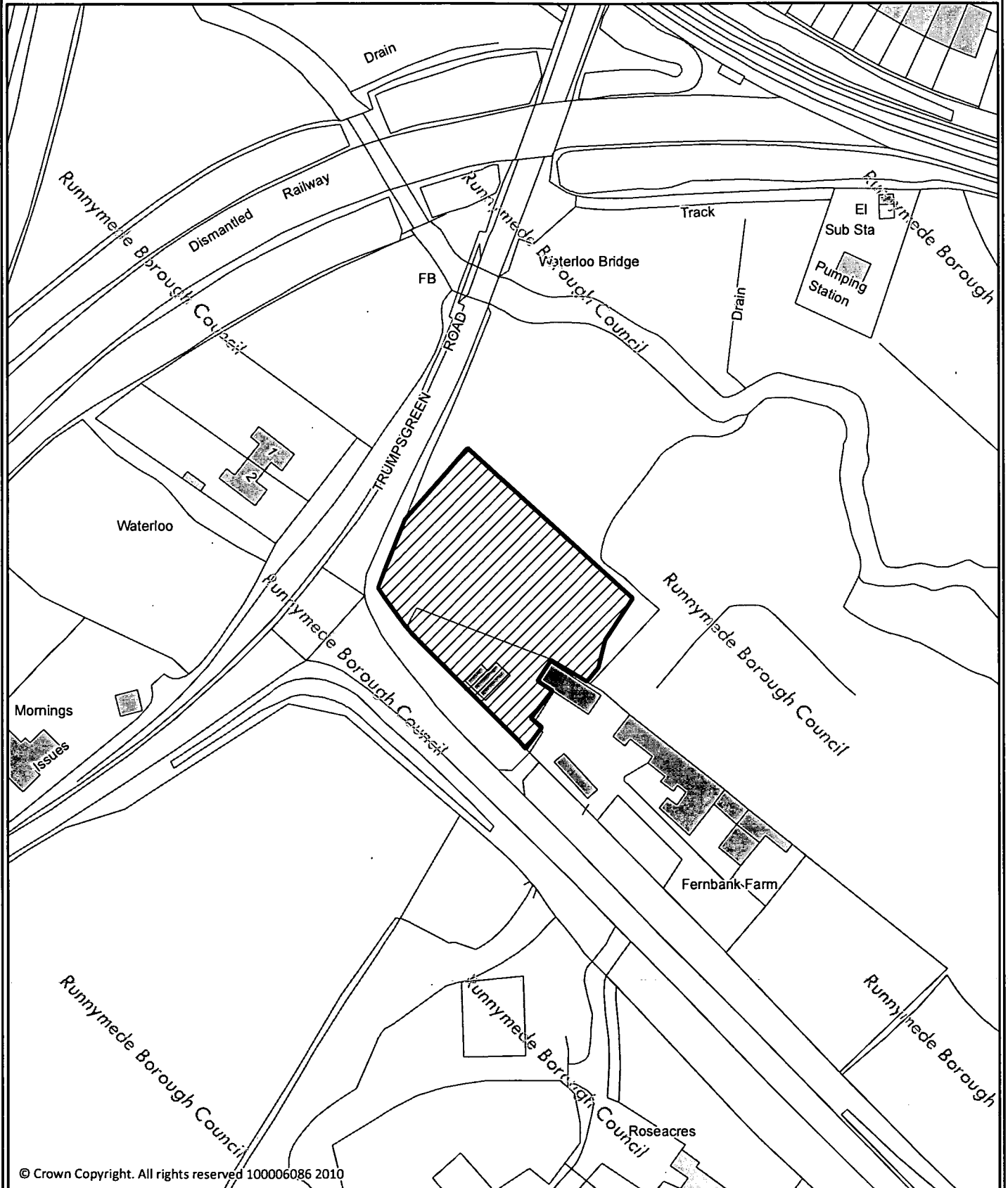
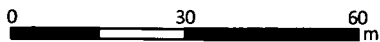


PART B



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Scale: 1:1,250



RU.10/0613



RU.10/0613 Date reg: 2nd July 2010 Ward: VIRGINIA WATER

LOCATION: FERNBANK HOUSE, BRIDGE LANE, VIRGINIA WATER
PROPOSAL: CERTIFICATE OF EXISTING LAWFULNESS FOR THE USE OF
 FERNBANK HOUSE AS A SELF CONTAINED RESIDENTIAL UNIT
 WITH DEFINED RESIDENTIAL CURTILAGE
TYPE: CERTIFICATE OF EXISTING LAWFULNESS
APPLICANT: Mr P Gray

SUMMARY OF RECOMMENDATION: **SPLIT DECISION** (PART APPROVAL AND PART REFUSAL OF CERTIFICATE) WITH ADDITIONAL ENFORCEMENT ACTION REQUESTED

1. Site

1.1 The application site is located on the north eastern side of Bridge Lane and is accessed through the larger Fernbank Farm site via a shared vehicular driveway. The application site has an area of approximately 0.24 hectares and contains a single storey, flat roofed detached building, known as Fernbank House. It is observed that the building is currently being used as a 4 bedroom dwelling. The site is located in the Green Belt and Flood Zone 1 (low risk) and is heavily wooded in part. This woodland area is separated from the main amenity space surrounding Fernbank House by 1.8 metre high, close boarded fencing.

1.2 The applicant is also the part owner of the wider Fernbank Farm site and the previously wooded area beyond which spreads to the north east and south east of the application site. This wider site is also located in the Green Belt and partly located in Flood Zones 2 and 3 (medium and high risk). The whole of the Fernbank Farm site (including the current application site) is covered by a Tree Preservation Order, No. 377.

2. History

2.1 The planning history which relates to the site dates back to the 1970s at which point the site appears to have been part of a smallholding known as Smallfield Farm. The most recent application at this site was in 1991, when permission was granted (RU.90/1240) for the provision of a new goat shed and run.

2.2 There is also a substantial enforcement history relating to Fernbank Farm, the most recent and relevant of which begun in November 2008 when the Council was informed that large scale clearing works were being carried out on the land. Over a number of visits it was observed that the following activities were occurring:

- the importation of soil and/or hardcore
- the formation of a new roadway
- The cutting down of a significant number of trees

- 2.3 The Council issued a Temporary Stop Notice on 21st November 2008 which required the above mentioned activities to be ceased. A Woodland Tree Preservation Order was also issued on 25th November 2008 in respect of the land at Fernbank Farm. This Tree Preservation Order was confirmed on 22 January 2009.
- 2.4 Following non compliance with the Temporary Stop Notice, on 27th November 2008, an application for an injunction was granted by the High Courts to prevent the unauthorised activities listed in paragraph 2.2 continuing at the site. This injunction was served to the land owner Mr Gray on 28th November 2008.
- 2.5 The landowner continued to carry on with works at the site in breach of the terms of the Injunction in January 2009 (by causing or permitting the cutting down of a number of trees protected by a Tree Preservation Order, and by continuing to import hardcore and soil on to the land which were specified as unauthorised activities in the Temporary Stop Notice). The landowner was taken to the High Court on 23rd January 2009 where he was prosecuted for non compliance with the Injunction.
- 2.6 Further investigations at Fernbank Farm also suggest that there has been a change in the use of a number of the buildings at the site from commercial and agricultural uses into self contained residential units.
- 2.7 In terms of the unauthorised importation of material, changes in ground levels, erection of bunds, replacement tree planting and restoration of the landscape at the site, these issues are to be dealt with as part of a proposed planning application at the site for a carriage driving facility. In addition, a further certificate of existing lawfulness application is expected to be submitted which will seek to regularise the remaining unauthorised residential units at the site. The agent for the applicant has advised that these two further applications are being prepared for submission before the end of 2010. Both of these applications are still awaited at the time of writing this report.

3. Application

- 3.1 This application is for a Certificate of Lawfulness for an Existing Lawful Use or Development (CLEUD) for the use of the building known as Fernbank House as a residential dwelling. The applicant states that this use has been continued at the site for a period in excess of 4 years.
- 3.2 The submitted plans show that Fernbank House is a flat roofed, single storey dwelling with a maximum depth of some 10.4 metres and a maximum width of some 15.5 metres. The building has a height of approximately 2.3 metres. The plans show that the building contains 4 bedrooms, a bathroom and w.c., kitchen diner and a living room.
- 3.3 In support of the application, a statutory declaration has been submitted from one of the occupiers of the house, Mr Spencer Brooks. The main points made in this statement are as follows:

- Mr Spencer Brooks and his wife Sarah have lived at Fernbank House continuously since 2000.
- The property was part of a larger area owned by Spencer Brooks' father Tony Brooks from 1998, known as Fernbank Farm.
- In March 2006, Fernbank Farm was sold by Tony Brooks to Spencer Brooks and Philip Gray as partners.
- The property was originally used as an outbuilding at Fernbank Farm.
- The property has the benefit of utility services common to Fernbank Farm, save that the whole is on a combined cess-pit system for sewerage purposes.
- The access to Bridge Lane is security gated and operated electronically for which all the occupiers of Fernbank Farm have the relevant code.

