

committee agenda



**Epping Forest
District Council**

District Development Control Committee Wednesday, 11th April, 2012

Place: Council Chamber, Civic Offices, High Street, Epping

Time: 7.30 pm

Democratic Services Officer: Simon Hill, The Office of the Chief Executive
Tel: 01992 564249 Email:
democraticservices@eppingforestdc.gov.uk

Members:

Councillors B Sandler (Chairman), R Bassett (Vice-Chairman), A Boyce, K Chana, D Dodeja, C Finn, J Hart, Mrs S Jones, J Markham, J Philip, Mrs C Pond, H Ulkun, Ms S Watson, J M Whitehouse and J Wyatt

A BRIEFING WILL BE HELD FOR THE CHAIRMAN, VICE-CHAIRMAN AND GROUP SPOKESPERSONS OF THE-COMMITTEE, AT 6.30 P.M. IN COMMITTEE ROOM 1 PRIOR TO THE MEETING

SUBSTITUTE NOMINATION DEADLINE:

18:30

1. WEBCASTING INTRODUCTION

1. This meeting is to be webcast. Members are reminded of the need to activate their microphones before speaking.

2. The Chief Executive will read the following announcement:

“This meeting will be webcast live to the Internet and will be archived for later viewing. Copies of recordings may be made available on request.

By entering the chamber's lower seating area you consent to becoming part of the webcast.

If you wish to avoid being filmed you should move to the public gallery or speak to the webcasting officer"

2. ADVICE TO PUBLIC AND SPEAKERS AT COUNCIL PLANNING SUBCOMMITTEES (Pages 5 - 6)

General advice to people attending the meeting is attached together with a plan showing the location of the meeting.

3. APOLOGIES FOR ABSENCE

4. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

(Assistant to the Chief Executive) To report the appointment of any substitute members for the meeting.

5. DECLARATIONS OF INTEREST

(Assistant to the Chief Executive) To declare interests in any item on this agenda.

6. MINUTES (Pages 7 - 26)

To confirm the minutes of the meetings of the Committee held on 14 and 27 February 2012 (attached).

7. PLANNING APPLICATION EPF/2300/11 - BROOKSIDE GARAGE, GRAVEL LANE, CHIGWELL IG7 6DQ - ERECTION OF REPLACEMENT WORKSHOP AND RESURFACING EXISTING YARD (Pages 27 - 36)

(Director of Planning and Economic Development) – To consider the attached report.

8. PLANNING APPLICATION EPF/1399/09- GARDEN CENTRE, 212 MANOR ROAD, CHIGWELL - OUTLINE PLANNING APPLICATION FOR 69 RESIDENTIAL UNITS (54 AFFORDABLE), PUBLIC OPEN SPACE AND A COMMUNITY FACILITY (D1 USE) WITH ALL MATTERS RESERVED EXCEPT ACCESS. (Pages 37 - 52)

(Director of Planning and Economic Development) To consider the attached report.

9. PLANNING APPLICATION EPF/2361/09 – REDEVELOPMENT OF LAND FORMERLY IN USE AS A GARDEN CENTRE AT 212 MANOR ROAD, CHIGWELL TO PROVIDE 21 FLATS 80% OF WHICH WILL BE AFFORDABLE HOUSING. (REVISED APPLICATION) (Pages 53 - 68)

(Head of Planning and Economic Development) To consider the attached report.

10. ROADSIDE HOUSE, AVENUE ROAD, DOBBS WEIR, NAZEING - DIRECT ACTION (Pages 69 - 72)

(Director of Planning and Economic Development) To consider the attached report.

11. ANY OTHER BUSINESS

Section 100B(4)(b) of the Local Government Act 1972, together with paragraphs 6 and 25 of the Council Procedure Rules contained in the Constitution requires that the permission of the Chairman be obtained, after prior notice to the Chief Executive, before urgent business not specified in the agenda (including a supplementary agenda of which the statutory period of notice has been given) may be transacted.

In accordance with Operational Standing Order 6 (non-executive bodies), any item raised by a non-member shall require the support of a member of the Committee concerned and the Chairman of that Committee. Two weeks' notice of non-urgent items is required.

12. EXCLUSION OF PUBLIC AND PRESS

Exclusion: To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the following paragraph(s) of Part 1 of Schedule 12A of the Act (as amended) or are confidential under Section 100(A)(2):

Agenda Item No	Subject	Exempt Information Paragraph Number
Nil	Nil	Nil

The Local Government (Access to Information) (Variation) Order 2006, which came into effect on 1 March 2006, requires the Council to consider whether maintaining the exemption listed above outweighs the potential public interest in disclosing the information. Any member who considers that this test should be applied to any currently exempted matter on this agenda should contact the proper officer at least 24 hours prior to the meeting.

Confidential Items Commencement: Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

Background Papers: Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and

- (b) have been relied on to a material extent in preparing the report and does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

Advice to Public and Speakers at Council Planning Subcommittees

Are the meetings open to the public?

Yes all our meetings are open for you to attend. Only in special circumstances are the public excluded.

When and where is the meeting?

Details of the location, date and time of the meeting are shown at the top of the front page of the agenda along with the details of the contact officer and members of the Subcommittee.

Can I speak?

If you wish to speak **you must register with Democratic Services by 4.00 p.m. on the day before the meeting**. Ring the number shown on the top of the front page of the agenda. Speaking to a Planning Officer will not register you to speak, you must register with Democratic Service. Speakers are not permitted on Planning Enforcement or legal issues.

Who can speak?

Three classes of speakers are allowed: One objector (maybe on behalf of a group), the local Parish or Town Council and the Applicant or his/her agent.

Sometimes members of the Council who have a prejudicial interest and would normally withdraw from the meeting might opt to exercise their right to address the meeting on an item and then withdraw.

Such members are required to speak from the public seating area and address the Sub-Committee before leaving.

What can I say?

You will be allowed to have your say about the application but you must bear in mind that you are limited to three minutes. At the discretion of the Chairman, speakers may clarify matters relating to their presentation and answer questions from Sub-Committee members.

If you are not present by the time your item is considered, the Subcommittee will determine the application in your absence.

Can I give the Councillors more information about my application or my objection?

Yes you can but it must not be presented at the meeting. If you wish to send further information to Councillors, their contact details can be obtained through Democratic Services or our website www.eppingforestdc.gov.uk. Any information sent to Councillors should be copied to the Planning Officer dealing with your application.

How are the applications considered?

The Subcommittee will consider applications in the agenda order. On each case they will listen to an outline of the application by the Planning Officer. They will then hear any speakers' presentations.

The order of speaking will be (1) Objector, (2) Parish/Town Council, then (3) Applicant or his/her agent. The Subcommittee will then debate the application and vote on either the recommendations of officers in the agenda or a proposal made by the Subcommittee. Should the Subcommittee propose to follow a course of action different to officer recommendation, they are required to give their reasons for doing so.

The Subcommittee cannot grant any application, which is contrary to Local or Structure Plan Policy. In this case the application would stand referred to the next meeting of the District Development Control Committee.

Further Information?

Can be obtained through Democratic Services or our leaflet 'Your Choice, Your Voice'

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: District Development Control **Date:** 15 February 2012
Committee

Place: Council Chamber, Civic Offices, **Time:** 7.30 - 9.50 pm
High Street, Epping

Members Present: B Sandler (Chairman), A Boyce, K Chana, D Dodeja, Mrs S Jones, Mrs M McEwen, Mrs C Pond, H Ulkun, Mrs L Wagland, Ms S Watson, G Waller, J M Whitehouse and J Wyatt

Other Councillors:

Apologies: R Bassett, C Finn, J Hart, J Markham and J Philip

Officers Present: N Richardson (Assistant Director (Development Control)), S G Hill (Senior Democratic Services Officer) and G J Woodhall (Democratic Services Officer)

36. WEBCASTING INTRODUCTION

The Assistant to the Chief Executive reminded everyone present that the meeting would be broadcast live to the Internet, and that the Council had adopted a protocol for the webcasting of its meetings.

37. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

The following substitute were noted:

Councillor McEwen for Councillor Bassett, Councillor Waller for Councillor Philip, Councillor Wagland for Councillor James Hart.

38. VICE CHAIRMAN FOR THE MEETING

Resolved:

That in the absence of the Vice Chairman, Councillor A Boyce be appointed as Vice Chairman for the duration of the meeting.

39. MINUTES

Resolved:

That the minutes of the meeting of the Committee held on 14 December 2011 be taken as read and signed by the Chairman as a correct record.

40. DECLARATIONS OF INTEREST

(a) Pursuant to the Council's Code of Member Conduct, Councillor declared a personal interest in agenda item 7 (Olympic Look and Free Plan) by virtue of being a member of Loughton Town Council the councillor had determined that her interest

was not prejudicial and would remain in the meeting for the consideration and voting on the matter.

(b) Pursuant to the Council's Code of Member Conduct, the following Councillors declared a personal interest in agenda item 8 (planning application at Billie Jeans, 26 High Street, Epping) by virtue of being members of the Area Plans Subcommittee East:

Councillors Jones, McEwen, Stallan and Waller;

The councillors had determined that their interest was not prejudicial and would remain in the meeting for the consideration and voting on the matter.

(c) Pursuant to the Council's Code of Member Conduct, Councillor J M Whitehouse declared a personal interest in agenda item 8 (planning application at Billie Jeans, 26 High Street, Epping) by virtue of being a member of Epping Town Council and the Epping Society, a consultee on the proposals, the councillor had determined that his interest was not prejudicial and would remain in the meeting for the consideration and voting on the matter.

(d) Pursuant to the Council's Code of Member Conduct, the following Councillors declared a personal interest in agenda item 9 (planning application at 212 Manor Road, Chigwell) by virtue of being members of Chigwell Parish Council:

Councillors Chana, Knapman (Non-member of the Committee), Sandler, Wagland;

The councillors had determined that their interest was not prejudicial and would remain in the meeting for the consideration and voting on the matter.

(e) Pursuant to the Council's Code of Member Conduct, Councillor J Wyatt declared a personal interest in agenda items 10 and 11 (planning application at Valley Grown Nursery, Paynes Lane, Nazeing) by virtue of being (i) a member of Area Plans Subcommittee West and a deputy representative on the LVRPA. The councillor had determined that his interest was not prejudicial and would remain in the meeting for the consideration and voting on the matter.

41. OLYMPIC "LOOK AND FEEL" PLAN

The Committee considered proposals for the Olympic 'Look and Feel' at a number of sites in the district. Specifically the Committee were asked to agree a request that express consent be given to the proposals under normal advertisement regulations. The proposals related to flags and banners along transport routes to the White Water Centre; Park and ride facilities and the Olympic Torch route. The Committee concurred with the proposals.

Resolved:

- (1) That the 'Look Plan' proposals be noted; and
- (2) That the Committee confirms that in this instance an application for express consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 is not required for these proposals subject to compliance with the following standard conditions for the display of advertisements:

Standard condition 1 requires no advertisement to be displayed without the

permission of the owner of the site (this includes land or buildings where the advertisement is displayed), or any other person with an interest in the site entitled to give permission.

Standard condition 2 prohibits the siting or display of an advertisement that would endanger anyone using any highway, railway, waterway, dock, harbour or aerodrome (civil or military), or would obscure or hinder the ready interpretation of any traffic sign, railway signal, or aid to navigation by water or air. It also prohibits the siting or display of an advertisement that would hinder the operation of any device used for the purpose of security or surveillance (such as closed circuit television cameras) or for measuring the speed of any vehicle (speed cameras or other speed-measuring devices).

Standard condition 3 requires the advertisement and any land or building used for the purpose of its display to be maintained in a reasonably clean and tidy condition so that it does not impair the visual amenity of the site.

Standard condition 4 requires any structure or hoarding used for the display of advertisements to be maintained in a safe condition that does not endanger the public.

Standard condition 5 is about the removal of advertisements and requires the site to be left in a safe condition that does not endanger the public and in a reasonably clean and tidy condition so that it does not impair the site's visual amenity.

42. PLANNING APPLICATION EPF/2126/11 - BILLIE JEANS, 26 HIGH STREET, EPPING - DEMOLITION OF EXISTING BAR AND AND REPLACEMENT WITH MIXED USE DEVELOPMENT AND 12 RESIDENTIAL UNITS

The Committee considered an application referred to it by Area Planning Subcommittee East at its meeting on 12 January 2012. The Subcommittee had recommended refusal of the application based on its mass, a cramped appearance, too overbearing and detrimental to the street scene.

The Committee heard from a supporter of the application and the applicants agent. Further representations received since the Planning Subcommittee were also reported.

The Committee were of the view that the proposed building had been designed with relief to the frontage and was of an acceptable design in a town centre location. The Committee requested a restriction on construction hours and that the Council should approve the ground floor A1/A3 class uses before occupation.

The Committee therefore granted permission accordingly subject to the completion of a Section 106 agreement for an education contribution and conditions.

Resolved:

That subject to the completion of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within 6 months requiring the developer to pay an index linked education contribution to Essex County Council of £11,944, planning Application EPF/2126/11 at Billie Jeans, 26 High Street, Epping be granted subject to the following conditions:

- (1) The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this notice.
- (2) The development hereby permitted will be completed strictly in accordance with the approved drawings nos: 2768 L01-1A, 2768 PL04D, 2768 PL05D, 2768 PL06B, 2768 PL07B, 2768 PL10D, 2768 PL10-1D, 2768 PL10-2D, 2768 PL10-3D, 2768 PL10-4D, 2768 PL11-1B, 2768PL11-2B.
- (3) No development, including demolition or preliminary groundwork's of any kind shall take place until the applicant/developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority.
- (4) No construction works above ground level shall have taken place until documentary and photographic details of the types and colours of the external finishes have been submitted to and approved by the Local Planning Authority, in writing, prior to the commencement of the development. The development shall be implemented in accordance with such approved details.
- (5) No development shall take place until details of foul and surface water disposal have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such agreed details.
- (6) No development shall take place until wheel washing or other cleaning facilities for vehicles leaving the site during construction works have been installed in accordance with details which shall be submitted to and agreed in writing by the Local Planning Authority. The approved installed cleaning facilities shall be used to clean vehicles immediately before leaving the site.
- (7) The use hereby permitted shall not be open for customers / members to enter outside the hours of 0700 to 2330 on Monday to Saturday and 0800 to 2300 on Sundays and Bank/Public Holidays.
- (8) No development, including works of demolition or site clearance, shall take place until a Tree Protection Plan and Arboricultural Method Statement in accordance with BS:5837:2005 (Trees in relation to construction) has been submitted to the Local Planning Authority and approved in writing. The development shall be carried out only in accordance with the approved Tree Protection Plan and Arboricultural Method Statement unless the Local Planning Authority gives its written consent to any variation.
- (9) A flood risk assessment and management and maintenance plan shall be submitted to and approved by the Local Planning Authority prior to commencement of development. The assessment shall include calculations of increased run-off and associated volume of storm detention using WinDes or other similar best practice tools. The approved measures shall be carried out prior to the substantial completion of the development and shall be adequately maintained in accordance with the management and maintenance plan.
- (10) Prior to commencement of the development details shall be submitted to and approved in writing by the Local Planning Authority for the permanent closure of the redundant vehicular access onto the High Street and to include:

- The construction of a footway with kerbing to replace the redundant lay-by/vehicular access across the site frontage,
- Position and type/design of bollards on the new footway.
- The provision of two dropped kerb crossing points with tactile paving across Half Moon Lane at its junction with the High Street

The approved details shall be implemented prior to first occupation and use of the development.

(11) There should be no obstruction above ground level within a 2.4m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway of Half Moon Lane. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times.

(12) Prior to first occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Travel Information and Marketing Scheme for sustainable transport approved by Essex County Council.

(13) Prior to commencement of the development details showing the means to prevent the discharge of surface water from the development onto the highway shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety prior to the access becoming operational and shall be retained at all times.

(14) The proposed development shall not be occupied until such time as the vehicle parking area indicated on the approved plans, including any parking spaces for the mobility impaired, has been hard surfaced, sealed and marked out in parking bays. The vehicle parking area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority.

