

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

## Planning Committee

The meeting will be held at **6.00 pm** on **22 October 2020**

**Due to government guidance on social-distancing and COVID-19 virus the Planning Committee on 22 October 2020 will not be open for members of the public to attend. Arrangements have been made for the press and public to watch the meeting live via the Council's online webcast channel at [www.thurrock.gov.uk/webcast](http://www.thurrock.gov.uk/webcast)**

### Membership:

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

Steve Taylor, Campaign to Protect Rural England Representative

### Substitutes:

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

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### Agenda

Open to Public and Press

	Page
<b>1 Apologies for Absence</b>	
<b>2 Minutes</b>	<b>5 - 8</b>
To approve as a correct record the minutes of the Planning Committee meeting held on 17 September 2020.	
<b>3 Item of Urgent Business</b>	
To receive additional items that the Chair is of the opinion should be	

considered as a matter of urgency, in accordance with Section 100B (4) (b) of the Local Government Act 1972.

- |           |   |                  |
|-----------|---|------------------|
| <b>4</b>  | <b>Declaration of Interests</b>   |                  |
| <b>5</b>  | <b>Declarations of receipt of correspondence and/or any meetings/discussions held relevant to determination of any planning application or enforcement action to be resolved at this meeting</b>  |                  |
| <b>6</b>  | <b>Planning Appeals</b>   | <b>9 - 12</b>    |
| <b>7</b>  | <b>Public Address to Planning Committee</b>   |                  |
|           | The Planning Committee may allow objectors and applicants/planning agents, and also owners of premises subject to enforcement action, or their agents to address the Committee. The rules for the conduct for addressing the Committee can be found on Thurrock Council's website at <a href="https://www.thurrock.gov.uk/democracy/constitution">https://www.thurrock.gov.uk/democracy/constitution</a> Chapter 5, Part 3 (c). |                  |
| <b>8</b>  | <b>19/01058/OUT Land part of Little Thurrock Marshes, Thurrock Park Way, Tilbury (deferred)</b>   | <b>13 - 96</b>   |
| <b>9</b>  | <b>20/00983/ELEC Tilbury Green Power, Tilbury Freeport, Tilbury, RM18 7NU</b>   | <b>97 - 120</b>  |
| <b>10</b> | <b>20/01065/FUL Treetops School, Buxton Road, Grays, Essex, RM16 2WU</b>  | <b>121 - 146</b> |
| <b>11</b> | <b>20/01051/FUL 40 High Road, Fobbing, Essex, SS17 9HN</b>  | <b>147 - 166</b> |
| <b>12</b> | <b>20/01053/FUL 63 Wharf Road, Stanford Le Hope, Essex, SS17 0DZ</b>  | <b>167 - 178</b> |
| <b>13</b> | <b>20/00905/FUL Land Part of St Cleres Hall Adjacent to James Court, Stanford Road, Stanford Le Hope, Essex</b>   | <b>179 - 198</b> |

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

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

Agenda published on: **14 October 2020**

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

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

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Members of the Council should ensure that their device is sufficiently charged, although a limited number of charging points will be available in Members Services.

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- Access the modern.gov app
- Enter your username and password

# DECLARING INTERESTS FLOWCHART – QUESTIONS TO ASK YOURSELF

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

## Helpful Reminders for Members

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

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

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



Does the business to be transacted at the meeting

- relate to; or
- likely to affect

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

Disclosable Pecuniary Interests shall include your interests or those of:

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

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

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

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

## **Pecuniary**

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

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

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

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

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

## **Non- pecuniary**

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



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

## Our Vision and Priorities for Thurrock

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

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

## Minutes of the Meeting of the Planning Committee held on 17 September 2020 at 6.00 pm

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

**Apologies:** Steve Taylor, Campaign to Protect Rural England Representative

**In attendance:** Leigh Nicholson, Interim Assistant Director of Planning, Transport and Public Protection  
Jonathan Keen, Interim Strategic Lead of Development Services  
Tom Scriven, Principal Planner  
Linda Saunders, Locum Solicitor  
Jenny Shade, Senior Democratic Services Officer  
Wendy Le, Democratic Services Officer

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Before the start of the meeting, all present were advised that the meeting was being live streamed and recorded, with the video recording to be made available on the Council's Youtube channel.

### **41. Minutes**

The minutes of the Planning Committee held on 13 August 2020, were approved as a true and correct record.

### **42. Item of Urgent Business**

There were no items of urgent business.

### **43. Declaration of Interests**

There were no declarations of interest.

### **44. Declarations of receipt of correspondence and/or any meetings/discussions held relevant to determination of any planning application or enforcement action to be resolved at this meeting**

The Chair declared on behalf of the Committee that correspondence had been received from another Councillor for 20/00342/FUL. However, this item had been withdrawn from the Agenda at the request of the Applicant and deferred to a later Committee date.

**45. Planning Appeals**

Regarding the recently approved 19/01662/FUL, Cllr Rice questioned when the section 106 agreements would be agreed following on from the Secretary of State's approval. Leigh Nicholson answered that the service was working together and quickly to get the section 106 agreements agreed.

**RESOLVED:**

**That Committee noted the report.**

**46. 20/00342/FUL Land Adjacent 43 and to rear of 45 to 47 River View, Chadwell St Mary, Essex**

Withdrawn at the Applicant's request.

**47. 20/00743/TBC Star Furniture, 10 Defoe Parade, Chadwell St Mary, Essex, RM16 4QR**

The report, which can be found on pages 35 – 40 of the Agenda, was presented by Tom Scriven.

Councillor Lawrence questioned if the colour of the shutters would be the same on all Council owned units. Tom Scriven answered that the colour of the shutters was not a decision for the Planning department and therefore he was unable to advise on plans for other Council owned units. However, the colour was considered to be acceptable in this location.

Councillor Rice proposed the Officer's recommendation which was seconded by the Vice-Chair.

*(Following Constitutional procedures, Chapter 5, Part 3, 13.5, Councillor Churchman was unable to participate or vote on this item as he was unable to hear the Officer's presentation due to technical issues.)*

**FOR: (8)** Councillors Tom Kelly, Mike Fletcher, Gary Byrne, Angela Lawrence, David Potter, Gerard Rice, Sue Sammons and Sue Shinnick.

**AGAINST: (0)**

**ABSTAINED: (0)**

20/00743/TBC was approved subject to conditions.

**48. 20/00849/TBC Gooderham House George Tilbury House and Poole House, Godman Road, Chadwell St Mary, Essex**

The report, which can be found on pages 41 – 48, was presented by Tom Scriven. There was one update since the publication of the report which related to condition 2 on page 46 of the Agenda and that was to include the



table with the complete list of plans on pages 41 and 42 of the Agenda as part of condition 2.

Referring to the Grenfell incident in North Kensington in 2017, the Vice-chair commented that one of the issues had been that the windows and cladding had not been fitted together well. He sought clarification on whether the fitting for the work to be undertaken for the windows and cladding would be managed at the same time to ensure the correct fitting. He also asked if the windows project and cladding project were separate projects or if it would be managed in tandem. Tom Scriven answered that before any work could be undertaken, it had to comply with building regulations. He went on to say that the service was working with Essex Fire Safety to ensure that the materials were appropriate and safe. Adding on, Leigh Nicholson explained that the windows project and cladding project would be managed in tandem which was part of the works refurbishment on some of Thurrock's tower blocks which had been heard at Planning Committee on 13 August 2020.

Councillor Rice welcomed the application and hoped it would be completed before the winter season.

Councillor Rice proposed the Officer's recommendation which was seconded by Councillor Shinnick.

**FOR: (9)** Councillors Tom Kelly, Mike Fletcher, Gary Byrne, Colin Churchman, Angela Lawrence, David Potter, Gerard Rice, Sue Sammons and Sue Shinnick.

**AGAINST: (0)**

**ABSTAINED: (0)**

**The meeting finished at 6.22 pm**

Approved as a true and correct record

**CHAIR**

**DATE**

Any queries regarding these Minutes, please contact  
Democratic Services at [Direct.Democracy@thurrock.gov.uk](mailto:Direct.Democracy@thurrock.gov.uk)

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<b>22 October 2020</b>	<b>ITEM: 6</b>
<b>Planning Committee</b>	
<b>Planning Appeals</b>	
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> Not Applicable
<b>Report of:</b> Jonathan Keen, Interim Strategic Lead - Development Services	
<b>Accountable Assistant Director:</b> Leigh Nicholson, Interim Assistant Director – Planning, Transportation and Public Protection.	
<b>Accountable Director:</b> Andy Millard, Director – Place	

## Executive Summary

This report provides Members with information with regard to planning appeal performance.

### 1.0 Recommendation(s)

1.1 To note the report.

### 2.0 Introduction and Background

2.1 This report advises the Committee of the number of appeals that have been lodged and the number of decisions that have been received in respect of planning appeals, together with dates of forthcoming inquiries and hearings.

### 3.0 Appeals Lodged:

3.1 **Application No:** 20/00345/HHA

Location: The Willows, Kirkham Road, Horndon On The Hill

Proposal: Single storey rear extension

3.2 **Application No:** 20/00355/HHA

- Location: 230 Lodge Lane, Grays  
Proposal: Single storey rear extension with two roof lights, first floor side extension and garage conversion
- 3.3 Application No: 20/00266/CV**  
Location: Blossom Barn, Peartree Lane, Bulphan  
Proposal: Application for the removal of conditions no 6 (Enclosure) and 7 (Extensions) of planning permission ref 14/01351/FUL (Proposed conversion of existing barn to single dwelling house.)
- 3.4 Application No: 19/01296/FUL**  
Location: Curtis Farm, High Road, Fobbing  
Proposal: Erection of new agricultural building
- 3.5 Application No: 20/00504/FUL**  
Location: Jemaine, 3 Branksome Avenue, Stanford Le Hope  
Proposal: Demolition of existing single dwelling and construction of two semi-detached new build properties each with separate summerhouse outbuildings, integral garages and parking provision
- 3.6 Application No: 19/01606/FUL**  
Location: Winfield Heights, Old Hill Avenue, Langdon Hills  
Proposal: Demolition of Existing Scout Hut, and Outbuildings and Erection of Bungalow with Associated Grasscrete Driveway
- 3.7 Application No: 20/00499/HHA**  
Location: 1 Clover Court, Grays

Proposal: Single storey side and rear extension

**3.8 Application No: 20/00168/HHA**

Location: 26 Whitmore Avenue, Stifford Clays

Proposal: Single storey front extension

**4.0 Appeals Decisions:**

No appeal decisions have been received.

**5.0 APPEAL PERFORMANCE:**

5.1 The following table shows appeal performance in relation to decisions on planning applications and enforcement appeals.

	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	
Total No of Appeals	5	4	5	4	7	0							25
No Allowed	1	0	2	2	0	0							5
% Allowed	20.00%	0.00%	40.00%	50.00%	0%	0%							20.00%

**6.0 Consultation (including overview and scrutiny, if applicable)**

6.1 N/A

**7.0 Impact on corporate policies, priorities, performance and community impact**

7.1 This report is for information only.

**8.0 Implications**

**8.1 Financial**

Implications verified by: **Laura Last**  
**Management Accountant**

There are no direct financial implications to this report.

## 8.2 Legal

Implications verified by: **Tim Hallam**  
**Deputy Head of Law (Regeneration) and Deputy Monitoring Officer**

The Appeals lodged will either have to be dealt with by written representation procedure or (an informal) hearing or a local inquiry.

Most often, particularly following an inquiry, the parties involved will seek to recover from the other side their costs incurred in pursuing the appeal (known as 'an order as to costs' or 'award of costs').

## 8.3 Diversity and Equality

Implications verified by: **Natalie Smith**  
**Strategic Lead Community Development and Equalities**

There are no direct diversity implications to this report.

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

None.

## 9.0. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- All background documents including application forms, drawings and other supporting documentation can be viewed online: [www.thurrock.gov.uk/planning](http://www.thurrock.gov.uk/planning). The planning enforcement files are not public documents and should not be disclosed to the public.

## 10. Appendices to the report

- None

# Agenda Item 8

Planning Committee: 22 October 2020	Application Reference: 19/01058/FUL
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<b>Reference:</b> 19/01058/OUT	<b>Site:</b> Land part of Little Thurrock Marshes Thurrock Park Way Tilbury
<b>Ward:</b> Tilbury Riverside and Thurrock Park	<b>Proposal:</b> Application for outline planning permission with some matters reserved (appearance, landscaping, layout and scale): Proposed construction of up to 161 new dwellings (C3) with vehicular access from Churchill Road; construction of 7,650 sq.m (GEA) of flexible employment floorspace (Use Class B1c / B2 / B8) with vehicular access from Thurrock Park Way; provision of open space including landscaping and drainage measures; new pedestrian / cycle links; and associated parking and access.

<b>Plan Number(s):</b>		
Reference	Name	Received
110D	Master Plan / Site Plan	07.11.19
111A	Site Location Plan	10.07.19
112A	Master Plan / Site Plan	07.11.19
113	Master Plan / Site Plan: Building Parameters: Indicative Heights	10.07.19
114E	Master Plan / Site Plan	07.11.19
A232-LA04A	Landscape Strategy Plan	10.07.19
CC1442-CAM-22-00-DR-C-90-1103 Rev. P01	Flood Compensation Storage	17.09.19
CC1442-130 Rev. P3	Access Roads Layout Overall Plan	07.11.19
CC1442-131 Rev. P3	Access Roads Layout Sheet 1 of 6	07.11.19
CC1442-132 Rev. P3	Access Roads Layout Sheet 2 of 6	07.11.19
CC1442-133 Rev. P3	Access Roads Layout Sheet 3 of 6	07.11.19
CC1442-134 Rev. P3	Access Roads Layout Sheet 4 of 6	07.11.19
CC1442-135 Rev. P3	Access Roads Layout Sheet 5 of 6	07.11.19
CC1442-136 Rev. P3	Access Roads Layout Sheet 6 of 6	07.11.19
CC1442-141 Rev. P3	Access Roads Vehicle Tracking Sheet 1 of 6	07.11.19
CC1442-142 Rev. P3	Access Roads Vehicle Tracking Sheet 2 of 6	07.11.19
CC1442-143 Rev. P3	Access Roads Vehicle Tracking Sheet 3 of 6	07.11.19
CC1442-144 Rev. P3	Access Roads Vehicle Tracking Sheet 4 of 6	07.11.19
CC1442-145 Rev. P3	Access Roads Vehicle Tracking Sheet 5 of 6	07.11.19
CC1442-146 Rev. P3	Access Roads Vehicle Tracking Sheet 6 of 6	07.11.19

- Archaeological desk based assessment;
- Breeding bird survey report;
- Commercial market report;
- Design and access statement;
- Energy and sustainability statement;
- Environmental noise assessment;
- Essex recorders datasearch report;
- Flood risk assessment;
- Great Crested Newt surveys;
- Landscape and visual impact appraisal;
- Phase 1 habitat assessment;
- Planning statement;
- Reptile survey report;
- Statement of consultation;
- Travel plan;
- Water Vole survey;
- Botanical survey;
- Ecological mitigation strategy and habitat enhancement plan;
- Invertebrate surveys and assessments;
- Surface and foul drainage strategy; and
- Transport assessment

**Applicant:**  
Nordor Holdings Ltd

**Validated:**  
11 July 2019  
**Date of expiry:**  
30 November 2020 (Extension of  
time agreed)

**Recommendation:** Refuse planning permission



## 1.0 BACKGROUND

- 1.1 At the meeting of the Planning Committee held on 19<sup>th</sup> March 2020 Members considered a report assessing the above proposal. The report recommended that planning permission be refused because:

*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.*

- 1.2 A copy of the report presented to the March Committee meeting is attached.
- 1.3 At the March Committee meeting Members were minded to resolve to grant planning permission for the proposed development based upon the following reasons:
1. *the opening of Tilbury 2 port expansion would create new jobs which would attract out of Borough workers that would result in a demand in local housing that the proposal could provide for;*
  2. *there was no flooding issue and that the Environment Agency had funds for flood defence in Tilbury;*
  3. *Thurrock needed social housing;*
  4. *the applicant had worked to address previous objections and the proposals included more open space; and*
  5. *connectivity improvements within the proposals.*
- 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. A further report was presented to the Committee at its meeting on 8<sup>th</sup> June where consideration was deferred to enable a site visit to take place. Site visits were undertaken on 3<sup>rd</sup> and 13<sup>th</sup> July.
- 1.5 The report was then included on the agenda of the Planning Committee meeting of 16<sup>th</sup> July. However, the item was deferred at the applicant’s request before that meeting.
- 1.6 The application remains recommended for refusal for the reason set out in the attached report. A copy of the original report presented at the March meeting, together with the update report presented to the June meeting are attached.

## 2.0 FACTUAL UPDATES

2.1 Shortly before the meeting of 8<sup>th</sup> June, Members received a late representation from the Essex Field Club. In summary, this representation raised the following matters:

- Local Wildlife Site (LoWS) – the site was identified as a LWS in a 2016 review. There is apparent confusion within the Council as to the site’s ecological status, but it is considered that the site is a LoWS and the ‘designation’ is therefore a material planning consideration;
- Invertebrate survey – concerns are raised about the effectiveness of the applicant’s surveys, which may undervalue the site. Nevertheless, the surveys show that the site is of County-level value and the proposals would impact on invertebrates through loss of habitat. Essex Field Club remind the local authority of its duty to conserve biodiversity through the Natural Environment and Rural Communities (NERC) Act 2006;
- NPPF – reference is made to para. 175 (Habitats and Biodiversity) which states (inter-alia)-

*When determining planning applications, local planning authorities should apply the following principles:*

- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
- c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists*

2.2 Shortly after the June meeting a representation was received from Buglife, which raised the following matters:

- the site is a biodiversity asset and was considered as a LoWS in the 2016 review. The site should be treated as a LoWS and this matter is a material consideration;
- the site is of importance for invertebrates and the proposed mitigation is considered to be insufficient. Furthermore the applicant’s surveys fail to correctly assess impacts;
- although the site may look overgrown, it contains a variety of habitats which are of interest and importance for invertebrates.

- 2.3 These two late representations were not reported to the June meeting and are therefore summarised for the benefit of the Committee in reaching a decision based on all representations received. The applicant's ecological consultant provided a response to these two late representations in June.
- 2.4 In response to all of these representations, the following comments have been offered by the Council's landscape and ecology advisor:
- the site was identified as a potential LoWS in 2017;
  - the applicant's Ecology Report (June 2019) identifies that the site has been proposed as a LoWS;
  - the LoWS designation is non-statutory, but is a material planning consideration;
  - the applicant's Ecology Report identifies remnant coastal grazing marsh, open mosaic habitat on previously developed land, reedbed and semi-natural woodland within or adjacent to the site. These are all habitats of principal importance included in the England Biodiversity List published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 (NERC Act). These are also a material planning consideration in and should be used to guide decision-makers in implementing their duty under section 40 of the NERC Act to have regard to the conservation of biodiversity when carrying out their normal functions;
  - detailed invertebrate surveys have been undertaken which conclude that the site is of at least County level value as it supports an assemblage of species of conservation concern. It is recognised that not all species that could be present on site will be recorded, however there have been several previous invertebrate surveys relating to previous proposed development relating to this site and the overall assessments remain consistent;
  - the site also contains water vole and reptiles which are protected under the Wildlife and Countryside Act. There is a legal duty to ensure that animals are not killed or injured as a result of the development. It is likely that the majority of these animals will require removal to an off-site location;
  - the applicant's Ecology Report and Ecological Mitigation Strategy (EMS) recognise that the development will significantly reduce the extent of the Habitats of Principal Importance within the site. Retained habitat areas require protection and enhancement and the EMS recognises that off-site compensation may be required for water voles and reptiles;
  - approximately one-third of the site will be retained and used for ecological mitigation. The applicant's Design and Access Statement proposes public

access to this area. Recreational uses can result in adverse effects on ecological interest due to disturbance and compromises in management;

- the EMS details measures to retain existing habitat features where possible and to create and enhance habitat within the eastern part of the site. While it is possible to create certain habitat features, grazing marsh is dependent on its location, geology and hydrology. The scheme would result in a permanent loss of this habitat feature;
- the site currently contains components of habitats of principal importance which will be lost permanently as a result of the proposed development. This is a material consideration that should be addressed. It is considered that off-site compensation as proposed in the EMS would be required to ensure that adequate mitigation is provided. What is required would be determined in part by the extent and nature of the proposed public access to the eastern area.

2.5 The ecological interest of the site, as recognised by its potential to be designated as a LoWS, together with the habitats and protected species present on-site are material planning considerations. Paragraph no. 170 of the NPPF requires that planning decisions contribute to and enhance the natural and local environment by (inter-alia) minimising impacts on and providing net gains for biodiversity. Paragraph no. 175 goes on to state that when determining planning applications, local planning authorities should apply a number of principles, including:

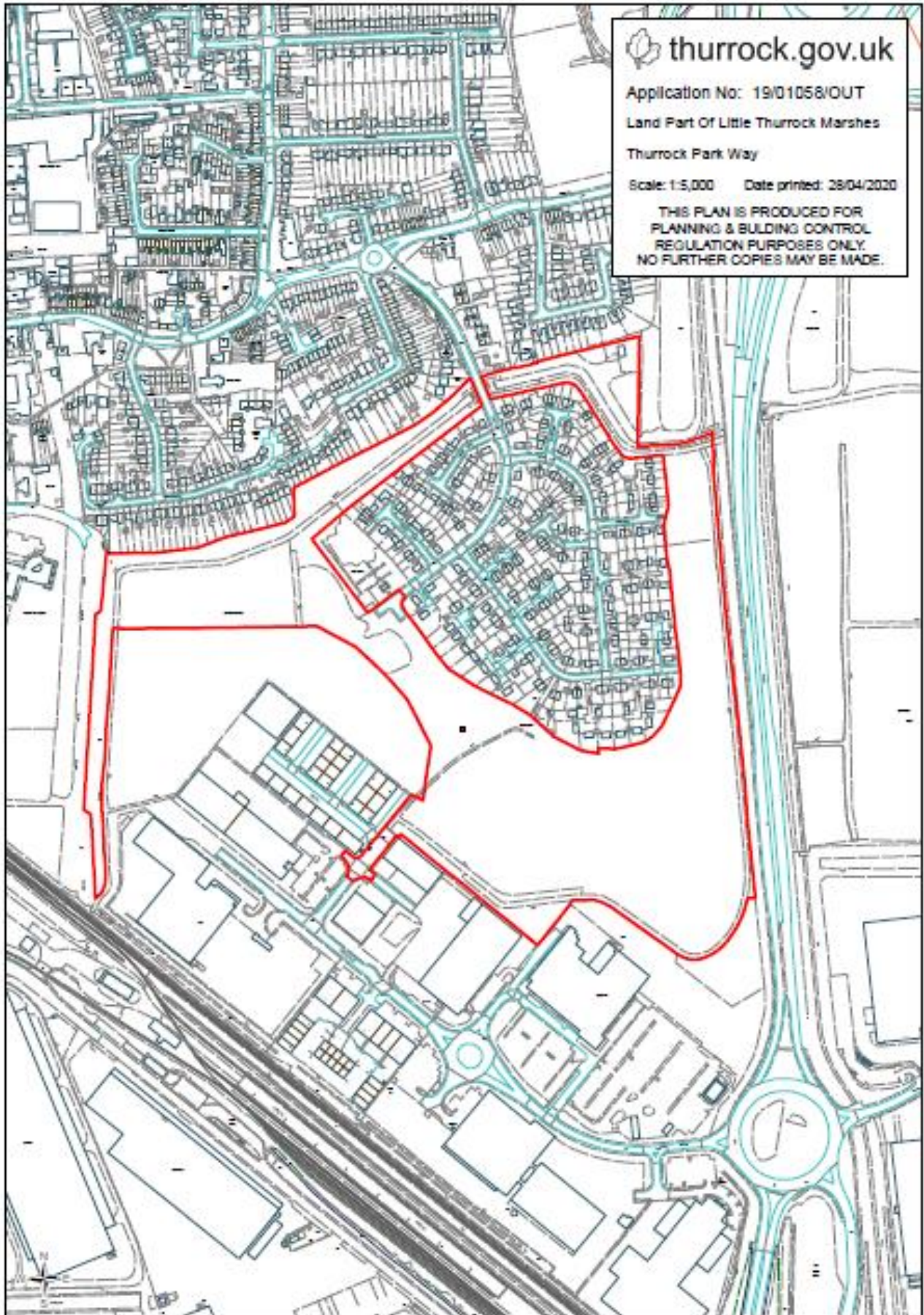
- (a) if significant harm to biodiversity resulting from development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

2.6 In this case a mitigation strategy is required and the applicant has submitted an EMS. Although there is some uncertainty as to the balance between ecological mitigation and on-site recreational provision, it is considered that planning conditions and / or obligations could address this matter

2.7 Nevertheless, the Green Belt issues identified in the previous reports remain of paramount importance in the consideration of this case.

**Documents:**

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



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Planning Committee: 8 June 2020 (Updated Report)	Application Reference: 19/01058/FUL
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<b>Reference:</b> 19/01058/OUT	<b>Site:</b> Land part of Little Thurrock Marshes Thurrock Park Way Tilbury
<b>Ward:</b> Tilbury Riverside and Thurrock Park	<b>Proposal:</b> Application for outline planning permission with some matters reserved (appearance, landscaping, layout and scale): Proposed construction of up to 161 new dwellings (C3) with vehicular access from Churchill Road; construction of 7,650 sq.m (GEA) of flexible employment floorspace (Use Class B1c / B2 / B8) with vehicular access from Thurrock Park Way; provision of open space including landscaping and drainage measures; new pedestrian / cycle links; and associated parking and access.

Plan Number(s):		
Reference	Name	Received
110D	Master Plan / Site Plan	07.11.19
111A	Site Location Plan	10.07.19
112A	Master Plan / Site Plan	07.11.19
113	Master Plan / Site Plan: Building Parameters: Indicative Heights	10.07.19
114E	Master Plan / Site Plan	07.11.19
A232-LA04A	Landscape Strategy Plan	10.07.19
CC1442-CAM-22-00- DRC-90-1103 Rev. P01	Flood Compensation Storage	17.09.19
CC1442-130 Rev. P3	Access Roads Layout Overall Plan	07.11.19
CC1442-131 Rev. P3	Access Roads Layout Sheet 1 of 6	07.11.19
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CC1442-136 Rev. P3	Access Roads Layout Sheet 6 of 6	07.11.19
CC1442-141 Rev. P3	Access Roads Vehicle Tracking Sheet 1 of 6	07.11.19
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CC1442-143 Rev. P3	Access Roads Vehicle Tracking Sheet 3 of 6	07.11.19
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CC1442-146 Rev. P3

Access Roads Vehicle Tracking Sheet 6 of 6

07.11.19

- Archaeological desk based assessment;
- Breeding bird survey report;
- Commercial market report;
- Design and access statement;
- Energy and sustainability statement;
- Environmental noise assessment;
- Essex recorders datasearch report;
- Flood risk assessment;
- Great Crested Newt surveys;
- Landscape and visual impact appraisal;
- Phase 1 habitat assessment;
- Planning statement;
- Reptile survey report;
- Statement of consultation;
- Travel plan;
- Water Vole survey;
- Botanical survey;
- Ecological mitigation strategy and habitat enhancement plan;
- Invertebrate surveys and assessments;
- Surface and foul drainage strategy; and
- Transport assessment



Planning Committee: 8 June 2020 (Updated Report)	Application Reference: 19/01058/FUL
<b>Applicant:</b> Nordor Holdings Ltd	<b>Validated:</b> 11 July 2019 <b>Date of expiry:</b> 30 April 2020 (Extension of time agreed)
<b>Recommendation:</b> Refuse planning permission	

## 1.0 BACKGROUND

- 1.1 At the meeting of the Planning Committee held on 19 March 2020 Members considered a report assessing the above proposal. The report recommended that planning permission be refused because:

*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.*

- 1.2 A copy of the report presented to the March Committee meeting is attached.
- 1.3 At the March Committee meeting Members were minded to resolve to grant planning permission for the proposed development based upon the following reasons:
1. *the opening of Tilbury 2 port expansion would create new jobs which would attract out of Borough workers that would result in a demand in local housing that the proposal could provide for;*
  2. *there was no flooding issue and that the Environment Agency had funds for flood defence in Tilbury;*
  3. *Thurrock needed social housing;*
  4. *the applicant had worked to address previous objections and the proposals included more open space; and*
  5. *connectivity improvements within the proposals.*
- 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 Since the March Committee meeting the applicant has confirmed that the scheme will provide policy compliant (35%) affordable housing and that the proposals will also comply with the unit mix in terms of affordable rent / social rent as required by the Council's Housing Officer. In addition, the applicant has confirmed that the financial contributions sought by the Council's Education Officer (£1,228,646.43) and by NHS England (£63,549) in order to mitigate the impacts of the proposed development are acceptable. The amount of financial contributions required to mitigate the impact of the development on the surrounding highways network have yet to be finalised. However, 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 additional representations have been received as follows:

- Confirmation of objection from Councillor Okunade (Ward Councillor);
- Two letters objecting to the proposals and raising concerns regarding loss of GB, flood risk, harm to ecology, ground conditions, access and traffic generation; and
- Three letters expressing disappointment at the resolution of the Planning Committee to grant planning permission, contrary to recommendation and the recent appeal decision.

## 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 March 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

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 a), b) and c) 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).*

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

As noted in the report to the March 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 for 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.

4.4 As expressed in National Planning Practice Guidance (NPPG) the purpose of the Direction is to give the SOS an opportunity to consider using the power to call-in an application under section 77 of the Town and Country Planning Act 1990. If a

planning application is called-in, the decision on whether or not to grant planning permission will be taken by the SOS, usually after a public inquiry, rather than the LPA. NPPG goes on to state that in considering whether to call-in a planning application, the SOS is generally concerned with whether the application involves planning issues of more than local importance that warrant the decision being made by him rather than the LPA. However each case will be considered on its merits. The call-in policy was updated on 26 October 2012 in a written ministerial statement. This Statement, inter-alia, notes that:

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

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

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

4.5 Officers consider that the proposals **potentially** conflict with national policies on important matters (i.e. GB). Furthermore, as 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 proposal, it is considered that there is **perhaps** a higher likelihood of the proposal being called-in by the Secretary of State. Members are also reminded that the planning merits of the earlier application were considered at a public inquiry, with the evidence of the applicant and LPA tested via the cross examination of witnesses.

4.6 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 ...”*

4.7 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.

4.8 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.”*

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

s70 (2) Town and Country Planning Act 1990 -

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

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

S38 (6) Planning and Compulsory Purchase Act 2004 -

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

4.10 Although each planning application must be judged on its individual merits, it is 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.

4.11 Assessment of the Committee’s reasons for being minded to grant permission

The following list of reasons were raised by Members as reasons to approve the application and these are considered in more detail below to assess whether these

comprise the VSC necessary for approving inappropriate development in the GB. The reasons are:

1. *the opening of Tilbury 2 port expansion would create new jobs which would attract out of Borough workers that would result in a demand in local housing that the proposal could provide for;*
2. *there is no flooding issue and that the Environment Agency has funds for flood defence in Tilbury;*
3. *Thurrock needs social housing;*
4. *the applicant has worked to address previous objections and the proposals included more open space; and*
5. *connectivity improvements within the proposals.*

4.12 *Reason 1: The opening of Tilbury 2 port expansion would create new jobs which would attract out of Borough workers that would result in a demand in local housing that the proposal could provide for.*

#### Assessment

The Tilbury2 expansion, promoted by the Port of Tilbury London Limited, was subject to an application for a Development Consent Order (DCO) to the SOS, as the proposals comprised a 'Nationally Significant Infrastructure Project'. The DCO was granted by the SOS in February 2019 and construction works commenced in April 2019. It is understood that the port expansion was expected to be partly operational in April 2020 and fully operational later in 2020. In summary, the DCO permits development comprising:

- the construction of a new roll-on / roll-off port (Ro-Ro) terminal for containers and trailers;
- the construction of a new Construction Materials and Aggregates Terminal (CMAT);
- a new jetty and extension to existing jetty; and
- the formation of a new rail and road corridor to link to the Ro-Ro and CMAT

4.13 The 'Outline Business Case' put forward by the Port of Tilbury to support their application, and considered by the SOS refers to the following employment figures (based on full-time equivalents (FTE)):

Existing Port of Tilbury (Tilbury1) jobs c.8,600 (year 2017)  
 Tilbury1 jobs at full capacity on existing site c.10,800  
 Tilbury2 short-term construction phase jobs c.270 (maximum)  
 Tilbury2 operational phase jobs c.500

- 4.14 Therefore, when fully operational the Tilbury2 port expansion is expected to generate around 500 new jobs. Although this is a large number of jobs, it is considerably less than the 4-5,000 jobs which were referred to at Planning Committee.

4.15 Prior to the decision to approve the DCO, Officers negotiated a s106 agreement with the Port of Tilbury which includes obligations on the Port to operate a Skills & Employment Strategy, aimed partly at maximising local employment opportunities. The agreed Strategy includes a breakdown of the home addresses of the c.650 employees directly employed by the Port in 2017 which records that 57% of these direct employees lived within the Borough. If this percentage is applied to the c.500 jobs created by Tilbury2 then c.285 new employees could be expected to live within the Borough. The Strategy does not contain any further breakdown for existing employees residing within Tilbury. However, the Strategy also records that the employment rate (57.7%) within Tilbury in 2016 was below the Thurrock (65.9%) and national (62.1%) rates. The corollary of the employment rates above is that rates of unemployment in Tilbury are higher than the Borough-wide and national rates. The Strategy therefore aims to maximise opportunities for existing residents of Tilbury who are unemployed to access the new jobs created at Tilbury2.

- 4.16 The conclusion of the above analysis is that of the c.500 new jobs created by Tilbury2 c.285 could be filled by residents of the Borough. Furthermore the Tilbury2 Skills & Employment Strategy recognises and aims to address the higher rates of unemployment amongst existing residents of Tilbury. Consequently it is considered that there is no convincing link between job creation at Tilbury2 and the need for new housing in Tilbury which would clearly outweigh the harm to the Green Belt.
- 4.17 Paragraphs 7.61 to 7.63 of the report to the March Committee considered the economic benefits of the proposals with reference to the proposed commercial floorspace on-site. In combination with any potential links between the proposed residential development Tilbury2, it is still concluded that only limited positive weight should be given to this factor.
- 4.18 *Reason 2: There is no flooding issue and that the Environment Agency has funds for flood defence in Tilbury*

#### Assessment

The flood risk implications of the development are considered at paragraphs 7.82 to 7.88 of the March Committee report. Subject to planning conditions, there are no objections to the application from the Environment Agency and the Council's Flood Risk Manager. However, the lack of objection from these consultees should not be attributed positive weight in the balance of GB considerations. As with any planning application where flood risk is a material planning consideration, the need to ensure that the development is safe from the risk of flooding and does not increase flood risk elsewhere are necessary requirements of planning policies.

4.19 The applicant considers that flood alleviation measures within the proposals should be considered as a benefit and paragraph 7.64 of the report to the March Committee notes that additional flood storage capacity of c.1,000 cu.m would be provided above the requirements of the development. Limited positive weight in the balance of GB considerations can therefore be attributed to this factor.

4.20 At the March meeting reference was made to works to be undertaken by the Environment Agency (EA) to flood defences at Tilbury. The Local Planning Authority was approached by the EA in October 2019 to confirm whether the proposed replacement of the 3 sets of lock gates and associated machine houses located at the main lock entrance to the port required planning permission. These lock gates are separate from the EA flood defence gate located on the River Thames side of the lock gates, but nevertheless the lock gates are of critical importance to the operations of the Port of Tilbury. The Local Planning Authority subsequently confirmed that replacement of the lock gates and machine houses would be permitted development and would not require planning permission. It is important note that this investment by the EA is for replacement of existing infrastructure and does not comprise new flood defence works. This factor is therefore considered to be immaterial to the consideration of the current planning application.

4.21 *Reason 3: Thurrock needs social housing*

#### Assessment

The provision of new market and affordable housing was cited by the applicant as a factor contributing towards VSC and the consideration of this issue is dealt with at paragraphs 7.34 to 7.41 of the March Committee report. The report concluded that, in line with the Planning Inspector's report, very significant weight should be attached to the matter of both market and affordable housing. Nevertheless, this factor will need to combine with other benefits of the scheme to comprise VSC.



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4.22 It is notable that the appeal proposal (total up to 280 dwellings) would have delivered up to 98 affordable dwellings, whereas the current proposal (total up to 161 dwellings) would only deliver up to 56 affordable dwellings. Although this factor still attracts very significant weight, compared to the previous scheme dismissed at appeal the total of affordable housing is actually reduced.

4.23 *4. The applicant has worked to address previous objections and the proposals included more open space*

#### Assessment

The report presented to the Committee in March provides a comparison of the appeal scheme and the current proposal with reference to impact on the openness of the GB and its purposes. The previous report makes clear that the current scheme involves less development and would retain more open land located on the eastern and south-eastern part of the site. Nevertheless, harm by way of inappropriate development, harm to openness and harm to a number of the purposes of the GB would occur. In accordance with paragraph 144 of the NPPF, this harm must be afforded “substantial weight”. The in-principle GB objections to the proposals remain, despite the reduction in the extent of harm.

