The Planning Inspectorate

Appeal Decisions

Hearing Held on 8 December 2020
Site visit made on 9 December 2020

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2021

Appeal Ref: APP/X1545/C/18/3215521
Land at Maythorne, The Endway, Althorne, Essex CM3 6DU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the enforcement appeal).
- The appeal is made by Mr A Powl against an enforcement notice issued by Maldon District Council.
- The enforcement notice, numbered ENF/18/00151/01, was issued on 17 October 2018.
- The breach of planning control as alleged in the notice is: The material change of use of the Land to residential (use class C3) with associated operational development that has resulted in the creation of three dwellinghouses.
- The requirements of the notice are:
    a. Cease the unauthorised use of the Land for residential purposes.
    b. Demolish the buildings associated with the unauthorised use and remove from the Land any resulting materials, debris or detritus.
    c. Remove from the Land any paraphernalia, materials, items or detritus associated with the unauthorised use.
- The period for compliance with the requirements is Five (5) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
  Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Appeal Ref: APP/X1545/W/18/3216373
Land at Maythorne, The Endway, Althorne, Essex CM3 6DU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission (the s78 Appeal).
- The appeal is made by Mr A Powl against the decision of Maldon District Council.
- The application Ref FUL/MAL/18/00684, dated 4 June 2018, was refused by notice dated 10 October 2018.
- The development proposed is: Section 73A application for the change of use of the barns to three dwellinghouses, including new link to boiler room, garden extensions and shed conversion to garages.
  Summary of Decision: The appeal is dismissed.

REASONS

Introduction

1. The planning merits of the ground (a)/ deemed planning application and the s78 Appeal are informed by confirming the background to and the scope of the

developments at issue, with particular reference to the site's planning history. The appellant did not submit appeals on grounds (b) or (c), nor did he question directly the description of the alleged breach of planning control. However, in view of comments within the appellant's appeal statements the scope and description of the alleged breach of planning control and related matters were discussed in some detail at the hearing.

The site

2. The Land identified in the enforcement notice encompasses a short terrace of 3 single storey dwellings and gardens, a detached outbuilding to the south (known as the boiler house), a detached outbuilding to the north (a former packing shed) and the access connecting the residential development to The Endway. The 0.2 hectare site in the s78 Appeal is essentially the same area of land.

3. The land was part of an agricultural business. The dwellings occupy the site of three linked sheds that were used in mushroom farming. These operations ceased around 1990. The two outer units were originally built as chicken sheds but subsequently were altered to facilitate the mushroom farming. The outer walls were faced in brick, with a small number of window openings, apart from the southern wall which was partially of blockwork with openings above. The larger middle unit, which was built at a later date, had walls of blockwork. Each unit had a shallow pitched roof of corrugated sheeting, with a low eaves' height. Barn doors in the front elevations were of timber. The blockwork boiler house had a smaller footprint, a higher eaves height, a steeply pitched roof, a timber door and high level windows. The packing shed was of brick with a shallow monopitch roof. The buildings had the appearance of functional agricultural buildings.

The developments

4. Works started on site in June/July 2017 and were completed by the end of January 2018. The final certificate under the Building Regulations 2010 was dated 12 February 2018.

5. The enforcement notice is against this development on the site of the old mushroom sheds, involving the creation of 3 dwellinghouses with the change of use of the land and the adjoining land to residential use, including the laying out of gardens. The Council considered that in order to form the residential units the walls of the agricultural buildings were mostly demolished and re-built, together with underpinning of the structures and the laying of new foundations.

6. The retrospective element of the development in the s78 Appeal is the 3 completed dwellings. The term retrospective is used in the sense of seeking planning permission for development already carried out, as provided for under section 73A of the 1990 Act. The planning application stated the finished development incorporated minor deviations from a scheme granted prior approval in October 2016. In addition, the scheme includes:

    - the proposed conversion of the boiler house to create a third bedroom for plot 3[1], together with the erection of a link to the main building;

[1] The plots/dwellings are numbered consecutively. Plot 1 is the first plot at the northern end of the development and plot 2 is the central plot. Plot 3 is the southernmost plot.

- the proposed conversion and partial reconstruction of the packing shed to create a triple bay garage to provide one enclosed parking space per dwelling;
- formalised gardens for the three plots and the southern extension of the garden to plot 3 to wrap behind the boiler house.

7. In summary, the development against which enforcement action has been taken is not significantly different to the retrospective element in the s78 Appeal. The Council confirmed that when the notice was issued the gardens were present, including the extension. The boiler house had been upgraded externally, although the extra bedroom and the link had not been undertaken. That was the position when I carried out the site visit. No work had been carried out to convert the packing shed.

The prior approval

8. An application was made for prior approval for a proposed change of use of agricultural building to three dwelling houses (C3) and for associated operational development (ref. COUPA/MAL/16/00991).

9. By a decision dated 19 October 2016 the Council as a local planning authority confirmed that prior approval is required and granted in accordance with the details submitted with the application and as set out by Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015[2].

10. Four conditions were attached to the prior approval by the Council. Condition 2 required the development to be carried out in complete accordance with the approved drawings specifically referenced on the decision notice. Condition 3, requiring details of foul drainage, was discharged subject to satisfactory implementation of the approved scheme, by an approval dated 24 July 2017. In addition, Part 3 W.(12)(a) of the GPDO states that the development must be carried out, when prior approval is required, in accordance with the details approved by the local planning authority, unless the local planning authority and the developer agree otherwise in writing. A condition set out in Q.2.(3) states that the development must be completed within a period of 3 years starting with the prior approval date.

11. The decision notice did not list the relevant drawing reference numbers. No point was taken on this and at the hearing the approved details of the application, including the drawings, were confirmed. I am satisfied that it was clear from the application and decision notice what details and plans received approval.

12. The Planning Support Statement submitted with the prior notification application said that the proposed development principally involved the conversion of the three conjoined sheds into a terrace of three dwellings. The sheds were described as solidly built structures with strip foundations and concrete floors. There was 'no doubt' that they were structurally sound and weatherproof. Existing elements of timber on the façade would be removed and replaced by window glazing. The roofs appeared to be in generally good condition, although the likely presence of asbestos was noted. No immediate works were proposed to replace the roofs. Some rooflights would be inserted to

[2] Subsequently referred to as the GPDO in the Decisions

maximise daylight within the plane of the existing roof. Doors to the front of the sheds would be rationalised. The predominant form and character of the sheds would remain intact. No demolition was proposed[3].