3.4 In addition, three letters have been submitted in support of the application. The first of these letters is from Philip Gray (the applicant) who states that he has seen the statutory declaration submitted by Spencer Brooks and confirms that all the facts referred to in this statement are true. Mr Gray advises that he has made visits to Fernbank House from early 2000 and since this time, the property has been occupied by Spencer Brooks, his wife and their children.

3.5 The second of the letters is from an R Colgate of 5 Wraysbury Road, Staines (who the agent states is a former magistrate and family friend). The author states that from his visits to the home, he can confirm that Spencer Brooks has resided at Fernbank House for over 4 years.

3.6 The final letter is from Hunt Ford and Co Accountants. The author advises that the firm has acted as Spencer Brooks' accountant since 2002. Visits have been made to Mr Brooks at his home at Fernbank Farm. The author of the letter states that the information contained in Mr Brooks' statutory declaration is correct and true.

3.7 Photographs of the amenity area at Fernbank House have also been provided as well as a copy of the Council Tax bill for the property (in this document the property is referred to as 'the bungalow at Fernbank Farm').

3.8 The agent for the applicant has provided a submission statement which makes the following points:

- From 1998, the entire holding was owned by Mr Tony Brooks who transferred the same in March 2006 to his son and applicant.
- Mr Spencer Brooks and his family took up occupation of Fernbank House in 2000.

- During the course of litigation leading to injunction proceedings in 2009, the applicant had cause to serve on the Council a great deal of evidence. The Council did not seek to challenge any of the evidence submitted which related to the residential curtilages or the existence of those occupations.
- 3.9 At the request of officers, the applicant has submitted further information in support of his case during the course of the application. As a result of this request, an additional letter has been provided from the occupiers of Klondyke Farm, Bridge Lane; a Mr and Mrs Hepplethwaite who advise that Mr and Mrs Brooks have been their neighbours for 10 years.
- 3.10 In addition, Mr and Mrs Brooks (the current occupiers of Fernbank House) have also written two supporting letters and have completed a Council's Human Rights Questionnaire which advises that they live at Fernbank House with their three children aged 9, 6 and 2. A copy of the submitted Human Rights Questionnaire and additional information regarding the family's personal circumstances are attached in Confidential Appendix 'G'.
- 3.11 The letter from Mr and Mrs Brooks also refers to a number of photographs taken inside the property to support that its residential occupation has continued for a period in excess of 4 years. These photographs have however never been submitted to the Council for consideration (officers have requested to see these photographs) despite the reference made to them in Mr and Mrs Brooks' letter.

4. Consultations

- 4.1 The application was advertised on the Council's weekly list and 6 letters of notification were sent to individual properties. No letters of representation have been received to this application.
- 4.2 The County Highway Authority have no objection.

5. Relevant Local Planning Policies

- 5.1 Saved Policies in the Runnymede Borough Local Plan Second Alteration 2001: Planning Policies are not relevant to a Certificate of Existing Lawfulness application.

6. Planning Considerations

- 6.1 The application has been made under Section 191 of the Town and Country Planning Act 1990. This is not a planning application and therefore considerations such as the impact of the use on the Green Belt and on the residential amenities of any neighbours in the locality are not relevant to this submission. Rather, the applicant seeks to prove by the submission of evidence that the building known as Fernbank House has been occupied as a residential unit continuously for a period in excess of 4 years prior to the submission of the application.

- 6.2 Guidance is clear that the onus of proof is with the applicant. The standard of proof is on the balance of probability and if the Planning Authority has no evidence of their own or from third parties to contradict or otherwise dispute the applicant's version of events, provided that this advice is precise and not unambiguous, then the Planning Authority should grant the application for lawful use. The following paragraphs will consider whether the building known as Fernbank House has been occupied as a residential unit continuously and in excess of 4 years prior to the date of this application i.e. since 1st July 2006 or before.
- 6.3 The occupier of Fernbank House, Spencer Brooks states that he has occupied Fernbank House with his family since 2000. This is well in excess of the 4 year period required for a certificate to be granted. This statement is supported by Mr Brooks' submitted statutory declaration. Whilst no supplementary details have been provided to support this claim, a Council Tax bill has been submitted for the property in support of the applicant's case. The agent for the applicant refers to this bill in his letter which accompanies the application (dated 24th June 2010), and states that Council Tax records will support that the property has been occupied residentially for a period in excess of 4 years. However, Council Tax records do not support that this is the case. Indeed, Council Tax has only been paid at the property (known by Council Tax as The Bungalow at Fernbank Farm) since 1st December 2007 which is less than the 4 year period required. In addition, the Council Tax records show that this is the only record that has ever been submitted at the property. This evidence submitted is therefore considered to not support the applicant's claim that the property known as Fernbank House has been occupied residentially for a period in excess of 4 years. No other utility bills have been submitted by the applicant.
- 6.4 Also in support of the application, four letters have been submitted from acquaintances and family friends. All of these letters corroborate that Fernbank House has been occupied residentially for a period in excess of 4 years. In addition, three of the letters (from R Colgate, Mr Philip Gray and Hunt and Co Accountants) all make reference to visits to the property. It should however be noted that the frequency of these visits is not clear. Overall, whilst the submitted letters support the applicant's claim that Fernbank House has been occupied continuously for a period in excess of 4 years, due to the lack of detail in the letters and due to the fact that the letters are not sworn statements, only limited weight can be afforded to their contents.
- 6.5 When considering the Council's own evidence, in addition to the information obtained from the Council Tax department, the Council's Elections department has confirmed that Mr and Mrs Brooks submitted individual applications to the Electoral Registration Officer on 14th March 2008 for Fernbank Farm having moved from Wraysbury and Staines respectively. They are registered at Fernbank Farm, not Fernbank House itself. It is stated that the applications were processed on that date with their entries entered on to the register on the 1st April 2008 at that property. On 7th September 2009, the Brooks confirmed continued residence through Elections automated telephone response system. This evidence does not therefore support that the Brooks have resided at Fernbank House for a period in excess of 4 years.

- 6.6 Whilst the Council Tax records and the Elections records do not substantiate the applicant's claim that Fernbank House has been occupied continuously for a period in excess of 4 years, this evidence in itself can only be afforded limited weight as these records cannot confirm beyond reasonable doubt whether or not Fernbank House was occupied prior to the accounts being created. Conversely, the statutory declaration provided by Mr Brooks is clear that Fernbank House has been occupied by him and his family for a period in excess of 4 years. Third party accounts provided corroborate that this is the case. It is concluded overall therefore that whilst there is an element of doubt as to whether Fernbank House has been occupied for a period in excess of 4 years, on the balance of probability, the Council does not have sufficient evidence to refute the applicant's claim that this is the case.
- 6.7 What is in dispute however is the size of the property 4 years ago, ie on 1st July 2006. Appendix 'H' shows Fernbank House subdivided into 3 areas. Area A was built prior to 21st June 2003 and has a floor area of some 62sqm. Area B was built sometime between 22nd June 2003 and 21st March 2007 and has a floor area of some 33sqm. Area C was built between 22nd March 2007 and early February 2008 and has a floor area of some 43sqm. This is verified by the Council's aerial photography records. This evidence demonstrates that whilst Area A appears to have existed at the site for a period in excess of 4 years, there is an element of doubt as to whether Area B has existed for the requisite period of time. It appears from the aerial photography that Area C has not existed at the site for a period in excess of 4 years.
- 6.8 The applicant has been advised of the Council's concerns regarding areas B and C during the course of the application and has been given the opportunity to provide additional information in support of the applicant's claim that these areas have indeed existed at Fernbank House since 1st July 2006. In response, the applicant has provided an additional aerial photograph of the site taken on 10th June 2006. This photograph shows that Area B formed part of the dwelling before 1st July 2006.
- 6.9 No additional evidence has been submitted in relation to Area C by either the applicant or the occupier of Fernbank House, and the Council's own evidence has not been disputed by either party. The agent has stated that the applicant has talked to the occupiers of the dwelling about producing additional evidence in support of Area C, however this additional evidence will not be able to be provided during the course of this application. The agent also states that 'Mr Gray recognises you may need to consider action in respect of C but asks that you process the application so far as Area A and B are now evidenced as being in residence on 1st July 2006 even if you have to refuse area C as 'unproven' at this stage.
- 6.10 Overall, for the reasons outlined in this report, it is considered on the balance of probability that areas A and B (as shown on the Council's plan in Appendix 'H') have existed at the site for a period in excess of 4 years and have been occupied as residential accommodation by Mr and Mrs Brooks and their family.

