

20/01156/FUL

**SITE OF BULLWOOD HALL, BULLWOOD HALL LANE,
HOCKLEY**

**SECTION 73 APPLICATION TO VARY CONDITION 5
(OBSCURE GLAZING TO SPECIFIED WINDOWS) TO
PERMISISON FOR RE-DEVELOPMENT OF FORMER
PRISON SITE APPROVED ON 17 DECEMBER 2018 UNDER
APPLICATION REF: 17/00964/FUL**

FROM CONDITION 5 STATING:

**‘THE FIRST FLOOR WINDOWS TO HOUSE TYPES A1, A2,
A3, B2 AND D1 SHALL BE GLAZED IN OBSCURE GLASS
AND TO WINDOW DESIGNS NOT CAPABLE OF BEING
OPENED BELOW A HEIGHT 1.7 METRES ABOVE FINISHED
FLOOR LEVELS. THE WINDOWS SHALL BE RETAINED AS
SUCH THEREAFTER FOR THE DURATION OF THE
DEVELOPMENT.**

TO A VARIED CONDITION STATING:

**‘ANY FIRST FLOOR SIDE WINDOWS TO PLOTS 3, 4, 25
(WEST ELEVATION), 31 (WEST ELEVATION), 3, 44 AND 46
SHALL BE GLAZED IN OBSCURE GLASS AND THE
WINDOW DESIGNS NOT CAPABLE OF BEING OPENED
BELOW A HEIGHT OF 1.7 METRES ABOVE FINISHED
FLOOR LEVEL. THE WINDOWS SHALL BE RETAINED AS
SUCH THEREAFTER FOR THE DURATION OF THE
DEVELOPMENT**

APPLICANT: MR STEVE O’NEILL (IDP ARCHITECTS)

**ZONING: METROPOLITAN GREENBELT AND UPPER
ROACH VALLEY**

PARISH: **RAYLEIGH TOWN COUNCIL**

WARD: **TRINITY**

1 RECOMMENDATION

1.1 It is proposed that the Committee RESOLVES

Subject to a decision the heading of which is consistent with the safeguard required by condition 3, that the application be approved, subject to being written into and bound by the obligations to the legal agreement dated 17 December 2018 to which application 17/00964/FUL relates and to the following conditions:

Standard Time Limit

- (1) The development hereby permitted shall be begun before the expiration of three years from the date of the original permission granted planning permission on 17 December 2018.

REASON: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Implementation in Accordance with Approved Plans

- (2) The development hereby permitted shall not be carried out other than in accordance with the approved plans listed in the Drawing Register and Issue Sheet dated 29 March 2018 and the plans referenced 011, (proposal showing effect of rewording condition), Drawing Number 839, (A1) 210, (A2) 210, (A3) 210, (B2) 210, (C1) 210 and (D1) 210.

REASON: For the avoidance of doubt and to ensure that the development is completed out in accordance with the details considered as part of the planning application.

Obscure Glazing to Specified Windows

- (3) Notwithstanding the details of the submitted Drawing Reference 011, 839 (window opening sections) (A1) 210, (A2) 210, (A3) 210, (B2) 210, (C1) 210 and (D1) 210 the east elevation window at Plot 11 (furthest forward facing the frontage of Plot 12 together with the southern flank window within the development at Plot 21 and the northern flank window within the adjacent development at Plot 20 (as annotated in green by plan reference 011) shall be glazed in obscure glass and to window designs not capable of being opened below a height of 1.7m above finished floor level. The windows shall be retained as such thereafter for the duration of the development. Prior to the occupation of any dwelling

at Plots 11-14, 15, 17, 18, 19, 22, 23, 24, 25-30, 31-34, 36,37, 38-43, 51-53 which serve bathroom and en-suite rooms all windows shall incorporate obscure glazing, together with a restricted hinge mechanism (as shown by Drawing Number 839 (Section) such that all windows be incapable of being opened further than 13 degrees. Any replacement windows over the lifetime of the residential use shall be the same as those required by this condition.

