensure an acceptable finish.

The development ranges in height from 7.5m to 7.8m and is considered an overall acceptable massing for a residential development. The site slopes gradually from south to north and therefore the smaller of the dwellings is on the higher ground.

The number of dwellings proposed equates to a density of approximately 35dph which sits comfortably within the Council's suggested range of 30-50 dph as outlined in Policy H3A, and although within the lower section of the range it is considered appropriate for this high residential area.

With regards to amenity space the proposal averages out to provide sufficient private amenity space to correspond with the number of habitable rooms of each property. Although plot No.5 has two trees in the rear garden which does remove some of the useable garden space it is considered that these trees make an attractive landscape contribution.

Overall it is considered that the scale, massing, design, layout and form of the development is in accordance with the adopted design policies of the Local Plan and Alterations.

Impact on neighbouring amenity

The nearest neighbours are to the east, the properties in Charles Street and the south, those in Crossing Road.

With regards to the properties in Charles Street, the proposal moves built development away from the rear gardens of Charles Street due to the demolition of the sub-station. The distance to the boundary of the site of built form has increased by 3m+, which is considered to reduce the overbearing impact the existing sub-station may have on these properties and improve the general outlook.

Although it is recognised that loss of privacy or the perception of loss of privacy may be a new issue on this site due to the residential use and one that has been raised by No. 69 Charles Street; the proposal meets and exceeds the suggested guidelines within the Essex Design Guide of 25m between the backs of houses and this is considered to achieve an appropriate degree of privacy.

The properties in Crossing Road will be much closer to the proposal with No. 10 Crossing Road approximately 3m away from the most southerly proposed house. Although relatively close it is not considered to impact significantly on this property or others in Crossing Road, particularly as although forward of those properties in Crossing Road the general line of development has been retained. Although there is a first floor side window proposed for the property closest to No. 10, this is for a stairwell and not considered to give rise to a significant amount of overlooking.

The neighbour at No. 17 Crossing Road has commented on construction times, this was addressed by condition on the previous approvals on the site and it is considered that these times are acceptable to be applied to this proposal to minimise impact on surrounding neighbours.

Further to controlling working hours on the site, a condition requesting details of a dust suppression scheme to be submitted and implemented can also be added to any permission if granted to reduce any nuisance to neighbouring properties when the sub-station is demolished.

Highways and Transportation Matters

Essex County Council Highways have no objection to the proposal subject to conditions. There is an existing access to the site which is to be utilised at the site. The amount of parking meets the standards as outlined in ST6. A neighbour has commented that construction vehicles should be parked on site to avoid further parking congestion in the surrounding road and this can be conditioned as such to also include the storage of materials on site only.

Landscaping and Ecology

The Council's Tree and Landscape Officer has no objection to the proposal subject to conditions, particularly to ensure the protection of trees throughout construction. A condition can also be added to ensure a satisfactory landscaping scheme is proposed. This can also apply to details of fencing around the site.

With regards to Ecology, the survey submitted is not considered to have fully taken into account the presence of a wide variety of species due to the time of year that it was taken. Although no presence of protected species were found, as the site has not been properly assessed at the correct time of year this cannot be verified. This lack of information is considered to be surmountable by condition to ensure a mitigation strategy is submitted to minimise the risk to any protected species on site.

Other Issues

Contamination:

As a disused site, with a former use as an electricity sub-station the site has been identified as potentially contaminated. A desk top study has been submitted with a recommendation for further study and therefore the Council's Contaminated Land Technical Officer has suggested the standard contaminated land condition which is considered appropriate.

Flooding and Waste Water:

The neighbour at 17 Crossing Road has raised concerns regarding the capability of the existing foul sewer and the potential of flooding on the site. Both of these factors can be addressed by condition to ensure satisfactory details and implementation of the scheme, and this has been requested by the Council's Drainage and Water Engineer.

Foot Path:

It is the intention of the proposal that the footpath to the west of the site (which falls outside of the application site) is to be retained and remain open throughout building works. Any closure or obstruction of the path falls under separate legislation and is dealt with by Essex County Council.

As with the previous approval on this site, the developer is prepared to enter into a legal agreement to resurface the adjoining footpath to this site at the applicant's expense.

Refuse Collection:

Further information is required regarding the storage and collection of refuse and recycling. It is considered that this can be dealt with by condition.

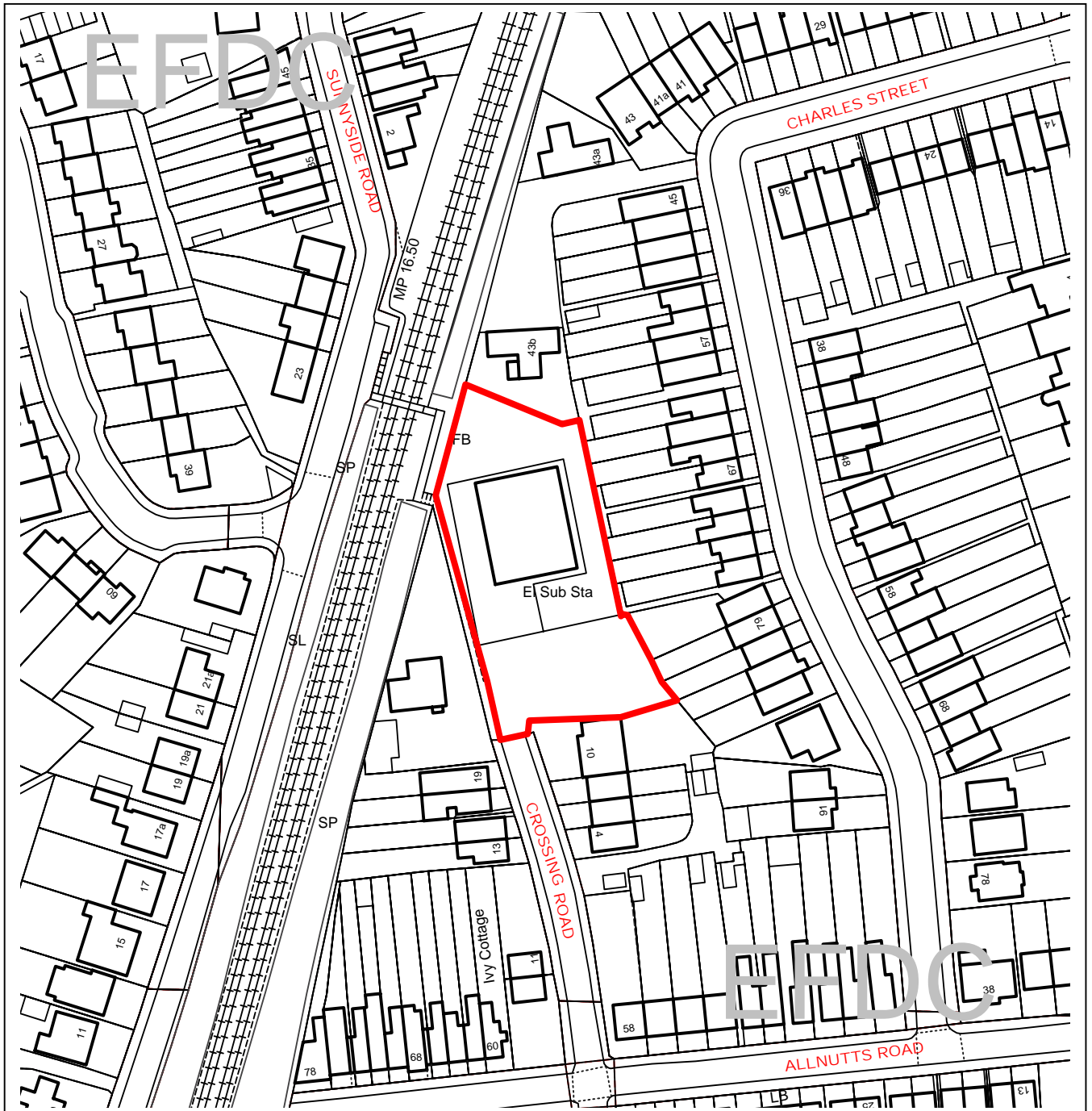
Conclusion:

In conclusion, it is considered that the proposal will result in a development that is in character with the existing residential area and is in accordance with national Guidance and the relevant policies in the Local Development Plan, therefore the application is recommended for approval subject to a legal agreement for the resurfacing of the footpath.



Epping Forest District Council

Area Planning Sub-Committee East



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Agenda Item Number:	2
Application Number:	EPF/2355/09
Site Name:	Former London Underground Sub Station Site, Crossing Road, Epping,
Scale of Plot:	1/1250

Report Item No: 3

APPLICATION No:	EPF/2490/09
SITE ADDRESS:	40 Landview Gardens Ongar Essex CM5 9EQ
PARISH:	Ongar
WARD:	Chipping Ongar, Greensted and Marden Ash
APPLICANT:	Mr D Evans
DESCRIPTION OF PROPOSAL:	Retention of two storey rear extension.
RECOMMENDED DECISION:	Grant Permission (With Conditions)

CONDITIONS

- 1 The shed described in drawing numbers 656.11 and 656.12 shall be permanently retained in the position shown on those drawings. Should the shed be removed or decay to the extent that it no longer screens views of the ground floor of 5 Kettlebury Way from windows serving the ground floor rooms of the extension hereby approved, it shall be replaced by a structure of the same dimensions in the same position within 28 days of its removal or decay to that extent.

