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**David Marchant** LLB (Hons) BSc (Hons) CEng FICE FCMI  
**Chief Executive**

## **AGENDA**

**Committee: DEVELOPMENT CONTROL**

**Date and Time: Tuesday 14<sup>th</sup> April 2015 at 7.30 p.m.**

**Venue: Council Chamber**

**N.B. This meeting will be webcast live on the internet.**

**Membership: Councillors Hart (Chairman), Smith (Vice Chairman),  
Anderson, Blackwell, Burch, Cole, Cross, Mrs King, Ladzrie,  
Varker, Mrs Wass, N. Watson and Wood**

**Canvey Island Town Councillors : Acott and Greig**

**Officers attending: Steve Rogers – Head of Regeneration and Neighbourhoods  
Fiona Wilson – Head of Legal Services  
Kim Fisher – Chief Development Control Officer**

**Enquiries: Cheryl Salmon, ext. 2454**

### **PART I (Business to be taken in public)**

**1. Apologies**

**2. Members' Interests**

**3. Minutes**

A copy of the Minutes of the meeting held on 3<sup>rd</sup> March 2015 is attached.

**4. Public Speakers**

The Chairman will announce the names of those persons who wish to speak in support /objection under Agenda Item No. 5 (if any).

## 5. Deposited Plans

Report of the Head of Regeneration and Neighbourhoods is attached.

	<b>Application No.</b>	<b>Address</b>	<b>Page</b>
1.	15/0058/ADV	Waterside Farm Sports Complex, Canvey Island (Canvey Island West Ward)	2
2.	15/0110/ADV	Waterside Farm Sports Complex, Canvey Island (Canvey Island West Ward)	6
3.	15/0117/FULCLC	Opposite 27 First Avenue, Canvey Island (Canvey Island Central Ward)	10
4.	15/0134/FUL	Hilton Road, Canvey Island (Canvey Island Winter Gardens Ward)	15

## Certificates of Proposed and Existing Lawful Use or Development

	<b>Application No.</b>	<b>Address</b>	<b>Page</b>
1.	15/0023/CLP	Five Acres, Great Burches Road, Thundersley (St. Peter's Ward)	25
2.	15/0075/CLP	Rear of 37 The Dale, Thundersley, Benfleet (Boyce Ward)	33

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## AGENDA ITEM NO. 3

### DEVELOPMENT CONTROL COMMITTEE

3<sup>RD</sup> MARCH 2015

**PRESENT:** Councillors Smith (Chairman), Anderson, Blackwell, Burch, Cole, Cross, Ladzrie, Hart, Mrs King, Varker, N. Watson and Wood.

Canvey Island Town Councillors Acott and Greig (Non-voting members of the Committee) were also present.

Councillors Letchford, Mrs Goodwin and Sharp also attended.

There were no apologies for absence.

#### 31. DEVELOPMENT CONTROL COMMITTEE CHAIRMAN

The Chairman, Councillor Smith, took opportunity to advise the Committee that whilst Councillor Ladzrie, the appointed Chairman, was present at the meeting he was unable to take the Chair due to ill health.

Councillor Smith further explained that as he had requested that two of the applications on the agenda were brought before the Committee and he wished to speak on those items it would not be appropriate for him to remain in the Chair whilst the Committee considered them. Therefore whilst Councillor Smith would remain in the Chamber for debate on applications 14/0646/FUL and 14/0718/FUL it had been agreed that Councillor Hart would take the Chair for those two agenda items.

#### 32. MEMBERS' INTERESTS

Councillor Burch declared an interest in Agenda Item No. 5(3) as shown under Minute 34(e).

Councillor Sharp declared an interest in Agenda Item No. 5(3) as shown under Minute No. 34(e).

Councillor Smith declared an interest in Agenda Item No. 5(3) as shown under Minute No 34(e).

Councillor Varker declared an interest in Agenda Item 5(3) as shown under Minute No. 34(e).

Councillor Wood declared an interest in Agenda Item 5(3) as shown under Minute No. 34(e).

### **33. MINUTES**

The Minutes of the meeting held on 3<sup>rd</sup> February 2015 were taken as read and signed as correct.

### **34. DEPOSITED PLANS**

- (a) **14/0632/FUL – 54 CASTLE LANE, HADLEIGH, BENFLEET, ESSEX (ST JAMES' WARD) – CONSTRUCTION OF TWO STOREY SIDE EXTENSION WITH REAR DORMER IN ROOF TO PROVIDE 2 NO. 2 BEDROOMED FLATS AND 1 NO. 1 BEDROOMED FLAT – MR MICHAEL TAYLOR**

This item had been withdrawn by the applicant prior to the meeting.

- (b) **14/0723/FUL – 316-318 LONDON ROAD, BENFLEET, ESSEX (APPLETON WARD) – FRONT AND SIDE EXTENSIONS, REPLACEMENT ROOF INTERNAL AND EXTERNAL ALTERATIONS, INCLUDING INSTALLATION OF NEW FENCING, CREATION OF GARDEN AREA TO REAR AND CHANGE OF USE TO CHILDREN'S NURSERY – MR C CATINO**

The application sought permission for extensions to and re-roofing of the former retail premises and to use the enlarged and improved building as a children's nursery.

The Planning Officer reported that in all the circumstances no significant harm could be identified as arising from the proposed development. The proposal was therefore recommended for approval.

The application was presented to the Committee in accordance with the Council's scheme of delegation as it represented a departure from the Development Plan.

The Committee noted that the consultation period contained within the Public Notice issued in respect of this proposal did not expire until the 6<sup>th</sup> March 2015. The Planning Officer therefore suggested that if Members were minded to adopt the recommendation, authority to approve the proposal could be delegated to the Head of Regeneration and Neighbourhoods, in consultation with the Chairman and Vice Chairman of the Development Control Committee.

Ms Harmsworth, a local resident, spoke in objection to the application.

During discussion Members raised concern that the premises were located near an extremely busy junction and that alterations to the highway, including the introduction of a yellow box, could exacerbate the problem. However, it was also recognised that these were highway matters and did not form part of the application site therefore they were not issues the Committee could consider.

A Member felt that the car park at the site should be hardsurfaced with parking bays marked out and requested that if approved a condition be added to this effect.

Following discussion it was:-

**Resolved** – That, subject to there being no new material planning objections being received at the expiry of the publicity period on 6<sup>th</sup> March 2015, that authority to approve the application be delegated to the Head of Regeneration and Neighbourhoods, in consultation with the Chairman and Vice Chairman of the Development Control Committee, subject to the conditions as set out in the Planning Officer's report and an additional condition that the car park be hardsurfaced and marked out prior to the first use of the proposed children's nursery.

**(c) 14/0737/FUL – NASHLEA FARM, POORS LANE, HADLEIGH, BENFLEET, ESSEX (VICTORIA WARD) – DEMOLITION OF EXISTING BUILDINGS AND CONSTRUCTION OF 6 NO. DETACHED DWELLINGS AND ASSOCIATED FACILITIES – EA AND BA WISBEY**

The application sought permission for the residential redevelopment of a site located within the Green Belt. The Planning Officer reported that the proposed redevelopment of the site had a materially greater impact on the openness of the Green Belt than existing development and would consequently constitute an inappropriate form of development, which if allowed, would be likely to have an adverse impact on the openness of the Green Belt contrary to the guidance contained in the NPPF and Policy GB3 of the Adopted Local Plan.

It was not considered that any very special circumstances necessary to justify inappropriate development in the Green Belt could be identified and the proposal was therefore recommended for refusal.

The application was presented to Committee for determination because of its location in the Green Belt at the request of Councillor Sharp.

Mr Butter, a representative of the applicant, spoke in support of the application.

Councillor Sharp spoke in support of the application.

During discussion some Members felt that the proposal would be beneficial to the site and surrounding area as the replacement of the existing businesses with residential properties would reduce the number of large lorries and general traffic in the area. Other Members of the Committee felt that the application would have an adverse impact on the openness of the Green Belt and would therefore represent inappropriate development in this area.

Following debate it was:-

**Resolved** – That the application be refused for the following reasons:

1. The site is allocated as Green Belt in the adopted Local Plan. National Planning Policy as set out in the National Planning Policy Framework states that development of the type proposed is not appropriate within the Green Belt and will only be permitted if very special circumstances exist which outweigh the harm to the Green Belt. It is not considered that any very special circumstances have been demonstrated to justify the proposed development, the approval of which would be detrimental to the openness, character and strategic function of this part of the Green Belt, contrary to National Planning Policy as set out in the National Planning Policy Framework.
2. The proposed development by reason of its tight layout would not be in keeping with the rural character of the area which comprises of scattered development. It is considered that this would result in significant detriment to the character and appearance of the area contrary to Policies EC2 and H9 of the Council's Adopted Local Plan.

*(At this point in the proceedings Councillor Smith vacated the Chair and Councillor Hart took the position of Chairman).*

**(d) 14/0646/FUL – HILLTOP VILLA, HILLTOP AVENUE, BENFLEET, ESSEX (BOYCE WARD) – CONSTRUCTION OF SINGLE STOREY SIDE EXTENSION - MR KIM CHAPMAN**

The applicant sought consent to extend the existing chalet with a single storey side extension to provide an annexe to accommodate a family member. The application property was located within the Green Belt. The Planning Officer reported that the proposed addition together with the existing conservatory would result in extensions disproportionately larger than the original dwelling and would consequently constitute an inappropriate form of development, which if allowed would be likely to have an adverse impact on the openness of the Green Belt contrary to Policy GB5 of the Adopted Local and national policy as set out in the National Planning Policy Framework (NPPF).

There were no very special circumstances to justify overcoming the detrimental harm that would be caused to the character and appearance of the Green Belt. The application was therefore recommended for refusal.

The application was presented to the Committee at the request of Councillor Smith in order for the Committee to assess the effect of the development on the Green Belt.

Mr Chapman, the applicant, spoke in support of the application.

Councillor Mrs Goodwin, a Ward Member, spoke in support of the application.

During discussion some Members concurred with the Planning Officer's report that the proposal would constitute an inappropriate form of development in the Green Belt. Others felt that there were exceptional circumstances in this case and did not agree that the development would adversely harm the openness, character and strategic function of the Green Belt.

Following debate it was:-

**Resolved** – That the application be approved subject to a condition that the materials used externally should harmonise with the existing development.

(Councillor Blackwell requested that it be recorded in the Minutes that he supported refusal and had voted against approval of the application.)

