

John Slater Planning Ltd

Chigwell Neighbourhood Plan 2018-33

Submission Version

A Report to Epping Forest District Council on the Examination of the
Chigwell Neighbourhood Plan

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5th November 2018

Contents

	Page
Executive Summary	3
Introduction	4
The Examiner's Role	4
The Examination Process	5
The Consultation Process	6
Regulation 16 Consultation	7
The Basic Conditions	7
Compliance with the Development Plan	8
Compliance with EU Obligations and Human Rights Legislation	9
The Neighbourhood Plan: An Overview	10
The Neighbourhood Plan Policies	13
The Referendum Area	21
Summary	22

Executive Summary

My examination has concluded that the Chigwell Neighbourhood Plan should not proceed to referendum. The reasons for this conclusion are that the Plan, taken as a whole, does not meet basic conditions, because –

- The Plan, in combination with other plans and projects will be likely to have an adverse impact on the Epping Forest SAC through increases in air pollution and recreational pressures. Accordingly, under the provisions of Schedule 2 of the Neighbourhood Planning Regulations 2012, the neighbourhood plan cannot be made. The plan cannot rely upon mitigation measures in the draft Local Plan.
- The plan has not been screened out under the Habitat Regulations by the District Council as Competent Authority and an Appropriate Assessment has not been prepared and accordingly the plan as a whole does not meet the basic conditions relating to compliance with EU obligations.
- The plan's overall policies set out, which can allow inappropriate development in the Green Belt are inconsistent with the strategic local plan policies for development in the Green Belt. The policies are also not in accordance with the Secretary of State's policies for the Green Belt as set out in Chapter 9 of the NPPF (2012).
- A number of the policies fail to meet the Secretary of State's advice that neighbourhood plan policies should be clear and precise, or are supported by appropriate evidence and could not be used by decision makers with confidence, particularly relating to design matters and the criteria for considering development on open space.
- The requirement for the Rolls Park residential development to fund the Community Hub would not pass the tests of Regulation 122 of the CIL Regulations 2010 or comply with the Secretary of State's policy on planning obligations.
- The requirement that the Limes Farm Regeneration, a strategic site in the emerging Local Plan, can only come forward via a review of the neighbourhood plan, would prevent the delivery of sustainable development and therefore fails one of the basic conditions.
- The policy for supporting local businesses appears to differentiate between existing and new businesses and therefore does not accord with Secretary of State advice.
- The two proposed LGS sites do not meet the criteria set out in Paras 76 and 77 of the NPPF (2012) and accordingly is contrary to Secretary of State policy.

Introduction

1. Neighbourhood planning is a process, introduced by the Localism Act 2011, which allows local communities to create the policies which will shape the places where they live and work. The Neighbourhood Plan provides the community with the opportunity to allocate land for particular purposes and to prepare the policies which will be used in the determination of planning applications in their area. Once a neighbourhood plan is made, it will form part of the statutory development plan alongside the Epping Forest District Local Plan (1988) and Local Plan Alterations (2006). Decision makers are required to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.
2. The neighbourhood plan making process has been led by Chigwell Parish Council which is a “qualifying body” under the Neighbourhood Planning legislation.
3. This report is the outcome of my examination of the Submission Version of the Chigwell Neighbourhood Plan. My report will make recommendations based on my findings on whether the Plan should go forward to a referendum.

The Examiner’s Role

4. I was formally appointed by Epping Forest District Council in July 2018, with the agreement of Chigwell Parish Council, to conduct this examination. My role is known as an Independent Examiner. My selection has been facilitated by the Neighbourhood Planning Independent Examiner Referral Service which is administered by the Royal Institute of Chartered Surveyors (RICS)
5. In order for me to be appointed to this role, I am required to be appropriately experienced and qualified. I have over 40 years’ experience as a planning practitioner, primarily working in local government, which included 8 years as a Head of Planning at a large unitary authority on the south coast, but latterly as an independent planning consultant. I am a Chartered Town Planner and a member of the Royal Town Planning Institute. I am independent of both Epping Forest District Council, and Chigwell Parish Council and I can confirm that I have no interest in any land that is affected by the Neighbourhood Plan.
6. Under the terms of the neighbourhood planning legislation I am required to make one of three possible recommendations:
 - That the plan should proceed to referendum on the basis that it meets all the legal requirements.
 - That the plan should proceed to referendum if modified
 - That the plan should not proceed to referendum on the basis that it does not meet all the legal requirements.

7. Furthermore, if I am to conclude that the Plan should proceed to referendum, I need to consider whether the area covered by the referendum should extend beyond the boundaries of the area covered by the Chigwell Neighbourhood Plan area.
8. In examining the Plan, the Independent Examiner is expected to address the following questions
 - a. Do the policies relate to the development and use of land for a Designated Neighbourhood Plan area in accordance with Section 38A of the Planning and Compulsory Purchase Act 2004?
 - b. Does the Neighbourhood Plan meet the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 namely that it specifies the period to which it is to have effect? It must not relate to matters which are referred to as “excluded development” and also that it must not cover more than one Neighbourhood Plan area.
 - c. Has the Neighbourhood Plan been prepared for an area designated under Section 61G of the Localism Act and has been developed and submitted by a qualifying body.
9. I am able to confirm that the Plan does relate to the development and use of land, covering the area designated by Epping Forest District Council, for the Chigwell Neighbourhood Plan on 3rd March 2014.
10. I can also confirm that it does specify the period over which the plan has effect namely the period from 2018 up to 2033.
11. I can confirm that the plan does not cover any “excluded development”.
12. There are no other neighbourhood plans covering the area covered by the Plan designation.
13. Chigwell Parish Council as a parish council is a qualifying body under the terms of the legislation.