REASON: In the interests of safeguarding privacy between adjoining occupiers

Prohibition of Further Side Windows

- (4) No further side windows other than those shown to the approved designs of the dwellings hereby approved shall be provided.

REASON: In the interests of safeguarding privacy between adjoining occupiers.

Yearly Logs: Surface Water Drainage

- (5) The applicant or any successor in title must maintain yearly logs of maintenance for the surface water drainage scheme which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon request by the Local Planning Authority.

REASON: To ensure the SuDS are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

Highway Surfacing

- (6) No unbound material shall be used in the surface treatment of the vehicular access and parking areas within 6 metres of the highway boundary.

REASON: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

Provision of Travel Information Packs

- (7) Prior to the occupation of the proposed residential development, the developer shall provide a Residential Travel Information Pack for every household for sustainable transport, to include six one day travel vouchers for bus travel approved by Essex County Council.

REASON: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10 of the highway authority's development management policies, adopted as County Council Supplementary Guidance in February 2011.

Provision of Development Buffer

- (8) The existing outer wooded fence shall be retained to provide a buffer between the development boundary and the extent of the adjoining ancient woodland. The buffer shall be retained as semi-natural habitat.

REASON: In the interests of protected species and the wider ecological enhancement and safeguarding of the adjoining woodland site.

Construction Traffic Control

- (9) The development shall be implemented in accordance with the details of the submitted Construction Management Plan dated 17 November 2017 Reference: SJT/18422-03_CTMP in particular the controlled management of the flow of construction traffic entering and leaving the site.

REASON: In the interests of safeguarding and protecting heritage assets adjoining the site access.

Delivery of Construction Materials and Plant

- (10) Construction delivery vehicles shall not access or exit the site between the hours of 0800 and 0930 and 1430 - 1530 hours Monday to Friday during local school term days.

REASON: In order to prevent conflict on the highway network during school run drop off and collection times given limitations for large vehicles to the site access and the large size of construction delivery vehicles in the interests of highway safety and the free flow of traffic.

2 PLANNING APPLICATION DETAILS

- 2.1 This application is submitted as a Section 73 (of The Town and Country Planning Act 1990) application to facilitate a variation of condition 5 which formed part of the original planning permission granted on 17 December 2018 in respect of development which was described as follows: 'Redevelopment of former prison complex to provide 72 dwellings comprising 14 No. five-bedroomed, 13 No. four-bedroomed, 18 No. three-bedroomed, 9 No. two-bedroomed houses, and 9 No. two-bedroomed and 9 No. one-bedroomed apartments'. The development granted is currently being developed whilst dwellings are at various stages of completion varying from plots which are advanced in terms of their build having roofs, windows and doors installed whilst others have roofs with no windows and doors installed. A lesser extent

of plots are at an earlier development stage with external walls currently being built.

- 2.2 The condition essentially required the first floor windows to the side elevation of some property types, these being House Type A1, A2, A3, B2 and D1, to be glazed in obscure glass and to window designs not capable of being opened below a height of 1.7m above finished floor level. The reason for the condition was to safeguard privacy between adjoining occupiers. It is noted that the condition did not restrict or control any glazing or openings of any of the plots at second floor level.
- 2.3 This application in terms of plot numbers fundamentally relates to Plot numbers 19, 20, 21, 34 and 36 (House Type A1), 11, 14 and 31 (House Type A2), 15, 18, 22, 33, 35 and 37 (House Type A3), 12, 13, 23, 25, 26, 32, 52 and 53 (House Type B2) and 1, 2, 3, 38, 39, 40, 41, 42 and 43 (House Type D1).
- 2.4 The application is submitted on the basis that the condition as worded is not actually required as it has been applied in blanket form to safeguard the amenity of adjoining properties taking into account the juxtaposition of the dwellings in question. The application is accompanied by a number of site layout plans highlighting the location and glazing treatment of the windows as currently affected by condition 5 (Drawing Number 010) and the treatment of the same window openings coinciding with the condition as it is proposed to be changed (Drawing Number 011). These drawings annotate by means of a key which windows are to remain obscured and non-openable below a height of 1.7 metres relative to the floor level (Red), those windows to be obscured and openable (Blue) and those windows which are to remain clear and openable (Green). These site layout plans are also on request supplemented by coinciding elevation plans comprising Drawing Numbers (A1) 210, (A2) 210, (A3) 210, (B2) 210, (C1) 210 and (D1) 210. These drawings are also supplemented by Drawing Number 839 which show in section from the details for the side hung and side opening obscure bathroom and en-suite windows which are those highlighted in blue by plan reference 011.

