

**LANGLEY AND MILE NURSERIES PLANNING APPEAL –
SECTION 106 AGREEMENT**

Presented by the Deputy Chief Executive

EXECUTIVE SUMMARY

The Langley and Mile Nurseries site located in the north of the Park is potentially a site that is no longer required for Park purposes. The site could therefore be considered for potential disposal.

This report provides Members with an update on Langley and Mile Nurseries planning appeal following the refusal of outline planning consent for residential development by Epping Forest District Council on 13 March 2020. It sets out the details of the associated Section 106 Agreement which would form part of any planning consent if the appeal was granted. This is required to be approved in draft by Members so that it can be forwarded as a draft to the Inspector ten days before the Hearing.

The drafting of this document has been undertaken in consultation with Epping Forest District Council and Essex County Council in accordance with the Procedural Guidance produced by the Planning Inspectorate. The draft Heads of Terms are outlined below. This paper requests Member approval to the draft Heads of Terms and requests the grant of delegated authority for potential changes sought to those Heads of Terms by the Inspector as a result of the appeal process.

RECOMMENDATIONS

- Members Approve:
- (1) draft Heads of Terms of the Section 106 Agreement between Epping Forest District Council, Essex County Council and the Authority as set out in paragraph 12 of this report; and
 - (2) delegation to the Deputy Chief Executive to make any changes to the obligations, if required, as set out in paragraph 13 of this report, prior to the signing under Seal of the Section 106 Agreement.

BACKGROUND

1 The Langley and Mile nurseries site was acquired as part of the larger 56-hectare area of land known as the Wake Estate in 1969. The sites known as Langley and Mile Nurseries were used as glasshouse businesses at the time of acquisition and have continued to be leased out commercially throughout the Authority's ownership. The site is neighboured to the south by residential properties and the Crooked Mile road is located on its eastern boundary. This site has therefore never formed part of the adjacent open space land and consequently has never been open to the public. Attached as Appendix B to this report is a historic aerial photograph of the site.

2 Officers identified the site as part of the Land and Property Review in 2017 where all of the Authority's landholdings were reviewed. This site was identified as potentially being no longer required for Park purposes.

Approval was granted in November 2017 (Paper E/526/17) to allow officers to progress with the advertising of the site on the open market and to return to Members on the outcome of this exercise. Prior to going out to the open market and following external advice officers submitted an application for an outline planning consent for residential development to seek to maximise the potential capital receipt. The application was refused by Epping Forest District Council (EFDC).

3 Langley and Mile Nurseries (shown edged in red on the plan attached as Appendix A to this report) is 1.2 hectares (3 acres) in area and at present subject to two commercial tenancies neither of which are for Park Act purposes. An aerial photograph is also attached as Appendix C to this report.

4 One of the tenant leases the land for the storage of grounds maintenance equipment and the other tenant has a user clause which also includes storage, vehicle repairs and office use. Both tenants have been operating under a tenancy at will agreement whilst a short term two-year lease arrangement was agreed. The leases are contracted out of the provisions of the Landlord and Tenant Act 1954 and are therefore not secure tenancies. Also, the Authority has agreed a landlord break option where it has the ability to determine the lease on a three month notice period.

5 Pre-application advice was sought from EFDC in May 2017 regarding the redevelopment of the site for residential purposes. This advice concluded that the principle of the proposed residential development was likely to be considered acceptable, as it would constitute the redevelopment of previously developed land, although this would be on the proviso that any redevelopment would not result in a greater impact on the openness of the Green Belt.

6 An application for outline planning permission with all matters reserved apart from access was submitted to EFDC in March 2019. The full description of the proposal is as follows: *'Outline planning application for a residential development comprising up to 52 no. dwellings (including 40% affordable housing) with vehicular access from Crooked Mile, associated open space, children's play area and ancillary works'*. Submission of the application, production of all the technical supporting details and the subsequent appeal are being undertaken by consultants Nexus Ltd who were appointed by the Authority to obtain planning consent. Nexus are now working on the Authority's appeal case.

