

<p>Reference: 20/01394/OUT</p>	<p>Site: Kemps Farm Dennises Lane South Ockendon RM15 5SD</p>
<p>Ward: Ockendon</p>	<p>Proposal: Outline planning permission for the construction of 27 custom-build dwellings (Use Class C3), with all matters reserved with the exception of access.</p>

Plan Number(s):		
Reference	Name	Received
2404-04 F	Proposed Plans	16th October 2020
2404-04 F	Proposed Plans	16th October 2020
2404-05	Existing Site Layout	16th October 2020
2404-10 REV. D	Proposed Plans	16th October 2020
2404-11 C	Proposed Plans	16th October 2020
2404-12 C	Proposed Plans	16th October 2020
2404-13	Proposed Plans	16th October 2020

<p>The application is also accompanied by:</p> <ul style="list-style-type: none"> - Air Quality Assessment - CGI 1 - CGI 2 - Custom Build Needs Assessment - Design and Access Statement: Parts 1-6 - Ecological Assessment - Flood Risk Assessment & Sustainable Drainage Strategy - Heritage Assessment - Legal Opinion - Noise Assessment - Planning Statement - Sustainability and Energy Statement - Transport Note - Transport Statement: Parts 1-3 	
<p>Applicant: Mr Lee Felstead</p>	<p>Validated: 15 October 2020 Date of expiry: 26 April 2021 (Extension of Time as agreed by applicant)</p>

Recommendation: Refuse planning permission

This application is scheduled for determination by the Council's Planning Committee because the application is considered to have significant policy or strategic implications involving development in the Green Belt (GB) (in accordance with Part 3 (b) Section 2 2.1 (a) of the Council's constitution).

1.0 Background

1.1 At the extraordinary meeting of the Planning Committee held on 25 February 2021 Members considered a report assessing the above proposal. The report recommended that planning permission be refused because:

- 1 *The application site is located within the Green Belt, as identified on the Policies Map accompanying the adopted Thurrock Local Development Framework 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 Thurrock Local Development Framework 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 to purposes c) and e) of the Green Belt, as set out by paragraph 134 of the NPPF. It is considered that 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 proposals are therefore contrary to Part 13 of the NPPF and Policies CSSP4 and PMD6 of the adopted Thurrock Local Development Framework Core Strategy and Policies for the Management of Development (2015).*
- 2 *The proposal would create an isolated residential development at a site that is located in an unsustainable location, distant from community services, essential support facilities and a choice of transport modes. As such the proposal would represent an unsustainable form of development in an unsustainable location, contrary to policies CSSP1, CSSP4 and PMD2 of the adopted Core Strategy and Policies for the Management of Development (2015) and Chapter 2 of the NPPF*
- 3 *The development, would, by reason of its siting, and scale in close proximity to designated heritage assets, be harmful to the setting of these assets. This harm would not be outweighed by the limited benefit of the scheme in terms of the provision of an additional residential unit. As a result the proposal would be contrary to policies PMD4 and CSTP24 of the Core Strategy 2015 and paragraphs 193 and 197 of the NPPF.*

- 1.2 A copy of the report presented to the February Extraordinary Committee meeting is attached.
- 1.3 At the Extraordinary Committee meeting in February, Members were minded to resolve to grant planning permission for the proposed development. Whilst it was acknowledged that there was significant harm to the GB, Members suggested that the following grounds outweighed the GB harm so as to amount to the Very Special Circumstances (VSC) needed to justify inappropriate development in the GB:
1. *Lack of 5 year housing supply and lack of 20% buffer of housing supply;*
 2. *The scheme is carbon neutral and provides custom build homes;*
 3. *Thurrock is a national growth hub;*
 4. *The development would be a 12 minute walk to the train station and local shops once the proposed footpath was in place through the country park so it would be sustainable.*
- 1.4 Members suggested that reason four addressed the second reason for refusal, regarding the sustainability of the development at this site.
- 1.5 Members also considered that the Heritage Officer's "less than substantial weight" assessment and were of the opinion that the site is secluded enough to address the impact upon the listed building.
- 1.6 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 Since the February Extraordinary Committee meeting the agent has submitted an updated draft Unilateral Undertaking for consideration by the local planning authority, Highways Officers and the Council's Legal Department. In addition options were submitted for improvements to the footpath network from the site

3.0 CONSULTATIONS AND REPRESENTATIONS

- 3.1 Since the previous report was published additional representations have been received and are detailed below. The additional information submitted by the applicant has also been subject to a further consultation process.
- 3.2 Detailed below is a summary of the consultation responses received since the previous report was published on the committee agenda for the January Planning Committee meeting. The full version of each consultation response can be viewed

on the Council's website via public access at the following link:
www.thurrock.gov.uk/planning

HIGHWAYS:

- 3.3 Following the additional information provided by the applicant in relation to the Unilateral Undertaking and accessibility improvements, concerns remain regarding the feasibility and deliverability of such works. In particular, the constraints operating on that section of road (limited visibility / road geometry (bends) / narrow road verge / presence of ditches, utility poles and hedges / lack of street lighting) are highlighted by the highways officer.

