

12 APRIL 2005

Dear Sir,

**LAND ADJOINING
'THE GABLES', ROBERTS ROAD
NORTH FAMBRIDGE
FIVE BEDROOM DETACHED HOUSE
WITH DOUBLE GARAGE
APPLICATION: FUL/MAL/05/00174**

I refer to the Council's Enforcement Officer's meeting with Mr. Hodges of Town and Country Developments Limited alleging that the above house, which is in the course of construction, is not being built in accordance with the approved plans. This is disputed.

Firstly I would say that the Council never imposed any Condition requiring slab levels for development to be approved by the Council before work commenced. This left the Developer with a degree of flexibility as to how to interpret the development of the site. In order to obtain a level access from the road to the garage this part of the development was taken as the starting point. This is a perfectly logical approach and the Developer has clearly not abused his position in any degree of latitude in the interpretation of the plans. The Developer has no wish to artificially increase the height of the building as this would result in additional cost through the use of additional materials. In this particular case there is no reason why any artificial raising of the building would have any advantage to the Applicant.

I would also draw your attention to the difficulties the Developer had in clearing the site so that a proper survey could be carried out. His attempts to clear the site were aborted because of objections from local residents and also by the requirements of your Tree Officer who put a Tree Preservation Order on the hawthorn trees at the front of the site. The protection of those trees resulted in access not being possible until planning permission was granted and the trees could be removed.

In addition I would add that the Council's Building Control Officers have inspected the work at the site. Clearly those Officers did not consider there to be any material difference between the approved plans and the construction work at the site. The Council's Building Regulation Officers are in the Planning Department and the information was available to the Council regarding the development at the site. It is somewhat unreasonable to allow the Developer to get to first floor level before raising the question of whether the development is being built in accordance with the plans or not. In this respect I would draw your attention to the judgement made in the case of *Basildon District Council v Martin Grant Homes*.

However, in order to progress the matter a survey of the site is being carried out. As far as the front elevation is concerned there is no material difference. The ridge height of the building under construction is 150 mm higher than that shown on the approved drawing. The site slopes down from the road towards the rear of the site. There is also a slight variation from side to side of the site. Thus the rear elevation is 450mm and 550mm higher than that shown on the approved drawings.


I enclose a copy of the drawing showing the ground level in relation to the damp proof course which is shown as a dotted line on the drawing. That damp proof course would be 150mm above ground level.

I take the view that the variations that have occurred are within the scope of the planning permission. It is essentially under-build in order to compensate for the difference in ground level. A further planning application is not therefore necessary.

For your assistance I enclose a copy of an appeal decision relating to a similar problem that occurred at High Street, Earl's Colne. This was the subject of an Enforcement Notice requiring the demolition of the dwelling. The Inspector held that as the property had been built up to 0.5 metres above the height shown on the approved drawings he considered that the development that had taken place fell within the scope of the planning permission that was granted.

I trust you will be able to concur with these views so that the work can continue without any further delay.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'R. Stemp', written over a horizontal line.

RAYMOND D. STEMPT FRICS FRTPI

**HEAD OF PLANNING SERVICES
MALDON DISTRICT COUNCIL
PRINCES ROAD
MALDON
ESSEX
CM9 5DL**



Appeal Decision

Inquiry opened on 12 August 2003

Site visit made on 14 August 2003

by Martin Joyce DipTP MRTPI

an Inspector appointed by the First Secretary of State

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Date

12 SEP 2003

Appeal Ref: APP/Z1510/C/02/1097375
45/47 High Street, Earls Colne, Colchester, Essex CO6 2PB

- 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 appeal is made by Jarvis Pensions Trusts against an enforcement notice issued by the Braintree District Council.
- The Council's reference is EA/34/02.
- The notice was issued on 16 July 2002.
- The breach of planning control alleged in the notice is failure to comply with condition No 2 of a planning permission (Ref: 01/00710/FUL) granted by the Council on 4 September 2001.
- The development to which the permission relates is the demolition of buildings and erection of one detached dwelling with garage.
- The condition in question is No 2 which states that:
"The development hereby permitted shall be carried out only in accordance with the approved plans and specifications shown on Drawing Nos 424/3, 4, 5 and 6 except as follows:
(a) Additional drawings that show details of proposed new dormers, bargeboards, porch surround, chimneys, windows, doors, eaves, verges and cills to be used by section and elevation at scales between 1:20 and 1:1 as appropriate shall be submitted to and approved by the local planning authority in writing prior to the commencement of any development.
(b) The section of the roof to the eastern side of the property, between the gable-end and the chimney shall be omitted in accordance with details to be submitted to and approved in writing by the local planning authority prior to the commencement of development, unless otherwise agreed in writing by the local planning authority."
- The notice alleges that the condition has not been complied with in that the height of the property is greater than that shown on approved drawing 424/6 and as a consequence thereof the elevations detailed are also not as shown on this approved drawing.
- The requirements of the notice are to lower the slab level of the property and then re-construct the property strictly in accordance with the approved drawing and Condition 2 of the said planning consent.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a), (b), (c) and (f) of the 1990 Act as amended. The deemed application for planning permission also falls to be considered.
- The Inquiry sat for two days on 12 and 13 August 2003.

Summary of Decision: The appeal is allowed following correction of the notice in the terms specified in the Formal Decision below.

Procedural Matters

1. At the Inquiry an application for costs was made by the appellants against the Council. This application is the subject of a separate Decision.

2. The appeal was originally made on grounds (a), (c) and (f). As a consequence of agreements made concerning corrections to the notice, prior to the Inquiry but following an abortive hearing that I conducted on 19 March 2003, the appellants requested, at the Inquiry, that ground (b) be added. This request was accepted.

