
APPLICATION No: TRE/EPF/794/05

Report Item No: 1

SITE ADDRESS:

TORRELLS HALL COTTAGES, SHELOW ROAD, WILLINGALE

PARISH: Willingale

APPLICANT: Mr B Swayne - Smiths Gore

DESCRIPTION OF PROPOSAL:

TPO 1/92; Western Section of Poplar Avenue: Fell and replace.
(25 trees)

RECOMENDED DECISION: Grant Permission

1. 20 replacement small leaved Limes (*Tilia Cordata*) minimum 16-18 girth, shall be planted in positions to be agreed by the Local Planning Authority within one month of the felling hereby agreed, unless varied with the written agreement of the Local Planning Authority. If within a period of five years from the date of planting any replacement tree is removed, uprooted, destroyed, dies or becomes seriously damaged and defective another tree of the same species and size of that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

Description of Proposal:

Felling of southern section of avenue (25 trees). Replacement with 14 trees of different species (small leaved lime).

Description of Site:

Torrells Chase is the drive to Torrells Hall, approximately 1 mile east of Willingale Village north of the Shellow Road. Torrells Hall is a Grade II* Listed Building and the avenue serves as an important "signifier" of its presence, set back from the road. The first section of Torrells Chase is lined with what were originally workers cottages, in pairs, now largely sold off and converted to private dwellings.

The trees stand in the 90m length outside the several cottages; the northern section is unaffected by the application.

Relevant History:

TPO/EPF/1/92 was made in January 1992 to protect the avenue.

TPO/EPF/41/95 - Application to reduce crowns of 23 poplars (i.e. the application trees, minus 2 trees to the north) - granted February 1996 subject to conditions.

29 July 2004 - Application to fell 5 poplars on land adjacent to The Lodge, Torrells Hall, Willingale rejected as invalid: lack of supporting information.

24 January 2005 - Application received to fell 4 trees adjacent to 2 Torrells Hall Cottages (application by representatives of owners of property); also considered invalid, lack of evidence.

Policies Applied:

LL9: the Council will not give consent to fell tree...protected by Tree Preservation Order unless it is satisfied that this is necessary and justified...any such consent will be conditional on appropriate replacement of tree.

Issues and Considerations:

Introduction

The basis of consideration of the application has been a number of site meetings with agents for the current owners (the land having passed from the Co-op Farm to a private trust). Two applications dealing with particular properties and particular trees have been taken into account insofar as the information (through not complete) is relevant to the current application.

The applicant has submitted information provided by an arboriculturist and an engineer. The Council has tested the engineering information with a specialist consultant. Apart from representations by neighbours, summarised in the agenda a report by an independent consultant acting for one of the neighbours has also been submitted and has been considered in a drafting of the report. This is also summarized below.

The issues concern not only damage to the buildings, whether it has happened, whether it is the fault of the trees and whether it can be cured by other means etc. but also what is the best landscape solution over the medium and long term in this location.

Issues

It is suggested that the following are the key issues to be considered:

1. What is the value of the trees in the local landscape?
2. What is the potential life expectancy of the avenue?
3. What degree of future risk to the adjacent buildings does the avenue pose?
4. Are there counter indications to felling (e.g. heave)?
5. Are there alternative solutions other than felling?
6. What weight should be given to the replanting proposals and are the details adequate?
7. Should the avenue be certified as having special or outstanding amenity value?

Discussion

1. It is clear that the avenue is a local landmark. It stands out in views from Shellow Road, and is seen from wide distances. It serves as an indicator of the presence of, and mark the approach to Torrells Hall, which is a Grade II* Listed Building.

The species, hybrid black poplar, makes a fast growing, tall, and attractive tree. It was traditionally planted for use in the match industry. It is not native, but it does have some environmental value as the home of the nationally scarce Poplar Hawk Moth. The ultimate form of Hybrid black poplar is very tall (20m plus, and widely spreading) although these trees have been contained to some extent by pruning.

2. On the other hand the life expectancy of the avenue is far less than had a different and more long-lived species been chosen originally. Poplar trees grow very quickly, but their wood is not strong, and so they are liable to shed branches. They are very poor at protecting themselves from decay. Decay gains entry through natural breakages, or through pruning wounds and tends to spread rapidly through the structure of the tree. Insipient decay can be seen in several of the standing trees, in the stems and in the crowns.

We have no evidence for the date of planting of the trees or for the age of the avenue. However it is likely to be less than 60 years old. Even so the life expectancy of the avenue is therefore limited. Even with regular pruning a number of the trees would be expected to fail over the next 20 years, leaving the avenue more and more ragged.

3. In respect of the future risk of buildings we have evidence that a number of the cottages have been affected in the past; it would appear that although repairs have been done to some of them that these repairs are not such that there can be confidence that they will not be affected in the future should growth of the trees not be curtailed. It is also asserted that there is likely to be a risk to buildings not so far affected.

In general terms it is accepted that Poplars have a high water

demand and are well known as causing subsidence at much greater distances than here. The soil is stated to be a firm clay of moderate plasticity, hence subsidence is possible, although not at such distances as for London Clay. The evidence base presented in support of the application is limited, however the general position is reasonably clear. It is as follows:

1 The Chase: No evidence of damage to this property or future risk.

2 The Chase: Subsidence occurring to this property at present. Details supplied by the applicant, and also by the owner of the property in a separate submission confirms that the property has serious problems which are causing the owner great difficulties. It is confirmed by the Council's engineer that there is sufficient evidence to conclude that subsidence as a result of the nearest poplars has occurred and that felling the trees would be the only reasonable solution, other than underpinning.

3 The Chase: This property was until recently in the ownership of the Co-operative Group Pension Fund but has recently been sold. The Council's engineer accepts that there is sufficient evidence to conclude that the property was damaged by subsidence. It has been partly underpinned although details of the underpinning have not been submitted. The future subsidence risk to this property therefore should be limited.

4 The Chase: This property has not been sold on; it has suffered damage as a result of subsidence according to the Council's engineer and other evidence supplied. It appears that the damage however was less severe than to No. 3; underpinning is reported not to have been carried out although significant internal repairs have been. There is therefore a risk of future damage.

The Lodge (ex-5/6 The Chase): This property has been sold and converted from two cottages to one house. There has been significant damage in the past alleged to have resulted from tree root activity but without conclusive evidence. It is understood that as a result of the past damage the property was underpinned, but that underpinning did not extend to the porch, or at any rate was insufficient. The application submitted on behalf of that property alleged root damage causing problems in the porch area. It is also understood there is a claim against the Co-operative Pension Fund in relation to this property. The advice of the Council's engineer in respect of this property was that there was insufficient evidence to conclude that the damage to the porch was definitely caused by the poplars. The nature and extent of the damage is not stated.

Chase Cottage (Chase Cottage together with The Lodge is situated on the east side of The Chase). There is no evidence of any past damage or future risk in relation to this property.

7/8 The Chase: These are the final two cottages on the west side of The Chase; there is no evidence of current damage or future risk in respect of trees adjacent to these properties.

4. In terms of counter indications the main possibility is heave. Where there is long standing drying of the soil the movement of the trees can allow heave to occur with consequent damage to buildings. Because it is likely that the buildings affected pre-date the trees the Council's engineer considers that this is a low risk although he cannot completely discount it. The agents have stated that in the unlikely event that heave should occur they would take responsibility for any arising costs. It should be noted however that this is not an offer which the Committee can secure by condition or reasonably by legal agreement. In broad terms however the likelihood and consequences of subsidence are likely to be much more serious than those of heave.

5. Poplars are probably the worst kind of tree to try to manage because of their high water demand, far-reaching root systems, and their fast growth rates. Therefore it is difficult to discount entirely the possibility of future damage on other properties even were a rigorous pruning regime to be instituted. Pruning was undertaken following the earlier consent (see history) but has not been continued. It seems clear that the future risk could at least be managed by regular and well considered pruning. In the supporting information it is claimed that the cost of this would be disproportionate. This is relevant, but only in so far as it is sensible to look at using resources sustainably. The more important point is that to be certain of controlling the risk of subsidence the trees would probably have to be pruned more heavily than they were previously, and at very regular intervals. This would significantly diminish the current amenity value of the trees and, because of their susceptibility to decay, would be likely to further shorten their life expectancy. The only other alternative to felling to eliminate the future risk would be additional underpinning to The Lodge, a complete underpinning to No. 2, and probably, in the reasonably likely event of damage continued, additional underpinning to No. 3 and complete underpinning to No. 4.

6. In respect of replacement planting the proposal is to replace the avenue with fewer trees, giving a better definition of the shape of each tree, and with a native species, the small leafed lime. In some correspondence smaller growing varieties of small leafed lime have been suggested however it will be preferable to use the species itself (*Tilia Cordata*). This is a long-lived tree, native to the area, which will grow well on the particular soils, and is likely to be of greater ecological benefit than the poplars. It is a species often used for formal avenues in parks and gardens so would be appropriate to the setting of a listed building. A fairly large size has been offered, but in the event of approval it is

recommended that a larger size be conditioned. It is also recommended that while 25 trees are not necessary at least 20 should be planted, 10 on each side of The Chase, rather than the 14 (6 to the west, 8 to the east so far offered). Should any of the planting fail then the Council has the power to insist on replacement, until the new avenue has successfully established. Small leafed lime also has a lower water demand and is expected to be able to grow to maturity without the risk of damage to the adjacent properties.

7. In respect of the value of the avenue it clearly has a special value as a local landmark, because of its visibility over a wide area, and because of its association with Torrells Hall. The Council therefore has the option of certifying the avenue as having special amenity value and this would have the effect of protecting the Council from claims for any costs arising from its decision. On the other hand it should be noted that such a certificate is liable to appeal and if the appeal on the certificate were lost its protective value would also be lost. Certification would only arise if the committee considered that the trees should be retained with appropriate management.

Conclusion

The key point is believed to be that the avenue needs to remain reasonably intact and be managed as a whole if it is to have value. Furthermore the value would be significantly diminished were it to be greatly restricted in size.