The Examination Process

14. The presumption is that the neighbourhood plan will proceed by way of an examination of written evidence only. However, the Examiner can ask for a public hearing in order to hear oral evidence on matters which he or she wishes to explore further or if a person has a fair chance to put a case.
15. I am required to give reasons for each of my recommendations and also provide a summary of my main conclusions.
16. During my preliminary assessment of the plan, there were some matters, primarily of procedural nature that I wished to discuss with the Parish Council and the District Council. These matters were set out the document entitled Initial Comments of the Independent Examiner, dated 25th July 2018. This was not to be a public hearing as provided by the legislation but an opportunity to get clarification of a number of matters which could allow me to come to a view as to whether the necessary

procedures had been followed. I produced an agenda in a document entitled Notes of an Exploratory Meeting dated 3rd August 2018, which was placed on the Parish Councils website. The meeting took place at the Parish Council offices on the morning of 5th September 2018 and a number of members of the public were in attendance. I subsequently produced the document entitled Notes Following Exploratory Meeting, dated 28th September 2018. This summarised the matters that were discussed and set out my intention for finalising my examination report without the need for a hearing. All the relevant documents have been placed on the appropriate websites.

17. I carried out an unaccompanied visit to Chigwell and the surrounding areas on the afternoon of the 4th September, prior to the Exploratory Meeting. This enabled me to familiarise myself with Chigwell and the surrounding countryside, as well as its relationship with Epping Forest. I was also able to see various developments which were already under constructions within the Plan area.

The Consultation Process

18. The genesis of this neighbourhood plan was a desire by the Parish Council to respond to the Issues and Options document published at the start of the preparation of the Epping Forest District Local Plan that was published in 2012.
19. The Parish Council was granted its neighbourhood area status in March 2014. The Parish Council set about preparing the plan and I note that it did not include any non-parish councillors in the neighbourhood plan making process.
20. Initially, there was an informal public consultation stage carried out between September 2014 and January 2015. This included a questionnaire sent all households and businesses, as well as the holding of a number of drop-in sessions to identify important planning issues. The questionnaire had a 30% response rate and it was essentially focussed on issues arising from the then early draft of the local plan, including possible Green Belt changes and expressions of support for small urban extensions dispersed around the edge of the urban areas.
21. At that stage, the Parish Council had envisaged that the Local Plan would be proposing large-scale sites to be taken out of the Green Belt and it was promoting an alternative strategy based on the list of SHLAA sites and other sites put forward by landowners.
22. All this work came together in a Pre- Submission consultation which coincided with another round of consultation on the Local Plan that was running in autumn 2016. The Neighbourhood Plan consultation, known as Regulation 14 Consultation on the Pre-Submission version of the plan, ran from 15th October 2016 until 23rd November 2016. This included the holding of public meetings, Parish Open Day forums and the publication of various written materials. It sought to differentiate the Parish Councils proposals to those that were in the Local Plan. This consultation produced

approximately 1,124 responses. These are all properly summarised in the Consultation Statement.

23. The Pre- Submission Version of the plan is a very different plan to the version that has now been submitted and which is the subject of this examination. It was allocating a much wider range of sites, in total 11. Some of these were contingent on the Local Plan taking the sites out of the Green Belt. It appears that the changes to the plan were as a result of a fuller appreciation of the strategy that the local plan was advocating for delivering the housing numbers for Chigwell Parish and therefore sought only to address the areas where there was a material difference between it and the draft Local Plan.

Regulation 16 Consultation

24. I have had regard, in carrying out this examination, to all the comments made during the period of final consultation, which took place over a 6-week period between 15th May 2018 and 26th June 2018. This consultation was organised by Epping Forest District Council, prior to it being passed to me for its examination. That stage is known as the Regulation 16 Consultation.
25. In total 21 individual responses were received. These came from Natural England, Essex County Council, Epping Forest District Council, Highways England, Environment Agency, Historic England, the Trustees of the Sisters of the Sacred Hearts of Jesus and Mary, and West Essex CCG. In addition, representations were received from Strutt and Parker on the half of the Chelmsford Diocese Board of Finance and also on behalf of Scott Properties Limited, Carter Jonas on behalf of London Square, Boyer on the half of Meridian Hill(Chigwell) Ltd, Icenii on behalf of Pegasus Life and Kind Build, Leith Planning Ltd on behalf of Stenprop Ltd and DHA Planning on behalf of Mr Stewart Isaacs. I have also received representations from five local residents. A number of the responses were received past the deadline but I have had regard to their comments as this has not prejudiced any parties interest
26. I have carefully read all the correspondence and I will refer to the representations where it is relevant to my considerations and conclusions in respect of specific policies or the plan as a whole.

The Basic Conditions

27. The Neighbourhood Planning Examination process is different to a Local Plan Examination, in that the test is not one of “soundness”. The Neighbourhood Plan is tested against what is known as the Basic Conditions which are set down in legislation. It will be against these criteria that my examination must focus.

28. The six questions which constitute the basic conditions test seek to establish that the Neighbourhood Plan: -
- Has had regard to the national policies and advice contained in the guidance issued by the Secretary of State and it is appropriate to make the Plan?
 - Will the making of the Plan contribute to the achievement of sustainable development?
 - Will the making of the Plan be in general conformity with the strategic policies set out in the Development Plan for the area?
 - The making of the Plan does not breach or is otherwise incompatible with EU obligations or human rights legislation?
 - Whether prescribed conditions are met and prescribed matters have been complied with?
 - Whether the making of the Plan will have a significant effect upon a European site or a European offshore marine site, either alone or in combination with other plans and projects?
29. During the course of this examination the Government issued a revised National Planning Policy Framework. However, in accordance with the stipulation of Paragraph 214 of the 2018 NPPF, this examination has been carried out applying the policies in the 2012 version of the Framework.

