

***Report to the District Development
Management Committee***

***Report Reference: EPF/1492/16
Date of meeting: 29 November 2017***



**Epping Forest
District Council**

Address: The Chimes Nursery, Old Nazeing Road, Nazeing, Waltham Abbey.

Subject: Outline Planning Application for 7 Self Build Houses, with all matters reserved.

Responsible Officer: Jill Shingler (01992 564106).

Democratic Services: Gary Woodhall (01992 564470).

Recommendation(s):

(1) That planning application EPF/1492/16 at The Chimes Nursery, Old Nazeing Road in Nazeing be refused permission for the following reasons:

- 1. The proposed development includes "more vulnerable" development within Flood Zone 3. The development does not meet the sequential test and does not provide wider sustainability benefits that outweigh the flood risk and does not therefore pass the Exceptions Test. The proposal is therefore contrary to the NPPF Para 102 and policy U2A of the Adopted Local Plan and Alterations.**
- 2. The development of this green field site within the Metropolitan Green Belt amounts to inappropriate development by definition harmful to the Green Belt and to the purposes of including land within the Green Belt, in addition the erection of 7 houses on the site will have a significant physical and visual impact on the openness of the Green Belt. No very special circumstances exist sufficient to outweigh the harm to the Green Belt that would result and the development is therefore contrary to policy GB2A of the adopted Local Plan and Alterations and to the NPPF.**
- 3. The proposed development will adversely impact on the landscape of the Lee Valley Regional Park contrary to the strategic policies on landscape and detailed proposals which identify the site as within a landscape enhancement area, and adversely impact on the amenity of users of the Regional Park, as such the development is contrary to Policy RST24 of the adopted Local Plan and Alterations.**

Report :

1. This application was considered by the Area Plans West Sub-Committee at their meeting on 15 November 2017 but they decided to refer the application to this Committee and did not vote on the officer recommendation, therefore the recommendation to this committee remains unchanged and is to refuse the application.

2. The Officer's report to the Sub-Committee is reproduced in full below. There is reference in the report to the Developer requesting that this application be considered as Phase 2 of the comprehensive redevelopment of the Chimes site. The "Phase 1" application EPF/1232/16 for the erection of 17 houses to the north of the application site, on previously developed land, was agreed to be granted by the Sub-Committee on 15 November 2017, which was in accordance with the Officer's recommendation subject to the completion of a legal agreement for the provision of affordable housing, education contributions and means for creation and management of an area of communal open space.

Additional Information

3. Additional information has been submitted by the applicant, which includes their opinion on the definition of the phrase 'limited infilling', examples of other infill developments (including some outside of the District), arguments regarding the Sequential Test and availability of alternative sites.

4. These matters have been considered by Planning Officers and it is not considered that the additional information or views of the applicant alter the decisions reached within the Officers Report or the opinion reached by Members of Area Plans Sub-Committee West. Furthermore, the examples put forward are not comparable to the proposed development or require the need to produce further explanation or assessment within this report.

Original Report to Area Plans Sub-Committee West meeting on 15 November 2017

Description of Site:

The application site comprises an irregularly shaped area of open Green Belt land approximately 1 hectare in area, which lies to the south of the Former Chimes garden Centre, and drops down to the river. Roughly half of the land is former landfill that has been backfilled and covered in topsoil and the whole of the site is open and free from development. Some clearance and land raising has taken place.

The application site is located within the Metropolitan Green Belt and Lee Valley Regional Park. The site is wholly within an Environment Agency Flood Zones 2 and 3a.

Description of Proposal:

Outline consent is being sought for the development of the site for 7 self-build/custom housing plots, together with the creation of a communal amenity area on the former landfill site for the occupants of the 7 dwellings, to be landscaped and managed thereafter through a residents Association. All matters other than the principle are reserved, and would be the subject of further applications, however the applicant has indicated that the intention is for the total floor area of the 7 dwellings to exceed 1000square metres and has provided an indicative plan that indicates that access would be taken from Old Nazeing Road through the site to the north.

The applicant has asked that this application be considered as Phase 2 of a comprehensive redevelopment of the whole of the Chimes Garden Centre Site in conjunction with the previous application on the agenda. However two applications have been submitted, not a single application, and they must each be considered on their individual merits.

That said, this applicant has confirmed that if members, contrary to the recommendation of officer's, are minded to grant permission then this can be subject to a legal agreement that would prevent the building of any of the 7 houses on this site, until such time as the houses on the adjacent site have been completed. This restriction is required to ensure that we are not left with the proposed 7 houses being accessed through the unsightly previously developed land.

Should members consider that the two, combined, are acceptable, whereas individually they are not, then a legal agreement would be required ensure that one element cannot be implemented without the other.

Relevant History:

The wider site has a long and complex planning History. An area of land to the immediate east of the site, which was at one time known as Nazebourne Poultry Farm was included within the same planning file as the application site and the planning history is therefore quite difficult to separate out.

