

## Appeal Decision

Hearing held on 20 January 2016

Site visit made on 21 January 2016

**by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI**

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

**Decision date: 10 February 2016**

---

**Appeal Ref: APP/J1535/W/15/3132062**

**Chimes Garden Centre, Old Nazeing Road, Broxbourne EN10 6RJ**

- 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 BDG Partners Ltd against the decision of Epping Forest District Council.
  - The application Ref EPF/0206/14, dated 29 January 2014, was refused by notice dated 11 February 2015.
  - The development proposed is the demolition of the existing garden centre/commercial buildings and erection of 43 dwellings with associated parking and landscaping.
- 

### Decision

1. The appeal is dismissed.

### Policy Context

2. The appeal is required to be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The relevant development plan here is the Epping Forest District Local Plan (1998) (the LP) and Local Plan Alterations (2006) (the LPA).
3. Other important material considerations here include the National Planning Policy Framework (2012) (the Framework) and the supporting Planning Practice Guidance (PPG).
4. The Framework provides amongst other things at paragraphs 47 and 49 that development plan policies should not be considered up to date if the Council cannot demonstrate a 5 year supply of suitable and deliverable housing land. It also provides at paragraph 215 that the weight to be accorded to development plan policies that predate the Framework should be adjusted according to their degree of consistency with the Framework.

### Main Issues

5. I consider the main issues to be:
  - (a) Whether the development plan policies are up to date in respect of the supply of housing.
  - (b) Whether the development would be 'inappropriate' in the Metropolitan Green Belt or otherwise harmful to the 'openness' of the Green Belt.
  - (c) In respect of flood risk:

- i) whether the location of part of the development in Flood Zone 3 satisfies the Sequential Test in the Framework and, if so,
  - ii) whether the Exceptions Test is also satisfied in that: would any wider sustainability benefits outweigh the flood risk? and would the development be safe for its users, without increasing flood risk elsewhere, and where possible reducing flood risk overall?
- (d) Whether the proposal makes suitable provision for affordable housing.
  - (e) Whether the proposal should and does make provision for education infrastructure including additional primary school accommodation and the costs of transporting students to secondary school.
  - (f) Whether there has been sufficient investigation of land contamination.
  - (g) Whether there has been sufficient investigation of wildlife impacts.
  - (h) Whether any harm to the Green Belt or other identified harm would be outweighed by any other considerations.

## **Reasons**

### *Housing Supply*

- 6. The LP was adopted some 18 years ago and the limited LPA changes were adopted 10 years ago. The housing target in the development plan is consequently now out of date and the Council does not dispute that the supply of available and deliverable housing land falls far short of the most recent assessment of need which is the starting point for assessing a 5 year housing supply. Consequently the Council cannot demonstrate a 5 year supply. In these circumstances paragraphs 47 and 49 of the Framework provide that housing supply policies should be considered out of date. Paragraph 14 provides in summary that where policies are out of date there should be a presumption in favour of sustainable development unless the adverse impacts would significantly and demonstrably outweigh the benefits.
- 7. Policies that seek to limit the location of housing to within existing defined settlements are to be considered out of date for the above reason and any conflict with such policies is outweighed by the housing supply shortfall. However other development plan policies should continue to attract full weight if they are consistent with the Framework. Local and national policies in respect of the Green Belt and flood risk are of particular relevance.

### *Green Belt*

- 8. The appeal site is low lying land entirely within the Green Belt. It is also within the designated Lee Valley Regional Park.
- 9. LPA Policy GB2A will not grant planning permission for new buildings in the Green Belt unless they are 'appropriate' in that they preserve openness, do not conflict with the purposes of the Green Belt, and are for specified types of development (which do not include general housing). However that policy wording is not fully consistent with the more up to date national policy in the Framework which here merits greater weight.
- 10. Paragraph 89 of the Framework provides amongst other things that development in the Green Belt may not be 'inappropriate' where it concerns the: '*partial or complete redevelopment of previously developed sites (brownfield land) whether redundant or in continuing use (excluding temporary*

*buildings) which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development'.*