Matters Concerning the Notice

3. At the start of the Inquiry I drew attention to two apparent defects in the notice, as I had similarly done at the abortive hearing and in subsequent correspondence. Firstly, the allegation was not set out as advised in Appendix 3 to Annex 2 of Circular 10/97, in that it did not give the date of the relevant planning permission or a description of the development approved. Neither did it quote the condition or state precisely how that condition had been breached. In particular, it was unclear in what way the elevations were not as shown on the approved drawing. Furthermore, whilst the notice alleges non-compliance with one of the approved plans, Drawing No 424/6, it was unclear whether the development that had taken place complied with the other plans referred to in the condition. Secondly, the notice refers, in two places to a "planning consent", whereas the correct terminology should be a "planning permission".
4. It was agreed that the notice should be corrected, and that such correction could be done without causing injustice to either party. On the question of whether there was compliance with the other plans quoted in the condition, the Council suggested that Drawing No 424/3 should also be included in the allegation. However, Drawing No 424/4 is a site and location plan, whilst No 424/5 shows details of the proposed garage, thus they are not pertinent to the allegation. This correction was not opposed by the appellants, without prejudice to their appeal on ground (b) but I drew attention to the fact that Drawing No 424/3A forms the basis of the development that has taken place. Nevertheless, it was agreed that, as that drawing was not submitted until after the date of issue of the notice, it could not be referred to in the allegation. However, I concur with the Council's suggestion that it should be referred to in the requirements of the notice, in the event of it being upheld, notwithstanding the fact that there is some doubt as to the date on which this drawing was formally approved by the Council. I also agree that the notice can be corrected without causing injustice to either party, thus I shall use my powers accordingly.

The Appeal Site and Planning History

5. The appeal property is located on the northern side of High Street, to the east of its junction with Queens Road, in the village of Earls Colne. The site was formerly occupied by a pair of buildings, Nos 45 and 47, known latterly as Scotties Bakery. Much of Earls Colne is designated as a Conservation Area, but the appeal property lies within the mediaeval core that extends from Foundry Lane in a downhill slope towards the Parish Church at the eastern end of High Street. Within the appeal site itself, the land falls in both an east-west direction and also from north to south.
6. A planning application for the demolition of the former buildings and the erection of a detached house and garage was refused permission in November 2000, and a subsequent appeal against that decision was made. The appeal was, however, withdrawn when, following discussion between the proposed developers and the Council, the planning permission that is the subject of the current enforcement notice was granted on 4 September 2001. Conservation Area Consent for the demolition of the two buildings was given on the same date. Following the issue of the enforcement notice, an application was made for the

retention of the dwelling that has been erected on the site, but that application was refused on 11 March 2003.

THE APPEALS ON GROUNDS (b) AND (c)

7. I have considered these grounds together as the arguments and contentions put forward at the Inquiry overlap to a considerable extent.

The Case for the Appellants

8. The appeal on ground (b) is made following the agreed correction to the notice, as it is now alleged that the new dwelling has been built higher than is shown on the approved drawings Nos 424/3 and 424/6, and also that the fenestration and front door is at a greater height above the pavement than shown on those drawings. However, the appellants contend that these matters have not, as a matter of fact, occurred. In this context, it is firstly necessary to consider how to interpret the planning permission. As it incorporates the application plans those plans can be considered, but only insofar as they relate to the appeal site, or within the "red line" area. This is important in relation to Drawing No 424/6, which shows the street scene and, in particular, the building to the west, No 43 High Street. It is submitted that no reliance can be placed upon the dimensions of that building, as the appellants had no access to it to take accurate measurements and the drawing was, in any event, only indicative and hand-drawn, notwithstanding that it was given a scale. This approach to interpretation is confirmed in an appeal decision concerning an enforcement notice issued by Thurrock Council (DETR Ref: T/APP/M1595/C/99/1026239-40). Drawing No 424/6, therefore, should only be considered as illustrative and it would not be used by a builder as the basis for any constructional work; rather the more detailed Drawing No 424/3 would be used, as it was clearly drawn to scale. Indeed, the latter drawing, and not 424/6, was used as the base for Drawing No 424/7C, which was submitted for Building Regulations purposes.
9. This leads to a second consideration as it is contended that, following the decision in *R v Basildon District Council ex parte Martin Grant Homes Ltd* [1986] JPL 863, the Council, in granting planning permission, did so in accordance with both the application plans and those approved for Building Regulation purposes, especially as both Planning and Building Control departments fall under the same Director. In support of this contention, it was clearly apparent to all concerned that the appeal site sloped, but the only drawing to show a slope was the illustrative Drawing No 424/6 and the Council chose to issue the planning permission without reference to either slab levels or to features on the ground. In these circumstances, where the builder has to establish a level slab and a datum point for all subsequent construction, there is a choice available and a reasonable degree of freedom in the amount of underbuild required to implement the development. Indeed, such a finding was made in another appeal decision against two enforcement notices issued by Barnsley Metropolitan Borough Council (DETR Ref: T/APP/R4408/C/99/1016931 & 1020176).
10. The point taken as the datum for the start of construction was, in the event, at the north-west corner of the house thus, at this point and for at least part of the rear elevation shown on Drawing No 424/3, the house has, as a matter of fact, been built in compliance with the approved plans. More crucially, however, the Council concedes that the dwelling accords with the approved plans from slab height upwards, therefore the only difference from those plans relates to the underbuild below the slab. In this context, it is submitted that the planning permission has to be interpreted sensibly and that the construction that has taken

place has done no more than taken reasonable account of the varied levels that exist on this or on any site.

11. This leads to consideration of what has actually been built. The Council accepts that a damp-proof course (dpc) level of 150mm above ground level is acceptable in all circumstances thus the actual difference between the development as built and that shown on the approved drawings varies between 0.1m, at the south-western corner, and 0.35m, at the south-eastern corner of the house. Such a variation is well within the tolerances allowed in the interpretation of any planning permission and should not have troubled the Council in any way. This is confirmed not only by the Barnsley appeal decision, where it was found that an additional underbuild of dwellings on a sloping site of 0.5m was within the terms of the relevant planning permission, but also by the Council's approach in another development within their area, at Kelvedon. In that case, revised slab levels and a more significant element of underbuild, shown on an amended drawing, were taken as minor amendments to the planning permission that had been granted. In all these circumstances, therefore, it is submitted that the dwelling has not been built higher than shown on the approved drawings.
12. Turning to the question of the height of the fenestration and the front door above the pavement, the same points in relation to the illustrative nature of Drawing No 424/6 apply, and this drawing would not be used to ascertain the heights of the various elements on the front elevation of the building. Drawing No 424/3 shows that the door would be above ground-level, and it is questionable whether there is any material difference between what is shown on that drawing and the development as built. As for the windows, the various heights of these may be scaled off the drawings, but such an exercise assumes that the black line shown on the plan is ground level. That may be a reasonable assumption, but it is not stated as such. It follows, therefore, that there are grounds for concluding that any difference between the heights of the windows and doors above the pavement level is *de minimis*. In all these circumstances, therefore, the appeal on ground (b) should succeed.
13. If, however, that argument is not accepted, it is submitted that the appeal on ground (c) must win. The Council has accepted that the house has been built in accordance with the planning permission above dpc level, and this equates to the slab level of the property. The underbuild is agreed as being a maximum of 0.35m, and this must be considered as entirely reasonable and within the scope of the planning permission. Therefore, even if the allegation is factually correct, and the property has been built higher than as shown on the plans, there has been no breach of planning control.