(15) Prior to commencement of the development details showing the means to prevent the discharge of surface water from the development onto the highway shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety prior to the access becoming operational and shall be retained at all times.

(16) No deliveries shall take place at the site outside the hours of 0700 to 2100 on Monday to Saturday and 0800 to 1800 on Sundays and Bank/Public Holidays.

(17) Notwithstanding the details shown on the approved drawings submitted with this planning application, prior to commencement of works, details of waste storage shall be submitted to and agreed in writing by the local planning authority and shall be implemented and maintained in accordance with the approved details.

(18) Equipment shall be installed to suppress and disperse cooking/food preparation fumes and smells to a minimum. The equipment shall be effectively operated and maintained for so long as the use continues. Details of the equipment shall be submitted to, and approved by, the Local Planning Authority and the equipment shall be installed and be in full working order to

the satisfaction of the Local Planning Authority prior to first commencement of use or occupation.

(19) All construction/demolition works and ancillary operations, including vehicle movement on site which are audible at the boundary of noise sensitive premises, shall only take place between the hours of 07.30 to 18.30 Monday to Friday and 08.00 to 13.00 hours on Saturday, and at no time during Sundays and Public/Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.

Reason: in the interests of the amenities of noise sensitive properties.

(20) Prior to first occupation of the ground floor commercial use, details of the proposed class A1 and A3 uses shall be submitted to and approved in writing by the local planning authority. The approved Class Use(s) shall be implemented on site thereafter.

Reason: To seek to clarify of the implemented use and the need for changes of use may result in the need for further planning permission.

43. PLANNING APPLICATION EPF/2361/09 – REDEVELOPMENT OF LAND FORMERLY IN USE AS A GARDEN CENTRE AT 212 MANOR ROAD, CHIGWELL TO PROVIDE 21 FLATS 80% OF WHICH WILL BE AFFORDABLE HOUSING. (REVISED APPLICATION)

Councillor M McEwen declared a prejudicial interest in this item and left the meeting for the duration of the debate and voting on this item. This was on the basis of being Housing Portfolio Holder.

The committee considered proposed revisions proposed to the grant of permission at 212 Manor Road, Chigwell first considered by the Committee in June 2010.

The applicant sought to build surface parking for the site (rather than underground parking), a change to the mix of affordable housing and a relaxation of the commencement of the development to secure housing grant funding.

The committee noted late representations and that Redbridge Borough Council were re-iterating their objections to the proposals.

The Committee concurred with the view of the officers that these changes were acceptable but were concerned that the new parking spaces should not be separated from the development at any time and asked for this to be conditioned.

Resolved:

That, subject to the application of the original planning conditions agreed on 8 June 2010 and to the completion of the original legal agreement (as amended below) within 6 months of the date of this meeting, the following revisions to the planning application EPF/2361/09 be approved:

(i) The enlargement of the application site to accommodate surface level car parking, instead of the underground car parking which was previously approved (resulting in a reduction in the number of car parking spaces provided from 25 to 20);

(ii) A change to the proposed mix of affordable housing, resulting in 53% of affordable units being available for affordable rent and 47% available for shared ownership; and

(iii) The requirement for the proposed access to be built prior to commencement to be relaxed to allow the development to be built up to a height no more than 1 metre above ground to allow the securing of housing grant funding; and

(iv) The surface level car park not to be subdivided or sold off from the 21 flat development.

44. PLANNING APPLICATION EPF/2456/11. VALLEY GROWN NURSERIES, PAYNES LANE, NAZEING. ADDITIONAL ACCESS ROUTE FROM GREEN LANE, IN CONNECTION WITH EPF/2457/11.

The Committee considered an application seeking alternative means of vehicular access to an application site in Paynes Lane, Nazeing. The application sought the creation of a nine metre wide stone track leading from the Valley Grown Nursery site linking to an existing private access track and road previously used for gravel extraction. The applicants intention was that HGV's would use this access rather than Paynes Lane.

The Committee received representations from a local objector, the Parish Council, the Lee Valley Regional Park Authority and the applicant. The Committee also noted further letters of objection received since the publication of the agenda.

The committee were of the view that the creation of a separate access way would impact on the amenity of residents who had previously been subject to HGV movements from extraction activity and was not proportionate response to the level of traffic proposed for the site. Members were also concerned that the nursery development itself was premature in advance of the formulation of glass house policy within the emerging local plan therefore the need for the road was also premature.

Resolved:

That planning application EPF/2456/11 at Valley Grown Nurseries, Paynes Lane, Nazeing be refused permission for the following reasons:

(1) The proposed development intrudes into an area that is being restored following gravel extraction within the Metropolitan Green Belt. The new road is considered excessive for the amount of traffic that is envisaged it will take. It is not considered that the development is necessary or proportionate in relation to the horticultural use that it is intended to serve and therefore it is inappropriate development within the Green Belt, Contrary to Policy GB2 of the adopted Local Plan.

(2) The creation of the new haul road across open land intrudes in the landscape and introduces additional commercial traffic into an area utilised for recreation, as such the development fails to conserve and enhance the landscape of the Lee Valley Regional Park or safeguard the amenity of the Park and is therefore contrary to policy RST24 of the adopted Local Plan.

(3) The proposal is contrary to current adopted policy and is considered premature in advance of the emerging Local Plan which will address the

future policy for glasshouse development in the District on the basis of evidence provided by a study that is currently being undertaken.

45. PLANNING APPLICATION EPF/2457/11- VALLEY GROWN NURSERIES, PAYNE'S LANE, NAZEING, ESSEX . - CONSTRUCTION OF GLASSHOUSE, ANCILLARY WAREHOUSE AREA, OFFICE AND WELFARE FACILITY SPACE, HABITAT ENHANCEMENT AND LANDSCAPING. (REVISED APPLICATION)

The Committee gave consideration to a further application on the Valley Grown Nurseries site on Paynes Lane, Nazeing. The matter had last been considered by the Committee at their meeting on 24 August 2011. This application provided further additional supporting information and sought to address the issues of harm to residential amenity of occupants of Paynes Lane from the increased vehicle movements. The Committee noted the proposed unilateral planning obligation put forward with the application.

The Committee received representations from an objector, the local parish council, the LVRPA and the applicant.

The committee were concerned that the application was premature in advance of the emerging Local Plan which would address the future policy for glasshouse development in the District. Additionally the committee maintained that the application would have an impact on the Green Belt, adversely affected the Lee Valley Park and contrary to local plan policy and refused the application accordingly.

Resolved:

That Planning Application EPF/2457/11 be refused for the following reasons:

(1) By reason of its very large bulk and scale, together with its siting outside of an area designated for glasshouses on the Local Plan Alterations proposals map, the proposed glasshouse and associated warehouse would have an excessive adverse impact on the open character of the Green Belt, undermining planning policy objectives for the locality. The proposed development is, therefore contrary to policies DBE1, DBE4, GB7A, E13A and E13B (i) of the Adopted Local Plan and Alterations

(2) The proposed development, by reason of the noise and disturbance caused by related vehicle movements, would cause material harm to the amenities presently enjoyed by nearby neighbouring residents, contrary to policies RP5A, DBE2 and DBE9 of the Adopted Local Plan and Alterations

(3) The proposed development would set an undesirable precedent for similar developments to take place on comparable sites within the Metropolitan Green Belt and outside of designated glasshouse areas, contrary to the principles of Policy GB7A and E13A of the Adopted Local Plan and Alterations.

(4) The proposed development would have a significant adverse impact on the character of the Lea Valley Regional Park contrary to policy RST24 of the Adopted Local Plan and Alterations.

(5) The proposal is contrary to current adopted policy and is considered premature in advance of the emerging Local Plan which will address the future policy for glasshouse development in the District on the basis of evidence provided by a study that is currently being undertaken.

46. ANY OTHER BUSINESS

It was noted that there was no further business to be transacted at the meeting.

CHAIRMAN

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EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: District Development Control Committee **Date:** 27 February 2012

Place: Council Chamber, Civic Offices, High Street, Epping **Time:** 7.30 - 10.10 pm

Members Present: B Sandler (Chairman), R Bassett (Vice-Chairman), A Boyce, K Chana, D Dodeja, C Finn, J Hart, Mrs S Jones, J Markham, J Philip, Mrs C Pond, H Ulkun, Ms S Watson and J Wyatt

Other Councillors: K Angold-Stephens, K Avey, Ms R Brookes, Mrs T Cochrane, Mrs D Collins, Ms J Hart, J Knapman, L Leonard, G Mohindra, Mrs M Sartin, Mrs P Smith, D Stallan, Mrs L Wagland, C Whitbread and D Wixley

Apologies: J M Whitehouse

Officers Present: N Richardson (Assistant Director (Development Control)), D Macnab (Acting Chief Executive), K Smith (Senior Planning Officer), S G Hill (Senior Democratic Services Officer), T Carne (Public Relations and Marketing Officer) and A Hendry (Democratic Services Officer)

47. WEBCASTING INTRODUCTION

The Senior Democratic Services Officer reminded everyone present that the meeting would be broadcast live to the Internet, and that the Council had adopted a protocol for the webcasting of its meetings.

48. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

It was noted that no substitutes had been appointed to the meeting.

49. DECLARATIONS OF INTEREST

(a) Pursuant to the Council's Code of Member Conduct, the following Councillors declared personal interests in agenda item 7 (planning application at Council Depot Site and Adjacent Land) as shown.

Councillors Cochrane, Hart, Finn, Leonard, Markham – Members of the LRA Group who had responded to the planning consultations.

Councillors Angold-Stephens, Pond and Wixley - Members of the LRA Group and as members of Loughton Town Council who had responded to the planning consultations.

50. ANY OTHER BUSINESS

It was noted that there were no further items of business for the meeting.

51. PLANNING APPLICATION EPF/2580/10 - COUNCIL DEPOT SITE AND ADJACENT LAND OFF LANGSTON ROAD, LOUGHTON IG10 3UE - OUTLINE APPLICATION FOR THE REDEVELOPMENT OF THE SITE FOR A RETAIL PARK WITH ASSOCIATED LANDSCAPING, CAR PARKING, GROUND REMODELLING WORKS, RETAINING WALL STRUCTURES AND TWO ACCESSES OFF LANGSTON ROAD

The Committee considered an outline planning application for the construction of a retail park, associated landscaping, car parking, ground works, retaining wall structures and proposals for the access to the site off Langston Road, Loughton.

The application indicated a layout plan of two blocks of units containing eleven retail units aimed at A1 (comparison retailers) use with up to 1000m² gross internal floor area for A3 use. A planning policy statement submitted also confirmed that no more than 1000m² of the gross internal floor area would be used for A1 food retail.

The application also set out indicative car parking at the front of the development together with proposals for two access points off Langston Road to provide an entrance to the car park and for a service/delivery access road. The members of the Committee had previously attended a visit to the site concerned.

The Committee also received a presentation of the proposed off-site highways works which sought to mitigate the impact of the additional traffic generated by the proposed retail park. The works had been developed following consultation with County Highways who had now approved the scheme from a highways perspective.

It was proposed that, as part of any permission, an agreement be completed to secure these highway works; pedestrian improvements; street lighting, a contribution to the costs of associated Traffic Regulation Orders; a travel plan for the site; a £40,000 contribution towards the Broadway Parking Review and to limit net retail sales floor space/A1 Food Retail/ A3 use within the development. The planning officer also asked for members to agree that tree replacement condition (12) include provision for 'compensatory' tree replacement of lost highways trees.

The Committee heard representations made by an objector, the Loughton Town Council and the applicant.

The Committee made observations on the following:

(i) It was requested that further investigations be made with transport operators in an effort to extend bus services into Langston Road as the existing bus stop in Rectory Lane was a distance from the proposed site. Officers commented that this could be taken into account in the formulation of the travel plan for the site.

(ii) Whether it was possible to extend cycle ways to the site and to complete works on Rectory Lane which had been secured under a previous Section 106 agreement. It was agreed that cycle ways could be considered further at detailed design stages.

(iii) Members were concerned that the site entrances were the only matter not reserved and that traffic management of the car park was important to avoid congestion. The Committee asked for a traffic management plan be included in any agreed conditions.

(iv) Members noted the retail viability assessment had taken account of smaller local shopping parades, the effect on which had been estimated at between – 0.6% to – 1.4%.

(v) That the proposed retail park would mean the creation of approximately 200 jobs in an area of regeneration.

(vi) That further work was required to ensure effective lighting and pedestrian access and security.

The committee considered and approved recommendations to grant the outline permission subject to the Section 106 and approval from the National Casework Unit as a departure from the Local Plan and resolved accordingly taking account of amendments suggested by members.

Resolved:

That subject to:

(i) the referral of the planning permission to the National Planning Casework Unit as a departure from the adopted Local Plan; and

(ii) the completion of an agreement under Section 106 of the Town and Country Planning Act 1990 within six months to secure:

(a) The provision of highway works and associated signage as shown in principle on drawing numbers STH2468-08 rev. H and STH2468-12 rev. A, to be completed before occupation of the development. Applicant also to explore potential to extend the existing cycle path in the vicinity of the site and implement improvement works where appropriate. Details to be agreed with Essex County Council.

(b) The provision of pedestrian improvements (including signage directing pedestrians towards The Broadway) as shown in principle on drawing number STH2468-07 rev. A, to be completed before occupation of the development. Details to be agreed with Essex County Council.

(c) A pedestrian crossing facility on Langston Road in lieu of a pedestrian phase at the Langston Road arm of the signals given capacity constraints, to be completed before occupation of the development. Details to be agreed with Essex County Council.

(d) The upgrade to Street Lighting including the improvement of pedestrian security in Langston Road, Station Approach and Torrington Drive, to be completed before occupation of the development. Details to be agreed with Essex County Council.

(e) A financial contribution of up to £25,000 towards the cost of advertising the Traffic Regulation Orders, to be paid before implementation of the development.

(f) The provision of signing and lining necessary to implement the Traffic Regulation Orders, to be completed before occupation of the development. Details to be agreed with Essex County Council.

(g) A Travel Plan, which must incorporate a scheme of monitoring by Essex County Council must be supported by a non-returnable fee of £3,000 payable by the Developer on implementation of the development. The Travel Plan shall include evidence of approaches to companies providing local bus services to extend those services into Langston Road.

(h) A contribution of up to £40,000 towards the funding of the Broadway Parking Review and to implement/fund any outcomes deemed necessary as a result of the proposed development.

(i) Limitations on the types/amounts of retail which may be permitted within the proposed retail park, to include:

(j) A limit on the maximum floor space within the development to ensure that the net retail sales floor space (including any mezzanines) does not exceed 12,915m²;

(k) The total amount of A1 food retail within the development shall not exceed 1,000m² net internal sales floor space; and

(l) The total amount of A3 use within the development shall not exceed 1,000m² gross internal floor space;

Planning application EPF/2580/10, Council Depot and Adjacent Land off Langston Road, Loughton be granted subject to the following conditions:

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission or two years from the approval of the last of the reserved matters as defined in condition 2 below, whichever is the later.

Reason: To comply with the requirements of Section 92 of the Town & Country Planning Act 1990 (as amended).

2. a) Details of the reserved matters set out below ("the reserved matters") shall be submitted to the Local Planning Authority for approval within three years from the date of this permission:

- (i) layout;
- (ii) scale;
- (iii) appearance; and
- (iv) landscaping.

b) The reserved matters shall be carried out as approved.

c) Approval of all reserved matters shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason: To comply with the requirements of Section 92 of the Town & Country Planning Act 1990 (as amended).

3. The total gross internal floor space provided within the development shall not exceed 16,435m².

Reason: To ensure that adequate space is retained within the development for the provision of car parking and landscaping.

4. The retail park hereby permitted shall at no time include a dispensing pharmacy or a Post Office counter.

Reason: To ensure that the development does not harm the vitality and viability of the retail function of the nearby Loughton Broadway Centre.

5. Prior to the first use of the development hereby permitted the drainage system, including the subsurface attenuation storage and flow reduction shall be installed in accordance with the specification detailed in the plans attached to the Flood Risk Assessment (dated December 2010). The drainage system will be maintained in accordance with the manufacturers recommendations thereafter.