It would be open to the committee to dismiss the application in respect of all of the trees, other than those that have been demonstrated to affect No. 2. However it is considered that the cumulative weight of the evidence together with the short lifespan of the species clearly puts the balance of advantage with felling and replacement, providing that the numbers and the size of the proposed replacements are increased, as per the suggested condition.

It is further concluded as above, the existing avenue should be considered as having special value but that this does not override the benefits of replacement. Nevertheless a certificate should be issued.

SUMMARY OF REPRESENTATIONS:

8 TORRELLS HALL CORTTAGES - Object. Have had no reassurances from the Landowner's Agents regarding the risk of heave, despite promises. Value the current avenue highly and are concerned that any replacement avenue would not have the same visual impact and integrity. Notwithstanding, were the proposal to be agreed, would wish to see the entire avenue treated uniformly with replacement by strong standards of a

suitable variety. Would like residents to be consulted on species.

2 TORRELLS HALL COTTAGES - Have had 22 months of insurance claim arising from subsidence. Extensive work necessary internally but advised that underpinning will be required unless the trees are removed. Believe problems due to trees to the front (total 4). The problems are, all ground floors have dropped considerably; doors do not close; stud-wall has dropped; cracks in walls; considerable damage to decorations, tiles, wallpaper; concrete staircase has dropped; hall, stairs and landing walls so cracked that now stripped of wallpaper - tired of having to replace it; kitchen floor sunk so much that units now lean away from the walls; living room has nasty cracks, plaster beginning to be shed. New front crack discovered to front elevation, also issues of loss of light. Aware of problems to other properties near by, also caused by the trees.

From research believes trees were never intended to remain more than 15 years, believes intended for match production. Have no historical importance; now causing great distress to the houses and residence. Pollarding not a solution. Have only been pollarded once in the years she has been there (12). Problems have caused considerable distress, life effectively "on hold" for last 22 months. Unable to sell house or even redecorate it. Find grossly unfair that quality of life and finances are dependent on whether the trees are felled or not.

TORRELLS HALL - Affected by application. Application concerns the whole avenue, not just one tree. Have commissioned independent report from expert familiar with the site. (Copy of cv enclosed, but not summarised). Expert is critical of the submissions.

The trees form a long and very attractive avenue. Mature avenues have become rare and are appealing. The avenue is well known in the area, in part because of the public footpath running along it. Significant local landmark. North-south orientation produces interesting light catching qualities. Has been customarily highlighted by estate agents in sales particularly for houses in The Chase. Questions impartiality of supporting arboricultural evidence.

In addressing risks to buildings, recognised that there are parties with vested interest keen on felling, as a "one and for all" solution to perceived risks. However, benefit can be thought of as to insurance companies and to the detriment of others. Landowner may feel better off without the burden of listed trees, particularly financially, avoiding maintenance costs. Facts do not support the proposal to fell, according to expert report, supported by cogent reasons.

Supporting documentation for the application is limited; implies damage to all the houses, however, this is not the case. Verticality reports showing foundation movements are not evidence of actual damage. Recognises that underpinning

suggests a belief that damage has occurred, however, underpinning should have been a satisfactory solution in itself where carried out. Therefore no need to deal with trees. Recognised in supporting documentation to application that regular pruning of the trees should be an effective management. He objects to it on the need for regularity and the cost implications. Council may feel costs should not be a factor used to determine the right approach; feels that technical points in application may be wrong and these have been refuted by his own expert. Some of the replanting proposals previously made are inappropriate, e.g. crab apples.

There has been poor maintenance of the tree concerned. Two trees have been uprooted, the last in 2002, and not replaced. Impossible to resist feeling about applicant will not respect any replanting scheme. His expert believes applicants replanting proposal not thought through. However, replanting beside the point adds no justification for proposed felling.

Summary of report:

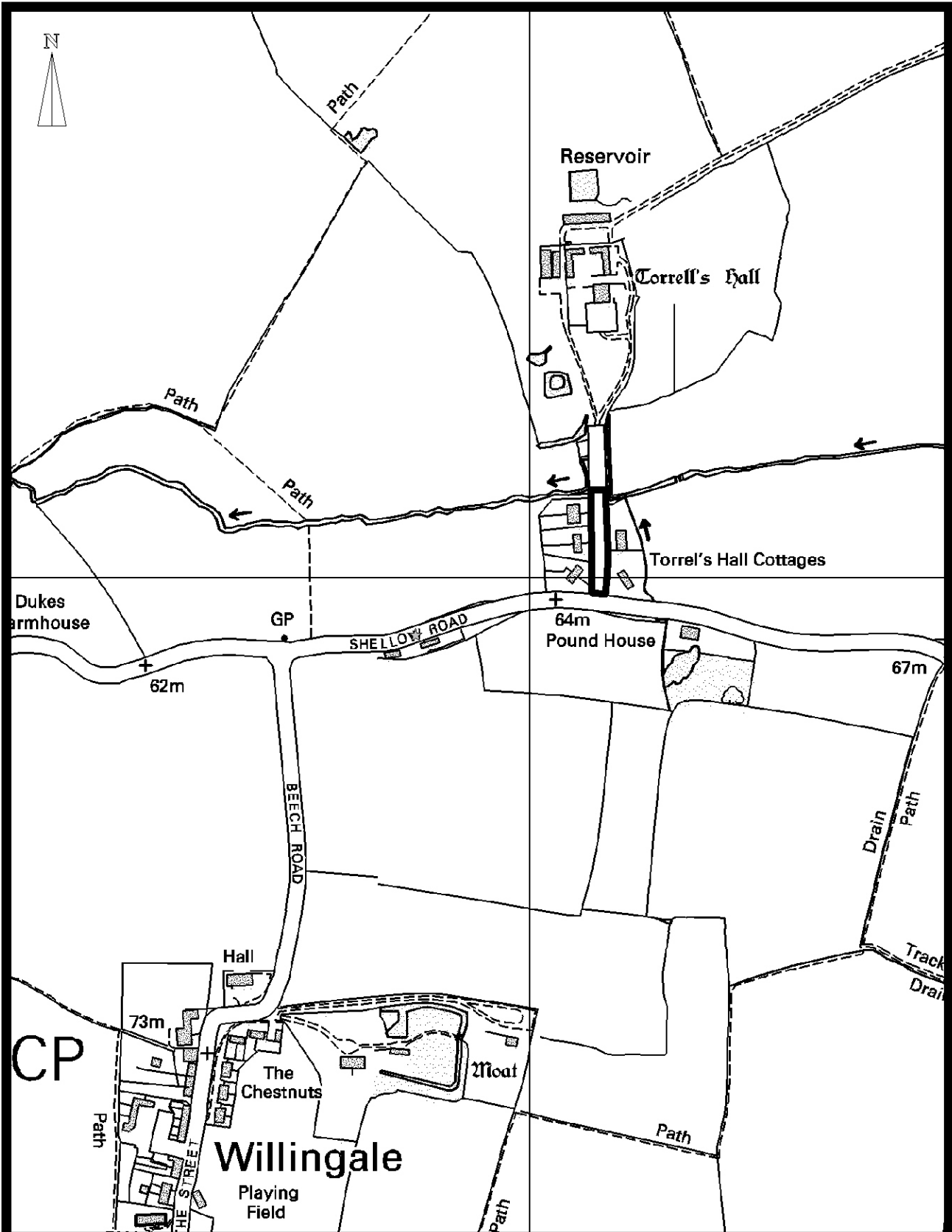
1. Trees clearly have a massive amenity value and this recognised in the application documents. Proposition in the application that their value is hard to judge makes no sense.
2. The avenue is one component of the overall setting of the Grade II stair listed Torrells Hall and Grade II separately listed wall garden to its south.
3. The proposal is a radical one, which requires a clear and well supported application. In this respect the application and its supporting papers demonstrate superficiality and contain troubling lack of clarity.
4. The application falls short of actually specifying that there is damage to any of the dwellings in The Chase.
5. Investigations have been carried out in relation only to some of the houses; do not show actual damage; verticality reports do not equate to actual damage.
6. In some case, at least, the issue of damage (whether actual or not) has apparently been addressed by underpinning, thus obviating the need for further action.
7. Application acknowledges that repeated pruning should be effective, but makes the point that it would be expensive - the cost is not the determinant.
8. The application states that pollarding of Poplars produces dangerous branches; this has not been the case in reality.
9. Replacement planting should be academic. Choice of replacement species is inappropriate. In any event the suggestions in the initial report and the addendum report are

different and inconsistent. Proposed number of new trees (14) is deficient and proposed size is too small.

10. Poor management or disinterest in the existing trees in the past raises questions about care of replacement trees and their subsequent management.

11. It would be a travesty if the avenue of trees along The Chase were to be lost.

12. Trees contain Poplar Hawk Moth, this being a moth species of Essex Red Data Book status, nationally categorised as scarce.



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Item No: 01
Scale: 1:5000



APPLICATION No: EPF/1480/04

Report Item No: 2

SITE ADDRESS:

PARISH: Ongar

ONGAR MOTORS & TRANSPORT CO, THE BOROUGH,
GREENSTED ROAD, ONGAR

APPLICANT: General Practice Investment Corporation

DESCRIPTION OF PROPOSAL:

Erection of medical and day care centre with associated parking facilities.

RECOMMENDED DECISION: Refuse

1. The proposal would result in an increased risk of flooding on this and adjacent sites in a Flood Zone 3 floodplain as defined in Government Guidance PPG25 and modelled by the Environment Agency to be within a 1 in 100 year flood event. The mitigating measures put forward by the applicant do not adequately or appropriately prevent such a flood measure occurring and therefore the proposal will be contrary to policies U2 and U3 of the adopted Local Plan and Government Guidance PPG25 (Development and Flood Risk).
2. The proposal includes development in close proximity to an ordinary watercourse. This will prejudice the environmental obligations of the Environment Agency and preclude the provision of an adequate buffer zone, contrary to policy U3 of the adopted Local Plan.

