

Planning Committee: 8 June 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 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 C5SP4 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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