- (e) **14/0718/FUL – 189 BENFLEET ROAD, THUNDERSLEY, BENFLEET (BOYCE WARD) – CONSTRUCTION OF SINGLE STOREY SIDE EXTENSIONS, SINGLE STOREY FRONT EXTENSION, INFILL PORCH, REPLACEMENT FRONT BAY WINDOW, TWO STOREY REAR/SIDE EXTENSIONS AND LOFT CONVERSION WITH BALCONY AND ROOF LIGHTS. CONSTRUCTION OF OUTBUILDING, NEW FRONT WALL, ENTRANCE GATES AND RAISED REAR PATIO (RETROSPECTIVE APPLICATION) – MR AND MRS TOM SANDERS**

(Councillor Burch declared a non pecuniary interest in the above item as he knew a member of the applicant's family).

(Councillor Sharp declared a non pecuniary interest in the above item as he knew a member of the applicant's family and was not in the Chamber for the debate).

(Councillor Varker declared a non pecuniary interest in the above item as he went to school with the applicant and remained in the Chamber during its consideration).

(Councillor Wood declared a non pecuniary interest in the above item as he had a distant friendship with the applicant's close family).

The applicant sought retrospective consent for various extensions to a detached dwelling and for the construction of a new outbuilding, raised patio area, new front wall and front gates. The application property was located within the Green Belt. The works were substantially completed and the applicant had advised that works were commenced in the belief that they constituted permitted development.

The Planning Officer reported that none of the works constituted permitted development. Furthermore the proposed additions resulted in a dwelling disproportionately larger than the original dwelling and the outbuilding would result in the construction of a new building, both of which constituted inappropriate forms of development, which if allowed would be likely to have a severe adverse impact on the openness of the Green Belt contrary to Policy GB5 and Appendix 2 of the Adopted Local and national policy as set out in the National Planning Policy Framework (NPPF). There were no very special circumstances to justify the detrimental harm caused to the character and appearance of the Green Belt and the application was therefore recommended for refusal.

The application was being presented to the Committee at the request of Councillor Smith in order for the Committee to assess the effect of the development on the Green Belt

Mr Sanders, the applicant, spoke in support of the application.

During discussion a Member spoke in support of the application as he believed that the works that had been undertaken were not too dissimilar to those that would be allowed under permitted development rights. Other Members felt that the works were clearly inappropriate development in the Green Belt and that as the proposal was in contravention of both the Adopted Local Plan and national policy it should not be permitted.

Following discussion it was:-

**Resolved** – That the application be refused for the following reasons:

1. The proposed development is situated within an area of land allocated for Green Belt purposes as defined in the Council's Adopted Local Plan, where development is only allowed in the most exceptional circumstances. The proposed extensions would disproportionately increase the size of the original dwelling, resulting in an oversized, inappropriate form of development, which if allowed would be likely to have an adverse impact on the character, appearance and openness of the Green Belt. The applicant has failed to demonstrate any very special reasons why the proposal might exceptionally be permitted and in the absence of such very special circumstances approval of the proposal would be contrary to Policy GB5 and Appendix 2 of the Adopted Local Plan and national policy as set out in the National Planning Policy Framework (NPPF).
2. The proposed outbuilding is situated within an area of land allocated for Green Belt purposes as defined in the Council's Adopted Local Plan, where the construction of new buildings is inappropriate development, and is only allowed in the most exceptional circumstances. The proposal would construct a new building, the outbuilding, resulting in an oversized, inappropriate form of development, which if allowed would be likely to have an



Development Control Committee – 3<sup>rd</sup> March 2015

adverse impact on the character, appearance and openness of the Green Belt. The applicant has failed to demonstrate any very special reasons why the proposal might exceptionally be permitted and in the absence of such very special circumstances approval of the proposal would be contrary to national policy as set out in the National Planning Policy Framework (NPPF).

Chairman

<b>Committee</b>	<b>DEVELOPMENT CONTROL</b>
<b>Date</b>	<b>14<sup>th</sup> April 2015</b>
<b>Subject</b>	<b>Deposited Plans</b>
<b>Report of the</b>	<b>Head of Regeneration and Neighbourhoods</b>
<b>Report Author</b>	<b>Kim Fisher</b>

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<b>Item</b>	<b>Application No.</b>	<b>Address</b>	<b>Page No</b>
<b>A. APPLICATIONS</b>			
<b>1</b>	<b>15/0058/ADV</b>	<b>Waterside Farm Sports Complex, Canvey Island. (Canvey Island West)</b>	<b>2 -5</b>
<b>2</b>	<b>15/0110/ADV</b>	<b>Waterside Farm Sports Complex, Canvey Island (Canvey Island West)</b>	<b>6 - 9</b>
<b>3</b>	<b>15/0117/FULCLC</b>	<b>Opposite 27 First Avenue, Canvey Island (Canvey Island Central)</b>	<b>10 - 14</b>
<b>4</b>	<b>15/0134/FUL</b>	<b>Hilton Road, Canvey Island (Canvey Island Winter Gardens)</b>	<b>15 - 23</b>
<b>B. CERTIFICATES OF PROPOSED AND EXISTING LAWFUL USE OR DEVELOPMENT</b>			<b>24</b>
<b>1</b>	<b>15/0023/CLP</b>	<b>Five Acres Great Burches Road Thundersley (St Peter's)</b>	<b>25 - 32</b>
<b>2</b>	<b>15/0075/CLP</b>	<b>Rear Of 37 The Dale Thundersley Benfleet (Boyce)</b>	<b>33 - 39</b>

**Members are advised that no site inspections are recommended in respect of Items attached to this agenda.**

## A. APPLICATIONS

### ITEM 1

<b>Application Number:</b>	<b>15/0058/ADV</b>
<b>Address:</b>	<b>Waterside Farm Sports Centre Somnes Avenue Canvey Island Essex SS8 9RA (Canvey Island West)</b>
<b>Description of Development:</b>	<b>Installation of new welcome sign</b>
<b>Applicant:</b>	<b>Castle Point Borough Council</b>
<b>Case Officer</b>	<b>Mrs Sophie Adams</b>
<b>Expiry Date</b>	<b>14.04.2015</b>

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### Summary

Advertisement consent is sought for the installation of a new welcome sign adjacent to the main vehicular access to the Waterside Farm Sports Centre.

Whilst prominently sited, it is not considered that the sign would have a negative impact on the appearance of the built and natural environment or result in an adverse impact on public amenity or highway safety. The proposal is consequently considered to satisfactorily conform to all relevant planning policy and guidance and is therefore recommended for APPROVAL.

The application is presented to Committee because it is made on behalf of Castle Point Borough Council which has a legal interest in the property.

### Site Visit

It is not considered necessary for Members to visit the site prior to determination of the application.

### Introduction

The Waterside Farm Sports Centre is located on the southern side of Somnes Avenue (B1014) some 300m east of the Waterside Farm Roundabout. This part of Somnes Avenue has a very open character, with Waterside Farm Sports Centre and Canvey Miniature Railway on its southern side and Castle Point Golf Course to its northern side.

The Sports Complex building is a detached two storey building used for leisure purposes, with associated car park and playing fields and includes a café. Advertisements within the site are relatively limited with one square shaped non-illuminated fascia sign located on the building specifying the name of the building and free standing signs within the car park indicating the terms and conditions of the car park use.

The site, the subject of the current application consists of a roughly triangular piece of land within the grounds of Waterside Farm Sports Centre close to the Centre's main vehicular access. The site is some 4.5m wide and 7.3m deep.

## **The Proposal**

The applicant seeks consent to install a new welcome sign which would be placed at the front of the site and angled to face the direction of traffic travelling westwards from the town centre of Canvey Island. The sign would be non-illuminated, free standing and supported by three metal posts, each measuring 2.412m in height, 0.076m in width and 0.076m in depth. The overall sign would have a height of 2.412m and a width of 2.743m. The sign would consist of aluminium composite board affixed to the posts.

The sign is divided into upper and lower parts. The upper part of the sign has a height of 0.914m and is intended to display the Castle Point Borough Council logo in green, yellow and blue to the top left with the legend "Welcome to Waterside Farm Leisure Centre" in a blue font, and "castlepoint leisure" in a green and blue font. Green, yellow and blue strips will be provided to the top right and bottom left corners.

The lower part of the sign has a height of 1.219m and will allow for event banners to be displayed. Such banners may advertise open days and special offers (e.g. free joining fee) at the Sports Centre.

## **Supplementary Documentation**

None

## **Planning History**

Advertisement Consent was granted on 8<sup>th</sup> August 1978 for three information signs and wall mounted symbol (A/CPT/7/78). These signs are not evident on site.

Advertisement Consent was granted on 26<sup>th</sup> June 1979 for double sided hanging sign (A/CPT/16/79). This sign is not evident on site.

## **Local Plan Allocation**

Public Open Space and Green Belt

## **Relevant Government Guidance and Local Plan Policies**

### National Planning Policy Framework

Paragraph 67

### Current Local Plan (Adopted November 1998)

S12 - Design, Siting and Illumination of Advertisements

S13 - Proliferation of Advertisements

S14 - Advertisements and Public Safety

## **Consultation**

### Legal Services

No comments received

### Canvey Island Town Council

No comments received

## **Public Consultation**

No neighbour responses have been received.

## **Evaluation of Proposal**

The National Planning Policy Framework (NPPF) states at paragraph 67 that poorly placed advertisements can have a negative impact on the appearance of the built and natural environment. Control over outdoor advertisements should be efficient, effective and simple in concept and operation. Only those advertisements which will clearly have an appreciable impact on a building or on their surroundings should be subject to the local planning authority's detailed assessment. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.

Policy S12 of the current Local Plan states that advertisements should be well designed and sited and relate to the character of the building and surrounding area. This is considered to be consistent with paragraph 67 of the NPPF.

Policy S13 states that the Council will exercise strict control to prevent a proliferation of advertisements, especially above ground floor level. This policy is negatively worded and inconsistent with the presumption in favour of sustainable development. It is more appropriate therefore to consider proposals for advertisements in the context of Local Plan Policy S12 and paragraph 67 of the NPPF.

Policy S14 seeks to prevent advertisements that would have an adverse effect on the safety of traffic or pedestrians. This is consistent with paragraph 67 of the NPPF.