Description of Proposal:

`L'-shaped large, part two, part single storey building with hardstanding on three sides providing access road from southern boundary as currently exists and 60 space car park. Proposal to provide group practice doctors' surgeries and elderly person day care centre, plus other community health service related facilities (clinics, optician, dentist, pharmacy etc) totalling 2,140 square metres of floor space on a footprint of about 1,200 square metres.

The building will have a shallow curved roof profile at a maximum height of 9.5m and externally composed of a mix of contrasting brick and render, with a pitched roof centrally glazed area as the main entrance to the building.

Description of Site:

A 0.55 ha irregular shape site currently leased to Epping Forest District by Essex County Council for use as a lorry park, with access off The Borough. There is a belt of trees on the eastern boundary, which Cripsey Brook and a footpath runs through, north to south. On the western boundary are 5 residential properties; to the north is open land.

The site is in the Metropolitan Green Belt and adjoins a Conservation Area to the northeast.

Relevant History:

Long history of use of land for parking of lorries since 1950s. In 1978 planning permission was granted for a car and lorry park, which was renewed in 1984.

Policies Applied:

Structure Plan - C2 (Green Belt constraint), BE1 (re-use of urban sites), T12 (vehicle parking).

Local Plan - GB2 (Green Belt restraint), HC6 (affect on Conservation Area), CF2 (location of health care centres), CF9 (access available for all user groups), U2 (resist development in areas at risk from flooding), U3 (resist development resulting in increase risk of flooding), DBE1 (scale and appearance of building), DBE2 (detriment to neighbouring property), DBE4 (new buildings in the Green Belt respect surroundings), DBE9 (residential amenity of neighbouring properties), LL10 (retention of trees), LL11 (provision for landscaping), T12 (resist loss of lorry park), T14 (adequate on-site parking), T17 (traffic accessibility, congestion and highway safety).

Issues and Considerations:

The main issues in this case are:

1. whether development within the Green Belt in this case will be harmful to its openness;
2. acceptability of losing a lorry park;
3. relationship to the surrounding area;
4. impact upon the amenities of occupiers of adjacent residential properties;
5. highway issues;
6. trees and landscaping issues; and
7. development within a flood plain.

Background

The applicants state the doctors surgeries in Basons Lane and The Ongar Surgery in the High Street are sub-standard and do not meet the needs of a modern health service or the requirements of the Disability Discrimination Act 1995. The practices have been searching for a suitable alternative building or site in Ongar and consider this to be the only available site of this size and location. In addition, under a NHS initiative, Primary Care Trusts have been advised to bring their community services, which may include GP services, pharmacy, dentistry, optical services, minor surgery and social care services together under one roof in new-build projects with primary health care moving out of hospitals and into community care centres. A new health centre will provide these facilities as well as other community care services (child health, chiropody, health visitors, school nurses etc).

Essex County Council have also been looking for a suitable location for a replacement facility for Day Care for Older People, currently provided at the Ongar War Memorial Hospital, which again does not meet operational standards.

A twenty place day care centre, together with expanded surgery facilities and community care staff into a new purpose built building has resulted in the proposal of this size and floor area to serve its community. The existing doctors' surgeries in Ongar do not have the facility or site area to provide the facilities now required in primary care. The proposed new building would provide 10 consulting rooms, nurse clinics and treatment room, dispensing area and administration/waiting rooms on the ground floor. The rest of the ground floor (350m²) will be the day care centre dining/sitting room, treatment room and administration plus a conservatory. Community health service facilities will be located on the first floor (physio, chiropodist x 2, child health, nurse treatment room, minor injuries rooms, speech therapist office, training room/meeting room and other offices).

1. Metropolitan Green Belt

There is an assumption against inappropriate development in the Green Belt. Only a few developments are appropriate as defined in Government advice, Structure Plan and the Local Plan. This is not one of those few developments.

However, should very special circumstances outweigh the harm to the openness of the Green Belt then there can be a justification for building in the Green Belt.

In considering this, it should be noted that the site does not add positively to the openness of the Green Belt. It is predominantly made up of a large hardstanding and in the past has been occupied by large lorries for overnight stay and storage purposes. There is built development immediately

adjacent to it and that part of the site containing Cripsey Brook and footpath will retain its vegetation where necessary, although replacement tree planting is considered necessary.

The other main point to consider is the need for the facility. This has been outlined above and the main difficulty has been in finding a suitable, sustainable location for a catchment area that not only includes Chipping Ongar, but outlying villages and rural areas. In this part of the town it is close to the southern end of the town centre, a large residential area and close proximity to public transport (bus stops). There is difficulty in finding a similar size, suitable site which is also available in Ongar and not in the Green Belt.

In summary on this point, it is felt that the very special circumstances do outweigh the harm to one of the main functions of the Green Belt, i.e. its openness, and furthermore, the site is hemmed in by built development, such that losing this part of the Green Belt to a community facility building of benefit to its population, would not be so out of keeping with its surroundings. It therefore complies with Structure Plan policy C2 and Local Plan policy GB2. The Parish Council is, however, also concerned with the use of land north of the application site as a potential Nature Reserve. This development may jeopardise any future provision, but a judgement of priority need has to be made based on what is best for the community.

2. Loss of Lorry Park

Policy T12 of the Local Plan states that the Council will resist the loss of the existing lorry park until an adequate, suitably located alternative is available. This policy is somewhat dated, having been drawn up some 10 years ago and the County Council have declared the land surplus to highway requirements, and whilst daytime parking does take place, the number of lorries present are few overnight. The County Council have no plans to continue to lease this to Epping Forest for this purpose. Furthermore, this is not neighbourly development set as it is immediately adjacent residential properties.

The loss of the lorry park therefore is accepted in this case, given the greater community benefits derived from a health and day care centre than an under-used lorry park.

3. Scale, Design and Appearance

Whilst the footprint of the building would be large, its height has been stepped down and the roof broken to reduce its bulk and massing. Contrasting external materials would add interest to its overall design and its height would be a little higher than the average house ridge level adjacent the site (which are about 8-8.5m). The site will be opened up to the High Street, and in general the new building would have a positive, albeit a dramatic changeable impact upon the visual amenities of the

street and on the adjacent Conservation Area.

The proposal therefore complies with policy DBE1 and HC6 of the Local Plan.

4. Living Conditions of Adjacent Residential Occupants

The building is large compared with adjacent residential properties to the west, which include a pair of bungalows at 6 and 7 Oakland Mews alongside parking off the entrance road, and larger two storey timber-clad homes at No's. 18 and 19 Turners Close. The building, however, will primarily be located on the opposite side of the site towards Cripsey Brook and being in the northern part of the site, it would not extend as far as the bungalows.

The residents of No. 18 Turner Close, and to a lesser extent, No. 19, will be most affected by the development. This is where the proposal will be closest at a distance of about 10m from the main rear wall of their house. Dense undergrowth will also be removed from here to provide vehicular access to parking at the rear end of the site. However, that part of the proposal in direct view from these two houses would be single storey at this point and in conclusion, the proposal would not be overbearing or visually intrusive to these occupiers.

Windows on the facing elevation will serve treatment rooms and clinic rooms, but the use of obscure glazing there would safeguard against overlooking and possible loss of privacy. Other windows facing on the far side limb of the building are more than 30m away, which is a significant distance of separation to not cause undue loss of amenity.

The proposal therefore complies with policies DBE2 and 9 of the Local Plan.

5. Highway Issues

Parking provision is commensurate for a building of this content and in this location. It is close to a residential area, in walking distance for many of its residents. Bus stops are also close by. The amount of activity at the site, including vehicles coming and going are likely to increase, however, this is compared with the low use of a lorry park, which potentially could be a greater source of nuisance from large vehicle movements if used to its full capacity.

The Highway Authority have withdrawn their initial objection and are satisfied that the development can proceed without harm to traffic and pedestrian movement, following the applicants submission of a highway capacity and safety assessment. However, this will be subject to the developers funding access improvements at the road junction between The Borough and the A128 High Street.

Highway officers have also recommended the following:-

- the provision of 4 uncontrolled crossings each with a dropped kerb/tactile paving at the A128 High Street/The Borough junction,
- the bringing up to current Essex County Council standards of both bus stops located at the same junction,
- a financial contribution to cover the cost of providing a foot/cycle path along the alignment of Footpath 14 (located on the north and north-east boundary of the site which links Rodney Road with the High Street),
- a contribution towards an A128 Route Study (incident black spots, pedestrian safety etc)
- a Travel Plan.

The applicant's have agreed to these highway improvements and should Members recommend that planning permission is granted, it would be subject to a Section 106 Agreement covering these points.

6. Trees and Landscaping

A tree survey and planting schedule has been submitted with this application. There will be a fairly dramatic change to the eastern boundary. The current footpath and brook will not be affected, but around 13 Poplar trees are proposed to be removed because of the close proximity of the proposed building. Whilst these are visually important, they are short lifespan trees, which are too closely located to each other to develop properly. Many are structurally unsound and diseased and there is evidence of gale damage.

The Council's arboriculturist has advised that a more positive planting scheme be submitted showing replacement planting for the Poplar trees and new hedge/shrub/tree planting to soften the extent of the large area of car parking. Larger existing specimen trees also along this boundary are shown to be retained.

It is considered that whilst the removal of the Poplar trees will open up the boundary, it has the benefit of the building being partially viewed from the High Street. Overall the proposal complies with policies LL10 and LL11 of the Local Plan.

7. Flooding

The site is located in a floodplain and the Environment Agency have objected to the development because it is at risk from flooding from Cripsey Brook. It lies within a Flood Zone 3 as defined in Government guidance PPG25 and modelled to be within a 1 flood in 100 year event or, to put another way, has 1% chance each year of being flooded. It also has a history of flooding. It is a previously non-developed site, possibly because of this. Also, because it is a building designed to

attract the public, especially for young children and old people, it can also be considered as development for vulnerable occupancy. In the event of a 1:100 year flood, flooding could potentially be to a depth of 0.5m - 0.7m.

The applicants, aware that the site is in a floodplain, have designed the building to be on stilts and voids and submitted a flood risk assessment document. The design of the proposed building does show the ground floor of the building raised by approximately 1.2m from natural ground level and infilled by grilles to allow water to move through with access to the building via long ramps.