Compliance with the Development Plan

30. To meet the basic conditions test, the Neighbourhood Plan is required to be in general conformity with the strategic policies of the Development Plan, which in this case is the combined policies found in the Epping Forest District Local Plan 1998, and also the Local Plan Alterations which were adopted in 2008. These have been combined into a single document.
31. The plan does not propose a housing requirement or allocate land for housing. It does have a number of policies dealing with development in the Green Belt, particularly Policy GB2A, dealing with acceptable development in the Green Belt and other policies dealing with rural exception sites and a policy for Grange Farm. Other policies of relevance include Policy TC1 which establishes a town centre hierarchy, identifying Brook Parade, Limes Farm and Manor Road as local centres and Policies LC5 and LC6 dealing with the protection of urban open space and the partial development of urban open space respectively.
32. Epping Forest District Council is currently preparing a new Local Plan which has now been submitted to the Secretary of State. The submission had been the subject of a

judicial review which had been dismissed by Mr Justice Supperstone on 29th June 2018. The claimants sought leave to appeal and on 20th September 2018 the Rt Hon Mr Justice Sales refused that application. Accordingly, EFDC submitted the Local Plan to the Secretary of State for public examination on 21st September 2018. No date has yet been set for the Local Plan Examination, although an Inspector, Louise Phillips has been appointed to carry out the examination

33. The neighbourhood plan in a number of instances refers to policies in the Local Plan, but that misinterprets the status of the plan which is still only a proposed plan.

Compliance with European and Human Rights Legislation

34. Chigwell Parish Council took the decision to publish a Final Sustainability Appraisal / Strategic Environmental Assessment Report dated March 2018, as required by EU Directive 2001/42/EC which is enshrined into UK law by the “Environmental Assessment of Plans and Programmes Regulations 2004”. It did not seek a screening opinion from the District Council.
35. The position regarding the Habitat Regulations is less than straightforward. This is due to the proximity of Chigwell Parish to Epping Forest, which is a designated Special Area for Conservation, a European designated site. It was flagged up early in the plan making process, that an Appropriate Assessment *may* be required in view of the likely air pollution and public access/recreational issues associated with development in close proximity to the forest.
36. The Parish Council appeared to take the view that these matters would best be addressed at the local plan level and could be dealt with by the mitigation identified through the Local Plan’s Appropriate Assessment and incorporated into the Local Plan’s policies. This matter culminated an email dated 6th December 2017 from the Parish Council’s Planning Consultant to the Planning Department stating that the Parish Council was looking to shortly submit the plan and needed to summarise the position in the Basic Conditions Statement.
37. He said that “the Parish Council needs to reconsider if there will be a requirement for a separate HRA screening of its Neighbourhood Plan, given the conclusions on the Local Plan screening”. In view of the fact that there was only one additional housing allocation being promoted in the neighbourhood plan and one of the Local Plan’s housing allocation was proposed to be designated as a Local Green Space, it was argued that the Local Plan screening would suffice. The District Council replied on 21st December 2017, having sought legal advice, and confirmed that it considered it necessary for the Parish Council “to undertake separate HRA screening of the neighbourhood plan”. [Examiners Note: it is the LPA not the Parish Council that is required to screen the plan]. It went further to say that “we consider an assessment of the Chigwell Neighbourhood Plan that complies with Regulation 63 of the Habitat Regulations 2017 to be necessary.” [Examiners Note: This could be construed as

an HRA screening opinion but without preparing a Screening Report] It offered to meet to discuss options for taking this further.

38. Natural England had been actively engaged throughout this process and had for a long time taken the view that as the local plan has not been adopted, its policies could change following examination. Until that plan had been adopted, their position was that the neighbourhood plan could have had an adverse impact on the SAC.
39. The Parish Council considered this to be an unreasonable position and appointed Environmental Gain Ltd to prepare an HRA Screening report dated 14 February 2018. Their report argued that any adverse effects would be mitigated by measures set out in the Local Plan. That report was issued prior to the Sweetman judgement. Their report did not acknowledge that the Local Plan was not an adopted document and could be subject to change. The Parish Council submitted the Environmental Gain report to Natural England and gave them two weeks to respond. Natural England did not respond.
40. The Parish Council decided to submit the plan under Regulation 15 on 7th March 2018. At this point, the District Council formally consulted Natural England on 21st March 2018, in accordance with Regulation 105 of the Conservation of Habitat and Species Regulations 2017 in order “to inform our appropriate assessment of the implications on the Epping Forest SAC of the Chigwell Neighbourhood Plan.” After the Neighbourhood Plan had been submitted, the District Council formally consulted Natural England on 21st March 2018, in accordance with Regulation 105 of the Conservation of Habitat and Species Regulations 2017 in order “to inform our appropriate assessment of the implications on the Epping Forest SAC of the Chigwell Neighbourhood Plan. Their response came on 24th April 2018 as part of Natural England’s Regulation 16 response. Upon receipt of this letter the District Council did offer to set up a telephone conference between the 3 parties “in order to facilitate dialogue but the Parish Council declined the offer and the telephone conference was cancelled”. That would have been the time for the LPA to produce a formal Screening Report, having consulted Natural England, confirming whether or not an Appropriate Assessment was required.
41. The decision as to whether a plan is required to have an Appropriate Assessment is not a decision that either Natural England or Chigwell Parish Council has to take. It is the role of the local planning authority, Epping Forest District Council as the Competent Authority, under Regulation 105 of the Conservation of Habitat and Species Regulations 2017, which determines whether an appropriate assessment is required.
42. I am not in a position to confirm that the basic condition regarding compliance with the EU obligations relating to the Habitat Regulations is met. To quote from Schedule 2 of the Neighbourhood Planning Regulations
“A qualifying body which submits a proposal for a neighbourhood plan must provide such information as the competent authority may reasonably require

for the assessment under regulation 102 (now Regulation 105) or to enable them to determine whether that assessment is required”

