

**SITE PLAN ATTACHED**

**LAND SOUTH OF EAST HORNDON HALL TILBURY ROAD WEST HORNDON  
ESSEX CM13 3LR**

**OUTLINE PLANNING APPLICATION (WITH ALL MATTERS RESERVED) FOR THE REDEVELOPMENT OF THE SITE COMPRISING DEMOLITION OF ALL BUILDINGS; CONSTRUCTION OF NEW BUILDINGS PROVIDING 35,000 SQM OF CLASS B1B, B1C, B2 AND B8 FLOOR SPACE AND 250 SQM OF CLASS A3 FLOOR SPACE, TOGETHER WITH ASSOCIATED VEHICLE PARKING, LOADING, CYCLE PARKING AND INFRASTRUCTURE.**

**APPLICATION NO: 19/00315/OUT**

<b>WARD</b>	Herongate, Ingrave & West Horndon	<b>13 WEEK DATE</b>	25.06.2019
<b>PARISH</b>	West Horndon	<b>Extension of time (if applicable):</b>	tbc
<b>CASE OFFICER</b>	Mr Mike Ovenden		
<b>Drawing no(s) relevant to this decision:</b>	1232-P-102/B; REDW-3235-112; 1232-P-123; Flood Risk Assessment; indicative - Appendix B Groundsure Insight Report; Archaeological Desk Assessment; Indicative - Extended Phase 1 Habitat and Bat Survey; Travel Plan; Heritage Statement; Landscape and Visual Impact Appraisal; Indicative- Noise Impact Assessment; Environmental Risk Assessment; Planning Statement; Indicative - Protective Species survey Report; Transport Assessments; Design & Access Statement;		

**Applicant:** MM Properties (London) Ltd

This application is reported to committee at the discretion of the Development Management Team Leader as it relates to a development of scale which is likely to be of interest to the committee.

**The application was deferred by the Planning and Licensing Committee at its meeting on 18 December 2019. The original report is reproduced in its entirety below. An update is provided at the end in an 'Addendum'.**

## 1. Proposals

This is an outline planning application addressing the principle of development with all other matters reserved – i.e. details of access, appearance, landscaping, layout and scale - at this stage. It comprises the demolition of all buildings; construction of new buildings providing 35,000 sqm of class B1b, B1c, B2 and B8 (i.e. research and development, light industrial, general industrial and storage and distribution respectively) floor space and 250 sqm of class A3 (restaurants and cafés) floor space, together with associated vehicle parking, loading, cycle parking and infrastructure.

As an outline application with all matter reserved, specific details of the form of development will be provided at the reserved matters stage if outline planning permission is granted. Nevertheless, an indicative layout plan, parameter plan showing building heights and a plan showing indicative points of access accompanies the application. The former shows 13 new buildings, retention of one existing building. The latter drawing shows all access (at 3 points) being from the Tilbury Road. The current T-junction of the A128 and Tilbury Road would be replaced by a roundabout within the existing limits of the highway funded by the developer.

The site is adjacent to the junction of the A127 and A128, north east of West Horndon. Along its northern boundary is the A127 and its slip road at a higher level (between 4 and 6 metres). Along the slip road is a run of panel fencing and conifers providing a poor quality though effective screen. The east boundary is formed by the A128 descending down from the junction at that higher level (approximately 8 metres higher than the site) as it travels south to the junction of the A128 and Tilbury Road. Vegetation along this boundary is predominantly deciduous, patchy and inconsistent in that near to the roundabout vegetation it is close to the carriageway, further down it is on the side of the embankment, reducing its effectiveness. Between autumn and spring its ability to act as a screen is very limited and currently the vegetation along the A128 away from the roundabout provides very little screening of the highway from the site or views of the site from the A128. At other times of the year from various sections of the A128 there would remain clear views into the site. At the southern extreme there is no significant change in levels and immediately to the south of the site is a dwelling and nursery. The western boundary is formed by Tilbury Road with the remnants of an unmanaged former agricultural hedge and scrub allows clear views into the interior of the site from the west. The site is more or less on the same level as the Tilbury Road, though at the southern end the site is at a slightly higher level. The site has a rounded triangular shape covering an area of approximately 8.65 hectares.

Concentrated towards the north boundary the site is in commercial use for a bulk transport and aggregates businesses, with buildings, earth bunds and vehicles and plant stored in a yard. To the south of that the land is open land used for rough grazing. Just outside and to the west of the site is East Horndon Hall, a Grade II listed building, with a pair of semi detached dwellings along the Tilbury Road frontage. There are other dwellings to the west of Tilbury Road. A public footpath crosses the northern part of the

site and a byway runs along the southern boundary with the adjacent commercial nursery and garden centre.

## **2. Policy Context**

The Development Plan: Brentwood Replacement Local Plan 2005

- Policy CP1 General Development Criteria
- Policy GB1 New Development
- Policy GB2 Development Criteria
- Policy E8 Employment Development Criteria
- Policy T1 Travel Plans
- Policy T2 New Development and Highway Considerations
- Policy T5 Parking – General
- Policy C16 Development within the Vicinity of a Listed Building
- Policy PC1 Land Contaminated by Hazardous Substances
- Policy PC4 Noise

Emerging Local Development Plan (LDP):

The Brentwood Replacement Local Plan 2005 remains the development plan and its policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the National Planning Policy Framework (NPPF). Due weight should be given to them, according to their degree of consistency with the NPPF - the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given.

The emerging Local Development Plan went through Pre-Submission (Publication Draft) Stage (Regulation 19) consultation early in 2019. The Council subsequently resolved to revise the detailed wording of some of the proposed housing allocations and undertake a focused consultation on those revisions. This was carried out over a six week period ending on 26 November 2019 and responses are currently being considered. The LDP will be submitted to the Secretary of State in early 2020 for an Examination in Public. This is likely to be held in mid 2020, subject to timetabling by the Secretary of State. Provided the Inspector finds the plan to be sound, it is projected that it could be adopted by the Council in late 2020 or 2021.