The grant of planning permission in 1971 for a Garden Centre (Sui Generis use) under EPO/0565/71 commenced the current chapter in the planning history of the site. Condition 2 laid out what goods could be sold from the site as an ancillary use of the Garden Centre. Condition 3 stated that the premises should only be used as a

Garden Centre and for no other use. The plans show the area of the permission as the area encompassed by the current buildings and an area of land to the west.

It is important at this stage to recognise that there were in 1971, and are in 2017, two separate planning units on the area encompassed by the Planning File (PL000430). One is known as "Chimes Garden Centre" and the other was "Nazebourne Poultry Farm". These two planning units are clearly and separately identified in the Planning Files in the individual applications and their associated plans. Chimes is the subject of the current application and the Nazebourne Poultry Farm site, which had a number of buildings and non conforming uses, has been purchased by the Lee Valley Regional Park Authority (LVRPA), cleared and returned to grass.

"Chimes" then was subject of the following applications (these are a relevant but not an exhaustive list):

1975 - EPF/0668/75 - Rebuilding of nursery as Garden Centre - granted
1975 - EPF/1014/75 - Extraction of sand and gravel - granted (area to west of site)
1982 - EPF/0003/82 - LDC for storage and sale of building materials - refused
1984 - EPF/0689/84 - Extension of garden centre and addition parking - granted
1989 - Section 52 Agreement on use of land to south of Chimes site for car parking and no other uses

The Garden Centre changed its name in 1995 to "The Potting Shed". Some time before this the site had encompassed an area to the south of the original planning permission, which was to become, after 2006, used without planning consent by a pallet firm, gas suppliers, flower sales and shed manufactures', which was later destroyed by fire in 2012.

The garden centre closed in about 1999.

It was then allowed to become derelict and was unused until late 2006 when a number of businesses moved on to the site from the adjacent Nazebourne Poultry Farm which had been cleared of development as part of a section 106 agreement.

The following applications were received in this time:

2003 - EPF/2211/03 5 dwellings - refused
2004 - EPF/1860/04 5 dwellings - withdrawn
2006 - EPF/0040/06 5 dwellings - refused

In 2002 Essex Country Council served an enforcement notice on the west of the site regarding the tipping of waste.

In December 2006 enforcement investigations commenced into building works in two of the garden centre buildings and the new uses of the site which were A1, B1, B2 and B8, and some Sui Generis uses. In 2007 a number of small buildings were erected on the site, large scale fencing erected and an area of hardstanding re-laid with a glasshouse being erected. The enforcement investigation concluded that there had been a change of use and operational development which required planning permission.

Enforcement Notices were served in 2011 (These were withdrawn after protracted negotiations over the submission of a planning application with Kelsworth).

After some considerable delay a planning application for the change of uses was submitted:

2012 - EPF/0969/12 Change of use of Garden centre to horticulture and B1 (Business uses) – This was withdrawn.

In 2012 a fire swept the site and burnt down the majority of the uses to the south of the site. Some uses continued to the north and a new use of car repairs started in building 1.

In 2013 – EPF/0524/13- Replacement buildings damaged in a recent fire and the erection of further amenity buildings for waste disposal and cycle storage facilities in connection with retention of a mixed use of retail garden centre and commercial centre with business uses A1 (retail), B1 (light industrial and office), B2 (general industry) and B8 (storage use) – This was withdrawn.

In 2014, application EPF/0206/14 for redevelopment of this and the adjacent (phase 1 site)) for the erection of 43 houses was refused at District Development Control Committee for the following reasons:

- 1. The proposed development includes "more vulnerable" development located within Flood Zone 3. The development does not provide wider sustainability benefits that outweigh the flood risk and does not therefore pass the Exceptions Test. As such the proposal is contrary to the NPPF. Para 102.*
- 2. The development, due to the amount of built form that will intrude in to the southern half of the site which is currently free of buildings, will have a significantly greater impact on the openness of the Green Belt than the existing development and as such is inappropriate and by definition harmful. The development is therefore contrary to policy GB2A of the adopted Local Plan and Alterations and to the NPPF.*
- 3. The proposal fails to provide on site affordable housing despite such provision being financially viable and the site being suitable for such development, as such the development is contrary to policies H5A, H6A, and H7A of the adopted Local Plan and Alterations and Para 50 of the NPPF.*
- 4. By reason of the site's location beyond the statutory walking distance to a secondary school the proposal will generate an additional cost to the Local Education Authority, Essex County Council, for transporting children to secondary school. However, the proposal does not include any mechanism to meet those additional costs. Since the proposal fails to properly address this matter it is not a sustainable form of development and is consequently contrary to policies CP9 (iii) and I1A of the Adopted Local Plan and Alterations, which are consistent with the National Planning Policy Framework.*

This decision was upheld on appeal and dismissed.

