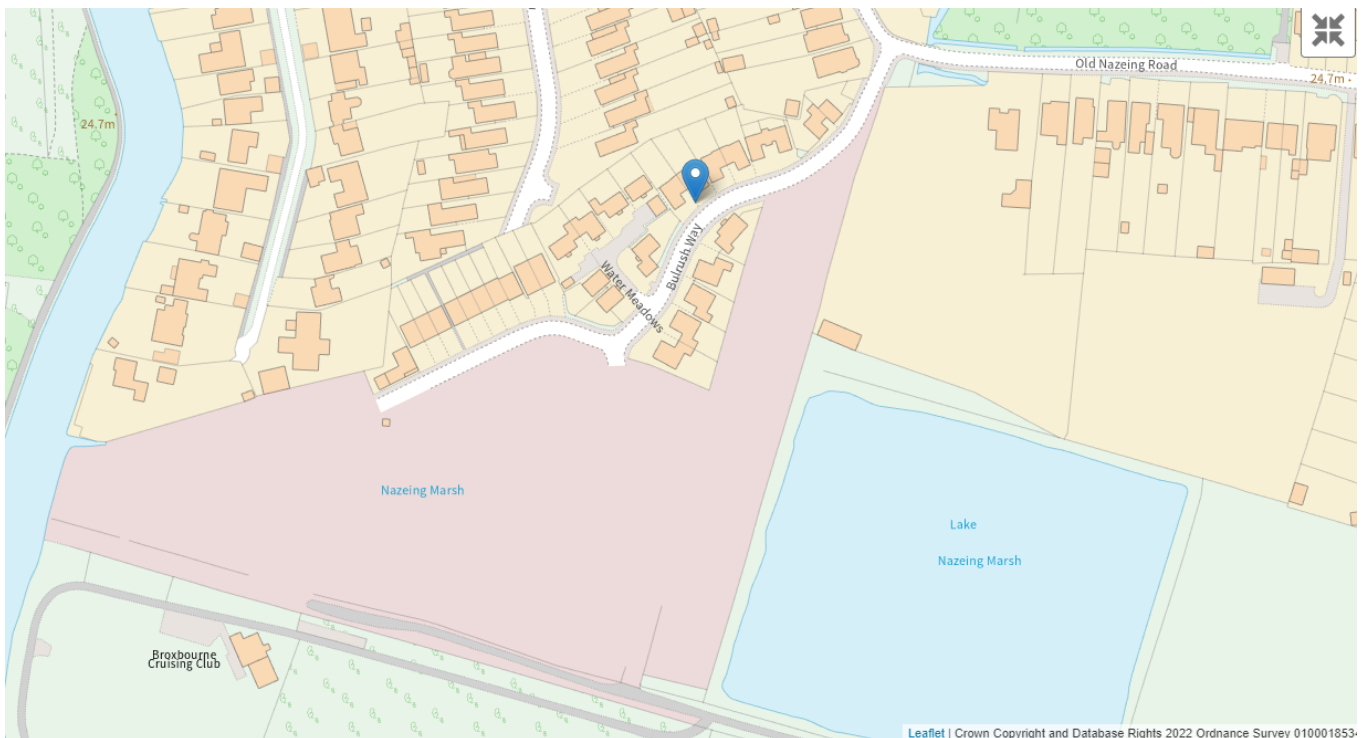


OFFICER REPORT

Application Ref: EPF/2601/22
Application Type: Outline planning permission: Some matters reserved
Applicant: Lifestyle Care and Community Ltd
Case Officer: Muhammad Rahman
Site Address: Land to the South & East of the former Chimes Garden Centre, Nazeing, Waltham Abbey, EN10 6RJ
Proposal: Outline application for the 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.
Ward: Lower Nazeing
Parish: Nazeing
View Plans: <https://eppingforestdcpr.force.com/pr/s/planning-application/a0h8d000001Ufuc>
Recommendation: Refuse



Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

Crown Copyright and Database Rights 2022 Ordnance Survey 0100018534

This application was deferred from the 15th November 2023 meeting to a future meeting upon the request of the applicant to allow the Council to respond to the various queries/FOI requests raised by the applicant, to which the Council has responded to.

Furthermore, since the deferral a number of further updates were made, namely;

1. An update to the National Planning Policy Framework 2023 replacing Paragraph numbers 126, 130, 137 - 150 & 186 with Paragraph numbers 131, 135, 142 - 155 & 186. Paragraph 76 is also of importance which states;
 1. Local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision making purposes if the following criteria are met: a) their adopted plan is less than five years old; and b) that adopted plan identified at least a five year supply of specific, deliverable sites at the time that its examination concluded.
 2. The new local plan was adopted on the 6th March 2023 and so is less than five years old, and as set out in the conclusion of this report, the adopted plan has identified a 5 year housing supply. Therefore paragraph 77 is not engaged.
2. An additional change was presented by the applicant, namely to the proposed contribution to Nazeing Parish Council from £150,000 to £165,000 and the provision of a street lighting scheme serving Bullrush Way to be secured via the s106 Legal Agreement.
3. A few neighbours at Bullrush Way have now withdrawn their objection and support the scheme.
4. Further information to address the impacts on the Epping Forest Special Area of Conservation was submitted and reviewed by Natural England and the Council, and Officers are satisfied there would be no significant impacts on the EFSAC subject to securing the relevant mitigation measures. Therefore the previously suggested reason for refusal regarding the impact on the EFSAC has been removed. However, a reason for refusal is still necessary regarding the inability to secure mitigation due to the absence of a completed legal agreement.
5. A further viability review was undertaken by the Councils appointed experts based on further information presented by the applicant, however it did not lead to a different conclusion, rather it affirmed again that the scheme can deliver a significantly higher level of affordable housing contribution whilst making a profit. This latest review is published on the website.
6. Comments were received from the Essex County Council Adult & Social Care Team which largely focuses on the design requirements of the extra care housing units as opposed to need for extra care housing which falls to the Council. However the following comments are included within the response:

"Adult Social Care met with the developer to discuss the proposed development. There are 4 affordable apartments in a separate block, and these could not be considered for use by ECC as they do not meet ECC's expectations for an Extra Care scheme to provide a minimum of 60 Extra Care apartments in one building with a communal entrance and reception facilities; for the tenure of a scheme to be predominately affordable housing; and for the Extra Care accommodation to be managed by a registered provider. Furthermore, the block of 4 apartments does not have a lift to provide access to all floors and it is located some distance from the main Extra Care scheme where the communal services and facilities are located. The developer is aware of our view.

