

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.

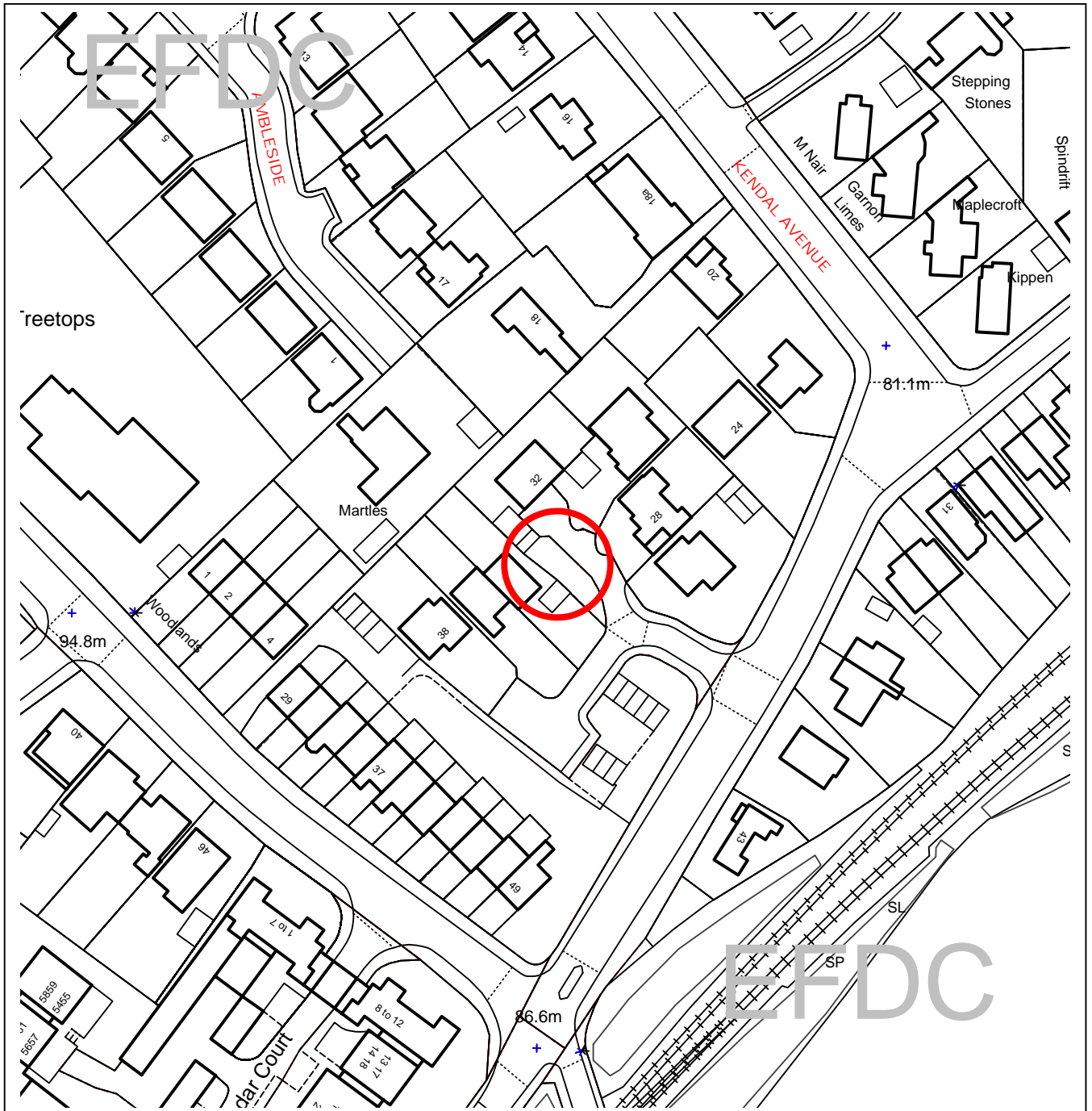
In the event of Members agreeing to allow the felling of the tree it is recommended that any consent be conditional upon suitable replacement being agreed prior to felling and on prior notice of the felling being given, to ensure that replanting can be secured.

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



The material contained in this plot has been reproduced from an Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery. (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

EFDC licence No.100018534

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.

