Agenda Item No: 7

Title: **Outline application for the erection of about 400 dwellings, construction of an access to highway and provision of public open space, play area and site for school UTT/0443/98/OP**

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Summary

1. This report updates Members on the current situation regarding this application and recommends that it be refused.

Background

2. The adopted District Plan currently identifies this land as a site for a development of up to 400 houses.

3. Part of the site is owned by Springate Trading Limited, subject to an option in favour of Pelham Homes Limited. The remainder of the site belongs to Croudace Limited.

4. An application for the comprehensive development of the whole site was made to the Council in 1998 and reported to the Development Control Sub-Committee on 4 January 1999. The Sub-Committee then approved the application subject to the completion of Section 106 Agreements.

5. The contents of the proposed Section 106 Agreements were then the subject of further negotiations and the terms thereof were reported to Members on 29 March 1999 and in full on 26 April 1999.

6. The developers then encountered serious problems associated with the works required to Pesterford Bridge. It was not until the beginning of this year that those aspects that needed to be covered in one of the S106 Agreements were resolved.

7. In the meantime, in March 2000, the Government issued PPG3, which advises generally in relation to housing policy. Specifically, however, it requires Local Planning Authorities to "avoid developments which make inefficient use of land (those of less than 30 dwellings to the hectare net….)".

8. On 19 September 2000 the Secretary of State issued the Town & Country Planning (Residential Development of Greenfield Land) (England) Directive 2000. This Directive came into force on 19 October 2000.

9. The Directive relates to applications which are received by a Local Planning Authority:

   i) on or after 17 October 2000, or

ii) before 17 October and in respect of which the Local Planning Authority have not given notice of a decision or determination before that date.

It provides, in essence, that where the proposed development comprises the provision of 150 or more houses or flats on greenfield land and the Local Planning Authority does not propose to refuse that application, it should consult the Secretary of State.

10. Having considered the Directive and the density requirements of PPG3, the applicants amended the application by increasing the number of houses to 600. The Council commenced afresh the process of consultation. Objections were received from 9 households on grounds of traffic impact, loss of open space on the development, density out of character with the area, strain on the local social infrastructure and that the additional homes are not needed. The Council for the Protection of Rural Essex Uttlesford Advisory Group objected on grounds that the additional development was not needed and that it was premature to the review of the local plan. Planning consultants acting for Old Road Securities plc, who in turn act for Audley End Estate, objected on grounds of impact on the character of the Green Belt, impact on natural heritage of the surrounding area including the Mount and Stansted Park, the need for a traffic assessment, the need for additional sports facilities and prematurity to the local plan review.

11. Members expressed reservations about the increase in the numbers of homes on the site when considering a report on the applicant's proposed obligations as part of its amended scheme for 600 dwellings on 26 February 2001. The Sub Committee resolved that the following matters be pursued with the applicant:

i) The number of dwellings provided by a housing association should be increased to 150.
ii) These 150 dwellings should be in three non-contiguous parcels and not on a single parcel.
iii) Additional Public Open Space.
iv) The contribution to leisure, recreation and community facilities off site should be increased to £750,000.

Members asked for a further report on the obligations, including the transportation aspects, once officers had discussed the transportation assessment with Essex County Council. Members stressed that the Council should not be rushed into determining the application.

Update on Events since the meeting of the Development Control Sub Committee on 26 February 2001

12. After the meeting Pelham Homes Ltd obtained an Opinion from Counsel on the terms of the Directive. In brief, he advised that, in his view, it is the grant (ie the resolution) and not the issue of the decision notice (ie the planning permission) which is the material event under consideration in the Directive and that the intention was to catch all outstanding planning applications as at 17 October 2000 and not ones which had been determined but decision notices not issued.

13. The Council's Legal Officers had reservations about this advice on the basis that the Directive states that it applies to "applications in respect of which the Local Planning Authority have not given notice of decision or determination". Pelham Homes Ltd referred back to Counsel and he repeated his expressed view.

