

Thurrock - An ambitious and collaborative community which is proud of its heritage and excited by its diverse opportunities and future

## Extraordinary Planning Committee

The meeting will be held at **6.00 pm** on **19 November 2020**

Due to government guidance on social-distancing and COVID-19 virus the Planning Committee on 19 November 2020 **will be held virtually**. Arrangements have been made for the press and public to watch the meeting live via the Council's online webcast channel at [www.thurrock.gov.uk/webcast](http://www.thurrock.gov.uk/webcast)

### Membership:

Councillors Tom Kelly (Chair), Mike Fletcher (Vice-Chair), Gary Byrne, Colin Churchman, Angela Lawrence, David Potter, Gerard Rice, Sue Sammons and Sue Shinnick

Steve Taylor, Campaign to Protect Rural England Representative

### Substitutes:

Councillors Qaisar Abbas, Abbie Akinbohun, Chris Baker, Daniel Chukwu, Garry Hague, Victoria Holloway and Susan Little

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### Agenda

Open to Public and Press

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**1 Apologies for Absence**

**2 Item of Urgent Business**

To receive additional items that the Chair is of the opinion should be considered as a matter of urgency, in accordance with Section 100B (4) (b) of the Local Government Act 1972.

**3 Declaration of Interests**

**4 Declarations of receipt of correspondence and/or any**

**meetings/discussions held relevant to determination of any planning application or enforcement action to be resolved at this meeting**

## **5 Public Address to Planning Committee**

The Planning Committee may allow objectors and applicants/planning agents, and also owners of premises subject to enforcement action, or their agents to address the Committee. The rules for the conduct for addressing the Committee can be found on Thurrock Council's website at <https://www.thurrock.gov.uk/democracy/constitution> Chapter 5, Part 3 (c).

### **Exclusion of the Public and Press**

Members are asked to consider whether the press and public should be excluded from the meeting during consideration of an agenda item on the grounds that it involves the likely disclosure of exempt information as specified in Part I of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act.

In each case, Members are asked to decide whether, in all the circumstances, the public interest in maintaining the exemption (and discussing the matter in private) outweighs the public interest in disclosing the information.

- |          |  |                 |
|----------|--|-----------------|
| <b>6</b> | <b>Monitoring Officer Report On The Decision Of The Planning Committee In Relation To Land Adjacent To Wood View And Chadwell Road, Grays (Application ref 19.01373.OUT)</b> | <b>5 - 32</b>   |
| <b>7</b> | <b>19/01373/OUT Land Adjacent Wood View and Chadwell Road, Grays, Essex</b>  | <b>33 - 104</b> |

**Consideration dependent on outcome of Agenda Item 6**

### **Queries regarding this Agenda or notification of apologies:**

Please contact Wendy Le, Democratic Services Officer by sending an email to [Direct.Democracy@thurrock.gov.uk](mailto:Direct.Democracy@thurrock.gov.uk)

Agenda published on: **11 November 2020**

## Information for members of the public and councillors

### Access to Information and Meetings

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Members of the public have the right to see the agenda, which will be published no later than 5 working days before the meeting, and minutes once they are published.

### Recording of meetings

This meeting will be live streamed and recorded with the video recording being published via the Council's online webcast channel: [www.thurrock.gov.uk/webcast](http://www.thurrock.gov.uk/webcast)

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- Enter the password **Thurrock** to connect to/join the Wi-Fi network.
- A Terms & Conditions page should appear and you have to accept these before you can begin using Wi-Fi. Some devices require you to access your browser to bring up the Terms & Conditions page, which you must accept.

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In the case of an emergency, you should evacuate the building using the nearest available exit and congregate at the assembly point at Kings Walk.

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# DECLARING INTERESTS FLOWCHART – QUESTIONS TO ASK YOURSELF

Breaching those parts identified as a pecuniary interest is potentially a criminal offence

## Helpful Reminders for Members

- *Is your register of interests up to date?*
- *In particular have you declared to the Monitoring Officer all disclosable pecuniary interests?*
- *Have you checked the register to ensure that they have been recorded correctly?*

## When should you declare an interest at a meeting?

- **What matters are being discussed at the meeting?** (including Council, Cabinet, Committees, Subs, Joint Committees and Joint Subs); or
- If you are a Cabinet Member making decisions other than in Cabinet **what matter is before you for single member decision?**



Does the business to be transacted at the meeting

- relate to; or
- likely to affect

any of your registered interests and in particular any of your Disclosable Pecuniary Interests?

Disclosable Pecuniary Interests shall include your interests or those of:

- your spouse or civil partner's
- a person you are living with as husband/ wife
- a person you are living with as if you were civil partners

where you are aware that this other person has the interest.

A detailed description of a disclosable pecuniary interest is included in the Members Code of Conduct at Chapter 7 of the Constitution. **Please seek advice from the Monitoring Officer about disclosable pecuniary interests.**

**What is a Non-Pecuniary interest?** – this is an interest which is not pecuniary (as defined) but is nonetheless so significant that a member of the public with knowledge of the relevant facts, would reasonably regard to be so significant that it would materially impact upon your judgement of the public interest.

## **Pecuniary**

If the interest is not already in the register you must (unless the interest has been agreed by the Monitoring Officer to be sensitive) disclose the existence and nature of the interest to the meeting

If the Interest is not entered in the register and is not the subject of a pending notification you must within 28 days notify the Monitoring Officer of the interest for inclusion in the register

**Unless you have received dispensation upon previous application from the Monitoring Officer, you must:**

- **Not participate or participate further in any discussion of the matter at a meeting;**
- **Not participate in any vote or further vote taken at the meeting; and**
- **leave the room while the item is being considered/voted upon**

**If you are a Cabinet Member you may make arrangements for the matter to be dealt with by a third person but take no further steps**

## **Non- pecuniary**

Declare the nature and extent of your interest including enough detail to allow a member of the public to understand its nature



**You may participate and vote in the usual way but you should seek advice on Predetermination and Bias from the Monitoring Officer.**

## Our Vision and Priorities for Thurrock

An ambitious and collaborative community which is proud of its heritage and excited by its diverse opportunities and future.

1. **People** – a borough where people of all ages are proud to work and play, live and stay
  - High quality, consistent and accessible public services which are right first time
  - Build on our partnerships with statutory, community, voluntary and faith groups to work together to improve health and wellbeing
  - Communities are empowered to make choices and be safer and stronger together
  
2. **Place** – a heritage-rich borough which is ambitious for its future
  - Roads, houses and public spaces that connect people and places
  - Clean environments that everyone has reason to take pride in
  - Fewer public buildings with better services
  
3. **Prosperity** – a borough which enables everyone to achieve their aspirations
  - Attractive opportunities for businesses and investors to enhance the local economy
  - Vocational and academic education, skills and job opportunities for all
  - Commercial, entrepreneurial and connected public services

<b>19 November 2020</b>	<b>ITEM: 6</b>
<b>Extraordinary Planning Committee</b>	
<b>Monitoring Officer Report On The Decision Of The Planning Committee In Relation To Land Adjacent To Wood View And Chadwell Road, Grays (Application ref: 19/01373/OUT)</b>	
<b>Wards and communities affected:</b> Little Thurrock Rectory	<b>Key Decision:</b> N/A
<b>Report of:</b> Ian Hunt – Monitoring Officer, Assistant Director of Law and Governance	
<b>Accountable Director:</b> Andrew Millard, Director of Place	
<b>Accountable Director:</b> Sean Clarke – Director of Finance, IT and Legal	
<b>This report is</b> Public but the appendix is not to be published by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 because it contains exempt information as set out in category 5, in that it is information in respect of which a claim to legal professional privilege can be maintained in legal proceedings.	
<i>If the report, or a part of this, has been classified as being either confidential or exempt by reference to the descriptions in Schedule 12A of the Local Government Act 1972, it is hereby marked as being not for publication. The press and public are likely to be excluded from the meeting during consideration of any confidential or exempt items of business to which the report relates.</i>	

## Executive Summary

This report is brought by the Monitoring Officer in accordance with his duty under section 5 of the Local Government and Housing Act 1989 to report on contraventions or likely contraventions of any enactment or rule of law. The Planning Committee is referred to the legal position set out in the exempt appendix in respect of the inadequate reasons that have been given for the decision taken on 16 July 2020 in relation to the land adjacent to Wood View and Chadwell Road (19/01373/OUT).

The Committee is asked to rescind the earlier decision in order to be able to reconsider the application in order to ensure that there is adequate and legally justifiable reasoning given. In making its new decision the Committee may accept the original officer recommendation, or depart from this if it is able to set out grounds which are sustainable in terms of planning law, policy and guidance.

## **1. Recommendation(s)**

**1.1 To rescind the decision taken by the Planning Committee on 16 July 2020.**

**1.2 To reconsider planning application 19/01373/OUT and to determine the application setting out legally adequate reasons for the decision to be sustainable.**

## **2. Background**

2.1 The planning application seeks outline planning permission (with all matters reserved) for 75 dwellings consisting of 57 houses and 18 apartments. The application site is not allocated for development in the Council's local development framework and is within the Metropolitan Green Belt.

2.2 The application was reported to the Planning Committee on the 25<sup>th</sup> June 2020, with an officer recommendation that the application should be refused for two reasons, namely that – i) the site was located in the Metropolitan Green Belt (GB) and ii) the detrimental visual impact that would occur as a result of the acoustic fencing that would be required to mitigate traffic noise.

2.3 The Committee did not support the officer recommendation and indicated that it was minded to approve the application. The application was therefore deferred for consideration at a later meeting.

2.4 At the meeting on 16 July 2020, the matter was returned to Committee with a supplemental report considering the implications of the application and the proposed reasons for approval. Officers made a further recommendation for refusal, with the legal adviser in attendance outlining that the Committee's decision needed to be evidenced by clear analysis and legally adequate reasoning.

2.5 Having considered the matter at length, the Committee rejected the officer recommendation by a majority and supported a motion to approve the application for the following reasons:

*1. The scheme would create employment during the construction phase.*

*2. The scheme would contribute towards the 5 year housing supply.*

*3. Significant weight should be afforded to the contribution towards sustainable development.*

*4. Delivering a sufficient supply of homes had significant weight.*

*5. Making effective use of land had significant weight.*

*6. Achieving well-designed places had significant weight.*

7. *The scheme was “shovel ready” because it would come back with a full planning application and if the current application was passed, the Committee would be ‘duty-minded’ to approve future applications.*

8. *The site was a windfall site.*

9. *The Council did not have a local plan.”*

2.6 The Committee resolved to grant permission subject to consideration by the Monitoring Officer and the usual conditions.

2.7 No planning permission will be issued to the applicant in respect of the decision taken by the Committee until further notice.

2.8 The Committee report packs and minutes of the meetings held on 25 June and 16 July respectively may be viewed via the links below:

<https://thurrockintranet.moderngov.co.uk/documents/g5836/Public%20reports%20pack%2025th-Jun-2020%2018.00%20Planning%20Committee.pdf?T=10>

<https://thurrockintranet.moderngov.co.uk/documents/g5836/Printed%20minutes%2025th-Jun-2020%2018.00%20Planning%20Committee.pdf?T=1>

<https://thurrockintranet.moderngov.co.uk/documents/g5863/Public%20reports%20pack%2016th-Jul-2020%2018.00%20Planning%20Committee.pdf?T=10>

<https://thurrockintranet.moderngov.co.uk/documents/g5863/Printed%20minutes%2016th-Jul-2020%2018.00%20Planning%20Committee.pdf?T=1>

### **3. Issues, Options and Analysis of Options**

3.1 The Planning Committee should consider the advice of the Monitoring Officer contained within the report, together with any verbal advice that may be offered during the meeting.

#### **Option 1 – Rescind the Resolution of 16 July 2020**

3.2 The Committee may take the specific legal advice of the Monitoring Officer and

(i) revoke the earlier decision

(ii) consider the planning application again

3.3 The Council will then be in a position to defend any future challenge as the decision will have been reviewed and a sustainable decision taken with legally adequate reasons set out.

## **Option 2 – Refuse to take the advice of the Monitoring Officer**

- 3.4 The Committee may decide not to accept the advice of the Monitoring Officer and resolve that the earlier decision should stand.
- 3.5 The Monitoring Officer will then be required to discharge his responsibility under s.5 of the Local Government and Housing Act 1989 and take a report to Full Council.

### **4. Reasons for Recommendation**

- 4.1 If the Council were to implement the decision taken by the Committee on 16 July 2020 and issue planning permission to the applicant, the decision would not be sustainable on legal challenge.
- 4.2 By revoking the earlier decision and considering the advice of the Monitoring Officer, the Planning Committee may resolve to grant permission or refuse the application setting out legally adequate reasons for its decision.

### **5. Consultation (including Overview and Scrutiny, if applicable)**

- 5.1 This matter has not been placed before an Overview and Scrutiny Committee

### **6. Impact on corporate policies, priorities, performance and community impact**

- 6.1 The planning application proposes that 28 of the 75 dwellings (35%) will be allocated for affordable housing in line with the Core Strategy.

### **7. Implications**

#### **7.1 Financial**

Implications verified by: **Dammy Adewole**  
**Senior Management Accountant, Central Services**

In the event of legal challenge the Council would be subject to financial costs in managing any challenge to the Committees decision.

#### **7.2 Legal**

Implications verified by: **Ian Hunt**  
**Assistant Director of Law and Governance**

The legal implications are contained within the body of the report with further detail and analysis of the legal position set out in the exempt appendix. The Monitoring Officer has carefully considered the public interest test and has

determined that the public interest in maintaining the exemption outweighs the public interest in disclosing the information in the appendix.

### 7.3 **Diversity and Equality**

Implications verified by: **Roxanne Scanlon**  
**Community Engagement and Project  
Monitoring Officer**

There are no specific Diversity and Equality implications from this report. A full Community and Equalities Impact Assessment should be carried out if this scheme is approved.

### 7.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

None

### 8. **Background papers used in preparing the report**

None

### 9. **Appendices to the report**

Exempt Appendix 1

### **Report Author:**

Ian Hunt  
Monitoring Officer  
Assistant Director of Law and Governance

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By virtue of paragraph(s) 5 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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# Agenda Item 7

Extraordinary Planning Committee: 19 November 2020	Application Reference: 19/01373/OUT
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<b>Reference:</b> 19/01373/OUT	<b>Site:</b> Land adjacent Wood View and Chadwell Road Grays Essex
<b>Ward:</b> Little Thurrock Rectory	<b>Proposal:</b> Outline planning application (all matters reserved) for 75 residential units consisting of 57 houses and 18 apartments

<b>Plan Number(s):</b>		
<u>Reference</u>	<u>Name</u>	<u>Received</u>
200	Site Location Plan	10th September 2019
201	Proposed Site Layout (indicative)	10th September 2019
210	Indicative Plans and Elevations	10th September 2019
211	Indicative Plans and Elevations	10th September 2019
212	Indicative Plans and Elevations	10th September 2019
213	Indicative Plans and Elevations	10th September 2019

The application is also accompanied by:

- Planning Support Statement / Design & Access Statement (ref SPL Ref:18.5410);
- Viability Assessment (November 2019: Arebray Development Consultancy);
- Transport Statement (October 2019: Beacon Transport Planning);
- Preliminary Ecological Appraisal (February 2017 (ref P2820.5.0):agb Environmental);
- Arboricultural Impact Assessment (June 2017 (ref P2820.6.0):agb Environmental);
- Noise Assessment, Technical Report, dated by 14 July 2017 (R6785-1 Rev 0), by 24 Acoustics
- Surface Water Drainage Strategy (December 2018 rev 00 (Project No. 07127));
- Flood Risk Assessment (March 2017 (ref P2820.4.0): agb Environmental);
- Phase 1 Ground Contamination Desk Study (March 2017 (ref 2820.3.0): agb Environmental)

Extraordinary Planning Committee: 19 November 2020	Application Reference: 19/01373/OUT
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<b>Applicant:</b> Mr D MacDonald	<b>Validated:</b> 3 February 2020 <b>Date of Expiry:</b> 17 July 2020 (Extension of time agreed with applicant)
<b>Recommendation:</b> Refuse planning permission	

## 1.0 BACKGROUND

- 1.1 At the meeting of the Planning Committee held on 25 June 2020 Members considered a report assessing the above proposal. The report recommended that planning permission be refused for two reasons. In summary, the first reason stated:

*The site is located in the Metropolitan Green Belt (GB) and the benefits of the scheme do not clearly outweigh the harm to the GB and thus constitute the very special circumstances to justify a departure from local and national planning policies.*

The second reason referred to:

*The overbearing and dominant visual impact of the acoustic fencing required to mitigate the impact of noise and ensure the quality of proposed amenity spaces.*

- 1.2 A copy of the report presented to the June Committee meeting is attached at Appendix 2.