Members of the District Development Control Committee however considered that there was a way forward and these were minuted as:

- 1. That the redevelopment of the northern part of the site could be acceptable, as this would avoid the Flood Risk Zone 3, most of the former landfill site and would likely to be acceptable in Green Belt terms;*

2. That any proposed scheme should include an appropriate element of affordable housing. Although it was acknowledged that this location was not acceptable for high density housing, a suitable development which respected the character of the area could be achieved.

Following this, application EPF/0570/15, for development of just the northern part of the site (the previously developed area) for 26 houses, was approved by Committee (without any affordable units on site) subject to a legal agreement requiring £500,000 towards the provision of affordable housing elsewhere and additional monies towards the provision of secondary education and school transport.

Following this approval, the applicant has discovered that the decontamination works involved in removing the landfill from under the site and restoring it to the level necessary to make housing development safe, would make that development which included housing actually over the landfill area was not economically viable.

The applicant has therefore submitted two separate applications one for 17 houses on the northern part of the site which is the subject of the previous report, and this one for 7 self build houses on the open land to the south, in a bid to avoid development over the landfill area.

Policies Applied:

Epping Forest Local Plan and Alterations (1998/2006)

CP1, Sustainable development objectives
CP2 Protecting the Quality of the Rural and built environment
CP3 New Development
CP6 Achieving sustainable development patterns
CP7 Urban Form and Quality
GB2a Development in the Green Belt
BB10 Development in the Lee Valley Regional Park (LVRP)
RP3 Water quality
RP4 Contaminated Land
H1A Housing provision
H2A Previously Developed Land
H3A housing density
H4A Dwelling Mix
H5A Provision of affordable housing
H6A Site thresholds for affordable housing
H7A levels of affordable housing
H8A Availability of affordable housing in perpetuity
H9A Lifetime Homes
RST24 Design and location of development in the LVRP
U1 Infrastructure adequacy
U2A Development in Flood Risk Areas
U2B Flood Risk assessment Zone
U3A catchment effects
U3B Sustainable Drainage Systems
DBE1 design of new buildings
DBE2 Effect on neighbouring properties
DBE3 Design in the Green Belt
DBE5 Design and layout in new development
DBE6 Car Parking in new development
DBE7 Public open space

DBE8 Private Amenity space
 DBE9 Loss of amenity
 LL1 Rural Landscape
 LL2 Inappropriate Rural Development
 LL3 Edge of settlement
 LL7 Planting protection and care of trees
 LL10 Adequacy of provision for landscape retention
 LL12 Landscaping schemes
 ST1 Location of development
 ST2 Accessibility of development
 ST4 Road Safety
 ST6 Vehicle Parking
 I1A Planning Obligations

The above policies form part of the Councils 1998 Local Plan. Following the publication of the NPPF, policies from this plan (which was adopted pre-2004) are to be afforded due weight where they are consistent with the Framework. The above policies are broadly consistent with the NPPF and therefore are afforded full weight.

Epping Forest Draft Local Plan consultation document (2016)

The Epping Forest District Draft Local Plan is the emerging Local Plan and contains a number of relevant policies. At the current time only limited material weight can be applied to the Draft Local Plan, however the Draft Plan and evidence base should be considered as a material consideration in planning decisions. The relevant policies within the Draft Local Plan are:

SP1 – Presumption in favour of sustainable development
 SP5 – Green Belt and district open land
 SP6 – The natural environment, landscape character and green infrastructure
 H1 – Housing mix and accommodation types
 T1 – Sustainable transport choices
 DM1 – Habitat protection and improving biodiversity
 DM2 – Landscape character and ancient landscapes
 DM9 – High quality design
 DM10 – Housing design and quality
 DM11 – Waste recycling facilities on new development
 DM15 – Managing and reducing flood risk
 DM18 – On site management of waste water and water supply
 DM21 – Local environment impacts, pollution and land contamination

Consultation Carried Out and Summary of Representations Received:

19 neighbours were consulted and a site notice was erected.
 The following responses were received:

PARISH COUNCIL – No objection

31 GREAT MEADOW – Object . Concerned about flood risk, harm to the Green Belt, potential for access to be taken from Great Meadow, harm to the beautiful part of the River Lee.

32 GREAT MEADOW – Object, Concerned about the spine road adjacent to the gate that leads into Great Meadow, this has previously been shown to be closed off. Would not want to see it opened up.

36 GREAT MEADOW –Object, the proposed road will run along our boundary causing noise and pollution issues. Concerned that Great Meadow could become a through road.

WOODACRE, RIVERSIDE AVENUE – Object. Green field land in Flood zone where vulnerable development should not be built. Concerned about increased flood risk, The land used to be covered in nature and trees but the applicant has bulldozed it, filling water holes and raising the land. Wildlife habitat has been lost and toads snakes etc have been displaced. Need to avoid the landfill area. Previous application was refused and dismissed on appeal due to harm to green Belt, Flood Risk, landscape of the Regional Park and harm to wildlife. Therefore this application should not now be approved.

