

<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)

<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 refuse 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>