However, the Environment Agency maintain their objection. They do not find this method acceptable and there are risks of the grilles becoming blocked, therefore impeding flood flow. This would affect flood storage volume and there is the risk of flooding, as a result, occurring to other residents in the area. Also the proposed building is too close to Cripsey Brook and an adequate buffer zone cannot be provided alongside this watercourse. The scale of the building and/or its siting is not acceptable in respect of this issue.

The frequency of flooding may be low but the Government Agency, taking advice of PPG25, state that when it occurs more people are generally affected by rarer floods, with potentially greater risk to life to those frequenting the proposed development, particularly the very old, infirm, disabled and long-term sick, which is likely to be more common in association with this than other types of development.

The Environment Agency believe the site to be wholly inappropriate for the development proposed. Officers feel uneasy about taking an opposite view, in view of recent flood events across the country, despite the mitigating measures proposed by the applicant, which includes a willingness to enter a legal agreement/planning conditions undertaking the regular inspection of the void area underneath the whole of the proposed building, keeping the area clear and not used for storage purposes and an hours of use control (no person on the site between 10pm and 6am).

Policy U2 of the Local Plan aims to safeguard against the risk of flooding either on site or elsewhere. The clear advice from the Environment Agency is that there is a fear that flooding may occur as a result of the development on neighbouring residential sites.

Policy U3 also states that the Council will not permit development resulting in an increased risk of flooding unless it is satisfied that there are adequate and appropriate attenuation measures to minimise this risk. Given the Environment Agency guidance, the suggested mitigating measures will be inadequate and extremely difficult to enforce in order to ensure against the risk of flooding.

Summary

In most respects this is an acceptable form of development. This appears to be the best possible provision of health care related facilities in a purpose built building and on an available site in Ongar, which has so far proved difficult to locate elsewhere and still be available generally for the public community it will serve. The Epping Forest Primary Health Trust is supportive of the new location and there is no available alternative similar size site in a more central location in Ongar.

However, Officers conclude that despite these plus factors, building in the floodplain where no building previously existed would increase flooding to adjacent sites and be a threat to the future occupiers and users of the site. On balance, therefore, the application is recommended for refusal on this point and secondly, because of being too close to Cripsey Brook without an adequate buffer zone.

Should the Committee support the planning application, as it is contrary to flooding policy, it would need to be reported to District Development Control Committee for a final decision.

SUMMARY OF REPRESENTATIONS:

PARISH COUNCIL - Object, support the notion of this development, but object on the following grounds:- Development is too large due to inclusion of the day care facility, will lead to increased traffic and hazard for pedestrians. Increase traffic volumes and site is some distance from the population base with the most requirement for this facility, i.e. the Shelley area, and will increase traffic flow through Ongar, Need to redesign the access of the road junction to Greensted Road to improve site access, Parish Council have been long committed to develop the area north as a Nature Reserve and therefore require clarification as to the effect of this scheme on these longer term issues. The existing footpath within the site boundary should remain and there are serious concerns as to the inadequacy of parking given the inclusion of the day centre within the plans, soft landscaping details are insufficient to allow this building to be adequately screened.

4 THE SPINNEY - Location on this site in this part of Ongar will be a wonderful asset and remove the ugly eyesore of the current site.

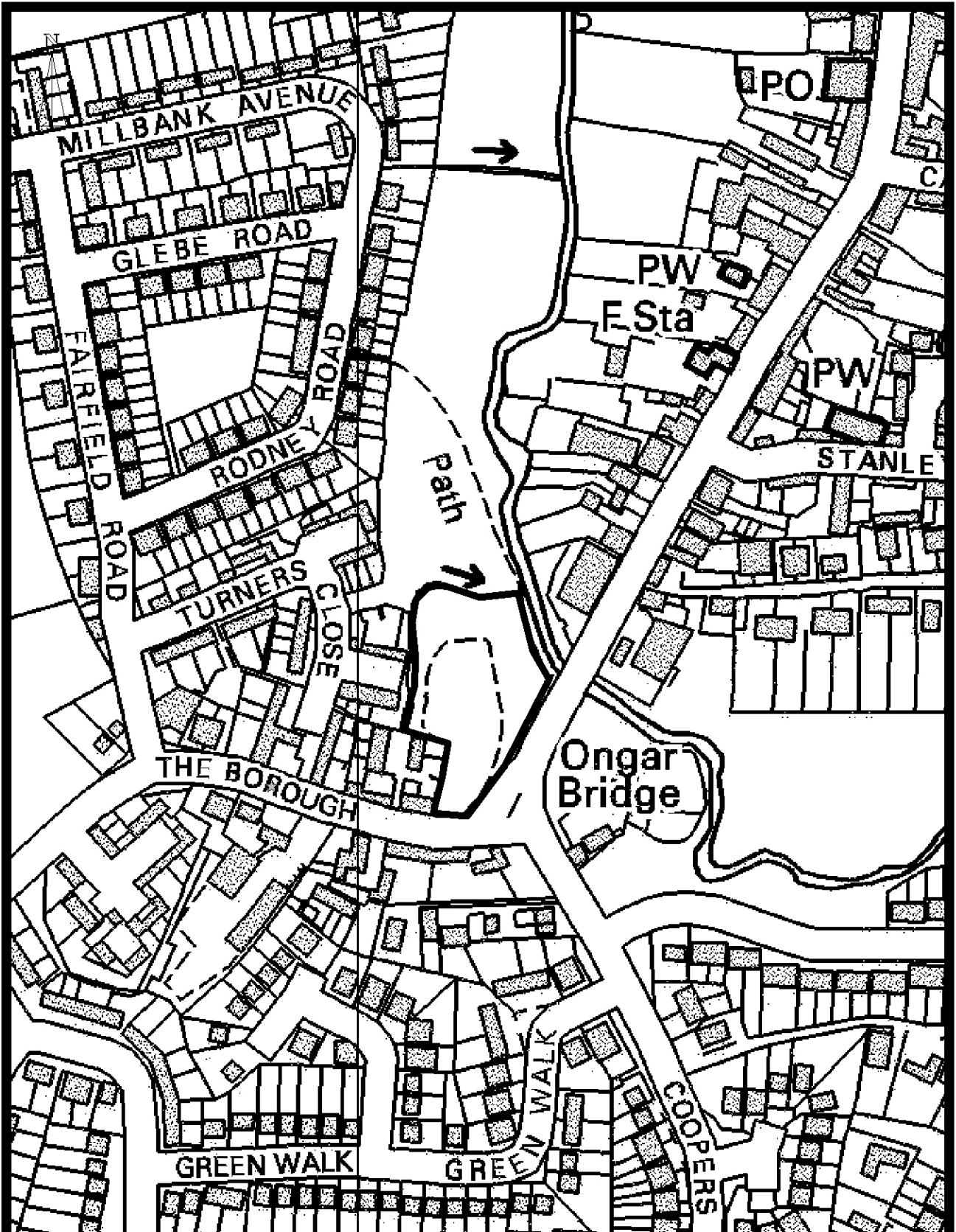
VINE HOUSE, ONGAR - No general objection, worried that if an alternative lorry park site is not found that traffic will start parking in lay-bys and on the street, Jewsons use the site for lorry to wait until their warehouse is ready, hope parking is for all and not to be charged, site will be contaminated, site access not good near a traffic island between the High Street and The Borough.

10 KETTLEBURY WAY - Site is contaminated (can smell gas), in a flood plain and having lived here for 40 years I have known the site to flood at least 3 times, cutting down trees will make the area less stable and remove the beautiful screening, proposed building is out of keeping, a more central site is required because this is located at one end of the town.

6 OAKLAND MEWS - Proposal will add to the drainage problems that exist in the area, should provide increased capacity for foul and surface water drainage, concern this will become a 24 hour, 365 days of the year facility which is inappropriate for a residential area, hours of use condition is required, headlights of cars disturb local residents entering the car park, traffic movement will seriously affect access to Oakland Mews and other residencies around The Borough, controls on lighting and signage.

7 OAKLAND MEWS - Low rise building which will not adversely affect our property, improve the area which is currently a dump for untaxed vehicles, overnight parking, fly tipping. car parking will be against the rear wall of our garden and concerned over noise pollution, would want a planted garden against this wall.

9 OAKLAND MEWS - Not sure this is the right site, should be attached to St Margarets Hospital in Epping or the War Memorial Hospital in Ongar or expand Basons Lane surgery and make better use of other sites. Residents and traders use the site for parking and need rear access to their houses. Is alternative lorry parking to be made? Site is in a flood plain.



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Item No: 02
Scale: 1:2500



APPLICATION No: EPF/1313/05

Report Item No: 3

SITE ADDRESS:

OS PARCEL 0002,BIRCHFIELD, STAPLEFORD TAWNEY

PARISH: Stapleford Tawney

APPLICANT: Mr M Stokes

DESCRIPTION OF PROPOSAL:

Use of agricultural land as a private traveller site providing 16 pitches (Retrospective application).

RECOMMENDED DECISION: Refuse

1. The site is within the Metropolitan Green Belt and the use of the land to provide a private gypsy caravan site is inappropriate development that is by definition harmful to the Green Belt. Moreover due to the scale of the proposal, its retention of made ground over the land, the stationing of caravans and vehicles, erection of ancillary structures and means of enclosure together with the normal everyday activities of people living on the land and the proposal would cause significant harm to the openness of the Green Belt and only serve to perpetuate the acknowledged harm caused by the existing lawful use and undermine the purposes of including the land in the Green Belt. It has not been demonstrated that very special circumstances sufficient to overcome this harm exist in this particular case. Accordingly the proposal is contrary to policies CS2, CS4, C2 and H6 of the Essex and Southend on Sea Replacement Structure Plan, adopted April 2001 and to policies GB2 and H11 of the Epping Forest District Local Plan, adopted January 1998.
2. Due to the scale of the proposal, its retention of made ground over the land, the stationing of caravans and vehicles, erection of ancillary structures and means of enclosure it would fail to respect its landscape setting and cause permanent damage to the character of the landscape. Accordingly, the proposal is contrary to policy NR1 of the Essex & Southend on Sea Replacement Structure Plan, adopted April 2001 and policy LL2 of the Epping Forest District Local Plan, adopted January 1998.
3. The access to the site does not enable those vehicles turning left into the site to do so without crossing the centre line of Epping Lane while the proposal would cause an increase in traffic above that generated by the lawful use of the site to the west along Epping Lane. This would perpetuate a hazard to road safety caused by the existing unlawful use of the land. Accordingly the proposal is contrary to policy T3 of the Essex & Southend on Sea Replacement Structure Plan, adopted April 2001 and policy T17 of the Epping Forest District Local Plan, adopted January 1998.