LEE VALLEY REGIONAL PARK AUTHORITY - ‘The proposed development of seven units of residential accommodation would: adversely impact on the permanence and openness of the green belt contrary to adopted national policy included in the National Planning Policy Framework (2012), adversely impact on the landscapes of the Lee Valley Regional Park contrary to its strategic policies on landscape and detailed proposals which identify the site as within a landscape enhancement area, and adversely impact on the amenity of users of the Regional Park. The application does not include reasons why exception to these policies should be made.’

Issues and Considerations:

This application is for outline consent with all matters reserved. Therefore the only consideration is the principle of erecting 7 self-build dwellings on the site.

Green Belt:

The application site is within the Metropolitan Green Belt and is free from any built structures, although the applicant has argued that the site should be regarded as previously developed land, the area on which the houses are proposed is simply undeveloped agricultural land and although the former landfill area has been argued to be previously developed, it has the appearance of a greenfield site as it has been backfilled and topsoiled and is indistinguishable from the adjacent agricultural land. In the previous appeal relating to the 43 dwelling application, the appeal inspector concluded that the area of this application site could not be regarded as previously developed land.

Paragraph 89 of the National Planning Policy Framework states that “a local planning authority should regard the construction of new buildings as inappropriate in Green Belt”, with a list of exceptions. These exceptions are listed as follows:

- *buildings for agriculture and forestry;*
- *provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;*
- *the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;*

- *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*
- *limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or*
- *limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.*

The proposed development does not fall within any of the above categories and is therefore inappropriate development by definition harmful to the Green Belt.

The applicant has put forward what he considers to be very special circumstances sufficient to outweigh the harm to the Green Belt and any other harm and has argued, particularly if this application is considered together with the 17 home application.

'Land swap':

The applicant argues that this application and the current one for the northern part of the Chimes site, together, only result in 24 houses on the combined site, rather than the 26 houses that have previously been approved on the northern part alone.

In addition, he argues that "the revised scheme represents the best use of the *available* developable brownfield land by extending the proposed buildings onto the lower site, whilst reverting some of the brownfield land back to a green field status on a "land swap" basis." Whilst it is agreed that the combined applications would result in approximately the same amount of open space being retained as would have remained had the 26 house scheme been developed it is not accepted that this is appropriate in Green Belt terms. The built development is now split into two areas, spreading development further into the previously undeveloped land and creates an illogical and indefensible boundary to the development.

In addition, whilst the combined proposals do result in 2 fewer houses in total than has previously been approved, the applicant has argued that the approved scheme is not viable, so the 26 house scheme does not amount to a viable fallback position.

Finally the combined development of 24 houses proposes larger houses so it is by no means clear that the development would result in greater openness than the previous scheme.

Due to the above it is clear that the proposed 'land swap' would not allow for the proposed development to constitute an appropriate development within the Green belt.

Self Build

The applicant puts forward that the proposed houses would be in accordance with the Self-Build Act 2015 and that the LPA does not currently have a five year housing supply or any allocated plots for Self-Build properties.

The Self-Build Act 2015 has been introduced to enable individuals and community groups who want to acquire land for self-build homes to do so. However the Act itself

only places a duty on certain public authorities to keep a register of individual and associations of individuals who wish to acquire serviced plots of land to bring forward self-build and custom housebuilding projects. This register was required from the 1st April 2016 and has been set up by Epping Forest District Council. The register is available on the Council's website. Whilst the Self-Build Act requires Local Authorities to have regard to this list when carrying out the functions of planning, housing, the disposal of authority owned land and regeneration it provides no further guidance on this.

Whilst in the context of the Housing & Planning Act 2016, the Self Build Act 2015 and the 2017 Housing White Paper it is clear that the Government is supportive of self-build/custom housing, and the applicant argues that the Council has a statutory duty to identify self-build sites, but this provision has not yet been enacted and the only duty currently on the Council is to maintain a register of self-build interests.

It is accepted that the Housing & Planning Bill places a duty on local planning authorities to provide plots for self-build and custom housing to meet local demand and that this Bill has been enacted. However, whilst there is a need to provide for such housing plots within the district, along with all other housing types, self-build plots must nonetheless be located within relevant and appropriate locations and ideally designated through the Local Plan. It is recognised that the proposed development would assist to meet the needs of individual and associations to acquire sites to bring forward self-build and custom housebuilding projects at this time and therefore this is given some weight in favour of the development, but this would not be sufficient enough to outweigh the harm from this inappropriate development within the Green Belt.

The appellant highlights the presumption in favour of sustainable development advocated by the NPPF and suggests that the decision taking criteria set out in paragraph 14 should apply in the absence of a five year housing land supply. The applicant makes the case that the Council cannot currently demonstrate a five year supply of housing land. As a consequence of not being able to demonstrate a five year supply the applicant contends that paragraph 49 of the NPPF indicates that considerably less weight be attributed to policies restricting housing development, which includes Green Belt policies.