4.24 *5. Connectivity improvements within the proposals*

#### Assessment

This factor is promoted by the applicant as a benefit of the proposals and is considered at paragraphs 7.42 to 7.49 of the March Committee report. Connectivity improvements were considered by the Planning Inspector and were considered to be a benefit of moderate / significant weight. Nevertheless, this benefit in combination with the other benefits of the proposals did not clearly outweigh the harm to the GB and thereby comprise the VSC necessary to justify a departure from planning policies.

4.25 Consequently this issue has been fully considered and would not comprise a reason to grant planning permission in this case.

4.26 Summary

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

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

- 4.27 Members are also reminded of the content of paragraph 7.70 of the March Committee report which referred to a very recent appeal case in the West Midlands GB. The Inspector for that appeal addressed the Green Belt balancing exercise and concluded:

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

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

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- 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 case<sup>1</sup> clarifies the meaning of the term ‘clearly’ in paragraph 144 NPPF to mean ‘not just marginally, but decisively’.

Accordingly, very special circumstances will not exist unless the benefits are shown to outweigh the harm clearly and decisively.

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

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 The benefits of this proposal have been evaluated in this report and the March report. Account has been taken of changes to the scheme and further information provided by the applicant as well as each of the reasons given by Members in support of a motion to grant planning permission in March. All the benefits have been weighed and put on the planning scales to ascertain whether they outweigh the harm to the Green Belt by reason of appropriateness and any other harm resulting from the proposal.

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

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- 5.15 NPPF paragraph 144 expressly requires harm to the Green Belt to be given substantial weight. The summary in the March officer report showed that in itself, the harm to the Green Belt clearly outweighs the benefits in this case, and planning permission should be refused.
- 5.16 With regard to 5-year housing supply, this factor has already been taken into account in the report and would not provide an extra consideration to add weight to benefits. It is pertinent for Members to note that, although the Council does not have a 5-year housing land supply, this does not of itself override the policy presumption against the grant of permission for inappropriate development in the Green Belt. In particular, paragraph 11 of the NPPF specifically indicates that a shortfall in the 5-year housing land does not engage the “tilted balance” if the site is in the Green Belt and the development is inappropriate, as in this case. In any event, this consideration has already been given significant weight.  
Summary of Legal Advice
- 5.17 From a legal (as well as a planning perspective): In addition to being contrary to the development plan, the application also proposes inappropriate development in the Green Belt. The outcome of the planning balance of all the benefits and all the harms weighs clearly, heavily and decisively to harm, indicating the proposals are positively harmful to the Green Belt. Accordingly, no very special circumstances exist in this case and planning permission should be refused.
- 5.18 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 degree reflect the benefits of the scheme promoted by the applicant and are also those matters which were considered by a Planning Inspector in 2018. It is not considered that these reasons clearly outweigh the identified harm to the Green Belt and therefore the reason for refusal has not been addressed sufficiently for the development to be considered acceptable. The reason for refusal therefore remains relevant.

## 7.0 RECOMMENDATION

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

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 a), b) and c) 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).

#### 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 for the refusal, approval has not been possible.

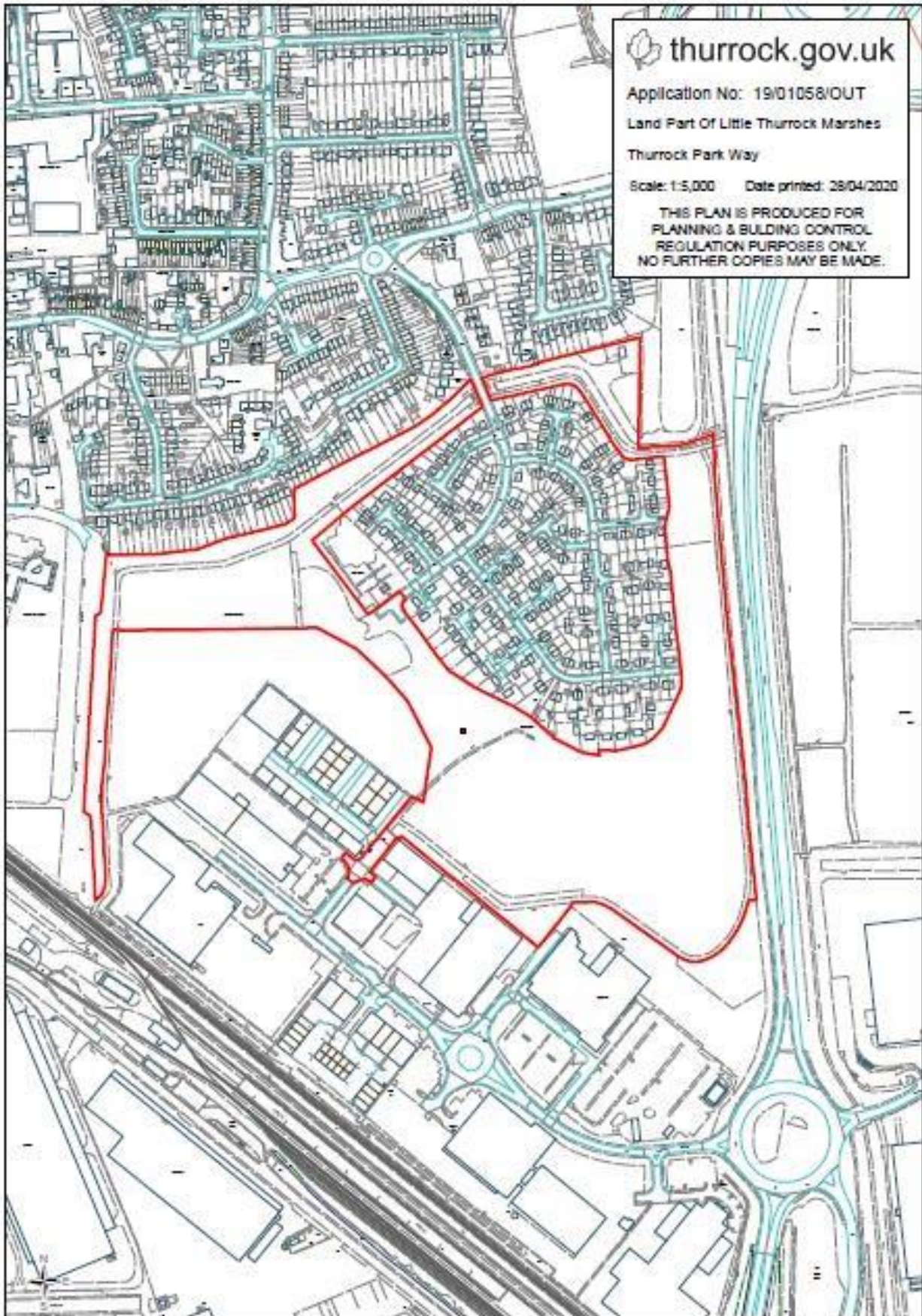
#### **Documents:**

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

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

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- Archaeological desk based assessment;
- Breeding bird survey report;
- Commercial market report;
- Design and access statement;
- Energy and sustainability statement;
- Environmental noise assessment;
- Essex recorders datasearch report;
- Flood risk assessment;
- Great Crested Newt surveys;
- Landscape and visual impact appraisal;
- Phase 1 habitat assessment;
- Planning statement;
- Reptile survey report;
- Statement of consultation;
- Travel plan;
- Water Vole survey;
- Botanical survey;
- Ecological mitigation strategy and habitat enhancement plan;
- Invertebrate surveys and assessments;
- Surface and foul drainage strategy; and
- Transport assessment

**Applicant:**  
Nordor Holdings Ltd

**Validated:**  
11 July 2019  
**Date of expiry:**  
30 April 2020 (Extension of time  
agreed)

**Recommendation:** Refuse planning permission

## 1.0 BACKGROUND

- 1.1 At the meeting of the Planning Committee held on 19 March 2020 Members considered a report assessing the above proposal. The report recommended that planning permission be refused because:

*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.*

- 1.2 A copy of the report presented to the March Committee meeting is attached.
- 1.3 At the March Committee meeting Members were minded to resolve to grant planning permission for the proposed development based upon the following reasons:
1. *the opening of Tilbury 2 port expansion would create new jobs which would attract out of Borough workers that would result in a demand in local housing that the proposal could provide for;*
  2. *there was no flooding issue and that the Environment Agency had funds for flood defence in Tilbury;*
  3. *Thurrock needed social housing;*
  4. *the applicant had worked to address previous objections and the proposals included more open space; and*
  5. *connectivity improvements within the proposals.*
- 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 Since the March Committee meeting the applicant has confirmed that the scheme will provide policy compliant (35%) affordable housing and that the proposals will also comply with the unit mix in terms of affordable rent / social rent as required by the Council’s Housing Officer. In addition, the applicant has confirmed that the financial

contributions sought by the Council's Education Officer (£1,228,646.43) and by NHS England (£63,549) in order to mitigate the impacts of the proposed development are acceptable. The amount of financial contributions required to mitigate the impact of the development on the surrounding highways network have yet to be finalised. However, 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 additional representations have been received as follows:

- Confirmation of objection from Councillor Okunade (Ward Councillor);
- Two letters objecting to the proposals and raising concerns regarding loss of GB, flood risk, harm to ecology, ground conditions, access and traffic generation; and
- Three letters expressing disappointment at the resolution of the Planning Committee to grant planning permission, contrary to recommendation and the recent appeal decision.

### 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 March 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

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 a), b) and c) 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).*

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

As noted in the report to the March 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.

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

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

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

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

4.5 Officers consider that the proposals conflict with national policies on important matters (i.e. GB). Furthermore, as 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 proposal, it is considered that there is a higher likelihood of the proposal being called-in by the Secretary of State. Members are also reminded that the planning merits of the earlier application were considered at a public inquiry, with the evidence of the applicant and LPA tested via the cross-examination of witnesses.

4.6 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 ...”*

4.7 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.

- 4.8 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.”*

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

s70 (2) Town and Country Planning Act 1990 -

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

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

S38 (6) Planning and Compulsory Purchase Act 2004 -

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

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

4.11 Assessment of the Committee’s reasons for being minded to grant permission

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

1. *the opening of Tilbury 2 port expansion would create new jobs which would attract out of Borough workers that would result in a demand in local housing that the proposal could provide for;*
2. *there is no flooding issue and that the Environment Agency has funds for flood defence in Tilbury;*
3. *Thurrock needs social housing;*

4. *the applicant has worked to address previous objections and the proposals included more open space; and*
5. *connectivity improvements within the proposals.*

4.12 *Reason 1: The opening of Tilbury 2 port expansion would create new jobs which would attract out of Borough workers that would result in a demand in local housing that the proposal could provide for.*

### Assessment

The Tilbury2 expansion, promoted by the Port of Tilbury London Limited, was subject to an application for a Development Consent Order (DCO) to the SOS, as the proposals comprised a 'Nationally Significant Infrastructure Project'. The DCO was granted by the SOS in February 2019 and construction works commenced in April 2019. It is understood that the port expansion was expected to be partly operational in April 2020 and fully operational later in 2020. In summary, the DCO permits development comprising:

- the construction of a new roll-on / roll-off port (Ro-Ro) terminal for containers and trailers;
- the construction of a new Construction Materials and Aggregates Terminal (CMAT);
- a new jetty and extension to existing jetty; and
- the formation of a new rail and road corridor to link to the Ro-Ro and CMAT

4.13 The 'Outline Business Case' put forward by the Port of Tilbury to support their application, and considered by the SOS refers to the following employment figures (based on full-time equivalents (FTE)):

Existing Port of Tilbury (Tilbury1) jobs c.8,600 (year 2017)

Tilbury1 jobs at full capacity on existing site c.10,800

Tilbury2 short-term construction phase jobs c.270 (maximum)

Tilbury2 operational phase jobs c.500

4.14 Therefore, when fully operational the Tilbury2 port expansion is expected to generate around 500 new jobs. Although this is a large number of jobs, it is considerably less than the 4-5,000 jobs which were referred to at Planning Committee.



- 4.15 Prior to the decision to approve the DCO, Officers negotiated a s106 agreement with the Port of Tilbury which includes obligations on the Port to operate a Skills & Employment Strategy, aimed partly at maximising local employment opportunities. The agreed Strategy includes a breakdown of the home addresses of the c.650 employees directly employed by the Port in 2017 which records that 57% of these direct employees lived within the Borough. If this percentage is applied to the c.500 jobs created by Tilbury2 then c.285 new employees could be expected to live within the Borough. The Strategy does not contain any further breakdown for existing employees residing within Tilbury. However, the Strategy also records that the employment rate (57.7%) within Tilbury in 2016 was below the Thurrock (65.9%) and national (62.1%) rates. The corollary of the employment rates above is that rates of unemployment in Tilbury are higher than the Borough-wide and national rates. The Strategy therefore aims to maximise opportunities for existing residents of Tilbury who are unemployed to access the new jobs created at Tilbury2.
- 4.16 The conclusion of the above analysis is that of the c.500 new jobs created by Tilbury2 c.285 could be filled by residents of the Borough. Furthermore the Tilbury2 Skills & Employment Strategy recognises and aims to address the higher rates of unemployment amongst existing residents of Tilbury. Consequently it is considered that there is no convincing link between job creation at Tilbury2 and the need for new housing in Tilbury which would clearly outweigh the harm to the Green Belt.
- 4.17 Paragraphs 7.61 to 7.63 of the report to the March Committee considered the economic benefits of the proposals with reference to the proposed commercial floorspace on-site. In combination with any potential links between the proposed residential development Tilbury2, it is still concluded that only limited positive weight should be given to this factor.
- 4.18 *Reason 2: There is no flooding issue and that the Environment Agency has funds for flood defence in Tilbury*

#### Assessment

The flood risk implications of the development are considered at paragraphs 7.82 to 7.88 of the March Committee report. Subject to planning conditions, there are no objections to the application from the Environment Agency and the Council's Flood Risk Manager. However, the lack of objection from these consultees should not be attributed positive weight in the balance of GB considerations. As with any planning application where flood risk is a material planning consideration, the need to ensure that the development is safe from the risk of flooding and does not increase flood risk elsewhere are necessary requirements of planning policies.

- 4.19 The applicant considers that flood alleviation measures within the proposals should be considered as a benefit and paragraph 7.64 of the report to the March Committee notes that additional flood storage capacity of c.1,000 cu.m would be provided above the requirements of the development. Limited positive weight in the balance of GB considerations can therefore be attributed to this factor.
- 4.20 At the March meeting reference was made to works to be undertaken by the Environment Agency (EA) to flood defences at Tilbury. The Local Planning Authority was approached by the EA in October 2019 to confirm whether the proposed replacement of the 3 sets of lock gates and associated machine houses located at the main lock entrance to the port required planning permission. These lock gates are separate from the EA flood defence gate located on the River Thames side of the lock gates, but nevertheless the lock gates are of critical importance to the operations of the Port of Tilbury. The Local Planning Authority subsequently confirmed that replacement of the lock gates and machine houses would be permitted development and would not require planning permission. It is important note that this investment by the EA is for replacement of existing infrastructure and does not comprise new flood defence works. This factor is therefore considered to be immaterial to the consideration of the current planning application.
- 4.21 *Reason 3: Thurrock needs social housing*

#### Assessment

The provision of new market and affordable housing was cited by the applicant as a factor contributing towards VSC and the consideration of this issue is dealt with at paragraphs 7.34 to 7.41 of the March Committee report. The report concluded that, in line with the Planning Inspector's report, very significant weight should be attached to the matter of both market and affordable housing. Nevertheless, this factor will need to combine with other benefits of the scheme to comprise VSC.

- 4.22 It is notable that the appeal proposal (total up to 280 dwellings) would have delivered up to 98 affordable dwellings, whereas the current proposal (total up to 161 dwellings) would only deliver up to 56 affordable dwellings. Although this factor still attracts very significant weight, compared to the previous scheme dismissed at appeal the total of affordable housing is actually reduced.
- 4.23 *4. the applicant has worked to address previous objections and the proposals included more open space*

#### Assessment

The report presented to the Committee in March provides a comparison of the appeal scheme and the current proposal with reference to impact on the openness of the GB and its purposes. The previous report makes clear that the current scheme involves less development and would retain more open land located on the eastern and south-eastern part of the site. Nevertheless, harm by way of inappropriate development, harm to openness and harm to a number of the purposes of the GB would occur. In accordance with paragraph 144 of the NPPF, this harm must be afforded “substantial weight”. The in-principle GB objections to the proposals remain, despite the reduction in the extent of harm.

#### 4.24 *5. Connectivity improvements within the proposals*

##### Assessment

This factor is promoted by the applicant as a benefit of the proposals and is considered at paragraphs 7.42 to 7.49 of the March Committee report. Connectivity improvements were considered by the Planning Inspector and were considered to be a benefit of moderate / significant weight. Nevertheless, this benefit in combination with the other benefits of the proposals did not clearly outweigh the harm to the GB and thereby comprise the VSC necessary to justify a departure from planning policies.

4.25 Consequently this issue has been fully considered and would not comprise a reason to grant planning permission in this case.

#### 4.26 Summary

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

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

4.27 Members are also of reminded of the content of paragraph 7.70 of the March Committee report which referred to a very recent appeal case in the West Midlands GB. The Inspector for that appeal addressed the Green Belt balancing exercise and concluded:

*“When drawing this together, it is my judgement that the other considerations advanced by the appellants would result in a very finely balanced decision. However, for Very Special Circumstances to exist, the other considerations would need to*

*clearly outweigh the substantial harm to the Green Belt by reason of inappropriateness, openness and purposes of the Green Belt ... In other words, for the appeal to succeed, the overall balance would have to favour the appellants' case, not just marginally, but decisively."*

- 4.28 Therefore, and although every case falls to be determined on its own merits, the benefits of the proposals must clearly or decisively outweigh the harm for VSC to exist. If the balancing exercise is finely balanced, then VSC will not exist. For this application it is considered that the benefits of the proposals do not clearly outweigh the GB harm and as a consequence VSC do not apply.
- 4.29 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 VSC 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. Duplication of a matter already taken into account in the officer reports should not be offered as a reason to reject officer conclusions unless the detailed nature and meaning of the disagreement is distilled into a precise and unequivocal material planning consideration, supported by cogent evidence, and which importantly, avoids involving a point of law. What this means in practice, is described in more detail further down.
- 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<sup>1</sup> clarifies the meaning of the term 'clearly' in paragraph 144 NPPF to mean 'not just marginally, but decisively'.

Accordingly, very special circumstances will not exist unless the benefits are shown to outweigh the harm clearly and decisively.

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

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 The benefits of this proposal have been evaluated in this report and the March report. Account has been taken of changes to the scheme and further information provided by the applicant as well as each of the reasons given by Members in support of a motion to grant planning permission in March. All the benefits have been weighed and put on the planning scales to ascertain whether they outweigh the harm to the Green Belt by reason of appropriateness and any other harm resulting from the proposal.

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

5.16 With regard to 5-year housing supply, this factor has already been taken into account in the report and would not provide an extra consideration to add weight to benefits. It is pertinent for Members to note that, although the Council does not have a 5-year housing land supply, this does not of itself override the policy presumption against

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

the grant of permission for inappropriate development in the Green Belt. In particular, paragraph 11 of the NPPF specifically indicates that a shortfall in the 5-year housing land does not engage the “tilted balance” if the site is in the Green Belt and the development is inappropriate, as in this case. In any event, this consideration has already been given significant weight.

#### Summary of Legal Advice

- 5.17 From a legal (as well as a planning perspective): In addition to being contrary to the development plan, the application also proposes inappropriate development in the Green Belt. The outcome of the planning balance of all the benefits and all the harms weighs clearly, heavily and decisively to harm, indicating the proposals are positively harmful to the Green Belt. Accordingly, no very special circumstances exist in this case and planning permission should be refused.
- 5.18 **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 degree reflect the benefits of the scheme promoted by the applicant and are also those matters which were considered by a Planning Inspector in 2018. It is not considered that these reasons clearly outweigh the identified harm to the Green Belt and therefore the reason for refusal has not been addressed sufficiently for the development to be considered acceptable. The reason for refusal therefore remains relevant.

## 7.0 RECOMMENDATION

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

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 a), b) and c) 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).

### Positive and Proactive Statement

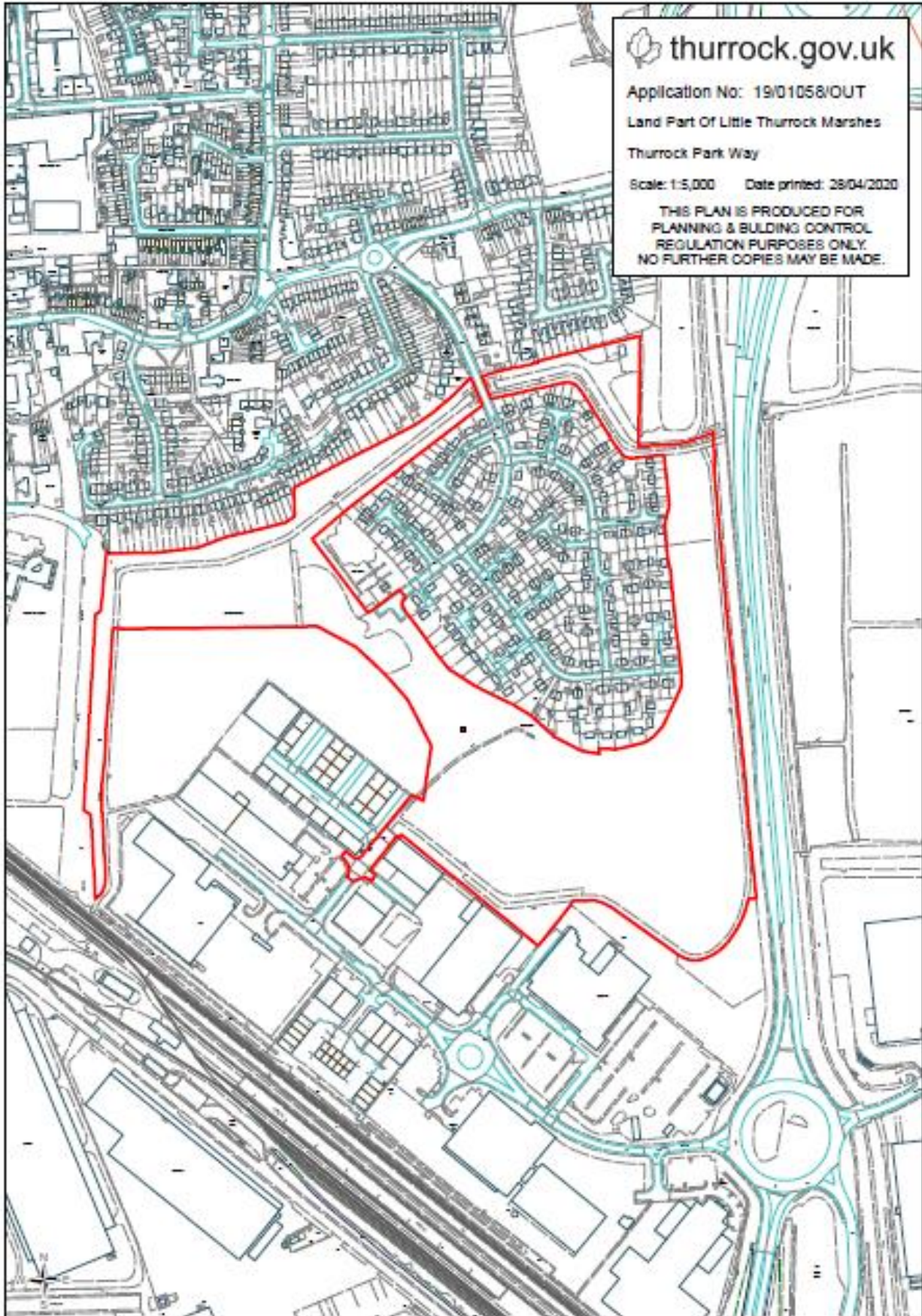
The local planning authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing with the Applicant/Agent. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory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

### **Documents:**

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







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Planning Committee 19.03.2020	Application Reference: 19/01058/OUT
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<b>Reference:</b> 19/01058/OUT	<b>Site:</b> Land part of Little Thurrock Marshes Thurrock Park Way Tilbury
<b>Ward:</b> Tilbury Riverside and Thurrock Park	<b>Proposal:</b> Application for outline planning permission with some matters reserved (appearance, landscaping, layout and scale): Proposed construction of up to 161 new dwellings (C3) with vehicular access from Churchill Road; construction of 7,650 sq.m (GEA) of flexible employment floorspace (Use Class B1c / B2 / B8) with vehicular access from Thurrock Park Way; provision of open space including landscaping and drainage measures; new pedestrian / cycle links; and associated parking and access.

<b>Plan Number(s):</b>		
<u>Reference</u>	<u>Name</u>	<u>Received</u>
110D	Master Plan / Site Plan	07.11.19
111A	Site Location Plan	10.07.19
112A	Master Plan / Site Plan	07.11.19
113	Master Plan / Site Plan: Building Parameters: Indicative Heights	10.07.19
114E	Master Plan / Site Plan	07.11.19
A232-LA04A	Landscape Strategy Plan	10.07.19
CC1442-CAM-22-00-DR- C-90-1103 Rev. P01	Flood Compensation Storage	17.09.19
CC1442-130 Rev. P3	Access Roads Layout Overall Plan	07.11.19
CC1442-131 Rev. P3	Access Roads Layout Sheet 1 of 6	07.11.19
CC1442-132 Rev. P3	Access Roads Layout Sheet 2 of 6	07.11.19
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CC1442-146 Rev. P3	Access Roads Vehicle Tracking Sheet 6 of 6	07.11.19

The application is also accompanied by:

- Archaeological desk based assessment;
- Breeding bird survey report;
- Commercial market report;

Planning Committee 19.03.2020	Application Reference: 19/01058/OUT
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<ul style="list-style-type: none"> <li>• Design and access statement;</li> <li>• Energy and sustainability statement;</li> <li>• Environmental noise assessment;</li> <li>• Essex recorders datasearch report;</li> <li>• Flood risk assessment;</li> <li>• Great Crested Newt surveys;</li> <li>• Landscape and visual impact appraisal;</li> <li>• Phase 1 habitat assessment;</li> <li>• Planning statement;</li> <li>• Reptile survey report;</li> <li>• Statement of consultation;</li> <li>• Travel plan;</li> <li>• Water Vole survey;</li> <li>• Botanical survey;</li> <li>• Ecological mitigation strategy and habitat enhancement plan;</li> <li>• Invertebrate surveys and assessments;</li> <li>• Surface and foul drainage strategy; and</li> <li>• Transport assessment.</li> </ul>	
<p><b>Applicant:</b> Nordor Holdings Ltd</p>	<p><b>Validated:</b> 11 July 2019 <b>Date of expiry:</b> 30 April 2020 (Extension of time agreed)</p>
<p><b>Recommendation:</b> Refuse planning permission</p>	

This application is scheduled for determination by the Council's Planning Committee because the application is considered to have significant policy or strategic implications, constitutes a departure from the Development Plan and is a re-submission of a scheme on a site which was previously considered by the Committee in 2017 (in accordance with Part 3 (b), Section 2 2.1 (a) of the Council's constitution).

## 1.0 BRIEF SUMMARY

Planning Committee 19.03.2020	Application Reference: 19/01058/OUT
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- 1.1 This application seeks outline planning permission for a mixed residential and commercial development of up to 161 dwellings, 7,650 sq.m of Class B1(c) / B2 / B8 (light industry / general industry / warehousing) floorspace and ancillary development. Permission is sought for details of access, with the appearance, landscaping, layout and scale of the development reserved for future approval (as reserved matters) should outline planning permission be granted. The application site was the subject of a similar proposal for mixed use development submitted in 2015 and dismissed at appeal in 2018.

## 2.0 DESCRIPTION OF PROPOSAL

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

Site Area	c.13.3 Ha
Residential Development	<p>Market Housing: 87 no. three-bed houses 18 no. four-bed houses</p> <p>TOTAL 105 units</p> <p>Affordable Housing: 12 no. one-bed flats 30 no. two-bed flats 6 no. three-bed flats 5 no. three-bed houses 3 no. four-bed houses</p> <p>TOTAL 56 units (35%)</p>
Commercial Development	7,650 sq.m floorspace (gross external area) to be used for Class B1(c) / B2 / B8 purposes

- 2.2 This is an application for outline planning permission with only the matter of access for detailed consideration at this stage. Details of the appearance, landscaping, layout and scale of the proposed development are reserved for future approval if outline planning permission were to be granted. Permission is sought for “up to 161 new dwellings” and this figure should therefore be viewed as a maximum. The mix of mix of residential units shown in the table above should be interpreted as indicative. Permission is also sought for 7,650 sq.m. (gross external area) of commercial floorspace and this amount of development should be considered as a ‘fixed’ development parameter.

### 2.3 Access

This is a matter for detailed consideration at this stage and is defined as the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network. The application proposes that the sole vehicular access to the residential uses on-site would be from an extension to Churchill Road, via the existing turning-head at its southern end. Access road layout

drawings show Churchill Road extended to both the west and south-east via two 'spine' roads, with associated cul-de-sac and loop roads which could access all of the dwellings. Vehicular access for the proposed Class B1(c) / B2 / B8 floorspace located on the southernmost part of the site would be from the Clipper Park development on Thurrock Park Way. Thus separate means of access for vehicles are proposed to serve the residential and Class B1(c) / B2 / B8 development. Nevertheless, masterplan drawings for the development show a potential cycle path (and by implication pedestrian route) linking the separate residential and commercial accesses. Two potential future cycleway links are also indicated on the western edge of the site which could connect to a public right of way from Manor Road.

#### 2.4 Groundworks

Although landscaping is a matter of details reserved for future approval if outline planning permission is granted, flood mitigation / alleviation works are proposed which would include the re-profiling of ground levels. Flood compensation storage would be increased in the form of new ditches and ponds alongside increases in levels to create development platforms.

#### 2.5 Landscaping

Although details of landscaping are reserved for future approval, a landscape strategy drawing has been submitted indicating a range of hard and soft landscape treatments, including potential new habitat creation.

#### 2.6 Layout

An indication of the way the site could be developed is shown on masterplan drawings. Residential development could potentially comprise principally terraces of dwellinghouses with two blocks of flats located on the western part of the site. The proposed commercial development is indicated on the southern part of the site.

#### 2.7 Scale

An indication of the scale of the development is provided on submitted masterplan drawings which show two and three-storey houses, three-storey flats and commercial development within two / three storey buildings.

### 3.0 **SITE DESCRIPTION**

3.1 The site comprises an irregularly shaped parcel of land, extending to approximately 13 hectares in area and generally located to the west of the Dock Approach Road (A1089) and north of the Thurrock Park Way commercial area. The site 'wraps around' the existing Churchill Road residential estate, developed in the late 1980's and principally comprising two-storey dwellinghouses on Churchill Road, Medlar Road, Salix Road and adjoining streets. This estate essentially comprises a cul-de-sac of c.250 dwellings accessing onto Dock Road to the north.

3.2 The northern part of the site consists of an open strip of land separating the Churchill Road estate and dwellinghouses to the north at Silverlocke Road, Lawns Crescent and the Willows. The drainage ditch, known as the Chadwell New Cross Sewer, passes east-west across the northern part of the site before changing

alignment to run parallel to the site's western boundary. This watercourse is defined as a 'Main River'. Much of the eastern part of the site also comprises a strip of open land separating the Churchill Road estate from the A1089 Dock Approach Road. The southern part of the site comprises a broader expanse of open land separating the Churchill Road estate from the Asda supermarket and commercial uses at Thurrock Park Way to the south. The western part of the site adjoins an area of open land located at the western-end of Thurrock Park Way.

- 3.3 The site is open and has been partly colonised by scrub vegetation. The majority of the application site, apart from a thin strip along the northern and western edges of the site, is within the Green Belt (GB) as defined by the Policies Map accompanying the adopted Core Strategy (2015). The south-western part of the site, as well as being designated as GB, is allocated as 'Additional Open Space'. The site is generally flat and low-lying and is within the high risk flood zone (Zone 3), although it benefits from existing flood defences. The site does not form part of the Tilbury flood storage area, which is generally located to the east of the A1089(T). None of the site forms part of any designated site of nature conservation importance.

#### 4.0 RELEVANT PLANNING HISTORY

<u>Ref.</u>	<u>Proposal</u>	<u>Decision</u>
52/00279/FUL	Erection of electric overhead lines at Dock Road, Little Thurrock	Approved
57/00570/FUL	Residential development	Refused
58/00087/FUL	Erection of overhead electric power lines	Deemed Approval
64/00617/FUL	Housing estate providing for the erection of 250 houses	Approved
66/00907/FUL	Operational land for the purposes of the authorities undertaking	Withdrawn
68/00783/FUL	Overhead power lines	Approved
69/00621/FUL	Vehicle park and access road on land west of Dock Road, Tilbury	Approved
69/00621A/FUL	Depot and access road west of Dock Road, Tilbury subject to conditions within planning application THU/621/69	Approved
74/00161/OUT	Development of land at Tilbury North for 30 acres of housing, 45 acres of warehousing and 53 acres of open space	Approved
78/00292/FUL	Development of land at Tilbury North for 30 acres of housing, 45 acres of warehousing and 53 acres of open space subject to condition 1 - 30 on permission THU/161/74	Approved
78/00601/OUT	Development including housing, warehousing, superstore and open landscaped areas	Appeal Lodged. Appeal Allowed

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78/00601A/FUL	Superstore and car parking, warehousing and car parking. Overall development access roads and sewers	Approved
81/01145A/FUL	Revised application for residential development of 252 houses	Approved
82/00141/OUT	Use of land as industrial and or warehousing and ancillary purposes	Approved
89/00283/OUT	Housing community facility, link road, access roads and public open spaces.	Refused
08/01042/TTGSCR	Request for EIA screening opinion: Proposed redevelopment of land at Little Thurrock for employment use and creation of public open space and wildlife habitat.	EIA not required
09/50024/TTGOUT	Land to the South of Churchill Road residential estate and to the north of the Thurrock Park employment area. Redevelopment of land at Thurrock Park to include development of 3.8 hectares of employment land as an extension to the existing employment uses at Thurrock park (use class B2/B1 (c) and B8 ) with a total maximum internal floor area of 20,000sq.m. Improvements to 9.6 hectares of existing open space, including better access.	Approved
11/50307/TTGOUT	Redevelopment of land at Thurrock Park to include: 1. Development of 3.8 hectares of employment land as an extension to the existing employment uses at Thurrock Park (uses B2, B1(c), B8) and open storage and other non-class B employment uses with a total maximum internal floor area of 20,000 sq.m. The open storage and non-class B employment uses shall be limited to not more than 2 hectares. 2. Improvements to 9.6 hectares of existing open space, including improved access.	Approved
13/00396/CV	Variation of conditions relating to 11/50307/TTGOUT	Invalid
13/00685/CV	Variation of conditions 2, 7, 12, 14, 15, 16, 20, 21, 22, 24, 25, 28, 29, 31, 32, 33, 36, 39, 40 and 41 of approved planning application 11/50307/TTGOUT to allow re-development of site without submitting details of all phases prior to the implementation of any part of the development	Finally disposed of
15/00116/OUT	Application for outline planning permission (with all matters reserved) for the development of 4ha of land to provide 122	withdrawn



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	residential units, and a 125 sq.m. community centre (Use Class D1) with associated landscape improvements and access works	
15/00171/SCR	Request for a screening opinion pursuant to Regulation 5 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011: Proposed development of 4ha of land to provide 122 residential units, and a 125 sq.m. community centre (Use Class D1) with associated landscape improvements and access works	EIA not required
15/00299/CV	Variation of conditions 2, 3, 4, 7, 12, 14, 15, 16, 18, 20, 21, 22, 24, 25, 28, 29, 31, 32, 33, 35, 36, 39, 40 and 41 of approved planning application 11/50307/TTGOUT to allow redevelopment of site without submitting details of all phases prior to the implementation of any part of the development.	Lapsed
15/00476/NMA	Variation of Conditions 3 (Outline Element) and Condition 4 (Time Limit) against approved planning application 11/50307/TTGOUT	Invalid
15/01354/OUT	Application for outline planning permission (with details of landscaping, scale and appearance reserved) for the development of 13.36 ha of land to provide up to 280 residential units, a 250 sq.m. community facility (Use Class D1) and 1,810 sq.m. of commercial floorspace (Use Class B2/B8) with associated landscape, flood improvement and access works	Refused, Appeal Dismissed
17/01631/OUT	Application for outline planning permission (with details of landscaping, scale and appearance reserved) for the development of 13.36 hectares of land to provide up to 280 residential units, a 250 sq.m. community facility (Use Class D1) and 1,810 sq.m. of commercial floorspace (Use Class B2/B8) with associated landscape, flood improvement and access works (Re-submission of planning application ref. 15/01354/OUT).	Withdrawn
19/01019/SCR	Request for Environmental Impact Assessment (EIA) Screening Opinion - Proposed construction of up to 161 new dwellings (C3) with vehicular access from Churchill Road; construction of 7,650 sq.m	EIA not required

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	(GEA) of flexible employment floorspace (B1c/B2/B8) with vehicular access from Thurrock Park Way; provision of open space including landscaping and drainage measures; new pedestrian/cycle links; and associated parking and access	
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- 4.1 From the table above planning application reference 15/01354/OUT is pertinent to this case as it involved the same site and proposed a mixed use of development of dwellings and commercial / community use floorspace. Application ref. 15/01354/OUT was considered by the Committee at its meeting in June 2017 where planning permission was refused on the grounds of harm to the GB. A subsequent appeal was considered at a public inquiry in May 2018 and the appeal dismissed in June 2018.

