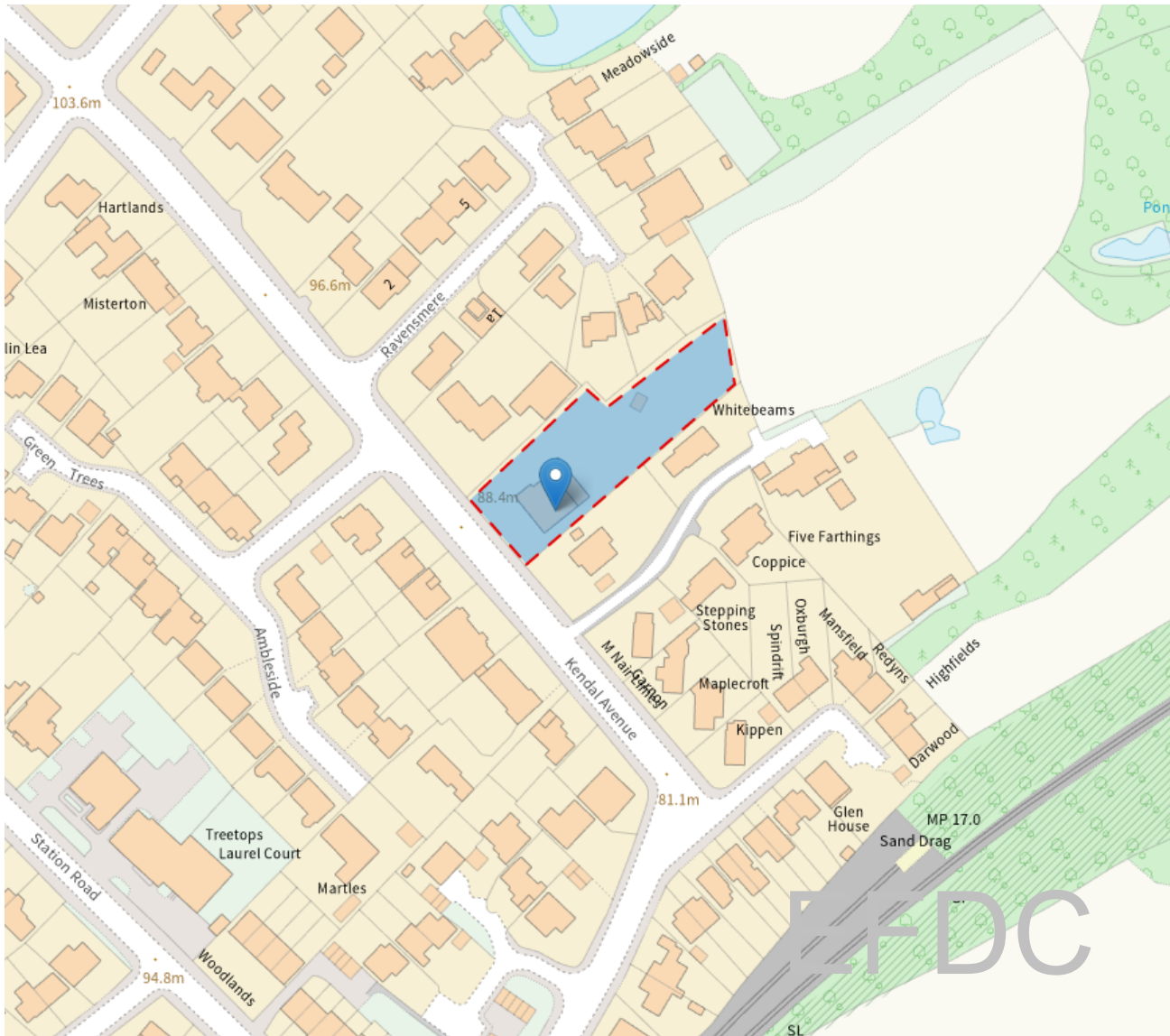




Epping Forest District Council

EFDC



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Application Number:	EPF/2122/20
Site Name:	11 Kendal Avenue Epping CM16 4PW

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OFFICER REPORT

Application Ref: EPF/2122/20
Application Type: Full planning permission
Applicant: Mr Martin Shipp
Case Officer: Cuma Ahmet
Site Address: 11 Kendal Avenue
Epping
CM16 4PW

Proposal: A new detached four bedroom house to the rear of the site, including a raised driveway and a detached garage.

Ward: Epping Hemnall
Parish: Epping
View Plans: <https://eppingforestdcpr.force.com/pr/s/planning-application/a0h8d00000Nwsd>

Recommendation: Approve with Conditions

This application is before this Committee since the recommendation is for approval contrary to an objection from a Local Council and an objection has been received from at least one non-Councillor resident material to the planning merits of the proposal. (Pursuant to The Constitution, Part Three: Scheme of Delegation from Full Council).

Description of Site

The application site comprises part of the side and rear garden curtilage currently associated with No.11 Kendal Avenue, which is located in the Hemnall ward of Epping. Given its hillside location, site levels fall from northwest to southwest. Epping Town Centre and London Underground services at Epping Station are within walking distance of the site. On-street parking controls are in operation along Kendal Avenue.

In terms of site specific planning constraints, several protected trees (TPO) are located to the front and side garden boundary with No.11A Kendal Avenue. The site is however not within a conservation area nor the subject of statutory or non-statutory listings.

The area is also predominantly residential in character, made up of a mix of dwellings and apartments of various ages and styles. The existing streetscape of Kendal Avenue has a spacious feel due to the set back of buildings, established planting and the fact that many properties are sited on large plots (including No.11 Kendal Avenue).

Description of Proposal

Planning permission is sought for a new 4-bedroom dwelling with detached garage including new vehicle access adjacent to the existing vehicle access/driveway serving no.11 Kendal Avenue.