- 1.3 At the June Committee meeting Members were minded to resolve to grant planning permission for the proposed development based upon the following reasons:

1. *Contribution towards five year housing land supply, including contributions towards the provision of affordable housing;*
2. *The situation with the Council's housing waiting list;*
3. *Limited harm to the purposes of the GB;*
4. *More weight should be afforded to the contribution towards sustainable development;*
5. *The package of s106 contributions;*
6. *The scheme is a shovel-ready project;*
7. *The scheme would create employment during construction.*

- 1.4 In accordance with Part 3(b) – Planning Committee Procedures and in particular Paragraphs 7.2 and 7.3 of the Constitution, the Committee agreed that the item should be deferred to enable a further report outlining the implications of making a decision contrary to the Planning Officer's recommendation and an assessment of

the reasons to approve the application formulated by the Committee. An updated report was presented to the Committee at its meeting on 16 July 2020 and this report is attached at Appendix 3. At the July meeting Members rejected the Officer recommendation to refuse planning permission and instead supported a motion to approve the application for the following reasons:

1. The scheme would create employment during the construction phase.
  2. The scheme would contribute toward the 5 year housing supply.
  3. Significant weight should be afforded to the contribution towards sustainable development.
  4. Delivering a sufficient supply of homes had significant weight.
  5. Making effective use of land had significant weight.
  6. Achieving well-designed places had significant weight.
  7. The scheme was shovel-ready project because it would come back with a full planning application and if the current application was passed, the Committee would be 'duty-minded' to approve future applications.
  8. The site was a windfall site.
  9. Thurrock did not have a Local Plan.
- 1.5 Following the July meeting the matter was referred to the Council's Monitoring Officer who has concluded, having taken legal advice, that the Committee's decision does not provide legally adequate reasons to satisfy the key policy test for granting permission for development in the Metropolitan Green Belt.
- 1.6 In the light of the conclusions of the Monitoring Officer, the application is to be returned to the Committee for it to consider whether to stand by or to rescind its earlier decision. That is a procedural decision which does not engage with the merits of the application. This officer report on the merits of the application will only fall to be considered by the Committee if the Committee has first decided to rescind its earlier decision.
- 1.7 On the assumption that the earlier decision has been rescinded, the Committee is now invited to consider the application entirely afresh and without reliance on its earlier decisions in June and July 2020. This is the logical consequence of rescinding the earlier decision, which should be treated as having no effect or status. However, since it would be an artificial exercise to have no regard at all to the matters that were discussed by the Committee in the prelude to those earlier decisions, this report sets out the professional views of officers on those matters, their materiality (if any), and the appropriate weight that officers consider that they should carry.

1.8 This report also provides factual updates since the July meeting. The application remains recommended for refusal for the reasons set out in the earlier reports, which are repeated in the recommendation below.

## **2.0 FACTUAL UPDATES**

2.1 At the meeting on 16 July it was verbally reported that one late letter of representation had been received following the publication of the agenda. This letter expresses concern over the reasons to support the application referred to by the Committee.

2.2 It was also verbally reported in July that a written statement had been received from the applicant in support of the application. This statement refers to the submitted Design, Access and Planning Statement (DAPS) and makes the following points:

- Section 2 of the DAPS describes the sustainability credentials of the site;
- Section 3 of the DAPS refers to the lack of 5 year supply in the Borough and the contribution that small and medium sites make towards housing need;
- Reference is made to the Council's 'Strategic Green Belt Assessment', the identification of the site therein as part of strategic parcel no. 31 and the contribution of this site towards the purposes of the GB;
- Section 4 of the DAPS lists national and local policies which could support the proposals;
- the proposals provide policy compliant affordable housing and s106 contributions; and
- the layout is indicative and could be revised to minimise noise impact. Soft landscaping could be used in combination with an acoustic fence.

## **3.0 PLANNING ASSESSMENT & IMPLICATIONS**

3.1 As required by the Constitution, an outline of the implications of making a decision contrary to the Officer recommendations is provided below. The recommended reasons for refusal from the 25 June Committee report is set out in italics below, with the implications considered subsequently. The Committee's attention is drawn in particular to section 7 of that report, which sets out the key issues and the officers' assessment of those issues. That assessment includes a detailed evaluation of the contribution that the site makes to openness and to the purposes of the Green Belt, and to the impact that the proposals would have on those matters.

### 3.2 REASON 1: PRINCIPLE OF DEVELOPMENT AND HARM TO THE GB

1. *The application site is located within the Green Belt, as identified on the Policies Map accompanying the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (2015). National and local planning policies for the Green Belt set out within the NPPF and Core Strategy set out a presumption against inappropriate development in the Green Belt. The proposals are considered to constitute inappropriate development with reference to policy and would by definition be harmful to the Green Belt. It is also considered that the proposals would harm the openness of the Green Belt and would be contrary Green Belt purposes (a), (c) and (e) as described by paragraph 134 of the NPPF. The identified harm to the Green Belt is not clearly outweighed by other considerations so as to amount to the very special circumstances required to justify inappropriate development. The proposal is therefore contrary to Policies CSSP4 and PMD6 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (as amended 2015) and chapter 13 of the National Planning Policy Framework 2019.*

### 3.3 REASON 2: VISUAL IMPACT OF ACOUSTIC MITIGATION

2. *The proposal would, by reason of the likely siting and scale of the proposed acoustic fencing necessary to mitigate the impact of noise and ensure that the quality of amenity spaces are not degraded, result in an overbearing and overdominant impact harmful to visual amenity. The proposal is therefore contrary to Policy PMD1, PMD2, CSTP22 and CST23 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (as amended 2015) and chapter 12 of the National Planning Policy Framework 2019.*

### 3.4 Implications of approving the application contrary to recommendation

As noted in the report to the 25 June Committee, the proposals do not accord with relevant policies in the Core Strategy and NPPF. Consequently, the application has been advertised as a departure from the development plan. Section 6.3 of that report identifies the relevant policies of the development plan and the recommended reasons for refusal (above) identify the policies which are not satisfied. If the Committee resolve to grant planning permission the provisions of the Town and Country Planning (Consultation) (England) Direction 2009 would engage. In particular, the description of the development falls within the ambit of paragraph 4 of the Direction. Therefore, prior to the local planning authority (LPA) issuing any formal decision on the application, the Secretary of State (SOS) for Housing, Communities and Local Government (Planning Casework Unit) would be consulted pursuant to

paragraph 9 of the Direction. In consulting with the SOS the LPA is required to provide copies of the following:

- a copy of the application, drawings and supporting information;
- a copy of statutory notices;
- copies of representations received;
- a copy of the Officer's report: and
- unless included in the Officer's report, a statement of the material considerations which the LPA consider indicate the application should be determined otherwise than in accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004.

3.5 As expressed in National Planning Practice Guidance (NPPG) the purpose of the Direction is to give the SOS an opportunity to consider using the power to call-in an application under section 77 of the Town and Country Planning Act 1990. If a planning application is called-in, the decision on whether or not to grant planning permission will be taken by the SOS, usually after a public inquiry, rather than the LPA. NPPG goes on to state that in considering whether to call-in a planning application, the SOS is generally concerned with whether the application involves planning issues of more than local importance that warrant the decision being made by him rather than the LPA. However each case will be considered on its merits. The call-in policy was updated on 26 October 2012 in a written ministerial statement. This Statement, inter-alia, notes that:

*“The SOS will, in general, only consider the use of his call-in powers if planning issues of more than local importance are involved. Such cases may include, for example, those which in his opinion:*

- *may conflict with national policies on important matters;*
- *may have significant long-term impact on economic growth and meeting housing needs across a wider area than a single local authority;*
- *could have significant effects beyond their immediate locality;*
- *give rise to substantial cross-boundary or national controversy;*
- *raise significant architectural and urban design issues; or*
- *may involve the interests of national security or of foreign Governments.*

*However, each case will continue to be considered on its individual merits”.*

- 3.6 Officers consider that the proposals conflict with national policies on important matters (i.e. GB). If the application were to be called-in by the SOS a public inquiry would be held where the LPA would be represented. As Officers have recommended the application for refusal, there may a practical issue in allocating staff to participate in the Inquiry. This is because some staff members are also chartered members of the Royal Town Planning Institute and the Institute’s Code of Professional Conduct (para. 12) states that:

*“Members must not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions ...”*

- 3.7 For information, when a resolution to grant planning permission contrary to recommendation for residential development at the Aveley Sports & Social Club site in Aveley was called-in by the SOS in 2014, the LPA were represented by the then Chair of the Planning Committee. An alternative option would be for the Council to engage external consultants to present its case but if they were members of a professional body (such as the RTPI) they would have their own professional obligations to comply with in relation to the giving of evidence.

Assessment of matters previously discussed as supporting the grant of permission

- 3.8 The following list of factors were raised at the meeting on 16 July 2020 as reasons to approve the application and these are considered in more detail below to assess whether these comprise the VSC necessary for approving inappropriate development in the GB. It is important to note that, whilst it is convenient to look at matters individually in the first instance, the question of VSC involves bringing all matters together on a cumulative basis. This is discussed in more detail in later paragraphs of this report. In discussing these matters, officers have given an indication of the weight that they consider, as a matter of professional judgment, should be accorded to them.

The reasons are:

1. The scheme would create employment during the construction phase;
2. The scheme would contribute toward the 5 year housing supply;
3. Significant weight should be afforded to the contribution towards sustainable development;

4. Delivering a sufficient supply of homes had significant weight;
5. Making effective use of land had significant weight;
6. Achieving well-designed places had significant weight;
7. The scheme was shovel-ready project because it would come back with a full planning application and if the current application was passed, the Committee would be 'duty-minded' to approve future applications;
8. The site was a windfall site and
9. Thurrock did not have a Local Plan.

*Reason 1: The scheme would create employment during construction*

- 3.9 Paragraph 3.15 below refers to the economic, social and environmental objectives of the planning system in contributing towards the achievement of sustainable development. If approved, during the short-term construction phase there would be some economic benefit associated with employment opportunities. In the longer term, the new households created would through household expenditure, contribute to the local economy. This limited benefit was recognised at paragraph 7.32 of the June Committee report. However, this factor attracts only limited positive weight in the balance of considerations, with similar economic benefits being achieved wherever housing development takes place.

*Reason 2: The scheme would contribute toward the 5 year housing supply*

- 3.10 The issue of housing land supply has been considered by the Committee regularly for planning applications within the GB and the applicant's reference to the lack of a five year housing supply as a factor supporting the proposals was assessed in the main report in June 2020. The housing land supply consideration carries significant positive weight for planning applications within the Borough. Similarly, the applicant's offer to deliver policy-compliant affordable housing (35%) is a benefit which attracts significant weight in favour of the proposals. However, the NPPF's presumption in favour of sustainable development is only engaged for sites or locations with a GB designation *after* they have been shown to satisfy Green Belt tests (either of being appropriate development or demonstrating VSC). If Green Belt policy provides a clear reason for refusing permission, there is no scope for the presumption to apply. It is clear from the NPPF (para 133) that the permanence of the Green Belt is one of its essential characteristics, and this is inevitably eroded if Green Belt land is released to meet a shortfall in the five year housing supply or affordable housing needs, and in that context officers consider that the contribution of the proposals towards five year housing land supply and the provision of affordable housing is not a sufficiently strong factor to justify a departure from normal planning policies.

- 3.11 In dismissing the (2020) appeal for residential development in Bulphan (APP/M1595/W/19/3242356) the Inspector concluded:

*“As to benefits, I have attributed significant weight to both the contribution of 116 residential units in context of a five year housing supply deficit and the provision of 40% affordable housing ... The proposal’s benefits would not clearly outweigh the substantial harm to the Green Belt and other harm identified. Very special circumstances therefore do not exist”.*

*Reason 3: Significant weight should be afforded to the contribution towards sustainable development*

- 3.12 Paragraphs 7.30 to 7.32 of the June Committee report assess the applicant’s contention that achieving sustainable development is a factor weighing in support of the application and contributing towards VSC. Chapter 2 of the NPPF is titled ‘Achieving Sustainable Development’ and paragraph 7 states that *“the purpose of the planning system is to contribute to the achievement of sustainable development”*. Paragraph 8 then goes on to describe the three objectives of the planning system in achieving sustainable development as:

- a) an economic objective;
- b) a social objective; and
- c) an environmental objective.

- 3.13 Paragraph 9 of the NPPF makes the point that these are not criteria against which an individual proposal should be judged and that they are to be delivered via the plan-led system. It follows that limited weight should be given to the extent to which a proposal helps to achieve any one or more of the objectives, if that proposal (as here) involves conflict with relevant policies of the development plan or the NPPF.

- 3.14 Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development and, for decision making, this means:

*“c) approving development proposals that accord with an up-to-date development plan without delay; or*

*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, granting planning permission unless:*

- (i) *the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>6</sup>, or*
- (ii) *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole”.*

3.15 With regard to d) and footnote <sup>6</sup> above, as the Council cannot demonstrate a five year supply of deliverable housing sites, the ‘tilted balance’ in favour of granting planning permission would ordinarily apply. However, the ‘tilted balance’ is subject to footnote <sup>6</sup> which identifies Green Belts as one of the list of policies in the NPPF for areas or assets of particular importance which may provide a clear reason for refusing the development. Put simply, the general presumption in favour of sustainable development set out by the NPPF does not apply to proposals which are in conflict with the NPPF’s policies for the GB. That will be the case for this proposal unless the test of VSC is made out. In other words, the presumption does not help to determine whether there are VSC and can only operate *after* a finding of VSC.

*Reason 4: Delivering a sufficient supply of homes had significant weight*

3.16 Chapter 5 of the NPPF is titled ‘Delivering a sufficient supply of homes’ and this chapter sets out the Government’s “*objective of significantly boosting the supply of homes*” (paragraph no. 59). Paragraph no. 68 goes on to state that “*small and medium sized sites can make an important contribution to meeting the housing requirement of an area*”. This chapter of the NPPF also sets out the policy requirement for LPAs to “*identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing ...*” (paragraph no. 73).

3.17 Delivering a sufficient supply of new homes is therefore an important national and local planning policy objective. However, this factor is already considered by reason 2 (above). Although significant positive weight can be attributed to the contribution the site would make to housing delivery, it is officers’ view that it is not a sufficiently strong factor to justify a departure from the development plan.

*Reason 5. Making effective use of land had significant weight*

3.18 Chapter 11 of the NPPF is titled ‘Making effective use of land’ and paragraph no. 117 states “*Planning policies and decisions should promote an effective use of land in*

*meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions".* However, the policy objective of making the best use of development sites does not override the protections afforded by a GB designation.

- 3.19 Notwithstanding the GB designation of the site, the proposed development of 75 dwellings on a site totalling c.2.57 Ha in area would result in a gross density of c.29 dwellings per hectare (dph). Core Strategy policy CSTP1 (Strategic Housing Provision) sets out the Council's housing density approach which refers to a density range of between 30-70 dph for sites located outside town centres, regeneration areas, key flagship schemes and other areas with high public transport accessibility (as is the case here). In these circumstances the proposed density would not represent a particularly efficient or effective use of the site.

*Reason 6. Achieving well-designed places had significant weight*

- 3.20 Both the NPPF and the Council's planning policies promote good design. Good design can be considered as a combination of the right development at the right location and incorporating the following elements (NPPF paragraph no. 127):

- function
- visually attractive
- sympathetic to local character
- sense of place;
- safe, inclusive and accessible.

- 3.21 Members are reminded that the application seeks outline planning permission with all matters (access, appearance, landscaping, layout and scale) reserved for subsequent approval. The plans which have been submitted must be treated as indicative or illustrative only. There is no reason to think that the design that ultimately comes forward would achieve anything more than any other proposal on a green field site. In these circumstances it is considered that only limited positive weight should not be given to this factor.

*Reason 7: The scheme was shovel-ready project because it would come back with a full planning application and if the current application was passed, the Committee would be 'duty-minded' to approve future applications*

3.22 A number of national newspapers reported that in early June 2020 that the Government issued an urgent call for “shovel-ready” projects to help the economy recover from the damage caused by the coronavirus lockdown. The Financial Times reported:

*“... the government has asked elected mayors and local business leaders in England for ideas that would create jobs and be finished within 18 months. The Financial Times has seen the letter sent on June 10 by Robert Jenrick, housing secretary, to mayors and the 38 local enterprise partnerships (LEPs), who are responsible for economic growth. Proposals are requested by June 18, underlining the urgency of the economic crisis. As well as schemes previously pitched for government funds, “we are willing to consider exceptional, additional shovel-ready capital projects that can be delivered within 18 months”, the letter said. “Where considering new projects, these must deliver on two overarching objectives — driving up economic growth and jobs and supporting green recovery.” Suggestions include modernising town centres; road, rail and cycling infrastructure; broadband improvements; research and development centres; and skills training programmes”.*

3.23 In this context, it is not considered that a residential development of 75 dwellings would constitute a shovel-ready, large scale infrastructure capital project. The accepted definition of ‘shovel-ready’ usually refers to a situation where planning is advanced enough such that construction can begin in a very short time. In this case, outline permission with all matters reserved is sought. If permission were to be granted, reserved matters submissions would need to be submitted and approved, as well as approval of any pre-commencement planning conditions. Construction and subsequent delivery of new dwellings on the ground would be unlikely for a period of years, not months. Therefore the reference to the scheme as a shovel ready project, as that term is generally understood, is not considered relevant.