This application is before this Committee since the recommendation differs from the views of the local council (Pursuant to Section P4, Schedule A (g) of the Council's Delegated Functions).

Description of Proposal:

Retention of two-storey rear extension.

The extension has a rectangular footprint and projects 3.040m across most of the rear elevation of the two-storey part of the house. It has a hipped roof with a ridge level with that of the main roof of the house and is finished in materials to match the original house. The extension is set in 1.87m from the western site boundary with 5 and 7 Kettlebury Way.

Members should note: This application does not relate to a raised platform/decking erected rear of the extension. The applicants have submitted a planning application and an application for a certificate of lawfulness in respect of that development. The application for the certificate of lawfulness is reported elsewhere on this agenda. The planning application for the retention of that development is being held in abeyance pending the Council's decision on the application for a certificate of lawfulness.

Description of Site:

The application site comprises a part single, part two-storey detached house and its associated garden. It is located on the north side of Landview Gardens, a short distance from its junction with Kettlebury Way. Nos 1 – 7 (odd) Kettlebury Way back on to the side garden boundary. They are two-storey detached houses with relatively short back gardens, approximately 12m in depth as measured between the rear of the original houses and the boundary with the application site. Land levels rear of the original house fall. The rear gardens of houses at 1 – 7 Kettlebury Way are approximately 600mm below the level of the rear garden at the application site.

No. 5 Kettlebury Way has a two-storey rear addition across the entire rear elevation that projects 3.5m thereby reducing the rear garden depth at that property to approximately 9m. It also has a single-storey side addition. The greater part of the extension is beyond the rear garden boundary.

No 7 Kettlebury Way has a small part-width two-storey rear addition and a two-storey side extension. It also has a 2.8m wide detached garage in the rear garden abutting the boundary with the application site, beyond which is the flank wall of the original house and part of the extension.

Relevant History:

EPF/1967/07 Two-storey side & rear and single-storey rear extension. Refused.
EPF/0417/08 First floor side & rear extension and single-storey rear extension. Refused.
EPF/1070/08 Single-storey front and two-storey rear extension. Approved.
EPF/0853/09 Alteration and retention of raised decking. Refused.
EPF/1347/09 Alteration and retention of raised decking. Withdrawn.
EPF/2016/09 Retention of raised decking and patio. Pending decision.
EPF/2365/09 Application for a Certificate of Lawfulness for raised decking and patio. Pending decision.

Policies Applied:

Epping Forest District Local Plan and Alterations

CP2	Quality of Rural and Built Environment
DBE9	Loss of Amenity
DBE10	Residential Extensions

SUMMARY OF REPRESENTATIONS:

NEIGHBOURS: - 5 neighbours were consulted and responses were received from the occupants of Nos. 1, 5 and 7 Kettlebury Way raising objection to the development, which is summarised as follows:

1. The development causes direct overlooking into neighbouring property. This is particularly because the internal floor level of the extension is some 1200mm above the garden level and views through the patio doors to neighbouring properties are direct and unrestricted.
2. The decking built onto the extension has the potential to cause an excessive degree of overlooking, which would certainly occur if trees at the side and rear of the garden are removed or lowered in height. If the extension is allowed to remain in its present form then the decking built onto it would have to remain.
3. If the decking were allowed to remain it would create a precedent for other properties in the area to build similar raised platforms.

4. The decking can be accessed via the extension. This encourages a more intensive use of the decking and that exacerbates the direct overlooking of neighbouring properties.
5. If the door from the extension to the decking were removed that would remove the need for the decking.
6. This application does not relate to the raised platform/decking rear of the extension and should be refused for that reason.
7. If the Council decides to grant planning permission, it should be subject to conditions requiring the replacement of patio doors with windows that do not facilitate egress from the rear of the extension, the removal of the raised platform, the provision of paving and planting rear of the extension and the removal of all permitted development rights.

In addition to the above objections, the occupants of 5 Kettlebury Way have made complaint about how previous planning applications and related planning enforcement investigations have been dealt with and have drawn attention to what they see as errors on the application forms and submitted plans.

The perceived errors on the application forms together with comments on the answers given to questions on the forms are summarised as follows:

a) Section 3 Description of the Proposed Works:

The works for the extension started in January 2009, not 2 March 2009.

b) Section 5 Pre-application Advice:

The applicant states Planning Officers have provided advice in support of the application. If that is the case the nature of that advice should be made public.

c) Section 10 Materials:

In respect of boundary treatments, it is noted the applicant states not applicable.

d) Section 15 Existing Use:

The applicant states the site is not vacant and dates the application 17 December 2009. In fact the site was vacant until 15 January 2010 when household goods were taken into the dwelling.

e) Section 31 Site Visit:

The applicant states the site can be seen from public land. That is not correct. It is essential the Local Planning Authority makes an inspection of the site and views it from 5 Kettlebury Way.

The perceived errors on the submitted drawings together with comments on them are summarised as follows:

a) Drawing No 656/13 – location plan and block plan:

The rear garden depth of 5 Kettlebury Way is 9m, not 13m as indicated.

b) Drawing No 656.11 – Existing Plans:

This drawing indicates the works carried out in 2009 including the decking, which is necessary for the two-storey extension to function. The decking should therefore be treated as being part of the extension. The drawing does not show the following information that is necessary to establish the actual extent of overlooking from the extension:

- i) Natural ground level adjacent to the raised platform/decking
- ii) Levels of the different areas of the raised platform
- iii) Levels of the steps from the extension to the raised platform/decking
- iv) The construction depth of the lowest area of the decking.
- v) Levels at the top of the existing fence on the western boundary.

It is a national validation requirement for applications to provide details including existing and proposed site sections and finished floor and site levels.

ONGAR TOWN COUNCIL – “Ongar Town Council considers this to be an unfortunate and significant over-development of a site that has already seen considerable extension and does not consider that there are merits to the development that makes its retention desirable. It poses considerable overlooking difficulties for a neighbouring property and this Council has grave concerns about the granting of a retrospective application of this nature setting an inappropriate precedent.”

Issues and Considerations:

This assessment only deals with the planning merits of the extension. The complaint made by the occupants of 5 Kettlebury Way about how previous planning applications and related planning enforcement investigations have been dealt with can be properly considered under the Council's complaints procedure. It is not appropriate to deal with them here since that would either prejudice the consideration of the complaint or could result in the decision on this application being based in part on matters other than an assessment of the planning merits of the extension.

The errors and omissions on the application forms and drawings identified by an objector are not so serious that they can be treated as impediments to considering the merits of this application. That is because:

1. The information submitted with the application is sufficient for it to be valid.
2. This assessment is based on an inspection of the application site both at 40 Landview Gardens and from adjacent land including 5 Kettlebury Way by planning officers in circumstances where the development actually exists.

There is no difficulty with the appearance of the extension which respects the design of the existing house in terms of its bulk and detailed design. Since it is not readily visible from any public area it has no consequence for the appearance of the street scene. The main issue raised by the extension is therefore its impact on the amenities enjoyed by the occupants of neighbouring properties.

Due to the distance the extension is set from the boundaries with 38 Landview Gardens and 1 Kettlebury Way it does not cause harm to the amenities of those properties. There cannot be any overbearing impact and there is no excessive overlooking of those properties. The rear half of the back garden of 1 Kettlebury Way adjoins the back garden boundary of 40 Landview Gardens, but

even if existing vegetation on the boundary is removed, a fence would adequately safeguard the privacy of 1 Kettlebury Way. This is assisted by the distance separating the extension from the boundary of the two gardens which is approximately 20m.

A substantial tree screen on the western boundary of the application site obstructs views between No 3 and the extension. If the trees screen were removed the rear part of the garden at No 3 could be overlooked to an extent. This would be largely restricted to views from the first floor of the extension since the combination of fencing on the site boundary and on the boundary of 3 and 5 Kettlebury Way would still severely restrict views from the ground floor of the extension. It would also assist in mitigating views from the first floor. In those circumstances the potential views from the first floor would be primarily mitigated by the distance between the first floor windows and the area of garden at No. 3 that could be seen beyond boundary fencing. That distance would be a minimum of 12m. When considering this matter, it should be noted that the distance between the first floor windows of No 3 and the adjacent area of garden at 40 Landview Gardens that would be visible from those windows if the trees were removed is very similar.

The tree screen extends along part of the boundary with 5 Kettlebury Way but only starts 4m beyond the rear wall of the extension. The extension is clearly visible when seen from the rear garden of 5 Kettlebury Way as is a timber shed that has been erected at the application site on the part of the garden boundary adjacent to the tree screen. The timber shed is 2.37m high when measured at the highest adjacent ground level. Although the land level on which the shed has been erected is approximately 800mm below the internal floor of the extension, the combination of the distance between the windows in the rear elevation at ground floor and the height of the shed mitigates the potential for overlooking. The case officer's inspection of the site verified that views of the top part of the glazed area of patio doors in the rear elevation of 5 Kettlebury Way are only possible at an eye level of 1.85m above the internal ground floor level of the extension and higher. Such views do not represent the outlook possible through normal use of the extension and, in any event, are very unclear. It would nevertheless be possible to obstruct such views by increasing the height of the shed to its maximum permitted height of 2.5m.