- 7 Following submission of the application, the Authority sought to work closely with the case officer at EFDC to resolve any issues of concern raised by statutory consultees and to provide further information when requested; however, communication proved to be challenging due to the application being passed between three different case officers in total. Key concerns raised early in the process (May/June 2019) related to the site's location within the Green Belt and its perceived impact on air quality. An additional 3 months' air quality monitoring was carried out in order to address the Environmental Health Officer's (EHO) concerns and the subsequent Air Quality Monitoring Report (December 2019) and the updated Air Quality Report (January 2020) demonstrated significantly lower emissions than those predicted in the original Air Quality Assessment.
- 8 Despite attempts to address concerns raised by EFDC the application was refused on 13 March 2020, for the following reasons:
1. the application site is located within the Metropolitan Green Belt and the proposed development would constitute inappropriate development, by definition, harmful to the Green Belt including harm derived from loss of openness. No very special circumstances exist that clearly outweighs the harm from the development and therefore the proposal is contrary to policies CP2 and GB2A of the Adopted Local Plan 1998 & 2006, Policies SP6 and DM4 of the Local Plan submission version 2017, and paragraphs 133, 143 – 146 of the Framework 2019;
 2. by reason of the site's location, the proposed development would not comply with the strategy of the emerging Local Plan. The proposed development is therefore contrary to policies SP1 and SP2 of the Local Plan Submission Version 2017;
 3. the application does not provide sufficient information to satisfy the Council, as competent authority, that the proposed development will not adversely affect the integrity of the Epping Forest Special Area for Conservation (SAC) and there are no alternative solutions or imperative reasons of overriding interest why the proposed development should be permitted. In the absence of such information, and in the absence of an appropriate legal agreement to mitigate such adverse impact, the proposed development is contrary to policies DM2 and DM22 of the Local Plan Submission Version 2017, paragraph 175 of the Framework 2019, and the requirements of the Habitats Regulations 2017.
- 9 Authority officers together with its external advisors disagreed with the reasons put forward for refusal, especially given the extra detail supplied regarding air quality. It was therefore decided to appeal against the decision (July 2020) and a request was made to the Planning Inspectorate that the matter be considered via an informal Hearing procedure. Green Belt issues form the crux of the argument, and the 'openness' of the Green Belt can be a very subjective matter. It was considered that a Hearing allows the opportunity for the Authority's case to be made verbally in front of the Inspector, and to address any questions they may have. The ability to do so face to face often allows for a much more persuasive argument to be put forward.

The Inspectorate agreed that a Hearing process was suitable for the appeal and the formal process commenced on 24 February 2021; a date for the Hearing is

expected shortly.

- 10 The Council have submitted their Statement of Case and have recently approached the Authority to work with them in order to remove Reason No.3 for refusal (in relation to impact on the SAC). It is likely that this approach is related to the fact that the Council has recently adopted an 'Interim Air Pollution Management Strategy' which will sit alongside the 'Interim Strategy for Managing Recreation Pressures' and this document will enable the need for any mitigation measures to be identified and if necessary conditioned and covered by financial contributions. Both strategies set out mechanisms and actions to help reduce impacts on the Epping Forest SAC which can be funded where appropriate via contributions from development.

SECTION 106 AGREEMENT

- 11 As part of the appeal process the Authority has also been advised to produce a planning obligation or Section 106 Agreement to cover off matters raised by EFDC during consultation with statutory stakeholders; these are matters which are usually required in relation to a proposal for residential development such as obligations for affordable housing and education. Essex County Council (ECC) will also be party to the Agreement given the educational component.
- 12 The obligations are set out below.
 - A) Early Years and Childcare Provision - **£236,384** – contribution specified by ECC.
 - B) Primary Education - **£81,535** – as above both these contributions are requested based on the demand created by the development and pressure on early years/primary education provision.
 - C) The provision of affordable housing - **40% (21 affordable houses to be provided in line with Policy).**
 - D) Epping Forest Special Area of Conservation
 - Atmospheric Pollution – **TBC pending the resolution of reason for refusal 3.**
 - E) Monitoring Contributions set at 5% of the total costs of the obligations.

Payment of both Essex County Council and Epping Forest District Council's legal fees for the preparation and completion of the Legal Agreement currently estimated at £1800 and £500 (maximum) respectively.

- 13 A draft Section 106 Agreement is currently with EFDC and ECC awaiting review. A final approved draft (agreed by all parties) will need to be sent to the Inspectorate 10 days before the Hearing commences. If the Authority is successful at appeal a final engrossed and completed version would be required before the Hearing closes as this would form part of the planning consent. This may need to include any changes suggested by the Inspector, hence approval is sought for delegation to the Deputy Chief Executive to make any minor amendments as required during the appeal process

ENVIRONMENTAL IMPLICATIONS

- 14 There are no environmental implications arising directly from the recommendations in this report.

FINANCIAL IMPLICATIONS

- 15 To date circa £100,000 has been expended on the planning application, which is mainly made up of consultants fees and further costs in the region of £12,000 are anticipated until the appeal process is concluded.

HUMAN RESOURCE IMPLICATIONS

- 16 There are no human resource implications arising directly from the recommendations in this report.

LEGAL IMPLICATIONS

- 17 Any decision to disposal of this land will be subject to future Member approval when consideration will be given at that time as to whether the land is no longer required for Park purposes. Any Section 106 Agreement that the Authority enters into would only be enforceable at the point development commenced. The Authority will not then be obliged to meet the obligations itself as the obligations would need to be met by a developer if the Authority decided to dispose of the land in the future.

RISK MANAGEMENT IMPLICATIONS

- 18 It is considered that marketing the site without completing the appeal process would be likely to have a negative impact on the marketing process and the expected bids. Whilst the outcome cannot be determined, an outline planning consent will make the land more attractive to potential developers than the site's current land designation.

