

TOPIC STATEMENT OF COMMON GROUND – LIVING CONDITIONS RfR5

APPEAL REFERENCE APP/X3540/W/19/3242636

DATE OF HEARING/INQUIRY 31st March 2020

APPELLANT Capital Community Developments Ltd

1. Appeal reference.

APP/X3540/W/19/3242636

2. Site address.

Land North Of Gardenia Close And Garden Square Rendlesham Suffolk.

3. Areas of Common Ground:

1. Disagreement on reason for refusal 6 is now limited to the living conditions of future occupants through the side to side relationship of properties with side windows and the effect that has on the privacy of future occupants.
2. That the key policy consideration for this reason for refusal is DM23 (Residential Amenity). The policy states:

When considering the impact of new development on residential amenity, the Council will have regard to the following:

(a) privacy/overlooking;

(b) outlook;

(c) access to daylight and sunlight;

(d) noise and disturbance;

(e) the resulting physical relationship with other properties;

(f) light spillage, air quality and other forms of pollution; and

(g) safety and security.


Development will be acceptable where it would not cause an unacceptable loss of amenity to adjoining or future occupiers of the development.

3. The Council sets out the side-to-side window interactions where impacts are identified in Appendix 1 (not including rooflights and half moon windows) based on the plans produced and presented as Appendix 2 of the appellant's Design proof of evidence.
4. The Appellant's feedback on an earlier and wider 'list' of relationships is provided in Appendix 2 of this Statement of Common Ground.
5. The rooflights and semi-circular 'half moon' windows would not present an opportunity for views out which would conflict with policy DM23 (the Council position being that this is subject to the cills of those windows being above 1.7m high). The appellant will demonstrate the cill heights in relation to floor level before the inquiry.
6. Reflecting the Council's SoC and the withdrawal of the ground floor side windows from the argument, the windows in contention are all at first and second floor levels.
7. Ground floor windows would not cause any loss of privacy, though first and second floor views down to ground floor windows could remain.
8. That sustainability and amenity benefits through additional natural light may or may not counteract impacts on living conditions; this being based on fact and degree in each case.
9. That privacy between properties has been highlighted by the Council in both pre-application enquiries and both planning applications and the appellant has sought to address it each time.
10. That the appellant has sought to address views out of windows in the design of the development by off-setting properties, considering window types and widths and window positions.

11. The Council takes the position that in all of the side-to-side relationships in dispute, removal of side windows from one property in each side-to-side relationship would largely remove any disagreement over adverse impacts.
12. The Appellant takes the position that in all of the side-to-side relationships in dispute, as a maximum, obscure glazing of these secondary side windows from at least one property in each side-to-side relationship would largely remove any disagreement over adverse impacts.

Areas of disagreement: Based on window to window relationships in Appendix 1.

13. Whether the first and second floor side windows as shown on plans without obscure glazing and no restrictions on window hanging/direction of opening or opening restriction would result in an unacceptable impact on residential amenity through loss of privacy to opposite properties.
14. Whether the Council provided the Appellant with a clear shortlist of the instances of what it considered to be unacceptable relationships prior to 12th March 2020. The Council claims that in the Officer's report, side to side relationships between windows were described as part of the residential amenity impacts. In the Council's Statement of Case it explained that it would attempt to address the extent of impacts through the Statement of Common Ground. The Council explains how this process failed in its opinion in the its planning proof of evidence (Paragraph 4.27).
15. Whether the Council could have or should have sought further information from the applicant to satisfy its concerns on first and second floor side to side window relationships during the lifespan of the planning application and thus avoid the reason for refusal.
16. The position taken by the Council that plans and documents submitted in the application and supporting the appeal did not demonstrate any physical window measures to prevent views out of the windows.
17. If point 13 does present an unacceptable impact on residential amenity, whether this could be mitigated through a condition being imposed to require obscure glazing or other measures such as window hanging/direction of opening or opening restrictions to the windows and whether the council should have considered this option before refusing on these residential amenity grounds.

Signed on behalf of Appellant	Signed on behalf of East Suffolk Council
Date 13 th March 2020	Date 12.03.20
Steven Bainbridge, Principal Planning Manager, Parker Planning Ltd. on behalf of the Appellant Capital Community Developments Ltd. 	Position Ben Woolnough Major Sites and Infrastructure Manager 

Appendix 1

The Council's position on relationships between side-to-side windows across all plots – as illustrated on the plans in Appendix 2 of the appellant's design proof of evidence.

In accordance with the Council's planning proof of evidence – paragraph 4.27:

“The Council has identified 67 side windows serving habitable rooms and landings, 5 bathroom windows which could have views across to another window. The vast majority of these will provide ability to view into opposing windows. There are 6 half moon windows and 25 rooflights which appear to be high level though floor to cill heights have not been demonstrated. The gaps between widows are between 3.5 metres and 11.5 metres, side elevation to side elevation.”

Plan No.	First floor	Second floor
A		
B1		Rooflights
B2		Rooflights
C1		Rooflights and half moon
C2		
D		Window and half moon
E		
F1		
F2		Window and half moon
F3		Window and Rooflights
G1		Rooflights and half moon
G2		
G3		Window and Rooflights
H1		
H2		
H3		Window and Rooflights
I1		Window and Rooflights
I2		Window and half moon
I3		
J1		Rooflights
J2		Rooflights

Key

Privacy impact between windows	One way downward privacy impact from 2 nd floor window to 1 st floor	No impact. Rooflights pending cill height confirmation
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Page from LPA document

The properties have a distance of 8metre between them.

North Elevation

South Elevation

Ground Floor

First Floor

Second Floor

Roof Plan

Great Glenham

Little Glenham

Both are bedroom windows.

Elevations of concern are the North elevation of the Framlingham style property and on the Glenham the South Elevation.

Appellant's response

The inset part of the site location plan to the left shows the properties are offset from each other. Had the LPA have overlaid the inset floor plans with the site layout plan then the appropriate offset angle would have been achieved. The LPA have shown the properties aligned with each other, exaggerating the level of intervisibility.

The inset elevation drawings do not have the benefit of the ground level 2m high fences. There would be limited or no intervisibility between properties at ground floor because of the fences.

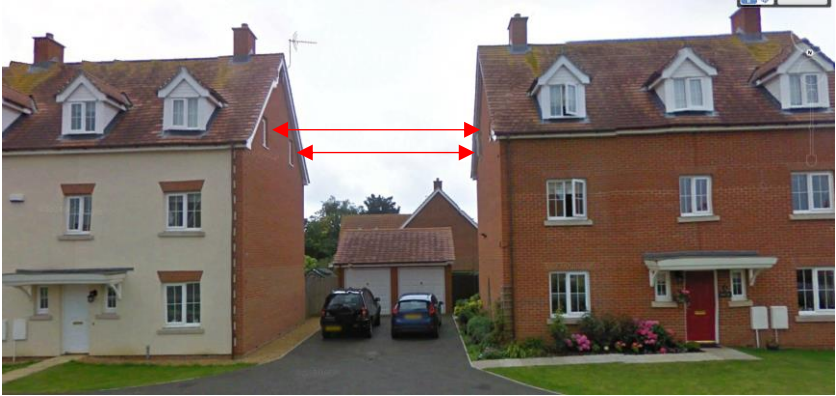
The inset plan below shows how, in reality, the intervisibility through narrow slot windows is a lot less than the LPA claim. If the Inspector is inclined to agree with the LPA than even this lessened intervisibility is an amenity impact worthy of further consideration, then it seems appropriate to consider whether obscure glazing the window would have sufficed to overcome the objection in the first place, thus negating this appeal:

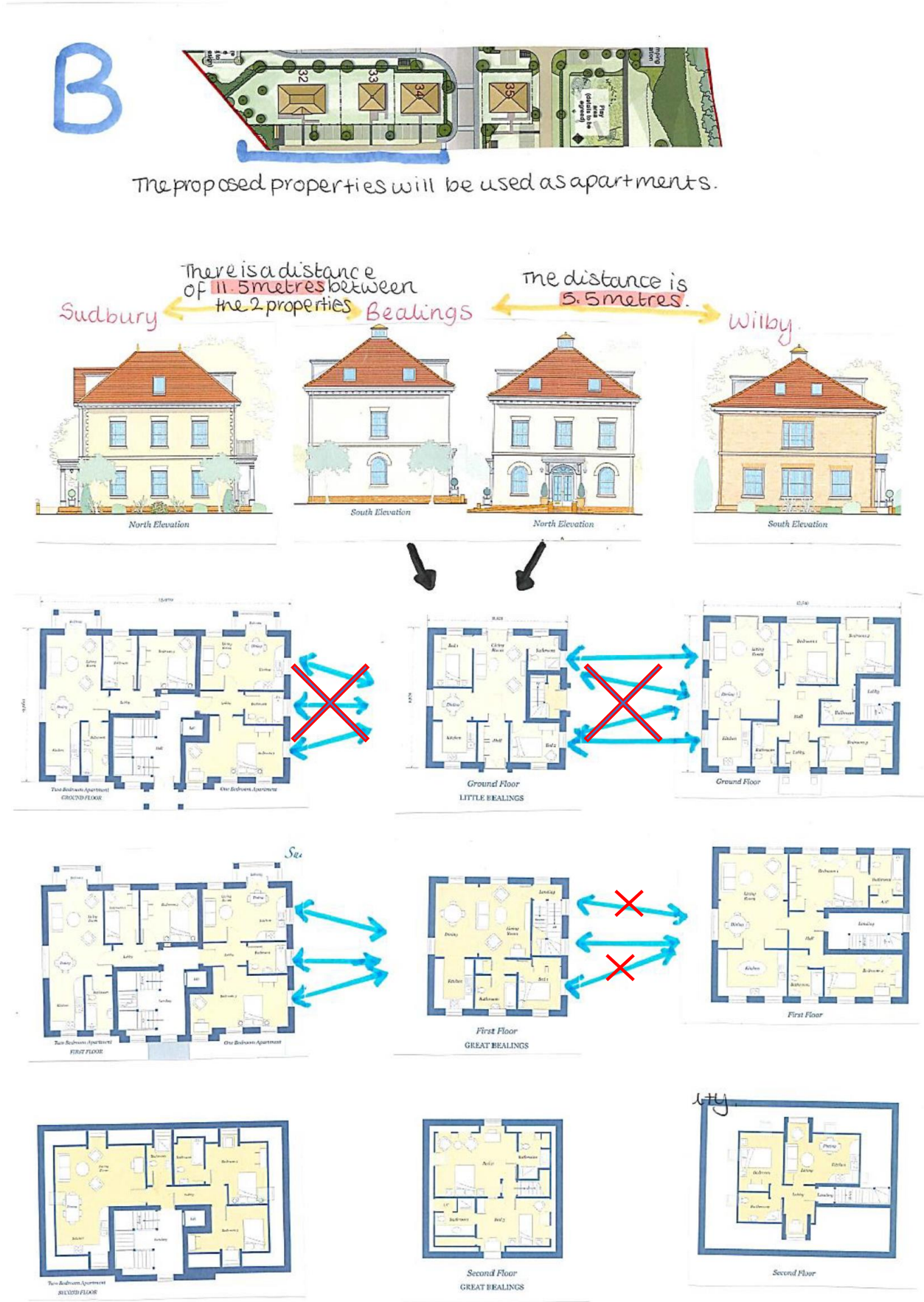
First floor:

Second floor:

The LPA diagram does not claim intervisibility above second floor level.