The proposed new dwellinghouse would have an overall width of 16.5m and a maximum depth of 17m, with the main part of the house measuring c.7.4m deep. The new property would have an eaves level of 2.95m, with a maximum ridge height of 7.183m. The proposed double garage measures 6m (w) x 6m (d) and 4.9m at its highest point.

Relevant Planning History

In chronological order, with the most recent application first:

EPF/1055/19: A new detached four bedroom house to the rear of the site, including a raised driveway with a detached garage (Revised application to EPF/3165/18). Refused (20/08/19) and subsequently dismissed at Planning Appeal (PINS Ref: APP/J1535/W/19/3239214). Appeal Costs Application partially awarded (PINS Ref: APP/J1535/W/19/3239214).

EPF/3165/18: A new detached four bedroom house to the rear of the site, including a raised driveway and a detached garage. Refused 12/03/19.

EPF/1500/17: (i) First floor side extension (ii) Two single storey rear extensions (iii) Linking of house to pool building, with two bedroom annex above pool building with external stair access (iv) Extension of loft area with additional dormer to front, two dormers to rear and dormer to side (v) Single storey side extension (vi) Ground floor pitched roof to front and side with car port under (vii) new rear terrace at ground floor (viii) first floor rear balcony area (ix) Changes to fenestration (x) New front gates and railings. Approved with conditions 01/08/17.

Development Plan

Section 38(6) Planning and Compulsory Purchase Act 2004 requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan currently comprises the Epping Forest District Council Adopted Local Plan (1998) and Alterations (2006).

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

CP1 Achieving Sustainable Development Objectives
CP3 New Development
CP5 Sustainable Building
CP6 Achieving Sustainable Urban Development Patterns
CP7 Urban Form and Quality
CP9 Sustainable Transport
NC1 SPAs, SACs and SSSIs
H3A Housing Density
H4A Dwelling Mix
H9A Lifetime Homes
DBE1 Design of New Buildings
DBE2 Effect on Neighbouring Properties
DBE3 Design in Urban Areas
DBE6 Car parking in new development
DBE8 Private Amenity Space
DBE9 Loss of Amenity
LL7 Planting, Protection and Care of Trees
LL10 Adequacy of Provision for Landscape Retention
LL11 Landscape Schemes
ST1 Location of Development
ST4 Road Safety
ST6 Vehicle Parking
I1A Planning Obligations
U2A Development in Flood Risk Areas
U2B Flood Risk Assessment Zones
U3B Sustainable Drainage Systems

Epping Forest District Local Plan Submission Version (2017) (LPSV)

Although the LPSV does not currently form part of the statutory development plan for the district, on 14 December 2017 the Council resolved that the LPSV be endorsed as a material consideration to be used in the determination of planning applications.

Paragraph 48 of the NPPF provides that decision-takers may give weight to relevant policies in emerging plans according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).

The LPSV has been submitted for Independent Examination and hearing sessions were held on various dates from February 2019 to June 2019. On the 2nd August, the appointed inspector provided her interim advice to the Council covering the substantive matters raised at the hearing and the necessary actions required of the Council to enable her to address issues of soundness with the plan without prejudice to her final conclusions.

The following policies in the LPSV are considered to be of relevance to the determination of this application, with significant weight being afforded to them. They are:

SP1 Presumption in Favour of Sustainable Development
SP2 Spatial Development Strategy 2011-2033
SP7 The Natural Environment, Landscape Character and Green and Blue Infrastructure
H1 Housing Mix and Accommodation Types
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
DM9 High Quality Design
DM10 Housing Design and Quality
DM11 Waste Recycling Facilities on New Development
DM15 Managing and Reducing Flood Risk
DM16 Sustainable Drainage Systems
DM18 On Site Management of Waste Water and Water Supply
DM19 Sustainable Water Use
DM21 Local Environmental Impacts, Pollution and Land Contamination
DM22 Air Quality
D1 Delivery of Infrastructure
D3 Utilities

National Planning Policy Framework (July 2021)

The revised NPPF is a material consideration in determining planning applications. As with its predecessor, the presumption in favour of sustainable development remains at the heart of the NPPF. Paragraph 11 of the NPPF provides that for determining planning applications this means either; (a) approving development proposals that accord with an up-to-date development plan without delay; or (b) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: i. the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the

development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making, but policies within the development plan need to be considered and applied in terms of their degree of consistency with the Framework.

Summary of Representations

Number of neighbours consulted: 13.

2 letters of objection have been received to date, from Epping Society and owner/occupier of Whitebeams, Kendal Avenue. Their main concerns are summarised below:

- Contrived, cramped design of the elevated driveway is unsightly and will have negative visual impact on the area;
- Design of ramp is impractical and will have an adverse impact on the trees;
- Proposed impacts on trees must be reviewed by Council's arboricultural officer.
- Loss of amenity to neighbours has not been addressed;
- Proposals inappropriate for an area of large family homes;
- Gross overdevelopment of a back garden site;
- Proposals create an unwelcome precedent;
- Proposals are too close and as such overbearing and unneighbourly and will block natural light to the kitchen, study and bedroom at Whitebeams; and
- Surface water run-off will go into lower-level properties particularly Whitebeams; Five Farthings; Coppice and Stepping Stones.

Epping Town Council: Objects on the following grounds:

- Vehicle access is tight and awkward;
- Design and construction of driveway is unsuitable for a conservation area;
- The revised submission information only addresses the impacts on the protection of trees;
- Other previous concerns of committee have not been addressed;
- Overdevelopment and over intensification of the garden site;
- Proposed dwelling is out of character resulting in cramped development and overly dominant; and
- Site was only designed for one dwelling.

EFDC Trees and Landscaping: No objections subject to tree protection and details of hard and soft landscaping conditions. A further non-standard condition is recommended to ensure that any below ground services to be installed within the root protection area of any retained trees are agreed in writing by the Council.

EFDC Land Contamination: No objections subject to a planning condition to address any unexpected contamination that may arise.