The potential for overlooking of 5 Kettlebury Way from the first floor of the extension is mitigated by the angle of view available from the extension. Unusually oblique views from the first floor window nearest the boundary with 5 Kettlebury Way do allow an excessive degree of overlooking. Although such views would not arise through the normal use of the room, it is possible to require that window to be obscure glazed in order to prevent the possibility of such views arising. That window serves a bedroom and is the sole source of light and outlook from that room therefore such a requirement would be harmful to the amenities enjoyed by the occupants of 40 Kettlebury Way. Since excessive overlooking is not possible as a consequence of the ordinary use of the room, the harm that would be caused to the occupants of 40 Landview Gardens by requiring that window to be obscure glazed would be disproportionate therefore such a condition would be both unnecessary and unreasonable.

No. 7 Kettlebury Way looks onto the flank wall of the extension, which is set just under 2m from the boundary. Since there are no windows in the flank wall of the extension there is no possibility of any overlooking of No. 7 from the extension. Furthermore, the relationship between the extension and the garden of no. 7 is such that there would be no increase in the amount of overshadowing of the garden beyond that already caused by the original house at 40 Landview Gardens. Similarly, the addition does not have any greater overbearing impact.

When assessing the merits of the extension, it is appropriate to consider the fall back position of the applicant in the event that planning permission is refused. It is open to the land owner to modify the extension such that it accords with the extension approved under planning permission EPF/1070/08. That extension would be set approximately 3.5m from the boundary with 5 and 7 Kettlebury Way but project an additional 300mm into the garden. That extension included patio doors and an additional glass door in the rear elevation, neither of which were proposed or

required by condition to be obscure glazed. Moreover, the distance the nearest glazed door in the approved addition would be from the boundary with 5 Kettlebury Way is approximately 3.8m, not materially different to the 3.6m that separates the patio doors in the existing extension from the boundary. Consequently there would be no difference in the degree of overlooking possible from the ground floor of the approved extension or the existing extension. That there is no excessive overlooking at present is solely due to the presence of a shed on the boundary with 5 Kettlebury Way. Since there is no condition on planning permission EPF/1070/08 requiring the erection of the shed the District Council would have no power to require its retention.

A further fall back position for the land owner is that he modifies the existing extension such that it complies with permitted development criteria. The construction of a two-storey extension to the rear of this house would be permitted development if it did not extend beyond the rear wall of the original house by more than 3m and no part of it was within 2m of the site boundary. Modifying the existing extension would primarily require setting in the flank wall an additional 200mm at most and carrying out associated alterations to the roof. There would be no need to reduce its depth from 3.04m to 3m since there is no material difference between the two dimensions. This has been held to be the correct approach in unrelated planning enforcement appeal decisions.

The modified extension would have exactly the same impact on the amenities of the neighbouring properties as the existing house. It would still require planning permission since in order for the extension to benefit from permitted development allowances it would have had to have been built in accordance with them in the first place. However, it would not be expedient to take enforcement action requiring the removal of the modified extension because it would be possible for the land owner to comply with the requirements of the Notice and then build a replacement extension of the same dimensions as permitted development. The issue of an enforcement notice in those circumstances would be likely to be found unreasonable at appeal and leave the Council vulnerable to a costs claim.

The objections raised by neighbours relate in particular to the opportunity for overlooking created by the raised platform/decking erected rear of the extension. The retention of the decking is the subject of a separate application as is the matter of whether it is a lawful development. It cannot be treated as part of the extension when dealing with this application even though neighbours argue that it should be. Nevertheless, it is appropriate to note that the erection of the large shed on the site boundary as permitted development does have the effect of adequately mitigating views from the raised platform/decking. Without it the raised platform/decking would facilitate excessive overlooking of 5 Kettlebury Way. This would be the case regardless of whether planning permission is required for the raised platform/decking. In the circumstances, although it is possible to require the removal of the decking (as suggested by one of the neighbours) by way of a condition imposed on any grant of planning permission for the extension, it is not necessary to do so in order to safeguard the privacy of the occupants of 5 Kettlebury Way. The only way to safeguard their privacy that is possible is to require the permanent retention of the shed on the boundary with 5 Kettlebury Way. This would also have the additional benefit of, to some small degree, acting as a noise barrier.

Conclusion

The extension as built has the potential to cause excessive overlooking of neighbouring properties. That potential is not realised solely because a shed on the boundary with the neighbouring properties that are vulnerable to overlooking obstructs views of those properties from the ground floor of the extension. It also obstructs views of them from an adjacent raised platform/decking that is not part of this application. It is possible to require the retention of the shed by way of a condition on any planning permission granted for the extension.

The fall back positions for the land owner would have a similar potential to cause overlooking but they are outside the District Council's control therefore the option to require the retention of the

shed in those scenarios does not exist. If the land owner were forced to adopt one of the fall back positions it is likely that the privacy of the immediate neighbours on Kettlebury Way would not be safeguarded since the shed could be removed from the boundary.

Accordingly, in order to safeguard the privacy of neighbouring properties it is recommended that planning permission be granted for the retention of the extension subject to a condition requiring the retention of the shed in its position on the site boundary.



Epping Forest District Council

Area Planning Sub-Committee East



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Agenda Item Number:	3 & 4
Application Number:	EPF/2490/09 & EPF/2365/09
Site Name:	40 Landview Gardens, Ongar CM5 9EQ
Scale of Plot:	1/1250

Report Item No: 4

APPLICATION No:	EPF/2365/09
SITE ADDRESS:	40 Landview Gardens Ongar Essex CM5 9EQ
PARISH:	Ongar
WARD:	Chipping Ongar, Greensted and Marden Ash
APPLICANT:	Mr Dave Evans
DESCRIPTION OF PROPOSAL:	Certificate of lawful development for existing raised decking and patio.
RECOMMENDED DECISION:	Lawful

REASON FOR LAWFULNESS

1. Following an examination of Council records, the information submitted with the application and inspections of the application site it is clear that:
 1. The patio is more than 4 years old and is therefore time immune from enforcement action. Even if it was not, it would be permitted development as defined in Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended).
 2. The works to the patio comprising of reconstructing pre-existing steps from it to the adjacent lawn and resurfacing are not development.
 3. The wall erected around part of the northern edge of the patio is permitted development under Class A of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended).
 4. The decking is not a raised platform and does amount to a distinct building that is permitted development as defined in Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

This application is before this Committee since it is an application that is considered by the Director of Planning and Economic Development as appropriate to be presented for a Committee decision (Pursuant to Section P4, Schedule A (k) of the Council's Delegated Functions).

Description of Proposal:

This application seeks to establish that an existing patio and raised decking is a lawful development. It is not an application for planning permission. Normally such applications are dealt with by the Director of Planning under powers delegated to him. This is on the basis that decisions on such applications are based on the application of planning law in respect of facts/evidence put forward by the applicant and/or third parties and that gathered by Officers. An

assessment of the planning merits of a development is not relevant to an assessment of whether it is lawful or not. This case is nonetheless reported to Members because of the concerns about the legality of the development raised with the Director of Planning by Cllr Jacobs.

The raised decking this application relates to is situated to the rear of a two-storey rear extension that is the subject of a planning application reported elsewhere on this agenda. The patio is largely situated to the east side of the two-storey extension, rear of a lawful single storey side extension.

The basis on which the Certificate is sought is that the development is permitted development, that is, it benefits from a general deemed planning permission for such development given in law and does not require any express planning permission from the District Council.

Description of Site:

The application site comprises a part single, part two-storey detached house and its associated garden. It is located on the north side of Landview Gardens, a short distance from its junction with Kettlebury Way. Nos 1 – 7 (odd) Kettlebury Way back on to the side garden boundary. They are two-storey detached houses with relatively short back gardens, approximately 12m in depth as measured between the rear of the original houses and the boundary with the application site. Land levels rear of the original house fall. The rear gardens of houses at 1 – 7 Kettlebury Way are approximately 600mm below the level of the rear garden at the application site.

No. 5 Kettlebury Way has a two-storey rear addition across the entire rear elevation that projects 3.5m thereby reducing the rear garden depth at that property to approximately 9m. It also has a single-storey side addition. The greater part of the extension is beyond the rear garden boundary.

No 7 Kettlebury Way has a small part-width two-storey rear addition and a two-storey side extension. It also has a 2.8m wide detached garage in the rear garden abutting the boundary with the application site, beyond which is the flank wall of the original house and part of the extension.

Relevant History:

EPF/1967/07 Two-storey side & rear and single-storey rear extension. Refused.
EPF/0417/08 First floor side & rear extension and single-storey rear extension. Refused.
EPF/1070/08 Single-storey front and two-storey rear extension. Approved.
EPF/0853/09 Alteration and retention of raised decking. Refused.
EPF/1347/09 Alteration and retention of raised decking. Withdrawn.
EPF/2016/09 Retention of raised decking and patio. Pending decision.
EPF/2490/09 Retention of two-storey rear extension. Pending decision.

