

CHIGWELL PARISH COUNCIL
OFFICER'S REPORT TO THE PLANNING COMMITTEE

Meeting Date: 9 October 2025

Subject: EPF/1902/25 and EPF/1903/25 — Chigwell Primary Academy, Mandir Lane, Chigwell, IG7 6ED

This report relates to two linked submissions that seek to decouple the consented residential enabling development from the delivery of a replacement primary school on designated Green Belt land. Application EPF/1902/25 is a s.73 proposal to vary conditions on the allegedly extant permission EPF/1681/19, including the plans condition, in order to remove references to the school and associated works. Application EPF/1903/25 is a Section 96A proposal to amend the operative description of development so that it refers only to a 59 dwelling residential scheme and associated works. The site is within the Metropolitan Green Belt. The original planning balance and the very special circumstances justifying inappropriate development rested on the delivery of a new school secured through phased build and occupation triggers in the s.106 agreement. The developer now proposes to substitute an off site education contribution for school delivery and to complete the housing independently.

The planning history is material. On 18 March 2020 the District Development Management Committee resolved to approve EPF/1681/19 for a replacement Chigwell Primary Academy and the residential enabling development, with a s.106 linking the occupation of market units to milestones in the construction of the school. The committee report expressly recorded that the proposal was an enabling development and the public benefits of the new school outweighed Green Belt harm and formed the basis for approval. Subsequent committee papers in February 2024 addressed a deed of variation and correspondence on the public record alleges the permission was implemented in early February 2024 for both school and residential elements. The enabling relationship between housing and school works has therefore been central to the grant and claimed implementation of the scheme.

The current proposals would materially alter that basis. Through EPF/1902/25 the applicant seeks to vary the plans condition and other conditions to remove the school and playing field references, and through EPF/1903/25 to re write the operative description so that the permission becomes a stand alone residential scheme. The covering material explains that the academy trust is pursuing Department for Education School Rebuilding Programme funding and does not intend to proceed with the developer's school build. A deed of variation to the s.106 is proposed to replace school delivery with a viability tested education contribution. The net effect would be to sever the enabling link and to rely on generalised financial mitigation in place of the site specific public benefit previously weighed in the Green Belt balance. The Parish Planning Committee is asked to note that the residential scheme was not approved on its own planning merits in the Green Belt and that the playing field and school delivery formed part of the very special circumstances package.

Policy and legal context confirms that this is not a non material matter. The National Planning Policy Framework as revised in December 2024 maintains that inappropriate development in the Green Belt is by definition harmful and should not be approved except in very special circumstances that clearly outweigh the harm. EFDC's adopted Local Plan embeds this approach in Policies SP5 and DM4. There has been no change in national or local policy that would newly justify a stand alone market housing scheme on this site without very special circumstances. On the contrary, recent appeal decisions in the district continue to apply SP5 and DM4 strictly and to require very special circumstances to be clearly demonstrated.

The statutory mechanisms proposed are also ill suited to what is sought. s.96A can only be used for changes that are non material in planning terms. Removing the school from the description would strike at the heart of the earlier planning balance in the Green Belt and would plainly be material. s.73 can be used to vary or remove conditions and can accommodate material amendments to conditions, but it cannot be used to contradict or re write the operative part of the permission. The Court of Appeal in Finney held that s.73 does not permit changes to the description of development and the Planning Practice Guidance now explains that although s.73 can be used for material amendments to conditions there is no power to alter the operative description through s.73. Any attempt to remove the school via the plans condition would still leave a fundamental conflict with the operative permission and would re open the Green Belt planning balance on a different basis.

The applicant cites Hillside and Armstrong. Hillside clarifies the law on overlapping and inconsistent permissions and does not assist an approach that would retrospectively recast the nature of the development that was granted in the Green Belt on the strength of very special circumstances. Armstrong confirms that Section 73 is not confined to minor changes, but it equally confirms the need to remain within the four corners of the permission and not to trespass into the operative part or to secure a fundamentally different scheme by condition variation. The proposals before the Council would produce a residential only scheme in place of an enabling package and would therefore amount to a substantially different permission in Green Belt terms.

