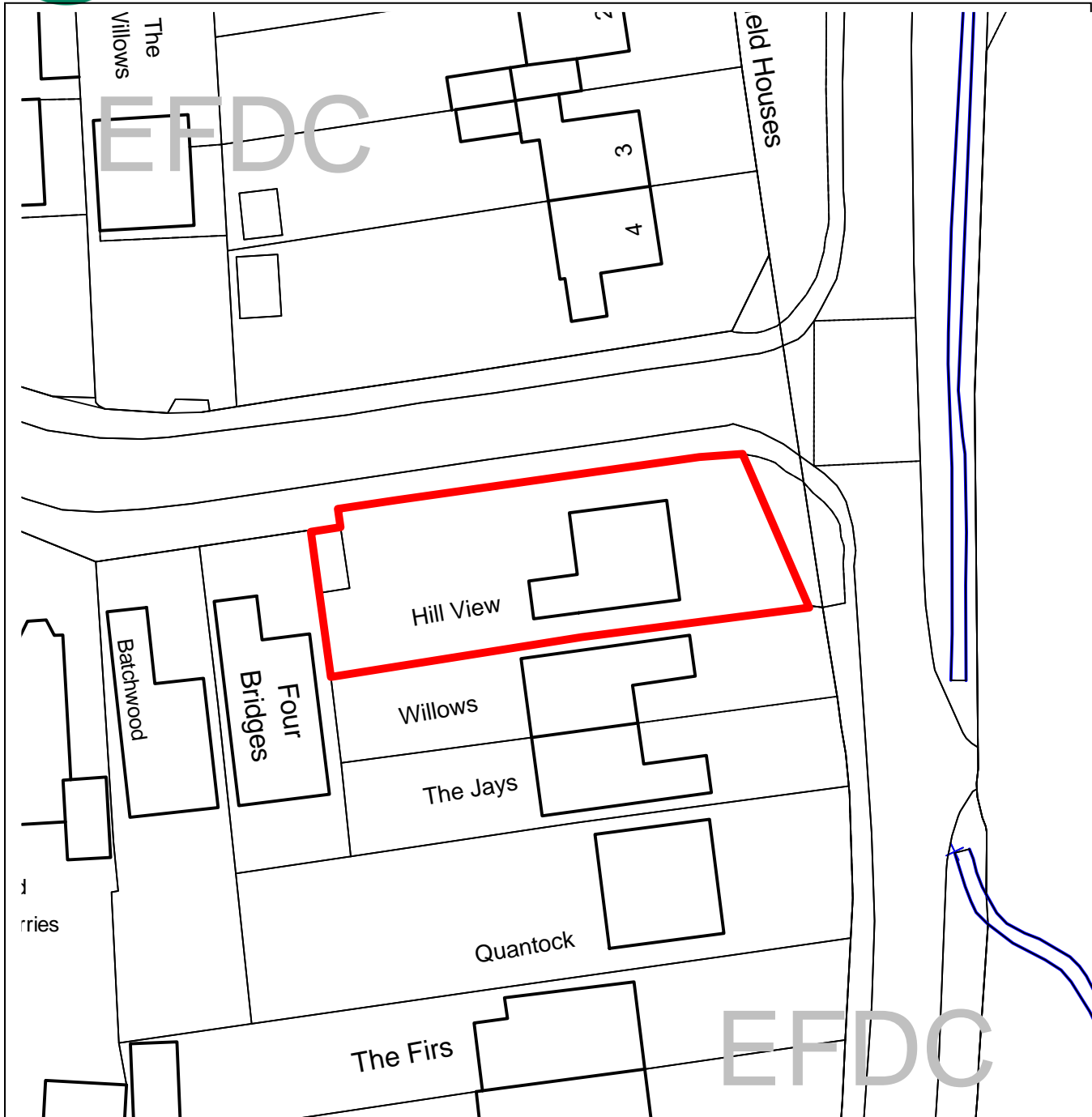




# Epping Forest District Council



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

Contains Ordnance Survey Data. ©  
Crown Copyright 2013 EFDC License No:  
100018534