4. Insufficient information has been provided to demonstrate whether the risk to the development by flooding is acceptable and whether the impact of the development on the risk of flooding of adjacent land is acceptable. Accordingly, the proposal is contrary to policy NR12 of the Essex & Southend on Sea Replacement Structure Plan, adopted April 2001 and policy U2 of the Epping Forest District Local Plan, adopted January 1998.
5. The existing means of disposal of sewage effluent is unsatisfactory and in the absence of any acceptable alternative proposals for the disposal of sewage effluent the proposal is likely to result in an unacceptable risk of pollution to the water environment. In addition, the existing use of the land has resulted in a number of diesel spillages/leakages and the proposal is likely to result in more similar contamination that poses a risk to the environment. Accordingly, the proposal is contrary to policy NR12 of the Essex & Southend on Sea Replacement Structure Plan, adopted April 2001 and policy RP3 of the Epping Forest District Local Plan, adopted January 1998.
6. The site is situated in a remote rural landscape and is not actually accessible to local services, shops or schools by any other form of transport than private car. The proposal therefore conflicts with the sustainability aims of policy T3 of the Essex & Southend on Sea Replacement Structure Plan, adopted April 2001.
7. The site is exposed to high noise levels from traffic using the adjacent motorway placing it in Noise Exposure Category C. The site is therefore considered to have poor living environment where it would not be appropriate to allow a residential development unless there is special justification for it. In view of reasons of 1 to 6 above and since no reasonable steps have been taken to find an alternative site there is no justification for allowing the proposed development on this site. Accordingly, the proposal is contrary to policy BE6 of the Essex & Southend on Sea Replacement Structure Plan, adopted April 2001 and policy RP5 of the Epping Forest District Local Plan, adopted January 1998.
8. In view of reasons 1, 2, 3 and 7 above the proposal fails to comply with criterion c, d and e referred to the supporting text for policy H11 of the Epping Forest District Local Plan, adopted January 1998. Moreover, there are no special circumstances that would justify making an exception to Green Belt policies of restraint and the proposal would cause harm to the openness of the Green Belt and the character of the countryside. The proposal therefore conflicts with policy H11.

Description of Proposal:

It is proposed to use land as a caravan site to provide 16 pitches for the accommodation of named travellers -

therefore a personal planning permission is sought. The people named in the application as those who would live at the site as proposed are currently living on the land. The application is therefore described as retrospective but it is not laid out as proposed.

The application proposes the site be laid out as 16 pitches accessed off two private drives with the pitches set 40m from the edge of an adjacent motorway. A 40m wide strip of the land on which a 2.5m high bund has been erected would be landscaped although there are no proposals for the land between proposed pitches 9-11 and the landscape strip. Similarly, there are no proposals for an area in the southwest corner of the site that is indicated as being prone to flooding.

A distance of 12m either side of a high-pressure gas main that crosses the northwestern third of the site would be kept clear.

Access would be as existing off Epping Lane in the southeast corner of the site. It is proposed to provide landscaping adjacent to the access.

No changes to the existing landform, means of disposal of foul and surface water or the method of servicing the site are proposed.

Description of Site:

The application site is a triangular area of land situated 500m northwest of the junction of Epping Lane and the A113 - London Road. It is bounded by Epping Lane to the south, the M25 motorway to the north and an open field to the west. A substantial hedge including several mature oak trees, one of which is a veteran oak, marks the boundary with Epping Lane. Immediately to the southeast is a small wood and between the site and field to the west is a drainage ditch that feeds into the River Roding 60m south of the site. A high-pressure gas main crosses the northwestern third of the site.

South of Epping Lane and north of the M25 is open countryside. The site is situated in the Metropolitan Green Belt.

The lawful use of the site is for agriculture and prior to its use as a caravan site it was used for grazing animals. Material comprising bricks, concrete, brick rubble and topsoil, chert pebbles, sand and wood has been imported to the site and laid to a depth of 0.2m to 1.5m in thickness in order to facilitate its current use. A bund that is now between 2 and 3m high built on a 10 wide base has been erected adjacent to the M25 along most of the northern site boundary.

Relevant History:

29.4.03

An enforcement notice was issued requiring the cessation of the use of the land as, inter alia, a travellers' caravan site, the removal of, inter alia, all associated works and the restoration of the land to its former condition.

13.05.04

An appeal against the notice was dismissed but the requirements of the notice and the period for compliance were varied.

The requirements as varied are:

"(1) Cease the unauthorised use of the land for a private travellers' caravan site and for the storage and distribution of furniture;
(2) Cease the unauthorised use of the existing stable building on the Land as a washroom;
(3) Remove all caravans, mobile homes and portable structures associated with the unauthorised use of the Land as a private travellers' caravan site and for the storage and distribution of furniture from the Land;
(4) Remove all those works comprising the associated operational development from the land (roadways, hardstandings, various means of enclosure around and to subdivide the Land, a marquee and all other buildings and structures ancillary and incidental to the use of the land);
(5) Remove all materials arising as a result of compliance with (1), (2), (3) and (4) from the Land;
(6) Restore the Land to its condition immediately prior to the Unauthorised Development taking place."

The time for compliance as varied is:

In respect of requirements (1), (2) and (3), 12 months after the notice took effect.

In respect of requirements (4), (5) and (6), 15 months after the notice took effect.

The notice took effect on 13th May 2004 therefore the relevant compliance dates are 13th May 2005 and 13th August 2005. The notice has not been complied with.

29.06.05

At the meeting of the Area Plans Sub-Committee C held on 29th June 2005 the personal circumstances of the current occupants of the site were considered in order to ascertain the need for them to be at this particular site and therefore ascertain whether taking steps to secure compliance with the Notice would be a proportionate interference in their rights under Article 8 of the European Convention on Human Rights.

The educational and health needs of the occupants of the site were not found to be such that they can only be met at the

site. Members considered they could certainly be met at another site and in that respect there is no change in circumstances since the appeal against the Notice was considered. In reaching his decision to extend the period for complying with the requirements of the Notice the Secretary of State had specific regard to the difficulty the occupants were likely to have in finding alternative sites. Accordingly, it was concluded that since the objections to the development are numerous and serious, interference with Article 8 rights by securing the cessation of the use remains necessary to safeguard the public interest and would not be a disproportionate measure or unjustified interference in this particular case.

The Sub-Committee therefore gave authority to commence criminal and/or civil proceedings to secure compliance with the enforcement notice as varied by the Secretary of State in his decision letter dated 13th May 2004. It also gave authority to commence Injunctive Proceedings in the High Court.

03.08.05

The current planning application was received. It was considered appropriate to have the application considered prior to seeking an injunction.

Policies Applied:

Structure Plan:

- CS2 - Protecting the natural and built environment
- CS4 - Sustainable new development
- C2 - Development within the Metropolitan Green Belt
- NR1 - Landscape Conservation
- NR12 - Protecting Water Resources
- BE6 - Polluting, Hazardous or Noisy Development
- H6 - Accommodation for Gypsies
- T1 - Sustainable Transport Strategy
- T3 - Promoting accessibility

Local Plan:

- GB2 - Development in the Green Belt
- RP3 - Protection of surface water and groundwater
- RP4 - Development on potentially contaminated land
- RP5 - Development affected by noise
- H11 - Applications for gypsy caravan sites in the Green Belt - criteria
- U2 - Development in areas at risk from flooding
- LL2 - protection of the rural landscape
- LL11 - Landscaping schemes
- T17 - Highways: Criteria for assessing proposals

In July 2005 the District Council published the Second Deposit draft of its proposed alterations to the Epping Forest District

Local Plan adopted in January 1998. Government guidance states that the weight to be attached to emerging policy for new or altered Local Plans will depend on how far those policies have advanced towards adoption. The weight to be given to proposed new or altered policies may also depend on the nature of objections received. The policies contained in the Second Deposit draft of the proposed Alterations to the Local Plan are 'material considerations' when assessing proposals for development. In this case the alterations do not affect the assessment of the proposal in any meaningful way.

Relevant National Planning Policy Guidance:

PPS1 - Delivering Sustainable Development
PPG2 - Green Belts
PPG3 - Housing
PPS7 - Sustainable Development In Rural Areas
PPG24 - Planning and Noise
PPG25 - Development and Flood Risk
Department of the Environment Circular No. 1/94 Gypsy Sites and Planning

Issues and Considerations:

Since the site is in the Green Belt the proposal would be inappropriate development that by definition is harmful to the Green Belt. The applicant therefore has to prove there are very special circumstances that overcome the harm caused by inappropriateness. The most important characteristic of the Green Belt is its openness and the condition of the land is not a material consideration in its continued protection therefore the harm to the Green Belt caused by inappropriateness is considerable.

The main planning issues in this case are therefore what level of harm is caused to the Green Belt and whether any very special circumstances that outweigh the harm caused exist.

Other issues include:

- 1) Impact on highway safety;
- 2) Whether the development would result in an increased risk of flooding and pollution to the site, the occupants and/or adjoining land;
- 3) Whether the proposal would provide satisfactory living conditions for the occupants.
- 4) Whether the development would meet sustainable development objectives.

It is also necessary to consider the applicants gypsy status and assess the human rights implications of a decision to refuse planning permission. It is necessary to consider the issue of gypsy status first of all since this has a bearing on the approach to the other issues.

GYPSY STATUS

For the purposes of planning law section 24(8) of the Caravan Sites and Control of Development Act 1960 as amended by section 16 of the Caravan Sites Act 1968 defines "Gypsies" as "persons of nomadic habit of life, whatever their race or origin".