14. In the context of his Opinion, the applicant's Counsel further advised that in the event that the Council considered there to be further material considerations meriting reconsideration of its previous resolution (for example the subsequent publication of PPG3 in March 2000), it was entitled to revisit the terms of that resolution in the exercise of its discretion. However, in so doing, (for example, in considering whether a higher density should increase the number of houses from the 400 previously approved), any fresh resolution would then trigger the requirements of the Directive, ie to consult the Secretary of State.

15. Whilst Officers still had reservations about the Advice of Counsel they were well aware of the views of Members on the Sub Committee, which were to prefer, in principle, the 400 dwelling scheme to the 600 dwelling scheme. On the basis of Counsel's advice, officers agreed with Pelham Homes Ltd that if they were to withdraw the amendment to the planning application and revert to 400 dwellings and complete the Section 106 Agreements, they would issue the planning permission in accordance with the resolution of Members. The applicant's agent wrote on 26 March stating that Pelham Homes Ltd was minded to withdraw the amendment and revert to the 400 dwelling scheme, once Officers' proposed action had been confirmed. At that time, Officers understood that most matters of substance had been resolved and that the Agreements would be executed quite quickly.

16. Officers confirmed the position by a letter dated 2 April 2001. However, the applicant's Agent was advised:

> "In the meantime, you will be aware that it is programmed that the new Local Plan will be considered by the Planning & Development Committee at its meeting in June. As part of this process, Members will need to review the Committee's resolution of 25 January 1999 and form a view as to whether the Rochford Nursery site ought to be making an increased contribution towards meeting the structure plan housing requirement to 2011. If planning permission has not already been granted, it may well become necessary for the matter to be referred back to the Sub-Committee".

17. At that time, the precise date of the June meeting had not been fixed. However, the Agent was subsequently advised that it would be held on 14 June. He was also advised, at that time, that in accordance with normal practice, the Council would be distributing relevant papers to Members of the Committee in advance of the meeting. It was made clear that it would be necessary to resolve matters before the papers, including the Draft Local Plan, were sent out. Clearly, if the planning permission had not already been granted, the Draft Local Plan had to include proposals for the future development of Rochford Nurseries. Such proposals, inevitably, had to take into account the Structure Plan requirements and PPG3.

18. At the end of March/early April, it was thought that all matters of substance had been resolved and that the Agreements would be concluded in the immediate future. It transpired that this was not the case and that there were still some unresolved matters between Pelham Homes Ltd and Croudace Ltd.

19. Towards the end of May, Pelham Homes Ltd's Agents and Solicitor indicated that they expected to resolve matters with Croudace Ltd and that they wished to proceed to complete the Agreements. At that time, there were still a number of procedural requirements to be satisfied.

20. Officers were becoming increasingly concerned as to the propriety of the situation. The Draft Local Plan was in the very last stages of preparation and, clearly, would have to make proposals which respected the Structure Plan and PPG3. Officers were concerned that the Council would be open to criticism if it were to issue a planning permission for 400 houses in the days immediately before the publication of the Draft Local Plan. In the light of Members' views, however, they remained willing to issue the permission if the Agreements were executed before the actual publication of the Draft Local Plan. Pelham Homes Ltd's Agent and Solicitor were both informed that the Draft Local Plan would be sent to Members on 8 June and that the planning permission would not be issued unless the Agreements were concluded in advance of that date.

21. The Agreements were not received before 8 June. The Draft Local Plan was then circulated to Members and, indeed, became a public document.

22. Officers were strongly of the view that they could not issue a document to Members which proposed 600 houses on this site and invite Members to approve it and then, subsequently, to issue a planning permission for 400 houses and deny Members the ability to make their own decision. Although they were satisfied that this was the correct view, they were so concerned as to discuss the matter with Counsel. He advised that, in his view, such course of action would be "perverse".

23. In the event, the applicants converted the Section 106 obligations into Unilateral Undertakings which were delivered to the Council on 13 June, that is to say, on the day before the meeting of the Planning & Development Committee. For the reasons set out above, Officers were not prepared to issue the planning permission in advance of the meeting on 14 June. Even then, there remained (and still remain) some unresolved procedural matters.