3.24 If outline planning permission were to be granted and the principle of residential development established, it is relevant that future applications for the approval of reserved matter and the discharge of planning conditions would ‘follow’ the outline permission. Provided that the reserved matters submissions were within the parameters established by any outline permission then it would be reasonable to assume that approval of reserved matters would follow. However, as outline permission is sought it is inevitable that a series of further submissions and approval are required before building works could commence. The proposal offers nothing of any particular value over and above any other case of an outline scheme and this factor is therefore considered to carry only the most limited weight.

*Reason 8: The site is a windfall site*

- 3.25 The Glossary at Annex 2 of the NPPF defines 'Windfall sites' as *sites not specifically identified in the development plan*. The site is designated as within the GB and is not identified for development in the adopted Core Strategy. Therefore the site could be regarded as a windfall site if it were to come forward for housing. However, this would be true for any GB site that was given planning permission for inappropriate development. In these circumstances it is considered that this should not be relied upon as a positive factor supporting the application.

Reason 9: Thurrock does not have a Local Plan

- 3.26 There may be some confusion between the terms 'Local Plan' and 'Development Plan'. As noted at paragraph 3.8 above, the Planning Acts require:

s70 (2) Town and Country Planning Act 1990 -

In dealing with an application for planning permission or permission in principle the authority shall have regard

(a) the provisions of the development plan, so far as material to the application

S38 (6) Planning and Compulsory Purchase Act 2004 -

If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise

- 3.27 The current Development Plan for Thurrock is the Core Strategy and Policies for the Management of Development (as amended) (2015). The original adopted Core Strategy (2011) was reviewed to ensure consistency with the NPPF and following that review the amended Core Strategy was adopted in 2015. It is considered that the relevant Core Strategy policies referring to the GB are up to date and consistent with the NPPF. Members will know that the Council is preparing a new Local Plan which, when adopted, will replace the NPPF. Members may also be aware that the Government's 'Planning For The Future' includes a requirement that all LPAs should have an up to date local plan by the end of 2023. An embryonic future local plan is not a matter which should carry any material weight.
- 3.28 Nevertheless, in this case the Core Strategy and NPPF provide clear policy guidance for the consideration of proposals in the GB.

Summary of the above reasons

- 3.29 Members of the Planning Committee are reminded of the content of NPPF paragraph 144 which states:

*“Very Special Circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly (emphasis added) outweighed by other considerations.”*

- 3.30 Therefore, and although every case falls to be determined on its own merits, the benefits of the proposals must clearly outweigh the harm for VSC to exist. If the balancing exercise is finely balanced, then VSC will not exist. For this application it is considered that the benefits of the proposals do not clearly outweigh the GB harm and as a consequence VSC do not apply.

- 3.31 The reasons put forward by Members for approving this development have been carefully considered but do not clearly outweigh the identified harm to the GB. Therefore, the reasons for refusal have not been addressed for the development to be considered acceptable.

- 3.32 In order to assist Members of the Committee in applying the very special circumstances test (NPPF paragraph no. 144), Members should address the following questions. After each question there is a short commentary to indicate the officer advice on how the question should be answered but ultimately this is a matter for Member decision. The questions are:

Question 1:

- 3.33 Taking the relevant policies of the adopted Core Strategy in turn (as identified in the officer report), **do you consider that the application proposal is in accordance with or in conflict with each policy?**

Commentary:

- 3.34 Paragraph no. 6.3 of the June Committee report lists all of the development plan policies which are relevant, to varying degrees, to the consideration of this application. A total of 29 planning policies are listed as relevant to the case. However, the suggested reasons for refusal only refer to 6 policies from the list of 29. It is considered that the proposals would either accord with or potentially not be in conflict with a number of development plan policies. For example, the application proposes 35% affordable housing and so is in accordance with policy CSTP2 (The Provision of Affordable Housing). As the application seeks outline planning permission with all matters reserved, it is not possible to give an assessment of the

proposals against a large number of the relevant development plan policies. For instance, as the layout of the scheme is a reserved matter it is not possible to form a view regarding compliance with the provision of adequate open space within the site (policy PMD5) or compliance with suggested parking standards (policy PMD8). Nevertheless, if outline permission were to be granted there is no reason to conclude that that an acceptable configuration of development could not be achieved, in accordance with policy. Policy CSSP1 (Sustainable Housing and Locations) sets out the housing delivery targets for Thurrock from 2001 to 2026 and clearly the proposals will assist in meeting housing needs. However, as the site is within the Metropolitan Green Belt the proposals are at odds with development plan policies which restrict development, in particular policies CSSP4 (Sustainable Green Belt) and PMD6 (Development in the Green Belt). Where, as is the case here, a proposal accords with some development plan policies but is simultaneously in conflict with other policies, a judgement is required as to which policies are dominant and take precedence. In the opinion of Officers those Development Plan policies which protect the Green Belt should prevail in this case. Although this judgement is considered further in the question below.

#### Question 2:

- 3.35 Having regard to your conclusions under Q1, and recognising that the policies might pull in different directions, **do you consider that the application proposal is in accordance with or in conflict with the Core Strategy, taken as a whole?** In addressing this question you will need to make a planning judgment about which policy or policies you consider to be the dominant policy, in terms of importance to the application proposal. Being in accordance with or in conflict with the dominant policy/policies is likely to carry more weight than being in accordance with or in conflict with lesser policies when making the overall judgment about whether the application proposal is in accordance with or in conflict with the Core Strategy.

#### Commentary:

- 3.36 From the commentary to the question above, it can be seen that the contribution of the proposals towards housing supply is a factor which generally accords with the broad objectives of policy CSSP1, while the Green Belt protection policies CSSP4 and PMD6 resist inappropriate development in the Green Belt. Therefore, a judgement on the interaction between 'competing' policies is required, as is a view regarding which development plan policies are dominant.
- 3.37 As noted above, Policy CSSP1 sets out the housing delivery targets for Thurrock up to 2026 and states, at (1) (II.) that:

*“Development will only be permitted on greenfield and Green Belt land where it is specifically allocated for residential development and where it is required to maintain a five-year rolling housing land supply.”*

- 3.38 It should be noted that policy CSSP1 was not subject to the Focused Review of the 2011 Core Strategy, although policy PMD6 was amended to remain consistent with the NPPF. The relevant wording of PMD6 states:

*“Planning permission will only be granted for new development in the Green Belt provided it meets as appropriate the requirements of the NPPF, other policies in this DPD, and the following”* (relating to different types of development).

- 3.39 Therefore policy PMD6 defers to the requirements of the NPPF which would permit inappropriate development in the Green Belt only if the very special circumstances test (paragraphs 143 & 144) is met. The contribution towards five-year housing land supply (mentioned by policy CSSP1 (1) (II.)) is a factor which could form part of this test, but in the opinion of Officers would need to combine with other benefits. Consequently, there is not necessarily a direct conflict between policies CSSP1 and PMD6, but a proposal for new housing would need to meet a shortfall in the five-year housing land supply (as is the case here) and satisfy the very special circumstances test referred to by PMD6 and the NPPF.
- 3.40 With regard to the ‘dominant’ policy considerations, the NPPF confirms that *“The Government attaches great importance to Green Belts”* (paragraph 133). Furthermore, in applying the presumption in favour of sustainable development (paragraph 11) the Green Belt is identified as an area or asset of particular importance. In this case, Officers consider that the very special circumstances test has not been satisfied and therefore the policy objective of protecting the Green Belt should prevail.

Question 3:

- 3.41 In relation to the Green Belt, the key policy for development management is Policy PDM6 of the Core Strategy and this requires an application proposal to satisfy the requirements of the NPPF (and other Core Strategy policies). The NPPF Green Belt test is that inappropriate development is by definition harmful to the Green Belt, that any harm to the Green Belt (harm by definition and any specific harm to Green Belt purposes or openness) must be given substantial weight, and such inappropriate development can only be justified where there are very special circumstances. Very special circumstances will not exist unless the other considerations in favour of the

development clearly outweigh the Green Belt harm and any other harm, taken together.

Commentary:

- 3.42 Members of the Planning Committee will be familiar with the balancing exercise which is required as part of the test to determine whether very special circumstances exist. The table at paragraph 7.54 of the report presented to Committee on 25<sup>th</sup> June provided a simple summary of the weight to be attached to the harm to the Green Belt, against the weight to be afforded to the benefits of development promoted by the applicant. Paragraph nos. 3.10 to 3.28 of the report to the 16<sup>th</sup> July provide an analysis of the reasons to approve the application referred to by Committee at the June meeting. Finally, paragraphs 3.11 to 3.32 (above) of this report consider the ‘final’ reasons for approving the application which were formulated at the July Committee meeting. In light of the analysis in the previous reports and above, it was, and remains, the firm view of Officers that the benefits of the development do not clearly outweigh the harm and therefore the very special circumstances required to justify inappropriate development do not exist.

Question 4:

- 3.43 There is no doubt that the application proposal is inappropriate development. **You therefore need to start by given substantial weight to the harm to the Green Belt (both the harm by definition and any harm you consider will be caused to Green Belt purposes or to the openness of the Green Belt) and then add to that harm all and any other non-Green Belt harm that you consider will be caused.** It is a matter for planning judgment how much weight to give to that non-Green Belt harm. **You must then consider whether the weight to be given to any other considerations in favour of the application proposal is sufficient to clearly outweigh the harm caused. Only if you decide that the other considerations do clearly outweigh the harm will you be able to conclude that very special circumstances exist.**

Commentary:

- 3.44 As per the commentary under question 3 (above), this question refers to the balancing exercise between harm and other considerations. The Committee is reminded that NPPF paragraph no. 144 requires that:

*“substantial weight’ is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”.*

- 3.45 The suggested weight to be placed on the benefits associated with the development and the reasons to approve the application referred to by Committee are set out in the previous reports and in the paragraphs above. Both the previous Committee reports and the analysis above provide a planning justification which conclude that, in this case, harm is not clearly outweighed by other considerations. Consequently, Officers consider that very special circumstances do not exist.

Question 5:

- 3.46 When considering other considerations in favour of the application proposal and determining the weight to be given to them, you will be making planning judgments. If you conclude that the outcome of the balancing exercise is unclear, or that the results are finely balanced, you will not be able to decide that the other considerations clearly outweigh the harm. If you are relying on a benefit of the development, you should ask yourself how certain it is that the benefit will be delivered and, generally speaking, the less certain the benefit the less weight it is likely to carry. Bearing in mind that the essential characteristics of the Green Belt is its openness and its permanence, factors which might apply to a wide range of development proposals would, generally speaking, be likely to carry less weight than factors which are a particular consequence of the particular application proposal.

Commentary:

- 3.47 Members of the Planning Committee are encouraged to undertake a thorough assessment of the considerations, potential benefits and reasons previously relied upon to support the application. The NPPF policy test is that harm to the Green Belt and any other harm must be *“clearly outweighed by other considerations”* for very special circumstances to exist. If harm is anything less than clearly outweighed then very special circumstances cannot exist and permission should be refused. The weight which Officers consider should be accorded to other considerations has been set out above and within the previous reports to Committee. Ultimately the balancing exercise is a matter for the Committee as decision-maker and is a judgement about material planning considerations. However, Members are reminded that site-specific factors will be likely to attract greater weight than generic considerations which could apply on a range of sites. Officer’s advice is that the combination of other considerations in this case do not clearly outweigh harm.

Question 6:

- 3.48 **Do you consider that this is a case where there are other considerations, and if so do they clearly outweigh the harm to the Green Belt taken together with any other harm?**

Commentary:

- 3.49 Members of the Planning Committee are reminded of the Officer's assessment of the application and, the principal GB harms and impact to the inherent openness character of the Green Belt. Officers concluded that the proposed development would amount to inappropriate development in the Green Belt, however, as stated above, the NPPF policy test is that the harm to the Green Belt and any other harm must be "clearly outweighed by other considerations" for very special circumstances to exist.
- 3.50 The June 2020 report reviewed the applicant's case for very special circumstances where a list of factors had been assessed. It was concluded that very significant weight could be afforded to the housing land supply. Conversely, the other factors promoted by the applicant attracted only limited weight or that no weight could be afforded at all. Therefore, to satisfy the requirements of the NPPF policy test then, VSCs need to clearly outweigh the harm to the GB. The resulting balancing exercise determined that the applicant has not advanced any factors which would singly or in combination amount to VSCs that could clearly outweigh the harm that would result by way of inappropriateness and the other harm in the assessment.
- 3.51 Following the June 2020 assessment, and Planning Committee, Members provided additional reasons for approving the development. At the July Planning Committee, Officers held that the seven reasons put forward by Members for approving the development do not clearly outweigh the identified harm to the GB.
- 3.52 Officers remain of the same view that neither the VSCs nor the 7 reasons given to approve the development, as put forward by Members, clearly outweigh the harm to the Green Belt. Members are reminded that if they are still minded to approve this application then the reasons put forward need to clearly outweigh the harm to the GB together with any other harm.

Question 7:

- 3.53 If you conclude that the application proposal is not in accordance with the Core Strategy in part due to a conflict with Policy PDM6, that exercise will have already

involved addressing any other considerations. The same is true if you consider that the requirements of Policy PDM6 are satisfied. It is therefore unlikely that there will be any other material considerations to indicate otherwise than a decision in accordance with the Core Strategy.

Commentary:

- 3.54 An assessment of the proposals against the requirements of Core Strategy policy PMD6, which in turn relies on the Green Belt policies in the NPPF, is the principal issue for the Committee to address. Put simply, if the Committee concludes that, after undertaking the balancing exercise, harm is not clearly outweighed by other considerations then planning permission must be refused in accordance with PMD6. However, if the Committee undertake the balancing exercise and conclude that harm is clearly outweighed by other considerations then a decision to grant planning permission (subject to referral, s106 obligations and planning conditions) could be taken, as the requirements of PMD6 will have been satisfied.
- 3.55 Officers have concluded that other considerations do not clearly outweigh the harm and, as very special circumstances do not exist, planning permission should be refused in accordance with development plan and national planning policies which protect the Green Belt.

#### **4.0 LEGAL IMPLICATIONS OF DECISION**

- 4.1 Members are reminded that in making their decision, they are required to comply with the general law, national and local Policies and the Council's Constitution.
- 4.2 Only material considerations can be taken into account and reasons given must be cogent, clear and convincing. In addition, considerations and reasons must be evidence based.
- 4.3 It is important to note that deviation from the above would potentially be unlawful and challengeable in the courts.
- 4.4 As a matter of law, under s. 38(6) Town and Country Planning Act, planning applications should be determined in accordance with the development plan, unless there are material considerations which indicate otherwise.

- 4.5 The policies contained in the “Core Strategy and Policies for the Management of Development Plan Document” (as amended) in 2015 are current and carry the legal status of the development plan.
- 4.6 Accordingly, to permit a departure from the Core Strategy, considerations are required to be ‘material’. This is an imperative and a legal requirement.
- 4.7 This application is contrary to the development plan, and a grant of planning permission in this case would be referred to the Secretary of State. However, referral to the Secretary of State as a decision safety net is not a material consideration and cannot legally be taken into account or support a reason to grant planning permission.
- 4.8 The site is located within the Green Belt and decisions concerning Green Belt applications must be made strictly in accordance with:
1. Green Belt Policy and
  2. Current Green Belt boundaries

This means speculation as to the outcome of a future Green Belt review as part of the Local Plan process cannot be afforded weight—when considering the planning application.

## **5.0 OVERALL CONCLUSIONS**

As required by the Constitution the implications of the Committee approving this application, which is a departure from national and local planning policies, are set out above. This report goes on to analyse the reasons previously suggested for approving the application contrary to recommendation provided by the Committee. These reasons to a degree reflect the benefits of the scheme promoted by the applicant. It is not considered that these reasons clearly outweigh the identified harm to the Green Belt and therefore the reasons for refusal have not been addressed sufficiently for the development to be considered acceptable. The reasons for refusal therefore remain relevant. If, contrary to the Recommendation, Members do decide to approve the application, it will be important to ensure that clear and adequate reasons are given by the Committee expressly for that decision, with specific reference to the Members’ answers to the Questions posed in section 3 of this Report, together with any other matters that are relied on by Members.