EFDC Land Drainage: No objections subject to planning conditions requiring a flood risk assessment to address opportunities for improving existing and additional surface water run off and foul water drainage before preliminary groundworks commence.

Essex County Council Highways: No objections.

Issues and Considerations

The main issues for consideration in this case are as follows:

- Effect of proposed development on the character and appearance of the area

- Design and layout including impact on protected trees
- Impact on amenities of neighbouring residents
- Highways and parking
- Land contamination and flood risks
- Impacts on EFSAC

Effect of proposed development on the character and appearance of the area

Members will have noted that the proposed scheme is the same (if not identical) to the appealed scheme (See LPA Ref: EPF/1055/19 and PINS Ref: APP/J1535/W/19/3239214 -both attached as Appendix 1a and 1b) that was ultimately dismissed by the Planning Inspector albeit on grounds unrelated to the concerns indicated by the Council in its reasons for refusal.

The appeal decision, whilst not binding on the Council, is helpful in that it clearly addresses the issues of concern at the time which were 1.) the unacceptable design and location of the driveway and its incongruous appearance within the streetscene; and 2.) the unacceptable design, scale, bulk, massing, position and proximity of the dwelling which would be overbearing and incongruous and detrimental to the amenities of Whitebeams as well as being out of context and proportion to its site and setting.

With regard to the first concern of the Council (“its first reason for refusal”) relating to both location and design of the new access and driveway, the Planning Inspector concludes as follows:

“8....a number of driveways that serve properties behind already exist on Kendal Avenue, for example at No 18A, to access No 3A & 3B, or to approach Whitebeams and others to the east of the appeal site. Each of these have a different appearance as they respond to the specific circumstances of their sites. However, they nonetheless mean that driveways running to the rear of frontage development are not alien in the streetscape.”

“9. The driveway would be on supports, but these would not be particularly high or prominent and so would not be visually incongruous. Moreover, I see no reason why its route between the boundary and the side of the dwelling would mean it appeared cramped as it would be set well back from the road at that point and the closest part of the house is not tall.”

On this basis, subject to planning conditions, officers also consider that the proposed new access and driveway would not be a visually incongruous addition to the area and/or streetscape and would not be cramped although details of its construction, impact on protected trees and appearance will need to be carefully controlled by planning conditions. Accordingly, if Members are minded to approve this application, it is recommended that tree protection measures including agreement for the installation of underground services as well as full details of hard and soft landscaping are included.

In respect to the second concern of the Council, (“its second reason for refusal”), which relates to the impacts of the location, size and design of the proposed new dwelling on both residential amenity (Whitebeams mainly) and the wider character and appearance of the area, the Planning Inspector concludes as follows:

“12. The new house would be behind the dwelling fronting the road, but from my appreciation of the area that is not an uncommon situation and would not be discordant. Moreover, as the proposal would be 1½ storeys high and would sit in relatively spacious grounds, it would not be cramped or dominate No 11.”

“13.the proposed development would not detract unacceptably from the character and appearance of the area”.

The impacts in terms of residential amenities (including Whitebeams specifically) is considered separately in the report.

In this particular instance, officers have previously noted that there are similar developments that have already taken place in close proximity, e.g. No.3, No.19 and Whitebeams, Kendal Avenue. On this basis, officers consider that the location and design of the new dwelling within the rear garden curtilage of No.11 Kendal Avenue would not be an uncommon situation and therefore would not upset the pattern of existing development in the area. If Members are minded to approve the application, further planning conditions are recommended in respect of external facing materials so that the future development can be successfully integrated into the existing environment.

Overall, officers consider that both the principle of residential development of this garden site and the effect it would have on the character and appearance of the immediate area is acceptable.

Design and layout including impacts on protected trees

The size and layout of the internal accommodation would meet minimum national and local planning requirements and is therefore acceptable. The proposed garden would be suitably private and usable. The applicant has proposed that external facing materials for both the dwellinghouse and garage would include render painted elevations with plain clay tiled roofs and aluminium glazing. Notwithstanding the information provided, officers consider that further samples and specifications of all external materials must be agreed to ensure that an exemplary standard of finish can be achieved. Therefore, a planning conditions has been included to secure details and samples of all external facing materials.

With respect to the impact on protected trees, the Council's Arboricultural Officer has reviewed the information provided, including the recommended driveway design by the applicant's consultant structural engineer's and arboricultural advisors and does not formally object in principle to the development. However, the Council's officer has recommended planning conditions (as discussed in the previous section) to ensure that the long-term health of the protected trees during both construction and occupation phases of development, can ensure that any short or long term impacts/harm are minimised.

Overall the proposed design quality and appearance and its impact on the existing streetscene is acceptable subject to conditions discussed and therefore would comply with the requirements of policies DBE1, DBE4 and DBE5 of the Adopted Local Plan and Alterations (2006) and policies DM9 and DM10 of the emerging SVLP (2017).

Impact on amenities of neighbouring residents

The new dwelling is sited to the northwest of the nearest neighbouring property at Whitebeams. As noted above, the Planning Inspector considered the impact of the proposed development on the living conditions of neighbouring properties and particularly at Whitebeams.

With regard to the dwellings to the north (Nos.13, 14 and 15 Ravensmere), the proposed development is at a relatively lower level and combined with the separation and its 1-1.5 storey height would not cause harm to the amenities of these residents.

Whitebeams currently sits at a lower level to the application site and its rear elevation is approximately 3m from the boundary. The Planning Inspectors conclusion regarding potential harm to the occupier/owner of Whitebeams in relation to its outlook, daylight and privacy is as follows:

"15. given the closeness to the boundary, the effect of the height difference, the presence of the 2m solid fence, and the fact that they would be adjacent to the hipped roof garage, I consider the development would affect neither the outlook from nor daylight to those windows. There are also windows on the side elevation of Whitebeams facing north-eastwards, but the new dwelling would only project a limited distance beyond this elevation, and, once the height difference, the fence and the separation are taken into account, there would be no harm to the living conditions provided by these windows."