The provision of affordable housing within the main Extra Care scheme would not meet ECC's requirements for Extra Care housing to be managed by a registered provider. Furthermore, ECC expects the rent and service charges, in particular any non-housing benefit eligible service charges, to be affordable for residents. The service charges in predominantly market sale Extra Care scheme can be unaffordable for those on a low income or in receipt of welfare benefits.

We support the developer's assertion that Extra Care housing schemes need to be of a sufficient size, in terms of number of apartments, to ensure that the communal facilities and provision of care are viable. Without communal facilities and care provision, the schemes are not Extra Care. For schemes that we commission, our expectation, as set out in the design guide, is that schemes would be a minimum of 60 apartments and a maximum of 100 apartments".

No other changes have been made to the report and the previous officer report has been reproduced below.

This application is before this Committee since it has been 'called in' by Councillor Richard Bassett (Pursuant to The Constitution Part 3: Part Three: Scheme of Delegation to Officers from Full Council).

Site and Surroundings

The site comprises of open green Belt land within the former Chimes Garden Centre. The site is accessed from Old Nazeing Road. It lies wholly within the Metropolitan Green Belt and the Lea Valley Regional Park (LVRP). It is not within a conservation area, nor are there any heritage assets within the site. The site is wholly within EA Flood Zones 2 & 3. A gas pipe runs adjacent the site.

Proposal

Outline application for the 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.

To summarise above, a total of 79 units are proposed along with commercial units.

The proposal was amended since its initial submission. The following amendments were made;

1. Removal of the previous proposed roundabout;
2. The 4 starter homes have been amended to 4 affordable houses;
3. The removal of the previous proposed 1 market dwelling which was sited to the rear of 95 Old Nazeing Road; and
4. Red/Blue line on the submitted Local Plan was amended removing the development to the rear of 95 Old Nazeing Road and the Blue line represents the parcel of land for Biodiversity Net Gain.

All parties were reconsulted on the amended description and plans.

A Planning Performance Agreement was entered into with the applicant to work through some of the key issues.

Relevant Planning History

Multiple Planning Histories with the most relevant below;

EPF/0689/84 - Extension of garden centre area with access road and additional car parking - Approved with Conditions

EPF/0229/90 - Section 106, Use of building for light industrial and storage uses (Classes B1 & B8) and car parking associated with Chimes Garden Centre - Approved with Conditions – Use ceased.

EPF/0206/14 - Demolition of existing garden centre/commercial buildings and erection of 43 dwellings with associated parking and landscaping - Refused

EPF/0570/15 - Demolition of existing Garden Centre/Commercial Buildings and erection of 26 dwellings with associated parking and landscaping - Approved with Conditions

EPF/1232/16 - Demolition of existing Garden Centre/Commercial Buildings and erection of 17 (16, 6 bed and 1, 4 bed) dwellings with associated parking and landscaping - Approved with Conditions

EPF/1492/16 - Outline planning application for 7 no. Self-Build Houses in accordance with Self-Build Act 2015 with all matters reserved - Refused

EPF/0566/18 - Outline planning application for 7 self-build homes with all matters reserved - Refused

EPF/1351/18 - Demolition of site buildings and redevelopment to provide 33 new homes
Approved & Implemented

EPF/1769/18 - Variation of planning conditions 4,5,6,7,9,10,12,13,14,15,16,17,18,19,20,21,24, 25 & 26 on planning permission EPF/0570/15 (Demolition of existing garden centre/commercial buildings and erection of 26 dwellings with associated parking and landscaping). To enable specific demolition works to take place before the conditions are discharged - Approved with Conditions

EPF/3040/19 - Proposed erection of x14 no. dwellings (4 flats and 10 dwellings) - Refused

EPF/3043/19 - Application for Variation of Condition 2 `Plan numbers' of EPF/1351/18 (Demolition of site buildings and redevelopment to provide x33 no. new homes) - Approved with Conditions

EF\2019\ENQ\00807 - Residential development proposed on Brownfield Land - Advice Given

EPF/0549/20 - Application for Variation of Condition 2 `Plan numbers` of EPF/1351/18 (Demolition of site buildings and redevelopment to provide x33 no. new homes - Extensions to plots 15 and 16 - Approved with Conditions

EF\2021\ENQ\00794 - Follow up to EF\2019\ENQ\00807 - Advice Given

EPF/2713/21 - Erection of 14 dwellings (4 flats and 10 dwellings) (resubmission of EPF/3040/19) – Approved

PRE/0149/22 – Pre-application in respect of conditions 4"– Details of Surface Water Proposals", 6,"– Flood Mitigation", 7"Submission of Contamination Risks and Mitigation", 9"Details of Hard and Soft Landscaping" & 16"Details of Enhancements for Nature Conservation" for EPF/2713/21 – Closed

EPF/0440/22 - Application for Approval of Details reserved by condition 16"verification report" for EPF/1351/18 – Refused

EPF/1168/23 - Variation of Condition `Plan numbers' of EPF/2713/21 (Erection of 14 dwellings (4 flats and 10 dwellings) (resubmission of EPF/3040/19)) – Refused

