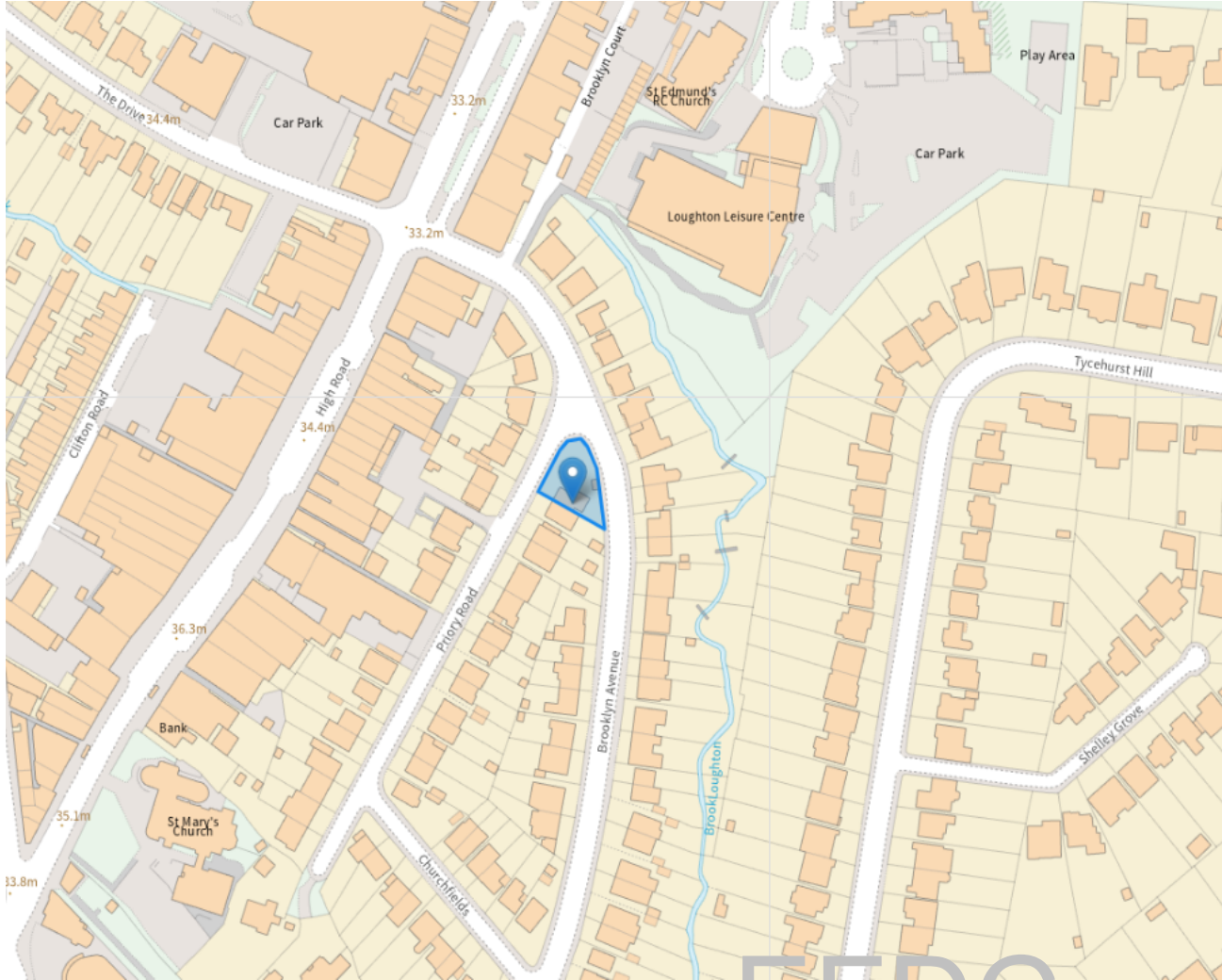




# EFDC



# EFDC

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Application Number:	EPF/0144/23
Site Name:	7 Brooklyn Avenue Loughton IG10 1BL

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# OFFICER REPORT

**Application Ref:** EPF/0144/23  
**Application Type:** Full planning permission  
**Applicant:** Mr and Mrs Nooitgedacht  
**Case Officer:** Muhammad Rahman  
**Site Address:** 7, Brooklyn Avenue, Loughton, IG10 1BL  
**Proposal:** Proposed detached 3 bedroom dwelling in an existing side garden (Re-submission of EPF/1306/21 dismissed on Appeal on EFSAC grounds only).  
**Ward:** Loughton St. Mary's  
**Parish:** Loughton  
**View Plans:** <https://eppingforestdcpr.force.com/pr/s/planning-application/a0h8d000001VDAC>  
**Recommendation:** Approve with Conditions (Subject to s106 Legal Agreement)

*This application is before this Committee since the recommendation is for approval contrary to an objection from a Local Council and at least one non-councillor resident, on planning grounds material to the application (Pursuant to The Constitution, Part 3: Scheme of Delegation to Officers from Full Council).*

## Site and Surroundings

The site comprises of a semi-detached house situated on the corner of Priory Road and Brooklyn Avenue. It is not listed nor in a conservation area or a flood zone. There are no protected trees on site. The site also lies some 550m away from the Epping Forest.