- 6.11 To date however, it is considered that the applicant has failed to produce any evidence to substantiate the claim that Area C has existed at the site and been occupied as residential accommodation for a period in excess of 4 years. Due to the Council's own evidence (which has not been disputed by the applicant or occupiers of the property) which shows that Area C has not existed at the site for the required 4 year period, it is therefore considered that on the balance of probability this element of the dwelling is not lawful.
- 6.12 When considering other matters, the curtilage of the property appears to have remained largely unchanged since at least 2003. A large amount of the land included in the original red line plan submitted by the applicant is however observed to be heavily wooded and could not reasonably be considered as curtilage. This wooded area is separated from the amenity space which surrounds the dwelling by 1.8m close-boarded fencing. It is this small amenity area only which is considered to form the curtilage of the property. The applicant has submitted a revised plan to show the curtilage of this property. In addition, the site has a shared vehicular access drive with Fernbank Farm itself and which allows for access to the property. No provision for parking within the curtilage of Fernbank House appears to exist and instead vehicles park within the wider Fernbank Farm site. The access to the site from Fernbank Farm is by a pedestrian access gate only.
- 6.13 To conclude, it is recommended that areas A and B as shown in Appendix 'H' are accepted as a lawful building with a lawful use as a residential dwelling along with the revised residential curtilage (which excludes the woodland). For the reasons outlined in this report it is recommended that a certificate is refused for Area C as this area of the property is considered to be an unauthorised development which has not existed at the site for a period in excess of 4 years.

7. Enforcement Considerations

- 7.1 If the Planning Committee agree with the officer's recommendation to refuse the issuing of a certificate for Area C at Fernbank House, then it is necessary to consider whether it is appropriate to take enforcement action. Planning Policy Guidance Note 18: 'Enforcing Planning Control' (PPG18) indicates that in considering any enforcement action, the decisive issue should be whether the breach would unacceptably affect public amenity or the existing use of the land meriting protection in the public interest. The decision as to whether or not it is expedient to take formal enforcement action is at the Planning Authority's sole discretion but regard must be had to planning policies and the circumstances of the planning breach. The decision must not be unreasonable or taken without proper consideration of the relevant facts and planning issues, or based on non-planning grounds.
- 7.2 The site lies within the designated Green Belt where there is a strong presumption against inappropriate development. As outlined in section 6 of this report, the Council has clear evidence that Area C (as shown on Appendix 'H') has not existed at Fernbank House for a period in excess of 4 years. This development therefore represents an unauthorised extension to a dwelling in the Green Belt.

- 7.3 When considering an extension to a property in the Green Belt, the most relevant policy in the development plan to assess the application against is saved Policy GB6. The policy makes provision for allowing replacement dwellings and extensions to dwellings in the Green Belt that do not result in an increase in built form likely to have a harmful effect upon the openness and visual amenities of the Green Belt. The Authority seeks to prevent a cumulative increase in the size of the dwelling in the Green Belt by setting a base figure (total floor area measured externally) for the property in May 1986 or at the date of first construction if the property was erected after May 1986. Any incremental floor area increase in built form that cumulatively exceeds the 30% threshold can be therefore said to represent a disproportionate addition (this is the terminology used in PPG2) to the dwelling. The policy states that exceptional circumstances will need to apply to increases in floor area, either for extensions or replacements in excess of 30%.
- 7.4 In this instance, the planning history records show that this part of the site was entirely open in 1986 except for several small outbuildings. According to the information submitted in support of the Certificate of Lawfulness application (specifically the statutory declaration of Mr Brooks, the occupier, and the letter submitted by Mr Gray, the applicant), the building now known as Fernbank House was only converted into habitable accommodation in 2000. It is not known how much the building had been extended by between its first construction as an outbuilding and 2000. However in this instance the base figure for the property has been taken as the size of the dwelling at the start of its residential occupation in 2000, which is approximately 62sq m (Area A on Appendix 'H'). Since 2000 the increase in floor area is 76 sq m (with 33 sq m being added between June 2003 and March 2007 (Area B) and a further 43 sq m (Area C) being added between March 2007 and February 2008). Since its first occupation in 2000, the dwelling inclusive of Area C has therefore been cumulatively extended by approximately 123% (of which Area C represents 69%) which significantly exceeds the 30% permitted by saved Policy GB6. The increase in floor area which results from the erection of unauthorised area C is therefore considered inappropriate development which causes significant harm to the Green Belt. By definition this would be a harmful development in the Green Belt.
- 7.5 Floor area, however, is not the only criterion under Policy GB6. The built development (i.e. bulk, height and mass) are equally important indicators under criteria 1) and 4) of saved Policy GB6. In this instance, as outlined in the paragraph above, the Council's aerial photographs demonstrate that the size of Fernbank House (Area A) has been increased significantly since the start of its residential occupation in 2000 with substantial extensions being added to the north west (Area B) and south east of the building (Area C). The erection of unauthorised extension (Area C) has cumulatively increased the harm to the Green Belt, and by reason of its size, is considered to represent a disproportionate addition to the dwelling. This is contrary to advice contained in Planning Policy Guidance Note 2 : 'Green Belts' and

- contrary to criterion 1 of saved Policy GB6. The erection of this unauthorised extension (Area C) has also spread development on this part of the site to the south east, and is considered to be detrimental to the openness of the Green Belt.
- 7.6 When considering the prominence of the extension, the erection of the unauthorised extension (Area C) has not increased the height of Fernbank House. However, the dwelling is observed to occupy a prominent location at the site, close to the south western site boundary which fronts on to Bridge Lane. It is observed that fencing has been erected down this boundary which largely obscures the dwelling and the unauthorised extension from public view. However, it is not enough to show that a building will be inconspicuous or will do no harm on a particular site when considering a proposal in the Green Belt. The Green Belt conception implies no further building except where there is a positive argument for allowing it.
- 7.7 When considering the remaining criteria in saved Policy GB6, the erection of unauthorised extension (Area C) has not created an additional self contained residential unit in compliance with criterion 2 of saved policy GB6. Due to the location of Fernbank House in relation to the nearest residential dwellings and due to the single storey nature of the extension, it is unlikely that the erection of Area C is harmful to the residential amenities of any neighbouring property in the locality as required by criterion 3.
- 7.8 The applicant has submitted no very special circumstances in support of the application. However the occupiers of Fernbank House have completed the Council's Human Rights Questionnaire and have also submitted additional information regarding the family's personal circumstances. This confidential information can be read in full in Appendix 'G'. In addition, the Brooks' state that Area C contains their bedroom and the bedrooms of their children and that the removal of Area C would have a detrimental effect on the whole family.
- 7.9 Whilst the points made by the occupiers to justify the retention of the unauthorised extension (Area C) are acknowledged and whilst there is sympathy with the personal circumstances of the Brooks' family, none of the arguments put forward by Mr and Mrs Brooks are considered to amount to very special circumstances which outweigh the significant harm that the erection of the unauthorised extension (Area C) has caused to the openness and visual amenities of the Green Belt.
- 7.10 The Committee should note that there are other unauthorised developments at the wider Fernbank Farm site including the alleged residential occupation of a portacabin and the unauthorised change of use of a number of the commercial/agricultural buildings on the larger site into self contained residential units which are still being investigated by the Enforcement Section. A number of other previously unauthorised breaches of planning control at Fernbank Farm including the importation of hardcore, tree felling and changes to the land levels have also still not been regularised by the landowner. It is therefore anticipated that there will be further planning

submissions by the end of the year (see paragraph 2.7 above) at this larger site at a later date and continued enforcement investigations will be pursued. In summary, this site has been the subject of significant enforcement investigations in the past two years (see paragraphs 2.2 to 2.5) and a number of unauthorised developments/operations still remain outstanding. It is considered that it is important to deal with this current breach in planning control in isolation however, as if enforcement action is not authorised promptly, Area C at Fernbank House could become lawful.

8. Human Rights Act 1998 Considerations

- 8.1 The Committee is reminded of the European Convention on Human Rights Article 8, the right to respect for private and family life and the home and Article 1 of the First Protocol, the right to peaceful enjoyment of possessions. Any interference with those rights must be in accordance with the law, proportionate and necessary in a democratic society. The Local Authority must not act in a way which is incompatible with convention rights. It is recognised that in this case, enforcement action could amount to an interference with the rights of the applicant and in particular the Brooks' family who currently occupy Fernbank House. However Members must balance the interference with the rights, which taking enforcement action would represent, and the public interest in protecting the openness of the Green Belt.
- 8.2 The taking of enforcement action, including legal action, can amount to an interference with a person's rights under Article 8. A Local Authority may only interfere with those rights if it is satisfied that such measures:
- are in accordance with the law;
 - pursue the legitimate aim of protecting the rights of others through preservation of the environment and the Green Belt; and
 - are necessary in a democratic society where the interference answers a pressing social need and in particular is proportionate to the legitimate aim pursued.
- 8.3 It is recognised that the enforcement action proposed in this report could amount to an interference with Mr Brooks and his family, his home and his private family life (see paragraphs 3.10, 7.8 and the Confidential Appendix 'G' on the family's personal circumstances) which fall within the protection of and are consistent with the objective and purposes of Article 8. The impact on the Brooks' family must be balanced against the public interest in pursuing the legitimate aims in Article 8 particularly the economic well-being of the country (which includes the preservation of the environment and the Green Belt) and the breach itself.
- 8.4 It is however considered to be important to ensure that the unauthorised development (Area C on Appendix 'H') does not become lawful. Consequently it is considered that enforcement notice(s) should be served.

