

Monthly report on Planning Appeal decisions received		Agenda No: 8
Corporate Priority: The environment is clean and green		
Report presented by:		
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Background Papers:		Public Report
Appeal decisions summary		
Options:		Key Decision:
Information only		NO
Executive Summary:		
This is a regular report on appeal decisions received with specific analysis of each appeal decision.		
Decision:		
Noting Only		
Purpose of Decision:		
N/A		
Corporate implications [should be explained in detail]		
Financial:	N/A	
Legal:	N/A	
Equalities/Diversity	N/A	
Customer Impact:	N/A	

Environment and Climate Change:	N/A
Consultation/Community Engagement:	N/A
Risks:	N/A
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PLANNING APPEAL DECISIONS

This is the monthly report on appeals which contains a précis of the outcome of each appeal received during the month of July 2010 and comment in respect of further action if applicable. The full text of decisions is available on the planning website under each respective planning application.

1.	Application No/Location	09/01363/FUL – 30-38 Old Road, Bradwell
	Proposal	Erection of one no. single oak framed, three bedroom dwelling
	Council Decision	Refused at committee in support of officer's recommendation There is no evidence to demonstrate that there is an agricultural need for the proposed dwelling and in these circumstances, the development would represent an unjustified intrusion into the countryside, to the detriment of its open rural character. The proposal would introduce a new dwelling in a location remote from key community facilities and poorly served by modes of transport other than the private car.
	Appeal Decision and Date	Appeal Dismissed – 1st July 2010
	Main Issue(s)	- whether the proposed development would represent an inappropriate and unsustainable incursion into the countryside, detrimental to its open, rural character; and - whether the material considerations advanced to support the proposal are sufficient to outweigh any harm identified.
	Inspector's Conclusion	No special reasons are advanced to justify a new dwelling in planning policy terms. Furthermore, the site lies some considerable distance from any main settlement, with no shops, facilities or public transport nearby. Located at the end of a narrow country lane, at least 1km from the main road, the site is comparatively isolated and remote. In the Inspector's view, the introduction of a new dwelling would represent an inappropriate and unsustainable development, poorly related to the established settlement pattern of the locality. It would require residents to be largely dependent on private transport to reach local facilities. Consequently, they considered the proposal would represent an inappropriate and unsustainable incursion into the countryside, detrimental to its open, rural character.
2.	Application No/Location	09/01117/OUT – Ivy Cottage, Long Green, Cressing
	Proposal	Erection of 42 bedroom hotel
	Council Decision	Refused at committee against officer's recommendation The application relates to a site within the Galleys Corner Special Policy Area as identified in the adopted Braintree District Local Plan Review. Policy RLP 58 of the adopted Plan relates to proposals for development within this Special Policy

		Area and requires that development is restricted to certain specified categories of use and restricts the extent of building coverage on the site to a maximum of 20%. The proposed building and its associated car parking will exceed this site coverage restriction.
	Appeal Decision and Date	Appeal Allowed – 6 th July 2010
	Main Issue(s)	Whether the proposed development would result in the spread of the built-up area of Braintree and lead to the coalescence of Braintree and Tye Green, contrary to the aims of the Council's approved planning policy.
	Inspector's Conclusion	<p>The L-shaped hotel building would be set back from the road frontage towards the rear of the site, surrounded by trees and lawns. Basically of two storeys in height, with accommodation in the roof space, the building would fit comfortably within the site, without appearing unduly prominent or out of keeping with its surroundings. The amount of car parking is sufficient for the development, with a minimal amount of partly low-level lighting. Extensive landscaping is proposed along the road frontage, retaining the green, well-vegetated appearance of this stretch of Long Green.</p> <p>The space around the hotel building, along with the landscaping and car park, would avoid the impression of a cramped over-development of the site and retain a physical and visual break between neighbouring buildings.</p> <p>Consequently, the Inspector considered the development would not result in the outward spread of the built-up area of Braintree or lead to the coalescence of Braintree and Tye Green.</p>

3	Application No/Location	09/01288/OUT – 41 Colchester Road, White Colne
	Proposal	Demolition of house and garage and erection of two storey terrace of five houses with associated parking and amenity area. form private drive, and new vehicular access onto Colchester Road
	Council Decision	Refused by committee contrary to officer recommendation The proposed development, by way of its scale, layout and design would be bulky and cramped, out of character with the surrounding development to the detriment of local character, the street scene and the visual amenity of the locality.
	Appeal Decision and Date	Appeal Dismissed – 8 th July 2010
	Main Issue(s)	<ul style="list-style-type: none"> - the effect of the proposed development on the character and appearance of the area; and - whether the proposed development would make adequate provision for highways infrastructure
	Inspector's Conclusion	<p>The Inspector was of the opinion that the appeal site sits at a point where the character of the north-eastern side of the road changes from being quite densely developed to an area that is greener and more spaciouly laid out.</p> <p>In their judgement, any development of the appeal site should respect that setting and relate appropriately to its immediate</p>