4.0 PLANNING ASSESSMENT & IMPLICATIONS

4.1 Implications of approving the application contrary to recommendation

As noted in the report to the February 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.

- 4.2 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”.

4.3 Officers consider that the proposals conflict with national policies on important matters (i.e. GB).

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

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

4.5 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.

4.6 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.”

- 4.7 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

- 4.8 Although each planning application must be judged on its individual merits, if the clear opinion of Officers is 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.
- 4.9 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 main report are set out in italics below and the implications are considered subsequently.
- 4.10 REASON 1: PRINCIPLE OF THE 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 (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.*

- 4.11 The following list was raised by Members as reasons to approve the application and these are considered more in detail below to assess whether these comprise the Very Special Circumstances necessary for approving inappropriate development in

the Green Belt. The reasons are:

1. *Lack of 5 year housing supply and lack of 20% buffer of housing supply;*
2. *The scheme is carbon neutral and provides custom build homes;*
3. *Thurrock is a national growth hub;*
4. *The development would be a 12 minute walk to the train station and local shops once the proposed footpath was in place through the country park so it would be sustainable.*

4.12 The reasons put forward by Members are assessed individually below to establish whether they amount collectively, or individually, to very special circumstances which clearly outweigh the harm caused to the Green Belt.

1. *Lack of 5 year housing supply and lack of 20% buffer of housing supply*

4.13 In recent appeal decisions, the Planning Inspectorate has indicated that the lack of a 5 year housing supply can be considered as a factor or benefit which can be given significant positive weight. However, appeal decisions indicate that this reason on its own cannot clearly outweigh GB harm so as to amount to the VSC necessary to justify inappropriate development. Significant weight can therefore be given to this matter, but it would need to combine with other factor in order to clearly outweigh the GB and other harm identified in this case.

2. *The scheme is carbon neutral and provides custom build homes*

4.14 Since preparation of the report to the February Committee meeting, the applicant has submitted a draft s106 Unilateral Undertaking (U/U) which has been further updated. The draft UU includes an obligation on the Owner that “all Houses shall be constructed to be Carbon Neutral from the date of first Occupation”. In practical terms this means that the dwellings are intended to be constructed such that they can be occupied and ‘operated’ as carbon neutral (i.e. a 100% reduction in CO₂ emissions assessed in accordance with Part L1A:2013 of the Building Regulations). Although clearly the physical process of constructing the dwellings will produce carbon emissions. As the proposal is for custom or self-build properties, any UU would need to apply to individual plot owners as successors in title in order for the carbon neutral obligation to ‘bite’. Adopted Core Strategy policies PMD13 (Decentralised, Renewable and Low-Carbon Energy Generation) and PMD14 (Carbon Neutral Development) generally encourage high standards of environmental sustainability including incorporation of renewable energy technologies and reduction of carbon emissions. Although a genuinely carbon neutral development is to be encouraged, planning policies already require high sustainability standards. The positive weight to be attributed to this factor is therefore somewhat limited and is reliant on the detailed drafting of the UU.

4.15 With regards to the provision of custom build housing, reason 1 already relates to

provision of housing, and they should be considered as a joint justification. The provision of custom build housing should not be double-counted as it is a component of housing supply (NPPF paragraph no. 61 refers).

3. *Thurrock is a national growth hub;*

4.16 Thurrock is widely recognised as a growth area within the Thames Gateway, however this refers to the Borough in its entirety and should not be interpreted as justification for ad hoc development in the Green Belt. This factor is not unique to the application site and does not temper the harm to the Green Belt, nor demonstrate any spatial imperative why Green Belt land is required to accommodate the proposals. As a result this reason is considered to give no weight in any justification in the balancing exercise for granting planning permission for this inappropriate development in the Green Belt in this location.

4. *The development would be a 12 minute walk to the train station and local shops once the proposed footpath was in place through the country park so it would be sustainable.*

4.17 The provision of a footpath does not form part of the application itself, but would be a requirement of a UU to be signed by the applicant, should permission be granted.

4.18 Comments have been received from the Council's Highways Officer which highlight a number of concerns regarding the proposed works:

- i. The public rights of way are just routes across ploughed fields so are not routes that can be simply provided with a better surface. They would be needed to be diverted to the edge of the field to do this
- ii. There are issues with visibility and crossing a road with a national speed limit in place
- iii. It is not a simple case of paving over a grass verge there are services, drainage ditches and service poles to resolve.
- iv. There is no current street lighting so such a facility would not be lit
- v. There may also be the need to remove hedgerows to accommodate this route which will need further investigation.