Relevant Legislation:

The particular piece of legislation against which this application must be assessed is the Town and Country Planning (General Permitted Development) Order 1995, as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 (referred to as the GPDO in this report). Also of relevance are sections 55 and 336 of the Town and Country Planning Act 1990.

S. 55 of the Act sets out the meaning of development. This includes any building operation. It makes it clear that works of maintenance, improvement or other alteration of a building that do not materially affect its external appearance are not development.

S. 336 of the Act states a building "includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.

Part 1 of Schedule 2 to the Order gives conditional deemed planning permission for development within the curtilage of a dwellinghouse. Class A of Part 1 relates to “The enlargement, improvement or other alteration of a dwellinghouse”. Class E essentially relates to the provision of outbuildings within the curtilage of a dwellinghouse. Class F relates to the provision of a hard surface within the curtilage of a dwellinghouse and generally permits the entire rear garden of a dwelling house to be hard surfaced.

The GPDO does not specifically give deemed planning permission for a raised platform. Class A makes it clear the development it relates to cannot benefit from deemed planning permission if it would consist of or include the construction or provision of a raised platform. Class E states development it relates to cannot be permitted development if it includes the construction or provision of a raised platform. It does not state that development which consists of a raised platform cannot benefit from permitted development rights given under that Class.

Class F does not set any limit on the depth a hard surface can be while the term “hard surface” is not defined in planning legislation.

Part 2 of Schedule 2 to the Order gives conditional deemed planning permission for minor operations on any land. Class A of Part 2 relates to, inter alia, the construction of a wall. This is permitted development subject to a height limit of 2m above ground level where it is not adjacent to a highway used by vehicular traffic.

The Order states that for the purposes of Part 1 of the Order, “raised” in relation to a platform means a platform with a height greater than 300mm.

Article 1(3) of the Order states, unless the context requires otherwise, any reference to the height of a building in the Order shall be construed as a reference to its height when measured from ground level. It clarifies that “ground level” means the level of the highest part of the surface of the ground immediately adjacent to the building.

SUMMARY OF REPRESENTATIONS:

NEIGHBOURS: - 1 neighbour was consulted and responses were received from the occupants of Nos. 1, 3, 5, 7, 14, 18 and 20 Kettlebury Way. They all raise objection to the development on its planning merits, which is not a matter relevant to the consideration of this application. Those objections are therefore not reported.

The occupant of 5 Kettlebury Way also makes numerous comments on the need for planning permission that are relevant. They are contained within a letter responding to correspondence from the Director of Planning and are mixed amongst comments in respect of the two-storey extension and the handling of this matter by the Planning Directorate. Due to the difficulty in separating out the comments material to this application from other matters dealt with in the letter without diluting its meaning the letter is reproduced in full as an appendix to this report:

ONGAR TOWN COUNCIL – No response received

Issues and Considerations:

This assessment only deals with the need for planning permission for the patio and decking. As indicated above, the planning merits of the development are not relevant to that assessment which must be based solely on findings of fact and an application of planning law.

The Patio:

A patio is captured by the definition of a building set out in the Act and the construction of the patio in the first instance is development.

Having regard to photographs of the site taken prior to the construction of the two-storey rear extension, it is clear that the patio is more than 4 years old. The patio is smaller than it originally was since part of it has been redeveloped to provide extensions. Buildings that are more than four years old are time immune from enforcement action and consequently are lawful therefore it is not necessary to deal with the question of whether it required planning permission in the first instance. For completeness it is pointed out that if it were treated as a hard surface it would be permitted development under Class F of Part 1, Schedule 2 to the GPDO. If it were treated as amounting to more than a hard surface and was constructed today it would be permitted development under Class E because it would amount to an outbuilding that is not higher than 2.5m within 2m of a boundary of the property. There is no requirement within Class E that an outbuilding be set any distance from the dwellinghouse.

It is also clear that works have been carried out to the patio. Those works consist of building a wall around part of its northern edge, reconstructing pre-existing steps from it to the adjacent lawn and resurfacing that part of the patio. The resurfacing works and works to the steps are works of repair and maintenance that do not materially affect its appearance. As such they are not development and therefore do not require any planning permission. Since the wall is not adjacent to a highway used by vehicular traffic and is less than 2m high it is permitted development under Class A of Part 2 of Schedule 2 to the GPDO.

The Decking:

Decking is also captured by the definition of a building set out in the Act. For the purposes of assessing the need for planning permission consideration is given to whether the decking amounts to a raised platform. All steps leading down to it are treated as being part of the decking in this instance. A raised platform is defined in the GPDO as a structure that is more than 300mm high. Anything lower is therefore not a raised platform. The measurement of height must be taken from the surface of the highest part of the surface adjacent to it. In the event of the surface of adjacent land being raised immediately before or after a development is completed it is appropriate to take the measurement from the highest original level, even if the amount of raising that has taken place is not sufficient to have required planning permission. It should be noted, however, Article 1(3) of the GPDO does not make reference to original levels when prescribing how the height of a building should be measured.

The highest ground level adjacent to the decking is that immediately to the west side of the extension. That land is clearly adjacent to the decking since it abuts it. Furthermore, there is no higher level of land that is adjacent to the decking.

Evidence of original land levels on this part of the site exists within two manholes in that location. The covers to both have been removed and brickwork inside examined by the case officer. The officer found the bricks and associated pointing that form the sides of the shaft appeared old, with only the top course and a concrete surface surrounding the manhole cover appearing to have been laid recently. The manhole nearest the decking is approximately 300mm from it and given the nature of its construction it is very likely that the original level of the land continued to the point that the decking starts. Accordingly, it was found that the highest adjacent land level immediately prior to the construction of the decking is a maximum of 100mm below the existing surface of the land immediately to the west of the extension.

Measurements taken on site demonstrate the surface of the decked area is a maximum of 150mm below the existing surface of the highest adjacent land and therefore 50mm below established original land level.

As indicated above, the steps leading down to the decked area from the two-storey rear extension to the house are treated as being part of the decking for the purpose of establishing whether the decking is captured by the definition of a raised platform set out in the GPDO. Measurements taken on site demonstrate the top of the highest step leading to the decking from the extension is 150mm above the existing surface of the highest adjacent land and therefore 200mm above the original ground level.

In the circumstances, even allowing for a small margin of error in measurements, no part of the decking is more than 300mm above the surface of either the existing or the original highest land level adjacent to the decking. Consequently, the decking is not captured by the definition of a raised platform set out in the GPDO.

It is also necessary to establish whether the decking is an integral part of another structure or a distinct building. The only other structure it could be part of is the adjacent two-storey rear extension. Members should be aware that since the decking was originally constructed it has been significantly lowered and steps added to it to facilitate access to it from the extension. This has been carried out without requiring any modification to the extension. That this has taken place is evidence that the decking is not part of the adjacent two-storey rear extension even though it abuts it. It is therefore clear that the decking is a building distinct from the extension and the assessment of the need for planning permission to erect it must be carried out on that basis.

It has been established above that the decking is development, that it is not a raised platform and that it does amount to a distinct building. In those circumstances and having regard to its situation in the curtilage of a dwellinghouse it would appear that the decking is permitted development under Class E of Part 1 Schedule 2 to the GPDO.

Class E.1 sets out a number of limitations on the size and location of buildings that can benefit from the deemed planning permission given in Class E. They are dealt with in turn below:

- a) The ground area covered by buildings within the curtilage (excluding the original dwellinghouse) is less than 50% of the curtilage (excluding the ground area of the original dwellinghouse)
- b) The decking is not on land forward of a wall forming the principal elevation of the original dwellinghouse.
- c) The decking does not have more than one storey.
- d) The decking (which is within 2m of the boundary of the curtilage of the dwellinghouse) does not exceed a height of 2.5m.
- e) There is no question of an eaves height exceeding 2.5m since the decking is a building that does not have a roof.
- f) The decking is not in the curtilage of a listed building.
- g) The decking does not include a raised platform (as defined in the GPDO).
- h) The decking does not amount to a dwelling or a microwave antenna.
- i) The decking is not a container that exceeds 3,500 litres

Class E.2 sets out further limitations in respect of buildings that can benefit from the deemed planning permission given in Class E. They do not apply in this case because the curtilage of the dwellinghouse this application relates to is not within a World Heritage Site, a National Park, an area of outstanding natural beauty or the Broads. Further limitations set out in Class E.3 also do not apply because the land is not in Article 1(5) Land as defined in Part 2 of Schedule 1 to the GPDO.

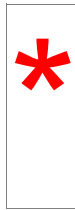
Conclusion:

Following an examination of Council records, the information submitted with the application and inspections of the application site it is clear that:

1. The patio is more than 4 years old and is therefore time immune from enforcement action. Even if it was not, it would be permitted development as defined in Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended).
2. The works to the patio comprising of reconstructing pre-existing steps from it to the adjacent lawn and resurfacing are not development.
3. The wall erected around part of the northern edge of the patio is permitted development under Class A of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended).
4. The decking is not a raised platform and does amount to a distinct building that is permitted development as defined in Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

Accordingly, the development the application relates to is lawful development and the Certificate of lawfulness applied for should be granted. This conclusion is arrived at following consultation with the Council's solicitor.