The Case for the Council

14. The Council accepts that there are two broad areas of agreement. Firstly that the property has been built according to the approved plans from dpc level upward and, secondly, that, after allowing for a dpc at a level of 150mm, the underbuild around the majority of the property ranges from 0m to 0.5m.
15. On ground (b) the Council contends that there can be no doubt that the alleged breach has, as a matter of fact occurred. The allegation concerns a breach of a condition on a planning permission, and that condition provides, *inter alia*, that the new dwelling shall be constructed "only in accordance with the approved plans and specifications shown on Drawing Nos 424/3, 4, 5 and 6...". The condition is clear, precise and unambiguous and the description of the development is specifically linked to the condition, and hence to the drawings. This distinguishes this case from those appeal decisions relied upon by the

appellants, as those cases did not concern breach of planning condition enforcement notices, rather they related to unauthorised buildings. The evidence in this case is clear; the building has not been built in accordance with the approved plans save for a small part of the rear elevation. It is taller, and the doors and windows are higher above ground level than shown on the plan. Moreover, this was accepted in cross-examination by both of the appellants' witnesses.

16. The appellants' approach is therefore untenable. The building has not been built so that it appears as it would on the approved plans, and the contentions about Drawing No 424/6 are not accepted. Even if the inaccuracies concerning No 43 are ignored it is reasonable to assume that the drawing is correct in relation to the appeal property and that it is to scale, otherwise there would be no point in giving a scale on the drawing. It is unrealistic, therefore, to claim now that the drawing was illustrative. It follows that the appeal property has not been built in accordance with the stated drawings, thus the appeal on ground (b) should be dismissed.
17. Turning to ground (c), attention is drawn to the wording of Section 171A(1)(b) which states that "failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control". Section 174(2)(c) is not qualified to exclude *de minimis* breaches, in comparison to the other limb of what constitutes a breach of planning control, that is the carrying out of development without planning permission, and there is some judgement allowed as to whether there has been such a breach. In relation to breach of planning condition cases, however, there is no discretion available. Therefore the "*de minimis* principle" is questioned here, albeit that the Council's case does not depend upon it.
18. It is submitted that the appellants cannot hide behind either the Building Control officers or *Martin Grant Homes*. The planning permission was granted on 4 September 2001, before any Building Regulations application or approval, which was not given until 11 January 2002. Therefore there can be no "imputed knowledge". In any event, the approved drawings for Building Regulations purposes show nothing more than the 150mm dpc level, and not the skirting which is there. The terms of the Building Regulations approval should also be noted, as they specifically state that it is not an approval under The Town and Country Planning Acts. Therefore the case does not equate to that in *Martin Grant Homes* for these reasons, but also because it appears that, in that case, there was a fairly unrestricted permission, with no condition limiting the precise size of the development, unlike in this appeal. Furthermore, whilst it is claimed that the slope on the appeal site was obvious, the appellants' architect accepted that he was not aware of it at the time of the application. At that time the old buildings were still in position, and the site was overgrown. Therefore, whilst the basic proposition in *Martin Grant Homes* is accepted, the Council did not have the necessary information before them when they determined the application.
19. All witnesses to the Inquiry agreed that a subjective judgement needed to be made on the question of whether the variations from the approved plans are *de minimis*. This judgement would be based on the relevant facts concerning the Earls Colne Conservation Area, the height of the property, and the fenestration emphasis. It is not sufficient to simply state that an increase of 0.5m is insignificant, as great care has to be exercised over developments in Conservation Areas, and small details and variations can be more crucial in such areas than elsewhere. This leads to consideration of the status of Drawing No 424/6, the submission of which, as part of the application, followed a request for a street scene. Such a request was

accepted by the appellants as reasonable, and it follows pertinent advice in Planning Policy Guidance Note 15 "Planning and the Historic Environment". Moreover, such drawings are normally to scale. Therefore, it is legitimate to consider, under the question of whether the breach is material, the relationship between the appeal property and the adjoining building. There is clearly a greater distance between the ridge and dormers of the appeal property as built and those on No 43 than was shown on drawing No 424/6, and it would be wrong, in planning terms, to ignore this difference. As to the fact that No 43 falls outside the "red line", the fact of the matter is that the appeal property has not been built as shown on the approved drawings, and that is sufficient for a breach to have occurred.

20. With regard to the alleged flexibility or latitude incorporated into a planning permission, the parallel drawn with the Barnsley appeal is not relevant as that was not a breach of planning condition case, and it is questionable whether the buildings concerned were the subject of such a restrictive condition as in this case. Furthermore, the appellants' planning witness accepts that the front elevation of the appeal property does not resemble the approved plans.
21. In conclusion, the totality of the case needs to be examined. The appeal property is higher than envisaged, and No 43 is lower than as shown on Drawing No 424/6. The consequent difference in height between the two buildings is therefore in the order of 0.68m. In the context of a Conservation Area location where matters of height and patterns of fenestration have a material impact on character, it is submitted that such a variation is not *de minimis*, thus the appeal on ground (c) should be dismissed.

Appraisal and Conclusions on Grounds (b) and (c)

22. In considering the above submissions and contentions, I deal firstly with the appeal on ground (b), for which the starting point is the wording of the allegation contained in the notice, as corrected following the agreements made at the start of the Inquiry. The allegation will now read thus:

"On 4 September 2001 planning permission was granted for the demolition of buildings and erection of one detached dwelling with garage, subject to conditions. One of those conditions was No 2 which states:

"The development hereby permitted shall be carried out only in accordance with the approved plans and specifications shown on Drawing Nos 424/3, 4, 5 and 6 except as follows:

- 1(a) Additional drawings that show details of proposed new dormers, bargeboards, porch surround, chimneys, windows, doors, eaves, verges and cills to be used by section and elevation at scales between 1:20 and 1:1 as appropriate shall be submitted to and approved by the local planning authority in writing prior to the commencement of any development.
- (b) The section of the roof to the eastern side of the property, between the gable-end and the chimney shall be omitted in accordance with details to be submitted to and approved in writing by the local planning authority prior to the commencement of development, unless otherwise agreed in writing by the local planning authority."

It appears to the Council that the condition has not been complied with in that the detached dwelling has been built higher than is shown on Drawing Nos 424/3 and 424/6, and in that the fenestration and front door have been constructed at a greater height above the pavement than shown on those drawings".