13. The plans reflected the description of the works, indicating the retention of the structures and basic alterations to allow for essential doors and windows. No new materials were detailed. One dwelling would occupy each shed, retaining the internal divisions between the units. The two outer units would be two bedroom dwellings and the central unit a three bedroom dwelling. The site plan provided gardens 6 metres deep to the rear of each unit, with additional green space to the sides. A total of three parking spaces would be sited off the access road.

14. The appellant stated that the three dwellings were completed in accordance with the scheme granted prior approval, deviations were minor, or as described at the hearing, 'de minimis'.

Comparison of approved and as-built developments

15. The appellant's statement of case for the enforcement appeal maintained that the development was clearly a conversion. All existing foundations, walls, and supports were retained as their original form. The buildings did not change in terms of height, footprint, volume or scale and the buildings were not extended, raised or otherwise expanded beyond the original planes/elevations/roof heights. Original 'as built' materials continued to give the building their structural integrity. Cladding was only atop the existing structure. At no point were the buildings rebuilt, part demolished or otherwise reconstructed. The internal layouts of each unit were altered to place the lounges on the western side, adjusting windows and amending door positions[4].

16. No detailed written schedule was provided of the actual works carried out. The appellant confirmed at the hearing that the prior approval application was based on 'generic' plans that had not been informed by a detailed survey(s) of the building. When the construction drawings were being prepared, based on survey information, the central shed was found to be higher than originally described. The adjacent two sheds were also higher than shown on the prior approval plans[5]. In carrying out the works the ridge heights of units 1 and 3 were raised to match the ridge height of the central unit, in part because of the low ceiling heights in the former sheds. A completely new timber roof structure was constructed and alterations made to the box guttering. Initially walls and foundations were said to have remained, with additional work to add waterproofing, plasterboard, external insulation and render. However, it was also explained that because the structures were very light for mushroom farming, works had to be done to ensure all complied with building regulations. A new structural frame was erected to support the new roof. Changes were made to address the inadequate foundations and a storage tank slab. Walls were taken down where structurally unstable and where there were cracks in the walls.

17. Photographic evidence shows that a substantial amount of demolition took place, including the removal of the entire roof structure and the demolition of

[3] Planning Support Statement paragraphs 2.7, 5.11 and 5.24-5.28 (document submitted after the hearing)
[4] Appellant's statement of case paragraphs 2.3, 2.4, 3.9
[5] The architect stated the central unit was 150 mm higher, unit 1 was 464 mm higher and unit 3 was 364 mm higher.

three external walls of unit 3, the front and rear walls of unit 2 and the rear wall of unit 1. The rear part of the internal dividing wall between plot 1 and plot 2 was also demolished. As part of the new build, the laying of new foundations and underpinning took place. New blockwork walls were built and the retained walls were increased in height. The photographs also show the new timber roof structure and the supporting steel frame and beams. A new concrete floor appears to have been laid in unit 2. In the schedule of works dated June 2017 provision was made for a new floor between plots 1 and 2 in order to keep floors a consistent level.

18. The draft statement of common ground (prepared by the appellant) acknowledged that the insertion of new steels and foundations were necessary to ensure compliance with building regulations and that it was also necessary to replace external walls and the roof.

19. A comparison of the elevation plans for the prior approval and as-built developments highlights the substantial change in the appearance of the new dwellings. Extensive areas of glazing have been introduced on the newly built rear (west) elevations of the units, additional and larger window openings have been formed on the front and side elevations. On unit 3 the position of the front door has been altered and a new door is inserted on the side elevation. Storm porches have been erected to the front doors of all units. The external materials include extensive use of dark grey weather boarding in addition to white render for the walls. The roofs are covered in slate and white painted fascias, soffits and barge boards are used.

20. The roof plans show that the pattern of rooflights has changed. Instead of 4 rooflights over the central unit in the original scheme, 3 rooflights are shown on the as-built plans, together with 1 rooflight for unit 3. The ridge lines are emphasised through the introduction of ridge tiles.

21. The proposed elevation plan for the prior approval specifies dimensions. The height of the eaves to all units is 2.1 m. The ridge height for the central unit 2 is 3.7 m and 3.6 m for the outer two units (front and rear elevations). Heights for these elements are not specified on the as-built elevation plans but the Council drew attention to the heights on the section plans. The stated dimensions confirm that the walls of the outer units were raised to increase the eaves height and as a consequence the ridge height. The internal ceiling height of the central unit (3.824 m) is slightly above the former ridge height and the pitch of the roof appears to be shallower than on the adjoining units. The sections also illustrate the changes to the guttering for the central unit, resulting in a slightly lower eaves and indicate the thickness of insulation, the use of plasterboard for internal walls and the enclosure of any retained walls within the new structure.

22. The internal layout in the prior approval scheme provided for a 3 bedroom dwelling having an internal floor area of 151 m^2 (plot 2) and 2 x 2 bedroom dwellings, each with an internal floor area of 83 m^2 (plots 1 and 3). The built development has 2 x 3 bedroom dwellings on plots 1 and 2, with floor spaces of 107 m^2 and 128 m^2 respectively. Plot 3 is a 2 bedroom dwelling with 81 m^2 of floorspace[6]. The increase in the size of unit 1 has been achieved by taking in space from plot 2 at the back half of the dwelling, so that the internal wall no longer follows the line of the original partition. The layout of accommodation in

[6] The appellant confirmed the floor spaces by email dated 10 December 2020.

all units also has been revised whereby the kitchens and living rooms are at the back of the dwellings with access into the gardens and the bedrooms are now placed to the front of the dwellings. Works were carried out to the boiler house so that its appearance was in a consistent design and materials to the dwellings.

23. Notwithstanding the submissions by the appellant to support the prior approval application the evidence clearly demonstrates that the original agricultural sheds suffered from very serious structural defects. A very substantial amount of building work was undertaken to replace the mushroom sheds with three dwellings. These works included extensive demolition and rebuilding of walls, a new roof and insertion of a steel support frame, new foundations and underpinning, increasing the height of the buildings, the introduction of extensive areas of glazing and additional fenestration, additional design details such as storm porches, use of a range of new external materials and a rearrangement of the internal layout, with consequent changes to the size of the units.