Determination of the Outstanding Planning Application

24. The Council cannot now act in a way which is inconsistent with the resolution of the Planning & Development Committee that, in the context of PPG3 and the Structure Plan adopted on 19 April, Rochford Nurseries should be contributing 600 dwellings towards the Structure Plan housing requirement for Uttlesford. The application must now be reconsidered by Members in the light of PPG3, the adopted structure plan and the emerging Local Plan proposals and the proper process for its approval and adoption.

25. Concerns about the potential impact of 600 dwellings will be tested by consultation on the deposit draft local plan and any new planning application for such a development.

26. Representations have recently been received from agents acting on behalf of Enodis Property Developments Ltd suggesting that its objections to the emerging local plan continuing to propose 650 dwellings in total at Oakwood Park, Little Dunmow could be met if planning permission was granted for the 400 dwelling scheme on Rochford Nurseries and the consequent shortfall in the local housing housing provision was made good at Oakwood Park. The Council has already considered the respective merits of alternative locations for proposed housing in approving the content of the deposit draft local plan on 14 June.

RECOMMENDED that

Planning Application UTT/0443/98/OP be refused on the grounds that:

i) its proposed net housing density of significantly less than 30 dwellings per hectare represents inefficient use of land; and
ii) the site should be contributing 600 dwellings towards meeting the Structure Plan housing provision for Uttlesford.

Background papers:- Planning application file UTT/0443/98/OP

Agenda Item No: 8

Title: Breach of condition and unauthorised sign.

Author: Tony Ewbanks (01799) 510494

Introduction.

1. This report, concerning the unauthorised restriction of a parking area in front of John Tasker House Surgery, New Street, Great Dunmow, is presented for Members information. It recommends that a retrospective application be submitted to formally establish the use of the parking area for staff only.

Notation

2. Within Development Limits & Conservation Area.

Relevant History

3. Erection of surgery building and car parking approved 1991.

Background

4. The 1991 permission conditioned that the car parking area was to remain open for use by visiting members of the public as well as the surgery's staff.

5. A letter of objection was received highlighting that an electronic barrier had been erected at the entrance to the parking area preventing members of the general public access to the area. A site inspection confirms the barrier and a stand incorporating a keypad had been installed at a height of approximately 1.2 –1.3m. A sign has been attached to the surgery building, noting the car parks use for staff and doctors only.

6. The surgery partners have indicated that the barrier was erected and the parking restricted to staff only *'on account of irresponsible parking in the car park'* resulting in it becoming both difficult and unsafe for doctors and ambulances to leave the surgery for emergency calls'.

Assessment

7. As the barrier and associated equipment is not adjacent to a public highway and less than 2m in height, they are deemed to be permitted development, thereby not requiring an application for permission. However, the current restrictive use of the car park is in breach of the 1991 permission. Furthermore, the sign attached to the surgery wall exceeds permitted development rights for advertisements and requires a retrospective application.

Conclusion

RECOMMENDED that the surgery submit a retrospective application for the retention of the sign and the variation to the 1991 condition, restricting use of the car park to staff only.

Background Papers – Enforcement case file ENF/33/01/D.

Agenda Item No: **9**

Title: **ENFORCEMENT OF PLANNING CONTROL**
LAND ADJACENT TO HUNTINGFIELDS HOUSE, STORTFORD ROAD, LITTLE CANFIELD
(Interests in land: Mrs L Barlow, Mr F Barlow)

Author: **Clive Theobald (01799) 510463**

Introduction

1 This report concerns the blocking in of an approved open pole barn. It recommends that enforcement and, if necessary, legal action be taken to require the removal of the external walling and to reinstate the structure as a pole barn.