11. Much of the appeal site was used for gravel extraction between about 1975 and 1980. The gravel pit was subsequently backfilled with waste and developed in part as a garden centre. After the garden centre closed the buildings and some of the land were used for other commercial purposes and there is a history of planning enforcement against unauthorised activities. The site is now vacant. The north eastern half of the appeal site includes the derelict and unsightly buildings of the former garden centre together with extensive hardstandings and incidental open land. The south western half is vacant open land.
12. In 1989 planning permission was granted for development including an area of additional car parking for the garden centre. That partially extended into the open south western half of the site but within a defined area. A Section 52 legal agreement completed at the same time provided that the remaining open land at the south western end of the site outside that defined parking area *'be kept permanently open and used solely for agricultural purposes'*.
13. In these circumstances I conclude that all of the land other than that 'agricultural' land comprises a single curtilage of 'previously developed land' as defined in the Glossary to the Framework. There is said to have been at one time an agricultural building on the open land beside the river but there are no visible remains. In any event the Framework definition of previously developed land specifically excludes: *'land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal where provision for restoration has been made through development control procedures.'* It is apparent that the land from which gravel was extracted was backfilled and covered in topsoil. I conclude that the agricultural land defined by that Section 52 agreement qualifies as greenfield land and that its development for housing would by definition be inappropriate. The Framework confirms that inappropriate development is by definition harmful in the Green Belt.
14. The Framework does allow that development of previously developed land in the Green Belt may not be inappropriate if it does not have a greater impact on openness.
15. Following the refusal of the subject planning application to develop the whole site for housing, planning permission has recently been granted for a reduced development of 26 dwellings on the previously developed land in the north eastern part of the site only. The appeal proposal concerns a very similar development on that land together with its extension onto the open land to the south by the construction of a further 17 dwellings.
16. The 26 dwellings on previously developed land would replace existing or recently demolished buildings, albeit that they would be taller. To the extent that they may have a greater impact on openness it is material that a planning permission for similar development has been granted which had regard to other considerations including the improved appearance for the derelict site.
17. The south western part of the site is fully open and has a disused but not derelict appearance. That part originally permitted for car parking is open grassland that has blended into the landscape with no visible hardstanding. It does not appear that the remaining land has been actively used for agriculture

in recent times. It developed as scrubland but that scrub and trees have been cleared by the Appellant leaving areas of bare earth, mounds of wood chippings and some rough grass. It was also obvious on site that there has been a very recent land raising operation. Whilst that may have in part used material already on the wider appeal site such as broken concrete and wood chippings, it also appears to have used imported soil. The land raising has also included part of the adjacent lane outside the appeal site, adjoining the premises of a cruising club.

18. At the hearing the Appellant's agent acknowledged that the volume of built development is more material to an assessment of openness than is the footprint of the buildings and hardstanding. The Council has estimated that the volume of built development across the site as a whole would increase fourfold as a result of the development. The 26 dwellings to be erected on the north eastern part of the site would have no greater impact on openness than would the 26 dwellings already permitted there and which could be implemented in the fallback position. However the additional 17 large dwellings to be erected on the open south western part of the site would have a substantial adverse impact on openness with significant additional harm to the Green Belt. That the S52 agreement limited the use of most of this land to agriculture confirms its status as countryside. Thus the development would also constitute an encroachment into the countryside which would contravene one of the stated purposes of Green Belts and represent additional harm.
19. For these reasons there would be harm to the Green Belt by reason of inappropriateness, loss of openness, and encroachment into the countryside. That would contravene LPA Policy GBA2 and national policy in the Framework. The Framework provides that substantial weight should be attached to harm to the Green Belt and that very special circumstances would need to be demonstrated to outweigh such harm.
20. I also agree with the Regional Park Authority that, whilst development of part of the site (the previously developed land) could be acceptable in landscape terms, the erection of houses over the other open parts of the site would be intrusive and would harm the landscape of the Regional Park in which the development would be located. This would also detract from the visual amenity of recreational users of the river and the towpath who would have a close view of the development on the previously open land. That is a separate additional harm to the harm to the Green Belt.

#### *Flood Risk*

21. LPA Policy U2A provides that a sequential approach will be applied to development proposals within the Environment Agency Flood Risk Zones. It also includes criteria for exceptionally permitting development in high flood risk areas which include that no suitable alternative site is available.
22. Paragraph 103 of the Framework is supported by more detailed PPG and is more up to date than the LPA. It provides amongst other things that, when determining planning applications, *'authorities should ensure flood risk is not increased elsewhere and only consider development proposals in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test, and if required the Exception Test, it can be demonstrated that: within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different*

*location; and development is appropriately flood resilient including safe access and escape routes*'. Houses are classified as 'More Vulnerable' development.