EPF/2602/22 - Outline application for the redevelopment of the site to provide up to 52 later living apartments (Extra Care Housing) (use class C2) incorporating a convenience shop and café (use class E); 13 retirement cottages (Extra Care Housing) (use class C2); 10 self-build & custom build houses (use class C3); 4 starter homes (use class C3) at 70% of Open Market Value; associated mini-roundabout access, open space, bowling green, children's play area and improved local bus service; all matters reserved except access – In Progress

This application differs from EPF/2601/22, in that the 4 proposed starter homes include a larger discount (70%) of open market value

EPF/1955/23 - Application for approval of details reserved by condition 3'External Finishes' on planning permission EPF/2713/21 (Erection of 14 dwellings (4 flats and 10 dwellings) (resubmission of EPF/3040/19) – Details Approved

Development Plan Context

Epping Forest Local Plan 2011-2033 (2023)

On 9 February 2023, the council received the Inspector's Report on the Examination of the Epping Forest District Local Plan 2011 to 2033. The Inspector's Report concludes that subject to the Main Modifications set out in the appendix to the report, the Epping Forest District Local Plan 2011 to 2033 satisfies the requirements of Section 20(5) of the Planning and Compulsory Purchase Act 2004 and meets the criteria for soundness as set out in the National Planning Policy Framework and is capable of adoption. The proposed adoption of the Epping Forest District Local Plan 2011 to 2033 was considered at an Extraordinary Meeting of the Council held on 6 March 2023 and formally adopted by the Council.

The following policies within the current Development Plan are considered to be of relevance to this application:

SP1 Spatial Development Strategy 2011-2033
SP2 Place Shaping
SP5 Green Belt and District Open Land
H1 Housing Mix and Accommodation Types
H2 Affordable housing
T1 Sustainable Transport Choices
DM1 Habitat protection and improving biodiversity
DM2 Epping Forest SAC and the Lee Valley SPA
DM3 Landscape Character, Ancient Landscapes and Geodiversity
DM4 Green Belt
DM5 Green and Blue Infrastructure
DM9 High Quality Design
DM10 Housing Design and Quality
DM11 Waste Recycling Facilities on New Development
DM16 Sustainable Drainage Systems
DM19 Sustainable Water Use
DM21 Local Environmental Impacts, Pollution and Land Contamination
DM22 Air Quality
P10 Nazeing
D1 Delivery of Infrastructure
D2 Essential Facilities and Services
D3 Utilities
D4 Community, Leisure, and Cultural Facilities

National Planning Policy Framework 2023 (Framework)

Paragraph 11
Section 5 Delivering a sufficient supply of homes
Section 8 Promoting healthy and safe communities
Section 11 Making effective use of land
Paragraphs 126 & 130
Paragraphs 137 – 150
Paragraph 180

Summary of Representations

Number of neighbours Consulted: 135. 40 Responses Received.
Site notice posted: Yes, including a Press advert

MULTIPLE OBJECTIONS RECEIVED inc. Broxbourne Cruising Club – Summarised as:

- Increased Traffic
- Lack of Infrastructure
- Impact on the Green Belt & LVRP
- Flood Risk
- No very special circumstances
- Ecology Concerns
- Impact on Rural Environment/Trees/Landscape
- Noise and general disturbance.
- Loss of privacy/overlooking; and
- Insufficient Lighting for Elderly Residents.

NAZEING PARISH COUNCIL – The Council has supported this application throughout and continues to do so. We reiterate our previous comments made on 02/01/2023, that the Council fully support the application EPF/2602/22 because the following will be specifically provided:

- i. Assisted living apartments and care facilities,
- ii. A new children’s play area which will also be available for use by the residents of the completed phases of the Chimes development,
- iii. Four starter homes,
- iv. Ten self-build homes,
- v. Financial contribution to Epping Forest Community Transport, which will provide an improved bus service to Nazeing and residents of Riverside ward,
- vi. A roundabout at the entrance to the Chimes site and
- vii. Communal facilities.

Resolved – that the Council also support application EPF/2601/22, although the Council’s preference is for application EPF/2602/22 as the starter homes are at 70% of Open Market Value. The reasons for supporting the application are the same as for application EPF/2602/22.

The Council have requested that District Cllrs Bassett and Pugsley call in both applications, namely EPF/2602/22 and EPF/2601/22.

Further comments following the re-consultation exercise;

At a meeting of Nazeing Parish Councils Planning Committee on 13th April 2023, the case detailed above was considered.

This Council is aware that negotiations have been taking place with the Case Officer and as a result changes have been made to the scheme which is the subject of these applications. In my letter dated 10 February 2023 I set out a number of reasons why the Council is supporting the applications. In the main these have not changed notwithstanding amendments which have been made by the applicant to the proposals. For example, it appears that Essex Highways objected to the proposal to include a mini roundabout at the entrance to the Chimes development on the basis that it was not required. Accordingly, the roundabout has been removed from the applications which is one of the reasons for the re-consultation.

The applicant has also indicated an intention to enter into a S.106 Agreement on the basis that the money contributed will be ring-fenced for Nazeing.

Following further discussion, the Council resolved to continue to strongly support both of the above applications as explained in the penultimate paragraph of my letter dated 10 February 2023.

Planning Considerations

The application has been submitted in outline with all matters, except for access, reserved for subsequent determination. As such the scope of the proposal is limited to consideration of the principle of the development and the access. Matters relating to scale, appearance, layout, and landscaping are to be fully assessed via a future reserved matters application(s).

The proposal would utilise the existing access, albeit with an extended vehicular crossover and no objections have been raised by the Highways officer in this regard. Whilst the parking spaces are indicated on the plans, these are merely indicative since layout is a reserved matter and would be considered subsequently if outline planning permission is granted. In terms of the proposed access, it is clear that it can accommodate the scale of the proposed development and would not harm the safety or operation of the highway network. Officers note the concerns raised by local residents, however; no substantive evidence has been provided to reach a different conclusion.

Thus, the remaining main issues relate to;

- a) The principle of the development within the Green Belt; and
- b) The impact on the Epping Forest Special Area of Conservation.