As the emerging plan advances and objections become resolved, more weight can be applied to the policies within it. At this stage there are outstanding objections to be resolved, nevertheless, the Local Plan Pre-Submission (Publication Draft) provides a good indication of the direction of travel in terms of aspirations for growth in the Borough and where development is likely to come forward through draft housing and employment allocations. In this case, the application site forms part of a proposed allocation for employment land (Policy E13, East Horndon Hall). However, as the plan

has yet to be submitted and inspected through an Examination in Public it is currently considered that it has limited weight in the decision making process.

#### National Policy

- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)

### **3. Relevant History**

- 17/01050/OUT: Outline application for demolition of all buildings; construction of 13 new buildings, comprising of Class B1b, B1c, B2 and B8 floor space and 250 sqm of Class A3 floorspace, together with associated vehicle parking, loading, cycle parking and infrastructure (Landscaping and Appearance reserved matters)  
-Application Refused. No appeal.

### **4. Neighbour Responses**

- Proposal has been declined once for good reason, looking at the new proposed plans I do not see any difference
- Object to loss of greenbelt which should be protected from development
- Inappropriate site for an industrial estate
- Would be an eye sore.
- The LDP has not been submitted nor agreed
- Proposal should be held until the inspector has considered the LDP
- The development of the West Horndon site is only a future proposal
- Reference to other LDP employment allocations locally
- Existing and future increases pollution in the area
- Increased noise for local residents from comings and goings at all times of the day/night
- No demand or need for an industrial estate
- Reference to 23 new dwellings built in locality (Elliot's nightclub site)
- Would significantly add to traffic movements in HGVs
- Would add to traffic using the A127
- Morning traffic would be a nightmare
- Danger to pedestrians using Tilbury road which is mostly without pavements
- Conflict between residents and commercial vehicles
- Since agriculture ceased on site the site has developed into a wildlife area
- Migrating geese visit the site
- Leave area green and reduce pollution
- Site is prone to flooding
- Affect setting of All Saints Church East Horndon (north of A127)
- Affect setting of Dunton Hills Garden Village

## 5. Consultation Responses

- **Bats - Mrs S Jiggins:** None received
- **Essex Badger Protection Group:**

This is now the third time The Essex Badger Protection Group has been consulted on this scheme. The original application was ultimately withdrawn by the applicant and the second application (17/01050/OUT) was refused by planners as it represented an inappropriate green belt development. It is difficult to see how this third application represents anything significantly different or how it is supposed to increase biodiversity on the site as required under the National Planning Policy Framework. We have nevertheless reviewed the scheme once again in some detail.

The consultation includes comments on matters relating to protected species and in accordance with current advice these detailed comments are not to be put into the public domain. However the group raises no objections to the proposal subject to conditions.

- **Essex Wildlife Trust:**

I can confirm we are satisfied that sufficient ecological information has been provided to enable determination, the proposed landscaping plan is acceptable and accordingly we have no further comment to make.

- **Environmental Health & Enforcement Manager:** None received, though no objections were received at the time of the last application, subject to conditions.
- **Anglian Water Services Ltd:**

There are assets owned by Anglian Water or those subject to an adoption agreement within or close to the development boundary that may affect the layout of the site. Anglian Water would ask that informatives be included within your Notice should permission be granted.

The foul drainage from this development is in the catchment of Upminster Water Recycling Centre that will have available capacity for these flows. Anglian Water will need to plan effectively for the proposed development, if permission is granted. We will need to work with the applicant to ensure any infrastructure improvements are delivered in line with the development. We therefore request a condition requiring phasing plan and on-site drainage strategy

- **Arboriculturalist:** None received
- **Essex & Suffolk Water:**

We have no objection to this development subject to compliance with our requirements, consent is given to the development on the condition that a water connection for the new dwellings is made onto our Company network for revenue purposes.

- **Planning Policy:**

Planning Policy comments were provided in response to the determination of application 17/01050/OUT (see officers report and Item 290 of the Council's Planning & Licensing Committee, 15 January 2019). Since then the plan-making process has progressed. The following comments have been updated in light of this progress. Consideration of planning policy in the current Local Plan and emerging Local Development Plan is provided within the body of the officer report (specifically 2. Policy Context, and 6. Summary of Issues).

The application should be assessed according to the Council's current development plan. In time, it is important that the application responds to the policies published in the Pre-Submission Local Plan (Regulation 19, February 2019), particularly if the very special circumstances case is being made on the basis of weight that can be attributed to the emerging plan. The issue of weight is considered in chapter 6 (summary of issues).

The site forms part of a proposed employment allocation in the emerging plan; policy E13, East Horndon Hall. Reference is made within this policy to improved sustainable links to Dunton Hills Garden Village and West Horndon Station. This principle is set as part of wider masterplanning for the integration of new development in the Southern Brentwood Growth Corridor. The growth corridor is defined by both the A127 highway and the railway line to London Fenchurch Street, containing several proposed development sites and sustainable transport links to West Horndon Station. This is integral to the Local Development Plan spatial strategy for sustainable growth.

The application should provide an adequate contribution for necessary transport mitigations, contributing to the overall funds required for transport improvements in the Southern Brentwood Growth Corridor. The Brentwood Infrastructure Delivery Plan (IDP) is regularly updated as more information becomes available. This will soon be updated following the completion of technical work to consider the wider transport implications of Local Plan growth but also the Council's vision for how development can be sustainably delivered in the Southern Brentwood Growth Corridor. This application would need to contribute a proportionate amount towards estimated costs considering other development in the area. It may be appropriate to use conditions and/or Section 106 agreement(s) to stipulate entering into agreements with adjacent landowners on the co-delivery or percentage contribution for transport mitigations, something that is being considered through the Council's IDP. Further engagement with the applicant is required on this subject.