EQUALITY IMPLICATIONS

- 19 There are no equality implications arising directly from the recommendations in this report.

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BACKGROUND REPORTS

Planning application to Epping Forest District Council

PREVIOUS COMMITTEE REPORTS

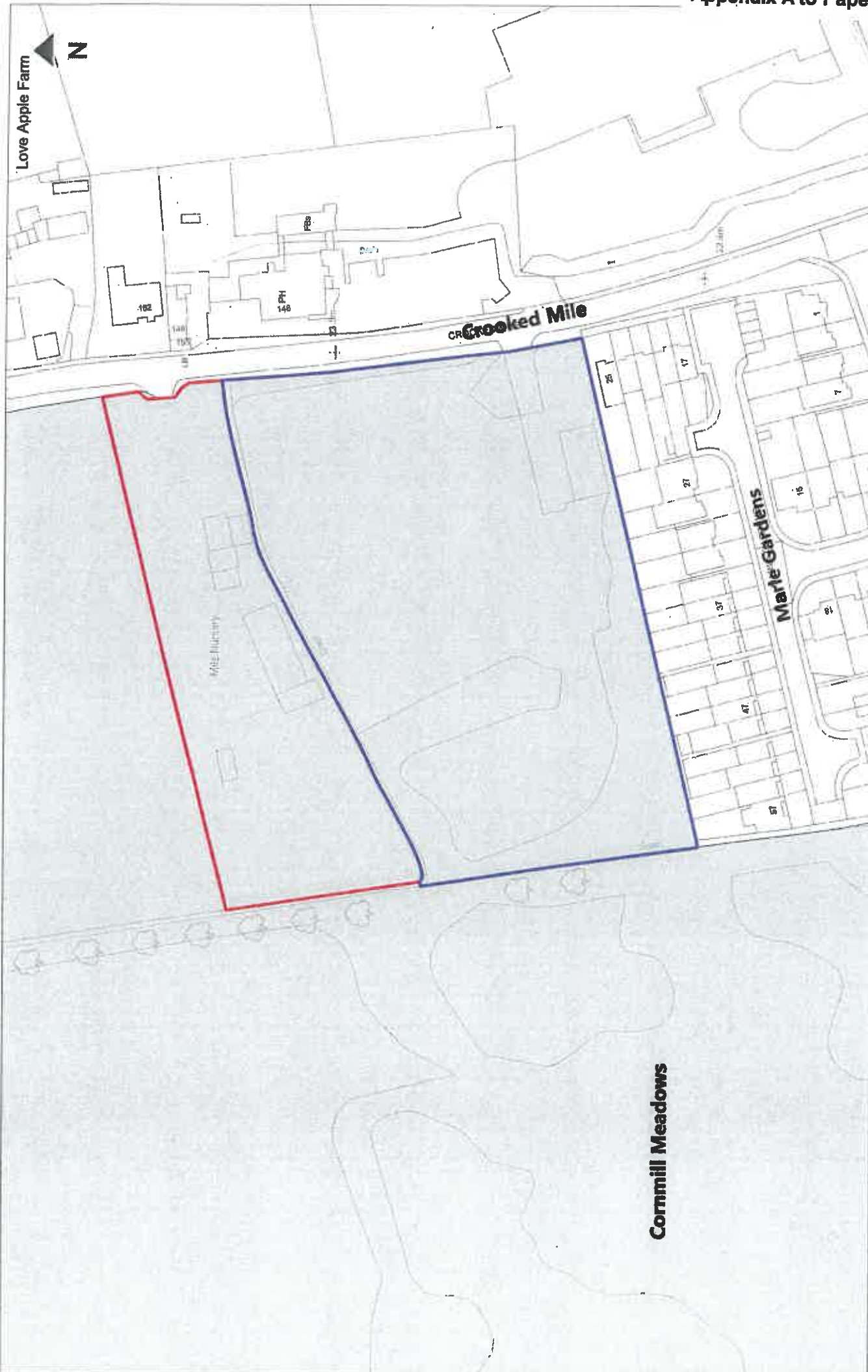
Executive	E/526/17	Proposal to Dispose of Site at Langley & Mile Nursery, Crooked Mile, Waltham Abbey	23 November 2017
Executive	E/507/17	Langley & Mile Nurseries, Crooked Mile, Waltham Abbey	22 June 2017

APPENDICES ATTACHED

Appendix A	Site plan
Appendix B	Historic aerial photo
Appendix C	Aerial photo

LIST OF ABBREVIATIONS

EFDC	Epping Forest District Council
ECC	Essex County Council
SAC	Epping Forest Special Area for Conservation



Mile and Langley Nurseries Context

1:1250 @ A4
10.05.21

-  Mile Nursery
-  Langley Nursery
-  LVRPA Ownership

Produced by: Corporate GIS (AAB)
M:\Cacorp Critical Data\User Specific Maps\Planning\Mile and Langley Nursery 2021\Context Plan (AB) 100521

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