The Planning Inspector also indicates that the impacts on the habitable room at first floor of the rear elevation of Whitebeams would not be impacted in terms of its outlook and daylight. Officers agree with this assessment.

Overall, officers have reviewed the circumstances onsite and agree with the conclusions reached by the Planning Inspector. Notwithstanding however, officers are mindful of the potential harm to residential amenities in the event that a future owner/occupier exercises their permitted development rights, particularly in respect to introducing new roof extensions. Therefore, officers have recommended a planning condition that would restrict the ability to add roof extensions without the prior permission of the LPA including a further restriction on addition of further/new windows in any of the elevations.

With regard to the potential for noise and disturbance from construction-related activities, officers have also recommended a planning condition to restrict the hours of operations.

Overall, the proposal will not have an adverse impact on the neighbouring living conditions and are therefore considered acceptable and would comply with policy DBE9 of the Adopted Local Plan and Alterations (2006) and policy DM9 of the emerging SVLP (2017).

Highways and parking

The design and position of the new access has not been objected to by Essex County Highways in respect to the safety and operation of the adjacent highway. Members will note that the proposed access and driveway is for the dedicated use of one additional dwelling and therefore in the opinion of officers would not lead to a situation where safety and function would be compromised. Adequate parking will be provided within the site in accordance with Essex Parking Standards (2014).

Accordingly, the impact of the proposals on the safety and operation of the highway including parking provision are acceptable and therefore comply with policies ST4 and ST6 of the Adopted Local Plan and Alterations (2006) and policy T 1 of the emerging SVLP (2017).

Land contamination and flood risks

With regard to contamination risk, the Council's Environmental Health specialist has advised that there is no evidence of historical uses that would have caused underlying pollution that is potentially harmful to sensitive uses such as residential. However, as a precaution it has recommended that a planning condition is included to deal with any unexpected contamination that arises at the point of implementation. Officers have included this condition.

The application site does not fall within a Council flood risk assessment zone or any Environment Agency flood zones. However, officers have noted the advice of the Council's drainage team which indicates that a development of this size would generate additional surface water run-off and that every opportunity should be taken to improve the situation. Therefore it is recommending that a Flood Risk Assessment is secured by planning condition including further details of how foul drainage and sustainable drainage can be incorporated.

Overall, the impact of the proposals in consideration of contamination and flooding risks are acceptable and therefore would comply with policies U2B and U3B of the Adopted Local Plan and Alterations (2006) and policies DM15, DM16 and DM21 of the Submission Version Local Plan (2017).

Impacts on Epping Forest Special Area of Conservation (EFSAC)

The Planning Inspector dismissed the previous appeal solely for the reason that the appellant was unable to demonstrate that the project level and cumulative harm caused to the integrity of the Epping Forest SAC could be mitigated. However, as Members will now note, the Council's agreed strategies to

deal with both recreation and atmospheric pollution impacts of new developments allow for officers to address the relevant issues with more certainty.

Screening Assessment

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

a) The site lies within the Zone of Influence as identified in the updated Approach to Managing Recreational Pressure on the Epping Forest Special Area of Conservation' (adopted by the Council on 11 April 2022) as a material consideration in the determination of planning applications. Consequently the development would result in a likely significant effect on the integrity of the EFSAC as a result of recreational pressures.

b) The development has the potential to result in a net increase in traffic using roads through the EFSAC.

Consequently, the application proposal would result in a likely significant effect on the integrity of the EFSAC in relation to both the recreational pressures and atmospheric pollution Pathways of Impact.

Having undertaken this first stage screening assessment and reached this conclusion there is a requirement to undertake an 'Appropriate Assessment' of the application proposal in relation to both the recreational pressures and atmospheric pollution Pathways of Impact.

Appropriate Assessment

Recreational Pressures

The application proposal has the potential to increase recreational pressures on the EFSAC. However, the Council, through the development of the Interim Approach, has provided a strategic, district wide approach to mitigating recreational pressures on the EFSAC through the securing of financial contributions for access management schemes and monitoring proposals. Consequently, this application can be assessed within the context of the Interim Approach. In doing so the Council has sought to take a proportionate approach to the securing of such financial contributions, and currently only seeks these from proposals for new homes within 3km of the EFSAC, as is the case with this planning application. The applicant has agreed to make a financial contribution in accordance with the Adopted Approach. Consequently, the Council is satisfied that the application proposal would not have an adverse impact on the integrity of the EFSAC subject to the satisfactory completion of a Section 106 planning obligation.

Atmospheric Pollution

The application proposal has the potential to result in a net increase in traffic using roads through the EFSAC. However, the Council, through the development 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. Consequently, this application can be assessed within the context of the IAPMS. The applicant has agreed to make a financial contribution in accordance with the IAPMS. In addition, the application will be subject to planning conditions to secure measures as identified in the IAPMS. Consequently, the Council is satisfied that the application proposal would not have an adverse impact on the integrity of the EFSAC subject to the satisfactory completion of a Section 106 planning obligation and the imposition of relevant planning conditions.

Overall, officers are satisfied that, subject to the satisfactory completion of a Section 106 planning obligation and the imposition of relevant planning conditions such as ensuring electric vehicle charging infrastructure and enabling home working, the application proposals would not have an adverse effect on the integrity of the EFSAC. It therefore complies with Policy NC1 of the Adopted Local Plan and Alterations (2006) and Policy DM2 and DM22 of the emerging SVLP (2017).

Conclusion

The proposals would provide an additional residential dwellinghouse in a sustainable location and will positively contribute to local and districtwide housing needs. The proposed scale and design complements the character and form of existing housing in the area as well as ensuring that the living conditions of existing neighbours are not harmed. There are also no flooding or contamination concerns in principle that would restrict the development from coming forward. Accordingly, it is recommended that planning permission is granted subject to planning conditions and a Section 106 Agreement to secure recreation/visitor and air pollution mitigations in relation to the EFSAC.