43. I have seen no evidence submitted with the documentation sent to me by the LPA, as required by Regulation 17c) of the 2012 Neighbourhood Planning Regulations that the LPA has produced a formal Screening Report which establishes categorically that an appropriate assessment is or is not required, although it has indicated that it believed an Appropriate Assessment is required. It is clear that no Appropriate Assessment has been prepared nor has a formal Screening Report been prepared which states that such an assessment does not need to be prepared.
44. I deal with the implications of this in the Plan Overview section of this report.
45. I am content that there is no conflict with the Human Rights Act.

The Neighbourhood Plan: An Overview

46. This neighbourhood plan has been prepared in parallel with the Epping Forest Local Plan and was in part driven by local concerns with proposals that could have come forward in that plan. In some respects, early versions of the neighbourhood plan were explicitly promoting an alternative strategy for Chigwell. As it subsequently transpired, local concerns arising from possible planning strategies which had been floated in the early Issues and Options stage of the Local Plan’s preparation, including large Green Belt releases, were not taken forward by the District Council in later versions of the plan. As the submission plan acknowledges, the latest version of the Local Plan is “broadly acceptable” and the intention was now that the two plans should complement each other, rather than being an alternatives strategy.
47. There remain deviations between the two plans, namely the neighbourhood plan’s proposed housing allocation in the Green Belt at Rolls Park, the proposed designation of the Convent as local green space and the proposed trigger for the Limes Farm regeneration. To what extent the work on the neighbourhood plan influenced the contents of the local plan is a matter of conjecture and is not relevant to my examination, which is to consider the neighbourhood plan, as submitted, and to test whether it meets the legal tests including the basic conditions as set out in Paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended), including whether the policies can be modified so that the plan meets the basic conditions test.
48. I have concluded that the Chigwell Neighbourhood Plan has significant failings which has resulted in my overall conclusion that the neighbourhood plan does not meet the basic conditions and should not proceed to referendum. I set out my reasoning in the following paragraphs.
49. The plan’s approach to the Green Belt is not in my opinion consistent with the Secretary of State’s policy set out in the NPPF. A number of policies, in particular Policy CHG2 - Rolls Park, Policy CHG3– Chigwell Row, Policy CHG5: – Supporting

Community Assets and Policy CHG7 – Supporting Local Businesses would permit development that is inconsistent with those set out in Paragraph 89 of the Framework. These policies countenance the construction of new buildings, outside the range of circumstances where new buildings would be allowed in the Green Belt under national policy. The neighbourhood plan policies blur Green Belt policy to allow, for example, residential development if there is a payment to the Parish Council of a significant financial sum, so long as the incursion is said to be “kept to minimum” and where the “design” does not harm the openness of the Green Belt.

50. Other policies specify what will be considered “very special circumstances”, based on factors such as the assessment of the contribution of the site to the openness of the Green Belt or whether the development could take place within the urban area. In my view, there is a need to draw a distinction between plan making, the *drafting of development plan policy* for the Green Belt, which is seeking to keep land permanently open and *decision making on planning applications*, where there is a need to balance whether “very special circumstances” exist which clearly outweigh other considerations. That is only a matter that can be considered on a case by case basis rather than as an instrument of planning policy. The Secretary of State approach is that if wider policy objectives require that development needs to be accommodated in the Green Belt, around urban areas then this should be done by removing the land from the Green Belt, following a Green Belt Review and that this can only happen in the context of the preparation of a Local Plan. That is the approach that the draft Epping Forest District Local Plan is adopting.
51. Not only does the plan need to be consistent with Secretary of State’s Green Belt policy, but there is also an additional test of whether the proposals are in general conformity with strategic policies in the adopted local plan. I consider that Green Belt Policy in the adopted local plan, Policy GB2A is one of the plan’s strategic policies, which is the neighbourhood plan should be in general conformity with. Again, I conclude that the treatment of development in the Green Belt set out in the neighbourhood plan do not pass the basic condition test of being in general conformity with the strategic policies in the local plan.
52. Another basic condition is whether the plan as a whole will deliver sustainable development. In this regard, I have concluded that the substantial development proposals at Rolls Park, would not be delivering sustainable development as it in a countryside location, remote from local services such as shops and schools.
53. Whilst it could be argued that the promotion of the Roll’s Park residential allocation is a pragmatic solution to the need to secure funding for the Community Hub, I consider it highly unlikely that the payment of a substantial financial windfall could be accepted, at the planning application stage, as a reason to grant planning permission as I believe that the payment would not pass the legal tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. That is also a view shared by the Local Planning Authority, as stated at the exploratory Meeting. I will set out my reasons fully in the relevant section of the report dealing with Policy CHG2.