The Council is currently in the process of preparing a new Local Plan where sites will be identified for residential development however the latest figures reveal that the Council can currently only demonstrate approximately a 1.5 year supply of land for housing purposes. It is accepted that the lack of a demonstrable five year supply of housing weighs in favour of granting planning permission. It is also recognised that recent appeal decisions have made it clear that policies for the supply of housing should not be considered 'up-to-date' if the LPA cannot demonstrate a five-year supply of deliverable housing sites. However the Court of Appeal Judgement *Suffolk Coastal District Council v Secretary of State for Communities and Local Government and Richborough Estates v Cheshire East Borough Council* clearly highlights that:

46. We must emphasize here that the policies in paragraph 14 and 49 of the NPPF do not make "out-of-date" policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker. Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is "out-of-date" should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied. That idea

appears to have found favour in some of the first instance judgments where this question has arisen. It is incorrect.

47. *One may, of course, infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for examples, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a “green wedge” or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment.*

As can be seen above neither paragraph 14 nor paragraph 49 of the NPPF suggest that when an LPA cannot demonstrate a five-year housing land supply any policies relating to the supply of housing should be ignored. Simply that these should be considered out of date and that the LPA may proscribe them with less weight. However even if the Epping Forest District Local Plan policies were completely ignored the entire NPPF is still considered relevant, which includes the paragraph that relate to Green Belt restrictions. This is clearly considered to be an important consideration since it is one of the stated policies within the Framework that indicates that development should be restricted (footnote to paragraph 14) and it is one of the only parts of the NPPF that specifies that “*when considering any planning application, local planning authorities should ensure that **substantial weight** is given to any harm to the Green Belt*” (paragraph 88 – my emphasis). Furthermore it has been made clear in both the Ministerial Statement from July 2013 and paragraph 034 of the Planning Practice Guidance that “*unmet housing need (including for traveller sites) is unlikely to outweigh the harm to the Green Belt and other harm to constitute the ‘very special circumstances’ justifying inappropriate development on a site within the Green Belt*”.

Government White Paper:

The applicant highlights that “*the Government White Paper promotes ‘small sites’ for residential development for self-build housing*” and a full White Paper Report has been submitted highlighting why the applicant considered that this scheme would comply with this Paper.

Notwithstanding this, at present the White Paper is at this stage simply a consultation document which will presumably be followed by legislation. Whilst the White Paper shows a clear ‘direction of travel’ with regards to the provision of self-build properties no weight can be attached to this until clear guidance has been provided by the government in the form of an updated NPPF

Affordable Housing Contribution

Originally the applicant was offering a contribution of £325 000 towards the provision of affordable housing within the District, however following the submission of a viability assessment and consideration of this by an independent consultant on the Council's behalf, the applicant has agreed that should this and the northern site both be approved, then a contribution of £1, 401,022 towards the provision of affordable housing could be required (£448, 842 of which relates to this 7 house site).

Money towards a local bus service in Nazeing.

In connection with this 7 house self build scheme the applicant is offering £50 000 to go to the Epping Forest Community Transport, to contribute towards the local bus service in Epping. Whilst this is welcomed and will be a community gain, it is unclear why the applicant feels that the contribution should be linked with the 7 house scheme and has not proposed the monies are split proportionately between the two schemes. Whilst the proposed contribution is welcomed as it will help maintain an important local service, it is not directly related to the proposed development and could be argued on any development in the locality so can not be afforded any weight with regard to very special circumstances in the Green Belt

Country Park

The applicant initially referred to the provision of a country park, and or forest, on the former landfill site and put this forward as part of the very special circumstances, however it became clear in the course of the applications that there was no mechanism in place to create and maintain this land as a public open space or country park and no public body, either Parish Council, District Council or Lee valley Park Authority have been brought on board with such a proposal. The creation of such a facility over a former landfill site, and the long term costs of the maintenance and management of such a development including liability for the safety of users of the "park" would be likely be excessive, for the relatively small public benefit that would result. The offer appeared to be a way of disposing of land which is not developable. The decontamination or barrier provision that would be required should this land be used for planting trees would likely make the development unviable.

Following discussions therefore, the applicant has changed the offer, to landscaping of the former landfill area and use of the land as communal amenity space for the residents of the new dwellings, with the costs of maintenance and management in the long term to be borne by the occupants of the dwellings and carried out through a residents management company. Whilst this appears to put a relatively high and disproportionate ongoing cost on the 7 householders of the self build properties, it does have the advantage of enabling the long term protection of the contaminated site. This will need to be included in any legal agreement should members be minded to grant permission.

Whilst the decontamination and long term maintenance of the site weighs in favour of the application, the weight is limited due to the fact that the land will not be publicly accessible, and is at present open land in any case.

Education Contribution

The applicant has set out a willingness to pay any required education contributions towards the provision of school places and or school transport in accordance with Essex County Council requirements. Taken on its own, however the number of

dwelling proposed in this application falls below the threshold for such contributions. If members are minded to link the two applications through a legal agreement then an appropriate contribution for the combined number of dwellings can be calculated.

This is however a requirement in policy terms and can not therefore be given weight with regard to overcoming Green belt objections.