Contains Royal Mail Data. © Royal Mail  
Copyright & Database Right 2013

Application Number:	EPF/1881/20
Site Name:	Hillview, St Leonards Road Nazeing Essex EN9 2HQ
Scale of Plot:	1:500

**Report Item No: 10**

<b>APPLICATION No:</b>	EPF/1881/20
<b>SITE ADDRESS:</b>	Hillview St Leonards Road Nazeing Essex EN9 2HQ
<b>PARISH:</b>	Nazeing
<b>WARD:</b>	Lower Nazeing
<b>APPLICANT:</b>	Mr Robert Currell
<b>DESCRIPTION OF PROPOSAL:</b>	Removal of the S106 Legal Agreement on planning permission EPF/1547/18 (Demolition of existing house and the erection of 5 (3, 2 bed and 2, 1 bed) flats. The 3 ground floor flats are to be provided for disabled residents and their families')
<b>RECOMMENDED DECISION:</b>	Refuse Permission

**Click on the link below to view related plans and documents for this case:**

[http://planpub.eppingforestdc.gov.uk/NIM.websearch/ExternalEntryPoint.aspx?SEARCH\\_TYPE=1&DOC\\_CLASS\\_CODE=PL&FOLDER1\\_REF=641113](http://planpub.eppingforestdc.gov.uk/NIM.websearch/ExternalEntryPoint.aspx?SEARCH_TYPE=1&DOC_CLASS_CODE=PL&FOLDER1_REF=641113)

**REASON FOR REFUSAL**

- 1 The applicant has failed to demonstrate sufficient justification for the removal of the Legal Agreement which was a significant material consideration justifying the approval of the development. The removal of the legal agreement would result in the loss of the much-needed local community benefit and a development that is contrary to policies CP1, DBE1, DBE6, DBE8, DBE9, 11A, ST4 & ST6 of the Epping Forest adopted Local Plan and Alterations (1998 & 2006) and policy SP1, DM9, DM10, D4, I1A and T1 of the Submission Version, 2017 and the NPPF, 2019.

*This application is before this Committee since the recommendation is for Refusal contrary to Local Council support which is material to the planning merits of the proposal, and the Local Council confirms it intends to attend and speak at the meeting where the application will be considered (Pursuant to The Constitution, Part 3: Scheme of Delegation to Officers from Full Council)).*

**Description of Site:**

Hillview was a detached 3-bed chalet bungalow located on a corner at the junction of St. Leonards Road and Tatsfield Avenue which has now been partly demolished. The site is located towards the edge of Nazeing, outside of the Metropolitan Green Belt. The site is not within a Conservation Area or a Listed Building.

### **Description of Proposal:**

This application seeks the removal of the 106 Legal Agreement of planning ref: EPF/1547/18 - the demolition of existing house and the erection of 5 (3, 2 bed and 2, 1 bed) flats. The 3 ground floor flats are to be provided for disabled residents and their families

The S106 agreement ensured that the disabled units were to be made available for those registered as disabled and would be for the benefit of the local community

- Clause 5 provided that the 3 disabled units should be built and fitted out to mobility standard.
- Clause 6 requires that the disabled apartment must be occupied by registered disabled persons
- Clause 7 requires that the disabled apartments must be marketed for sale and /or occupation to persons who have resided within 8 miles radius of the site for the previous 5 years.

The applicant has submitted a number of documents in support of the application claiming that there is a clear demand for disabled units within Nazeing and therefore there is no requirement for an Agreement as the market will determine that the units remain in occupation for disabled persons.

This documentation includes a Solicitor's letter which argues that the conditions in the Legal Agreement are affecting financiers coming forward to fund the project who consider the Legal Agreement to be too restrictive preventing their ability to take possession and re-sell should the owner fall into mortgage arrears. The assumption made is also that the prospective purchasers will be unable to obtain residential mortgages and without bank funding the scheme cannot go ahead.