Further dialogue is required regarding transport mitigation measures (i.e. enhanced bus services, new roundabout, road widening and improvement of Station Road), in partnership with Essex County Council as highways authority. Timescales for the completion of development should be considered in terms of how it coincides with the start of construction for Dunton Hills Garden Village, and so the additional construction traffic in the area, and on the A128, may also need to be considered as part of the transport impacts.

Considerations regarding access, layout and scale should consider cumulative impacts of surrounding development, most significantly Dunton Hills Garden Village. The applicant could have sought clarification through pre-application advice from Brentwood Borough Council on this matter.

The application is to create 3,5000 sqm (3.7 ha) of gross internal area employment floorspace. This would help contribute to the employment land allocation specified in the Pre-Submission Local Plan (total of 5.5 ha), importantly providing alternative new employment land where existing land is lost through redevelopment (i.e. West Horndon industrial estates), and adding to the mix of uses to be delivered as part of the standalone new community at Dunton Hills Garden Village.

- **Economic Development:**

The emerging Brentwood Local Development Plan provides a strategy for economic growth in the borough through the allocation of new employment land, in addition to policies that enable the redevelopment of existing employment land and opportunities for growth in existing urban areas. The Council is preparing a new Corporate Strategy that will identify economic growth as a key priority. It is important that new employment land is delivered in order that future economic growth targets are achieved. Land at and South of East Horndon Hall has been identified by the Council for a minimum of 5.5 hectares of new employment floorspace, to be delivered in conjunction with mixed uses at Dunton Hills Garden Village. Delivery of employment land should provide new jobs in the area as well as contribute to local supply chains and the wider economy. However, it is important that economic growth is delivered in the right places and through suitable processes, which is why the Council is progressing its Local Development Plan. Proposals for economic growth should be in line with this.

- **Parish Council:**

This planning application is essentially the same as Planning Application No. 17/01050/OUT. This was refused by Brentwood Borough Council. The opportunity has been taken by the developer to modify aspects of the proposed site layout and provide additional information in response to concerns raised by respondents to the past planning application.

Parish Councillors continue to have a number of serious concerns regarding this proposed development. These are set out below.

## Need

At the present time there are industrial units available for hire at West Horndon Industrial Estate, Childerditch Industrial Estate and Cockridden Farm Industrial Estate. These are all within two miles of the proposed development. Also, with the new Enterprise Park being developed at the junction of the M25 with the A127, it is difficult to envisage why more industrial units are required within or in close proximity of West Horndon Parish.

## Green Belt

The land where the proposed industrial park is to be sited is green belt. Inappropriate development of green belt land is by definition harmful and should not be approved except in very special circumstances. While the developer has provided material supporting new commercial development, this is not regarded as sufficient evidence of special or exceptional circumstances. Many of the comments provided remain opinion. To allow this site to be developed would result in harm to a corridor of environmental and wildlife habitat. To allow conflict with the green belt would negate the purpose of safeguarding the countryside from encroachment. Also, the harm to 'openness' would be substantial in magnitude.

## Thames Chase

Thames Chase is a community forest located in London and Essex. It is an inspirational example of land regeneration for the recreation and enjoyment of all. The land identified for the proposed development falls within the Thames Chase boundary. Brentwood Borough Council is a signatory to the Thames Chase agreement.

## Flooding

The flood report provided with this planning application is far more detailed than submitted with the prior application. West Horndon Parish Councillors do not have sufficient expertise to know whether the concerns previously expressed regarding flooding on the proposed site and the danger posed to surrounding areas have been appropriately addressed.

It is already known that during periods of inclement weather the land in question is waterlogged. It is also known that existing surrounding surface water drainage systems are already at, or close to, capacity. Proposals to address flooding must be robust and consider the local area. Therefore, West Horndon Parish Council would ask that the recommendations put forward by the developer in this regard are validated by the Environment Agency and Essex County Council Flood Defence Team to ensure that all needs have been met.

## Transport



Parish Councillors continue to have serious concerns regarding the increased traffic that the proposed industrial estate will generate. The A127 and A128 already operate at close to capacity and during rush hours traffic can be at a standstill. This proposed development will exacerbate the situation.

Parish Councillors continue to believe that very few of the employees at the proposed site would choose to walk or cycle from West Horndon Station. This means that the proposed parking spaces at the site would be under great demand, with traffic congestion resulting on surrounding streets.

#### Location

As previously stated, Tilbury Road is a quiet rural road. The number of vehicles using the road is minimal, although this has increased slightly since the last planning application, and will increase in the future. This is due to the near completion of a new housing development at the north end of Tilbury Road, on the site of the former Elliots Night Club and Petrol Station.

The amount of traffic that this proposed development will generate would totally change the environment and character of the area and be detrimental to existing residents and those enjoying their newly built properties.

West Horndon Parish Council therefore recommends rejection of this application.

- **Highway Authority:**

A number of site visits have been carried out and the documents accompanying the application have been duly considered. During the course of assessing the previous application for this site (17/01050/OUT), it was agreed that the mix of B1b, B1c, B2 and B8 could be tailored so that higher trip generators (B1b and B1c) could be reduced in favour of B2 and B8 usage. The Transport Assessment in this application has stayed consistent with that agreement and assessed a Gross Internal Area of 2,500 sqm of B1b, 5,000 sqm of B1c, 9,500 sqm of B2 and 18,000 sqm of B8. On that basis, the Highway Authority is satisfied that, along with the provision of mitigation measures, the proposed development can be accommodated within the local highway network without detriment to highway safety, efficiency and capacity.