24. The similarities between the prior approval and the as-built scheme are confined to the dwellings being sited on the same overall footprint as the mushroom sheds and the maintenance of a range of three single storey units with pitched roofs. Contrary to the statement by the appellant, the development of the dwellings has resulted in the external dimensions of the overall building being extended significantly beyond the external dimensions of the original building. To maintain as the appellant did that the changes were 'de minimis' when compared to the prior approval scheme is not supported by the evidence at all. The countryside location of the site adds to the significance of the changes.

25. Significantly, the appellant confirmed at the hearing that the purpose of the prior approval was to establish a concept and that subsequently changes were made to respond to what was on the ground. There appeared to be no recognition that the conditions attached to the prior approval required compliance with the approved details and plans.

26. In conclusion, the scheme submitted for prior approval was not based on any significant investigation or survey of the agricultural buildings. The later survey and preparation of construction drawings would have demonstrated from the outset and before the start of building work that the prior approval scheme could not realistically be implemented if the necessary building regulations were to be complied with and safe homes were to be provided. The prior approval scheme was not commenced and then carried out. The three year time limit for completion of the prior approval scheme has not and cannot be met. That being the case the prior approval is no longer extant, which was agreed by the main parties at the hearing.

27. The enforcement notice correctly states that the breach of planning control is within paragraph (a) of section 171A(1) of the 1990 Act, the carrying out of development without planning permission, as opposed to paragraph (b), failing to comply with any condition or limitation subject to which planning permission has been granted. Elements of the original fabric of the building remain but the very limited original fabric was fully integrated into the new structure. A substantial amount of operational development took place to create the three new dwellings. My conclusion is that as a matter of fact and degree the works

to the mushroom sheds did not amount to alterations or conversion but were so extensive as to amount to demolition and the construction of new buildings for use as dwellings. The old buildings did not survive and new buildings were erected.

28. In coming to this conclusion I have taken into account the appellant's reference to an appeal decision in Epping Forest District that considered demolition but the facts and circumstances of every case will be different. Case law is very relevant, notably the *Hibbitt* judgement referred to by the Council which was referred to extensively in the later *Oates* judgement[7]. The appellant's reliance on the works 'being reasonably required' are within the context of an application for a prior approval and as such has little weight.

29. In view of my conclusions on the extent and type of building work undertaken the description of the alleged breach of planning control correctly identifies that operational development has resulted in the creation of three dwellinghouses. The more usual descriptive phrase is the erection of three dwellinghouses and I intend to make this minor correction. There also has been a change in the use of the land to residential. Having regard to the meaning of "use" in section 336(1) of the 1990 Act, the extent of the Land and the shared use of part of the Land, the wording appropriately includes development constituting a material change of use. The notice fairly tells the person(s) on whom it has been served what has been done wrong and what must be done to remedy it. The appellant did not seek to argue otherwise or to dispute in any way the validity of the notice. The appellant, whilst not agreeing with the Council's approach and assessment, understood that the deemed planning application is for a new build development involving the construction of three dwellinghouses, not a conversion limited to a change of use.

30. In the Reasons, the four year time limit for taking enforcement action against operational development is cited. The ten year time limit for taking action against a material change of use also should be stated. There was no dispute that the development was carried out within the last four years.

31. I am satisfied that the notice is able to be corrected as indicated above without injustice to either the appellant or the local planning authority.

Ground (a)/deemed planning application and s78 Appeal

Planning policy

32. The development plan includes the Maldon District Approved Local Development Plan 2014-2029, adopted July 2017 (the LDP). The most important policies for determining the deemed planning application and the s78 Appeal are those cited in the reasons for issuing the enforcement notice and the reasons for refusal. These are:

- Policy S1, concerning sustainable development, Policy S2 on strategic growth and Policy S8 settlement boundaries and the countryside,
- Policy D1 design quality,
- Policy T2 on accessibility, and

[7] *Hibbitt v Secretary of State for Communities and Local Government and Rushcliffe Borough Council* [2016] EWHC 2853 (Admin); *Oates v Secretary of State for Communities and Local Government and Canterbury City Council* [2018] EWCA CIV 2229

- Policy H4 on the effective use of land.

33. The Council pointed out that the reference in the reasons to Policy D2 (climate change and the environmental impact of development) was in error and that instead the correct policy reference is Policy D1.

34. The Maldon District Design Guide Supplementary Planning Guidance (SPD) November 2017 and the Council's Vehicle Parking Standards SPD November 2018 are material considerations.

35. The National Planning Policy Framework (the Framework) sets out the Government's planning policies for England and how they should be applied. Decisions should apply a presumption in favour of sustainable development. The suite of national Planning Practice Guidance and the National Design Guide also will be taken into account where relevant.

36. The Council was able to demonstrate a five year supply of deliverable housing sites in October 2018. The Council updated this position through its annual monitoring report. The statement dated November 2020 concludes that the Council can demonstrate 4.90 years' worth of housing land supply against its identified housing target. The appellant did not dispute the extent of the shortfall and there is no evidence to cast doubt on that position. Therefore for the purposes of the Framework the tilted balance applies. Permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

37. The appellant drew attention to the prominence of the ability to demonstrate a five year land supply in the reasons for issuing the enforcement notice and the reasons for refusal of planning permission. The Council confirmed that the change in circumstances regarding the five year housing land supply did not alter its negative assessment of the development.

38. The description of the development for determination in the ground (a) appeal is derived directly from the alleged breach of planning control as corrected: The material change of use of the Land to residential (use class C3) with associated operational development that has resulted in the erection of three dwellinghouses. The deemed planning application is not an application for prior approval under Class Q and therefore the tests are not the same. As explained in the section above, the development against which enforcement action has been taken is not significantly different to the retrospective element in the s78 Appeal.

Main issues

39. The main issues for both developments are:

- Whether the development of the dwellings on a site outside a defined settlement promotes a sustainable pattern of development;
- Whether the development is of a high quality design taking particular account of its effect on local character and context, the provision of private amenity space and on-site parking;
- Whether the prior approval and/or permitted development rights under Class Q of the GPDO represent realistic fallbacks;

- Whether any identified harm may be resolved by planning condition(s).

40. In view of the common issues and the similarities between the developments I will cover the ground (a)/deemed planning application and the s78 Appeal together, distinguishing the additional proposals in the s78 Appeal and the additional matters associated with the ground (a) appeal where necessary.