## 5.0 CONSULTATIONS AND REPRESENTATIONS

### 5.1 PUBLICITY:

This application has been advertised by way of individual neighbour notification letters sent to 383 surrounding occupiers, press advert and site notices. The application has been advertised as a departure from the Development Plan and a major development.

- 5.2 27 individual letters of objection have been received together with a petition containing 660 signatures also objecting to the application. The following matters of concern have been raised:

- unsafe / inadequate access;
- increased traffic congestion;
- pollution and impact on air quality;
- harm to amenity;
- increased noise;
- loss of GB;
- flooding;
- impact on ecological interests; and
- effect on infrastructure.

### 5.3 CONSULTATION RESPONSES:

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

**5.4 ESSEX COUNTY COUNCIL (ARCHAEOLOGY):**

No objections subject to conditions being attached to any grant of planning permission.

**5.5 ANGLIAN WATER:**

Recommend a number of informatives relating to foul water drainage. As the proposed surface water drainage does not relate to Anglian Water assets, no comments are provided.

**5.6 BUGLIFE:**

Object to the application on the grounds of:

- impact on priority habitats and invertebrate species;
- loss of a potential Local Wildlife Site; and
- inadequate mitigation proposals.

**5.7 CAMBRIDGESHIRE & ESSEX BUTTERFLY CONSERVATION:**

Object to the loss of a potential Local Wildlife Site.

**5.8 ESSEX POLICE:**

Recommend that the development achieves Secured by Design accreditation.

**5.9 HIGHWAYS ENGLAND:**

Offer no objection on the basis that the proposals will generate minimal additional traffic on the strategic road network in peak hours.

**5.10 NHS:**

Require a financial contribution of £63,549 to mitigate the impacts of the development on primary healthcare services.

**5.11 ENVIRONMENT AGENCY:**

Draw attention to the need to undertake the Sequential and Exception Test. Recommend that planning conditions are attached to any grant of planning permission.

**5.12 EMERGENCY PLANNING:**

No response received.

**5.13 FLOOD RISK MANAGER:**

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No objections, subject to conditions.

5.14 HOUSING OFFICER:

Confirm that the proposed provision of affordable housing and the tenure mix is acceptable.

5.15 HIGHWAYS OFFICER:

No objection – although suggest that a contribution towards mitigation at the Marshfoot Road / A1089 slip road junction is considered. Consultation with Highways England is required regarding the potential impact of the proposals on the A1089. Some concerns remain regarding road layout within the site (N.B. – layout is a reserved matter). A contribution to the cycle / pedestrian link to the south of the north-western link would be sought.

5.16 PORT OF TILBURY LONDON LTD.

Express concern regarding the content of the Transport Assessment and potential impact on the ASDA roundabout junction.

5.17 ESSEX FIELD CLUB:

Object to the application on the grounds of impact on priority habitats and species, the loss of a Local Wildlife Site, loss of GB, incomplete invertebrate surveys and inadequate mitigation and compensation.

**6.0 POLICY CONTEXT**

6.1 National Planning Policy Framework (NPPF)

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

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

- <sup>1</sup> *This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites ...*
- <sup>2</sup> *The policies referred to are those in this Framework relating to: habitats sites and/or SSSIs, land designated as GB, Local Green Space, AONBs, National Parks, Heritage Coast, irreplaceable habitats, designated heritage assets and areas at risk of flooding or coastal change.*

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

5. Delivering a sufficient supply of homes;
6. Building a strong, competitive economy;
8. Promoting healthy and safe communities;
9. Promoting sustainable transport;
12. Achieving well-designed places;
13. Protecting GB land;
14. Meeting the challenge of climate change, flooding and coastal change; and
15. Conserving and enhancing the natural environment;

## 6.2 National Planning Practice Guidance (NPPG)

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

Climate change;  
 Design: process and tools;  
 Determining a planning application;  
 Flood risk and coastal change;  
 Green Belt;  
 Healthy and safe communities;  
 Natural environment;  
 Noise;  
 Open space, sports and recreation facilities, public rights of way and local green space;  
 Renewable and low carbon energy; and  
 Travel Plans, Transport Assessment and Statements.

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

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

Overarching Sustainable Development Policy:

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

Spatial Policies:

- CSSP1: Sustainable Housing and Locations;
- CSSP2: Sustainable Employment Growth;
- CSSP3: Sustainable Infrastructure;
- CSSP4: Sustainable GB; and
- CSSP5: Sustainable Greengrid.

Thematic Policies:

- CSTP1: Strategic Housing Provision;
- CSTP2: The Provision of Affordable Housing;
- CSTP6: Strategic Employment Provision;
- CSTP9: Well-being: Leisure and Sports;
- CSTP14: Transport in the Thurrock Urban Area: Purfleet to Tilbury;
- CSTP18: Green Infrastructure;
- CSTP19: Biodiversity;
- CSTP20: Open Space;
- CSTP22: Thurrock Design;
- CSTP25: Addressing Climate Change;
- CSTP26: Renewable or Low-Carbon Energy Generation; and
- CSTP27: Management and Reduction of Flood Risk

Policies for the Management of Development

- PMD1: Minimising Pollution and Impacts on Amenity;
- PMD2: Design and Layout;
- PMD5: Open Spaces, Outdoor Sports and Recreational Facilities;
- PMD6: Development in the GB;
- PMD7: Biodiversity, Geological Conservation and Development;
- PMD8: Parking Standards;
- PMD9: Road Network Hierarchy;
- PMD10: Transport Assessments and Travel Plans;
- PMD12: Sustainable Buildings;
- PMD13: Decentralised, Renewable and Low Carbon Energy Generation;
- PMD15: Flood Risk Assessment; and
- PMD16: Developer Contributions

#### 6.4 Thurrock Local Plan

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

#### 6.5 Thurrock Design Strategy

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

### 7.0 ASSESSMENT

#### 7.1 Procedure:

With reference to procedure, this application has been advertised (inter-alia) as being a departure from the Development Plan. Should the Planning Committee resolve to grant planning permission, the application will first need to be referred to the Secretary of State under the terms of the Town and Country Planning (Consultation) (England) Direction 2009 with reference to the 'other development which, by reason of its scale or nature or location, would have a significant impact on the openness of the GB'. The Direction allows the Secretary of State a period of 21 days (unless extended by direction) within which to 'call-in' the application for determination via a public inquiry. In reaching a decision as to whether to call-in an application, the Secretary of State will be guided by the published policy for calling-in planning applications and relevant planning policies.

7.2 The main issue for consideration in this case is the assessment of compliance with planning policies for and impact on the GB. Given the recent planning application for the site (ref. 15/01354/OUT) a comparison of the current proposals with this earlier scheme is also necessary. The content of the Planning Inspector's report considering application ref. 15/01354/OUT is germane to the current application and an assessment of whether the current proposals would lead the local planning authority to a different conclusion from that reached by the Planning Inspector is a key matter. In addition to the GB considerations raised by the proposals, the assessment below also covers the following areas:

- Highways and traffic considerations;
- Ecological considerations;
- Noise and air quality; and
- Flood risk and site drainage.

As outline planning permission is sought a detailed analysis of design issues, layout and impact on residential amenity is not provided at this stage.

### 7.3 I. PRINCIPLE OF DEVELOPMENT AND IMPACT ON THE GB

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

- i. whether the proposals constitute inappropriate development in the GB;
- ii. the effect of the proposals on the open nature of the GB and the purposes of including land within it; and
- iii. whether the harm to the GB is clearly outweighed by other considerations so as to amount to the very special circumstances (VSC) necessary to justify inappropriate development.

#### i. Whether the proposals constitute inappropriate development in the GB

7.4 As noted in paragraph 3.3 above, apart from strips of land along the northern and western edges all of the site is located within the GB. However, no built development is proposed on these strips and consequently all of the built development proposed would be sited on the GB. Therefore adopted Core Strategy policies CSSP4 and PMD6 apply to the proposals alongside part 13 of the NPPF (Protecting GB land).

7.5 Paragraph 133 of the NPPF confirms that the Government attaches great importance to GBs and states that the

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

With regard to proposals affecting the GB, paragraph 143 states that

*“Inappropriate development is, by definition, harmful to the GB and should not be approved except in vsc”.*

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

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

- a) buildings for agriculture and forestry;
- b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial



grounds and allotments; as long as the facilities preserve the openness of the GB and do not conflict with the purposes of including land within it;

- c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
- d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- e) limited infilling in villages;
- f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and
- g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
  - not have a greater impact on the openness of the GB than the existing development; or
  - not cause substantial harm to the openness of the GB, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

7.7 Clearly the proposals to construct up to 161 dwellings and 7,650sq.m. of Class B1(c) / B2 / B8 floorspace do not fall into any of the exceptions listed at (a) to (g) in the paragraph above. Consequently, the proposals comprise inappropriate development with reference to the NPPF.

7.8 Development plan policy, as expressed in the Core Strategy and Policies for the Management of Development (2015) is consistent with national policy on GB matters. Core Strategy policy CSSP4 sets out the objective of maintaining the purpose, function and open character of the GB. In order to implement this policy, the Council will:

- maintain the permanence of the boundaries of the GB;
- resist development where there would be any danger of coalescence; and
- maximise opportunities for increased public access, leisure and biodiversity.

7.9 In addition, Core Strategy policy PMD6 states that, inter-alia, planning permission will only be granted for new development in the GB provided it meets as appropriate the requirements of the NPPF.

7.10 In common with the proposals which were considered at appeal (ref. 15/01354/OUT), it is still the case that new residential and commercial buildings in the GB are by definition inappropriate. As a result there can be no change in the conclusion reached previously as to the principle of the proposed land uses. Consequently, it is a straightforward matter to conclude that the proposals for residential and commercial development constitute inappropriate development in the GB.

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

- 7.11 The analysis in the paragraphs above concludes that the residential and commercial development is inappropriate development which is, by definition, harmful to the GB (NPPF para. 143). However, it is also necessary to consider whether there is any other harm (NPPF para. 144).
- 7.12 As noted above paragraph 133 of the NPPF states that the fundamental aim of GB policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of GBs being described as their openness and their permanence. Although this is an application for outline planning permission with details of layout reserved, it is apparent from the submitted indicative drawings that built development and accompanying curtilages etc. would occupy a large part of the site. The proposals would comprise a substantial amount of new built development in an area which is currently open. Advice published in NPPG (July 2019) addresses the role of the GB in the planning system and, with reference to openness, cites the following matters to be taken into account when assessing impact:
- openness is capable of having both spatial and visual aspects;
  - the duration of the development, and its remediability; and
  - the degree of activity likely to be generated, such as traffic generation.
- 7.13 It is considered that the proposed development would have a detrimental impact on both the spatial and visual aspects of openness, i.e. an impact as a result of the footprint of development and building volume. The applicant has not sought a temporary planning permission and it must be assumed that the design-life of the development would be a number of decades. The intended permanency of the development would therefore impact upon openness. Finally, the development would generate traffic movements associated with both residential and commercial elements. This activity would also impact negatively on the openness of the GB.
- 7.14 Therefore, it is considered that the amount and scale of development proposed would significantly reduce the openness of the site. As a consequence the loss of openness, which is contrary to the NPPF, should be accorded substantial weight in the consideration of this application.
- 7.15 In the context of impact on the openness of the GB, it is also necessary to consider the current proposals against the earlier dismissed scheme (15/01354/OUT) and the relevant conclusions reached by the Planning Inspector. This earlier application proposed a greater number of residential dwellings (up to 280) but a smaller quantum of non-residential development (2,060 sq.m within Class D1 and B2 / B8). With regard to the amount of development a brief comparison between the 2015 and current schemes is presented in the table below:

	<u>15/01354/OUT</u>	<u>19/01058/OUT</u>
Total Site Area	13.36 Ha	13.36 Ha
Site Area Within GB	c.11.3 Ha	c. 11.3 Ha
No. of Dwellings	Up to 280	Up to 161
Non-Residential Floorspace	2,060 sq.m.	7,650 sq.m

- 7.16 There are no differences between the 2015 and current applications in terms of the extent of proposed undeveloped land outside of the GB which lies adjacent to the site's northern and western boundaries. Similarly, within those GB parts of the site that are proposed for development there are no material differences between the two applications apart from locations at the eastern and south-eastern parts of the site. The 2015 application proposed a narrow corridor of open land along the eastern boundary forming a strip between a ribbon of new residential development and the A1089. At the south-eastern corner of the site this corridor widened to form a wider landscape buffer, which also included flood water attenuation and provided a clear gap between the commercial and residential element of the proposals. The current application deletes the previously proposed buffer separating residential and commercial development, but also deletes the residential ribbon adjacent to the A1089 boundary. This change has the effect of creating a more substantial area of open land along the eastern boundary. Although it is difficult to provide a precise comparison between the two applications of the extent of open land (particularly as layout is a reserved matter), it is the case that the current indicative layout would retain more openness on the eastern and south-eastern part of the site.
- 7.17 Paragraph nos. 8 to 13 of the Inspector's Report refer to the effect of the 2015 application proposals on the openness of the GB. The report considered impact on the openness of the site itself and the visual impact on the wider GB in the assessment of the effect on openness. The following extracts are of relevance:
- "The appeal development with its 280 dwellings, employment units and community building would result in a considerable diminution to the openness of this GB site itself. There would be some undeveloped features, including green spaces, gardens and waterbodies but to my mind the overall impression would be that the current site would largely be replaced by urbanisation."*
- Whilst noting that *"there is little visual connection with the wider GB when viewed from the western part of the site"*, the Inspector observed that from *"within the eastern section (of the site) the scarp slope to the north of Tilbury Marshes, which is also within the GB, becomes visually apparent. From the higher vantage point of the Dock Approach Road the observer is much more aware of the visual connectivity between the appeal site and the GB land to the east ... The appeal site therefore comprises open green land that has some visual connection to the wider area of GB ... In any event the development itself would fundamentally change the visual prominence of the site. This is because the buildings would be atop a raised platform of around 2.03 AOD in order to address flood risk. The cross-section that was provided by the appellant through the eastern part of the site clearly shows that the finished land level would be higher than that of the Dock Approach Road ... The overall housing layout shows closely grouped houses and six blocks of flats. Within this context the waterbodies and open spaces would have little meaningful function in terms of retaining openness in GB terms. For all of these reasons I consider that there would be very significant harm to the openness of the GB."*
- 7.18 To summarise the Inspector's conclusions on the subject of openness, the residential and commercial development would diminish openness (as a spatial concept) on the site itself. Compared to the appeal scheme, the current proposals

would retain a more substantial area of undeveloped land along the eastern and south-eastern boundary and thereby reduce the impact on openness.

Nevertheless, the indicative layout suggests that the remainder of that part of the site that lies within the GB would experience a clear loss of openness. Therefore, with regard to the site as a whole, there would still be harm to openness as a spatial concept.

- 7.19 With regard to the visual impact on the wider GB in the assessment of openness, the Inspector concluded that the eastern part of the site enjoyed a visual connection to the wider GB across the A1089, although there is little visual connection on the western part of the site. The Inspector also notes that land raising on the east of the site would change the visual prominence of the site. The current proposals remove buildings along the eastern boundary, which would arguably maintain the visual connection to the wider GB. In addition, the associated deletion of landraising on this part of the site would reduce the visual prominence of the development as an ‘engineered’ landform.
- 7.20 However, despite the reduced impact on openness and maintenance of the existing visual connection from the eastern part of the site to the wider GB, the current proposal would still reduce openness (as a spatial concept) on a large part of the site.
- 7.21 Paragraph 134 of the NPPF sets out the five purposes which the GB serves as follows:
- a) to check the unrestricted sprawl of large built-up areas;
  - b) to prevent neighbouring towns from merging into one another;
  - c) to assist in safeguarding the countryside from encroachment;
  - d) to preserve the setting and special character of historic towns; and
  - e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- 7.22 Paragraph nos. 14 to 21 of the Inspector’s Report considered the effect the 2015 proposals on these purposes and a comparison of the Inspector’s conclusions with the current scheme is provided below.
- 7.23 *a) to check the unrestricted sprawl of large built-up areas*

Paragraph no. 14 of the Inspector’s report confirmed that Grays is a “large built-up area” and that a development of 280 houses “*would not be an insignificant extension to the town*”. Paragraph no. 15 noted that the existing Thurrock Park development (Churchill Road etc.) of c.250 dwellings built in the 1980’s “*has resulted in a degree of sprawl itself. However the addition of a similar sized housing development into the open land to its south and east would exacerbate this (sprawl) considerably*”. Although at paragraph no.16 the Inspector accepted that the site has strong physical boundaries “*that does not mean that it has no function in terms of checking urban sprawl. This is not an insubstantial sized area of land and the proposal would not be small scale in nature. I have already come to the conclusion that once development takes place there would be some*

*visual connection to the GB beyond the Dock Approach Road. In the circumstances the appeal scheme would lead to a degree of urban sprawl outward of Grays.”*

7.24 With reference to the current case, despite the omission of built development from the eastern part of the site the proposals still represent a large scale extension to the built-up area of Grays at this point. Although of lesser magnitude to the appeal scheme the proposals would still result in a degree of urban sprawl, contrary to this GB purpose.

7.25 *b) to prevent neighbouring towns merging into one another*

Paragraph no. 17 of the Inspector’s report confirms that the appeal site *“remains as an open area of GB that lies between the two”* (the two neighbouring towns of Grays and Tilbury). The following paragraph of the report states:

*“I acknowledge that the development of Tilbury docks alongside the river has already blurred the distinction between the two settlements (Grays and Tilbury) as separate entities. The construction of the Amazon and Travis Perkins warehouses has further added to the sense of proximity between them. However, assuming the allocated commercial land is eventually built out the process of coalescence would effectively be completed by the development of the appeal site. All that would be left between the two settlements would be an inconsequential remnant of GB land to the north of the ASDA car park and the southern corridor and roundabout of the Dock Approach Road. In the circumstances the appeal proposals would contribute to the coalescence of Tilbury and Grays”.*

7.26 The current proposals would increase the width of the “southern corridor” of GB adjacent to the A1089. However, the indicative layout shows that the proposed residential and commercial development would lead to the joining together of Tilbury and Grays (at paragraph no. 17 the Inspector observed that *“it seems generally accepted that the Thurrock Park way commercial area, including the ASDA superstore, is part of Tilbury and that Thurrock Park is part of Grays”*). Therefore, despite a reduction in the magnitude of coalescence between Grays and Tilbury, the current proposals would nevertheless result in a degree of coalescence contrary to this purpose of the GB.

7.27 *c) to assist in safeguarding the countryside from encroachment*

Paragraph nos. 19 and 20 of the Inspector’s report assess the appeal proposals against this GB purpose and reach the conclusion that the site *“clearly has value as countryside”* which would be subject to the *“harmful effect of encroachment”*. Although, compared to the appeal scheme, the current proposals would reduce the amount of development there would still be a significant encroachment in the countryside.

7.28 With regard to the final two GB purposes: d) to preserve the setting and special character of historic towns; and e) to assist in urban regeneration by encouraging the recycling of derelict and other urban land) the Inspector concluded that these

purposes would not be offended. There is no reason to reach a different conclusion in considering the current proposals.

- 7.29 In considering “*any other harm resulting from the proposal*” (NPPF para. 144) the Planning Inspector addressed the matters of flood risk, land stability, construction impacts and highways matters. The Inspector’s conclusions, set out at paragraph nos. 22 to 26 of the report, were that subject to planning conditions there would be no unacceptable harm arising. More detailed consideration of flood risk, highways matters etc. is provided later in this report. However, under the heading of other harm to the GB beyond those matters raised above, it can be concluded that there is no other harm.
- 7.30 In conclusion under the headings (i) and (ii) it is concluded that the current proposals would lead to harm to the GB by way of inappropriate development (i.e. definitional harm), would be harmful by way of loss of openness and would be harmful as a result of conflict with GB purposes (a), (b) and (c). In accordance with paragraph 144 of the NPPF substantial weight should be afforded to this harm
- iii. Whether the harm to the GB is clearly outweighed by other considerations so as to amount to the VSC necessary to justify inappropriate development
- 7.31 Paragraph 144 of the NPPF states that, when considering any planning application, local planning authorities
- “should ensure that substantial weight is given to any harm to the Green Belt. VSC will not exist unless the potential harm to the GB by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations”.*
- 7.32 Neither the NPPF nor the Adopted Core Strategy provide guidance as to what can comprise vsc, either singly or in combination. However, some interpretation of VSC has been provided by the Courts. The rarity or uniqueness of a factor may make it very special, but it has also been held that the aggregation of commonplace factors could combine to create VSC (i.e. ‘very special’ is not necessarily to be interpreted as the converse of ‘commonplace’). However, the demonstration of VSC is a ‘high’ test and the circumstances which are relied upon must be genuinely ‘very special’. In considering whether VSC exist, factors put forward by an applicant which are generic or capable of being easily replicated on other sites, could be used on different cases leading to a decrease in the openness of the GB. The provisions of VSC which are specific and not easily replicable may help to reduce the risk of such a precedent being created. Mitigation measures designed to reduce the impact of a proposal are generally not capable of being VSC. Ultimately, whether any particular combination of factors amounts to VSC will be a matter of planning judgment for the decision-taker.
- 7.33 The Planning Statement and additional representations submitted by the applicant to accompany the application sets out the applicant’s case for VSC under the following main headings:
1. provision of new market and affordable housing;

2. provision of connectivity improvements;
3. provision of new, public open space; and
4. provision of new employment units.

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

#### 7.34 1. Provision of new market and affordable housing

Under this heading the applicant refers to the following factors:

- the Inspector's report considered that the provision of market and affordable housing was a benefit of "*very significant weight*";
- Core Strategy policy CSSP1 (Sustainable Housing and Locations) recognises that it will be necessary for the Council to release land from the GB to meet housing need;
- The Council's draft Local Plan Issues and options (Stage 2) consultation states that (i) the Council will have to consider releasing land from the GB to accommodate new homes and supporting facilities (page 33) and (ii) the Council considers that given the acute shortage of land currently identified as being available to meet housing need over the plan period the exceptional circumstances required by the NPPF to justify changes to GB boundaries can be clearly demonstrated (page 50);
- the current NPPF places greater emphasis on ensuring a sufficient supply of new housing and introduces a Housing Delivery Test (paragraph 75);
- there is a considerable historic shortfall in meeting the Borough's housing targets and there is a significant shortfall in meeting the five-year supply, as evidenced by the Council's 'Five Year Housing Land Supply Position Statement' (July 2016);
- the South Essex Strategic Housing Market Assessment (2016) refers to an annual objectively assessed need of between 919 and 973 dwellings per annum and an affordable housing need of 555 dwellings per annum. Housing delivery, including affordable housing has been considerable less than these targets;
- paragraph 69 of the NPPF recognises the important contribution of small and medium sized sites to housing delivery; and
- the application site is deliverable and proposes policy compliant affordable housing (35%). The site could help to meet housing need ahead of the anticipated timeframe for the Local Plan which may be delayed due to uncertainty associated with the Lower Thames Crossing.

For the above reasons the applicant considers that the provision of market and affordable housing should be given very significant weight. The applicant also points out that while the vsc should not relate to new housing provision *alone*, Government advice is that housing provision can form part of the vsc to justify

inappropriate development when this benefit is considered alongside one or more other benefits.

### 7.35 Consideration

The issue of housing land supply (including affordable housing) has been considered by the Committee regularly with regard to proposals for residential development in the GB.

- 7.36 The adopted Core Strategy (as amended) (2015) sets out the Council's targets for the delivery of new dwellings. Policy CSTP1 states that between April 2009 and March 2021, 13,550 dwellings are required to meet the overall minimum target of 18,500 dwellings (2001 -2021). In addition, provision is made for a further 4,750 dwellings between 2021 -2026. This is a total of 18,300 for the period 2009-2026, equating to an average of 1,076 dwellings per annum.
- 7.37 National planning policy as expressed at paragraph 59 of the NPPF states that (inter-alia) in order to support the Government's objective of significant boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed. Paragraph 73 goes on to state that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should include a buffer of 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.
- 7.38 The most recent published analysis of the Borough's housing land supply is provided in the Thurrock Local Plan Five Year Housing Land Supply Position Statement (July 2016). This statement notes that *"the dwelling requirement set out in the Core Strategy is now considered to be out of date"*. Instead, the South Essex Strategic Housing Market Assessment identifies a range of objectively assessed need for Thurrock of between 919 and 973 dwellings per annum (2014 base date). The Statement also assesses the supply of deliverable housing in the five year period from 2016/17 to 2020/21 and concludes that there is a supply of between 2.5 and 2.7 years in relation to the identified objectively assessed need. This figure of between 2.5 and 2.7 years supply was produced some time ago (2016) and it is to be expected that the figure has reduced as completions on a number of larger sites with planning permission has progressed (Bata Fields, Arisdale Avenue etc.). Although the current supply figure is in the process of being updated, it is common ground with the applicant that supply is less than the five year (+20%) requirement.
- 7.39 Paragraph nos. 27-30 of the Planning Inspector's report assess the provision of housing in the context of being a benefit of the appeal proposals. Evidence at the time of the inquiry (2018) indicated that a five year supply could not be demonstrated and that the 2.5-2.7 years supply at that time was a *"serious shortfall"* when considered against the NPPF objective of boosting significantly the supply of housing. At paragraph 28 the Inspector noted that Thurrock is tightly constrained



by the GB and the evidence suggests that the Borough's housing requirement will not be able to be met solely on brownfield sites. Although at the time of the Inquiry the Council were undertaking a GB assessment as part of the evidence base for the new Local Plan, the Inspector noted that the Plan was still at an early stage and could not be relied on to address housing needs at that time. Regarding the provision of affordable housing and despite some reservations concerning the viability work undertaken by the applicant, the Inspector acknowledged the contribution the site could make towards a "*serious shortfall of affordable housing against identified needs*".

- 7.40 In 2018, and based on the evidence available at that time, the Inspector concluded that the overall provision of market and affordable housing was a benefit of very significant weight. The current scheme proposes a smaller number of dwellings (market and affordable) compared to the appeal scheme and therefore the contribution towards the supply of new housing will be reduced. Nevertheless, as noted above, the degree of shortfall against the five year supply (+20%) is likely to have worsened. Therefore, in line with the appeal decision, the matter of housing delivery contributes towards vsc and should therefore be accorded very significant weight in the consideration of this application.
- 7.41 It is necessary to point out one key difference between the appeal scheme and the current proposals in relation to the consideration of housing land supply as a factor contributing to vsc. In 2013 a written ministerial statement confirmed that the single issue of unmet housing demand was unlikely to outweigh GB harm to constitute the vsc justifying inappropriate development. This position was confirmed in a further ministerial statement in 2015 and was referred to in previous iterations of NPPG. However, the latest revision of the NPPF (2019) does not include this provision and the corresponding guidance in NPPG has also been removed. Nevertheless, a very recent appeal decision (ref. APP/Q4625/W/19/3237026) referred specifically to this point and considered that "*even so, unmet need on its own, is highly unlikely to amount to vsc*". Accordingly the very significant benefit of the contribution towards housing land supply would need to combine with other demonstrable benefits to comprise the vsc necessary to justify inappropriate development.
- 7.42 2. Provision of connectivity improvements
- Under this heading the applicant refers to the following factors:
- new and enhanced pedestrian and cycle links will improve access to schools, employment areas, the Asda store, residential areas and open space;
  - connecting the site accords with Core Strategy policies OSDP1, CSSP5, CSTP15 and a number of spatial objectives; and
  - in the context of paragraph 138 of the NPPF the proposed connectivity improvements would provide compensatory benefits and the sustainable location of the site is a positive factor in considering its potential release from the GB.
- 7.43 Consideration

The master plan / site plan drawings submitted to accompany application show the following links connecting the site to adjoining land:

- *“potential cycle path access to Manor Road”* located at the north-western corner of the site. This link would cross over the Chadwell New Cross sewer (within the site) and potentially connect to Manor Road (outside the site) across a section of unadopted road;
- *“potential future access across site for Council’s future cycle link to Thurrock Park Way”*. This link would be located to the south of the link described above and would form a small part of the new off-road cycle link (scheme no. 84) promoted by the Council (Improving the cycle network – December 2017). This link is intended to connect Manor Road and the Thameside schools to Tilbury via an off-road route through the Thurrock Park Way commercial estate. Completion of this route will need to address land ownership issues; and
- *“potential cycle path access to Thurrock Park Way and secure emergency vehicle access”*. The potential link would connect the development, and by extension the existing Churchill Road estate, to Thurrock Park Way. The connection relies on access across a small section of private land, although it is understood that the applicant has right of access.

7.44 The 2015 planning application also proposed improvements to wider connectivity via links through the site and the current submission proposes similar links. At the 2018 appeal, a total of four potential links were considered comprising the three links within the current application and a further link at the site’s north-eastern corner to connect to the existing cycle path alongside the A1089(T). This north-eastern link is not included in the current application. Nevertheless, the Inspector’s report addressed the issue of connectivity. At paragraph no. 31 of the report the Inspector noted that in general terms the proposed improvements to connectivity:

*“... would provide a benefit to existing as well as new residents. At present the site acts as a barrier to movement south of Thurrock Park and the appeal scheme would address this by providing through routes for cyclists and pedestrians”.*

7.45 Turning to the detail of each proposed link, in response to the connection at the site’s north-western corner the Inspector’s report noted the proximity to the Thameside schools and stated:

*“... In addition to the benefit to new residents, this would provide a more attractive and shorter walking or cycling route for those living on Thurrock Park. It would have the potential to encourage less car use for these school trips. This would also provide a slightly shorter route to Grays station and shopping centre ... Provision of this link would involve crossing third party land between the site boundary and the public highway at Manor Road ... The probability that this link would be provided may be high but not certain.”*

- 7.46 Referring to the southern route linking to Thurrock Park Way paragraph 34 of the Inspector's report considered that:

*"... existing residents would be able to walk or cycle through the site and access the Asda superstore, Tilbury town centre and its station via Thurrock Park way. This would be a much shorter and more pleasant route than the existing alternative via the Dock Road and Dock Approach Road."*

- 7.47 In summarising the benefits of the north-western, southern and north-eastern links (which does not form part of the current submission) the Inspector concluded that these links would provide important accessibility advantages that should be given "*significant weight*". However, in referring to the Council's proposed off road cycle link (scheme no. 84), the Inspector gave "*moderate weight*" to this particular benefit.

- 7.48 In light of the Inspector's conclusions at paragraph no.31 of the appeal decision, there is no doubt that the proposals would provide a benefit in improving walking and cycling links in the area. This objective is supported by a number of adopted Core Strategy policies including CSSP5 (Sustainable Greengrid) and CSTP14 (Transport in the Thurrock urban area). The applicant's planning statement refers to paragraph 138 of the NPPF which states (inter-alia) that:

*"When drawing up or reviewing GB boundaries, the need to promote sustainable patterns of development should be taken into account ... Where it has been concluded that it is necessary to release GB land for development, plans should give first consideration to land which has been previously-developed and/or is well-served by public transport. They should also set out ways in which the impact of removing land from the GB can be offset through compensatory improvements to the environmental quality and accessibility of remaining GB land"*.

- 7.49 Although paragraph 138 refers to drawing up or reviewing GB boundaries (which should only be altered through the preparation or updating of plans – para. 136), there is support elsewhere within the NPPF for the promotion of pedestrian and cycle movements (e.g. paragraph 101). In these circumstances, and to maintain consistency with the findings of the Planning Inspector, moderate / significant weight should be given to the proposed connectivity improvements.

- 7.50 3. Provision of new public open space

Under this heading the applicant refers to the proposed provision of a large green space in the south-eastern part of the site as well as areas of landscaping, habitat creation and ponds / waterways providing flood attenuation and ecological interest. The public open space is cited as a recreational resource at the edge of the urban area which would support the objectives of NPPF paragraph nos. 91 and 141 as well as chapter 8 of the NPPF. The existing site is considered to be both of poor quality and inaccessible to the public and the proposals provide the benefit of new public space. The applicant refers to page 68 of the Council's Local Plan Issues & Options (Stage 2) consultation document (December 2018) which, in the context of potential small urban extensions in the GB, identifies opportunities for:

*“localised improvement and enhancement of spoiled countryside and provide access to new open space and recreational opportunities for those communities adjacent to the urban fringe”.*

The applicant considers that the proposed open space should be considered as a “compensatory improvement” and refers to NPPG advice for the GB (Reference ID: 64-002-20190722).

The applicant further considers that the open space will make a contribution within an area recognised as deficient in local parks by the Council’s Open Spaces Strategy 2006-2011.

The applicant finally considers that the proposed provision of new open space should be given at least significant weight in the planning balance.

#### 7.51 Consideration

At the outset it should be borne in mind that that the application seeks outline planning permission with the matter of layout reserved for subsequent approval. Accordingly, the various site / master plans submitted to support the application should be considered as illustrative only and representing one possible way in which the development could be accommodated on the site. Nevertheless the indicative layout accompanying the submission shows an area adjacent to the A1089(T) which would retained as open space. This area would total c.4Ha in area and would partly comprise a corridor c.60m in width in-between the rear of gardens at Medick Court / Mace Court / Samphire Court and the A1089(T) before opening out into a wider area measuring c. 145m (measured east-west) and c.160m (measured north-south) located at the south-eastern corner of the site.

- 7.52 Although this area would be free from built development and open, it is important to note that this open space would perform a number of functions. The updated Flood Risk Assessment (FRA) (December 2019) proposes an area for the compensatory storage of floodwater located in the open corridor parallel to the A1089(T). This area would be lowered to c.-1.9m AOD in order to create an attenuation ‘basin’ with a capacity of c.29,000m<sup>3</sup>. Appendix D of the FRA provides detail of this compensatory storage by reference to a plan showing the full extent of the basin when ‘full’. An appendix to the FRA Addendum also details sections through the attenuation basin to show a flat-bottomed area with slopes rising to natural levels at the edge of the basin. The majority of open space between the A1089(T) and existing rear gardens would be occupied by the basin. Although there is no disagreement with the applicant that this corridor would remain open, there would be times of the year when the basin is occupied in full or in part with water, thereby diminishing its utility as public open space. Even in a potential prolonged period of dry weather when the margins of the basin would be dry, public access to this space would still be limited to what is essentially a corridor between existing rear gardens and the A1089(T). For these reasons, this part of the site would have limited value as public open space.

7.53 In the south-eastern corner of the site an open area (c.2.2Ha in extent) is indicated to be located south of the flood storage basin, west of the A1089(T), east of the proposed residential and commercial area and north of small parcel of GB land adjacent to the Asda superstore and car park. This area is considered to comprise a more usable area of potential public open space compared to the eastern corridor or open land. However, this south-eastern plot would not only serve as public open space but would also provide new habitat as part of the submitted Ecological Mitigation Strategy and Habitat Enhancement Plan.

7.54 The indicative layout of the development suggests other areas of open space within the site, however these spaces are limited in size and are incidental to the residential and commercial development. Consequently these areas do not contribute to meaningful public open space provision.

7.55 In support of the proposals, the applicant refers to elements of the NPPF. Firstly, reference is made to paragraph 141 which states:

*“Once GBs have been defined, local planning authorities should plan positively to enhance their beneficial use, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity ; or to improve damaged and derelict land”.*

There is currently no public access onto the site and therefore the applicant’s proposals to provide public open space at the south-eastern corner of site align with the objectives of paragraph 141.

7.56 The applicant also refers to part 8 of the NPPF (Promoting healthy and safe communities) and states that the proposals would provide a safe and accessible new development. As layout is a reserved matter, it is not possible to confirm whether the proposals would comply with national policy objectives of a safe place. However, the applicant’s intention to provide public open space accords with requirements for accessible green infrastructure (paragraph 91c) and enhanced public access (paragraph 98).

7.57 The applicant considers that the provision of new public open space may also be viewed as an appropriate *“compensatory benefit”*, as referred to in NPPG, as the proposals provide *“access to new recreational playing field provision within the GB”*. The relevant paragraph from NPPG (Paragraph: 002 Reference ID: 64-002-20190722) states:

*“How might plans set out ways in which the impact of removing land from the GB can be offset by compensatory improvements?”*

*Where it has been demonstrated that it is necessary to release GB land for development, strategic policy-making authorities should set out policies for compensatory improvements to the environmental quality and accessibility of the remaining GB land. These may be informed by supporting evidence of landscape,*

*biodiversity or recreational needs and opportunities including those set out in local strategies, and could for instance include:*

- *new or enhanced green infrastructure;*
- *woodland planting;*
- *landscape and visual enhancements (beyond those needed to mitigate the immediate impacts of the proposal);*
- *improvements to biodiversity, habitat connectivity and natural capital;*
- *new or enhanced walking and cycle routes; and*
- *improved access to new, enhanced or existing recreational and playing field provision”.*

This paragraph therefore refers to the plan making function of the local planning authority rather a decision on an individual planning application. It is important to note that, based on the submitted landscape strategy drawing, the proposal would not provide playing field provision, although it is accepted that new public access to open space would be provided.