If Members disagree with this assessment and find the development to be unlawful then the pending planning application to retain the decking will be assessed and reported to Members, provided the applicant does not first withdraw that application. It must be recognised that the applicant would have a right of appeal against a decision to refuse to grant the Certificate. That is also the case if, following an assessment of the planning merits of the decking, the Council takes enforcement action against it. The grounds of any appeal against an enforcement notice would almost certainly include the ground that the decking does not need planning permission because it is permitted development. Officers are of the opinion that it is very likely such appeals would be linked and they may well be dealt with by way of a public inquiry in order to give weight to the findings, although that is a matter for the Planning Inspectorate to decide.



5, Kettlebury Way,
Marden Ash,
Ongar,
Essex, CM5 9EU

Your ref. PL/KS/EPF/2365/09

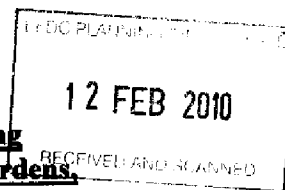
12th February 2010

Ms. K. Smith,
Epping Forest District Council,
Directorate of Planning & Economic Development,
Civic Offices,
High Street,
Epping,
Essex, CM6 4BZ

(By e-mail and by hand)

Dear Ms. Smith,

**Planning application ref. EPF/2365/09 for
Certificate of Lawful Development for existing
raised decking and patio at 40, Landview Gardens,
Ongar, Essex, CM5 9EQ**



We thank you for your letter dated 25th January 2010 (received 28th January 2010) bringing to our attention the fact that this retrospective planning application has been lodged.

We note particularly the guidance:-

- i) at your sixth paragraph, that where we have made observations upon previous applications for this address where necessary we should reiterate our position (rather than cross-refer) and we will.
- ii) at your eighth paragraph, that our observations should be as full and as clear as possible and we will ensure that they are.

We own and live at No.5, Kettlebury Way, Ongar which is situated immediately West of the Application Property. We suffer severe direct overlooking from the various unauthorised development works at 40, Landview Gardens and accordingly we object strenuously to this retrospective planning application.

The various unauthorised development works, constructed in early 2009, include:-

- i) a two-storey rear extension with ground floor external sliding/folding doors (within a 3.50 metres/11'6" wide opening).

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- ii) a stepped raised platform and patio to facilitate a step down of some 1200 mm/4'0" from the threshold of the external sliding/folding doors in i) above to existing gardens level.

These two elements are identified separately only because the original "Planning trail" for each one took a separate course, but in function/use the elements are inseparable.

It is our understanding that the Applicant/Householder (a professional developer/builder guided by Professional Consultants) purported to take his authority to construct the two-storey rear extension from The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 which came into force on 1st October 2008. However he **failed** to observe certain limitations imposed by the GDO and the two-storey extension recently attracted Enforcement Proceedings accordingly.

We understand further that the Applicant/Householder **failed** to seek both Planning Approval and Building Regulations Approval prior to his execution of the works comprising the stepped raised platform and patio.

The Applicant/Householder's first attempt to create the stepped raised platform and patio caused severe direct overlooking into our home. We wrote to Epping Forest District Council on 24th April 2009 thus:-

As you know we are deeply concerned about the entire raised platform installed at the rear of the dwelling spanning the full width of the plot and projecting some 4.00 metres into the rear garden from the rear face of the newly extended dwelling. The platform affords users direct views into the windows of our home. At our rear boundary fence (some 1800 mm tall) the unauthorised platform is just about 900 mm below the top of the fence and the balustrade to the platform is almost level with the top of the fence. Planting on the boundary would not provide an acceptable barrier and a fence needing to be some 3.00 metres tall, would not be acceptable either.

and Enforcement Proceedings relating to the existing stepped raised platform and patio were set in train promptly.

In response to the Enforcement Proceedings on the existing stepped raised platform and patio the Applicant/Householder submitted the following Retrospective Planning Applications:-

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- a) EPF/0853/09.
- b) EPF/1347/09.
- c) EPF/2016/09.

In each case the Householder **failed** (despite clear instructions on the application forms) to provide any measurements, spot levels, etc. We alerted the Planning Department to these wants of detail in correspondence thus:-

- i) For a) above, our letter dated 8th June 2009.
- ii) For b) above, our letters (2 No.) dated 19th August 2009.
- iii) For c) above, our letter dated 17th November 2009.

In each case the Planning Department **failed** to seek from the Householder the necessary details.

The status of the foregoing Retrospective Planning Applications is thus:-

- a) EPF/0853/09

This was refused by the Committee by a unanimous vote.

- b) EPF/1347/09

This was withdrawn by the Applicant prior to the planning committee meeting.

- c) EPF/2016/09

This is still being processed by Planning Officers.

Given the foregoing it is clear that the Applicant/Householder believed that he did not have GDO rights for the existing stepped raised platform and that planning permission was required. By way of their agenda recommendations for a) and b) above it is apparent that the Planning Officers were similarly minded.

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In a different strategy by the Applicant/Householder the current application ref.EPF/2365/09 is for a Certificate of Lawful Development for the existing stepped raised platform and patio only and is based upon the premise that the structure substantially (but not entirely) meets the requirements of the GDO. It remains the case that there is severe direct overlooking into our home from the existing stepped raised platform and patio. The Planning Officers seem to regard this severe direct overlooking as an "unintended consequence" of alleged loose drafting of the General Development Order. We challenge that conclusion.

The Director of Planning provided unconvincing "preliminary findings" within his letter of 20th November 2009 that:-

- i) by measuring at a remote datum point the existing stepped raised platform could be viewed for the most part but not entirely as a GDO structure.
- ii) "neither the extension or the decking/patio are reliant on each other --- it (the stepped raised platform) is clearly capable of being separated from the extension".

We have challenged both of these finding within our letter of 3rd December 2009 thus:-

- a) in respect of i) above – there is existing ground level (garden) immediately adjacent to the stepped raised platform and this is the level to be addressed. Officers established the height as 500 mm, so that a planning application was necessary.
- b) in response to ii) above – the two-storey extension, with its sliding/folding ground floor doors (within a 3.50 metres/11'6" wide opening), cannot function without the stepped raised platform to provide access/egress from the two-storey extension to the rear garden. Hence planning approval is necessary for the two-storey extension with the stepped raised platform as one entity.

The Director of Planning has **failed** to respond to our letter of 3rd December 2009.

We wrote to the Planning Department on 10th December 2009 "We have noticed that the North-West corner of the purported GDO two-storey extension built in early 2009 is 1.87 metres from the Western boundary of No.40, Landview Gardens". Taking account of the projection of the eaves construction too, for the purposes of the General Development Order this measurement will be not more than 1.57 metres. The GDO requires this measurement to be not less than 2 metres – so there is a 21.5% error here. Accordingly it has been established that the two-storey extension has neither GDO rights nor a planning approval. Seemingly the various Officers visiting site, some measuring, had **failed** to detect this critical deviation by the Householder from the GDO.

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Apparently the Officers had **failed** to detect too until after 10th December 2009, the fact that the two-storey extension projects 3.04 metres rather than the 3.00 metres maximum allowed by the GDO. They remain silent as to the width of the extension.

Hence the two-storey rear extension was not a GDO structure and has now become the subject of retrospective planning application ref.EPF/2490/09 which is currently being processed by the Planning Officers.

The Epping Forest District Local Plan lays great emphasis on the requirement that development does not result in an excessive loss of amenity of neighbouring properties. A key factor to be taken into account by “developers” is the avoidance of excessive overlooking.

As noted earlier in this letter the subject Application, ref.EPF/2365/09, is for a Certificate of Lawful Development for the admission of the existing stepped raised platform and patio only as a GDO structure – it does not include the two-storey rear extension, nor the GDO shed.

The Application appears to adopt the “remote datum” concept promoted as a “preliminary finding” by the Director of Planning and Economic Development, although there is no definitive explanation. The Applicant’s interpretation of the concept seems to be that once the “remote datum” level is established the raised platform and patio can be constructed in its entirety on or within a horizontal plane 300 mm maximum above that datum. That might be so for a flat site but for a sloping site the 300 mm height limitation imposed by the GDO can only be accommodated by introducing a tiered or terraced arrangement with 300 mm maximum height steps – so that at no point in the entire structure does it exceed 300 mm in height above the ground over which the structure is built.

Subject only to the GDO 50% coverage limitation, acceptance of the principle of the Applicant’s apparent interpretation described above could result in the Householder being free to construct great areas of raised level platform in the length of the garden. Because of the natural fall of the ground Northwards, the platform would become progressively higher above ground as it reached Northwards with consequent intolerable overlooking into all of the homes backing-on to 40, Landview Gardens. Such a prospect flies directly in the face of the requirements of the Epping Forest District Plan. Tiering or terracing would address the slope in the site and avoid the unacceptable outcome described above.