Reason: To ensure that adequate drainage is provided for the development.

6. The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) dated 2010 Ref 24128/003 and the following mitigation measures contained within the FRA:

a. Limiting the surface water run-off up to a 1 in 100 year critical storm so that it will not exceed the run-off as stated on Table 1 within the technical notes of the FRA.

Reason: To prevent flooding by ensuring satisfactory storage of/disposal of surface water from the site and to prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided, as required by the Environment Agency.

7. No development shall take place until a Phase 1 Land Contamination investigation has been carried out. The completed Phase 1 report shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any necessary Phase 2 investigation. The report shall assess potential risks to present and proposed humans, property including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments and the investigation must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11", or any subsequent version or additional regulatory guidance.

[Note: This condition must be formally discharged by the Local Planning Authority before the submission of details pursuant to the Phase 2 site investigation condition that follows]

Reason: To ensure the risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

8. Should the Phase 1 Land Contamination preliminary risk assessment carried out under the above condition identify the presence of potentially unacceptable risks, no development shall take place until a Phase 2 site investigation has been carried out. A protocol for the investigation shall be submitted to and approved by the Local Planning Authority before

commencement of the Phase 2 investigation. The completed Phase 2 investigation report, together with any necessary outline remediation options, shall be submitted to and approved by the Local Planning Authority prior to any redevelopment or remediation works being carried out. The report shall assess potential risks to present and proposed humans, property including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments and the investigation must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11", or any subsequent version or additional regulatory guidance.

[Note: This condition must be formally discharged by the Local Planning Authority before the submission of details pursuant to the remediation scheme condition that follows]

Reason: To ensure the risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

9. Should Land Contamination Remediation Works be identified as necessary under the above condition, no development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use has been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved remediation scheme unless otherwise agreed in writing by the Local Planning Authority. The remediation scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures and any necessary long term maintenance and monitoring programme. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 or any subsequent version, in relation to the intended use of the land after remediation.

[Note: This condition must be formally discharged by the Local Planning Authority before the submission of details pursuant to the verification report condition that follows]

Reason: To ensure the risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

10. Following completion of measures identified in the approved remediation scheme and prior to the first use or occupation of the development, a verification report (referred to in PPS23 as a Validation Report) that demonstrates the effectiveness of the remediation carried out must be produced together with any necessary monitoring and maintenance programme and copies of any waste transfer notes relating to exported and imported soils shall be submitted to the Local Planning Authority for approval. The approved monitoring and maintenance programme shall be implemented.

Reason: To ensure the risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

11. In the event that any evidence of potential contamination is found at any time when carrying out the approved development that was not previously identified in the approved Phase 2 report, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with a methodology previously approved by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with the immediately above condition.

Reason: To ensure the risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

12. No development shall take place until details of tree planting, including positions or density, species and planting size(s) and a timetable for implementation have been submitted in relation to compensatory replacement planting for trees lost through the proposed off-site highway works (which have been secured by legal agreement) and approved in writing by the Local Planning Authority. These works shall be carried out as approved. If within a period of five years from the date of planting any tree, or replacement, is removed, uprooted or destroyed or dies or becomes seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place unless the Local Planning Authority gives its written consent to any variation.

Reason:- To comply with the duties indicated in Section 197 of the Town and Country Planning Act 1990 so as to ensure a satisfactory appearance to the development and to ensure that there is no harm to highway safety caused by the positioning of replacement trees.

13. No development to take place until such time that Traffic Regulation Orders have been secured to:

a. prevent the parking of vehicles along the service road adjacent to Chigwell Lane between the petrol filling station and Station Approach, except for loading

b. make the service road adjacent to Chigwell Lane one way preventing traffic travelling southeast to northwest along it between the petrol filling station and Station Approach

c. no entry from the service road onto Chigwell Lane from the north-western access

d. make the section of Barrington Green from the edge of the access adjacent to no. 34 to the junction with Chigwell Lane one way preventing traffic travelling from southeast to north west

e. no parking along Oakwood Hill in the vicinity of the Langston Road signalised junction

f. the prohibition of vehicles on the section of Barrington Green adjacent to the Winston Churchill Public House, as necessary to implement the highway works as shown in principle in drawing number STH2468-08 rev. H

g. Any other TRO's considered necessary to implement the highway works as shown in principle in drawing number STH2468-08 rev. H, STH2468-12 rev. A and STH2468-07 rev. A. Details to be submitted to and agreed in writing with the Local Planning Authority and implemented.

Reason: In the interest of highway safety and efficiency.

14. Prior to commencement of the development details of the provision of suitable temporary construction access arrangements, including appropriate visibility splays, adequate access width and radii to accommodate the simultaneous entry and exit of vehicles using the temporary access, temporary traffic management/signage and wheel cleaning facilities for the duration of the construction phase to prevent the deposition of mud or other debris onto the highway network/public areas, turning and parking facilities for delivery/construction vehicles within the limits of the application site together with an adequate parking area for those employed in developing the site shall be submitted to and approved in writing by the Local Planning Authority. The measures shall subsequently be implemented as approved.

Reason: In the interests of highway safety and efficiency.

15. Prior to commencement of the development details showing the means to prevent the discharge of surface water from the development onto the highway shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety prior to the access becoming operational and shall be retained at all times.

Reason: To prevent hazards caused by water flowing onto the highway and to avoid the formation of ice on the highway in the interest of highway safety.

16. Prior to commencement of development, details of the parking provision for cars, the number, details of the location and design of powered two wheelers and secure and covered bicycle parking facilities to accord with the requirements of the Parking Standards Design and Good Practice guide dated September 2009 shall be submitted to and approved in writing with the Local Planning Authority. The approved facilities shall be provided prior to occupation and retained available for parking at all times thereafter and not used for any purpose other than the parking of vehicles that are related to the use of the development.

Reason: In the interests of highway safety, efficiency and accessibility and to ensure that adequate car parking is available for staff and customers of the retail park.

17. Prior to commencement of development, the provision of details relating to the vehicular and pedestrian access arrangements as shown in principle on PRC drawing 002 (proposed site plan) to be submitted to and

agreed in writing with the Local Planning Authority. The approved scheme shall be provided prior to occupation.

Reason: In the interest of highway safety and efficiency

18. The existing redundant accesses shall be permanently closed and replaced with full upstand kerbs and footway, immediately the proposed new accesses are brought into use. Details to be submitted to and agreed in writing with the Local Planning Authority prior to commencement of development.

Reason: To ensure the removal of and to preclude the creation of unnecessary points of traffic conflict in the highway in the interests of highway safety.

19. Prior to the commencement of the development hereby approved, details of refuse storage shall be submitted to the Local Planning Authority for approval in writing. The agreed storage shall be provided prior to the first use of the retail park.

Reason: To ensure that adequate provision is made for refuse storage within the development.

20. Details of ventilation and extraction equipment to mitigate cooking odours shall be submitted to the Local Planning Authority for approval in writing and installed in accordance with the agreed detail prior to the commencement of A3 use of any part of the retail park.

Reason: To protect the amenity of the surrounding environs.

21. Prior to the commencement of the development hereby approved, a Car Park Management Plan shall be submitted to the local planning authority for approval in writing. The Car Park Management Plan shall include details of the car park layout, markings, signage and lengths of stay. The car park shall operate in accordance with the detail agreed within the Car Park Management Plan at all times.

Reason: In the interest of ensuring that the car parking provided is conveniently accessible for use by staff and visitors of the development.

CHAIRMAN

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Report to District Development Control Committee



**Epping Forest
District Council**

Date of meeting: 11 April 2012

Subject: Planning Application EPF/2300/11 – Brookside Garage, Gravel Lane, Chigwell IG7 6DQ – Erection of replacement workshop and resurfacing existing yard.

**Officer contact for further information: Nigel Richardson Ext 4110
Committee Secretary: S Hill Ext 4249**

Recommendation(s):

That the Committee considers the recommendation of the Area Plans Sub Committee South at its meeting on 29 February 2012 to grant planning permission subject to the following suggested conditions:

(1) The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this notice.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

(2) Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no further buildings or extensions to existing buildings shall be erected (other than those expressly authorised by this permission).

Reason: To safeguard the openness of this part of the Metropolitan Green Belt.

(3) Within three months of the new building being erected, the existing workshop (shown cross-hatched on drawing no. JTS/7419/02) shall be demolished.

Reason: To safeguard the openness of this part of the Metropolitan Green Belt.

(4) The maintenance and repair of vehicles, including works associated with undertaking MOT's, shall not be undertaken in the open yard areas of the site as indicated as diagonally hatched on drawing no. JTS/7419/03.

Reason: The application has been submitted on this basis. The condition is in the interest of safeguarding the open character of this part of the Metropolitan Green Belt as well as the amenities of residents living in the vicinity of the site.

Report

1. (Director of Planning and Economic Development) The planning application was reported to Area Plans Sub-Committee South with an officer recommendation to refuse planning permission. The original report to Committee is attached. The site is within the Metropolitan Green Belt but operates as an existing commercial business which has a certificate of lawful development granted in 2006 for continued use as motor vehicle storage, recovery and repairs. The planning application is to replace an existing workshop building with a larger building on the site and slightly extend the existing hard surfacing area into that part of the site created by the building to be removed. Officers considered that the larger building would be too excessive in scale and therefore it amounts to inappropriate development in the Green Belt which no very special circumstances would outweigh this harm.
2. The main issue for the Committee was that the new building would be well screened from public vantage points, including the road, and therefore despite almost doubling in size, it would not be conspicuous from the Green Belt or visually harmful to the street scene. They further concluded that the additional MOT facility in the workshop would benefit the local rural economy, which after all, was an existing protected employment facility that has existed since the late 1960's.
3. There was some debate of the requirement of conditions necessary to make the development acceptable and overcome potential harm to local amenity. As officers considered the proposal was contrary to Green Belt policy, the committee recommended that the officers report to this DDCC meeting should include suggested conditions to be attached to a planning permission should the application be granted. Four necessary and relevant conditions are included in the recommendation. The Officers report (appended) to Area Plans Sub-Committee South stated that a Flood Risk Assessment will be required by condition, should permission be granted. However, it is now concluded that the building and site area does not hit the required threshold.
4. This is a balanced case because on the one hand, Policy E4A of the Local Plan seeks to protect sites in employment use and the larger building is needed for an MOT station in addition to the existing car storage and repair use of which a significant percentage is taking place in the open yard. On the other hand, it is a larger workshop, doubling the size of the one it is replacing in this rural location and therefore by definition is inappropriate development in the Green Belt.

Conclusion

5. Should the Committee be persuaded by the Area Committees recommendation to grant planning permission, it is recommended that this be subject to the suggested 4 conditions. The applicant states that the existing workshop will be demolished once the new one is built. He has a lot of equipment stored in the existing workshop which needs to be relocated into the new building and therefore needs a 3 month overlap in the recommended third condition. In respect of the suggested fourth condition, the new workshop has been partly submitted on the basis that a larger one is needed to overcome a significant percentage of repair and servicing work taking place in the rear yard area. A condition restricting no work in the open yard area will justify the larger building in Green Belt and amenity terms.

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Extract from Plans Subcommittee South Agenda of 29 February 2012-03-30

APPLICATION No:	EPF/2300/11
SITE ADDRESS:	Brookside Garage Gravel Lane Chigwell Essex IG7 6DQ
PARISH:	Chigwell
WARD:	Chigwell Village Lambourne
APPLICANT:	Brookside Garage
DESCRIPTION OF PROPOSAL:	Erection of replacement workshop and resurfacing existing yard.
RECOMMENDED DECISION:	Refuse Permission

Click on the link below to view related plans and documents for this case:

http://planpub.eppingforestdc.gov.uk/AniteLM.websearch/ExternalEntryPoint.aspx?SEARCH_TYPE=1&DOC_CLASS_CODE=PL&FOLDER1_REF=532683

REASON FOR REFUSAL

- 1 The site is within the Metropolitan Green Belt. The proposed commercial building is excessively large and not required for any of the land use objectives for Green Belts. The proposal therefore, amounts to inappropriate development as defined in Planning Policy Guidance Note 2 and is by definition harmful to the Green Belt. It would cause clear harm to its openness and rural character. There are no very special circumstances in favour of the development that outweigh the harm caused to the Green Belt. The proposal is therefore contrary to Policies GB2A and GB7A of the Council's Adopted Local Plan and Alterations.

This application is before this Committee since it would otherwise have been refused under delegated powers by the Director of Planning and Economic Development, but there is support from the relevant local Parish/Town Council and no other overriding planning consideration necessitates refusal (Pursuant to The Constitution, Part Three: Planning Directorate – Delegation of Council function, Schedule 1, Appendix A.(I))

Description of Site:

The subject site covers an area of approximately 1.2 hectares of land and lies east of Gravel Lane, Chigwell. It operates as commercial premises, trading as Brookside Motor Garage. The premises form part of a small cluster of ribbon development along Gravel Lane and immediate neighbouring site Taylors Cottages, forms a row of residential properties. The site accommodates an existing rectangular workshop building and two detached brick buildings. There is a small trailer and an open timber shed further east into the site accessed across a narrow bridge. East of the site lies a large area of existing hardstanding used as open storage for motor vehicles. The site is within the Metropolitan Green Belt

Description of Proposal:

This application is to demolish an existing brick building and replace this with a larger steel framed building to be used as an additional workshop and MOT station. (Revised application)

The building will be square in plan and will be approximately 13.7 metres by 13.7 metres and its eaves height will be 5.0 metres and 6.2 metres to its ridge.

Relevant History:

CHIG/142/60 – Use for garaging commercial vehicles (Brookside) – Approved

CHIG/292/66 – Continued use for motor vehicle repairs – Approved/ conditions

CHI/463/70 – Continued use for motor vehicle repairs – Approved

CHI/500/72 – Continued use for motor vehicle repairs – Lapsed

EPF/2193/05 – Certificate of lawfulness for existing use for storage and motor vehicle repairs, recovery and police inspection. Lawful

EPF/0792/10 - Erection of a steel framed building to be used as an additional workshop and MOT station. Withdrawn

EPF/2205/10 - Erection of a steel framed building to be used as an additional workshop and MOT station. (Revised application) Refused.

Policies Applied:

CP2 – Protect the quality of the built environment

DBE1 and DBE2 – Design and appearance of new buildings

DBE4 – Design of buildings in the Green Belt

DBE9 – Neighbouring occupiers amenity

GB2A and GB7A – Green belt/ conspicuous development in the green belt

ST4 – Road safety

LL10 – Landscape retention

Summary of Representations:

A site notice was displayed and 4 letters sent to neighbouring occupiers. No letters of representation have been received.

CHIGWELL PARISH COUNCIL – The Council SUPPORTS this application.

Issues and Considerations:

The issues raised by this revised proposal include the impact on highway safety, the design and appearance of the new building and amenity of neighbouring occupiers'. The main issues are whether the development is appropriate in the Metropolitan Green Belt and if it is not, whether the applicant has demonstrated very special circumstances sufficient to allow an inappropriate development. The previously refused proposal was rejected based on there being no demonstrable very special circumstances in favour of an inappropriate development.

Green Belt

The lawful use for this site is for the storage and repair of motor vehicles. A large area of the eastern part of the site is used for additional open storage of vehicles. There is presently an existing detached building sited some 7.0 metres from Gravel Lane that serves as a workshop. In addition, there are two other smaller buildings (one open ended) and one larger building on site. In

support of this proposal, the larger existing building will be demolished in order to erect the replacement building.

The erection of new buildings in the Metropolitan Green Belt (MGB) that are not reasonably required for purposes that do not conflict with the purposes of including the land in the MGB is inappropriate development. In addition, new buildings should not be conspicuous from within or beyond the Green Belt if they would have an excessive adverse impact upon the opens, rural character or visual amenities.

