



**REPORT of
DIRECTOR OF PLANNING AND REGULATORY SERVICES**

**to
NORTH WESTERN AREA PLANNING COMMITTEE
06 AUGUST 2018**

MEMBERS' UPDATE

AGENDA ITEM NO. 5

Application Number	RES/MAL/16/01475
Location	The Summer House Back Lane Wickham Bishops Essex
Proposal	Reserved matters application for the approval of appearance, landscaping and scale on outline planning application OUT/MAL/13/00118 allowed on appeal ref APP/X1545/A/13/2201061 (Demolition of two storey detached double garage with workshop and demolition of storage shed. Removal of hard surfaced tennis court including means of enclosure and erection of single dwelling house)
Applicant	Mr David Brown
Agent	N/A
Target Decision Date	N/A
Case Officer	Yee Cheung
Parish	Wickham Bishops
Reason for Referral to the Committee / Council	This Reserved Matters is presented to Members at the North Western Area Planning Committee following a Judicial Review where the decision notice issued by the Council on 24 April 2017 was quashed by the High Court on 9 February 2018.

7 CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.4.9 A further letter dated 01/08/18 has been received from Bircham Dyson Bell solicitors on behalf of an objector which are summarised and responded to below:

Comment	Officer Response
The assessment of the character of the area is flawed.	Officers are satisfied with the assessment that has been made.
The proposal would not have the appearance of a traditional farmhouse as stated within the report, particularly as it would include too much glazing.	The Officer intention in making this comment was to emphasise that the building would be built using traditional materials and architectural forms. The purpose of this comment was to stress that the building

	would be of a style that is generally in-keeping with the character of rural Essex rather than a development of an alternative or modern design.
The use of white render results in the building	White render is not an uncommon material and is not considered to be inappropriate in this context.
The statement that the site is of domestic character rather than part of the open countryside conflicts with statements made when the outline application was refused.	The refused application was the subject of a successful appeal and therefore the Planning Inspectorate must have concluded that it would be possible to erect a dwelling at this site. The presence of a garage and other domestic structures is considered grounds to consider that the content of the officer report is fair.
No explanation has been provided as to why previous comments that led to the refusal of the outline application have been reversed.	The success of the appeal against that reason for refusal is grounds to reach a different conclusion. It would be unreasonable to apply full weight to comments previously made which have inherently been disagreed with by the Planning Inspectorate.
The reference to the area having a suburban residential feel is incorrect as the Council's design guide states that the character is Arcadian.	Arcadian is a fair term for the character of the area. This does not change the overall assessment of the proposal.
The report states that the majority of the site is outside of the settlement boundary which is misleading as it is only the tip of the site that is within the settlement boundary.	A small part of the site is within the settlement boundary but almost all of the site is outside the settlement boundary.
The proposal would detract from the countryside, is therefore contrary to the Local Development Plan and should be refused.	In reaching their opinion, the objector appears to give no weight to the fact that a dwelling has been granted outline planning permission at this site and their assessment is therefore considered to be unbalanced.
The Council cannot approve a different layout and yet this is being proposed.	This matter is wholly addressed within the Officer Report. The judge has clearly indicated that the layout cannot be re-approved, but that through approving the scale of the dwelling, there can be a degree of tolerance applied to the layout, subject to the assessment of the Local Planning Authority.
The assessment of whether the layout has changed does not make any assessment of its surroundings. The character of the area should have been assessed in making this judgement.	The dimensions of the dwelling and the distances from the boundary have been set out in the report which is considered to address the surroundings of the building. The character of the area is not determinative in this matter, but if it was given additional weight it could reasonably be argued that an