3 MATERIAL PLANNING CONSIDERATIONS

Site and Context

- 3.1 This application site comprising an area of approximately 2.85 hectares was formerly the site of Her Majesty's Prison "Bullwood Hall" located south of High Road and adjoining Hockley Woods. The site is accessed from a junction made with High Road 390m west of the junction made with Fountain Lane. The former prison site was decommissioned by the Ministry of Justice (MoJ) and closed in March 2013 as part of the Government's wider modernisation programme to improve the operational efficiency of the prison estate. The closure of HMP Bullwood Hall was part of the wider Government's prison modernisation programme.

- 3.2 Bullwood Hall although forming part of an outline application which approved the principle of its conversion and renovation for residential use is still standing undeveloped and does not form part of the approved substantive development now being built out. A separate application, reference 20/00450/FUL, for its subsequent demolition to provide 6 apartments is currently under consideration by officers and therefore remains undetermined.
- 3.3 Further north along Bullwood Hall Lane and closer to the site entrance are a number of detached residential properties, some of which are Grade II listed including North Lodge, Whitbreds, South Lodge and the barn on the west side of the lane, 70 metres north of South Lodge. The site is surrounded by a comprehensive network of public rights of way (PROW). Public footpath No. 3 follows Bullwood Hall Lane from its junction with High Road south towards the site. Public footpath 49 runs along the western edge of the site entering the site at its southern end.

Relevant Planning History

- 3.4 There are records of significant planning history to the former prison site. However, given the new chapter which has begun, the only relevant site history is that relating to the substantive full planning approval following an outline which did not progress by way of a Reserved Matters application and the subsequent discharge of any of the conditions which would not need to be repeated by any Section 73 approval.
- 3.5 Application No. 17/00964/FUL: Redevelopment of former prison complex to provide 72 dwellings comprising 14 No. five-bedroomed, 13 No. four-bedroomed, 18 No. three-bedroomed, 9 No. two-bedroomed houses, and 9 No. two-bedroomed and 9 No. one-bedroomed apartments: Granted Full Permission 17 December 2018.
- 3.6 Application No. 19/00397/DOC: Application to discharge condition 11 (Means to restrict surface water discharge onto the highway) on application 17/00964/FUL approved on 17 December 2018 for Redevelopment of former prison complex to provide 72 dwellings comprising 14 No. five-bedroomed, 13 No. four-bedroomed, 18 No. three-bedroomed, 9 No. two-bedroomed houses, and 9 No. two-bedroomed and 9 No. one-bedroomed apartments: Conditions 30/08/2019. Condition Discharged 30/08/2019.
- 3.7 Application No. 19/00402/FUL: Variation of Condition 15 to Application 17/00964/FUL for Development of 72 Dwellings Approved on 17 December 2018; Allow for the Development to Proceed in Accordance With a Revised Construction Management Plan: Pending.
- 3.8 Application No. 19/00498/DOC: Application to discharge condition 7 (surface water drainage scheme) and condition 8 (surface water maintenance plan) to Permission granted under application 17/00964/FUL for redevelopment of former prison complex to provide 72 dwellings comprising 14 No. five-bedroomed, 13 No. four-bedroomed, 18 No. three-bedroomed, 9 No. two-