Green Belt conclusion:

The proposed erection of dwellings on this site whether on its own or in conjunction with the proposed development on the northern part of the Chimes site would not fall within any of the exceptions as stated within paragraph 89 of the NPPF and would therefore clearly constitute inappropriate development. The NPPF states that *“inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations”*.

For the reasons set out above it is clear that the development is inappropriate development of greenfield land and that the benefits offered are not sufficient to outweigh the harm to the Green Belt that would result from the development. Whether there is other harm which also needs to be weighed against the proposal will be considered below.

Lee Valley Regional Park:

The Lee Valley Regional Park consists of 4,000 hectares of open space interspersed with various leisure facilities; there are also pockets of residential, industrial or horticultural development. The Park is a key element in the open space network of London and the Region. It is part of London's Green Belt, a green corridor of countryside penetrating far into the urban area and is one of the largest concentrations of open space available for informal recreation in London, Hertfordshire and Essex¹.

The Lee Valley Regional Park Authority consider that the development would adversely impact on the landscapes of the Lee Valley Regional Park contrary to its strategic policies on landscape and detailed proposals which identify the site as within a landscape enhancement area, and would adversely impact on the amenity of users of the Regional Park.

The development is therefore contrary to policy RST4 of the Adopted Local Plan and Alterations

Flooding:

The application site is located wholly within an Environment Agency Flood Zone 2 and partially within a Flood Zone 3a. Given that the application seeks to avoid developing on the landfill area of the site, the indicative layout plan shows the proposed 7 houses to be located almost entirely within Flood Zone 3, that is the area most likely to flood. A Sequential Test is required for the proposed development.

¹ Lee Valley Regional Park Plan (adopted 2000)

Paragraph 101 of the NPPF requires decision-makers to steer development to areas with the lowest probability of flooding by applying the sequential test.

The sequential test that has been submitted relates to the combined site, not just the 7 house site and as the applications have been submitted separately and not as a single application it is not accepted that this is the correct method, however, even looking at the combined site it is not accepted that the site passes the sequential test.

At the time of the approval of 26 houses on the site, the Council did not have a Strategic Flood Risk Assessment in place, and each application received for development in a flood risk area needed to be accompanied by a sequential test, to show that there was nowhere at lesser risk of flooding and which is available and deliverable, for a development of the type proposed. At the time of the last application the sequential test submitted indicated that there were no sites of sufficient size available and deliverable for 26 houses. Essentially this is because most sites in this District are within the Green Belt and not previously developed land and residential development is therefore inappropriate. The sequential test was therefore accepted, as the 26 house scheme avoided use of land within Floodzone 3.

Since that time the Draft Local Plan has been produced and this identifies potential sites for development in order to meet the Councils future housing need. All sites within flood zones 2 and 3 were automatically rejected as unsuitable and it is clear that there are a large number of potential sites in the District, at lesser risk of flooding, on which 7 or indeed 24 houses could be developed, in the event that the Draft Local Plan is adopted. This site appears in the Draft Local Plan simply as it has been identified as having an extant consent for development. Had consent not already been granted here, it would not have been identified as a suitable site for development.

However at the current time, the draft Local Plan carries little weight and many of the potential sites identified in the Draft Plan are therefore not currently deliverable as they are on land that is within the Green Belt. For this reason it has been accepted that, particularly given the extant consent on the northern part of the Chimes site, the development of that part of the site, which is flood zone 2, could be regarded as passing the sequential test. However, it is not accepted that the southern site, which is flood zone 3 or the combined areas taken together, can pass the sequential test. The land where the 7 houses are proposed is simply Green Belt land, it is not previously developed land and the Local Plan has identified many sites around Nazeing and the wider District that are Green Belt and outside of Flood Zones 2 and 3 which could be developed for housing.

The appeal Inspector in considering the appeal against the refusal of permission for the 43 house development which included development of this southern part of the site covered the sequential test argument in some detail:

“ The western part of the site closest to the river frontage would remain as Zone 3a. That part of the site would be occupied by 6 of the proposed 43 dwellings. If it is necessary to develop land in the Green Belt in order to satisfy the need for housing, then the sequential test should still be applied to seek out land at a lower risk of flooding, there is no evidence before me of a lack of Zone 1 or Zone 2 land elsewhere in the Green belt. Even if Zone 2 land needs to be developed because of a lack of suitable zone 1 land , then it does not appear that consideration has been given to providing all of the proposed housing on zone 2 land, whilst avoiding zone 3a land. Even if no zone 2 land can be provided elsewhere, then consideration

should be given to a revision to the site design and layout in order to avoid siting 6 dwellings on zone 3a land.

It is acknowledged that it is a material consideration that the Council has permitted the development of 26 dwellings on the previously developed part of the site within Flood Zone 2. Other considerations would have been relevant there such as that the site is already occupied by buildings and hardstanding, there would be associated social, economic and environmental benefits of redeveloping this derelict site. However I do not consider that the sequential test has been suitably applied so as to justify the development of the remaining greenfield land within zone 2 and especially zone 3a.