8.5 Regard must be paid to the human rights of the landowner, and the occupiers of Fernbank House and the potential difficulties caused by the service of any statutory notices or institution of any proceedings. Any action authorised must be a proportionate remedy in the circumstances of the case. This must be balanced against the identified harm to the Green Belt. For this reason it is recommended that the enforcement notice has a compliance period of 1 year. This time period would provide the Brooks family with a reasonable time period to seek alternative accommodation should they wish to pursue this option.

9. Equalities Issues

9.1 No equalities issues have been identified

10. Financial considerations

10.1 If the committee decides to take enforcement action and the owner of the site decides to exercise his right of appeal, this case is likely to be determined by a Informal Hearing or Public Inquiry. An Inquiry would incur costs which may require a supplementary estimate if the budgetary provision for such Inquiries is overspent.

11. Conclusions

11.1 Members must fully and fairly balance the considerations referred to in this report when deciding to authorise any of the actions referred to in Sections 6, 7 and 8 of this report to seek to remove the unauthorised extension (Area C) to Fernbank House. Members will wish to have regard to the human rights issues detailed in Section 8 and the Confidential Appendix and will wish to consider whether the action they authorise is a proportionate remedy in all the circumstances of the case.

11.2 Members must take into account all the considerations material to this case. On the one hand there are the personal circumstances of the Brooks' family (occupiers of Fernbank House), the likely distress and difficulties caused by the service of any statutory notices on the instigation of any proceedings and the convention rights on the owner and his family and the occupier's family. On the other hand there is the significant harm to the rural character, appearance and open nature of the locality contrary to the main aims and objectives of the Green Belt designation.

11.3 In view of the harm caused by this unauthorised development in the Green Belt to the openness of the Green Belt, Officers consider that further action is necessary to remedy the breach of planning control.

11.4 The Committee is requested to consider all the facts and the issues in relation to this case and determine whether further legal action is both reasonable, compatible with the Human Rights Act 1998, proportionate to the legitimate aim being pursued, and necessary to remedy the breach of planning control at the site.

OFFICERS' RECOMMENDATION that -

(1) SPLIT DECISION

REFUSE CERTIFICATE OF EXISTING LAWFULNESS for Area C of Fernbank House as annotated on the plan in Appendix 'H' for the following reason:

The applicant has not adequately demonstrated on the balance of probability that Area C has existed at Fernbank House and been used as residential accommodation for a period of 4 years or more.

GRANT CERTIFICATE OF EXISTING LAWFULNESS for an independent residential dwellinghouse comprised of Areas A and B (as shown on the plan in Appendix 'H') and its associated residential curtilage for the following reason:

The Local Planning Authority is satisfied on the balance of probability that these areas have been in existence and in use as an independent residential unit for a period in excess of 4 years.

(2) The Director of Administration and Leisure be authorised to issue Enforcement Notice (s) under Section 172 of the Town and Country Planning Act 1990 (as amended) relating to the following matters:

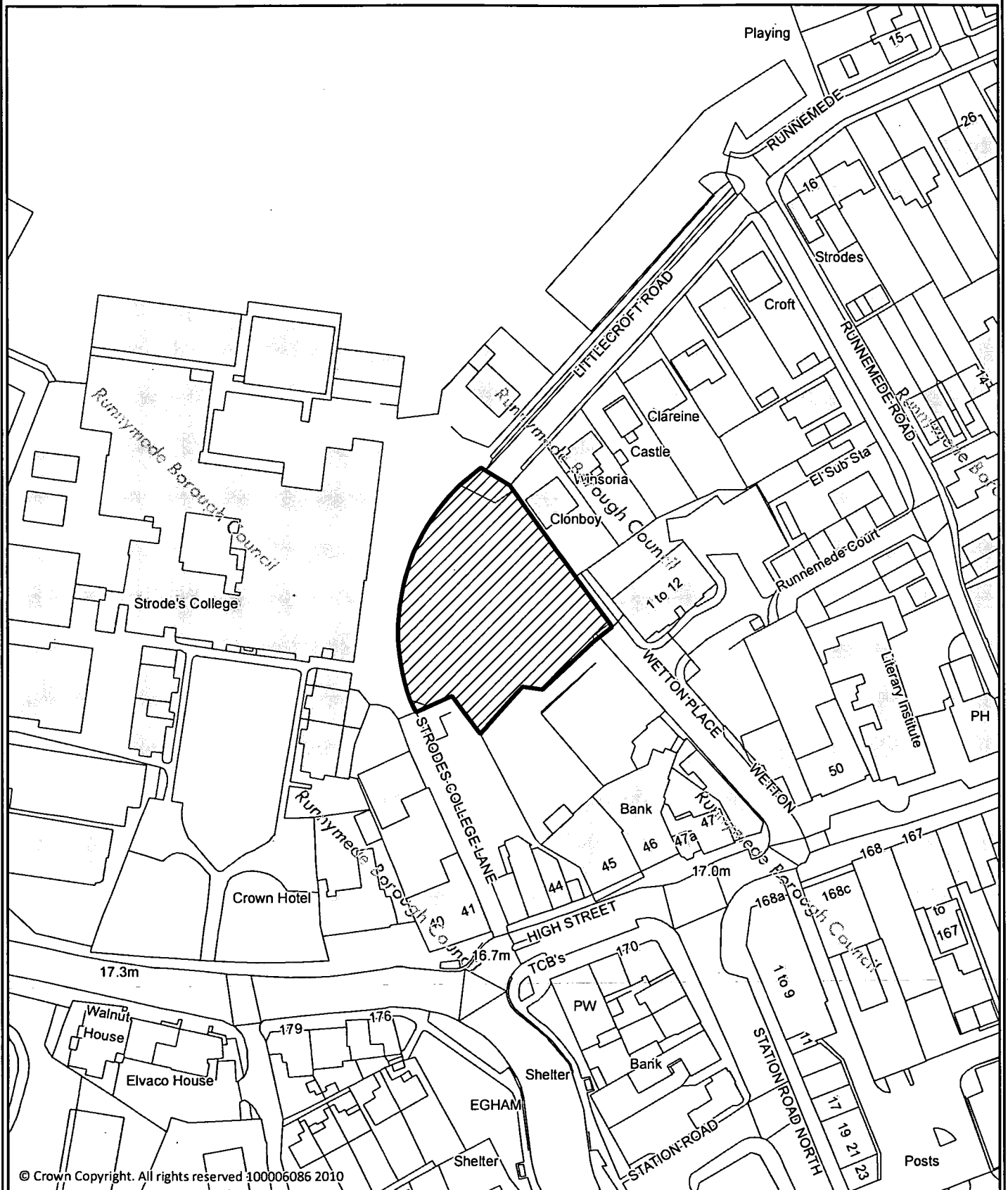
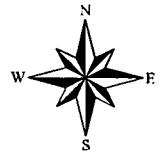
- (a) to cease the residential use of the unauthorised single storey flat roof side extension to the south east of Fernbank House (annotated as Area C);**
- (b) the demolition and removal of the unauthorised, single storey, flat roofed side extension to the south east of Fernbank House (annotated as Area C);**
- (c) the removal of all resulting materials, debris and rubble;**
- (d) the above steps to be undertaken within 1 year of the date of the notice(s) taking effect.**

(3) the Director of Administration and Leisure be authorised to take appropriate action in carrying out necessary works or prosecution under Sections 178 and 179 of the Town and Country Planning Act 1990 in the event that these notice(s) once effective are not complied with.

Reason for Issuing Enforcement Notice(s)

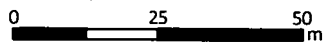
- 1. The unauthorised single storey side extension to Fernbank House (known as Area C), by reason of its floor area both alone and cumulatively (in combination with the other lawful extensions to the original dwelling since 2000) constitutes a disproportionate addition to the original dwelling that represents inappropriate and harmful development in the Green Belt, being detrimental to its openness by virtue of its size and spreading development to the south east, and by conflicting with the purposes of the Green Belt is contrary to saved Policies GB1 and GB6 of the Runnymede Borough Local Plan Second Alteration 2001, advice contained in Planning Policy Guidance Note 2 : 'Green Belts' and the Council's Supplementary Planning Guidance on Policy GB6.**

- 2. The Planning Authority do not consider that very special circumstances have been put forward in support of this application to justify the granting of planning permission, so contrary to saved Policies GB1 and GB6 of the Runnymede Borough Local Plan Second Alteration 2001, advice contained in Planning Policy Guidance Note 2: "Green Belts" and the Council's Supplementary Planning Guidance on Policy GB6.**



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Scale: 1:1,250



RU.10/0817

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RU.10/0817	Date reg:	01.09.10	Ward	EGHAM
LOCATION:	WETTON COURT, WETTON PLACE (FORMERLY STRODES COLLEGE) HIGH STREET, EGHAM.			
PROPOSAL:	AMENDMENTS TO RU.03/0979 TO PROVIDE BALCONIES AND PORCHES TO UNITS (ERECTION OF PART TWO STOREY AND PART THREE STOREY BUILDING COMPRISING 14 NO. X TWO BED FLATS WITH ANCILLARY CAR PARKING AND VEHICULAR ACCESS OFF WETTON PLACE FOLLOWING DEMOLITION OF EXISTING BUILDING.)			
TYPE:	FULL PLANNING PERMISSION			
APPLICANT:	SHANLY HOMES LIMITED			

SUMMARY OF RECOMMENDATION: GRANT subject to conditions.