23. The Sequential Test seeks to direct development first to areas of low probability of flooding (Zone 1) in preference to areas of medium probability (Zone 2) which are themselves to be preferred to areas of high probability (Zone 3). In this case the submitted site-specific flood risk assessment (FRA) initially identified that the site was mainly in Flood Zone 3a (High Probability of Flooding). Thus consideration should be given to whether the need for the development can be met by land at lower risk of flooding.
24. The Appellant points to the District's shortfall in housing supply (which is attributed largely to the designation of 92% of the District as Green Belt) and asserts that this demonstrates that: *'the demand for sites for residential development cannot be solely met even when development is allowed in all 3 flood zones'* and that the Council: *'cannot meet their housing supply target using only land within Flood Zone 1 and Flood Zone 2'*.
25. Since the FRA was submitted the Environment Agency has reclassified the site such that most would be within Zone 2 (Medium Probability) but the western part closest to the river frontage would remain as Zone 3a. That part of the site would be occupied by 6 of the proposed 43 dwellings.
26. Whilst the Council does not dispute that the Sequential Test has been passed I do not agree with the Appellant's reasoning or conclusion in that regard. Firstly, if it is necessary to develop land in the Green Belt in order to satisfy the need for housing (which is considered separately) then the sequential test should still be applied to seek out land at lower risk of flooding. There is no evidence before me of a lack of Zone 1 or Zone 2 land elsewhere in the Green Belt. Secondly, even if Zone 2 land needs to be developed because of a lack of suitable Zone 1 land, then it does not appear that consideration has been given to providing all of the proposed housing on Zone 2 land, whilst avoiding Zone 3a land. Even if no Zone 2 land can be provided elsewhere, then consideration should be given to a revision of the site design and layout in order to avoid siting the 6 dwellings on Zone 3a land.
27. It is acknowledged that it is a material consideration that the Council has permitted the development of 26 dwellings on the previously developed part of the site within Zone 2. Other considerations would have been relevant there such as that the site is already occupied by buildings and hardstanding. There would be associated social, economic and environmental benefits of redeveloping this derelict site. However I do not consider that the Sequential Test has been suitably applied so as to justify the development of the remaining greenfield land within Zone 2 and especially Zone 3a.
28. Even were the Sequential Test to be satisfied, then I do not consider that the development of the Zone 3a land has been shown to be justified by wider sustainability benefits for the community as would be required by the Framework to pass the Exceptions Test. Whilst the Council's Level 1 Strategic Flood Risk Assessment refers at paragraph 7.4.6 to the Sustainability Appraisal work as relevant to such assessments, the Appellant's scoring method relates to another document that has been withdrawn and is no longer material. It seeks to assess compliance against a series of sustainability criteria. There has been some incorrect scoring and totals as discussed at the hearing. But in any case I consider that it is too crude a method, not least because it gives equal

weighting to very disparate criteria. In this case any benefit of the development would be mainly for the occupiers of the houses rather than the wider community. Those occupiers would still be at some risk of flooding themselves albeit that raised floor levels would reduce the risk of flooding within their homes and it has not been shown to be unsafe for the lifetime of the development.

29. The Framework seeks that consideration be given to opportunities for new development to reduce the overall risk of flooding and that development should not increase the risk of flooding elsewhere. In that regard local residents have expressed concern about local surface water flooding which was not part of the Environment Agency risk assessment. Residents of the adjacent Riverside Avenue already experience significant local surface water flooding during periods of high rainfall and are concerned that this could be made worse by the proposed development. Riverside Avenue is mainly within Flood Zone 3a and has a high water table close to the river. From what I saw it appears that the main reason for that current flooding is not fluvial but is because Riverside Avenue is a private road that apparently lacks any surface water drainage system. Whilst the road would originally have been developed with smaller houses set in generous gardens, the original dwellings have been replaced by much larger houses, many of which have extensive areas of hardstanding to provide car parking. That will have reduced the capacity of the ground to absorb rainfall whilst also increasing the rate of run-off from hard surfaces.
30. According to submitted photographs the main area of surface water ponding occurs at the lowest part of Riverside Avenue near its southern end. That is close to a large surface water pipe which runs along the boundary between Riverside Avenue and the appeal site. The pipe may belong to Thames Water and it carries surface water from the nearby 1970s Great Meadow development. There is also an opening in the pipe to allow water to enter from a ditch on the appeal site which carries surface water from the buildings and hardstandings on the previously developed land in and around the former garden centre. There does not appear to be any connection into the pipe from Riverside Avenue. As the pipe runs partly above ground such a connection would be difficult or impossible to achieve and, if feasible, would likely require the consent of Thames Water. I do not consider that the solution to that existing problem lies with the appeal proposal but is rather a matter for the Riverside Avenue Residents Association to address since it would probably require works on land owned or controlled by their members.
31. Whilst floor levels of some proposed dwellings would be raised above existing ground levels, compensatory storage is intended within garden areas. The surface water drainage system for the appeal development is intended to include on site storage which would keep the rate of surface water run-off at or below current levels such that there should be no increased risk of run off onto adjoining land at Riverside Avenue.
32. Notwithstanding those declared intentions, which could be subject to enforceable planning conditions, recent land-raising on the lower parts of the site near the river appears to contradict that strategy and could alter local drainage patterns. Whether those works are lawful would be a matter for the local planning authority. However, were the appeal to be allowed conditions could require that the development be implemented as proposed which may necessitate the removal of that imported material.