Therefore, from a highway and transportation perspective, the impact of the proposal is acceptable to the Highway Authority subject to the following requirements:

#### HIGHWAY WORKS

1. Prior to first occupation of the proposed development, highway works shall be provided either;

- A) By the developer constructing the roundabout and associated works on the A128 as shown in principle in drawing REDW-3235-104 Rev B (within the Transport Assessment), and
- B) The developer providing the carriageway widening and associated works to the A128 / Station Road junction as shown in principle on Drawing REDW-3235-122 (within the Transport Assessment),

OR, should the proposed Dunton Hills Garden Village development (site 200 within Brentwood Borough Council's Local Plan Preferred Site Allocations document of January 2018) come forward ahead of these proposals,

- C) The developer to pay a contribution to ECC for the value of the roundabout and junction widening works in A and B above, towards enhanced improvements at these junctions to be implemented by the Dunton Hills Garden Village developer, with full details to be agreed with the Highway Authority.

Reason: In the interests of ensuring the highway retains adequate capacity, safety and efficiency to serve the proposed development, other Local Plan proposals in the vicinity and the wider highway network.

Prior to first occupation of the site, the developer shall also implement the following infrastructure improvements as shown in principle in Drawing REDW-3235-112.

These shall include, but not be limited to the following;

- 2. New pedestrian footways and improvement of existing ones to include dropped kerbs and tactile paving at indicated road crossing points and site access junctions;

Reason: To provide safe access for both pedestrians and the mobility impaired in the interest of accessibility in accordance with Policies DM1 and DM9 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

- 3. The proposed site accesses shall be provided with clear to ground visibility splays with dimensions of 2.4 metres by 95 metres to the south of the southernmost access and north of the northernmost access, along with a 2.4 metres wide parallel band across the entire site frontage. Visibility splays shall be retained free of any obstruction in perpetuity.

Reason: To provide adequate inter-visibility between vehicles using the site access and those in the existing public highway in the interest of highway safety in accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

- 4. Bus stops; the relocated southbound stop on the A128 and the northbound stop (located approximately 180 metres south of the proposed new roundabout) shall include the provision of new bus shelters, a new flag pole, new timetable information display and raised kerbs to facilitate pedestrian and wheelchair access.

Reason: To encourage trips by public transport in the interest of accessibility in accordance with Policies DM1 and DM9 of the Development Management

Policies as adopted as County Council Supplementary Guidance in February 2011.

5. The developer shall pay for the necessary Traffic Regulation Order together with provision of the associated signing to reduce the speed limit on old Tilbury Road to 30mph.

Reason: In the interests of highway safety and Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

## GENERAL

6. An employee Travel Plan shall be implemented and a £5,000 Travel Plan monitoring fee (plus the relevant sustainable travel indexation) will be payable to Essex County Council to cover a minimum 5 year period from the date of occupation of the development.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10 of the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

7. A Construction Management Plan shall be submitted to, and approved in writing by the local planning authority. The approved Plan shall be adhered to throughout the construction period.

The Plan shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and underbody washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

## Informatives:

In making this recommendation the Highway Authority has treated all planning application drawings relating to the internal layout of the proposal site as illustrative only. The B1, B2 and B8 mix proposed within the Transport Assessment has been assessed and is considered acceptable. The Highway Authority would, however, wish to reconsider its recommendation should any proposal come forward to alter the development mix.

The Public Right of Way network is protected by the Highways Act 1980. Any unauthorised interference with any route noted on the Definitive Map of PROW is considered to be a breach of this legislation. The public's rights and ease of passage over public footpath no 66 (West Horndon parish) shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way.

The grant of planning permission does not automatically allow development to commence. In the event of works affecting the highway, none shall be permitted to

commence until such time as they have been fully agreed with this Authority. In the interests of highway user safety this may involve the applicant requesting a temporary closure of the definitive route using powers included in the aforementioned Act. All costs associated with this shall be borne by the applicant and any damage caused to the route shall be rectified by the applicant within the timescale of the closure.

Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.

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, Childerditch Highways Depot, Hall Drive, Brentwood, Essex CM13 3HD.

- **Public Rights of Way:** None received
- **Essex County Council (Lead Local Flood Authority):**

Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we do not object to the granting of planning permission subject to conditions.

- **Essex County Council (Major Development and New Communities)**

The Growth and Development team at ECC is primarily responsible for co-ordinating single responses for major development schemes and Nationally Significant Infrastructure Projects. The above application would not normally be within our remit for a single ECC response given that it is within an emerging Local Plan, but its location and wider context in relation to emerging proposals for 'Dunton Hills Garden Village' (DHGV) necessitates input from my team. These further comments do not seek to alter those already submitted to this consultation, but rather seek to clarify ECC's position in relation to some of its other functions.

It is noted that this application follows an earlier proposal in 2017 (17/01050/OUT) for the same type and scale of development, which was refused permission. This previous application was refused on the grounds that it would constitute inappropriate development in the Green Belt, and very special circumstances to justify inappropriate development in the Green Belt do not exist.

Since the previous application was refused on 23 January 2019, Brentwood Borough Council has consulted on its Regulation 19 (Pre-Submission) draft Local Plan, which closed on 19 March 2019. The application site is identified within this draft plan (draft Policy E13: East Horndon Hall) for 5.5 hectares of land for a mix of B1, B2 and B8 uses with supporting Sui Generis uses. The Planning Statement,

dated March 2019, recognises that the application site sits within the wider context of the draft Local Plan and the proposed strategic allocation of land directly to the east of the site for the development of up to 4,000 dwellings (draft Policy R01 Dunton Hills Garden Village Strategic Allocation). ECC, however, recognises that the weight to be given to a draft plan is a matter for the Local Planning Authority as the decision maker.