Background

Under the 2016/2017 site selection process part of the site (SR-0438b) (where the proposed self builds are located) was assessed, however, it did not make it to stage 1 due the extant planning permission dated prior to 31st July 2016 (EPF/0570/15).

Too add, under the 2018 site selection process (SR-0438B-N), again part of the site as mentioned above was assessed, however it did not go past stage 1 as it was located outside the settlement buffer zone – one of the Major Policy Constraints.

Members should also be aware that prior to the submission of the application, an application for the site to be included in the Brownfield Register was made. As per the Town and Country Planning (Brownfield Land Registers) Regulations 2017, the Council will only enter previously developed land in its area in Part 1 of the register where it meets the criteria in regulation 4(1). The land must (a) have an area of at least 0.25 hectares, or be capable of supporting at least 5 dwellings; (b) be “suitable for residential development”; (c) be available for residential development; and (d) residential development of the land must be achievable.

As for what land is “suitable for residential development”, this is defined further in regulation 4(2). The first three criteria under reg.4(2) reflect decisions that have already been made – that the site has been allocated in a local plan, has planning permission, or permission in principle. The final criterion requires a judgment by the LPA to be made, in that the land:

“(d) is, in the opinion of the local planning authority, appropriate for residential development, having regard to—
(i) any adverse impact on—
(aa) the natural environment;
(bb) the local built environment, including in particular on heritage assets;
(ii) any adverse impact on the local amenity which such development might cause for intended occupiers of the development or for occupiers of neighbouring properties;
and
(iii) any relevant representations received.”

The site was reviewed by the Council and the Brownfield Land Register (‘BFLR’) assessments sets out why the site was discounted, and so was not added to the Brownfield Register. Too add, the Council sought legal advice on this matter which was shared with the applicant, and the conclusions are below;

40. The current applicant (Lifestyle Care and Community Ltd) continues to place reliance on a legal opinion that criticised the Council's BFLR conclusions...

41. This Legal Opinion was submitted to the Council as part of the response on behalf of the applicant at that time, River Lea Developments Limited, to the BFLR assessment. They obtained an Opinion from Steven Whale, a planning barrister, dated 8 March 2022. He states that he considered both "the former Poultry Farm site" and the "Chimes Phase III site". Reference is also made by him to the planning appeal decision. A number of criticisms were made in that Opinion, but - as his last section makes clear - Mr Whale did not reach a conclusion on whether or not the areas he was asked to consider were or were not Brownfield land. At its highest, his conclusions in para 33 are that:

"33. The Council should re-assess the two sites. There are factual reasons for doing so. Moreover, the Council appears on present evidence to have erred in law in that it has not applied section 14A(7)(a) of the Planning and Compulsory Purchase Act 2004. ..."

42. Despite these criticisms, the Council has stood by the assessments that it has made. There was an exchange of pre-action protocol correspondence, in September and October 2022, regarding a possible judicial review challenge to the Brownfield Land Register assessments. The Council also obtained and shared its own legal opinion dated 8 August 2022 with River Lea Developments Limited. The Council did not accept the points made on behalf of River Lea Developments Limited. The legal points at issue were about the Council's assessment of the sites' suitability for residential development under regulation 4, and the application of section 14A(7)(a).

43. In any event, no judicial review proceedings were issued. Therefore, as matters stand now, the 2021 Brownfield Land Register assessment remains valid, and has not been legally challenged. It was also part of the evidence base for the Local Plan and considered as part of that process before its adoption this year.

Principle of the Development within the Green Belt

Paragraph 137 of the Framework states: the Government attaches great importance to the Green Belt. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence, or in other words, it is characterised by an absence of development.

Paragraphs 147 & 148 further state; 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 resulting from the proposal, is clearly outweighed by other considerations. The adopted Local Plan echoes the position of the NPPF and both identify that certain forms of development are not considered to be inappropriate in the Green Belt.

It is common ground with the applicant that the proposal represents inappropriate development within the Green Belt, which is by definition, harmful, and given its significant quantum and scale will also result in substantial material harm to its openness, both in visual and spatial terms. In addition, the areas of parking along with the residential paraphernalia and domestic/commercial activity that would result from the dwellings and commercial units would cause a further significant erosion of the openness of the Green Belt.

The site has an overall area of some 2.7027 hectares and of this approx. 0.44 ha is previously developed land which includes Bullrush way and a small section contained at the northern end of the old poultry farm site. However, this small section of previously developed land (PDL) is immaterial in this

application due to the significant harm to the openness of the Green Belt that this development proposal would cause.

The proposal conflicts with the fundamental purpose of the Green Belt of keeping land permanently open and will result in substantial urban sprawl. In accordance with the requirements of the Framework, each of the identified harms to the Green Belt noted above, which are considerable, must be afforded substantial weight against the proposal. Very special circumstances (“VSCs”) are required to clearly outweigh these and any other harm, and this matter will be discussed further in the Planning Balance.

Epping Forest Special Area of Conservation (SAC)

A large part of the Epping Forest is designated as a Special Area of Conservation (EFSAC) primarily for its value in respect of beech trees and wet and dry heaths and for its population of stag beetle. As an internationally important site it is afforded the highest level of protection due to it containing habitats and species that are vulnerable or rare.

The Council, as a ‘competent authority’ under the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations), and in accordance with Policy DM2 of the Epping Forest District Local Plan 2011 – 2033, has a duty to ensure that plans and projects for whose consent it is responsible will not have an adverse effect on the integrity of such designated sites either alone or in combination with other plans and projects.

The Council, through the Local Plan Habitats Regulations Assessment 2022, (the HRA 2022) has identified two main issues (known as ‘Pathways of Impact’) that are currently adversely affecting the health of the Epping Forest.

The first relates to recreational pressure. Surveys have demonstrated that the 75th percentile of visitors live within 6.2km (Zone of Influence) of the Epping Forest. As such new residential development within this 6.2km ‘Zone of Influence’ is likely to result in more people visiting the Epping Forest on a regular basis which will add to that recreational pressure.