33. Overall it is concluded on this issue that the proposed development of land in Zone 3a satisfies neither the sequential test nor the exceptions test and is in conflict with the Framework which is more up to date than the development plan in this regard.

*Affordable Housing*

34. LPA Policy H5A seeks the provision of affordable housing on-site. LPA Policy H6A sets out thresholds above which affordable housing is required (and which applies here). LPA Policy H7A seeks 40-50% provision depending upon location unless it can be shown that *'they are inappropriate or that they make a scheme economically infeasible'*.
35. The Appellant refuses to make any provision on-site on the grounds of viability/economic feasibility and because some local support for the exclusion of affordable housing is claimed. That relates to the parish council's support for the development and also to the submission by local residents of signed copies of a standard letter distributed by the Appellant which included a statement to that effect. The Appellant also claims both that the dwellings in the designed scheme are unsuitable for use as affordable housing due to their large average size and that a redesigned scheme to include more smaller dwellings would have a greater adverse impact on the openness of the Green Belt.
36. Little weight is accorded to these factors. Firstly I have not seen reliable viability evidence for a scheme with on-site provision which demonstrates that such provision is not economically feasible. Secondly the Appellant has only consulted local residents who by definition are already housed. The Appellant has not consulted those who are currently in need of housing locally but who cannot afford market prices. That does not establish that on-site affordable housing is *'inappropriate.'* Whilst the scheme dwellings are large and may not be appropriate as affordable dwellings, an alternative scheme which included more smaller dwellings need not have an adverse impact on openness. For example 2 semi-detached houses could replace one large detached house or 3 terraced houses could replace a pair of semi-detached houses within the same building envelope or a similar volume.
37. It is however material that the Council has already permitted the 26 dwelling scheme on the same site. That also lacks on-site provision of affordable housing and the Council has accepted a payment of £500,000 for off-site provision in lieu. At the hearing the Appellant's agent estimated that a typical open market dwelling suitable for use as an affordable dwelling would cost about £200,000 and that a subsidy of £100,000 would be needed to make it affordable. No particular type of affordable housing was considered and the amount of subsidy could vary according to whether the homes are social rented, affordable rented or shared ownership. Thus £500,000 would allow for the provision of only 5 affordable dwellings off-site whereas fully policy compliant provision for a 26 dwelling development would be for at least 10 dwellings.
38. When the Council's consultants appraised the viability evidence originally submitted by the Appellant they concluded that for a development of 43 dwellings with no on-site affordable housing there would be a surplus profit of £913,000. The Appellant has accepted that conclusion as a basis for consideration of viability and has submitted a completed unilateral S106 obligation which would make an increased contribution of £1m for off-site

affordable housing. It is claimed that the additional £87,000 would be funded by a reduction in the assumed developer's profit (from 20% to 17%).

39. Using the Appellant's estimates a £1m contribution would allow 10 affordable dwellings to be provided off-site at a subsidy of £100,000 per dwelling. Had the 10 dwellings been provided on site that would have represented only 23% of the 43 dwellings. As provision would be off-site there would be (43+10=) 53 dwellings in total of which only 19% would be affordable.
40. It is concluded that it has not been directly demonstrated that the provision of affordable housing on site is not appropriate or economically feasible as no scheme including such provision has been assessed. However it is material that the development is likely to require considerable expenditure on remediation of contaminated land and also that the Council has accepted an off-site contribution when permitting the 26 dwelling scheme. It is therefore concluded that the shortfall in affordable housing and the lack of on-site provision would not in themselves warrant the dismissal of the appeal were the proposal otherwise acceptable. These considerations outweigh any literal conflict with the development plan.