23. The condition which the Council is attempting to enforce requires that the development shall only be carried out in accordance with the specifications shown on Drawings 424/3 and 424/6, with certain exceptions that are not pertinent to the issues before the Inquiry. The essence of the allegation is therefore that the appeal property has been built higher than is shown on the approved drawings, and that the fenestration and front door are at a greater height above the pavement than shown on those drawings (Nos 424/3 and 424/6).
24. This leads to consideration of what the drawings actually show. Drawing No 424/3 is entitled "Proposed House", whilst No 424/6 has the legend "Street Scene". Drawing No 424/3 shows the four proposed elevations of the house, and the two floor plans, whilst No 424/6 shows the elevation to the High Street, including the properties to both east and west of the proposed dwelling. Both drawings are to a scale of 1:100, although No 424/6 is more crudely drawn and appears less accurate. However, it is not marked as being illustrative or indicative. Neither drawing contains any written dimensions, neither are there any "specifications" save for a basic indication of external materials on the front and side elevations of Drawing No 424/3. Neither drawing specifies a ground or pavement level, nor is the proposed slab level or dpc shown. A thick black line appears on both drawings, and I consider that this must be assumed to be ground level, notwithstanding the fact that that shown on Drawing No 424/3 is horizontal and flat, whilst that shown on No 424/6 slopes to the east. A step to the front door is clearly shown on Drawing No 424/3, but not on No 424/6, where only the threshold is indicated.
25. It follows from this assessment that any dimensions must be scaled from the two drawings. I have therefore undertaken this exercise in respect of the ridge height of the western section of the house, the underside cill level of the westernmost ground-floor and first floor windows and the threshold level of the front door. All measurements are taken from the top of the thick black line that I have assumed to be ground level. On Drawing No 424/3, the ridge height is 6.85m, the underside cill level of the ground-floor window is 0.85m, the underside cill level of the first-floor dormer window is 3.95m, and the threshold level of the door is 0.15m. On Drawing No 424/6, the same dimensions are 6.8m, 0.7m, 3.7m and 0m respectively. There are, therefore, identifiable differences between corresponding dimensions taken from each of the two drawings, and this must lead to an interim conclusion that the appeal property could not be built "only in accordance" with the specifications on both drawings.
26. Notwithstanding this point, however, it is apparent that the building on the ground has not been constructed as shown on either drawing, because it is taller. At the western end of the front elevation, the ridge height is 6.9m above dpc level, which is 0.44m above pavement level at that point. Therefore, the building is 7.34m above ground level, rather than 6.85m or 6.8m depending upon which of the two approved drawings is used for such a scaled measurement. The doorway and the windows are also consequently higher above the level than could reasonably be assumed to be ground level on the drawings. Therefore, as a matter of fact, the detached dwelling has been built at a greater height than is shown on the two drawings specified in the allegation of the notice and the appeal on ground (b) must fail.
27. Turning, therefore, to the appeal on ground (c), it is necessary to consider the question of how the approved drawings should be interpreted, and whether any variations between what is shown on them and what has been built fall within the scope of the planning permission that has been granted. In this context I have already noted that there are discrepancies between the two drawings, thus there has, in my opinion, to be a reasonable degree of

latitude taken in relation to interpretation of what has been permitted. It follows from this that, firstly, Drawing No 424/3 would more normally be taken as the plan upon which to base detailed measurements, as it has clearly been drawn with a greater degree of draughtsmanship than Drawing No 424/6, and it also shows all of the elevations and floor plans of the proposed building. In addition, it was used as the base for the more detailed Building Regulation drawings that were subsequently approved, and which would be followed by a builder, in preference to the less detailed planning drawings.

28. This leads to consideration of the contentions concerning imputed knowledge within the Council, following the judgement in *Martin Grant Homes*. Whilst there are differences between the two cases, including the fact that the order of the relevant approvals is reversed, I consider that the fact, in the appeal before me, that the Building Control Officers did not consider there to be any material difference between the plans submitted for Building Regulation approval and those approved under the planning permission is significant. Furthermore, whilst neither plan showed the sloping levels within the site, I do not find that at all unusual as, in my experience, ground variations are rarely illustrated unless there are pronounced differences that would require particular building works to be undertaken. This is confirmed by the Council's acceptance of the fact that an increase in the height of a building to allow the installation of a dpc is considered to be reasonable. It must follow, therefore, that such an alteration to the approved drawings would fall within the scope of the planning permission.
29. This leads then to the question of the further variations from the approved drawings, which are all a consequence of the dpc/slab level chosen for the building. This level was taken from the north-western corner of the building, as that was the highest ground level within the footprint, thus no excavation of original ground would be needed. I find such a choice to be completely logical, especially in circumstances where the Council did not seek to control the slab level through the imposition of a specific condition. Furthermore, I am of the view that any builder has some latitude of interpretation and that, in this case, this freedom to choose the starting point of building work was not abused. I am also mindful of the fact that an artificial or unnecessary raising of the height of a building would lead to extra building costs, through the use of additional materials. Whilst this might happen in situations where there is an advantage to building higher, for example to achieve a better view, I can think of no reason in this case why such raising of levels would be needed.
30. I do not concur with the view of the Council that the question of whether the variation between that which has been built and that which is shown on approved drawings is *de minimis* requires a subjective judgement that will take account of the site's location. In my view, whether changes are *de minimis* or not are a matter of fact and degree. In this case, I do not consider that the changes from the approved drawings are *de minimis*, as the property that has been built is up to 0.5m above the height shown on the approved drawings. However, I do consider that the development that has taken place falls fully within the scope of the planning permission that was granted in the circumstances of this case. These circumstances include the fact that there is an inherent conflict between the two drawings referred to in the notice; that neither drawing specified ground, pavement, dpc or slab levels; that an increased height for the purposes of installing a dpc is considered acceptable by the Council; that Building Regulation drawings based on Drawing No 424/3 have subsequently been approved within the same department of the Council; and, that it is normal for building work to use the most advantageous level within a site where there are

surface variations. Consequently, I conclude that the building constructed does not require a further grant of planning permission and it follows that the appeal on ground (c) succeeds.

Other Matters

31. All other matters given in evidence to the Inquiry and raised in the written representations have been taken into account, but they do not outweigh the conclusions reached on the main grounds of this appeal.