- 7.58 The applicant refers to the Council’s Local Plan Issues & Options (Stage 2) consultation and to the option for GB development comprising small urban extensions. Page 68 of this consultation document lists the opportunities for such extension as including:

*“localised improvement and enhancement of spoiled countryside and provide access to new open space and recreational opportunities for those communities adjacent to the urban fringe”.*

It is important to note that the Stage 2 consultation presented and sought views on issues and options for sustainable development in the Borough, which will be eventually formalised in the new Thurrock Local Plan. The consultation did not identify or promote individual sites for development. Instead the consultation will inform the future draft Local Plan which will be submitted for examination.

- 7.59 Finally under this heading, the applicant refers to Core Strategy policy and the deficiency in local park provision as indicated in the Open Spaces Strategy 2006-2011. This Strategy is part of the suite of technical documents supporting the Core Strategy and is referred to by a number of adopted policies (CSTP18 – Green Infrastructure / CSTP20 – Open Space / PMD5 – Open Spaces, Outdoor Sports & Recreational Facilities). The Strategy provides an audit of the hierarchy of open spaces in Thurrock and maps deficiencies in access to spaces and facilities based on distance. The strategy suggests that the site is within an area with deficiencies and the proposed new public open space would partly address this issue. However, it is relevant that Core Strategy policy also requires new development to provide appropriate open space provision. In particular, Policy PMD5 states that (inter-alia):

*“Proposed development must ensure that:*

- i. New open spaces, outdoor sports and recreational facilities are provided in accordance with adopted standards to meet the needs of the development and to address deficiencies”*

7.60 The summary of proposed open space standards set out at Appendix 5 of the Core Strategy are based on population and so the degree to which the proposed open space provision located at the site’s south-eastern corner would provide a benefit over and above meeting the needs of residents of the proposed development is a matter of judgement. On the basis of the overall site area (13.3Ha), the provision of c.2.2Ha of usable public open space represents c. 16.5% of the site. For the purposes of comparison saved Local Plan (1997) policy BE3 (Urban Open Spaces) requires 10% of the gross site area of major residential sites to be set out as open space. The proposals exceed this ‘rule of thumb’ figure. However, bearing mind that the open space will serve an ecological as well as recreational function it is not considered that significant weight should be afforded to this factor as suggested by the applicant. Instead the provision of new public open space should be given moderate weight in the balance of considerations.

7.61 4. Provision of new employment units

Under this heading the applicant refers to the findings of the South Essex Economic Development Needs Assessment (2017) and the Thurrock Employment Land Availability Assessment (2017) both of which will form part of the evidence base to support the new Local Plan. These documents were referred to in the Council’s Local Plan Issues & Options Stage 2 consultation (2018). Page 80 of this consultation document identifies a number of key issues including:

*“the lack of flexibility in the Borough’s overall employment land portfolio means that a potential need exists to identify additional land ... in supporting the growth an expansion of SME’s and start-up businesses”.*

Page 81 of the consultation document addresses the matter of employment land provision with an option of allocating sites to encourage geographical clusters of specialist employment uses and providing sites for emerging business sectors or start-up businesses which may be compatible in housing growth areas.

Finally, the applicant has submitted a ‘Commercial Market Report’ which concludes that the site could provide *“much needed small and medium sized industrial accommodation located with good road connectivity, local amenities and able to provide support services to the adjacent and expanding world class Port of Tilbury”.*

The applicant considers that significant weight should be given to this factor.

7.62 Consideration

The economic benefits of the proposals, through the provision of employment floorspace, were promoted by the 2015 planning application and also considered at appeal. Paragraph no. 36 of the Inspector’s report noted:

*“The Thurrock Employment Land Availability Assessment (December 2017) indicates that there is an over-supply of larger sites in terms of future employment demand. The appeal site would provide a number of smaller units on the southern side of the site adjacent to the existing employment area. In the past planning permission has been granted for employment development of the southern part of the appeal site, most recently in 2012. However, such use has never materialised and no permission remains extant. Furthermore, there is an allocated, but undeveloped, employment site adjacent. I do not consider that the evidence of need for the units proposed here is particularly strong and I therefore afford this factor limited weight”.*

- 7.63 The Thurrock Employment Land Availability Assessment (2017) was available at the time of the planning appeal and was referred to in the Inspector’s report. The only change since the time of the appeal decision is the submission of the ‘Commercial Market Report’ by the applicant which expresses a view that the site could satisfy a need for small and medium sized industrial floorspace. However, the need for a more varied ‘offer’ in terms of industrial and commercial floorspace is already known. For the reasons set out by the Planning Inspector this factor attracts only limited weight.
- 7.64 In addition to the four principal arguments for vsc promoted by the applicant and set out above, reference is also made to other benefits comprising the flood alleviation measures and the way in which the proposals support a number of strategic Core Strategy policies. Regarding flood alleviation it is suggested that the proposals will reduce flood risk to surrounding properties and the alleviation scheme will benefit from a maintenance regime. Paragraph 163 of the NPPF requires development in flood risk areas to ensure that flood risk is not increased elsewhere and paragraph 165 requires drainage systems to have maintenance arrangements in place. The Environment Agency and flood risk manager have both confirmed no objection, subject to conditions, and it can be assumed that the development would not increase flood risk off-site. The degree to which the proposals would provide a positive benefit, i.e. whether the alleviation scheme would reduce flood risk, has not been demonstrated conclusively in the applicant’s Planning Statement, although reference is made to additional flood storage c. 1,000 cu.m above the requirements of the development. In line with the Inspector’s report, the matter of flood risk does not weigh against the application, and some limited positive weight in the GB balance can be attributed to the additional flood storage capacity. The applicant also refers to compliance with a number of strategic Core Strategy policies and spatial objectives which promote sustainable growth. However, these policies and objectives do not override policies for the protection of the GB.
- 7.65 In addition to the factors cited as forming vsc, the applicant also comments on the degree of harm to the openness of the GB and the purposes of including land therein. Specific reference is made to the Thurrock Strategic GB Assessment Stages 1a and 1b produced by the Council in January 2019 and forming part of the suite of documents to support the new Local Plan. This assessment considers strategic parcels of land within the GB in terms of their ‘contribution’ to three of the five GB purposes. The site is identified as forming part of strategic parcel no. 31



and paragraph 6.1.13 (conclusions) includes this parcel in a recommendation for more detailed scrutiny and assessment. The applicant consider that strategic parcel no. 31 has characteristics which make it more suitable than other parcels for release from the GB. Despite the assessment of this land parcel and the recommendation for further scrutiny, it is important to remember the status of this document. In particular, paragraph 1.2.4 states:

*“Stage 2 assessment will identify detailed assessment of sites and boundaries in the GB to identify defensible long-term boundaries and provide recommendations on detailed boundary changes. Stage 2 will proceed only in the event that there is a clearly demonstrated exceptional circumstances to amend the boundaries of the Metropolitan GB in order to meet future development needs”.*

- 7.66 Pages 49-50 of the Thurrock Local Plan Issues & Options (Stage 2) consultation also refers to the Thurrock GB Assessment Stages 1a and 1b and states that:

*“It should be noted that the Green Belt Assessment is a technical document and does not specifically identify any sites or broad areas of GB for development as any decision on the need to amend the boundary of the GB in Thurrock must be taken as part of the wider plan-making and evidence development process”.*

Consequently, the conclusions of the GB Assessment have only very limited weight in the consideration of this case.

#### 7.67 Green Belt Conclusions

It is concluded that the proposals comprise inappropriate development with reference to paragraph 145 of the NPPF. Consequently, the development would be harmful by definition with reference to paragraph 143. The proposals would reduce the openness of the GB on the site as a result of the construction of the residential and commercial buildings and associated development. Compared to the appeal proposals, the current scheme would include a much larger undeveloped area located on the eastern and south-eastern part of the site. Consequently, compared to the previous application the impact on openness would be reduced.

Nevertheless, the proposals would materially reduce openness, giving rise to significant harm. With reference to the purposes of the GB defined by NPPF paragraph 134, although lesser in extent compared to the appeal proposals, the current scheme would nevertheless result in a degree of sprawl, coalescence and encroachment contrary to purposes (a), (b) and (c). In accordance with NPPF paragraph 144 “substantial” weight should be given to this harm.

- 7.68 With reference to the applicant’s case for VSC, an assessment of the factors promoted is provided in the analysis above. However, for convenience, a summary of the weight which should be placed on the various GB considerations is provided in the table below:

<b>Brief Summary of GB Harm and Case for VSC</b>			
<u>Harm</u>	<u>Weight</u>	<u>Factors Promoted as VSC</u>	<u>Weight</u>

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Inappropriate development	Substantial	provision of new market and affordable housing	Very Significant
Reduction in the openness of the GB		Provision of connectivity improvements	Significant / Moderate
Conflict with GB purposes (a), (b) and (c)		Provision of new, public open space	Moderate
		Provision of new employment units	Limited
		Flood risk alleviation	Limited
		Compliance with Core Strategy strategic policy / objectives	No weight

7.69 As ever in reaching a conclusion on GB issues, a judgement as to the balance between harm and whether the harm is clearly outweighed by the benefits of the development must be reached. In this case there is harm to the GB with reference to inappropriate development, loss of openness and some conflict with the purposes of the GB. It is acknowledged that compared to the proposals considered and scrutinised at a public inquiry in 2018 there would less harm to openness as a direct result of less built development. Nevertheless a degree of harm to the GB would remain. Several factors have been promoted by the applicant as comprising the VSC necessary to approve inappropriate development and it is for the Committee to judge

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

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

*"VSC will not exist unless the potential harm to the GB by reason of inappropriateness, and any other harm resulting from the proposal, is clearly (emphasis added) outweighed by other considerations."*

A very recent decision dismissing an appeal against the refusal of a continuing care retirement centre in the West Midlands GB (APP/Q4625/W/19/3237026) addressed the GB balancing exercise and concluded:

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

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

## 7.71 II. HIGHWAYS & TRAFFIC CONSIDERATIONS:

The planning application is accompanied by a Transport Assessment (TA) and a Travel Plan. Although this is an application for outline planning permission, details of access (i.e. accessibility to and within the site in terms of the positioning and treatment of circulation routes) are for consideration as part of this submission.

- 7.72 Two points of access for vehicles are proposed to serve the development. Firstly, to serve the proposed residential development Churchill Road would be extended on its current alignment (north-east to south-west) and at its current dimensions (7.3m wide carriageway with two 2m wide footpaths). A series of lower category roads would penetrate through the site to serve the proposed dwellings. The second point of access for vehicles would be located from Thurrock Parkway to the south of the site, to serve the proposed commercial uses. The site connects to the public highway at Thurrock Parkway via a right of way for vehicles and pedestrians across land in private ownership within the 'Clipper Park' commercial estate. The applicant has confirmed that this right of way has the benefit of being held in perpetuity. This commercial access would provide a short section of link road, parking and turning areas serving the proposed commercial uses only.
- 7.73 The proposed access arrangements would therefore separate the residential access (via Churchill Road) from the commercial access (via Thurrock Parkway). Nevertheless, the submitted plans indicate that a potential cycle path / secure emergency vehicle access would link the residential development to Thurrock Parkway. As noted above, the submitted masterplan drawing also indicates the position of a potential cyclepath access to Manor Road at the north-western corner of the site and a potential future access to the off-road cycle network west of Thurrock Park Way. The development therefore has potential to provide satisfactory connection for vehicles, cyclists and pedestrians.
- 7.74 As the site is located adjacent to the strategic road network (A1089) and because traffic associated with the development could impact upon that network via the Marshfoot Road junction, Highways England (HE) has been consulted on the proposals. In responding to the originally submitted TA, a number of queries were raised by HE. Responding to a subsequent revision to the TA, HE confirmed no objection to the proposals on the grounds of impact on the strategic road network. Members will note that the Port of Tilbury has expressed concerns that the proposals will impact on the Asda roundabout junction and that the TA does not fully assess the impact of the development on this junction. This roundabout junction and the A1089 Dock Road and St. Andrew's Road carriageways form part of the strategic road network and are therefore a HE asset. As the updated HE consultation response raises no objection, it must be concluded that the proposals would not harm the operation of this junction.

7.75 The Council's Highways Officer has also considered the content of the revised TA and considers that a contribution towards mitigation measures at the Marshfoot Road junction with the A1089 slip road is required. A number of detailed comments are offered by the Highways Officer referring to the internal highways layout. However, as layout is a reserved matter it is not considered that the queries raised would stop the local planning authority considering the application as submitted. Similarly as the matter of layout is reserved for future approval, vehicle parking on the site would be considered at a later stage, if outline planning permission were to be granted.

7.76 Member of the Committee will note that a number of objections from residents refer to the matter of access and potential traffic congestion. Similar objections were raised to the 2015 application and the matter was assessed by the Planning Inspector as follows:

*“Residential access would be from Churchill Road. Residents on this estate were concerned about the impact of the additional traffic, including at the roundabout junction with the Dock Road, especially at peak times. Whilst I can appreciate that traffic flows would increase there is no evidence that this would lead to dangerous conditions either along Churchill Road or at the roundabout. I appreciate that the Dock Road can become congested especially at peak periods and when there are problems on the A13. However, this is not unusual in an urban area and the TA indicates that the proportional increase in traffic flows would be relatively small.*

*I understand there have been some accidents and “near misses” along Churchill Road but the recorded history does not show this residential street to be of particular risk in this respect. The council as Highway Authority has not objected to the proposals on the grounds of highway safety or junction capacity. Highways England was also consulted but concluded there would be no harm to the strategic highway network. In the circumstances I do not consider that there would be unacceptable harm in respect of this matter.”*

7.77 As the planning policy context has not significantly changed since the appeal decision, it is concluded that there are no reasons on highways grounds to object to his application.

7.78 III. ECOLOGICAL CONSIDERATIONS:

The site does not form part of any statutory site of designated ecological interest. The nearest such statutory designation to the site being the Globe Pit SSSI, designated for its geological interest and located some 650m to the north-west of the site. The north-eastern corner of the application site is located a short distance to the west of the Little Thurrock Reedbeds Local Wildlife Site (LWS), designated on a non-statutory basis for its reedbed habitat. However, land within the site close to the LWS would be retained in its existing open state and would not be developed. Consequently, there would be no immediate impact on the LWS. The site also forms part of the larger Little Thurrock Marshes 'Potential LWS', included as an appendix to the Thurrock Greengrid Strategy. This potential LWS

designation was based on the status of the site as remnant grazing marsh. However, this potential non-statutory designation has not been confirmed.

7.79 Objections to the application have been received from Buglife, Essex Field Club and Cambridgeshire & Essex Butterfly Conservation on the grounds of impact on ecological interests and biodiversity. Although comments from the Council's landscape and ecology advisor are awaited, in responding to the 2015 application the Advisor considered that the general principles set out within the Ecological Mitigation Strategy were appropriate for the site. Proposals for habitat mitigation and enhancement were also considered to be broadly acceptable.

7.80 An updated Ecological Mitigation Strategy and Habitat Enhancement Plan accompanies the current application which provides mitigation measures for protected species on the site, mitigation for loss of habitats and additional enhancements. Planning conditions could be used to secure the proposed mitigation measures and consequently there are no objections to the proposals on ecological grounds.

#### 7.81 IV. NOISE AND AIR QUALITY:

There are no air quality issues arising from the proposed development, the closest Air Quality Management Areas being located to the west within Grays and east at Tilbury. A Noise Assessment accompanies the application and concludes that acceptable noise levels for new residents can be achieved with the use of standard thermal double glazing and background ventilation provided by standard non acoustic trickle ventilators.

#### 7.82 V. FLOOD RISK & SITE DRAINAGE:

The site, along with surrounding areas in all directions, is located in the high probability flood risk area (Zone 3a). The Tilbury Flood Storage Area (FSA), which is designated as a functional floodplain with the highest flood risk (Zone 3b), is located to the east of the site on the opposite side of the A1089. The Tilbury FSA is separated from surrounding areas within Zone 3a by flood defences. Furthermore, the site and surrounding areas benefit from tidal defences on the banks of the River Thames. These tidal defences protect the site and surrounding land to a 1 in 1,000 year flood event standard. There are also 'main rivers', as defined by the Environment Agency (EA) close to the application site comprising the Chadwell New Cross Sewer which passes through the northern part of the site, the East Tilbury Dock sewer to the south and Chadwell Cross Sewer to the east.

7.83 Table 2 of PPG (Paragraph: 066 Reference ID: 7-066-20140306) comprises a 'Flood Risk Vulnerability Classification' for different types of development which, in combination with the flood zone classification, determines whether development is appropriate, should not be permitted or should be subject to the Exception Test. The proposed residential development comprises 'more vulnerable' development with reference to Table 2, whilst the proposed commercial floorspace is defined as 'less vulnerable'. Table 3 of PPG comprises a 'Flood Risk Vulnerability and Flood Zone Compatibility' table which defines the proposed 'less vulnerable' commercial

development as appropriate in Flood Zone 3a. However, the 'more vulnerable' residential development should be subject to an Exception Test. In addition to the Exception Test, the development proposals are also subject to the requirements of the Sequential Test which aims to steer new development to areas with the lowest risk of flooding.

#### 7.84 Sequential / Exception Test

The Thurrock Strategic Flood Risk Assessment (SFRA) has applied the Sequential and Exception tests to the Borough's broad regeneration and growth areas, including the Grays and Tilbury urban areas. However, this is a 'windfall' site and PPG advises for individual planning applications that 'the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed'. For individual applications like this a pragmatic approach needs to be taken to Sequential Testing as all of the Tilbury broad regeneration area (to the south) and land surrounding the site to the north, east and west, as the catchment area, is also located within in the high risk flood zone. It is considered that there are no alternative available sites identified in the Development Plan within this catchment area that could accommodate the proposed development in a lower flood zone. For these reasons the proposal is considered to pass the Sequential Test.

7.85 For the 'Exception Test' to be passed, the proposed development needs to provide 'wider sustainability benefits to the community that outweigh flood risk', and demonstrate that the development will be 'safe for its lifetime'. In addition to the reasons stated in the 'Sequential Test' assessment (which also apply here) and based on the site's location, the development is considered to provide 'wider sustainability benefits to the community that outweigh flood risk'. Paragraph 8 of the NPPF sets out three dimensions to sustainable development, namely economic, social and environmental. The NPPF definition of the economic role includes reference to "*building a strong, responsive and competitive economy ... ensuring sufficient land is available to support growth*". The definition of the social role of sustainable development includes reference to "*providing the supply of housing required to meet the needs of present and future generations*". Judged against these definitions of sustainable development, the proposals are considered to pass the first limb of the Exception Test (i.e. there are wider sustainability benefit which outweigh flood risk).

7.86 The FRA and associated addendum demonstrates that the development will be 'safe for its lifetime'. The proposed development will not result in a significant increase in flood risk elsewhere. Flood storage compensation, maintenance of the storage area, finished floor levels, resistance and resilience measures and safe access and egress have all been designed to incorporate climate change allowances. Safe refuge will be provided above the 1 in 1000-year plus climate change breach level as requested by the EA

#### 7.87 Detailed Flood Risk Mitigation Measures

The existing topography of the site and surrounding areas is generally flat and low lying with levels ranging between +1.1m AOD on the north-western part of the site reducing to -0.5m AOD adjacent to the A1089. Levels at the bottom of the Chadwell New Cross Sewer at the site's north-west corner are -1.8m AOD. In order to address potential flood risk issues by placing the proposed development above the modelled flood event the proposals include a raising of ground levels across the site to +1.5m AOD in order to create a development platform. In addition, surface water attenuation storage would be provided on-site through the formation of a box culvert in the north-western corner and an attenuation basin with a storage capacity of c.29,000 cu.m. adjacent to the eastern boundary. Levels would be reduced to form this basin, though it is unclear whether a net importation of material is required to achieve the formation of the development platform.

- 7.88 Subject to relevant planning conditions, there are no flood risk or drainage objections to the application.

## 8.0 CONCLUSIONS AND REASONS FOR RECOMMENDATION

- 8.1 The principle issue for consideration in this case is the assessment of the proposals against planning policies for the GB and whether there are very special circumstances which clearly outweigh harm such that a departure from normal policy can be justified. The proposals are 'inappropriate development' in the GB would lead to the loss of openness and would cause some harm to the purposes of the Green Belt. Substantial weight should be attached to this harm in the balance of considerations. Although the current proposals would be relatively less harmful to the GB when compared to the 2015 scheme, harm would still result which attracts substantial weight. Although significant weight can be given to some of the benefits of the proposals, the identified harm must be clearly or decisively outweighed for vsc to exist. The principal GB objection therefore remains, and in-line, with the findings of the Planning Inspector it is concluded that harm outweighs benefit.
- 8.2 Subject to potential planning obligations and conditions there are no objections to the proposals with regard to highways issues, impact on ecology, noise or flood risk. However, the GB issues remain the primary issue of paramount importance in the consideration of this case. Consequently it is recommended that planning permission is refused.

## 9.0 RECOMMENDATION

- 9.1 The Committee is recommended to refuse planning permission for the following reason:
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 a), b) and c) 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).

#### Positive and Proactive Statement

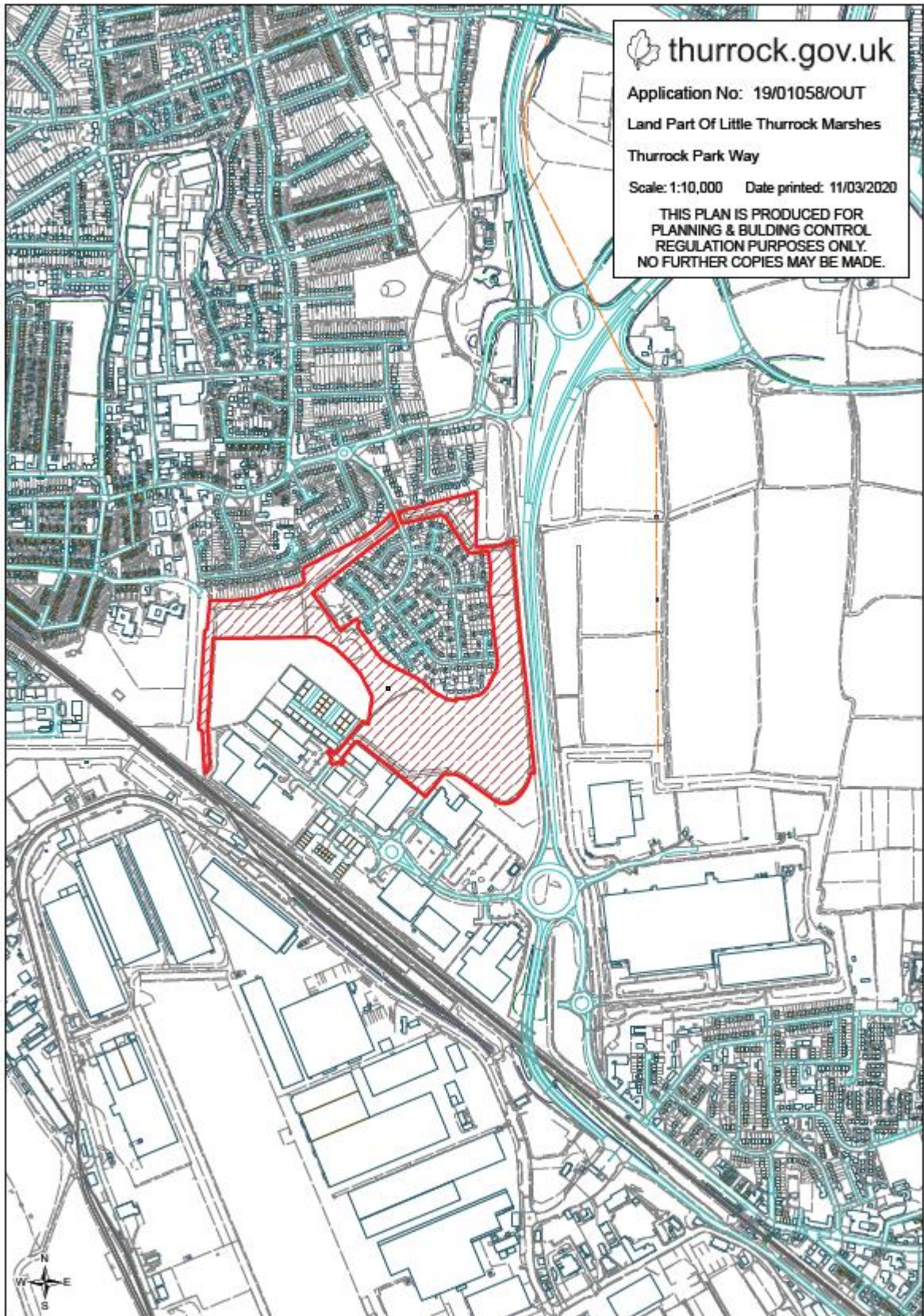
The local planning authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing with the Applicant/Agent. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory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

#### **Documents:**

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

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





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<b>Reference:</b> 20/00983/ELEC	<b>Site:</b> Tilbury Green Power Tilbury Freeport Tilbury RM18 7NU
<b>Ward:</b> Tilbury Riverside and Thurrock Park	<b>Proposal:</b> Proposed variation of s36 (Electricity Act) consent and deemed planning permission for the construction and operation of a biomass and energy from waste fuelled electricity generating station (Tilbury Green Power) - proposed amendment to condition no. 56 in order to remove the restriction on the tonnage of feedstock material to be delivered to the site by road and replace with a requirement to regularly assess alternative modes of transport to minimise impact on the road network and also amend the site boundary to exclude jetty infrastructure.

<b>Plan Number(s):</b>		
<u>Reference</u>	<u>Name</u>	<u>Received</u>
Figure 1.1	Proposed Site Location Plan	31.07.2020
Figure 1.2	Section 36 Application Boundary March 2020	31.07.2020
Figure 1.2	Section 36 Boundary Modifications June 2020	31.07.2020
Figure 1.2A	Section 36 Application Boundary	31.07.2020

<p>The application is also accompanied by:</p> <ul style="list-style-type: none"> <li>• Covering letter</li> <li>• Supporting Statement with appendices comprising –           <ul style="list-style-type: none"> <li>- Red-line boundary site plan (proposed amendment)</li> <li>- Relevant S36 Consent and deemed planning permission (March 2020)</li> <li>- Proposed amendments to the Relevant S36 Consent and deemed planning permission shown as tracked changes</li> <li>- Explanatory Memorandum detailing the reasons for the proposed changes to the consent/deemed permission</li> <li>- Statement explaining why the S36 should be varied</li> <li>- Consultation summary</li> <li>- Compliance checklist</li> <li>- Status of existing Planning Permissions and Discharge Submissions</li> </ul> </li> </ul>
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- Report in Support of Amendment to Condition 56
- Supplementary Environmental Information Report (2019) comprising –
  - Description of the Phase 2 Development
  - Assessment of Potential Environmental Effects
  - Design and Access Statement Addendum
  - Application Drawings

**Applicant:**

Tilbury Green Power Limited (TGP)

**Validated:**

12.08.2020

**Date of expiry:**

23.10.2020

**Recommendation:** That Planning Committee agree that the content of paragraphs references 6.3 to 6.17(below) comprise the consultation response to be provided by the relevant planning authority to the Department for Business, Energy & Industrial Strategy.

**1.0 BACKGROUND AND DESCRIPTION OF PROPOSAL**

1.1 This report considers the issues raised by an application submitted by Tilbury Green Power (TGP) to the Secretary of State (SoS) for Business, Enterprise & Industrial Strategy (BEIS – formerly the Department for Energy & Climate Change (DECC)) to vary an existing s36 (Electricity Act 1989) consent and deemed planning permission for the construction and operation of a biomass and energy from waste fuelled electricity generation station at Tilbury Docks.

1.2 s36(c) of the Electricity Act 1989 (inserted by s20 of the Growth and Infrastructure Act 2013) allows for the SoS to vary a s36 consent and the process for an applicant to seek a variation is set out in the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013. A guidance note (July 2013) accompanying the Regulations confirms that that the SoS has the power to make “such variations as appear to be appropriate”. However, paragraph 26 of the guidance notes that the variation procedure is not intended as a way of authorising any change to a developer’s plans that would result in development that would be fundamentally different in character or scale from what is authorised by the existing consent

1.3 The Council is defined as the ‘relevant planning authority’ and is required to be consulted by BEIS along with the following bodies:

- Natural England;
- Historic England;
- NATS (National Air Traffic Services);

- Met Office
- Defence Infrastructure Organisation;
- Port of London Authority;
- Environment Agency;
- Highways England;
- Civil Aviation Authority;
- Health and Safety Executive; and
- Met Office Property Management.

1.4 A formal consultation was received from BEIS dated 12<sup>th</sup> August 2020 requesting that any comments are submitted no later than 23<sup>rd</sup> October 2020. Paragraph 8 (1) of the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 states:

*8(1) The appropriate authority (SoS) may cause a public inquiry to be held into a variation application if it considers it appropriate to do so having considered -*

- (a) any representations made about a variation application to the appropriate authority –*
  - (i) which a relevant planning authority makes within two months of the date on which a copy of the application was served on it under regulation 5(2)(b); and*
  - (ii) which any other person makes on or before the date specified in accordance with regulation 5(5)(b)(iii), where those representations are not withdrawn; and*
- (b) all other material considerations.*

The SoS therefore has discretionary power to hold a public inquiry to consider a variation application and in considering whether to hold such an inquiry the SoS must consider any representations submitted by the relevant planning authority or any other person where those representations are not withdrawn.

1.5 Members of the Planning Committee will be aware that with the enactment of the Planning Act 2008 (November 2008) a different consenting regime for onshore electricity generating stations with a capacity of more than 50MW was introduced. Under this Act such proposals are defined as Nationally Significant Infrastructure Projects (NSIPs) where permission is granted via a Development Consent Order issued by the relevant SoS. However, as the TGP proposal was submitted before the 2008 Act came into force, the provisions of the Electricity Act 1989 apply.

- 1.6 By way of background, the s36 consent and deemed planning permission were implemented and a first phase of the development, comprising a waste wood biomass plant with a 40MW output became operational in April 2018. This electrical output is generated from c.300,000 tonnes of waste wood biomass per annum (from a consented total of 650,000 tonnes waste input per annum).
- 1.7 In summary, the current submission to the SoS seeks firstly to vary the s36 consent to amend the extent of the application site (as delineated by a red line boundary) in order to exclude a jetty and associated infrastructure from the application site, and secondly seeks a direction from SoS that the deemed planning permission be varied to amend planning condition no. 56 as follows (proposed new text in italics, proposed deletions struck-through):

*(56) Throughout the operational life of the Phase 2 Development, there shall be submitted to the Council not less frequently than every five years from the commencement of operation of the Phase 2 Development, a report on the quantity of waste material delivered to the Phase 2 Development using road, rail and River Thames. The report shall also examine cost effective measures as may exist to minimise the impact of waste transport by road. ~~No more than 450,000 tonnes of Biomass, Waste Wood, Solid Recovered Fuel, Commercial & Industrial Waste and/or Municipal Solid Waste shall be delivered by road to the Site per annum.~~*

Reason: To minimise the impact of imports on the road network.

- 1.8 The applicant's background and reason for submitting the application is described thus:

*"The consented development consists of two generation units (Phase 1 and 2) having a combined electrical capacity of 80 MW. Construction is complete on the first phase of the development which commenced full operation in April 2018. The first generating unit is fired on waste wood biomass and has an electrical generating capacity of 40 MW approximately.*

*For Phase 2 of the development, engagement with waste supply companies in the environs of the development site commenced in 2018 and is currently ongoing. On foot of these discussions, to secure the commercial viability of the second generating unit TGP wishes to amend Condition 56 in the deemed permission for the development.*

*The Section 36 Consent for the TGP development permits up to 650,000 tonnes per annum of waste material to be brought onto the site to supply the Phase 1 and Phase 2 generating units. The Consent currently places a limit on the quantity of waste*

*material delivered to the development site by road at 450,000 tonnes per annum.*

*In the region of 300,000 tonnes per annum of waste wood is currently transported by road to the Phase 1 generating unit.*

*It is proposed to transport up to 350,000 tonnes of waste per annum to the Phase 2 generating unit. Under the current Consent, only 150,000 tonnes per annum of this can be transported by road, the balance of 200,000 tonnes per annum needing to be transported by alternative means such as river barge or by rail.*

*This restriction on road transportation significantly undermines the commercial viability of Phase 2 of the development by reducing the flexibility to avail of locally available waste material and waste from locations inland not readily connected to barge or rail transport, without significant additional handling and additional fixed infrastructure costs.*

*TGP is seeking the operational flexibility to avail of commercially viable waste transport methods for the waste contractors who will supply waste materials over the life of the project. TGP is not seeking to exclude any mode of transportation (road, rail, barge) and acknowledges that commercial factors associated with waste sources and appropriate transport modes may change over time. TGP intends therefore to apply to vary the Consent to remove the restriction on road transport and to require that the transport of waste to the site be reviewed at regular intervals.*

*Condition 56 in the S36 Consent currently limits waste transported to site to no more than 450,000 tonnes of Biomass, Waste Wood, Solid Recovered Fuel, Commercial & Industrial Waste and/or Municipal Solid Waste shall be delivered by road to the Site per annum. The principal change proposed is to amend this condition to remove the limitation on road transport and to require a report every five years on the commercial viability of waste transport modes”.*

## **2.0 SITE DESCRIPTION**

- 2.1 The TGP site is located within the Port of Tilbury, at the north-western end of the port complex and covers an area of some 9.3 hectares. The River Thames is located to the south-west of the site. The north and north-western boundary of the site is formed by a drainage channel known as Botney Channel, which is defined as a ‘main river’ by the Environment Agency. On the northern side of this channel is Grays Beach park, with mixed commercial and residential areas located further east at Manor Way and Curzon Drive. The north-eastern boundary of the site is formed by the Grays to Tilbury railway corridor. Land and buildings within the Port of Tilbury complex, including the internal port access roads, form all other boundaries to the site.

- 2.2 The TGP site is irregular in shape and comprises three main elements. Firstly, the southern part of the site comprises an existing jetty and associated conveyor line adjacent to the river frontage. The jetty has a river frontage of some 300m and projects approximately 230m beyond the mean high water mark. The conveyor line increases in height above ground level as it runs in a north-westerly direction parallel to the shoreline. This conveyor line terminates close to the south-eastern corner of the site. On the landward (north-eastern) side of the flood defence is an open area used for the storage of biomass awaiting use at the facility. The westernmost part of the site is occupied by Phase 1 of the TGP facility comprising principally a waste wood processing building, boiler hall, turbine building, air cooled condensers, chimney stack and associated ancillary buildings and plant.
- 2.3 The remainder of that part of the site south of Botney Channel comprises a largely open and hardsurfaced area containing the vehicle access (from an internal port estate road) and the electrical switching station for the facility.
- 2.4 The final component of the site is a small triangular-shaped area of open rough grassland located on the northern side of Botney Channel and immediately east of the Curzon Drive industrial estate.
- 2.5 The TGP site formerly comprised factory buildings, plant, warehousing and car parking areas operated by Cargill for the production of sweeteners from cereals. Production ceased in 2005 and the site remained unused thereafter. De-commissioning of the site and demolition of all buildings and structures, apart from a small gatehouse building, was undertaken in 2011/12.
- 2.6 The area surrounding the TGP site contains a variety of land uses. To the south, and within the dock complex, is a flour mill, substantial warehouse buildings, with lorry parking, service areas and areas used for the storage of containers and other materials. To the east of the site are a number of railway sidings aligned parallel with the main Grays to Tilbury railway line. To the east of this railway corridor are mainly small-scale modern industrial and warehouse units located on Thurrock Parkway. Small commercial units are also located to the north of the site at Curzon Drive. Public open space and the Grays Beach play facility are located adjacent to the north-eastern boundary of the site with residential properties on Manor Way, Crest Avenue and Conway Gardens beyond. The nearest existing residential properties are located approximately 100m from the TGP site boundary. A recent planning permission (ref. 14/00810/FUL) for the development of 27 flats at the former pumping station site in Manor Way which is located approximately 30m to the north of the TGP lapsed last year. A planning application (ref. 18/00386/FUL) for 44 flats on the former pumping station site is currently under consideration.



**3.0 RELEVANT PLANNING HISTORY**

3.1 Historically the site formed an undeveloped part of Grays Thurrock Marshes but was developed from the 1970’s for industrial purposes associated with the manufacture of derivatives from cereals. This use ceased in 2005. There is an extensive recent planning history associated with the TGP facility which is set out in the table below.