The existing and proposed plans/ elevations are inaccurate which makes it difficult to ascertain the exact net volume increase from the existing building to be demolished and its replacement. Notwithstanding, the Planning Statement makes clear the proposed building will be 169 sqm (reduced from the previous proposal for a 400 sqm building) and the existing workshop building to be demolished is some 80 sqm. This will amount to a significant volume increase that will in effect more than double the size of the existing building. The proposed new building and hardsurfaced areas will be used for general industrial purposes and as such, does not fall within any of the acceptable forms of development in the Green Belt. It is therefore inappropriate development in the Green Belt and is by definition, harmful to the Green Belt. In addition, by reason of its height, size and volume, the proposed building will result in a large and conspicuous development in the Green Belt that would harm the rural character of the area.

The Parish Council's 'Support' for this proposal and the additional supporting planning statement has been given weight. However; Chigwell Parish Council has not given reasons for its position and accordingly only very little weight may be applied to this consideration when deciding whether or not to permit inappropriate development in the Green Belt.

Whether there are special circumstances

The Applicants' supporting planning statement argues that very special circumstances exist which would justify allowing the development within the Metropolitan Green Belt. The reason cited is that the site is a 'protected' employment location. Policy E4A seeks to protect sites currently or last in use for employment outside the defined employment area from redevelopment or for a change of use to other land uses. The lawful commercial use of this site is accepted.

The supporting text contained within paragraph 10.53a states that these small employment sites can make an important contribution to the local economy. It goes to clarify that the protection of these sites is needed because they are under threat from increasing pressure for residential development. Therefore, whilst this policy does seek to protect such sites from redevelopment, it does not categorically support the intensification of any lawful use.

The site is presently a small to medium sized operation. A larger building is needed for the intended purposes of an MOT station which will significantly intensify the present commercial use of this site. However, the site is close to residential properties and the proposed new use for an MOT station will generate increased noise levels, which is not appropriate immediately adjacent to residential properties within this rural locality.

Although there are a number of other smaller buildings within the site, the Applicant proposes to demolish only one small building as a trade off. When comparing the size of the building to be demolished with its replacement, it does not amount in a significant reduction of the built form.

The Applicant states the existing external untidy yard would be cleared. However, by the very nature of the commercial enterprise this level of external activity is to be expected. If the new build were to be allowed, it would not limit or reduce the external activity working within the yard areas. It would also not be reasonable to condition the yard areas not to be used should the new building be erected.

The statement also offers that one or possible two job opportunities could be created. However, it would be difficult for potential employees to commute to and from the site without a car because there are no local bus routes that serve this part of Gravel Lane.

Although a large portion of this site is previously developed by the areas of hard standing, it is in a Green Belt location. The size of the building proposed is overly large. The intended use for an MOT station does not fall within the acceptable uses within the Green Belt. The Applicants' case for special circumstances has been taken into consideration. However, whilst the local economy may benefit from possible new job creation, this reason alone does not amount to very special circumstances which justify the intensification of the commercial activity on this site which would outweigh the harm to the Green Belt.

Design/ appearance within the street

The proposed building is large. However, it will generally conform to the size required for buildings to be used for general industrial purposes and is therefore acceptable. The proposed building will be sited approximately 46 metres from the road and will be well screened from the road by trees.

It is considered that the building's size, design and appearance is such that it will not result in an adverse or negative impact on the street scene.

Neighbours Amenity

The use of this site for commercial purposes is already established. The proposed building will be sited some 25.0 metres from the nearest residential property, which raises some concern due to the potential for increased noise levels from the use of heavy machinery. However, an appropriate condition for opening hours and hours of use could ensure any intensification will not result in material harm to neighbouring occupier's amenity.

Land drainage

The site does not lie within a Flood Risk Assessment Zone. However, as the building will measure 324 m² it will lead to an increase in surface water. A Flood Risk Assessment is required and this can be secured by a condition.

The land drainage officer does not raise any objection to the application.

Landscape

The eastern and southern boundary of the site is well tree'd with dense leylandii. The new building will be at an adequate distance from existing landscaping such that it should not be affected by this proposal. The trees within and around the site are not a risk, therefore there are no tree or landscape issues in connection with this application.

Highway safety

According to Essex County Council Highway Authority, accident data for the last 5 years has been investigated and has shown that there are no recorded accidents associated with this site. It is considered there will be little if any increase in vehicle movement into the site as a result and on balance, the Highway Authority does not wish to raise an objection. The proposal will not be detrimental to highway safety or efficiency at this location on the proviso a condition is added to improve current visibility for the site.

Conclusion

The supporting planning statement claims very special circumstances on the basis that it allows additional employment opportunities for this site; however, the site is not in a sustainable location. The proposal is considered inappropriate and the very special circumstances do not outweigh the harm caused in this Green Belt location and as such is recommended for refusal.

Should you wish to discuss the contents of this report item please use the following contact details by 2pm on the day of the meeting at the latest:

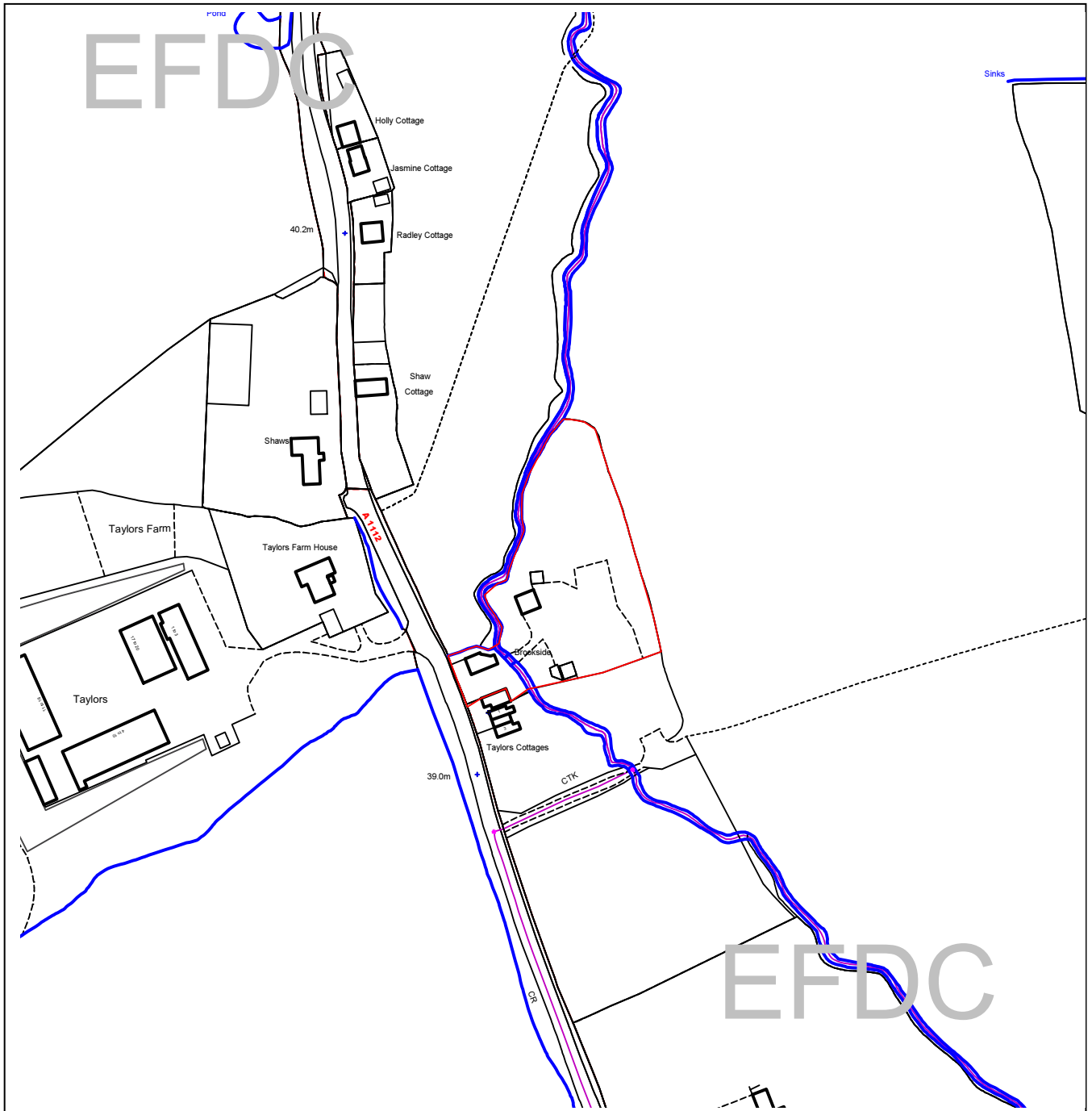
***Planning Application Case Officer: Paula Onyia
Direct Line Telephone Number: 01992 564103***

or if no direct contact can be made please email: contactplanning@eppingforestdc.gov.uk



Epping Forest District Council

Area Planning Sub-Committee South



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Agenda Item Number:	3
Application Number:	EPF/2300/11
Site Name:	Brookside Garage, Gravel Lane Chigwell, IG7 6DQ
Scale of Plot:	1/2500

Report to the District Development Control Committee



**Epping Forest
District Council**

Date of meeting: 11 April 2012

Subject: Planning application EPF/1399/09 – 212 Manor Road, Chigwell – Outline planning permission for up to 69 residential units (52 affordable), public open space and a community facility (contribution to provision of the local post office), with all matters reserved except access.

Responsible Officer: Katie Smith, Senior Planning Officer (01992 564109)

Committee Secretary: Simon Hill (01992 564249)

Recommendation:

That the Committee's previous resolution (that planning permission be granted, subject to the completion of an altered Section 106 Legal Agreement) be extended to facilitate the completion of the legal agreement within 6 months of the date of this meeting.

Introduction:

1. This application was originally considered by the Committee in October 2009, when the Committee resolved to grant planning permission, subject to referral to the Government Office and to the completion of an agreement under Section 106 of the Town and Country Planning Act 1990 (a "Section 106 Agreement") to secure:
 - The amount, tenure and occupancy of the affordable housing;
 - Highway improvements (works and/or financial contributions);
 - A significant financial contribution towards the provision of a Post Office within the locality of the site;
 - Vehicular access into the adjacent site; and
 - The provision of an area of public space within the site to be transferred to Epping Forest District Council at nil consideration.
2. The application has subsequently been reported to Members of this Committee on two further occasions: in April 2011 with an Officer's recommendation for refusal following a period during which no progress has been made on the completion of the legal agreement, at which time, following a response by the Applicant, Members granted a further period of six months for the completion of the agreement and then again in August 2011 when Members granted a further extension of six months to their resolution to grant planning permission.
3. The most recent resolution by Members expired on 24th February 2012 and despite considerable efforts by the Applicant and legal representatives from Epping Forest District Council, Essex County Council and Moat (the prospective Housing Association) the agreement was not completed by that date.

4. The planning merits of the proposal remain unchanged from consideration previously by this Committee and are set out in the report that was presented to Area Plans South on 16th September 2009 (attached as Appendix 1).
5. In light of the progress which has been made towards the completion of the legal agreement since August 2011, it is recommended that the Committee resolves to grant planning permission for the proposed development, subject to the completion of a legal agreement (within a further period of 6 months) to secure the provision of the affordable housing, highway works, the post office contribution, the vehicular access into the adjacent site and the public open space.

Extract from Area Planning Subcommittee South on 16 September 2009

APPLICATION No:	EPF/1399/09
SITE ADDRESS:	212 Manor Road Chigwell Essex IG7 4JX
PARISH:	Chigwell
WARD:	Grange Hill
APPLICANT:	Mr Graham Cox
DESCRIPTION OF PROPOSAL:	Outline planning application for 69 residential units (54 affordable), public open space and a community facility (D1 Use) with all matters reserved except access.
RECOMMENDED DECISION:	Grant Permission (Subject to S106)

CONDITIONS

- 1 Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 2 Application for the approved reserved matters referred to in condition 1 must be made not later than the expiration of three years from the date of this notice. The development hereby permitted must be begun not later than the expiration of two years from the date of the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last matter approved.
- 3 Details of the types and colours of the external finishes shall be submitted for approval by the Local Planning Authority in writing prior to the commencement of the development, and the development shall be implemented in accordance with such approved details.
- 4 No development shall take place on site, including site clearance, tree works, demolition, storage of materials or other preparatory work, until all details relevant to the retention and protection of trees, hereafter called the Arboricultural Method Statement, have been submitted to the Local Planning Authority and approved in writing. Thereafter the development shall be undertaken only in accordance with the approved details, unless the Local Planning Authority has given its prior written consent to any variation.

The Arboricultural Method Statement shall include a tree protection plan to show the areas designated for the protection of trees, shrubs and hedges, hereafter referred to as Protection Zones. Unless otherwise agreed, the Protection Zones will be fenced, in accordance with the British Standard Trees in Relation to Construction-Recommendations (BS.5837:2005) and no access will be permitted for any

development operation.

The Arboricultural Method Statement shall include all other relevant details, such as changes of level, methods of demolition and construction, the materials, design and levels of roads, footpaths, parking areas and of foundations, walls and fences. It shall also include the control of potentially harmful operations, such as burning, the storage, handling and mixing of materials, and the movement of people or machinery across the site, where these are within 10m of any designated Protection Zone.

The fencing, or other protection which is part of the approved Statement shall not be moved or removed, temporarily or otherwise, until all works, including external works have been completed and all equipment, machinery and surplus materials removed from the site.

The Arboricultural Method Statement shall indicate the specification and timetable of any tree works, which shall be in accordance with the British Standard Recommendations for Tree Works (BS.3998: 1989).

The Arboricultural Method Statement shall include a scheme for the inspection and supervision of the tree protection measures. The scheme shall be appropriate to the scale and duration of the works and may include details of personnel induction and awareness of arboricultural matters; identification of individual responsibilities and key personnel; a statement of delegated powers; frequency, dates and times of inspections and reporting, and procedures for dealing with variations and incidents. The scheme of inspection and supervision shall be administered by a suitable person, approved by the Local Planning Authority but instructed by the applicant.

5 No development shall take place, including site clearance or other preparatory work, until full details of both hard and soft landscape works (including tree planting) have been submitted to an approved in writing by the Local Planning Authority, and these works shall be carried out as approved. These details shall include, as appropriate, and in addition to details of existing features to be retained: proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle artefacts and structures, including signs and lighting and functional services above and below ground. Details of soft landscape works shall include plans for planting or establishment by any means and full written specifications and schedules of plants, including species, plant sizes and proposed numbers / densities where appropriate. If within a period of five years from the date of the planting or establishment of any tree, or shrub or plant, that tree, shrub, or plant or any replacement is removed, uprooted or destroyed or dies or becomes seriously damaged or defective another tree or shrub, or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

6 No development shall take place, including site clearance or other preparatory work, until all details relevant to the implementation of hard and soft landscape works and tree planting, hereafter called the Landscape Method Statement, have been submitted to the LPA, and the development shall not commence until the Landscape Method Statement has been approved by the LPA in writing. All landscape works shall be undertaken in accordance with the approved details, unless the LPA has given its prior written consent to any variation.

The Landscape Method Statement shall include as appropriate, protection of the planting areas, where appropriate by fencing, during construction; preparation of the

whole planting environment, particularly to provide adequate drainage; and the provision which is to be made for weed control, plant handling and protection, watering, mulching, and the staking, tying and protection of trees. The Landscape Method Statement shall also normally include provision for maintenance for the period of establishment, including weeding, watering and formative pruning, and the removal of stakes and ties. Provision shall be made for replacement of any plant, including replacements, that are removed, are uprooted, or which die or fail to thrive, for a period of five years from their planting, in the first available season and at the same place, with an equivalent plant, unless the LPA has given its prior written consent to any variation.

All hard and soft landscape works shall be completed prior to the occupation or use of any part of the development, unless the LPA has given its prior written consent to a programme of implementation. The hard and soft landscape works, including tree planting, shall be carried out strictly in accordance with any approved timetable.

The Landscape Method Statement shall state the provision which is to be made for supervision of the full programme of works, including site preparation, planting, subsequent management and replacement of failed plants.

- 7 Before the occupation or use of any phase or part of the development, whichever is the soonest, a Landscape Management Plan (LMP) shall be submitted to and approved by the LPA.

The LMP shall contain a statement of the long-term aims and objectives covering all elements of the implementation of the agreed landscape scheme and full details of all management and establishment operations over a five-year period, unless otherwise agreed in writing by the LPA. It shall also include details of the relevant management, and supervisory responsibilities.