1. Site

- 1.1 This application site is located within the urban area and the Egham town centre but outside the shopping core. The Green Belt boundary lies to the north of the application site. The Egham Town Centre Conservation Area lies immediately to the south and west of the application site. The Almshouses approximately 15 metres to the west of the application site are Grade II listed buildings. The site falls within flood zone 2 (medium risk).
- 1.2 To the east of the site are residential properties fronting onto Littlecroft Road or with access off Wetton Place. To the south are commercial properties fronting onto the High Street.

2. History

- 2.1 The application site originally fell within the grounds of Strodes College but is now under separate ownership. The whole site has an extensive planning history. The most relevant applications are listed below.
- 2.2 RU.03/0979: Erection of a part two storey and part three storey building comprising 14 no x two bed flats with ancillary car parking and vehicular access off Wetton Place. Granted February 2004
- 2.3 RU.08/0744: Discharge of planning condition 2 (external materials), 3 (hard landscaping), 15 (tree protection measures), 21 (Refuse stores), 22 (cycle racks) and 26 (site compound and traffic management) of planning approval RU.03/0979. Approved October 2008.
- 2.4 RU.08/0977: Discharge of planning condition 14 (soft landscaping) of planning approval RU.03/0979. Approved October 2008.
- 2.5 RU.08/1139: Discharge of planning condition 18 (hard landscaping), 19 (parking and visibility splays) and 23 (surface water source control measures) Split decision January 2009.

3. Application

- 3.1 This is a revised planning application to planning permission RU.03/0979 for the erection of a part two-storey and part three-storey building comprising 14 no. x two-bed flats following the demolition of the former headmaster's house and the refectory building. This building is currently under construction.
- 3.2 This application seeks amendments to the design of the above proposal by the provision of balconies upon the east elevation of the proposed building. In addition revisions are proposed to the front porch upon this eastern elevation. The proposed balconies would extend to a maximum height of some 7 metres and would be located at first floor and second floor levels. A privacy screen would be provided so as to prevent direct overlooking to neighbouring dwellings. The balconies would be constructed in iron with a galvanised powder coating in black.
- 3.3 The proposed amended porch design comprises the central porch upon the eastern elevation. The design comprises a "gable end" roof design with sloping hipped roofs to the sides. The porch would extend to a maximum height of some 5 metres.
- 3.4 There are no other changes from planning permission RU.03/0979.

4. Consultations

- 4.1 This application has been advertised and 54 individual notification letters sent to surrounding properties. There have been 3 letters of objection from neighbouring residential properties along Littlecroft Road and Tamarind Court. The main objections are summarised below:
- Additional overlooking from balconies to neighbouring gardens along Littlecroft Road.
 - The development has already caused direct inconvenience to the neighbouring dwelling at Clonboy.
 - Aesthetically the proposal will look totally out of character with other properties in the area.
 - The use of balconies will increase noise and disturbance to neighbouring properties.
 - Concerns over location and size of the refuse and cycle store. In addition no elevations have been submitted for its approval.
 - Removal of existing boundary fencing to the west of Tamarind Court.
- 4.2 The County Highway Authority have no objection.

5. Relevant Local Planning Policies

- 5.1 Saved Policies in the Runnymede Borough Local Plan Second Alteration 2001: HO9, TC1, TC2, BE2, BE5, BE10, BE15, SV2.

6. Planning Considerations

- 6.1 Planning permission RU.03/0979 is a material consideration and therefore has to be considered as part of this revised application. Under application RU.03/0979 the proposed layout and design of the proposed building was considered to be compatible with the surrounding area and sympathetic to the visual amenities of the streetscene. The proposal was also considered to preserve the character and appearance of the Conservation Area, and protect the amenities of neighbouring dwellings.
- 6.2 The main issue with this application is the impact of the new first and second floor balconies upon the amenities of neighbouring residential properties. Consideration also needs to be given to their impact upon the character of the new residential development under construction and upon the surrounding area, the character of the conservation area and upon the setting of neighbouring listed buildings.
- 6.3 The nearest neighbouring property 'Clonboy' is a two-storey dwelling located to the east of the proposed flats. The building as permitted under RU.03/0979 projects some 2 metres beyond the rear elevation of Clonboy. The nearest part of the building as already permitted would be 7.6 metres from the side elevation of 'Clonboy'. The proposed balconies would be set in from the side wall of the new building, and would be located some 7 metres to the existing side boundary with Clonboy.
- 6.4 The proposed section of building closest to Clonboy is restricted to two storeys in height. This design and distance coupled with a proposed privacy screen to the side elevation of the new first floor balcony closest to this dwelling is considered to protect the residential amenities of this dwelling. The second floor balcony (closest to Clonboy) is located further from the site boundary with "Clonboy" retaining a distance of some 18 metres. Given its height, it is considered reasonable to impose a condition to secure a privacy screen to the eastern side of the balcony to prevent views towards the side of Clonboy and overlooking the garden area of this neighbouring dwelling.
- 6.5 It is considered necessary to impose a condition seeking further details of the proposed height, and materials of the privacy screen to the eastern side of these balconies so as to ensure that there is no overlooking to this neighbouring dwelling. The proposed privacy screen is detailed at a height of some 1.6 metres, which is not considered to be of a sufficient height to prevent overlooking. It is considered reasonable that further details be submitted detailing the screen at a minimum height of 1.8 metres so as to prevent views towards the neighbouring dwelling and garden at Clonboy.

- 6.6 It is considered that given the separation distances between the application building and this neighbouring dwelling and the juxtaposition, coupled with the proposed privacy screens there would be no serious overlooking or loss of privacy to this neighbouring dwelling and its garden area.
- 6.7 The proposed balconies would provide oblique views to their rear garden area. However, given the obliqueness and the distances involved the balconies are not considered to cause serious overlooking or loss of privacy to the occupants of 'Clonboy' when using their rear garden. Winsoria, Littlecroft Road, is located to the north east of Clonboy, retaining even greater distances to the revised proposals. On this basis there is not considered to be any loss of amenity to this dwelling or its garden area.
- 6.8 The scale, positioning and design of the proposed revisions are considered to be in character with the new building currently under construction under application RU.03/0979. Given the design, scale and positioning of the proposals upon the eastern elevation, the proposals are considered to preserve the neighbouring conservation area and protect the setting of neighbouring listed buildings.
- 6.9 Concerns raised by the occupant of Tamarind Court in relation to the proposed bin store and boundary fencing have been fully considered. Planning application RU.08/0744 granted details relating to the proposed boundary treatment for the development and details of the design and location of the bin store. Under application RU.08/0744 as part of planning condition 21, the bin store was located to the south of the site, to the west of Tamarind Court.
- 6.10 The revised site plan submitted under this 2010 application details a revision to the proposed floor area of the bin store from that previously approved under application RU.08/0744. The bin store is located within a similar position to that already agreed under the previous 2008 application, however it has increased in depth. No revised elevational details have been submitted for consideration. Following an assessment on site, the bin store has been erected but not as detailed on the revised site layout. On this basis it is considered reasonable to request further details of the revised bin store, including its full elevations through a planning condition. This will allow the revision of the bin store to be fully considered, and its impact upon the character of the area and upon neighbouring residential amenities to be assessed.
- 6.11 Under application RU.08/0744 details of boundary treatment were also approved under condition 18. This included the provision of a new 1.8 metre high timber closeboarded fence along the eastern boundary of the site adjacent to Tamarind Court. Planning Condition 18 of RU.08/0744 states that the boundary treatment should be carried out as approved before the last house is occupied. The applicant therefore has to undertake the scheme in accordance with these agreed details unless a variation is agreed in writing by the local planning authority. This will be dealt with separately by officers directly with the applicant, and will not form part of this application.

- 6.12 The site also falls within floodplain zone 2. However given the nature of the revisions the proposals are not considered to have any impact upon the floodplain. Given the nature of the proposals the Environment Agency has not been consulted.
- 6.13 Consideration has been given to Articles 1 and 8 of the First Protocol of the European Convention on Human Rights. It is not considered that the granting of permission would result in a violation of any person's rights under the Convention.