Elsewhere in Rendlesham (23 to 25 Knight Road) this inter-relationship between windows has been found to be acceptable by the LPA at a distance of 7.5m:



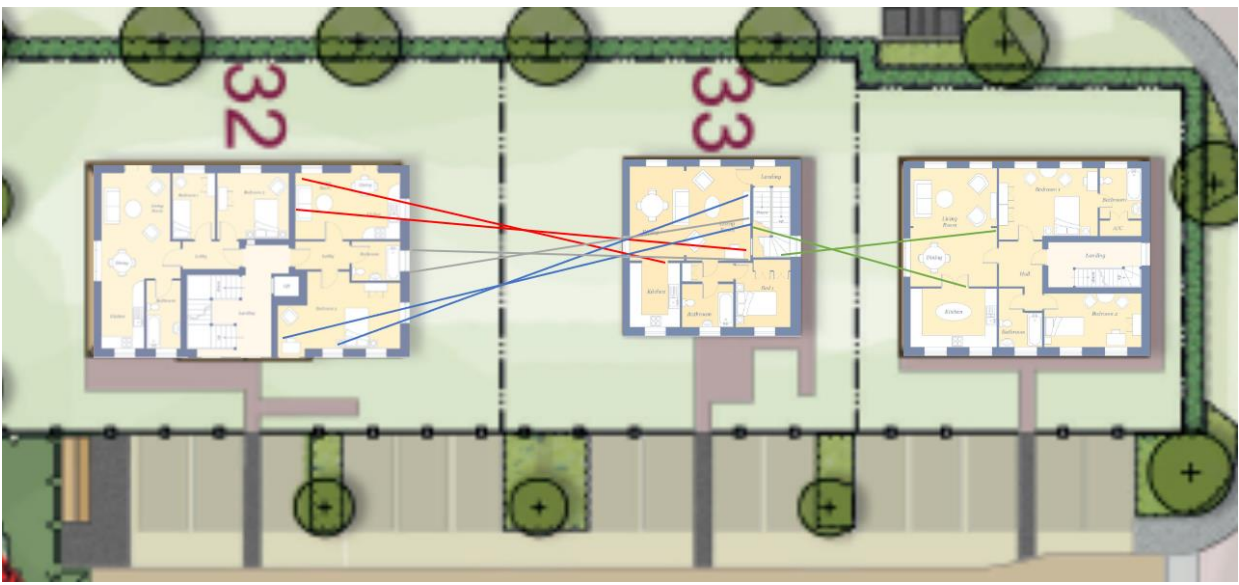


The 7x matters raised by the LPA concerning ground floor overlooking have been superseded by the LPAs Statement of Case which states:
“5.42 The appellant has submitted a review of the impacts which were identified leading to this reason for refusal. It is evident from the case officer’s report that impacts are identified in the layout which do not comply with DM23. The Council intends to defend this reason for refusal, however, a review has refined the defence of this reason to the impact on residential amenity of future residents through overlooking between properties. On balance the relationship of windows with fences, smaller gardens, front to back distances and visibility into ground floor windows are not deemed to be such adverse effects to be seen as contrary to DM23.” In addition these ground floor vies are blocked by fences.

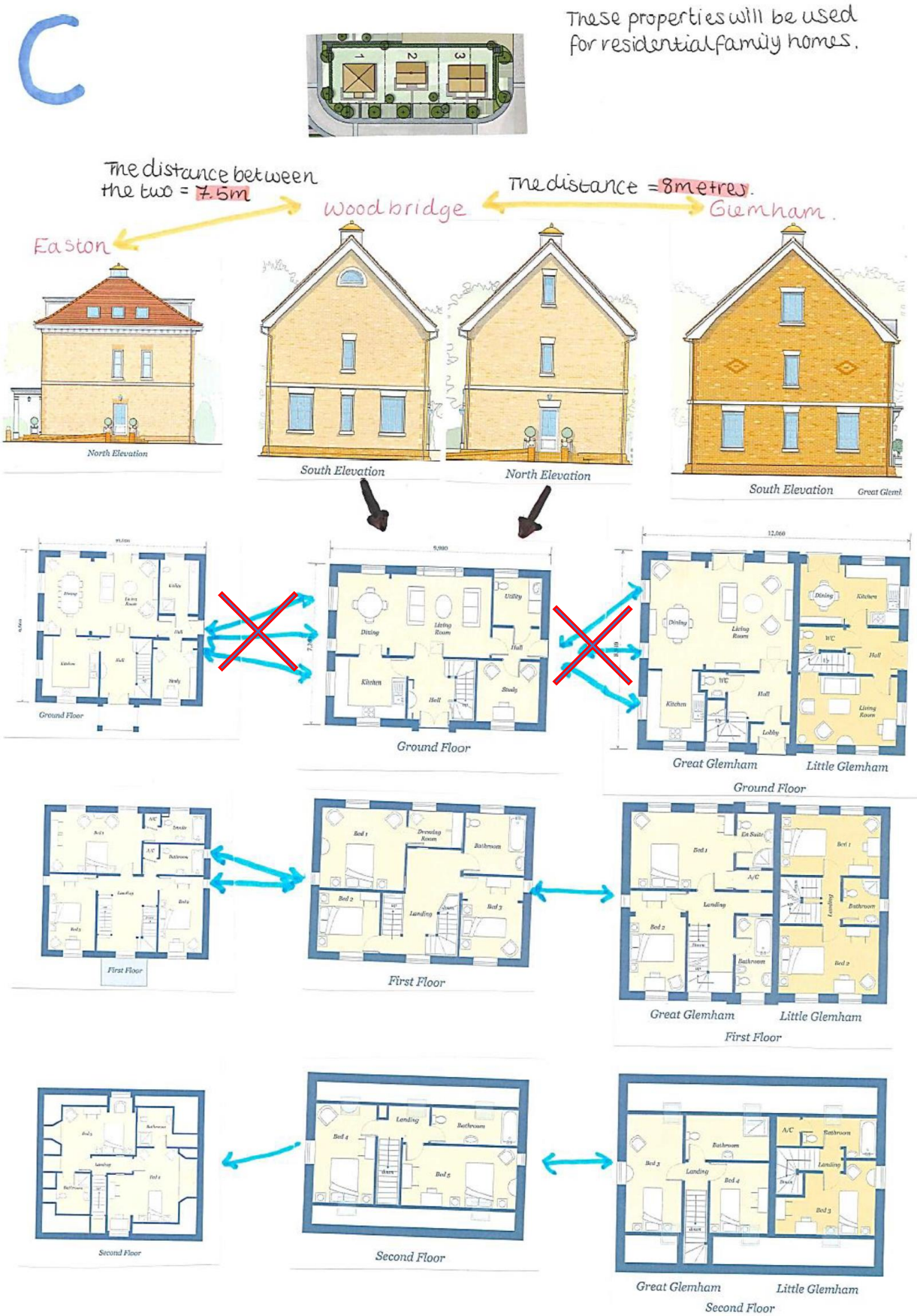
Of the 6x matters indicated at first floor on the image to the left we make the following comments:

- The 1x instance of potential overlooking between the first floor south elevation window of the Bealings building and the bathroom window of the north elevation of the Sudbury building (grey lines on inset plan below) are not possible because it should be assumed the bathroom window would be obscured glazed.
- The 1x instance of potential overlooking from the first floor south elevation windows of the Bealings building to the living room of the northern first floor elevation of the Sudbury (red lines below) would be through a relatively narrow window on the Bealings and because this is not one of the principle windows in this property it could be obscure glazed or frosted if the decision maker found it necessary to do so.
- The same is the case for the instance between the Bealings first floor southern elevation window and the Sudbury first floor northern elevation bedroom window (blue lines below); it too could be solved by obscure glazing the Bealings window.
- The 2x instances of potential overlooking between the first-floor southern elevation window in the Wilby building to the northern elevation windows of the Bealings **are only in fact 1x instance because the LPA have used the wrong floor plan for the Bealings at first floor in their evidence.** The remaining instance (green lines) is from the landing area of the Bealings and therefore is hardly an amenity issue. There are two ways to approach this if need be; to obscure glaze the Bealings stairwell window as it only serves a transitory area or narrow the window of the Wilby to reduce the angle of incidence of the view by way of a minor amendment IF the LPA or Inspector think it necessary.
- The 1x instance of potential overlooking between the Wilby first floor southern elevation window and the first floor bedroom window of the Bealings on the northern elevation is non-existent **because the LPA have used the wrong floor plan for the Bealings at first floor in their evidence.**

The LPA have used the ‘Plot 15 variant’ (left) instead of the ‘standard’ Bealings (right):



None of the 6x instances of potential first floor overlooking between the properties in ‘Area B’ on the LPAs drawing cannot be dealt with by way of simple planning controls and should have been the subject of requests for information from the LPA during the course of the planning application. The appellant is content that the solutions listed above be condition if the Inspector considers it necessary to do so.