## Proposal

The proposal is for a detached 3-bedroom dwelling in an existing side garden.

This is an identical scheme to EPF/1306/21 which was before Members at the 6th October 2021 meeting.

## Relevant Planning History

EF\2020\ENQ\01044 - Proposed Infill detached dwelling.

EPF/1306/21 - Proposed detached 3-bedroom dwelling in an existing side garden – Refused & Dismissed on EFSAC grounds only (Please refer to Appendix 1 for Appeal Decision).

## 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  
H1 Housing Mix and Accommodation Types  
T1 Sustainable Transport Choices  
DM2 Epping Forest SAC and the Lee Valley SPA  
DM3 Landscape Character, Ancient Landscapes and Geodiversity  
DM5 Green and Blue Infrastructure  
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  
DM17 Protecting and Enhancing Watercourses and Flood Defences  
DM18 On Site Management of Wastewater and Water Supply  
DM19 Sustainable Water Use  
DM21 Local Environmental Impacts, Pollution and Land Contamination  
DM22 Air Quality

Epping Forest Local Plan (1998) and Alterations (2006):

On the 06 March 2023 at an Extraordinary Council meeting, it was agreed that 'on adoption of the Epping Forest District Local Plan 2011–2033 and following the end of the six-week period for legal challenge that the following Development Plan Documents and associated Proposals Maps are revoked and should not be used for decision-making:

- a) Those policies of the Epping Forest District Local Plan adopted January 1998 that had not previously been replaced; and
- b) Epping Forest District Local Plan Alterations adopted July 2006'.

The relevant policies from these documents are listed below:

CP2 Protecting the Quality of the Rural and Built Environment  
CP3 New Development  
CP6 Achieving Sustainable Urban Development Patterns  
CP7 Urban Form and Quality  
H2A Previously Developed Land  
H4A Dwelling Mix  
U3B Sustainable Drainage Systems  
DBE1 Design of New Buildings  
DBE8 Private Amenity Space  
DBE9 Loss of Amenity  
LL10 Adequacy of Provision for Landscape Retention  
LL11 Landscaping Schemes  
ST4 Road Safety  
ST6 Vehicle Parking

National Planning Policy Framework 2021 (Framework)

The Framework is a material consideration in determining planning applications. The following paragraphs are considered to be of relevance to this application:

Paragraphs 110 - 112  
Paragraph 119

Paragraphs 126, 130  
Paragraph 180

### Summary of Representations

Number of neighbours Consulted: 14. 8 response(s) received.  
Site notice posted: Yes.

MULTIPLE OBJECTIONS RECEIVED – Summarised as;

- Out of character/Bulky/Overdevelopment;
- Garden Grabbing;
- Lack of amenity space;
- Loss of privacy/overlooking;
- Parking/Traffic Highways safety concerns;
- Loss of light;
- Flooding concerns;
- Trees and landscaping; and
- Impact on EFSAC.

LOUGHTON TOWN COUNCIL – The Committee NOTED the contents of six letters of objection.

A neighbour registered to speak against this item sent apologies following their spouse being taken unwell. Written comments were sent for consideration by the Committee.

The agent for the applicant of this proposal addressed the meeting.

The Committee OBJECTED to this application stating the proposal was the same as the previous application considered, under EPF/1306/21.

The Committee supported the refusal reasons of the local planning authority and reiterated its previous comments, which were (Min no PL7.1):

“The Committee OBJECTED to this application on the grounds that it was garden grabbing and an overdevelopment of the site, leaving both properties with insufficient amenity space. Members commented that this corner added to the visual amenity of the street. The Committee opposes any loss of trees and noted that the proposal would result in the loss of four trees on the site.”

Members disputed the findings of the Inspector, regarding the parking stress in this road, and noted that his visit coincided with parking restrictions being in place during that time.

### Planning Considerations

The main issues for consideration in this case are whether the previous reasons for refusal have been overcome. Members refused the previous application on the following grounds;

1. The Council cannot be certain beyond reasonable scientific doubt that the proposed development either alone or in combination with other developments within the district will not adversely affect the integrity of the Epping Forest Special Area for Conservation and there are no alternative solutions or imperative reasons of overriding public interest why the proposed development should be permitted. Also, in the absence of an appropriate legal agreement to mitigate such adverse impacts, the proposed development is therefore contrary to Policies DM2 & DM22 of the Local Plan Submission Version 2017, Paragraph 180 of the NPPF 2021, and the requirements of the Habitats Regulations 2017.

2. The proposal will appear as a cramped form of development and will also result in the loss of importance green infrastructure to the detriment of the established character and appearance of the locality, contrary to Policies CP2, CP7 & DBE1 of the adopted Local Plan 1998 & 2006, Policy DM9 of the Local Plan Submission Version 2017, and the NPPF 2021.