Notation

2 Outside Development Limits / Route of New Road (A120).

Relevant History

3 Planning permission granted in November 1992 for an agricultural pole barn measuring 15m x 7.5m, following the refusal of a previous application for a structure twice the size. Concerns raised by the Parish Council in that application insofar as the proposed structure would (1) be too remote from the house (2) be severed by the new A120 when it was built (3) the need for it is not established. No policy objections were raised to the application, however, and permission was granted subject to the development being carried out in all respects strictly in accordance with the submitted plans and the use of the building being restricted solely to the use as applied for.

4 Enforcement investigations were carried out in 1998 following information received that materials were being stored and that a new access was being created from the A120 at the location of the approved structure. The landowner stated at that time that these were for the construction of the pole barn. The access was closed off following investigations. An inspection in 1999 showed that concrete pads had been formed in the ground in the approximate position of the approved structure. The landowner stated that these had been placed in the ground for the pole barn prior to November 1997 and claimed that work had therefore commenced within five years of the date of approval (November 1992). As the Council was unable to adduce any evidence to disprove the landowner's claim, no further action was taken.

5 Appeal against Enforcement Notice requiring demolition of adjoining bungalow within same ownership (Woodcroft) is now with Planning Inspectorate for re-determination.

Background

6 This site was the subject of a separate enforcement report to Members on 2 July 2001 concerning unauthorised building works comprising an open fronted storage building. At that meeting, Members authorised enforcement action against that building to require its demolition and removal from the land. Reference was made in the report to separate enforcement enquiries that were being conducted concerning the blocking in of the approved pole barn. This report concerns this structure.

7 The drawings for the 1992 application show that the pole barn would have a pitched roof and open sides and ends to reflect its stated use, namely the storage of hay and sheep / cattle feed, a tractor and, during bad weather, housing livestock. Work on this development was completed this year.

8 In May 2001, information was received that the pole barn was being blocked in by the use of breeze blocks. An inspection has since shown that the pole barn has been blocked in almost to its roof on all sides and that a series of square openings have been provided in the new walls. The Council has written to the landowner requesting an explanation as to why this infilling has

taken place and the justification for this. The landowner has been advised that the work appears to be unlawful and that any further work undertaken will be at her own risk. The landowner has responded and her comments are attached to the end of this Agenda.

9 In summary, the landowner's response is as follows:

- the structure was built in accordance with the approved plans as a pole barn and consequently there is no breach of condition
- it will be used for the purposes for which it was originally designed
- it is not possible to use the barn for the purpose for which it was built without protective sides. Public safety, fire and security risks also have to be considered
- any openings in the sides are for light and ventilation
- the planning condition does not prevent permitted development
- the General (Permitted Development) Order 1995 permits the extension or alteration of an agricultural building

Consideration of Findings

10 Although the approved pole barn appears to have been completed before it was recently filled in, it may still be that the new work represents a breach of the original planning condition.

11 Class 6 B of the General (Permitted Development) Order 1995 permits the extension or alteration of an agricultural building subject to the proviso that development is not permitted if *"the external appearance of the premises would be materially affected"*.

12 As previously stated, permission was granted for a pole barn, namely a structure that was to be open in character to reflect the landowner's intended use of it. It is considered that the infilling of the pole barn to form a solid structure represents a significant and material external change to this, particularly given the size and bulk of the structure as altered (15m x 7.5m). It is therefore your officers' view that the works are not permitted development for this reason and represent unlawful works on the land.

Representations

Little Canfield Parish Council

13 `*"We are greatly disappointed to find that this area is once again the subject of alleged breaches of planning control, and are pleased to support your Council most strongly in your efforts to rectify the situation".*

Planning Considerations

The main issue is whether the infilling of the approved pole barn causes any detriment to the visual amenities of the area.

14 Whilst the structure is partially obscured from the A120 by established hedge screening along this boundary, it is still visible, particularly in view of its close

position to the road. It can also be viewed from The Flitch Way. The structure would become more apparent in winter when trees are without leaf. Its bulk and scale together with the use of block walling creates a stark appearance that is considered inappropriate at this location.

15 The site lies within a rural area of sporadic development beyond development limits where there is a presumption against inappropriate forms of new development. Given the above, the structure as altered is considered to be detrimental to the rural characteristics of the area and therefore contrary to this policy.