For the reasons outlined above this proposal complies with the relevant policies under both the Epping Forest District Council Adopted Local Plan (1998) and Alterations (2006), the Epping Forest Local Plan Submission Version (2017) as well as guidance contained in the NPPF.

Should you wish to discuss the contents of this report item please use the following contact details by 2pm on the day of the meeting at the latest:

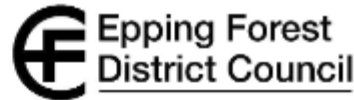
Planning Application Case Officer: Cuma Ahmet

Or if no direct contact can be made please email:
contactplanning@eppingforestdc.gov.uk

APPENDIX 1a

Our Ref: EPF/1055/19

TOWN AND COUNTRY PLANNING ACT 1990
Town and Country Planning General Development Orders
PLANNING DECISION NOTICE



Planning Services Directorate
Civic Offices,
323 High Street,
Epping,
Essex CM16 4BZ

An electronic version of this
decision notice is available
on our website:
www.eppingforestdc.gov.uk/iplan

Case Officer was: Ishita Sheth
Direct Line: 01992564049
Email: isheth@eppingforestdc.gov.uk

To: M P Architects LLP
Great Basons
Basons Lane
Ongar
Essex
CM5 9AR

Proposal: A new detached four bedroom house to the rear of the site, including a raised driveway with a detached garage (Revised application to EPF/3165/18)

Location: 11 Kendal Avenue, Epping, Essex, CM16 4PW

In pursuance of the powers exercised by the Local Planning Authority this Council do hereby give notice of their decision to **REFUSE PERMISSION** for the development described above, for the reasons listed below.

Signed

A handwritten signature in black ink, appearing to read 'N. Richardson'.

N. Richardson
Planning Services Director.

Date: 07 August 2019

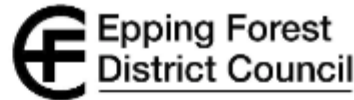
Reasons for Refusal

1

The proposed driveway access, by reason of its design and location, would appear incongruous within the street scene, given its artificially raised position and cramped within the site, given its relationship with the protected trees and existing fencing and garages. It would therefore be contrary to policy DBE1 of the Adopted Local Plan and Alterations and policy DM9 of the Local Plan Submission Version 2017.

Our Ref: EPF/1055/19

TOWN AND COUNTRY PLANNING ACT 1990
Town and Country Planning General Development Orders
PLANNING DECISION NOTICE



Planning Services Directorate
Civic Offices,
323 High Street,
Epping,
Essex CM16 4BZ

An electronic version of this
decision notice is available
on our website:
www.eppingforestdc.gov.uk/iplan

Case Officer was: Ishita Sheth
Direct Line: 01992564049
Email: isheth@eppingforestdc.gov.uk

To: M P Architects LLP
Great Basons
Basons Lane
Ongar
Essex
CM5 9AR

Proposal: A new detached four bedroom house to the rear of the site, including a raised driveway with a detached garage (Revised application to EPF/3165/18)

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N. Richardson
Planning Services Director.

Date: 07 August 2019

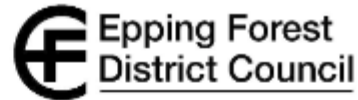
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Our Ref: EPF/1055/19

TOWN AND COUNTRY PLANNING ACT 1990
Town and Country Planning General Development Orders
PLANNING DECISION NOTICE



- 2 The proposed dwelling, by reason of its design, scale, bulk, massing, position and proximity, would be an overbearing incongruous development, detrimental to the amenities of Whitebeams and out of context and proportion to its site and setting. It would therefore be contrary to policy DBE1 of the Adopted Local Plan and Alterations and policy DM9 of the Local Plan Submission Version 2017.

Informatives:

This decision is made with reference to plan numbers: 1846/03, 1846/08, 1846/11 A, 1846/100 B, 1846/101 E, 1846/102 B, 17118/P001 F.

NOTES RELATING TO PLANNING APPLICATIONS TOWN AND COUNTRY PLANNING ACT 1990

1. If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission or approval for the proposed development, he may appeal to the Secretary of State for Communities and Local Government in accordance with Section 78 of the Town and Country Planning Act 1990. If an Enforcement Notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against the Local Planning Authority's decision on your application, then you must do so within 28 days of the date of the Enforcement Notice or within 6 months of the date of this notice, whichever period expires earlier. In all other cases, if you want to appeal then you must do so within 6 months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. Tel: 0303 444 5000, or online at the following website: www.planningportal.gov.uk/pcs) The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the Local Planning Authority or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of any development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him. There is no time limit for appealing against a decision relating to a Certificate of Lawful Use or Development.
2. If permission to develop land is refused, or granted subject to conditions, whether by the Local Planning Authority or by the Secretary of State for Communities and Local Government and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council of the County District in which the land is situated a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
3. In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of an application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. [Further details are on GOV.UK.](#)



Appeal Decision

Site visit made on 15 January 2020

by Mr J P Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2020

Appeal Ref: APP/J1535/W/19/3239214

11 Kendal Avenue, Epping CM16 4PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Martin Shipp against the decision of Epping Forest District Council.
 - The application Ref EPF/1055/19, dated 23 April 2019, was refused by notice dated 7 August 2019.
 - The development proposed is a new detached 4-bedroomed house to the rear of the site, including a raised driveway and a detached garage.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Shipp against the Council. That application is the subject of a separate decision.

Main Issues

3. The main issues in this case are
 - a) the effect of the development on the character and appearance of the area;
 - b) the impact on the living conditions of neighbouring residents and
 - c) whether the development would be likely to affect the integrity of the Epping Forest Special Area of Conservation (the SAC).