3. The proposed development would result in the loss of on-street parking provision to the detriment of highway safety, contrary to Policies ST4 & ST6 of the adopted Local Plan 1998 & 2006, Policy T1 of the Local Plan Submission Version 2017, and the NPPF 2021

#### Reason for Refusal 1 – Epping Forest Special Area of Conservation (EFSAC)

A significant proportion of the EFSAC lies within the Epping Forest District Council administrative area. The Council has a duty under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) to assess whether the development would have an adverse effect on the integrity of the EFSAC. In doing so the assessment is required to be undertaken having considered the development proposal both alone and in combination with other Plans and Projects, including with development proposed within the LPSV.

The Council published a Habitats Regulations Assessment in January 2019 (the HRA 2019) to support the examination of the LPSV. The screening stage of the HRA 2019 concluded that there are two Impact Pathways whereby development within the Epping Forest District is likely to result in significant effects on the EFSAC. The Impact Pathways are effects of urbanisation with a particular focus on disturbance from recreational activities arising from new residents (residential development only) and atmospheric pollution as a result of increased traffic using roads through the EFSAC (all development). Whilst it is noted that the independent Inspector appointed to examine the LPSV, in her letter dated 2 August 2019, raised some concerns regarding the robustness of elements of the methodology underpinning the appropriate assessment of the LPSV, no issues were identified in relating to the screening of the LPSV or the Impact Pathways identified. Consequently, the Council, as Competent Authority under the Habitats Regulations, is satisfied that the Impact Pathways to be assessed in relation to this application pertinent to the likely significant effects of development on the EFSAC alone and in-combination with other plans and projects are:

- 1) Recreation activities arising from new residents (recreational pressures); and
- 2) Atmospheric pollution as a result of increased traffic using roads through the EFSAC (air quality).

#### Stage 1: Screening Assessment

This application has been screened in relation to both the recreational pressures and air quality Impact Pathways and concludes as follows:

- 1) The site lies within the 0-6.2km zone of Influence as identified in the adopted Interim Approach to Managing Recreational Pressure on the Epping Forest Special Area of Conservation' (the Interim Approach). In addition, the site lies within the parish of Loughton. Consequently, the development would result in a likely significant effect on the integrity of the EFSAC as a result of recreational pressures.
- 2) The development would 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 recreational pressures and air quality.

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 the above.

## Stage 2: 'Appropriate Assessment'

### Recreational Pressure

The application proposal has the potential to increase recreational pressures on the EFSAC. However, the Council, through the development of the Interim Approach and identification of Infrastructure Enhancement Projects in the Council's Green Infrastructure Strategy, has provided a strategic, district wide approach to mitigating recreational pressures on the EFSAC through the securing of financial contributions for access management schemes, monitoring proposals and Infrastructure Enhancement Projects specifically related to development within the parishes of Loughton, Buckhurst Hill and Theydon Bois. Consequently, this application can be assessed within the context of the Interim Approach and the Green Infrastructure Strategy. The applicant has agreed to make a financial contribution in accordance with the Interim Approach and the Green Infrastructure Strategy. Consequently, the Council is satisfied that the application proposal would not have an adverse effect 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.

For clarity, the recent appeal was dismissed as the submitted s106 legal agreement did not account for the revised financial contributions in regard to the EFSAC which were updated in August 2022 as set out in Appendix 1 Para 27.

On this note, the Applicant has completed the s106 legal agreement and the relevant financial contributions have been paid.

Therefore, based on the above assessment, there would be insufficient grounds to refuse in this regard.

### Reason for Refusal 2 – Character & Appearance

The previous officer assessment is set out below.

The proposed development is considered to have a neutral impact to the street scene and wider area and would follow the pattern of development within the locality. It would also not amount to harmful overdevelopment of the site, as there would be (1) sufficient spacing around the dwelling; 2) ample amenity space retained for the host house, and (3) functional amenity space provided for future users of the dwelling. To conclude, development on this site would be considered to be making an effective use of land and will have a neutral impact to the character and appearance of the area.

Members will note that this issue was not upheld by the Planning Inspectorate as set out in Appendix 1 Paragraphs 4 – 13. As such there are no reasonable grounds to pursue this ground any further.

### Reason for Refusal 3 – On street parking provision

The previous officer assessment is below.

With regards to the parking arrangements for the proposed dwelling, 2 car parking spaces are required for a 2 bed+ dwelling in line with the Councils adopted parking standards (Essex Parking Standards 2009), which the proposal would meet. It is also noted that no objection has been received from the highways officer, so it is considered that there would be no detrimental impact to the safety operation of the highway network. Accordingly, the proposal complies with Policies ST4 and ST6 of the LP, Policy T1 of the LPSV, and Paragraphs 110 and 111 of the Framework.