Conclusion

16 It is considered that it is expedient in the public interest for enforcement action to be taken to require the landowner to remove the block walling and to reinstate the structure as a pole barn as previously approved.

RECOMMENDED that enforcement and, if necessary, legal action be taken to require the removal of the external walling and to reinstate the structure as a pole barn as originally approved.

Background Papers: Enforcement File Ref: ENF/163/98/D

Agenda Item No: **10**

Title: **Appeal Decisions**

Authors: **Jeremy Pine (01799) 510460**

Summary

The following appeal decisions have been received since the last meeting:

1 APPEAL BY MR N OGILVIE
LAND AT 1 AND 2 BRIDGEFOOT COTTAGES, PARSONAGE ROAD, TAKELEY
ENFORCEMENT NO: ENF/142/98

Appeal against the decision to issue an enforcement notice re an unauthorised change of use of land from residential amenity land to land used for the parking and/or storage of motor vehicles which are not used in association with the residential occupation of the dwellings on the land.

Appeal decision:	DISMISSED
Date of decision:	19 JUNE 2001
Original decision made by:	DC SUB
Date of original decision:	6 NOVEMBER 2000

Summary of decision:

The Inspector said that he was left with too many doubts to accept that the appellant had satisfied the burden of proof that the site had been used for at least 10 years prior to the issue of the notice for the parking of cars unrelated to the residential use of the site. The use was not therefore immune from enforcement action by the passage of time.

He said that policies intended to protect the surrounding area from development pressures arising from the airport merited strong support. He felt that proximity to the airport was a factor weighing against, rather than in favour of, granting planning permission. He acknowledged that the parked cars were not prominent and that any visual harm was negligible, but he said that that was an argument that could be repeated too often and that the potential for substantial cumulative harm, particularly to the openness of the area, was considerable. He said that he would expect to see parking of cars within the airport complex associated with airport activity, which was what the development plan sought to achieve.

He said he felt that the appellant was somewhat unwise in becoming dependent on a source of income which he must have known, from the Council's inquiries and his attempts to deceive them, was under threat.

The Inspector noted that there was ample space within the airport boundary for car parking and that, whilst there has had to be flexibility on occasion in the use of specific areas, there was no record of drivers being turned away. He was not therefore satisfied that a need for parking beyond the airport boundary had been proven. Rather, he felt any demand was driven by the cost and convenience of the on-airport facilities.

The Inspector's attention had been drawn to an allowed appeal for airport related parking at Henham, within the Countryside Protection Zone, but he said that Policies S4 and T4 were particularly firmly worded and permitted no exceptions from which the current proposals could benefit.

The Inspector found that there was poor visibility from the access, which was potentially dangerous, and that turning movements to and from the site would likely impede the free flow of traffic on what was at times a busy road. He was firmly of the view that it would be wrong to allow any development which would increase the use of the access over and above that associated with the residential use and approved cattery.

The Inspector said that he saw no realistic possibility of an alternative site being found locally for a business of this type and 28 days was ample time for existing clients' cars to be removed. He saw no reason why people who had booked in advance could not find space at the airport itself.

An application by the Council for an award of costs against the appellant for unreasonable behaviour was allowed. The Inspector's reasons for allowing the award were:

i) The appellant failed to produce substantial evidence that other material considerations should outweigh the development plan, whilst acknowledging himself that the proposals were in conflict with it.

ii) The appellant produced weak and unconvincing evidence in an attempt to establish immunity from enforcement action in circumstances when it should have been obvious that his history of lying to the Council would cast serious doubts on the reliability of his own oral evidence.

iii) It should have been evident to the appellant that there was negligible prospect of finding an acceptable (in planning terms) alternative site, and that there was, therefore, little likelihood of the compliance period being extended to enable a search to be made.

Comments on decision:

Current dismissal rate on this type of appeal (i.e. Countryside Protection Zone around Stansted Airport) since 1984/5: 82% (17 cases).