Gypsy status is therefore not concerned with a person's origins or ethnicity but is dependent on a person following a nomadic habit of life.

The leading case giving guidance in how to approach the question of the gypsy status of applicants for planning permission is the Court of Appeal decision in *Wrexham County Borough Council v National Assembly for Wales and Mr and Mrs Berry*. This established that the main matter in determining gypsy status is whether a person is actually living a travelling life (whether seasonal or periodic) at the time the application is made. If they are not it is then necessary to consider the following matters:

- 1) Do the applicants come from a traditional Gypsy background and have followed a nomadic way of life in the past?
- 2) Do the applicants have an honest and realistically realisable intention of resuming travelling?
- 3) What is the reason for the interruption of their nomadic way of life and what is the likely duration of such an interruption?

Information submitted with the application together with further information submitted by the applicants and their agent indicates that all those who would live on the site come from families who followed a nomadic lifestyle and that they themselves have followed a nomadic lifestyle. Responses to a questionnaire completed in respect of 54 of the total 79 people stated in the application to be living on the land indicate that they generally wanted to live at the site as long as they were allowed to do so and most had done so for approximately three years. Only two of the respondents said they had made enquiries about alternative sites or applied to reside on a Council owned site. The most common reasons why they wished to remain there was because they perceived they had nowhere else to go and in order to secure an education for their children.

Scant information on employment has been given but it is stated in the application that the men living at the site work in the local area, which is described as being within a 10-30 mile radius of the site. It is therefore not clear whether the occupants of the land travel to find work but it would appear while they may commute up to 30 miles, they do not follow a nomadic lifestyle in order to seek work to any greater extent than the settled population.

There is no evidence to dispute the stated background of those living on the land and they all claim gypsy status. However, based on what they have said, they have ceased their nomadic

habit of life for three years, do not have a realistically realisable intention of resuming travelling and have decided to stop travelling in order to secure the education of their children, and because they no longer considered a nomadic habit of life to be sustainable. Accordingly, any gypsy status the applicants may have had appears to have been lost and they should not be given gypsy status for the purpose of considering the merits of this application.

However, it should be noted that the proposed replacement for Circular 1/94 proposes the definition of gypsies and travellers for planning purposes be amended to state:

"a person or persons who have a traditional cultural preference for living in caravans and who either pursue a nomadic habit of life or have pursued such a habit but have ceased travelling, whether permanently or temporarily, because of the education needs of their dependant children, or ill-health, old age, or caring responsibilities (whether of themselves, their dependants living with them, or the widows and widowers of such dependants), but does not include members of an organised group of travelling show people or circus people, travelling together as such"

The replacement Circular is expected to be adopted in October 2005 and it is expected that the definition of gypsies and travellers proposed will be included in it. Since it would effectively remove the test of actually following a nomadic habit of life, under that definition the applicants could arguably be afforded gypsy status. However, that would result in a conflict between the new Circular and the 1960 Act. Therefore, even if that definition of gypsies and travellers was included in a replacement Circular, unless the legal definition set out in the 1960 Act were also changed the legal definition of gypsies would remain unchanged and there appear to be no proposals to amend the 1960 Act. Accordingly, as the law and adopted planning policy currently stand, the applicants have lost their gypsy status.

This conclusion is at odds with the Planning Inspector's conclusions in the appeal decision letter dated 13th May 2004. The decision letter stated only two of the sites occupants still followed a generally nomadic lifestyle but the remaining occupants either intended to travel but found circumstances made it hard to do so or found it expedient to remain settled to enable their children to receive an education. Significant weight was given to the fact that, at the time of the Inquiry most of the occupants of the site had lived there for less than a year and accordingly they were considered to have gypsy status. Since the response to the questionnaire issued by the Council reveals the overwhelming majority of the respondents have lived on the site for 3 years they have clearly lived there for a significant period of time. Moreover, the response also indicates an overwhelming intention to remain on the site permanently. These facts were not available to the Planning

Inspector when considering the issue of gypsy status and had they been he might have come to a different conclusion.

GREEN BELT AND VERY SPECIAL CIRCUMSTANCES

As stated above, the proposal is inappropriate development in the Green Belt. The applicants point out that the number of pitches would be approximately half of what existed when the Council took enforcement action. It is acknowledged that the proposal would be a consolidation and rationalisation of the existing use. Despite the smaller scale of the proposal compared to the current unauthorised use, the proposal would still be a very large gypsy caravan site that would provide accommodation for 7 extended gypsy families divided into 16 family groups. Furthermore, the proposal would involve the retention of all of the made ground despite much of it not being required to provide pitches together with the bund adjacent to the M25. Together with the caravans, vehicles, ancillary structures and means of enclosure the proposal would have a very similar visual impact on the Green Belt as the existing use. The proposal would be visually intrusive and continue to materially erode the openness of the Green Belt in this otherwise open, undeveloped location. It would also continue to be harmful to the character and appearance of the area whatever landscaping was carried out to mitigate its impact. This impact would continue to be compounded by the normal everyday activities of the occupants living on the site.

It is therefore concluded that the proposal would cause significant harm to the Green Belt and only serve to perpetuate the acknowledged harm caused by the existing use and undermine the purposes of including the land in the Green Belt.

It is therefore necessary to consider whether any very special circumstances of sufficient weight to outweigh the harm caused by inappropriateness and other harm. The Caravan Sites Act 1968 places a duty on local authorities to make adequate provision for gypsies residing in or resorting to their areas. Gypsy status is therefore capable of being a very special circumstance but in this case, it is considered the occupants of the site have lost their gypsy status because they no longer follow a nomadic habit of life, have not done so for some years and intend to remain settled on the site. It is nevertheless necessary to consider the personal circumstances of the occupants of the land and any hardship that would be brought on them as a result of a decision to refuse planning permission.

The applicants state that approximately half their number is under 16 years old. Responses to the Council's questionnaire revealed that of 23 such children, 18 were attending local schools or nurseries, the remainder of which were generally under school age.

The respondents also state that 9 of their number are either pregnant or ill and receiving medical attention but in the case of 5 of them no details are given. That information is

supplemented by the results of interviews of residents carried out by officers on 10th, 19th and 24th May 2005. All the information gathered reveals:

- 1) A baby is being treated by medication administered by her carers for stomach/kidney problems that have not been fully diagnosed despite tests at Harlow hospital over the course of the past few months.
- 2) One woman is pregnant.
- 3) One man is being treated by self-administered medication for diabetes, high blood pressure. He has suffered 2 minor strokes, the last time in 2004 and complains of stomach and head problems. He has had a CT scan.
- 4) One woman has diabetes and arthritis.

Of the remainder, four people comprising one family have said they are all sick and attending Harlow hospital but gave no details. The remaining person who said they were ill on the questionnaire did not say they were when interviewed. It is not clear what ails her but having regard to the written response it may be that she is recovering from drug or alcohol addiction.

Having regard to the information provided it does not appear that the needs of the occupants of the site are different to those of the general population. If the occupants moved away from the site that would probably result in children currently in local schools and nurseries having to go to a different school or nursery and this would be disruptive to them. There is no reason, however, to conclude that the educational needs of the children could not be met at another school or nursery. Equally, those receiving medical treatment do not have any requirement to live on the site in order to continue to receive treatment. It is acknowledged that if the occupants of the site returned to a nomadic habit of life that it would result in difficulties in accessing educational and health services. However, since the educational and health needs identified could be met elsewhere they are not considered to amount to a very special circumstance of sufficient weight to overcome the harm caused to the Green Belt.

The alternative would be to settle elsewhere and it is noted that of those responding to the Council's questionnaire, even though nearly all had been living on the land since 2002, the occupants of only 2 plots had made enquiries about alternative sites or applied to live on a Council site.

It must be acknowledged that there are few lawful sites for Irish travellers to settle and that makes it difficult for the occupants of the site to resume their previous nomadic habit of life. This has no doubt led to their desire to remain on this site as long as possible or indeed permanently as some have stated. Against this it must also be acknowledged that the occupants of the site would have been aware that an enforcement notice requiring them to cease their use of the land became effective in May 2004 and that the notice required them to

vacate the site by 13th May 2005. They were certainly told of those facts by officers when interviews were carried out in May 2005. It was possible for planning applications to use other land as a gypsy caravan site to have been made during that time. But this Council has received none and the applicants have not said whether they have made planning applications to any other Council. In deciding to dismiss the appeal against the enforcement notice the Planning Inspector varied it to give a compliance period of one year precisely so the occupants of the site would have an opportunity to find alternative sites. Since no serious attempts have been made to do so the lack of suitable sites is not considered to amount to a very special circumstance of sufficient weight to overcome the harm caused to the Green Belt.

HIGHWAY SAFETY

The only vehicular access to the site is off Epping Lane, a rural road of single carriageway that varies in width and is enclosed on both sides by hedges and verges of varying width and height. The speed limit is 60mph. The entrance to the site is on the outer radius of a long bend where the road has a width of 6m. The road narrows with no kerbs or verges to the west of the site entrance.

Highway engineers have commented that the access to the site does not enable those vehicles entering the site to do so without crossing the centre line of Epping Lane and that the increase in traffic to the west of the site along Epping Lane would be a hazard to road safety.

Although the first objection could be addressed by physical alterations to the access to provide a 10m kerb radii, that may cause harm to the adjacent part of the existing hedgerow and could result in the loss of trees. If that were the case it would be unacceptable in Green Belt and landscape terms therefore it is necessary to agree a solution that demonstrably is acceptable in those terms prior to the grant of any planning permission. Since that matter cannot be left to a condition and no proposals for the alterations to the access were submitted with the application the development is not acceptable because the dimensions of the access are not suitable to serve the proposed use.

The second objection cannot be overcome since the part of Epping Lane west of the site cannot be improved and the proposed use would result in considerably more traffic than the lawful use of the land as an agricultural field. Even though the traffic generated is likely to be less than when the site contained 30 occupied pitches, it would still be sufficiently high to cause a hazard to road safety on Epping Lane.