## 6.0 RECOMMENDATION

The Committee is recommended to:

Refuse planning permission for the following reasons:

1. The application site is located within the Green Belt, as identified on the Policies Map accompanying the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (2015). National and local planning policies for the Green Belt set out within the NPPF and Core Strategy set out a presumption against inappropriate development in the Green Belt. The proposals are considered to constitute inappropriate development with reference to policy and would by definition be harmful to the Green Belt. It is also considered that the proposals would harm the openness of the Green Belt and would be contrary Green Belt purposes (a), (c) and (e) as described by paragraph 134 of the NPPF. The identified harm to the Green Belt is not clearly outweighed by other considerations so as to amount to the very special circumstances required to justify inappropriate development. The proposal is therefore contrary to Policies CSSP4 and PMD6 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (as amended 2015) and chapter 13 of the National Planning Policy Framework 2019.
2. The proposal would, by reason of the likely siting and scale of the proposed acoustic fencing necessary to mitigate the impact of noise and ensure that the quality of amenity spaces are not degraded, result in an overbearing and overdominant impact harmful to visual amenity. The proposal is therefore contrary to Policy PMD1, PMD2, CSTP22 and CST23 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (as amended 2015) and chapter 12 of the National Planning Policy Framework 2019.

Informative(s):-

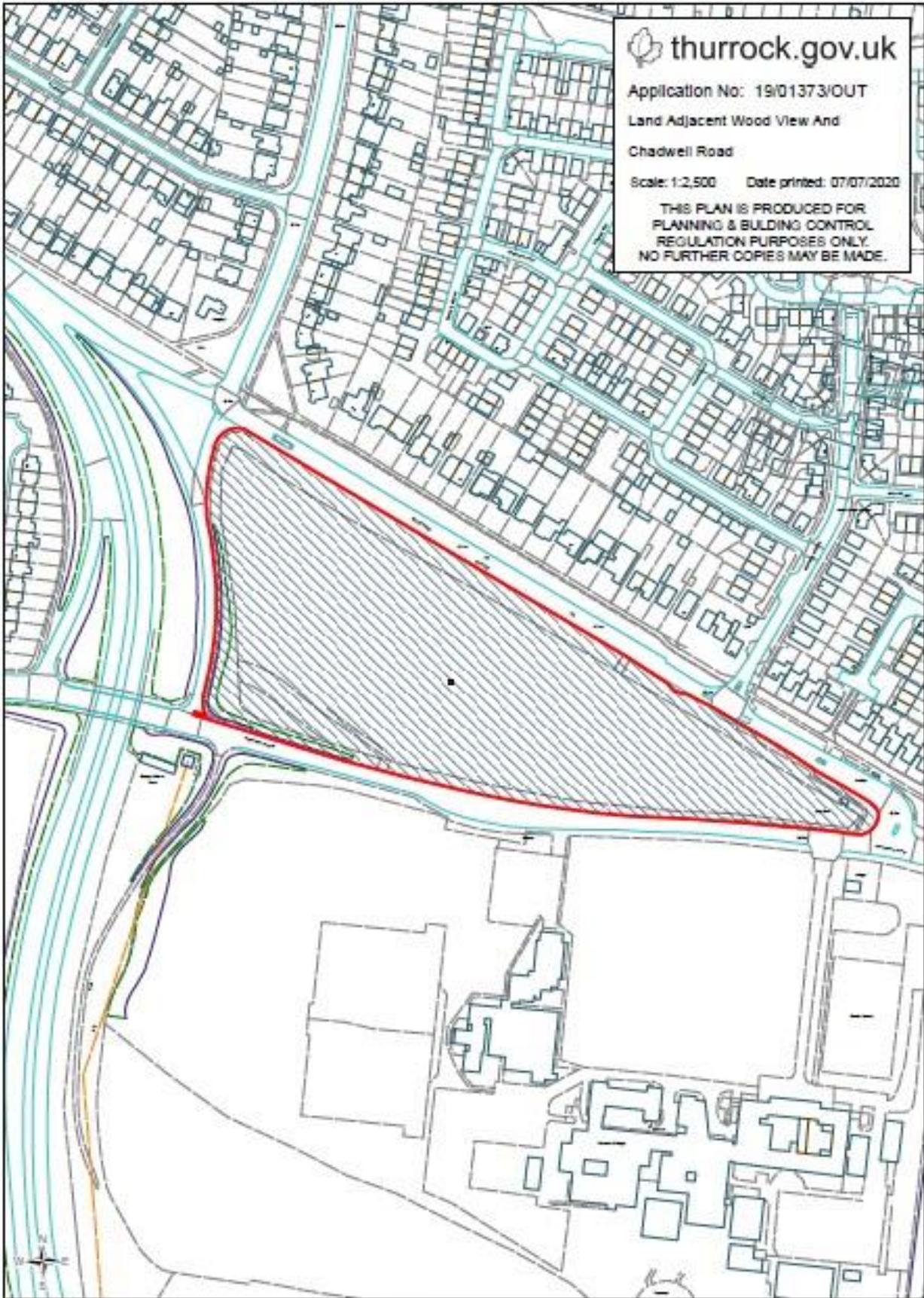
1. Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) - Positive and Proactive Statement:

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing with the Applicant/Agent. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

**Documents:**

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

<http://regs.thurrock.gov.uk/online-applications>



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Planning Committee 25 June 2020	Application Reference: 19/01373/OUT
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<b>Reference:</b> 19/01373/OUT	<b>Site:</b> Land adjacent Wood View and Chadwell Road Grays Essex
<b>Ward:</b> Little Thurrock Rectory	<b>Proposal:</b> Outline planning application (all matters reserved) for 75 residential units consisting of 57 houses and 18 apartments

<b>Plan Number(s):</b>		
Reference	Name	Received
200	Site Location Plan	10th September 2019
201	Proposed Site Layout (indicative)	10th September 2019
210	Indicative Plans and Elevations	10th September 2019
211	Indicative Plans and Elevations	10th September 2019
212	Indicative Plans and Elevations	10th September 2019
213	Indicative Plans and Elevations	10th September 2019

The application is also accompanied by:

- Planning Support Statement / Design & Access Statement (ref SPL Ref:18.5410);
- Viability Assessment (November 2019: Arebray Development Consultancy);
- Transport Statement (October 2019: Beacon Transport Planning);
- Preliminary Ecological Appraisal (February 2017 (ref P2820.5.0):agb Environmental);
- Arboricultural Impact Assessment (June 2017 (ref P2820.6.0):agb Environmental);
- Noise Assessment, Technical Report, dated by 14 July 2017 (R6785-1 Rev 0), by 24 Acoustics
- Surface Water Drainage Strategy (December 2018 rev 00 (Project No. 07127));
- Flood Risk Assessment (March 2017 (ref P2820.4.0): agb Environmental);
- Phase 1 Ground Contamination Desk Study (March 2017 (ref 2820.3.0): agb Environmental)

<b>Applicant:</b> Mr D MacDonald	<b>Validated:</b> 03 February 2020 <b>Date of expiry:</b> 17 July 2020 (Extension of time agreed with applicant)
<b>Recommendation:</b> Refuse planning permission	

The planning application is scheduled for determination by the Council's Planning Committee because the application is considered to have significant policy

implications and constitutes a departure from the Development Plan. The application has also been called-in by Councillors J Redsell, E Rigby, B Maney, A Jefferies, M Fletcher, B Johnson for matters regarding Green Belt (GB), landfill, overdevelopment and on highways grounds.

## 1.0 BRIEF SUMMARY

- 1.1 This application seeks outline planning permission for a residential scheme comprising of 57 houses and 18 flats with all matters reserved. Detached, semi-detached and terraced dwellings are proposed and indicative plans have been submitted for these house types. Some of these house types have been allocated car ports.
- 1.2 The site plan indicates an illustrative layout and the indicative point of access would be from Wood View on the site's northern boundary and towards the eastern end of the site. Areas of hardstanding are also proposed to accommodate a new vehicular access and new associated roads.

## 2.0 DESCRIPTION OF PROPOSAL

- 2.1 The table below summarises some of the main points of detail contained within the development proposal:

Site Area	2.57 Ha
Residential Development Number of Dwellings:	<u>Market Housing</u> 6 no. five bed houses 12 no. four bed houses 29 no. 3 bed houses  TOTAL 47 units  <u>Affordable Housing</u> 10 no. two bed houses 12 no. two bed flats 6 no. one bed flats  TOTAL 28 units (35%)

- 2.2 This is an application for outline planning permission with all matters reserved. Limited indicative details have been provided with regard to the appearance, landscaping and scale of the residential units. The illustrative site layout plan indicates the arrangement and the quantum development proposed, as set out in the

table above. Details of appearance, landscaping, layout and scale are reserved for future approval, if outline planning permission were to be granted.

- 2.3 Access is also a reserved matter, but the applicant is still required to demonstrate the proposed location(s) of access points. A single point of access has been indicated on the illustrative site layout plan located on the Wood View road frontage, opposite its junction with Culverin Avenue. Permission is sought for 75 residential units and this figured should be viewed as a maximum. The mix of unit residential units, shown in the table above, should be interpreted as indicative.

### **3.0 SITE DESCRIPTION**

- 3.1 The site comprises of a triangular-shaped parcel of open land, extending to c.2.57 hectares in area situated between Wood View to the north and Chadwell Road to the south. The site appears to be used for the grazing of livestock.
- 3.2 To the south, the application site is located directly opposite USP College and the north of the site is bordered by single and two-storey residential properties of varied character fronting Wood View.
- 3.3 The application site is within the Green Belt as defined by the Core Strategy (2015) proposals map. None of the site forms part of any designated site of nature conservation. The site is within the low risk flood area (Zone 1) and is a short distance from an historic landfill site located to the east.

### **4.0 RELEVANT HISTORY**

- 4.1 No relevant planning history.

### **5.0 CONSULTATIONS AND REPRESENTATIONS**

#### **5.1 PUBLICITY:**

This application has been advertised by way of individual neighbour notification letters, press advert and public site notice which has been displayed nearby.

The application has also been advertised as a major development and a departure from the Development Plan.

- 5.2 Thirty two letters of objection have been received raising the following concerns;
- inappropriate access to the site;

- additional traffic and congestion;
- environmental pollution;
- possible excessive noise;
- out of character;
- infrastructure, especially roads, are at full capacity;
- GP surgery, schools and amenities are oversubscribed;
- litter/smells;
- loss of amenity;
- additional parking pressures;
- loss of GB land would lead to loss of wildlife;
- loss of water pressure;
- loss of views across the site from the north;
- concerns with site drainage and flooding;
- site is used for farming and there is a covenant to prevent housing use;
- overlooking / loss of privacy from residential units directly opposite;
- materials unacceptable;
- sale of alcohol causing disturbance;
- site was previously a landfill and concerns with contamination at the site and implications to health;
- this development does not fit with the strategic plan for the borough;
- access to site is via the Quantum development roundabout and already congested;
- the requirement to show exceptional circumstances, has not been met by the application; and
- loss of oak trees at the site.

### 5.3 CONSULTATION RESPONSES:

Detailed below is a summary of the consultation responses received. The full version of each consultation response can be viewed on the Council's website via public access at the following link: [www.thurrock.gov.uk/planning](http://www.thurrock.gov.uk/planning)

5.4 ANGLIAN WATER:

Advisory comments provided,

5.5 ARCHAEOLOGICAL HERITAGE ADVICE:

No objection, subject to conditions.

5.6 CADENT:

Advisory comments provided regarding gas assets within or close to the site.

5.7 EDUCATION:

s.106 contribution required to mitigate impact of development.

5.8 ENVIRONMENTAL HEALTH:

No objection, subject to conditions.

5.9 ESSEX FIELD CLUB:

Objection raised regarding loss of habitat.

5.10 ESSEX POLICE:

Advisory comments provided relating to lighting, boundary treatment and Secure By Design.

5.11 FLOOD RISK MANAGER:

No objection, subject to conditions.

5.12 HIGHWAYS;

Further information required regarding road layout and other matters. (NB – as this is an application seeking outline planning permission with all matters reserved, these details are not for consideration at this stage).

#### 5.12 HOUSING:

Express a preference for one / two-bed affordable housing units.

#### 5.13 NATURAL ENGLAND;

Site is within Zone of Influence of the Essex Coast RAMS designation and mitigation is required.

### 6.0 POLICY CONTEXT

#### 6.1 National Planning Policy Framework (NPPF)

The revised NPPF was published on 24<sup>th</sup> July 2018 (and subsequently updated with minor amendments on 19<sup>th</sup> February 2019). The NPPF sets out the Government's planning policies. Paragraph 11 of the Framework expresses a presumption in favour of sustainable development. This paragraph goes on to state that for decision taking this means:

- c) *approving development proposals that accord with an up-to-date development plan without delay; or*
- d) *where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date<sup>1</sup>, granting permission unless:*
  - i. *the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>2</sup>; or*
  - ii *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

<sup>1</sup> *This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites ...*

- <sup>2</sup> *The policies referred to are those in this Framework relating to: habitats sites and/or SSSIs, land designated as Green Belt, Local Green Space, AONBs, National Parks, Heritage Coast, irreplaceable habitats, designated heritage assets and areas at risk of flooding or coastal change.*

The assessment of the proposals against the development plan set out below refers to a number of policies, reflecting the nature of the proposals.

As the proposals comprise of residential development, paragraph 11(d) is relevant to a degree in respect of the five year supply of deliverable housing. The Council's most recently published figure for housing land supply (July 2016) refers to a supply of between 2.5 to 2.7 years and it is to be expected that this figure has reduced as completions on large development sites have progressed. Accordingly, as residential development is proposed, the 'tilted balance' in favour of granting permission would ordinarily be engaged. However, the 'tilted balance' does not apply to land designated as Green Belt (paragraph 11 (d) (i) and (ii)).

Paragraph 2 of the NPPF confirms the tests in s.38 (6) of the Planning and Compulsory Purchase Act 2004 and s.70 of the Town and Country Planning Act 1990 and that the Framework is a material consideration in planning decisions. The following chapter headings and content of the NPPF are particularly relevant to the consideration of the current proposals:

5. Delivering a sufficient supply of homes;
8. Promoting healthy and safe communities;
9. Promoting sustainable communities;
11. Making effective use of land;
12. Achieving well-designed places;
13. Protecting Green Belt land;
14. Meeting the challenge of climate change, flooding and coastal change; and
15. Conserving and enhancing the natural environment.

## 6.2 National Planning Practice Guidance (NPPG)

In March 2014 the former Department for Communities and Local Government (DCLG) launched its planning practice guidance web-based resource. This was accompanied by a Written Ministerial Statement which includes a list of the previous planning policy guidance documents cancelled when the NPPF was launched. NPPG contains a range of subject areas, with each area containing several sub-topics. Those of particular relevance to the determination of this planning application include:

- Appropriate Assessment
- Climate change
- Effective use of land
- Flood risk and coastal change
- Green Belt
- Healthy and safe communities
- Historic environment
- Natural environment
- Noise
- Open space, sports and recreation facilities, public rights of way and local green space
- Planning obligations
- Travel Plans, Transport Assessments and Statements
- Use of planning conditions
- Viability
- Waste

### 6.3 Local Planning Policy: Thurrock Local Development Framework (2015)

The Council adopted the “Core Strategy and Policies for the Management of Development Plan Document” (as amended) in 2015. The following Core Strategy policies in particular apply to the proposals:

Overarching Sustainable Development Policy:

- OSDP1: (Promotion of Sustainable Growth and Regeneration in Thurrock).

Spatial Policies:

- CSSP1: Sustainable Housing and Locations
- CSSP3: Sustainable Infrastructure
- CSSP4: Sustainable Green Belt
- CSSP5: Sustainable Greengrid

Thematic Policies:

- CSTP1: Strategic Housing Provision
- CSTP2: The Provision of Affordable Housing
- CSTP5: Neighbourhood Renewal
- CSTP15: Transport in Greater Thurrock
- CSTP19: Biodiversity

- CSTP20: Open Space
- CSTP22: Thurrock Design
- CSTP23: Thurrock Character and Distinctiveness
- CSTP24: Heritage Assets and the Historic Environment
- CSTP25: Addressing Climate Change
- CSTP26: Renewable or Low-Carbon Energy Generation
- CSTP27: Management and Reduction of Flood Risk

#### Policies for the Management of Development

- PMD1: Minimising Pollution and Impacts on Amenity
- PMD2: Design and Layout
- PMD4: Historic Environment
- PMD5: Open Spaces, Outdoor Sports and Recreational Facilities
- PMD6: Development in the Green Belt
- PMD7: Biodiversity, Geological Conservation and Development
- PMD8: Parking Standards
- PMD9: Road Network Hierarchy
- PMD10: Transport Assessments and Travel Plans
- PMD13: Decentralised, Renewable and Low Carbon Energy Generation
- PMD15: Flood Risk Assessment
- PMD16: Developer Contributions

#### 6.4 Thurrock Local Plan

In February 2014 the Council embarked on the preparation of a new Local Plan for the Borough. Between February and April 2016 the Council consulted formally on an 'Issues and Options (Stage 1)' document and simultaneously undertook a 'Call for Sites' exercise. In December 2018 the Council began consultation on an 'Issues and Options (Stage 2 Spatial Options and Sites)' document, this consultation has now closed and the responses have been considered and reported to Council. On 23 October 2019 the Council agreed the publication of the Issues and Options 2 Report of Consultation on the Council's website and agreed the approach to preparing the Local Plan.