The LMP shall also include provision for a review to be undertaken before the end of the five year period. A revised LMP shall be submitted for the agreement of the LPA before five years has expired. The revised details shall make similar provisions for the long term maintenance and management of the landscape scheme. The revised scheme shall also make provision for revision and updating.

The provisions of the LMP, and subsequent revisions shall be adhered to and any variation shall have been agreed beforehand in writing by the LPA. No trees, shrubs, hedges or other plants shall be removed for the duration of the Landscape Management Scheme or its revisions, without the prior written approval of the LPA. Any trees, shrubs, hedges or other plants being so removed shall be replaced in the first available planting season by an equivalent replacement or replacements to the satisfaction of the LPA. Management of the landscape scheme in accordance with the LMP or their agreed revisions shall not cease before the duration of the use of the development unless agreed in writing by the LPA.

- 8 Prior to the commencement of the development hereby permitted, details of the provision of suitable temporary access arrangements to the application site in connection with the land forming/construction operations, to include wheel washing facilities, any necessary traffic management, turning and off loading facilities for delivery/construction vehicles within the limits of the site together with an adequate parking area for those employed in developing the site shall be submitted to the Local Planning Authority for approval in writing. The development shall proceed in accordance with these approved details.

- 9 Prior to the first occupation of any part of the development hereby approved details of an access to adoptable standards, to include visibility splays of 90m by 2.4m by 90m, 10.5m radii kerbs (if unachievable radii should be to the maximum possible) and 5.5m carriageway width with 2m wide footway along the edge of the site boundary and the bell mouth of the access (x2 footways), including the removal of any redundant dropped kerbs and replacement with full upstand kerbs shall be submitted to the Local Planning Authority for approval in writing. The details approved shall be implemented prior to the first occupation of the development approved and retained thereafter.
- 10 All roads and footpaths within the development should be designed in accordance with the Essex Design Guide.
- 11 A flood risk assessment shall be submitted to and approved by the Local Planning Authority prior to commencement of development. The assessment shall include calculations of increased run-off and associated volume of storm detention using Windes or other similar programme. The approved measures shall be undertaken prior to the first occupation of the building hereby approved and shall be adequately maintained in accordance with a management plan to be submitted concurrently with the assessment.
- 12 Prior to commencement of development, details of levels shall be submitted to and approved by the Local Planning Authority showing the levels of the site prior to development and the proposed levels of all ground floor slabs of buildings, roadways and accessways and landscaped areas. The development shall be carried out in accordance with those approved details.
- 13 Prior to commencement of development, including demolition or site clearance works, a phased contaminated land investigation shall be undertaken to assess the presence of contaminants at the site in accordance with an agreed protocol as below. Should any contaminants be found in unacceptable concentrations, appropriate remediation works shall be carried out and a scheme for any necessary maintenance works adopted.
- Prior to carrying out a phase 1 preliminary investigation, a protocol for the investigation shall be agreed in writing with the Local Planning Authority and the completed phase 1 investigation shall be submitted to the Local Planning Authority upon completion for approval.
- Should a phase 2 main site investigation and risk assessment be necessary, a protocol for this investigation shall be submitted to and approved by the Local Planning Authority before commencing the study and the completed phase 2 investigation with remediation proposals shall be submitted to and approved by the Local Planning Authority prior to any remediation works being carried out.
- Following remediation, a completion report and any necessary maintenance programme shall be submitted to the Local Planning Authority for approval prior to first occupation of the completed development.
- 14 Prior to the commencement of the development hereby approved, details of mitigation methodology regarding reptiles and bats which may be present on the site shall be submitted to the Local Planning Authority for approval in writing. The development shall proceed in accordance with the approved details.

- 15 The development shall proceed only in accordance with the recommendations set out in Section 7 (pages 25-27) of the Desk Study and Extended Phase 1 Habitat Survey produced by Thompson Ecology (July 2009) unless otherwise agreed in writing by the Local Planning Authority.

and subject to a Section 106 Legal Agreement to secure 54 residential units (78%) for on-site affordable housing, and a contribution towards highway and public transport improvements in the locality, and education provision.

This application is before this Committee for the following reasons:

since it is an application for development of a significant scale and/or wider concern and is recommended for approval (Pursuant to Section P4, Schedule A (c) of the Council's Delegated Functions);

since it is an application for residential development of 5 dwellings or more and is recommended for approval (Pursuant to Section P4, Schedule A (d) of the Council's Delegated Functions); and

since it is an application for commercial development and the recommendation differs from more than one expression of objection (Pursuant to Section P4, Schedule A (f) of the Council's Delegated Functions).

Description of Proposal:

This application seeks outline planning permission for a residential development with public open space and a community facility. The proposal will provide a total of 69 housing units, of these 54 units proposed are affordable (78%). The breakdown is 15 market housing units (21%), 37 social rented units (53%) and 17 intermediate housing units (24%). All matters other than access are reserved for consideration at a later time.

Description of Site:

The application site is previously developed, accommodating part of the Jennykings Garden Centre. The site is bounded by Manor Road to the south, the railway line to the west and Froghall Lane to the east. There are some mature trees along the northern boundary and some dense vegetation along the eastern site boundary with Froghall Lane. The land across the site is generally level, but with a slight decrease towards the Froghall Lane boundary.

Relevant History:

CHI/0187/57. Layout of new roads & erection of 72 houses. Refused 21/08/57.

CHI/0132/73. Use of land for residential purposes. Refused 23/05/73.

CHI/0279/73. Proposed residential development. Refused 23/05/73.

CHI/0577/73. Use of land for residential purposes. Refused 30/01/74.

Members will recall recent planning applications for residential development on the adjacent site. The most recent (EPF/1071/09) was referred to the District Development Control Committee with a recommendation of support by Area Plans South on 5th August 2009.

Policies Applied:

East of England Plan

SS7 – Green Belt
H1 – Regional Housing Provision 2001-2021
H2 – Affordable Housing
T14 - Parking
ENV7 – Quality in the Built Environment
LA1 – London Arc

Adopted Local Plan and Alterations

HC12 – Development Affecting the Setting of a Listed Building
GB2A – Development in the Green Belt
GB7A – Conspicuous Development
GB16 – Affordable Housing
H2A – Previously Developed Land
H3A – Housing Density
H4A – Dwelling Mix
H5A – Provision for Affordable Housing
H6A – Site Thresholds for Affordable Housing
H7A – Levels of Affordable Housing
CP1 – Achieving Sustainable Development Objectives
CP2 – Protecting the Quality of the Rural and Built Environment
CP3 – New Development
CP4 – Energy Conservation
CP5 – Sustainable Building
CP6 – Achieving Sustainable Urban Development Patterns
CP7 – Urban Form and Quality
CP8 – Sustainable Economic Development
DBE1 – Design of New Buildings
DBE2 – Impact of New Buildings
DBE5 – Design and Layout
DBE8 – Amenity Space Provision
ST1 – Location of Development
ST2 – Accessibility of Development
ST4 – Highways Considerations
ST6 – Car Parking Standards
LL11 – Landscaping Schemes
E4A – Protection of Employment Sites

Summary of Representations:

CHIGWELL PARISH COUNCIL: No objection.

35 properties were consulted, a site notice erected and responses were received from the following properties – their comments are summarised below:

9 WARREN COURT
28 WARREN COURT
1A LONG GREEN
42 LONG GREEN
115 LONG GREEN
81 MOUNT PLEASANT ROAD
205 MANOR ROAD

Green Belt

Development could set a precedent for future developments on Green Belt land. Development would further encroach onto Green Belt Land and would destroy more of the countryside to the detriment of local residents and future generations.

Need

There is no need for this build. There are seven empty flats in my complex in Long Green (raised by 42 Long Green). There are already plans to build flats at junction of Manor Road and Fencepiece Road so why build more?

Highways and Parking

Existing traffic congestion in the locality would worsen. Parking is limited on the development site. Limited access/egress to and from the site. Difficulties for pedestrians crossing the road.

Character and Appearance.

Would be out of character with the surrounding semi-rural area. Would overpower the nearby listed cottages.

Neighbouring Amenity

Increased noise and pollution. Overlooking of neighbouring gardens and houses (raised by 28 Warren Court). Would spoil views of the forest and cemetery. Loss of privacy for visitors to cemetery.

Impact of setting of Listed Buildings

Would overpower nearby listed cottages. Could cause movement to the nearby listed cottages, which have only limited foundations.

Other Matters

Already strain on local facilities (schools and doctors). The Council's reasons for refusing 116 houses at Grange Farm should apply here too. Increased risk of crime. Grange Hill Station has a poor service to central London.

ESSEX AREA RAMBLERS. Objection. The amount of traffic which would inevitably be generated would present a threat to the safety of Manor Road. The large number of affordable residences is not exceptional circumstances.

Issues and Considerations:

The main issues in this case are:

- The acceptability of the proposed development within the green belt;
- The impact of the proposed development on the amenities of the occupiers of neighbouring dwellings;
- The design of the development;
- The impact of the development on the character and appearance of the area;
- Impacts on nearby listed buildings;
- The proposed highways and parking arrangements;
- The proposed provision of affordable housing; and

The sustainability of the proposed development.

Acceptability of the Development within the Green Belt

The site is located within the Metropolitan Green Belt, where new residential development is considered to be inappropriate. In this instance, the applicant has put forward a case explaining why they consider that there are very special circumstances which justify this development within the Green Belt. The applicant's case for exceptional circumstances is that *'the particular merits of this case mean that the limited harm to the function of the Green Belt by allowing inappropriate development is outweighed by the acute identified need for family affordable housing accommodation, particularly 3+ bed houses with private gardens, that cannot be met in any other way and which can be reasonably expected to persist in the long term'*.

Policy GB16 of the local plan deals with affordable housing on Green Belt sites and provides for small scale affordable housing development as a whole to be built within the green belt subject to a number of criteria.

Policy GB16 provides for the provision of affordable housing in the Green Belt so long as it is small-scale and a "settlement". The policy allows for affordable housing where:

- There is a demonstrable social or economic need not met elsewhere,
- It is supported by the local parish council and a proper appraisal of need,
- It is well related to the existing settlement,
- Will not have a detrimental impact on the character of the locality,
- There are no significant grounds for objection on highways, infrastructure or other planning grounds.
- Isolated pockets of development should be avoided.

The application site is located on the edge of the urban area. The site is well served by transport infrastructure, not least by Grange Hill Underground Station. The submitted Affordable Housing Statement refers to the identified need in the Council's most recent (2003) Housing Needs Survey. The need for the affordable housing proposed is supported by both the Council's Housing Services and also Moat Homes Limited, one of the preferred Registered Social Landlord's (RSL's). Moat state 'we feel that the housing requirements for the District have been adopted and consequently feel that this scheme offers a good opportunity for Moat to increase its housing stock within Epping Forest'. There has been no objection to the scheme raised by Chigwell Parish Council. Accordingly, it is considered that the provision of affordable housing on this site may be acceptable in relation to the criteria set out in policy GB16, subject to consideration of the other planning merits of the case. These will be considered in subsequent sections of this report.

Policy GB7A of the Local Plan states that the Council will refuse planning permission for development conspicuous from within or beyond the green belt which would have an excessive adverse impact upon the openness, rural character or visual amenities of the green belt. It is considered that the height and density of the development proposed is such that it would be in keeping with the pattern of surrounding development. Furthermore due to the natural screening to the northern and eastern boundaries of the site and the context of the western and southern boundaries (which are adjacent to the railway line and Manor Road) it is not considered that the development would appear overly conspicuous. There is also built development opposite to the south and to the west on the other side of the railway line. It therefore would not appear isolated in the countryside.

Affordable Housing

Policy GB16 specifically relates to proposals for affordable housing within the Green Belt and has been discussed above. Policy H5A sets out a list of criteria which are to be applied to consider whether a site is suitable for affordable housing. These are:

- The overall level, nature and distribution of housing need in the district;
- The size and characteristics of the site;
- The type of affordable housing required and the type of dwellings proposed on the site;
- The dispersal of affordable housing throughout the site;
- The nature of any adjacent housing; and
- The proximity of the site to public transport and accessibility to facilities.

There is a considerable need for the provision of affordable housing within the District, with currently 4,700 applicants being registered on the Council's Housing Register. The site is located in close proximity to the existing urban area and the associated transport infrastructure. Surrounding residential developments are generally modest sized semi-detached and terraced dwellings, with some detached dwellings interspersed. The mix of dwellings proposed accords with policy H4A in terms of the size and tenures. The mix of housing also generally meets the identified need with the only exception being the suggestion by the Head of Housing that the four 4+ bed houses be replaced with 3 bed houses, for which there is a greater need. This mix can be finalised in an associated Section 106 legal agreement which would ensure the provision of affordable housing to the development.

Neighbouring Amenity

Neighbouring amenity is an issue which will need to be considered at greater depth upon the submission of reserved matters relating to the detailed design of the development. Notwithstanding this, it is considered that the site is capable of accommodating a development of the scale proposed without resulting in material harm to the amenities of the occupiers of neighbouring residential properties. The closest property to the site is 193a Manor Road, located on the opposite side of the street. Some concern has also been raised by a local resident regarding the potential impact on Warren Court, to the west of the site. However, the nearest gardens of these properties are located some 75 metres from the site, separated by the railway line and it is not considered that a development of a reasonable height would cause any material loss of privacy.

Design

The detailed design of the proposed development is also an issue which is reserved for later consideration. However, an indicative layout and indicative sections have been submitted which indicate that the development would be fairly spacious and of a reasonable density, in keeping with the built development in the area. The maximum building height shown on the sections are three storey buildings. Considerable amounts of the vehicle parking shown on the site layout would be enclosed in car courts away from the main street views. An indicative masterplan also shows how the adjacent site could be integrated as part of a comprehensive development.

Impact on the Character and Appearance of the area

The impact of the proposed development on the character and appearance of the area will need to be fully considered upon the submission of reserved matters. Notwithstanding this, it is considered from the indicative plans provided and the density proposed that a development of this scale could be accommodated without any material harm to the character and appearance of the area.

Impact on Nearby Listed Buildings

The row of listed cottages is located on the opposite side of Manor Road and are set back from the public highway. Their location on the other side of the street visually divorces them from the site and as a result it is not considered that the proposed development would be detrimental to their

setting. Concern has been raised by a local resident regarding the potential for disturbance from the construction proposed to cause movement to the listed cottages, which are built on limited foundations. Having regard to the distance separating the cottages from the application site (approximately 57 metres to the nearest cottage) and the location of the road in between, it is not considered that sufficient weight should be applied to this consideration as to justify the refusal of planning permission on this basis.

Highways and Parking

Access is the only reserved matter for which consent is being sought at this stage. Essex County Council, the Highway Authority, has no objection to the proposed development subject to a number of planning conditions and other requirements which would need to be facilitated by means of a Section 106 legal agreement. Matters to be included within a section 106 would include the provision of a financial contribution towards the provision of traffic orders and road markings along both sides of Grange Crescent between Froghall Lane and Grange Crescent; the closure of the lay-by on the north-eastern carriageway; the provision and implementation of a Transport Information and Marketing Scheme for sustainable transport; and improvements to bus-stops. Accordingly, subject to the imposition of the planning conditions suggested by the Highways Authority and subject to the completion of a legal agreement to secure the above, it is considered that the proposed access arrangements are acceptable.

Trees and Landscaping

The existing landscaping on the site is generally located to the site boundaries and it should therefore be feasible to work around these in the detailed layout proposals. Accordingly, it is expected that most of the existing trees on the site would be retained. This may be controlled by the use of a tree protection condition. The submitted tree survey recommends that a 5m strip of vegetation is retained along the boundary with Froghall Lane, this is not shown on the submitted indicative layout. However, this is a matter which may be considered upon the submission of reserved matters relating to design and landscaping. It is considered that a development of the scale proposed would need to be softened by additional landscaping and this may also be controlled by the use of planning conditions.