### **Relevant History:**

EPF/0833/20 - Modifications to S106 agreement on planning permission ref EPF/1547/18 Clause 6 & 7 (Demolition of existing house and the erection of 5 (3, 2 bed & 2, 1 bed) flats. The 3 ground floor flats are to be provided for disabled residents and their families) - Refused 28/07/2020

*1. The application has failed to demonstrate sufficient justification for the removal of Clause 6 and the modification of Clause 7 of the Section 106 Legal Agreement which could involve the loss of a local Community benefit to Epping which was the main reason for the developments approval and is contrary to policies CP1, DBE6, DBE8, ST4 & ST6 of the Epping Forest adopted Local Plan (1998 & 2006) and the aims and objectives of the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011 and policy SP1, DM10, D4 and T1 of the Local Plan Submission Version, 2017.*

*2. The development provides insufficient parking and is contrary to the aims and objectives of the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011, and policies ST4 & ST6 of the Epping Forest Adopted Local Plan, (1998 & 2006) and policy T1 of the Local Plan Submission Version, 2017.*

EPF/1547/18 - Amendment to approved development Ref EPF/2548/15 - for the Demolition of existing house and the erection of 5 (3, 2 bed and 2, 1 bed) flats. The ground floor flats are to be provided for disabled residents and their families. Approved - subject to a Legal Agreement - Signed - 17/01/2020

The amendments involved: removal of the basement parking; a reduction in the depth of the building to accommodate, the reciting of the car parking spaces to the rear aspect. The numbers of parking spaces reduced from 8 to 5; the building was increased in height from 3.9m to 5.4m and the number of flats reduced from 6 to 5 with the number of beds increased.

Ref: EPF/2548/15 - Demolition of the existing detached chalet bungalow and the erection of a block of six flats - Approved subject to a Unilateral Undertaking - signed 24/04/2019

EPF/0582/05 - Two storey rear extension, raised roof ridge with two dormer windows to front and new garage to rear - Approved 28/09/05

EPF/1306/10 - Raising of roof, two storey rear extension, front porch, front dormer windows and detached garage to rear - Approved 10/09/10

EPF/2113/10 - Vehicle crossover - Refused 02/12/10

EPF/1153/11 - Raising of roof, two storey rear extension, gable over flat dormer and detached garage to rear (revised application from EPF/1306/10) - Approved 29/07/11

### **Policies Applied:**

#### **DEVELOPMENT PLAN CONTEXT**

##### **Local Plan (1998) and Alterations (2006)**

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).

CP1 Achieving sustainable development objectives  
CP2 Protecting the quality of the rural and built environment  
CP3 New development  
DBE6 Car parking in new development  
DBE8 Private Amenity space  
11A Planning Obligations  
ST4 Highway safety  
ST2 Accessibility of development  
ST4 Road Safety  
ST6 Vehicle Parking Standards

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.

In addition to paragraph 11, the following paragraphs of the NPPF are considered to be of relevance to this application:

Paragraph 54 - 56 - Planning Conditions and Obligations  
Paragraph 102- 106- Promoting Sustainable Transport  
Paragraph 124 -136- Achieving well designed Places

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

Although the LPSV does not currently form part of the statutory development plan for the district, on 14<sup>th</sup> 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 2<sup>nd</sup> 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.

As the preparation of the emerging Local Plan has reached a very advanced stage, subject to the Inspector's Advice regarding the need for additional MMs, significant weight should be accorded to LPSV policies in accordance with paragraph 48 of Framework. The following table lists the LPSV policies relevant to the determination of this application and officers' recommendation regarding the weight to be accorded to each policy.

Policy	Weight afforded
SP1 Presumption in Favour of Sustainable Development	Significant
DM9 High Quality Design	Significant
DM10 Housing Design and Quality	Significant
D4 Community, Leisure & Cultural Facilities	Significant
I1A Planning Obligations	Significant
T1 Sustainable Transport	Significant

## **Consultation carried Out & Summary of Representations received:**

### **NAZEING PARISH COUNCIL – NO OBJECTION**

The community benefit of these purpose build disabled apartments is significant and fully support the much-needed disabled accommodation and should be approved.

The Parish Council wish to attend the meeting and make representations if minded to refuse.

### **Main Issues & Considerations:**

The key considerations in this application are the

- Relevant planning history of the site
- Details of the approved development and reasons for the signed S106 Agreement

### **Relevant Planning History of the Site**

Planning permission was granted in 2015 ref: EPF/2548/15 for the demolition of the existing detached chalet bungalow and the erection of a block of 6 flats, (2, 2 bed and 4 one-bed units). The 3 ground floor flats were to be exclusively for disabled residents and their families which formed part of a signed agreement with basement parking spaces for 8 car spaces and a vehicular access onto Tatisfield Avenue.