#### 6.5 Thurrock Design Strategy

In March 2017 the Council launched the Thurrock Design Strategy. The Design Strategy sets out the main design principles to be used by applicants for all new development in Thurrock. The Design Strategy is a supplementary planning document (SPD) which supports policies in the adopted Core Strategy.

## 7.0 ASSESSMENT

### 7.1 Procedure:

With reference to procedure, this application has been advertised as being a departure from the Development Plan. Should the Planning Committee resolve to grant planning permission, the application will first need to be referred to the Secretary of State under the terms of the Town and Country Planning (Consultation) (England) Direction 2009. The reason for any referral as a departure relates to the GB and therefore the application will need to be referred under paragraph 4 of the Direction. The Direction allows the Secretary of State a period of 21 days within which to 'call-in' the application for determination via a public inquiry. In reaching a decision as to whether to call-in an application, the Secretary of State will be guided by the published policy for calling-in planning applications and relevant planning policies.

### 7.2 The assessment below covers the following areas:

- I. Principle of development and impact upon the Green Belt
- II. Access, traffic Impact and car parking
- III. Flooding and site drainage
- IV. Planning obligations/contributions
- V. Other matters
- VI. Overall balancing exercise

### 7.3 I. PRINCIPLE OF DEVELOPMENT AND IMPACT UPON THE GREEN BELT

Under this heading, it is necessary to refer to the following key questions:

1. Whether the proposals constitute inappropriate development in the Green Belt;
2. The effect of the proposals on the open nature of the GB and the purposes of including land within it; and
3. Whether the harm to the GB is clearly outweighed by other considerations so as to amount to the very special circumstances (VSC) necessary to justify inappropriate development.

### 7.4 1. Whether the proposals constitute inappropriate development in the GB

The site is identified on the Core Strategy Proposals Map as being within the GB where policies CSSP4 and PMD6 apply. Policies CSSP4 and PMD6 state that the Council will maintain, protect and enhance the open character of the GB in Thurrock. These policies aim to prevent urban sprawl and maintain the essential characteristics

of the openness and permanence of the GB to accord with the requirements of the NPPF.

- 7.5 Paragraph 133 within Chapter 13 of the NPPF states that the Government attaches great importance to GBs and that the

*“fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belt are their openness and their permanence.”*

Paragraph 143 of the NPPF states that

*“Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”.*

Paragraph 144 goes on to state that local planning authorities should ensure that “substantial weight” is given to any harm to the GB and that VSC will not exist unless the potential harm to the GB by way of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

- 7.6 With reference to proposed new buildings in the GB, paragraph 145 confirms that a local planning authority should regard their construction as inappropriate, with the following exceptions:

- a) buildings for agriculture and forestry;
- b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the GB and do not conflict with the purposes of including land within it;
- c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
- d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- e) limited infilling in villages;
- f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and
- g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
  - not have a greater impact on the openness of the GB than the existing development; or

- not cause substantial harm to the openness of the GB, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

7.7 The proposals do not fall within any of the exceptions to inappropriate development as defined in paragraph 145 of the NPPF. The application site is an open green space with no current built form. A recent site visit also recorded that the majority of the site has some agricultural use comprising the grazing of livestock. Consequently, as the application seeks outline permission for 75 residential units located on an open green space, the proposal clearly comprises inappropriate development in the Metropolitan GB, which is harmful by definition with reference to the NPPF and Core Strategy Policies PMD6 and CSSP4. In accordance with the NPPF (para. 144), substantial weight should be given to this harm.

7.8 2. The effect of the proposals on the open nature of the GB and the purposes of including land within it

The analysis in the paragraphs above concludes that the proposal is inappropriate development which is, by definition, harmful to the GB (NPPF para. 143). However, it is also necessary to consider whether there is any other harm (NPPF para. 144).

7.9 As noted above paragraph 133 of the NPPF states that the fundamental aim of GB policy is to prevent urban sprawl by keeping land permanently open, the essential characteristics of GBs being described as their openness and their permanence. Although this is an application for outline planning permission with all matters reserved, it is apparent from the indicative drawings that built development and accompanying curtilages. would be spread across the majority of the application site. The proposals would comprise a substantial amount of new built development in an area which is currently open. Advice published in NPPG (Jul 2019) addresses the role of the GB in the planning system and, with reference to openness, cites the following matters to be taken into account when assessing impact:

- openness is capable of having both spatial and visual aspects;
- the duration of the development, and its remediability; and
- the degree of activity likely to be generated, such as traffic generation

7.10 It is considered that the proposed development would have a detrimental impact on both the spatial and visual aspects of openness, i.e. an impact as a result of the footprint of development and building volumes. The applicant has not sought a

temporary planning permission and it must be assumed that the design-life of the development would be a number of decades. The intended permanency of the development would therefore impact upon openness. Finally the development would generate traffic movements associated with the residential use and it is considered that this activity would also impact negatively on the openness of the GB. Therefore, it is considered that the amount and scale of the development proposed would significantly reduce the openness of the site. As a consequence the loss of openness, which is contrary to the NPPF, should be accorded substantial weight in the consideration of this application.

- 7.11 With regard to the visual impact and the GB assessment of openness, the quantum of development proposed would undoubtedly harm the visual character of the site. Ground levels in the area and across the site slope downwards from north to south and the Noise Assessment report indicates that a 2 metre high acoustic fence is necessary and has been included in the acoustic model. The acoustic fence is required to minimise noise levels to the external amenity areas of dwellings. It is appreciated the current application seeks an outline consent for residential development and the layout and appearance of the development are reserved matters. Nevertheless, it is considered that the development of the site as proposed would clearly harm the visual component of openness.
- 7.12 The proposal would therefore reduce openness as both a spatial and visual concept.
- 7.13 Paragraph 134 of the NPPF sets out the five purposes which the GB serves as follows:
- a. to check the unrestricted sprawl of large built-up areas;
  - b. to prevent neighbouring towns from merging into one another;
  - c. to assist in safeguarding the countryside from encroachment;
  - d. to preserve the setting and special character of historic towns; and
  - e. to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- 7.14 In response to each of these five purposes:

*a. to check the unrestricted sprawl of large built-up areas*

The site is situated within the GB immediately adjacent to the large built up area of Little Thurrock / Grays located to the north and to the west of the site. The proposal would extend built form into the open parcel of land where there is currently no built development and would therefore result in some sprawling of the Little Thurrock / Grays urban area. For the purposes of the NPPF, the proposal would therefore result

in the sprawling of the adjacent large built up area as demonstrated by an urban form of development on an open parcel of GB land immediately adjacent to Little Thurrock / Grays.

7.15 *b. to prevent neighbouring towns from merging into one another*

The site is generally located on the eastern edge of Little Thurrock and further east of the site lies Chadwell St. Mary. The application site is a considerably distance from Chadwell St. Mary and is separated by the A1089(T) Dock Approach Road. Therefore it is considered that the proposal would not result in the confluence of any towns and the development would not conflict materially with this GB purpose.

7.16 *c. to assist in safeguarding the countryside from encroachment*

With regard to the third GB purpose, the proposal would involve built development on a site which is currently open and undeveloped. The proposed built development would spread across the whole site and it is important to note that the proposed dwellings would inevitably require parking spaces, garage/cart lodges, hardstandings, associated vehicle accesses and roads. It is therefore considered that the proposal would constitute an encroachment of built development into the countryside in this location and would constitute material harm to this purpose of the GB.

7.17 *d. to preserve the setting and special character of historic towns*

As there are no historic towns in the immediate vicinity of the site, the proposals do not conflict with this defined purpose of the GB.

7.18 *e. to assist in urban regeneration, by encouraging the recycling of derelict and other urban land*

In general terms, the development could occur in the urban area and, in principle; there is no spatial imperative why GB land is required to accommodate the proposals. The erection of 75 residential units with associated hardstandings, vehicle accesses and fencing etc. is inconsistent with the fifth purpose of the GB.

7.19 In conclusion under the headings (i) and (ii) it is considered that the current proposals would lead to harm to the GB by way of inappropriate development (i.e. definitional harm), would be harmful by way of loss of openness and would be harmful as a result of conflict with GB purposes (a), (c) and (e). In accordance with 144 of the NPPF substantial weight should be afforded to this harm.

7.20 3. Whether the harm to the GB is clearly outweighed by other considerations so as to amount to VSC necessary to justify inappropriate development

Paragraph 144 of the NPPF states that, when considering any planning application, local planning authorities -

*“should ensure that substantial weight is given to any harm to the Green Belt. VSC will not exist unless the potential harm to the GB by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations”*

7.21 Neither the NPPF nor the adopted Core Strategy provide guidance as to what can comprise VSC, either singly or in combination. However, some interpretation of VSC has been provided by the Courts. The rarity or uniqueness of a factor may make it very special, but it has also been held that the aggregation of commonplace factors could combine to create VSC (.i.e. ‘very special’ is not necessarily to be interpreted as the converse of ‘commonplace’). However, the demonstration of VSC is a ‘high’ test and the circumstances which are relied upon must be genuinely ‘very special’. In considering whether VSC exist, factors put forward by an applicant which are generic or capable of being replicated on other sites, could be used on different cases leading to a decrease in the openness of the GB. The provisions of VSC which are specific and not easily replicable may help to reduce the risk of a precedent being created. Mitigation measures designed to reduce the impact of a proposal are generally not capable of being VSC. Ultimately, whether any particular combination of factors amounts to VSC will be a matter of planning judgement for the decision-taker.

7.22 The Planning Support Statement submitted to accompany the application sets out the applicant’s case for VSC under the following main headings

- a) Lack of a 5 year housing land supply;
- b) Delivering a sufficient supply of homes (NPPF – Paragraphs 59 and 68); and
- c) Importance to GB purposes.

7.23 Also, while not submitted as a formal case for VSC, the applicant references the following sections of the NPPF as relevant justifications to be considered;

- d) Achieving sustainable development
- e) Making effective use of land
- f) Achieving well-designed places

7.24 The detail of the applicant's case under these headings and consideration of the matters raised is provided in the paragraphs below.

7.25 a) Lack of a 5 Year Housing Land Supply

Consideration

The issue of housing land supply (including affordable housing) has been considered by the Committee regularly with regard to proposals for residential development in the GB and it is acknowledged that there is presently a lack of 5 year housing supply. The most recently published analysis of the Borough's housing land supply is provided in the Thurrock Local Plan Five Year Housing Land Supply Position Statement (July 2016). This statement notes that "*the dwelling requirement set out in the Core Strategy is now considered to be out of date*". Instead, the South Essex Strategic Housing Market Assessment identifies a range of objectively assessed need for Thurrock of between 919 and 973 dwellings per annum (2014 base date). The Statement also assesses the supply of deliverable housing in the five year period from 2016/17 to 2020/21 and concludes that there is a supply of between 2.5 and 2.7 years in relation to the identified objectively assessed need. This figure of between 2.5 and 2.7 years supply was produced some time ago (2016) and it is to be expected that the figure has reduced as completions on a number of larger sites with planning permission has progressed (Bata Fields, Arisdale Avenue etc.). Although the current supply figure is in the process of being updated, it is accepted that supply is less than the five year (+20%) requirement.

7.26 The current proposals would, with 75 units, be of some benefit in contributing towards addressing the shortfall in the supply of new housing as set out in Core Strategy policy delivery targets and as required by the NPPF. The matter of housing delivery contributes towards VSC and should be accorded significant positive weight in the consideration of this application. In 2013 a written ministerial statement confirmed that the single issue of unmet housing demand was unlikely to outweigh GB harm to constitute the VSC justifying inappropriate development. This position was confirmed in a further ministerial statement in 2015 and was referred to in previous iterations of NPPG. However, the latest revision of the NPPF (2019) does not include this provision and the corresponding guidance in NPPG has also been removed. Nevertheless, a very recent appeal decision from February 2020 (ref. APP/Q4625/W/19/3237026) referred specifically to this point and considered that "*even so, unmet need on its own, is highly unlikely to amount to vsc*". Accordingly the very significant benefit of the contribution towards housing land supply would need to combine with other demonstrable benefits to comprise the VSC necessary to justify inappropriate development.

7.27 b) Delivering a sufficient supply of homes (NPPF – Paragraphs 59 and 68)

The applicant refers to the following content from the NPPF. Paragraph 59 of the NPPF states:

*‘To support the Government’s objectives of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without necessary delay’.*

Paragraph 68 of the NPPF states:

*‘Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should;*

*c) support the development of windfall sites through their policies and decisions - giving great weight to the benefits of using suitable sites within settlement for homes’*

7.28 Consideration

This factor is related to the issue of five year housing land supply considered above. It is acknowledged the application site may constitute a small-medium sized site and could make a contribution to meeting the housing requirements within the Borough. However, the site is within the Green Belt and paragraph 143 of the NPPF clearly states that *‘inappropriate development is, by definition harmful, to the Green Belt and should not be approved except in very special circumstances’*. Although policies within the NPPF refer to supporting the delivery of new housing development this single factor on its own would not clearly outweigh the identified harm to the GB so as to comprise the VSC needed to justify inappropriate development. Furthermore the presumption in favour of sustainable development set out by the NPPF does not apply to the GB (para. 11 (d) (i)).

7.29 c) Importance to Green Belt Purposes

Consideration

The matter of the value of the site in contributing to the purposes of the GB has been addressed above. The applicant maintains the application site does not make a significant contribution to the purposes of the GB and cites ‘The Thurrock Strategic GB Assessment Stages 1a and 1b (January 2019) to justify their position. The Thurrock Strategic GB Assessment Stages 1a and 1b was produced by the Council

in January 2019 and forms part of the suite of documents supporting the new Local Plan. This document identifies strategic parcels of land within the GB in terms of their 'contribution' to three of the five GB purposes. The site is identified as forming part of strategic parcel no. 31 and paragraph 6.1.13 (conclusions) includes this parcel in a recommendation for more detailed scrutiny and assessment. Furthermore, the Thurrock Local Plan Issues & Options (Stage 2) consultation also refers to the Thurrock GB Assessment Stages 1a and 1b as a technical document that "...does not specifically identify any sites or broad areas of GB for development as any decision on the need to amend the boundary of the GB in Thurrock must be taken as part of the wider plan-making and evidence development process...". Consequently, the conclusions of the GB Assessment have only very limited weight in the consideration of this case. As set out above, it is considered that the development of the site as proposed would be harmful to a number of the purposes of including land in the GB.

#### 7.30 d) 'Achieving Sustainable Development'

The applicant considers that the proposed development would be economically sustainable due to the number of jobs generated during the construction phase and would also have environmental and social benefits.

#### 7.31 Consideration

The NPPF confirms that the purpose of the planning system is to contribute to the achievement of sustainable development (para. 7). At para. 11 the NPPF states that plans and decisions should apply a presumption in favour of sustainable development. For decision-taking para. 11 (c) and (d) confirm the application of the presumption in favour of sustainable development as:

*(c) approving development proposals that accord with an up-to-date development plan without delay; or*

*(d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, granting permission unless:*

*(i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>6</sup>; or*

- (ii) *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

The footnote (6) from the above extract includes the Green Belt as an area or asset of particular importance. Succinctly put, land designated as GB provides a strong reason for refusing the erection of 75 units as proposed and the current proposal could not be viewed as 'Achieving Sustainable Development' since this would directly contravene the NPPF's policies on 'Protecting Green Belt land' (Chapter 13).

- 7.32 In summary, under this heading, the proposal would result in new dwellings which would result in local expenditure and create jobs in the short term during construction. However there would not be a significant long term positive impact due to the limited number of units. Therefore this factor is afforded very limited weight.

### 7.33 e) Making Effective Use of Land

The applicant sites the NPPF chapter 'Making effective use of land' as material consideration for development.

### 7.34 Consideration

Paragraph 117 explicitly refers to previously-developed land (PDL) or brownfield land. The NPPF glossary definition of brownfield land reverts to the definition of previously developed land. The NPPF states that even on land that was last occupied by a permanent structure, it should not be assumed, that the whole curtilage should be developed.