Even were the Sequential Test to be satisfied, then I do not consider that the development of the Zone 3a land has been shown to be justified by wider sustainability benefits for the community, as would be required by the Framework, to pass the Exceptions Test. ... In this case any benefit of the development would be mainly for the occupiers of the houses rather than the wider community. Those occupiers would still be at some risk of flooding themselves, albeit that raised floor levels would reduce the risk of flooding within their homes and it has not been shown to be unsafe for the lifetime of the development."

It is considered that the same arguments remain entirely applicable to this 7 house scheme and to the combined development.

A flood risk assessment has been provided which has been accepted, subject to conditions, by the Environment Agency and the Councils Land Drainage Team, which indicates that suitable attenuation and mitigation can be put in place to prevent the flooding of the houses themselves and any risk of increased flooding elsewhere, but these factors do not outweigh the fact that the scheme clearly fails to pass the Sequential Test and the Exceptions Test and is therefore contrary to the NPPF and the adopted Policies of the Local Plan and indeed the draft policies of the Draft Local Plan.

Land Contamination:

The development was intended to avoid building on the former landfill site, and it appears that there is adequate space outside of the identified landfill area to fit 7 houses and gardens.

The fact that this is intended to be a self build site makes the contamination issue more difficult to deal with.

The contaminated Land Officer raised the following concern:

"ELA Plan BDG1 Rev A indicates that the landfill may extend beneath Plot 18 (which may need to be relocated), and beneath the proposed western part of the access road (and beneath any required turning head to the SE of Plot 24). Although the roadway should prevent direct soil ingestion/inhalation/ingestion risks from the underlying waste and it should be feasible to remediate risks in proposed managed soft covered road verges (unless robust remedial measures were employed to remediate grass verges/communal landscaped areas if applicable a maintenance scheme would need to be adopted to maintain any remedial works).

Although it would be feasible for individual plots to investigate and remediate direct soil ingestion/inhalation/ingestion risks in individual plots and to install basic gas mitigation measures in individual dwellings under conditions attached to reserved

matters approvals, it would be unlikely to be feasible to mitigate against any high gas risks that could require a cut of wall / ventilation trench, to provide a barrier to prevent the spread of fire from combustible waste in close proximity (eg to Plot 18), or to deal with potential recontamination of on site soils from leachate flowing onsite from the adjoining landfill individually under Reserved matters and these issues would need to be addressed first under any Outline consent.

I don't think that any detailed investigation of gas risks has been reported to have been carried out to date (Ground Gases and Landfill Gases including Hydrogen Sulphide as potentially indicated by sulphurous odours reported during previous investigation) and it may be necessary for extended gas monitoring to be carried out (the water table is normally high in the Lea Valley and will be at a similar level to water levels in the River Lea and the water filled gravel pits to the East of Chimes Nursery, which will suppress the fermentation of organic wastes and prevent combustible wastes burning. However during major drought episodes once every 20 years or so, the water table will drop several metres causing fermentation and gas production to increase and combustible wastes to dry out and potentially burn if ignited, meaning that it could be difficult to fully quantify risks over a short timescale at this site).

It will be necessary to ascertain whether leachate is causing problems that require "hotspot" remediation, whether any combustible waste close to the site will require removing or isolating, and whether any high ground gas risks require centrally remediating before the landfill "cap" can be completed to prevent direct soil ingestion/inhalation/dermal contact risks to users of the proposed "public open space" area. The depth of cover on the landfill will be dependent upon the type of vegetation to be grown (1m of "clean" soil for trees & 600mm of "clean" soil for shrubs) and the type of "cap" will depend on whether or not the site is to be managed over the lifetime of its use (if it is to be unmanaged, a cobble anti intrusion layer with geotextile membranes above & below overlain by a minimum of 1m of "clean" soil would be required). Any "cap" will need to be robust and durable to prevent potential acute exposure to asbestos "hotspots". Unlike other solid contaminants likely to be present in the waste, asbestos will not degrade over time and exposure to only a very small area of impacted soil could present acute exposure risks (The Planning File records that the Bank of England disposed of its asbestos waste at this landfill following stripping works at the Langston Road Works and other asbestos demolition waste is also likely to be present).

I would advise that detailed investigation & quantification of landfill gas, waste combustibility and leachate risks, together with any necessary remediation measures, are completed by way of condition under the Outline consent in order to address centralised risks from landfill contaminants before more localised risks originating from onsite sources are dealt with by way of conditions attached to individual reserved matters approvals for individual plots (or that the detailed investigation works are completed and a detailed remediation scheme drawn up by the applicant before any application is decided, leaving only if applicable a Verification Condition and an Unexpected Contamination Condition to be attached to any outline consent)."

Given the above, should members be minded to approve this application, very specific contaminated land conditions will need to be applied to ensure that the development is safe and will not result in issues on surrounding sites.