Too add, following the committee meeting where the previous application was determined, the ECC Highways Officer provided the following comments below to the Agent (dated November 2021);

I have reviewed the Area Planning Sub-Committee South webcast, dated 06 October 2021, for application EPF/1306/21, and can confirm that Cllr Pond does not actually refer to any Essex County Council (ECC) or Epping Forest District Council (EFDC) policy/information/documentation, but references the North Essex Parking Partnership (NEPP), and a proposal for a parking review in the location of the application site. I can confirm that at this time no public consultation on this scheme has taken place, and therefore there are no guarantees that any scheme will ever be implemented. Consequently, from my point of view, I cannot see that this possible parking scheme has any bearing on the planning application. Especially as this is an unclassified road, and the applicant could simply apply to ECC for a Vehicle Crossover application and implement it without having to obtain any planning permission. It should be noted though that EFDC, as part of the NEPP, are the Parking Authority for the District.

Further to the above, I can confirm that there have been no changes to EFDC Policies ST4, ST6 or T1, or any relevant ECC Highway policies, that does not allow for the loss of on-street parking whilst creating access for off-street parking. Consequently, as per my recommendation for this application, I would reiterate that, from a highway point of view, the proposal is not considered to be contrary to any of the aforementioned policies.

Following on from the above, the work by the North Essex Parking Partnership (NEPP) who were conducting a parking review in this location at the time of the previous application has concluded and resulted in the red lines for no stopping around the corner of the road. A plan is attached in Appendix 3 showing the location of the new red lines currently in place.

Members attention is also drawn to the existing access on Brooklyn Avenue which will be closed up and the kerb reinstated. This has also been secured via a condition. This will mitigate for the loss of on-street carparking on Priory Avenue where the new access serving the existing house is located.

Too add, Members will note that this issue was also not upheld by the Planning Inspectorate as set out in Appendix 1 Paragraphs 14 – 19.

Thus, based on the above, officers are of the view that the proposal is acceptable in this regard, and there are no reasonable grounds to pursue this issue any further.

### Other Considerations

#### Standard of Accommodation

The proposal would exceed the National Described Space Standards for a 3 bed-6-person dwelling (102m<sup>2</sup>) at some 120m<sup>2</sup> and have a functional external amenity space of some 124m<sup>2</sup> with a

reasonable outlook for future users of the dwelling, and the host house would retain some 100m2 of amenity space.

### Living Conditions

The proposed development has addressed the concerns raised under the recent pre-application. As such, it is considered that the proposed dwelling would have no material impact to the living conditions of the host house, in terms of loss of privacy, loss of light, overshadowing, overbearing and visual impact.

There are no material impacts to the other surrounding properties on Priory Road to the front & Brooklyn Avenue to the rear/side, in terms of loss of privacy from harmful overlooking that would warrant a reason for refusal.

### Trees and Landscaping

The Council's Tree officer has raised no objection subject to the imposition of conditions as part of the consent, as the proposed landscaping scheme is considered to be adequate, and as mentioned above the existing trees on site have no legal protection so they can be removed without any consent. This consent will secure the protection of the existing trees to be retained and those proposed.

### Conclusion

Members may be aware that the Council recently lost a costs appeal to 11 Crossfields in Loughton, where planning permission was previously refused on several grounds and the decision was dismissed on appeal purely on SAC grounds. In the subsequent resubmitted application, the reasons for refusal from the original application were pursued again despite the Inspector previously concluding that everything but the SAC impacts were acceptable, and these were not upheld by the Appeals Inspector and an award of costs was granted against the Council. This decision can be found in Appendix 2.

To conclude the for the reasons set out above, having regard to the matters raised, the proposal has overcome the previous reasons for refusal, and it is recommended that conditional planning permission be granted subject to a s106 Legal Agreement to secure contributions for the EFSAC, including monitoring fees.

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: Muhammad Rahman  
Direct Line Telephone Number: 01992 564415

or if no direct contact can be made, please email: [contactplanning@eppingforestdc.gov.uk](mailto:contactplanning@eppingforestdc.gov.uk)



## Appeal Decision

Site visit made on 28 November 2022

by **A Parkin BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 19 December 2022**

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**Appeal Ref: APP/J1535/W/22/3292682**

**7 Brooklyn Avenue, Loughton IG10 1BL**

- 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 and Mrs Nooitgedacht against the decision of Epping Forest District Council.
- The application Ref EPF/1306/21, dated 6 May 2021, was refused by notice dated 6 October 2021.
- The development proposed is a detached 3 bedroom dwelling in an existing side garden.

### Decision

1. The appeal is dismissed.

### Preliminary Matters

1. The Council's officer report listed a number of documents in relation to the Epping Forest Special Area of Conservation (SAC), which were not included in the Council's evidence. Consequently, I contacted the Council and asked them to provide copies, or updated copies, of these documents; to provide information about the designation of the Epping Forest SAC; and, to provide any views on these from Natural England.
2. Copies of various documents were provided, together with information regarding current mitigation measures for developments where adverse effects on the integrity of the SAC cannot be excluded. This was copied to the appellant for their information.

### Main Issues

3. The main issues are the effect of the proposal on:
  - The character and appearance of the area;
  - Parking provision and highway safety; and,
  - The Epping Forest SAC.

