

Reference: 20/01051/FUL	Site: 40 High Road Fobbing Essex SS17 9HN
Ward: Corringham and Fobbing	Proposal: Five single storey detached dwelling houses for the over 55s with associated parking and amenity areas

Plan Number(s):		
Reference	Name	Received
F1PGF/01	Fibonacci 1 Proposed Floor Plans	12 August 2020
F1PGF/02	Fibonacci 2 Proposed Floor Plans	12 August 2020
F1PGF/03	Fibonacci 3 Proposed Floor Plans	12 August 2020
F1PE/04	Fibonacci 1 Proposed Elevations	12 August 2020
F2PE/05	Fibonacci 2 Proposed Elevations	12 August 2020
F2PE/06	Fibonacci 3 Proposed Elevations	12 August 2020
PSLP1:500S	Proposed Site Layout 1:500 Scale	12 August 2020
SLP1:1250	Site Location Plan 1:1250 Scale	12 August 2020

The application is also accompanied by:	
<ul style="list-style-type: none"> - Design & Access Statement - Explanation Statement - Transport Assessment - Various Fibonacci Spiral Plans 	
Applicant: Mr Ricky Jeffs	Validated: 12 August 2020 Date of expiry: 30 November 2020 (Extension of Time agreed with applicant)
Recommendation: Refuse	

1.0 BACKGROUND

- 1.1 At the meeting of the Planning Committee held on 22 October 2020 Members considered a report assessing the above proposal. The report recommended that planning permission be refused because:

- 1 *The proposal represents an inappropriate form of development within the Green Belt, which is by definition, harmful. The proposal would introduce significant built form into an area which is currently open resulting in actual harm to openness. The circumstances put forward by the applicant would not amount to very special circumstances to clearly outweigh the harm to the Green Belt. Therefore the proposal would be contrary to policy PMD6 of the Thurrock Local Development Framework Core Strategy and Policies for Management of Development 2015 and the requirements of the National Planning Policy Framework 2019.*
- 2 *The proposed dwellings, by reason of their design, scale, layout and the introduction of a significant level of built form into the generally open area to the rear of properties on High Road would result in a density of development and urban appearance significantly out of character for the area. Therefore the proposal would have a significant adverse impact upon the generally open character of this area contrary to policies CSTP22, CSTP23 and PMD2 of the Thurrock Local Development Framework Core Strategy and Policies for Management of Development 2015 and the requirements of the National Planning Policy Framework 2019.*

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

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

1. *Tailored Bungalows – Specialist and limited height (so they could only be bungalows)*
2. *Sustainable village location – (as there were 2 bus stops nearby with an hourly service)*
3. *Innovative Internal Design – (Lend to be adapted & Adapt to own need)*
4. *Employment in Construction Phase*
5. *Shovel Ready (The applicant had stated they would start as soon as they could)*

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.

2.0 FACTUAL UPDATES

- 2.1 The applicant has previously indicated they would complete a s106 to restrict the occupation of these properties to over 55s only and for the permitted development rights to be removed. There is currently no reason to suggest that the applicant would object to reasonable and necessary contributions.

3.0 CONSULTATION AND REPRESENTATIONS

- 3.1 Since the previous Committee report was published there have been no additional representations.

4.0 PLANNING ASSESSMENT & IMPLICATIONS

- 4.1 As required by the Constitution, an outline of the implications of making a decision contrary to the Officer recommendations is provided below. The recommended reason for refusal from the October Committee report is set out in italics below, with the implications considered subsequently.

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

- The proposal represents an inappropriate form of development within the Green Belt, which is by definition, harmful. The proposal would introduce significant built form into an area which is currently open resulting in actual harm to openness. The circumstances put forward by the applicant would not amount to very special circumstances to clearly outweigh the harm to the Green Belt. Therefore the proposal would be contrary to policy PMD6 of the Thurrock Local Development Framework Core Strategy and Policies for Management of Development 2015 and the requirements of the National Planning Policy Framework 2019.*

4.3 Implications of approving the application contrary to recommendation

As noted in the report to the October 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 not engage as the description of the development falls within outside the ambit of paragraph 4 of the Direction. Therefore, the local planning authority (LPA) can issue the formal decision for the application without submitting to the Secretary of State.

4.4 Officers consider that the proposals potentially conflict with national policies on important matters (i.e. Green Belt). Furthermore, any resolution to grant planning permission would be at odds with the findings of the Planning Inspector appointed by the SOS to consider the earlier appeal for a similar, and smaller, proposal.

4.5 A further practical implication of any resolution to grant planning permission is the potential inability 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.”

