



Appeal Decision

Hearing held on 17 September 2024

Site visit made on 17 September 2024

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2024

Appeal Ref: APP/J1535/W/24/3342224

Land to the south & east of the former Chimes Garden Centre, Nazeing, Waltham Abbey EN10 6RJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Kevin Ellerbeck on behalf of Lifestyle Care & Community Ltd against the decision of Epping Forest District Council.
 - The application Ref is EPF/2601/22.
 - The development proposed is redevelopment of the site to provide up to 52 later living apartments (Extra Care Housing) incorporating a convenience shop and café (use class E); 13 retirement cottages (Extra Care Housing); 10 self-build & custom build houses; 4 affordable houses, open space, bowling green, children's play area and improved local bus service; all matters reserved except access.
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Decision

1. The appeal is allowed and planning permission is granted for redevelopment of the site to provide up to 52 later living apartments (Extra Care Housing) incorporating a convenience shop and café (use class E); 13 retirement cottages (Extra Care Housing); 10 self-build & custom build houses; 4 affordable houses, open space, bowling green, children's play area and improved local bus service; all matters reserved except access, at land to the south & east of the former Chimes Garden Centre, Nazeing, Waltham Abbey EN10 6RJ in accordance with the terms of the application, Ref EPF/2601/22, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr Ellerbeck on behalf of Lifestyle Care & Community Ltd against the decision of Epping Forest District Council. An application for costs was also made by the Council against the appellant. Those applications are the subject of separate decisions.

Preliminary Matters

Site address and development description

3. Prior to the Council's determination of the planning application, the site boundary was amended, with development formerly proposed to the rear of

95 Old Nazeing Road omitted from the scheme. In the header above, I have used the address provided on the Council's decision notice, since the parties agree this provides an accurate description of the site's location.

4. Following negotiations with the Council and third parties, the proposal was amended and differs from the application form's description. Notably, the '1 market dwelling' and 'mini-roundabout access' were omitted from the proposal, and the Unilateral Undertaking (UU) provided under section 106 of the Town and Country Planning Act 1990 would secure four units of affordable housing, rather than '4 affordable starter homes'. Therefore, for accuracy, the description of development is taken from the Council's decision notice.
5. There is disagreement between the parties regarding the use class of the proposed 'later living apartments' and 'retirement cottages'. However, the parties agree those units would be 'extra care housing' as per the Planning Practice Guidance's (PPG) definition¹. Therefore, in the interests of clarity and to avoid unnecessary complexity at the reserved matters stage, I have used the PPG definitions in the development description.

Council's second reason for refusal

6. The second reason for refusal, as set out on the Decision Notice concluded that, in the absence of completed planning obligations, the proposal would fail to mitigate against adverse impacts on local infrastructure and services. The UU submitted during the appeal contains planning obligations to secure financial contributions toward local infrastructure and services, including contributions relating to Biodiversity Net Gain (BNG), provision of a community centre, community facilities, health services, open space and green infrastructure, sports facilities, transport, and library services.
7. Following submission of the Council's Addendum Statement of Case, the UU was amended. The outstanding areas of dispute are whether the Community Centre contribution and BNG contribution would satisfy the statutory tests at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regs), and as such form main issues in this appeal. In my reasoning, I have considered the planning obligations against the statutory tests.
8. The planning obligations would come into effect on grant of planning permission. However, where I conclude a planning obligation would not comply with the statutory tests, it ceases to have effect and the owners shall be under no obligation to comply with the obligation(s).

Draft National Planning Policy Framework and Written Ministerial Statement

9. On 30 July 2024, government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Also on 30 July, the Secretary of State made a written ministerial statement (WMS) entitled "Building the homes we need". During the appeal, the parties were invited to consider whether the proposed reforms to the Framework and WMS are of relevance to the appeal proposal and I have had regard to the parties' written responses in my decision.

¹ Paragraph: 010 Reference ID: 63-010-20190626

Main Issues

10. The main issues in this appeal are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and development plan policies;
- The effect of the proposal on the openness of the Green Belt;
- Whether the proposal would provide an appropriate mix of housing, with particular regard to the provision of affordable housing;
- Whether the proposed development would make suitable provision for local community facilities;
- Whether the proposed development would achieve Biodiversity Net Gain;
- The effect of the proposed development on the integrity of the Epping Forest Special Area of Conservation; and
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

11. The site comprises a mix of derelict land with areas of spoil and hardstanding, together with regenerating scrub. Former commercial buildings have been cleared, and the site is now vacant. A large portion of the site area comprises uncapped landfill.
12. The site lies to the south of existing residential development and abuts a housing development that is under construction and in part complete, known as Chimes Phases 1 and 2. To the east is a lake, and the site is bound to the west by the River Lea. The site is in the Green Belt.
13. Policy SP5 of the Epping Forest District Local Plan 2023 (LP) protects the Green Belt from inappropriate development in accordance with the Framework and the criteria set out in LP Policy DM4.
14. Framework paragraph 154 regards the construction of new buildings as inappropriate in the Green Belt. Whilst criteria (C) and (D) of Policy DM4 identify certain forms of development that are not inappropriate development, neither party suggests the proposal would comply with such exceptions.
15. Through the construction of major new residential development, the proposal would comprise inappropriate development in the Green Belt.
16. Policy DM4 reflects the provisions of paragraphs 152 and 153 of the Framework, and states inappropriate development should not be granted planning permission except in very special circumstances.

Effect on openness of Green Belt

17. Paragraph 142 of the Framework states the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the

Green Belt's essential characteristics are its openness and permanence. LP Policy DM4 identifies the purposes of the Green Belt, including to check the unrestricted sprawl of large built-up areas and assist in safeguarding the countryside from encroachment.

18. The proposal would comprise major development on a vacant site. It would introduce a significant volume of new built form across the site, including buildings, hardstanding, and boundary treatments. The spatial effects of the development would therefore be the loss of Green Belt openness.
19. The site is generally enclosed along its boundaries by fencing, trees and hedges. The site adjoins existing built development at its north and north-western edge and experiences a high degree of containment from the wider landscape by physical features including the River Lea and Snakey Lane. The interior of the site is generally open, with low, scrub vegetation, areas of hardstanding, and occasional small trees including a loose tree belt across the middle of the site. The site is of limited aesthetic value.
20. Paragraph 5.12 of Landscape & Visual Impact Assessment 2022 (LVIA) concludes the proposals could be integrated into this receiving landscape without notable adverse effects on landscape character and suggests there would be opportunities for localised landscape benefits as the proposed landscaping matures.
21. As identified in Table 2 of the LVIA, the most prominent views of the development would be experienced to the west of the site from publicly accessible routes, such as the river towpath. From these vantage points, views would be constrained to the narrow, open section of the site boundary abutting the river and would allow only partial views of the development, which would be viewed within the context of development at Riverside Avenue. Therefore, the site is generally screened from view within the surrounding landscape, and the proposed development would be of limited visual prominence and would be viewed within the context of other modern residential development.
22. There is scope for the development to assimilate with its residential and countryside context. However, the proposed development would change the appearance of the site through the introduction of built development, and thus would have an adverse visual impact on Green Belt openness.
23. The proposed development would represent an extension of the built area. However, the site has strong, defensible boundaries and the development would not be perceived as urban sprawl or countryside encroachment. The proposal would not therefore represent a significant conflict with this purpose of the Green Belt. In addition, I have been provided no compelling evidence that development of the site would hamper urban regeneration or discourage the recycling of derelict and other urban land.
24. As set out above, the site's limited aesthetic value and visual prominence, containment from the wider landscape, relationship to the existing built area, and proposed landscaping would serve to reduce the magnitude of the development's visual impacts on the Green Belt to some degree. However, the proposal would result in a loss of openness and thus permanently harm this essential characteristic of the Green Belt.