- bedroomed houses, and 9 No. two-bedroomed and 9 No. one-bedroomed apartments.30/08/2019: Condition Discharged 30/08/2019.
- 3.9 Application No. 19/00600/DOC: Discharge of condition 3 (Materials) on approved application 17/00964/FUL: redevelopment of former prison complex to provide 72 dwellings comprising 14 No. five-bedroomed, 13 No. four-bedroomed,18 No. three-bedroomed, 9 No. two-bedroomed houses, and 9 No. two-bedroomed and 9 No. one-bedroomed apartments: Condition Discharged 30/08/2019.
- 3.10 Application No. 19/01167/DOC: Discharge of conditions 4 (Landscaping) and 17 (details of footway and bridleway) on approved application 17/00964/FUL: redevelopment of former prison complex to provide 72 dwellings comprising 14 no five-bedroomed, 13 no four-bedroomed,18 no three-bedroomed, 9 no two-bedroomed houses, and 9 no two-bedroomed and 9 no one-bedroomed apartments: Condition Discharged 01/07/2020.
- 3.11 Application No. 20/00330/FUL: Proposed Creation of a Temporary Marketing Suite Including the Construction of a Single Storey Building for use as an Office for the Purposes of Marketing the Adjacent Housing Development and Associated Laying of Hard Surface to Create a Car Park of 5 No. Parking Spaces: Planning Permission granted 19/08/2020.
- 3.12 Application No. 20/00450/FUL: Demolition of the existing vacant building and erection of 6No. residential apartments with associated car parking, cycle storage and landscaping: Pending.
- 3.13 Application No. 20/00617/FUL: Variation of Condition No. 17 of planning consent reference. 17/00964/FUL to allow for minimum width of the shared footpath and bridleway to be amended from 3 metres to 2 metres. Relating to Proposal for Redevelopment of former prison complex to provide 72 dwellings comprising 14 no five-bedroomed, 13 no four-bedroomed,18 no three-bedroomed, 9 no two-bedroomed houses, and 9 no two-bedroomed and 9 no one-bedroomed apartments. Application Withdrawn 23/09/2021.
- 3.14 Application No. 20/00980/DOC: Discharge of condition 17 (provision of a shared footway and bridleway) on application 17/00964/FUL dated 17/12/2018: Condition Discharged 02/02/2021.
- 3.15 Application No. 21/00051/DOC: Discharge of condition no. 6 (external lighting details) of planning consent reference 20/00330/FUL: Condition Discharged 23/02/2021.
- 3.16 Application No. 21/00277/TPO: All trees and vegetation within metal hoarding around main hall with exception of T1 Oak and T2 Bay Fell to near ground level only Stump grinding operations: Grind main stumps to approximately 250 - 300mm where viable Fell to ground level all trees and vegetation 10m outside of Badgers exclusion zone and outside of Metal hording as marked in Yellow on drawing TPP02 NB: No works can take place within 10m of the Sett

entrance, appropriate signage and non-invasive barrier is to be erected prior to creating an exclusion zone.

- 3.17 All tree works within the 20 and 30m exclusion zones must be supervised by an ecologist and the use of hand tools and soft dismantle with lowering devices must be implemented where safe to do so. No grubbing out of tree roots is to take place. An Ecologist must be present for watching brief purposes. Stump grinding operations (excluding badger sett area) Grind main stumps to approximately 250 - 300mm where viable. N.B. The presence of a suspected active badgers sett may restrict some tree works and stump grinding operations within 10m of the sett entrance. To be confirmed prior to works commencing. Soft dismantle for tree felling operations advised. (24/3/2021).

Assessment of Key Issue

- 3.18 Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a statutory responsibility on planning authorities to determine planning applications in accordance with the provisions of the Development Plan unless material planning considerations indicate otherwise.
- 3.19 It is the applicant's position that the condition as imposed does not meet the requirements of paragraph 55 of the National Planning Policy Framework which indicates that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
- 3.20 The only matter which the local planning authority needs to consider in this instance is that of whether the revisions cited are acceptable such that the development can be lawfully implemented in accordance with the plans which still apply to the elements which remain unchanged and in accordance with those aspects which are revised as cited by this particular application. The fundamental and only question which needs addressing therefore in this instance is that of whether the underlying objective of the condition which was to safeguard residential amenity would be undermined and whether the condition as it is proposed to be re-worded would uphold the remaining objective. As it has been worded the condition would not uphold the underlying objectives of planning policy as the wording does not reflect now the level of detail provided and it is on the basis of this detail that the recommendation is made consistent with how the condition should read as cited by condition 3 which articulates the safeguards which are written into this new consent.
- 3.21 From a procedural perspective if granted, this section 73 consent would become the operative consent taking into account the plans as previously approved which remain unaffected together with any new updated plans and those conditions deemed to be still relevant. Section 73 of The Town and Country Planning Act indicates that applications such as the one in question