Officers' Recommendation

GRANT subject to the following conditions:

1. Full Application – Standard Time Limit (C015)
2. Within 1 month from the date of this permission further details of the proposed privacy screen to the first and second floor balconies closest to the existing dwelling "Clonboy" located to the east of the application site shall be submitted to and approved by the local planning authority. Details shall include the finished material of the screen and should provide a finished screen height of not less than 1.8 metres. The screens shall be erected in accordance with the agreed details before occupation of the residential units and thereafter retained in perpetuity.

Reason: To ensure that the proposal does not lead to overlooking and loss of privacy to neighbouring residential dwellings.

3. Within 1 month from the date of this permission further details (including samples) of the proposed external materials for the revised front porch shall be submitted to and approved in writing by the local planning authority. When agreed there shall be no variation in the materials unless a variation is agreed in writing by the local planning authority.

Reason: To ensure that the proposed works harmonise with that existing in the interests of visual amenity and to comply with saved Policy BE2 of the Runnymede Borough Local Plan Second Alteration April 2001.

4. Within 1 month from the date of this permission further details of the proposed siting, size and design of the proposed bin store shall be submitted to and approved in writing by the local planning authority. The bin store shall then be provided in accordance with the approved details prior to the first occupation of the development and retained thereafter.

Reason: In the interests of amenity, to provide adequate refuse and recycling facilities and provide satisfactory form of development and to comply with saved Policies MV2 and MV4 of the Runnymede Borough Local Plan Second Alteration 2001.

Informatives:

1. The applicant is advised that all conditions imposed under application RU.03/0979 are still valid and should be fully complied with. In addition the subsequent details approved under planning applications RU.08/0744, RU.08/0977 and RU.08/1139 are still valid and should be fully complied with as part of the development.
2. The applicant is advised that this decision relates to the following drawing numbers received on the dates shown :

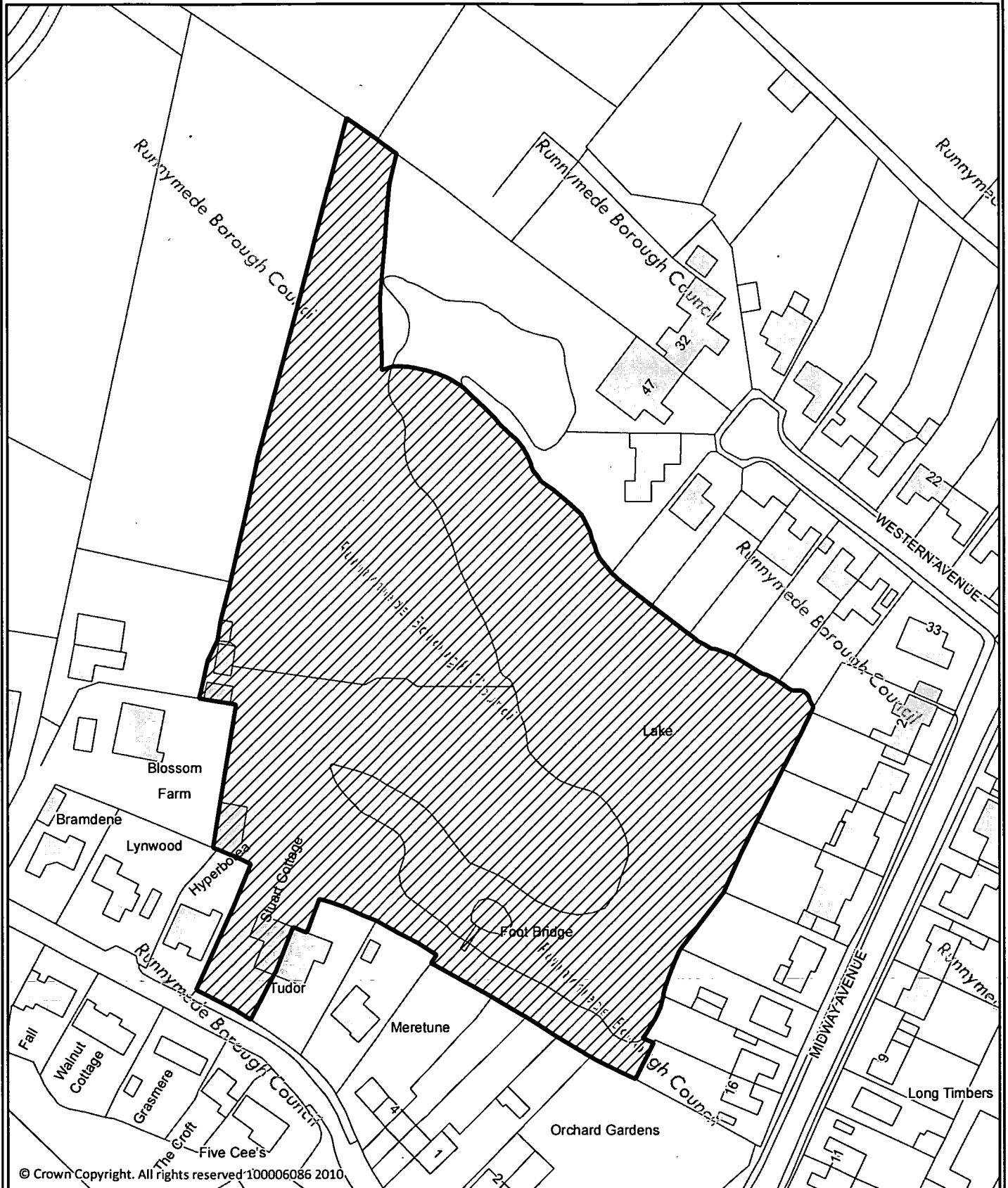
<u>Drawing Number:</u>	<u>Date Received:</u>
1121 pln 012 (Rev A)	26.08.10
1121 pln 010	26.08.10
1121 pln 011	26.08.10
Design and Access Statement	26.08.10

Any permission hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a licence must be obtained from the Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway.

3. The development hereby granted consent has been assessed against the following Development Plan policies – saved Policies HO9, TC1, TC2, BE2, BE5, BE10, BE15, and SV2 of the Runnymede Borough Local Plan Second Alteration April 2001 and other material planning considerations including third party representations. It has been concluded that the development would not result in any harm that would justify refusal in the public interest. The Planning Officer's report giving a more detailed assessment of this application is available for inspection at the Technical Services Department and copies can be obtained subject to a photocopying charge.

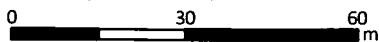
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Scale: 1:1,250



RU.10/0834

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RU.10/0834 Date reg: 6/9/10 Ward: THORPE

LOCATION: STUART COTTAGE, ROSEMARY LANE, THORPE
PROPOSAL: RETENTION OF SINGLE STOREY EXTENSION TO DETACHED
 GARAGE TO THE REAR OF THE PROPERTY INCLUDING KITCHEN
 WC AND STORE (RETROSPECTIVE AND REVISED APPLICATION)
TYPE: FULL PLANNING PERMISSION
APPLICANT: H S Gill

SUMMARY OF RECOMMENDATION: GRANT subject to conditions

This application has been referred to the Planning Committee for determination as the applicant is related to a Councillor

1. Site

1.1 Stuart Cottage is a 2 storey semi-detached dwelling on the northern side of Rosemary Lane, and with a plot frontage of some 15m onto the road. The house is on an extensive site of some 1.8 hectares which includes a lake and fields at the rear. The site extends eastwards to the back of the properties fronting Western Avenue, around the side and rear of No.47 Western Avenue and to the side boundary of Blossom Farm to the west.

1.2 The site is located in the Green Belt. The front part of the site, on which the dwelling and its immediate rear garden lies, is within the Thorpe settlement area. The south western area of the site lies within the medium risk floodplain (flood zone 2). The southern part of the site lies within the 5km buffer zone around the Thames Basins Heath Special Protection Area (SPA).

2. History

2.1 EGH.58/5128: Internal alterations and erection of a garage - Approved (Building Regs only)

EGH.70/1383: Provision of external walls to existing roof to form a new room – Approved (Building Regs only)

RU.80/0469: 44 detached houses with garages, together with service roads and sewers on approximately 6.28 acres on land rear of Stuart Cottage – Refused. Appeal dismissed May 1981.

RU.80/1058: To erect houses and garages together with service roads and sewers on approximately 6.28 acres on land rear of Stuart Cottage – Refused. Appeal dismissed May 1981.

RU.83/0203: Erection of single storey front and rear extensions – Granted May 1983

RU.94/0782: Retention of two storage containers used for the housing of carriage-driving equipment – Refused May 1994.

RU.04/0523: Erection of single storey rear extension – Granted June 2004

3. Application

3.1 Retrospective planning permission is sought to retain extensions to an existing detached 4 car garage block. The garage block is located some 15 metres to the rear of the dwelling, close to the western boundary of the site. The extensions are to the northern side of the garage block, between the garage and conservatory.