Provision of affordable housing

Off-site affordable housing provision

25. The appellant has provided two versions of the UU with different approaches to planning obligations relating to the provision of affordable housing. Regulation 122(2) of the CIL Regs states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. These statutory tests are reflected in national policy at paragraph 57 of the Framework. I have considered the obligations within the UU versions against the statutory tests.
26. LP Policy H2 requires developments of 11 or more dwellings to provide 40% of those dwellings as on-site affordable housing units. Where the Council agree it would be inappropriate to provide on-site affordable housing, criterion (F) of Policy H2 permits the Council to accept a financial contribution for off-site provision where it is supported by a viability assessment assessing the level of contribution to be provided.
27. The Council accepts the extra care housing elements of the scheme would not be suited to the provision of on-site affordable housing for practical reasons. Consequently, the UU secures four on-site affordable housing units and, subject to my conclusions on development viability, a financial contribution toward off-site affordable housing provision.
28. At criterion (G), Policy H2 indicates that where a viability assessment has been submitted, the Council will undertake an independent review. Based upon its independent review of the appellant's viability assessment, the Council considers the scheme could viably support a financial contribution of £1.7m toward off-site affordable housing provision, in addition to the four on-site affordable housing units. This would equate to an affordable housing provision rate of 18.8%. Whilst this would fall significantly short of Policy H2's 40% rate, it would be policy compliant since the scale of the contribution is predicated on an assessment of viability as required by Policy H2(D) and (F).
29. The appellant disputes the Council's viability assessment, and the Briefing Note by Bespoke Property Consultants concludes no payment of affordable housing is viable for this scheme. The Briefing Note indicates that to support the affordable housing contribution would require a reduction in the scheme's land value or profit.
30. Paragraph 190 of the Framework states that where a site is affected by contamination, responsibility for securing a safe development rests with the developer and/or landowner. The presence of contamination associated with the former landfill use of the site would require costly remediation works before the site may be brought into use. The Council's viability assessment therefore applies a benchmark land value (BLV) of £1.
31. The appellant asserts the BLV should reflect the value of previously developed land (PDL) on-site and provide an incentive for the landowner. However, the PDL value has been calculated through extrapolation of assumptions used in the strategic viability assessment which informed preparation of the LP. Whilst

the PPG requires BLV to allow a premium for landowners, it also requires it be informed by abnormal costs and be based on existing use value². The appellant estimates the remediation costs would be high, at around £3.6m. The appellant has provided no evidence of any beneficial existing use of the site nor an assessment of the value of an alternative use. Therefore, there is insufficient evidence to justify an increase in BLV above that applied by the Council.

32. The Council's viability assessment applies a profit target of 17.5%. However, the appellant argues a higher figure of 20% should be afforded to reflect risks associated with a scheme of this size and nature and suggests this justified by a stagnant market and increases in build costs. The appellant's position is based on professional opinion and is not substantiated by evidence relevant to the scheme to justify profit at the highest rate supported by the PPG³.
33. The appellant also suggests the Council's viability assessment underestimates planning obligations costs. However, as discussed below, I have found some proposed obligations would not satisfy the statutory tests, and therefore must not be imposed. This will inevitably reduce the proposal's planning obligation costs and have a positive effect on development viability. Since the Council has previously raised its concerns regarding the legal compliance of those obligations, I am satisfied it had suitable opportunity to appropriately consider planning obligation costs in its viability assessment.
34. The parties disagree on the commercial values of the scheme associated with the café and salon, with a significant difference in the values applied in each viability assessment. The BPC briefing note suggests lower values are justified since the commercial uses would serve residents and would not be in a high street location. However, there is ambiguity regarding the proposed commercial uses, particularly as the development description refers to the inclusion of a shop rather than a salon. Further clarification on the proposed uses would be required to justify a reduction in the revenue assumption.
35. The BPC briefing note suggests the Council has overestimated build costs, reducing the surplus available for affordable housing provision. However, the Council's viability assessment indicates the proposed scheme should be subject to a properly constituted elemental cost plan, given the non-standard form of development and existing ground conditions, and not the BCIS general construction rates.
36. The appellant asserts the Council's assessment does not comply with the PPG and industry standard practice and guidance. However, the assessment has been prepared using an industry standard model which seeks to avoid errors from deviation from the BLV. I have been presented no compelling evidence to demonstrate the Council's viability assessment would not comply with the RICS guidance or PPG.
37. The BPC briefing note concludes that no payment of affordable housing is viable for this scheme and cautions that if the sum requested is too high, the scheme may not be able to be delivered. However, the Council's assessment demonstrates that through a reduction in the BLV assumption and developer's

² Paragraph: 014 Reference ID: 10-012-20240214

³ Paragraph: 018 Reference ID: 10-018-20190509

profit, the development can viability support the affordable housing contribution. The submitted evidence does not persuade me that the assumptions applied in the Council's assessment were inadequate or erroneous. Therefore, I am satisfied the affordable housing sum can be viably supported and is justified by a transparent, compliant viability assessment.

38. The obligations to secure the four on-site affordable housing units and the £1.7m affordable housing sum would be necessary to comply with Policy H2 and, since the obligations are based on assessment of viability, would be fairly related in scale. The obligations would therefore satisfy the statutory tests.

Clawback clause and event fees

39. Since the proposal would not achieve the 40% policy requirement, the Council has requested the inclusion of a late-stage review clause within the UU. The review clause would seek to re-assess the viability of the scheme after planning permission is granted, and prior to occupation of 90% of dwellings, and would require payment of an additional contribution representing a proportion of any profit margin above a 17.5% threshold.
40. Policy H2 includes no specific criteria requiring a review clause. At paragraph 3.16, the supporting text indicates that the Council will require planning obligations to include mechanisms for viability reviews and 'clawback clauses' for new larger-scale residential development that will be delivered on a phased basis. The proposal would involve major development and build-out rates of extra-care housing may differ from a typical housing development. However, the evidence before me does not suggest the scheme would be delivered on a phased basis.
41. The Council note that LP Policy D1(J) requires the consideration of the cumulative impacts of development at the appropriate time. However, the policy concerns the delivery of infrastructure, with applicable types of infrastructure listed at paragraph 6.3. Policy D1 is therefore unrelated to the provision of affordable housing.
42. Consequently, there is no policy requirement for the proposed development to provide a mechanism for viability review after the grant of planning permission. A planning obligation containing a 'clawback' clause would not be necessary to make the development acceptable in planning terms and thus would not comply with the statutory tests.
43. It therefore follows that, in the absence of a post-decision review mechanism, the consideration of event fees as part of an open book analysis, is not necessary.
44. As set out above, the proposal would provide four on-site affordable housing units and the UU secures an affordable housing sum for off-site provision, justified by a viability assessment. Having particular regard to the provision of affordable housing, I am satisfied the proposal would provide an appropriate mix of housing.
45. The proposal would therefore comply with LP Policy H2 which requires the on-site provision of affordable housing and accepts financial contributions toward off-site provision at a level determined by a viability assessment.