- 7.35 Evidence from a recent site visit reveals there are no existing buildings at the site and is in fact an open plot of land used to graze livestock; the site cannot therefore constitute PDL. The NPPF warns that the exception of PDL is not relevant "*where this would conflict with other policies in this Framework*". Notwithstanding the above, as identified earlier in the report, the proposal would conflict with the GB policies set out within the framework as it represents inappropriate development which fails to demonstrate VSC which clearly outweigh the harm.
- 7.36 The proposal seeks outline consent for a residential development which would introduce various built forms across the site and associated vehicle access roads and hardstanding. Effectively, the proposal would create an urban style residential development that includes 75 residential units, resulting in an urbanised environment on an open plot of land. Thus, reference to NPPF's '*making effective use of land*' is not considered relevant or appropriate in the context of Green Belt land, especially

where it has been established the site is neither brownfield land nor PDL. As a result, this factor is afforded no weight in the assessment of the impact upon the Green Belt.

7.37 f) Achieving well-designed places

The applicant maintains that paragraphs 124 to 132 of the NPPF sets out the requirement for good design and is a key aspect of sustainable development.

7.38 Consideration

The application submitted is in outline form with all matters reserved. Illustrative details of the site layout have been supplied with some elevation / floor plans of some of the units proposed, however these plans have been confirmed by the agent as indicative plans only. Therefore, matters relating to appearance are not required to be considered within the parameters of the current outline application. In any case the NPPF and the Council's own planning policies require a high standard of design and therefore the achievement of a well-designed place should not be seen as an optional extra. As a result, this factor is afforded no weight in the assessment of the impact upon the Green Belt.

7.39 With reference to the applicant's case for VSC, an assessment of the factors promoted is provided in the analysis above. It is concluded that although very significant weight can be attached to the benefit of the contribution towards housing land supply, the other factors promoted by the applicant attract only limited weight or should be afforded no weight at all. As paragraph 144 of the NPPF requires that for VSC to exist harm to the GB and any other harm must be clearly outweighed by other considerations, a summary of harm against benefit is provided later in this report.

## II. ACCESS, TRAFFIC IMPACT AND CAR PARKING

7.40 Highways England and the local highways authority has been consulted on the application. Highways England maintain that they have an interest in the potential impact the development may have on the Strategic Road Network (SRN) and that the impact to the A1089(T) is of particular concern. Highways England's interest lies in establishing whether there would be any adverse safety implications or material increase in queues / delays on the SRN as a result of the development.

7.41 Having reviewed the applicant's Transport Statement, Highways England considers that, from the forecast traffic flows and likely routing of the trips to and from the development, it is considered unlikely there would be any impact on the SRN as a result from the proposed development. However, it has been noted by Highways England that, as the application site is approximately 1.3 miles from the A1089(T),

there may be construction impacts from the proposed development. Accordingly, Highways England have recommended a Construction Traffic Management Plan (CTMP) to assess the construction impacts and whether this would affect the safe operation of the SRN. Should the application be recommended for approval, an appropriately worded condition could be added.

- 7.42 The Council's highways officer has also been consulted on the application and, in summary, has offered comments concerning the internal road layout and the proposed new access. The highways officer comments that the proposal would need to be assessed in terms with compliance with the Design Manual for Roads and Bridges (DMRB) and maintains this would be required to understand whether the potential access arrangements are suitable. The safety concerns of the highways officer are appreciated, particularly concerning the implications of the potential 4-arm mini roundabout, but as this application seeks outline planning permission, with all matters reserved, the applicant is only required to demonstrate where potential access point(s) are proposed. A single point of access has been identified on the indicative proposed site plan and therefore the statutory planning requirements are satisfied.
- 7.43 Therefore, at this stage the applicant is not required to provide precise details relating to design standards, layout or parking arrangements for the proposed development. In light of this, the local planning authority cannot legitimately request further details within an outline application, where vehicle access to the site and layout are reserved matters to be considered at a later stage should outline planning permission be granted.

### III. FLOODING AND SITE DRAINAGE

- 7.44 The Council's flood risk manager has been consulted and initially issued a holding objection due to insufficient details being supplied. However, the applicant has submitted a further Surface Water Drainage Strategy and the flood risk manager has since removed the previous objection, subject four planning conditions.
- 7.45 These conditions mainly relate to further detailing of a surface water drainage scheme, a scheme to minimise off-site flood cause by surface water run-off and ground water, a maintenance plan detailing the maintenance arrangements and the requirement for the applicant and/or any successor to maintain yearly logs in accordance with the maintenance plan. Therefore, should the application be approved, these details could be considered within the parameters of any reserved matters application or application for the approved of details reserved by planning condition.

#### IV. PLANNING OBLIGATIONS / CONTRIBUTIONS

- 7.46 The application seeks outline consent for 75 residential units with an indicative mix of one, two, three, four and five-bed properties. The applicant has submitted a Viability Assessment, which concludes at paragraph 1.3 that the site will be able to provide policy compliant affordable housing and s106 contributions and would remain viable. Furthermore, the Council's Housing Officer has confirmed that it is the Council's preference for one and two-bed residential units and the applicant has confirmed that 28 one and two-bed units would be allocated as affordable housing units. Consequently, this would ensure the proposal provides 35% policy compliant affordable housing.
- 7.47 A number of comments from residents have mentioned the local area is already oversubscribed for local amenities such as schools and GP surgeries. The Council's education department has been consulted and have commented that contributions would be required to meet the demands on local nurseries, primary and secondary schools created by the development. Having liaised with the agent on the matter, the applicant has in principle agreed to pay the contributions.
- 7.48 With regard to local GP surgeries, NHS England has been consulted on the current application but no comment has been received.
- 7.49 Natural England has advised that the site falls within the 'Zone of Influence' (Zoi) for one of more of the European designated sites scoped into the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The Essex Coast RAMS is a large-scale strategic project which involves a number of Essex authorities, including Thurrock Council, working together to mitigate the effects arising from new residential development. Once adopted, the RAMS will comprise a package of strategic measures to address such effects, which will be costed and funded through developer contributions. The issue of RAMS would become relevant if the application were being recommended favourably and the contribution could be secured via an appropriate legal agreement.

#### V. OTHER MATTERS

- 7.50 The Council's environmental health officer (EHO) advises with regard to air quality, there are no issues concerning the proposal. However, concerning the construction of the development, it is requested that a Construction Environmental Management Plan (CEMP) should be submitted to address specific environmental matters during construction. Should the application be recommended for approval a CEMP could be appropriately conditioned.

- 7.51 With regards to the issue of noise, the EHO notes that the submitted Noise Assessment suggests that a 2 metre high fence should be installed as a noise barrier to mitigate harm from noise on potential occupiers of the development. Paragraph 5.2 of the Assessment states;

*'It is proposed that a 2 m high fence runs along the site boundary with local roads and this has been included in the acoustic model. This fence should be a close board construction with a minimum surface density of 12kg/m2.'*

Paragraph 6.4 of the Noise Assessment further states:

*'Noise levels in external amenity areas are predicted to be lower....across the majority of the site and have been minimised by provision of a 2 m high boundary fence and are therefore considered to be acceptable in planning terms.'*

- 7.52 The applicant's noise modelling therefore includes the provision of 2 metre fencing to be constructed around the site boundary. However, having liaised with the EHO further on the matter, the following comments were received:

*'Without the fencing around the site it would still technically be possible for all dwellings to achieve the BS8233:2014 guide internal levels with an enhanced glazing specification. To meet the guidelines the windows will have to be closed, hence acoustic ventilation will be necessary. The applicant would also need to re-model the noise to determine the required glazing and ventilation specifications.'*

*External living spaces such as gardens cannot be so easily protected to meet WHO guidelines where levels are high. Barriers of one form or other, are necessary.....*

*Exceeding the WHO guidelines....indicates that the quality of the amenity provided will be increasingly degraded as the levels increase above the upper 55dB LAeq,16h threshold.'*

- 7.53 The installation of 2 metre high acoustic fencing would therefore be needed to ensure the quality of the proposed residential amenity spaces. Given the extensive road frontage to Wood View and Chadwell Road the extent of such fencing in this location would be significant in order to mitigate noise level impacts for future occupants of the site and ensure the quality of those external amenity spaces. In light of the currently open nature of the site, the extent of acoustic fencing would also potentially create an overbearing / over dominant impact within the immediate locality to the detriment of visual amenity and contrary to Policy PMD1 and PMD2, CSTP22 and CST23 of the Core Strategy. Such fencing would also harm the open nature of the GB.

## 7.54 VI. OVERALL BALANCING EXERCISE

As mentioned above, paragraph 144 of the NPPF requires that other considerations or benefits of the development should clearly outweigh *“the potential harm to the GB by reason of inappropriateness, and any other harm resulting from the proposal”* for VSC to exist. An analysis of all material planning factors is required in order to assess the full extent of *“any other harm resulting from the proposal”*. In addition to the analysis above and for convenience, a summary of the GB harm, any other harm and the weight which should be placed on the various benefits and considerations promoted by the applicant is provided in the table below;

<b>Summary of GB harm, any other harm and benefit / considerations referred to by the applicant</b>			
<b>Harm</b>	<b>Weight</b>	<b>Benefits / Factors Promoted</b>	<b>Weight</b>
Visual impact of acoustic barrier on openness of GB	Significant	Lack of 5 year housing supply	Very significant
Inappropriate development in GB	Substantial		
Reduction in the openness of GB			
Conflict (to varying degrees) with a number of the purposes of including land in the GB – purposes a, c and e.		Delivering a sufficient supply of homes	No weight
		Importance to GB Purposes	Very limited weight
		Achieving Sustainable Development'	Very limited weight
		Making Effective Use of Land	No weight
Achieving well-designed places		No weight	

7.55 As ever, in reaching a conclusion on GB issues, a judgement as to the balance between harm and whether the harm is clearly outweighed must be reached. In this case there is harm to the GB with reference to inappropriate development, loss of openness, harm to a number of GB purposes and visual harm associated with acoustic mitigation. Several benefits and factors have been promoted by the applicant as VSC and it is for the Committee to judge:

- i. the weight to be attributed to these factors;
- ii. whether the factors are genuinely 'very special' (i.e. site specific) or whether the accumulation of generic factors combines at this location to comprise VSC.

7.56 Where a proposal represents inappropriate development the applicant must demonstrate VSC which clearly (emphasis added) outweigh the harm to the GB. A very recent decision dismissing an appeal against the refusal of a continuing care retirement centre in the West Midlands GB (APP/Q4625/W/19/3237026) addressed the GB balancing exercise and concluded:

*"When drawing this together, it is my judgement that the other considerations advanced by the appellants would result in a very finely balanced decision. However, for VSC to exist, the other considerations would need to clearly outweigh the substantial harm to the GB by reason of inappropriateness, openness and purposes of the GB ... In other words, for the appeal to succeed, the overall balance would have to favour the appellants' case, not just marginally, but decisively."*

7.57 Therefore, and although every case falls to be determined on its own merits, the benefits of the proposals must clearly or decisively outweigh the harm for VSC to exist. If the balancing exercise is finely balanced, then VSC will not exist. The applicant has not advanced any factors which would singly or in combination amount to VSC that could clearly outweigh the harm that would result by way of inappropriateness and the other harm identified in the assessment. There are no planning conditions that could be used to make the proposal acceptable in planning terms. The proposal is clearly contrary to Policies CSSP4, PMD6 and PMD2 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (as amended 2015) and the National Planning Policy Framework 2019.

## **8.0 CONCLUSIONS AND REASONS FOR RECOMMENDATION**

8.1 The principle issue for consideration in this case is the assessment of the proposals against planning policies for the GB and whether there are any factors or benefits which clearly outweigh harm such that a departure and comprise the VSC necessary for a departure from normal policy to be justified. The proposals are 'inappropriate development' in the GB would lead to the loss of openness and would cause some harm to the purposes of the Green Belt. Substantial weight should be attached to this harm in the balance of considerations. Although varying degrees of positive weight can be given to some of the benefits of the proposals, the identified harm must be clearly or decisively outweighed for VSC to exist. It is concluded that the benefits of the development do not clearly outweigh harm and consequently the application is recommended for refusal.

## 9.0 RECOMMENDATION

### 9.1 The Committee is recommended to:

Refuse planning permission for the following reasons:

1. The application site is located within the Green Belt, as identified on the Policies Map accompanying the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (2015). National and local planning policies for the Green Belt set out within the NPPF and Core Strategy set out a presumption against inappropriate development in the Green Belt. The proposals are considered to constitute inappropriate development with reference to policy and would by definition be harmful to the Green Belt. It is also considered that the proposals would harm the openness of the Green Belt and would be contrary Green Belt purposes (a), (c) and (e) as described by paragraph 134 of the NPPF. The identified harm to the Green Belt is not clearly outweighed by other considerations so as to amount to the very special circumstances required to justify inappropriate development. The proposal is therefore contrary to Policies CSSP4 and PMD6 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (as amended 2015) and chapter 13 of the National Planning Policy Framework 2019.
2. The proposal would, by reason of the likely siting and scale of the proposed acoustic fencing necessary to mitigate the impact of noise and ensure that the quality of amenity spaces are not degraded, result in an overbearing and over-dominant impact harmful to visual amenity. The proposal is therefore contrary to Policy PMD1, PMD2, CSTP22 and CST23 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (as amended 2015) and chapter 12 of the National Planning Policy Framework 2019.

#### **Informative(s):-**

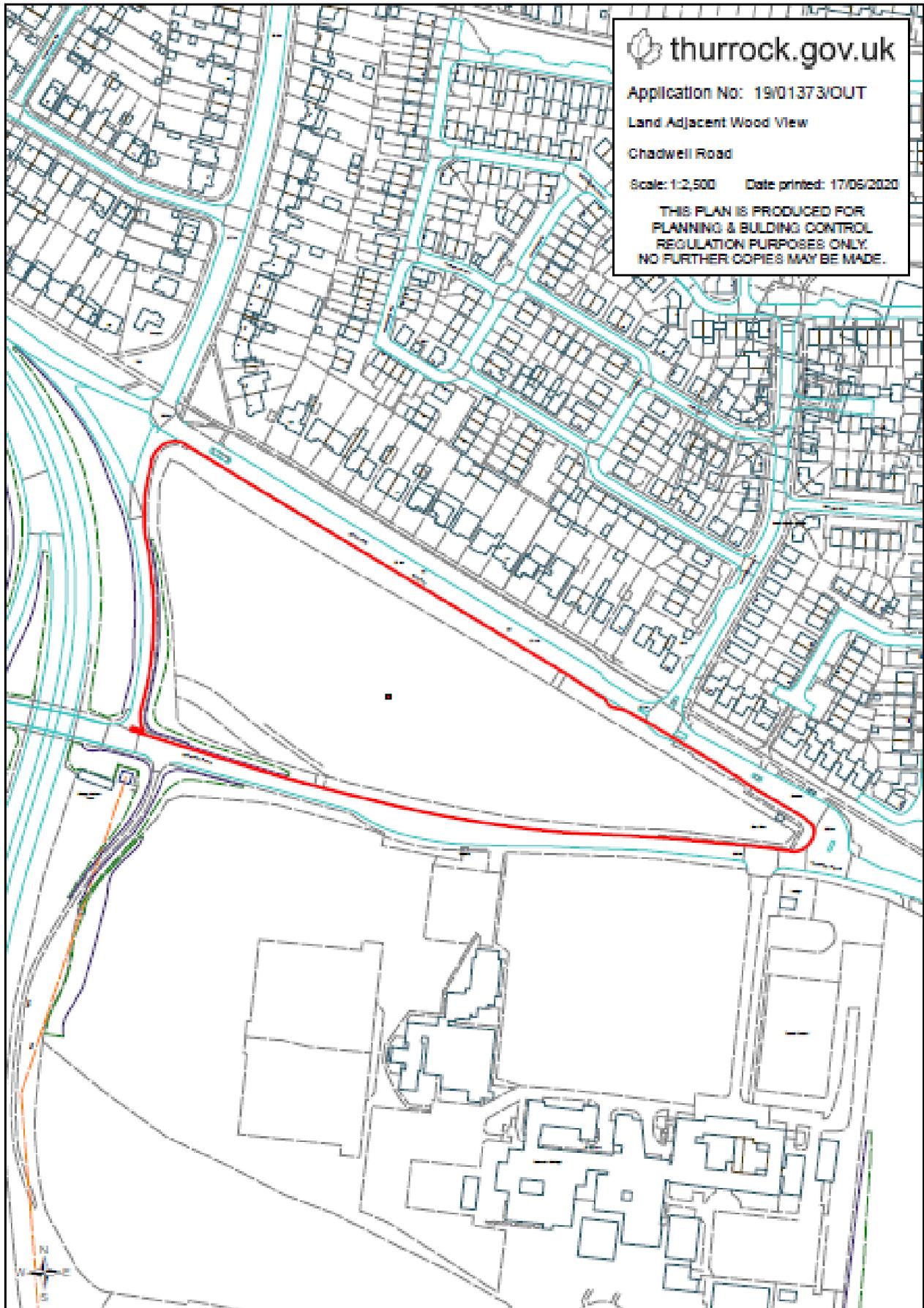
- 1 Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) - Positive and Proactive Statement:

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing with the Applicant/Agent. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

**Documents:**

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

[www.thurrock.gov.uk/planning](http://www.thurrock.gov.uk/planning)



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Planning Committee: 16 July 2020	Application Reference: 19/01373/OUT
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<b>Reference:</b> 19/01373/OUT	<b>Site:</b> Land adjacent Wood View and Chadwell Road Grays Essex
<b>Ward:</b> Little Thurrock Rectory	<b>Proposal:</b> Outline planning application (all matters reserved) for 75 residential units consisting of 57 houses and 18 apartments

<b>Plan Number(s):</b>		
Reference	Name	Received
200	Site Location Plan	10th September 2019
201	Proposed Site Layout (indicative)	10th September 2019
210	Indicative Plans and Elevations	10th September 2019
211	Indicative Plans and Elevations	10th September 2019
212	Indicative Plans and Elevations	10th September 2019
213	Indicative Plans and Elevations	10th September 2019

The application is also accompanied by:

- Planning Support Statement / Design & Access Statement (ref SPL Ref:18.5410);
- Viability Assessment (November 2019: Arebray Development Consultancy);
- Transport Statement (October 2019: Beacon Transport Planning);
- Preliminary Ecological Appraisal (February 2017 (ref P2820.5.0):agb Environmental);
- Arboricultural Impact Assessment (June 2017 (ref P2820.6.0):agb Environmental);
- Noise Assessment, Technical Report, dated by 14 July 2017 (R6785-1 Rev 0), by 24 Acoustics
- Surface Water Drainage Strategy (December 2018 rev 00 (Project No. 07127));
- Flood Risk Assessment (March 2017 (ref P2820.4.0): agb Environmental);
- Phase 1 Ground Contamination Desk Study (March 2017 (ref 2820.3.0): agb Environmental)

<b>Applicant:</b> Mr D MacDonald	<b>Validated:</b> 3 February 2020 <b>Date of Expiry:</b>
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Planning Committee: 16 July 2020	Application Reference: 19/01373/OUT
	17 July 2020 (Extension of time agreed with applicant)
<b>Recommendation:</b> Refuse planning permission	

## 1.0 BACKGROUND

1.1 At the meeting of the Planning Committee held on 25<sup>th</sup> June 2020 Members considered a report assessing the above proposal. The report recommended that planning permission be refused for two reasons. In summary, the first reason stated:

*The site is located in the Metropolitan Green Belt (GB) and the benefits of the scheme do not clearly outweigh the harm to the GB and thus constitute the very special circumstances to justify a departure from local and national planning policies.*

The second reason referred to:

*The overbearing and dominant visual impact of the acoustic fencing required to mitigate the impact of noise and ensure the quality of proposed amenity spaces.*

1.2 A copy of the report presented to the June Committee meeting is attached.

1.3 At the June Committee meeting Members were minded to resolve to grant planning permission for the proposed development based upon the following reasons:

1. *Contribution towards five year housing land supply, including contributions towards the provision of affordable housing;*
2. *The situation with the Council's housing waiting list;*
3. *Limited harm to the purposes of the GB;*
4. *More weight should be afforded to the contribution towards sustainable development;*
5. *The package of s106 contributions;*
6. *The scheme is a shovel-ready project;*
7. *The scheme would create employment during construction.*

- 1.4 In accordance with Part 3(b) – Planning Committee Procedures and in particular Paragraphs 7.2 and 7.3 of the Constitution, the Committee agreed that the item should be deferred to enable a further report outlining the implications of making a decision contrary to the Planning Officer’s recommendation. This report also assesses the reasons formulated by the Committee.
- 1.5 The application remains recommended for refusal for the reasons set out in the attached report.

## **2.0 FACTUAL UPDATES**

2.1 At the meeting of 25<sup>th</sup> June it was verbally reported that two late letters of representation had been received following the publication of the agenda. These letters raise objections to the application on the following grounds:

- inadequate access;
- increased traffic congestion;
- potential for anti-social behaviour;
- potential noise generated by users of any new public open space on-site;
- loss of green spacer; and
- increased pollution.

2.2 A consultation response from the NHS (Mid & South Essex Sustainability and Transformation Partnership) was also received after publication of the June Committee agenda. This response confirms that the proposed development will impact on three surgeries close to the site, as these surgeries do not have capacity to meet the needs of future occupiers. A financial contribution of £29,700 is sought in order to mitigate the impact of the development of healthcare provision.

## **3.0 PLANNING ASSESSMENT & IMPLICATIONS**

3.1 As required by the Constitution, an outline of the implications of making a decision contrary to the Officer recommendations is provided below. The recommended reasons for refusal from the 25<sup>th</sup> June Committee report is set out in italics below, with the implications considered subsequently.

3.2 REASON 1: PRINCIPLE OF DEVELOPMENT AND HARM TO THE GB

1. *The application site is located within the Green Belt, as identified on the Policies Map accompanying the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (2015). National and local planning policies for the Green Belt set out within the NPPF and Core Strategy set out a presumption against inappropriate development in the Green Belt. The proposals are considered to constitute inappropriate development with reference to policy and would by definition be harmful to the Green Belt. It is also considered that the proposals would harm the openness of the Green Belt and would be contrary Green Belt purposes (a), (c) and (e) as described by paragraph 134 of the NPPF. The identified harm to the Green Belt is not clearly outweighed by other considerations so as to amount to the very special circumstances required to justify inappropriate development. The proposal is therefore contrary to Policies CSSP4 and PMD6 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (as amended 2015) and chapter 13 of the National Planning Policy Framework 2019.*

## REASON 2: VISUAL IMPACT OF ACOUSTIC MITIGATION

2. *The proposal would, by reason of the likely siting and scale of the proposed acoustic fencing necessary to mitigate the impact of noise and ensure that the quality of amenity spaces are not degraded, result in an overbearing and over-dominant impact harmful to visual amenity. The proposal is therefore contrary to Policy PMD1, PMD2, CSTP22 and CST23 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (as amended 2015) and chapter 12 of the National Planning Policy Framework 2019.*

### 3.3 Implications of approving the application contrary to recommendation

As noted in the report to the 25<sup>th</sup> June Committee, the proposals do not accord with relevant policies in the Core Strategy and NPPF. Consequently, the application has been advertised as a departure from the development plan. If the Committee resolve to grant planning permission the provisions of the Town and Country Planning (Consultation) (England) Direction 2009 would engage. In particular, the description of the development falls within the ambit of paragraph 4 of the Direction. Therefore, prior to the local planning authority (LPA) issuing any formal decision on the application, the Secretary of State (SOS) for Housing, Communities and Local Government (Planning Casework Unit) would be consulted pursuant to paragraph 9 of the Direction. In consulting with the SOS the LPA is required to provide copies of the following:

- a copy of the application, drawings and supporting information;

- a copy of statutory notices;
- copies of representations received;
- a copy of the Officer's report: and
- unless included in the Officer's report, a statement of the material considerations which the LPA consider indicate the application should be determined otherwise than in accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004.

3.4 As expressed in National Planning Practice Guidance (NPPG) the purpose of the Direction is to give the SOS an opportunity to consider using the power to call-in an application under section 77 of the Town and Country Planning Act 1990. If a planning application is called-in, the decision on whether or not to grant planning permission will be taken by the SOS, usually after a public inquiry, rather than the LPA. NPPG goes on to state that in considering whether to call-in a planning application, the SOS is generally concerned with whether the application involves planning issues of more than local importance that warrant the decision being made by him rather than the LPA. However each case will be considered on its merits. The call-in policy was updated on 26 October 2012 in a written ministerial statement. This Statement, inter-alia, notes that:

*“The SOS will, in general, only consider the use of his call-in powers if planning issues of more than local importance are involved. Such cases may include, for example, those which in his opinion:*

- *may conflict with national policies on important matters;*
- *may have significant long-term impact on economic growth and meeting housing needs across a wider area than a single local authority;*
- *could have significant effects beyond their immediate locality;*
- *give rise to substantial cross-boundary or national controversy;*
- *raise significant architectural and urban design issues; or*
- *may involve the interests of national security or of foreign Governments.*

*However, each case will continue to be considered on its individual merits”.*

3.5 Officers consider that the proposals conflict with national policies on important matters (i.e. GB). If the application were to be called-in by the SOS a public inquiry

would be held where the LPA would be represented. As Officers have recommended the application for refusal, there may be a practical issue in allocating staff to participate in the Inquiry. This is because some staff members are also chartered members of the Royal Town Planning Institute and the Institute's Code of Professional Conduct (para. 12) states that:

*"Members must not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions ..."*

3.6 For information, when a resolution to grant planning permission contrary to recommendation for residential development at the Aveley Sports & Social Club site in Aveley was called-in by the SOS in 2014, the LPA were represented by the then Chair of the Planning Committee.

3.7 A further practical implication of any resolution to grant planning permission is the potential for the local planning authority to be able to resist similar proposals involving inappropriate development in the GB. Paragraph 47 of the NPPF states that:

*"Planning law requires that applications for planning permission are determined in accordance with the development plan, unless material considerations indicate otherwise."*

3.8 The "planning law" referred to in paragraph 47 comprises s70 (2) of the Town and Country Planning Act 1990 and s38 (6) of the Planning and Compulsory Purchase Act 2004, which are reproduced below for ease of reference:

s70 (2) Town and Country Planning Act 1990 -

*In dealing with an application for planning permission or permission in principle the authority shall have regard*

*(a) the provisions of the development plan, so far as material to the application*

S38 (6) Planning and Compulsory Purchase Act 2004 -

*If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise*

3.9 Although each planning application must be judged on its individual merits, it is the opinion of Officers that there are no material considerations (i.e. no considerations which would amount to very special circumstances (VSC)) which would warrant a decision being taken otherwise than in accordance with the development plan.

3.10 Assessment of the Committee's reasons for being minded to grant permission

The following list of reasons were raised by Members as reasons to approve the application and these are considered in more detail below to assess whether these comprise the VSC necessary for approving inappropriate development in the GB.

The reasons are:

1. contribution towards five year housing land supply, including contributions towards the provision of affordable housing;
2. the situation with the Council's housing waiting list;
3. limited harm to the purposes of the GB;
4. more weight should be afforded to the contribution towards sustainable development;
5. the package of s106 contributions;
6. the scheme is a shovel-ready project;
7. the scheme would create employment during construction.

3.11 *Reason 1: The contribution towards five year housing land supply, including contributions towards the provision of affordable housing*

The issue of housing land supply has been considered by the Committee regularly for planning applications within the GB and the applicant's reference to the lack of a five year housing supply as a factor supporting the proposals was assessed in the main report. The housing land supply consideration carries significant positive weight for planning applications within the Borough. Similarly, the applicant's offer to deliver policy-compliant affordable housing (35%) is a benefit which attracts significant weight in favour of the proposals. However, the NPPF's presumption in favour of sustainable development is not engaged for sites or locations with a Green Belt designation. Therefore the contribution towards five year housing land supply and the provision of affordable housing is not enough on its own to clearly outweigh the identified harm so as to amount to the VSC needed to justify a departure from normal planning policies.

3.12 *Reason 2: The situation with the Council's housing waiting list*

Officers have sought information from the Council's Housing Department regarding this matter. At the outset it should be noted that housing waiting list and waiting time data may be capable of misinterpretation as Thurrock uses a choice-based lettings approach compared to other local authorities which make direct allocations of properties. However, the following 'headline' figures have been obtained to provide a snapshot of the current situation:

- the housing waiting list contains 5,590 applicants, predominantly in the 'general needs' category;
- the greatest demand is for one and two-bed properties;
- based on those applicants actively bidding for a property, the waiting time varies between a c.1.9 years (for a three-bed property) to c.5.4 years (for a four-bed property). Waiting times for small one and two-bed properties are between c.4 and c.4.1 years.

The proposed provision of 35% affordable housing in the form of 28no. one and two-bedroom dwellings is recognised as a benefit of the proposals and, as above, this factor should be afforded significant positive weight in the planning balance. However, as set out within the June Committee report, the provision of new housing including affordable housing does not clearly outweigh the identified harm to the GB. Consequently and in-line with recent appeal decisions, including the recent Bulphan appeal decision (application ref. 18/01830/OUT), the VSC required to justify a departure from established planning policies do not exist.

### 3.13 Reason 3: limited harm to the purposes of the GB

Paragraph 134 states that the GB serves five purposes as follows:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

3.14 The report to the June Committee considered that there would be harm to purposes a), c) and e) above. With reference to purpose a), when considered on a broad geographic scale, the site is located on the edge of the built-up area which extends from Little Thurrock in the east to West Thurrock / Purfleet in the west. To a degree, it is a matter of judgement as to the extent of harm to this GB purpose, particularly when bearing in mind that the term 'large built-up area' is not defined in the NPPF. However, this GB purpose is to check unrestricted sprawl and it must be concluded that built development on an open field immediately adjacent to a large built-up area would harm this GB purpose.

3.15 Regarding GB purpose c), the site is an open field which is currently used for agricultural purposes. Members are reminded that the GB is primarily a spatial

designation and paragraph 133 of the NPPF in particular refers to the essential characteristics of GBs being their openness and their permanence. It is considered that the Little Thurrock Marshes appeal decision from 2018 (application reference 15/01354/OUT) is of some relevance to the current case. At paragraph 19 of the appeal decision the Inspector noted that the Little Thurrock Marshes site *“does not have any particular landscape quality but it is not particularly despoiled either as is often the case with land close to an urban area ... the site clearly has value as countryside as is indicated in the many representations from local people”*. Therefore the landscape quality of a GB site is not material to consideration of issues of openness. The site must therefore be considered as open countryside and the development of the site as proposed would undeniably harm this purpose of the GB.

3.16 Finally, the June report considered that there was harm to purpose e) as, in theory, the urban area could be used to accommodate new residential development. The Inspector’s report for the recent dismissed appeal for the GB site at Bulphan also considered harm to purpose e) and noted the Council’s case that *“as the proposal clearly does not involve the recycling of derelict or other urban land, there is an “principle” conflict with this purpose”*. However, the Inspector went on to note that *“the appellants’ case is that there are sound planning reasons for the release of the land for housing and these need to be weighed against any conflict with GB purposes”*. Of the three GB purposes referred to by the June report, there is some judgement required as to the impact on purpose e). Nevertheless, it is considered that there is clear harm to purposes a) and c) and in relation to these purposes it is not possible to conclude a lower level of harm.

3.17 *Reason 4: More weight should be afforded to the contribution towards sustainable development*

Paragraphs 7.30 to 7.32 of the June Committee report assess the applicant’s contention that achieving sustainable development is a factor weighing in support of the application and contributing towards VSC. Chapter 2 of the NPPF is titled ‘Achieving Sustainable Development’ and paragraph 7 states that *“the purpose of the planning system is to contribute to the achievement of sustainable development”*. Paragraph 8 then goes on to describe the three objectives of the planning system in achieving sustainable development as:

- a) an economic objective;
- b) a social objective; and
- c) an environmental objective.

3.18 Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development and, for decision making, this means:

- “c) approving development proposals that accord with an up-to-date development plan without delay; or*
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, granting planning permission unless:*
- (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>6</sup>, or*
  - (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole”.*

3.19 With regard to d) and footnote <sup>6</sup> above, as the Council cannot demonstrate a five-year supply of deliverable housing sites, the ‘tilted balance’ in favour of granting planning permission would ordinarily apply. However, as noted at paragraph 7.31 of the June Committee report, the ‘tilted balance’ is subject to footnote <sup>6</sup> which identifies Green Belts as one of the list of areas or assets of particular importance which provides a clear reason for refusing the development. Put simply, the general presumption in favour of sustainable development set out by the NPPF does not apply to the Green Belt.

3.20 An assessment of the economic, social and environmental objectives of achieving sustainable development is provided under Reason 7 below.

3.21 *Reason 5: The package of s106 contributions*

Paragraph nos. 7.46 to 7.49 of the June Committee report confirm that the scheme will include 35% affordable housing, which could be secured by a planning obligation. Similarly financial contributions towards the demands on nursery, primary and secondary school provision created by the proposed development have been agreed with the applicant and can be secured via s106. As noted at paragraph 2.2 above, the NHS have requested a financial contribution of £29,700 and the June Committee report referred to a Essex Coast RAMS payment which will be c.£9,000. It is understood that the applicant would be agreeable to payment of these contributions and the provision of affordable housing via a s106 legal agreement. However, as the application is recommended for refusal, Officers have not pursued the formulation of heads of terms for such an agreement.