Ecology

A preliminary ecological appraisal was submitted with the original application which identified a need for a follow up reptile and newt survey, and a bat emergence survey. A reptile and Newt survey indicated that the land to the south provides a suitable habitat for reptiles. Grass snakes were found but it would be expected also that slow worms and common lizards may be present. As such mitigation measures would be required should permission be granted, to ensure that reptiles are removed to an appropriate receptor site to avoid any reptiles being killed or injured. Conditions can be imposed to secure this and in addition it is an offence to harm protected species. No great Crested Newts or amphibians were found at the site. A bat emergence survey was also carried out and this indicates that there are no bat roosts within the site but that the site and surroundings are used for foraging. Mitigation measures can be required by condition should the application be approved and the fact that the proposals include the retention and enhancement of the existing backfilled landfill area as an area of open space allows for enhancement of the ecological value of the area subject to the imposition of suitable conditions.

Highways

This is an outline application with all matters reserved, including access, however the indicative layout plan that has been submitted indicates that suitable access can be achieved from Old Nazeing Road, via a private access track that runs past the property known as Nazebourne. This is a narrow access but given the previous use of the site and the potential traffic movements that the authorised use could generate the access is considered to be suitable and appropriate for the development now proposed, particularly given that consent already exists for 26 houses utilising this access.

Concern has been raised by neighbours that the development could be accessed from Great Meadow, which is currently a cul de sac. As access is a reserved matter this can be properly considered at the detailed submission stage.

Other considerations:

Amenity considerations:

Given the location of the application site and since this proposal is for outline consent with all matters reserved it is considered that 7 dwellings could be erected on the site without causing any detrimental impact on neighbouring residents.

Conclusion:

In light of the above, despite claims by the applicant, the site does not constitute previously developed (brownfield) land and the proposal does not meet any of the exceptions to inappropriate development as stated within the NPPF. The proposal for a 'land swap' does not render the application as 'not inappropriate' and as such the proposal continues to constitute inappropriate development that is, by definition, harmful to the openness of the Green Belt. In addition the site is located within an Environment Agency Flood Zone 2 and 3a with the proposed housing being shown to be within 3a, which is the highest flood risk and the development has not passed a Sequential Test or the Exceptions Test which are set out in the NPPF. Additionally the site is within the Lee Valley Regional Park and would harm the character of the Lee Valley Regional Park.

It is accepted that the Council cannot currently demonstrate a five year supply of housing sites, as required by paragraph 49, and it is accepted that the provision of seven self-build/custom houses would assist in meeting the need in enabling individuals and community groups who want to acquire land for self-build homes to do so. Whilst both these factors weigh in favour of the development they are not in themselves overriding factors that should allow development with no regard to any other constraints.

The lack of a five year land supply means that Local Plan policies regarding the supply of housing are out-of-date however it does not mean that these should be completely disregarded. The National Planning Policy Framework contains clear policies requiring that *“local planning authority[s] should regard the construction of new buildings as inappropriate in the Green Belt”* (paragraph 89) and stating that *“inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk”* (paragraph 100).

It is recognised that the site is in a relatively sustainable location however it is not considered that this, or the other material considerations put forward are sufficient to outweigh the harm to the Green Belt through inappropriate development or to disregard the government objective of minimising development within the areas at highest risk of flooding.. Furthermore the proposal would be harmful to the character and amenity of the Lee Valley Regional Park which is given some weight against the proposal.

As such the proposal continues to be contrary to Government Guidance in the form of the NPPF, the Technical Guidance, the PPG and the Local Plan policies CP2, GB2A, RST24, U2A and RP4, as previously identified, and therefore the application is recommended for refusal.

The applicant has asked that this application and the application for 17 houses on the adjacent site should be considered together, as if they were a single application. Despite being advised that a single phased application would be the appropriate way of ensuring that the proposals were considered in that way, he has chosen to continue with the 2 applications.

The 7 house scheme does not work in isolation and would result in a significant spread of built development into an area that is not previously developed land and the retention of the existing previously developed and hard surfaced area, with no extinction of any existing use rights for that land.

Should members therefore be minded to consider this application in tandem with the “Phase 1” proposals and consider that the combined development would be acceptable then any approval would need to be subject to a legal agreement that prevents it from being implemented before the completion of the development of the 17 house scheme and the associated remediation of the remaining previously developed area, again to avoid the situation of just the road and the 7 houses on the lower site being constructed.

Officer advice remains, that even if the two applications are considered together, the combined development is inappropriate in the Green Belt, causes harm to the character of the LVRP, and fails to pass the sequential and exception tests. As such the application is recommended for refusal.

Members are advised that given the clear failure to meet both national and local planning policy should they consider that this application can be approved, it will need to be referred to the District Development Management Committee for consideration.

Advice - Is there a way forward?

Given the location of the site within the Metropolitan Green Belt, the Lee Valley Regional Park and in an Environment Agency Flood Zone 3 it is not considered that there is any way forward for residential development on this site.