Provision of community facilities

46. The Epping Forest District Council Infrastructure Delivery Plan Part B Report: Infrastructure Delivery Schedule 2020 Update (IDP) sets out infrastructure requirements to deliver the planned level of growth. At 4.15, the IDP identifies a schedule of infrastructure projects for Lower Nazeing. This includes additional community facilities space to meet the needs of new residents, comprising combined library, youth services and community hall⁴.
47. In their letter dated 13 January 2023, the Council's Strategic Infrastructure & Planning Obligations Officer sets out infrastructure required to serve the development. This includes 455 sqm of additional community facilities space to meet the needs of new residents. The UU contains an index-linked Community Facilities Contribution of £104,438, equating to the £1,322 per dwelling sum identified by the Strategic Infrastructure & Planning Obligations Officer. The Community Facilities Contribution is not disputed by the parties, and I am satisfied the evidence demonstrates the contribution is necessary, directly related to the development, and reasonably related in scale and kind, and thus compliant with the statutory tests.
48. However, the UU also contains a Community Centre Contribution, an index-linked sum of £165,000 toward the management and maintenance of the Nazeing Parish Community Centre. Whilst I note the contribution has local support, the obligation is not justified by the IDP nor the Strategic Infrastructure & Planning Obligations Officer's letter, and it is unclear why the Community Facilities Contribution could not be used for this purpose.
49. Consequently, I have been provided no evidence to demonstrate the Community Centre Contribution would be necessary to make the development acceptable in planning terms. Therefore, the planning obligation to secure the Community Centre Contribution would not comply with the statutory tests.
50. Subject to the omission of the Community Centre Contribution obligation, the proposal would make suitable provision for local community facilities.
51. The proposal would therefore comply with LP Policies D1, D2, D3 and D4 which together require development be served by appropriate infrastructure as identified through the Infrastructure Delivery Plan Schedules and Essex County Council's Developers' Guide to Infrastructure Contributions; support proposals only where it can be demonstrated that there will be sufficient capacity within the utilities infrastructure to meet the needs of the development; and, provide or improve the essential facilities and services required to serve the scale of the proposed development, with delivery of infrastructure provided directly or secured through contributions in accordance with the statutory tests.

Biodiversity Net Gain (BNG)

52. LP Policy DM1 requires all development deliver a net gain in biodiversity. The policy requires any negative impacts on natural habitats and biodiversity be proportionately addressed in accordance with the hierarchy of mitigation, habitat compensation, and local offsetting, and requires development proposals integrate biodiversity through their design and layout.

⁴ IDP ref: LNA11

53. The Biodiversity Net Gain Report April 2023 (BNG report) used the Defra 4.0 Biodiversity Beta Metric Calculator to calculate the biodiversity unit values of habitats for the site. The BNG report indicates the site comprises a mixture of trees, scrub, grassland, ruderal and swamp vegetation. There are mature and semi-mature trees along the eastern, northwestern, and southern boundaries. The on-site habitat baseline score at Table 13 identifies the mixed scrub, neutral grassland, and ruderal/ephemeral vegetation as of low or medium distinctiveness and in poor or moderate condition. Only the urban trees of medium distinctiveness are described as being in good condition. The BNG report therefore identifies the site has a relatively low habitat baseline.
54. Table 11 of the BNG report identifies that, even accounting for on-site habitat retention, creation and enhancement, the development would result in a loss of on-site habitat units. Therefore, the BNG report recommends off-site compensation for the purpose of achieving a 10% net gain in biodiversity. However, Policy DM1 does not specify a target BNG percentage, and the proposal would not be subject to the requirements of the national mandatory BNG. The proposed 10% net gain would therefore exceed the requirements of the development plan.
55. The UU includes a contribution of £350,000 toward BNG in the area of the development, with off-site compensation proposed at a landfill area adjacent to Broxlea Nursery. It is unclear how the cost of off-site compensation has been calculated to inform the BNG contribution sum. Furthermore, no details have been provided of any mechanism available to the Council to deliver off-site BNG in this location. The evidence fails to demonstrate the BNG Contribution would be necessary to make the development acceptable in planning terms or fairly and reasonably related in scale and kind. The BNG Contribution would not therefore satisfy the statutory tests.
56. The BNG report identifies that on-site habitat retention, creation and restoration measures would result in a small loss of 2.65 habitat units (13.2% loss) and a substantial gain of 5.28 hedgerow units (856.38% increase). The indicative landscaping plans show extensive areas of proposed planting of trees, hedgerows, native and ornamental shrubs, wildflower grassland and flowering lawn. Therefore, there is opportunity through the landscaping strategy to incorporate habitat of higher distinctiveness.
57. Paragraph 55 of the Framework requires planning obligations only be used where it is not possible to address unacceptable impacts through a planning condition. The Council suggests BNG can be secured through planning conditions and has put forward proposed conditions requiring submission of a scheme to enhance the ecological value of the site, quantified using a Biodiversity Impact Assessment Calculator and submission of a Biodiversity Enhancement Strategy for protected and priority species.
58. In summary, the BNG report demonstrates the site has a low baseline habitat score and the development plan does not specify a BNG threshold target. There would be opportunities to provide habitat of higher distinctiveness within the site layout and the Council indicate conditions would secure on-site mitigation and compensation in accordance with Policy DM1's mitigation hierarchy. Therefore, subject to the imposition of planning conditions, the proposal would achieve BNG in accordance with LP Policy DM1.