4.6 *“Planning law”* 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

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

4.8 REASON 2:

2 *The proposed dwellings, by reason of their design, scale, layout and the introduction of a significant level of built form into the generally open area to the rear of properties on High Road would result in a density of development and urban appearance significantly out of character for the area. Therefore the*

proposal would have a significant adverse impact upon the generally open character of this area contrary to policies CSTP22, CSTP23 and PMD2 of the Thurrock Local Development Framework Core Strategy and Policies for Management of Development 2015 and the requirements of the National Planning Policy Framework 2019.

- 4.9 The 'design' reason of refusal remains applicable and still stands. The proposal would introduce a dense, urban development within an open area. This matter has not been addressed by the applicant. In the recently dismissed appeal the Inspector was concerned about the layout, in paragraph 23 he stated "*Since they [the new properties] would not follow the general building line which is characteristic of the area, they would appear an incongruous feature in the street scene. This would be contrary to Policy CSTP22 of the CSPMDFR which states that development proposals must demonstrate high quality design founded on a thorough understanding of, and positive response to, the local context. It would fail to strengthen the sense of place, as required by Policy CSTP23 of the CSPMDFR and would fail to contribute positively to the character of the area in which it is proposed.*

The present scheme would have even more of an unacceptable adverse impact to character, as there is an additional property when compared to the previously refused scheme.

4.10 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 Very Special Circumstances necessary for approving inappropriate development in the Green Belt. The reasons are:

1. *Tailored Bungalows – Specialist and limited height (so they could only be bungalows)*
2. *Sustainable village location – (as there were 2 bus stops nearby with an hourly service)*
3. *Innovative Internal Design – (Lend to be adapted & Adapt to own need)]*
4. *Employment in Construction Phase*
5. *Shovel Ready (The applicant had stated they would start as soon as they could)*

4.11 *Reason 1: Tailored Bungalows – Specialist and limited height (so they could only be bungalows)*

Assessment

- 4.12 There is not any design element which is innovative or ground-breaking within the layout or design. The proposed buildings have a regular shaped floor plan with no

clearly identifiable distinction between them and any other regular property. If the application were to be approved a planning condition could be used to ensure that the properties are occupied by the over 55s only. A planning condition could also be used to remove normal permitted development allowances for extensions, including upward extensions. However this would not restrict an occupant from applying for planning permission for future extensions and there is nothing within the plans or supporting documents to differentiate these properties. This matter should be afforded no weight in the consideration of the application.

- 4.13 *Reason 2: Sustainable village location – (as there were 2 bus stops nearby with an hourly service)*

Assessment

- 4.14 The site is not considered to be within a sustainable location. It is situated to the edge of the village, outside the established residential frontage. Fobbing is a linear settlement, which is located mostly along the main road (High Road). The facilities which are available within the village, the pub, church and church hall are all located in what would have been the historic centre of the village. This centre is over a mile walk from the application site, also there are no shops, GPs or dentists within the village.
- 4.15 Members considered the bus stops with an hourly service to constitute a sustainable village location. The mere proximity of a bus stop would not tip the balance from the site not being sustainable to being sustainable. Should older occupiers not be very mobile, then getting a bus which would only stop at specific places would be difficult. The limited bus timetable would make access difficult for potential occupiers. If 'specialist' housing for the elderly is being proposed then it is reasonable for the occupants to have easy and convenient access to a range of supporting services. This type of housing should be located in urban areas with better links. The location is not 'sustainable' in this regard. This factor therefore carries no weight.

- 4.16 *Reason 3: Innovative Internal Design – (Lend to be adapted & adapt to own need)*

Assessment

- 4.17 The actual appearance of the buildings with the design of the facades is considered to be poor as they appear almost utilitarian. Additionally the appearance is unbalanced and confused creating an awkward finish. There are large areas of blank wall which contribute to the unattractive aesthetics of the properties.
- 4.18 Notwithstanding the above, Members considered the internal design constitutes a benefit as the layout is more open plan than bungalows which are available within

the local area. This, Members considered would enable the buildings to be adapted to needs of a specific resident, such as for disabled access. As a general point the planning system does not concern itself with the internal arrangement of dwellings aside from the assessment of reasonable internal space and the number of bedrooms which can influence car parking requirements. The internal layout of dwellings can change without any need for planning permission. Therefore this factor carries no weight in the Green Belt assessment.

4.19 Reason 4. *Employment in Construction Phase*

Assessment

4.20 Members were receptive to the applicant's claims of jobs being provided for 50 workers during the construction phase and that these would be Thurrock people and therefore provide income into the local economy. there is no evidence to back up the claim of the number of workers and it is impossible to confirm that this would be, or indeed could be the case. It is not clear the particular skillset of Thurrock residents would be available at the correct time throughout the build out to ensure that only local labour would be used. Whilst the applicant states there would be 50 jobs created, some of these are likely to be very short term as the site is small. The overall construction period would be short, so the benefits of the jobs would not be long term. Therefore, this is not considered a circumstance that could provide any weight towards Very Special Circumstances

4.21 Reason 5. *Shovel Ready (The applicant had stated they would start as soon as they could)*

Assessment

This factor is promoted by the applicant and Members as a benefit of the proposals.