The proposed sign intends to welcome people to the Waterside Farm Sports Centre and is located close to the main vehicular access with Somnes Avenue in order to carry out this function. The design of the sign is simple and consistent with the branding of the Sports Centre and the board is located away from the building within the site, and is unlikely to have a negative impact on the character or appearance of the Sports Centre building. Furthermore it is not considered that the sign would result in an excessive amount of advertising or unnecessary clutter on the site, the wider site or the area generally and is therefore considered unlikely to detract from the character and appearance of the area.

The proposed sign is set back from the highway and is non-illuminated. As such it is considered unlikely to result in an adverse impact on public amenity or highway safety. Consequently the proposal is considered to be consistent with the aims of Policies S12 and S14 of the Adopted Local Plan, and also the requirements of paragraph 67 of the NPPF.

## **Conclusion**

The proposed sign is unlikely to have a negative impact on the character and design of the Sports Centre building and would not have a negative impact on the appearance of the built and natural environment. Furthermore the proposal would not result in an adverse impact on public amenity or highway safety or result in an excessive number of advertisements on the site or unnecessary clutter. The proposal is consequently considered to satisfactorily conform to all relevant planning policy and guidance.

I have taken all other matters raised by interested parties into consideration, but none are sufficient to outweigh the considerations that led to the recommendation.

## **My Recommendation is Approval**

### **Informatives**

1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

**ITEM 2**

<b>Application Number:</b>	<b>15/0110/ADV</b>
<b>Address:</b>	<b>Waterside Farm Sports Centre Somnes Avenue Canvey Island Essex SS8 9RA (Canvey Island West)</b>
<b>Description of Development:</b>	<b>Fascia sign to cafe</b>
<b>Applicant:</b>	<b>Castle Point Borough Council</b>
<b>Case Officer</b>	<b>Mrs Sophie Adams</b>
<b>Expiry Date</b>	<b>15.04.2015</b>

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**Summary**

Advertisement consent is sought for the installation of a fascia sign for the cafe at Waterside Farm Sports Centre.

The proposed sign is unlikely to have an appreciable impact on the appearance and design of the Sports Centre building and would not have a negative impact on the character and appearance of the built and natural environment. Furthermore the proposal would not result in an adverse impact on public amenity or highway safety. The proposal is consequently considered to satisfactorily conform to all relevant planning policy and guidance and is therefore recommended for APPROVAL.

The application is presented to Members because it is made on behalf of Castle Point Borough Council which has a legal interest in the property.

**Site Visit**

It is not considered necessary for Committee to visit the site prior to determination of the application.

**Introduction**

The Waterside Farm Sports Centre is located on the southern side of Somnes Avenue (B1014) some 300m east of the Waterside Farm Roundabout. This part of Somnes Avenue has a very open character, with Waterside Farm Sports Centre and Canvey Miniature Railway on its southern side and Castle Point Golf Course to its northern side.

The Sports Complex building is a detached two storey building used for leisure purposes, with associated car park and playing fields and includes a café. Advertisements within the site are relatively limited with one square shaped non-illuminated fascia sign located on the building specifying the name of the building and free standing signs within the car park indicating the terms and conditions of the car park.

**The Proposal**

The applicant seeks consent to install a non illuminated fascia sign to the front elevation of the building over windows serving the café, located close to the main pedestrian access at the western end of the building. The sign would be positioned 2.489m above ground level, and

would consist of aluminium composite board with screw fixings. It would measure 1.2m in height, 4m in width and 0.003 in depth and carry the legend "The Centre Cafe" in white lettering against a blue background. In smaller white lettering the sign would also specify "Hot drinks Snacks Sandwiches Takeaway Free Wi-fi" against a green background.

### **Supplementary Documentation**

None

### **Planning History**

Advertisement Consent was granted on 8th August 1978 for three information signs and wall mounted symbol (A/CPT/7/78). These signs are not evident on site.

Advertisement Consent was granted on 26th June 1979 for a double sided hanging sign (A/CPT/16/79). This sign is not evident on site.

### **Local Plan Allocation**

Public Open Space and Green Belt

### **Relevant Government Guidance and Local Plan Policies**

#### National Planning Policy Framework

Paragraph 67

#### Current Local Plan (Adopted November 1998)

S12 - Design, Siting and Illumination of Advertisements

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S14 - Advertisements and Public Safety

### **Consultation**

#### Legal Services

No objections

#### Canvey Island Town Council

No comments received

### **Public Consultation**

No neighbour responses have been received.

### **Evaluation of Proposal**

The National Planning Policy Framework (NPPF) states at paragraph 67 that poorly placed advertisements can have a negative impact on the appearance of the built and natural environment. Control over outdoor advertisements should be efficient, effective and simple in



concept and operation. Only those advertisements which will clearly have an appreciable impact on a building or on their surroundings should be subject to the local planning authority's detailed assessment. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.

Policy S12 of the current Local Plan states that advertisements should be well designed and sited and relate to the character of the building and surrounding area. This is considered to be consistent with paragraph 67 of the NPPF.

Policy S13 states that the Council will exercise strict control to prevent a proliferation of advertisements, especially above ground floor level. This policy is negatively worded and inconsistent with the presumption in favour of sustainable development. It is more appropriate therefore to consider proposals for advertisements in the context of Local Plan Policy S12 and paragraph 67 of the NPPF.

Policy S14 seeks to prevent advertisements that would have an adverse effect on the safety of traffic or pedestrians. This is consistent with paragraph 67 of the NPPF.

The proposed signage intends to identify the presence of the cafe within the Waterside Farm Sports Centre, and would be attached to the front elevation of the Sports Centre building. The design of the sign is simple and consistent with the branding of the Sports Centre and its proportions relate well to the scale of the building and its fenestration. Overall the proposed sign is considered unlikely to have a negative impact on the character and design of the Sports Centre building.

Considering the wider site, and the surrounding area, it is not considered that the proposed sign would result in an excessive level of advertising on the site or unnecessary clutter and consequently the sign is considered unlikely to have a negative impact on the appearance of the built and natural environment of the surroundings.

The proposed sign is set back considerably from the highway and is non-illuminated. The proposal will not therefore result in glare to highway users and will not result in an adverse impact on public amenity or highway safety. The proposal is therefore considered to be consistent with the aims of Policies S12 and S14 of the Adopted Local Plan, and also the requirements of paragraph 67 of the NPPF.

## **Conclusion**

The proposed sign is unlikely to have a negative impact on the character and design of the Sports Centre building, and would not have a negative impact on the appearance of the built and natural environment. Furthermore the proposal would not result in an adverse impact on public amenity or highway safety or result in an excessive number of advertisements on the site or unnecessary clutter. The proposal is consequently considered to satisfactorily conform to all relevant planning policy and guidance.

I have taken all other matters raised by interested parties into consideration, but none are sufficient to outweigh the considerations that led to the recommendation.

**My Recommendation is Approval**

**Informatives**

1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

**ITEM 3**

**Application Number:** 15/0117/FULCLC  
**Address:** Opposite 27 First Avenue Canvey Island Essex SS8 9LR  
(Canvey Island Central)  
**Description of Development:** Formation of parking area for community bus  
**Applicant:** Castle Point Borough Council  
**Case Officer:** Mr Keith Zammit  
**Expiry Date:**

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**Summary**

The application seeks to provide a parking area for a community bus. No robust reasons for refusal can be identified and the proposal is therefore recommended for APPROVAL.

The application is presented to the Committee as the Council is both the applicant and landowner. The application has been submitted on behalf of the Canvey Big Local Lottery.

**Site Visit**

It is not considered necessary for Members to visit the site prior to determination of the application.

**Introduction**

The application site is located at the eastern end of First Avenue within an area of open space which is currently grassed and forms a 'village square' flanked by terraced houses to all sides. The wider green space rises to the west and is crossed by a footpath but is otherwise devoid of significant features.

**The Proposal**

Permission is sought for the formation of a parking area for a community bus. It is proposed to excavate an area of the green space, having a size of some 5.5m by 23m and to make level ground, then lay grasscrete and provide a vehicular access (dropped kerb) to the highway.

The lay-by will be used by a community bus and the applicant has advised that for most of the year the bus is likely to be used for 2 or 3 hours only between the hours of 4pm and 9.30pm, one day a week (not at the weekend).

**Supplementary Documentation**

The application is accompanied by technical details in respect of the construction of the parking area.

**Planning History**

None

## **Relevant Government Guidance and Local Plan Policies**

### Castle Point Local Plan

EC2 – Design

EC3 – Residential amenity

## **Consultation**

### County Highways

To be reported

### Canvey Island Town Council

To be reported

### Environment Agency

No comments, refer to standing advice

### Legal Services

To be reported

## **Public Consultation**

One objection has been received containing the following comments:

1. There are not many children living in First Avenue. It should be sited where there are children that would use it.
2. Concern is raised about noise and possible antisocial behaviour arising from use of the bus

## **Comments on Consultation Responses**

The Environment Agency Flood Risk Standing Advice is discussed below.

Impact on neighbours is discussed below.

## **Evaluation of Proposal**

The main issues with this application are the visual impact of the proposal, both in terms of the physical ground work and the parked vehicle, the impact on the amenity of the surrounding residential properties and highway safety implications.

### Visual impact

Policy EC2 of the Local Plan requires spaces around buildings to be enhanced by appropriate hard and soft landscaping. This is consistent with paragraphs 56 to 58 of the NPPF.

The proposed parking area would be finished in grasscrete. Whilst not the most attractive material, it would, once established blend with the existing grassed area and would not be prominent in views from most of the surrounding houses. Furthermore grasscrete offers the opportunity for surface water percolation within the site. On balance it is not considered that the introduction of grasscrete would be so injurious to the visual amenity of the surrounding area

that a reason for refusal on this basis could be upheld on appeal. No objection is therefore raised to the proposal under Policy EC2.

The parking of a bus on the site has the potential to adversely impact on the character and appearance of the area which at the present time is dominated by a visually pleasing grassed area, free of parked vehicles, providing an attractive outlook for the residents and visual softening of the surrounding hard surfaces. Parking a bus here would reduce the openness of the green and would be less visually pleasing than the current situation. However, it is noted that it is only intended to park the bus here for a few hours at a time and only one evening a week. Whilst it would erode the visual amenity of the area whilst present at the site it is not considered that this would occur with such frequency that a refusal of permission on the basis of harm to visual amenity could be supported on appeal.

Overall there are no objections on visual grounds.