Epping Forest Special Area of Conservation

59. The appeal site is within the zone of influence of the Epping Forest Special Area of Conservation (SAC), a European site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).
60. The SAC is designated for the purpose of protecting its qualifying features, namely North Atlantic wet heaths with cross-leaved heath; European dry heaths; beech forests on acid soils; and its stag beetle population. The conservation objectives are to ensure the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the favourable conservation status of its qualifying features.
61. The Epping Forest Special Area of Conservation is vulnerable to the effects of atmospheric pollution. The population increase associated with the proposed development would increase traffic using roads within 200m of the SAC. The proposed development would therefore have likely significant effects on the integrity of the SAC from an increase in atmospheric pollution.
62. I may consider measures to secure mitigation with a view to ensuring that the proposal would not adversely affect the integrity of European Sites. The Council has adopted an Interim Air Pollution Mitigation Strategy (IAMS) which provides a strategic approach to mitigating air quality impacts on the SAC. The IAMS identifies a costed programme of specific mitigation measures to reduce pollution within the SAC's zone of influence and has been prepared in accordance with Natural England advice.
63. The UU secures an index linked financial contribution of £335 per dwelling payable to the Council as a financial contribution to mitigate the impact of the development on air pollution at the SAC in accordance with the IAMS. This approach can be problematic as there is no obligation on the Council to spend the money as envisaged and in a particular timescale. However, the evidence before me indicates that as a responsible public body it will use the funds to deliver measures identified by the IAMS. Therefore, I am satisfied that the Air Pollution Contribution would be used for the intended purpose, would secure mitigation measures, and is therefore necessary to make the development acceptable in planning terms.
64. With the Air Pollution Contribution secured through a planning obligation, the proposal would not have significant effects on the Epping Forest SAC.
65. The development would therefore comply with LP Policies DM2 and DM22 which expect development proposals assist in the conservation and enhancement of biodiversity and provide mitigation measures to ensure that the development will have no adverse effect on the integrity of European sites and protect the district from the impacts of air pollution.
66. In addition, the proposal would satisfy the Habitat Regulations and would accord with paragraph 185 of the Framework which seek to protect biodiversity and maintain the hierarchy of designated sites.

Other considerations

67. The appellant asserts there are a range of other considerations which weigh in the scheme's favour. I have considered these matters and apportioned weight to each.

Housing supply

68. The Council rely on its housing land supply position of 5.4 years identified by its recently adopted LP. Paragraph 76 of the Framework states local planning authorities are not required to identify and update annually a supply of specific deliverable sites where the development plan is less than five years old identifies at least a five-year supply of specific deliverable sites. However, by virtue of footnote 79 of the Framework, paragraph 76 should not be taken into account in determining the appeal proposal, since the proposal pre-dates the publication of the Framework.

69. In a recent appeal decision within the Council's area at Chigwell Nursery, High Road, Chigwell, Essex IG7 5BL⁵, the housing land supply position was challenged. The Inspector found that, despite the recently adopted development plan, compelling evidence of a five-year housing land supply was not presented.

70. The Statement of Common Ground includes an annotated sites trajectory, in which the appellant asserts several sites allocated for major development lack clear evidence that housing completions will begin on site within five years, and therefore should not be considered deliverable within five years, as per the Framework's definition. The appellant's estimate is similar to that put forward in the Chigwell appeal, ranging from 3.4 to 3.9 years depending on the base date applied.

71. The Council disputes the appellant's assessment of the sites trajectory and during the hearing provided a verbal update on certain sites. However, this information was of insufficient detail to quantify the supply and demonstrate compliance with the Framework's definition of 'deliverable'. Consequently, I have no compelling evidence that a five-year housing supply exists and my findings are consistent with that of the Chigwell appeal in this regard.

72. Within the context of a housing shortfall, the proposed development's contribution of 79 dwellings to the area's housing supply attracts significant weight in the scheme's favour.

Affordable housing provision

73. The proposal would provide four affordable dwellings and a financial contribution toward off-site provision, and therefore would contribute to the supply of affordable homes. As discussed above, the provision of affordable housing would fall significantly below the 40% requirement of Policy H2, even taking into account any exemption for affordable home ownership necessitated by paragraph 66(b) of the Framework. However, taking into account the overall shortfall in housing supply, the contribution to the supply of affordable housing carries significant weight in favour of the proposal.

⁵ Appeal ref: APP/J1535/W/23/3334925

Older people's housing

74. The PPG describes the need to provide housing for older people as 'critical', since people are living longer lives and the proportion of older people in the population is increasing⁶. The 'Assessment of need for housing and accommodation for older people in Epping Forest District to 2037 July 2023' report by Housing Learning & Improvement Network (Housing LIN report) predicts the district's population of persons aged 65+ will change from 2.6% in 2023 to 22.5% by the end of the plan period (2033). This indicates the district has an ageing population.
75. The Housing LIN report quantifies the housing needs for older people by housing type over the plan period. This includes 120 units of Extra Care Housing by 2033. The Council suggest this need can be met through LP policies requiring a mix of housing at site allocations.
76. A site at Froghall Lane in Chigwell⁷ is allocated for approximately 105 specialist dwellings. However, the Council previously refused planning permission at the site and whilst a new application is pending determination, the site currently has no extant planning consent. In addition, whilst it is proposed that a strategic-scale site allocation at Latton Priory would include specialist accommodation, I have been provided no evidence of an extant planning consent, or the timescales for delivery of either of these sites. Furthermore, at both site allocations, it is unclear if the specialist housing proposed would be of comparable type to the proposed development.
77. The appellant's site's trajectory suggests a proposal including elderly persons' apartments, with integrated care facilities at Loughton was refused planning permission⁸. A site at Waltham Abbey was granted consent several years ago for 60 assisted living housing units, prompting debate at the hearing as to whether the permission had lapsed. The Council deems the permission to remain extant but was unable to provide evidence to demonstrate a realistic prospect of delivery of specialist housing at the site.
78. Despite the LP policies in relation to housing mix and site allocations, there is no compelling evidence that older people's housing of comparable type to the proposal would be delivered in the short or medium term. Even if site allocations and existing consents were to be delivered, in light of the critical national need for older people's housing, I do not consider harm would arise were the supply of older people's housing to exceed the identified local need. In addition, whilst the proposal would provide housing for older people, it is accepted that housing of this type assists in releasing existing dwellings to the market and is therefore beneficial to the supply of housing as a whole.
79. It was suggested a planning obligation containing criteria for a local connection test could prioritise local people, such an obligation would not be necessary to make the development acceptable in planning terms and thus would not comply with the statutory tests. Nonetheless, the proposal would contribute to meeting the housing needs of older people in the local area.

⁶ Paragraph: 001 Reference ID: 63-001-20190626

⁷ LPA Ref: CHIG.R4

⁸ LPA Ref: EPF/1822/22

80. The LP includes policy requirements for a mix of housing. However, in the absence of evidence of a supply of deliverable sites for specialist housing in the short and medium term, the proposed 65 units of extra-care housing would make a significant contribution toward meeting the critical need to provide housing for older people. The provision of older people's housing therefore attracts significant weight in favour of the development.

Self-build and custom housebuilding

81. The Self-Build and Custom Housebuilding Act 2015 as amended (SBCH Act) requires the Council establish and publicise a register of those who are seeking to acquire serviced plots of land in the authority's area for self-build and custom housebuilding (SBCH). Unless exempt, section 2A of the SBCH Act places a duty on the Council to grant suitable development permission in respect of enough serviced plots of land to meet the demand for SBCH in the authority's area. During the hearing, the Council stated there are 46 persons on its register and considers its supply of SBCH plots to be nil. Consequently, there is a significant shortfall in the supply of SBCH plots.
82. The proposed development would provide 10 SBCH plots, available to persons on the Self Build Register. The UU contains planning obligations to secure the construction and occupation of SBCH and are therefore necessary to ensure provision of dwellings which satisfy the SBCH Act's definitions.
83. The Council has failed to comply with its duties under the SBCH Act. Within this context, the provision of 10 SBCH plots carries significant weight in the proposal's favour.