<b>Application Ref</b>	<b>Description of Proposal</b>	<b>Decision</b>
08/00175/ELEC	Application for s36 Electricity Act consent and deemed planning permission to develop a 60 MW renewable electricity generating plant at Tilbury Docks	Consent and deemed planning permission issued by the Secretary of State (SoS) for the Department of Energy & Climate Change) (DECC) August 2009
10/50148/TTGDCCD	Discharge of conditions 4 & 5 (wheel cleaning details) and 39 & 40 (archaeology) of 08/00175/ELEC	Approved
10/50179/TTGDCCD	Discharge of conditions 6 & 7 (dust suppression) and condition 8 (demolition protocol) of 08/00175/TTGELEC	Approved
10/50188/TTGDCCD	Discharge of condition 27 (noise and vibration monitoring scheme) of 08/00175/ELEC	Approved
10/50250/TTGDCCD	Discharge of conditions 47 & 48 (bat surveys / protection / mitigation scheme) and conditions 49 & 50 (reptile surveys / protection / mitigation scheme) of 08/00175ELEC	Approved
11/50361/TTGETL	Extension of time limit for implementation of planning permission ref. 01.08.04/87C (08/00175/ELEC) to construct and operate a biomass and energy from waste fuelled generating station for a period of two years to 26 Aug 2014.	Approved
11/50376/TTGCND	Variation of conditions 58, 59 & 60 (source and transportation of fuels for the development) attached to planning permission 01.08.04/87c	Approved

	(08/00175/ELEC) and any corresponding conditions attached to any permission granted from planning application 11/50361/TTGETL	
12/01088/CONDC	Discharge of condition 41 (contamination risk) of 11/50376/TTGCND	Approved
13/00422/SCR	Request for EIA Screening Opinion for a proposed waste wood storage and processing facility at Tilbury Green Power Biomass and Energy from Waste Power facility	EIA Required
13/00427/SCO	Request for Scoping Opinions for a proposed waste wood storage and processing facility at Tilbury Green Power Biomass and Energy from Waste Power facility	Advice given
13/00453/NMA	Non-Material Amendment: To allow permitted preliminary works to be undertaken in advance of the submission and approval of details associated with conditions 19 and 23 (Planning Permission - 11/50376/TTGCND)	Approved
13/01079/NMA	Non-Material Amendment: To revise the requirement under Condition 12 of planning permission 11/50376/TTGCND for a green/brown roof on the administration/visitor building, replacing it with alternative ground level habitat adjacent to the proposed ecological area	Approved
13/01170/CONDC	Discharge of condition 13 (rainwater harvesting) of approved planning application 11/50376/CONDC	Approved
13/01179/FUL	The construction and operation of a waste wood processing facility incorporating process building, a visual screen to the River Thames, external plant and equipment, storage areas and car parking	Approved
14/00239/CONDC	Application for approval of details reserved by condition 9 (temporary	Advice Given

	buildings etc.) of planning permission ref. 11/50376/TTGCND	
14/00439/CONDC	Application for approval of details reserved by condition no. 18 (river transport opportunities) of planning permission reference 11/50376/TTGCND	Advice Given
14/00561/CONDC	Application for approval of details reserved by condition 8 (demolition materials recovery target) of planning permission ref. 11/50376/TTGCND	Approved
14/00599/CONDC	Application for approval of details reserved by conditions 19 (travel plan) and 20 (vehicle and accident monitoring scheme) of planning permission reference 11/50376/TTGCND	Advice Given
14/00603/CONDC	reserved by condition 23 (pile driving) of planning permission reference 11/50376/TTGCND	Approved
14/00648/CONDC	Application for approval of details reserved by condition no. 10 (site layout and design) of planning permission ref. 11/50376/TTGCND	Advice Given
14/00658/CONDC	Application for approval of details reserved by condition nos. 49 and 50 (landscaping and creative conservation) of planning permission ref. 11/50376/TTGCND	Advice Given
14/00660/CONDC	Application for the approval of details reserved by conditions 33 and 34 (method and working of drainage) of planning permission ref. 11/50376/TTGCND	Advice Given
14/01139/CONDC	Application for approval of details reserved by condition 9 (Travel Plan) of planning permission ref. 13/01179/FUL	Advice Given
14/01141/CONDC	Application for approval of details reserved by condition no. 3 (Construction Environment Management Plan) of planning permission ref. 13/01179/FUL	Advice Given

14/01212/NMA	Application for a non-material amendment following the grant of planning permission - removal of condition 15 (biomass storage building foundation details) of planning permission ref. 11/50376/TTGCND and s.36 (Electricity Act) deemed planning permission variation ref. 12.04.09.04/266C issued by the Department of Energy Climate Change dated 20 August 2014	Approved
14/01287/CONDC	Application for the approval of details reserved by condition 5 (foundation design details) and 6 (pile driving scheme) of planning permission ref. 13/01179/FUL	Advice Given
14/01298/CONDC	Application for approval of details reserved by condition no.15 (surface water management strategy) of planning permission ref. 13/01179/FUL	Advice Given
16/00102/CONDC	Discharge of condition 66 (Stack Aviation Lighting) from approved planning permission 11/50361/TTGFUL. For Phase 1 Stack Only	Approved
16/00873/NMA	Non material amendments to condition 10 of planning application 11/50376/TTGCND; A series of detailed design driven amendments to the layout and design of the generation station phase 1, including the on site electricity substation	Approved
16/00991/CONDC	Application for the approval of details reserved by condition no. 64 (air pollution monitoring) of deemed planning permission ref. 12.04.09.04/266C (biomass and energy from waste fuelled electricity generating station at Tilbury Docks) in respect of phase 1 of the development (biomass power plant).	Approved

16/01709/CONDC	reserved by condition nos. 4 (wheel washing) and 5 (wheel washing) of DECC deemed planning permission ref. 12.04.09.04/266	Approved
17/00843/CONDC	Application for the approval of details reserved by condition no. 29 (noise and vibration management plan) of the deemed planning permission for the Tilbury Green Power power plant facility (as amended by 11/50376/TTGCND).	Advice Given
17/00844/CONDC	Application for the approval of details reserved by condition no. 13 (noise and vibration management plan) of planning permission ref. 13/01179/FUL	Advice Given
17/01093/CONDC	Application for the approval of details reserved by condition no. 53 (pest and vermin control) of DECC deemed planning permission ref. 12.04.09.04/266 - Thurrock Council ref. 11/50376/TTGCND	Advice Given
17/01266/CONDC	Application for the approval of details reserved by condition nos. 63 (disposal and re-use of post combustion residues) of planning permission ref. 11/50376/TTGCND	Advice Given
17/01590/CONDC	Application for the approval of details reserved by condition no. 17 (flood response plan) of planning permission ref. 11/50376/TTGCND	Advice Given
17/01591/CONDC	Application for the approval of details reserved by condition nos. 68 of planning permission ref. 11/50361/TTGETL	Advice Given
19/00499/ELEC	Proposed variation of s36 (Electricity Act) consent and deemed planning permission for the construction and operation of a biomass and energy from waste fuelled electricity generating station (Tilbury Green Power) - proposed increase in generating capacity to 80MW and	Consultation response provided to SoS – Variation approved by SoS March 2020

	variations to conditions including restrictions on source and quantity of waste material components.	
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3.2 The applications of principal importance from the above table are:

- 08/00175/ELEC – this refers to an application submitted to the SoS (DECC) for (i) consent under section 36 of the Electricity Act 1989 to construct and operate a 60 megawatt (MW) biomass and energy from waste fuelled electricity generating station and (ii) a direction under section 90(2) of the Town and Country Planning Act 1990 that planning permission for the development be deemed to be granted. Thurrock Council were a consultee and in responding to DECC raised an objection and requested that a public inquiry be held before the SoS reached a decision on the application. The former Thurrock Thames Gateway Development Corporation (TTGDC) were also a consultee (as they performed the function as the relevant planning authority at that time) and did not maintain any objection to the application, subject to planning conditions and obligations within a s106 legal agreement. After considering all material planning matters the SoS granted a s36 consent and a direction (deemed planning permission) in August 2009 (DECC reference 01.08.10.04/87C. In September 2009 DECC issued an errata to one of the planning conditions. In July 2011 TGP sought a direction from the SoS pursuant to condition 3(2) of the s36 consent to extend the period within which commencement of the development was required to occur (from 26.08.12 to 26.08.14). The SoS issued a s36 direction in July 2011 allowing commencement of development no later than 26.08.14. However the SoS noted that consent from the relevant planning authority would also be required to extend the life of the deemed planning permission.
- In 2011 TGP submitted two applications to TTGDC (the relevant planning authority at that time). Application ref. 11/50361/TTGETL sought an extension to the time limit for implementing the deemed planning permission (DECC ref. 01.08.10.04/87C) for two further years until 26.08.14. This application was approved by TTGDC subject to planning conditions and a deed of variation to the s106 unilateral undertaking signed by TGP. At the same time TGP submitted a s73 (Planning Act) application to TTGDC seeking variation of condition nos. 58-60 of the deemed planning permission which related to the sources and transportation of fuels to the site. The Council (as a consultee) raised no strategic policy objection to the proposal and permission was granted, subject to a deed of variation to the s106 unilateral undertaking, in January 2012.
- In April 2014 TGP applied to the SoS (DECC) for (i) a variation to the s36 (Electricity Act) consent to extend the time period for implementation by one year (until 26.08.15) (ii) clarification that TGP has the right to assign the benefit of the s36 consent and (iii) a s90 direction (deemed planning permission) the extending

the time period for commencement until 26.08.15 and replication of planning permission ref. 11/50376/TTGCND with regards to conditions and progress on discharging the requirements thereof. In August 2014 the SoS approved the application (ref. 12.04.09.04/266C).

- In March 2019 TGP applied to the SoS (DECC) for (i) a variation to the s36 (Electricity Act) consent to increase the generating capacity of the facility to 80MW and (ii) vary planning conditions attached to the deemed planning consent, including restrictions on source and quantity of waste material components. It is notable that this application included a proposal to delete condition no. 56. In March 2020 the SoS approved the application, but considered that condition no. 56 should be retained.

#### **4.0 CONSULTATIONS AND REPRESENTATIONS**

4.1 As this is an application submitted by TGP to the SoS pursuant to the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 there is no requirement for the relevant planning authority to undertake any formal consultation or notification. Instead the applicant is required to include within their submission to the Department for Business, Energy & Industrial Strategy (BEIS - formerly DECC) a statement of what account has been taken of views expressed by persons consulted by the applicant. The application includes, at Appendix 5, a 'Report on Consultation with Statutory Agencies and the Public' (November 2018). This report confirms that TGP consulted with the following bodies:

- Thurrock Council;
- Highways England; and
- Port of London Authority.

4.2 TGP received the following consultation replies:

4.3 HIGHWAYS ENGLAND:

Confirm that comments will be submitted to the formal consultation.

4.4 PORT OF LONDON AUTHORITY:

Would object to any application to remove the cap on the amount of material brought to the site by road. The Tilbury Green Power Site is ideally placed for sustainable transport both being located within Tilbury Dock and having a frontage (and jetty) on the River Thames. It would be a significant missed opportunity and contrary to planning policy that seeks to increase sustainable transport, if all the materials

needed for the plant could be brought in by road. Whilst the proposal to review at regular intervals (suggested to be every 5 years) is noted all that seems to be proposed is a report, with no requirement to act on the findings of the report. It is also unclear whether consultees would be able to review and comment on the report and therefore there would be no critical appraisal of the report that is produced. The PLA considers that in line with planning policy, the use of water to deliver materials to the development site should be maximised.

4.5 Planning officers have consulted with the Council's Highways Officer who has responded as follows:

4.6 HIGHWAYS:

The proposal would mainly impact on the strategic highway network (A1089) which is a Highways England asset. There are still concerns with the impact of this development on the local network, particularly in regard to the sourcing of materials from local sites away from the strategic network. Overall the preference would be for the continued servicing of the development to remain with more sustainable transportation modes.

## **5.0 POLICY CONTEXT**

### **5.1 National Policy Statements (NPS)**

As noted above the TGP was consented under the Electricity Act 1989 as the proposal was submitted prior to the provisions of the Planning Act 2008 coming into force. Proposals for onshore generating stations with a capacity of more than 50mW submitted after 1<sup>st</sup> March 2010 qualify as NSIPs where consent is obtained via a DCO. The Planning Act 2008 requires that applications for a DCO are determined by the SoS in accordance with relevant National Policy Statements (NPS). Although the existing consent and current submission were not considered under the Planning Act 2008, the following NPS are nevertheless relevant to the consideration of the application.

### **5.2 Overarching National Policy Statement for Energy (EN-1)**

Identifies a general need for new electricity infrastructure projects and highlights the role of renewable electricity generation, including biomass and energy from waste. Generic impacts associated with proposals for generating stations include traffic and transport and waste management. Paragraph 5.13.2 states that the consideration and mitigation of transport impacts is an essential part of the Government's wider policy objectives for sustainable transport.



### 5.3 Renewable Energy Infrastructure (EN-3)

Part 2 of this NPS refers to assessment and technology-specific information and part 2.5 covers biomass and waste combustion. Under the heading of 'transport infrastructure', paragraph 5.2.24 notes that biomass and energy from waste generating stations are likely to generate considerable transport movements. Paragraph 5.2.25 states that Government policy encourages multi-modal transport and expects materials to be transported by water or rail routes where possible. This paragraph goes on to say that although there may in some instances be environmental advantages to rail or water transport, whether such methods are viable is likely to be determined by the economics of the scheme.

### 5.4 **National Planning Guidance**

#### National Planning Policy Framework (NPPF)

The revised NPPF was published on 24<sup>th</sup> July 2018 (and subsequently updated with minor amendments on 19<sup>th</sup> February 2019). The NPPF sets out the Government's planning policies. Paragraph 11 of the Framework sets out a presumption in favour of sustainable development. Paragraph 2 of the NPPF confirms the tests in s.38 (6) of the Planning and Compulsory Purchase Act 2004 and s.70 of the Town and Country Planning Act 1990 and that the Framework is a material consideration in planning decisions.

The following headings and content of the NPPF are relevant to the consideration of the current proposals:

6. Building a strong, competitive economy;
9. Promoting sustainable transport;
12. Achieving well-designed places; and
14. Meeting the challenge of climate change, flooding and coastal change.

### 5.5 Planning Policy Guidance (NPPG)

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

- Air quality
- Climate change;

- Design;
- Environmental Impact Assessment;
- Flood risk and coastal change;
- Health and wellbeing;
- Natural environment;
- Renewable and low carbon energy;
- Travel Plans, Transport Assessments and Statements;
- Use of planning conditions; and
- Waste.

#### 5.6 Waste (England and Wales) Regulations 2011

The Regulations transpose the European Directive on waste and, inter-alia, impose duties in relation to waste management and the improve use of waste as a resource. The Regulations refer to a waste hierarchy comprising: prevention; preparing for re-use; recycling; other recovery (for example energy recovery); and disposal.

#### 5.7 Waste Management Plan for England 2013

Sets out the Government's aim to work towards a more sustainable and efficient approach to waste management.

#### 5.8 National Planning Policy for Waste 2014

Sets out detailed waste planning policies to be read in conjunction with the NPPF, the Waste Management Plan for England and National Policy statements.

#### 5.9 **Local Planning Policy**

##### Thurrock Local Development Framework (2015)

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

Overarching Sustainable Development Policy:

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

Spatial Policies:

- CSSP3 (Infrastructure)

Thematic Policies:

- CSTP14 (Transport in the Thurrock Urban Area)
- CSTP15 (Transport in Greater Thurrock)
- CSTP16 (National and Regional Transport Networks)
- CSTP17 (Strategic Freight Movement and Access to Ports)
- CSTP28 (River Thames)

Policies for the Management of Development:

- PMD1 (Minimising Pollution and Impacts on Amenity)
- PMD9 (Road Network Hierarchy)
- PMD10 (Transport Assessments and Travel Plans)
- PMD11 (Freight Movement)

#### 5.10 Thurrock Local Plan

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

#### 5.11 Thurrock Design Strategy

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

### **6.0 ASSESSMENT**

- 6.1 As set out above, this application is submitted to the SoS for consideration and decision, although the Council as the relevant planning authority is invited by BEIS to submit its views. The purpose of this report is to provide the Committee with an appraisal of the proposed variation to the s36 consent and deemed planning

permission in order to inform a consultation response to BEIS. Also as confirmed above, before determining the application the SoS may cause a discretionary public inquiry to be held if it is deemed appropriate to do so having considered the representations received and all other material considerations.

- 6.2 The structure of the assessment below sets out the variations applied for and a suggested response.

Proposed Variation of s36 Consent

- 6.3 Paragraph 1:

Proposed amendment of the s36 Application Boundary (site plan) in order to remove the river jetty and associated conveyor connecting to the south-eastern corner of the 'main' site. Replacement of Figure 1.2 with Figure 1.2A.

**Response:** The proposed change to the site boundary to remove the river jetty and associated conveyor is linked to the proposed amendment to condition no. 56 (described below). The proposal would, in effect, remove any potential for access to the river for delivery or export of materials to or from the facility. This proposed variation is considered in more detail below.

Proposed Variation of Deemed Planning Permission

- 6.4 Condition no. 56 (Material Inputs):

The current condition is:

*“No more than 450,000 tonnes of Biomass, Waste Wood, Solid Recovered Fuel, Commercial & Industrial Waste and/or Municipal Solid waste shall be delivered by road to the Site per annum.”*

- 6.5 The proposal would delete the condition and introduce a replacement condition as follows:

*“Throughout the operational life of the Phase 2 Development, there shall be submitted to the Council not less frequently than every five years from the commencement of operation of the Phase 2 Development, a report on the quantity of waste material delivered to the Phase 2 Development using road, rail and River Thames. The report shall also examine cost effective measures as may exist to minimise the impact of waste transport by road.”*

- 6.6 **Response:** With regard to condition no. 56, the proposed amendment would remove the current cap restricting road deliveries to no more than 450,000 tonnes per annum and would potentially allow for all deliveries of feedstock (up to 650,000 tonnes per annum) by road. Existing condition no. 55 limits imports of all feedstocks to the site to no more than 650,000 tonnes per annum, so the effect of condition nos. 55 and 56 is to require 200,000 tonnes of feedstock to be delivered by modes of transport other than road transport. The site is located at the northern-end of the Tilbury Docks complex and is accessed from an internal estate road within the Port. The Port itself is accessed from the A1089 which connects to the A13. Both the A1089 and A13 (west of the A1089 junction) form part of the Strategic Road Network (SRN) where Highways England (HE) are the responsible highways authority. At the time of writing Officers have not seen a consultation response from HE. Nevertheless, as noted by the Council's Highways Officer, the highway impacts of the proposed amendment will predominantly affect the trunk road network in respect of actual traffic impact and policy issues associated with potential vehicle kilometres travelled. Accordingly, it is reasonable for the Council to defer to HE on the issue of potential impacts of additional vehicle movements on the SRN.
- 6.7 The Port of Tilbury, which includes the land within the s36 application boundary is specifically referred to by adopted Core Strategy policy CSTP28 (River Thames). This policy states at (1.) that the Council and partners will ensure that the economic and commercial function of the river will continue to be promoted through (inter-alia): (i) priority being given to allocating riverside sites to uses that require access to the river frontage (ii) safeguarding port-related operational land and (iv) safeguarding existing and promoting new jetties and wharves for transport of goods and materials. Core Strategy policy CSTP17 (Strategic Freight Movement and Access to Ports) is also to a degree relevant as this policy recognises the tradition of port-related and freight activity in Thurrock and seeks to support the logistics and port sectors by, inter-alia, facilitating a shift to river and rail freight. The site currently has access to the River Thames via both the jetty included within the s36 application boundary and the nearby dock berths accessed by the internal port estate roads.
- 6.8 The NPPF and NPS (Energy) refer to the importance of sustainable transport and the pre-submission consultation response from the Port of London Authority also mentions the policy intention of moving bulk materials by river and the ideal placement of the site within Tilbury Docks and with a frontage to the River Thames. The site is therefore in a location capable of being served by sustainable modes of transport.
- 6.9 As noted above, in 2019 the TGP applied to the SoS to vary the s36 consent and deemed planning permission and the amendments proposed at that time included the deletion of condition no. 56. In responding to the SoS, the Council referred to the position of the site within Tilbury Docks, the riverfront access and planning policies

aimed at securing sustainable modes of transport. The consultation response to the SoS (June 2019) therefore queried whether the proposed amendment to condition no. 56 was consistent with policies promoting sustainable transport.

- 6.10 The decision letter from the SoS (dated 26<sup>th</sup> March 2020) responding to the proposed 2019 variation referred at paragraph no. 4.4 to the proposed deletion of condition no. 56 as follows:

*“The Applicant has also requested the removal of the restriction imposed by Condition 56 (Material Inputs), which currently allows only 450,000 tonnes of waste and biomass fuel to be brought to the site by road (i.e. the remaining 200,000 tonnes needs to be delivered by the River Thames). Thurrock Council queried whether the proposed amendment is consistent with policies promoting sustainable transport (i.e. the Thurrock development plan for waste includes the National Policy for Waste (2014) and adopted Core Strategy (2015); The National Planning Policy Framework and NPS (Energy) also refer to the importance of sustainable transport). The Secretary of State has considered the issue and notes, in particular, that although the policy requirements in EN-1 (Overarching National Policy Statement for Energy) and EN-3 (Renewable Energy Infrastructure) do not mandate the used of water-based transport there is a clear expectation that transportation of materials by water or rail should be preferred where cost effective and that any change should be based on considerations of the impacts of its retention on the costs-effectiveness and viability of the scheme. The Secretary of State has also considered the information contained within the Transport Assessment provided by the Applicant and notes that Highways England has not objected to the proposed removal of the condition. The Applicant has not provided any specific evidence as to why the condition should be removed or why it is no longer cost effective. The Secretary of State therefore considers that the current condition which was put in place to minimise the impact on the surrounding roads should be retained.”*

- 6.11 The SoS therefore acknowledged that although river or rail transport methods are preferred, the encouragement of these sustainable transport modes has to be balanced with whether such methods are financially viable, as determined by the economics of the scheme (NPS EN-3, paragraph no. 2.5.25). Nevertheless, as the 2019 variation application did not provide specific evidence why the condition should be removed or why the condition was no longer cost effective, the SoS concluded that the condition should remain unchanged.
- 6.12 It is noted that the applicant has now submitted a supporting document titled ‘Tilbury Green Power Phase 2 Application to Amend Planning Condition 21 May 2020’ (Mott Macdonald). Part 3 of this document investigates the commercial impacts of different transport modes and concludes at paragraph no. 3.3.3 that road and rail transport,

road and barge transport and finally barge transport directly from an on-site wharf are all transport modes which are more expensive than direct road transport.

- 6.13 The Council does not dispute the conclusions of the applicant's supporting document. In addition, the Council recognises that EN-3 refers to the cost effectiveness and financial viability of transportation. Therefore, in the absence of any objection from Highways England relating to potential impact on the strategic road network, it is a matter for the SoS to balance the environmental benefits of sustainable modes of transport with the relative costs of different modes of transport and their impact on the financial viability of the scheme.
- 6.14 However, the Council has considered the content of the proposed wording of condition no. 56 and notes that it only requires the submission to the Council of a five-yearly report which confirms the tonnages delivered by different modes of transport and examines potential measures to minimise the impacts of transport by road. If the SoS concludes that removal of the existing wording is appropriate, the replacement wording should require the submission of a regular report to the relevant planning authority. The report should investigate the opportunities for sustainable modes of transportation and comment on their cost effectiveness and impact on financial viability. If the results of the investigation conclude that it is viable and economic to use modes of transport other than by road, then there should be a commitment to utilise sustainable transport modes. The wording of the condition should also include reference to consultation by the local planning authority with the Port of London Authority. The Council suggests that the following, or similar wording should be used for condition no. 56:

*“Every five years starting from the Commissioning of the Phase 2 Development and throughout the operational life of the Phase 2 Development a report on the quantity of feedstocks delivered to the Phase 2 Development using road, rail and the River Thames shall be submitted to and approved by the local planning authority, in consultation with the Port of London Authority. The report shall include an investigation as to whether rail and / or river transport can be used for the transportation of feedstocks into the site. In the event that the report concludes that it is viable and economic to use rail and / or river transport then these modes shall be used within a timescale to be agreed in writing by the local planning authority.”*

- 6.15 The Council notes that the proposed amendment to the site plan (Figure 1.2A) would remove the potential for the site to be served directly from the adjacent jetty. The proposed removal of the jetty from the site plan would therefore restrict the potential options transport by river and potentially prejudice this mode of transport as a viable option. The SoS is requested to consider whether there are sound reasons to remove the potential for direct river access from the site.

## **7.0 CONCLUSIONS AND REASONS FOR RECOMMENDATION**

- 7.1 The purpose of this report is to provide the SoS (BEIS) with the Council's views on an application to amend the s36 (Electricity Act) consent and deemed planning permission for the TGP facility. The proposed amendment to condition no. 56 was previously considered by the Council in 2019 and at that time it was queried whether the removal of the condition in its entirety was consistent with policies promoting sustainable transport. In amending the s.36 and deemed planning permission earlier this year the SoS did not remove condition no. 56 as no evidence about cost-effectiveness has been submitted by the applicant.
- 7.2 The applicant has now provided an assessment of the costs of different modes of transport which concludes that road transport is the most cost-effective method. National policy expressed in EN-3 sets out a preference for sustainable transport modes where cost-effective. It is a matter for the SoS to judge whether the applicant's case is robust. If the SoS concludes that the condition can be amended a stronger form of wording is suggested to require a commitment to enacting sustainable transport.

## **8.0 RECOMMENDATION**

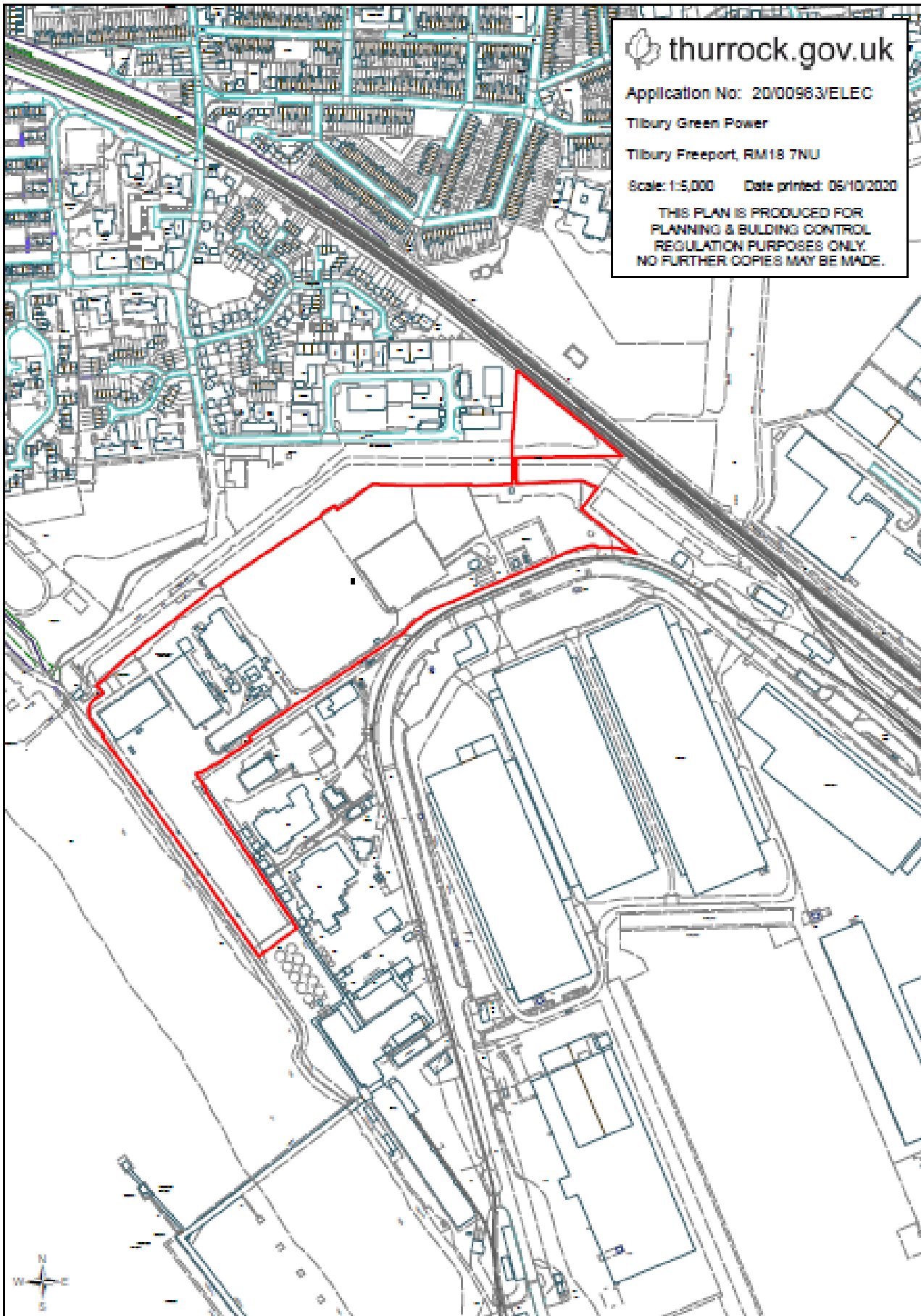
- 8.1 That Planning Committee agree that the content of paragraphs references 6.3 to 6.17 (above) comprise the consultation response to be provided by the relevant planning authority to the Department for BEIS.

### **Documents:**

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

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





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Planning Committee 22 October 2020	Application Reference: 20/01065/FUL
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<b>Reference:</b> 20/01065/FUL	<b>Site:</b> Treetops School Buxton Road Grays Essex RM16 2WU
<b>Ward:</b> Little Thurrock Blackshots	<b>Proposal:</b> Construction of a new sports hall and 2no. additional classrooms

Plan Number(s):		
Reference	Name	Received
TRE2-NZB-01-ZZ-DR-A-0102-S3-P04	Site Layout	14th August 2020
TRE2-NZB-11-00-DR-A-0104-S3-P04	Proposed Elevations	14th August 2020
TRE2-NZB-01-ZZ-DR-A-0102-S3-P05	Site Layout	28th August 2020

The application is also accompanied by:

- Planning Statement Treetops (Real8 Group, August 2020)
- Design and Access Statement
- Flood Risk Report (Ref. 70787R2, 15<sup>th</sup> July 2020)
- Sports Hall Community Engagement (3<sup>rd</sup> July 2020)
- Sports Hall Community Engagement Responses
- Letter of Support from Panathon Foundation (18<sup>th</sup> June 2020)

<b>Applicant:</b> Treetops School	<b>Validated:</b> 1 September 2020  <b>Date of expiry:</b> 27 October 2020
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**Recommendation:** Approve, subject to conditions

This application is scheduled for determination by the Council's Planning Committee because the previous application relating to the erection of a new 140 pupil SEN (special educational needs) Free school with associated parking and landscaping (ref. 19/00725/FUL) at the site was considered and determined by Members in October 2019. This current application directly relates to proposed development following that approval.

**1.0 DESCRIPTION OF PROPOSAL**

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

Site Area	c. 647 sq.m
Proposed Floorspace	584 sq.m
Height	Single storey. Sports hall c. 7.4m high
No. of Staff	112 full time equivalent (No change proposed)
Capacity	140 places (ages 5 to 16 years) (No change proposed)
Car Parking (within the application site)	Existing: 121 spaces, including 2 spaces for disabled users.
	Proposed: 232 spaces, including 9 spaces for disabled users. (No change proposed)
	Net increase: 111 spaces (No change proposed)

1.2 The proposal seeks permission for the erection of a new sports hall with 2 additional classrooms attached. The proposals would be purpose built for Special Educational Needs (SEN) pupils at the new Treetops School. Planning permission was granted in November 2019 for the proposed development of the new 140 pupil place SEN Free school. This proposal would be an addition to the new school but would entail no increase in pupil or staffing numbers. The proposed SEN Free School would be run by the same Trust as the Treetops Academy, located to the immediate north of the site, but would be operated as an entirely separate school.

1.3 Temporary planning permission was also granted in September 2019 by the Planning Committee for a double demountable classroom to the immediate east of the application site (adjacent to the existing playgrounds) in order that the new school could provide additional SEN teaching facilities for the Treetops Academy School following the confirmed intake of students for September 2019. It is anticipated that the double demountable classroom would be removed from the site when the temporary permission expires in October 2021.

**2.0 SITE DESCRIPTION**

2.1 The site of the former Torrells County Secondary School extended to an area of 10.8 Ha and included playing fields to both the south and north-west of the campus buildings. However, the current application site is c. 687 sq.m in area and is situated on the central and eastern part of the former school site. The existing Treetops Academy is located to the north of the application site and accessed via Buxton

Road. Immediately south and west of the application site lies a large part of the existing car parking area and a part of the ‘operational’ playing field and also floor slabs, foundations and hardstandings associated with the former school buildings. A number of trees and shrubs are sited on this part of the site, however aside from this landscaping and lighting columns within the car park there are no above-ground built structures on the site. This is the site area associated with the recently approved Free school. Playing fields are located further to the south; residential development along Buxton Road and Carlton Road is located to west; the A1089 is to the immediate east and undeveloped land lies to the immediate north with Stanford Road beyond.

2.2 The site of the proposed sports hall and additional classrooms is immediately south of the existing Treetops Academy school buildings, and north east of the site for the proposed new school. The site is located on an area of proposed landscaping between the car park and the edge of the playground to the far east of Treetops School, and is currently an overgrown grass area adjacent to the original footprint and area associated with the former school buildings. The site is located within the Metropolitan Green Belt. The site is located in a low flood risk zone.

### 3.0 RELEVANT PLANNING HISTORY

The site has an extensive planning history associated with its recent use for educational purposes. The current site comprises part of the larger former Torrells County Secondary School site, which was developed in the post WWII years and subsequently demolished in the mid-late 2000s. A number of hardsurfaced areas associated with the former schools remain on-site. In recent years the northern ‘footprint’ of the former schools buildings has been redeveloped via the construction of the Beacon Hill Academy (post 16 campus) which provides facilities for pupils with severe and complex learning difficulties and Treetops Academy School which provides 290 places for pupils between the ages of 3 and 19 who experience moderate learning difficulties. The most recent planning history is set out in the table below:

Application Reference	Description	Decision
06/00170/TTGFUL	Demolition of existing school building and the construction of replacement Treetops and Beacon Hill special schools plus respite/post 16 building, garage block and related works, all taking permanent access from Buxton Road (construction access from Stanford Road).	Approved
07/00148/TTGFUL	Amendments to planning permission 06/00170/TTGFUL (Demolition of	Approved

	existing school building and the construction of replacement Treetops and Beacon Hill special schools plus respite/post 16 building, garage block and related works).	
10/00976/TBC	New school kitchen and dining room plus pupil changing facilities.	Approved
11/00099/FUL	Erection of single storey building comprising canteen and shop	Withdrawn
11/00359/FUL	Erection of single storey building comprising canteen and shop	Approved
12/00279/FUL	New 4000msq car park, with soft and hard landscaping and lighting.	Approved
14/00971/FUL	Replacement teaching building	Approved
19/01095/FUL	Temporary permission is sought for the siting of a double demountable classroom unit to the rear of the school site for a duration of 1 year in order to allow the school to accommodate pupils with special educational needs within the borough of Thurrock while the planning application (ref. 19/00725/FUL) for the construction of the Treetops Free School is considered.	Approved (expiring 31 <sup>st</sup> October 2021)
19/00725/FUL	Erection of a new 140 pupil SEN school with associated parking and landscaping	Approved

#### 4.0 CONSULTATIONS AND REPRESENTATIONS

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

#### 4.2 PUBLICITY:

This application has been advertised by way of individual neighbour notification letters, press advert and public site notice which has been displayed nearby. No written comments have been received at the time of drafting this report.

#### 4.3 HIGHWAYS

No objection subject to conditions.

#### 4.4 LANDSCAPE AND ECOLOGY ADVISOR

No objections.

#### 4.5 SPORT ENGLAND

Supports application, subject to condition relating to Community Use Agreement.

### 5.0 POLICY CONTEXT

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

5.1 The revised NPPF was published on 19<sup>th</sup> February 2019. The NPPF sets out the Government's planning policies. Paragraph 2 of the NPPF confirms the tests in s.38 (6) of the Planning and Compulsory Purchase Act 2004 and s.70 of the Town and Country Planning Act 1990 and that the Framework is a material consideration in planning decisions. The following chapter headings and content of the NPPF are particularly relevant to the consideration of the current proposals:

6. Building a strong, competitive economy
8. Promoting healthy and safe communities
9. Promoting sustainable transport
11. Making effective use of land
12. Achieving well-designed places
13. Protecting Green Belt land
14. Meeting the challenge of climate change, flooding and coastal change
15. Conserving and enhancing the natural environment

#### 5.2 National Planning Practice Guidance (NPPG)

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

- Design
- Determining a planning application
- Open space, sports and recreation facilities, public rights of way and local green space
- Planning obligations
- Transport evidence bases in plan making and decision-taking

- Travel plans, transport assessments and statement in decision-taking
- Use of planning conditions

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

The “Core Strategy and Policies for Management of Development” was adopted by Council on the 28th February 2015. The following policies apply to the proposals:

#### OVERARCHING SUSTAINABLE DEVELOPMENT POLICY

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

#### SPATIAL POLICIES

- CSSP3 (Infrastructure)
- CSSP4 (Sustainable Green Belt)

#### THEMATIC POLICIES

- CSTP9 (Well-being: Leisure and Sports)
- CSTP12 (Education and Learning)
- CSTP22 (Thurrock Design)
- CSTP25 (Addressing Climate Change)
- CSTP27 (Management and Reduction of Flood Risk)

#### POLICIES FOR MANAGEMENT OF DEVELOPMENT

- PMD1 (Minimising Pollution and Impacts on Amenity)
- PMD2 (Design and Layout)
- PMD6 (Development in the Green Belt)
- PMD8 (Parking Standards)
- PMD9 (Road Network Hierarchy)
- PMD10 (Transport Assessments and Travel Plans)

### 5.4 Thurrock Local Plan

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



of Consultation on the Council's website and agreed the approach to preparing a new Local Plan.