Drainage and Flooding

This planning application was not accompanied by a Flood Risk Assessment (FRA) at the time of submission. Accordingly, in the absence of the FRA being submitted the Environment Agency has lodged an objection. However, an FRA was submitted on 26th August and it is anticipated that the Environment Agency comments in respect of the FRA can be verbally reported to the Planning Committee.

Sustainability

Policies CP1 – CP8 of the adopted Local Plan relate to achieving sustainable development and place emphasis on encouraging developments which provide for renewable energy, energy conservation and sustainable building. These are matters which will generally need to be considered at the reserved matters stage. However, the applicant has submitted a sustainability statement in which they commit to achieving the Code for Sustainable Homes Level 3 for all residential units on the development. They suggest that this may be secured by the use of a planning condition.

Other Matters

Loss of Employment Site

Policy E4A of the Local Plan safeguards employment sites from redevelopment to other uses, unless a number of criteria are satisfied. An element of employment would be retained on the site due to the proposed provision of a community use. Whilst exact employment figures would be dependent on the exact use, which is not yet confirmed, it is considered that this policy has been addressed. The application form suggests that 5 people could be employed on the site and whilst this would be dependant upon the exact use of the facility proposed, it is considered to be accessible bearing in mind the existing use of the land which does not generate large numbers of employees.

Education

ECC have advised that if planning permission is granted they would seek a financial contribution towards Early Years and Childcare provision and Secondary Education provision in the locality. Due to a surplus of primary school places in the locality they would not seek a contribution towards primary education.

Protected Species

The application is supported by an Extended Phase 1 Habitat Survey and Natural England has no objection to the proposed development subject to the recommendations contained within that study. It is also considered likely that there could be reptiles present on the site and, less likely, that bats may also be present. It is considered that a planning condition requiring a mitigation methodology would prevent any adverse impacts on these species groups.

Conclusion

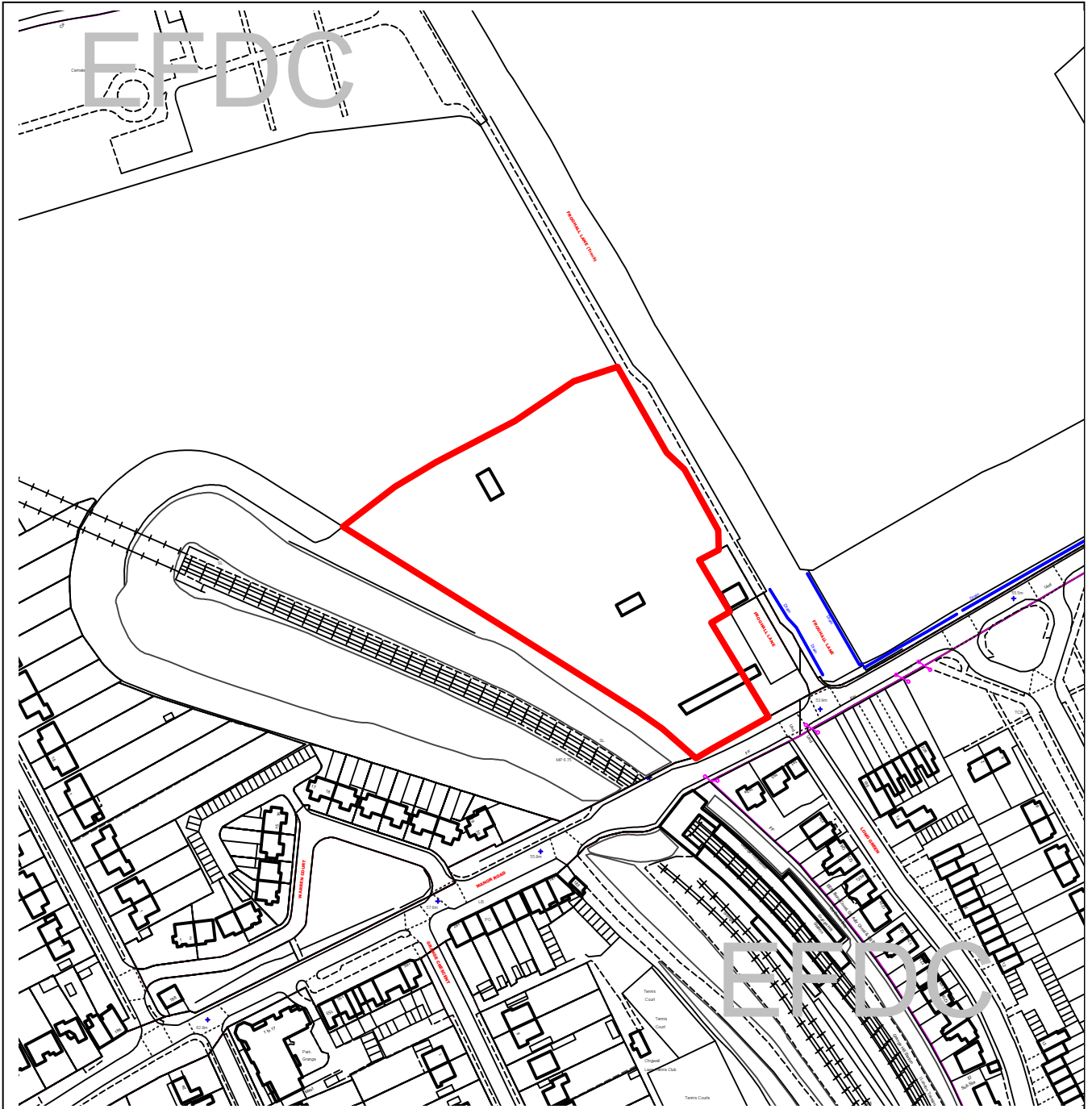
In light of the above appraisal, it is considered that the provision of affordable housing on this site would make a valuable contribution towards the identified need within the District. When this is considered in conjunction with site specific factors (such as the proximity to the transport network, the location of the site on the edge of the urban area, the previously developed status of the land and the distinct boundaries to all sides of the site, which would retain a defensible boundary to the Metropolitan Green Belt), it is considered that there is a strong case for exceptional circumstances to justify an exception to the normal green belt policy of restraint.

For these reasons, it is recommended that planning permission be granted, subject to the completion of a Section 106 legal agreement to secure the matters referred to in this report also subject to those planning conditions discussed.



Epping Forest District Council

Area Planning Sub-Committee South



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Agenda Item Number:	3
Application Number:	EPF/1399/09
Site Name:	212 Manor Road, Chigwell, IG7 4JX
Scale of Plot:	1/2500

Jennikings Nursery, Manor Road, Chigwell

**Section 106 Agreement – Proposed Heads of Terms (Affordable Housing Elements Only)
(Subject to the approval of Moat’s Board)**

- (1) Moat Housing to be a signatory and party to the Section 106 Agreement.
- (2) 54 dwellings (79% of the total number) to be provided as affordable housing.
- (3) Subject to the agreement of the Homes and Communities Agency (HCA) to Moat utilising sufficient grant from its Recycled Capital Grant Fund (RCGF) or to the receipt of sufficient capital grant from the HCA:
 - (a) 32 (60%) of the affordable properties to be provided in the form of Affordable Rented Housing, at Affordable Rents, that meet the requirements of the HCA’s Affordable Rent Framework, with the following property mix:
 - 6 X 2 bedroom flats
 - 16 X 2 bedroom houses
 - 10 X 3 bedroom houses
 - (b) 22 (40%) of the affordable properties to be provided as shared ownership, with the following property mix:
 - 17 X 2 bedroom flats
 - 1 X 2 bedroom house
 - 4 X 3 bedroom houses
- (4) If HCA approval to the use of sufficient grant from Moat’s RCGF is not given, or if sufficient capital grant is not provided by the HCA:
 - (i) 18 (33%) of the affordable properties to be provided in the form of Affordable Rented Housing, at Affordable Rents, that meet the requirements of the HCA’s Affordable Rent Framework, with the following property mix:
 - 5 X 2 bedroom flats
 - 13 X 3 bedroom houses
 - (ii) 36 (67%) of the affordable properties to be provided as shared ownership, with the following property mix:
 - 18 X 2 bedroom flats
 - 1 X 2 bedroom house
 - 17 X 3 bedroom houses
 - (iii) No grant funding from either the HCA or Moat to be required as a result.
- (5) All the affordable housing to be provided by Moat.
- (6) All shared ownership properties to meet the Council’s Shared Ownership Policy, i.e.:
 - (i) The *average* initial equity share sold to shared owners across all the shared ownership homes within to development to be no more than 35%;

- (ii) Shared owners to be able to purchase a minimum equity share of 25% and a maximum equity share of 50% for shared ownership schemes;
 - (iii) Shared owners to be able to purchase additional equity shares (staircase) up to full 100% ownership; and
 - (iv) Shared owners to pay an initial rent of no more 2.5% of the unsold equity per annum, with subsequent rent increases determined in accordance with Moat's Rent Setting Policy.
- (7) The affordable housing to meet the HCA's design and quality standards.
 - (8) No more than 50% of the market housing on the development to be occupied until the developer (or subsequent developer) has entered into a legally binding agreement with Moat for the sale of the affordable housing to Moat.
 - (9) Moat to comply with its signed District-wide Nominations Agreement with the Council.
 - (10) The Council's usual provisions to be included within the S106 Agreement that release any mortgage in possession from the affordable housing requirements, in specified circumstances.

August 2011

Report to the District Development Control Committee



**Epping Forest
District Council**

Date of meeting: 11 April 2012

Subject: Planning Application EPF/2361/09 – Redevelopment of land formerly in use as a garden centre to provide 21 flats 80% of which will be affordable housing. (Revised application)

Responsible Officer: Katie Smith, Senior Planning Officer (01992 564109)

Committee Secretary: Simon Hill (01992 564249)

Recommendation:

That the Committee refuses planning permission for the development described above, for the following reason:

- 1. The proposed development would place an additional burden on existing local education services, which are unable to accommodate additional places. The application does not secure the provision of any additional capacity within local education services, contrary to Policy I1A and CP3 (i) of the adopted Local Plan and Alterations**

Introduction:

1. This application was considered by the Committee at its previous meeting in February 2012, when the Committee resolved to grant planning permission, subject to the completion of a legal agreement.
2. Members approved amendments to the development proposal and the proposed legal agreement as follows:
 - (i) The enlargement of the application site to accommodate surface level car parking, instead of the underground car parking which was previously approved (resulting in a reduction in the number of car parking spaces provided from 25 to 20);
 - (ii) A change to the proposed mix of affordable housing, resulting in 53% of affordable units being available for affordable rent and 47% available for shared ownership; and
 - (iii) The requirement for the proposed access to be built prior to commencement to be relaxed to allow the development to be built up to a height no more than 1 metre above ground to allow the securing of housing grant funding; and
 - (iv) The surface level car park not to be subdivided or sold off from the 21 flat development.

3. As reported in the agenda report for the meeting of 15th February 2012 (provided as appendix 1), the applicant had raised concern in relation to the inclusion of a financial contribution of £35,072 towards education services. At the Committee meeting this matter was raised by Councillor Knapman. However, the resolution to grant planning permission did not omit the education contribution.
4. Subsequent to that meeting, the applicant has advised that they are not prepared to make an education contribution. This is for the reasons that the development site does not come within the catchment area for West Hatch School and also because the requirement for the education contribution on the adjacent development site was omitted at the District Development Control Committee meeting of 6th October 2009.
5. The County Council (as the Education Authority) has been consulted on the proposed omission of the contribution and has commented as follows:

When the application was originally received in 2009 there were insufficient early years and childcare places to meet the needs of the development and therefore a request for an EY&C contribution was made. However in 2011 I was asked to review the position and reported in March 2011 that the position had changed and a contribution for EY&C places was no longer required. I can confirm that this remains the case.

I can report that the position with regard sufficiency of primary school places has also changed. Previously our forecasts showed that it was likely that there would be sufficient places to meet the needs of the development but the latest data published in the document, Commissioning School Places in Essex 2011-2016 (CSPE), forecasts that there will not be sufficient places to meet the needs of the development at primary level. The Priority Admission Area School is Chigwell Primary School which has permanent capacity to take 270 pupils and it is forecast that there is likely to be 279 pupils on roll by 2016. Looking at the wider area and in particular at infant level, Chigwell Row Infant School has permanent capacity to take 58 pupils but it is forecast that there is likely to be 79 pupils on roll by 2016. There is also a similar position at Limes Farm Infant School with a deficit of 2 permanent places expected by 2016.

With regard to secondary provision the catchment school is West Hatch High School. The CSPE shows that the school has capacity for 1,295 pupils but is forecast to have 1,310 pupils on roll by 2016. The school is currently investigating ways in which to increase its capacity. Monies received would be pooled with s106 contributions due in respect of other developments in the area and spent at the school to create additional places in line with the need for additional places generated by the developments. As the school is now an academy it is ECC policy to obtain a funding agreement from the school to ensure the money is spent in accordance with s106 requirements.

I understand that an argument has been raised that as pupils from outside the district attend West Hatch High it is not appropriate to require a s106 contribution for the school. I cannot accept this argument as a valid one and draw your attention to the decision of the Planning Inspectorate in the matter of 16 Roughwood Close, Watford (APP/Y1945/A/10/2136251). The Inspector considered the fact that the secondary facilities might be used by children from outside the district and concluded at para 21 'that the calculated contribution sought is necessary and appropriate'.

From the above it is clear that additional provision will be needed at primary and secondary level and that this development will add to that need. I must therefore request on behalf of Essex County Council that any permission for this development is granted subject to a section 106 agreement to mitigate its impact on education. The formula for calculating education contributions is outlined in our Developers' Guide to Infrastructure

Contributions, 2010 Edition. Our standard s106 agreement clauses that give effect to this formula are stated in our Education Contribution Guidelines Supplement, published in July 2010. For information purposes only, should the final development result in the suggested 21 flats with 15 having 2 or more bedrooms, the sum would be £45,074 index linked to April 2011 costs (a breakdown of this sum is attached).

6. As can be seen from the comments made by the Education Authority, the need for the contribution not only remains but has increased since the application was previously considered, with a need now arising for primary education places as well. However, it is the view of the planning officer that, given the amount of work undertaken to date in respect of this proposal, it would not now be reasonable to seek the increased sum from the Applicant.
7. In light of the above appraisal, in the absence of the education contribution to be secured by legal agreement the proposed development would cause harm to the locality in terms of the increased pressure on local education services which do not have sufficient capacity at present to accommodate that demand. For this reason, it is recommended that planning permission be refused.

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Extract from

***Report to District Development Control
Committee***

Date of meeting: 15 February 2012



**Epping Forest
District Council**

Subject: Planning Application EPF/2361/09 – Redevelopment of land formerly in use as a garden centre to provide 21 flats 80% of which will be affordable housing. (Revised application)

**Officer contact for further information: K Smith Ext 4109
Committee Secretary: S Hill Ext 4249**

Recommendation:

That the following revisions to the planning application EPF/2361/09 be approved:

(i) The enlargement of the application site to accommodate surface level car parking, instead of the underground car parking which was previously approved (resulting in a reduction in the number of car parking spaces provided from 25 to 20);

(ii) A change to the proposed mix of affordable housing, resulting in 53% of affordable units being available for affordable rent and 47% available for shared ownership; and

(iii) The requirement for the proposed access to be built prior to commencement to be relaxed to allow the development to be built up to a height no more than 1 metre above ground to allow the securing of housing grant funding; and

also subject to the application of the original planning conditions agreed on 8 June 2010 and to the completion of the original legal agreement (as amended above) within 6 months of the date of this meeting.