41. I am very conscious that the development is let and occupied under tenancies as three dwellings and that if the appeals are unsuccessful the current occupiers would probably lose their homes and have to find alternative accommodation. Therefore rights under the Human Rights Act 1998[8] are engaged and specifically the right of a person to respect for private and family life and their home. Also, I must have due regard to the public sector equality duty set out in the Equality Act 2010.

Location of development

42. In order to secure a sustainable pattern of development the strategy in the LDP expressed in Policy S2 is to concentrate the majority of growth within and adjacent to the main settlements. A small proportion of growth is allocated to the District's rural villages, where growth is related to the settlement hierarchy and reflects the size, function and physical capacity of the settlements.

43. The hierarchy is set out in Policy S8. Althorne is a smaller village, a category described as containing few or no services and facilities, with limited or no access to public transport, very limited or no employment opportunities. The settlement boundary of the village is defined in the Policies Map and encompasses a block of development centred around the junction of the B1010 and Summerhill/Burnham Road.

44. The appeal site is located outside of and some 710 m or so[9] to the east of the settlement boundary in the countryside. Policy S8 protects the countryside for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. The policy allows for development that (a) would not adversely impact upon the intrinsic character and beauty, and (b) falls within one of the categories of development identified in points (a) to (m).

45. The Council was of the view that the development does not fall within any of the criteria, whereas the appellant initially considered that criterion (e) applied: "The re-use of a redundant or disused building that would lead to an enhancement to the immediate setting (in accordance with Policies E4 and D3)." Both parties agreed at the hearing that compliance with the policy criterion had to take into account Policies E4 and D3. Policy D3 applies to development proposals that affect a heritage asset and is not relevant to the appeal developments. Policy E4 concerns agricultural and rural diversification. The appellant accepted that the developments are not associated with agriculture or other land-based rural businesses, nor do they involve the change of use of existing rural buildings to other employment generation uses. The developments do not fall within one of the categories in points (a) to (m).

46. I conclude the residential development is not acceptable for a countryside location under Policy S8. There is conflict with Policy S8, even if the

[8] The Human Rights Act 1998 incorporates into UK law most of the fundamental rights and freedoms in the European Convention on Human Rights.
[9] This figure is based on the figure in the Council's statement paragraph 6.7

development is found to have no adverse impact upon the intrinsic character and beauty of the countryside.

47. An aim of the settlement and growth strategies is to direct development towards the most accessible locations in the District, thereby minimising the need to travel, allow use of sustainable modes of transport and improve access for all the community. The Council reported at the hearing that the village no longer has a shop. Access to a range of services, health provision, community facilities, employment and education would be dependent on travelling to the higher order settlements, the nearest town being Burnham on Crouch. The walk into the village or to the station from the site involves stretches of unlit roads without a footway, which I confirmed on my site visit. Use of a bicycle would not be encouraged because of the relatively narrow and busy B1010. The bus service no longer stops on The Endway and the frequency of the service is very limited. The probability is that residents of the dwellings would be very heavily reliant on the use of the car, even to access facilities within Althorne village. Access would not be available to all.

48. With reference to criterion 2 of Policy T2, a small scale development of 3 dwellings would not reasonably be expected to provide safe and direct walking routes to nearby services facilities and public transport to overcome any existing constraints. Therefore selecting an appropriate location for such development is important. Maythorne is not in a location well placed to reduce the need to travel, encourage residents to use alternatives to the private car or to enable access by all members of the community.

49. In summary, there is conflict with Policies S2 and S8 and an objective of Policy T2 of the LDP.

Design

Character and appearance

50. The site is within landscape type Coastal Farmed Landscape[10] (E2 Tillingham and Latchingdon Coastal Farmland), which is substantially flat and artificially drained to create agricultural land with a distinctive ancient rectilinear field pattern. There is an absence of woodland and a sparse settlement pattern. The network of rural lanes is small in scale and sensitive to change.

51. Althorne is an agricultural settlement[11], where buildings are loosely clustered to define space in key locations, such as around nodes and main streets. At the village edge the overall pattern of development is open, with buildings set back from the street. The SPD advises that outside the village boundary the main consideration is the sensitive rural edge where new development relates to landscape character.

52. The Endway is in the countryside, well to the east of the core of the village. It is a narrow rural lane where the clusters of buildings are separated by fields resulting in a rural and open aspect. Plot sizes vary. Typically dwellings are sited near to the highway, whilst agricultural buildings are set further back. The character of the surroundings here is distinct from the more compactly developed area within the defined settlement boundary.

[10] Maldon Design Guide B 03 page 12, taken from Maldon Landscape Character Assessment
[11] Maldon Design Guide B 04_02 page 17

53. The agricultural sheds and adjacent farmland at Maythorne were consistent with this very loose and rural pattern of development. The neighbouring dwellings to either side contribute to the interrupted ribbon of residential development along the highway, with the old farm buildings to the rear of St Helier sited opposite the former mushroom sheds on the appeal site. Trees define the boundary to the adjacent field owned by the appellant and are a landscape feature.

54. The residential development is small scale in view of the number of dwellings and the single storey built form. The size and form of the dwellings has some reference back to the former agricultural sheds and the external materials of timber cladding, slate and the use of render reflect materials seen in the surrounding area. However, the introduction of three new dwellings and the change in the use of the land to a residential use have brought about a very significant and atypical change to the appearance and character of the site and its surroundings.

55. The three dwellings are accessed by a track off The Endway and are sited behind the frontage residential development. The design makes a strong statement, particularly on the rear elevations with the incorporation of large expanses of glazing within bold frames and also the white painted barge boards along the slightly projecting roof gables. The dwellings are prominent in short distance views from The Endway, especially as a result of the formation of a new access and break in the frontage hedgerow to the west of the site's main access. The development is not in character with and fails to reinforce the dominant settlement pattern and rural, open setting. The failure to respect and enhance the character and local context conflicts with a requirement of Policy D1. The intrinsic character of the countryside is not protected, resulting in conflict with Policy S8.

56. The additional proposed works to the packing shed, together with the link and the change of use of boiler house would continue the design theme of the residential development. They would consolidate the residential use but would not be a determining factor in the acceptability of the scheme in the s78 Appeal.

Amenity space

57. On plan the boundary to the residential site has been closely defined around the dwellings, which limits the extent of encroachment of the domestic use and gardens into the open, agricultural surroundings but also limits the scope to create a soft landscaped edge. The rear boundary to the small gardens is marked by post and rail fencing. The higher close boarded fencing between the plots is the more visually dominant.