#### *Education Contributions*

41. LPA Policy I1A provides amongst other things that in appropriate circumstances the Council will negotiate S106 legal obligations to require financial contributions for school places, using county wide guidance. Paragraph 204 of the Framework sets out tests for such obligations. The Community Infrastructure Levy Regulations 2010 (as amended) include relevant statutory requirements at Regulations 122 and 123.
42. In April 2014 the Local Education Authority (LEA) requested financial contributions towards the additional secondary school places at the Stewards Academy in Harlow that were stated to be needed to serve the development. The LEA also sought a contribution equivalent to the costs of transporting all the secondary pupils to that school for a period of 5 years. In February 2015 the Council refused planning permission in part because that nearest Essex secondary school is beyond the statutory walking distance and because the proposal makes no provision for the additional transport costs that would be incurred by the LEA. Although the Officer Report had included the LEA request for a contribution to secondary school places, the final reason for refusal referred only to the transport costs. The Report also commented that there was then considered to be adequate capacity for pre school and primary education.
43. In November 2015 the Education Authority withdrew its request for a contribution to secondary school places because CIL Regulation 123 restricts the pooling of contributions to 5 separate obligations for a project. However a transport contribution was still sought.
44. In the event the Appellant has submitted a unilateral obligation which includes a primary school contribution of £141,530 and a secondary school transport contribution of £32,702.
45. Following clarification from the LEA it appears that there are now concerns about the capacity of local primary schools. A primary school places contribution has been sought in respect of another planning application on the appeal site. However the practice of the LEA is not to alter previous advice,



notwithstanding that in this case that advice was given almost 2 years ago and that circumstances may have changed. Primary school capacity remains a concern of some other interested persons. Were the appeal proposal otherwise acceptable then the fact that the obligation includes a primary school places contribution may address that concern. However as I have no evidence that the amount calculated is appropriate, and because the LEA position is ambiguous as to whether there is now a need, I have not taken the primary school contribution into account.

46. In relation to the transport contribution, that does appear to have some justification in principle. However it assumes that all pupils will travel to Harlow when some may instead attend the much closer secondary school in Broxbourne, which is within walking distance. As that school comes under Hertfordshire Education Authority it may give preference for places to students within its defined catchment. There is no information before as to whether it is likely to also have capacity to take some or all students from the subject development.
47. It is nevertheless concluded on this issue that the Appellant has addressed the reason for refusal and that there would not be harm in that regard or a material contravention of LPA Policy I1A. In the absence of any evidence that the students would all be accommodated at Broxbourne then the transport costs contribution is justified and has been taken into account. It is however noted that the LEA consider that the wrong index base date was used in the undertaking and that might marginally affect whether the transport contribution sum is correct.

#### *Land Contamination*

48. Almost all of the south western part of the site and some of the north eastern part has been subject to landfill and is likely to be contaminated as a result. The Officer Report further commented that it is not 'good practice' to allow residential development on such landfill sites. However LP Policy RP4 provides in summary that permission to develop such land will not be granted unless in summary: (a) prior tests are carried out; (b) if contamination is found, appropriate methods of treatment are agreed with the Council, pollution authorities and water companies; and (c) that treatment shall include measures to protect or recreate habitats of nature conservation interest. Thus the development plan does not preclude such development if the stated criteria are met.
49. The Officer Report commented that the Council lacked expertise in this area and relied on the Appellant's submitted preliminary information and statement that the worst case would involve removing all of the contaminated material and that this could be both feasible and cost effective. The removal of material would be complicated by the need to pump groundwater away before the solid material could be removed and there were associated risks of subsidence of adjacent sites. The Report also warned that if costs were higher than estimated then the affordable housing contribution may be 'difficult to retain'. It advised that if members were inclined to grant planning permission then a suitably qualified consultant should be engaged before permission was given and that standard contaminated land conditions should be applied. Notwithstanding these concerns and the absence of further expert advice, no reason for refusal was applied in relation to the contaminated land issue.