#### Impact on neighbours

Policy EC3 of the Local Plan seeks to prevent noisy development from causing loss of amenity to residents. This is generally consistent with paragraphs 120 to 125 of the NPPF.

It is possible that noise could be generated within the bus considering that it is aimed at young people, but this is not likely to be greater than noise that might occur from children playing on the green, which could happen at any time, especially during the summer and is likely to be unsupervised.

There is some concern at the possibility that the engine of the bus could be left running, for example to run the heating during the winter. This could cause nuisance to surrounding properties from noise and from pollution. However, the Council is the applicant, and as a responsible public body it ought to be able to ensure that the bus is operated in a manner not to cause detriment to surrounding residents.

All in all, it is not considered that there would be such an adverse impact on the amenity of nearby residents that an objection to the proposal on the basis of adverse impact on the amenity of adjoining residents could be supported on appeal.

#### Highway implications

Policy EC2 of the Local Plan also requires all modes of movement to be made safe and convenient.

The proposed parking space does not include the provision of a turning facility, with the result that the bus will need to reverse into or out of the space when entering or leaving the site. This raises a potential safety issue with the bus being required to undertake manoeuvres within the adjoining highway; however, the layout within this part of First Avenue would appear to be capable of accommodating the turning movements of a bus at this point and as such it is not considered that the level of risk posed by the proposal would be so significant as to justify refusal.

Subject to there being no unfavourable comments from the Highway Authority, there is no objection to the proposal on highway safety grounds.

Other matters

The introduction of a hard surface has the potential to lead to increased surface water runoff onto the adjoining highway. The use of grasscrete offers some opportunity for surface water percolation and the establishment of grass on the site should result in absorption rates similar to that currently achieved

The Environment Agency Standing Advice for operational development less than 1ha in area is that the Agency should be consulted with a Flood Risk Assessment and Sequential Test evidence. This is considered to be a disproportionate response to a proposal for approximately 125m<sup>2</sup> of hard surfacing. Subject to a condition requiring the use of grasscrete and the implementation of such a scheme in accordance with SUDS principles, no objection is raised to the surfacing of this area.

**Conclusion**

The proposal is considered to offer a community benefit by providing a parking area for the community bus. It is not considered that undue detriment to the visual amenity of the area or the residential amenity of adjoining occupiers would be caused by the proposal, subject to appropriate conditions imposed to limit the use of the parking area and the achievement of appropriate surface water drainage of the site.

I have taken all other matters raised by interested parties into consideration, but none are sufficient to outweigh the considerations that led to the recommendation.

**My Recommendation is Approval subject to the following conditions**

1 The development hereby permitted shall be begun on or before the expiration of five years beginning with the date of this permission.

REASON: This condition is imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

2 The proposed lay-by shall only be used for the purposes of the stationing of the Community Bus and shall be used for no other purpose whatsoever, without the prior formal consent of the Local Planning Authority.

REASON: In order to limit the impact on the amenity of the adjoining residents.

3 Details of the means of preventing the use of the lay-by by others shall be submitted to and approved in writing by the Local Planning Authority prior to the first use of the lay-by hereby approved.

Any approved scheme shall be implemented prior to the first use of the lay-by and thereafter permanently maintained as such.

REASON: In order to protect the amenity of adjoining residents.

**Informatives**

1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

**ITEM 4**

<b>Application Number:</b>	<b>15/0134/FUL</b>
<b>Address:</b>	<b>Rear Of Morrisons Local Hilton Road Canvey Island Essex (Canvey Island Winter Gardens)</b>
<b>Description of Development:</b>	<b>2 No. 4 bed detached houses and 2 No. 3 bed link detached chalets</b>
<b>Applicant:</b>	<b>Mr Mark Smith</b>
<b>Case Officer</b>	<b>Mr Keith Zammit</b>
<b>Expiry Date</b>	<b>21.04.2015</b>

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**Summary**

The application seeks to use part of the site of the former Silver Jubilee Public House to provide four single family dwellinghouses. The proposal is considered to be unacceptable, particularly in comparison to the previous scheme, and therefore is recommended for refusal.

This application is presented to Committee at the request of Councillor Cole.

**Site Visit**

It is not considered necessary for Members to visit the site prior to determination of the application.

**Introduction**

The application relates to a largely hard surfaced area of land that was formerly part of the car park serving the Silver Jubilee Public House located to the east. The site has been separated from the curtilage of the former public house, which is now in separate ownership and partly in use as a convenience store.

To the east of the site are residential properties fronting Briarswood together with a property in non-residential use as a beauty clinic at the junction of Briarswood and Hilton Road. To the south of the site is part of the curtilage of 11 Briarswood, beyond which is the Winter Gardens Primary School.

**The Proposal**

Permission is sought for four dwellings with an access road. The scheme seeks to overcome the reasons for refusal attached to an earlier application.

**Supplementary Documentation**

The application is accompanied by a materials schedule and a Flood Risk Statement which can be viewed on the Council's website.

**Planning History**



February 2015 – permission refused for 2 No. 4 bedroomed detached houses and 2 No. 3 bedroomed linked detached chalets (14/0733/FUL) for the following reasons:

1. The proposed car ports serving plots 3 and 4, due to their limited width, would not represent a convenient parking facility and the proposal as such is likely to give rise to additional on-street parking in surrounding streets, to the detriment of the free flow of traffic and the amenity and convenience of surrounding residents, contrary to Policy T8 of the Castle Point Borough Local Plan.
2. The proposed development, due to the relative orientation of adjoining properties and the proximity of the proposed dwellings to the eastern boundary of the site, would give rise to overshadowing of adjoining gardens to the east, to the detriment of the residential amenity of the occupiers of those dwellings, contrary to RDG3 of the Council's adopted Residential Design Guidance.
3. The proposed area for collection of refuse and recyclable materials from plots 2 to 4 would be inappropriately sited and detrimental to the visual amenity of the area, contrary to Policy EC2 of the Castle Point Borough Local Plan and RDG13 of the Council's adopted Residential Design Guidance.
4. The proposal fails to provide adequate demonstration of the satisfactory management of surface water within the development and as a consequence the local planning authority is not satisfied that the proposal would not give rise to flooding elsewhere. The proposal as such is contrary to Government guidance as expressed at paragraph 100 of the National Planning Policy Framework.

### **Relevant Government Guidance and Local Plan Policies**

#### National Planning Policy Framework

Paragraphs 39, 56-58, 100-104

#### Current Local Plan

EC2 – Design

T8 – Parking standards

#### Residential Design Guidance

RDG1 – Plot size

RDG2 – Space around dwellings

RDG3 – Building lines

RDG5 – Privacy and living conditions

RDG6 – Amenity space

RDG7 – Roof development

RDG12 – Parking and access

RDG13 – Refuse and recycling storage

### **Consultation**

#### Canvey Town Council

Objects to the proposal on the following grounds:

- o overdevelopment
- o inadequate access for refuse lorries

- o further impact on current infrastructure
- o application should not be considered pending outcome of drainage study
  
- o if approved, conditions should be imposed relating to enhancement and improvement of existing road infrastructure

Refuse and recycling

No objections

Environment Agency

No objection subject to conditions

County Highways

To be reported

**Public Consultation**

One objection received making the following points:

- o would lead to reversing into Hilton Road
- o detrimental to highway safety
- o additional on-street parking
- o will add to problems of surface water flooding

**Comments on Consultation Responses**

A refusal of the scheme on the grounds of prematurity pending the outcome of the drainage review has no policy basis and would be unsustainable as a reason for refusal.

Other planning matters raised are discussed in the evaluation of the proposal.

**Evaluation of Proposal**

The main issues with this application are the principle of residential development, flood risk, design, impact on residential amenity and any traffic and parking implications.

Principle

The land is allocated for residential purposes on the Proposals Map accompanying the adopted Local Plan. There can therefore be no objection to the principle of residential development on this site.

Flood Risk

Whilst it is acknowledged that Committee objected to the previous proposal on the basis of flood risk, for the reasons stated below, it is not considered that an objection of this nature can be sustained on appeal.

Government guidance as contained in the NPPF requires all proposals for new dwellings in areas at risk of flooding to be accompanied by a site-specific Flood Risk Assessment in order to demonstrate that the occupiers of the proposed development would not be placed at unacceptable risk in the event of a flood. The proposal is also required to pass the sequential and exception tests as set out in the National Planning Policy Framework and associated

Practice Guidance, in order to determine whether sites of lower flood risk probability exist which may be more suitable for the type of development proposed.

With regard to the sequential test, the proposal seeks to provide dwellings within the settlement of Canvey Island. For residential development to serve the community of Canvey Island it is considered that it would need to be located within that settlement. Since the settlement of Canvey Island is located entirely within Flood Zone 3 it is not considered that there are reasonably available alternative sites within the area with a lower probability of flooding that could accommodate the proposed development. Under the circumstances it is considered that the proposal passes the sequential test.

Having passed the sequential test, the proposal must then pass the exception test. In order to meet the requirements of the exception test as described at paragraph 102 of the NPPF, the proposal must demonstrate that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and a site-specific Flood Risk Assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

In response to the first criterion, in a very broad sense, the continued development of Canvey Island is necessary to sustain the local community and prevent the social and economic blight of the settlement. However, in assessing whether these benefits outweigh the flood risk, the flood risks surrounding the development must be considered in more detail.

The second criterion requires that the applicant demonstrates that the development is safe, will not increase flood risk elsewhere and where possible will reduce flood risk overall.

The applicant has provided a Flood Risk Statement (FRS). The finished ground floor level of the properties would be 0.3m above the ground level of the site. The FRS identifies that during a 1 in 200 year breach event water levels may reach a depth of 1m above finished ground floor level and during a 1 in 1000 year breach event may reach a depth of 2m above finished ground floor level, a depth on site of 2.3m. The ground floor of the property would therefore be liable to flooding; however, with the first floor set at 2.95m above ground level, there would be refuge available which would be 0.65m above predicted maximum flood water levels. Provided that the response of occupiers to flooding or a flood warning is managed by a Flood Response Plan, it is not considered that there would be undue risk to occupiers posed by the development.

The applicant has submitted a flood response plan at section 4 of the FRS. Although direct delivery of flood warnings to occupiers is dependent upon the occupier registering for the Environment Agency's Flood Warnings Direct service, given the level of media coverage which would likely be afforded to a tidal flood warning affecting Canvey, it is considered that occupiers would be likely to receive such warnings in good time. The applicant's Flood Response Plan is considered acceptable for the purposes of making occupiers aware of actions that they should take if a flood warning is issued or flooding occurs. A condition may be imposed on the grant of any consent requiring enactment of this plan.