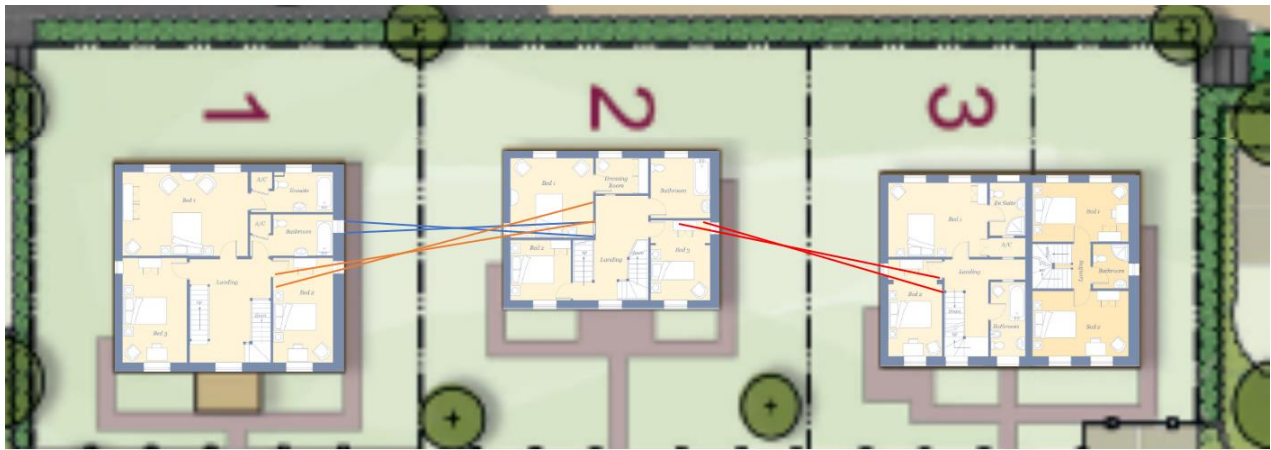


The 6x matters raised by the LPA concerning ground floor overlooking have been superseded by the LPAs Statement of Case which as dropped its stance on visibility into ground floor windows". In addition, these ground floor views are blocked by fences.

The inset part of the site location plan to the left shows the properties are offset from each other. Had the LPA have overlaid the inset floor plans with the site layout plan then the appropriate offset angle would have been achieved. The LPA have shown the properties aligned with each other, exaggerating the level of intervisibility.

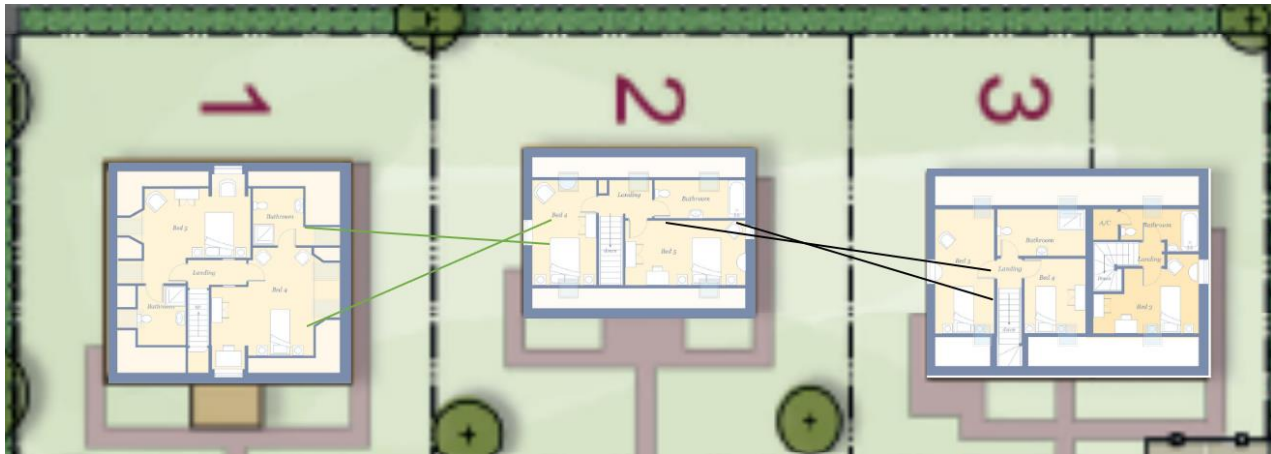
Of the 3x instances of potential overlooking indicated by the LPA at the first floor level we make the following comments:

- The 1x instance of potential overlooking between the bathroom window at first floor in the Easton and the Woodbridge (blue lines) should have been assumed by the LPA to be resolved by the inserted of obscure glazing by condition.
- The 1x instance of potential overlooking between the first floor northern elevation bedroom of the Easton and the first floor southern elevation bedroom of the Woodbridge (orange lines) is at an obscure angle not accurately represented by the LPA in their evidence. If the Inspector considers it necessary, either of the windows could be obscure glazed.
- The 1x instance of potential overlooking between the first floor northern elevation bedroom window of the Woodbridge and the first floor southern elevation bedroom window of the Glenham (red lines) is at a very obscure angle not accurately represented by the LPA in their evidence. If the Inspector considers it necessary, either of the windows could be obscure glazed.



Of the 2x instances of potential overlooking indicated by the LPA at the second floor level we make the following comments:

- The potential view from plot 3 (Glenham) at second floor level is via a half-moon window with a 1.7m cill height and a such is unlikely to afford significant views that would cause an unacceptable loss of residential amenity.
- The 1x instance of potential overlooking between the second floor northern elevation bedroom window of the Woodbridge and the second floor southern elevation bedroom window of the Glenham is highly unlikely because of the obscure angle which means there is a very small area of the bedroom space in the Woodbridge in which someone would have to be standing to cause a problem.



None of the 11 instances of potential overlooking in the LPAs 'Area C' of its evidence bear scrutiny.



The 3x matters raised by the LPA concerning ground floor overlooking have been superseded by the LPAs Statement of Case which as dropped its stance on visibility into ground floor windows". In addition, these ground floor views are blocked by fences.

The inset part of the site location plan to the left shows the properties are offset from each other. Had the LPA have overlaid the inset floor plans with the site layout plan then the appropriate offset angle would have been achieved. The LPA have shown the properties aligned with each other, exaggerating the level of intervisibility.

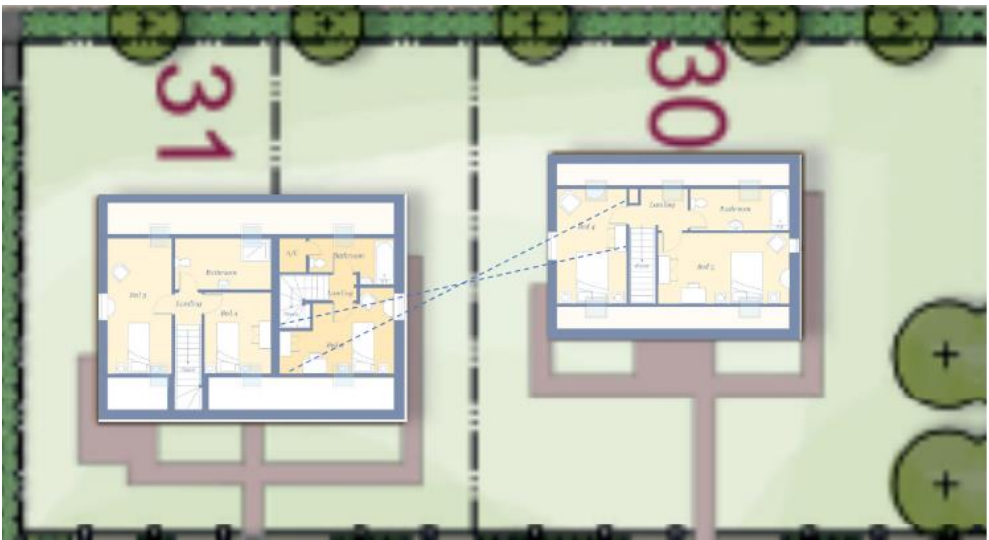
Of the 1x instance of potential overlooking indicated by the LPA at the first floor level we make the following comments:

- The instance which the LPA allude to is to a bathroom window which their own document appears to acknowledge would be obscure glazed.