54. Beyond the Green Belt issues, I believe that there are fundamental problems with the fact that the impact of development being proposed in the neighbourhood plan will, in combination with the development being proposed in the local plan, have an adverse impact on the Epping Forest SAC. There was agreement from all parties at the Exploratory Meeting, that the Sweetman Ruling means that any Habitat Regulation screening cannot now take into account mitigation measures against any impacts. That itself is conclusive, but notwithstanding that argument, I am concerned that the plan and the screening report produced on behalf of the Parish Council relies upon mitigation measures which are being proposals in the still draft Local Plan. Those policies and indeed the accompanying Local Plan Habitat Regulation Assessment has not been examined and it is possible that the policies which is the neighbourhood plan relies upon, could change, before the plan is actually adopted. In this instance, I agree with the conclusions of Natural England, Epping Forest District Council and Essex County Council that the neighbourhood plan cannot rely upon the mitigation measures arising from proposals in the local plan, until such time as the Local Plan is adopted. It is acknowledged that the plan in conjunction with proposals in the Local Plan would, in the absence of mitigation have an adverse impact on the Epping Forest SAC. That conclusion immediately triggers the provisions of Schedule 2 of the Neighbourhood Planning Regulations 2012 and that means that the neighbourhood plan cannot be made.
55. Equally, it is clear that the Chigwell Neighbourhood Plan as submitted, has not been subject to the necessary steps required to be taken by the Local Planning Authority as Competent Authority in that it has not formally screened the submitted neighbourhood plan to determine whether an Appropriate Assessment is or is not required as required by The Conservation of Habitats and Species Regulations 2017(Regulation 105). An Appropriate Assessment has not been prepared and as it has been accepted that the plan will have an impact on the Epping Forest SAC, I did consider whether to adjourn the examination to allow an Appropriate Assessment to be undertaken. However, in view of my conclusions on other aspects of the plan, that document would not have changed the recommendation that tomorrow examination would make. It would therefore have unnecessarily wasted resources in preparing a document which would have had no benefit to the outcome of the plan's examination.
56. In terms of the other EU obligations I feel that the Sustainability Appraisal has not adequately considered "reasonable alternatives" in terms of whether other sites could have delivered funding towards the Community Hub. This is a point that is made on behalf of other landowners in their Regulation 16 comments.
57. Finally, I have concerns with regards to the way a number of the proposed policies are drafted or in particular the absence of a Character Assessment to support the plan's design policies. There are instances where the plan falls short of the Secretary of State's expectations as set out in Planning Practice Guidance which requires that neighbourhood plan policies should be clear and precise and are capable of being

used with confidence by decision-makers, or that the policy is supported by appropriate evidence.

58. As an examiner, my remit is to look at the plan as a whole, and I concluded that whilst a small number of the policies could be amended to bring into line with the basic conditions, the majority of the policies which reflect the main thrust of what the overall plan is looking to achieve, do not pass the basic conditions and I believe I have no alternative but to recommend that the Chigwell Neighbourhood Plan should not proceed to referendum. I appreciate that this will be a major disappointment to Parish Council but I do not consider that the efforts have been wasted and I would urge the Parish Council to continue to engage with the Local Plan making process and also to take up the offer of discussions with the District Council planners with regard to issues such as the funding of the Community Hub, whether it be by introducing alterations to the Green Belt boundaries to the proposed site to allow enabling development or through the allocation of CIL money, if it is introduced in the future, to the Community Hub scheme.
59. In the next section of report, I will examine each of the individual policies in terms of how they comply with the basic conditions.

The Neighbourhood Development Plan Policies

Policy CHG 1 – A Spatial Plan for the Parish

60. Planning Practice Guidance states that a neighbourhood plan policy should be drafted so that it is “clear and unambiguous”. It should be “drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”
- 61.** The wording of the first sentencing policy is somewhat ambiguous, when it states “The parish will continue to be defined by the Metropolitan Green Belt”. This strikes me as not actually being a statement of planning policy which could be used to determine a planning application but an expression of the context for planning in Chigwell in that the area contains a mixture of urban areas surrounded by Green Belt.
62. The policy that states that development will only be appropriate within the urban area of the parish, unless it is suited to a countryside location. As pointed out by the District Council in their Regulation 16 comments, not all development that could be “suited to a countryside location” would necessarily be accepted in the Green Belt, such as the erection of new business premises. There is also ambiguity regarding the use of the term “suited to a countryside location”.
63. The policy then appears to limit development to Chigwell Village, Chigwell Row and the urban areas of Grange Hill for infill development or plot subdivision or the

redevelopment of previously developed land. I do not consider that it is appropriate to place limitations on the objective which is to focus development into what must be the more sustainable locations. As written it would preclude the change of use of buildings to residential. It would also run counter to Policy CEP6 of the adopted local plan which seeks to concentrate new economic or housing developments and redevelopment within urban areas, by maximising the use of spare capacity in terms of land, buildings and infrastructure.

64. I am also concerned that the policy to resist development on “existing public open land or private open land *that acts as an effective visual break in the urban form*” is not specific. The plan should have identified which land is considered to provide this “effective visual break”. As written any planning application affecting open land will need to be judged as to whether the decision maker considers that the land performs this particular role. I do not think that this allows the applicant or landowner to know whether their particular parcel of land will be protected by this policy.
65. The final element of the policy relies upon planning applications providing mitigation to the potential adverse effects on the Epping Forest SAC, in accordance with the “Local Plan”, which is only an emerging policy, at this point in time this has not been tested and for which there may be outstanding objections. In any decision making such policies in an emerging plan must be given appropriate weight in accordance with the tests set out under paragraph 216 of the NPPF (2012) and paragraph 48 of the NPPF (2018). To “make” the plan with this policy unamended as proposed, will effectively confirm development plan status on what is only draft planning policy, which could change as a result of the examination process.
66. I therefore consider that the plan policy as submitted does not meet the basic conditions as it does not accord with Secretary of State policy, the strategic policies in the adopted local plan and could prevent the delivery of sustainable development.

Policy CHG 2: Enabling Development at Rolls Park, Chigwell.