It is noted that there is the possibility of incorporating flood resistance and resilience measures into the construction of the buildings in order to minimise damage during a flood event and enable a faster recovery once floodwaters have subsided. The submission contains a list of such measures at section 5 of the FRS. These include using water resistant finishes to interior walls, avoiding use of MDF, siting electricity meter/consumer units and boilers as high as

possible within the properties and installing ground floor wiring in plastic conduits to enable easy replacement following a flood. It is considered that this represents an acceptable approach. A

condition may be imposed on the grant of any consent requiring the dwellings to be constructed in accordance with these measures.

The National Planning Practice Guidance states at paragraph 054 Reference ID: 7-054-20140306 that when considering safety, the depth and velocity of flood water and the structural safety of buildings needs to be considered. The submission contains no consideration of such matters. Were permission granted, it would be necessary to impose a condition requiring demonstration of the ability of the buildings to withstand water pressures that may act upon them during a flood.

In terms of surface water, whilst it is acknowledged that the site is already hard surfaced and that the replacement of part of that hardsurfacing with grass and planted areas would have a beneficial impact on surface water disposal on the site, it is considered that further improvements could be achieved through the use of SuDS principles in the provision of any new hardsurfacing within the site. The submitted Flood Risk Statement acknowledges the need for the use of Sustainable Drainage Systems on the site. A condition requiring the use of SuDS may be attached to the grant of any consent.

Subject to the imposition of the conditions as described, there can be no sustainable objection to the proposal on the basis of flood risk.

#### Design

Policy EC2 of the current Local Plan requires a high standard of design in all new buildings. This is consistent with paragraphs 56 to 58 of the NPPF.

The Council has adopted Residential Design Guidance as a Supplementary Planning Document, which has been prepared in accordance with section 7 of the NPPF. Within this, guidance at RDG7 deals with roof development and requires roofs to be proportionate to the remainder of dwellings with features such as dormer windows maintaining good roof margins.

The proposed dwellings are of satisfactory design. There is no significant architectural character to the surrounding area, and it is not considered that the provision of these dwellings would be visually harmful to the character of the area as a whole. There is a mixture of single and two storey properties in the area, so the provision of two storey properties and chalets on this site would not look out of place. The proposed dormers to plots 3 and 4 are not considered to be out of scale with the rest of the roof. No objection is therefore raised to the proposal in design terms, under Policy EC2 or guidance at RDG7.

RDG1 deals with plot sizes. It states that within the existing built up area, plot sizes for all new development should be informed by the prevailing character of plot sizes.

The proposed dwellings would be on plots ranging from 10m to 14m in width and 21m to 23m in depth. This would be reflective of plot sizes in the area, and as such there is no objection to the proposal on the basis of RDG1.

RDG2 requires the space around all new development to be informed by the prevailing character of space around dwellings. The properties would be located a minimum of 1m from

the boundaries of their plots which is considered reflective of the character of the surrounding area. No objection is therefore raised to the proposal on the basis of RDG2.

RDG3 requires proposals to respect established building lines. The proposed dwelling on Plot 1 would be located some 3m from Hilton Road at the closest point. The previous scheme originally provided the dwelling on Plot 1 at 3m from Hilton Road but this isolation was increased to 5m as a result of negotiation. The current scheme reverts to the previously unacceptable arrangement and would result in the proposed dwelling standing too far forward of the adjacent Morrisons Local store, creating an unduly prominent and dominant feature in the street scene. An objection is raised accordingly.

It is of course acknowledged that the proposal would have dwellings on plots 2 to 4 set well behind the building line of Hilton Road. Whilst the provision of such forms of development can impact upon the character and pattern of development locally, in this instance the development would be sited between a commercial site to the west and a cul-de-sac of houses and a further non-residential use to the east. Under such circumstances it is not considered that the provision of dwellings in the manner shown could be said to be harmful to the general pattern of development in the area. No objection is therefore raised to this aspect of the proposal on the basis of RDG3.

#### Neighbour impact

RDG3 also requires proposals not to cause excessive overshadowing or dominance to adjacent dwellings. The adjacent properties in Briarswood have reasonably deep gardens at some 10 - 11m, when compared with the policy requirement of 9m. The proposal would result in the provision of dwellings 1m from the rear fence of some of those properties (9 and 11 Briarswood) resulting in the provision of some 11 to 12m between rear and flank elevations. Such a relationship is commonly found on corner plots and there are examples of similar arrangements of properties nearby, for example at 43 Hilton Road & 1 The Ridings, 14/16 The Ridings & 33 Sussex Way, 286 Link Road/3 Bradley Close & 284 Link Road and within Briarswood. In the context of the surrounding development is not considered that the layout proposed in respect of plots 3 and 4 would be inconsistent with the layout of existing development in the area and the levels of isolation achieved would not lead to an unsatisfactory living environment for existing residential occupiers through obtrusiveness or dominance.

For the remainder of the development, the layout has been revised to provide dwellings on the western part of the site, with the access located on the eastern side adjacent to the rear boundaries of those properties fronting Briarswood. Relocation of the dwellings in this manner has enabled the achievement of an increased distance of some 18m to be provided between existing and proposed properties, which is considered satisfactory.

No objection is therefore raised on the basis of this part of RDG3. However, the moving of the vehicular access to the eastern side of the site and the relocation of the dwellings further west creates a situation whereby the existing dwellings in Briarswood would experience increased noise and disturbance along their rear boundaries from the movement of vehicles, and the occupiers of the new dwellings would be closer to the adjacent food store compared to the previous scheme and likely to experience more noise and disturbance from use of the external areas of that site, particularly from vehicle movements. The layout would not provide the high quality of development that is sought by the NPPF and an objection is raised accordingly.

RDG5 deals with privacy and living conditions and requires a distance of 9m to be provided between first floor windows and the boundary of the site. Where this is not achieved, the use of obscure glazed and fixed windows can be used to mitigate overlooking concerns, but only where the windows concerned are secondary windows.

The rear gardens would achieve a minimum depth of 9m so the first floor rear windows would not cause undue overlooking and the windows would be provided with an adequate outlook.

The front windows of Plot 1 would overlook Hilton Road which is within the public realm and would not result in undue loss of privacy to nearby properties. The front aspects of Plots 2 to 4 would face each other across a private drive/turning area at a distance of some 11m which could be viewed as somewhat close; however this situation would be readily apparent to prospective occupiers who could decide whether the development offered an acceptable level of privacy for them. It would not lead to an increase in overlooking of existing development.

There are side windows proposed at first floor level to plots 3 and 4. In the case of Plot 4 this would face an existing car park so would not result in a loss of privacy. In the case of Plot 3, this may cause overlooking of existing properties, but the window would serve a staircase and is therefore a secondary window which may be obscure glazed and fixed in order to protect adjacent residents' privacy without leading to unsatisfactory living conditions within the dwelling. Subject to such a condition there is no objection to the proposal on the basis of RDG5.

Other matters of detailed design and layout

RDG6 requires outdoor amenity space to be provided in proportion to the size of the dwelling. 15m<sup>2</sup> per habitable room should be provided.

Plots 1 and 2 would each have six habitable rooms and plots 3 and 4 would each have five habitable rooms. The amenity areas required and provided would be:

	<u>Required</u>	<u>Actual</u>
Plot 1	90m <sup>2</sup>	93m <sup>2</sup>
Plot 2	90m <sup>2</sup>	150m <sup>2</sup>
Plot 3	75m <sup>2</sup>	95m <sup>2</sup>
Plot 4	75m <sup>2</sup>	86m <sup>2</sup>

It can be seen that the garden areas provided meet the minimum amounts required by design guidance and as such are considered satisfactory. However, given that some of the garden areas do not exceed the recommended minima by significant amounts, and that the exercise of permitted development rights could significantly erode the garden areas, it is considered that a condition is necessary to withdraw permitted development rights for extensions to the dwellings and outbuildings within the curtilage, should permission be granted.

RDG13 requires the provision of safe, adequate and suitable means of refuse and recycling storage. The current scheme retains in principle, the refuse collection arrangements presented in the earlier application. Whilst it is acknowledged that Committee objected to the previous proposal on the basis of the impact of the proposed refuse collection facilities on the amenity of the surrounding area, for the reasons stated below, it is not considered that an objection of this nature can be sustained on appeal.

Plot 1 directly fronts the highway so refuse would simply be collected as part of the normal kerbside collection service. Plots 2 to 4 would be located further than 25m from the highway

which is the maximum distance that refuse can be carried. The Council's refuse collection vehicles will not be able to enter this development, so a location is needed within 25m of the highway where refuse can be placed on collection day. There would be an area approximately 20m from the highway, adjacent to the private drive, where plots 2 to 4 can place refuse and

recycling for collection without obstructing the vehicle access and without causing undue visual detriment to the area.

Subject to a condition requiring the provision and retention of this facility, no objection can be raised to the proposal under RDG13.

### Parking

Policy T8 of the current Local Plan requires the provision of parking in accordance with adopted standards. This is consistent with paragraph 39 of the NPPF which requires local planning authorities to set such standards reflecting local circumstances.

Guidance at RDG12 requires parking not to have an adverse impact on visual or residential amenity.

The currently adopted standards require the provision of two spaces for properties with two or more bedrooms. Garages will only be counted as a parking space where they have internal dimensions of 3m by 7m and a 6m deep forecourt to such garages is required to ensure that vehicles parked in front of garages do not overhang the highway. Other parking spaces should have dimensions of 2.9m by 5.5m.

Plots 1 and 2 would each have an integral garage with forecourt parking space of adequate size to satisfy the requirement. Plots 3 and 4 would have double length car port parking which would be fractionally deficient in width at 2.8m. It is acknowledged that Committee previously objected to this element of the previously submitted proposal on the basis that it failed to meet the parking standards. However, it is not considered that a reason for refusal based on a deficiency of the magnitude present here would be capable of being sustained on appeal. No objection is therefore raised to the proposal on this basis.

Policy EC2 requires parking and access to be safe and convenient. The current scheme seeks to provide the access on the eastern part of the site, adjacent to the rear gardens of the adjoining properties. This arrangement results in a 1.8m-2m high fence defining the eastern boundary of the access road, to the front boundary of the site. .