### Reasons

#### *Character and appearance*

4. The appeal site is located at the intersection of Brooklyn Avenue and Priory Road within a suburban residential area, very close to the centre of Loughton. There are a range of dwelling types and sizes in this area, although predominantly traditional, 2-storey, gable fronted semi-detached houses and single storey bungalows, with front and rear gardens. Many of the front gardens include driveways for off-street car parking.

5. The appeal site is located in the garden of 7 Brooklyn Avenue, an extended semi-detached dwelling that faces towards Priory Road, but which is accessed from Brooklyn Avenue; the other semi-detached dwelling (2A Priory Road) faces onto and is accessed from Priory Road in a conventional manner, with its rear garden extending to Brooklyn Avenue. The garden of 7 Brooklyn Avenue is largely to the side of the building and is enclosed by timber-panel fencing which extends around the property, above which a number of trees and bushes are visible.
6. This is an unusual arrangement, with two joined, semi-detached homes functionally facing in opposite directions. Whilst the pair are by no means identical, there is some symmetry to the buildings, with both having projecting 2-storey gables to the Priory Road elevation.
7. The orientation of 7 Brooklyn Avenue, and the timber panel fencing to the Priory Road 'frontage' of the property, are visually awkward in the streetscene; detracting from the visual coherence of the semi-detached houses. The existing open vehicular access to Brooklyn Avenue and the substantial 2-storey extension to No 7 are also somewhat incongruous in the streetscene.
8. The proposed development would entail various works to 7 Brooklyn Avenue, including changing the 'rear' vehicular access to a garden, with fencing to separate it from Brooklyn Avenue; the provision of two off-street car parking spaces to the 'front' of the building by Priory Road; and, the blocking up and re-orientation of various windows and doors.
9. In the side garden of No 7, a new 2-storey, gable fronted detached dwelling would be erected facing towards Priory Road, with two off-street car parking spaces provided. The proposed dwelling, the host building and 2A Priory Road would all face towards Priory Road as a result of the proposal. The remainder of the curtilage of the proposed dwelling would be enclosed by timber fencing, of a similar scale and appearance to the existing fencing.
10. There would be some reduction in spaciousness at the corner as a result of the proposed dwelling. However, the broad open junction with footpaths, together with the 124 sqm garden space of the proposed dwelling, means that this would not significantly detract from the character and appearance of the area. Views of the fencing and side elevation of the proposed dwelling would not be dissimilar to the existing views towards the side of No 7.
11. The Council is concerned at the loss of several trees from the garden, which make a positive contribution to the character and appearance of the area. However, the trees do not benefit from any statutory protections and could be removed by the appellant without further recourse. I also note that several trees are assessed to be diseased. In any event, I am satisfied that the retained trees, a Laburnum, an Apple tree and a Purple Plum tree, together with further planting, would mean that their loss would not be harmful to the character and appearance of the area.
12. The design, scale, massing, materials and orientation of the proposed dwelling would not be out of keeping with the host building or the wider streetscene, at this prominent location. Furthermore, the proposed development would resolve some of the existing issues that detract from the character and appearance of the area, including how 7 Brooklyn Avenue addresses the adjoining streets.

13. For these reasons the proposed development would not adversely affect the character and appearance of the area. Consequently, it would not conflict with policies CP2 (protecting the quality of the rural and built environment), CP7 (urban form and quality) and DBE1, which concerns the erection of new buildings, of the Epping Forest Local Plan 1998 and Alterations 2006 (EFLPA); with draft policy DM9 (high quality design) of the Submission Draft Epping Forest Local Plan 2017 (SDEFLP); and, with the National Planning Policy Framework 2021 (the Framework), in this regard.

*Parking provision and highway safety*

14. The proposed development would entail the creation of two new vehicular accesses to Priory Road, together with the stopping up of a vehicular access on Brooklyn Avenue.
15. There would be no change in the quantum of off-street parking provision at the host building, 7 Brooklyn Avenue, although the location would change so as to be off Priory Road. Whilst a new vehicular access would be created on Priory Road, the access on Brooklyn Avenue would be closed, resulting in no quantitative change to the existing situation.
16. The proposed detached dwelling would also have two off-street car parking spaces, which would accord with the Council's parking requirements, and these would be accessed via a new dropped crossing on Priory Road.
17. The new vehicular access would result in the loss of some on-street car parking capacity. However, there is no compelling evidence to demonstrate that this is an area of parking stress, or that the limited reduction in on-street parking capacity would be detrimental to the area.
18. At the time of my visit, mid-afternoon, there was little on-street parking activity on Priory Road or Brooklyn Avenue. I also note that the Council received no objection to the proposal from the Local Highway Authority, Essex County Council.
19. For these reasons the proposal would have an acceptable impact on parking provision and highway safety. Consequently, it would not conflict with policies ST4 (road safety) and ST6 (vehicle parking) of the EFLPA; with draft policy T1 (sustainable transport choices) of the SDEFLP; or with the Framework, in this regard.