50. During the appeal process the Appellant submitted an addendum appeal statement to the effect that the costs of remediating the land contamination had been incorrectly addressed in the viability study and could be trebled, in which case there would be no 'surplus' profit that could be used to fund the affordable housing contribution. However, at the hearing the Appellant's agent withdrew this argument and agreed that the appeal should be assessed on the basis of the viability conclusions of the Council's consultants, which do show the surplus that would fund affordable housing provision.
51. At the hearing it was noted that revised land contamination conditions had been applied to the permitted 26 dwelling scheme.
52. Sufficient information has been provided to assess the risks of contamination but there remains some uncertainty as to the extent of the remediation works that would be necessary. Conditions could be used to determine the appropriate methods of treatment.
53. Matters relating to the protection or recreation of wildlife habitats are addressed below.
54. It is concluded that the proposal is potentially compliant with Policy RP4. However there remains some uncertainty as to the cost and extent of remediation necessary.

#### *Wildlife*

55. Wildlife impacts were not stated by the Council as a reason for refusal but have been raised by interested persons including the Regional Park Authority. The Framework seeks that the planning system should minimise impacts in biodiversity and provide net gains where possible. That requires that sufficient information is available about potential impacts on bio-diversity and the scope for avoidance, mitigation or enhancement.
56. The main potential wildlife habitat is on the open southern part of the site. A preliminary ecological appraisal dated August 2013 was submitted with the application together with follow-up surveys for reptiles and amphibians and for bat emergence. The latter survey found no evidence of bat roosts but commented that this section of the Lee Valley is 'clearly a bat foraging hotspot'. The reptiles and amphibians survey did not find any amphibians but did find one grass snake. The survey concluded that it was 'surprising' that no further reptiles were found. Suggested mitigation included the trapping and relocation of reptiles. However no location was identified for relocation and the report commented that this might present difficulties. When commenting on the 26 dwelling scheme (which kept the south western area open) the Environment Agency pointed to the enhancement opportunities for that part of the site. Whilst associated with surface water storage they could include bio-diversity enhancement and informal recreation.
57. Lee Valley Regional Park Authority owns nearby land and has expert knowledge of local wildlife. The authority objected that the ecological/wildlife surveys were incomplete. The Authority's appeal statement commented that the papers were insufficient to provide a clear identification of species on the site and the nature of measures required to mitigate impact on them, without which an informed decision should not be made. The Council's officer report had concluded that

these matters could be addressed by conditions and did not include a related reason for refusal.

58. At the hearing nearby residents commented that snakes and newts were common in the area and that, when the Appellant had disturbed the appeal site by removing scrub and other vegetation, a large number of snakes had migrated onto nearby land. Residents also report that there are ponds on land near the site. That suggests potential for amphibians.
59. At the hearing a revised Phase 1 Ecology Survey was submitted by the Appellant. It is dated January 2016 and has been prepared to support a new application for housing development on the appeal site. That application is not before me and I have no further details about it. However the survey report comments amongst other things that semi-improved grassland makes up a substantial proportion of the survey area and reveals good potential for reptiles with numerous basking and foraging opportunities. It refers to the single grass snake found in the 2013 reptile survey. The report is based on a visit to the site on 4 January 2016 and any grass snakes would have been hibernating at that time, as would any other snake species. A small pond present in 2013 had since been filled in. Several follow-up specialist surveys were recommended in Spring and Summer to include reptiles, great crested newts, bats and water voles/otters.
60. Almost 3 years have passed since the original ecology report and surveys. I saw on the hearing site visit that the recent land raising and earth moving operations across the southern part of the appeal site are likely to have altered the habitat but it is not clear whether this occurred before or after 4 January.
61. The effect of development on the northern part of the site would be the same as for the permitted 26 dwelling scheme. However, given the comments of the Park Authority that previous surveys have been inadequate, together with the time that has passed since those surveys, the recent change in habitat, and the recommendations of the ecological report that further surveys are needed I do not consider that there is currently sufficient information to assess the wildlife potential of the south western part of the site or to conclude what mitigation may be needed. As there is potential for risk to protected species and their habitat this would not be a suitable matter to be left to conditions.

#### *Other Matters*

62. Account has been taken of other matters raised in evidence and submitted representations but these do not alter my conclusions on the main issues. In particular, whilst the development would generate traffic movements on the area's narrow roads, regard should be had to the site's history as a garden centre which would also have generated considerable traffic movements and which could potentially resume in the fallback situation. Transport evidence has been submitted and the highway authority does not object to the development.
63. It is acknowledged that the Government is consulting upon potential amendments to the Framework including policy for previously developed land in the Green Belt and that the Housing and Planning Bill may alter policy in relation to affordable housing and starter homes. However only limited weight may be accorded to these matters at this stage. Neither these nor the other matters weighed outweigh the conclusions on the main issues.