Socioeconomic factors and health & wellbeing

84. The proposed development would be within walking and cycling distance of local facilities, schools, employment, open spaces such as the Lee Valley Regional Park, and public transport, thereby offering good accessibility for future occupants.
85. The development would result in provision of construction jobs, and increases in local spending, council tax revenue, and stamp duty revenue from future occupants.
86. The appellant draws on research by Aston University which identifies the health and wellbeing benefits for occupants of retirement communities with on-site support services. During the hearing, the parish council representative expressed a local aspiration for older people's housing to be provided within the community, rather than requiring residents to relocate to allocated sites at other settlements. The proposal was supported by some local residents, including those expressing a desire to move to older people's housing. In addition, the appellant asserts the provision of older peoples housing will improve health and wellbeing for elderly residents and expects the provision of on-site care will reduce demand for local healthcare services, and costs for the NHS and adult social care services.
87. Taking into account the scale of development proposed, these factors carry modest weight in the schemes' favour.

Bus service enhancement

88. In the interests of reducing the need to travel by car and promoting sustainable transport, the local highway authority (LHA) identifies a need for the developer to implement improvements to increase the frequency of the existing bus service operated by Epping Forest Community Transport.
89. The proposed development would be served by a new bus stop and the UU includes a planning obligation to secure the Transport Contribution identified by the LHA. I am therefore satisfied the obligation would comply with the statutory tests.
90. The purpose of the improved bus service is principally to meet the needs of future occupants of the development. However, the increase in bus frequency would benefit other service users along the route. Whilst there is uncertainty regarding the length of time the bus service would be sustained for, the wider benefits associated with the enhanced bus service nonetheless carry modest weight in favour of the proposal.

Local shop and café, open space, and sport provision

91. The proposed development would be served by a small shop and café. In addition, the proposal would include a bowling green, children's play area, open space, and footpath links. These facilities would be accessible to residents of surrounding residential development, including Chimes phases 1 and 2 which are not served by such facilities and with no evidence similar facilities would be provided in future. The improved offer of local services and facilities in the area is therefore afforded modest positive weight.

Street lighting

92. The proposal would provide street lighting at Bulrush Way where none exists at present. I note the concerns of effects on bat populations. However, harm could be avoided through external lighting standards secured by condition.
93. In addition to serving the development, the provision of street lighting would improve highway safety for other users of Bulrush Way, including residents of the Chimes phase 1 and 2 developments, and attracts modest weight in favour of the development.

Other financial contributions

94. In addition, to the planning obligations discussed above, the submitted UU contains a number of obligations to secure financial contributions toward the provision of facilities and infrastructure. I have considered these planning obligations against the statutory tests.
95. Health: The IDP sets out the infrastructure requirements to deliver the planned level of growth. The IDP identifies the provision of health facilities as essential infrastructure is that which is necessary to mitigate impacts arising from the development. At 4.15, the IDP identifies a schedule of required infrastructure projects for Lower Nazeing, including additional GP floorspace funded in part by planning obligations.
96. In addition, the East of England Ambulance Service NHS Trust (EEAST) identifies the proposed development is likely to have an impact on the

Waltham Abbey emergency ambulance station, with capital costs for ambulance services arising from the proposed development. Population growth associated with the development would increase demand for local GP and ambulance services.

97. The UU secures a Health Contribution toward improvement to the GP surgery to serve development and toward the East of England Ambulance Service. The GP service contribution reflects the number of dwellings proposed, and the ambulance service sum matches the capital costs associated with the development identified by EEAST. I am therefore satisfied the Health Contribution is necessary, directly related to the development, and reasonably related in scale and kind, and thus satisfies the statutory tests.
98. Libraries: The suggested population increase brought about by the proposed development is expected to create additional usage of Waltham Abbey library. The library contribution is therefore necessary to improve, enhance and extend the facilities and services provided at Waltham Abbey library and to expand the mobile offer that would service this development.
99. Sports facilities: The IDP identifies a need to extend the capacity of the football facilities in Waltham Abbey through the provision of additional pitches. The sports facilities contribution is therefore necessary to ensure the increase in population is adequately served by sports facilities.
100. Open space and green infrastructure (GI): The IDP identifies that new development should be served by public parks and gardens in line with Fields in Trust Standards. The open space and GI contribution is therefore necessary to ensure the development is served by open space and GI.
101. Habitats: The site is within the Lee Valley Regional Park (LVRP). The LVRP Authority identify that new residents would make use of adjoining park areas, in particular Rushymead public open space, and request a financial contribution to accommodate the increased footfall arising from the proposed development, to enhance visitor infrastructure, improve access paths, provide additional benches, boundary fencing, and enhance woodland habitat. The Habitat Contribution is therefore necessary to mitigate the effects of the development on the LVRP and meet the development's recreational needs.
102. Monitoring: The monitoring contribution is necessary to ensure the development complies with the obligations in the UU.
103. I am satisfied the above obligations comply with the statutory tests and I have taken them into account in coming to my decision. The purpose of those other financial contributions is principally to serve the development or mitigate its impacts. However, it is acknowledged that investment in and enhancement of local facilities and infrastructure would also be of benefit to the wider community. Such other financial contributions secured by the development therefore carry modest weight in favour of the development.

Biodiversity Net Gain (BNG)

104. The development plan requires the proposal deliver BNG. As discussed above, the BNG contribution would not satisfy the statutory tests. However, I am satisfied BNG could be secured on-site through planning conditions. Due to

the uncertainty regarding the overall BNG uplift, I attach limited weight to biodiversity enhancement.

Remediation of contaminated land

105. Table 6.2 of the Interpretative Desk Study Report July 2022 indicates the risks posed by the existing landfill to groundwater and River Lea are low, and contaminants are not considered to represent a significant risk to the water environment. Consequently, the report suggests the landfill is of low environmental risk within the context of the site's existing use.
106. Contaminants within the existing landfill would pose a medium/high or medium risk to future site users, and via plant uptake in gardens and landscaped areas. Remediation is therefore necessitated by the proposed use.
107. Since the existing landfill poses low environmental risk, the remediation of contaminated land carries only limited weight in favour of the scheme.

Regularisation of access road

108. At time of the hearing, the access road and pedestrian footway serving the adjacent Chimes phase 1 & 2 developments did not benefit from planning permission, resulting in uncertainty for those residents who depend on the road for access their property. The proposal sought to regularise the access road. I have since been provided with details of a recent planning consent for provision of the access road⁹ and a certificate of lawful development for existing use and regularisation of installed pedestrian footpath¹⁰. Therefore, there exist other mechanisms by which the regularisation of the access road and footway could be achieved. Since, the access road and footway now benefit from planning permission, this is a neutral factor in my decision.

Planning precedent

109. The appellant notes the proximity of the site to the Chimes phases 1 & 2 developments and considers the principle of residential development has been established at the site. I have taken into account the site's relationship to existing built form in the assessment of Green Belt openness above.
110. The appellant indicates the phase 2 development was permitted on grounds of very special circumstances. Therefore, the scheme was assessed through balancing its planning merits against the Green Belt harm. Likewise, in my decision, I have included a balancing exercise. Consequently, the previous grants of permission for the Chimes phase 1 & 2 developments are neutral factors in my decision.