The specific conditions targeted by EPF/1902/25 underline the materiality of what is proposed. Varying the plans condition to remove the replacement school, the new playing field and associated layouts would extinguish the very elements that justified the residential incursion into the Green Belt. Varying the playing field condition would similarly dismantle part of the approved community benefit. Changes to ecological and contaminated land conditions cannot be considered in isolation where the physical baseline and end use mix on the wider site would change. None of these changes can credibly be characterised as non material or as neutral to the Green Belt balance previously struck by Members.

For the avoidance of doubt, an alternative off site education contribution cannot replicate the site specific public benefits that were decisive in 2020. The earlier committee report framed the balance around a replacement school on this land and a linked programme of works. A financial payment to education elsewhere does not reinstate those benefits, nor does it answer the policy objection to a free standing housing estate in the Green Belt. Recent NPPF revisions do not soften the very special circumstances test that applied then and applies now.

Taking all matters into account, officers consider that the Section 96A proposal to alter the description is not non material and should be refused. Officers further consider that the Section 73 proposal to remove school related plans and conditions would amount to a material change that would conflict with the operative permission and would improperly convert an enabling scheme into a stand alone housing development in the Green Belt. If the applicant wishes to pursue a residential only scheme it should be the subject of a fresh full planning application so that the planning authority can re assess the proposal against the current NPPF and the adopted Local Plan, including Green Belt policy, affordable housing, Epping Forest SAC mitigation, transport, design and layout and the provision of open space and playing fields.

Recommendation to the Parish Council is to object to EPF/1902/25 and EPF/1903/25 and to advise the Local Planning Authority that the changes sought are material and cannot lawfully or properly be progressed under Section 96A or Section 73 in this Green Belt context. A new application is required because the enabling rationale that provided the very special circumstances has been

withdrawn, leaving no special circumstances to justify inappropriate development in the Green Belt.

Recommendations:

That the Planning committee consider the following resolutions:

That the Parish Council objects to EPF/1903/25 (Section 96A) and requests that EFDC refuse the application. The proposed change to the operative description from a “new school with associated residential enabling development” to a “residential development comprising 59 dwellings” is, in planning terms, material because it removes the very element that formed the basis of the Green Belt planning balance. A s.96A procedure is confined to non-material changes and cannot be used to recast the nature of the permission or its justification; the alteration would undermine the decision previously taken that very special circumstances existed only because the residential scheme enabled delivery of a new school and playing field on this Green Belt site. The correct course, if a residential-only scheme is sought, is a fresh full planning application so that the Green Belt balance, affordable housing, Epping Forest SAC mitigation and transport policy matters can be reassessed against the current NPPF and the adopted Local Plan.

That the Parish Council also objects to EPF/1902/25 (s.73) and requests that EFDC refuse the application. Varying the plans condition and other conditions to remove the provision by the developer of a new school and playing field would produce a substantively different development from that permitted under EPF/1681/19 and would improperly convert an enabling scheme into a free-standing market housing estate in the Green Belt. s.73 may vary conditions but cannot be used to contradict or rewrite the operative permission or to secure a fundamentally different development. The proposed changes would extinguish the very components that provided the very special circumstances and thus reopen the planning balance on an entirely different basis. With the enabling purpose withdrawn there are no very special circumstances to clearly outweigh the definitional harm to the Green Belt and the additional harm arising from loss of the approved playing field, resulting in conflict with the NPPF Green Belt policies and with the Epping Forest District Local Plan, including Policy SP5 and related Green Belt policies. An off-site education contribution cannot replicate the site-specific public benefits previously relied upon and would not make a residential-only scheme appropriate development in the Green Belt.

The Parish Council therefore requests that both EPF/1903/25 and EPF/1902/25 are refused and that EFDC require any residential-only proposal to be brought forward by way of a new full planning application. Should EFDC be minded, contrary to this objection, to grant either application, the Parish Council asks that the matter be referred to the the relevant Planning Committee at which the Parish will make representations and that no decision is issued unless and until statutory consultees on playing field and educational matters have been notified and any section 106 obligations and planning conditions necessary to secure on-site community infrastructure, Epping Forest SAC mitigation, health provision, affordable housing in line with current policy of 40%, construction management safeguards for the school and robust occupation controls have been transparently reassessed and consulted upon.

Prepared by:

C Jefcoate

Acting Clerk