are applications to develop land without compliance with conditions previously attached to previous planning permissions. The statute advises that on such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and if they decide that planning permission should be granted subject to conditions differing from those subjects to which the previous permission was granted.

- 3.22 Considering the case placed forward in this particular instance, the assessment of the effect of windows already installed and those to be installed which do not comply with the stated condition has been assisted by an officer site visit and meeting convened with the site manager and agent on Friday 12 March. This assessment took the form of the consideration of all plots as numbered in Section 2.3 of this report which are the plots affected by the condition and that condition as it is proposed be amended which, given the omission of conditions already discharged, would now read as condition 3.
- 3.23 Each plot was considered in terms of what had to date actually been installed (on those properties nearing completion) and also what was to be installed at those properties which are in progress of being built. The purpose of a case-by-case assessment of each affected house relative to each adjacent house type coinciding with the plot numbers stated was to gain an understanding regarding what the current implications were in terms of any variance or current non-compliance with the condition.
- 3.24 It is understood why the condition was included as part of the planning permission. However, on consideration of the development on the ground and the floor plans which remain unchanged in terms of the position of windows and the use of the rooms they serve, it is considered that with the exception of 1 first floor bedroom window pertaining to the east (front side aspect) elevation of Plot 11 that of those properties built that there is no clear evidential harm to the amenity of any neighbouring property. When standing by this window on the built form at Plot 11 which is to serve a bedroom a limited field of vision was enabled into the lounge area which was to serve Plot 12.
- 3.25 This was the only first floor window within this plot which offered an outlook into the neighbouring property, although limited, would be in the opinion of the case officer harmful such as to justify this window having to comply with the requirements of the original condition. The submitted Plan reference 011 does not annotate this window as being clear and openable, which would constitute the harm to amenity, however, a condition is recommended which provides clarity that this window which gives rise to the current harm is obscured up to a height of 1.7 metres above finished floor level and incapable of being opened more than that shown by plan reference 839 which shows windows where they are opening windows on such affected elevations being restricted to a side hung opening of 13 degrees.
- 3.26 This condition would ensure that overlooking would not occur as the degree of opening is simply not sufficient to enable a direct outlook providing the glazing

at eye level is obscured. It is noted that there is another window within the middle east section of Plot 11. However, given the alignment of the front footprint of Plot 12 relative to the position of this window it is not possible to see directly into any living accommodation serving Plot 12. This window is acceptable as installed.

- 3.27 Given that outlook of the west elevation of Plot 11 towards an adjoining area of public open space, and that the objective of the condition is to safeguard residential amenity, it is not considered that it is reasonable or necessary to restrict the glazing on this window to being obscured or to restrict the opening of this window as there are no properties to the north or west of the site which can be affected by this window opening. It is also noted that Plot 14 has at its east elevation a bedroom window which looks out onto the corner plot and its own private amenity area set against a background of woodland, the latter of which is outside the application site. There is no property that will be affected by this bedroom window in terms of overlooking.
- 3.28 It is considered that the value of such individual assessment is that it demonstrates that although considered necessary at the time of imposition such a blanket condition is nevertheless not a bespoke condition which takes account of the location, juxtaposition and outlook from individual properties taking into account importantly the limitation that exists on outlook from the flank windows of properties by reason of their functional use almost in most cases providing bathroom and en-suite rooms.
- 3.29 Plot 34 located at the southern aspect of the site has one window at its side elevation which looks out over part of the estate road and the large expanse of designated open space which will not affect residential amenity. A bedroom window to the opposite flank faces an obscured bathroom window of the adjacent property which will be limited to a 13-degree side opening casement arrangement which will mitigate the overlooking that the original condition sought to safeguard. Plot 36 is arranged in a similar fashion whilst it is noted that a clear glazed rear bedroom window will look in a north easterly direction towards a blank wall which is that nearest wall elevation at Plot 37. Plots 20 and 21 which are detached 3 storey houses located south of Plot 11 at the far north west corner of the site are shown to look out onto a highway with sufficient separation such that overlooking from the side elevations are not considered to affect any properties. However, on the inner flank the plans indicate the proposed retention of clear unobscured window openings 1 at each property at close proximity, which is unacceptable. Condition 3, it is considered, addresses this matter specifying their treatment in the interest of residential amenity whilst not frustrating those aspects which are acceptable which the condition facilitates as the guidance advises that it is reasonable and necessary to make the development acceptable.
- 3.30 It is noted that almost all the windows subject of the condition, with the exception of those highlighted above, constitute small narrow side elevation windows which serve bathroom and en-suite facilities which are already glazed with obscure glass. These windows are all openable windows by