*Epping Forest SAC*

20. The appeal site lies within a zone of influence for the Epping Forest SAC, whose qualifying features include Beech forests on acid soils with *Ilex* and *Taxus* in the shrub-layer; wet heathland with cross-leaved heath; and dry heath (Annex I habitats). Stag Beetles (Annex II species) are also widespread in the SAC.
21. In its Local Plan Habitats Regulations Assessment (HRA) the Council has identified two pathways from residential development that may lead to significant adverse effects on the SAC. The pathways are Air Quality, as a result of more people driving within and in the vicinity of the SAC; and, Recreational Pressures, as a result of more people using the SAC for recreational purposes such as walking.
22. The Council has provided me with a Cabinet report and Minutes from 11 April 2022 regarding the Partnership Agreement for Strategic Access Management

and Monitoring (SAMM) measures. The report sets out the current mitigation measures for likely significant effects on the SAC from Recreational Pressures and the updated financial contributions that are required for the SAMM measures<sup>1</sup>, as well as financial contributions required for the provision of Suitable Alternative Natural Greenspace (SANG) in the area<sup>2</sup>.

23. Financial contributions from developers are also required towards the implementation of the Interim Air Pollution Mitigation Strategy 2020. Natural England, the Appropriate Nature Conservation Body (ANCB) was involved in this process and is satisfied with the approach to mitigation. I am satisfied that the proposed development would adversely affect the integrity of the SAC but that with appropriate mitigation, this matter can be satisfactorily addressed.
24. The appellant is aware of the need to mitigate adverse effects on the SAC from the proposed development and has provided a signed Unilateral Undertaking Planning Obligation under S106 of the Town and Country Planning Act 1990 (as amended), dated 11 July 2022.
25. For Planning Obligations, details of each person's title to the land are needed and in written representations appeals like this one, the appellant will need to provide evidence of title to the Inspector. Normally this is in the form of an up to date copy entry or entries from the Land Registry<sup>3</sup>. However, in this case, no such evidence has been provided, and I am not, therefore, satisfied that the planning obligation is legally sound in this regard.
26. I note from the email correspondence of 11 July 2022 that the Council has received payment of the fees. However, it is not clear whether the financial contributions specified have also been paid.
27. In any event, the Recreational Pressures financial contributions specified in the submitted Unilateral Undertaking, and which presumably are the ones the appellant claims to have paid to the Council, are out of date. Amongst other things, the Cabinet report dated 11 April 2022 states that in addition to the increased SAMM contribution of £1852.63 per dwelling, a SANG contribution of £716 per dwelling is also required. This means that the mitigation payments agreed by the Council and Natural England have not been secured.
28. For these reasons I am not satisfied that the proposed development would not harm the integrity of the Epping Forest SAC. It would therefore conflict with draft policies DM2 (Epping Forest SAC and the Lee Valley SPA) and DM22 (air quality) of the SDEFLP, and with the Framework in this regard.

### **Conclusion**

29. The proposed development would have an acceptable impact upon the character and appearance of the area and on parking provision and highway safety. However, the harm to the Epping Forest SAC outweighs this.
30. For the reasons given above, and taking into account all relevant matters, I conclude the appeal is dismissed.

*Andrew Parkin*

INSPECTOR

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<sup>1</sup> Paragraph 20 of the Cabinet report

<sup>2</sup> Paragraph 19 of the Cabinet report

<sup>3</sup> Paragraph N.5.2 of the Procedural Guide: Planning Appeals – England, April 2022



## Costs Decision

Site visit made on 28 September 2022

by **M Russell BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

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### Costs application in relation to Appeal Ref: APP/J1535/W/21/3289165 11 Crossfields, Loughton IG10 3PY

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Oleg Kovalenko for a full award of costs against Epping Forest District Council.
  - The appeal was against a refusal to grant planning permission for 'erection of single storey extension and erection of new attached dwelling, following demolition of existing garage'.
- 

### Decision

1. A full award of costs is allowed in the terms set out below.

### Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG provides that local planning authorities (LPAs) are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. Examples of this include where an LPA persists in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
3. The application for costs is made solely in respect of the second reason for refusal on the Council's decision notice. I accept that the Council's planning committee members are not under an obligation to accept an officer recommendation.
4. However, the report to the Council's planning committee is unequivocal that the proposed dwelling is the same scheme that was previously dismissed at appeal<sup>1</sup>. The report also makes it clear that the previous Inspector found that there would be no harm resulting from the proposed dwelling on the character and appearance of the area. There is nothing within the Council's case to suggest that there were any material changes in circumstance to justify persisting in objections to elements of the scheme that an Inspector has previously indicated to be acceptable.

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<sup>1</sup> Appeal Ref APP/J1535/W/18/3208248

### **Conclusion**

5. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in respect of the second reason for refusal on the Council's decision notice. For that reason, a full award of costs is justified in respect of this matter.