	Arcadian setting with more space around the proposed buildings has more scope to allow for flexibility than an urban setting or a smaller site where changes would be perceived to be proportionately greater.
Measurements have been taken using the outside wall of the building and not the eaves and overhanging elements of the roof.	Officers have been fully transparent about the measurements and this does not therefore prevent the assessment of the proposal.
The reduction of floorspace that is quoted is incorrect due to the abovementioned assessment of where measurements should have been taken and this reduction should be given no weight in the assessment of the alteration of the layout.	Officers are satisfied that the measurements quoted have been taken reasonably and do not mislead.
There is no reference to 'reasonable level of tolerance' within the judgement and therefore using this test is unlawful.	The judge does not use that phrase, but this phrase has been used by officers to summarise the findings of the judgement which are set out within the officer report.
The assessment that the shape of the dwelling is not irregular does not follow any lawful test that has been recommended by the judge.	This phrase was used to address the comment which was made by an objector in this regard, most notably bullet point 1 on page 4 of the letter from Bircham Dyson Bell dated 13 March 2018. It is respectfully suggested that the objector would have been equally critical if this point had not been addressed.
Suggested condition 8 does not address the concerns that have been raised by the objector in relation to root protection areas and tree protection measures.	Suggested condition 8 is part of a suite of tree clarification/protection measures that would be relied upon including condition 2 which states which trees are expected to be retained and condition 8 of the outline permission which requires tree protection measures to be submitted and agreed.
No assessment has been made as to whether it will be possible to comply with condition 8. The condition is therefore unreasonable and unenforceable.	The condition, and all others recommended, are considered to meet the six tests of a condition as set out at paragraph 55 of the NPPF.
Conditions 2 and 7 relate to matters including the access and layout of development which is in conflict with government guidance.	The conditions specify the plans that are required to be complied with and landscaping. The conditions are wholly reasonable to use.
The report is flawed as it fails to make an assessment of the appropriateness of the use of white render and has therefore ignored a comment of the objector.	The use of white render is considered to be wholly acceptable in this setting and in-keeping with the general character of the area. The appropriateness of the materials is commented on at paragraph 5.3.16 of the Officer Report.
The report is flawed as it fails to make an assessment of the ability to undertake the	Paragraphs 5.3.21 to 5.3.32 address this thoroughly and the comments of the

development without impacting upon trees at the site.	objectors in this regard have been adequately summarised within the report.
Objections concerning construction activity have been disregarded.	Disturbance during the construction phase would not be a reasonable reason to refuse the application. Construction activity can be handled under other legislation and these controls need not be duplicated by the Planning Authority. It is considered that such a condition would not relate to the Reserved Matters that are to be considered and should have been imposed at outline stage if necessary. The Inspector included no such condition and therefore imposing such a condition would conflict with the advice provided by the objector at the 2 nd paragraph of page 5 of their letter. Construction activity is temporary and, for a development of this scale, it is considered that it is unnecessary to impose a condition to address this matter.
The Council has fettered its duty to consider the impact of construction traffic to the Highway Authority.	It is highlighted within the Officer Report that the Highway Authority have not requested a condition in this regard. For the reasons set out above, it is considered that it is not necessary to impose a condition to address this matter.
No assessment has been made of how the proposals would affect the contribution of the trees at the site in terms of their role as providing a habitat at the site.	The majority of the trees at the site are to be retained and will therefore continue to provide a habitat for any protected species that are present at the site. The removal of fruit trees, which could be removed in any event without the need for any form of approval, is not considered to result in the unacceptable loss of habitat at the site. If any protected species are present at the site, they will continue to be protected by other legislation. Due to the removal of trees, which forms part of the landscaping proposals at the site, Councillors could choose to impose a condition to require a 'walkover survey' to ensure that no protected species are present (and agree a scheme of appropriate mitigation if any are identified) if they consider this to be an appropriate measure.
The report is confused as it quotes approximate figures in one part where detailed figures have been included at	It is recommended that Councillors give full weight to the accurate figures that are quotes and disregard the approximate figures which

another part.	were clearly stated to be approximates and only used as a form of summarisation.
The manner in which the comments of the Tree Officer have been presented on the Council's website is misleading and confusing.	This has been resolved, an apology has been given for any confusion caused and copies of the consultation responses have been sent to the objector in full. It is considered that this does not constitute a procedural irregularity that would result in any decision being quashed. This matter does not affect the planning merits of the proposal and it would therefore be inappropriate to refuse the application for this reason.
Due to the above, any decision that is reached could be the subject of legal challenge.	For the reasons set out above, it is considered that all matters have been adequately considered and that following the recommendation of officers would represent a sound decision.

8 PROPOSED CONDITIONS

It is recommended that the reason for condition 04 is amended to read as follows:

In the interest of highway safety and to ensure appropriate parking is provided in accordance with policies D1 and T2 of the Maldon District Local Development Plan and to follow from condition 6 of the outline planning permission.

It is recommended that condition 08 is amended to read as follows:

Notwithstanding the details shown on plans 16.09.03 Revision B (dated 27 February 2017), prior to the commencement of development, details of the precise location and routes of all soakaways, inspection chambers, pumping stations, pipework and other such infrastructure related to foul and surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The development shall subsequently be undertaken only in full accordance with the approved details.