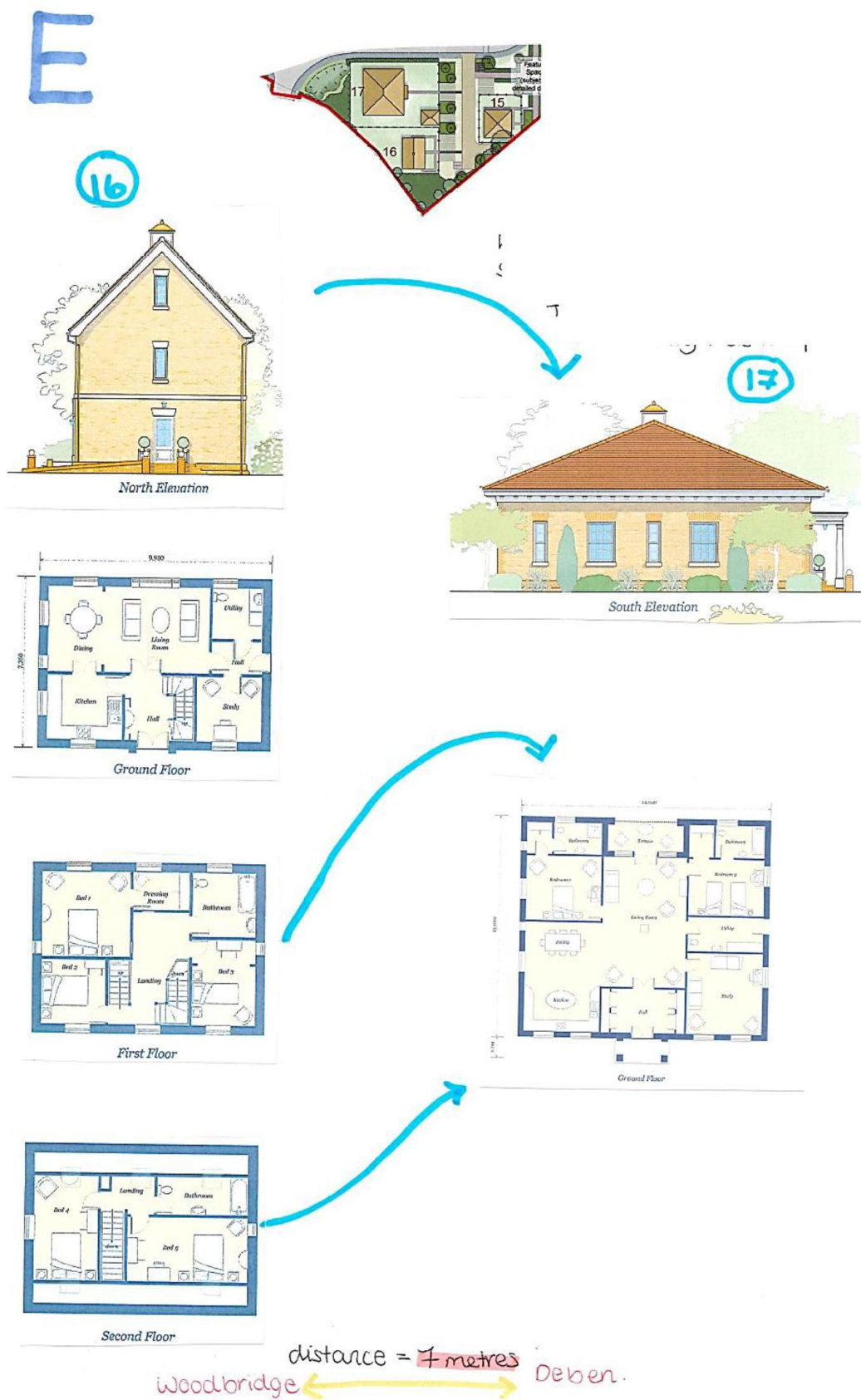


Of the 1x instance of potential overlooking indicated by the LPA at the second floor level we make the following comments:

- The potential view from plot 31 (Glemham) at second floor level is via a half-moon window with a 1.7m cill height and a such is unlikely to afford significant views that would cause an unacceptable loss of residential amenity.



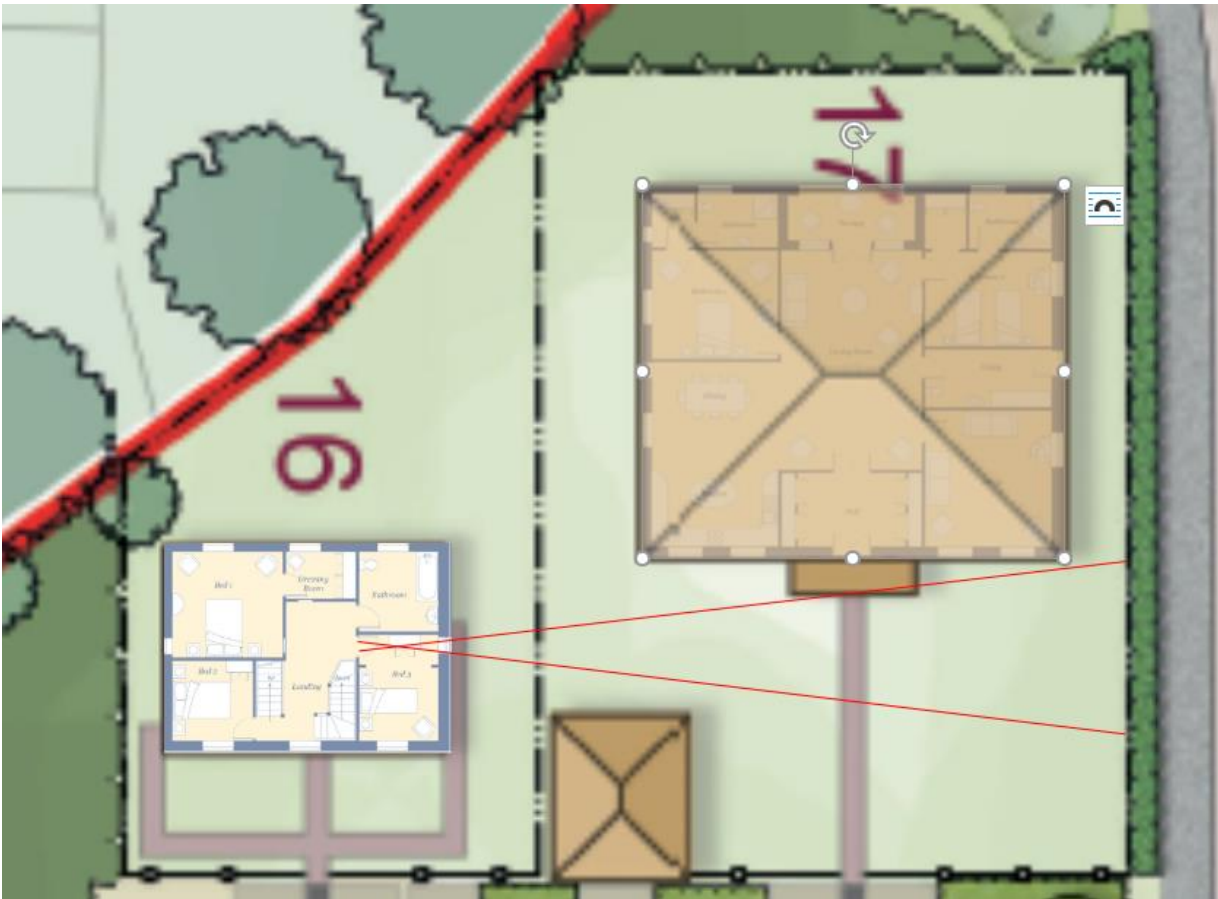
Neither of the two issues which the LPA use in evidence bear scrutiny.



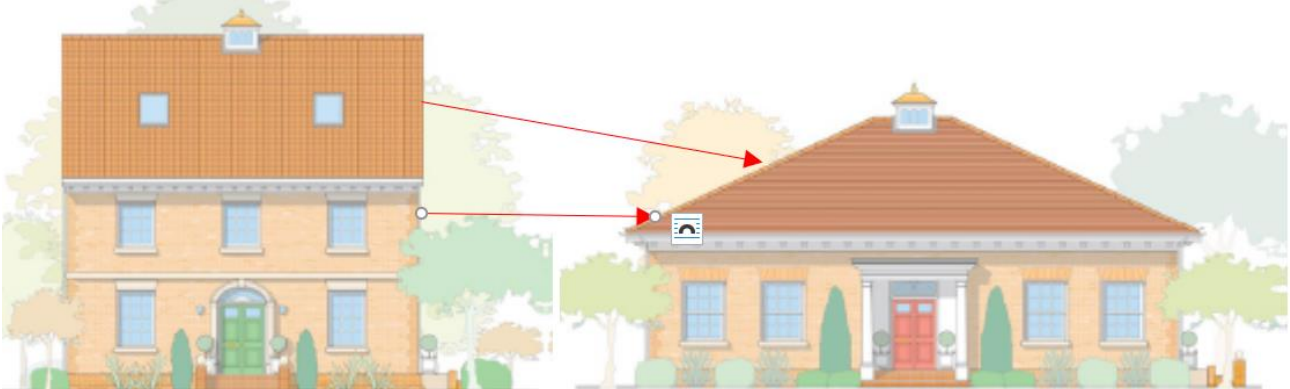
The inset part of the site location plan to the left shows the properties are offset from each other. Had the LPA have overlaid the inset floor plans with the site layout plan then the appropriate offset angle would have been achieved. The LPA have shown the properties aligned with each other, exaggerating the level of intervisibility.

It is completely unclear what issues the LPA has in their 'Area E'.

As can be seen below the view from the first and second floor northern elevations windows of the Woodbridge through the narrow slot windows pass by the front of the Deben Bungalow:

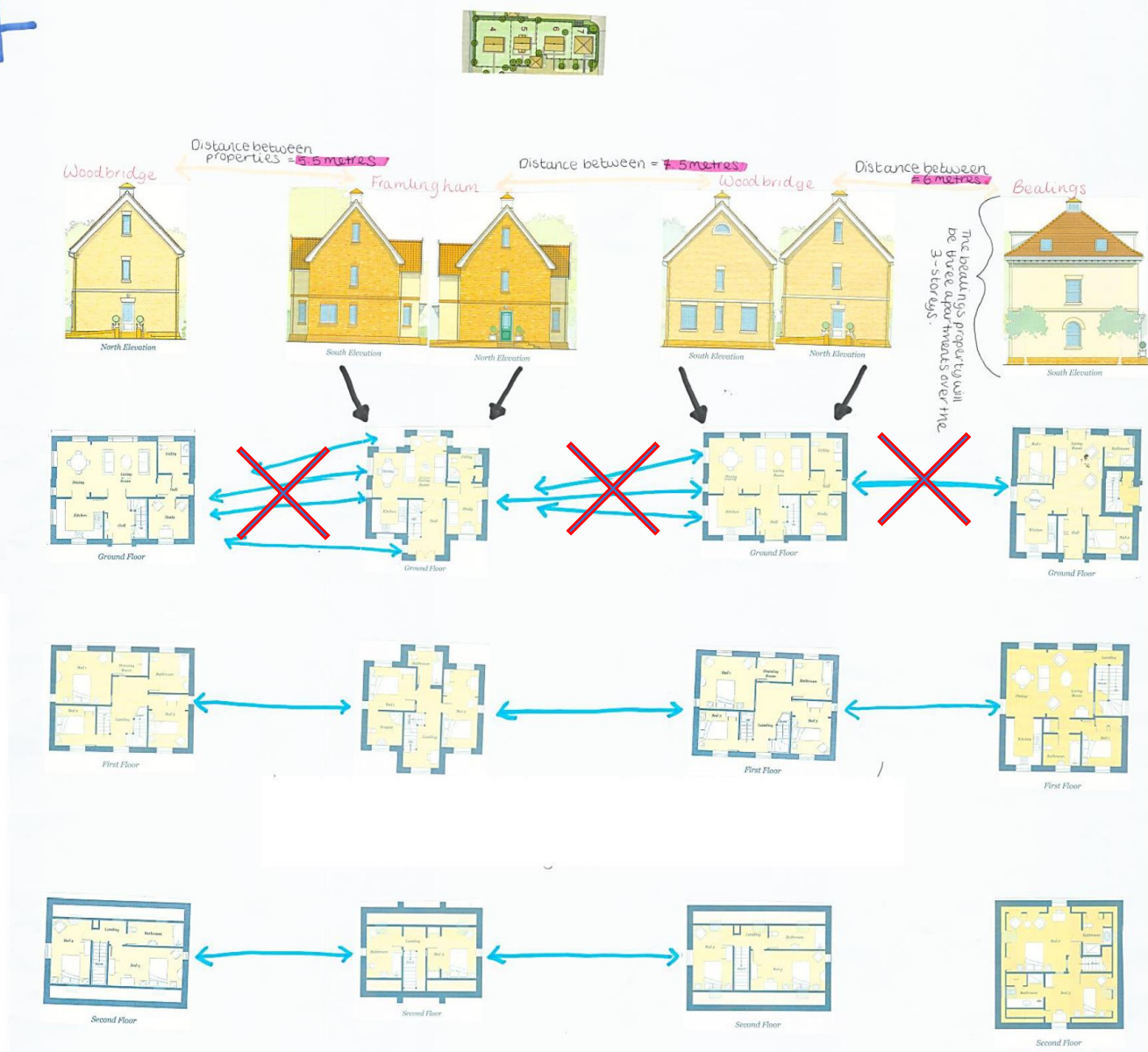


If the LPA is attempting to show that the Woodbridge somehow dominates or overlooks the Deben then, as with the other example areas above, they have failed to understand that the two properties are offset from each other. Therefore, from the Woodbridge windows at first and second floor on the northern elevation, even if viewed from a very obscure angle, the only real view is of the bungalow's roof.



Whilst it is wholly unclear what issues the LPA is trying to highlight here; the fact remains that the properties have not been properly aligned. The occupants of the Woodbridge cannot see around corners.

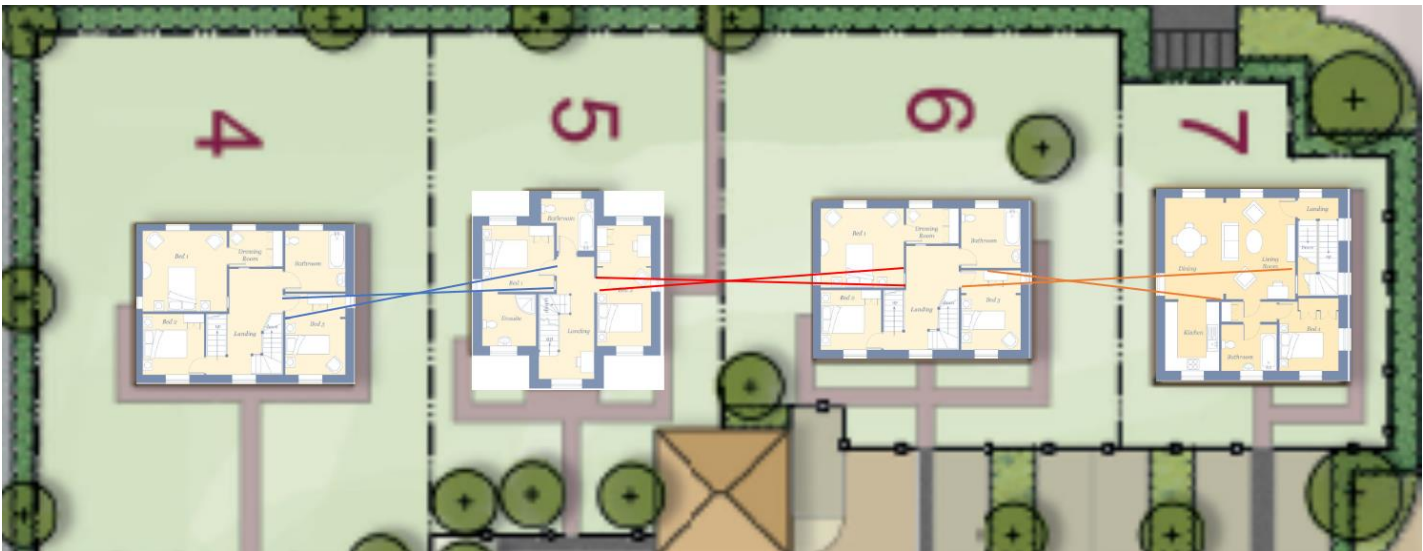
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The 8x matters raised by the LPA concerning ground floor overlooking have been superseded by the LPAs Statement of Case which as dropped its stance on visibility into ground floor windows". In addition, these ground floor views are blocked by fences.

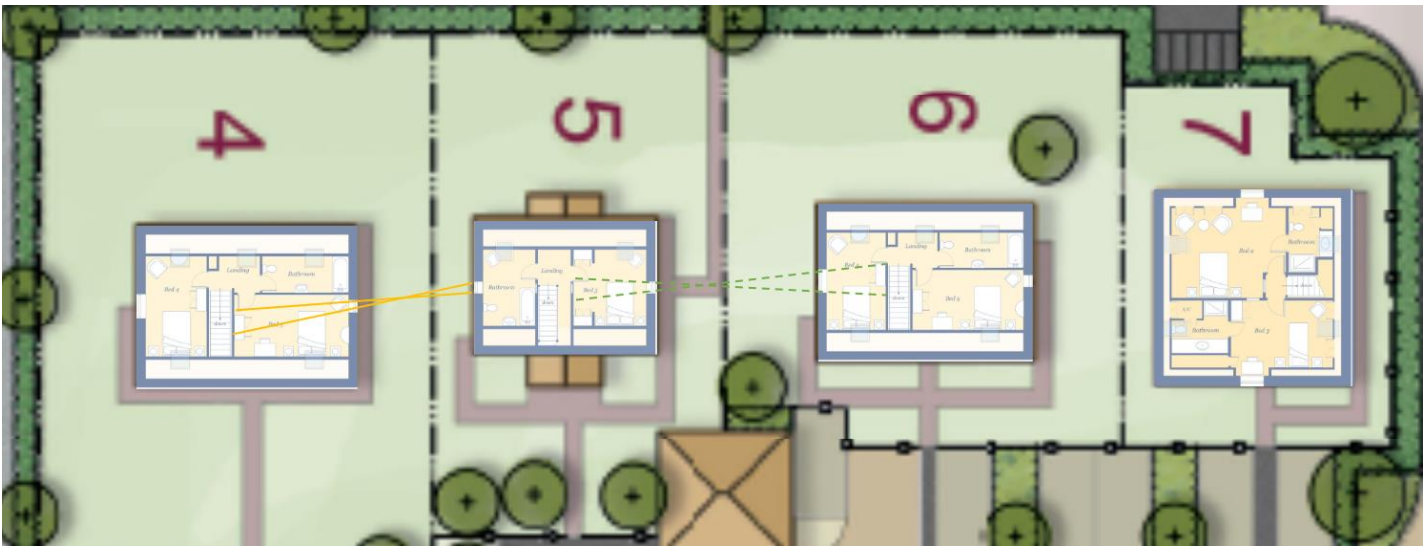
Of the 3x first floor inter-relationships between the various properties below the following comments are generic to all:

- The angles are very tight because the windows are narrow, therefore the actual proportion of the rooms in which any views might be possible is very small.
- The windows are narrow and are not the principle windows and thus could have been obscure glazed had the LPA have requested this.