58. The Design Guide indicates a minimum of 100 m^2 of private amenity space per 3+ bedroom dwelling and 50 m^2 for a 1 to 2 bedroom unit. There was agreement between the main parties that plot 1 (3 bed) has 48 m^2, plot 2 (3 bed) 49 m^2 and plot 3 (2 bed) has 67 m^2 of private garden space. The extension of the garden to plot 3 to wrap behind the boiler house as proposed in the s78 Appeal has been carried out, is included in the 67 m^2 and therefore does not represent an increase in amenity space for this unit. The proposal in the s78 Appeal is to increase the number of bedrooms to three on plot 3, which in turn increases the guideline figure to a minimum of 100 m^2 for this unit.

59. Private gardens generally provide for a number of functions such as hanging out washing, sitting out, having a kick around, offering habitats for wildlife and allowing water to drain naturally. At Maythorne the internal arrangement of living accommodation relates well to the garden in that kitchen/living space has direct access to the patio area. The gardens, being on the west side of the buildings, would benefit from the afternoon sun, as well as being sited away from the comings and goings at the front of the dwellings. Small patios have been provided. However, the downside is the significant shortfall in the amount of space for all of the units, especially as they probably would be occupied as family homes.

60. In the discussion at the hearing the appellant suggested, going forward, making the gardens larger by an extension of the residential curtilages in accordance with Policy H4. However, there are no specific proposals to assess as part of these appeals and Policy H4 states that extensions to domestic gardens within the countryside will not normally be permitted. The allowance for small unobtrusive extensions of residential curtilages into the countryside applies to dwellings within the settlement boundary. I noted on the site visit that domestic activities appeared to be spilling out informally on to the adjacent lands, facilitated by the gates in the rear boundary fences. Formal recreation spaces within the village or countryside footpaths would not fulfil the same functions as private gardens.

61. I conclude that an inadequate amount of amenity space has been provided for each dwelling. That being so the schemes fail to comply with criterion 2) of Policy D1 and guidance in the Maldon District Design Guide SPD. Policy H4 does not provide support for the development.

Parking

62. To comply with the SPD two car parking spaces per unit are required. Visitor parking is not required in small residential schemes. The Council understood that there are three on-site parking spaces, two to the north of unit 1 and one to the south of unit 3. With reference to the s78 Appeal the Council considered that one space per dwelling would be provided in the proposed garage.

63. The appellant's information about the parking provision is not consistent or necessarily corresponds with what has actually taken place. The s73A application form stated that there were five car parking spaces on site, which with the three proposed additional spaces in the converted packing shed would give a total of eight spaces. However, the proposed site plan (ref 1826/GA05) shows only the three spaces in the converted building.

64. During the appeal process the appellant submitted additional information[12]. In terms of the current situation three spaces per dwelling are shown. The parking plan identifies four spaces sited in the area between the plot 1 dwelling and the packing shed, one space to the front and one space to the rear of the packing shed, one space to the front of the boiler house and two spaces on land to the south, outside the site. The updated proposed situation, on the basis that the s78 Appeal is allowed, shows four spaces in the proposed garage building[13]. Additional spaces for the plots would be adjacent to the garage, alongside the

[12] Appellant's response to Inspector's Note
[13] One space for plot 1 and for plot 3 and two spaces for plot 2

accessway and in front of the boiler house. In summary, three spaces are shown for each dwelling, with two 'spare' parking bays.

65. When I visited the site cars were parked on the hard surfaced area on the northern side of the plot 1 dwelling and also on the land to the south of the site.

66. Overall the details indicate that there is inadequate on-site car parking for the as-built scheme, with the use of land outside the site in order to provide the required level of parking. Turning to the s78 Appeal, the proposed conversion of the packing shed to a garage would provide a use for the building and be acceptable parking provision, providing one space per plot. However, the location of the additional three spaces has not been satisfactorily shown on a parking plan. In summary, an acceptable parking layout has not been submitted for the existing development or the s78 Appeal.

67. Overspill on-street parking would be unlikely to occur along The Endway or cause detriment to pedestrian and highway safety and the free flow of traffic on this highway. The greater probability is that car parking would spill onto the shared access track or adjacent land, increasing the harmful visual impact and negating any gain from the proposed conversion of the packing shed and causing loss of amenity to neighbouring occupiers. Criterion 5) of Policy D1 and criterion 5) of Policy T2 are not met.

Other considerations

68. The submitted evidence demonstrates that safety and building regulation requirements have been met in the construction of the dwellings but there is little to show that the development has minimised its effect on the environment to ensure compliance with Policy D2.

Conclusions

69. The countryside location of the residential site and development are not supported by Policies S1, S2, S8 and T2. The introduction of a residential use and the bold design for the dwellings do not maintain the rural open character and local identity in this countryside location. The site is not of sufficient size to enable private amenity space standards to be met, thereby reducing the quality of the development. An acceptable parking plan for on site car parking provision remains to be resolved. As a result there is conflict with requirements of Policies S1, S8, D1 and T2. Policy H4 offers no support, bearing in mind the location and type of development.

Prior approval, permitted development rights and a fallback

70. I have concluded that the development as built is not in accordance with and is substantially different from the scheme granted prior approval on 19 October 2016. This prior approval is no longer extant and consequently it does not represent a realistic fallback. Even if the time period for completing the development had not expired the appellant's own evidence has demonstrated that the approved scheme would not be compliant with the Building Regulations and in practice could not be carried out in accordance with the approved plans. Furthermore, a scheme for the residential use and conversion of the former buildings would have necessitated increasing the external dimensions of the building envelope in order to achieve required standards. Under the provisions of Q.1 such development is not permitted.

71. A prior approval under the GPDO for a material change of use under Class Q is for a specific proposal that does not fall within any of the exceptions or limitations and which meets all the stated conditions. Unlike an outline planning permission, the prior approval did not establish the acceptability of a residential use on the appeal site and allow for details to be submitted at a later date.

72. The operational development has resulted in the erection of new non-agricultural buildings, Class C3 dwelling houses. Permitted development rights under Class Q or any other Class in Part 3 of Schedule 2 do not apply. Moreover, the permission granted by Schedule 2 does not apply if the existing building or the existing use is unlawful (article 3(5) of the GPDO). The rights to convert the old agricultural sheds were lost when the buildings were demolished.