3.2 Initially the application was only for the retention of the store part of the building (some 3sqm) and annotated as 'A' on Appendix 'I'. During the processing of the application, it was found that permission should also have been sought for the kitchen and wc part of the building (which has an additional floor area of some 19sqm). This additional area is annotated as 'B' on Appendix 'I'. Consequently this element has been added to the retrospective application and local residents have been re-notified of this revision to the application.

3.3 The kitchen and wc extension has a sloping roof with a maximum height of 3.15m, reducing down to some 2.6m over the store. Both the store and kitchen/wc part of the extensions have external doors on their eastern face, and the kitchen and wc have windows facing northwards. The kitchen and wc part of the extensions are also open internally to the garage.

3.4 The applicant has submitted a letter which provides some background information with regard to the extensions and sets out why he considers planning permission should be granted. In summary, the applicant states:

- that the garage (which included a sink and other units) was built in 1982 under permitted development rights, along with a greenhouse.
- there was also a storage structure with a wc area between these buildings which had existed prior to 1998. These were in a poor condition, and the applicant wished to up-grade them.
- preparatory works were begun in summer 2008 to renovate the water and electricity supplies to the garage and greenhouse prior to the re-build.
- further works continued through Autumn of 2008 and recommenced in Spring 2009 with completion in September of that year. He states that he was not aware of any potential issue with the re-build until 7 months later.
- The applicant states that he was not aware of any potential issue with the re-build until 7 months later.

3.5 The applicant also states:

- the replacement extension to the garage is not inappropriate development and because of its small scale, use of materials, and location it cannot be argued to cause harm to the openness of the Green Belt
- the use is ancillary to the residential use of Stuart Cottage
- it replaces an existing structure and is between two existing structures that have been there since 1982. It is not visually intrusive.
- the boundary fence and high leylandii hedge provide good screening on the western site boundary. Hence it has no detrimental impact on immediate neighbour to the west.
- the closest neighbours have not objected to this application
- residents who have objected live between 100m to 400m away from the garage and there is no more detriment to their open view and visual amenity than there was with the previous structure.

4. Consultations

4.1 The application has been advertised on the Council's list of weekly applications and letters of notification were initially sent out to neighbouring properties in respect of the store extension (area annotated 'A' on Appendix 'I'). Three letters of objection were received following the initial notification. The main objections are summarised as follows:

- The height of the store exceeds the permitted regulated height for such development in the Green Belt – it should be reduced to 2.5m
- The 4 car garage block is not a correct description for the building – it is carpeted, plastered internally, has full electricity services provided and a large extension which contains a kitchen/toilet as per a domestic property
- The kitchen/toilet were added as an extension to the garage block within the last 18 months. The writer queries the accuracy of the submission and why this previous extension was not subject to the requirement for planning permission
- The garage block/party room is outside the domestic curtilage of Stuart Cottage. It therefore cannot be considered ancillary to the use of the dwelling, and requires consent in its own right
(Comment: see paragraphs 6.2 to 6.4)
- Loss of privacy as the garage/party room directly overlooks No. 12 Midway Avenue
- Its use has become more intrusive following removal of trees and shrubs. Noise now travels directly across the lake to No. 12 Midway Gardens

- Building in the Green Belt
- Conflict of interest as the owner of the property is a planning councillor and builder
- Concern that the building will be converted to a dwelling, and further structures could be erected and similarly converted, contrary to Green Belt Policy

4.2 The neighbouring properties were re-consulted on the revised application (description revised to include the kitchen and wc part of the building – see area annotated as 'B' on Appendix 'I'), and given 14 days to make further comments. Further comments have been received from 2 households, who raise the following additional points:

- Concern raised that the applicant should have submitted revised drawings to show the revision to the application
(Comment: Revised drawings were not requested as the extension was shown on the submitted drawings. The revised description was considered to make the amended application clear. However, in the light of the concern raised by two neighbours, and to avoid any doubt on the part of the Committee, the applicant has provided a revised drawing which outlines the extensions for which permission is sought in blue. For the avoidance of doubt, Appendix 'I' annotates Areas A and B which are subject to this retrospective application)
- Request that the application should be withdrawn and amended documents made available to view and residents given 21 days on which to comment (rather than the 14 days given), since he considers that the way that the amendment has been accepted and publicised is incorrect and unclear.
(Comment: It is considered that the revisions made to this application are clear)
- If the garage and extensions are outside the curtilage, and the land is green belt and agricultural, the development should not be permitted, a fresh application should be submitted for it so that the Committee can reach its conclusion in the knowledge of the full facts.
- The removal of trees and bushes has made the garage more visible and overbearing when viewed from 12 Midway Avenue, and as stated in their previous letter, causes loss of privacy, noise and disturbance (when used for parties) and the security light shines directly into their lounge
- The building is on land outside the original curtilage of Stuart Cottage, and is Green Belt, and on this basis they understand that no building should be permitted for domestic use.
(Comment: see paragraphs 6.2 to 6.4)

- The revised application is a substantial development that represents approximately 33% increase or more
- The extension and storage room considerably exceed the permitted regulated height for such development, and should be reduced to 2.5m
- The garage and extensions are outside the domestic curtilage of Stuart Cottage and therefore cannot be claimed to be ancillary to the use of the dwelling. A land registry plan has been submitted which shows different areas of land coloured differently. Stuart Cottage and the immediate area to the rear (some 5-7m in depth), excluding the access drive in yellow; larger area of the site at the rear (including the lake) in pink, and an access to the west of Bramdene in blue)
(*Comment: see paragraph 6.3*)
- Concern that the Planning Officer had not taken action to validate and clarify the land registry information
(*Comment: The applicant has to sign a certificate about land ownership when any application is submitted. Unless it is brought to officers' attention that an ownership certificate has been incorrectly completed Officers have no justification to check these details. In this case because of the objectors' comments land registry checks have been carried out and these documents have also been assessed by the Legal Section.*)
- Inaccurate description: This is not a 'garage block', since it contains carpet, plastered walls and has full electricity services provided, a very large kitchen and toilet extension. He considers that 'function room' is a better description. The objector queries whether the change of use should be included in the application, and comments that the use is not ancillary. Furthermore, that there is not a need for such a use when the village hall and new community centre already exist in the village.
(*Comment: It is proposed that the use of the retrospective extensions is controlled by a condition restricting its use as ancillary to the host dwelling.*)
- Concern over the traffic that will be generated along Rosemary Lane (a single track road) by the use
- There is confusion with regard to exactly what the revised proposals involve in terms of the building/ roof height/pitch, and considers a completely correct statement of the facts should be provided on which to base consideration and decision, including any changes in roof heights being completely and clearly identified and visible. He considers this to be particularly important in the light of the vast increase in size of extension over and above the size of the extension originally submitted.

- There is concern within the neighbourhood regarding the application and that it should go forward on clear and unquestionable facts that cannot be challenged or dismissed when a decision by the Planning Committee is reached.
- 4.3 The Council's Environmental Protection Officer states that no noise complaints have been received in respect of the use of the site.
- 4.4 The County Highways Authority raise no objections to the proposal.
5. Relevant Local Planning Policies
- 5.1 Saved Policies in the Runnymede Borough Local Plan Second Alteration 2001: GB1, H09
- 5.2 Relevant Adopted Supplementary Planning Guidance: None
6. Planning Considerations
- 6.1 The site is in the Green Belt. The primary considerations with this application are thus whether the development is appropriate development in the Green Belt, and if not, whether there are any very special considerations that would justify granting permission in this case. Impact on the residential amenity of adjoining occupiers and other concerns raised by residents must also be taken into account.
- 6.2 Before looking at the planning merits of this application, it is considered necessary to address some of the points raised by local residents. In particular the use and siting of the building, whether the building falls within the curtilage of the dwelling house, and whether its use can be considered to be ancillary and incidental to the use of the dwelling. This is an extensive site, and not all of it falls within the 'residential curtilage' of Stuart Cottage. Hence not all of the site benefits from 'permitted development rights' under Schedule 2, Part 1 of the General Permitted Development Order 2009 (GDPO). Having assessed this matter on site, officers consider that the area around the garage does fall within the curtilage of Stuart Cottage by reason of its proximity to the dwelling; nature and use of the land around it; the regular domestic maintenance of this area; and lack of physical features on the ground (such as a fence, hedge or other type of enclosure) which might be considered to separate it from the dwelling and its garden.
- 6.3 An objector has supplied a land registry title plan map of Stuart Cottage. The objector has queried the officer's view that the land on which the garage is sited does not form part of the residential curtilage of Stuart Cottage. It shows the house, and some 5-7m of rear garden (but not all of the front garden or side drive) coloured yellow, with the larger area of the site, including the lake and paddock area to the north coloured red, and a side access coloured blue. This suggests that the current site was historically in different ownerships. However, it is understood that the different parcels of land were bought together in the late 1960's.

The garage and greenhouse were erected in this area of the site in 1982. Functionally this area of the site has been used for purposes incidental to the enjoyment of the dwellinghouse currently known as Stuart Cottage for some 20 years or more. The land has been in the same ownership for some 30 years.