Policy

4. I consider there is a reasonable likelihood that Policy DM9(H) in the emerging *Epping Forest District Local Plan* will be adopted in the form similar to that before me and so I afford it significant weight. However, the policies from the emerging Local Plan concerning issue (c) relate to some of the Actions suggested by the Inspector examining that plan and so could well change in the future in response to those Actions. The weight I have given them is therefore limited.

Reasons

Character and appearance

5. Kendal Avenue is a mature residential road that comprises a mix of dwellings and apartments of various ages and styles. The streetscape has quite a spacious feel

due to the set back of buildings, the established planting, and the fact that many properties, including No 11, sit in large plots.

6. The proposed house would be behind the existing dwelling, and to gain access a driveway would be formed along the western boundary. In order to safeguard the protected trees in that area and to account for the varied land levels, this driveway would be on supports.
7. The drive would not be apparent when coming from the north-west as it would be concealed by the solid fence separating the front garden of No 11 from the property next door.
8. It could be seen though when in front of No 11 and when coming from the south-east. However, a number of driveways that serve properties behind already exist on Kendal Avenue, for example at No 18A, to access No 3A & 3B, or to approach Whitebeams and others to the east of the appeal site. Each of these have a different appearance as they respond to the specific circumstances of their sites. However, they nonetheless mean that driveways running to the rear of frontage development are not alien in the streetscape.
9. The driveway would be on supports, but these would not be particularly high or prominent and so would not be visually incongruous. Moreover, I see no reason why its route between the boundary and the side of the dwelling would mean it appeared cramped as it would be set well back from the road at that point and the closest part of the house is not tall.
10. On the evidence before me I consider that, with the use of supports and suitable conditions requiring the agreement of details, the driveway would not damage the protected trees on this side of the appellant's front garden. In particular I note that the crowns of the trees to be retained appear high enough to allow traffic to pass underneath. It was said that service runs to the proposal could harm the roots, but again this could be controlled, and other routes, such as along the south-eastern boundary, may be possible.
11. A further concern was about how construction traffic would access the site of the proposed dwelling. That in itself is not a matter that affects the planning merits of this appeal. Clearly though if the building cannot be physically built then any permission would, in due course, lapse.
12. The new house would be behind the dwelling fronting the road, but from my appreciation of the area that is not an uncommon situation and would not be discordant. Moreover, as the proposal would be 1½ storeys high and would sit in relatively spacious grounds, it would not be cramped or dominate No 11.
13. Accordingly, I conclude that the development would not detract unacceptably from the character and appearance of the area, and so in this regard would not conflict with Policies CP2 and DBE1 in the *Epping Forest District Local Plan* (as altered in 2007) that seek to ensure development respects its setting and protects the quality of the built environment.

Living conditions

14. The new house would be to the north-west of Whitebeams, a 2-storey dwelling that sits at a slightly lower level with its rear elevation some 2-3m from the boundary.
15. At ground floor level Whitebeams appears to have 2 windows to habitable rooms looking towards the development. However, given the closeness to the boundary, the effect of the height difference, the presence of the 2m solid fence, and the fact

that they would be adjacent to the hipped roof garage, I consider the development would affect neither the outlook from nor daylight to those windows. There are also windows on the side elevation of Whitebeams facing north-eastwards, but the new dwelling would only project a limited distance beyond this elevation, and, once the height difference, the fence and the separation are taken into account, there would be no harm to the living conditions provided by these windows.

16. At first floor level there appears to be a further window to a habitable room on the rear elevation. That would look over the roof of the garage, and so any effect on outlook and day light would be extremely limited.
17. No windows are on the part of the proposal that is closest to Whitebeams and so those neighbours would suffer no loss of privacy.
18. The development would also be set at a lower level than the dwellings to the north. Given this, and mindful of the separation and its 1½ storey height, the proposal would not unreasonably affect the living conditions of those residents.
19. Accordingly, the development would not cause unacceptable harm to the living conditions of neighbouring residents. Whilst the Council has cited Local plan Policy DBE1 in its reason for refusal that does not appear to be relevant to this issue. However, I consider there would be no conflict with Policy DM9(H) of the emerging Local Plan, which seeks to protect neighbours' living conditions, or with the Framework.

The likely effect on the integrity of the SAC

20. The need to protect and safeguard Special Areas of Conservation arises not from the development plan framework but from national and European legislation. Any development proposals are therefore considered in the light of the *Conservation of Habitats and Species Regulations 2017* (the Regulations), with the aim of maintaining or restoring, at favourable conservation status, the natural habitats and species. Before deciding to give permission for a plan or project that is likely to have a significant effect on a European site, the decision-maker (competent authority) must make an appropriate assessment of the implications for the site in view of the site's conservation objectives. The competent authority can then only permit the plan or project after having ascertained there would be no adverse effect on the integrity of the site.
21. This SAC is one of the last areas of large-scale woodland pasture in the south of the country. Its designation is because of the presence of 3 qualifying habitats (Atlantic beech forest, European dry heaths and Northern Atlantic wet heaths), as well as one species (the stag beetle). The conservation objectives of the SAC are to ensure the integrity of the site is maintained or restored as appropriate and to ensure it contributes to achieving favourable conservation status of its qualifying features.
22. On the evidence before me, there are 2 ways in which residential development could impact the SAC. The first of these is through disturbance and damage from increased recreational activity by the visitors. The SAC is a popular place to walk and exercise, yet this can result in a pressure that causes harm to habitat and species through trampling, erosion, dog waste, general plant destruction and so on.
23. The second pathway that could result in effects on the SAC is from atmospheric pollution arising from increased car traffic, especially through the SAC and at the road junctions within the SAC. The qualifying features of the SAC are sensitive to atmospheric change as certain pollutants could accelerate or damage plant growth.