Conclusions

32. From the evidence at the Inquiry, and for the reasons given above, I conclude that the allegation in the notice is incorrect. Accordingly, I shall correct the notice to reflect this.
33. As to the appeal on ground (c) I am satisfied on the evidence that the appeal on this ground should succeed in respect of those matters which, following the correction of the notice, are stated in it as constituting the breach of planning control. In view of the success on legal grounds, the appeal on the remaining grounds and the application for planning permission deemed to have been made under Section 177(5) of the Act as amended do not fall to be considered.

FORMAL DECISION

34. In exercise of the powers transferred to me, I direct that the enforcement notice be corrected by the deletion of paragraph 3 in its entirety and the substitution therefor of the following allegation:

"On 4 September 2001 planning permission was granted for the demolition of buildings and erection of one detached dwelling with garage, subject to conditions. One of those conditions was No 2 which states:

"The development hereby permitted shall be carried out only in accordance with the approved plans and specifications shown on Drawing Nos 424/3, 4, 5 and 6 except as follows:

- (a) Additional drawings that show details of proposed new dormers, bargeboards, porch surround, chimneys, windows, doors, eaves, verges and cills to be used by section and elevation at scales between 1:20 and 1:1 as appropriate shall be submitted to and approved by the local planning authority in writing prior to the commencement of any development.
- (b) The section of the roof to the eastern side of the property, between the gable-end and the chimney shall be omitted in accordance with details to be submitted to and approved in writing by the local planning authority prior to the commencement of development, unless otherwise agreed in writing by the local planning authority."

It appears to the Council that the condition has not been complied with in that the detached dwelling has been built higher than is shown on Drawing Nos 424/3 and 424/6, and in that the fenestration and front door have been constructed at a greater height above the pavement than shown on those drawings".

35. Subject to this correction I allow the appeal and direct that the enforcement notice be quashed.

Information

36. Particulars of the right of appeal against this decision to the High Court are enclosed for those concerned.

Martin Joyce

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr David Whipps

Solicitor and Partner with Holmes & Hills,
Solicitors, Bocking End, Braintree, Essex CM7 9AJ,
instructed by the Corporate Services Director of the
Council.

He called:

Mr J Dawson

Mr A Davies DipEM MA

Mrs B A Watkin Grad Dipl Cons
(AA) IHBC

Enforcement Officer with the Council
Halstead Area Development Control Manager with
the Council
Senior Specialist Adviser with the Historic Building
& Conservation Section of the Environmental
Directorate of Essex County Council

FOR THE APPELLANT:

Mr Kevin Leigh

He called:

of Counsel, instructed by Mr R D Stemp

Mr M S Edmonds ACIOB ABIAT
Mr R D Stemp FRICS FRTPI

Design & Planning Consultant
Chartered Surveyor & Town Planner

INTERESTED PERSONS:

Mrs L Pudney

Local resident, 4 Queens Road, Earls Colne, Colchester, Essex CO6 2RP

DOCUMENTS

- Document 1 Lists of persons present at the Inquiry
- Document 2 Letter of notification of the Inquiry and list of those so notified.
- Document 3 Bundle of Appendices (Nos 1-9) and Plans produced by Mr Edmonds.
- Document 4 Bundle of Appendices (RDS1-RDS17) produced by Mr Stemp.
- Document 5 Bundle of Appendices, including photographs and plans, produced by Mr Dawson.
- Document 6 Bundle of Appendices (Nos 1-3) produced by Mr Davies.
- Document 7 Bundle of Appendices (Nos BW-BW14) produced by Mrs Watkin.
- Document 8 Report of *R v Basildon District Council ex parte Martin Grant Homes Ltd* [1986] JPL 863, produced by the appellants.
- Document 9 Memorandum, dated 29 May 2002, from Mrs Watkin to Mr Dawson.
- Document 10 Letters dated 29 May 2001 and 29 June 2001, from Mr Stemp to the Council, and from the Council to Mr Edmonds, respectively.
- Document 11 File note of site visit made by Mr Dawson on 15 May 2002.
- Document 12 Letter dated 14 April 1999, from the Council to Mr Edmonds, concerning land at the former Star & Fleece, High Street, Kelvedon, produced by the appellants.
- Document 13 Drawing to illustrate the reduced height of the appeal property, produced by the appellants.
- Document 14 Letter dated 13 June 2003, from Mr Stemp to the Council.