73. The 2016 prior approval has no weight and is not a factor that weighs in favour of the built development or the proposed development in the s78 Appeal. There is no valid fallback position.

Planning conditions

74. The Framework makes clear that planning conditions should be kept to a minimum, and only be used where they satisfy the six tests – necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. Planning Practice Guidance advises that planning conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects.

75. The condition put forward by the local planning authority and agreed by the appellant for the as-built development would remove permitted development rights to erect garages, extensions or separate buildings (other than incidental outbuildings less than 10 cubic metres in volume). The reason refers to ensuring the dwellings retain private amenity space and to restricting the amount of built form in the rural location. This type of condition would have the potential to prevent any further harm but would not overcome the identified harms to the character and appearance of the area already caused by the development or the existing shortfall in private amenity space.

76. Furthermore, permitted development rights in Part 1 of the GPDO apply to a residential curtilage not a residential site. That being so the wording would need to be amended. The extent of the curtilages to the 3 plots would not necessarily include all the land within the site, in particular the packing shed and land immediately adjacent to that building.

77. A condition could be imposed requiring the submission of a parking plan to provide two car parking spaces per unit but to date it has not been shown there is sufficient space within the site to provide convenient and useable provision, without the need for tandem parking.

78. Two conditions were put forward by the local planning authority and agreed by the appellant for the development in the s78 Appeal. The first seeks to ensure the garages are used solely for the parking of a motor car in connection with the residential dwellings. Whilst it would protect the garage spaces for parking it would not address the lack of clarity over parking provision as a whole. This could only be done through the submission of a detailed parking scheme.

79. The second condition to restrict additional built development on the site is similarly worded to the condition for the as-built scheme. I have the same concerns to those set out in the paragraphs above.

80. The appellant proposed a planning condition to secure electric vehicle charging facilities. In general terms such provision is supported by the Vehicle Parking Standards SPD. However, it would not overcome the fundamental concerns over the location and deficiencies in accessibility of the site that I have identified. Nor would it address the lack of clarity over parking provision as a whole. On matters of detail, the wording of the proposed condition lacks precision and would not be an enforceable condition. The suggested amendment by the local planning authority would have to be incorporated to address enforceability.

81. In conclusion, planning conditions could address certain details of the scheme but are not able to satisfactorily mitigate or overcome the fundamental harms arising from the location of the site in the countryside, the siting of the dwellings and the scheme design. The shortfall and lack of clarity on parking provision may be capable of being resolved. That being so, the matter of on-site parking provision is not a determining factor weighing strongly against the developments. Nevertheless, the wider objective in Policy T2 of securing an accessible environment remains.

Conclusion on the development plan

82. Policy S1 advocates a positive approach, that reflects the presumption in favour of sustainable development, when considering development proposals. Key principles are identified, including the delivery of a sustainable level of housing growth that will meet local needs and deliver a wide choice of high quality homes in the most sustainable locations.

83. On the positive side, development makes a small contribution to housing growth, bearing in mind that windfall sites are a reliable component of the District's five year housing supply. As neutral factors, the site is not in a high risk flood area and no constraints have been highlighted in local infrastructure. On the negative side of the balance the site is not in a sustainable location where housing development is promoted. The key principle of minimising the need to travel and to prioritise sustainable modes of transport is not met. Rural character and identity are not maintained. Aspects of the scheme detract from its quality, particularly the very significant shortfall in amenity space. My conclusion is that the balance is against the development when tested against the key principles of Policy S1.

84. The final element of Policy S1 in effect adopts the tilted balance expressed in the Framework. The most recent annual update of the District's five year housing land supply shows a slight shortfall at 4.90 years. This follows on from the years when a five year supply of deliverable housing sites has been demonstrated. A comparison of the position in 2019/20 with 2018/2019 indicates that the change is part due to a reduction in anticipated supply from major sites of 10+ dwellings and strategic allocations. Small sites and windfalls are in a healthy position. The record on completions shows an upward trend. With these factors in mind I attach limited weight to the identified shortfall in this case.

85. The built development in the deemed planning application and the scheme in the s78 Appeal is not supported by Policy S1. There also is a failure to comply with Policies S2, S8, D1 and T2 and a lack of support from Policy H4. The developments are not in accordance with the development plan when considered as a whole.

Other considerations

The Framework

86. In respect of rural housing, the Framework emphasises the importance of supporting developments that meet local needs and locating housing where it will enhance or maintain the vitality of village communities. The dwellings at Maythorne have been rented out and occupied since completion but there is very little specific evidence to show a positive contribution towards the stated objectives. The site is not in an isolated location and therefore the homes do not have to be justified by one or more of the circumstances in paragraph 79 of the Framework. In terms of making effective use of land, the Framework attaches substantial weight to use of suitable brownfield land for homes within settlements, not the countryside. The appellant relies on paragraphs 83 and 84 but these policies are directed to supporting businesses and a prosperous rural economy. The agricultural site and buildings did not fall within the meaning of previously developed land because land that is or was last occupied by agricultural or forestry buildings is specifically excluded from the definition[14].

87. The Framework promotes sustainable transport and expects patterns of growth to be actively managed in support of such objectives. I recognise that the opportunities to maximise sustainable transport solutions will vary between urban and rural areas. The LDP has taken this factor into account when identifying locations for sustainable growth. Althorne is a smaller village, lower down in the settlement hierarchy and the site is well outside the settlement boundary. The shortfall in adequate, clearly defined and useable on-site parking provision is very relevant when the factors identified in paragraph 105 of the Framework are taken into account. The use of a planning condition has the potential to address this matter. Safe and suitable access to the site is not able to be achieved for all users in view of the inadequacies in pedestrian provision along the local highway network.

88. The role of SPDs in achieving good design is recognised by the Framework. The strong concern over private amenity space and to a lesser extent the concern on parking provision indicate that the development would not function to the required standards. The external appearance is not sufficiently sympathetic to local character to merit full support. The site is not within a designated area that has the highest status of protection in conserving the natural environment. Nevertheless, recognising the intrinsic character of the countryside is a policy objective. The harm the residential use and associated operational development causes to the rural, open character is a further factor weighing against the new homes.