The second issue is atmospheric pollution which is caused primarily by vehicles travelling on roads within 200m of the EFSAC which emit pollutants harmful to the EFSAC’s interest features (Nitrogen Dioxide and Ammonia). Development proposals (regardless of their type, size, and location within the District) which would result in even an increase in just one additional vehicle using roads within 200m of the EFSAC has the potential to contribute to increases in atmospheric pollution within the EFSAC when taken in combination with other plans and projects.

Stage 1: Screening Assessment

This application has been screened in relation to the recreational pressures and atmospheric pollution ‘Pathways of Impact’ and concludes as follows:

1. The site lies outside of the 6.2 km Zone of Influence as identified in the Epping Forest Strategic Access Management and Monitoring (SAMM) Strategy. Consequently, the development would not result in a likely significant effect on the integrity of the EFSAC as a result of recreational pressures.
2. Based on the information provided by the applicant the development would result in a net increase in Annual Average Daily Traffic (AADT) using roads within 200m of the EFSAC. Consequently, the application proposal would result in a likely significant effect on the integrity of the EFSAC in relation to atmospheric pollution Pathway of Impact.

Having undertaken this first stage screening assessment and reached this conclusion there is therefore a requirement for the Council to undertake an ‘Appropriate Assessment’ of the application proposal in relation to the atmospheric pollution Pathway of Impact.

Stage 2: 'Appropriate Assessment'

Atmospheric Pollution

The information provided by the applicant has indicated that the proposal would result in a net increase in Average Annual Daily Traffic (AADT) using roads within 200m of the EFSAC of some 14 vehicles. The application site has not been allocated in the adopted Local Plan for the provision of residential development and as such the proposals has not been assessed through the modelling undertaken to inform the HRA 2022 and the Council's Adopted Air Pollution Mitigation Strategy.

The Council, through the adoption of an Interim Air Pollution Mitigation Strategy (IAPMS), has provided a strategic, district wide approach to mitigating air quality impacts on the EFSAC through the imposition of planning conditions and securing of financial contributions for the implementation of strategic mitigation measures and monitoring activities.

It is important to note that the evidence base that has been developed to inform the IAPMS has taken into account Annual Average Daily Traffic (AADT) that would arise from development planned through the adopted Local Plan. The use of AADT is the appropriate method for understanding the effects of atmospheric pollution on ecological health. The IAPMS therefore provides the mechanism by which the competent authority can arrive at a conclusion of no adverse effect on the EFSAC as a result of planned development.

The application has indicated that they would be prepared to make a financial contribution towards the implementation of monitoring and mitigation measures identified in the IAPMS. However, in this particular case, as the proposal has not been allocated in the adopted Local Plan and, having regard to the scale of development proposed, the applicant cannot rely solely on the measures contained in the IAPMS for its mitigation. A scheme of this scale would need to be supported by bespoke air quality modelling to determine the level of impact on the EFSAC over and above those identified in the HRA 2022 and be supported by a bespoke mitigation strategy. As the application is not supported by either the Council cannot be satisfied that the proposal would not have an adverse effect on the integrity of the EFSAC.

As such the Council, as competent authority under the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations), and in accordance with Policy DM2 of the Epping Forest District Local Plan 2011 – 2033 (whereby it has a duty to ensure that plans and projects for whose consent it is responsible) has not been satisfied that the proposal would not have an adverse effect on the integrity of the EFSAC either alone or in-combination with other plans and projects within the adopted Local Plan.

Therefore, the proposal fails to demonstrate with reasonable scientific certainty that there would be no adverse effect on the special interest features of the EFASC. As such the proposal has the potential to result in an adverse effect on the EFSAC and as such is contrary to Policy DM2 of the adopted Local Plan, the requirements of the Framework and the legislative requirements of the Habitat Regulations.

Other Considerations

C2/C3 Use Class

PPG 10 states;

Extra care housing or housing-with-care: This usually consists of purpose-built or adapted flats or bungalows with a medium to high level of care available if required, through an onsite care agency registered through the Care Quality Commission (CQC). Residents are able to live independently with 24-hour access to support services and staff, and meals are also available. There are often extensive

communal areas, such as space to socialise or a wellbeing centre. In some cases, these developments are known as retirement communities or villages - the intention is for residents to benefit from varying levels of care as time progresses. Paragraph: 010 Reference ID: 63-010-20190626

It is for a local planning authority to consider into which use class a particular development may fall. When determining whether a development for specialist housing for older people falls within C2 (Residential Institutions) or C3 (Dwellinghouse) of the Use Classes Order, consideration could, for example, be given to the level of care and scale of communal facilities provided. Paragraph: 014 Reference ID: 63-014-20190626

Having reviewed the proposed care package and taking into account the self-contained element of the proposed units, Officers are of the opinion that the units should be treated as C3 use. In any case this has no material impact to the merits of the case.

Landscape/Visual Impact

Officers are satisfied that the resulting development has scope to sit comfortably and successfully assimilate with its existing residential and countryside context. However, as above-mentioned layout, landscaping etc, i.e., the important finer details of the scheme can be adequately controlled by planning conditions and at the reserved matters stage to ensure this.

Community Infrastructure

The proposal will generate additional demands on healthcare and other community facilities including leisure. Interested parties have raised concerns about the capacity of these local services to support such increased demands. However, Officers are satisfied that the appropriate mitigation measures as detailed in the Planning Obligation section below, if secured via a completed s106 legal agreement would overcome these concerns.

Consequently, in the absence of harm there is no conflict with the LP or the Framework in these regards. However, as these obligations are mitigation, they do not constitute material benefits.

Self-Build

The Council has been unable to meet the demand for self-build and custom housebuilding in their area as required under the Self Build Act 2015 (as amended), and so the proposed up to 10 self-build plots is afforded moderate weight.