Community Centre

111. The proposal would include a community facilities contribution available to spend on local facilities, including the community centre. The proposal would have a modest positive effect on the provision of community facilities. However, as discussed above, I have found the separate community centre contribution set out in the UU would not meet the statutory tests and therefore can be afforded no weight.

⁹ EPF/1811/24

¹⁰ EPF/1812/24

Whether very special circumstances would justify the proposal

112. As discussed above, the proposal would be inappropriate development which is, by definition, harmful to the Green Belt. The proposed development would harm the Green Belt's openness.
113. The WMS recognises the Green Belt comprises a variety of land types, and the evidence suggests the appeal site is of little aesthetic or environmental value. Nonetheless, paragraph 153 of the Framework requires substantial weight be given to any harm to the Green Belt.
114. Subject to the use of planning obligations or conditions, conflict with the development plan would not arise in respect of the provision of affordable housing, provision of local community facilities, BNG, or the integrity of the Epping Forest Special Area of Conservation. Consequently, I have identified no other harms arising from the proposal.
115. Set against the Green Belt harm, there are other considerations that weigh in the scheme's favour. The proposal would provide major housing development within the context of a shortfall in supply; deliver on-site and off-site affordable housing; provide older people's housing for which there is a critical need; and provide SBCH plots within the context of a failure to comply with the duties of the SBCH Act. These other considerations are of a very high order, to which I afford significant weight in the scheme's favour.
116. In addition, I attach modest weight to the site's socioeconomic and health & wellbeing factors, bus service enhancement, provision of a local shop / café, open space and sport provision, street lighting, and other financial contributions toward local infrastructure and community facilities. BNG and remediation of contaminated land attract limited positive weight.
117. The proposal would have a range of positive effects of varying magnitude. I find the cumulative effect of these other considerations clearly outweigh the substantial harm to the Green Belt. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.
118. The Framework's policies that protect the Green Belt as an asset of particular importance, do not therefore provide a clear reason for refusing the development. The Council did not provide compelling evidence that a five-year housing supply exists. In such circumstances, paragraph 11d) of the Framework requires permission be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework's policies taken as a whole.
119. For the reasons discussed above, the adverse impacts the proposal do not demonstrably outweigh the benefits. Of particular importance are the contribution of housing, including, affordable housing, older people's housing, and SBCH plots, which would support the objective at paragraph 60 of the Framework to significantly boost the supply of homes, and to address the needs of groups with specific housing requirements.
120. The proposal would therefore comply with LP Policies SP5 and DM4 which together protect the Green Belt and its openness from inappropriate development and permit development only in very special circumstances, in accordance with national policy.

Other Matters

121. Concerns were raised regarding the effect of the proposed development on the character of the area and tranquillity of the river valley environment. As discussed above, the site is enclosed by boundary vegetation and is of limited existing aesthetic value and the development would be well-related to the existing built area. The proposal would include financial contributions to provide enhancement to the regional park. In addition, external lighting would be controlled through a planning condition. Therefore, I am satisfied the proposal would not harm the area's character or tranquillity.
122. The submitted Flood Risk Assessment demonstrates the development would be adequately protected against flooding, would be safe for occupants, and would reduce the off-site risk of flooding. Therefore, the submitted evidence does not suggest the development would increase flood risk.
123. Some local residents suggested the proposed development would increase traffic, resulting in congestion with associated harm to air quality, obstruction of emergency vehicles, and present a highway safety risk to pedestrians and cyclists. I have been provided no evidence the proposal would harm highway safety, and I note the advice of the local highway authority who did not object to the proposal, subject to securing measures to ensure highway safety during the construction phase, and the financial contribution toward the bus service operated by Epping Forest Community Transport.
124. As discussed above, the proposal would provide financial contributions toward local infrastructure and community facilities. Therefore, I am satisfied the proposal would not place undue pressure on local infrastructure.
125. Whilst some respondents queried the suitability of the location for older people's housing, many respondents expressed a desire for accommodation of this type in Nazeing. The site adjoins the built area of the village, and I am satisfied the development would be in an accessible location.
126. Concerns were raised the proposal would affect the living conditions of neighbouring occupants, namely that the provision of a play area and shop/café may encourage anti-social behaviour and other disturbance. I have included a condition requiring the development meet the Secure by Design standard to reduce crime. I have also included conditions to specify the use of the commercial building, opening hours, and to control noise, light pollution, and odour. The design and layout of the site are matters for consideration at the reserved matters stage, and I have no compelling evidence the living conditions of nearby residents would be adversely impacted.

Conditions

127. The Council has provided a list of suggested conditions, and an annotated list provided by the appellant sets out areas of agreement and disagreement. The appellant has provided written confirmation to all pre-commencement conditions contained in the Schedule of Conditions.
128. In the interests of certainty, I have attached conditions which specify the date by which the development should commence, the details which comprise the reserved matters, and the approved plans.

129. To ensure the development provides housing for older people, as supported by LP Policy H1, I have attached a condition requiring the extra care housing units provide accommodation for people aged 55 years and over.
130. To conserve protected and priority species in accordance with LP Policy DM1 and allow the Council to discharge its statutory duties in respect of wildlife, I have included conditions requiring the submission and approval of a biodiversity method statement prior to commencement of the development, submission of a lighting design scheme, and biodiversity enhancement strategy for protected and priority species prior to above ground works. For the same reasons, I have included conditions requiring a licence or statement, as appropriate, in the event the development would impact breeding or resting bats or Great Crested Newts.
131. To improve the biodiversity value of the site in accordance with LP Policy DM1, I have included a condition requiring submission and implementation of a scheme to enhance the ecological value of the site, quantified using the Biodiversity Impact Assessment Calculator. Furthermore, to prevent harm to nesting birds, I have included a condition to prevent removal of hedgerows, trees, shrubs and structures during nesting periods.
132. To ensure that risks from land contamination to future users of the land and neighbouring land are minimised, together with those to controlled waters, property, and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with LP Policy DM21, I have attached a condition requiring the submission and approval of an assessment of the risks posed by any contamination within each phase.
133. To maintain the character and appearance of the area and retain green infrastructure, as required by LP Policies DM3 and DM5, I have included conditions requiring submission and approval of a tree protection plan, Arboricultural method statement and monitoring schedule prior to commencement of development, with replacement planting of any damaged or removed trees, hedges and shrubs. Also to maintain the character and appearance of the area by not altering ground levels, I have attached a condition requiring excavated material be removed from the site.
134. To reduce the risk of flooding to the development and prevent flooding elsewhere in accordance with LP Policies DM15, DM16 and DM18, I have attached conditions requiring the development be carried out in accordance with the Flood Risk Assessment, and that details of surface water disposal and a flood evacuation plan be submitted to and approved by the Council.
135. I have included a condition requiring details of the location of electric vehicle charging points be submitted and approved to ensure the development contributes toward a low carbon future and reduce air pollution in accordance with LP Policies T1 and DM22. To ensure the development supports improved digital connectivity to reduce pollution and improve health and wellbeing of residents and visitors in accordance with LP Policy D5, a condition is attached requiring dwellings be provided necessary infrastructure to enable connection to superfast broadband. The district is in an area of severe water stress, and I have attached a condition requiring a reduction of water use in accordance with LP Policy DM19.