#### 5.5 Thurrock Design Strategy

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

#### 5.6 Thurrock Residential Alterations and Extensions Design Guide (RAE)

In September 2017 the Council launched the RAE Design Guide which provides advice and guidance for applicants who are proposing residential alterations and extensions. The Design Guide is a supplementary planning document (SPD) which supports policies in the adopted Core Strategy.

### 6.0 **ASSESSMENT**

#### Procedure:

With reference to procedure, this application has been advertised as being a departure from the Development Plan.

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

- I. Principle of the Development
- II. Design and Layout and Impact upon the Area
- III. Amenity Impact
- IV. Access, Traffic Impact and Car Parking
- V. Community Use
- VI. Other Matters

#### I. PRINCIPLE OF THE DEVELOPMENT

#### 6.2 As noted at paragraph 2.2 above, the site is located within the Metropolitan Green Belt. It is therefore necessary to consider the following key questions:

- i. whether the proposals constitute inappropriate development in the Green Belt;
- ii. the effect of the proposals on the open nature of the Green Belt and the purposes of including land within it; and

- iii. whether the harm to the Green Belt is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify inappropriate development.

6.3 i. Whether the proposals constitute inappropriate development in the Green Belt

Chapter 13 (Protecting Green Belt land) of the NPPF sets out national planning policies for the Green Belt. Paragraph 133 within Chapter 13 states that the “*Government attaches great importance to Green Belts*” and that the “*fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belt are their openness and their permanence.*” Paragraph 145 states that a local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Paragraph 145 sets out a limited number of exceptions to this, comprising:

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

- 6.4 The exceptions to inappropriate development set out at (a) to (f) above do not apply to the proposals. With regard to exception (g), the proposed sports hall and classrooms would be partly located on the footprint of the former Torrells County Secondary School which was demolished in the mid-late 2000s. The definition of ‘previously developed land’ (PDL) set out at Annex 2 of the NPPF defines PDL as:

*“Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.”*

- 6.5 In this case, although vegetation has partly obscured the footprint of the former school buildings, the ground floor slabs are visible and would fall within the definition of PDL. However, it is considered that the proposals would have a greater impact on the openness of the Green Belt than the existing development (i.e. the floor slabs) and therefore exception (g) would not apply. Consequently, the proposals comprise inappropriate development with reference to paragraph 145 of the NPPF.
- 6.6 Paragraph 143 of the NPPF makes it clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in “*very special circumstances*”. Paragraph 144 goes on to state that, 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, is clearly outweighed by other considerations*”.
- 6.7 Development plan policy, as expressed in the adopted Thurrock Core Strategy and Policies for the Management of Development (2015) is consistent with national policy on Green Belt matters. Core Strategy policy CSSP4 sets out the objective of maintaining the purpose, function and open character of the Green Belt. In order to implement this policy, the Council will:
- maintain the permanence of the boundaries of the Green Belt;
  - resist development where there would be any danger of coalescence; and
  - maximise opportunities for increased public access, leisure and biodiversity.
- 6.8 In addition, Core Strategy policy PMD6 states that, inter-alia, planning permission will only be granted for new development in the Green Belt provided it meets as appropriate the requirements of the NPPF.
- 6.9 Consequently, it can be concluded that the proposals constitute inappropriate development in the Green Belt.

ii. The effect of the proposals on the open nature of the Green Belt and the purposes of including land within it

- 6.10 Having established that the proposals are inappropriate development, it is necessary to consider the matter of harm. Inappropriate development is, by definition, harmful to the Green Belt, but it is also necessary to consider whether there is any other harm to the Green Belt and the purposes of including land therein.
- 6.11 As noted above paragraph 133 of the NPPF states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts being described as their openness and their permanence. Although the new sports hall and classrooms would be partly located on the footprint of former Torrells County Secondary School buildings, these structures were demolished to ground level approximately 10-12 years ago and this part of the site has been essentially open since this time. The proposals would comprise new built development (c.584 sq.m) in an area which is open. Therefore, it is considered that the development proposed would significantly reduce the openness of the site. As a consequence the loss of openness, which is contrary to the NPPF, should be accorded substantial weight in the consideration of this application.
- 6.12 Paragraph 133 of the NPPF sets out the five purposes which the Green Belt serves as follows:
- (a) to check the unrestricted sprawl of large built-up areas;
  - (b) to prevent neighbouring towns from merging into one another;
  - (c) to assist in safeguarding the countryside from encroachment;
  - (d) to preserve the setting and special character of historic towns; and
  - (e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- 6.13 In response to each of these five Green Belt purposes:
- 6.14 *(a) to check the unrestricted sprawl of large built-up areas*

The NPPF does not provide a definition of the term “*large built-up areas*”. However, at a wide geographical scale, the site is located at the eastern edge of the Grays / Little Thurrock built-up area. The school site and open land on the eastern side of the A1089 Dock Approach Road form a corridor of Green Belt land separating Little Thurrock from Chadwell St. Mary. Although the development would comprise a new building in the Green Belt, the historical context up until c.10 years ago was that the site was occupied by an extensive range of school buildings. In these circumstances

the proposals would arguably have only limited impact upon the purpose of the Green Belt in checking the unrestricted sprawl of large built-up areas.

6.15 *(b) to prevent neighbouring towns from merging into one another*

The NPPF does not provide a definition of the term “towns”. However, adopting a precautionary approach, the conurbations of Grays / Little Thurrock and Chadwell St. Mary could reasonably be considered as separate towns. The corridor of Green Belt (including the application site) serves a function in preventing Grays / Little Thurrock and Chadwell St. Mary from merging. Therefore, the proposals would impact on the purpose of the Green Belt in preventing neighbouring towns from merging into one another.

6.16 *(c) to assist in safeguarding the countryside from encroachment*

With regard to the third Green Belt purpose, the proposal would involve built development on what is currently open land. The term “countryside” can conceivably include different landscape characteristics (e.g. farmland, woodland, marshland etc.) and adopting a cautious approach the site comprises “countryside” for the purposes of applying the NPPF policy test. It is considered that the proposals would constitute an encroachment of built development into the countryside at this location, causing some harm to the third purpose for including land in the Green Belt.

6.17 *(d) to preserve the setting and special character of historic towns*

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

6.18 *(e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land*

In general terms, the development could occur in the urban area and in principle, there is no spatial imperative why Green Belt land is required to accommodate the proposals. However, it is notable that the proposals would be provided as part of the recently approved new school and, in addition, would be located adjacent to the current Treetops School and it could be expected that synergies would result from the shared location. As there were valid reasons for co-locating the school, and it is reasonable to assume there may be valid reasons for locating the proposed sports hall, it is considered that the harm to this purpose of the Green Belt is limited.

6.19 In light of the above analysis, it is considered that the proposals would, to a degree, be contrary to some of the purposes of including land in the Green Belt. As noted above, there would be in-principle harm by reason of inappropriate development and

harm by reason of loss of openness. Substantial weight should be afforded to these factors.

6.20 iii. Whether the harm to the Green Belt is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify inappropriate development

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

6.21 The Planning Statement submitted by the applicant to accompany the application sets out the applicant's 'Planning Assessment' and a case for very special circumstances under the following headings:

1. Support for the proposals within Core Strategy policy CSTP12;
2. Planning history for the site;
3. Demand and need for the purpose built facility; and
4. Community use.

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

6.22 The applicant's case for very special circumstances:

1. *Core Strategy policy support for educational facilities at the site (Policy CSTP12).*

6.23 Consideration

Adopted Core Strategy Thematic Policy CSTP12 (Education and Learning) sets out the Council's general objective to enhance educational achievement and skills in the Borough, including (inter-alia) the provision of special education facilities to meet current and future needs (part 1. (I.) of the policy). CSTP12 also refers, at part 5, to special education and states that:

*"The Council and partners will support children with special educational needs through further development of specialist bases and resource bases at mainstream schools, as follows:*

- ii. Completion of the special education campus at Buxton Road, Grays by relocating Beacon Hill School there from South Ockendon."*

Although the written justification to this policy does not expand to provide further details on this "special education campus", it can be reasonably assumed that the policy refers to the 2006 and 2007 planning permissions for redevelopment of the site and the fact that elements of the permission remain unimplemented. Furthermore, planning permission has been granted for the proposed new SEN Free school at the Treetops site and the policy clearly refers to a campus providing facilities for pupils with special education needs at the Buxton Road site. Therefore, in a broad sense, the current proposal can be considered to accord with the 'spirit' of Policy CSTP12.

- 6.24 It is also relevant to refer to the Government's planning policies, as expressed in the NPPF, with regard to new educational facilities. Under the chapter heading of 'Promoting healthy and safe communities', paragraph 94 states that:

*"It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:*

- a) give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications."*

- 6.25 The Government's policy statement from 2011 'Planning for schools development: statement', although not forming part of the NPPF or NPPG, is also relevant to this proposal. This statement includes the following principles for the planning system:

- there should be a presumption in favour of the development of state-funded schools, as expressed in the National Planning Policy Framework;
- local authorities should give full and thorough consideration to the importance of enabling the development of state-funded schools in their planning decisions;

- local authorities should make full use of their planning powers to support state-funded schools applications;
- local authorities should only impose conditions that clearly and demonstrably meet the tests set out in Circular 11/95;
- a refusal of any application for a state-funded school, or the imposition of conditions, will have to be clearly justified by the local planning authority.

6.26 As the site is located in the Green Belt it is not considered that that positive approach encouraged by national policy (above) would supersede the protection afforded to the Green Belt elsewhere within national planning policies. Therefore it is still necessary to consider both the harm and benefits of the proposal and undertake a balancing exercise. Nevertheless, it is considered that local and national planning policies supporting the delivery of additional facilities for this new school can be afforded moderate weight in the balance of Green Belt considerations.

#### 6.27 *2. Planning history for the site.*

Planning permission was granted in November 2019 for the new 140 pupil (SEN) Free school with associated parking and landscaping at the site. The proposed sports hall and two classrooms would be built close by and would closely relate to this new school as buildings. It was noted in the consideration of the planning application for the new school, that the overall built footprint of the extant and part-implemented planning permission was greater than that which was proposed, and approved, for the new school. The approved scheme for the new school was concluded as being likely to benefit the openness of the Green Belt. The current proposals would also benefit the openness of the Green Belt.

#### 6.28 Consideration

An assessment and comparison of the floorspace proposed for the new school versus that which was part implemented and also approved on site previously (ref. 06/00170/TTGFUL and 07/00148/TTGFUL) was carried out for the recently considered application for the new school (ref.19/00725/FUL). This detailed assessment concluded that the new school would result in a significant reduction in the overall footprint and floorarea provided on the site, in comparison to the previously approved schemes, even when considering what could actually be implemented on site at the same time as the new school. It was estimated that c.2,000 sq.m. floorspace of the approved shared facilities building remains unbuilt alongside c.4,000 sq.m. floorspace for the unbuilt Beacon Hill school. Therefore, a little over 50% of the floorspace approved in 2007 had been delivered on-site. The approved new school would provide of c.3,500 sq.m floorspace which represents a clear reduction in built floorspace on the site compared to the extant planning permission (ref. 07/00148/TTGFUL). This current proposal for the sports hall and



two classrooms would provide a further 584 sq.m additional floorarea for the school. This proposal would still result in a development which would continue to result in a reduction in the built form which could be built across the larger site. As a result of the reduction in overall floorspace, the current proposal would have a lesser effect on openness than the situation that would occur if the unimplemented elements of the extant permission were completed. Whilst it has not been possible to undertake comparative analysis of built volume, it is likely that the current proposal for the sports hall and classrooms would result in less building mass and bulk compared to the unimplemented elements of the extant permission.

6.29 The existing planning permission (ref. 07/00148/TTGFUL) can be considered as a 'fall-back' and is therefore capable of being a material consideration in the decision making process. However, the weight which can be afforded to the fall-back position will vary and the Courts have held that greater weight can be attached to the fall-back position where is a 'real prospect' of the fall back development coming forward. A Court of Appeal Judgement ((Mansell v. Tonbridge & Malling Borough Council [2017] EWCA Civ 1314) confirmed the legal considerations in determining the materiality of the 'fall back' position as a planning judgement and the basic principle is that for a prospect to be a 'real prospect' it does not have to be probable or likely, a possibility will suffice. Clearly a period of time has elapsed since the 2007 permission and it can be assumed that budgets for new school delivery have become more constrained (e.g. the former Building Schools for the Future programme was scrapped in 2010). Accordingly the prospects of the extant permission being delivered are considered to be slim. Nevertheless, as the current proposals, in addition to the recently approved new school, represent a reduction in built development it is considered that moderate weight can be attached to the recent planning history for the site in the balance of Green Belt considerations.

### 6.30 *3. Demand and need for the purpose built facility*

Under this heading the applicant refers to:

- Thurrock a leader in SEND provision and a significant increase in applications for SEN pupil places in Thurrock;
- Short supply of purpose built facilities for SEN pupils;
- Access to facilities;
- Additional space.

### 6.31 Consideration

Thurrock Council has an established strong reputation for its education of Special Educational Needs and Disability (SEND) pupils which although is very positive has

resulted in a significant increase in applications for SEND pupil places within its administrative area. It is understood that this increase in demand has resulted in provision for SEN pupils at separate schools which is not the Department for Education's (DfE) preferred approach. The DfE would prefer such places to be provided in purpose built educational facilities that can cater for the needs of its SEN pupils. This proposal would enhance the facilities already offered at the new Treetops School by providing a dedicated sports hall which currently is not being provided at the school.

- 6.32 The purpose built sports hall and associated classrooms would allow for the new school to provide a wide ranging sporting curriculum to its pupils which would be limited if physical exercise would have to be provided within the main hall. Furthermore, the proposal would help reduce the piecemeal approach to school place provision and allow funding for enhanced provision to be focused on their area of need.
- 6.33 The addition of two classrooms would allow for additional teaching space for smaller group sizes related to physical education and sensory development, adjacent to the sports hall. Small group classes of 5 is common for SEN pupils and the direct access from the hall to these classrooms would allow pupils to be taught dance, drama and other forms of more physical activities without having to take pupils across the school to the approved classrooms, which could cause disruption.
- 6.34 In light of the positive and proactive approach encouraged by national planning policies, it is considered that significant weight can be attached to this factor in the balance of Green Belt considerations.

6.35 *4. Community Use*

The applicant is proposing to enter into a Community Use Agreement to ensure that the new sports hall would be available (when their use is not required by the School) for use by the local community including organised sports clubs, charities, organisations and for casual use. This is a substantial benefit to not only the SEN community but the local community as a whole. This is due to the fact that although the majority of the facilities within the administrative area of Thurrock have halls, these do not currently cater for the needs of SEN pupils.

- 6.36 The application is supported by a letter of support from a local charity confirming that the proposed development would build upon local success and allow them to collectively develop opportunities for disabled people of all ages within the Thurrock and wider Essex area. A community use of the proposed development would enable more disabled individuals to take part in sustainable community support.

6.37 Consideration

It is acknowledged that the facility would be purpose built for the benefit of use by SEN pupils and the wider community including other SEN groups. It is acknowledged that there is a lack of purpose built facilities such as that proposed and it is considered that moderate weight should be given to this factor in the Green Belt balance.

**6.38 Green Belt Conclusions**

Under the heading of Green Belt considerations, it is concluded that the proposals comprise inappropriate development. Consequently, the development would be harmful in principle and would reduce the openness of the Green Belt. Furthermore it is considered that the proposals would cause some harm to role which the site plays in fulfilling the purposes for including land in the Green Belt. In accordance with policy, substantial weight should be attached to this harm. With reference to the applicant’s case for very special circumstances, an assessment of the factors promoted is provided in the analysis above. However, for convenience, a summary of the weight which should be placed on the various Green Belt considerations is provided in the table below:

<b>Simplified Summary of Green Harm and applicant’s case for Very Special Circumstances</b>			
<u>Harm</u>	<u>Weight</u>	<u>Factors Promoted as Very Special Circumstances</u>	<u>Weight</u>
Inappropriate development	Substantial	Local / National policy support for educational facilities	Moderate
Reduction in the openness of the Green Belt		Planning history for the site	Moderate
Conflict (to varying degrees) with a number of the purposes of including land in the Green Belt		Demand and need for the purpose built facility	Significant
		Community use	Moderate

6.39 Within the table above, all 4 factors promoted by the applicant can be assessed as attracting varying degrees of ‘positive’ weight in the balance of considerations. As ever, in reaching a conclusion on Green Belt issues, a judgement as to the balance between harm and whether the harm is clearly outweighed must be reached. In this case there is harm to the Green Belt with reference to inappropriate development, loss of openness and conflict with a number of Green Belt purposes. A number of factors have been promoted by the applicant as comprising the ‘very special

circumstances' required to justify inappropriate development and it is for the Committee to judge:

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

6.40 Taking into account all Green Belt considerations, Officers are of the opinion that in this case the identified harm to the Green Belt is clearly outweighed by the accumulation of factors described above, so as to amount to the very special circumstances justifying inappropriate development.

## II. DESIGN AND LAYOUT AND IMPACT UPON THE AREA

6.41 The proposed sports hall and two classrooms would be built on an area of grass close to the main built environment of the approved new school. The proposal would not be built upon any playing fields or any other formal playing area or surfacing. The proposal would provide a modern functional building. The sports hall would have a maximum height of 7.4m, a length of 28.2m and width of 18m and feature a shallow dual pitched roof. The proposed two additional classrooms would have a maximum height of 3.9m and would be constructed adjoining the immediate eastern end elevation of the sports hall and would share a physical link, via a lobby area, with the sports hall, as well as having access to each of the individual classrooms. The sports hall would be constructed using composite aluminium panels in a neutral colour whilst the classrooms would be clad in Western Red Cedar. The scale, design and overall appearance of the proposed built form would be similar to that of the proposed new school building.

6.42 The proposed site is grassed and does not contain any trees or other landscape features of any significance. The proposed development would be broadly single storey and therefore it is considered that it would not have a significant visual impact upon the locality. Viewed as part of the overall new school development the proposal is unlikely to lead to any harm to the character of the area. The proposals would comply with policies CSTP22 and PMD2 with regards their scale, mass, siting and appearance.

## III. AMENITY IMPACT

6.43 The proposals would be remotely situated from residential properties on Buxton Road and Carlton Road to the west of the larger Treetops school site. The proposals would result in no detrimental impact to neighbour amenities and would fully comply with Policy PMD1.

#### IV. TRAFFIC IMPACT, ACCESS AND CAR PARKING

- 6.44 The approved development for the new school included conditions relating to and securing the provision of adequate car parking, cycle storage, pedestrian routes/crossing points and an agreed travel plan under Conditions 8, 9, 17 and 16 of permission 19/00725/FUL. The proposals entails no changes to the approved parking and access arrangements to the new school.
- 6.45 The Planning Statement indicates the new facilities would not entail any increase in pupil intake and increased staff numbers and therefore no additional impact of the school on the road network. However, the Council's Highway Officer has recommended that the school provides details of the proposed community use in order that a further assessment be carried out in relation to the potential level of use of the facility to assess whether the community use would impact upon the highway or not. A suitably worded Community Use Agreement condition has been included and, subject to the update of the new school's travel plan, there are no highway objections to the proposals.

#### V. COMMUNITY USE

- 6.46 The applicant intends to make the sports hall available for community use for everyone, including the wider SEN community. During the consideration of the application, advice was sought from Sport England. Sport England have provided encouraging guidance. Sport England is not a formal consultee in this instance, given the proposals would not take place on playing fields or sports areas, however its guidance is helpful in relation to Community Use Agreements (CUA).
- 6.47 Sport England has advised that community use of the sports hall would be welcomed. It is advocated that the proposed community use of the sports hall be secured through the completion of a community use agreement (between the school governing body, Thurrock Council and possibly Active Essex) secured through a planning condition imposed on any planning permission. This would help ensure that suitable community access to the sports hall is secured over a long term period. A CUA sets out a school's policy and arrangements for community use of its sports facilities and covers matters such as hours of use, types of bookings accepted, restrictions on community use etc. Such a condition would be justified to secure community use over a long term period and to ensure that the community use arrangements are safe and well managed. As a consequence, Sport England supports the application subject to a CUA condition.

#### 7.0 CONCLUSIONS AND REASONS FOR APPROVAL

- 7.1 This application proposes a sports hall and two additional classrooms for the new SEN Free School. The site is located within the Green Belt and proposals comprise

inappropriate development. Consequently, there would be definitional harm to the Green Belt, as well as harm by way of loss of openness and harm to a number of purposes which the Green Belt serves. Substantial weight should be attached to this harm. The applicant has set out a number of factors which they consider to constitute the very special circumstances needs to clearly outweigh the identified harm and justify the inappropriate development. Consideration of these factors is set out above and it is concluded that a case for very special circumstances exists.

7.2 The design and appearance of the proposed sports hall and classrooms would be to a high standard and would be considered acceptable. The proposals would entail access to the sports hall for community use which has been secured by suitable planning condition. In all other respects the application complies with the adopted Core Strategy policies and is recommended favourably.

**8.0 RECOMMENDATION**

8.1 Approve, subject to the following planning conditions:

**Standard Time Limit**

1. The development hereby permitted must be begun not later than the expiration of 3 years from the date of this permission.

**Reason:** To comply with Section 91(1) of The Town & Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

**Approved Plans**

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

<b>Plan Number(s):</b>		
Reference	Name	Received
TRE2-NZB-01-ZZ-DR-A-0102-S3-P04	Site Layout	14th August 2020
TRE2-NZB-11-00-DR-A-0104-S3-P04	Proposed Elevations	14th August 2020
TRE2-NZB-01-ZZ-DR-A-0102-S3-P05	Site Layout	28th August 2020

**Reason:** For the avoidance of doubt and to ensure the development accords with the approved plans with regard to policies PMD1 and PMD2 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development [2015].

**Details of materials:**

3. Notwithstanding the information on the approved plans, no development shall commence above ground levels until written details or samples of all materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The written details or samples shall include specifications for bricks, render, cladding and window / door frames. The development shall be carried out using the materials and details as approved.

**Reason:** In the interests of visual amenity and to ensure that the proposed development is integrated with its surroundings in accordance with policy PMD2 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (2015).

**External lighting:**

4. Prior to the first use or operation of the development, details of the means of any external lighting on the site, including any illumination of the outdoor play facilities, shall be submitted to and agreed in writing with the local planning authority. The details shall include the siting and design of lighting together with details of the spread and intensity of the light sources and the level of luminance. The lighting shall be installed in accordance with the agreed details prior to first use or operation of the development and retained and maintained thereafter in the agreed form, unless otherwise agreed in writing by the local planning authority.

**Reason:** In the interests of highway safety and residential amenity and to ensure that the development can be integrated within its immediate surroundings in accordance with Policies PMD1 and PMD2 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (2015).

**Car parking provision:**

5. The development hereby permitted shall not be used or operated until such time as the vehicle parking, turning and drop-off areas shown on drawing number FS0720-BBA-00-XX-DR-L-1.1 Rev. P03 detailed in Condition 8 of planning approval ref. 19/00725/FUL including any parking spaces for the mobility impaired, have been hard surfaced, sealed and marked out as shown on this drawing. The vehicle parking area, turning and drop-off areas shall be retained in this form at all times thereafter and shall not be used for any purpose other than the parking and manoeuvring of vehicles that are related to the use of the approved development.

**Reason:** In the interests of highway safety and to ensure that adequate car parking provision is available in accordance with policies PMD8 and PMD9 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development

(2015).

**Cycle parking:**

6. Prior to the first use or operation of the development hereby approved details of the number, size, design and materials of secure and weather protected cycle parking facilities to serve the school shall be submitted to and agreed in writing with the local planning authority. The agreed facilities shall be installed on-site prior to the first use or operation of the secondary school and shall thereafter be permanently retained for sole use as cycle parking for the pupils, students and staff of the secondary school.

**Reason:** To reduce reliance on the use of private cars, in the interests of sustainability, highway safety and amenity in accordance with Policies PMD2 and PMD8 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (2015).

**Pedestrian routes / crossing points:**

7. Notwithstanding the details shown on the approved plans, prior to the first operation or occupation of the development a drawing showing routes and crossing points for pedestrians within the car parking areas on-site shall be submitted to and agreed in writing by the local planning authority. The approved details shall be implemented prior to the first operation or occupation of the development and retained thereafter unless otherwise agreed in writing by the local planning authority.

**Reason:** In the interests of pedestrian safety and in accordance with policies PMD2, PMD8 and PMD9 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (2015).

**Travel Plan:**

8. Prior to the first operation or occupation of the office building hereby permitted, a Travel Plan shall be submitted to and agreed in writing with the local planning authority. The Travel Plan shall follow the 'Modeshift STARS' Travel Plan system (or similar approved local authority system) and shall include detailed and specific measures to reduce the number of journeys made by car to the building hereby permitted and shall include specific details of the operation and management of the proposed measures. The approved measures shall be implemented upon the first operational use or occupation of the building hereby permitted and shall be permanently kept in place unless otherwise agreed in writing with the local planning authority. Upon written request, the operator of the school / academy shall provide the local planning authority with written details of how the agreed measures contained in the Travel Plan are being undertaken at any given time.



**Reason:** To reduce reliance on the use of private cars, in the interests of sustainability, highway safety and amenity in accordance with Policy PMD10 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development [2015].

**Community Use Agreement:**

9. Prior to first occupation of the development hereby permitted, a Community Use Agreement prepared in consultation with Sport England will be submitted to and approved in writing by the Local Planning Authority, and a copy of the completed approved agreement will be provided to the Local Planning Authority. The agreement shall apply to the sports hall and supporting ancillary facilities and include details of pricing policy, hours of use, access by non-educational establishment users, management responsibilities and a mechanism for review, and anything else which the Local Planning Authority in consultation with Sport England considers necessary in order to secure the effective community use of the facilities. The development shall not be used at any time other than in strict compliance with the approved agreement.

**Reason:** To secure well managed safe community access to the playing field, to ensure sufficient benefit to the development of sport and to accord with policies CSTP9, CSTP12, PMD2, PMD8 and PMD9 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (2015).

**Construction methodology:**

10. The construction phase of the development shall proceed in accordance with the measures within the submitted Construction Environmental Management Plan (CEMP) (dated May 2019) accompanying planning application ref. 19/00725/FUL and approved under Condition 13 of planning approval ref. 19/00725/FUL, unless otherwise agreed in writing by the local planning authority. In particular, all vehicular traffic associated with the construction of the development shall access and egress the site via Stanford Road, as detailed at part 3 of the CEMP. No demolition or construction works in connection with the development shall take place on the site at any time on any Sunday or Bank / Public Holiday, nor on any other day except between the following times:

Monday to Friday	0800 – 1800 hours
Saturdays	0800 – 1300 hours

unless in association with an emergency or the prior written approval of the local planning authority has been obtained.

**Reason:** In order to minimise any adverse impacts arising from the construction of

the development in accordance with policy PMD1 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development (2015).

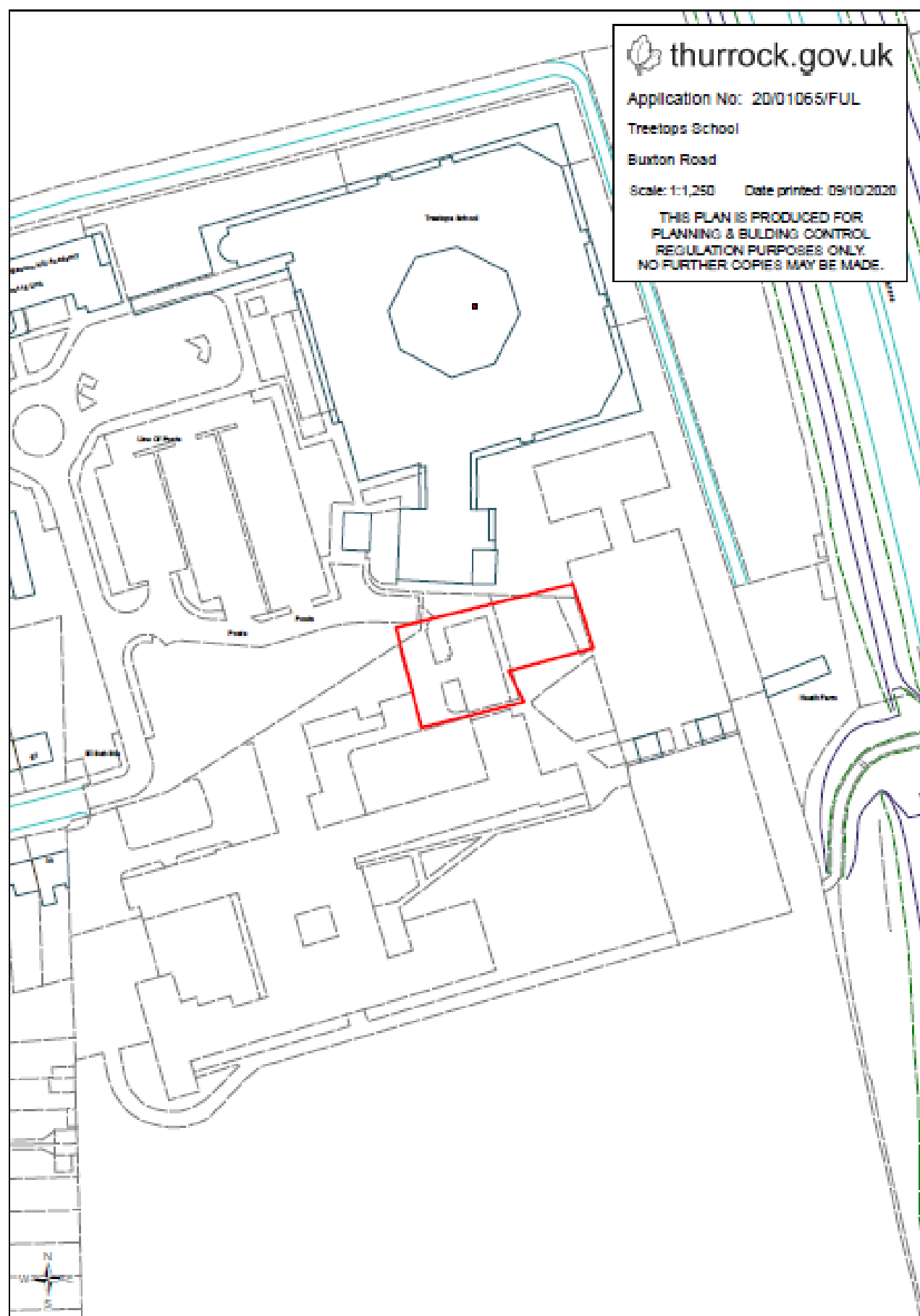
#### Positive and Proactive Statement

- 1 The local planning authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

#### **Documents:**

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

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



 **thurrock.gov.uk**  
Application No: 20/01065/FUL  
Treetops School  
Burton Road  
Scale: 1:1,250     Date printed: 09/10/2020  
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<b>Reference:</b> 20/01051/FUL	<b>Site:</b> 40 High Road Fobbing Essex SS17 9HN
<b>Ward:</b> Corringham And Fobbing	<b>Proposal:</b> 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"> <li>- Design &amp; Access Statement</li> <li>- Explanation Statement</li> <li>- Transport Assessment</li> <li>- Various Fibonacci Spiral Plans</li> </ul>	
<b>Applicant:</b> Mr Ricky Jeffs	<b>Validated:</b> 12 August 2020 <b>Date of expiry:</b> 26 October 2020 (Extension of Time agreed with applicant)
<b>Recommendation:</b> Refuse	

This application is scheduled for determination by the Council's Planning Committee because it has been called in by Cllrs G Rice, S Shinnick, L Worrall, V Holloway and Kerin (in accordance with the Constitution Chapter 5, Part 3 (b), 2.1 (d) (ii)) to assess the impact of the proposal on the amenity of local area.

**1.0 DESCRIPTION OF PROPOSAL**

1.1 The application seeks planning permission for five single storey residential properties (all for over 55 year olds) situated in a linear arrangement, running perpendicular from the road, on the plot at 40 High Road Fobbing.

**2.0 SITE DESCRIPTION**

2.1 The site is accessed directly from High Road Fobbing, beyond the area which is designated as an established residential frontage. The site is overgrown and presently appears as a distinct boundary to the main part of Fobbing Village. The broadly rectangular site is long and thin (155m x 20m) and is within Green Belt. The site covers 0.37 hectares.

**3.0 RELEVANT PLANNING HISTORY**

Application Reference	Description of Proposal	Decision
20/00719/FUL	Five single storey detached dwellinghouses for the over 55s with associated parking and amenity areas	Withdrawn by applicant
20/00333/FUL	Three single storey detached dwellinghouse and one single storey semi detached dwellings for over 55's (C3 use) and a separate dentist (D1 use)	Withdrawn by applicant
19/00043/OUT	Outline planning permission with all matters (except for scale) reserved for construction of 4 detached single storey dwellinghouses (affordable) with associated parking	Refused and dismissed on Appeal
07/00018/OUT	Detached 3 bedroom bungalow and detached garage.	Refused
01/00089/OUT	Outline planning application for 3 bedroom chalet bungalow	Refused
84/00743/OUT	Bungalow	Refused
81/00784/OUT	Private dwelling	Refused
76/00611/OUT	Detached House Appeal lodged, appeal refused.	Refused
55/00129/FUL	Use of land for erection of bungalow.	Refused

**4.0 CONSULTATIONS AND REPRESENTATIONS**

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

#### 4.2 PUBLICITY:

This application has been advertised by way of individual neighbour notification letters, press advert and public site notice which has been displayed nearby. There were comments received from seven different addresses, six of these were in support of the proposal, with one objection. The matters raised in support are summarised as:

- Homes for neglected sector community/benefit the community
- Tidy up site/landscaping
- No impact to the surroundings

The objection was in regard to the site being within Green Belt, which should not be built on.

#### 4.3 ENVIRONMENTAL HEALTH

No objections, subject to conditions.

#### 4.4 ESSEX POLICE

No objections, subject to conditions.

#### 4.5 HIGHWAYS

No objections, subject to conditions.

#### 4.6 LANDSCAPE AND ECOLOGY

No objections, subject to conditions and RAMS mitigation.

### 5.0 POLICY CONTEXT

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

5.1 The revised NPPF was published on 19 February 2019. The NPPF sets out the Government's planning policies. Paragraph 2 of the NPPF confirms the tests in s.38 (6) of the Planning and Compulsory Purchase Act 2004 and s.70 of the Town and Country Planning Act 1990 and that the Framework is a material consideration in planning decisions. The following chapter headings and content of the NPPF are particularly relevant to the consideration of the current proposals:

5. Delivering a sufficient supply of homes;
8. Promoting healthy and safe communities;
9. Promoting sustainable communities;
12. Achieving well-designed places;
13. Protecting Green Belt land;
15. Conserving and enhancing the natural environment.

## 5.2 National Planning Practice Guidance (NPPG)

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

- Design: process and tools
- Determining a planning application
- Green Belt
- Housing and economic needs assessment
- Housing for older and disabled people
- Housing: optional technical standards
- Use of Planning Conditions

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

The “Core Strategy and Policies for Management of Development” was adopted by Council on the 28 February 2015. The following policies apply to the proposals:

### SPATIAL POLICIES

- CSSP1 (Sustainable Housing and Locations)
- CSSP4 (Sustainable Green Belt)

### THEMATIC POLICIES

- CSTP1 (Strategic Housing Provision)
- CSTP22 (Thurrock Design)
- CSTP23 (Thurrock Character and Distinctiveness)

### POLICIES FOR MANAGEMENT OF DEVELOPMENT



- PMD1 (Minimising Pollution and Impacts on Amenity)
- PMD2 (Design and Layout)
- PMD6 (Development in the Green Belt)
- PMD8 (Parking Standards)

#### 5.4 Thurrock Local Plan

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

#### 5.5 Thurrock Design Strategy

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

### 6.0 **ASSESSMENT**

#### Background

In 2019 planning permission was sought for *outline planning permission with all matters (except for scale) reserved for construction of 4 detached single storey dwellinghouses (affordable) with associated parking* (ref: 19/00043/OUT) The application was refused on the following two grounds:

1) Green Belt - 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 very special circumstances put forward by the applicant would not clearly outweigh the harm to the Green Belt.

2) Design & Layout - The proposed dwellings, by reason of their 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.

The current application is similar in offering a specific type of housing which is single storey and is set out with a similar layout covering the same areas of the site. The current application is different in that it provides an additional unit, so there are now 5 units, whereas there were previously 4 units proposed.