ECC, in its role as a statutory service provider and consultee, has actively co-operated to date in the early formulation of a masterplan for DHGV. As an adjacent site, draft Policy E13 identifies key development principles which include improved sustainable links (including walking, cycling and public transport) to DHGV and West Horndon station in order to maximise opportunities for those accessing the site to use other modes of travel to the private car. The draft Local Plan makes clear reference to encouraging a modal shift to access this site, for example at paragraph 9.224.

It is important that this site is carefully considered within the spatial context of the wider area. Paragraph 7.29 of the draft Local Plan recognises that there is a clear need to ensure that strategic investment sites (such as the application site) are well connected through public transport and active travel infrastructure to support their overall sustainability. This means that there should be appropriate sustainable travel connections (including walking, cycling and public transport) to existing settlements, and emerging development proposals in the vicinity (including DHGV). Further information in the Design and Access Statement, dated March 2019, for example providing guidance on how the emerging key development principles around sustainable and alternative access in the draft Local Plan could be delivered would be beneficial, and the relationship with A128, as a key strategic route to the east.

In conclusion, as the application site is within a draft Local Plan, ECC does not object to the proposed development in principle. However ECC would like to reiterate the importance of carefully considering the relationship between this site and the emerging proposals for the adjacent DHGV site, and the clear need for sustainable travel connections between the application site, existing settlements, and other emerging development proposals.

## **6. Summary of Issues**

### **Planning Policy**

#### **The Brentwood Replacement Local Plan 2005**

The starting point for determining this planning application is the current development plan, which is the Brentwood Replacement Local Plan 2005 ('the Local Plan'). Planning legislation states that applications must be determined in accordance with the relevant development plan policies unless material considerations indicate otherwise.

Additional policies, as relevant material considerations for determining this application are the National Planning Policy Framework 2019 (NPPF), National Planning Practice Guidance (NPPG) and the emerging Local Development Plan (“LDP”). Although individual policies in the Local Plan should not be read in isolation, the adopted plan contains policies of particular relevance to this proposal which are listed in section 2 above.

### Emerging Local Development Plan (to 2033)

In the adopted Local Plan the Green Belt notation washes over the Site. However, in the emerging LDP as currently drafted (Pre-Submission local Plan, Regulation 19, February 2019), it is proposed to remove the Site from the Green Belt and allow for its development for employment use (Policy E13), though for a development across an area of only 5.5 hectares. A summary of the present status of the emerging LDP is given in section 2 ‘Policy Context’ above.

Officers consider that, as the emerging LDP has yet to be submitted to the Secretary of State, prior to consideration at the Examination in Public including in the context of the outstanding objections, limited weight can be attached to its policies at this stage as a relevant material consideration. This is consistent with officer advice given on other sites in the emerging LDP where changes in policies are proposed. In contrast the applicant’s view is that the plan is ‘very well advanced’ and ‘very significant weight’ should be given to the emerging LDP, citing an absence of significant unresolved objections to the proposed allocation. In support of this position, the applicant instructed Leading Counsel to advise on this and other matters, and his advice is that the emerging LDP is “reasonably well advanced” and “...very special circumstances do exist which clearly outweigh all relevant perceived planning harm.” Officers have taken advice from another senior Counsel and received advice that, even if a robust approach is taken to the unresolved objections to the emerging site allocation, nonetheless, following the advice in the current NPPF (para. 48) the increased weight that could be given to the continuing LDP allocation still does not, in itself, justify the grant of planning permission at this point without there being sufficiently weighty very special circumstances that support the grant of outline planning permission now.

Officers have suggested to the applicant that the application be held in abeyance, until the emerging plan has been adopted as the Development Plan, but the applicant is pressing for a decision. Officers have a more general concern that if permission is granted for developments in draft allocations at this stage of the LDP process, particularly for development in the Green Belt, it might encourage other applicants to seek a similar route thereby undermining the plan led system and the credibility of the local plan process using policies not yet tested through the local plan examination process. They have also pointed out that, at this point, the proposed allocation in the LDP does not superseded the Green Belt designation in the adopted Local Plan.

### **Planning History**

This is also a relevant material consideration in this instance. In January 2019 a more detailed application for a similar proposal on the Site was refused for the following reasons:

“1 The proposal would be inappropriate development in the Green Belt in that it would materially detract from openness, it would represent an encroachment of development into the countryside and result in an unrestricted sprawl of a large built up area. It would therefore conflict with Brentwood Replacement Local Plan Policies GB1 and GB2 and the objectives of the Framework as regards development in the Green Belt.

2 Other matters that may weigh in favour of the proposal have been considered but collectively they do not clearly outweigh the harm to the Green Belt or the other harms identified. Therefore, very special circumstances to justify inappropriate development in the Green Belt do not exist.”

This current application was submitted just over a month after the refusal of the last application in an attempt to ensure that the principle of development could be established in the light of the proposed allocation of the Site in the emerging replacement Local Plan.

This previous refusal decision by the Council is relevant to the current application because it relates to the same site, it forms substantially the same proposal, it was a decision recently, the operative development plan remains the same and there has been no material change in NPPF Green Belt policy.

Accordingly, consideration of this current application involves consideration of whether the previous reasons for refusal have been sufficiently overcome.

### **Specific Green Belt considerations**

The Site is within the Green Belt which washes over the locality. This is shown on the map that accompanies the adopted Local Plan. There is a proposal to remove it from the current Green Belt in the emerging Local Plan; and this is addressed below. However, for the time being it remains a site within the Green Belt. The committee will be aware that national Government policy consistently attaches great importance to the Green Belt. The fundamental aim of Green Belt policy is to prevent urban sprawl, not allow settlements to merge by keeping land permanently open. Green Belt is a spatial designation not a qualitative one, therefore the requirement to protect openness applies just as much to attractive countryside as to less attractive areas of Green Belt.