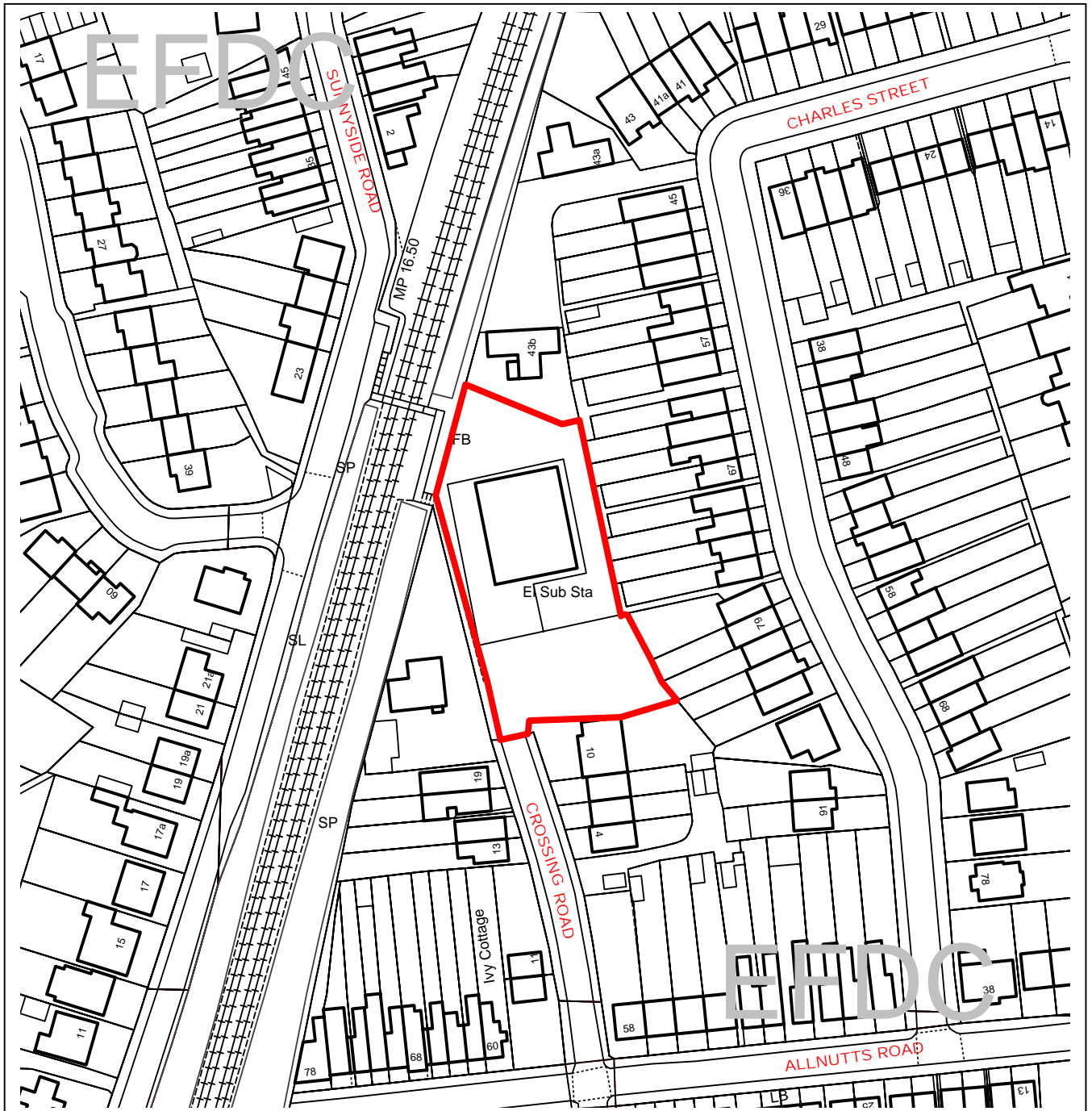
Conclusion:

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



The material contained in this plot has been reproduced from an Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery. (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

EFDC licence No.100018534

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



The material contained in this plot has been reproduced from an Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery. (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

EFDC licence No.100018534

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.