		<p>surroundings. In that context, they were of the opinion that the proposed development would fail to meet those requirements. It would result in a significant building mass extending across a substantial proportion of the site's width, giving an unduly cramped and urban feel to the development. That effect would be exacerbated by the position and scale of the access drive, which would rise to curve from the highway frontage to effectively fill the gap between the houses and the south-eastern boundary.</p> <p>In the Inspector's judgement, the proposed development would fail to reflect the important transition in character between the relatively densely developed area to one side of No 41 and the greener and more spaciouly laid out area on the other. In their judgement, the design of the proposed development in terms of its scale, appearance and layout would be unacceptable, both in the context of the local street scene.</p> <p>The Inspector observed that the footway in the vicinity of the stop on the south-western side of the road was extremely narrow, such that it would not be feasible to erect a bus shelter in that position and it was clear to them that there was no need for bus shelters to be funded. Accordingly, they were not persuaded that the contribution was necessary to render the proposed development acceptable and they attached little weight to the existence of the Unilateral Undertaking.</p>
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4	Application No/Location	10/00260/FUL – 305 Rayne Road, Braintree
	Proposal	Proposed dormer windows
	Council Decision	Refused under delegated powers The proposed two no. front dormer windows, by reason of their siting in relation to the existing double bay window features which connect into the main roof slope, would result in an unacceptable form of development, giving rise to a cluttered and cramped appearance within the roof slope, detracting from the appearance and character of the host dwelling as a whole and the wider street scene
	Appeal Decision and Date	Appeal Dismissed – 16th July 2010
	Main Issue(s)	The effect of the proposed front dormers on the character and appearance of the host dwelling and the street scene.
	Inspector's Conclusion	The bays and their pitched roofs are an important and distinctive feature of this house and the proposed dormers would be squeezed into the gap between the apex of the bay roof and the ridge of the main roof. The Inspector considered that the size, scale and position of the proposed dormers within the roof slope would result in a cramped appearance that would detract from the overall design and appearance of the house. They would dominate the front roof slope, creating a top-heavy appearance that would not accord with the character or appearance of this prominent dwelling.

5	Application No/Location	10/00301/FUL – 4 Monksdown Road, Coggeshall
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	Proposal	Erection of two storey side extension comprising of a dining room on ground floor and two bedrooms on first floor
	Council Decision	Refused under delegated powers Due to the site's corner location, the proposed two storey side extension, by virtue of its siting, bulk and design, would result in a prominent feature within the street scene, having an adverse impact on the character of the locality. Furthermore, the proposed side extension would unbalance the existing pair of semi-detached dwellings, creating a visually unsatisfactory development, which is not considered to be compatible with the character and appearance of the site and its surroundings.
	Appeal Decision and Date	Appeal Dismissed – 20 th July 2010
	Main Issue(s)	Whether the proposed extension would seriously harm the character and appearance of the surroundings.
	Inspector's Conclusion	The existing dwelling is in a prominent position near the south-western corner of this open space and can be clearly seen from much of the surroundings. The proposed 2-storey side extension to it, owing to its position, height and bulk would not only be out of scale and an ungainly, unbalanced addition to the pair of dwellings of which it would form part, but it would be an unacceptably alien and intrusive element in the street scene. In these ways it would cause serious harm to the character and appearance of this pleasant locality.

6	Application No/Location	09/00511/PLD – Unit 16, Swan Vale Industrial Estate, Colchester Road, Witham
	Proposal	Application for Certificate of Lawfulness for Unrestricted A1 Retail Use
	Council Decision	Refused under delegated powers Permission 08/00228/FUL was granted by the Council for the demolition of existing buildings on part of the industrial estate and the erection of a Class A1 DIY store and garden centre, the use was restricted by condition. A subsequent planning permission 08/00410/OUT was granted redevelopment of the whole industrial estate for Class B1, B2 and B8 purposes (15 units) and the erection of a Class A1 DIY retail store and garden centre. No express condition restricting the type of Class A1 retail use that could be carried out or the goods that could be sold was imposed. It is the latter of these two decisions that is the focus of this appeal. The key consideration is whether or not the proposed use of Unit 16 is fettered by the nature of the application, supporting plans and documents submitted and the wording of the decision subsequently granted so that it can only lawfully be used as a DIY store/garden centre. It was the Councils' view that the use was restricted to that of a DIY store/garden centre and not an unrestricted A1 Retail use.
	Appeal Decision and Date	Appeal Allowed – 8 July 2010
	Main Issue(s)	In the Inspector's view, supported by Case Law, in construing this outline permission regard may only be had to the permission itself, including any conditions imposed and the reasons for their imposition and the plans that are incorporated, unless there is ambiguity. The Inspector did not consider that

		<p>the intentions or expectations of the Council should colour this assessment as they were not legally binding.</p> <p>The Appeal Decision is a lengthy one and refers to much Case Law - it is therefore recommended that Members refer to the whole document for further information if required.</p>
	Inspector's Conclusion	<p>The Inspector concluded, on the evidence now available, that the Council's refusal to grant an LDC in respect of the use of Unit 16, Swan Vale Industrial Estate, Colchester Road, Witham as unrestricted open retail use (Use Class A1) was not well-founded and that the appeal should succeed. The Inspector granted a Lawful Development Certificate</p>
	Additional Information	<p>An application for an Award of Costs was made against the Council however the Inspector considered that the Council had not acted unreasonably in refusing the application and therefore no Award was made.</p>