67. This policy promotes a mixed-use development in the Green Belt, comprising a housing scheme covering up to 2 hectares, which will deliver up to 40 homes if the scheme were to deliver the requisite amount of affordable housing, or if EFDC agreed that the affordable housing requirement was waived, the number reduced to 30. In addition, the proposal includes a community park element incorporating a new public park and footpaths and a new scout headquarters.
68. The purpose underlying the allocation is to assist the delivery of an offsite community facility which will comprise a new parish community hub, covered by Policy CHG3. This policy requires that the housing scheme “comprises the minimum number of houses to enable the financing in full of the offsite community facility”. The policy is also caveated by the need to the agreement to be reached with the planning authority

on the approach to affordable housing and to the provision of a viability appraisal at planning application stage.

69. The neighbourhood plan is not proposing the alteration to the Green Belt boundary. It is accepted that the land will remain in the Green Belt but the plan argues that the policy to deliver the Community Hub will ensure that “the very special circumstances test of national green belt policy... will be met”. The NPPF policy regarding the consideration of “very special circumstances” is set out in paragraphs 87 and 88. This firstly establishes that “inappropriate development is, by definition, harmful to the Green Belt and should not be *approved* “except in very special circumstances”. However, paragraph 88 is clearer as it begins “When considering any planning application...” It then it establishes the need to balance the potential harm to the Green Belt by reason of its inappropriateness and any other harm is clearly outweighed by other considerations”.
70. My view that the test of the plan maker is set out in paragraph 79 of the Framework which stresses the Government’s policy to keep Green Belt land permanently open, to prevent urban sprawl. It states that the essential characteristics of the Green Belt is its openness and its permanence. In terms of the latter, it is the role of a local plan review to promote changes to Green Belt boundaries and the emerging Epping Forest District Local Plan is doing that in a number of areas in Chigwell. It is not appropriate for a neighbourhood development plan to be promoting development inside the Green Belt that fundamentally undermines the purpose of the Green Belt, even if it does so on the basis that the Parish Council would receive a substantial financial contribution to fund community facilities.
71. To allocate just under 5 acres of undeveloped Green Belt land for housing is entirely at odds with the overall Green Belt objective of keeping land permanently open. It will increase urban sprawl, particularly in view of the site’s close proximity to new housing development currently underway at Chigwell Village. Whilst I can understand why the Parish Council may have found the offer made by the landowner to be attractive, which is to be funded by the proposed Plan’s allocation of land for residential development, I do not consider that a planning obligation to fund the community facilities would meet the test sets out in the Community Infrastructure Levy Regulations 2010, in particular Regulation 122. I do not believe that a payment to fund a Community Centre, Parish Council offices, Village Café and a replacement library would meet the test of that the payment would be required to make the residential development acceptable in planning terms, nor will the new facilities be directly related to the new housing nor is the scale of the contribution of circa £6.5m “fairly and reasonably related, in scale and kind” to the construction of 30 to 40 houses. The plan refers to the need to fully fund the cost of the proposed hub, but I have not seen any detailed evidence, that this is the only means of financing the facilities the Parish Council aspires to. I would question why all costs should have to fall to the Parish Council, as the library will be a County Council facility. I raised at the Exploratory Meeting, the development potential of the existing site in Hainault

Road and the open land to the north and whether a case could be argued through the local plan examination, that the land could be considered as a Green Belt release as the vacant land to the north of the existing car park is under Parish Council control. That will be a far more sustainable location for enabling residential development, being close to public transport links, local shops and facilities. I heard that the Parish Council had not pursued the matter due to the Green Belt objections raised by the District Council in respect of a recent planning application but such objections would be overcome if the site were to be released from the Green Belt. I sensed from the reactions from the District Council's side at the Exploratory Meeting that there could be a willingness to engage with the Parish Council on this basis. Similarly, I heard that the District Council may introduce a Community Infrastructure Levy Scheme, once the Local Plan is adopted, which would enable 25% of all CIL receipts to be used by the Parish Council, as it sees fit.

72. Equally, I consider that to promote this allocation, based on this justification, could open the doors to other Green Belt landowners seeking to promote their sites by "offering funding for local community projects", using the same rationale. I have seen no evidence from the landowner, beyond the Site Assessment Report, which was submitted as part of the evidence base, justifying the level of contribution other than it appears to conveniently match the current estimate, and I do not have confidence that these figures are necessarily robust. The policy refers to the requirement for a Viability Appraisal been carried out at the planning application stage but the principle of that level of development being acceptable on this site will have been already established by the allocation in the made neighbourhood plan.
73. As well as the policy departing significantly from national Green Belt policy, the proposal also conflicts with Policy GB 2A - Development in the Green Belt as set out in the Epping Forest–Local Plan 1998 and the Local Plan Alterations 2008. It would also be contrary to the proposed Policy SP 6 and the proposed Policy DM 4 of the emerging Local Plan, which whilst not being a basic condition test, as it is not adopted policy, this is still a guide as to whether the plan deliver sustainable development.
74. I consider that the approach being taken by the District Council, by seeking the release from the Green Belt of smaller sites, immediately on the edge of existing settlements, closer to shops and facilities to be a more sustainable location, for delivering the numbers of new houses the plan is seeking to deliver. I have placed little weight on the public transport accessibility benefits of the new Chigwell parish bus service as I have no information as to its long-term sustainability.
75. Finally, I have no evidence to suggest that the proposed level of housing at Rolls Park will not, to some extent, have an adverse impact on the Epping Forest SAC. I note that the proposals include the Community Park, but in view of the comments on Natural England, I cannot be satisfied that the proposal will not to some extent have an adverse impact on Epping Forest. This was a matter to which they appeared to be agreement from both sides of the Exploratory Meeting.