No other land to the east of the access road falls within the ownership or control of the applicant.

The consequence of these features is that the applicant is unable to provide a sight splay on the eastern side of the access road and that access to and from the site is located in a poor relationship with an adjacent lay-by which places pedestrians in a driver's blind spot. It is considered that this arrangement constitutes a danger to pedestrians and as such the proposal fails to provide safe and convenient access. An objection is raised accordingly.

The proposed parking spaces for the dwellings are to be finished in permeable paving and would offer permeability for rain water. No such provision is made for the shared driveway serving Plots 2 to 4. This represents a missed opportunity to improve the permeability of the site; however, as has been mentioned, it is considered that a condition may be applied to any

permission granted requiring this area to be provided in accordance with SuDS principles to limit the potential for surface water runoff. It must also be remembered that the site is currently hard surfaced, and much of it would be given over to garden landscaping as a result of the proposed development, thereby reducing the amount of site coverage with impermeable

surfaces. The proposal therefore is likely to reduce the amount of surface water runoff from the site, and would not increase flood risk elsewhere.

## **Conclusion**

The proposed development is considered to be less acceptable than the previously proposed scheme for this site. It would introduce unnecessary disturbance to existing residents, provide a poor living environment for new residents, create a dangerous access point and result in an unduly prominent form of development, to the detriment of the streetscene.

I have taken all other matters raised by interested parties into consideration, but none are sufficient to outweigh the considerations that led to the recommendation.

## **My Recommendation is Refusal for the following reasons**

1 The proposed dwelling on plot 1, due to its proximity to Hilton Road, would be an unduly prominent and obtrusive feature in the streetscene, to the detriment of the visual amenity of the area, contrary to Policy EC2 of the adopted Local Plan, RDG3 of the Council's Residential Design Guidance and Government guidance in the National Planning Policy Framework.

2 The proposed vehicular access to plots 2 to 4, by reason of its proximity to the eastern boundary of the site, would lead to undue disturbance and loss of amenity to existing residential properties to the east of the site, contrary to Policy EC2 of the adopted Local Plan, RDG12 of the Council's Residential Design Guidance and Government guidance in the National Planning Policy Framework.

3 Occupiers of the proposed development, by reason of the proximity of the dwellings to the western boundary of the site, would be likely to experience undue noise and disturbance from activity associated with the operation of the adjacent food store, particularly vehicular activity. The proposal would therefore fail to provide the high quality of residential development sought by the National Planning Policy Framework.

4 The proposal fails to provide an appropriate sight splay on the eastern side of the proposed access road and this feature, coupled with the poor relationship created between the proposed access road and the adjacent lay-by, which places pedestrians in a driver's blind spot, fails to achieve safe and convenient access to the site, contrary to Policy EC2 of the adopted Local Plan and Government guidance as contained in the National Planning Policy Framework.

## **Informatives**

1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal.



**B. CERTIFICATES OF PROPOSED AND EXISTING LAWFUL USE OR DEVELOPMENT**

The following applications seek to achieve confirmation that the works proposed or the uses undertaken are lawful within the context of paras 192 and 193 of the Town and Country Planning Act 1990.

Applications for a certificate of proposed or existing lawful use or development must be determined solely on the basis of fact and the law. Evidence to support the applications must be precise and unambiguous and the onus of proof rests solely with the applicant.

The determination of applications for proposed or existing lawful use or development is a technical and legal exercise. As such there is no requirement to consider the application in the context of the Local Plan or in the light of comments from third parties as unsubstantiated opinion or views can carry no weight in the determination of such matters.

As the determination of applications for proposed or existing lawful use or development is a technical and legal exercise dependent on evidence, they are not normally presented to Members for consideration. However in respect of the cases that follow, presentation to this Committee has been specifically requested by a Member.

**ITEM 1**

<b>Application Number:</b>	<b>15/0023/CLP</b>
<b>Address:</b>	<b>Five Acres Great Burches Road Thundersley Benfleet Essex (St Peter's)</b>
<b>Description of Development:</b>	<b>Construction of outbuilding</b>
<b>Applicant:</b>	<b>Mr D Laver</b>
<b>Case Officer</b>	<b>Ms Julie Sprange</b>

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Presentation of this application to the Development Control Committee has been requested by Councillor Dick.

**Site Description**

The application site is located on the western side of Great Burches Road some 132.5m north of its junction with Grange Road. The site is unusually shaped with a maximum width of 59m and maximum depth of 53.4m. The site rises to the west and south west.

A detached chalet bungalow with flat roofed side and rear dormers, a rear conservatory and a single storey side extension occupies the site. The bungalow is located deep within its plot, some 21m from the highway boundary.

**Description of Proposed Development**

The proposal seeks a determination as to the need for planning permission for a single storey, 'L' shaped, detached, part pitched roof, part flat roofed outbuilding. The building will provide a garage, sun lounge and storage room and measures a maximum of 12.3m in depth, 10.3m in width and has a maximum height of some 5m; however due to the topography of the site, the height of the outbuilding, as measured from the highest part of the surface of the ground adjacent to it, is only 2.7m.

The applicants consider that the proposal satisfies the requirements of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 and the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 and does not therefore require the further formal consent of the Planning Authority.

**Relevant History:**

1951 – Approved application for bungalow for agricultural purposes (BEN/98/51)

1972 – Approved application for bedroom and WC in roof space (BEN/12528)

1975 – Approved application for demolition of conservatory and erection of utility room (CPT/875/75)

2001 – Approved application for removal of agricultural condition to allow occupation by person or persons not cultivating adjoining land at “Five Acres” Great Burches Road, Thundersley (BEN/98/51/VAR)

2013 – Refused application for demolition of existing property and erection of four bedroomed detached dwelling with new vehicular crossover (CPT/3/13/FUL) for the following reasons:

1. The proposed development is situated within an area allocated for Green Belt purposes as defined in the Council’s Adopted Local Plan, where development is only allowed in the most exceptional circumstances. The proposal, by reason of its scale, mass, form and substantial alterations to ground levels across the site, would result in the creation of a dwelling materially larger than the original dwelling which is an inappropriate form of development, which if allowed would be likely to have an adverse impact on the openness, character and appearance of the Green Belt. The applicant has failed to demonstrate any very special reasons why the proposal might exceptionally be permitted and in the absence of such very special circumstances approval of the proposal would be contrary to local policy as set out in the Adopted Local Plan and national policy as set out in the National Planning Policy Framework (NPPF).
2. The proposed development, by reason of its reliance on an extensive flat roofed side and rear extension represents a poor form of design which fails to make a positive contribution to the visual amenity of this part of the Green Belt, contrary, contrary to Policy EC2 of the adopted Local Plan and Government guidance as contained in the National Planning Policy Framework.

2014 – Pre-application advice on provision of a replacement dwelling (PE/00012/2014) with following recommendation:

‘In the absence of any very special circumstances, the Officer recommendation in respect of a non policy compliant proposal for a replacement dwelling on the site is likely to be one of refusal’.

This advice was followed by the submission of an application for the provision of a replacement dwelling which was approved by Committee on the 4<sup>th</sup> September 2014. (14/0331/FUL).

There is no record of permitted development rights being withdrawn. The property is therefore considered to have permitted development rights available.

### **Local Plan Allocation**

Green Belt

### **Relevant Policies**

The application is for a Certificate of Proposed Lawful Development and must be determined solely on the basis of fact and the law. There is therefore no requirement to consider the application in the context of the Local Plan.

## Consultation Responses

The application must be determined solely on the basis of fact and the law. There is therefore no requirement to carry out third party consultations.

## Evaluation of Proposal

The applicant has indicated that consideration of the proposal should be undertaken within the context of Class E of the Town and Country Planning (General Permitted Development) Order, 1995, as amended.

The applicant has recited the conditions attached to the Class and has sought to identify compliance with each in order to demonstrate that the structure proposed constitutes permitted development. The applicant has however made a fundamental error in the assessment of the proposal, in failing to consider the nature of development permitted by Class E of the Order. Class E of the amended General Permitted Development Order grants consent for:

The provision within the curtilage of the dwellinghouse of—

- (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or
- (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

In order to qualify for consideration under Class E detached buildings in residential gardens must be incidental to the enjoyment of the dwellinghouse.

Case law has determined that the term 'incidental to the enjoyment of the dwellinghouse' does not embrace primary living accommodation and there are numerous examples of Planning Inspectors dismissing appeals for Certificates of Lawfulness for detached garden structures which contain primary living accommodation. Primary accommodation is defined as a living room, bedroom, bathroom or kitchen or such other accommodation which may reasonably be expected to be provided as part of a dwelling.

When the application was first received there was no indication of the proposed use the various rooms contained within the building. However following discussion a revised drawing was submitted identifying the accommodation as a garage, storage room and sun lounge.

Section 4 of the submitted Planning Statement however described the proposed uses as 'a garage and games room in association with the existing dwelling' further stating 'it will form part of the ancillary accommodation present on site to support the day to day use and enjoyment of the main property.'

Within the conclusion of the submitted Planning Statement , it is stated 'the outbuilding is an ancillary structure, secondary to the main dwelling and will provide a recreational use for the enjoyment of the residents within the main dwellinghouse, therefore constituting an incidental use'.

In further correspondence the applicant's agent stated that:

*"The outbuilding will definitely accommodate a garage for the purposes of parking the applicant's own private cars.*

*No shower or toilet will be provided in the outbuilding. The client is likely to use the outbuilding predominantly as a sun lounge, but with recreational equipment for either gymnasium or games kept inside for entertainment. This is no different to a conservatory with a snooker table in.*

*In any event, the key concept is that the outbuilding is for private residential use incidental and ancillary to the use of the main dwellinghouse. Therefore, provided that it is put to said uses (as required by Schedule 2 Part 1 Class E of the GPDO), the building is capable of being permitted development and indeed could be used for any one of these purposes. Therefore, there is an amount of flexible usage in the floor space proposed as long as it remains ancillary and incidental. Technically, we need not have stated what purpose the floor space is to be used for, other than that it fits within the tolerances of the 'ancillary and incidental' purposes.*

*The building will be a garage and sun lounge as per the plans, but with the option of having some entertainment and exercise facilities in as well depending on the applicant's own wishes"*

The applicant's agent did not further clarify the proposed use of the storage area (5.6m x 4.5m).

Despite the assertions of the applicant's agent that the proposed use of the building does not need to be specified, it is the view of the Planning Authority that the use of the building is fundamental to its consideration as a Class E building.