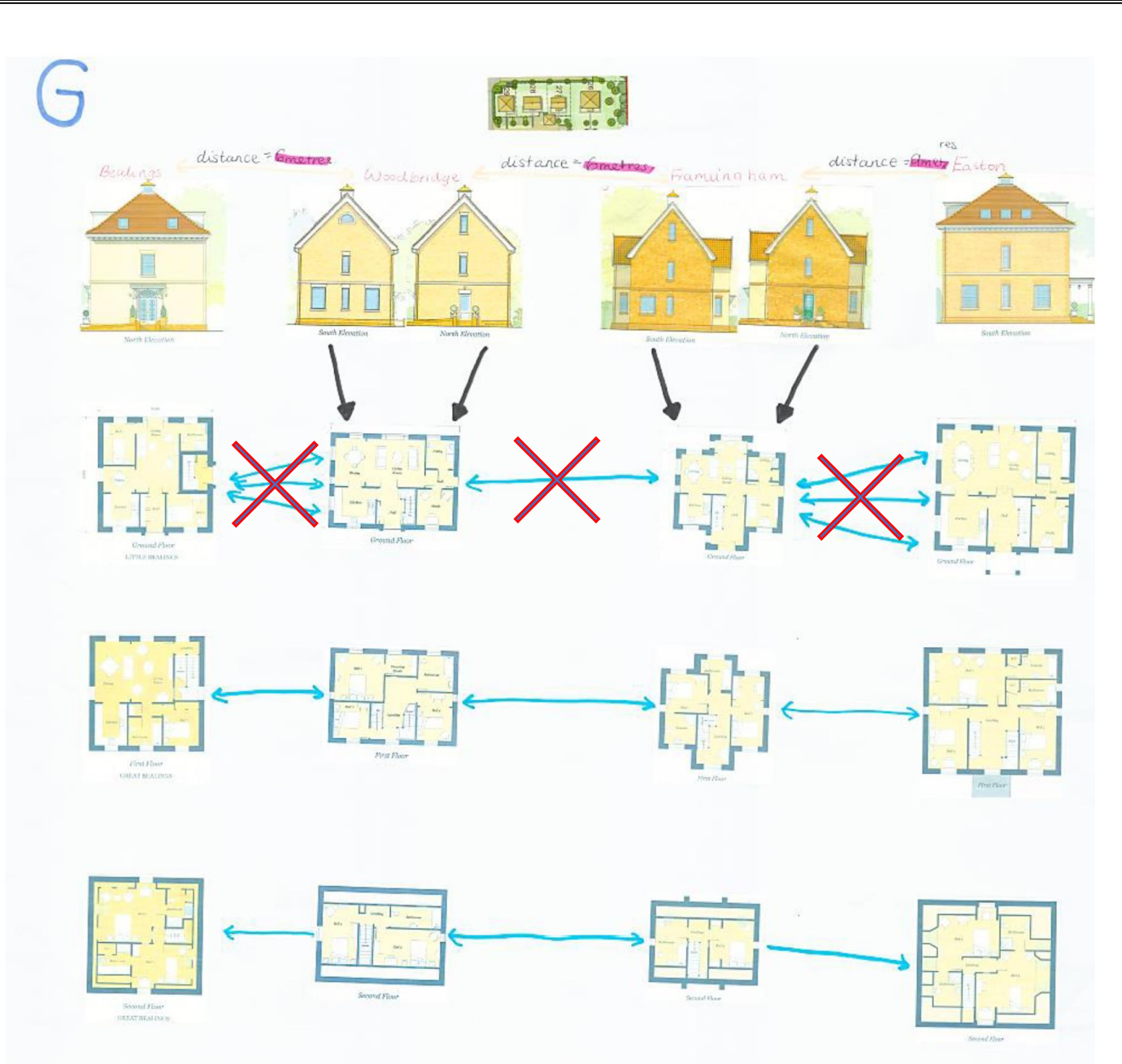


Of the 2x second floor inter-relationships which the LPA refer to in their evidence, we have the following comments:

- The relationship between Plot 4 (Woodbridge) and Plot 5 (Framlingham) is acceptable because the northern elevation window at first floor in the Woodbridge is a bathroom and should have been assumed by the LPA to be obscure glazed.
- As set out in other examples above the 1x potential overlooking between plots 5 (Framlingham) and 6 (Woodbridge) is acceptable of the near impossible likelihood of a person standing in the second floor bedroom of the Woodbridge and being able to look over the lip of the above-head height window in the southern elevation of the Woodbridge (green dashed lines).



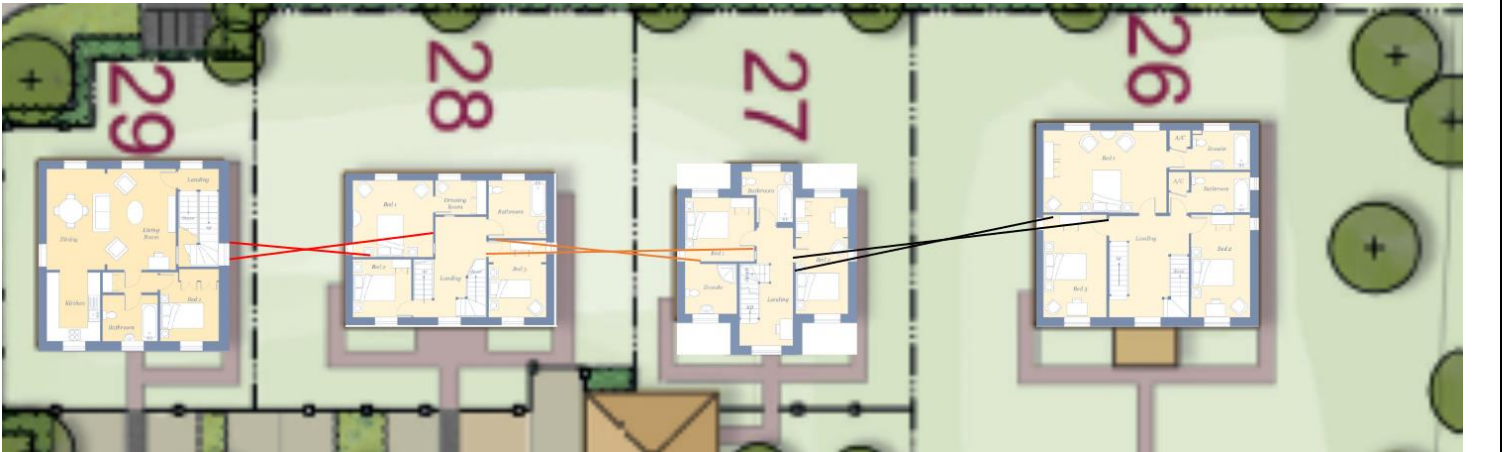
None of the 13x inter-relationships referred to in the LPAs evidence stand up to scrutiny. There are no overlooking issues which either 'trip' planning policy or cannot otherwise be overcome with simple planning controls.



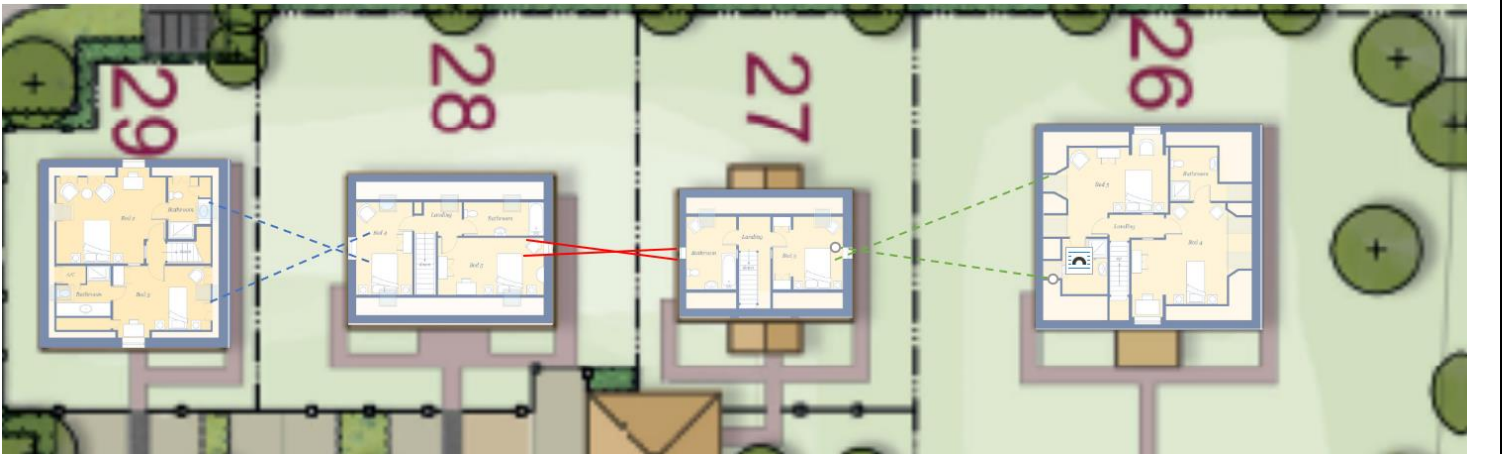
The 7x matters raised by the LPA concerning ground floor overlooking have been superseded by the LPAs Statement of Case which as dropped its stance on visibility into ground floor windows”. In addition, these ground floor views are blocked by fences.

The inset part of the site location plan to the left shows the properties are offset from each other. Had the LPA have overlaid the inset floor plans with the site layout plan then the appropriate offset angle would have been achieved. The LPA have shown the properties aligned with each other, exaggerating the level of intervisibility.