Front Elevation 1:100



Flank Elevation



Flank Elevation



Rear Elevation

Rev A Elevations modified Apr 04

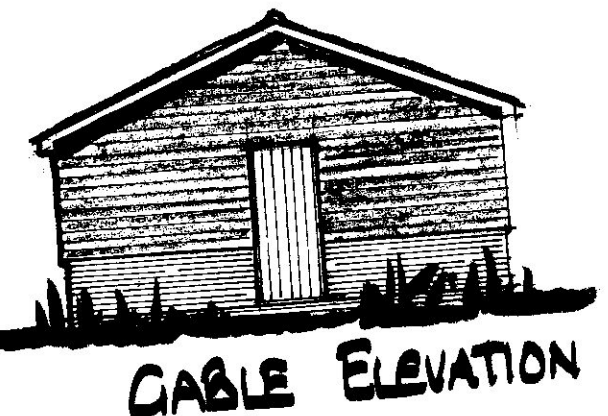
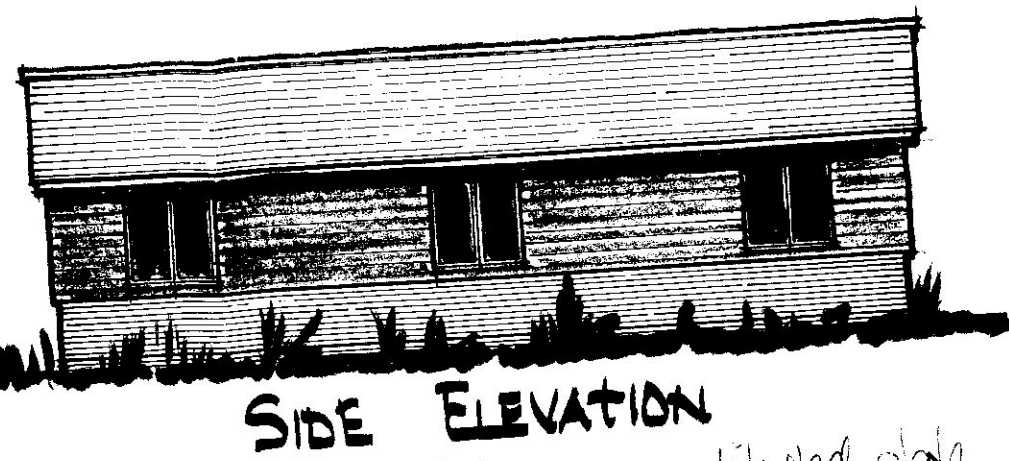
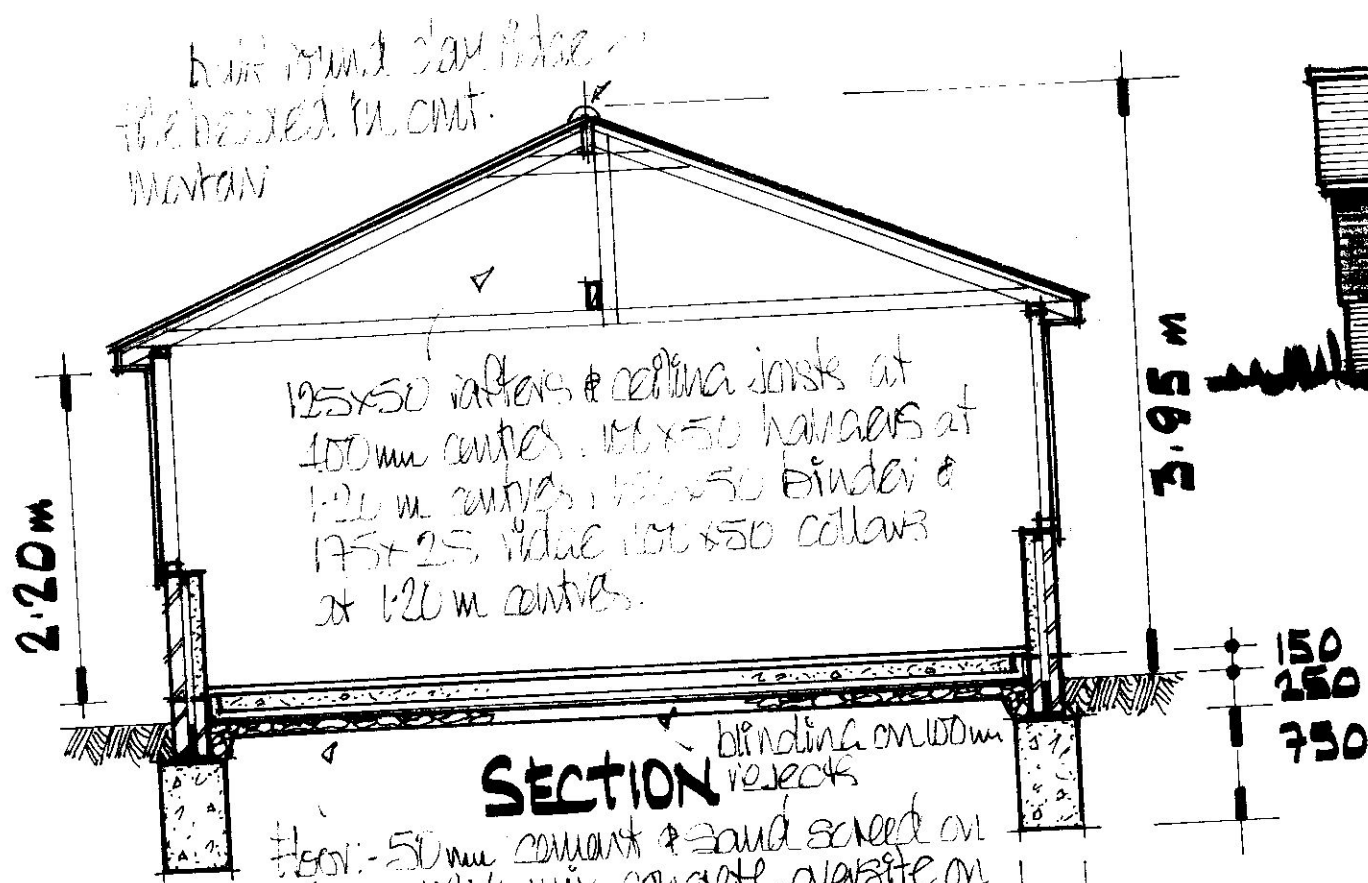
Proposal 5 Bed Detached Dwelling
 Location Roberts Road North Fambridge
 Scale 1:100 Drawing No. 1019-01A

RAYMOND D STEMP

CHARTERED SURVEYOR
 CHARTERED TOWN PLANNER
 107A, MALDON ROAD,
 BURNHAM ON CROUCH,
 ESSEX CM0 8DD
 Tel : MAL ON (01621) 783417