- 6.4 The Council's legal adviser has confirmed that the land on which the garage and retrospective extensions (the subject of this application) are positioned within the residential curtilage of Stuart Cottage.
- 6.5 Objectors have also raised questions with regard to the use of the garage building and additions to its northern elevation. The existing garage building is carpeted (carpet squares on concrete floor), and contains domestic-type lighting fixtures and other fixtures. The extensions, which are the subject of this application, have added a kitchen and wc ('B' on Appendix 'I'), as well as a store (annotated 'A' on Appendix 'I'). The store contains materials and chemical products, paints etc for the up-keep of the house and its grounds. The main part of the building appears to have a mixed use for the parking of cars and a boat, and for leisure use and parties. The applicant states that the building is not let out on a commercial basis for parties. It is considered that the parties are not so frequent that they could be considered to be anything other than incidental to the enjoyment of the dwellinghouse currently known as Stuart Cottage. For the reasons set out above the existing garage building falls within the residential curtilage of Stuart Cottage and the current use of this garage building is considered to be incidental to the enjoyment of the dwellinghouse.
- 6.6 Having established the above, it is considered helpful to explain the 'permitted development' rules and changes to these rules which led to the need for the application. In essence, the kitchen wc and store extensions (annotated 'A' and 'B' on Appendix 'I'), the subject of this revised retrospective application, requires planning permission because of the change in permitted development rights introduced by the Government in October 2008. The construction of Areas A and B (as shown on Appendix 'I') appears to have commenced after 1st October 2008 when the Amendment Order was brought into force.
- 6.7 Prior to 1st October 2008, the 1995 GDPO (as amended) permitted a building to be built within the curtilage of a dwelling without requiring permission subject to a number of criteria. The most pertinent criteria being that the height of the building did not exceed 4 metres with a ridged roof and the floor area would not exceed 50% of the total area of the curtilage. The original garage did not require planning permission because it complied with the relevant criteria of the GDPO. In addition as the original garage has been erected for more than four years, it is a lawful building.

- 6.8 On 1st October 2008 the Labour Government relaxed the permitted development rights particularly for householders. The aim of these changes was two-fold. The first aim was to put in place a new set of rules that would allow householders more freedom to extend their homes provided there was no significant impact on neighbours. The second aim was to reduce the number of planning applications submitted to the local planning authority. Whilst these changes have relaxed the rules for extensions to dwellings, the rule on outbuildings (such as this garage) have been tightened up. This led to an increase in the number of applications relating to outbuildings which previously did not require permission.
- 6.9 Since 1st October 2008 a building could be built within the curtilage of a dwelling without requiring permission subject to more criteria than in the 1995 GDPO (as amended). The most pertinent criteria of the 2008 GDPO in this case is that the height of a building within 2 metres of a site boundary shall not exceed 2.5 metres. As the extensions to the garage (annotated as 'A' and 'B' on the appendix) are located within 2 metres of the western boundary of the site and have a maximum height of 2.7 metres for Area A and a maximum height of 3.15 metres for Area B, planning permission is required for kitchen, w.c. and store extensions to the garage because they exceed the permitted height of 2.5 metres.
- 6.10 It should be noted that the applicant has initially advised that only the store (Area A) required planning permission. Subsequent investigations revealed that Area B on Appendix 'I' also posted-dated the change in the 2008 GDPO. Hence planning permission was also required for Area B.
- 6.11 Extensions to outbuildings within the residential curtilage (garages more than 5 metres from the house) do not fall into the category of 'appropriate development' listed in Planning Policy Guidance Note 2: Green Belts (PPG2). Consequently the extension is considered to constitute 'inappropriate development' in the Green Belt. Under the terms of PPG2, such development should not be permitted unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations. In relation to Development Plan policy, saved Policy GB1 states that 'within the Green Belt except for the area within the settlement of Thorpe, there will be a strong presumption against development that would conflict with the purposes of the green belt or adversely affect its open character'
- 6.12 Stuart Cottage lies within the Thorpe Settlement Area (as defined on the Local Plan proposals map). However, the garage lies outside this area. In terms of saved Local Plan Policy GB1, it is necessary to look at the purposes of the Green Belt and whether they would be harmed by the extension, and impact on its open character. It must be acknowledged that the extension would cause some harm both to openness and purposes of the Green Belt. It is also considered necessary to look at the degree of harm. In this case, the extensions are relatively small, they are tucked behind and to the side of an existing lawful garage and are generally lower in height than the lawful garage building. Critically, the extensions (A and B) are located between the lawful garage and the existing lawful

greenhouse. As the extension is located between two lawful buildings, the harm to openness is extremely limited. These extensions are also partially screened by an existing lawful greenhouse.

- 6.13 It is also considered material that the kitchen and wc extension are understood to have replaced existing structures on this side of the building. A review of aerial photographs suggest that there was a structure on the northern side of the garage which are different to the extensions now in place. Whilst the applicant has not been able to provide further evidence or to confirm the size of these former structures, it is nevertheless relevant to the planning considerations.
- 6.14 Furthermore, it is also considered relevant to take into account what can be built under the terms of the 2008 GDPO and what could reasonably be required should the extension be refused and enforcement action authorised. As stated above in paragraph 6.9, permitted development rights allow buildings of this size and type to be built provided that they are not more than 2.5 metres in height. In this case, this would necessitate the removal of the slope from the roof (which is a maximum of some 3.15m high, and which reduces to some 2.6m at its northern point) and the provision of a flat roof not more than 2.5m high. If Members decided to refuse this application and then considered it to be expedient to take enforcement action, the requirement of the subsequent enforcement notice would be to reduce the height of Areas A and B to a maximum height of 2.5 metres. An extension to the garage at this reduced height would be permitted development. Enforcement action cannot require the demolition of a building that is permitted development.
- 6.15 The assessment that has to be made in this case is therefore what is the impact on the Green Belt between the existing height of the unauthorised extensions and the permitted development height of 2.5 metres. The difference in height varies between 0.65 metres and 0.1 metre. This is the fall-back position for the applicant.
- 6.16 The difference between the current unauthorised scenario and the applicant's fallback position is so small and in a location between two buildings, the impact on the Green Belt is considered to be negligible. The extent of the applicant's fall-back position is considered to represent very special circumstances for allowing this inappropriate development in the Green Belt and overcomes the harm to the Green Belt. If Members consider that some harm over and above the fall-back position does exist, it is not considered to be either sensible or appropriate to refuse planning permission in this case.
- 6.17 Whilst strong objections have been received from neighbours with regard to the impact on their residential amenities, it is not considered that the single storey extensions, given the distances involved and the boundary screening along the western side boundary, cause any serious overlooking or loss of privacy to neighbouring properties. No other detrimental impacts or neighbouring properties are considered to be created by this unauthorised development.

- 6.18 The objectors have raised concerns over procedural matters, notably that the revised application is not clear, no revised drawing has been received and more time should have been given to allow 21 days on which to comment. The need for the revision to the application to include the kitchen and wc was, in part, highlighted by the neighbours themselves, and since the kitchen and wc are clearly identified on the original drawings and also exist on site, it is not considered that the lack of revised drawing has been prejudicial to the neighbours. A revised plan has now been submitted to address this concern of local residents. Furthermore, further letters have been received from two of the three original objectors, and some 6 weeks additional time has been available for comment prior to the Committee meeting should the objectors wish to submit further comments.
- 6.19 Consideration has been given to Articles 1 and 8 of the First Protocol of the European Convention on Human Rights. It is not considered that the granting of permission would result in a violation of any person's rights under the Convention.

Officers' Recommendation

GRANT subject to the following condition:

- The extensions to the garage which include the kitchen, w.c. and store shall only be used for purposes ancillary and incidental to the enjoyment of the dwellinghouse currently known as Stuart Cottage, unless prior written consent is obtained from the Local Planning Authority.

Reason: To ensure that the resultant building is not converted to a self-contained residential dwelling or used for commercial purposes in order to protect the character and visual amenities of the Green Belt and to comply with saved Policy GB1 of the Runnymede Borough Local Plan Second Alteration 2001 and Planning Policy Guidance Note 2 : 'Green Belts'.

Informatives:

- The applicant is advised that this decision relates to the following drawing numbers received on the dates shown :-

<u>Drawing Number:</u>	<u>Date Received:</u>
ADS/HS011/02	03/9/10
ADS/HS011/03A, 01A	3/11/10

Any permission hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a licence must be obtained from the Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway.

2. The development hereby granted consent has been assessed against the following Development Plan policies – saved Policies GB1 and HO9 of the Runnymede Borough Local Plan Second Alteration April 2001 and other material planning considerations including third party representations. It has been concluded that the development would not result in any harm that would justify refusal in the public interest. The Planning Officer's report giving a more detailed assessment of this application is available for inspection at the Technical Services Department and copies can be obtained subject to a photocopying charge.