4.19 The applicant has been advised that a Road Safety Audit would be required. The results were not ready for submission at the time of publication, but these would be vital in determining whether the proposed scheme would be feasible and safe.

4.20 Given the separation distance from the site to the closest bus stop or train station, it is not considered that the proposal is conveniently located for access to public transport. As a result this reason is not considered to give any weight in any justification in the balancing exercise for granting planning permission for this inappropriate development in the Green Belt in this location.

Conclusion to this section

- 4.21 As detailed above the matters put forward by Members in support of the proposal are very general, lack empirical evidence and do not come close to providing very special circumstances case to overcome the in principle harm to the Green Belt. Most of these issues had already been considered by officers in making the original recommendation. At that time none were found to be enough to tip the balance to approving the principle of development. Following further consideration of each, as detailed above, it is shown that individually and collectively none of these matters constitute the very special circumstances that would be required to allow a departure from policy to be made. The proposal remains unacceptable in principle.
- 4.22 The matters put forward by Members relate solely to reason 1 of the refusal and do not address the other reasons for refusal set out in the original Committee report. This second reason is considered below.
- 4.23 REASON 2: ACCESS AND SUSTAINABILITY
- 2 *The proposal would create an isolated residential development at a site that is located in an unsustainable location, distant from community services, essential support facilities and a choice of transport modes. As such the proposal would represent an unsustainable form of development in an unsustainable location, contrary to policies CSSP1, CSSP4 and PMD2 of the adopted Core Strategy and Policies for the Management of Development (2015) and Chapter 2 of the NPPF*
- 4.24 Further discussions have been undertaken and information has been provided however, as highlighted above, the Council's Highways Officer has still highlighted concerns regarding the accessibility of the site and the practicality and safety of mitigation works proposed within the draft Unilateral Undertaking. The information provided is not considered sufficient to demonstrate that the site location could be considered sustainable and reason for refusal 2 has not be satisfactorily addressed.
- 4.25 REASON 3: HERITAGE IMPACTS
- 3 *The development, would, by reason of its siting, and scale in close proximity to designated heritage assets, be harmful to the setting of these assets. This harm would not be outweighed by the limited benefit of the scheme in terms of the provision of an additional residential unit. As a result the proposal would be contrary to policies PMD4 and CSTP24 of the Core Strategy 2015 and paragraphs 193 and 197 of the NPPF*
- 4.26 The printed draft minutes show that Members considered that the Heritage Officer's 'less than substantial weight' assessment and that the site was secluded was enough

to address Officer's third reason for refusal that was the impact to a listed building.

- 4.27 When assessed against the criteria of the NPPF paragraph 196 states '*where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use*'.
- 4.28 No updated information has been provided, therefore the only factor which can be considered a public benefit remains the ability to positively contribute towards housing land supply, however given that no affordable housing is proposed this weighting would be limited.
- 4.29 The NPPF makes no reference to the visibility of the heritage asset in question, as such it is not considered that Members' arguments would be sufficient justification or that the benefits of the scheme would not outweigh the 'less than substantial harm' impact upon the two designated heritage assets. As a result the proposal would be contrary to policies PMD4 and CSTP24 of the Core Strategy 2015 and paragraphs 193 and 197 of the National Planning Policy Framework 2019.

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.

- 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 case 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.

- 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 November officer report advises 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 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 4 reasons for approving the application contrary to recommendation provided by the Committee. These reasons to a large degree are considered to be generic, easily replicated and not necessarily site specific. It is not considered that these reasons clearly outweigh the identified harm to the Green Belt, and other harm. Therefore the reasons for refusal have not been addressed sufficiently for the development to be considered acceptable and the reasons for refusal remain relevant.

7.0 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 Local Development Framework 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 Thurrock Local Development Framework 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 to purposes c) and e) of the Green Belt, as set out by paragraph 134 of the NPPF. It is considered that 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 proposals are therefore contrary to Part 13 of the NPPF and Policies CSSP4 and PMD6 of the adopted Thurrock Local Development Framework Core Strategy and Policies for the Management of Development (2015).

2. The proposal would create an isolated residential development at a site that is located in an unsustainable location, distant from community services, essential support facilities and a choice of transport modes. As such the proposal would represent an unsustainable form of development in an unsustainable location, contrary to policies CSSP1, CSSP4 and PMD2 of the adopted Core Strategy and Policies for the Management of Development (2015) and Chapter 2 of the NPPF
3. The development, would, by reason of its siting, and scale in close proximity to designated heritage assets, be harmful to the setting of these assets. This harm would not be outweighed by the limited benefit of the scheme in terms of the provision of an additional residential unit. As a result the proposal would be contrary to policies PMD4 and CSTP24 of the Core Strategy 2015 and paragraphs 193 and 197 of the NPPF.

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>