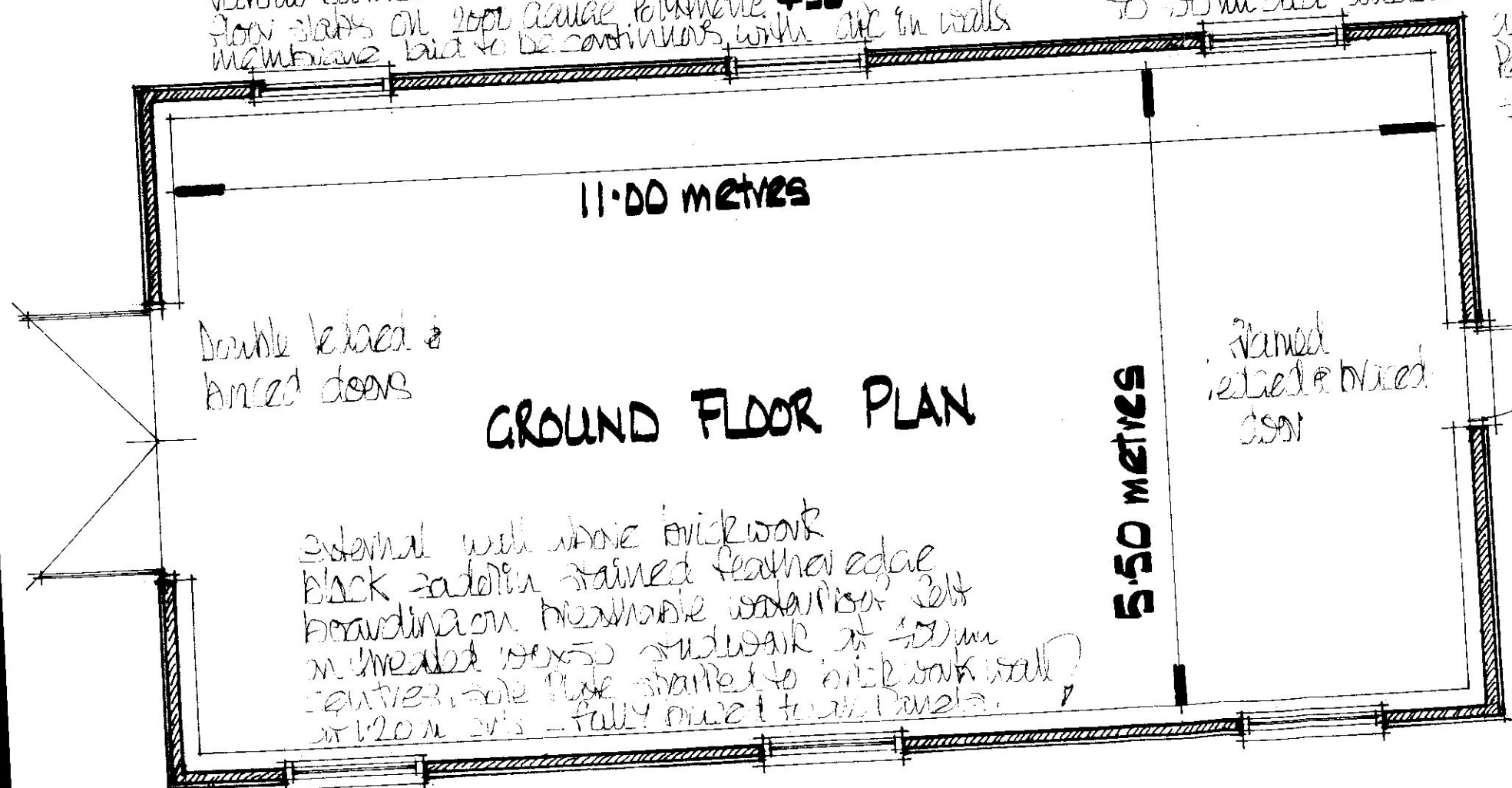


RICS



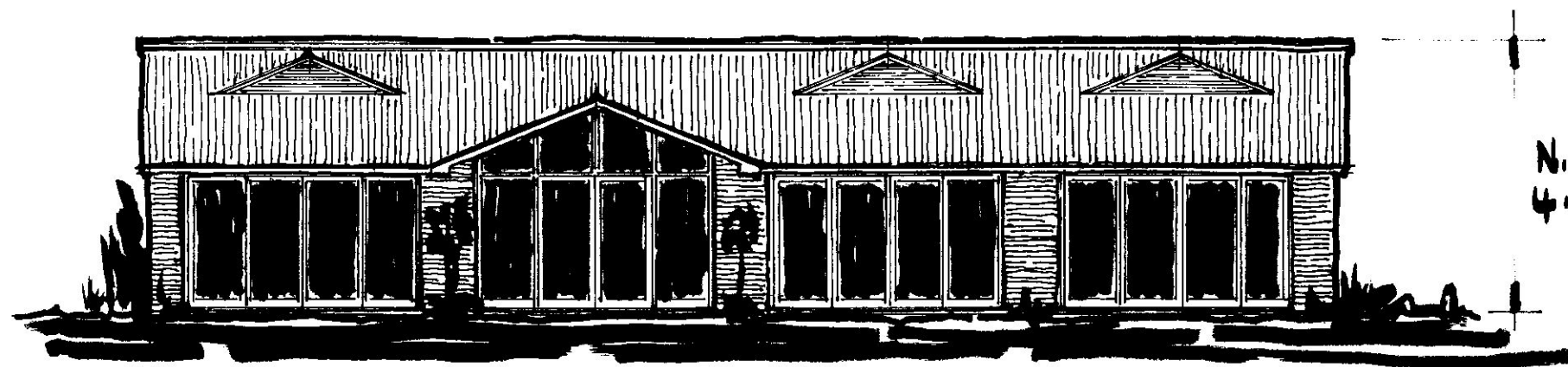
Roof covering slate or re-constituted slate on 18x38mm treated saw battens on 'Terno' breathable underfelt.
 Foundations 1:2:4 mix concrete to size & depth as shown. ultimate depth agreed on site with L.A.
 Ins. to 100mm half round PVC gutter to 40mm dia PVC downpipes to bedding eye gullies.
 To 150mm dia underground quality PVC pipes at 1m to wall. Bedded & surrounded in 150mm pea shingle to soakaway with 7.5m from structure.

Walls - 3mm dpc level. External cavity construction above dpc external skin facing red brickwork, 65mm cavity filled with wool ties and plastic cavity closer. Built with Celotex Tuff CW 202.9 on northern inner skin 100mm lead heavy thermal blockwork.