Policies GB1 and GB2 aim to control development but support a limited range of development, subject to being appropriate to the Green Belt and protecting its openness. These policies are broadly consistent with the NPPF, but where there is a difference between it and the development plan, the NPPF, which is newer than the

development plan, takes precedence. The later document is a more up to date and concise statement of Green Belt policy.

The NPPF, paragraph 145, lists limited forms of new building that are considered appropriate development in the Green Belt. One category that is potentially relevant in this case is:

(g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

- not have a greater impact on the openness of the Green Belt than the existing development;
- not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

Here, however, the development does not concern limited infilling. It also concerns commercial development so the second criterion cannot apply.

While the applicant contends that up to 40% of the Site is previously developed, visually it appears to be less. Even so, this aspect is only relevant for up to 40% of the site. With regard to openness, it is a spatial and visual quality, normally considered to be the lack of buildings, and an appropriate way to assess the proposal in comparison with the existing development is a visual comparison of the massing, spread and position of buildings. Recent Government advice based on caselaw supports this approach. The same guidance identifies other possible factors including the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness - and the degree of activity likely to be generated, such as traffic generation.

Much of the Site is currently open with few buildings on it. These are concentrated at the north end. While only limited information on the form of the proposed development has been provided in the application, the combination of the quantum of development described in the application, the indicative layout plan (proposed roof plan 1232-P-102 B) showing the spread of buildings over the Site and their footprints and the parameter plan (1232-P-123) showing building heights of up to 7.5m, 10.0m, 12.5m and 13.5m indicate that this development would have a significantly greater impact on the openness of the Green Belt than the existing development. Furthermore, the proposal is for a permanent development so its duration would be long term and it would generate significant traffic – irrespective of the capability of the (modified) highway to accommodate such traffic.

For the majority of the Site that is not claimed to be previously developed it is clearly inappropriate development as it does not relate to any of the exceptions listed in NPPF paragraph 145.



For these reasons, it is recommended that the overall proposal should be treated as inappropriate development in the Green Belt. This conclusion is consistent with the Committee's decision made on the previous application.

#### Very special circumstances

For inappropriate development in the greenbelt to be considered further requires consideration of whether there are very special circumstances. Two paragraphs in the NPPF are particularly relevant in this regard:

“143. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

144. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.”

The last sentence is particularly worthy of note. Even were there to be very special circumstances they would need to clearly outweigh the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, which is a much higher threshold than an ‘on balance’ judgement.

The Applicant has identified the following:

#### (a) The status of the Site in the emerging LDP

As already mentioned, officers consider that the emerging LDP can only carry limited weight at this stage. Furthermore, the Site is not unique in terms of its emerging change of policy status as this approach has been taken on other sites in the emerging LDP where changes in policies are proposed. In contrast the applicant's view is that the plan is ‘very well advanced’ and ‘very significant weight’ should be given to the emerging LDP, citing an absence of significant unresolved objections to the proposed allocation.

#### (b) The compelling economic case

The applicant contends that there are clear and compelling economic aspects to its claim for very special circumstances:

- Provision of vital employment land which will assist in addressing the planned and existing undersupply of employment land in the short and medium term, as envisaged in the Regulation 19 version of the emerging Local Development Plan:

- Provision of employment land which will increase the choice of location, type and size of units for existing and future businesses in the Borough, and addressing an existing and planned lack of choice in the Borough;
- Provision of employment land which will provide a significant number of new jobs (estimated to be between 641 and 1,000 new jobs);
- Provision of employment land which will assist in the release of some existing employment sites for housing, and therefore assist in bridging the deficit of housing land provisions across the Borough;
- Provision of an alternative, accessible location for existing businesses relocating from the West Horndon Industrial Estate, which has a draft allocation for circa. 500 new homes in the Regulation 19 Local Plan and facilitating the preservation of these businesses within the Borough; and
- Provision for industrial employment users, for which there is currently no vacant supply in the Borough, meaning that sector will stagnate if not accommodated in the short term.

A similar case was made at the time of the last application, though the last bullet point is new, and the estimate of claimed economic benefits has been increased.

- The Housing and Economic Land Availability Assessment assesses the Site as suitable, available and achievable for employment development.
- The applicant contends that delays in the local plan process are having an effect on the local economy.
- The scheme will generate £18m of gross value added to the local economy and £880,000 per annum in business rates at the current charging rate.
- The application site is entirely within the applicant's control and therefore considered to be readily available and deliverable in the short to mid-term; and
- The investment in construction and infrastructure will be over £50m and will provide an average of 122 construction jobs over 3 years of development.

If supported by the LDP it is acknowledged that there are no known physical impediments to deliverability of the Site.

The credibility of the claimed financial benefits has not been independently assessed; but there has been no indication, so far, that these benefits would not be available post LDP adoption.

In common with the case made at the time of the last application the applicant considers the following factors are supporting elements to very special circumstances: *the site is partly previously developed land, the existing uses have developed in an unplanned manner which will be removed as part of these proposals, the site does not make a significant contribution to the Green Belt, a number of occupiers have been identified for the site and negotiations are progressing, which will cement the early delivery of these units, the proposal will remove almost all of the current level of HGV movements through West Horndon by providing a high quality industrial scheme on the outskirts,*

*close to the A127 junction; and installation of SUDS will resolve surface water flooding issues in the vicinity.*

The applicant continues to draw a link to the development of this site and the potential residential redevelopment of the West Horndon Industrial Estate(s). Through discussions with the applicant, officers have been unable to identify a clear link between firms currently on the West Horndon site and their moving to this site in anything other than it could be one possible location for their relocation. However there remains no application for the redevelopment of the West Horndon site and consequently no permission, or known timetable for the redevelopment of that site.

These issues were advanced at the time of the last application and judged not to be very special circumstances that clearly outweighed the harm to the greenbelt.

In discussions since submission, the applicant has referred to the permitted application for the redevelopment of the Peri Ltd site (16/00152/FUL), including the demolition of an existing office and construction of new office, warehouse and other buildings for the resident applicant company.