24. Surveys have shown that about half the visits to the SAC are made by those living within 3km of the boundary, and this would include the residents of the appeal site. Similarly, the closeness to the SAC and the importance of its roads in relation to Epping mean there is a strong probability that the traffic associated with this scheme would use them and so contribute to the atmospheric pollution. The development is therefore likely to contribute to further damage to the SAC.
25. In assessing these impacts, I appreciate that only one extra dwelling is proposed. However, under the Regulations the impact must be considered both alone and in combination with other plans and projects. Therefore, whilst the impact of this one house, by itself, may be slight, when taken with other similar proposals across the District there could be a cumulative harm to the integrity of the SAC.
26. No mitigation to address this has been put forward. Whilst a legal agreement has been suggested by the appellant one has not been forthcoming and in any event it is unclear as to how that would resolve the impact on each of these pathways. I have also considered a 'Grampian' condition to require development to commence only after this matter has been addressed. However, the need for off-site payments and an unspecified timescale to mitigate the harm through atmospheric pollution would render this course inappropriate.
27. I therefore conclude that, when considered in combination with other plans and projects, the development would adversely affect the integrity of the SAC and in the absence of mitigation I cannot conclude the proposal would not be likely to affect the integrity of the SAC. It would therefore be in conflict with the Regulations and the Framework.

Other matters

28. There may be a shortfall in housing land supply in the District. However, as the application of policies in the Framework provide a clear reason for refusing the development then the balance in favour of granting planning permission found in paragraph 11(d) of the Framework is not engaged. Moreover, although near to Epping town centre, under paragraph 177 of the Framework the presumption in favour of sustainable development does not apply.

Conclusions

29. Whilst I consider the effect on the character and appearance of the area and the neighbours' living conditions would not be unacceptable, the failure to find it would not be likely to affect the integrity of the SAC means I conclude the appeal should be dismissed.

Jeremy Sargent

INSPECTOR

Conditions: (16)

- 1 The development hereby permitted shall begin not later than three years from the date of this decision.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby permitted shall be carried out and retained strictly in accordance with the following approved plans:

100/REV B
101/REV F
102/REV C
17118/P001/REV G
17118/P002

Reason: For the avoidance of doubt and to ensure the proposal is built in accordance with the approved plans.

- 3 Samples of the types and details of colours of all the external finishes shall be submitted for approval in writing by the Local Planning Authority prior to the commencement of the development, and the development shall be implemented in accordance with such approved detail.

Reason: To ensure the proposed works preserve the special architectural and historic interest of the building, in accordance with policy DBE1 and DBE3 of the adopted Local Plan and Alterations 1998 & 2006, policy DM9 and DM10 of the Local Plan Submission Version 2017, and the NPPF.

- 4 No preliminary ground works shall take place until a flood risk assessment and management and maintenance plan shall be submitted to and approved by the Local Planning Authority prior to commencement of development. The assessment shall include calculations of increased run-off and associated volume of storm detention using WinDes or other similar best practice tools. The approved measures shall be carried out prior to the substantial completion of the development and shall be adequately maintained in accordance with the management and maintenance plan.

Reason: The development is of a size where it is likely to result in increased surface water run-off, in accordance with policy U2B of the adopted Local Plan and Alterations 1998 & 2006, and policy T1 of the Local Plan Submission Version 2017, and the NPPF.

- 5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any other order revoking and re-enacting that

order) no development permitted by virtue of Class B of Part 1 to Schedule 2 shall be undertaken, without the prior written agreement of the Local Planning Authority.

Reason: The ensure further consideration is given with regards to the effect on the character and appearance of the area and living conditions on adjoining properties, in accordance with policy DBE9 of the adopted Local Plan 1998 & 2006, policies DM9 and DM10 of the Local Plan Submission Version 2017, and the NPPF.

- 6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows other than those expressly authorised by this permission shall be constructed on any elevation, without the prior written agreement of the Local Planning Authority.

Reason: The ensure further consideration is given with regards to the effect on the living conditions on adjoining properties, in accordance with policy DBE9 of the adopted Local Plan 1998 & 2006, policies DM9 and DM10 of the Local Plan Submission Version 2017, and the NPPF.

- 7 If any tree, shrub or hedge shown to be retained in the submitted Arboricultural reports is removed, uprooted or destroyed, dies, or becomes severely damaged or diseased during development activities or within 3 years of the completion of the development, another tree, shrub or hedge of the same size and species shall be planted within 3 months at the same place. If within a period of five years from the date of planting any replacement tree, shrub or hedge is removed, uprooted or destroyed, or dies or becomes seriously damaged or defective another tree, shrub or hedge of the same species and size as that originally planted shall, within 3 months, be planted at the same place.

Reason: To comply with the duties indicated in Section 197 of the Town and Country Planning Act 1990 as well as to safeguard the amenity of the existing trees, shrubs or hedges and to ensure a satisfactory appearance to the development, in accordance with policies LL10 and LL11 of the adopted Local Plan and Alterations 1998 & 2006, and policies DM3 and DM5 of the Local Plan Submission Version 2017, and the NPPF.

- 8 Prior to any above ground works, full details of both hard and soft landscape works (including tree planting) and implementation programme (linked to the development schedule) shall be submitted to and approved in writing by the Local Planning Authority. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of the building or completion of the development, whichever is the sooner. The hard landscaping details shall include, as appropriate, and in addition to details of existing features to be retained: proposed finished levels or contours; means of enclosure; car parking layouts; other minor artefacts and structures, including signs and lighting and functional services above and below ground. The details of soft landscape works shall include plans for planting or establishment by any means and full written specifications and schedules of plants, including species, plant sizes and proposed numbers /densities where appropriate. If within a period of five years from the date of the planting or establishment of any tree, or shrub or plant, that tree, shrub, or plant or any replacement is removed, uprooted or destroyed or dies or becomes seriously damaged or defective another

tree or shrub, or plant of the same species and size as that originally planted shall be planted at the same place.

Reason: To comply with the duties indicated in Section 197 of the Town and Country Planning Act 1990 so as to ensure that the details of the development of the landscaping are complementary, and to ensure a satisfactory appearance to the development, in accordance with policies CP2 and LL11 of the adopted Local Plan and Alterations 1998 & 2006, policies DM3 and DM5 of the Local Plan Submission Version 2017, and the NPPF.