Affordable Housing

Policy H2 states; development sites which provide for 11 or more homes or residential floorspace of more than 1000m² (combined gross internal area), the Council will require 40% of those homes to be for affordable housing and provided on site. Further, the Framework and the Local Plan recognise that, for some developments and in exceptional circumstance, it may be more appropriate for financial contribution to be provided in lieu of affordable housing on site, thus helping the District Council fund the provision of affordable housing on another site suitable for the provision of those home. This is subject to the following conditions, provided that the Council is satisfied:

- The financial contribution is at least equivalent to the increased development value if affordable housing was not provided on site, subject to such a contribution being viable; and
- A financial and viability appraisal has been provided (with supporting evidence) which is transparent and complies with relevant national and local guidance applicable at the time, properly assessing the level of financial contribution to be provided.

Although it is possible to incorporate affordable housing within this proposed development, the Council has accepted in the past, for practical reasons, that private extra-care, or assisted living accommodation is not particularly suited for the provision of on-site affordable housing. In such circumstances, the Council has agreed an appropriate level of financial contribution for other such developments. In the circumstances of this application therefore, it is concluded that a similar approach would be appropriate. However, in this instance the applicant has not offered an appropriate contribution to affordable housing provision.

In accordance with the policy noted above, a financial and viability appraisal was submitted by the applicant which has been assessed by the Council's affordable housing consultants (BPS Surveyors).

Having reviewed the submitted information, BPS have concluded that the proposed scheme is in a substantial surplus at some £3.4 million and, therefore, can viably contribute towards additional affordable housing.

The applicant has currently proposed 4 affordable houses + £250,000 payment. To achieve 40% policy compliance a further £2.2 million is required, so £250,000 + £2.2 million = £2.47 million. Further information was submitted by the applicant inc. a further payment of £250,000 (Total of £500,000) which was reviewed by BPS; however, it did not lead to a different conclusion nor any of the concerns raised in the reports addressed by the applicant. In total therefore the application has a significant shortfall of £1.97 million (£2.47m minus £500,000) which should be provided towards affordable housing provision.

The applicant disagrees with the above assessment but has not provided sufficient justification as to why the above figure is not viable. Thus, BPS and Officers are of the view that no reasonable agreement would be reached. As such for the reasons above, the proposal fails to provide an appropriate level of affordable housing contributions despite such provision being financially viable, and so this lack of provision should be afforded substantial weight against the proposal.

Air Quality in respect to Human Health

The submitted air quality assessment concludes that the impacts on Human health from the construction and operational phases will be low subject to the mitigation measures. The Councils Air Quality Officer has raised no objections to the above assessment subject to recommended conditions.

Health and Well-Being

The proposal would reduce the risk of social isolation and may reduce the potential call on the NHS as well as improve health and well-being of older residents. This benefit attracts neutral weight. The Councils Public Health Improvement Officer has reviewed the submitted Health Impact Assessment (HIA) and raised no objections.

Economic Development and Employment

The proposal would be likely to generate jobs approx. 135 Direct and 200 indirect jobs as stated in the submitted HIA, with further supply chain benefits from services providing support to older residents. There would be economic benefits from the construction of the proposal and long-term benefits from spending in the local economy for goods and services. These benefits are afforded some weight.

Location

Public transport services run within walking distance of the site and a large urban catchment close by would help to reduce the travel distance of potential staff. The convenience and sustainability of the location for the development including the improvement to the C392 Bus Service would attract some weight.

Flood Risk

The site is within Flood Zone 2 & 3 and the applicant has carried out a sequential test which sets out why the site is suitable for the proposed development and that no other alternative suitable sites are available within the District. 4 different methodologies were carried out and of this Officers do not agree with methodologies 1-3 but give some weight to methodology No. 4.

The following Paragraphs of the Frameworks states;

162. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.

163. If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in Annex 3.

164. The application of the exception test should be informed by a strategic or site-specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. To pass the exception test it should be demonstrated that:

- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
- b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

165. Both elements of the exception test should be satisfied for development to be allocated or permitted.

167. When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
- b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
- d) any residual risk can be safely managed; and
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

As per Para 164 (a) as mentioned throughout the report there are some benefits to the wider community in regard to health and wellbeing, economic development, and employment along with the upgrades to the bus network and other various improvements inc to the Local Parish as outlined in the Planning Obligation section below.

Turning to Para 164 (b) & Para 167, Officers note that the Environment Agency, ECC Suds Team & the Councils Drainage Team are satisfied with the submitted Site-Specific Flood Risk Assessment subject to recommended conditions.

On this basis, it is not considered reasonable to recommend refusal on Sequential Test grounds, particular one that could be defended on appeal.

Lee Valley Regional Park (LVRP)

Officers note the concerns raised by the LVRP Authority with regards to ecology and the impact on the LVRP. Additional surveys were submitted during the course of the application and reviewed by both the LVRPA & ECC Ecology Team. No material objections were raised, however, there is still some scope for improvement. As layout, landscape is a reserved matter, some of the finer details, such as the suggested 10m buffer from the eastern, southern, and western boundaries of the site to ensure sufficient space was provided within which to create a substantial landscape buffer in order to shield the development from the Regional Park, can be reviewed at that stage along with suitably worded planning conditions.

To summarise this matter, the LVRPA have suggested appropriate mitigations in their comments along with a financial contribution which are set out in the Planning Obligation sections below.

The applicant has queried this financial contribution and the LVRPA has provided the following response below;

It is important that the development, positioned as it is within the Regional Park, provides sufficient amenity space to cater for the immediate informal recreational, play and open space requirements of all the new residents, so as to reduce the pressure on adjoining Park areas. The proposed public open space will no doubt be a popular and a well-used area given the number of new units proposed and the fact that there is very little open space provided as part of the recent residential developments immediately to the north of the application site. A substantial number of the new residents from the proposed 80 units, are likely therefore to make use of adjoining Park areas, in particular Rusheymead just to the north of the application site, which is public open space and includes some informal paths and wayfinding. It is unclear how the access proposed in the southeast corner of the site is to be managed as public access along the section of Snakey Lane between the two lakes heading east through to Green Lane is not currently permitted, and it is unlikely that the fishery would wish to see this area and access to the lake opened up. Contributions via S106 funding have therefore been sought to enable the Authority to enhance visitor infrastructure and woodland habitat at Rusheymead to accommodate the increased and regular use/footfall arising from the proposed development; indicative figures suggested a sum of 89k for these enhancements, as per the Authority's original submission.