FLOODING

The proposals map of the Local Plan indicates a very small part

of the southwest corner of the site is prone to flooding. That is not part of the land on which it is proposed to provide pitches but it is the part of the site on which the greatest depth of made ground has been laid. Council land drainage engineers have made no comment on the impact of the made ground in that location. The site is however located in a medium to low flood risk zone and the Environment Agency has raised objection to the proposal on the basis that no Flood Risk Assessment has been submitted.

It is not proposed to remove the made land from any part of the site and although that may protect the proposed pitches from flooding that is not considered to be an appropriate way of dealing with flood risk since it simply transfers that risk to adjacent land with unknown consequences. Since insufficient information has been provided to assess the risk to the development by flooding and how the flood risk to adjacent land is affected by the development it cannot be concluded that the development is acceptable in flood risk terms. Accordingly it would not be justifiable to grant planning permission for the proposed development.

POLLUTION

There are number of matters to consider in relation to pollution. They include the potential for contamination caused by the works necessary for the development and the potential for pollution as a result of the use of the land.

No assessment of the risk of contamination caused by the made ground has been submitted with the application but the applicant points out that such an assessment was carried out in connection with the previous appeal, which did not reveal the presence of any contaminants.

The use of the land has resulted in a number of diesel spillages/leakages that were witnessed by Environmental Health Officers. The nature and extent of any harm caused is not known but it is apparent the continued use of the land as a gypsy site is likely to result in more similar contamination. In addition, the method of disposal of foul sewage could result in contamination of ground and surface water if not disposed of properly. The Environment Agency oppose the development on the basis that the current means of disposal of sewage effluent is unsatisfactory and Environmental Health Officers advise that the use of the made ground for soakage as currently takes place results in pollution of the watercourse adjacent to the western site boundary. In the absence of any acceptable alternative proposals for the disposal of sewage effluent the proposal is likely to result in an unacceptable risk of pollution to the water environment.

APPROPRIATE LIVING CONDITIONS

Previous noise tests have demonstrated the entire site falls

within Noise Exposure Category (NEC) C with the main source of noise being traffic on the M25. National planning guidance as set out in PPG24 states that planning permission for residential development on sites within this category "should not normally be granted but where it is considered that permission should be given, for example because there are no alternative quieter sites available, conditions should be imposed to ensure a commensurate level of protection against noise." As such, the noise level on the site is considered to cause poor living conditions but if there is other justification for allowing the development, consent could be granted subject to the provision of noise mitigation measures.

As indicated above, it is not known whether any alternative sites exist because the applicants have not taken any reasonable steps to find alternative sites despite being given substantial time to do so. As also detailed above, the proposed development has been found to be harmful to the Green Belt, highway safety and the environment. In the circumstances there is no justification for allowing this development on land within NEC C.

With regard to air pollution, previous surveys have found that beyond a distance of 60m from the centre of the M25 nitrogen dioxide levels are acceptable. Since the pitches would be outside that area the main living area of the site as proposed would not be exposed to unacceptable levels of nitrogen dioxide. That assessment may be affected by proposals to widen the M25 between junctions 16 and 30 but the Highways Agency advise it is not anticipated that the proposals will involve acquiring any land at this location.

SUSTAINABILITY

The site is situated in a remote rural landscape and is not actually accessible to local services, shops or schools by any other form of transport than private car. This assessment is reinforced by a letter to Kevan Broome of the Traveller Education Service from Essex County Council dated 19th May 2005, which determined that the part of the route to Lambourne Primary School from the site along Epping Lane is regarded as not available to be walked. In the circumstances the proposal conflicts with the sustainability aims of adopted planning policy.

OTHER MATTERS

Structure plan policy relating to accommodation for gypsies allows for criteria based policies for assessing planning applications for gypsy caravan sites where it has not been possible to identify specific sites for such usage in local plans. This is in accordance with Circular 1/94 and the guidance contained in the draft replacement circular. The supporting text for Local Plan Policy H11 states gypsy sites should:

- (a) be within reasonable distance of a settlement for access to schools, shops, etc;
- (b) not be in close proximity to residential properties;
- (c) have a minimum impact upon the appearance of the countryside;
- (d) have, or be capable of having, convenient and safe access to the main road network;
- (e) be capable of providing an acceptable living environment, and;
- (f) be in close proximity to an area frequented by gypsies.

Having regard to the above assessment of the proposal as detailed above it is considered that even if the applicants could be afforded gypsy status, the proposal would not meet all the requirements of adopted planning policy for assessing proposals for gypsy caravan sites.

With regard to the impact of the proposal on the high pressure gas main crossing part of the site, no response from Transco has been received therefore it is not known whether there are any adverse impacts on the pipeline or whether there are any safety issues for the occupants of the site.

HUMAN RIGHTS

The Human Rights Act 1998 incorporates the European Convention on Human Rights into UK law and is a relevant consideration. Officers have taken steps to find out the personal circumstances of the occupants of the site to ascertain the need for them to be at this particular site and therefore ascertain both whether a decision to refuse planning permission and taking action to secure compliance with the extant enforcement notice would be a proportionate interference in their Article 8 rights. The necessity for such interference has already been established in the Secretary of States decision to dismiss the appeal against the Notice following the public inquiry held in January and February 2004.

The educational and health needs of the occupants of the site are not such that they can only be met at the site. They could certainly be met at another site and it cannot be said that no alternative sites are available since the applicants have not taken reasonable steps to find one. In that respect there is no change since the appeal against the Notice was considered. In reaching his decision to extend the period for complying with the requirements of the Notice the Secretary of State had specific regard to the difficulty the occupants were likely to have in finding alternative sites. Accordingly, it is concluded that since the objections to the development are numerous and serious, interference with Article 8 rights by refusing planning permission and securing the cessation of the existing use is necessary to safeguard the public interest and would not be a disproportionate measure or unjustified interference in this particular case.

Conclusion

The proposed development is inappropriate development that by definition is harmful to the Green Belt and no very special circumstances of sufficient weight to override the harm caused by inappropriateness exist. The development would cause harm to the open character and appearance of the Green Belt and prejudice the purposes of including the land in the Green Belt.

The development would also result in conditions prejudicial to highway safety, would be likely to result in an unacceptable risk of pollution to the water environment and conflict with the sustainability aims of adopted planning policy.

Moreover, there is no justification for allowing such development on land exposed to noise levels that would create poor living conditions and no information has been submitted to demonstrate the development is acceptable in flood risk terms.

Since the objections to the development are numerous and serious, interference with Article 8 rights by refusing planning permission and securing the cessation of the existing use is necessary to safeguard the public interest and would not be a disproportionate measure or unjustified interference in this particular case.

The proposed development is therefore contrary to Structure Plan policies CS2, CS4, C2, NR1, NR12, BE6, H6, T1 and T3. It is also contrary to Local Plan policies GB2, RP3, RP5, H11, U2, LL2 and T17. Accordingly, it is recommended that planning permission be refused.

SUMMARY OF REPRESENTATIONS:

PARISH COUNCIL - No response received.

ENVIRONMENT AGENCY - Objection raised on the following grounds:

1) The proposed means of disposal of sewage effluent is unsatisfactory and will create an unacceptable risk of pollution to the water environment.

2) The application is not accompanied by a Flood Risk Assessment (FRA) as required by PPG25.

HIGHWAYS AGENCY - The application will not adversely affect the M25 motorway at this location, the Highways Agency does not intend to issue a direction and would not wish to object to the application.

NEIGHBOURS - Response received from the occupants of 10 neighbouring properties, 9 raising objection and 1 declining to make comment but stating they feel disenfranchised because they feel the matter will eventually be decided by the Secretary of State. The following objections and comments were made:

1) Property will be further devalued.

2) If consent is granted permission for houses on objectors

land should be given as compensation.

3) Since the travellers moved to the site there have been many break-ins which has resulted in the need to incur the expense of fitting additional security measures.

4) The police have either failed or been slow to follow up CCTV evidence resulting in the need for property owners to endure nightly vigils to protect their property.

5) The occupants of the land have allowed their dogs to roam freely causing damage to property.

6) The occupants of the land have threatened people with violence and damage to their property

7) The behaviour of the occupants of the land threatens the viability of local businesses.

8) Harm the landscape.

9) Inappropriate development in the Green Belt.

10) The use would result in an increase in traffic that would be an increased hazard to road safety.

11) The proposal is contrary to adopted planning policy and if allowed could lead to uncontrolled development.

12) The proposal should be treated as any other proposal for development in the Green Belt.

13) The site is not appropriate for human occupancy, especially for bringing up young children. It is too close to the motorway exposing the occupants to danger from accidents on it, air pollution and excessive noise.

14) Any residential use of the site is unacceptable.