means of a side hung casement articulating on a hinge mechanism which was observed and noted at the time of the officer's site visit. The plots where this arrangement is in place include Plots 11-14, 15, 17, 18, 22, 23, 24, 25-30, 31-34, 36, 37, 38-43, 51, 52 and 53.

- 3.31 It is considered that if these windows were open on each adjacent property when the bathrooms / en-suite rooms were in use there would be an element of the perception of visual intrusion by the fact that the respective windows are within 2-3 metres of one another. Drawing Number 839 therefore provides a practical solution which addresses and mitigates the potential for overlooking of one another when in use, if the window already obscured were to be opened. En-suite bathrooms are fitted with mechanical ventilation systems that are light operated such that the opening of a window for purposes of ventilation is not a necessity. The inclusion of the requirement as part of the revised condition restricting the opening of all windows to 13 degrees will mitigate any harm which could arise otherwise.
- 3.32 Plot 31 located to the south east aspect of the site incorporates a long north flank elevation which faces the rear aspect of 2 pairs of semi-detached properties, these being 27, 28, 29 and 30. The submitted plans acknowledge and indicate by annotation that these first floor windows will be obscured and fixed shut in line with the original condition such as to mitigate the impacts on the rear amenity of the stated properties.
- 3.33 In concluding, as presented and as further explained and illustrated by the plans submitted providing compliance with condition 3, the development is acceptable. Notwithstanding the wording of condition 3 which has to be changed to secure the required safeguards but nevertheless do not detract from the fact that there is scope to do so within the statutes (as the applicant's description does not go far enough to achieve the safeguards despite being clearly shown on all requested plans – condition 3 (formerly condition 5) sets out the requirements with regard to Plots 11, 20 and 21 as it does to those plots and the restricted openings cited under 3.30 and 3.31 of this report. It is not considered that the development would be harmful in residential amenity terms or would undermine the underlying objective of the original condition providing compliance with condition 3.
- 3.34 It is noted that many conditions have been discharged such that there is no requirement for their imposition as part of this recommendation .

4 CONSULTATIONS AND REPRESENTATIONS

- 4.1 No consultation responses have been received.

5 EQUALITY AND DIVERSITY IMPLICATIONS

- 5.1 The Equality Impact Assessment (EIA) indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

6 CONCLUSION

- 6.1 The condition as modified, subject to the safeguard written into condition 5, upholds the principal objective of the condition such as to render the development acceptable, if undertaken in compliance with condition 5.



Marcus Hotten

Assistant Director, Place and Environment

Relevant Development Plan Policies and Proposals

National Planning Policy Framework (NPPF) (February 2019)

Rochford District Council Local Development Framework Core Strategy (Adopted December 2011)

Policies H1,H4,H5,URV1,CP1,T8,ENV 1,ENV3,CLT5.

Rochford District Council Local Development Framework Development Management 17/00964/FUL

Plan (Adopted December 2014)

Policies DM1, DM2,DM4,DM10,DM25,DM26,DM27,DM28,DM30,DM31.