Officers consider that the mitigation measures suggested by the LVRP are justified and thus consider that the impact on the LVRP can be overcome via a suitably worded conditions, along with a completed s106 Legal Agreement.

Trees, Landscape and Ecology

The submissions recognise a number of assets exist within the site in landscape and ecological terms. This includes a range of existing trees and extended natural environments which may include nesting sites for bats and birds etc, and the likelihood that other ground foraging fauna exist.

Opportunities for biodiversity enhancement evidently exist and will form a key component of the wider site, likely to include new habitats.

The broad principles established in the Preliminary Ecological Assessment and Supporting surveys, the Landscape Strategy and the Biodiversity Net Gain assessment are accepted by Officers and ECC

Ecology Team, Natural England and the Environment Agency and the Councils Tree Team, and further details can be progressed at the reserved matters stage, along with suitably worded planning conditions and a completed s106 legal agreement.

Planning Obligations

It is recognised that larger scale developments have potentially greater impacts on the wider environs beyond the site-specific matters considered above. The Infrastructure Delivery Plan establishes the broad mechanism by which such matters can be resolved through appropriate contributions to improve local services and facilities to meet the increased needs placed on them by increased demand arising from development. Additional information from key service providers will inform the local requirements.

In the event that planning permission is granted a s106 legal agreement would be required to secure the following financial contributions below.

For clarity, Officers are satisfied that the obligations below are necessary to make the development acceptable in planning terms, that they are directly related to and are fairly and reasonably related in scale and kind to the development, and so meets the tests set out in paragraph 57 of the Framework and the CIL Regulations 2010.

- 4 Affordable houses + Payment of £2.47 million
- GP Surgery - £657.30 per dwelling (79 x 657.30 = £51,926.7)
- Libraries - £6,224
- Community Facilities - £1322 per dwelling (x79) = £104,438
- Sport and Leisure Facilities - £1142.35 per dwelling = £90,245.65
- Open Space and Green Infrastructure - £7262.03 per dwelling (x79) = £573,700.37
- East of England Ambulance Service - £17,557
- Epping Forest Community Transport C392 bus service - £158,000
- Nazeing Parish Community Centre - £165,000
- LVRPA Rushmead habitat and visitor infrastructure enhancements
- Woodland habitat enhancement - £50K
- Access improvements approx. 500m type 1 path upgrade - £30k
- Visitor infrastructure improvements 4 benches - £3k
- Boundary fencing upgrade approx. 200m - £5k
- Bird & Bat boxes - £1k
- Total - £89,000
- The Provision of BNG Land & Offset contribution & Monitoring Strategy & Habitat Creation Plan to deliver Biodiversity Net Gain - £100,000
- 10 Self Build plots.
- The Provision of public open space, bowling green and children's play area including a Management Plan and Details and arrangements of the Management company will be required.
- The provisions of an Employment and Skills Plan' (ESP) seeking to drive forward an increase in construction employability levels and workforce numbers.
- EFSAC Mitigation financial contributions in relation to air pollution - £335 per dwelling (x79) = £26,465

Total Costs = £3,852,556.72

- Epping Forest DC S106 Monitoring Fee - Five percent (5%) of the cost value of the financial planning obligations included in the agreement (up to a maximum of £50,000) and/or a flat rate of £500 per each non-financial obligation.

Total EFDC Monitoring Fee = £50,000

- Essex County Council Monitoring Fees - £550 per obligation

Total ECC Monitoring Fee = £1100

Planning Balance & Conclusion

As mentioned earlier in the report, since the proposal constitutes inappropriate development in the Green Belt that causes additional harm to its openness and conflicts with its fundamental purposes, the applicant must advance VSCs to clearly outweigh this harm.

The main thrust of the VSCs advanced by the applicant is the need, principally for the extra care housing and lack of an up to date 5-year housing supply, which are assessed below.

Need for extra care housing in the Epping Forest District

The Councils Planning Policy Team have provided the following comments below;

The outline planning application proposes the erection of 52 later living apartments and 13 retirement cottages both promoted as being categorised within use class C2. The development is described as providing 'enhanced extra care'. It is stated that both 'schemes would meet a clear unmet need for (the) Specialist Accommodation proposed'.

Epping Forest District Council commissioned research in 2021 from the Housing LIN, a consultancy specialising in research on older peoples housing, into the need for specialist accommodation for older people in Epping Forest District over the Local Plan period, 2011-2033. The Housing LIN reported back their findings in the 'Assessment of need for housing and accommodation for older people in Epping Forest District to 2033' at the end of 2021. This research was further updated in 2023 to take account of the ONS 2021 census population estimates, with the Housing LIN reporting back their updated findings in July 2023.

The Housing LIN report breaks down the net need for housing for older people by different categories – Housing for Older People (Sheltered social housing & private sector retirement housing), Housing with Care (extra care housing and assisted living), residential care homes and nursing care homes. Table 15 of the report (p23) summarises this net need. It states that over the remaining Plan period to 2033, 60 more housing with care units will be needed for sale/shared ownership and 60 for rent. This equates to 6 new housing with care units per year on an annualised basis for both rental and for sale/shared ownership, or 3 just for sale/shared ownership. On a non-annualised basis, the Housing LIN table states that 15 new housing with care units are needed in 2023, 35 by 2027, and 60 by 2033.