136. To ensure construction works do not cause undue nuisance and disturbance to neighbouring occupants, in accordance with LP Policies DM9 and DM21, I have attached a condition specifying the periods for taking deliveries, running plant equipment, and demolition and construction. To ensure the development incorporates measures to reduce the risk and fear of crime, as required by LP Policy DM9, I have attached a condition requiring it adhere to the principles of the Secure by Design standard.
137. To avoid harm to highway safety from deposited material in accordance with LP, I have included a condition requiring wheel washing or other cleaning of vehicles leaving the site during construction.
138. To ensure the dwellings are accessible and all including people with disabilities and are adaptable to the changing needs of households as required by LP Policy H1, I have included a condition requiring dwellings are built in accordance with Part M4(2) of the Building Regulations.
139. To ensure the shop/café unit is retained for commercial uses to serve occupants of the development, I have included a condition requiring the premises be used only for purposes within Class E of the Use Classes Order.
140. To protect the living conditions of future site occupants and neighbours in accordance with LP Policies LP9 and DM21, I have included conditions which specify the opening hours for the shop/café unit and require submission of details of details of internal air extraction, including discharge from cooking, odour control measures, and sound levels.
141. To ensure highway safety and promote travel choice in accordance with LP Policy T1, I have included conditions requiring submission of details of secure and convenient cycle parking and provision of a travel information pack.
142. To ensure adequate on-site provision for waste storage, as required by LP Policies DM11, I have included a condition requiring submission of details of waste and recycling storage.
143. As stated at condition no 2, details of the layout, scale, appearance of buildings, and landscaping are reserved matters that are subject to the consideration and approval of the Council. Consequently, I have not attached those suggested conditions requiring details of finished floor levels, submission of a construction management statement, archaeological assessment, landscaping and ecological management plan, ground levels, water network upgrades, and infrastructure phasing plan. Such matters can be considered at the reserved matters application stages. Therefore, at this outline stage, those conditions would not be necessary to make the development acceptable in planning terms.
144. I have not imposed the suggested condition relating to the removal of permitted development rights. Paragraph 54 of the Framework indicates planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Such a condition would not be necessary to make the appeal proposal acceptable in planning terms and would not comply with the Framework.

Conclusion

145. As set out above, very special circumstances exist to justify inappropriate development in the Green Belt and there are no other matters that would lead me to reach a different conclusion.
146. Consequently, I conclude the proposal would comply with the relevant provisions of the Framework and the development plan when considered as a whole. The appeal should therefore be allowed.

E Dade

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission or two years from the approval of the last of the reserved matters as defined in condition 2 below, whichever is the later.
- 2) Prior to commencement of the development, details of the layout, scale, and appearance of the building(s) and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to the Local Planning Authority for approval before the expiration of three years from the date of this permission, and the development shall be carried out in accordance with the details so approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: 17152-E-001 Rev G.
- 4) The extra care housing units hereby approved shall be used for people aged 55 years and over, and for no other purpose (including any other purpose in Class C3 (b) (& for the avoidance of doubt C2) as defined in the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that order with or without modification.
- 5) No development shall take place (including any demolition, ground works, site clearance) until a Biodiversity Method Statement for protected and Priority species (Great Crested Newt, reptiles, Badger, Hedgehog and breeding birds) has been submitted to and approved in writing by the local planning authority. The content of the method statement shall include the following:
 - a. purpose and objectives for the proposed works;
 - b. detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used);
 - c. extent and location of proposed works shown on appropriate scale maps and plans;
 - d. timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
 - e. persons responsible for implementing the works;
 - f. initial aftercare and long-term maintenance (where relevant);
 - g. disposal of any wastes arising from works.

The works shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter.

- 6) Any works which will impact the breeding / resting place of bats, shall not in any circumstances commence unless the local planning authority has been provided with either:
- a. a licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorizing the specified activity/development to go ahead; or
 - b. a method statement relating to a registered site supplied by an individual registered to use a Bat Mitigation Class Licence for Bats; or
 - c. a statement in writing from the Natural England to the effect that it does not consider that the specified activity/development will require a licence.
- 7) Any works which will impact the breeding / resting place of Great Crested Newt shall not in in any circumstances commence unless the local planning authority has been provided with either:
- a. a licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorizing the specified activity/development to go ahead; or
 - b. a method statement relating to a registered site supplied by an individual registered to use a Great Crested Newt Low Impact Class Licence; or
 - c. a GCN District Level Licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorizing the specified activity/development to go ahead; or
 - d. a statement in writing from the Natural England to the effect that it does not consider that the specified activity/development will require a licence.
- 8) A) No work on any phase of the development (with the exception of demolition works where this is for the reason of making areas of the site available for site investigation), shall commence until an assessment of the risks posed by any contamination within that phase shall have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of Potentially Contaminated Sites - Code of Practice and the Environment Agency's Guidelines for the Land Contamination: Risk Management (LCRM 2020) (or equivalent if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The development shall only be carried out in accordance with the approved details unless the Local Planning Authority gives its written consent to any variation. The assessment shall include: (1) A survey of the extent, scale and nature of contamination and (2) An assessment of the potential risks to: human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland, service

lines and pipes; adjoining land; groundwater and surface waters; ecological systems; and archaeological sites and ancient monuments.

B) If following the risk assessment unacceptable risks are identified from land affected by contamination in that phase, no work on any phase of the development shall take place, until a detailed land remediation scheme has been completed. The scheme will be submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. (The remediation scheme shall be sufficiently detailed and thorough to ensure that after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990). The development shall only be carried out in accordance with the approved scheme. Following the completion of the remediation works and prior to the first occupation of the development, a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority.

- 9) No development, including works of demolition or site clearance, shall take place until a Tree Protection Plan, Arboricultural Method Statement and site monitoring schedule in accordance with BS:5837:2012 (Trees in relation to design, demolition and construction - Recommendations) has been submitted to the Local Planning Authority and approved in writing. The development shall be carried out only in accordance with the approved documents.
- 10) The development shall be carried out in accordance with the submitted flood risk assessment FRA Rev B (ref 2950, dated Feb 2023') and the following mitigation measures it details:

"If any minor gains and losses associated with external levels will however occur and are proposed at the detailed level design/reserved matters stage which has yet to take place, a full level plan and volume calculations will be supplied at that stage to demonstrate that there will not be any loss in flood storage at the site in a 1 in 100 year plus climate change even"

Such plans and calculations shall be submitted for assessment prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. Any measures detailed therein shall be retained and maintained thereafter throughout the lifetime of the development.

- 11) Prior to preliminary ground works taking place, details of surface water disposal and a flood evacuation plan shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and shall be provided on site prior to the first occupation and shall be retained for the lifetime of the development.