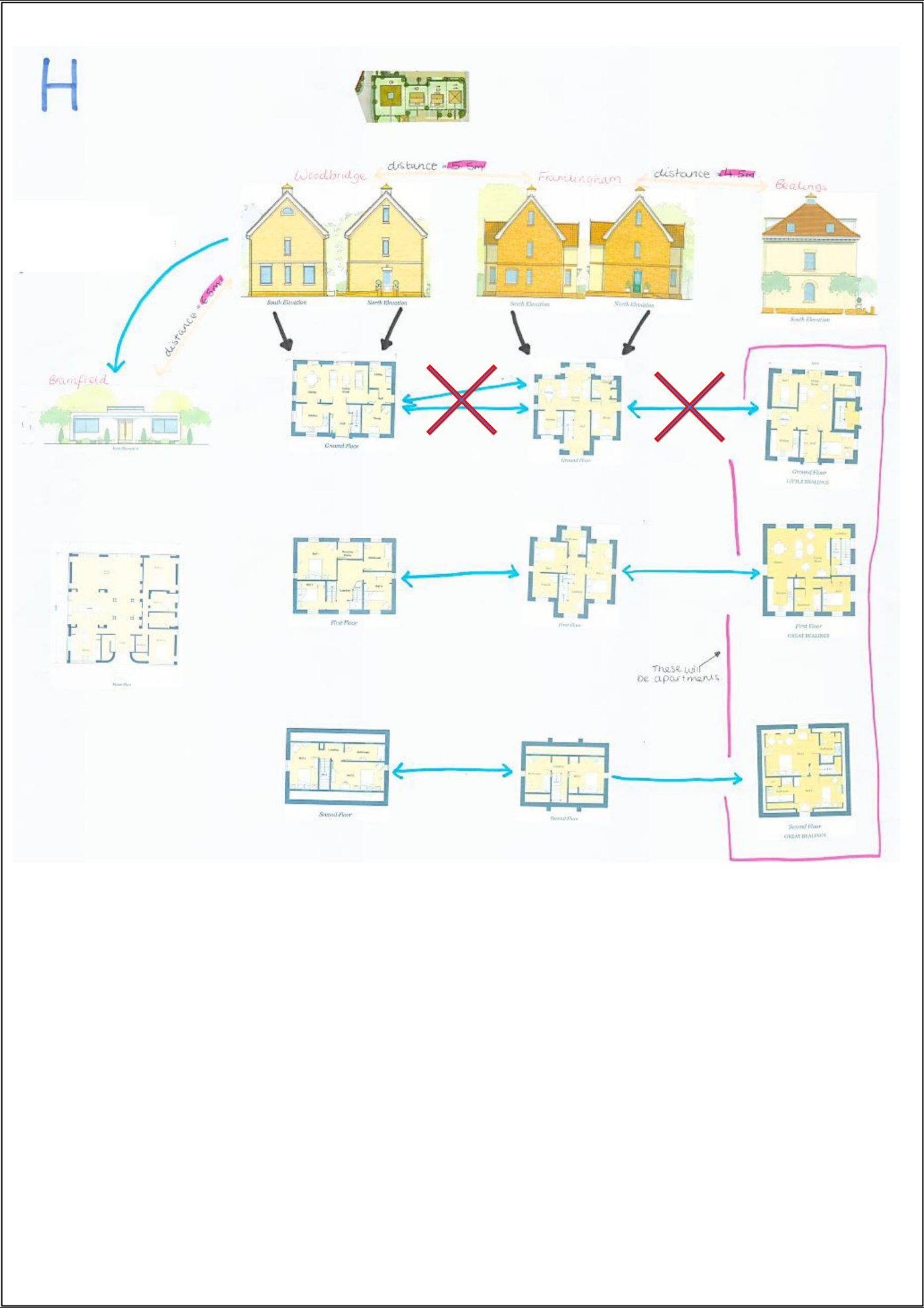
- Of the 3x potential examples of first floor level overlooking which the LPA have alluded to, we make the following comments:
- The 1x instance between plot 29 (Bealings) and plot 28 (Woodbridge) is between a window over a stairwell to a narrow bedroom window (red lines below). The bedroom window in the Woodbridge could be obscure glazed if need be.
 - The 1x instance between plot 28 (Woodbridge) and plot 27 (Framlingham) is between two narrow slot windows (orange lines below) which, not being principle windows, could easily be obscure glazed.
 - The 1x instance between plot 27 (Framlingham) and plot 26 (Easton) is over a distance of some 9 metres (black lines below) and is between two narrow slot windows and only offer views of the bedroom wall of the south elevation first floor bedroom to plot 26. Either window could be obscure glazed if the LPA or Inspector thought it justified.



- Of the 3x potential examples of second floor overlooking which the LPA point to in their ‘Area G’, we make the following comments:
- The relationship between plot 29 (Bealings) and plot 28 (Woodbridge) is unlikely to have an adverse amenity impact because the likelihood of a person standing in the second floor bedroom of the Woodbridge and being able to look over the lip of the above-head height arched window in the southern elevation of the Woodbridge is very low (blue lines below).
 - The 1x instance of potential overlooking between plot 28 (Woodbridge) and plot 27 (Framlingham) is non-existent because the LPA should have assumed the bathroom window in the Framlingham would be obscure glazed.
 - The 1x instance of potential overlooking between plot 27 (Framlingham) and plot 26 (Easton) is over a distance of some 9 metres (green dashed lines below) and is to three rooflights; one of which is to a bathroom and should have been assumed by the LPA to be obscure glazed. The other two rooflights are at an obscure angle not well represented in the LPAs evidence’ they too could be obscure glazed IF the LPA or Inspector felt it justified.



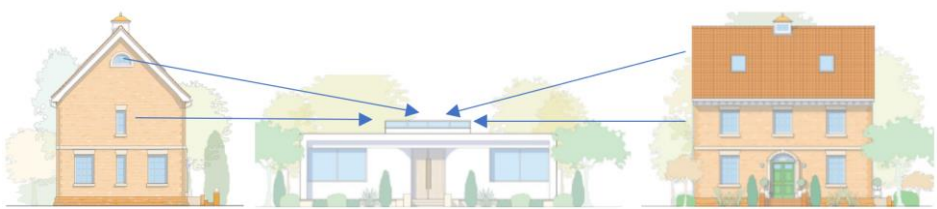
None of the 13x examples provided in the LPAs evidence are justified or cannot be easily dealt with by simple planning controls.



The 3x matters raised by the LPA concerning ground floor overlooking have been superseded by the LPAs Statement of Case which as dropped its stance on visibility into ground floor windows". In addition, these ground floor views are blocked by fences. The inset part of the site location plan to the left shows the properties are offset from each other. Had the LPA have overlaid the inset floor plans with the site layout plan then the appropriate offset angle would have been achieved. The LPA have shown the properties aligned with each other, exaggerating the level of intervisibility.

In relation to the 1x instance of potential overlooking from plot 9 to plot 8 we have the following comments:

- The potential view from plot 9 (Woodbridge) at first floor level is non-existent because it is at the same level as the skylight.
- The potential view from plot 9 (Woodbridge) at second floor level is via a half-moon window with a 1.7m cill height and therefore only offers a view over the top of the bungalow at plot 8 from a very limited area within the southern elevation bedroom of plot 9. In addition, the potential view to the skylight of the Bramfield is at a low angle of incidence giving limited visibility through the skylight which may be effectively blocked by glare on the glass at that angle. In any event, obscure glazing the second floor half-moon window in the Woodbridge would completely rule out any issue in this relationship and the LPA should have investigated this during the planning application. We have shown this below by placing the Woodbridge arbitrarily either side of the Bramfield to illustrate the point:



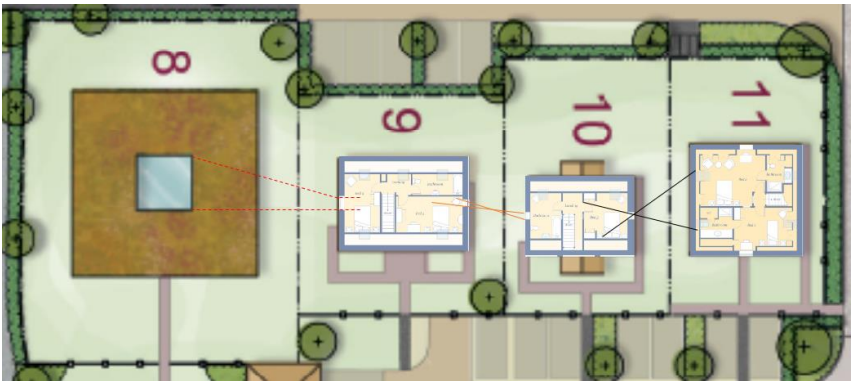
In relation to the 2x instances of potential overlooking at first floor we make the following comments:

- The views between plot 9 (Woodbridge) and plot 10 (Framlingham) are only possible through narrow slot windows from very small areas of the bedrooms. If necessary, this could have been overcome through the provision of obscure glazing to windows and the LPA should have considered this.
- The views between plot 10 (Framlingham) and plot 11 (Bealings) are at a more obscure angle than the LPA evidence shows. The window in the Bealings is a narrow slot window that could be obscure glazed if the LPA considered it necessary.

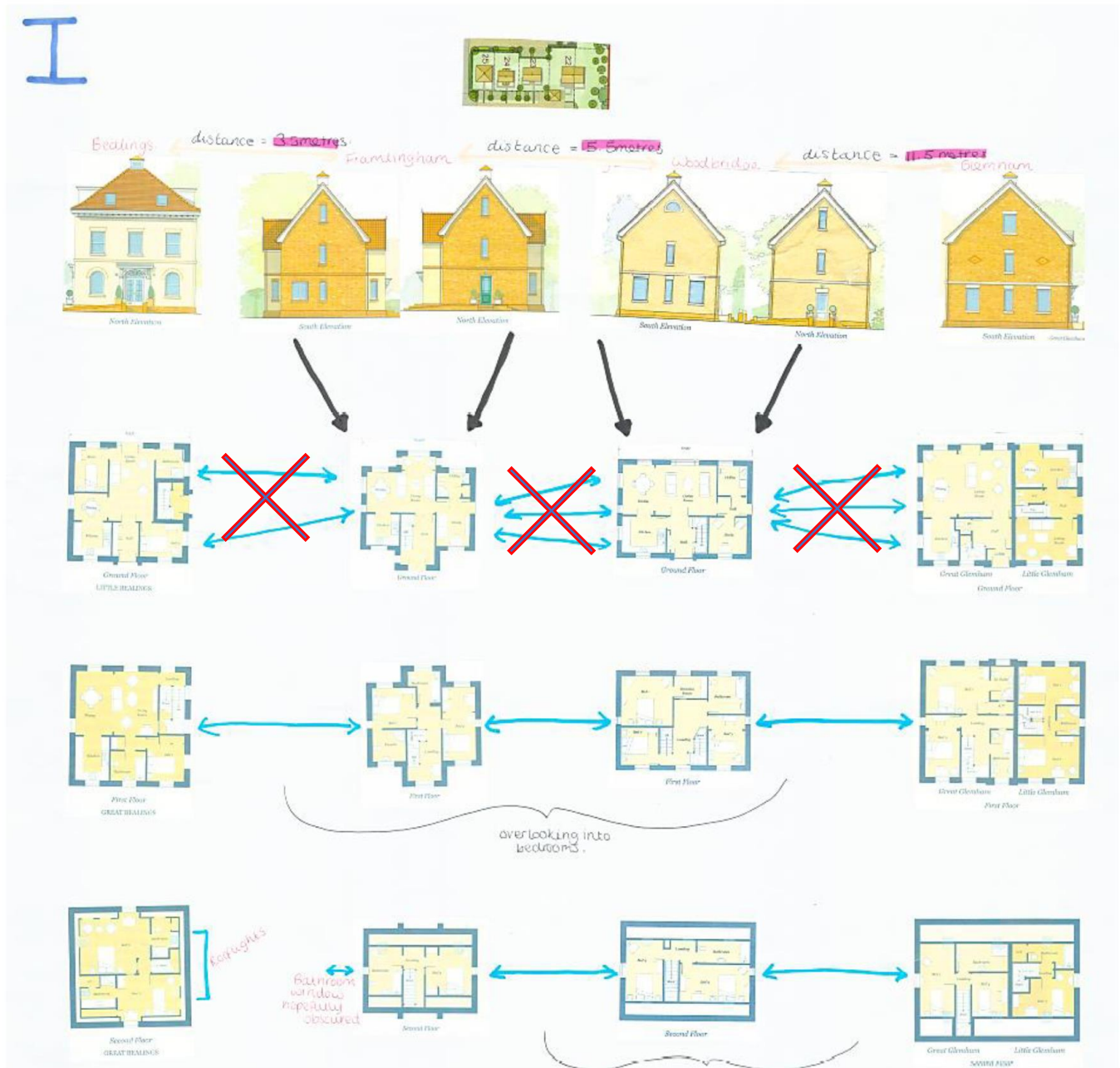


In relation to the 2x instances of potential overlooking at second floor we make the following comments:

- The view from plot 9 (Woodbridge) to plot 10 (Framlingham) is to a bathroom in the Framlingham and as such the LPA should have assumed the window would be obscure glazed.
- The view from plot 10 (Framlingham) to plot 11 (Bealings) is from a narrow slot window at an obscure angle to rooflights in the Bealings; one of which is to a bathroom and as such should have been assumed to be obscure glazed. The remaining rooflight is related at such an extreme angle that direct views are potentially impossible.