The applicant in the Design & Access Statement stated that: -

*'a fundamental part of this application is that the ground floor flats will be designed to a full mobility standard and reserved solely for the occupation by disabled persons with families. There are no purpose-built facilities such as these in Nazeing, and the development will fulfil a local need'*.

At the time of consideration, there were outstanding concerns with the proposed development. Essex Highways objected to the scheme due to insufficient parking and that the proposed spaces were substandard in size and did not meet the current bay dimensions which could lead to inappropriate kerbside parking. Essex Highways advised that the proposal if permitted would set a precedent for future similar developments which could in time lead to additional inappropriate parking and would undermine the principle of seeking to discourage on street parking in the locality.

The development would have been refused but as it offered to provide 3 units for disabled occupants residing within a five-mile radius of the site, the local community benefit was a major factor in favour of the development and a legal agreement was agreed to secure this. The application was approved at Committee with the full support of the Parish Council which suggested that there was a requirement within the local area for such a development.

The Committee emphasizing that in the event that the applicant failed to complete the Agreement Members would delegate powers to officers to refuse planning permission on the basis that the development would not comply with Local Plan policies regarding the provision of sufficient off-street parking provision.

A subsequent application submitted in 2018 (EPF/1547/18) sought to reduce the number of flats from 6 to 5 but to increase the number of 2-bed units (3, 2 bed and 2, 1 beds) and remove the basement parking. The parking spaces were then relocated to the allocated amenity space area thereby significantly reducing the amenity space to accommodate the parking spaces. There were a number of objections to the proposal both from residents and Essex Highways. Residents

considered the development to be over development but again the scheme was supported only on the grounds of the provision of disabled units for the local community within the scheme. When it came to the compilation of the agreement, the distance in which the disabled units could be sold was increased from 5 to an 8-mile radius to accommodate the applicant who considered that there would not be enough demand in such a short distance range.

#### Details of the approved scheme and Justification for the Legal Agreement

Planning Obligations should only be sought where they meet the following tests as set out in Paragraph 54 - 56 of the NPPF. Paragraph 56 states that Obligations should be: -

- Necessary to make the development acceptable in planning terms
- Directly related to the development and
- Fairly and reasonably related in scale and kind to the development.

This application seeks to remove the legal agreement completely from the approved scheme ref: EPF/1547/18 signed in January 2020.

The original approved development was in 2015 where the officers report went into some detail regarding the site and its location approximately 400m from Nazeing small local shopping parade with the closest train station i.e. Broxbourne Main Line Station, over 1.7 miles from the site and that it would take longer than 30 minutes to walk. Furthermore, whilst there is public transport available within this area it is limited and as such it would be expected that the majority of trips would be made by private vehicle use and it was not a sustainable location.

Only 8 car spaces were to be provided in the original scheme, 3 of which were to be disabled car spaces. Essex County Council Vehicle Parking Standards (2009) recommend a minimum of ten off-street parking spaces, which includes two visitor parking spaces. The development fell short of the required level of car parking provision however, because the scheme was supported by a legal agreement ensuring that the three ground floor flats would be occupied by Registered Disabled Persons and their families it was accepted that a lesser car parking provision could be provided for purpose built disabled accommodation since it is not uncommon for there to be less car ownership amongst Registered Disabled Persons. Only on this basis was it considered that the eight off-street parking spaces would be sufficient.

The submitted plans indicated the provision of three disabled bays on the highway but these could not be considered as part of this application since they would need to be secured through legislation outside of planning.

The applicant offered the disabled units as a way of securing planning consent and it was the disabled units which weighed significantly in favour of the development and its subsequent approval with an agreement.