Report Detail

1. (Director of Planning and Economic Development) Members may recall this application, which was first considered by this Committee in June 2010. The Committee resolved to grant planning permission subject to referral to the Government Office and subject to the completion of a Section 106 legal agreement within 9 months to secure:

- The provision of the vehicle access to the site prior to the commencement of development;

- The amount, tenure and occupancy of the affordable housing;
 - Highway Matters, including street lighting;
 - Education Provision (financial contribution and/or other); and
 - A contribution towards the re-opening of a Post Office facility within Manor Road.
2. Confirmation was received from the Government Office in August 2010, stating that the Secretary of State had concluded that the application should be determined by Epping Forest District Council.
3. A copy of the report to the District Development Control Committee and minutes at that time are attached to this report.
4. Following that resolution to grant planning permission, no action was taken on the completion of the Section 106 legal agreement within the required time period and in April 2011 the application was reported back to the Committee for further consideration. At that time Members gave a further resolution to grant planning permission, subject to the completion of a legal agreement within 6 months.
5. Whilst that resolution has subsequently lapsed, the Applicant's Agent has engaged with officers from the Council's Planning and Housing Directorates and negotiations regarding the development have resumed.
6. The Applicant has amended the scheme by slightly increasing the site boundary onto land which previously formed part of the application for the adjacent site. This has provided space to accommodate surface level car parking within the development, thereby reducing the construction costs by omitting the need to provide underground parking. This amendment does result in a reduction in the number of car parking spaces within the development from 25 spaces to 20. However, having regard to the highly sustainable location of the site, in particular its proximity to Grange Hill Underground Station, this reduction in car parking is considered to be acceptable.
7. Amendments have also been proposed to the Heads of Terms for the legal agreement which will accompany this planning permission, if granted. These are discussed in greater detail below.

The Applicant's Position

8. The Applicant has provided the following statement, indicated why it has not been possible to sign the legal agreement subject to the terms set out in the Committee's decision of April 2011:
9. "Due to the downturn in the housing market since 2007 when the property was purchased and because of the change in government funding to Housing Associations together with additional construction costs and contributions we were unable to deliver the heads agreed by the committee in June 2010."

Revised Terms for Legal Agreement

10. The following revised terms for the legal agreement have been agreed in principle by the Applicant and officers from the Council's Planning and Housing Directorates:

(1) Affordable Housing (all 2 bed units)

- (a) 17 affordable units to be provided
- (b) 9 (53%) of the affordable units to be for affordable rent
- (c) 8 (47%) of the affordable units to be for shared ownership
- (d) All shared ownership properties to meet the Council's Shared Ownership Policy, i.e.:
 - (i) The *average* initial equity share sold to shared owners across all the shared ownership homes within to development to be no more than 35%;
 - (ii) Shared owners to be able to purchase a minimum equity share of 25% and a maximum equity share of 50% for shared ownership schemes;
 - (iii) Shared owners to be able to purchase additional equity shares (staircase) up to full 100% ownership; and
 - (iv) Shared owners to pay an initial rent of no more 2.5% of the unsold equity per annum, with subsequent rent increases determined in accordance with the selected housing association's Rent Setting Policy.
- (e) All the affordable housing to meet the HCA's design and quality standards.
- (f) None of the market housing on the development to be occupied until the developer (or subsequent developer) has entered into a legally binding agreement with the selected housing association for the sale of the affordable housing to the selected housing association.
- (g) The name of the housing association to provide the affordable housing is East Thames

(2) Other Matters

- (a) Post Office Contribution of £40,000
- (b) Education Contribution of £35,072
- (c) The approved development not to be built beyond a height which exceeds one metre above the ground level of the site, until the access road has been provided.
- (d) The delivery of required Highway improvement works (e.g. street lights)

Appraisal

11. The main changes in relation to the previously agreed Heads of Terms relate to the proportion of the affordable housing which will be available for affordable rent in relation to the shared ownership units and also to the requirement for the access road (the subject of a planning application on the adjacent site) to be provided.

12. In relation to the affordable housing, the Council's Director of Housing has agreed a mix of 53% affordable rent to 47% shared ownership following careful consideration of the circumstances and merits of this case.

13. Turning to the access road, it was previously agreed that this development would not be commenced until such time as the access road leading from Manor Road had been provided. This requirement was necessary as if the development were to proceed in isolation to the access road proposed on the adjacent site, then there would be no access to the development by car. It is on the basis that the access would be provided via the adjacent site that the Council has previously accepted that this site is capable of sustaining the number of dwellings proposed.

14. However, East Thames, the potential housing association for the development, has advised that this raises a problem in relation to their intended use of grant funding, which is necessary to deliver the affordable housing. It will be a requirement of their use of grant funding that the development commences by a certain date. Compliance with this date may not be possible if the commencement of the development has to be preceded by the completion of the access road. It is, therefore considered reasonable that this requirement be relaxed as set out above, to provide the opportunity for a commencement to be made on the site to secure the funding, prior to the access road being provided. The limitation of the progress of the commencement to a maximum of one metre above ground level will safeguard against the development proceeding to completion without the access road.

15. The Applicant's agent has expressed some concern regarding the inclusion of an education contribution, because they consider that the site lies outside of the catchment area for West Hatch School and is not, therefore, necessary. However, previous resolutions given by the Committee have included this contribution and if the committee considered that this obligation is necessary, the Applicant is willing to make the contribution. It is the opinion of officers that the sum should be retained within any new resolution that is given, on the basis that additional demand for education services within the locality will arise from the proposed development.

Potential for the Future Delivery of the Development

16. The Applicant's Agent has stated that the developer confirms that he is now able to complete the development with all the aforementioned proposals in place.

Conclusion

17. In light of the above appraisal, it is considered that the amendments to the development and the Heads of Terms for the legal agreement do not have a material impact upon the proposed development, the principle of which has already been agreed by previous resolutions to grant planning permission.



Appeal Decision

Site visit made on 20 January 2011

by Keith Manning BSc (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 April 2011

Appeal Ref: APP/Y1945/A/10/2136251
16 Roughwood Close, Watford WD17 3HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Matthew Homes Ltd against the decision of Watford Borough Council.
 - The application Ref 10/00012/FUL, dated 6 January 2010, was refused by notice dated 24 March 2010.
 - The development proposed is erection of four detached houses and all ancillary works.
-

Decision

1. I dismiss the appeal.

Main Issue

2. The main issue in this case is whether the financial contributions provided for through the medium of the unilateral undertaking¹ submitted would be adequate to mitigate the impact of the proposed development having regard to the broad policy principles set out in Annex B to Circular 05/2005 *Planning Obligations* ('the Circular'). The undertaking provides for contributions in respect of childcare, nursery and primary education, and youth services.

Reasons

3. The appeal site is a large triangular parcel of land at the head of Roughwood Close occupied by a single detached house. This is vacant. Although the main body of the house was largely intact at the time of my visit the roof tiles had been removed, apparently around May 2010, prior to which the roof void had been surveyed for bats. The site is bounded to the north and east by houses in generous plots of varying size and to the west by open land that is within a Green Belt.
4. Planning permission (Ref 10/00855/FUL) for the same development was granted on 7 December 2010, the matter of the putative presence of bats and the matter of contributions² to local services and infrastructure having evidently been resolved to the Council's satisfaction. An informative to that permission states....."The proposal is the same as a previous proposal that was refused planning permission 10/00012/FUL in March 2010 due to the lack of an appropriate planning obligation, and because there was some doubt as to whether protected species of wildlife (bats) might be roosting on the site; but this reapplication has satisfactorily addressed both those matters."

¹ Unilateral Undertaking dated 14 December 2010

² As in completed agreement dated 7 December 2010, a copy of which I requested prior to my decision

5. Having examined the site and its surroundings, I have no reason to take a different view from that of the Council regarding the appropriateness of the development in terms of the principle of the land use or the nature and design of the development as proposed. Moreover, I have no reason, on the basis of the evidence before me, to doubt that the permission would be implemented if this appeal were not to succeed. It therefore represents a clear-cut 'fallback' position for the appellant which is a powerful material consideration. Notwithstanding that the site is no longer classified as previously-developed land to which priority for development is generally to be accorded, the specific merits of what is proposed are no longer, in a practical sense, at issue.
6. The Council's representations were submitted prior to the grant of planning permission and, in the circumstances, there is no need for me to address the matter of nature conservation, which was the subject of its first reason for refusal. Neither is it necessary for me to address the in-principle need for financial contributions to mitigate the impact of the proposed development. It is plainly common ground that some such contributions are necessary and I have no reason to take an alternative view. Moreover, the Council's position is that the full range and extent of contributions sought are lawfully sought in the context of the Community Infrastructure Levy Regulations 2010 that are now in force. The issue therefore revolves around six specific contributions to which the appellant has committed under the terms of the permission now granted and its associated planning obligation, and the absence of those same contributions from the unilateral undertaking submitted in respect of the proposed development I am obliged to consider.
7. In straightforward terms the issue, and hence my decision, turns on whether any or all of the following contributions are necessary and appropriate in the light of the advice in the Circular that such contributions be reasonable, relevant, necessary as a result of and directly related to the proposed development and proportionate to it:
 - Sustainable Transport - £4,500
 - Secondary Education - £16,986
 - Libraries - £795
 - Open space - £3,708
 - Children's playspace - £2,955
 - Health facilities- £1,650

Given the circumstances of this appeal, the content of the unilateral undertaking and that of the appellant's statement, it is effectively common ground between the parties that nursery and primary education, childcare and youth services are appropriately provided for by way of a proportionate financial contribution.

8. Appendix 28 of the appellant's statement contains a selection of appeal decisions in which various aspects of the policy and practice of the Council and the County Council in respect of contributions are considered and the weight to be attached determined. However, it is evident from reading those decisions that many turn on the specific circumstances and evidence before the Inspector, which I am not party to. For example, in the case of the appeal referenced APP/B1930/A/06/2006963, it is clear that the Inspector considered

- a contribution towards sustainable transport schemes would be justified but that, in its absence, the requisite measures could in that case be secured by a planning condition; and I note that condition 12) of that decision puts that conclusion into effect.
9. The Council, on the other hand, maintains that its approach within the Hertfordshire context is frequently supported by Inspectors and, notwithstanding the individual examples put before me by the appellant and the lack of specificity in the Council's statement, I have no evidence to suggest that is not generally the case.
 10. Bearing the above points in mind, I consider the issue in the circumstances specific to this case having regard to the advice in the Circular, which sets out the broad principles regarding the negotiation of planning obligations appropriate to specific sites and allows for pooled contributions and the application of formulae and standard charges. These approaches are most relevant, it seems to me, in circumstances where development is likely to have an incremental impact on the capacity of physical and social infrastructure in the locality that needs to be mitigated and cannot be addressed by the imposition of planning conditions. Hence financial contributions to such infrastructure proportionate to the likely impact of a specific development can, in practice, only be sought through the medium of a planning obligation.
 11. It is against that background that I consider the disputed contributions sought. The relevant development plan policy background is comprehensively documented in the appellant's submission, albeit that the Regional Spatial Strategy remains in force. However, it seems to me that the most relevant development plan policies are the saved policies of the Watford District Plan 2000 ('the local plan'), amongst which IMR2 is of particular significance because it sets out the Council's approach to planning obligations, listing those other policies concerning specific topics³ which might create the need for a planning obligation. The Council points out, in its statement, that use of formulae and standard charges with a view to pooling contributions is encouraged by the Circular and that the circumstances of Watford, with significant reliance for housing provision on smaller sites, are particularly appropriate for that approach, providing developers with a clear view in advance of what is likely to be needed and expected in any particular case.
 12. I have no reason to disagree with that analysis, albeit that the Circular makes clear that such mechanisms should not be applied in a blanket fashion but rather applied to the circumstances of any particular case. Given that the Council considers that the contributions sought are consistent with the policy requirements set out in paragraph B5 of the Circular, it follows that its position that the tests of the Community Infrastructure Levy Regulations 2010 would also be satisfied is a consistent one, the central question in respect of each contribution being whether the circumstances of the particular development at issue do in fact necessitate the contribution sought. I am conscious that in no instance does the appellant effectively contest the proportionality, as opposed to the necessity, of what is sought. If that were the case then, logically, a different amount would have been offered through the medium of the unilateral undertaking in respect of any contribution considered necessary but disproportionate.

³ Written Statement - Table 9

13. As it is, the undertaking makes no contribution in respect of the following matters and it is therefore primarily to the necessity or otherwise of the contributions sought by the Council that I now turn my attention.

Sustainable Transport

14. I note that the County Council's email of 6 July was a response to a query following a single appeal decision in which the Inspector was unable to divine what mitigation was required in respect of highways. However, I also note that the Inspector in the case referenced above considered that the additional residents in that case would be likely to have a significant impact on local transport need and that a contribution towards sustainable transport schemes that would be related to the effect of the proposal would be justified, albeit he imposed a condition requiring a scheme of mitigation as opposed to the £8,500 contribution sought.
15. It seems to me that small increments of development, such as the scheme at issue, must cumulatively put additional strain on transport infrastructure and, whilst not necessarily creating a highway safety objection as a consequence of additional traffic generation, would fall within the purview and intentions of local plan policies T4, T7, T9 and T24, which collectively seek to promote more sustainable travel within the Borough Council's area. The appellant refers to the County Council's email of 6 July 2010 and describes the South West Hertfordshire Transport Plan as "aspirational". Insofar as it aspires to deliver a programme of improvements set out in a periodically reviewed action plan, that must inevitably be the case. However, it is clear from paragraph B21 and B22 of the Circular that a discrete piece of infrastructure need not be individually justified but rather addressed through pooled contributions, the scale of which may be set out in advance as through the use of the '*Planning obligations guidance – toolkit for Hertfordshire*' document published in January 2008. Although not part of the development plan or formally adopted, apparently, as a supplementary planning document as such, it is nevertheless published in advance, as advised by the Circular and has been approved as guidance by the County Council following consultation. Amongst other things, it provides an indication of sought contributions based on parking standards and bedroom numbers, which seems to me to be a reasonable starting point, at least, for negotiations concerning a specific scheme.
16. In the light of the above considerations it merits weight as a basis for negotiating the contributions appropriately derived from individual small housing schemes to be pooled for use on local schemes identified in the Local Transport Plan and in urban transport plans to enhance non-car accessibility within the catchments of new development, albeit not the greater weight that a more formal document would attract. Moreover, it seems to me that the intention of the Circular's advice would be undermined if the approach that has been established through the toolkit were not to be applied consistently, albeit that very consistency might arguably be described as a blanket approach. Thus, while I acknowledge that there is degree of opacity in the County Council's approach that would also run counter to the Circular's advice, I am not persuaded that the contribution sought is, in principle, unnecessary; and that being so, I would not regard a nil contribution as acceptable. However, I consider that an obligation is the appropriate means of securing financial contributions, whatever the appropriate amount, and, in the absence of specific evidence to demonstrate that the approach in the toolkit generates a sought contribution that would be disproportionate to the development proposed in

this instance, I have no basis for concluding that the contribution to sustainable transport would be excessive.

17. For the above reasons, I conclude that a contribution in respect of sustainable transport is necessary.

Secondary Education

18. The appellant accepts that financial contributions to the County Council's education service, in accordance with policy H10 of the local plan, to mitigate the impact of the development upon it are, in principle, appropriate. There is no contention concerning the contributions sought for nursery and primary education, in respect of which there is an acknowledged current shortfall in provision.
19. The contention concerning secondary education arises, it appears, because of an adequacy of capacity in the short term but an emerging capacity issue in 2015/16 and 2016/17. However, it seems to me that the mitigation of impact on the schools system can only be addressed through the formulaic approach because it is not possible to say that children from the proposed development will necessarily attend a local publicly funded school, whether that be for the purposes of nursery, primary or secondary education, or indeed what families will occupy any particular development. Moreover, parental choice considerations, especially at secondary level, make it inevitable that demand cannot necessarily be conceived of in terms of administrative boundaries. What is relevant is the totality of demand arising from new development and in any event the Circular recognises that pooled contributions can address cross-authority impact. For that reason I do not consider it inappropriate for the development at issue in this instance to make no contribution to secondary education on the premise that the facilities funded might be used by children from outside the district. Unless private education is opted for, or in the unlikely event of family houses containing no children, the proposed development will directly give rise to a demand for facilities and again the intentions of the Circular can only properly be served by a degree of consistency. Appendix 1 to the toolkit sets out explicitly the cost on a per pupil basis, taking into account variation over time as developments are initially occupied before settling towards an assumed norm for established residential areas.
20. Although it seems that capacity would not be an issue locally until 4 or 5 years from now, it also has to be borne in mind that the lifetime of a permission is generally three years and that a development commenced at the end of that period might not be fully occupied until around that time. Again, this militates in favour of a standardised approach consistently applied. Moreover, the size of the houses proposed suggests to me that they are likely to be occupied by families with older children in any event.
21. For these reasons, I do not consider that there is a convincing argument in this case to depart from the normal expectation in the local planning authority and County Council area that a proportionate financial contribution to secondary education facilities to mitigate the impact of residential development should be effected through the medium of a planning obligation. I conclude that the calculated contribution sought is necessary and appropriate.