- 9 No development, including works of demolition or site clearance, shall take place until a Tree Protection Plan, Arboricultural Method Statement and site monitoring schedule in accordance with BS:5837:2012 (Trees in relation to design, demolition and construction - Recommendations) has been submitted to the Local Planning Authority and approved in writing. The development shall be carried out only in accordance with the approved documents.

Reason: To comply with the duties indicated in Section 197 of the Town and Country Planning Act 1990, and to enable full and proper consideration be given to the impact of the proposed development on existing trees / hedges, so as to safeguard and enhance the visual amenities of the area and to ensure a satisfactory appearance to the development in accordance with policy LL10 of the adopted Local Plan and Alterations 1998 & 2006, policies DM3 and DM5 of the Local Plan Submission Version 2017, and the NPPF.

- 10 No services shall be installed within the root protection area of any retained trees on or adjacent to the site unless the Local Planning Authority gives its prior written approval.

Reason: To comply with the duties indicated in Section 197 of the Town & Country Planning Act 1990 so as to ensure that the amenity value of tree(s) are safeguarded in accordance with the guidance contained within the National Planning Policy Framework, policy LL10 of the adopted Local Plan and Alterations, and policies DM 3 and DM 5 of the Epping Forest District Council Local Plan Submission Version 2017.”

- 11 Prior to first occupation of the development, measures shall be incorporated within the development to ensure a water efficiency standard of 110 litres (or less) per person per day.

Reason: The District is classed as being in an area of severe water stress and the reduction of water use is therefore required in the interests of sustainability and in accordance with policy CP2 of the adopted Local Plan and Alterations 1998 & 2006, policy DM19 of the Local Plan Submission Version 2017, and the NPPF.

- 12 Prior to any above groundworks, details and location of the parking spaces (including garages) equipped with active Electric Vehicle Charging Point(s) shall have been submitted to and approved in writing with the Local Planning Authority (LPA), unless otherwise agreed in writing with the LPA. The installation of EVCP shall be completed in accordance with the approved details and made operational prior to first occupation. The details must include details as follows:

- Location of active charging infrastructure; and
- Specification of charging equipment to be used.

Reason: To ensure the development contributes to supporting the Council towards a low carbon future and the wider aims and objectives for reducing car-led air pollution in regard to the EFSAC, in accordance with policy CP1 of the adopted Local Plan 1998 & 2006, Policies T1 & DM22 of the Local Plan Submission Version 2017, and the NPPF.

- 13 No deliveries, external running of plant and equipment or demolition and construction works, other than internal works not audible outside the site boundary, shall take place on the site other than between the hours of 07:30 to 18:00 on Monday to Friday and 08:00 to 13:00 on Saturday and not at all on Sundays, Public or Bank Holidays.

Reason: To ensure that the proposed construction work does not cause undue nuisance and disturbance to neighbouring properties at unreasonable hours and in accordance with policies RP5A and DBE9 of the adopted Local Plan 1998 & 2006, and policies DM9 and DM 21 of the Local Plan Submission Version 2017, and the NPPF.

- 14 Wheel washing or other cleaning facilities for vehicles leaving the site during construction works shall be installed and utilised to clean vehicles immediately before leaving the site. Any mud or other material deposited on nearby roads as a result of the development shall be removed.

Reason: To avoid the deposit of material on the public highway in the interests of highway safety, in accordance with policy ST4 of the adopted Local Plan and Alterations 1998 & 2006, policy T1 of the Local Plan Submission Version 2017, and the NPPF.

- 15 The proposed use of this site has been identified as being particularly vulnerable if land contamination is present, despite no specific former potentially contaminating uses having been identified for this site. Should any discoloured or odorous soils be encountered during development works or should any hazardous materials or significant quantities of non-soil forming materials be found, then all development works should be stopped and an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced) shall be undertaken. If any contamination is found then the site shall be remediated. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.

Reason: It is the responsibility of the developer to ensure the safe development of the site and to carry out any appropriate land contamination investigation and remediation works. The condition is to ensure the risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors, in accordance with policy RP4 of the adopted Local Plan and Alterations, and policy DM21 of the Local Plan Submission Version 2017, and the NPPF.

- 16 Prior to any above groundworks, a strategy to facilitate super-fast broadband for future occupants of the site shall have been submitted to and approved in writing by the Local Planning

Authority (LPA). The strategy shall seek to ensure that upon occupation of a dwelling, either a landline or ducting to facilitate the provision of a broadband service to that dwelling from a site-wide network, is in place and provided as part of the initial highway works and in the construction of frontage thresholds to dwellings that abut the highway, unless evidence is put forward and agreed in writing by the LPA that technological advances for the provision of a broadband service for the majority of potential customers will no longer necessitate below ground infrastructure. The development of the site shall be carried out in accordance with the approved strategy.

Reason: To ensure the development contributes to supporting improved digital connectivity throughout the District and supports the wider aims and objectives for reducing car-led air pollution, improving the health and wellbeing of residents and visitors including the EFSAC, in accordance with policy CP1 of the adopted Local Plan 1998 & 2006, Policies D5, DM2, DM9, DM10 & DM22 of the Local Plan Submission Version 2017, and the NPPF.

Informatives: (4)

- 17 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
- 18 All work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to: SMO3 - Essex Highways, Unit 36, Childerditch Industrial Park, Childerditch Hall Drive, Brentwood, Essex, CM13 3HD.
- 19 Note: Under the Land Drainage Byelaws of this Council, Land Drainage Consent is also required before any work commences. Please contact the Land Drainage team on 01992 564000 for application forms. The grant of planning permission does not imply the automatic grant of Land Drainage Consent.
- 20 This permission is also subject to conditions and/or covenants of an accompanying Section 106 Agreement.