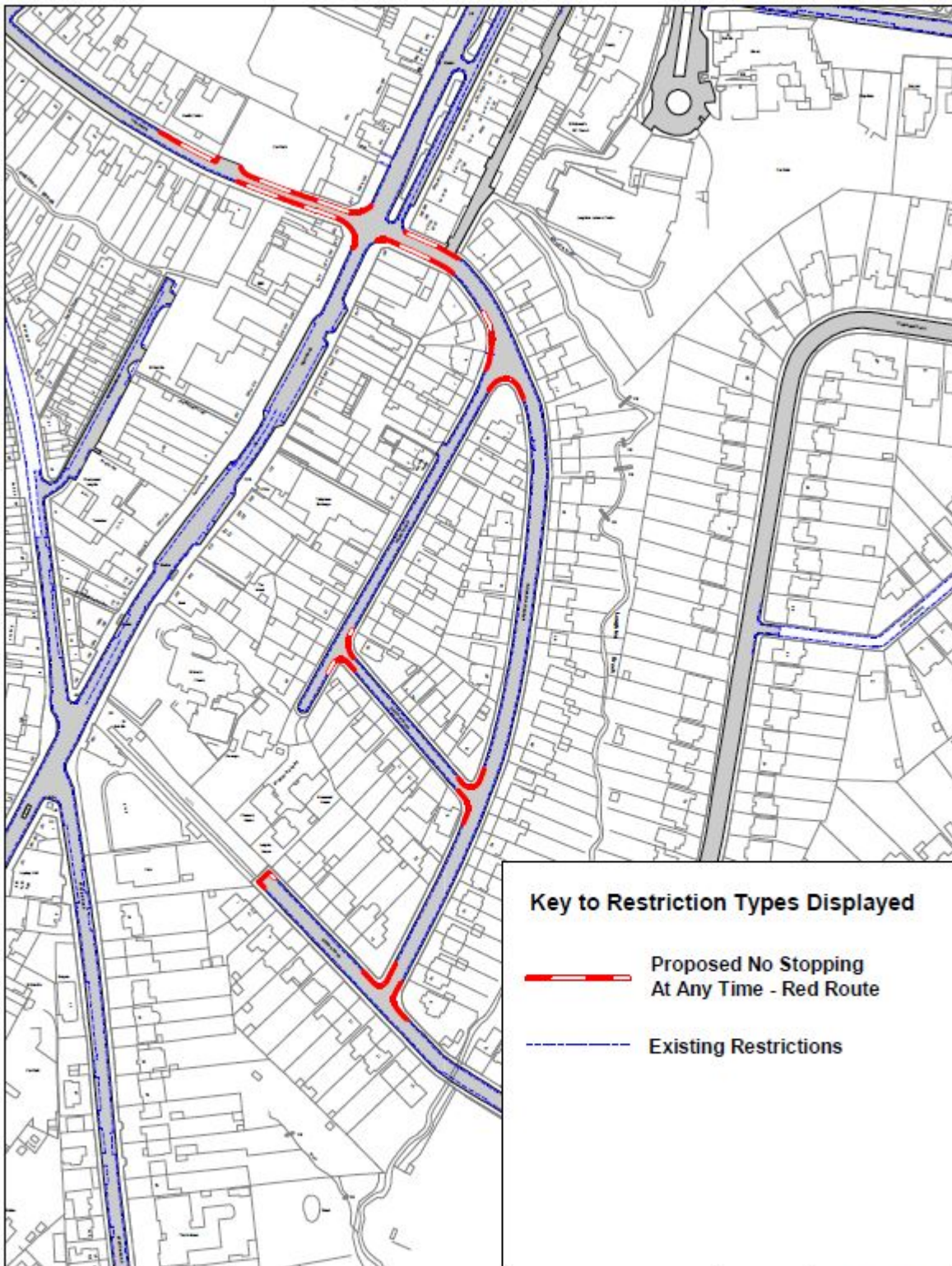
### **Costs Order**

6. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Epping Forest District Council shall pay to Mr Oleg Kovalenko, the full costs in respect of the second reason for refusal on the Council's decision notice in the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
7. The applicant is now invited to submit to Epping Forest District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.



*M Russell*

INSPECTOR

# Appendix 3 - NEPP Parking Restriction Plan



### Key to Restriction Types Displayed

-  Proposed No Stopping At Any Time - Red Route
-  Existing Restrictions



Priory Road Area



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 Licence No. LA 077070 2022

SCALE	1 : 2500 @ A4
DATE	13/01/2022
DRAWING No.	2022_EF_PR
DRAWN BY	BOM

**Conditions: (18)**

- 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, 101 Rev A, 102, 103, 200, 201, 202, 203, 210, and 220.

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

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

Reason: To ensure satisfactory provision and disposal of surface water in the interests of Land Drainage, in accordance with Policies DM16 & DM18 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF, and Policy RP3 of the adopted Local Plan and Alterations 1998 & 2006.

- 4 A) No work on any phase of the development (with the exception of demolition works where this is for the reason of making areas of the site available for site investigation), shall commence until an assessment of the risks posed by any contamination within that phase shall have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of Potentially Contaminated Sites - Code of Practice and the Environment Agency's Guidelines for the Land Contamination: Risk Management (LCRM 2020) (or equivalent if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The development shall only be carried out in accordance with the approved details unless the Local Planning Authority gives its written consent to any variation. The assessment shall include: (1) A survey of the extent, scale and nature of contamination and (2) An assessment of the potential risks to: human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland, service lines and pipes; adjoining land; groundwater and surface waters; ecological systems; and archaeological sites and ancient monuments.