76. For all the above reasons, I have concluded that this policy does not meet basic conditions.

Policy CHG 3: Chigwell Row- A Sustainable Community

77. My concern with this policy, relates to the second sentence of the policy, in that it appears to support development, outside the settlement boundary and within the Green Belt, so long as the development does not compromise the “essential open character of the Green Belt and the public benefits are such to provide very special circumstances”. I believe that the wording of policy will undermine the overall approach to new building in the Green Belt set out in paragraph 89 of the NPPF (2012). Again, I do not consider that a neighbourhood plan policy should be setting out what would constitute “very special circumstances” by virtue of offering unspecified public benefits.
78. As submitted I do not consider the policy meets the basic conditions but I could have recommended that the policy could be amended by deleting the second element of the policy but that would have removed the essential feature of the policy that it was advocating.

Policy CHG 4: Regenerating Limes Farm

79. I am concerned that the regeneration of this estate is going to be dependent upon the Parish Council deciding to undertake a review of the neighbourhood plan. It appears that the Parish Council is seeking to take the initiative in determining how and where new housing on the estate should go.
80. Notwithstanding my overall conclusions on this neighbourhood plan, the Parish Council could have sought to promote its vision for the regeneration of Limes Farm at this point, rather than effectively saying that one of the Local Plan’s strategic sites cannot progress until the Parish Council takes a decision to prepare a neighbourhood plan. I note that the plan is only supporting the *principle* of the local plan’s proposals and is “sceptical that a viable and comprehensive regeneration programme is possible”.
81. Draft Local Plan Policy SP 3 commits the District Council to developing a strategic masterplan and includes the principle of “strong vision, leadership and community engagement”. As submitted the proposal will be making the residents of the Limes Farm community dependent on the results of a referendum of all residents in Chigwell Parish.
82. In my experience, achieving successful estate regeneration is complex, ensuring that the community is actively engaged and at the same time, ensuring the phasing of new build development is balanced with the refurbishment/ redevelopment of existing areas, to provide continuity of housing supply through the project.

83. I believe that the proposed policy would undermine the delivery of this strategically important regeneration scheme, if the development were to be planned, not as a strategic master plan for the estate, but by a wider neighbourhood plan review of the whole parish. I therefore consider that the policy fails the test of delivering sustainable development.

Policy CHG 5: Supporting Community Assets

84. The policy refers to the proposals for a new community facility on the Victory Hall site on Hainault Road, “as shown on the Policies Map”. However, when I refer to the Insert Plan – Grange Hill and Chigwell Village, there appears to be no such designation, covering that site, although this is covered by the designation for Policy CHG6 – Supporting Local Shops.
85. The absence of that plan means that the extent of the proposal to extend the site into the Green Belt cannot be properly judged. The Plan’s approach to allowing development to encroach into the Green Belt, even if it is a “kept to the minimum necessary to deliver a viable facility” is inconsistent with national and local green belt policy. As I previously referred to it would be better for the Parish Council to argue through the examination of the Local Plan, that the enlarged site could usefully be taken out of the Green Belt, which will then allow a version of this policy to be promoted, which could also deliver enabling development, in what would be a sustainable location.
86. The wording of the policy is also vague in that it refers to “some provision of a doctor’s surgery”. Any decision maker including a potential medical practice or funding body will be unclear as to what is meant by “some provision”. I am also intrigued as to logic of why a doctor’s surgery can be considered acceptable in the Green Belt, whilst a dental facility is stated as not being appropriate.
87. The other elements of the policy relate to the retention of a number of community facilities. I have no comments to make on the choice of facilities. I consider the wording of the policy to be somewhat ambiguous in that it refers to “proposals that lead to the unnecessary loss”. It would have been helpful for the plan to set out when a loss could be accepted e.g. when a function is no longer viable.

Policy CHG 6: Supporting Local Shops

88. This policy adds a helpful local dimension to the emerging Policy E 2 of the draft Local Plan. My only concern is that by imposing a strict percentage, it could lead to units standing empty. If a shop closes down and there is no demand for a replacement shop, is it not better that new occupier is found rather than to force the unit to stand empty, because the percentage threshold has been breached. I

therefore consider that the policy could incorporate some mechanism for allowing a degree of flexibility.

Policy CHG 7: Supporting Local Businesses

89. The policy as submitted only relates to the creation of new businesses, but planning policies have to be used to consider proposals from existing occupiers of premises. The issue of responsibility for implementing mitigation measures misunderstands the principle that planning permissions inure to the benefit of the land. Any planning conditions are capable of being enforced by the planning authority either through an enforcement notice or a breach of conditions notice.
90. My conclusions regarding the neighbourhood plan's approach to development in the Green Belt are equally applicable to this policy. The policy needs to be clear as to which businesses it is seeking to protect. Is it only used in Class B or would it relate to other new commercial operators?
91. I am unclear as to how policy wishes to deal with the expansion of existing businesses. It appears that development for new businesses could be accommodated in the Green Belt subject to 3 criteria, whilst an expansion of an existing building has to be consistent with green belt policy.
92. I have no comments to make on the work from home element of the policy. I noticed that the District Council is concerned that the second paragraph could lead to development in unsustainable locations. However, I am equally conscious that, ignoring green belt considerations, Paragraph 28 of the NPPF encourages the sustainable growth and expansion of all types of business and enterprise in rural areas.

Policy CHG 8: Promoting Good Design in the Parish

93. When I carried out my site visit I was struck by the architectural diversity of the neighbourhood area. The wording of the policy seems to imply that there is a uniform "character of the parish", when the fact there is a great variety of character areas. I consider that a more useful test would be that proposals should be designed to be in keeping with the character of the immediately surrounding areas rather than the parish as a whole.
94. The reference to larger buildings set in large grounds is only relevant to certain parts of the plan area, rather than much of the parish. It would have been better if the policy had been supported by evidence set out in a Character Appraisal and then the 4 bullet points could then be applied to specific areas.
95. Is the presumption against flattened development relevant to all of the parish and the plan needs to articulate how the conversion of a building into the flats would change the character of the area? I witnessed the wide variety of boundary walls, fences and security gates, on properties in many parts of Chigwell but I am also conscious that

in some streets, these would be totally out of character. Similarly, the use of “weatherboarding and agricultural vernacular” would not be in character with some of the more urban area. As submitted, I do not consider the policy provides the clarity that would enable the design guidance to be used with confidence throughout the plan area. I therefore do not consider that it passes the basic conditions test, in terms of compliance with Secretary of State policy.