Libraries

22. The improvement of the Central Library facilities in Watford, within the catchment of which the proposed development falls, is arguably an action to address an existing deficiency, as the appellant maintains. However, policy H10 of the local plan provides for contributions in respect of community facilities and it seems to me that there must be some impact to be mitigated in any event as a direct consequence of additional households and the toolkit makes it clear that pooled contributions will only be used to provide library facilities relevant to the development in question. Whilst at first sight the link might seem tenuous, the logic of pooled contributions to social infrastructure, as advised by the Circular, leads me to the conclusion that there is a sufficiently direct link between new development and local library services to satisfy the relevant test and Appendix 1 to the toolkit explains how the pool of contributions is anticipated to be used. Moreover, there is an explicit basis for calculating the contributions that does not seem to me to lead to a disproportionate outcome.

23. For these reasons, I consider the library contribution sought to be justified.

Open space

24. The Council's letter of 16 July 2009 confirms that the proposed development is not in an area of open space deficiency and on that basis simply proposes to halve the normal contribution sought. The approach appears to be derived from the Council's Planning Obligations Statement of 2008, whereas SPG10, which is formally adopted supplementary guidance, deploys formulae based on assumed land values that are not current, albeit there is provision to vary according to the circumstances of the site and hence scope for a more precise negotiation.

25. I am not persuaded that policy L8 of the local plan, which recognises that there may be situations where there is sufficient provision within the locality, supports in those circumstances the concept of a halved contribution as suggested, as opposed to one based on a more refined negotiation. Although the policy is clear that all residential development may be expected to have some impact on open space resources, I am not persuaded in this instance that the amount of the contribution sought is adequately justified in the specific circumstances of the site's locality and directly related to it, notwithstanding that the principle of a contribution is embedded in the relevant adopted policy.

Children's playspace

26. Family houses, even if set in private gardens, may reasonably be expected to give rise to at least some impact on children's playspace resources. It is clear from the Council's letter of 16 July 2009 that children's playspace provision would fall to be addressed as a consequence of policy L9 of the local plan as amplified by SPG10. The latter provides, at paragraph 10.4.5, a clear requirement and a straightforward means of informing site-specific negotiation as advocated by paragraph B33 of the Circular. However, it is not clear from the Council's letter how the standard charge is to be applied, bearing in mind that the standard charge is a minimum of £985 per dwelling and the sum in contention is £2,955, rather less than the £3,940 that would be predicted on that basis.

27. Given the clarity of the adopted policy and guidance, I consider that in the circumstances of the site a contribution would be justified but there is less clarity as to whether or not the amount in contention is appropriately calculated if the starting point for negotiation is the standard charge.

Health facilities

28. Policy H10 of the local plan indicates that contributions to community facilities required as a direct result of the proposed development may be required by the Council. Doctors' surgeries are mentioned in the explanation to the policy and the Council's letter of 16 July 2009 does no more than mention a study undertaken on behalf of the Primary Care Trust. Having read this study, which is simply appended to the Council's Planning Obligations Statement, I am not persuaded that it forms an appropriate basis upon which to negotiate a contribution from the development proposed, bearing in mind that it appears to be predicated on the proposition that "any new residential development (that is in excess of ten units) will have an immediate impact in the terms of demand for primary care".
29. In any event, it is essentially a discursive document, albeit that a tariff is suggested, and does not seem to me to have any status as guidance for developers in the manner intended by the Circular. The basis upon which a contribution simply to 'health facilities' in the Borough of Watford as a whole is sought is, in my view, inconsistent with the policy principles of the Circular. There is insufficient basis for negotiating related or proportional contributions in respect of small increments of proposed residential development such as that proposed in this instance and, bearing in mind the funding arrangements for healthcare in general, I am not persuaded that even the relatively modest contribution sought is justified.

Transparency

30. The explanation to policy IMR2 of the local plan states, at paragraph 12.27, that..... "S106 payments are held in separate accounts and are rigorously audited. They are monitored and reported regularly to Council and therefore available for public inspection. Full reporting back to developers is undertaken to show how and where their contributions have been used." The Council's *Planning Obligations Statement* also makes it clear that procedures are in place to ensure that an audit trail exists to relate contributions to specific expenditure. Similar arrangements and opportunities for tracking expenditure are explained in section 16 of the County Council's toolkit. On the basis of such arrangements being in place, I have no reason to consider that either council would not be able to demonstrate a clear audit trail between contributions made and infrastructure provided, or otherwise fail to accord with the principles embodied in paragraph B21 of the Circular.

Overall conclusions

31. I have considered the cases put by the parties in terms of both general principles and specific contributions and in the light of the broad policy principles set out in Annex B to the Circular taken as a whole, including the advice on formulae, standard charges and pooled contributions. In most cases I have concluded that a contribution to infrastructure provision by the relevant authorities would, in the circumstances, be justified, albeit I acknowledge that there is a lack of certainty as to exactly when, how and where the contributions sought would be deployed. However, this is a small housing scheme which

would combine with others to impact on public infrastructure and the mitigation of such impacts in those circumstances, it seems to me, must inevitably involve the sorts of mechanisms advocated by the Circular and operated by the relevant local authorities in this case, including those designed to ensure transparency in the deployment of specific contributions in the context of their being pooled for use alongside others.

32. Although there may be scope for negotiation regarding proportionality in the case of some of the contributions sought; in only one case, health facilities, am I persuaded that a nil contribution would be acceptable. In all other cases, I am of the view that failure to provide a contribution would lead to conflict with the intentions of local plan policy IMR2 and relevant topic based policies. For this reason, the financial contributions provided for through the medium of the unilateral undertaking submitted (which, by reason of their omission, would be nil in respect of all the disputed contributions) would not be adequate to mitigate the impact of the proposed development having regard to the broad policy principles set out in Annex B to the Circular.
33. No material considerations have been identified which would be sufficient to outweigh the resulting conflict with the intentions of the development plan and I therefore conclude that the appeal should be dismissed.

Keith Manning

Inspector

Report to District Development Control Committee



**Epping Forest
District Council**

Report reference: ENF/0164/10

Date of meeting: 11 April 2012

Subject: Direct Action - Roadside House, Avenue Road, Dobbs Weir, Nazeing

**Officer contact for further information: Sharon Hart (01992 564113)
Jeremy Godden (01992 564498)**

Committee Secretary: Simon Hill (01992 564249)

Recommendation:

That, subject to Cabinet approval to incur associated expenditure, authority be given to the Director of Planning and Economic Development to take direct action under Section 219 of the Town & Country Planning Act 1990 on one or more occasions to secure compliance with the requirements of the Section 215 Notice issued 31 March 2011 in respect of Roadside House, Avenue Road, Dobbs Weir, Nazeing.

Report Detail:

1. (Director of Planning and Economic Development) Complaints were received in 2010 to the Planning Enforcement Section that a building business was being run from a private domestic bungalow at Roadside House, Avenue Road, Dobbs Weir Nazeing. This is a single storey house in a residential area. The road is a private road.
2. An investigation revealed that the owner of the property was a builder and building materials were being stored on the site, with pallets of bricks, wood, scaffold poles and other equipment on the front driveway of the property. At the same time Environmental Health were investigating complaints of rubbish being burnt at the site in a pit/corrugated iron structure in the rear garden. The owner of the property was subsequently prosecuted under Environmental Health legislation for these bonfires.
3. Additionally a number of commercial vehicles were stationed on the front drive. This included a HIAB lorry and a van. The lorry had a quality of materials and waste on it. This was subject to separate enforcement action where a Notice was served. Although this is currently under appeal the vehicles have been removed from the site, although the HIAB is parked in the street, where it is immune from planning enforcement action (and highway action as the road is private).
4. Negotiations with the owner to remove the materials from the site proved fruitless, and the amount of materials increased, with domestic waste such washing machines being left on the drive, and a large sign advertising building services being placed against the house.
5. A number of planning applications have been made regarding the site since 2009, with one being for the erection of a summerhouse in the rear garden granted in December 2009. Work started on this scheme in July 2011. The owner claimed the materials were for use on the various projects at the site, such as the summer house, and in addition stockpiled for a first floor extension project. This later scheme was refused in November 2011. At this time, and at the current time, the house was being used as a house in multiple occupation with 6 rooms being let out on short term lets. This itself though does not require planning permission.

6. However, the amount of material, the domestic waste, the corrugated burning area and the signage were causing serious visual harm to the amenities of the area. Additionally the amount of materials was in excess of what could be reasonably be used for the construction of the summerhouse, and it was clear that much of it was stored in the hope of a grant of permission for the first floor extension and in connection with the owners building business.

7. Therefore a S215 Notice (Untidy Land) was authorised under the Director of Planning and Economic Development delegated authority and served on 31 March 2011. The authority to issue the Notice included authority for the Director of Corporate Support Services to commence criminal and/or civil proceedings to remedy a breach of the Notice.

8. The notice required the owner of the land to remove all domestic waste from the land, other than stored in Council wheelie bins, remove all building materials from the land, removal all company signs from the land and to remove the corrugated structure from the rear garden.

9. This notice became live on the 12 May 2011 and had a compliance period of 28 days, which expired on 10 June 2011.

10. A compliance check was carried out on the 15 June 2011 and found that the notice had not been complied with so the Council prosecuted the owner for failing to comply. On 30 August 2011 at Harlow Magistrates Court the owner, Mr James Emmerson pleaded guilty to the offence of failing to comply with the Notice. The Magistrates fined him £200 and ordered him to pay £558 towards the prosecution costs.

11. Mr Emmerson's legal representative stated that Mr Emmerson would clear the site "in the next few days", and the Councils Legal representative confirmed no further action would be taken whilst representations were made to vary the notice to permit him to store materials in the front garden in connection with the recently commenced summer house. Subsequent negotiations allowed Mr Emmerson 8 weeks to clear the site in accordance with the notice, with an area at the side of the drive to be used to store materials for the summer house being allowed to be used until 21 November 2011 when it was predicted the building works would cease.

12. On 21 November officers carried out a compliance check and found that the site had not been cleared and the materials and waste were still in situ. The Agent for Mr Emmerson argued that the materials were needed for the first floor extension (although this had just been refused) and the decision was taken to commence a further prosecution.

13. On 20 March 2012 at Harlow Magistrates Court the owner Mr James Emmerson pleaded guilty to the offence of failing to comply with the Notice. The Magistrates fined him £1000 and ordered him to pay £416 towards the prosecution costs.

14. Officers then wrote to Mr Emmerson asking him to clear the site within seven days or further action would be taken. Mr Emmerson contacted officers and arranged a site visit on 27 March 2012. At the site visit it was noted that Mr Emmerson had started work to clear the site, and had removed the domestic waste and corrugated structure from the land. He stated that he had lost his business and was working for another firm as a driver in London. He asked for 8 weekends to clear the site, and also asked to be allowed to retain materials to finish off internal works to the summer house and rear garden. This last matter is being considered by Officers. He was also under the impression that the first floor extension refusal had been appealed, but investigations revealed no appeal has been made and that it is now out of time to make such an appeal.

15. Whilst Officers are heartened that he now appears to be cooperating with the Council to comply with the provisions of the notice, due to the history on this site and the fact that the Council has had to mount two prosecutions, there is justifiable concern that the clearance

may not be finished within the time span indicated.

16. Therefore Officers ask that authority for Direct Action be granted so that if the notice is not complied with they can commence action immediately.

Power to Take Direct Action:

17. The Council has the power, under Section 219 of the Town and Country Planning Act 1990, to enter the land and take steps to secure compliance with the requirements of the Notice. Any expenditure could be recovered as a simple debt and additionally be secured as a charge against the land which would be recovered on the completion of any future transfer or sale of the land. In this case, since the requirements of the Notice have not been complied with despite prosecution and the issue of further written requests to comply, Officers have taken steps to explore the option of taking direct action to secure compliance with the Notice.

18. There are practical and legal issues associated with what specific steps a Council can take in exercising its power under Section 219 to secure a cessation of a use. Measures such as removing all of the building materials and the sign from the site are practicable.

19. Materials removed from the site while taking steps required by the notice must be held for at least 3 days and if the owner claims them within that period they must be returned (Regulation 14 of the Town and Country Planning Regulations 1992) However, if they are not claimed, then the Council can sell the materials and retain any proceeds up to the amount of expenditure incurred by the Council in taking the steps to comply with the Notice. If a debt remains to the Council after the materials have been disposed of, the Council can place a charge upon the land so that monies from any future sale may be offset against the costs incurred and recover as a simple debt.

20. Alternative courses of action open to the Council are a further prosecution or seeking an Injunction from the High Court against the owner of the land and operator of the use. There is a balance to be struck here as the first prosecution did not bring about any meaningful compliance with the notice, but the second prosecution may have brought about a change of heart on the part of Mr Emmerson. However, as explained above there are concerns that the required works may not be carried out within the timeframe proposed.

21. The process of seeking and enforcing an injunction can be costly and time consuming, although costs are likely to be recoverable in this case. The High Court may grant the Council an injunction requiring named persons to comply with the requirements of the Notice. However, if the persons served with an Injunction fail to comply with its terms then the Council could seek to have them committed for contempt of court.

Human Rights Considerations

22. Taking Direct Action could be considered an infringement of The First Article of the First Protocol of the European Convention of Human Rights. The First Article of the First Protocol states persons are entitled to the peaceful enjoyment of their possessions. That right is a qualified right and interference with it by a public authority is permitted in accordance with the law as necessary for the protection of the rights and freedoms of others and the general interest. Accordingly, there is a fair balance to be struck between individual's rights, the public interests protected by the planning system and those of other persons.

23. In this case it is considered that since the use of the land causes clear harm to the interests of to the visual amenity of the street scene and neighbours the balance falls against the rights of the owner and occupier of the land. The Council has attempted on a number of occasions to gain the cooperation of the owner and occupier to remedy the harm caused and has successfully prosecuted for failure to comply with the Notice twice but only now is work commencing to clear the site. It is therefore necessary to be prepared to take alternative action including direct action to secure compliance with the requirements of the Notice. In the circumstances taking direct action to remedy the harm caused by the continuation of the

unlawful use is considered to be proportionate.

24. The owner and occupiers Article 6 right to a fair trial has in this case already been provided by the Magistrate Court hearings.

Conclusion:

25. Following the two successful prosecutions it has been established that the continuance of the use of the land for the storage of building materials is not acceptable in planning terms. Since the Council's actions to date have not been successful in bringing the unauthorised use to an end, if the Council does not seek to uphold the terms of the Notice by taking further alternative action to secure compliance this would result in the continuation of harm to visual amenity. Moreover, if the Council does not take such action to uphold the Notice it could lead to the owners of other land and operators of similar unlawful uses disregarding the Council's planning control function in the future. Although the Council could again prosecute the owner in the Magistrates' Court again it is at best a course of action that is used in conjunction with other action.

26. The options for alternative action are to either take direct action under Section 219 of the Town & Country Planning Act 1990 or to seek an Injunction from the High Court against the owner of the land and operator of the use. In this case taking direct action is likely to achieve compliance with the requirements of the enforcement notice faster than could be achieved if the Council sought and then had to take steps to enforce an Injunction. It is considered that the costs of taking direct action in this case are likely to be relatively modest when compared to those of seeking and enforcing an Injunction, although the Council should be able to recover its costs whichever of the alternative courses of action were taken.

27. If direct action is unsuccessful it would still be open to the Council to seek an Injunction at a later date. Authority already exists to pursue that option as part of the original authority.

28. It is therefore recommended that authority be given to the Director of Planning and Economic Development to take direct action under Section 219 of the Town & Country Planning Act 1990 on one or more occasions to secure compliance with the requirements of the Notice, subject to Cabinet approval to incur associated expenditure over the threshold for delegated cost expenditure by the Planning Department.