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However, for other reasons we can demonstrate that the Applicant's "remote datum" is not the appropriate reference point in any event. As noted earlier:-

- i) current application ref.EPF/2490/09 seeks retrospective planning permission for the two-storey rear extension only
- ii) the subject Application ref.EPF/2355/09 seeks a Certificate of Lawful Development for the admission of the existing stepped raised platform and patio only as a GDO structure

and, of course, each of these structures sits upon its own respective "plot" albeit side by side. Further explanation follows.

Please find herewith photographs annotated thus:-

a) Photograph "A"

"Rear elevation of 40, Landview Gardens before the construction of the two-storey extension in early 2009."

b) Photograph "B"

"Rear elevation, pavings, rockery/gardens and lawn before the construction of the two-storey extension and stepped raised platform in early 2009."

c) Photograph "C"

"Relationship between paving and threshold of door with sidelights before the construction of the two-storey extension in early 2009."

d) Photograph "D"

"Raised platform constructed upon existing lawn in early 2009".

We observe the following from the photographs:-

- 1) by reference to the brick sizes in photograph "A" the butt has a "footprint" of 600 mm x 600 mm/2'0" x 2'0" and therefore, the footpath running across the full width of the elevation can be seen to be some 1200 mm/4'0" wide.

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- 2) in photograph "B" between the house and the camera there is shown:-
- i) the 1200 mm wide footpath mentioned at 1) above.
 - ii) centrally a set of steps ranging down from i) to iv). These steps rise some 0.75 metres/2'6" in the aggregate and have a similar going/projection.
 - iii) either side of the step a rockery/garden sloping down from i) to iv) following the line of the steps.
 - iv) the lawn.

Hence taken from i) and ii) above the overall projection of the foregoing from the face of the original rear wall of the house to the lawn is 1950 mm/6'5".

- 3) by reference to the brick sizes in photograph "C" the depth of step down from the level of the threshold to the surface of the paving is 375 mm/1'3". Hence taken together from 2) ii) and 3) the overall height from the level of the threshold to the surface of the lawn is 1125 mm/3'9". The paving and steps will have been built with falls to assist in shedding water away from the building, so these figures can safely be rounded up to 1200 mm/4'0".
- 4) photograph "D" shows the raised platform (first attempt) constructed directly upon the existing lawn – the deck is some 800 mm above the lawn. Currently the raised platform is partially reduced to a deck height of 500 mm above the existing lawn. Still the raised platform is constructed directly upon the existing lawn.

The combined mass of the original rearward external works projected 1950 mm/6'5" beyond the face of the original rear wall before giving way to lawn.

The two-storey extension which is the subject of the retrospective planning application ref.EPF/2490/09 projects 3040 mm/10'0" beyond the face of the original rear wall and the foundation "footprint" would exceed that. So the two-storey extension within its own site consumed all of the original rearward external works and encroached upon virgin lawn area too.

In turn this resulted in the site of the current stepped raised platform and patio being positioned entirely in virgin lawn area, entirely disassociated from the original rearward external works from which, it appears, the Applicant has taken his inappropriate "remote datum".

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The difference in height between the virgin lawn area and the threshold of the sliding/folding doors in the two-storey extension is 1.20 metres/4'0". the height of the stepped raised platform above the virgin lawn area varies between 500 mm/1'8" minimum and 1.20 metres/4'0" maximum – all exceeding the 300 mm/1'0" maximum prescribed in the GDO.

As described the height of the existing stepped raised platform and patio above the virgin lawn area upon which it is sited exceeds the 300 mm maximum prescribed by the GDO and hence the structure does not qualify as a GDO structure. Please refuse application ref.EPF/2365/09 accordingly.

The applicant has perpetrated the following significant errors in his retrospective Planning Application for a Certificate of Lawful Development for existing raise decking and patio:-

A) Errors in the Application Form

a) Section 4. Pre-application Advice

- i) the Applicant has **failed** to note the date(s) upon which the advice was given.
- ii) the information required by the form includes "Details of pre-application advice received?" The Applicant has **failed** to provide the information required but has responded "ON-GOING" instead.

Of course "ON-GOING" advice would be "post-application" and it rather begs the question as to what that "ON-GOING" advice might constitute.

b) Section 8. Description of Existing Use, Building Works or Activity.

The Applicant has responded "EXISTING RAISED DECKING AND PATIO BUILT MAY '09". This is incorrect. The answer should have been "EXISTING RAISED DECKING AND PATIO BUILT IN EARLY 2009, PRE 24TH APRIL, WITH VARIOUS ALTERATIONS EFFECTED THEREAFTER UP TO AND INCLUDING OCTOBER 2009".

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A) Errors in the Application Form (contd)

c) Section 9. Grounds For Application for
A Lawful Development Certificate

The form states "If applicable, please give the reference number of any existing planning permission ---- affecting the application site. Include ---- the number of any condition being breached."

The Applicant cites planning permission ref.EPF/1070/08 dated 20/08/2008 and **fails** to identify a condition being breached.

The planning permission cited by the Applicant is inapplicable because:-

- i) it is wrongly noted as being dated 20/8/2008 whereas it is actually dated 21/8/2008.
- ii) its planning application documentation failed to reveal any rearward external works – particularly the provision for accommodating a step down of some 1200 mm/4'0" from the ground floor french doors of the extension to existing garden level. Without such provision the extension as drawn could not function. The Planning Department **failed** to seek from the Householder details for the rearward external works but, none-the-less, approval was given.
- iii) the footprint of the un-built two-storey extension approved in scheme reference EPF/1070/08 measured 5.80 metres/19'0" width and 3.50 metres/11'6" projection and that scheme had its own unique door and window configuration.

The "footprint" of the built two-storey extension for which current retrospective application reference EPF/2490/2009 seeks approval measures 7.00 metres/23'0" width and 3.04 metres/10'0" projection and this scheme too has its own unique door and window configuration.

Contd

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Epping Forest District Council,
Directorate of Planning & Economic Development.

12th February 2010

A) Errors in the Application Form (contd)

c) Section 9. Grounds For Application for
A Lawful Development Certificate (contd)

iii) Contd.

The stepped raised platform which is the subject of current retrospective application reference EPF/2365/09, with its severe direct overlooking into our home, was purpose built to suit the “footprint” and function of scheme ref.EPF/2490/09 and could not be migrated into scheme reference EPF.1070/08 because the “footprint” and function differs in the latter.

The form specifies “Please state why a Lawful Development Certificate should be granted”. The Applicant has responded “AGREED WITH JOHN DE WILTON PRESTON THAT IT IS LAWFUL BUT REQUIRE CERTIFICATE TO SATISFY NEIGHBOURS”

A clear understandable statement of the substance of the “agreement” is required.

d) Section 10. Information in Support of
A Lawful Development Certificate

The form enquires “When was ---- the building works substantially completed” and the Applicant responded “02/10/2009”.

Guidance from the Planning Portal runs “To be considered for a Certificate of Lawfulness applicants must show that --- the ‘building works’ have been substantially complete for more than four years, prior to your application”. Information Leaflet No.6 from the D.O.E. Planning Service offers identical guidance. The building works comprising the stepped raised platform and patio have not been complete for more than four years and hence do not qualify to be considered for A Certificate of Lawfulness. Please reject the application accordingly.

Contd

Ms.K.Smith,
Epping Forest District Council,
Directorate of Planning & Economic Development.

12th February 2010

A) Errors in the Application Form (contd)

e) Section 12. Declaration

The Applicant has **failed** to date the declaration.

f) Section 15. Site Visit

The form enquires "Can the site be seen from a public road, public footpath, bridleway or other public land? The applicant has answered "YES" when it should be "NO".

B) Errors and wants of information in the Application drawings/photograph

a) Drawing No.656/10C

(This drawing provides both the "location plan" and the "block plan")

In both plans our house (No.5, Kettlebury Way) is immediately to the North of No.7, Kettlebury Way. Each plan indicates our rear garden as being 13.50 metres deep from the rear wall of the main house to the rear boundary fence. This is wrong – in fact the measurement is just 9.00 metres.

b) Drawings Nos. 656 9G and 656 10C

i) Two storey rear extension and GDO shed

Both the two-storey extension and the GDO shed are illustrated on the drawings. Neither structure is being considered in the subject Application for a Certificate of Lawfulness. The Application relates to the stepped raised platform and patio only.

Contd

Ms.K.Smith,
Epping Forest District Council,
Directorate of Planning & Economic Development.

12th February 2010

B) Errors and wants of information in the Application drawings/photograph (contd)

b) Drawings Nos. 656 9G and 656 10C (contd)

ii) Remote datum and various notes

The drawings and the photograph contain various notes and dimensions which appear to relate to the Applicant's contention that a "remote datum" should prevail and its consequences.

However there is no statement on the drawings, on the photograph or in the Application Form bringing all of the information provided to a reasoned conclusion. Hence the Application lacks the necessary clarity to justify a Certificate of Lawful Development. **Please seek a fully reasoned statement.**

iii) Levels and dimensions to reveal the precise extent of direct overlooking into our home from the stepped raised platform and patio.