There is therefore a need for more extra care units over the Plan period. However, this need is far from critical, and the Council believes that this need could be accommodated on already allocated sites as:

- The Council has flexibility in how some residential allocations it has can be used as there is a need for a minimum of 11,400 homes over the Local Plan period, but the allocations will deliver 12,199 as outlined in Table 2.3 on page 28 of the Local Plan.
- Policy H1 D specifically states that large scale new residential developments, which would include a number of allocated sites within the Local Plan, 'should incorporate specially designed housing/specialist accommodation for people with support needs (including for older people and housing with care).'
- The Council has a specific allocated site for 105 new specialist dwellings – CHIG R4 Policy P7 P159 Local Plan Part 1 and P92 & 93 Local Plan Part 2.

Therefore, it is the Council's view that very limited weight should be attached to the need for extra care units in the District in relation to the case made by the applicant for very special circumstances.

The applicant has submitted a report by DLP which challenges the findings of the Housing LIN report and suggests there is a much greater need for new extra care units in the District over the Plan period.

Housing LIN has issued a rebuttal to this challenge and stands by the findings of their 2023 updated report.

5 Year Housing Supply

The Councils Planning Policy Team have provided the following comments below;

The Epping Forest District Local Plan 2011–2033 was adopted on the 06 March 2023. As agreed by the Local Plan Inspector, when considered against the stepped trajectory, the latest 5-year housing land supply, including a 20% buffer, stands at 5.4 years. Therefore, the plan makes sufficient provision for housing over the plan period and takes a practical and sound approach towards housing delivery and the housing trajectory. There is adequate evidence to indicate that a 5-year supply of housing will be maintained. The plan delivers an appropriate provision for affordable housing, older people, specialist housing, Gypsy and Traveller accommodation and accessible homes to meet the identified needs of different groups.

Furthermore paragraph 75 of the 2021 NPPF states that:

‘A five-year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan, or in a subsequent annual position statement which:

- a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and
- b) incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process’.

The Epping Forest District Local Plan qualifies as a ‘recently adopted Plan’ under Footnote 40 of the 2021 NPPF which states that ‘a plan adopted between 1 November and 30 April will be considered recently adopted until 31st October in the same year’.

As such, despite the assertion of the applicant (supported by their submission documents) to the contrary, the Council can demonstrate a five-year supply of land for housing and therefore very limited weight is attributed to this matter in terms of ‘very special circumstances’, and therefore the ‘tilted balance’ as set out in paragraph 11 of the NPPF is not engaged.

The Council consider that the cumulative reasons advanced by the applicant do not amount to very special circumstances to clearly outweigh;

1. The harm by reason of inappropriate development in the Green Belt, the additional harm derived from loss of openness, and conflicting with fundamental purposes of including land within it;
2. The harm by reason of lack of sufficient affordable housing provision; and
3. The harm to the EFSAC; and
4. The harm to the Infrastructure due to the absence of a completed s106 Legal agreement.

Consequently, the ‘very special circumstances’ necessary to justify the development do not exist. The proposal would therefore be contrary to the Framework, to the policies of the adopted Local Plan, and the Habitats Regulations.

Thus, the application of policies in the Framework that protect the Green Belt and Habitats Sites provide a clear reason for refusing the development proposed (as per footnote 7). Paragraph 11 of the Framework – the presumption in favour of sustainable development is not therefore engaged.

Officers have considered the representations and these have been addressed above. although some issues will be assessed in detail at reserved matters stage, when layout, landscape, scale etc is considered.

Officers have also considered the numerous appeal decisions submitted by the applicant in support of the application, however, each case needs to be assessed on its own individual merits and for the reasons set out above, they afforded limited weight.

For the reasons set out above having regard to all the matters raised, it is recommend that that planning permission is refused.

If you wish to discuss the contents of this report item please email the case officer by 2pm on the day of the meeting at the latest, or if no direct contact can be made please email: contactplanning@eppingforestdc.gov.uk

Refusal Reason(s): (3)

- 1 The proposal constitutes inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt. In addition, the proposal would cause significant additional harm to its openness and would conflict with its fundamental purpose of keeping land permanently open. The nature of the proposal would cause a significant increase in the residential paraphernalia in and around the site which would cause additional significant harm to the character of the Green Belt. The very special circumstances advanced by the applicant do not clearly outweigh these identified harms to the Green Belt and the other harms identified. The proposal is therefore contrary to Policies SP5 & DM4 of the Epping Forest District Local Plan 2011 - 2033 (2023), and Paragraphs 137, 147 - 150 of the NPPF 2023.
- 2 The application has failed to provide sufficient provision of / contribution towards affordable housing despite such provision being financially viable, contrary to Policy H2 of the Epping Forest District Local Plan 2011 – 2033 (2023) and the NPPF 2023.
- 3 In the absence of a completed Section 106 planning obligation the proposed development fails to mitigate against the adverse impact that it will have on the local infrastructure and service, including provision of affordable housing, health capacity, sports & leisure, open space, BNG, the Epping Forest Special Area for Conservation in terms of air pollution, and local community facilities as set out in the adopted Infrastructure Delivery Plan. Failure to secure such mitigation is contrary to policies H2, DM2, DM22, D1, D2, D3 and D4 of the Epping Forest Local Plan 2011-2033 (2023), the NPPF 2023, and the requirements of the Habitats Regulations 2017.

Informatives: (2)

- 4 The Local Planning Authority has identified matters of concern within the officer's report and clearly set out the reason(s) for refusal within the decision notice. The Local Planning Authority has a formal post-application advice service. Please see the Councils website for guidance and fees for this service - <https://www.eppingforestdc.gov.uk/planning-and-building/apply-for-pre-application-advice/>. If appropriate, the Local Planning Authority is willing to provide post-application advice in respect of any future application for a revised development through this service.

5 This decision is made with reference to the following plan numbers: 17152-E-001 Rev G, 17152-P-001 Rev G, 10891L.LSP.003 Rev H, Tree Constraints Plan (Preliminary) - Sheets 1 - 3, Artist Impressions 1 - 6, and Supporting Information.