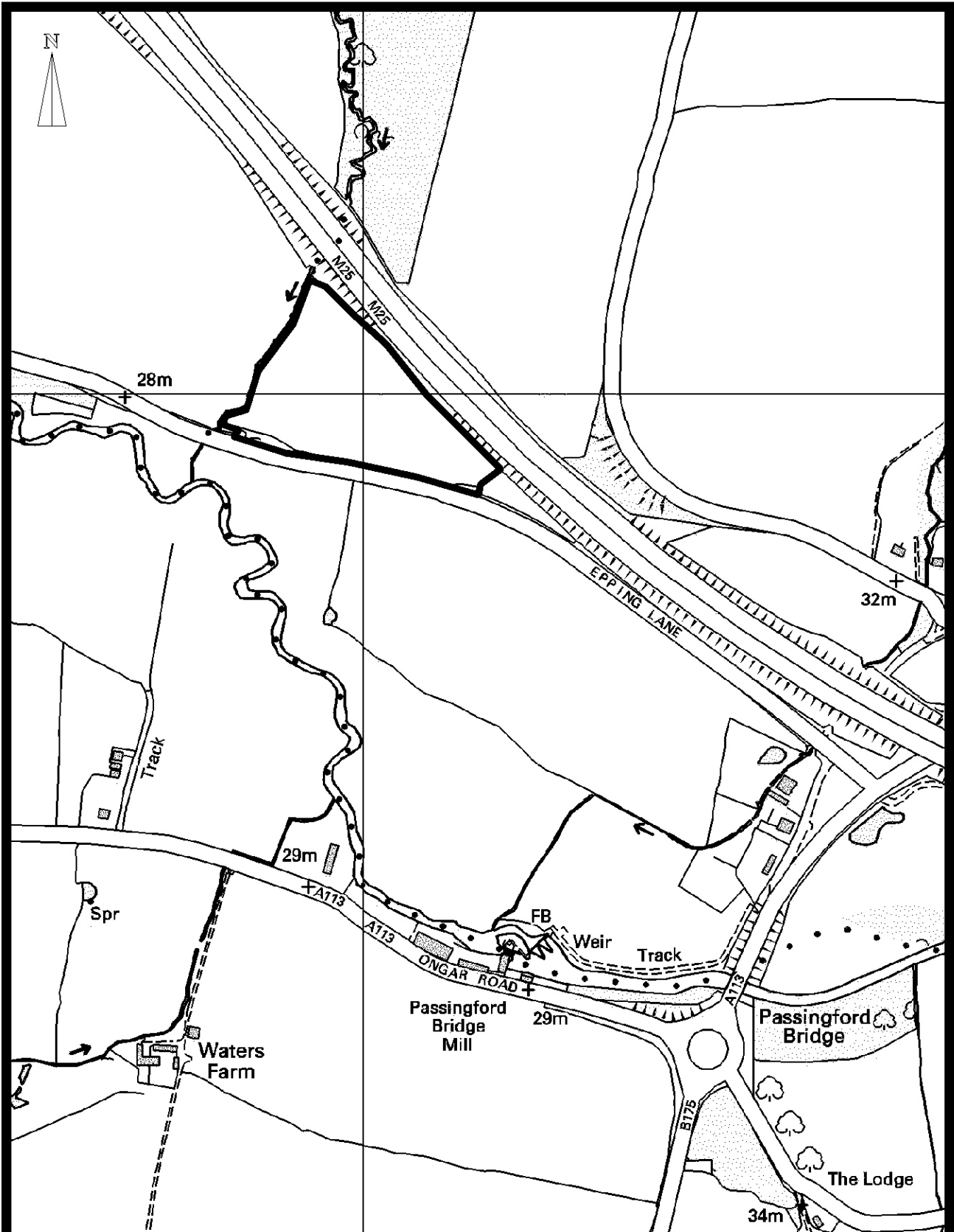
15) This matter was previously considered at appeal and the appeal was dismissed.

16) People do not appear to be penalised for flouting planning laws. Since the applicants started the existing use without permission this application should be refused.

17) The fact that the applicants have bought the land with the intention of settling there permanently conflicts with their claim to be travellers.

18) Essex seems to have more than it's fair share of these sites and continually giving in to these demands is not the answer.

19) The Council should take into account the history of the site, it's residents and whether this location alongside a motorway is the ideal location for people to live.



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Item No: 03
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APPLICATION No: EPF/1224/05

Report Item No: 4

SITE ADDRESS:
HIGH WARREN, MOUNT END, THEYDON MOUNT

PARISH: Theydon Mount

APPLICANT: Mr & Mrs A Panayiotou

DESCRIPTION OF PROPOSAL:
Two storey side extension. (Revised application)

RECOMMENDED DECISION: Grant Permission

1. To be commenced within 5 years.
2. Materials shall match existing.
3. 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 E shall be undertaken without the prior written permission of the Local Planning Authority.
4. Tree protection measures required.
5. Submission of a landscape scheme.
6. Retention of existing trees and shrubs

Description of Proposal:

Revised application for a two-storey side extension. The extension has been reduced since the previous application however it is still a sizeable addition of 415sqm. The main part of the extension would be L-shaped with a maximum depth of 22.6m and a maximum width of 20m, and would be 9.6m in height. The attached garage would be 19.4m deep by 7m wide with accommodation in the roof space to a height of 7.2m. A number of single storey outbuildings would be demolished to accommodate the extension.

Description of Site:

Large detached dwelling located within extensive grounds in a relatively isolated location on the north side of Banks Lane, Theydon Mount. The property is set back from the road by some 90m and is well screened on all sides. It has previously been extended and has an existing floor space of approximately 646 square metres.

Relevant History:

EPF/1326/78 - Single storey extension - Approved/conditions
EPF/110/86 - Two storey front and side extension - Approved/conditions (revoked)
EPF/1203/89 - Single storey swimming pool extension - Approved/conditions
EPF/1170/90 - Two ornamental lakes - Approved/conditions
EPF/260/92 - First floor extension - Refused
EPF/983/92 - First floor extension - Approved/conditions
EPF/445/05 - Two storey side extension - Refused

Policies Applied:

GB2 and GB14 - Green Belt Policies
DBE9 and DBE10 - Residential Development Policies

Issues and Considerations:

The main issues here are its potential impact on the neighbouring properties, its design, and whether this is appropriate development in the Green Belt.

Due to its isolated position and abundance of screening there would no impact on neighbouring properties and the extension is in keeping with the grand scale and design of the original property.

In Green Belt terms, the floor space of the revised extension is smaller than the previous application at approximately 415 square metres. However it would be a 64% increase to the existing property and could be considered unacceptably large within the Green Belt.

However, this is an unusual case being a large dwelling situated in very extensive grounds where a large extension can be assimilated without detriment to the open character of the Green Belt generally. Furthermore, the outbuildings that are to be removed have a considerably greater ground coverage of 841 square metres than the proposed extension, however these are only single storey. The loss of the outbuildings would partly negate the extension, however, and to ensure this permitted development rights (Class E) would need to be removed

so the outbuildings could not be rebuilt without planning permission.

The revised application has seen a reduction in the northern most point of the extension by some 6.2m and has lowered the roof of the attached garage block by 1.6m.

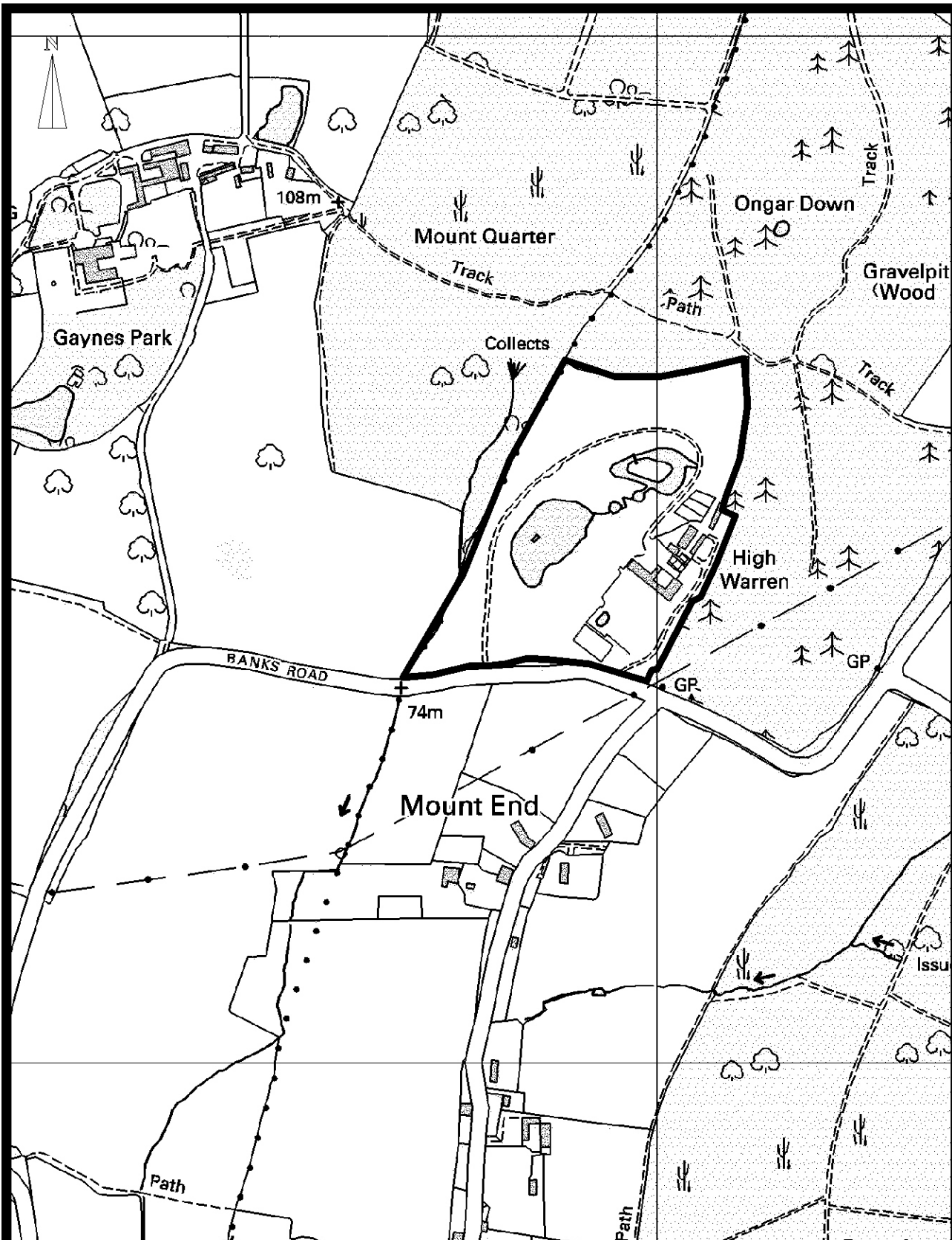
There are several trees on site, some of which may need to be felled. However, on such an extensive site any limited loss will not be significant. However, a landscaping scheme should be required by condition to ensure replacement is carried out where appropriate.

Conclusion

Although this is still a sizeable extension that would result in a 64% increase to the original dwelling, due to its isolated and well screened location and the removal of such extensive outbuildings, on balance, it is felt that this addition would not be detrimental to the openness and appearance of the Green Belt and can be recommended for approval.

SUMMARY OF REPRESENTATIONS:

PARISH COUNCIL - Object due to overdevelopment.



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