The applicant appealed the decision. In dismissing the appeal the Inspector noted:

*Paragraph 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.*

*Paragraph 23. Although the dwellings would be single storey, which would limit views of the dwellings from outside of the site, I am not persuaded on the evidence before me that they would not be visible from the public domain. Since they 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, as required by Policy PMD2 of the CSPMDFR.*

*Paragraph 13. Given the scale of the development, I do not consider it would reasonable to secure a planning obligation by condition, nor would it be reasonable to require that the dwellings would be affordable by condition. In the absence of a mechanism to ensure that the proposed dwellings would be affordable, I am unable to give this matter weight. Moreover, I have been provided no substantive evidence that the appeal dwellings would meet local community needs. I therefore do not consider that the appeal would meet the exception set out in Paragraph 145 f) of the Framework.*

The current proposal is similar to the previously refused application and the current proposal does not introduce any additional reasons whereby the application can be deemed acceptable.

6.1 The assessment below covers the following areas:

- I. Principle of development and impact upon the Green Belt
- II. Access, traffic impact and parking
- III. Design, layout and impact upon the area
- IV. Ecology
- V. RAMS Mitigation
- VI. Other matters

I. PRINCIPLE OF DEVELOPMENT AND IMPACT UPON THE GREEN BELT

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

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

1. Whether the proposals constitute inappropriate development in the Green Belt

6.3 The site is identified on the Core Strategy Proposals Map as being within the Green Belt where policies CSSP4 and PMD6 apply. Policy CSSP4 identifies that the Council will 'maintain the purpose function and open character of the Green Belt in Thurrock', and Policy PMD6 states that the Council will 'maintain, protect and enhance the open character of the Green Belt in Thurrock'. These policies aim to prevent urban sprawl and maintain the essential characteristics of the openness and permanence of the Green Belt to accord with the requirements of the NPPF.

6.4 Paragraph 133 within Chapter 13 of the NPPF states that the Government attaches great importance to Green Belts and that the "*fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belt are their openness and their permanence.*" Paragraph 143 states that "*inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.*" At paragraph 145 the NPPF sets out a limited number of exceptions where the construction of new buildings could be acceptable. The site is currently devoid of built form and consists of an area of open land. The proposal for residential development would not fall within any of the exceptions to the presumption against inappropriate development in the Green Belt. Consequently, it is a straightforward matter to conclude that the

proposals comprise inappropriate development with reference to the NPPF and Core Strategy policy.

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

- 6.5 Having established that the proposals are inappropriate development, it is necessary to consider the matter of harm. Inappropriate development is, by definition, harmful to the Green Belt, but it is also necessary to consider whether there is any other harm to the Green Belt and the purposes of including land therein.
- 6.6 Paragraph 134 of the NPPF sets out the five purposes which the Green Belt serves as follows:
- a. to check the unrestricted sprawl of large built-up areas;
  - b. to prevent neighbouring towns from merging into one another;
  - c. to assist in safeguarding the countryside from encroachment;
  - d. to preserve the setting and special character of historic towns; and
  - e. to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- 6.7 In response to each of these five purposes:
- a. to check the unrestricted sprawl of large built-up areas*
- 6.8 The site is located in a rural location, on the edge of the village of Fobbing. For the purposes of the NPPF, the site is considered to be outside of any 'large built up areas'. As a result the development would not result in the unrestricted sprawl of a built up area and therefore would not conflict with this purpose.
- b. to prevent neighbouring towns from merging into one another*
- 6.9 The development would not conflict with this Green Belt purpose.
- c. to assist in safeguarding the countryside from encroachment*
- 6.10 With regard to the third Green Belt purpose, the proposal would involve built development on what is currently an open site. It is therefore considered that the proposal would constitute an encroachment of built development into the countryside in this location. The four single storey residential units would constitute material harm to the openness character of the Green Belt. The development would consequently conflict with this purpose.

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

- 6.11 The site is not within Fobbing Conservation Area and it is not considered that the proposal would harm the character of a historic town.

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

- 6.12 In general terms, the development could occur in the urban area and, in principle; there is no spatial imperative why Green Belt land is required to accommodate the proposals. Allowing unrestricted development on land outside the urban area would conflict with the aim of directing development towards the urban area. Therefore the proposed dwellinghouses are inconsistent with the fifth purpose of the Green Belt.
- 6.13 In light of the above analysis, it is considered that the proposals would be contrary to purposes c and e of the above listed purposes of including land in the Green Belt. Substantial weight should be afforded to these factors.

3. Whether the harm to the Green Belt is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify inappropriate development

- 6.14 Neither the NPPF nor the Adopted Core Strategy provide guidance as to what can comprise 'very special circumstances', either singly or in combination. However, some interpretation of very special circumstances (VSC) has been provided by the Courts. The rarity or uniqueness of a factor may make it very special, but it has also been held that the aggregation of commonplace factors could combine to create very special circumstances (i.e. 'very special' is not necessarily to be interpreted as the converse of 'commonplace'). However, the demonstration of very special circumstances is a 'high' test and the circumstances which are relied upon must be genuinely 'very special'. In considering whether 'very special circumstances' exist, factors put forward by an applicant which are generic or capable of being easily replicated on other sites, could be used on different sites leading to a decrease in the openness of the Green Belt. The provisions of very special circumstances which are specific and not easily replicable may help to reduce the risk of such a precedent being created. Mitigation measures designed to reduce the impact of a proposal are generally not capable of being 'very special circumstances'. Ultimately, whether any particular combination of factors amounts to very special circumstances will be a matter of planning judgment for the decision-taker.
- 6.15 With regard to the NPPF, paragraph 143 states that '*inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances*'. Paragraph 144 goes on to state that, 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, is clearly outweighed by other considerations*”.

6.16 The applicant has put forward the following consideration forward to demonstrate very special circumstances within the Design and Access statement submitted with this application:

- 1) Addresses Housing Need in the Borough
- 2) Provides specialist retirement home accommodation tailored to local need where the demand is ‘critical’
- 3) Very well-connected, sustainable central village location (i.e. not remote or isolated)
- 4) Previously developed site (existing dropped curbed access)
- 5) Currently Thurrock as an authority is not delivering sustainable development for the people living in the Borough, in social and economic terms in particular. This application shall help correct this shortcoming.
- 6) Innovative internal design

These are assessed below:

- 1) *Addresses Housing Need in the Borough*

6.17 The applicant puts forward the need for housing within Thurrock as a consideration towards proving very special circumstances.

#### Consideration

6.18 In 2013 a written ministerial statement confirmed that the single issue of unmet housing demand was unlikely to outweigh GB harm to constitute the very special circumstances justifying inappropriate development. This position was confirmed in a further ministerial statement in 2015 and was referred to in previous iterations of NPPG. However, the latest revision of the NPPF (2019) does not include this provision and the corresponding guidance in NPPG has also been removed. Nevertheless, a recent Green Belt appeal decision (ref. APP/Q4625/W/19/3237026) referred specifically to this point and considered that “even so, unmet need on its own, is highly unlikely to amount to very special circumstances”. Accordingly the benefit of the contribution towards housing land supply would need to combine with other demonstrable benefits to comprise the very special circumstances necessary to justify inappropriate development.

6.19 The current proposal would, consisting of 5 units, be of only limited benefit in contributing towards addressing the shortfall in the supply of new housing as set out in Core Strategy policy delivery targets and as required by the NPPF. Nonetheless, the matter of housing delivery contributes towards very special circumstances and should be accorded significant weight in the consideration of this application. However, as noted above, this single issue on its own cannot comprise the very special circumstances to justify inappropriate development, and as such, for these circumstances to exist this factor must combine with other considerations.

*2) Provides specialist retirement home accommodation tailored to local need where the demand is 'critical'*

6.20 The applicant put forward the 'critical' need for older peoples housing as a consideration towards VSCs.

#### Consideration

6.21 There is no evidence that these houses are specifically required for people within Fobbing. There is no substantive evidence that the dwellings would meet local community needs. As noted later in this report the location is not easily accessible or near to local facilities which are considered as an integral factor for older people's housing. Specialist older person's accommodation would usually have shared facilities for residents use, alarm systems or a warden service or manager service to assist residents. The proposal has none of these and the units are standard residential properties.

Additionally, as noted above, within the previous appeal decision the Inspector noted that a legal agreement to ensure the properties were affordable was deemed unreasonable due to the small scale of the proposal. This would be the same in regard to ensuring the properties are for older peoples housing.

6.22 The principle of increasing the supply of housing for the elderly is recognised but for the Borough's specific needs to be met such accommodation would need to be suitable in all respects. There is nothing provided within the application which makes the proposal unique to the needs of older people. The properties are standard dwellings. Additionally, the location of this site is not considered to be a suitable location for older people and therefore only limited weight can be afforded to this consideration towards very special circumstances.

*3) Very well-connected, sustainable central village location (i.e. not remote or isolated)*

6.23 The applicant states that the proposal site is within a sustainable location, therefore suitable for older people's housing.

### Consideration

- 6.24 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. 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 within the village. There are some buses which serve the village, but these are infrequent and, at best, offer a bus every couple of hours. There are no GPs or dentists within the village either. Therefore, it is difficult to see how the site can be termed sustainable and therefore suitable for older people's housing. The applicant states that site is within a central village location, this is not agreed as it is clearly not well-connected and is remote from facilities. Therefore no weight can be afforded to this consideration towards very special circumstances.

#### *4) Previously developed site (existing dropped kerbed access)*

- 6.25 The applicant considers the site is previously developed land (PDL) as there is an existing dropped kerb.

### Consideration

- 6.26 There is no built form on the site and it is clear that there has been no built form on the site for some time. Whilst there was previously a dwellinghouse at the site, this is no longer there being demolished in the 1930s, and the site is now open. The NPPF Annex 2 Glossary confirms that PDL excludes land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape. The Planning Inspector on the previous appeal in 2019 for a similar development at the site clearly stated they did not consider the site to be PDL. Accordingly, this factor should be given no weight in the determination of the application as a Very Special Circumstance.

*5) Currently Thurrock as an authority is not delivering sustainable development for the people living in the Borough, in social and economic terms in particular. This application shall help correct this shortcoming.*

### Consideration

- 6.27 The fifth factor towards VSCs is somewhat confusing, the applicant does not justify the statement which is generic and needs explanation. When considering this specific site, the proposal is offering five units and in social and economic sustainability terms this is not significant irrespective of the (unclear) particular shortcomings which the applicant is referring to.



6.28 Further to this, Paragraph 11 of the NPPF states that the presumption in favour of sustainable development would apply unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The Green Belt designation is classified as a protected area and there are clear reasons within the Framework for refusing the development due to the impact upon the Green Belt. Therefore the presumption in favour of sustainable development would not constitute a factor towards very special circumstances and is afforded no weight.

*6) Innovative internal design*

6.29 The applicant states they consider the proposal offers a high-quality innovative design shaped around the site circumstance available.

Consideration

6.30 The proposal is for single storey residential properties, the applicant does not specify what is *innovative* about the proposal. There does not seem to be any offering which is inventive or ground-breaking within the layout or design. As this point has not been clarified within the application this factor cannot be afforded any weight towards very special circumstances.

6.31 A summary of the weight which has been placed on the various Green Belt considerations is provided below;

<b>Summary of Green Belt Harm and Very Special Circumstances</b>			
<b>Harm</b>	<b>Weight</b>	<b>Factors Promoted as Very Special Circumstances</b>	<b>Weight</b>
Inappropriate development	Substantial	Housing Need	Very significant weight
Reduction in the openness of the Green Belt			
Conflict (to varying degrees) with a number of the purposes of including land in the Green Belt – purposes c and e.		Specialist older people’s housing tailored to local need	Limited weight
		Sustainable central village location	No weight
		Previously developed land	No weight
		Correct lack of sustainable social and economic	No weight

	development	
	Innovative internal design	No weight

6.32 As ever, in reaching a conclusion on Green Belt issues, a judgement as to the balance between harm and whether the harm is clearly outweighed must be reached. In this case there is harm to the Green Belt with reference to both inappropriate development and loss of openness. However, this is not considered to be the full extent of the harm; the other harm is considered further in this report. Several factors have been promoted by the applicant as ‘Very Special Circumstances’ and it is for the Committee to judge:

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

6.33 Where a proposal represents inappropriate development the applicant must demonstrate Very Special Circumstances which clearly outweigh the harm to the Green Belt. In this instance it is considered that the applicant has not advanced factors which would amount to very special circumstances that could overcome the harm that would result by way of inappropriateness and the other harm identified in the assessment. There are no planning conditions which could be used to make the proposal acceptable in planning terms. The proposal is clearly contrary to policies CSSP4 andPMD6of the adopted Thurrock Local Development Framework Core Strategy and Policies for the Management of Development (as amended 2015) and the National Planning Policy Framework 2019.

II. ACCESS, TRAFFIC IMPACT AND PARKING

6.34 The proposal would utilise a single access road which would be positioned along one side boundary in order to provide access to the rear of the site. Concerns have been raised by the Council’s Highway Officer with regards to the suitability of the access onto High Road, the increase in the intensity of the use and the ability of the internal access road to accommodate all necessary vehicle movements including access by refuse vehicles. Whilst these concerns are noted it is considered that there is adequate scope within the site to alter the layout to provide a suitable internal road layout. In addition the matters relating to the use of the access point and the provision of suitable visibility splays could be addressed through appropriate conditions.

6.35 The proposed site plan indicates there would be two parking spaces per dwelling and visitor spaces. This would be sufficient to provide a suitable level of parking for future occupants.

### III. DESIGN AND LAYOUT AND IMPACT UPON THE AREA

- 6.36 The National Planning Policy Framework (NPPF) states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
- 6.37 Policy PMD2 of the Core Strategy requires that all design proposals should respond to the sensitivity of the site and its surroundings and must contribute positively to the character of the area in which it is proposed and should seek to contribute positively to local views, townscape, heritage assets and natural features and contribute to the creation of a positive sense of place.
- 6.38 Policy CSTP22 of the Core Strategy indicates that development proposals must demonstrate high quality design founded on a thorough understanding of, and positive response to, the local context.
- 6.39 Policy CSTP23 of the Core Strategy states the Council will protect, manage and enhance the character of Thurrock to ensure improved quality and strengthened sense of place.
- 6.40 Whilst there are a number of existing single storey buildings in the surrounding area these are set in relatively informal layouts. The proposed dwellings would be single storey in scale and would extend in a formal layout towards the rear of the site. Whilst in isolation such a scale is preferable to two storey dwellings it would result in the introduction of a level of built form at a scale which would appear urban and significantly out of character to the rear of High Road. Therefore in conjunction with the position of the proposed dwellings this would lead to a level of bulk and massing which would appear out of character in the area to the rear of High Road. Given the above the proposal would result in a significant adverse impact upon the generally open character of this area contrary to policies CSTP22, CSTP23 and PMD2 of the Core Strategy and the requirements of the NPPF.
- 6.41 The actual appearance of the buildings with the design of the facades is concerning 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. From the Design and Access Statement it appears the applicant is proposing a modern appearance. Presently, the details of how the design shown on the plans could be interpreted to create an attractive modern building are not clear.
- 6.42 It should also be noted that the scheme is similar to the previous submission which was dismissed on appeal where the Inspector supported the Council's view:

Within paragraph 23 the Inspector stated: *“Since they 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, as required by Policy PMD2 of the CSPMDFR.”*

Within paragraph 24 *“The appeal scheme would also conflict with the Framework, which sets out the importance of achieving well-designed places and seeks to ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting.”*

This supports the view that this form of development would be significantly out of character with the area.

- 6.43 With regards to neighbouring amenity the proposed dwellings would be located away from the nearest residential neighbours. In addition the dwellings would be single storey in scale. The relationship with neighbouring dwellings would ensure that there would not be a significant loss of light, overbearing impact or loss of privacy to neighbouring properties.
- 6.44 With regards to the amenity of future occupiers there would be sufficient space to provide suitable light and outlook to habitable rooms. The proposed dwellings would benefit from a suitable level of privacy. The rear gardens would be of sufficient size to provide suitable amenity for future occupiers.
- 6.45 As noted above, the amenity of both existing and the prospective residents in terms of loss of light, overbearing impact or loss of privacy to neighbouring properties is considered acceptable. Nevertheless, there are significant concerns regarding the layout of the buildings and detailed design of the facades. Therefore, the proposal is considered contrary to the NPPF and policies PMD2, CSTP22 and CSTP23 of the Core Strategy.

#### IV. ECOLOGY

- 6.46 The site has potential to support protected species, which would likely be restricted to nesting birds. The Council’s Landscape and Ecology Advisor has confirmed that to avoid disturbing any nesting birds it would be necessary for any vegetation clearance to take place outside birds nesting season. They also advised that *there is potential for the site to be used by badgers as it is surrounded by areas of more established trees. If planning permission is granted a condition is sought requiring a badger survey to be undertaken to confirm that no badgers are present, to avoid a potential offence being committed.*

- 6.47 It is considered that the proposal would not unacceptably impact upon protected species as the above matters can be dealt with through planning conditions.

#### V. RAMS MITIGATION

- 6.48 The site is within the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) zone of influence and therefore it would be necessary for the local planning authority to secure a contribution towards mitigation of the effects of recreational disturbance on Thames Estuary and Marshes SPA. In the event that the application were being recommended favourably, such a contribution could be secured via an appropriate legal agreement.

#### VI. OTHER MATTERS

- 6.49 The Police have raised concerns regarding the proposal due to the layout whereby the buildings are set back from the road and therefore there would be limited surveillance which is a safety concern. Therefore, should the application be recommended favourably a condition requiring Secure by Design would be required.

### **7.0 CONCLUSIONS AND REASON(S) FOR REFUSAL**

- 7.1 The proposed development is sited within the Green Belt and would not fall within one of the exceptions to inappropriate development as set out in the NPPF. Therefore it would result in inappropriate development in the Green Belt which is by definition harmful to openness.
- 7.2 The proposal would also introduce a significant built form into an area which is currently open and has little development. Therefore, the development would encroach upon the openness of the Green Belt resulting in actual harm to openness. The applicant has not advanced any circumstances that would amount to very special circumstances that could overcome the strong presumption against this type of proposal. The development is therefore contrary to Policy PMD6 of the Core Strategy and guidance contained in the NPPF and is therefore harmful by definition.
- 7.3 The application is very similar to the previous application 19/00043/OUT which was dismissed on appeal and this application has not advanced any material considerations to alter this conclusion and would be more harmful to the Green Belt as it includes an extra dwelling.
- 7.4 The scale of the development and the formal layout would result in an urbanising appearance out of character to the rear of properties along High Road. Additionally, the detailed design of these properties appear unbalanced and unattractive. Therefore, the proposal is contrary to policies CSTP22, CSTP23 and PMD2 of the

Core Strategy and the requirements of the NPPF.

## 8.0 RECOMMENDATION

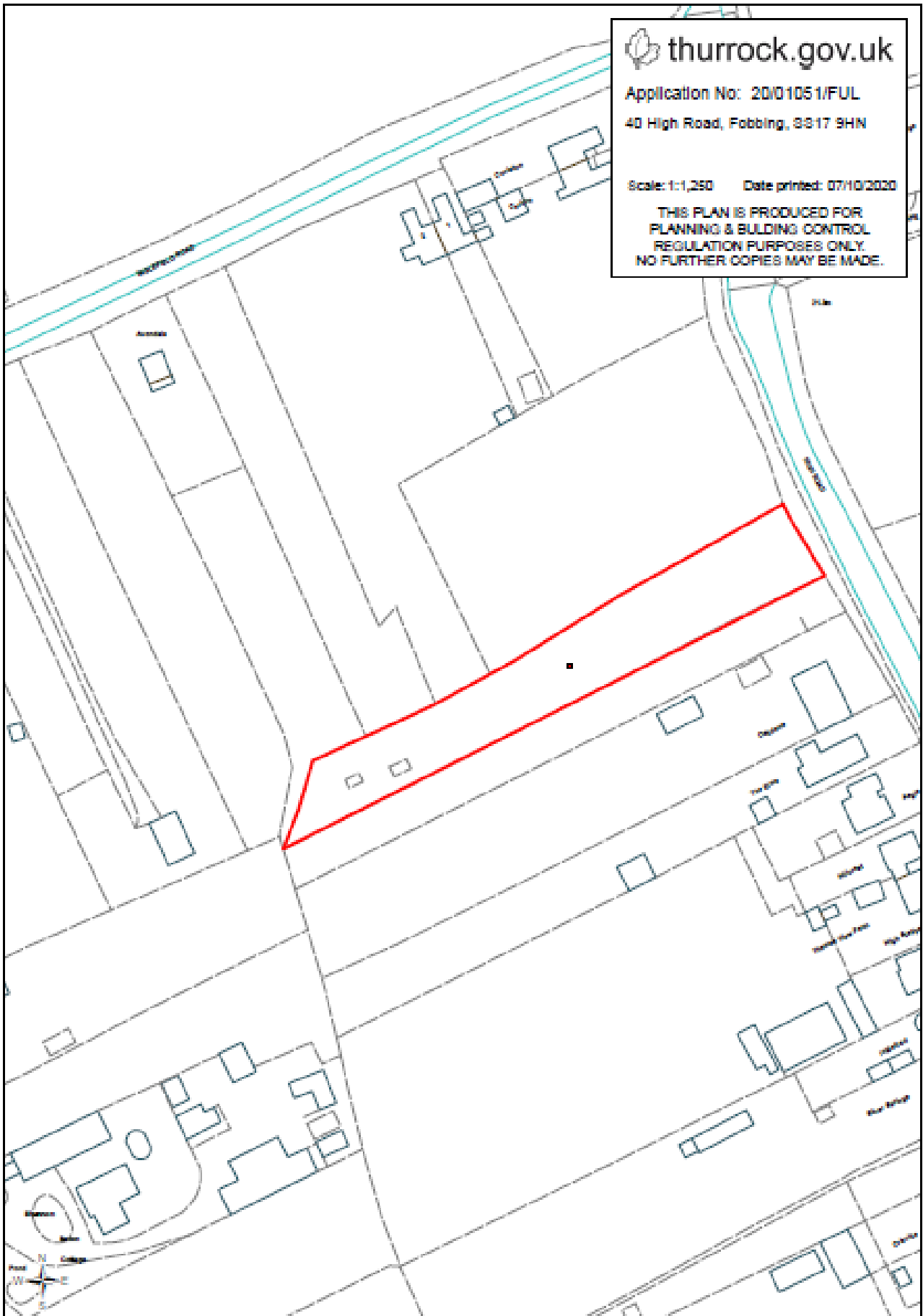
### 8.1 Refuse planning permission for the following reason(s):

- 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:

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



thurrock.gov.uk  
Application No: 20/01051/FUL  
40 High Road, Fobbing, SS17 9HN  
Scale: 1:1,250 Date printed: 07/10/2020  
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<b>Reference:</b> 20/01053/FUL	<b>Site:</b> 63 Wharf Road Stanford Le Hope Essex SS17 0DZ
<b>Ward:</b> Stanford Le Hope West	<b>Proposal:</b> Demolition of existing dwelling to form access to, and erection of, seven (7) retirement bungalows with parking and amenity space to the rear of Wharf Road

Plan Number(s):		
Reference	Name	Received
206-100(1)	Existing Site Plan	12 <sup>th</sup> August 2020
206-200(1)	Site, Location and Layout Plans	12 <sup>th</sup> August 2020
206-201(1)	Proposed Floor & Roof Plans and Elevations	12 <sup>th</sup> August 2020

The application is also accompanied by: - Design and Access Statement	
<b>Applicant:</b> Mr M James	<b>Validated:</b> 14 August 2020  <b>Date of expiry:</b> 26 October 2020 ( <b>Extension of Time agreed with Applicant</b> )
<b>Recommendation:</b> To Refuse	

This application is scheduled for determination by the Council's Planning Committee because it has been Called In by Councillors Hebb, Piccolo, Halden, Watkins and Huelin (in accordance with Part 3 (b) 2.1 (c) of the Council's constitution) to enable Members to assess any potential loss of amenity to the local area.

## 1.0 DESCRIPTION OF PROPOSAL

1.1 The application seeks permission to construct seven (7) age restricted dwellings, consisting of 6 x 2 bedroom semi-detached bungalows and 1 x 2 bedroom detached wheelchair accessible dwelling. There would be provision for 12 car spaces (including 1 dedicated disabled space for the wheelchair accessible dwelling). The development would be accessed from Wharf Road, with the existing dwelling at No 63 proposed to be demolished to create the new access road.

**2.0 SITE DESCRIPTION**

2.1 The application site is an overgrown rectangular piece of land behind a row of detached and semi-detached houses on the eastern side of Wharf Road. The site abuts the playing field of Stanford le Hope Primary School to the east and the rear gardens of No 2 Warrene Close to No 53 Wharf Road to the north. To the south are residential dwellings fronting Grove Road.

**3.0 RELEVANT PLANNING HISTORY**

Application Reference	Description of Proposal	Decision
08/01054/FUL	Erection of 8 semi-detached retirement bungalows and associated car parking [on land To Rear Of 57-71 And 57 Wharf Road utilising a different access point on Wharf Road]	Recommended for refusal to Planning Committee 8 January 2009. Members resolved to approve subject to completion of s106 Agreement, which was never signed. Application subsequently withdrawn.
08/00397/FUL	Demolition of No. 67 Wharf Road to create and access road to land to the rear, and the erection of eight (8) semi-detached retirement bungalows	Refused (on grounds of unsatisfactory layout and design and lack of financial contributions to provide the requisite health and other infrastructure)
88/00379/OUT	Four no semi-detached chalets	Refused. Subsequent appeal dismissed. This proposal sought to create an access to the site via the removal of part of no. 67 Wharf Road. The Inspector considered the proposal to be an undesirable backland development, likely to lead to negative impact via disturbance and noise upon no. 65 and 67 Wharf Road, and the changes to no. 67 would have a detrimental impact upon the appearance of the street scene
THU/439/64	Outline permission for 2 bungalows	Refused - undesirable backland development, causing overlooking and suffering from overlooking,

		and inadequate vehicular arrangements via unmade access between 71 and 81 Wharf Road)
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#### 4.0 CONSULTATIONS AND REPRESENTATIONS

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

#### 4.2 PUBLICITY:

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

Fourteen (14) representations were received from nearby occupiers – all raising objections to the proposed development on the following grounds:

- Inadequate and unsatisfactory access to the site
- Additional traffic
- Environmental pollution
- Excessive noise and disturbance
- Lack of parking for visitors/ carers
- Lack of privacy for the existing and proposed dwellings
- Loss of trees detrimental to the visual amenity of the area
- Loss of habitats and species
- Detrimental to the character and appearance of the area

#### 4.3 ENVIRONMENTAL HEALTH OFFICER:

Recommend the imposition of conditions to control the hours of construction and the submission of CEMP for approval.

#### 4.4 ESSEX COUNTY COUNCIL ARCHAEOLOGY:

The Essex Historic Environment Record shows that the proposed development lies in a sensitive area of historic landscape. The imposition of pre-commencement conditions is therefore recommended.

#### 4.5 ESSEX COUNTY COUNCIL FLOOD RISK ADVISOR:

Holding objection issued subject to the provision of further information for assessment including Drainage Strategy.

#### 4.6 ESSEX POLICE:

Recommends that the developer seeks to achieve the relevant Secured by Design accreditation.

#### 4.7 HIGHWAYS:

There are concerns with the construction of a new access relating to the classification of the road; and concerns in respect of the width of the access road. The proposed access is also a potential safety hazard and conflict point with Cabborns Crescent, also vehicular crossovers that are in close proximity to the proposed access. Further concerns also expressed in respect of the proposed pedestrian access arrangements.

#### 4.8 LANDSCAPE AND ECOLOGY ADVISOR:

Recommend Refusal

### 5.0 POLICY CONTEXT

#### **National Planning Guidance**

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

The NPPF was published on 27 March 2012 and amended on 24 July 2018 and again on 19 February 2019. Paragraph 11 of the National Planning Policy Framework sets out a presumption in favour of sustainable development. Paragraph 47 applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration in planning decisions.

The following headings and content of the NPPF are relevant to the consideration of the current proposals:

2. Achieving sustainable development
4. Decision-making
5. Delivering a sufficient supply of homes
11. Making effective use of land
12. Achieving well-designed places
15. Conserving and enhancing the natural environment

##### National Planning Practice Guidance (NPPG)

In March 2014 the Department for Communities and Local Government (DCLG) launched its planning practice guidance web-based resource. This was accompanied by a Written Ministerial Statement which includes a list of the previous planning policy

guidance documents cancelled when the NPPF was launched. PPG contains a range of subject areas, with each area containing several subtopics. Those of particular relevance to the determination of this planning application comprise:

- Design
- Determining a planning application

### **Local Planning Policy**

#### Thurrock Local Development Framework (as amended) 2015

##### Spatial Policies:

- CSSP1 (Sustainable Housing and Locations)

##### Thematic Policies

- CSTP1 (Strategic Housing Provision)
- CSTP19 (Biodiversity)
- CSTP22 (Thurrock Design)
- CSTP23 (Thurrock Character and Distinctiveness)

##### Policies for the Management of Development:

- PMD1 (Minimising Pollution and Impacts on Amenity)
- PMD2 (Design and Layout)
- PMD7 (Biodiversity, Geological Conservation and Development)
- PMD8 (Parking Standards)
- PMD9 (Road Network Hierarchy)
- PMD16 (Developer Contributions)

#### Thurrock Local Plan

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

Local Plan.

### Thurrock Design Strategy

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

## **6.0 ASSESSMENT**

6.1 The proposal raises the following issues:

- I. Principle of the Development
- II. Design, Layout and Impact upon the Character and Appearance of the Area
- III. Traffic Impact, Access and Car Parking
- IV. Impact on the Amenity of Neighbours
- V. Internal and External Amenity Area
- VI. Biodiversity and Ecological Impact
- VII. Other Matters

### **I. PRINCIPLE OF THE DEVELOPMENT**

6.2 The application site has no specific land use designation in the prevailing Development Plan and lies outside the Green Belt. It lies within an established residential area where residential development could be considered acceptable in principle subject to consistency with the provisions in the NPPF and conformity with the relevant provisions in the Development Plan and adopted standards.

### **II. DESIGN, LAYOUT, CHARACTER AND APPEARANCE**

6.3 Policy PMD2 of the Core Strategy requires that all design proposals should respond to the sensitivity of the site and its surroundings and must contribute positively to the character of the area in which it is proposed and should seek to contribute positively to local views, townscape, heritage assets and natural features and contribute to the creation of a positive sense of place.

6.4 Policies CSTP22 and CSTP23 of the Core Strategy indicate that development proposals must demonstrate high quality design founded on a thorough understanding of, and positive response to, the local context.

6.5 It is proposed to develop a narrow, rectangular strip of land behind a row of detached and semi-detached bungalows and dwellinghouses. In essence a cul-de-sac would be created between the existing dwellings fronting Wharf Road and the school playing fields serving the Stanford le Hope Primary School. Although the design and detailing of the proposed dwellings are satisfactory, the layout of the development bears no relationship with the spatial pattern of the surrounding developments at Wharf Road, Wharf Close and Warrene Close, where every dwelling has a street

presence. There are no similar examples of the type of development proposed in the vicinity of the site. Furthermore, the site coverage of the proposed buildings relative to the plot sizes significantly exceeds that of the neighbouring plots – resulting in a cramped and contrived form of development.

- 6.6 In the light of the foregoing, it is considered that the proposed backland development, by reason of its layout, scale and siting would be incongruous and out of keeping with the locality and would be detrimental to the character and appearance of the area, in contravention of Core Strategy policies PMD2, CSTP22 and CSTP23 and inconsistent with the provisions in the NPPF and Thurrock Design Strategy.

### III. TRAFFIC IMPACT, ACCESS AND PARKING

- 6.7 The application site lies within a medium accessibility area and is a relatively short walk from the train station and local facilities and services. The proposal would make provision for 12 car spaces, which would be in accordance with policy PMD8.
- 6.8 Core Strategy policy PMD9, amongst other matters, seeks to ensure that new development does not prejudice road safety. Wharf Road is a level 2 Urban Road and is used frequently by Heavy Goods Vehicles to access the Stanhope Industrial Estate and a new access is proposed following the demolition of an existing dwelling to serve the development. The Council's Highways Officer has expressed concern about the proposed access particularly when considering the classification of the road. The proposed access would not be wide enough and could not accommodate 2 vehicles passing side by side. A suitable and adequate access arrangement would be a necessity at this location to prevent awkward reversing manoeuvres back onto the highway. Furthermore, there is a potential safety hazard and conflict point with the vehicular access to Cabborns Crescent on the opposite side of Wharf Road.
- 6.9 The proposals show a pedestrian access to the southern side of the site but not the northern side.
- 6.10 In the light of the foregoing, the proposed access arrangement would be inadequate and unsatisfactory and would be likely to give rise to conditions interfering with the free flow of traffic and undermine highway safety, contrary to Core Strategy policy PMD9.

### IV. IMPACT ON THE AMENITY OF NEIGHBOURS

- 6.11 Section 12 of the NPPF refers to design and the standard of amenity. Paragraph 127 paragraph f) states among other things that planning policies and decisions should ensure that developments: "Create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users." Policy PMD1 reinforces the emphasis on the protection of amenity. It seeks to ensure that development does not cause, among other things, noise and disturbance, invasion of privacy, loss of light or visual intrusion.
- 6.12 The proposed dwellings would be bungalows with no habitable accommodation at the upper level.

- 6.13 The contrived layout of the proposed development means that the proposed dwellings would be close to the common boundary with the neighbouring properties fronting Wharf Road; in some cases the rear garden depths of the proposed bungalows would be as little as 5m. In the expectation that boundary treatments will be in place and in close proximity of the front elevations of the proposed houses, the proposed dwellings would, as a consequence, have poor visual outlook. Furthermore, the vehicular movements close to the neighbouring properties would generate noise and disturbance that would adversely affect the living conditions of the neighbours, contrary to policy PMD1 of the Core Strategy.

#### V. INTERNAL AND EXTERNAL AMENITY AREA

- 6.14 NPPF provisions and policy PMD1 also seek satisfactory living standards for residential occupiers. The internal layout of the 7 dwellings complies with both Thurrock and National Space Standards. However, the rear gardens of the properties would be a little over 5m, meaning that the gardens would be so small that they would not allow a usable amenity space for potential occupiers. The sub-standard provision would fail to ensure a suitable living environment for potential future occupiers and lends credence to the conclusion that the proposal would be an undesirable overdevelopment of the site contrary to the above policy and guidance in the NPPF.

#### VI. BIODIVERSITY AND ECOLOGICAL IMPACT

- 6.15 The NPPF seeks positive improvements in the quality of the natural environment, moving from a net loss of bio-diversity to achieving net gains for nature. It further states that the planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible. Amongst other matters, Core Strategy policy PMD7 requires an assessment of what species and habitat would be lost or adversely affected as a result of development (including an ecological survey where appropriate - to enable the Council to determine an application which would result in a loss of biodiversity or geological value.
- 6.16 The site has been unmanaged for many years and comprises a mix of scrub and long grass with a mature hedge along the rear boundary with the adjacent school playing field. No Preliminary Ecological Assessment (PEA) has been provided with the application to determine the ecological value of the site. Residents have reported reptiles within the site and bats foraging over it. The site would also be suitable for nesting birds. Without the PEA it is not possible to determine the value of the habitat on site. No mitigation has been proposed for the loss of habitat.
- 6.17 It is clear from the proposed siting of the bungalows within 2m of the boundary to the north east that the existing hedge would need to be removed. This has not been addressed in the Design and Access Statement accompanying the application and no assessment has been made of the hedge. Its removal would open up views over the school playing field. These would be difficult to screen even with fencing due to the close proximity of the proposed dwellings to the boundary. Given the lack of ecological surveys and any opportunities for appropriate mitigation and the need to remove the perimeter hedge, which has not been addressed, the Council's



Landscape and Ecology Advisor recommends refusal and the proposal is in conflict with policy PMD7 of the Core Strategy and the relevant NPPF provisions.

- 6.18 The site is within the Essex Coast RAMS Zone of Influence and the proposed development falls within the scope of the RAMS as relevant development. Without mitigation the proposed development is likely to have a significant effect on the Thames Estuary and Marshes Special Protection Area. To avoid the developer needing to undertake their own individual Habitat Regulations Assessment the Essex Local Planning Authorities within the Zones of Influence have developed a mitigation strategy to deliver the necessary mitigation to address mitigation impacts to be funded through a tariff applicable to all new additional dwellings. The current tariff is £125.58 per additional dwelling. This scheme would result in a net increase of 6 units; therefore it would be necessary for the LPA to apply a tariff of £753.48 for in order to fund works to mitigate the in-combination effects of recreational disturbance on SPA.
- 6.19 In the absence of any signed obligation or undertaking to address the mitigation of the impacts, the proposal is contrary to policy PMD16 of the Core Strategy.

## VII. OTHER MATTERS

- 6.20 The Council's Flood Risk Advisor has placed a holding objection on the application because no drainage information has been submitted therefore there may be an increased risk of flooding associated with the site. The application is for a proposal which is classified as minor development and is not within an area where there is an identified risk of surface water flooding. In such instances the Lead Local Flood Authority is not required to be consulted on surface water drainage. In addition to this the site lies in an area which is classified as having very low risk of flooding and in the circumstance, neither a flood risk assessment nor a drainage strategy is required for this application.