In common with this application, “*very limited weight*” was attached to the emerging LDP in that decision. At the time of that application it was envisaged that the LDP would be submitted to the Secretary of State the following year. The site is also in the greenbelt and the development was considered to be inappropriate development. However it was permitted for the reason set out below:

“However, the clear thrust of government advice is that the planning system should do everything it can to support sustainable economic growth and that significant weight should be placed on the need to support this growth. Officers consider that the sustainability benefits with the redevelopment of this site, i.e. reducing haulage requirements, and the absence of any appropriate alternative sites within the borough, should be given significant weight. When taken together, it is therefore considered that these considerations would amount to very special circumstances that would clearly outweigh the harm to the Green Belt”.

It is rare that two proposals are closely comparable to one another and there are material differences between this and the application case. That site had a planning history of previous permissions and lawful development certificates and the whole site was considered previously developed. The majority of the site was used for external storage and that was to continue post redevelopment. This current application development is on a greater scale than that application and the greenbelt harm is greater as are the claimed economic benefits. Officers are not persuaded that the claimed economic benefits outweigh the significant harm to the greenbelt.

In any event planning determinations are not made on the basis of precedent – each application is considered on its own merits. Furthermore, understandably no similar link has been drawn by the applicant to refused applications or dismissed appeals relating to major redevelopment proposals in the Green Belt. One such is the dismissed appeal

for the residential redevelopment of the South Essex Golf Club dismissed on appeal in 2018.

#### Other matters

The current 'low weight' status of the emerging LDP does not provide a good basis for applying its other non site specific development management policies. This includes but is not limited to those in Chapter 5 'Resilient built environment', for example relating to energy and water efficiency above building regulation levels or low carbon on site energy generation. Once adopted comparable policies in the plan will have full weight. However an application approved at this stage would not have to meet the higher standards proposed in the emerging LDP.

At the time of the last application issues of drainage, flood risk, water supply, highways, wildlife, setting of the listed building (East Horndon Hall and All Saints Church), proximity to Dunton Hills Garden Village, residential amenity and contamination were considered and formed no part of the reasons for refusal. The impact on those matters was either acceptable or acceptable subject to conditions or S106 agreement (for example the highways works). It would not be reasonable to re open matters that were not part of the reasons for refusal.

### **7. Recommendation**

The Application be REFUSED for the following reasons:-

1 The proposal would be inappropriate development in the Green Belt in that it would materially detract from openness, it would represent an encroachment of development into the countryside and result in an unrestricted sprawl of a large built up area. It would therefore conflict with Brentwood Replacement Local Plan Policies GB1 and GB2 and the objectives of the Framework as regards development in the Green Belt.

2 Other matters that may weigh in favour of the proposal have been considered but collectively they do not clearly outweigh the harm to the Green Belt or the other harms identified. Therefore, very special circumstances to justify inappropriate development in the Green Belt do not exist.

#### Informative(s)

##### 1 INF23 Refused No Way Forward

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and clearly identifying within the grounds of refusal either the defective principle of development or the significant and demonstrable harm it would cause. The issues identified are so fundamental to the proposal that based on the information submitted with the

application, the Local Planning Authority do not consider a negotiable position is possible at this time.

**2 INF20 Drawing Numbers (Refusal)**

The drawing numbers listed above are relevant to this decision

**3 INF05 Policies**

The following development plan policies contained in the Brentwood Replacement Local Plan 2005 are relevant to this decision: CP1, GB1, GB2 National Planning Policy Framework (NPPF) 2019 and NPPG.



## **Addendum**

### **Introduction**

The application was deferred by the Planning and Licensing Committee at its meeting on 18 December 2019. The original report is reproduced above in its entirety, unaltered.

This Addendum includes an update on matters discussed at the meeting and a summary of further comments received.

**The officer recommendation remains that this application should still be refused for the two reasons set out in numbered Section 7 above, namely,**

- 1. The proposal would be inappropriate development in the Green Belt in that it would materially detract from openness, it would represent an encroachment of development into the countryside and result in an unrestricted sprawl of a large built up area. It would therefore conflict with Brentwood Replacement Local Plan Policies GB1 and GB2 and the objectives of the Framework as regards development in the Green Belt.**
- 2. Other matters that may weigh in favour of the proposal have been considered but collectively they do not clearly outweigh the harm to the Green Belt or the other harms identified. Therefore, very special circumstances to justify inappropriate development in the Green Belt do not exist.**

## **The Emerging LDP**

Since the Planning and Licensing Committee meeting on 18 December 2019, the Council has submitted the LDP to the Planning Inspectorate (Secretary of State). While this is a further step towards adoption, officers advise that the additional weight it adds to the LDP is minimal. The 2005 plan remains the Development Plan and the LDP still is considered to have 'limited weight' in the decision making process.

The next step for the LDP is for the Inspectorate to hold the examination in public, the timescale for which has yet to be published, but is likely to be from summer onwards. At that point the Inspector is likely to make various judgements about the overall soundness of the plan. However, it is unlikely that the Inspector will give her findings on specific parts of the plan until her report is published in late 2020 or 2021. This may contain directions or advice on alterations the Inspector considers necessary, which may require further decisions and consultation by the Council. The plan would gain full weight once adopted, while attaining less than full weight at some point close to adoption, though likely after the examination in public and therefore attaining such weight is some way off. Accordingly, it is premature for different parts of the LDP to be given different weighting, as in the instant situation.