Policy CHF 9: Promoting Good Design in the Chigwell Conservation Area

96. My only concern is regarding the fourth bullet point, which presumes against “unnecessary loss of a non-designated heritage assets in the conservation area”. What constitutes an “unnecessary loss” is not defined. Will the demolition required to allow for a replacement building constitute a necessary loss? National guidance on non-designated heritage assets is set out in Paragraph 135 of the NPPF (2012). This requires a balanced judgement to be made regarding the scale of harm or loss to be balanced against the significance of the heritage asset. All applications for development in a conservation area, including demolitions are required to have regard to whether the development will preserve or enhance the special character of the area. Paragraph 137 of the NPPF (2012) states that local planning authorities should look for opportunities for new development within conservation areas. Any decision will need to balance the impact of the opportunity of new development against the significance of the building to be lost or altered to the conservation area. Whilst the policy as written does not meet basic conditions the policy could have been capable of modification to bring it into line with Secretary of State advice.

Policy CHG 10: Local Green Spaces

97. The proposal is for two areas to be designated as Local Green Space (LGS). Paragraph 79 of the Framework states that local policy for managing development within a local green space should be consistent with policy for Green Belt.
98. In respect of the Glebe land at High Road / Vicarage Lane, this land is already in the Green Belt and therefore is already subject to the strict policies which should keep the land permanently open. Local green space status also rules out development other than in exceptional circumstances. I cannot therefore see that imposing LGS designation offers any further protection than the land currently enjoys. A further consideration is that Paragraph 77 of the NPPF (2012) requires that the designation should be only used “where the green area is demonstrably special to local community and holds a particular local significance”. I have seen no evidence submitted, which justifies why the land is demonstrably special for its own value and it appears, from the supporting text, that the driver for the proposed designation is that the site has been promoted from development in the past and its proximity to

local services in the village centre which makes it vulnerable to “short– medium-term policy shifts” or attempts to demonstrate “very special circumstances” - which is common to both LGS and Green Belt decision criteria. I do not consider that the proposal meets the strict test for designation and accordingly does not meet the basic conditions.

99. The issues regarding the Convent are not as straightforward. This is the allocation site that the draft local plan is proposing in Policy P 7– CHIG.R5. As this is only emerging policy, that would not in my opinion mean that designation is inappropriate in its own right. From my reading of the justification set out in Paragraphs 4.44 to 4.45, I clearly appreciate the historic importance of the Convent and it’s setting. The land passes the test of being in reasonably close proximity to the community, is local in character and is not an extensive tract of land. However, I am not convinced that in the absence of the proposed local plan allocation, there would have been little call for the land in question to be designated as local green space. On my site visit around the parish, I noted other historic properties, whose setting were equally as important to them. I sense that the objective of designation seems to be to thwart the proposed local plan allocation, because of concerns regarding the potential impact on the listed building, it’s setting and the separately listed forecourt piers, gateway and railings. I note from Appendix 6 of the draft Local Plan that specific development guidance has been produced for the site, which recognises the possible impact on the listed building and listed structures. Such development is required to address the setting of the heritage assets and preserve their special architectural and historic interest. In my experience of similar situations relating to new development and listed structures, the careful siting of new development, for example, positioning development to the edges of the site can maintain primary views of the house and its structures.
100. Importantly, I am not persuaded that the LGS designation is “consistent with the local planning of sustainable development” which is a requirement set out in paragraph 76 of the Framework. The historic importance of the listed building and its associated structures can be properly protected by the careful planning and design of any new development within the immediate setting of listed building. Accordingly, I do not consider that the policy meets the basic conditions in terms of compliance with Secretary of State policy as set out in the NPPF and could also mean that the plan does not achieve the delivery of sustainable development.

The Referendum Area

101. If I had been in a position to recommend that the Plan progresses to its referendum stage, I would have been required to confirm whether the referendum should cover a larger area than the area covered by the Neighbourhood Plan. In this instance, I can confirm that had the plan been able to proceed to referendum the area of the Chigwell Neighbourhood Plan as designated by Epping Forest District Council on 3rd

March 2014, would have been the appropriate area for the referendum to be held and the area for the referendum does not need to be extended.

Summary

102. This report outlines why I have not been able to recommend that the Chigwell neighbourhood plan should proceed to referendum. As paragraph 184 of the NPPF (2012) states “neighbourhood plans must be in general conformity with the strategic policies of the local plan”. The plans approach to green belt issues is not in conformity with the development plan’s adopted green belt policy nor is consistent with the approach advocated by the Secretary of State in the NPPF for Protecting Green Belt Land and a significant number of the policies would undermine the objective of keeping green belt land permanently open.
103. Furthermore, I have reached the conclusion that the plan will have an adverse effect, in combination with other plans, on the Epping Forest SAC, as acknowledged by all parties and in reaching that conclusion I am unable to take the account of any mitigation measures, set out in the emerging local plan. Accordingly, Schedule 2 of the Neighbourhood Planning Regulations 2012 is engaged and the plan cannot be made.
104. **To conclude, I can confirm that my overall conclusion is that the Chigwell Neighbourhood Plan, does not meet all the statutory requirements and should not proceed to referendum.**

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5th November 2018