

<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> 17 July 2020 (Extension of time agreed with applicant)
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**Recommendation:** 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 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 by 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 appellant's 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 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

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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)

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.

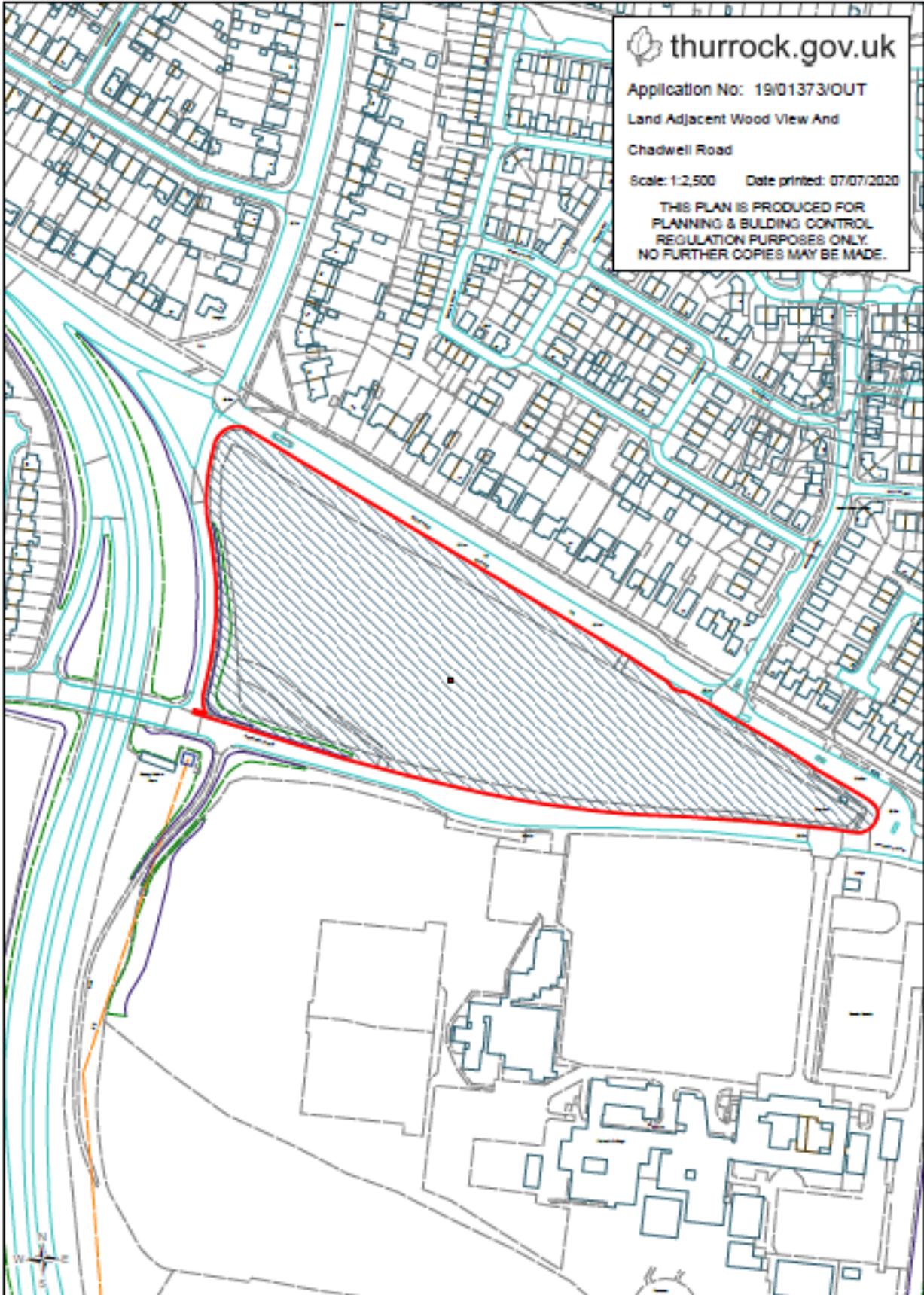
Informative(s):-

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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