2 APPEAL BY MR AND MRS G EVANS
HENNY COTTAGE, ONGAR ROAD, WHITE RODING, ESSEX
APPLICATION NO: UTT/1275/00/FUL

Appeal against the refusal of granting planning permission for a two-storey side extension.

Appeal decision: DISMISSED

Date of decision: 22 JUNE 2001

Original decision made by: OFFICERS

Date of original decision: 5 AUGUST 2001

Summary of decision:

The Inspector was concerned that extending the dwelling to the extent proposed would substantially increase the prominence of the dwelling, leading to a situation where it would dominate the surrounding area and contrast sharply with the smaller more rural scale and character of the older buildings nearby. He felt that the extension would not be proportionate to the dwelling, and would reduce the modest amount of amenity space which constituted visually to the open character and appearance of the area.

Comments on decision:

Current dismissal rate on this type of appeal (i.e. Over-development and loss of amenity) since 1984/5: 67% (150 cases).

3 APPEALS BY MR N RIDGEWAY
REAR OF 40 THE STREET, MANUDEN
APPLICATION NOS: UTT/0810/00/FUL & UTT/0811/00/LB

Appeals against the refusal of i) granting of planning permission for the erection of a new private residential house and garage and ii) listed building consent for the demolition of a lean-to garden structure, blockwork garden wall and forming new access and rebuilding with facing brickwork

Appeal decisions:	DISMISSED
Date of decisions:	5 JULY 2001
Original decisions made by:	DC SUB
Date of original decision:	29 SEPTEMBER 2000
Officer's recommendation to Committee:	APPROVALS

Summary of decision:

The Inspector considered that the lean-to retained a degree of historic interest in relation to No. 40 and in its weathered state, formed an attractive boundary to the extensive and mature rear garden. He considered that its removal, coupled with the erection of the new dwelling, would have a significant detrimental effect on the special architectural and historic interest of No. 40 and its setting. He also considered that the new dwelling would reduce the sense of spaciousness on the eastern side of Watts Yard, around No. 40. He did not consider that material overlooking or overshadowing would result or that the extra traffic generated would significantly affect highway safety.

Members visited this site.

Comments on decision:
Current dismissal rate on this type of appeal (i.e. adverse effect on setting of listed buildings) since 1984/5: 91% (124 cases).

4 APPEAL BY MR AND MRS S TAYLOR
LAND OFF CHURCH WALK, LITTLEBURY
APPLICATION NO: UTT/0661/00/FUL

Appeal against the refusal of granting of planning permission for conversion and extension of an existing building to provide one dwelling

Appeal decision:	DISMISSED
Date of decision:	4 JULY 2001
Original decision made by:	DC SUB

Date of original decision: 4 JULY 2001

Officer's Recommendation to Committee: REFUSAL

Summary of decision: 16 AUGUST 2000

The Inspector considered that the existing building had the appearance of an ancillary domestic outbuilding. He said that the extensions would increase its bulk significantly, and that the addition of a chimney and more windows would add to the impression of a change in scale. The proposal would compete with the scale of listed buildings along Walden Road, harming their setting. Conversion to a dwelling would give the building a prominence not appropriate to its construction and at odds with the historic pattern of development in Littlebury. He felt that the dwelling would be sufficiently visible from surrounding streets, paths and gardens to interrupt the separate space to the rear of the listed buildings.

The Inspector felt that material overlooking of adjacent gardens could occur, especially as by being separately and permanently lived in it would be probably used more than the outbuilding, and because there would be pressure to reduce the height of screening hedges to reduce shading.

He noted that the appellants intended to use the building for an elderly relative, but he accorded that little weight as they wished to create a separate and self-contained dwelling, which would outlast any personal circumstances. He felt that the increased comings and goings would detract from the living conditions of the occupants of neighbouring houses, and that the future occupants of the new dwelling would suffer poor living conditions as the occupants of Ringhill would have to park in front of the new dwelling and pass both it and the rear garden.

Comments on decision:

Current dismissal rate on this type of appeal (i.e. adverse affect on setting of listed buildings) since 1984/5: 91.% (124 cases).