B) If following the risk assessment unacceptable risks are identified from land affected by contamination in that phase, no work on any phase of the development shall take place, until a detailed land remediation scheme has been completed. The scheme will be submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be



undertaken including the verification plan. (The remediation scheme shall be sufficiently detailed and thorough to ensure that after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990). The development shall only be carried out in accordance with the approved scheme. Following the completion of the remediation works and prior to the first occupation of the development, a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority.

Reason: To ensure that 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 DM21 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF, and Policies RP4 of the adopted Local Plan and Alterations 1998 & 2006.

- 5 Tree protection shall be implemented prior to the commencement of development activities (including demolition), and the methodology for development (including supervision) shall be undertaken in accordance with the submitted Tree Survey/ Arboricultural Method Statement reports and Tree protection shall be installed as shown on Arborterra Ltd drawing number 720 - 03 dated April 2021, unless the Local Planning Authority gives its prior written approval to any alterations.

Reason: To comply with requirements of 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 DM3 & DM5 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF, and Policy LL10 of the adopted Local Plan and Alterations 1998 & 2006.

- 6 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). 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 Policies T1 & DM22 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.

- 7 Prior to first occupation, the applicant/developer shall ensure that each dwelling has been provided with the necessary infrastructure to enable its connection to a superfast broadband network or alternative equivalent service.

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 Policies D5, DM2, DM9 & DM22 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.

- 8 Prior to first occupation of the building/extension hereby permitted the window(s) in the flank elevation(s) at first floor level and above, shall have been fitted with obscure glass with a minimum privacy level 3 obscurity, and no part of that/those window[s] that is less than 1.7 metres above the internal floor level of the room in which it is installed shall be capable of being opened. Once installed the obscure glass shall be retained thereafter.

Reason: To prevent overlooking and loss of privacy to the occupants of neighbouring properties, in accordance with Policy DM9 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF, and Policies CP7 & DBE9 of the adopted Local Plan 1998 & 2006.

- 9 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, in accordance with Policy DM19 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.

- 10 Prior to first occupation of the development, a scheme to enhance the ecological value of the site shall be submitted to and agreed in writing by the Local Planning Authority. The ecological value shall be quantified using the Biodiversity Impact Assessment Calculator (BIAC) where appropriate. The scheme shall be implemented in full prior to the occupation of the development hereby approved.

Reason: To maintain and improve the biodiversity of the site and to mitigate any impact from the development hereby approved, in accordance with Policy DM1 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.

- 11 Prior to first occupation of the development the existing vehicular access on Brooklyn Avenue shall be fully reinstated, including footway construction and full height kerbing.

Reason: To ensure the removal of and to preclude the creation of unnecessary points of traffic conflict in the highway in the interests of highway safety, in accordance with Policy T1 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF, and Policies ST2 & ST7 of the adopted Local Plan and Alterations 1998 & 2006.

- 12 The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those specified in the submitted application form & design & access statement.

Reason: To ensure a satisfactory appearance in the interests of visual amenity of the area, in accordance with Policy DM9 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF, and Policies CP2 & DBE1 of the adopted Local Plan 1998 & 2006.

- 13 Hard and soft landscaping shall be implemented as shown on Tententen 'proposed landscaping plan' drawing number 103; and the accompanying planting schedule. The works shall be carried out prior to the occupation of the building or completion of the development, whichever is the sooner. 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 requirements of 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 DM3 & DM5 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF, and Policy LL10 of the adopted Local Plan and Alterations 1998 & 2006.

- 14 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 requirements of 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 DM3 & DM5 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF, and Policy LL10 of the adopted Local Plan and Alterations 1998 & 2006.

- 15 Prior to any above groundworks, all material excavated from the below ground works hereby approved shall have been removed from the site.

Reason: In order to ensure that levels are not altered across the site as a result of deposited materials, in the interests of amenity, in accordance with Policies DM9, DM12 & DM21 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF, and Policies CP2, DEB1 & DBE9 of the adopted Local Plan 1998 & 2006.

- 16 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 T1 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF, and Policy ST4 of the adopted Local Plan and Alterations 1998 & 2006.

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

Reason: To ensure that the proposed construction work does not cause undue nuisance and disturbance to neighbouring properties at unreasonable hours, in accordance with Policies DM9 & DM21 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF, and Policies RP5A and DBE9 of the adopted Local Plan and Alterations 1998 & 2006.

- 18 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 Classes A, AA, B & E of Part 1 to schedule 2 shall be undertaken, without the prior written agreement of the Local Planning Authority.

Reason: To 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 DM9 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF, and Policies CP2, CP7, DBE1 & DBE9 of the adopted Local Plan 1998 & 2006.

**Informatives: (2)**

- 19 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.
- 20 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](mailto:development.management@essexhighways.org) or by post to:  
SMO3 - Essex Highways, Unit 36, Childerditch Industrial Park, Childerditch Hall Drive, Brentwood, Essex, CM13 3HD.