Essex County Council Parking Standards Design and Good Practice (September 2009) Standard C3

Background Papers:-

None.

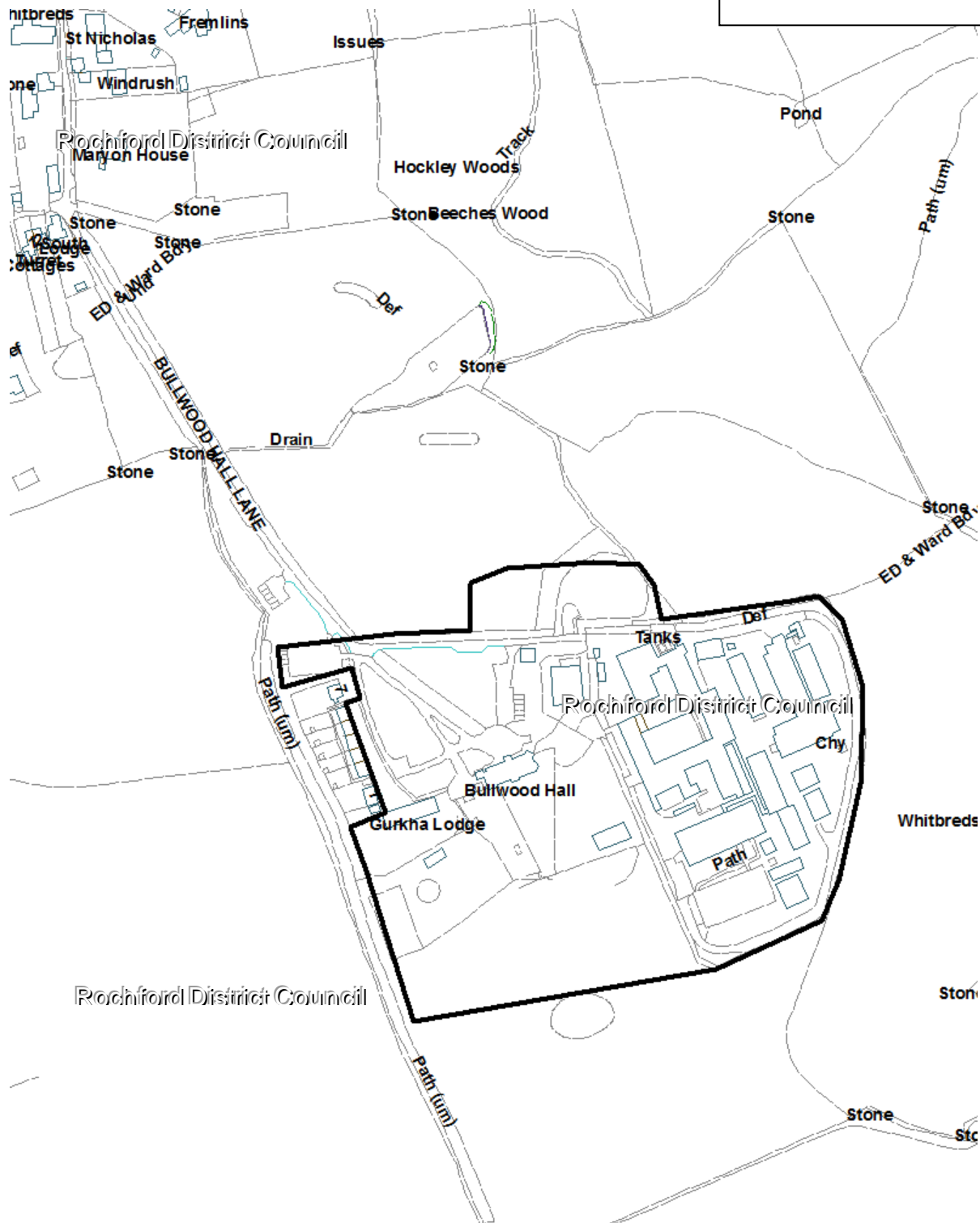
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