## **Applications in advance of LDP adoption**

As part of the work on the LDP, policy officers have had discussions with developers, and others proposing the allocation of sites in the new plan for development, over an extensive period. These discussions have been carried out on the basis of potential allocations in the future development plan. However, as this has been a long process, some have proposed to submit their applications in the hope that planning permission would be granted without waiting for the adoption of the new plan. This approach is not encouraged and risks undermining the plan led system and the credibility of the current LDP process, using policies not yet tested through the local plan examination process. Further, granting permission at this stage is likely to encourage other applicants to seek submit 'early' permissions and claim for reasons of consistency that a similar approach be applied to them. It is particularly problematic for sites in the Green Belt as at this point, a proposed allocation in the LDP does not superseded the Green Belt designation in the adopted Local Plan.

While a planning committee does not have to accept the advice of its officers if there were to be a fundamental difference of approach to determining applications, between officers and the committee, it would risk undermining the credibility of officer advice on fundamental matters as well as on more general planning issues.

## **Inappropriate Development and Very Special Circumstances**

It is clear from the report on this application, the report and decision on the previous application (17/01050/OUT), the officer presentation on this case at the last committee and the applicant's case, that the development is 'inappropriate development' in the greenbelt as defined in the National Planning Policy Framework (NPPF).

In this respect the committee is referred to the following section taken from '6. *Summary of Issues*' of the above report reproduced as follows:

*"Very special circumstances*

*For inappropriate development in the greenbelt to be considered further requires consideration of whether there are very special circumstances. Two paragraphs in the NPPF are particularly relevant in this regard:*

*"143. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.*

*144. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations."*

*The last sentence is particularly worthy of note. Even were there to be very special circumstances they would need to clearly outweigh the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, which is a much higher threshold than an 'on balance' judgement."*

Therefore, if the committee members are now minded to resolve to grant planning permission they must, first, identify whether there are very special circumstances ("VSC") that meet the required threshold, secondly what are these VSC, and, thirdly, identify why these VSC now clearly outweigh the harm of the development.

In doing so the committee members will need to give their reasons for differing both with their previous decision to refuse in respect of application 17/01050/OUT, and, with their officers' recommendation still to refuse this application. That explanation will need to show how the VSC clearly outweigh, individually or collectively, the harm to the greenbelt, and any other harm. This identification and weighing up should occur before the committee votes on any proposal to grant planning permission for the development.

### **Applicant's submissions**

Members of the committee will have received an email from the applicant's agent on 6 February 2020 providing a copy of the applicant's original legal advice, updated advice including a reference to a case in Wigan recently subject to a resolution to grant permission. Those documents, which are necessarily in the public domain on the on-line planning register, are a further promotional expression of the applicant's case and officers do not propose to comment further. With regard to the Wigan case, it is a general planning principle that applications are determined on their own merits and officers are not persuaded that introducing the quoted case changes the circumstances of this case.

### **Further representations**

Since the publication of the report for the December committee further representations have been received and where they differ from those made earlier (see section 4 in main report above) are summarized as follows:

- As a new resident to Tilbury Road I believe this development would cause too much traffic
- Would cause pollution, inconvenience and disturbance to new and old residents
- Concerns about crime and safety
- An industrial estate is not right for the area
- Save the land for residential development
- The land is green belt and should stay that way
- Would build up traffic and noise and ruin the whole road

### **Drainage**



At the committee meeting West Horndon Parish Council raised concerns that the flood risk modelling did not take into consideration the flows coming from Thorndon Woods Country Park; indicating that the outfall at the culvert on station road acts as a pinch point, suggesting that it may be better to have the outfall to the south of station road.

As reported at the meeting, drainage was not a reason for refusal of the last application relating to a similar form of development and the SUDS team has raised no objections on this application subject to conditions. Notwithstanding this, the case officer has discussed these comments with the SUDS team. Its view is that these concerns and issues could be raised with the drainage consultants at the discharge of conditions stage as the outline information provided was shown to be acceptable

### **The Secretary of State for Housing, Communities and Local Government**

If the committee resolves to refuse the application, the decision may be issued as for any other application.

However, if the committee resolves to grant planning permission for the development, then, prior to issuing a decision, this local planning authority must notify the Secretary of State of the intention to grant permission, in accordance with the requirements of The Town and Country Planning (Consultation) (England) Direction 2009.

The Direction defines this form of development as “Green Belt development” which consists of or includes inappropriate development on land allocated as Green Belt in an adopted local plan and which consists of or includes development that exceeds the following thresholds:

- (a) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (b) any other development which, by reason of its scale or nature or location, would have a significant impact on the openness of the Green Belt.

The proposal is clearly many times in excess of the threshold in (a) and the proposal would have a significant impact on the openness of the greenbelt, irrespective of any justification.

The Direction specifies the information that must be sent to the Secretary of State including a statement of the material considerations which the authority considers indicate the application should be determined otherwise than in accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004 (i.e. to determine the application in accordance with the adopted Development Plan). Given the recommendation of refusal the report to committee does not contain such a statement. If the committee were to come to the view that the planning merits of the case justify the grant of planning permission its reasons should be recorded when making its resolution, as advised above, and this record would act as the statement on behalf of the local planning authority and sent to the Secretary of State as part of the notification.

The purpose of the Direction is to give the Secretary of State, by his power of “call-in”, the opportunity to make his own determination under S.77 of the Town and Country Planning Act 1990.

The local planning authority cannot grant planning permission on the application until the expiry of a period of 21 days beginning with the date which the Secretary of State tells the authority in writing is the date he received the required documentation unless the Secretary of State has notified the authority that he does not intend to issue a direction under section 77 of the Town and Country Planning Act 1990 (i.e. that the Secretary of State will determine the application) in respect of the application, in which case the authority may proceed to determine the application, or directs that he requires additional time.

Finally, if the Secretary of State allows the determination of this local planning authority to stand then it will issue the decision notice subject to appropriate planning conditions and obligations. In that context, it is requested that authority be appropriately delegated to the Head of Planning in consultation with the Committee Chair.

#### *BACKGROUND DOCUMENTS*

#### **DECIDED:**