Once the legal agreement was signed which ensured through Clause 6 and 7 that the disabled units were to be made available for those registered as disabled and would be for the benefit of the local community a new application was submitted removing the basement car park. The scheme was once again approved in 2020 with a further reduction in the number of parking spaces from 8 to 5 (with no provision for disabled car spaces) which took over the rear garden. Essex Highways again raised concerns with regard to the parking: 'from a highway and transportation perspective the impact of the proposal is NOT acceptable to the Highway Authority for the following reasons: 'The proposal does not have sufficient parking provision and the proposed spaces are substandard in size that do not meet the current bay dimensions of 2.9m x 5.5m which could lead to inappropriate kerbside parking.

The Parking Standards Design and Good Practice September 2009 recommends minimum parking provision levels for residential properties - a minimum total of 10 spaces would be recommended for this proposal, nine residential spaces and a minimum of one visitor space. The proposal was contrary to the aims and objectives of the Highway Authority's policies ST4 & ST6 of the Local Plan

This application now seeks to remove the Legal Agreement completely because they view it as being too restrictive. Whilst there is a consensus that these disabled units are needed in the locality and the applicant by signing the agreement also has committed to providing them indicating a demand for them, their concern that on repossession there would be difficulty in selling them but there is no significant evidence to justify this assertion.

The 3-ground floor disabled units for the local community was seen as a public benefit and that tied in with the legal agreement was the main aspect of the application and it was this contribution that was given considerable support and weight by the council in its approval and, without the legal agreement the development would have been refused planning permission. This assessment still stands and is relevant to this application.

In addition, there are many areas of the development which fall short of the Council's standard requirements. The amenity space is unsatisfactory and poorly sited and provides no privacy for future occupiers. The site is not in a sustainable location with public transport more than a mile away and the number of car spaces is insufficient and substandard in size for the number of units resulting in a cramped and unsatisfactory form of environment contrary to the Local Plan and LPSV.2017. Therefore it is considered that the retention of the legal agreement is both justified and necessary and the case for its removal has not been made.

#### Additional Suggestion by the Applicant

An additional solicitor's letter has been submitted during the course of this application where they confirm that the ideal situation for the financial lenders is that the Legal Agreement is removed completely from the scheme but suggest that if the Agreement is to remain in place that the clauses be reviewed and amended so that Clauses 5 and 6 are retained with a modification to Clause 7 to read as:

'Clauses 5 and 6 relate to the first occupation of the property and do not apply to subsequent occupation'.

This alternative arrangement would mean after the first occupation of the 3 disabled units they could then be sold to any interested able-bodied person and the Legal Agreement would no longer be relevant, which very similar to this application.

#### Conclusion

The submitted Planning Statement advocates for the removal of the Legal Agreement supported by the Solicitor who maintains that the applicant is committed to providing the disabled units with a belief that there is a demand, for them, and therefore, a need for these units. From all the documents provided, including the Parish Council, there is a consensus that these disabled units are needed in the locality and the applicant by signing the agreement also has committed to providing them indicating a demand for them, therefore, their concern that on repossession there would be difficulty in selling them would be overstated and not borne out by the evidence presented.

The applicant accepted the obligations hence the planning approval to EPF/1547/18 and to seek the removal of the legal agreements would jeopardise the delivery of these much-needed units.



Furthermore, the legal agreement was considered necessary to make the development acceptable in planning terms and is directly related to the development. The clauses meet the tests as set out in paragraph 54-56 of the NPPF, and the removal of the Legal Agreement would result in a development that fails to provide suitably sized and sited amenity space and a sufficient number and sized car parking spaces that is harmful to the surrounding area and to its future occupants contrary to policies CP1, DBE1, DBE6, DBE8, DBE9, 11A, ST4 & ST6 of the Epping Forest adopted Local Plan (1998 & 2006) and policy SP1, DM9, DM10, D4, I1A and T1 of the Submission Version, 2017 and the aims and objectives of the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011 which seek to ensure, amongst other things, that new development is of a high-quality design, that respects its setting and the character and environment of the locality.

It is considered that the Council has been supportive of the development every step of the way and it is considered unreasonable to take away the most significant and main justification for approving the development without any substantial evidence that would justify such a removal. In the light of the above considerations it is recommended that planning permission is refused.

***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: Caroline Brown***

***Direct Line Telephone Number: 01992 564182 or if no direct contact can be made please email: [contactplanning@eppingforestdc.gov.uk](mailto:contactplanning@eppingforestdc.gov.uk)***