Class E(a) states that development would be permitted under Class E, for any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such.

If the purpose of the building is not clear or is ambiguous, a determination on whether such use is incidental cannot be made.

There are two elements that need to be demonstrated for a building to constitute permitted development under Class E:

- (i) . The building should not contain any primary accommodation, i.e provision of the type of accommodation that could reasonably be expected to be provided in the main dwelling and
- (ii) The accommodation provided must be required for a purpose incidental to the enjoyment of the dwellinghouse as such.

It is not enough for the applicant to simply demonstrate that the proposal complies with the conditions or limitations imposed on the Class, it must be demonstrated that the building itself falls to be considered within Class E in the first instance, that is, that the building is required for a purpose incidental to the enjoyment of the dwellinghouse as such.

### **The provision of Primary Accommodation**

It is the view of the Secretary of State that permission is not given by Class E if the accommodation to be provided in a new outbuilding is of the sort which would normally be considered as integral to the everyday requirements of a house. Thus, a building which contained facilities, such as a living room, bedroom, a kitchen or a bathroom, would not be considered to be incidental to the enjoyment of the dwellinghouse. The Secretary of States' view on the matter is that to be incidental, the function of the space provided must be subordinate to the basic or primary accommodation to be expected at a dwellinghouse, rather than being an incident of that main use. Thus, as the Secretary of State would have it, to qualify as permitted development, accommodation must be of a type which would be needed for activities such as leisure pursuits, hobbies, playrooms, gardening, storage etc.

The applicant's agents have identified that part of the building will be likely used as a sun lounge with recreational equipment for either gymnasium or games kept inside for entertainment. The agent has suggested in their further submissions that such use would be 'no different to a conservatory with a snooker table in'.

It is the view of the Planning Authority that a sun lounge constitutes a form of development which may reasonably be expected to be provided as part of the normal facilities provide by a dwelling and as such constitutes primary accommodation.

As such the proposed building cannot constitute permitted development.

### **Required for a purpose incidental to the enjoyment of the dwellinghouse as such.**

The Courts have held that that the word 'required' in Class E should be interpreted to mean 'reasonably required'. The words 'as such' are also important. Thus in this case, the appellant must show that what is proposed is reasonably required for a purpose incidental to the use of the dwellinghouse. The onus of proof is squarely upon the appellant and the relevant legal test is on the balance of probability.

The proposed development seeks to provide a building with a floor space of some 100.47m<sup>2</sup>. The existing dwelling has a ground floor area of some 107m<sup>2</sup>. The proposal therefore seeks to provide floor space equivalent to an increase in the ground floorspace of the dwelling by some 94%. No explanation as to why this level provision may reasonably be required has been provided.

Furthermore, in the application under consideration, there is a vagueness in respect of the use of the outbuilding which would undermine the 'reasonably required' argument. The applicant's agent identifies proposed uses which differ from the submitted Planning Statement and reference is made to 'flexible usage'. In the absence of clarity as to how the building will be used it is not possible to determine whether the proposed uses in themselves are reasonably required.

In the absence of such evidence and demonstration the Planning Authority cannot confirm that the proposal satisfies the fundamental requirements of Class E. The proposed development cannot therefore be determined to constitute permitted development.

Support for this stance may be found in numerous appeal decisions. For example, in APP/R5510/X/12/2175753 (outbuilding for storage, gym and children's play area) the Inspector noted that the appellant's case focused on the various physical criteria relating mainly to building dimensions and location as set out in Class E of the GDPO. The contention was that the outbuilding was permitted under Class E as it was to be used as for storage and as a gym and children's playroom. In considering the proposal, he considered this approach to be incorrect, stating that:

*"The Courts' have held that the word 'required' in Class E should be interpreted to mean 'reasonably required'. The words 'as such' are also important. Thus in this type of case, the appellant should show that what is proposed is reasonably required for a purpose incidental to the use of the dwellinghouse. The onus of proof is squarely upon the appellant and the relevant legal test is on the balance of probability. It is therefore appropriate to examine the reasons for development being required under Class E.*

*The applicant in the current case also seeks to rely solely on the limitations and conditions attached to Class E to justify the development. This is clearly inadequate to demonstrate the status of the building as permitted development."*

The Inspector in the aforementioned appeal goes on to say that;

*"although the appellant asserts that the outbuilding will not be used for residential purposes, there is no explanation as to why an outbuilding of the design and size proposed is required. The outbuilding in the appeal case would be quite substantial in size and its floor area would be comparable to that of the original ground floor area of the main dwelling".*

This is also the case for the proposed outbuilding. The floor area of the proposed outbuilding is 100.47m<sup>2</sup> and the ground floor area of the main bungalow is some 107m<sup>2</sup>. No explanation is provided to justify the size of the outbuilding in which the floor area is almost as large as that of the ground floor of the main dwelling which comprises of a kitchen, lounge, dining room, bathroom two bedrooms and a conservatory.

The Inspector also touches on the vagueness of the proposed uses (which are identified as storage/gym/playroom) which are not dissimilar from those indicated in the outbuilding proposed, as being imprecise and states that apart from the vagueness of the claimed intended use, merely making an application for a Lawful development certificate and stating a proposed use does not provide a case that what is proposed is or would be reasonably required.

The Inspector dismissed the appeal on the basis that no evidence had been put forward on which he could base a finding that the outbuilding was reasonably required for a purpose incidental to the enjoyment of the dwellinghouse and therefore the outbuilding would not be lawful under Class E of the GPDO.

In APP/T3725/X/13/2194294,(garden room building to the rear of the existing house) the Inspector in that case concluded that the development would meet the conditions and limitations of E.1 and E.3, but identified that the applicant had failed to demonstrate that the development was required for a purpose incidental to the enjoyment of the dwellinghouse as such.

In APP/F5540/X/14/2216912 (erection of a detached outbuilding to be used as a gymnasium/storage room). the Inspector noted that the outbuilding satisfied the dimensional and ground coverage requirements of Class E, but the Lawful Development Certificate was refused by the Council primarily because it was not satisfied, due to the proposed building's large size and site coverage, that the building was required for a purpose incidental to the enjoyment of the dwellinghouse as such.

The Inspector referred to the case of *Emin v SSE and Mid Sussex DC* (1989) which dealt with the questions of building size and incidental uses. The Court held in this case that whereas the relative sizes of the proposed building and the dwellinghouse might be an important consideration, it was not by itself conclusive. It was necessary to consider whether the use of the proposed building, in the context of the planning unit, was intended and would remain subordinate to the main use of the property as a dwellinghouse. It was for the appellant to demonstrate that the proposed building was reasonably required for purposes incidental to the enjoyment of the dwellinghouse.

The Inspector further commented that the statement accompanying the application stated the use of the outbuilding was as a gymnasium and/or a storage room and that these were uses or activities that could be regarded as being incidental. The Inspector further stated that there was no doubt that a building of the size proposed, once erected, could be put to a range of uses incidental to the enjoyment of the dwelling house as such. However, this did not demonstrate that there was a genuine and reasonable requirement for an outbuilding to accommodate the uses, nor was it necessarily the case that such uses would ordinarily require a building of this size. The Inspector concluded that it was for an appellant to show that a building of a proposed size was reasonably required and that it would be designed with the incidental uses in mind, having regard to all the circumstances.

The proposed outbuilding that is the subject of the current application has stated uses such as storage and a garage which could be considered to be of a incidental use; however it has not been demonstrated within the application that there is a reasonable requirement for an outbuilding to accommodate these uses, nor is it necessarily the case that such uses would ordinarily require a building of this size.

### **Conclusion**

The use of the proposed building is imprecisely defined but does refer to the inclusion of a sun lounge. Such provision is considered to be primary accommodation, the inclusion of which removes the building from consideration under Class E.

Furthermore, whilst the applicant has sought to demonstrate that the proposed development can meet the conditions and limitations attached to Class E, the applicant has not made the case that the building is, or would be, reasonably required for specifically identified purposes, incidental to the enjoyment of the dwellinghouse as such.

The proposed development cannot therefore be determined to constitute permitted development under Class E.



**Recommendation**

My Recommendation is that a Certificate of Lawfulness in respect of the outbuilding **BE REFUSED** for the following reason:

By virtue of the provisions of Class E of Part 1 of Schedule 2 of 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 and Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 and the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014, it is concluded that the proposed detached outbuilding includes primary living accommodation, in the form of a Sun lounge and that the applicant has not demonstrated (on the balance of probability) that the proposed building, as illustrated on the submitted plans 14.2692/P201 Rev A, 14.2692/P202 Rev D, 14.2692/P204 Rev C and 14.2692/P203 Rev B 2nd June 2014 and received by the Planning Authority on 6th February 2015, is reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such and DOES NOT therefore constitute 'permitted development'

**ITEM 6**

**Application Number:** 15/0075/CLE  
**Address:** Rear Of 37 The Dale Thundersley Benfleet Essex SS7 1TD  
(Boyce)  
**Description of Development:** Use of land as garden  
**Applicant:** Mr A Draper  
**Case Officer:** Mr Keith Zammit

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Presentation of this application to the Development Control Committee has been requested by Councillor Smith.

**Site Description:**

The application concerns land to the east of 37 The Dale, Benfleet, Essex. It is to the rear of the residential curtilage, but there is no fence separating the curtilage from the land the subject of this application.

**Description of Proposed Development:**

Confirmation is sought that the use of the application site as garden is lawful.

**Relevant History:**

December 2014 – Certificate of Lawfulness of Existing Use in respect of the use of land as garden (14/0526/CLE); refused on the 16<sup>th</sup> December 2014 for the following reason:

*Insufficient information has been submitted to demonstrate on the balance of probability, that the use of the land as garden has subsisted for a period of ten years prior to the submission of the application for a Certificate of Lawfulness for an existing use.*

**Evaluation:**

Section 191 of the Town and Country Planning Act 1990 states that for the purposes of the Act, uses and operations are lawful if no action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason) and they do not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

If, on an application under this section, the local planning authority is provided with information satisfying it of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by it, it shall issue a certificate to that effect; and in any other case it shall refuse the application. The burden of proof is therefore firmly on the applicant to demonstrate that the use, operations or other matters are lawful.

National Guidance makes it clear that an application for a Lawful Use certificate must **precisely** describe what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate

The application for a Certificate of Lawfulness is made on the basis that the use commenced more than ten years before the date that the application was made.