The drawings fail to reveal:-

- i) natural ground spot levels adjacent the stepped raised platform.
- ii) spot levels for the three main areas of stepped raised platform – two in timber decking and one in stone paving.
- iii) spot levels on each of the various steps.
- iv) overall constructional depth of the lowest area of decking. .
- v) spot levels for the top of the capping rail of the existing fence on the Western boundary.

and these various measurements/levels are critical in establishing the actual extent of direct overlooking into our home from the stepped raised platform and patio.

Contd

Ms.K.Smith,
Epping Forest District Council,
Directorate of Planning & Economic Development.

12th February 2010

- B) Errors and wants of information in the Application drawings/photograph (contd)
- b) Drawings Nos. 656 9G and 656 10C (contd)

Neither the Planning Officers nor the Planning Committee can evaluate the Application without this critical information.

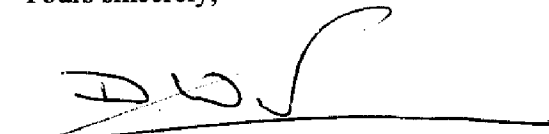
Indeed the EFDC "Validation Checklist" for use in a "Householder Application for planning permission for an extension, vehicular access or other works to a single dwelling" identifies a NATIONAL REQUIREMENT for the Applicant to provide a variety of information including "existing and proposed site sections and finished floor and site levels".

The word "REQUIREMENT" conveys mandatory status so that an application is incomplete without such information. This surely warrants the return of the subject Application to the Applicant for want of further and better particulars?

(End of Section "B" entitled "Errors and wants of information in the Application drawings/ photograph")

Taking account of all of the foregoing we request that you refuse the Applicant's request for a Certificate of Lawfulness.

Yours sincerely,



Mr.D and Mrs.P.Williamson

Photograph "A"

Rear elevation of 40, Landview Gardens
before the construction of the two-storey
extension in early 2009.



LOVE OF 40 LANDVIEW GARDENS / 2016/2009



PHOTOGRAPH OF ORIGINAL STEPPED PLATFORM
WHICH HOUSE WAS FIRST BUILT

EPPING FOREST DISTRICT COUNCIL
21 OCT 2009
RECEIVED AND SCANNED

Photograph "B"

Rear elevation, pavings, rockery/gardens and lawn before the construction of the two-storey extension and stepped raised platform in early 2009.

EPPING FOREST DISTRICT COUNCIL
PLANNING SERVICES
PUBLIC VIEWING COPY
PLEASE RETURN TO RECEPTION

Photograph "C"

Relationship between paving and threshold of door with sidelights before the construction of the two-storey extension in early 2009.





Photograph "D"

"Raised platform constructed upon existing lawn in early 2009".

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Report Item No: 5

APPLICATION No:	EPF/2366/09
SITE ADDRESS:	45 Rayfield Epping Essex CM16 5AD
PARISH:	Epping
WARD:	Epping Lindsey and Thornwood Common
APPLICANT:	Ascham Homes
DESCRIPTION OF PROPOSAL:	Single storey side and rear extension and loft conversion with rear dormer window. (Revised application)
RECOMMENDED DECISION:	Grant Permission (With Conditions)

CONDITIONS

- 1 The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this notice.
- 2 Materials to be used for the external finishes of the proposed extension, shall match those of the existing building.
- 3 The development, including site clearance, must not commence until a tree protection plan, to include all the relevant details of tree protection has been submitted to the Local Planning Authority and approved in writing.

The statement must include a plan showing the area to be protected and fencing in accordance with the relevant British Standard (Trees in Relation to Construction-Recommendations; BS.5837:2005). It must also specify any other means needed to ensure that all of the trees to be retained will not be harmed during the development, including by damage to their root system, directly or indirectly.

The statement must explain how the protection will be implemented, including responsibility for site supervision, control and liaison with the LPA.

The trees must be protected in accordance with the agreed statement throughout the period of development, unless the Local Planning Authority has given its prior written consent to any variation.

This application is before this Committee since the recommendation differs from the views of the local council (Pursuant to Section P4, Schedule A (g) of the Council's Delegated Functions).

Description of Proposal:

The applicant seeks planning permission for the construction of a single storey rear and side extension and a loft conversion that is to comprise of a rear dormer window.

The single storey extension is to wrap around the south western rear corner of the existing house. It will project 3 metres from the original rear façade and have an overall width of 5.1 metres which includes the width of the side extension. The extension will comprise of a hipped roof form and will have a wall height of 2.5 metres. Materials are to match those of the existing house.

The single storey extension will be setback a minimum of 1.4 metres from the western side boundary 2.2 metres from the eastern side boundary and approximately 17 metres from the rear southern boundary.

The proposed rear dormer window is to project 2.6 metres from the roof slope, have a height of 2.1 metres and a width of 4.1 metres. The dormer window will provide additional room in the loft for 2 bedrooms.

Description of Site:

The subject site is located on the southern side of Rayfield within the town of Epping. The site itself is mainly regular in shape although it does widen in width towards the rear.

Located towards the front of the site is a double-storey semi-detached dwelling constructed from facing brickwork and a concrete tile roof. Off street parking is located on the hard surface towards the front of the house. A private open space area is located to the rear of the site. Located on the side and rear boundaries is a medium size timber paling fence and a medium size hedge. A large willow and a medium size conifer tree are located to the rear of the site.

The subject site is located within a well established built up area mainly comprising of semi-detached and terrace style houses. Building form, scale and sizes are very similar within the street scene. Front setback from the highway is consistent and spaces/gaps between building blocks form an important component to the character of the surrounding area.

Relevant History:

EPF/2018/09 Single storey side and rear extension and loft conversion with rear dormer window. (withdrawn)

Policies Applied:

CP2 Protecting the Quality of the Rural and Built Environment
DBE9 Loss of amenity
DBE10 Design of residential extensions

Summary of Representations

EPPING TOWN COUNCIL – Objects for the following reason:

Committee objects to this application which is inappropriate over-development of family accommodation. It is likely, by nature of the development, to give rise to significant interference with neighbouring properties, overlooking from the dormers proposed and a very significant intensification of the use of the site. Committee were concerned that the accommodation comprises five bedrooms but has insufficient room to seat or dine as a family. This

accommodation arrangement suggests strongly that a house in 'multiple occupation' is being planned at this location which is inappropriate in a family residential area.

4 properties were notified and responses were received from:

- 43 Rayfield, Epping
- 47 Rayfield, Epping

Also a petition comprising of 17 signatures and a letter from the Epping Society objected to the application.

The main concerns within these letters are as follows:

- The proposed development is out of keeping with the character of the surrounding area and the character and appearance of the post war houses.
- The proposal is an overdevelopment of the subject site.
- The proposed dormer window would result in a loss of privacy due to overlooking.
- Mature vegetation within and surrounding the site would be affected by the extension.
- The proposed development would be overbearing and result in a loss of light through overshadowing.
- The building work would cause noise and disturbance during construction.
- The rear extension is completely incongruous with the rear aspect of all neighbouring properties.
- The development would be visually intrusive and a dominant feature when viewed from adjoining houses.
- A five bedroom house in this location is inappropriate.

Issues and Considerations:

Firstly it should be noted that the only reason that planning permission is required in this case is the hipped roof form of the side/rear extension gives it a height over 3 metres within 2 metres of a side boundary. It should also be noted that the loft conversion and rear dormer window does not require planning permission as it meets the permitted development requirements within Class B of Part 1, Schedule 2, of the General Permitted Development Order.

Consequently, if the extension was to comprise of a flat roof then planning permission would not be required for any part of the proposed development as all the works could be done under permitted development.

The main issues raised by this development are its design and impact to the amenities of adjoining occupiers. Although the proposed dormer window can be constructed under permitted development, since the applicant has applied for planning permission to erect it, it will also be assessed.

In terms of reflecting the street scene, only the side component of the extension would be visible from public areas. It would be set back a significant distance from the front façade, appear low in scale and would not be bulky in appearance. It would appear subservient and an integral part of the original building and therefore would not cause harm to the character and appearance of the locality.

The rear extension is appropriate in terms of its design and appearance.

The design and appearance of the dormer would be appropriate. It is well proportioned, set below the ridgeline and off the eaves and is subservient to the original roof.

Neighbouring amenities:

Given the orientation of the site and the existing buildings, the proposed side/rear extension would not result in a harmful impact in terms of a loss of light to adjoining private open space areas and habitable room windows of adjoining properties.

In terms of overlooking it is noted that there are two flank windows on the western elevation of the extension. One of these windows is to service a bathroom and the other is a secondary window serving a bedroom. It could be conditioned that these windows be obscured glazed to prevent any direct overlooking, however there is existing screening on the boundary in the form of a hedge and fence that will prevent any overlooking.

The dormer would not result in a materially greater degree of overlooking of neighbouring properties than that which is available from existing first floor windows in the rear elevation. The proposed rear dormer window is therefore acceptable in terms of its impact on amenity.

Other issues:

The application was referred to Council's trees and landscape officer who recommended planning permission be granted subject to a condition that tree protection measures are put in place during any constructions works.