## 7.0 CONCLUSIONS AND REASON(S) FOR REFUSAL

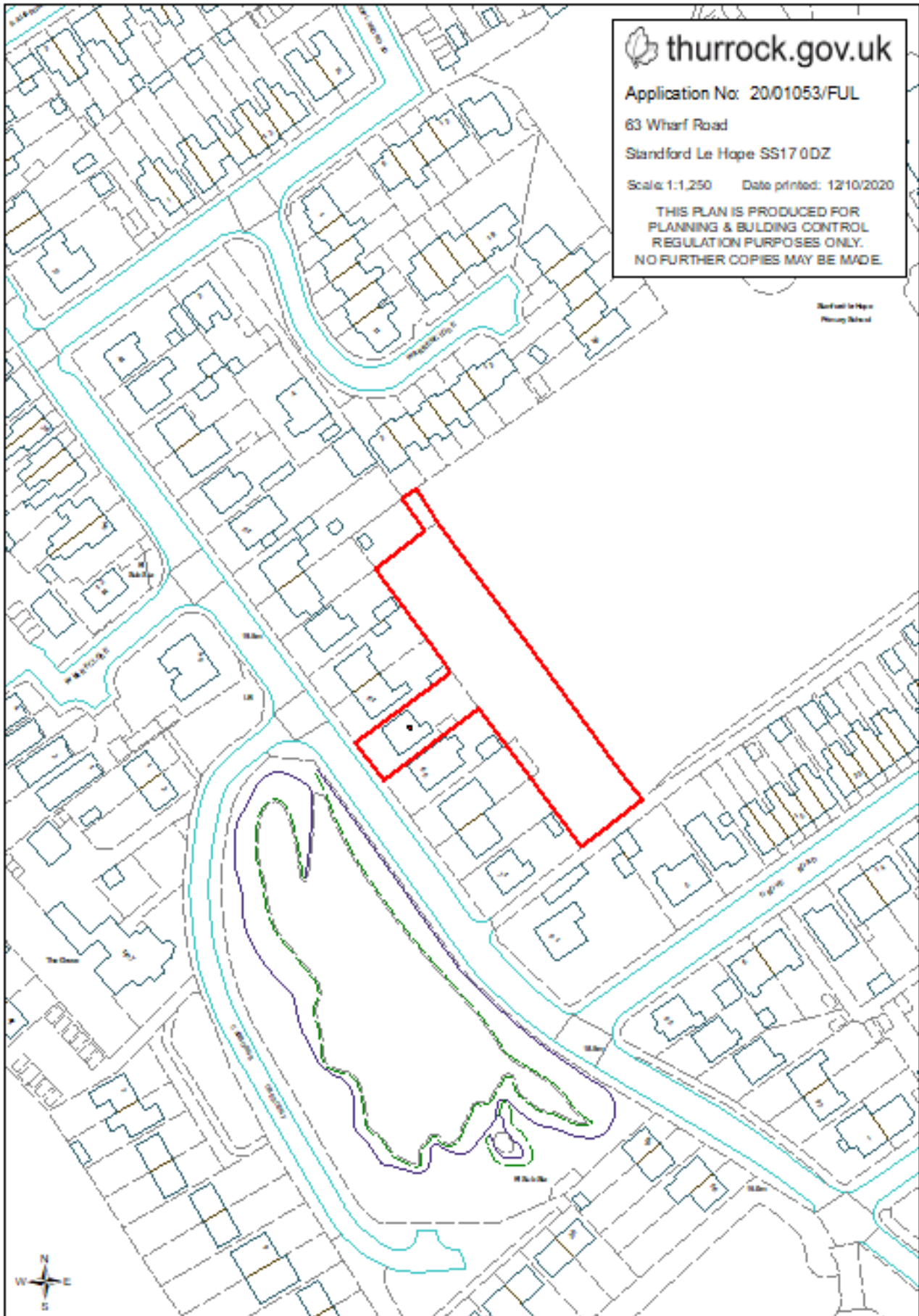
- 7.1 The proposals would result in harm to the character and appearance of the area, the living conditions of existing occupiers surrounding the site and future occupiers of the dwellings.
- 7.2 The proposal would also be harmful to highways and pedestrian safety due to an inadequate access point to Wharf Road and unsuitable pedestrian access.
- 7.3 Additionally, the application submission is lacking in ecological surveys and any opportunities for appropriate mitigation, including a signed obligation and or an undertaking.
- 7.4 The proposal is therefore recommended for refusal.

## 8.0 RECOMMENDATION

To Refuse for the following reasons:

**Reason(s):**

1. The proposed development would, by reasons of its layout, scale and siting, be an undesirable overdevelopment of the site, which detracts from and would be out of keeping with the prevailing character and appearance of the surrounding area, in contravention of policies CSTP22, CSTP23 and PMD2 of the Thurrock LDF Core Strategy and Policies for the Management of Development (2015) and the provisions within Chapter 12 of the National Planning Policy Framework 2019.
2. The proposed access arrangement is inadequate and unsatisfactory and fails to provide safe and appropriately sized access. Furthermore, its location in close proximity to access to Cabborns Crescent represents a potential safety hazard and point of conflict. Therefore, its layout, siting and design would be likely to give rise to conditions prejudicial to pedestrian and highway safety, contrary to policy PMD9 of the LDF Core Strategy 2015.
3. The proposed development would, by reasons of its layout and scale, result in a poor visual outlook for its future occupiers and its insufficient private amenity space would be provided resulting in a poor standard of accommodation for future occupiers. Furthermore, the expected traffic generation would result in noise and disturbance, detrimental to the living conditions and amenity of the existing adjoining occupiers contrary to section 12 of the National Planning Policy Framework 2019 and policies PMD1 and PMD9 of the LDF Core Strategy 2015.
4. No Preliminary Ecological Assessment (PEA) has been provided with the application to determine the ecological value of the site. Without the PEA it is not possible to determine the value of the habitat on site and no mitigation has been proposed for the loss of habitat. Furthermore, it is clear from the proposed siting of the bungalows within 2m of the boundary that the existing hedge would need to be removed. Given the lack of ecological surveys and any opportunities for appropriate mitigation and the need to remove the perimeter hedge, which has not been addressed, the proposal is in conflict with policy PMD7 of the adopted LDF Core Strategy 2015 and the relevant NPPF provisions.
5. The site is within the Essex Coast RAMS Zone of Influence and the proposed development falls within the scope of the RAMS as relevant development. Without mitigation the proposed development is likely to have a significant effect on the Thames Estuary and Marshes Special Protection Area. In the absence of any signed obligation or undertaking to address the mitigation of the impacts, the proposal is contrary to policy PMD16 of the adopted LDF Core Strategy 2015.



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<b>Reference:</b> 20/00905/FUL	<b>Site:</b> Land Part Of St Cleres Hall Adjacent To James Court Stanford Road Stanford Le Hope Essex
<b>Ward:</b> Stanford Le Hope West	<b>Proposal:</b> Demolition of existing barns and construction of building containing five apartments with associated hardstanding and landscaping (resubmission of 18/00984/FUL - Erection of a terrace of 4no. residential dwellings with associated hardstanding and landscaping following demolition of existing buildings)

Plan Number(s):		
Reference	Name	Received
3726_PL01a	Existing Site Plan	19 August 2020
3726_PL02a	Existing Outbuildings	21 July 2020
3726_PL03b	Proposed Floor Plans	19 August 2020
3726_PL04c	Proposed Elevations	19 August 2020
3726_PL05e	Proposed Site Plan	22 September 2020
3726_PL06	Volume Comparison	21 July 2020
3726_PL07b	Existing and Proposed Green Space Comparison	25 September 2020
3726_PL08a	Proposed Roof Plan	19 August 2020
3726_PL09a	Refuse Access	22 September 2020

The application is also accompanied by: <ul style="list-style-type: none"> <li>- Design and Access Statement</li> <li>- Planning Statement</li> <li>- QC Planning Submission Opinion</li> </ul>	
<b>Applicant:</b> Mr R Lyon	<b>Validated:</b> 22 July 2020  <b>Date of expiry:</b> 23 October 2020 (Extension of time agreed with applicant)
<b>Recommendation:</b> Grant planning permission, subject to conditions and s106	

agreement

This application is scheduled for determination by the Council’s Planning Committee because it has been called in by Cllrs S Hebb, T Piccolo, D Huelin, A Watkins and J Halden (in accordance with the Constitution Chapter 5, Part 3 (b), 2.1 (d) (ii)) to assess the impact of the proposal on the amenity of local area.

**1.0 DESCRIPTION OF PROPOSAL**

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

<b>Site Area (Gross)</b>	0.119ha							
<b>Height (maximum)</b>	Eaves – 4.7m Ridge – 9.75m							
<b>Units (All)</b>	<b>Type (ALL)</b>	<b>1- bed</b>	<b>2- bed</b>	<b>3- bed</b>	<b>4- bed</b>	<b>5- bed</b>	<b>TOTAL</b>	
	Houses							
	Flats	1	4					
	<b>TOTAL</b>	<b>1</b>	<b>4</b>				<b>5</b>	
<b>Affordable Units</b>	<b>Type (ALL)</b>	<b>1- bed</b>	<b>2- bed</b>	<b>3- bed</b>	<b>TOTAL</b>			
	Houses							
	Flats							
	<b>TOTAL</b>				<b>0</b>			
<b>Car parking</b>	Flats: 5 Total allocated: 5 spaces (1 per unit) Total Visitor: 1 space Total: 6							
<b>Amenity Space</b>	Over 800 sqm of communal amenity space							
<b>Density</b>	42 units per ha							

1.2 This application seeks planning permission for the erection of a building which would contain five apartments following the demolition of existing buildings on the site. The proposal also includes associated hardstanding and landscaping.

1.3 The proposed building would be located toward the north west corner of the wider site which is currently has been developed under previously approved planning

applications 11/50268/TTGFUL and 16/00271/FUL. The building itself would be of pitched roof design with an appearance similar to the buildings previously approved on the site. The proposed parking area would utilise the access which was approved under the previous applications.

**2.0 SITE DESCRIPTION**

2.1 The application site is situated within the Green Belt to the West of Stanford-le-Hope. The site, which is located on the south side of Stanford Road was formerly part of a redundant farmyard which also included a large car storage building. The area to the south of the site has been developed to provide 17 residential units under applications 11/50269/TTGFUL and 16/00271/FUL. The site itself would be within an area which was proposed as an open area with landscaping in previous application 16/00271/FUL. Access to the site would be via the access road within the current development which links the site to the driveway that is shared with St Clere’s Hall Golf Club.

2.2 The site is adjoined to the east by residential development fronting London Road and the cul-de-sac of Oxford Road, and to the West by St Clere’s Hall, which is a Grade II\* listed building. This building was once a farmhouse but is now used as the clubhouse for St Clere’s Hall Golf Club.

**3.0 RELEVANT PLANNING HISTORY**

3.1 The following table provides the relevant planning history:

Application Reference	Description of Proposal	Decision
11/50268/TTGFUL	Erection of 14 dwellings	Approved
14/00547/CONDC	Discharge of conditions 2,3,4,8,9,10,21,22 and 23 on previous planning application 11/50268/TTGFUL.	Advice Given
14/00654/CONDC	Discharge of Conditions 5, 6, 12, 15, 18 and 19 against approved planning application 11/50268/TTGFUL	Advice Given
16/00271/FUL	Demolition of existing car storage building and erection of a residential terrace of 5no. three bedroom dwellings	Refused – Appealed – Allowed
17/01628/CONDC	Application for the approval of details reserved by condition no. 3 (Hard and soft landscaping), 4 (Construction and waste management plan), 5(Highways	Advice Given

	management plan) and 8(foul and surface water) of planning permission ref. 16/00271/FUL (Demolition of existing car storage building and erection of a residential terrace of 5 no. three bedroom dwellings)	
18/00984/FUL	Erection of a terrace of 4no. residential dwellings with associated hardstanding and landscaping following demolition of existing buildings	Refused – Appealed – Dismissed

**4.0 CONSULTATIONS AND REPRESENTATIONS**

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

**4.2 PUBLICITY:**

This application has been advertised by way of individual neighbour notification letters, press advert and public site notice which has been displayed nearby. There was one comment received which did not object to the proposal, although it raised concerns on the following matters:

- Access to site
- Additional traffic
- Use of green areas
- Possible excessive noise

**4.3 CADENT GAS:**

No objection.

**4.4 ENVIRONMENTAL HEALTH**

No objection, subject to conditions.

**4.5 HIGHWAYS**

No objection, subject to conditions.

**4.6 LANDSCAPE AND ECOLOGY ADVISOR:**

No objection, subject to conditions.

**4.7 LISTED BUILDING ADVISOR:**



Recommend amendments, suggested conditions.

## 5.0 POLICY CONTEXT

### National Planning Policy Framework (NPPF)

5.1 The revised NPPF was published on 19 February 2019. The NPPF sets out the Government's planning policies. Paragraph 2 of the NPPF confirms the tests in s.38 (6) of the Planning and Compulsory Purchase Act 2004 and s.70 of the Town and Country Planning Act 1990 and that the Framework is a material consideration in planning decisions. The following chapter headings and content of the NPPF are particularly relevant to the consideration of the current proposals:

- 2. Achieving sustainable development
- 4. Decision-making
- 5. Delivering a sufficient supply of homes
- 11. Making effective use of land
- 12. Achieving well-designed places
- 13. Protecting Green Belt land
- 16. Conserving and enhancing the historic environment

### 5.2 National Planning Practice Guidance (NPPG)

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

- Design: process and tools
- Determining a planning application
- Effective use of land
- Green Belt
- Historic environment
- Housing: optional technical standards
- Housing supply and delivery
- Noise
- Planning obligations
- Tree Preservation Order and trees in conservation areas
- Use of planning conditions

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

The “Core Strategy and Policies for Management of Development” was adopted by Council on the 28 February 2015. The following policies apply to the proposals:

#### OVERARCHING SUSTAINABLE DEVELOPMENT POLICY

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

#### SPATIAL POLICIES

- CSSP1 (Sustainable Housing and Locations)
- CSSP4 (Sustainable Green Belt)

#### THEMATIC POLICIES

- CSTP1 (Strategic Housing Provision)
- CSTP2 (The Provision Of Affordable Housing)
- CSTP22 (Thurrock Design)
- CSTP23 (Thurrock Character and Distinctiveness)
- CSTP24 (Heritage Assets and the Historic Environment)

#### POLICIES FOR MANAGEMENT OF DEVELOPMENT

- PMD1 (Minimising Pollution and Impacts on Amenity)
- PMD2 (Design and Layout)
- PMD4 (Historic Environment)
- PMD6 (Development in the Green Belt)
- PMD7 (Biodiversity, Geological Conservation and Development)
- PMD8 (Parking Standards)
- PMD9 (Road Network Hierarchy)

#### 5.4 Thurrock Local Plan

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

## 5.5 Thurrock Design Strategy

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

## 6.0 ASSESSMENT

### Background

In 2018 planning permission was sought for *Erection of a terrace of 4no. residential dwellings with associated hardstanding and landscaping following demolition of existing buildings*. The application was refused on the following three grounds:

1) Green Belt - The proposed development would, by reason of its siting and scale result in a greater impact on the openness of the Green Belt than the previously approved development, representing inappropriate development in the Green Belt which is by definition harmful. In addition the proposal results in a loss of openness due to the substantial increase in the extent of the built form on the site. There are no circumstances put forward by the applicant which would constitute very special circumstances to justify inappropriate development in the Green Belt.,

2) Character/ - The proposed development, would by reason of its siting, scale, density and extent of hardstanding result in an overly dominant, incongruous and urban form of development adversely impacting upon the street scene and character of the area

3) Impact to listed building - The development, would by reason of its siting and scale result in substantial harm to the setting of the adjacent Grade II\* Listed Building, St Clere's Hall. The massing and position of the proposed terrace would dominate the local streetscene and crowd the listed building and block intermittent historic views across the site.

The applicant appealed the decision. In dismissing the appeal the Inspector noted:

*Paragraph 10. The preliminary finding is that there is no existing enforceable requirement to remove the 2 buildings presently located within the red-line site area of the present appeal, and that they are available to be considered with regard to the paragraph 145g exception, rather than judging the proposal against the originally intended open space.*

*Paragraph 25. As a result, the setting of the former farmhouse should be regarded as extending north and south, but that over the appeal site or the land already developed is of low significance. The further development proposed in this appeal would not have an adverse effect on the setting of the listed building, and the shortcomings identified in the previous main issue in design and layout of the building*

*and its car parking would not affect the setting in any event. It is concluded that the requirements of statute as well as local and national policy on the preservation of heritage assets would be satisfied in this case.*

The current application is within the same site area, but is a significantly different proposal with one building providing five flats with smaller footprint and bulk. Also, there is significantly less hardstanding proposed.

6.1 The assessment below covers the following areas:

- I. Principle of the development in the Green Belt
- II. Layout and design
- III. Impact on listed building
- IV. Impact on amenity
- V. Highways and parking
- VI. Landscape and ecology
- VII. RAMS mitigation

I. PRINCIPLE OF THE DEVELOPMENT IN THE GREEN BELT

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

Whether the proposals constitute inappropriate development in the Green Belt

The site is identified on the Core Strategy Proposal's Map within the Green Belt where policies CSSP4 and PMD6 apply. Policy CSSP4 identifies that the Council will 'maintain the purpose function and open character of the Green Belt in Thurrock', and policy PMD6 states that the Council will 'maintain, protect and enhance the open character of the Green Belt in Thurrock'. These policies aim to prevent urban sprawl and maintain the essential characteristics of the openness and permanence of the Green Belt in accordance with the requirements of the NPPF.

6.3 Paragraph 133 within Chapter 9 of the NPPF states that the Government attaches great importance to Green Belts and that the "*fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belt are their openness and their permanence.*" Paragraph 145 states that a local planning authority should regard the construction of new buildings as inappropriate in Green Belt. The NPPF sets out a limited number of exceptions to this, this includes:

*g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:*

*– not have a greater impact on the openness of the Green Belt than the*

*existing development*

- 6.4 The NPPF defines "Previously developed land" to be: *Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.*
- 6.5 The principle of the residential re-development of the wider site has already been established by the granting of full planning permission under applications 11/50268/TTGFUL and 16/00271/FUL. The principle of redeveloping the site was initially given by the Thurrock Thames Gateway Development Corporation. These developments relied on the redevelopment of a previously developed site where there would be no greater impact upon the openness of the Green Belt than the existing development. The effect of this for the purposes of the assessment of the previous applications was the demolition the pre-existing buildings on site with their replacement considered to be appropriate development in the Green Belt. Part of the reason for the refusal of application 18/00984/FUL was that it was considered the floor area and volume of these buildings had been 'spent' in the previously consented schemes.
- 6.6 Despite this, at the last appeal the Planning Inspector concluded in paragraph 10: *The preliminary finding is that there is no existing enforceable requirement to remove the 2 buildings presently located within the red-line site area of the present appeal, and that they are available to be considered with regard to the paragraph 145g exception, rather than judging the proposal against the originally intended open space.* Therefore, given the Planning Inspectorate's decision the current proposal should be considered on the basis of the existing situation when considering whether it constitutes an exception to inappropriate development within Green Belt.
- 6.7 Before considering the impact of the development it is first pertinent to consider the extent of the site which constitutes PDL. There has been an assessment of the existing buildings, which, based upon the appeal decision, are available to be considered as part of the Green Belt assessment. The proposal is to replace these two buildings with one building which would contain five apartments.
- 6.8 Having clarified that the relevant part of the site does constitute PDL consideration must then be given to whether the development would result in a greater impact upon

openness than the existing development on the site. The existing buildings on the site are located centrally within the site and the development would be partly within this footprint, although consolidated to the south west of the site. It is important at this point to consider the relative impact upon openness of these structures when compared with the redevelopment of the site for a building with five flats.

- 6.9 Footprint and volume comparisons are a starting point within the PDL exception test, however the character of the existing structures are also important. The existing buildings on site, which are applicable to use for PDL, are detailed below:

Existing building 1 - volume 477m<sup>3</sup> / footprint 106m<sup>2</sup>

Existing building 2 - volume 636m<sup>3</sup> / footprint 130m<sup>2</sup>

**Total existing volume 1,113m<sup>3</sup>**

**Total existing footprint 236m<sup>2</sup>**

The proposed building is detailed below:

New building – volume 1,130m<sup>3</sup> / footprint 167m<sup>2</sup>

**Difference of proposed volume +17m<sup>3</sup>**

**Difference of proposed footprint -69m<sup>2</sup>**

Therefore, the redevelopment would lead to a decrease in footprint and a relatively minor increase in volume.

- 6.10 The proposed building would have a ridge height of 9.75m, the existing buildings have ridge heights of 6.3m and 6.5m. Nonetheless, the proposed building is a single structure which replaces two separate buildings. Additionally, with the proposed building whilst the ridge height is higher than the existing buildings, the ridge is steep with the eaves height a maximum of 4.7m which reduces massing and bulk in the roof. It is considered that the reduction in footprint and design of the building would reduce the visual extent of the built form on the site. Even with the increase of the ridge height of the building over the existing barns the overall extent of the massing of the proposal is less than the existing situation on site. Therefore, in terms of height and massing, the proposed buildings would have less of an impact on openness.
- 6.11 However, it is also important to consider the character of the buildings to be replaced and the relative impact upon openness. The redevelopment would replace predominantly commercial style buildings with a residential building. These existing buildings and structures are of substantial and permanent construction. As a result it is considered that the impact upon the Green Belt in terms of the character of these existing buildings is relatively similar to the proposed building.

- 6.12 The apartment building would lead to less built in terms of footprint. The landscaping will be conditioned to ensure a more attractive finish with additional planting which will enhance the area. Given the above, the redevelopment would reduce built form on the site in terms of footprint and number of buildings and it is not considered the proposal would result in a greater impact upon openness than the existing development on the site. Additionally, the specific location of the site, is within an area where there are other residential units. Therefore the first exception of paragraph 145 g) is met and the proposal would constitute appropriate development.
- 6.13 Given that the proposal is considered to be acceptable based upon the relative impact in relation to the existing structures on site it is considered appropriate to impose conditions on removal of existing structures.

## II. LAYOUT AND DESIGN

- 6.14 The proposed building would be sited to the south west of the wider residential site and would create a functional corner to the overall mews development. The building when compared with the last refused application has been set back away from Stanford Road, so it would not be so visually dominant within the street scene. This is also the case when compared with the existing buildings on the site. Additionally, the roof of the proposed building is pitched away from Stanford Road, which again reduces the visual impact.
- 6.15 The design of the proposed building compliments the existing recent residential developments within the cul-de-sac. The design and features have been inspired by the present houses on the site, such as the steeply pitched roof, black windows and weatherboarding.
- 6.16 In addition to the above, the development would improve the landscape buffer, which separates the proposed building from the road. There is currently a large extent of hardstanding and the proposal would ensure that as well as the removal of the unsightly barns, the resultants shared amenity area of 849sq.m will lead to improvement of the aesthetics of the site.
- 6.17 Therefore it is considered, that the siting and scale of the proposed building are acceptable and would result in a complimentary building which would fit in with street scene and character of the area. The proposal would, therefore, comply with policies PMD2, CSTP22 and CSTP23 and the NPPF.

## III. IMPACT ON LISTED BUILDING

- 6.18 The site is located adjacent to St Clere's Hall, a Grade II\* listed former farmhouse. As a Grade II\* listed building, St Clere's Hall is a heritage asset of significant value.

Therefore great weight should also be given to any harm identified as part of the assessment of the proposal. Any harm to, or loss of, the significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification. Within the previous appeal decision the Planning Inspector evaluated that, in terms of setting, the application site is of low significance and that the previous proposed development would not have had an adverse effect on the setting of the listed building.

- 6.19 The Planning Inspector considered the previous application had limited impact on the listed building. As this proposal has a lesser effect there can be no objection on this matter. The Historic Buildings Advisor advises addition of conditions relating to materials and details be imposed, all well as details of all hard and soft landscaping and boundary treatments, to ensure a good quality of design he would not object to the proposal. Therefore, with the conditions suggested by the Historic Buildings Advisor, from a heritage perspective, the proposal would be acceptable in terms of policies CSTP24 and PMD4 and the NPPF.

#### IV. IMPACT ON AMENITY

- 6.20 The proposed building would be sited a significant distance from the nearest pre-existing dwellings located to the east of the site on Stanford Road. As a result it would not result in a significant loss of light, overbearing impact or loss of privacy to these neighbours.
- 6.21 Given the distance between the buildings and the impact upon a limited number of windows it is considered that this would not result in significant harm to present or future occupiers of the wider development. Any views from the current proposal would be towards the flank of existing properties to the south east and would not directly overlook habitable room windows or private amenity space.
- 6.22 With regards to the proposed parking and turning area this would result in some disturbance to the previously approved properties. However in the context of their siting within an estate where there are likely to be a number of vehicular movements and the close proximity to Stanford Road it is considered that this would not result in an unacceptable impact upon the amenity of future occupiers.
- 6.23 The proposed building would provide units of a sufficient size and with suitable light and outlook to provide an acceptable living environment for future occupiers. The proposed shared amenity area would exceed the recommended standards and would provide sufficient amenity space for future occupiers. As such it is considered that the proposal would provide a suitable living environment for future occupiers.

#### V. HIGHWAYS AND PARKING



- 6.24 The proposal would be accessed through the estate road associated with the previously approved applications on the site. The proposal is for five additional dwellings which is unlikely to result in a significant increase in vehicular movements. The proposal would provide one parking spaces per unit and a visitor space which is considered to be sufficient for properties of this size in this location and would comply with the requirements of policy PMD8. A cycle store is proposed to be provided on the site.
- 6.25 Refuse collection arrangements would be the same as the previously approved applications. There is a refuse/recycling area provided within the site. Therefore no concerns are raised with regards to refuse storage or collection.

#### VI. LANDSCAPE AND ECOLOGY

- 6.26 The proposal would incorporate sufficient space for boundary screening and would not adversely impact upon TPO trees on the adjacent site. The Council's Landscape and Ecology Advisor has raised no objection to the proposal subject a condition in relation to a detailed landscaping scheme with particular attention to screening along the boundary with Stanford Road. No concerns have been raised with regards to biodiversity and ecology.

#### VII. RAMS MITIGATION

- 6.27 The application site falls within the Zone of Influence (ZoI) within the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS), as relevant development. Without mitigation the proposed development is likely to have a significant effect on the Thames Estuary and Marshes Special Protection Area. It is therefore considered that a proportionate financial contribution in line with Essex Coast RAMS should be made to contribute towards the funding of mitigation measures detailed in the Essex Coast RAMS Strategy
- 6.28 The mitigation strategy involves a tariff for each residential unit which is £125.58 per unit to mitigate the in-combination effects of recreational disturbance on the Special Protection Area. Having considered the proposed avoidance and mitigation measures above, the Council takes the view that with adopted mitigation the project will not have an adverse effect on the integrity of the European sites included within the Essex Coast RAMS. A unilateral undertaking would be appropriate in order to secure the mitigation costs within the Essex Coast RAMs Zone of Influence.

### 7.0 CONCLUSIONS AND REASONS FOR APPROVAL

- 7.1 The proposed development is sited within the Green Belt and is considered to fall

within one of the exceptions to inappropriate development as set out in the NPPF Paragraph 145. The proposal is considered acceptable as it would represent an appropriate form of development which would not affect the openness of the Green Belt. The proposal would rationalise the built form on the site in one area and additional landscaping would improve the appearance of the site.

7.2 In relation to design, appearance, layout and scale the proposal would be acceptable and in terms of technical highways matters the level of activity would be acceptable. Other matters of detail are also considered to be appropriate, subject to conditions.

**8.0 RECOMMENDATION**

8.1 Approve, subject to the following:

i) the completion and signing of an obligation under s.106 of the Town and Country Planning Act 1990 relating to the following heads of terms:

RAMS mitigation contribution

and

ii) the following planning conditions:

**TIME LIMIT**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91(1) of The Town & Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

**PLANS**

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Plan Number(s):		
Reference	Name	Received
3726_PL01a	Existing Site Plan	19 August 2020
3726_PL02a	Existing Outbuildings	21 July 2020
3726_PL03b	Proposed Floor Plans	19 August 2020
3726_PL04c	Proposed Elevations	19 August 2020

3726_PL05e	Proposed Site Plan	22 September 2020
3726_PL06	Volume Comparison	21 July 2020
3726_PL07b	Existing and Proposed Green Space Comparison	25 September 2020
3726_PL08a	Proposed Roof Plan	19 August 2020
3726_PL09a	Refuse Access	22 September 2020

Reason: For the avoidance of doubt and in the interest of proper planning.

**DETAILS OF MATERIALS**

3. Notwithstanding the information on the approved plans, no development shall commence above finished ground levels until written details or samples of all materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out using the materials and details as approved.

Reason: In the interests of visual amenity and to ensure that the proposed development is integrated with its surroundings in accordance with policy PMD2 of the adopted Thurrock Core Strategy and Policies for the Management of Development [2015].

**CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN [CEMP]**

4. No demolition or construction works shall commence until a Construction Environmental Management Plan [CEMP] has been submitted to and approved in writing by the local planning authority in writing. The CEMP should contain or address the following matters:
  - (a) Hours of use for the construction of the development
  - (b) Hours and duration of any piling operations,
  - (c) Wheel washing and sheeting of vehicles transporting loose aggregates or similar materials on or off site,
  - (d) Details of the method for the control of noise with reference to BS5228 together with a monitoring regime;
  - (e) Measures to reduce vibration and mitigate the impacts on sensitive receptors together with a monitoring regime ;
  - (f) Measures to reduce dust with air quality mitigation and monitoring,

Works on site shall only take place in accordance with the approved CEMP.

Reason: In order to minimise any adverse impacts arising from the construction of the development in accordance with policy PMD1 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development [2015]

### **BOUNDARY TREATMENTS**

5. Prior to the first use or operation of the development, details of the design, materials and colour of the fences and other boundary treatments shown on drawing no. 003 Proposed Site Layout Ground Floor shall be submitted to and approved in writing by the local planning authority. The fences and other boundary treatments as approved shall be completed prior to the first use or operation of the development and shall be retained and maintained as such thereafter.

Reason: In order to safeguard the amenities of neighbouring occupiers and in the interests of the visual amenity of the area in accordance with policies PMD1 and PMD2 of the adopted Thurrock Core Strategy and Policies for the Management of Development [2015].

### **SOFT AND HARD LANDSCAPING**

6. No development shall take place until full details of both hard and soft landscape works to be carried out have been submitted to and approved in writing by the local planning authority. These details shall include the layout of the hard landscaped areas with the materials and finishes to be used and details of the soft landscape works including schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers/densities and details of the planting scheme's implementation, aftercare and maintenance programme. The hard landscape works shall be carried out as approved prior to first occupation of the development hereby approved unless otherwise first agreed in writing by the local planning authority. The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the commencement of the development, unless otherwise first agreed in writing by the local planning authority. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written consent to any variation.

Reason: To secure appropriate landscaping of the site in the interests of visual amenity and the character of the area and to ensure that the proposed development in the Green Belt does not have a detrimental effect on the environment in accordance with policies CSTP18 and PMD2 and PMD6 of the adopted Thurrock

LDF Core Strategy and Policies for the Management of Development [2015].

### **PARKING PROVISION – AS SHOWN ON THE APPROVED PLANS**

7. The development hereby permitted shall not be first occupied until such time as the vehicle parking areas shown on the approved plans, have been hard surfaced, sealed and marked out as shown on the approved plans. The vehicle parking areas shall be retained in this form at all times thereafter and maintained for their designated purpose.

Reason: In the interests of highway safety and to ensure that adequate car parking provision is available in accordance with policies PMD8 and PMD9 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development [2015].

### **REMOVAL OF EXISTING BUILDINGS**

8. No works above ground level of the development hereby permitted shall be undertaken until the existing barns on the site, as show on plan numbers 3726\_PL01a and 3726\_PL02a have been demolished and the resulting material removed from the site.

Reason: The development has only been approved on the basis that the development hereby approved is a replacement of volume and mass of built form in the Green Belt in accordance with policy PMD6 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development [2015].

### **REFUSE AND RECYCLING STORAGE – AS PER THE APPROVED PLANS**

9. The refuse and recycling storage facilities as shown on drawing number 3726\_PL05e shall be constructed and completed prior to the first occupation of the development and retained for such purposes at all times thereafter.

Reason: In To ensure that refuse and recycling provision is provided in the interests of visual amenity of the area in accordance with policies PMD1 and PMD2 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development [2015].

### **CYCLE PARKING – AS SHOWN ON THE APPROVED PLANS**

10. The cycle parking facilities as shown on the approved plan(s) shall be provided prior to the first occupation of any of the residential units and retained for such purposes thereafter.

Reason: To reduce reliance on the use of private cars, in the interests of sustainability, highway safety and amenity in accordance with Policies PMD2 and PMD8 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development [2015].

### **ELECTRIC VEHICLE CHARGING CAPABILITY**

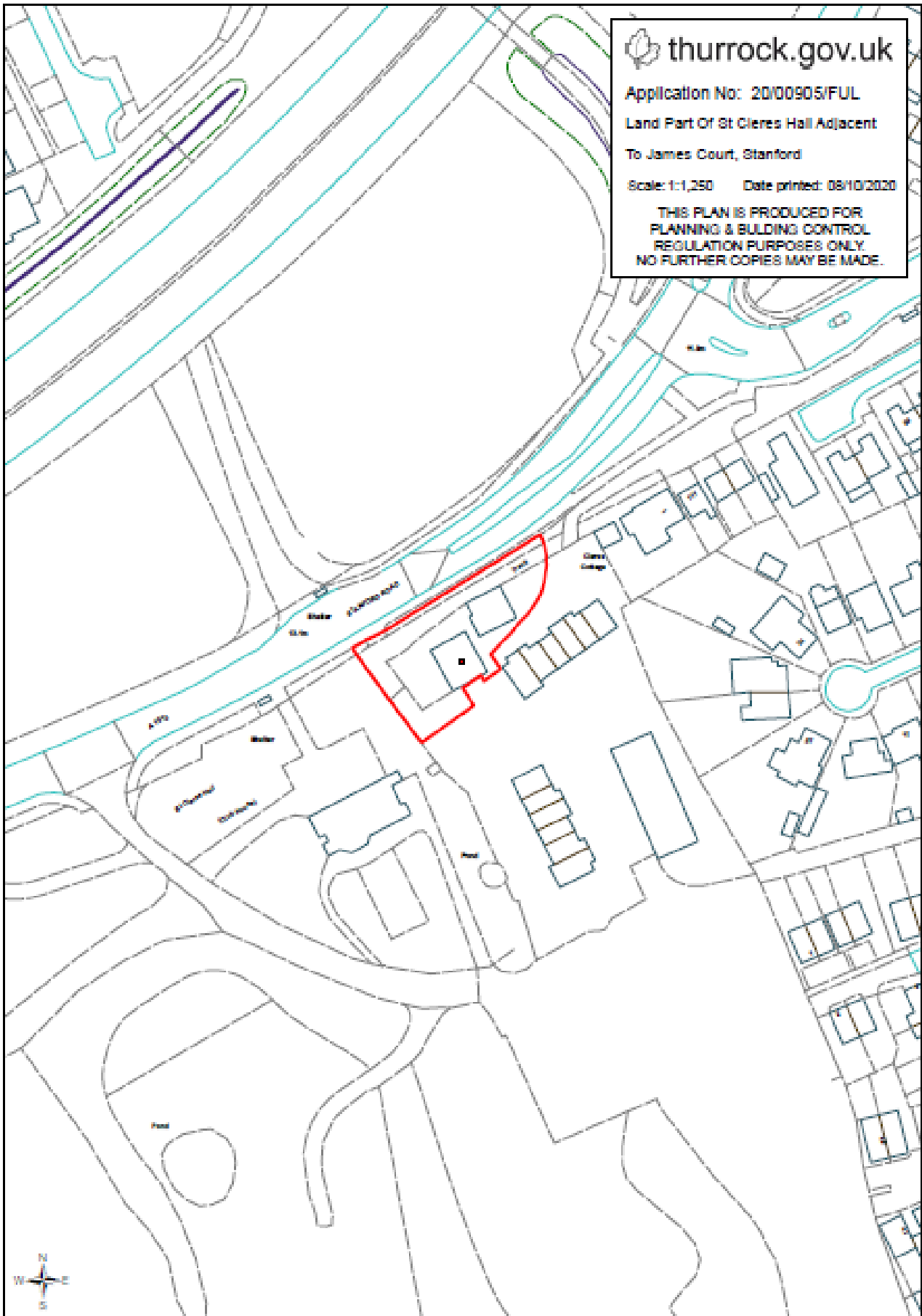
11. Prior to installation of any underground services, details of measures to ensure that the car parking spaces are capable of accommodating electric vehicle charging points shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be implemented in accordance with the agreed measures which shall be retained thereafter.

Reason: To reduce reliance on the use of petrol/diesel cars, in the interests of sustainability, highway safety and amenity in accordance with Policies PMD1 and PMD2 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development [2015].

#### **Documents:**

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

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



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