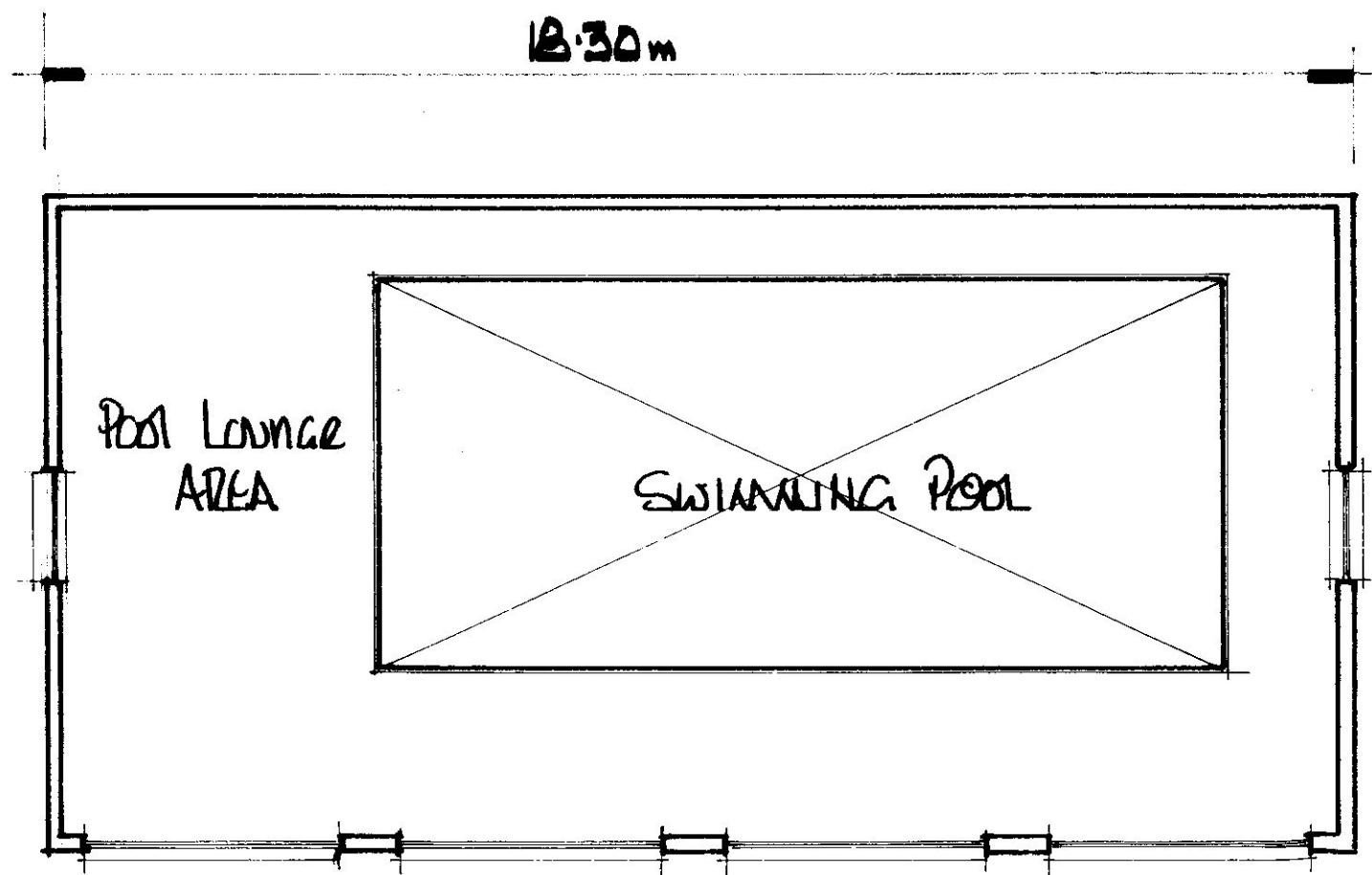
PROPOSED DOMESTIC STORE BUILDING AT MONKS FARM, PRIORY ROAD, TIPTREE HEATH ESSEX.

SCALES 1:50 1:100



NORTH ELEVATION

N.E.
4'00m

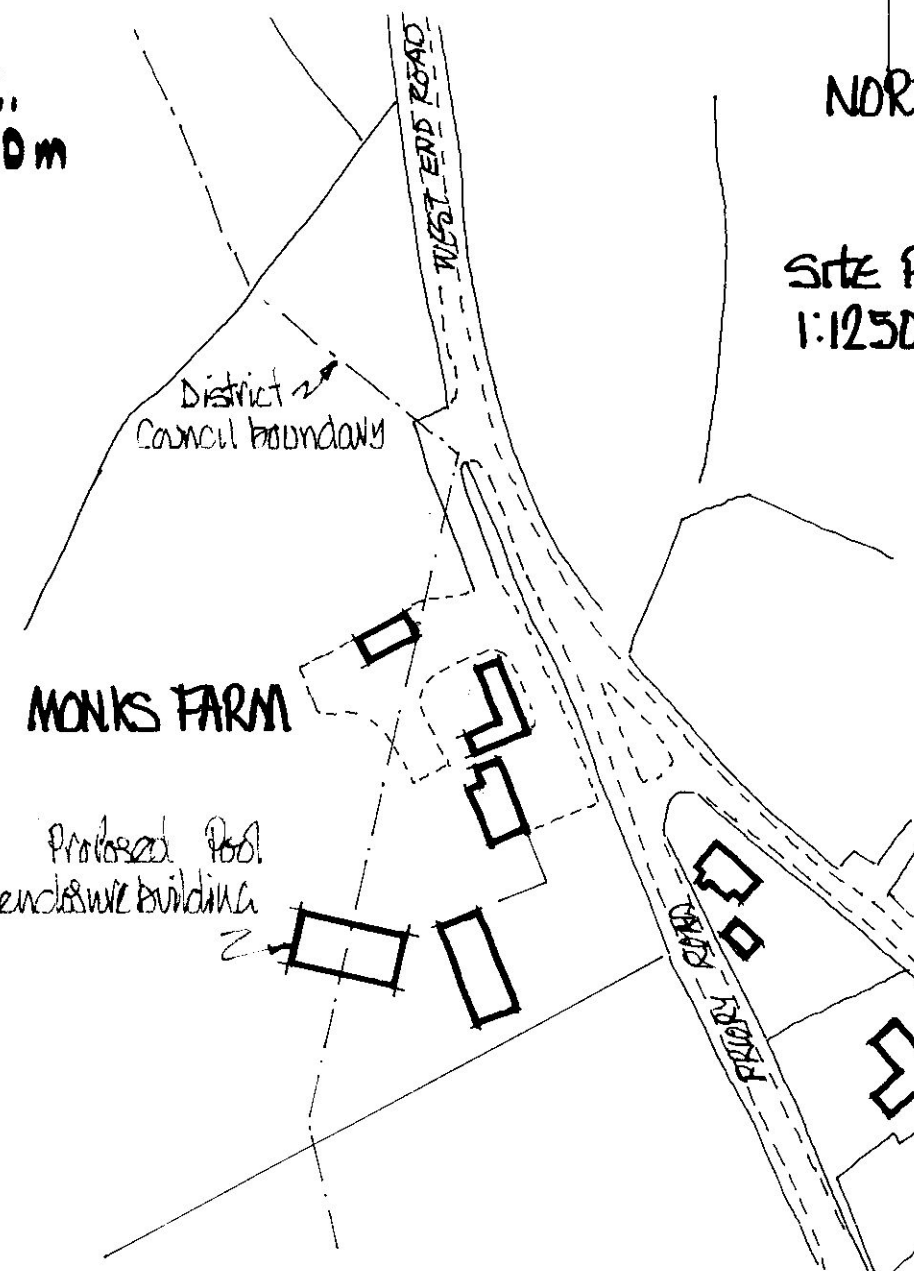


PATIO



NORTH

SITE PLAN
1:1250



PROPOSED SWIMMING POOL ENCLOSURE
BUILDING AT MONKS FARM, PRIORY ROAD,
TIPTREE, ESSEX.
FOR MR. F. TAYLOR

Scale 1:100