The application is dated 21<sup>st</sup> December 2014 but was not received by the Planning Authority until 28<sup>th</sup> January 2015; therefore the relevant period that the use must be shown to be continuous from is 28<sup>th</sup> January 2005. The applicant states that the use was begun on 31<sup>st</sup> December 1979.

The following evidence has been submitted in support of the application:

3. Extract from the contract of sale dated 1971
4. Application form for an official search of the Index Map and accompanying location plan dated 31.12.79.
5. Photograph stated as taken in 1973 indicating the eastern fence and cultivated lawn prior to the planting of trees and shrubs
6. Later photograph of garden indicating semi-mature trees and shrubs planted by the applicant, which was produced as a post card.
7. Series of 4 photographs indicating garden parties for charitable organisations, Essex Wildlife, Towns Women's Guild, Rotary and social events attended by local dignitaries

There is on Ordnance Survey plan with a red outline (not the same as the land the subject of the application) also numbered item 5.

8. Aerial photographs dated 1999 and 2013.
9. Letter from Countryside Estates describing the garden (with attached aerial photo from the internet)
10. Aerial photograph of the property close up, with invoice from English Heritage Buildings, for construction of detached car port, later to be glazed and converted to a summerhouse
11. Undated photographs of 'barbecue building'
12. Undated photographs of 'barbecue building'
13. Ordnance Survey extract showing 'barbecue building'
14. Statement from Mr and Mrs Tring
15. Letter from Mr and Mrs Broomfield

The evidence as submitted must demonstrate that on the balance of probability the statement made by the applicant in respect of the use of the land is true.

Consideration will be given to each item of submitted evidence:

1. Extract from the contract of sale dated 1971

This has an accompanying plan which appears to include the area of land the subject of this application. It does not, however, make any reference to the use of the land. It therefore does not serve to demonstrate that on the balance of probability the land has been used for garden purposes for the requisite period.

2. Application form for an official search of the Index Map and accompanying location plan dated 31.12.79.

This has an accompanying plan which includes the area the subject of this application. It does not, however make any reference to the use of the land. It therefore does not serve to demonstrate that on the balance of probability the land has been used for garden purposes for the requisite period.

3. Photograph stated as taken in 1973 indicating the eastern fence and cultivated lawn prior to the planting of trees and shrubs

It should be noted that the photograph is stated to have been taken in 1973. This is prior to the date on which the applicant states the use of the land as garden began. At this time the applicant's assertion is that the land was not used as garden, although the photograph suggests that the grass on the site was mown and the land therefore maintained.

Given the date of the photograph it is not considered that it provides evidence for the use of the site as garden in the requisite period.

Furthermore this photograph does not show the whole of the site the subject of the application. Even if the photograph were to be accepted as evidence of relevant use, which for the reasons stated above, it is not, it cannot, by virtue of the limited extent of land shown, provide evidence for the use of the whole site.

4. Later photograph of garden indicating semi-mature trees and shrubs planted by the applicant, which was produced as a post card.

This photograph had previously been identified as showing part of the application site, but its weight was limited due to the lack of associated date.

It has now been revealed that the photograph was made into a post card by Royal Mail. The applicant claims to have used these to invite people to various events. One of the post cards (blank) has been provided with the application. The applicant has also provided a scan of the negative. The applicant states that the post card was produced in 1978, but the copy of the invoice from the Post Office for printing costs that is referred to has not been provided.

However, the post card shows that it was made by a company called Quik Snaps with a telephone number of 0232 230365. This company is still listed at 23 Shaftesbury Square, Belfast.

The telephone code for Belfast changed from 0232 to 01232 in 1995, as part of a UK-wide renumbering scheme. In 2000, all area codes in Northern Ireland were replaced by the single

code 028, with the local number being prefixed by two additional digits, so Quik Snaps' telephone number became 028 9023 0365. This is the number currently listed for the company.

Based on this evidence, it may be deduced that the post card was not produced any later than 1995, or the telephone number would have started with 01232 or 028.

This adds some substance to the applicant's claim that the post card was produced in 1978. In any event, even taking the latest possible date for production of the post card of 1995, that would be 20 years before the date the application was received by the Planning Authority.

Examination of the current garden and comparison with the postcard reveals the retention of key features, such as the telephone box and flagpole. This evidence strongly suggests that use of the land as a garden has taken place for 20 years or more.

However, the post card only provides an image of part of the garden and does not identify the use of the land on the southern part of the application site, beyond the location of the telephone box.

5. Series of 4 photographs indicating garden parties for charitable organisations, Essex Wildlife, Towns Women's Guild, Rotary and social events attended by local dignitaries (and Ordnance Survey plan)

The first of these photographs shows activity around the fountain which falls within the original curtilage to No. 37 The Dale, and outside the application site. Two marquee type structures are shown within the application site. These structures are of a temporary nature and do not provide evidence of the use of the land as garden for the requisite period. It should be noted that this photograph is undated and provides no evidence therefore of the period of activity.

The second photograph appears to show activity around the summerhouse located on land to the east of the application site. Some chairs are located within the application site. Again however the photograph is undated and provides no evidence of the period of activity.

The third photograph again shows activity around the summerhouse on the adjoining site. By orientating the site relative to the flag pole shown in the second photograph, the activity shown in this photograph would appear to be taking place on land to the east of the application site. As such this photograph fails to provide evidence of the use of the application site as garden.

Photograph 4 appears to have been taken from the same spot as photograph 2; it shows people sitting within the application site. The photograph is undated but was clearly taken on the same date as photograph 2. The assumption has been made, in the absence of any evidence to the contrary that all four photographs were taken on a single day.

As such the photograph fails to demonstrate that on the balance of probability, the use of the land as garden subsisted for the relevant period.

The photographs all appear to show a charitable gathering, taken at some undefined point in time. It is not considered that photographs of what appears to be a single charitable event on land within the control or ownership of the applicant establishes, on the balance of probability, the use of that land as garden for the requisite period.

It is not clear what the Ordnance Survey extract numbered Item 5 seeks to demonstrate.

6. Aerial photographs dated 1999 and 2013.

These show the presence of trees and what appear to be areas of hardstanding and structures on the land. However the photographs do not provide evidence of the use of the land for garden purposes over the requisite period.

There is some uncertainty over the date of the 1999 photograph. A note at the bottom of the image states the date to be 1/1/1999, whilst at the top of the page a date of 12/31/99 is given. This adds further uncertainty to consideration of the application, particularly when one considers that the trees on the site are shown to be in full leaf and it is unlikely therefore that the photograph was taken in December/January.

The 2013 photograph is stated to have been taken on 7/9/2013. It is possible to see the new dwelling to the south being constructed, which was approved on 14/1/2013. The amount of foliage appears appropriate to the season. There is therefore no reason to dispute the date of this photograph.

Of further note on the aerial photographs is the presence of what appears to be a path extending from a wall adjacent to the telephone box and extending to the southern boundary of the extended site. This path appears to serve to provide access to a paddock area to the south of the application site.

Aerial photography held within the planning department does not provide any more conclusive evidence than the aerial photographs submitted with the application.

7. Letter from Countryside Estates describing the garden (with attached aerial photo from the internet)

The description within the letter of an L-shaped plot with a 67' (20.4m) road frontage and 200' (61.0m) plus approximate depth appears to be at least partially consistent with the extended site. No.37 The Dale does have a frontage of approximately 20m according the location plan submitted with the application, and the depth from the street including the application land to the east of the original curtilage, would appear to be in the region of 70m to 75m. The description of the garden as 'landscaped and manicured' would suggest that the land identified in the letter has been used as garden for enjoyment rather than merely being maintained to stop it becoming overgrown. However, whilst the description of the garden as 'L' shaped supports the inclusion of land to the south of the extended curtilages, the lack of an accompanying plan or any evidence of the extent of the southern extension limits the value of this statement. It is not therefore considered that this statement provides evidence that the land to the south of the telephone box has been used for garden purposes for the requisite period.

8. Aerial photograph of the property close up, with invoice from English Heritage Buildings, for construction of detached car port, later to be glazed and converted to a summerhouse

The photograph shows the land to the east of the original curtilage having the appearance of a domestic garden.

The applicant claims that this evidence demonstrates that the photograph must be from before July 2013. Consideration of the evidence submitted however indicates that the photograph must predate 2003 as the evidence submitted indicates that the carport constructed on the site to the south of No. 37 was constructed in 2003. This is not present in the submitted photograph.

The photograph is also helpful in providing a limited view of the land to the south of the telephone box, which appears to have a similar appearance to that of the area to the east of the original curtilage.

9. Undated photographs of 'barbecue building'

See below

10. Undated photographs of 'barbecue building'

See below

11. Ordnance Survey extract showing 'barbecue building'

This is dated in 2002 and purports to identify the location of a structure which the applicant claims is the 'barbecue building' depicted in photographs 9 and 10. The Council has no evidence to counter this claim and it is clear from the submitted photographs that the area to the west of the building exhibits the character and appearance of a domestic garden. However, the Ordnance Survey cannot provide evidence of use of the land as garden area and the submitted photographs are undated.

These submissions cannot therefore provide strong evidence for the use of the land as garden. It is noted however that the 'barbecue building' is shown on the submitted postcard.

12. Statement from Mr and Mrs Tring

This does not refer to a plan and is therefore of limited weight in identifying the extent of land used as garden.

13. Letter from Mr and Mrs Broomfield

This does not refer to a plan and is therefore of limited weight in identifying the extent of land used as garden.

## **Conclusion**

It is clear that the land the subject of this application is currently used for garden purposes. It is also considered, on the basis of the evidence provided that at least part of the site has been used for garden purposes for in excess of ten years. However, insufficient precise and unambiguous evidence has been submitted to demonstrate that all of the land within the application site has been used for garden purposes for the requisite period.

In particular it is not considered that sufficient evidence has been provided to demonstrate that on the balance of probability, the land to the south of the boundary created east-west across the site, adjacent to the telephone box has been used as a garden for the requisite period

The case for the use of the land as part of the garden is further weakened by the fact that this area of land is separately enclosed from the adjoining land.

**My Recommendation is** that a Certificate of Lawfulness in respect of the use of land as a garden **BE REFUSED** for the following reason:

Insufficient precise and unambiguous information has been submitted to demonstrate on the balance of probability, that the use of all of the land as garden has subsisted for a period of ten years prior to the submission of the application for a Certificate of Lawfulness for an existing use.