## Planning Balance

64. It is considered that substantial weight should be accorded to the harm to the Green Belt by reason of inappropriateness, loss of openness and encroachment into the countryside. There would also be some harm to the landscape of the Regional Park due to that encroachment on the south western part of the site and the loss of openness. There is also significant harm by reason of flood risk, especially in relation to that part of the development which would be within Zone 3a. The need for further wildlife surveys indicates that it would be premature to grant permission at this stage. The uncertainty about remediation costs mainly represents a risk to the Appellant. It relates more to the development of the southern half of the site where most of the contaminated landfill is located.
65. To weigh with the harm the Appellant cites a number of considerations. The main benefits of the development would be the social and economic benefits of providing the additional market housing on site, together with the social benefits of the potential provision of some affordable housing off-site.
66. There is a considerable local under-supply of housing land against identified needs, which the Council acknowledges. There is no up-to-date housing target. However the Appellant cites an Objectively Assessed Need figure of 514 dwellings per annum against a projected supply of only 111 dwellings in 2015-2016 and 113 dwellings in 2016-2017, a shortfall of about 400dpa against that need and an accumulating backlog. Neither is that undersupply likely to be addressed in the near future given that most of the District is in the Green Belt and that it is not expected that a new local plan (including a new housing target) will be adopted until 2018. However the PPG advises at 3-034-201410-6 that: *an 'unmet need for housing is unlikely to outweigh the harm to the Green Belt and other harm to constitute the 'very special circumstances' justifying inappropriate development on a site within the Green Belt'*. That limits the weight to be accorded to that benefit.
67. The other considerations suggested by the Appellant to weigh with the harm are: that the appeal site includes previously developed land; that landfill would be remediated and the land brought back into beneficial use; that there is local support including from the Parish Council and the District Council's Area Committee; and that the District Committee's decision was made only on the casting vote of the chairman. However the benefits of bringing previously developed land into beneficial use and provided more than half of the additional housing can be realised by the permitted 26 dwelling scheme with much less impact on the Green Belt, landscape, flood risk, and wildlife. The open land is not previously developed and should not require the same remediation if it is not used for housing. It still has potential for agriculture, forestry, nature conservation or informal recreational purposes. There are local objections to the development as well as support and the resolved position of the District Council is to oppose the development.
68. I conclude that the other considerations do not constitute the very special circumstances needed to outweigh the harm to the Green Belt, and the other harm to the landscape of the Regional Park, flood risk, and the potential harm to wildlife. Whilst some aspects of the development comply with some development plan policies, the significant and demonstrable environmental harm and the associated overall conflict with the development plan and with

relevant Framework policies outweigh the social and economic benefits such that this is not a sustainable development and the presumption in favour of sustainable development therefore cannot apply.

**Conclusions**

69. For the above reasons the overall conclusion is that the proposal is in conflict with the development plan and the Framework and there are no material considerations which outweigh that conflict. The appeal should therefore be dismissed.

*Robert Mellor*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mr S Whipps	Solicitor and Legal Assoc MRTPI, Holmes and Hill LLP
Mr K Ellerbeck	For the Appellant Company

### FOR THE LOCAL PLANNING AUTHORITY:

Ms J Shingler BA(Hons) MRTPI	Principal Planning Officer, Epping Forest District Council (at hearing only)
Ms Sharon Hart	Enforcement Officer, Epping Forest District Council (at site visit only)

### INTERESTED PERSONS:

Ms Kay Mingay	Local Resident
Mr D Hughes	Local Resident (also representing those members of Riverside Avenue Residents Association who oppose the development)

## **DOCUMENTS**

1. Nazeing Parish Council letter of 19 January 2016
2. Draft S106 undertaking
3. KIFT Viability Report of 8 October 2014 & appendices
4. Interim Sustainability Report July 2012
5. Table of figures relating to housing supply as at 1 April 2014
6. Landscape Character Assessment (extract)
7. Completed S106 unilateral undertaking dated 21 January 2016
8. Revised Phase 1 Ecology Survey January 2016
9. Final Decision Notice for 26 dwelling scheme
10. Environment Agency consultation response on 26 unit scheme
11. Email from Essex County Council LEA dated 26 January 2016