The Town Council's concerns about internal arrangements and that the proposal is indicative of an intention to use the house as a House in Multiple Occupation are recognised. However, this application is submitted on the basis that it is a householder application for permission to extend a dwelling and not on the basis of a proposed material change of use from a dwellinghouse to a House in Multiple Occupation. The District Council have no option but to deal with the application as submitted. It is nevertheless appropriate to include an informative on any consent given to make it clear that the granting of planning permission should not be construed as a grant of consent to use the dwelling as a House in Multiple Occupation and that such use would require a separate planning permission.

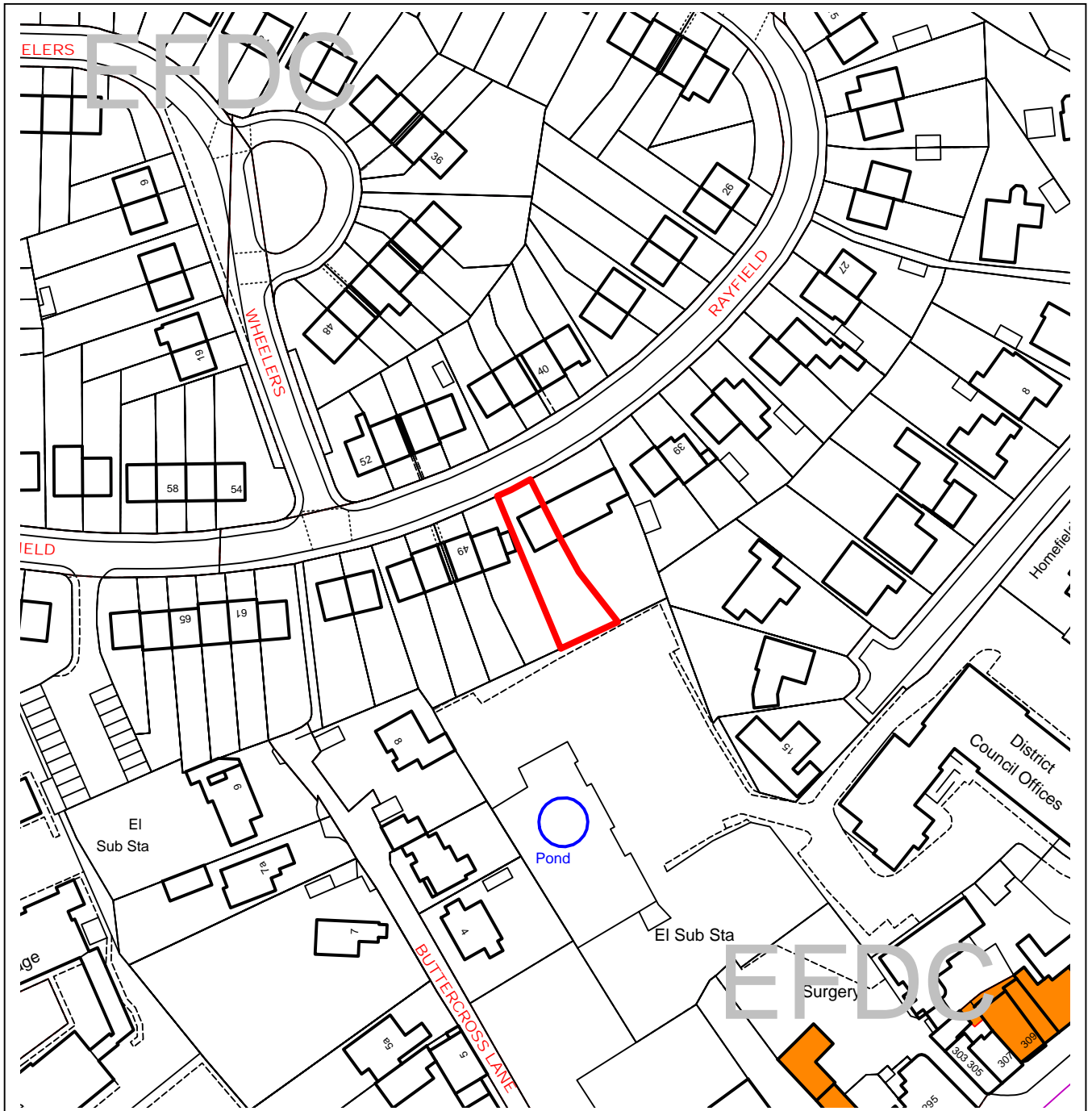
Conclusion:

In conclusion it is considered that the proposed development is acceptable in terms of its design and appearance in that it will reflect the character of the surrounding area and the existing building and that it would not cause harm to the amenities of adjoining property occupiers. It is therefore recommended that the application be approved subject to conditions.



Epping Forest District Council

Area Planning Sub-Committee East

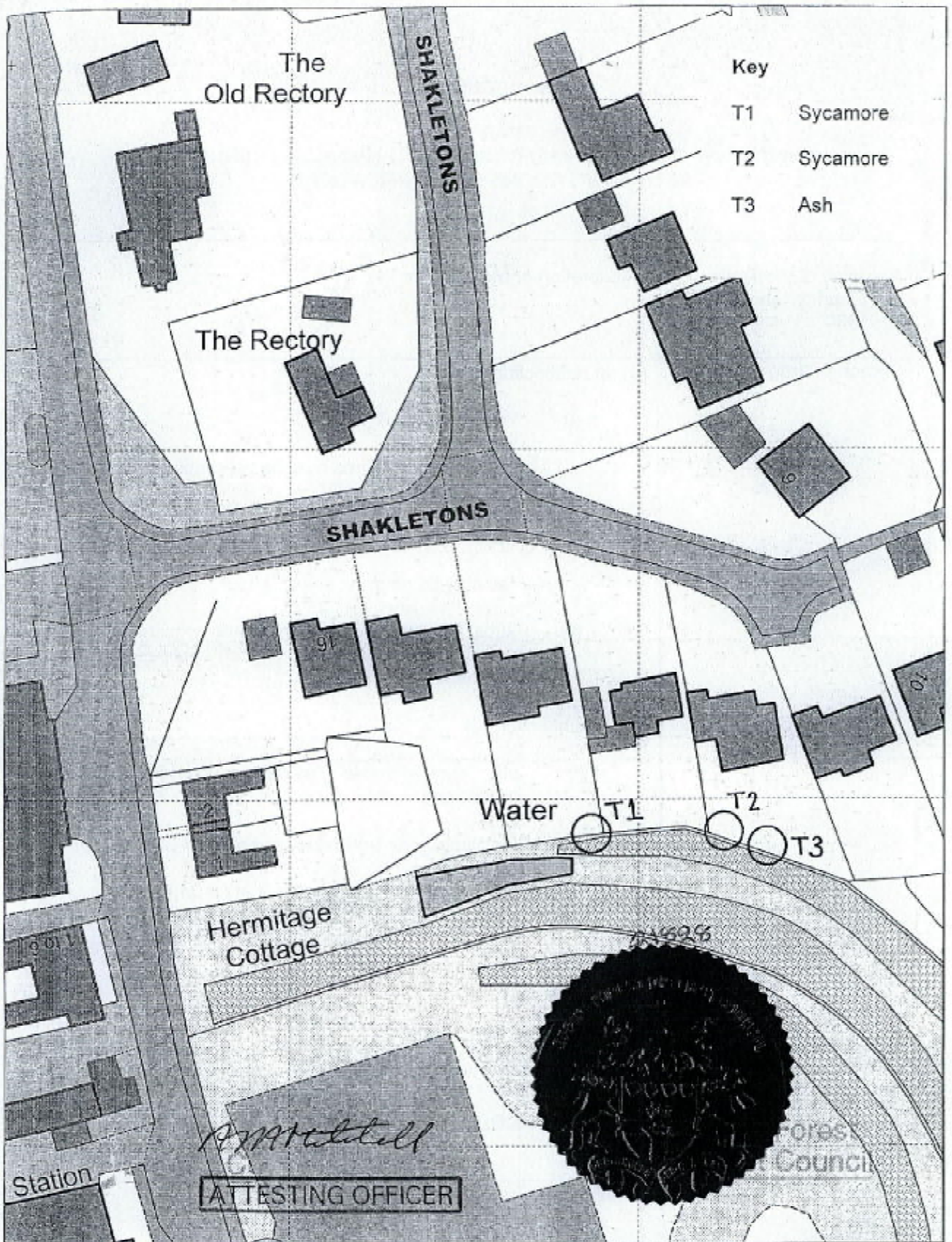


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Agenda Item Number:	5
Application Number:	EPF/2366/09
Site Name:	45 Rayfield, Epping, CM16 5AD
Scale of Plot:	1/1250

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- Key**
- T1 Sycamore
 - T2 Sycamore
 - T3 Ash

A. M. Atwell
ATTESTING OFFICER



Epping Forest District Council
 Planning Services
 Civic Offices
 High Street
 Epping CM16 4BZ

Land to the rear of 12, 13 & 14 Shakletons		Centre X: 555276.505
Ongar		Centre Y: 203261.557
Essex		Width : 135.000
TPO/EPF/47/09		Angle : .000
Scale : 1:750	Date : 8 Sep 2009	Time : 09:06:56 AM
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