3.22 Paragraph 56 of the NPPF is relevant to the matter of planning obligations as follows:

56. *Planning obligations must only be sought where they meet all of the following tests:*

- a) necessary to make the development acceptable in planning terms;*
- b) directly related to the development; and*
- c) fairly and reasonably related in scale and kind to the development.*

3.23 Adopted Core Strategy policy PMD16 (Developer Contributions) is also relevant and states:

- 1. Where needs would arise as a result of development, the Council will seek to secure planning obligations under Section 106 of the Town and Country Planning Act 1990 and in accordance with the NPPF and any other relevant guidance.*
- 2. Through such obligations, the Council will seek to ensure that development proposals:*
  - i. Where appropriate contribute to the delivery of strategic infrastructure to enable the cumulative impact of development to be managed.*
  - ii. Meet the reasonable cost of new infrastructure made necessary by the proposal.*
  - iii. Mitigate or compensate for the loss of any significant amenity or resource.*
  - iv. Provide for the ongoing maintenance of facilities provided as a result of the development.*

3.24 As assessed against these national and local planning policy requirements, the provision of policy-compliant affordable housing meets the minimum requirements of Core Strategy policy CSTP2 (The Provision of Affordable Housing). As noted at paragraph 3.11 above, the contribution of the proposals to the supply of new housing, including affordable housing, is a benefit which can be afforded significant positive weight. However, it is worth noting the 35% affordable housing provision on-site is a minimum Core Strategy policy requirement and not an “extra” benefit. Furthermore, as the mechanism for securing affordable housing is a s106 legal agreement, this benefit should not be double-counted as a benefit in its own right and as part of the s106 package. The legal agreement is simply the legal mechanism for securing affordable housing.

3.25 Any s106 legal agreement would also secure financial contributions towards education provision, healthcare provision and the Essex Coast RAMS. Members of the Committee are reminded that these contributions are required to mitigate the impacts of the scheme. That is, if approved and built, residents of the development would place new pressures and demands on existing education, healthcare and recreation facilities. The payments are therefore necessary to contribute to the new infrastructure which is required to manage or mitigate the impacts generated by the

development. The potential s106 package should not be viewed as the delivery of new 'benefits', but rather as providing the new infrastructure necessary to mitigate impact. In this context and with reference to national and local policy, the s106 package must carry no weight in the balance of GB considerations.

### 3.26 Reason 6: The scheme is a shovel-ready project

A number of national newspapers reported that in early June 2020 that the Government issued an urgent call for "shovel-ready" projects to help the economy recover from the damage caused by the coronavirus lockdown. The Financial Times reported:

*"... the government has asked elected mayors and local business leaders in England for ideas that would create jobs and be finished within 18 months. The Financial Times has seen the letter sent on June 10 by Robert Jenrick, housing secretary, to mayors and the 38 local enterprise partnerships (LEPs), who are responsible for economic growth. Proposals are requested by June 18, underlining the urgency of the economic crisis. As well as schemes previously pitched for government funds, "we are willing to consider exceptional, additional shovel-ready capital projects that can be delivered within 18 months", the letter said. "Where considering new projects, these must deliver on two overarching objectives — driving up economic growth and jobs and supporting green recovery." Suggestions include modernising town centres; road, rail and cycling infrastructure; broadband improvements; research and development centres; and skills training programmes".*

3.27 In this context, it is not considered that a residential development of 75 dwellings would constitute a shovel-ready, large scale infrastructure capital project. The accepted definition of 'shovel-ready' usually refers to a situation where planning is advanced enough such that construction can begin in a very short time. In this case, outline permission with all matters reserved is sought. If permission were to be granted, reserved matters submissions would need to be submitted and approved, as well as approval of any pre-commencement planning conditions. Construction and subsequent delivery of new dwellings on the ground would be unlikely for a period of years, not months. Therefore the reference to the scheme as a shovel-ready project is not relevant.

### 3.28 Reason 7: The scheme would create employment during construction

Paragraph 3.17 above refers to the economic, social and environmental objectives of the planning system in contributing towards the achievement of sustainable development. If approved, during the short-term construction phase there would be some economic benefit associated with employment opportunities. In the longer

term, the new households created would through household expenditure, contribute to the local economy. This limited benefit was recognised at paragraph 7.32 of the June Committee report. However, this factor attracts only limited positive weight in the balance of considerations and does not combine with other benefits to clearly outweigh the harm to the GB.

### 3.29 Summary

Members of the Planning Committee are reminded of the content of NPPF paragraph 144 which states:

*“Very Special Circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly (emphasis added) outweighed by other considerations.”*

3.30 Members are also reminded of the content of paragraph 7.56 of the June Committee report which referred to a very recent appeal case in the West Midlands GB (APP/Q4625/W/193237026 Oak Farm, Hampton Lane, Catherine De Barnes Solihull B92 0JB decision date: 14th February 2020 (Continuing Care Retirement Community under Use Class C2 with wellness centre in Green Belt)). The Inspector for that appeal addressed the GB balancing exercise and concluded:

*“When drawing this together, it is my judgement that the other considerations advanced by the appellants would result in a very finely balanced decision. However, for Very Special Circumstances to exist, the other considerations would need to clearly outweigh the substantial harm to the Green Belt by reason of inappropriateness, openness and purposes of the Green Belt ... In other words, for the appeal to succeed, the overall balance would have to favour the appellants’ case, not just marginally, but decisively.”*

3.31 Therefore, and although every case falls to be determined on its own merits, the benefits of the proposals must clearly or decisively outweigh the harm for VSC to exist. If the balancing exercise is finely balanced, then VSC will not exist. For this application it is considered that the benefits of the proposals do not clearly outweigh the GB harm and as a consequence VSC do not apply.

3.32 The seven reasons put forward by Members for approving this development have been carefully considered but do not clearly outweigh the identified harm to the GB. Furthermore the approach taken in the above mentioned appeal is relevant in considering VSC and these do not clearly or decisively outweigh the harm to the GB. Therefore, the reasons for refusal have not been addressed for the development to be considered acceptable.

#### 4.0 LEGAL IMPLICATIONS OF DECISION

Members are reminded that in making their decision, they are required to comply with the general law, national and local Policies and the Council's Constitution.

Only material considerations can be taken into account and reasons given must be cogent, clear and convincing.

In addition, considerations and reasons must be evidence based.

- 4.1 It is important to note that deviation from the above would potentially be unlawful and challengeable in the courts.
- 4.2 If Members are mindful of departing from the contents and recommendations of the officer reports, they are required strictly to adhere to the legal rules and principles of decision making.
- 4.3 As a matter of law, under s. 38(6) Town and Country Planning Act, planning applications should be determined in accordance with the development plan, unless there are material considerations which indicate otherwise.
- 4.4 The policies contained in the "Core Strategy and Policies for the Management of Development Plan Document" (as amended) in 2015 are current and carry the legal status of the development plan.
- 4.5 Accordingly, to permit a departure from the Core Strategy, considerations are required to be 'material'. This is an imperative and a legal requirement.
- 4.6 This application is contrary to the development plan, and a grant of planning permission in this case would be referred to the Secretary of State. However, referral to the Secretary of State as a decision safety net is not a material consideration and cannot legally be taken into account or support a reason to grant planning permission.
- 4.7 In addition, unless underpinned by clear and cogent evidence, opinions and anecdotes are not material considerations and cannot legally be taken into account when making a decision or to support a reason.
- 4.8 Further, reasons supporting a motion to approve the application against officer recommendation are required to be material planning considerations, with cogent supporting evidence.

4.9 The site is located within the Green Belt and decisions concerning Green Belt applications must be made strictly in accordance with:

1. Green Belt Policy and
2. Current Green Belt boundaries

This means speculation as to the outcome of a future Green Belt review as part of the Local Plan process cannot be taken into account when considering the planning application and/or could not be afforded weight.

4.10 In addition to being contrary to the development plan the development proposes inappropriate development in the Green Belt, which is 'by definition, harmful to the Green Belt' (NPPF paragraph 143).

As a matter of national policy the NPPF paragraph 144 states:

*'When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal is clearly outweighed by other considerations.'*

This paragraph is required to be followed in its entirety.

4.11 Planning permission for development in the Green Belt should only be granted if the benefits are shown clearly to outweigh the potential harm to:

1. The Green Belt and
2. Any other harm resulting from the proposal

and the planning balance gives rise to very special circumstances.

In this case there are two reasons for refusal, each of which are required by the NPPF to be given substantial weight. Very special circumstances will not exist unless the combined weight of these harms is clearly outweighed by evidenced benefits.

4.12 A recent appeal case<sup>1</sup> clarifies the meaning of the term 'clearly' in paragraph 144 NPPF to mean 'not just marginally, but decisively'. Accordingly, very special circumstances will not exist unless the benefits are shown to outweigh the harm

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<sup>1</sup> APP/Q4625/W/193237026 Oak Farm, Hampton Lane, Catherine De Barnes Solihull B92 0JB decision date: 14th February 2020 (Continuing Care Retirement Community under Use Class C2 with wellness centre in Green Belt)

clearly and decisively. Note: that the NPPF unequivocally requires the scales to be tipped in favour of harm unless outweighed clearly (i.e. decisively) by benefits.

- 4.13 If the outcome of this planning balance is not clear (i.e. decisive), then, according to NPPF 144, very special circumstances will not exist, and planning permission should be refused.
- 4.14 The benefits of this proposal have been evaluated in this report and the June report. Account has been taken of each of the reasons given by Members in support of a motion to grant planning permission in June. All the benefits have been weighed and put on the planning scales to ascertain whether they clearly outweigh the harm to the Green Belt by reason of appropriateness and any other harm resulting from the proposal.
- 4.15 NPPF paragraph 144 expressly requires harm to the Green Belt to be given substantial weight. The summary in the June officer report showed that in itself, the harm to the Green Belt clearly outweighs the benefits in this case, and planning permission should be refused.
- 4.16 With regard to 5-year housing supply and provision of affordable housing, this factor has already been taken into account in the report and would not provide an extra consideration to add weight to benefits. It is pertinent for Members to note that, although the Council does not have a 5-year housing land supply, this does not of itself override the policy presumption against the grant of permission for inappropriate development in the Green Belt. In particular, paragraph 11 of the NPPF specifically indicates that a shortfall in the 5-year housing land does not engage the “tilted balance” if the site is in the Green Belt and the development is inappropriate, as in this case. In any event, this consideration has already been given significant positive weight.
- 4.17 Summary of legal matters
- From a legal (as well as a planning perspective): In addition to being contrary to the development plan, the application also proposes inappropriate development in the Green Belt. The outcome of the planning balance of all the benefits and all the harms weighs clearly, heavily and decisively to harm, indicating the proposals are positively harmful to the Green Belt. Accordingly, no very special circumstances exist in this case and planning permission should be refused.
- 4.18 Failure to follow the legal process would be unlawful and could result in a High Court Challenge.

## 5.0 OVERALL CONCLUSIONS

As required by the Constitution the implications of the Committee approving this application, which is a departure from national and local planning policies, are set out above. This report goes on to analyse the seven reasons for approving the application contrary to recommendation provided by the Committee. These reasons to a degree reflect the benefits of the scheme promoted by the applicant. It is not considered that these reasons clearly outweigh the identified harm to the Green Belt and therefore the reasons for refusal have not been addressed sufficiently for the development to be considered acceptable. The reasons for refusal therefore remain relevant.

## 6.0 RECOMMENDATION

The Committee is recommended to:

Refuse planning permission for the following reasons:

1. The application site is located within the Green Belt, as identified on the Policies Map accompanying the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (2015). National and local planning policies for the Green Belt set out within the NPPF and Core Strategy set out a presumption against inappropriate development in the Green Belt. The proposals are considered to constitute inappropriate development with reference to policy and would by definition be harmful to the Green Belt. It is also considered that the proposals would harm the openness of the Green Belt and would be contrary Green Belt purposes (a), (c) and (e) as described by paragraph 134 of the NPPF. The identified harm to the Green Belt is not clearly outweighed by other considerations so as to amount to the very special circumstances required to justify inappropriate development. The proposal is therefore contrary to Policies CSSP4 and PMD6 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (as amended 2015) and chapter 13 of the National Planning Policy Framework 2019.
2. The proposal would, by reason of the likely siting and scale of the proposed acoustic fencing necessary to mitigate the impact of noise and ensure that the quality of amenity spaces are not degraded, result in an overbearing and over-dominant impact harmful to visual amenity. The proposal is therefore contrary to Policy PMD1, PMD2, CSTP22 and CST23 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (as amended 2015) and chapter 12 of the National Planning Policy Framework 2019.

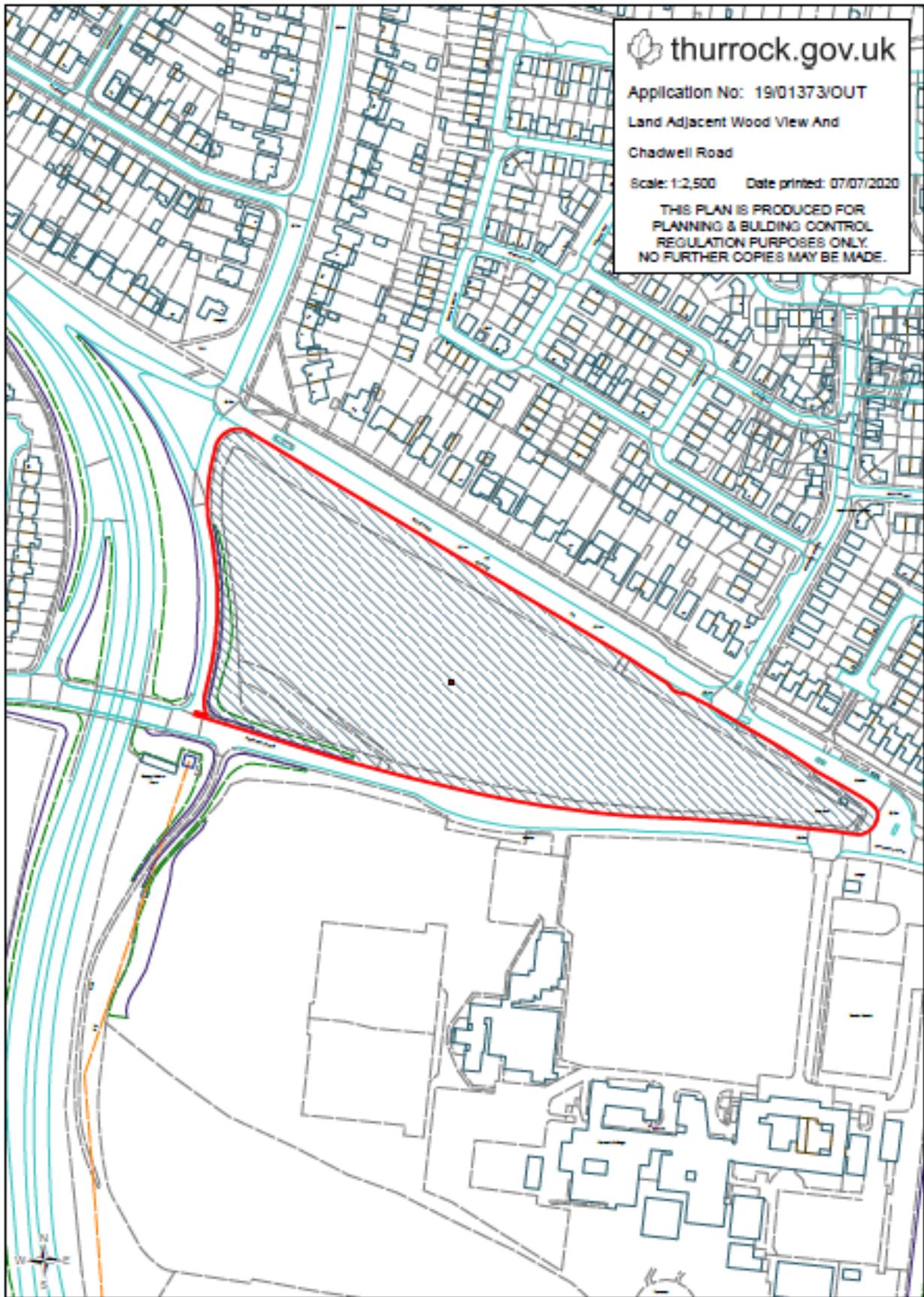
Informative(s):-

1. Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) - Positive and Proactive Statement:

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing with the Applicant/Agent. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

**Documents:**

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online: <http://regs.thurrock.gov.uk/online-applications>



 **thurrock.gov.uk**  
Application No: 19/01373/OUT  
Land Adjacent Wood View And  
Chadwell Road  
Scale: 1:2,500    Date printed: 07/07/2020  
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