89. Even allowing for the slight shortfall in the District's five year housing land supply and the objective of delivering a sufficient supply of homes I conclude that the adverse impacts of approving the development, whether the built scheme in the deemed planning application or with the additional proposals in

[14] The Framework Annex 2 Glossary

the s78 Appeal, significantly outweigh the benefits when assessed against the Framework. Accordingly there is a failure to comply with the Framework and the grant of planning permission is not supported by national planning policy.

Appeal decisions

90. I find it very significant that no planning permission has been granted for any new dwellings outside of the settlement boundaries of Althorne since 2013 and no appeals have been allowed, even at the time when the Council was unable to demonstrate a five year supply of housing land.

91. The Fiddlers Rest appeal decision[15] is very relevant because of the location of that appeal site on The Endway. The Inspector, like myself, found that the clusters of development set within generous plots gave The Endway a rural feel, distinct from the character of the core settlement where the pattern of development is closer knit with smaller plots. Similarly, the Inspector considered the spaciousness and open rural character to be important to the intrinsic character of the countryside. In addition, the real difficulties of accessing services, even within Althorne and the use of public transport were described, with particular reference to the poor pedestrian provision.

92. Several other housing proposals around Althorne village were likewise dismissed on appeal. In the River View Terrace appeal decision[16] the Inspector concluded the provision of two houses would make a modest contribution to the economy and the supply of market housing, but the harm caused by extending and intensifying built development in an unsustainable location would significantly and demonstrably outweigh the benefits of providing a modest amount of additional housing.

93. In the Clifford's Farm appeal decision[17] the Inspector concluded that residents of the proposed four dwellings would be heavily reliant on private transport for most of their needs and services including education and medical services. The site, which was outside but adjacent to the settlement boundary, was not in a sustainable location. The contribution to local housing supply did not justify the development outside an adopted settlement boundary. The Burnham Road appeal decision[18] related to a site just to the east outside the settlement boundary. Nevertheless, the Inspector concluded the occupiers of the new dwelling would not have acceptable access to shops and services. Finally in an appeal for a 48 dwelling development on a larger site further to the east on Burnham Road (Mansion House Farm)[19] the Inspector found the site not to be in a particularly sustainable location and the development contrary to core aims of the Framework in this regard.

94. The common theme in these appeal decisions for sites outside the settlement boundary is that the harm to the character and appearance and the unsustainable location weighed decisively against the proposed residential developments, whether or not a five year housing land supply can be demonstrated.

[15] Appeal ref APP/X1545/A/12/2179165 dated 15 February 2013
[16] Appeal ref APP/X1545/A/14/2222319 dated 26 February 2015
[17] Appeal ref APP/X1545/A/14/2225889 dated 29 December 2014
[18] Appeal ref APP/X1545/W/17/3169919 dated 31 May 2017
[19] Appeal ref APP/X1545/W/16/3152730 dated 8 May 2017

95. The appeal decision at Little Ashtree Farm[20] is able to be distinguished. The proposal was for a barn conversion to residential on land outside the settlement boundary of Mayland, not Althorne. The Inspector concluded that there was a realistic prospect of the barn conversion authorised under a prior approval being implemented in the event the appeal failed. There was no evidence the prior approval scheme, which was for a very similar residential development, could not be carried out successfully. The Inspector concluded that despite the conflict with policies in the development plan and paragraphs in the Framework the prior approval was an important material consideration that indicated the proposal would be acceptable. In contrast at Maythorne I have concluded that the prior approval has no weight for the reasons set out earlier in this decision and therefore it does not have the same decisive role as a fallback in the planning balance.

96. Appeal decisions are not a consideration weighing in favour of the developments. Bearing in mind the importance of consistency in decision-making, they weigh significantly against.

Other matters specific to the ground (a) appeal

97. In respect of the ground (a) appeal/deemed planning application I have power to grant permission for the whole or any part of the development described in the breach of planning control or in relation to the whole or any part of the Land to which the notice relates (s177(1)(a)). In view of the integrated form of the development and the harm identified it would not be appropriate to exercise this option in this case.

98. The prior approval scheme does not offer an obvious alternative because it is a different development that relied on retaining a very substantial amount of the original buildings. In view of the low height of the end units and the structural condition of the former mushroom sheds the approved scheme could not be implemented to provide habitable accommodation.

Human rights

99. If upheld without variation, compliance with the enforcement notice would result in the loss of the three homes. The homes are occupied and consequently article 8 is engaged. Article 8 is a qualified right that requires a balance between the rights of the individual and the needs and interests of the wider community. The enforcement notice has a legitimate aim of protecting the environment by resisting unsustainable development.

100. The enforcement notice was served on the occupiers of the three dwellings, enabling the residents to appeal if they so wished. There has also been the opportunity to make representations on the appeals. In March 2020 the appellant reported that three families with young children (one child with disabilities) were living in each of the units. The appellant confirmed at the hearing the current position as to occupancy. The dwellings are occupied under 12 month assured shorthold tenancy agreements. The tenancy for Plot 1, dating to May 2019, is now periodic. The tenancy for plot 2 began on 3 January 2020 and so expires on 3 January 2021. The tenancy for plot 3 has 1 year to run from 4 June 2020.

[20] Appeal ref APP/X1545/W/18/3194812 dated 6 September 2018

101. Significantly the dwellings were offered to let and all occupiers entered into their tenancy agreements after the enforcement notice was issued on 17 October 2018. At the hearing the appellant confirmed that the occupiers entered into their tenancies in full awareness of the enforcement action and the risk involved. No evidence was produced to indicate that the occupiers have a need to live near Althorne or that they would have any difficulty in finding alternative living accommodation.

102. In view of the above considerations the position of the current occupiers is not strong and the degree of interference with their rights would be low. The development causes harm to local character, is not of the quality required and is not in an appropriate location to promote sustainable development. Refusal of planning permission is necessary and proportionate in the public interest. There are no grounds to justify a temporary permission. The reasonableness of the period of compliance will be considered under the ground (g) appeal.

103. Through Article 1 of Protocol 1 a person has the right to the peaceful enjoyment of their possessions. It is a qualified right and so a balance is required against the public interest. The fact the appellant carried out the development without the necessary authorisation weakens his position and reduces the seriousness of the interference with his rights. In view of the serous harms identified as a result of the development refusal of planning permission is necessary and proportionate in the public interest.

Conclusions

104. The development that is the subject of the deemed planning application is contrary to the development plan when read as a whole. Material considerations also weigh strongly against the development. I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed planning application.