- 12) Prior to any above ground works, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting plans) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.
- 13) Prior to any above ground works, A Biodiversity Enhancement Strategy for protected and Priority species prepared by a suitably qualified ecologist shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:
- a. Purpose and conservation objectives for the proposed enhancement measures;
 - b. detailed designs or product descriptions to achieve stated objectives;
 - c. locations, orientations and heights of proposed enhancement measures by appropriate maps and plans (where relevant);
 - d. persons responsible for implementing the enhancement measures; and
 - e. details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details prior to first occupation and shall be retained in that manner thereafter.

- 14) Prior to any above ground works, details and location of the parking spaces (including garages) equipped with active and/or passive Electric Vehicle Charging Point(s) shall have been submitted to and approved in writing with the Local Planning Authority (LPA). The installation of EVCP shall be completed in accordance with the approved details and made operational prior to first occupation. The details shall include:
- a. Location of active charging infrastructure;
 - b. Specification of charging equipment; and
 - c. Operation/management strategy. The council will expect that a management plan for the charging points is set out clearly. This will address:
 - i. Which parking bays will have active charging provision, including disabled parking bays;
 - ii. How charging point usage will be charged amongst users;
 - iii. The process and the triggers for identifying when additional passive charging points will become activated; and

- iv. Electricity supply availability. The electricity supply should be already confirmed by the Network Provider so that the supply does not need to be upgraded at a later date.
- 15) Prior to any above ground works, all material excavated from the below ground works hereby approved shall have been removed from the site, unless retention of material is agreed pursuant to any landscaping works approved as part of a relevant condition.
- 16) Prior to first occupation of the development, a scheme to enhance the ecological value of the site shall be submitted to and agreed in writing by the Local Planning Authority. The ecological value shall be quantified using the Biodiversity Impact Assessment Calculator (BIAC) where appropriate. The scheme shall be implemented in full prior to the occupation of the development hereby approved, and so retained.
- 17) Prior to first occupation, the applicant/developer shall ensure that each dwelling has been provided with the necessary infrastructure to enable its connection to a superfast broadband network or alternative equivalent service.
- 18) Prior to first occupation of the development, measures shall be incorporated within the development to ensure a water efficiency standard of 110 litres (or less) per person per day.
- 19) Prior to first occupation of the development, the Developer shall be responsible for the provision, implementation and distribution of a Residential Travel Information Pack for sustainable transport, approved by Local Planning Authority, to include six one day travel vouchers, and or Oyster cards, for use with the relevant local public transport operator. These packs (including tickets) are to be provided by the Developer to each dwelling free of charge.
- 20) No removal of hedgerows, trees or shrubs, or works to or demolition of buildings or structures that may be used by breeding birds, shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a detailed check of vegetation for active birds' nests immediately before the vegetation is to be cleared, provided a written report of confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site, and that written confirmation has been approved by the Local Planning Authority.
- 21) No deliveries, external running of plant and equipment or demolition and construction works, other than internal works not audible outside the site boundary, shall take place on the site other than between the hours of 08:00 to 18:00 on Monday to Friday and 08:00 to 13:00 on Saturday and not at all on Sundays, Public or Bank Holidays.

- 22) Wheel washing or other cleaning facilities for vehicles leaving the site during construction works shall be installed and utilised to clean vehicles immediately before leaving the site. Any mud or other material deposited on nearby roads as a result of the development shall be removed.
- 23) If any tree, shrub or hedge shown to be retained in the submitted Arboricultural reports is removed, uprooted or destroyed, dies, or becomes severely damaged or diseased during development activities or within 3 years of the completion of the development, another tree, shrub or hedge of the same size and species shall be planted within 3 months at the same place. If within a period of five years from the date of planting any replacement tree, shrub or hedge is removed, uprooted or destroyed, dies or becomes seriously damaged or defective another tree, shrub or hedge of the same species and size as that originally planted shall, within 3 months, be planted at the same place.
- 24) The commercial premises (shop and Café) hereby permitted shall only be open to customers between the hours of 7am to 10pm daily.
- 25) Prior to the first occupation of the development hereby permitted, information shall be submitted to and approved in writing by the Local Planning Authority detailing how the development would adhere to the principles of Secure by Design. The development shall be carried out and retained in accordance with the agreed details.
- 26) The proposed dwelling(s) hereby permitted shall be built in accordance with Part M4 (2) of the Building Regulations.
- 27) Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) (England) Order (GPDO) 2015 (or any Order revoking and/or re-enacting that Order) the commercial premises shall only be used for Class E as specified in the application and for no other purpose (including any other purpose in Class E of the Schedule to the Town & Country Planning (Use Classes) Order 1987 or any provision equivalent to that Class in any Statutory Instrument revoking and/or re-enacting that Order).
- 28) No development shall take place until details of the arrangements for internal air extraction, odour control measures, noise levels, and discharge to atmosphere from cooking operations, including the location, appearance and finish of any external ducting and flues have been submitted to and been approved in writing by the Local Planning Authority for the Shop/Café. The approved details shall be installed before the use hereby permitted commences and so retained. The equipment shall thereafter be maintained in accordance with the manufacturer's instructions for the lifetime of the development and operated at all times when cooking is being carried out.

- 29) Prior to first occupation, details shall be submitted to the Local Planning Authority, to be approved in writing, for appropriate cycle parking for the proposal. The approved facility shall be secure, convenient, covered, and provided prior to the first occupation and shall be retained as such at all times.
- 30) Prior to first occupation of the development hereby permitted, details of provision for adequate storage for waste and recycling for the residential/commercial units hereby permitted shall be submitted to and approved by the Local Planning Authority. The measures as agreed shall be complete and available for use prior to first occupation of the residential units and thereafter maintained in accordance with the agreed details.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT:

- Stephen Whale, Counsel, Landmark Chambers;
- Kevin Ellerbeck, Appellant, Director, Lifestyle Care & Community Ltd;
- Roland Bolton, Planning Specialist, SPRU;
- Chris Ellerbeck, Architect.

FOR THE LOCAL PLANNING AUTHORITY:

- Steven Bell, Solicitor Advocate, Birketts LLP;
- Ross Greenfield, Solicitor Birketts LLP;
- Muhammad Azizur Rahman BSc MA, Senior Planning Officer (Development Management), Epping Forest District Council;
- Matt Cranitch BSc MA, Senior Planning Policy Officer (Policy & Implementation Team), Epping Forest District Council;
- Christine Bowora BA Information and Technical Officer (Policy & Implementation Team), Epping Forest District Council;
- Kladjio Koci, Assistant Planner, Epping Forest District Council;
- Andrew Jones BSc MRICS, Director, BPS Surveyors;
- Agnes Mrowiec MSc MRICS, Senior Surveyor, BPS Surveyors.

INTERESTED PARTIES:

- Cllr David Joslin, Chairman of Planning Committee, Nazeing Parish Council.

DOCUMENTS

- Policy H2 supporting text;
- Policy DM1 and supporting text;
- Epping Forest District Council Infrastructure Delivery Plan Part B Report: Infrastructure Delivery Schedule 2020 Update, Epping Forest District Council.

PLANS

- EPF/1014/75 Landfill Site, Chimes Garden Centre, Epping Forest District Council.