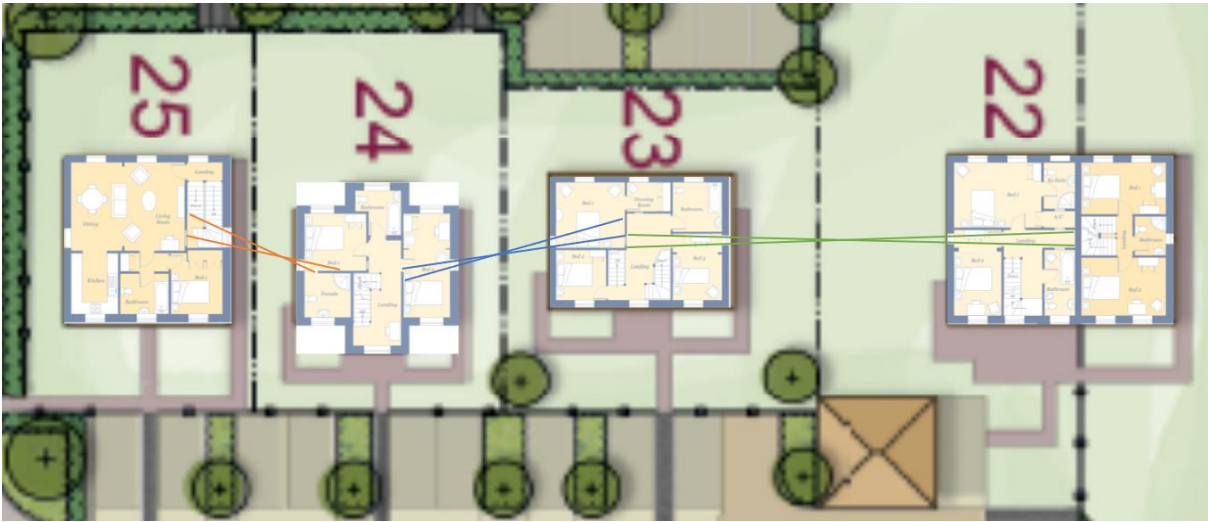
None of the 8x examples provided in the LPAs evidence are justified or cannot be easily dealt with by simple planning controls



The 3x matters raised by the LPA concerning ground floor overlooking have been superseded by the LPAs Statement of Case which as dropped its stance on visibility into ground floor windows". In addition, these ground floor views are blocked by fences. The inset part of the site location plan to the left shows the properties are offset from each other. Had the LPA have overlaid the inset floor plans with the site layout plan then the appropriate offset angle would have been achieved. The LPA have shown the properties aligned with each other, exaggerating the level of intervisibility.

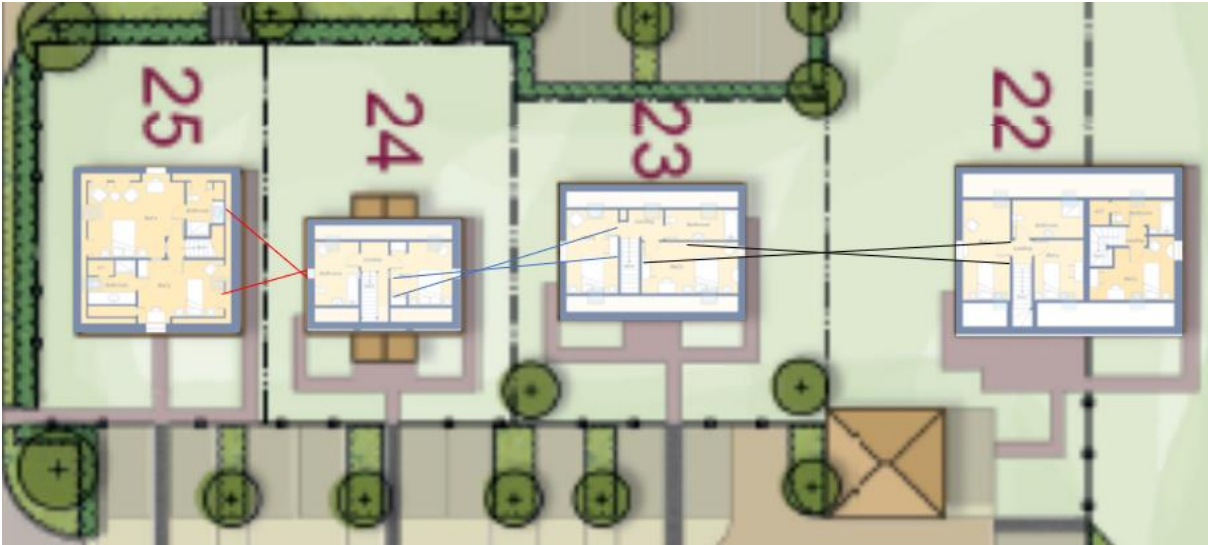
In relation to the 3x instances of potential overlooking at first floor we make the following comments:

- The view from plot 25 (Bealings) and plot 24 (Framlingham) is at an extreme angle and through a narrow slot window in the first floor bedroom of plot 24. If the LPA had considered it necessary, the window could have been obscure glazed.
- The view from plot 24 (Framlingham) to plot 23 (Woodbridge) is between two narrow slot windows which are offset from each other at an angle. If the LPA thought it justified it could have required either of the windows to be obscure glazed.
- The view from plot 23 (Woodbridge) to plot 22 (Glemham) is 11.5m and between narrow slot windows. The affected rooms are landings and therefore unlikely to be adversely affected in terms of amenity.



In relation to the 3x instances of potential overlooking at second floor we make the following comments:

- The view between plot 25 (Bealings) and plot 24 (Framlingham) is to a bathroom window in the Framlingham and as such the LPA should have assumed the window would be obscure glazed.
- The view between plot 24 (Framlingham) and plot 23 (Woodbridge) is between a narrow slot window and is at an obscure angle. The first floor bedroom northern elevation window of the Framlingham could have been obscure glazed if the LPA thought it necessary.
- The view from plot 23 (Woodbridge) to plot 22 (Glemham) is 11.5m and between a narrow slot window and a half-moon window with a 1.7m cill height and therefore unlikely to be adversely affected in terms of amenity. If the LPA had justifiable concerns either window could have been obscure glazed.



None of the 8x examples provided in the LPAs evidence are justified or cannot be easily dealt with by simple planning controls

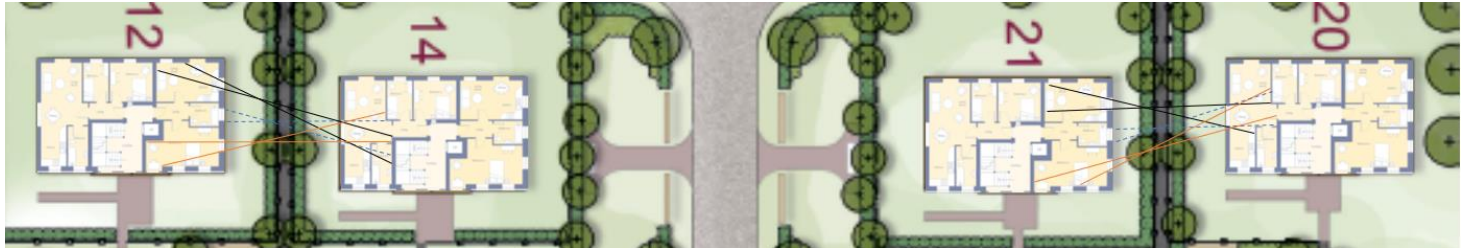


The 6x matters raised by the LPA concerning ground floor overlooking have been superseded by the LPAs Statement of Case which as dropped its stance on visibility into ground floor windows". In addition, these ground floor views are blocked by fences.

The inset part of the site location plan to the left shows the properties are offset from each other. Had the LPA have overlaid the inset floor plans with the site layout plan then the appropriate offset angle would have been achieved. The LPA have shown the properties aligned with each other, exaggerating the level of intervisibility.

In relation to the 6x instances of potential overlooking at first floor we make the following comments:

- The blue dashed lines represent views to bathroom windows and as such the LPA should have assumed these would be obscure glazed.
- The black and orange lines represent views over 10m and to non-principle windows which could have been obscure glazed if the LPA thought it was justified over a distance of 10m.



In relation to the 2x instances of potential overlooking at second floor we make the following comments:

- The views are between rooflights at a distance of 10m. The rooflights could have been controlled to be non-opening or obscure glazed if the LPA had considered the matter and considered it justified to do so.



None of the 14x examples provided in the LPAs evidence are justified or cannot be easily dealt with by simple planning controls