105. For the reasons given above the planning balance weighs heavily against the development and the s78 Appeal should be dismissed.

106. Refusal of planning permission and dismissal of the s78 Appeal would not violate the human rights of either the appellant or the occupiers of the dwellings.

Ground (f)

107. The issue is whether the requirements of the enforcement notice are excessive.

108. At the hearing the Council confirmed that the purpose of the notice is to remedy the breach of planning control, which is reflected in the policy reasons for issuing the notice. The requirements should follow from this purpose.

109. Step (a), cease the residential use, would do no more than remedy the unauthorised use of the land. I have concluded that new buildings were erected. Step (b), demolish the buildings, would remove the unauthorised operational development. I note that the appellant accepted that the demolition requirement could only be justified in planning terms if the development is considered to be a new building rather than the conversion of an existing

structure[21]. Step (c), removal of paraphernalia and materials from the Land, would ensure full completion of step (a). On this analysis the requirements are confined to remedying the breach and are not excessive.

110. Nevertheless, I have to consider whether there is any obvious alternatives to the stated requirements that would remedy the breach. To require alteration of the development to secure compliance with the prior approval scheme does not provide an appropriate alternative for several reasons. The prior approval is no longer extant. A ground (f) appeal is not able to be used to gain planning permission for a development different to that enforced against. The evidence also has demonstrated that the prior approval scheme was not a realistic alternative and would not provide a safe, habitable development. It would be excessive to require the implementation of such a scheme.

111. Initially the appellant argued that the buildings should be required to be restored to their original condition, based on the additional works identified in the schedule dated June 2017. The works carried out were described in the appellant's statement as 'easily reversible'. However, that is not the case and the schedule does not clearly specify the works that were actually carried out. For example, works to the foundations were not informed by the findings of the appointed structural engineer and the schedule incorporates phrases such as roofs 'are likely to be removed', 'repairs and alterations as necessary to external walls'. The original buildings have been shown to be in very poor condition. It would be excessive and unrealistic to require not only demolition of the new build but also fabric to be restored that is unsound.

112. Following the hearing the appellant put forward alternative wording for step (b): "Strip out the buildings associated with the unauthorised use and remove from the land any resulting materials, debris or detritus". An additional step was proposed "Land and retained buildings only to be used for purposes ancillary to the lawful use of the site".

113. These steps appear to be aimed at retaining the buildings for agricultural use. However, proposed step (b) would have the effect of achieving planning permission for the buildings through the operation of section 173(11). The Council did not decide to under-enforce and this outcome would be contrary to the purpose of the notice. Furthermore, the buildings have been designed for residential use and there is nothing to suggest that they would be functional for agricultural use. The additional step would also be excessive because it would impose a positive requirement. It would be unnecessary because the land would revert to its lawful agricultural use (s57(4) of the 1990 Act). The stated requirements in the notice do not deprive the appellant of his lawful use rights. The appellant's proposed variation to step (b) is not appropriate or acceptable.

114. The appeal on ground (f) does not succeed.

Appeal on ground (g)

115. The issue is whether the compliance period of five calendar months is reasonable. This involves consideration of what the recipient of the enforcement notice will have to do in practice to carry out the remedial steps and consequently how much time should be allowed for that purpose. There is also a need to ensure the period is proportionate taking full account of the

[21] Statement of case for enforcement appeal paragraph 3.8

human rights and any equality considerations. A balance needs to be struck between the public interest in ensuring the notice is complied with expeditiously and the private interests of the appellant and the occupiers.

116. The ground of appeal put forward a period of twelve months as being reasonable. The appellant requested at the hearing that the compliance period be extended to eighteen months through to June 2022, largely due to the length of tenancies currently in place.

117. On the appellant's evidence the works to create the dwellings took around six months to carry out. Therefore the demolition of the buildings is unlikely to take longer and probably would be completed over a shorter period.

118. The appellant confirmed that the dwellings are occupied under 12 month assured shorthold tenancy agreements. The information from the appellant has shown that the dwellings were offered to let and all current occupiers entered into their tenancy agreements after the enforcement notice was issued on 17 October 2018. That being so the appellant and the occupiers should have been aware of the risks involved and the potential loss of the dwellings. No evidence was produced to indicate that the occupiers would have any difficulty in finding alternative living accommodation. However, they would have hoped for successful outcomes on the appeals and probably have not progressed towards or secured alternative living arrangements.

119. In general, a compliance period should not exceed one year unless there are exceptional circumstances. The Framework and Planning Practice Guidance confirm the importance of effective enforcement to maintain public confidence in the planning system and to tackle breaches of planning control which otherwise have an unacceptable impact on the amenity of the area.

120. Balancing the competing considerations and taking into account the current situation with the pandemic, I conclude that the compliance period should be extended. A period of nine months is reasonable in order to allow for the occupiers to secure new accommodation and then for the works to be carried out, whilst ensuring the harms do not continue for longer than necessary. The appeal on ground (g) succeeds to this limited extent.

Conclusions

121. For the reasons given above, the enforcement appeal should not succeed, the enforcement notice should be upheld as corrected and varied and I shall refuse to grant planning permission on the deemed planning application. The s78 Appeal should be dismissed.

DECISIONS

Appeal ref: APP/X1545/C/18/3215521

122. It is directed that the enforcement notice be:

- corrected in section 3 by the deletion of the word "creation" and the substitution of the word "erection" in the description of the matters that appear to constitute the breach of planning control;
- corrected in section 4 by the addition of the following words at the end of the first sentence: "in respect of the operational development and within the last ten years in respect of the material change of use."

- varied in section 6 by the substitution of nine (9) months as the time for compliance.

123. Subject to these corrections and variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal ref: APP/X1545/W/18/3216373

124. The appeal is dismissed.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Kieron Lilley MTCP AInstLM MRTPI	Associate Director, Smart Planning
Martyn Pattie	MP Architects LLP
Andy Powl	The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Julia Sargeant	Senior Planning Officer, Maldon District Council
Matthew Leigh	Lead Specialist Place, Maldon District Council
Hayley Parker Haines	Maldon District Council

INTERESTED PERSONS:

Ruth Edge	Recipient of enforcement notice
Karen Coombe	Recipient of enforcement notice
Peter Grimes	Local resident
Stephen Powl	Local resident
Susan Powl	Local resident