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”.

- 4.22 In this context, it is not considered that a residential development of just 5 dwellings would constitute a shovel-ready, large scale infrastructure capital project.
- 4.23 Commencement can be conditioned for within 1 year, but this can be as minor as digging a trench. The Council can't require completion within a timeframe as this is unreasonable. Therefore, the project being shovel ready is not afforded any weight towards Very Special Circumstances.

Other matters raised

- 4.24 There were some additional reasons in support of the proposal raised at the October committee meeting which cannot be used as Very Special Circumstances. These included the fact members considered the proposal would ‘prevent neighbouring towns merging into one another’ (NPPF 134. b) (the fact a proposal is not contrary to one of the purposes of the Green Belt cannot be a Very Special Circumstance) and the proposal would not be harmful to the Fobbing Conservation Area (the site is not in the Conservation Area). Whilst this was confirmed at the meeting, they are mentioned here for clarity. The lack of harm to Green Belt purposes cannot be put forward as a Very Special Circumstances.

Summary

- 4.25 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.”

- 4.26 Members are also of reminded of the recent appeal decision for a lesser development of four single storey dwellings at the site which was dismissed in August 2019. The Inspector concluded in paragraph 33 of the appeal decision 33. *The proposal would be inappropriate development in the terms set out in the Framework and lead to a moderate loss of openness to the Green Belt. It would also harm the character and appearance of the area. The Framework establishes that substantial weight should be given to any harm to the Green Belt. No considerations have been put before me*

which would outweigh the totality of the harm. Consequently, very special circumstances do not exist and the proposal would conflict with the Framework.

- 4.27 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 Very Special Circumstances to exist. If the balancing exercise is finely balanced, then Very Special Circumstances 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 Very Special Circumstances do not apply.
- 4.28 The five 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 Very Special Circumstances and these do not clearly or decisively outweigh the harm to the GB. Therefore the reason for refusal has not been addressed for the development to be considered acceptable.

5.0 LEGAL IMPLICATIONS OF DECISION

- 5.1 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. 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.
- 5.2 It is important to note that deviation from the above would potentially be unlawful and challengeable in the courts.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 Accordingly, to permit a departure from the Core Strategy, considerations are required to be 'material'. This is an imperative and a legal requirement.

- 5.7 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 is not a material consideration and cannot legally be taken into account or support a reason to grant planning permission.
- 5.8 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. Further, reasons supporting a motion to approve the application against officer recommendation are required to be material planning considerations, with cogent supporting evidence. Disagreement with officer recommendation should be supported by clear and material reasoning, with evidence, and should importantly avoid involving a point of law.
- 5.9 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.

- 5.10 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.

- 5.11 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.

- 5.12 A recent appeal case¹ 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.

- 5.13 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.
- 5.14 NPPF paragraph 144 expressly requires harm to the Green Belt to be given substantial weight. The summary in the October officer report showed that in itself, the harm to the Green Belt clearly outweighs the benefits in this case, and officers recommend planning permission should be refused.

Summary of Legal Advice

- 5.15 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 officer assessment 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, officers advise that no very special circumstances exist in this case and recommend planning permission should be refused.
- 5.16 Failure to follow the legal process would be unlawful and could result in a High Court Challenge.

6.0 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 5 reasons for approving the application contrary to recommendation provided by the Committee. These reasons to a large

¹ 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)

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 remains relevant.

7.0 RECOMMENDATION

The Committee is recommended to refuse planning permission for the following reasons:

- 1 *The proposal represents an inappropriate form of development within the Green Belt, which is by definition, harmful. The proposal would introduce significant built form into an area which is currently open resulting in actual harm to openness. The circumstances put forward by the applicant would not amount to very special circumstances to clearly outweigh the harm to the Green Belt. Therefore the proposal would be contrary to policy PMD6 of the Thurrock Local Development Framework Core Strategy and Policies for Management of Development 2015 and the requirements of the National Planning Policy Framework 2019.*
- 2 *The proposed dwellings, by reason of their design, scale, layout and the introduction of a significant level of built form into the generally open area to the rear of properties on High Road would result in a density of development and urban appearance significantly out of character for the area. Therefore the proposal would have a significant adverse impact upon the generally open character of this area contrary to policies CSTP22, CSTP23 and PMD2 of the Thurrock Local Development Framework Core Strategy and Policies for Management of Development 2015 and the requirements of the National Planning Policy Framework 2019.*

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>

